February 28, 2025

Report on the Investigation into the Death of Jermaine Hickson

INTRODUCTION

New York Executive Law Section 70-b authorizes the Office of the Attorney General, acting through its Office of Special Investigation (OSI), to investigate, and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or a peace officer, as defined. When OSI does not seek charges, Section 70-b requires OSI to issue a public report.

This is the report of OSI's investigation of the death of Jermaine Hickson, who was shot on November 10, 2022, by members of the New York City Police Department (NYPD) and died of his wounds.

OVERVIEW

In the evening of November 10, 2022, Mr. Hickson, his girlfriend TC, and TC's daughter TH, were in their apartment on West 36th Street in Brooklyn. (OSI does not publish the names of civilian witnesses.) Mr. Hickson and TC began arguing and Mr. Hickson pulled out a gun. Fearing for their safety, TC left the apartment with TH as Mr. Hickson fired the gun in the apartment. Mr. Hickson followed TC and TH outside. TC struggled with Mr. Hickson for the gun, and Mr. Hickson fired another shot. TC and TH became separated while they fled. TH called 911 as she headed to the corner of West 36th Street and Neptune Avenue while Mr. Hickson followed her. Six uniformed NYPD officers in three police cars arrived at the corner. As shown in body worn camera (BWC) and security video, Mr. Hickson shot at two of the officers as they were getting out of their car, and those officers and two others fired at Mr. Hickson. Mr. Hickson was struck multiple times and pronounced dead at the scene.

Having thoroughly investigated the facts and analyzed the law, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' use of deadly force against Mr. Hickson was justified and, therefore, closes the matter with the issuance of this report and will not seek charges.

FACTS

The Scene

The shooting occurred in front of HL Deli at the corner of West 36th Street and Neptune Avenue. West 36th Street runs north-south, ending in a "T" at Neptune Avenue to the north and intersecting with Mermaid Avenue to the south. The area around the shooting had single family homes, low-rise apartment buildings, and businesses, including the HL Deli and a Key Food grocery store.

NYPD Crime Scene Unit photo showing HL Deli on West 36th Street, with Neptune Avenue to the right.

Interviews

OSI conducted interviews with NYPD Sergeants John Christie and Geovani Sanchez, and with NYPD Officers Christopher Frein, Steven Tartar, Khurram Zubair, and Thomas Petronis. OSI interviewed civilian witnesses CV and HL. Civilian witnesses TC and TH declined to speak with OSI but gave recorded interviews to NYPD Detective Evan Johnson. Civilian witness KN, a friend of TH, also gave a recorded interview to Detective Johnson.

Events Leading up to the Shooting

TC told Detective Johnson that she and Mr. Hickson had been together for many years and had lived together on West 36th Street between Neptune Avenue and Mermaid Avenue for a few years. On the day of the shooting, they spent the day at home with TC's daughter, TH. Mr. Hickson and TC had been drinking vodka and smoking marijuana since early evening in their bedroom. TH was in her own bedroom when TC and Mr. Hickson began arguing. During the argument, Mr. Hickson took out a gun. TC was alarmed as she had not known Mr. Hickson had a gun and did not see where it came from.

TC went to TH's bedroom and told her Mr. Hickson had a gun and they needed to leave the apartment. TH said she didn't see the gun and didn't take the situation seriously until she heard a gunshot go off in the apartment as they were leaving. TC recalled hearing a second shot from within

the apartment when she and TH were in the hallway of their building; TH did not recall hearing a second shot. TC and TH both said that TC tried returning to the apartment multiple times to check on Mr. Hickson, but that TH pulled her out of the building. External security video from a nearby building showed that TC and TH rushed out of their building at 10:16 p.m. (according to the timestamp on the video), that TC attempted to go back into the building, and that TH pulled her away.

NYPD records showed that a ShotSpotter report was generated at 10:15 p.m. ShotSpotter is a system, installed in various places around the city, which uses sensors to "listen" for gunshots. If the system interprets a sound as a gunshot, it generates a report in real time for NYPD. (ShotSpotter's accuracy has been criticized by the New York City Comptroller in a June 2024 report: https://comptroller.nyc.gov/reports/audit-report-on-the-new-york-city-police-departments-oversight-of-its-agreement-with-shotspotter-inc-for-the-gunshot-detection-and-location-system/.)

TC and TH both said Mr. Hickson followed them outside with the gun, which is confirmed by security video.[1] TC walked toward Mr. Hickson, and TH pulled her away from him.

Video showed that TH and TC walked south down West 36th Street toward Mermaid Avenue, and that Mr. Hickson paused outside the apartment building for a moment and then followed TC and TH down West 36th Street. TC said she attempted to get Mr. Hickson to drop the gun and struggled with him for it unsuccessfully.

[1] 2840 West 36th Street Video footage

Still from security video from 2840 West 36th Street, showing Mr. Hickson holding what appears to be a gun in his right hand (red circle) while TH attempted to get TC to leave.

KN said she was walking to TH's apartment for dinner when she heard TH yelling down the street. As she got closer, she heard TH say something about a gun and saw TC and Mr. Hickson struggling for something. KN didn't see the gun until Mr. Hickson shot into the air. KN didn't see Mr. Hickson point the gun at anyone in particular, but both TC and TH told Detective Johnson that Mr. Hickson fired the gun in their direction. After the gunshot, TC, TH, and KN became separated as they fled in different directions.

Security video from 2840 West 36th Street, which did not have audio, captured blurry figures engaged in a struggle; security video from 2841 West 36th Street, which had audio, captured an argument out of the camera's view, in which a woman shouted, "What are you doing? No," followed by a gunshot. The video captured more shouting after the gunshot as TH entered the camera's view and ran north on West 36th Street toward Neptune Avenue, followed by Mr. Hickson and TC, who was shouting, "Jermaine." TC said she was behind Mr. Hickson, who was behind TH. TH said she took off running toward some people after Mr. Hickson shot at her. Mr. Hickson followed her, and TH called 911 on her cellphone.

NYPD records show TH called 911 at 10:17 pm. In the 911 call recording, TH can be heard yelling "No. I'm not coming next to you." She begged the 911 operator for help and said that her stepfather, who was wearing a grey sweater and blue shirt, had a gun. The recording also captured TH screaming and crying, followed by gunshots and sirens.

HL said he was outside the deli with CV when they heard TH yelling down the street. HL and CV saw TH walking barefoot and talking on the phone about a man with a gun and her mother. Security video from the deli[2] showed HL and CV standing outside when TH entered the camera's view, barefoot and talking on a cellphone. TH told Detective Johnson that she was on the phone with a 911 operator when a man, later identified as HL, asked her what was going on.

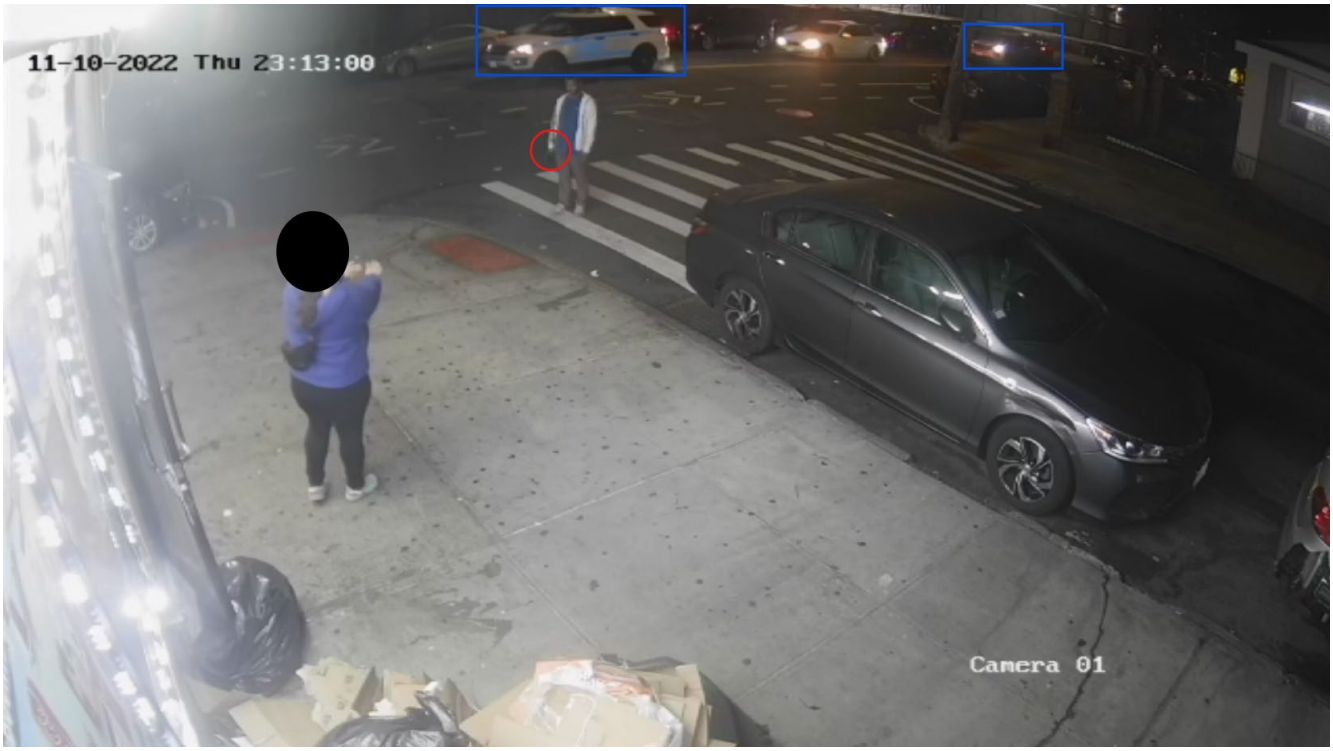
[2] Deli Video . The timestamp on the deli video is 55 minutes faster than the BWC footage.

Still from HL Deli security video showing KH walking barefoot and holding a phone in her right hand. CV and HL are standing to the left of KH, facing each other.

Video showed that TH turned left onto Neptune Avenue and that HL and CV followed her. The three walked out of the camera's view. HL said TH told him that her stepfather had a gun and that she didn't know where her mother was. HL said he tried to calm TH, but she was hysterical once she saw her stepfather behind them. HL said Mr. Hickson told him to bring TH back, and that Mr. Hickson told TH he wasn't going to shoot her or hurt her, though he said this while holding the gun.

The Shooting Incident

HL Deli security video showed that a few seconds after TH, HL, and CV walked out of the camera's view, Mr. Hickson entered the frame from West 36th Street with the gun in his right hand. CV said HL tried to hide TH between parked cars on Neptune Avenue and that she (CV) walked toward the Deli to distract and calm Mr. Hickson. HL Deli security video confirmed that CV walked toward Mr. Hickson, who had a black gun in his right hand. CV said she told Mr. Hickson to put down the gun and told him the police were already there – and video showed two marked police cars driving up Neptune Avenue. Deli video showed that CV raised her hands in the air and waved, as if to attract the attention of the arriving police cars.



Still from HL Deli security video showing Mr. Hickson holding a gun in his right hand (red circle) and CV with her hands out as two marked NYPD patrol cars (blue squares) drove up.

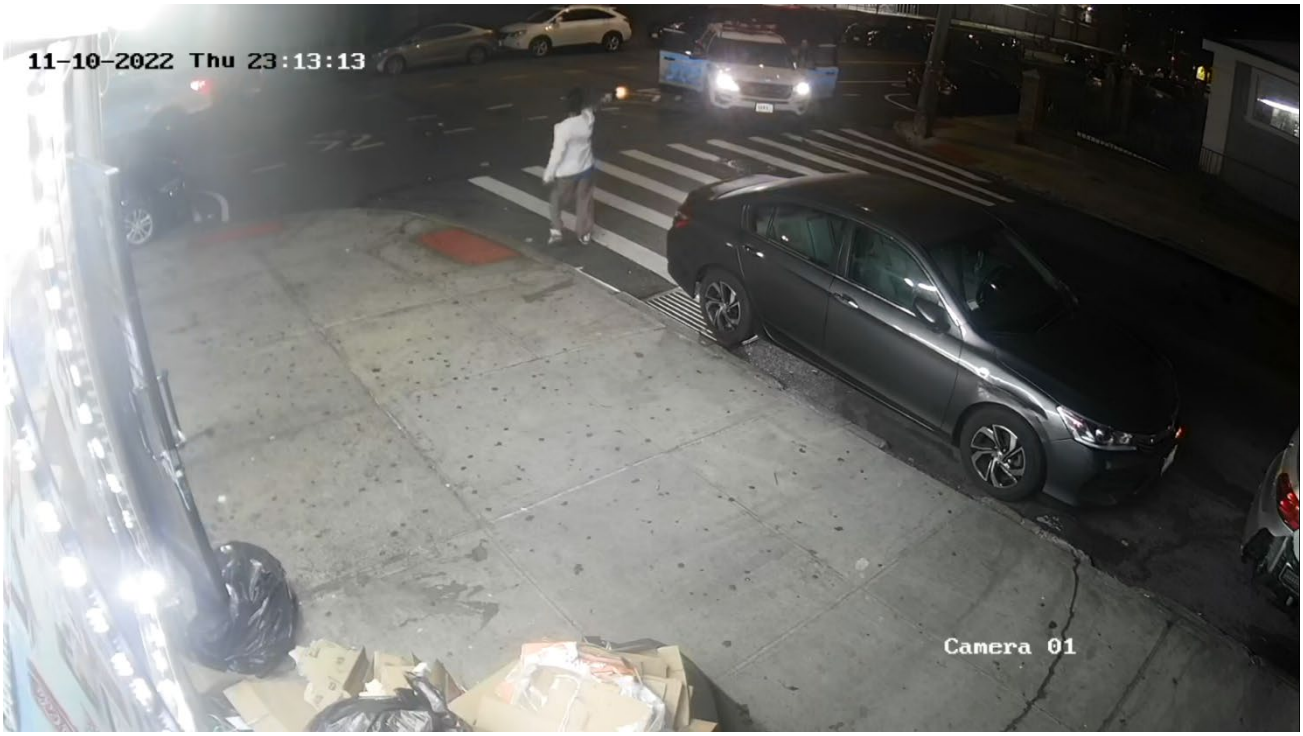
HL Deli security video showed that the first police car paused for a moment and continued down Neptune Avenue. The second police car, driven by Officer Christopher Frein[3] with Officer Colin Rossiter[4] as the front passenger, turned halfway onto West 36th Street and parked at an angle in front of the deli. CV told OSI that Mr. Hickson shot at the officers as soon as they opened the car doors. She said she ran into the deli and hid for the remainder of the shooting.

Officer Frein told OSI that he and Officer Rossiter were responding to a ShotSpotter report and a radio transmission of shots fired when they drove up Neptune Avenue to the intersection with West 36th Street. Officer Frein said he stopped the car at the crosswalk, and that Mr. Hickson began shooting at him and Officer Rossiter as soon as they opened their car doors. Officer Frein said he and Officer Rossiter shot back, which is corroborated by HL Deli security video and BWC video. Officer Frein's BWC video captured him radioing "shots fired" and taking cover behind his car.

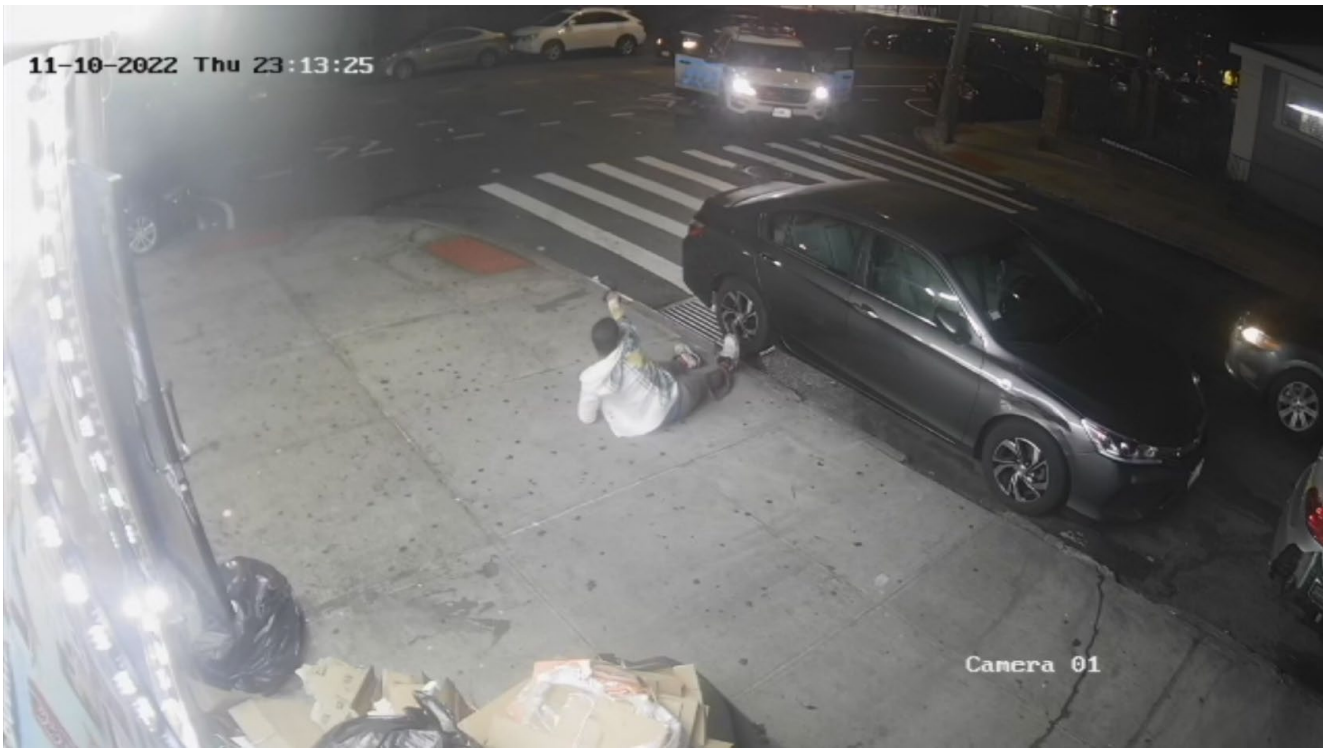
Officer Frein said he was aware of an unmarked police car pulling up behind him and another unmarked police car approach them from West 36th Street. Officer Frein saw Officer Tatar shooting from West 36th Street. Officer Frein heard Officer Tatar yell "ceasefire" and repeated it. Once the shooting stopped, all the officers moved towards Mr. Hickson and Officer Tatar secured Mr. Hickson's gun.

[3] Officer Frein BWC footage.
[4] Officer Rossiter BWC footage. Officer Rossiter died in March of 2023.

HL Deli security video showed that Mr. Hickson fired his gun at least four times at Officers Frein and Rossiter immediately after they opened their car doors. Mr. Hickson fell to the ground, sat back up, and fired two more times.



Still from HL Deli security video showing Mr. Hickson firing a gun at Officers Frein and Rossiter as they opened the doors of their patrol car.



Still from HL Deli security video showing Mr. Hickson after he fell, and sat up, firing his gun at Officers Frein and Rossiter. The headlights of Officer Tatar's unmarked police car are visible on the right.

Officer Steven Tatar[5], in uniform, was driving an unmarked police car with Officer Thomas Petronis, also in uniform, as his front passenger. Officer Tatar told OSI that he heard on the police radio a ShotSpotter report, a 911 call for shots fired in regard to a domestic dispute, and his patrol supervisor reporting an incident with a victim and shots fired. Officer Tatar's BWC video showed that he drove the wrong way up West 36th Street and encountered a hysterical TC and KN in the middle of the block. He stopped briefly and asked, "Where, what's he wearing?" and continued up West 36th Street. His BWC captured the sound of multiple gunshots and then showed him getting out of the car and firing at Mr. Hickson multiple times as Mr. Hickson sat on the ground facing Officers Frein and Rossiter.

Officer Tatar said that as he was driving up West 36th Street he saw TC, who was frantic; she pointed to where Mr. Hickson was and said he had a gun. As he continued up West 36th Street, he said he saw Officers Rossiter's and Frein's police car to his right and heard gunshots go off from his left. Officer Tatar said he could see fear on Officer Frein's face and gunshots hitting their police car but couldn't see Mr. Hickson at first. As Officer Tatar took cover behind a parked car on the left side of the street, he saw Mr. Hickson holding a gun and firing shots at Officers Rossiter and Frein. Officer Tatar shot at Mr. Hickson until he saw Mr. Hickson fall to the ground. Officer Tatar said he yelled "ceasefire" and made eye contact with Officer Frein, who also yelled "ceasefire." After the shooting, Officer Tatar said he handcuffed Mr. Hickson and recovered the gun lying next to him, which is corroborated by HL Deli security video.

HL Deli security video showed blood pooling around Mr. Hickson and additional officers arriving. The BWCs of Officer Khurram Zubair and Sergeant John Christie captured them radioing for an ambulance. The BWCs of Officers Zubair and Petronis showed them taking turns performing chest compressions on Mr. Hickson. Officer Zubair's BWC showed him checking Mr. Hickson for a pulse multiple times and saying he could not find one. HL Deli security video showed that an FDNY ambulance arrived at 10:22 p.m. Officer Zubair's BWC showed that an FDNY Lieutenant pronounced Mr. Hickson dead at 10:23 p.m.

In her interview with Detective Johnson, TH said she ran away from Mr. Hickson and heard shots go off behind her. She said HL ran with her until they saw a police car, and that she got into the police car and stayed there until the shooting stopped. Officer Shannon Fahy's and Sergeant Christie's BWCs showed that they drove to the corner of West 37th Street and Neptune Avenue at 10:18 p.m., when TH approached them and got into their rear passenger seat.

In her interview with Detective Johnson, TC said police cars pulled up at the corner of Neptune Avenue and West 36th Street, and Mr. Hickson began shooting at police officers. In HL's interview with OSI, he said he did not see Mr. Hickson point the gun at anyone until the marked police car pulled up. He said Mr. Hickson pointed the gun at the police car as soon as it stopped; he said he heard a shot fired as soon as the officers opened their doors.

[5] Officer Tatar BWC footage

Sergeant Geovani Sanchez[6] said he was partnered with Officer Zubair on the night of the incident and that they were at the precinct when he heard a ShotSpotter report and Sergeant Christie radioing "shots fired." The precinct was only about a mile away from West 36th Street and Neptune Avenue, so he and Officer Zubair responded. Sergeant Sanchez said he heard gunshots as they were driving on Neptune Avenue. Officer Zubair parked behind Officer Frein's car on Neptune Avenue, and Sergeant Sanchez noticed an unmarked police car to the left. Sergeant Sanchez saw a man in a white hoodie on the ground shooting in his direction; he fired a single shot and took cover.

Sergeant Christie said he was partnered with Officer Fahy on the day of the shooting and told OSI they were on routine patrol in a marked police car on West 37th Street and Mermaid Avenue when he heard gunshots. A man in an SUV stopped to tell Sergeant Christie that a man in all black clothing was shooting near the deli. Sergeant Christie heard a ShotSpotter report over the radio and also radioed the information he got from the man in the SUV. As Sergeant Christie and Officer Fahy headed to the deli, Sergeant Christie heard gunshots and encountered a woman, later identified as TH, screaming for help. Sergeant Christie said they allowed TH to get in the backseat of their car and headed to the scene. When he arrived, Mr. Hickson was on the ground and Officer Zubair was performing CPR. Sergeant Christie said he requested an ambulance for Mr. Hickson and checked if any officers were hurt.

Autopsy

Dr. Amelia Baxter-Stoltzfus of the New York City Office of Chief Medical Examiner (OCME) conducted the autopsy and determined that Mr. Hickson sustained two penetrating gunshot wounds to the brain; one penetrating gunshot wound to the cheek; one perforating and one penetrating gunshot wound to the torso; and one penetrating gunshot wound to the left leg. Mr. Hickson also had a laceration in the lower back where a bullet fragment was recovered. Dr. Baxter-Stoltzfus recovered four bullets and six bullet fragments from Mr. Hickson body, including one bullet from his shirt and three bullet fragments from Mr. Hickson's anterior head. She determined the cause of death to be the gunshot wounds to the head and torso. A toxicology examination of Mr. Hickson's blood showed a blood alcohol content (BAC) of 0.261% and a THC level of 2.3ng/mL.

Ballistics Evidence

NYPD officers recovered Mr. Hickson's gun, a Canik 9mm Lugar semi-automatic pistol, from the scene, and Sergeant Sanchez's and Officers Tartar's, Frein's, and Rossiter's service weapons. NYPD's Firearms Analysis Section (FAS) tested all the guns and found them to be operable. The NYPD service weapons had 15-round magazines, giving those guns a capacity of 16 if a round was in the firing chamber. Upon examination of the service weapons, and assuming each service weapon had been loaded with 16 live rounds prior to the shooting, as is standard NYPD practice, FAS found that Sergeant Sanchez had discharged one round, Officer Tatar had discharged 10 rounds, Officer Frein had discharged eight rounds, and Officer Rossiter had discharged 12 rounds.

[6] Sergeant Sanchez BWC footage.

Mr. Hickson's gun also had a capacity of 16 live rounds (15 in the magazine and one in the chamber), but it was unknown how many rounds it had been loaded with prior to the shooting. Upon examination, FAS found that Mr. Hickson's gun had one round in the chamber and one round in the magazine.

NYPD Crime Scene Unit photo of the Canik 9mm Lugar semi-automatic pistol (RC1) recovered from the scene, with the live round from the chamber (RC1A), the magazine capable of holding 15 live rounds (RC1B), and one live round from the magazine (RC1B1).

NYPD's Crime Scene Unit (CSU) processed the scene, including the police cars, and searched Mr. Hickson's apartment after the shooting. Officers Frein's and Rossiter's car had bullet impact marks to the passenger side door and the front windshield. A parked car in front of the deli had four bullet impact marks. A bullet impact mark was found on the wall of a bedroom in Mr. Hickson's apartment.

NYPD CSU photos of Officers Frein's and Rossiter's car, showing the bullet impact mark in the front passenger side door (left) and the two bullet impacts marks in the driver's side windshield (right).

NYPD CSU photo of a car parked in front of the deli with four bullet impact marks.

NYPD CSU photo of a bullet impact mark in Mr. Hickson's apartment.

NYPD's Ballistics section analyzed the bullets and bullet fragments recovered from Mr. Hickson's body. Ballistics determined that the bullet from his cheek and the two fragments from his torso were unsuitable for comparison. With regard to the bullets from Mr. Hickson's t-shirt, posterior skull, and left knee, and the bullet fragments from Mr. Hickson's anterior head and lower back, Ballistics ruled them out as fired from the Canik 9mm Luger or Officer Frein's gun and otherwise found them inconclusive as compared to each other and to Sergeant Sanchez's, Officer Tatar's, and Officer Rossiter's guns.

LEGAL ANALYSIS

New York Penal Law Article 35 sets forth the defense of justification to crimes involving the use of physical force. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. If a defense is raised at trial, the burden is on the prosecutor to disprove it beyond a reasonable doubt, PL 25.00(1). The defendant is entitled to have the jury instructed on the defense of justification even if the defendant does not offer evidence, as long as the defense is implied by the prosecutor's evidence. *People v Steele*, 26 NY2d 526 (1970).

In this case, Sergeant Sanchez and Officers Tartar, Frein, and Rossiter used deadly physical force. Under PL 10.00(1) "deadly physical force" is "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." Under PL 10.00(10) "serious physical injury" is "physical injury which creates a substantial risk of death, or

which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ."

PL 35.30 is the provision defining justification when a police officer or peace officer uses force to effect or attempt to effect an arrest. PL 35.30(1) provides:

"A police officer or a peace officer, in the course of effecting or attempting to effect an arrest … of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest … or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that … (c) regardless of the particular offense which is the subject of the arrest … the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force."

As the provision states, officers who use deadly physical force are justified when they reasonably believe deadly force is necessary to defend themselves or another against the imminent use of deadly physical force. "Reasonable belief" means that a person actually believed, "honestly and in good faith," that physical force was about to be used against them and that physical force was necessary for self-defense (subjective component), and it means that a "reasonable person" under the same "circumstances" could have believed the same (objective component). *People v Goetz*, 68 NY2d 96 (1986); *People v Wesley*, 76 NY2d 555 (1990). Therefore, before using deadly force in self-defense, (a) the officer must honestly and in good faith believe deadly force was about to be used against them or another person and that deadly force is necessary for self-defense, and (b) a reasonable person under the same circumstances could believe the same.

When an officer is justified in using deadly physical force pursuant to PL 35.30, the officer does not have a duty to retreat, PL 35.15(2)(a)(ii).

Based on the evidence in this investigation, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' use of deadly physical force was justified under the law. NYPD officers arrived at Neptune Avenue and West 36th Street as a result of a ShotSpotter alert, a radio transmission of shots fired, and being flagged down by someone who said a man was shooting near the deli. Deli security video and BWC video showed that Mr. Hickson shot at Officers Frein and Rossiter as soon as they opened the door of their car; Officers Frein and Rossiter shot back at Mr. Hickson. Sergeant Sanchez and Officer Tatar, who arrived from different directions after the gunfire began, saw Mr. Hickson shooting at Officers Frein and Rossiter and then shot at him. The officers involved had reasonable cause to believe that Mr. Hickson was committing Criminal Possession of a Weapon in the Second Degree[7] and attempted Aggravated Assault on a

[7] Under PL 265.03 a person commits Criminal Possession of a Weapon in the Second Degree when "such person possesses any loaded firearm."

Police Officer,[8] both class C violent felonies. The officers saw Mr. Hickson using deadly physical force and reasonably believed that deadly physical force was necessary to stop Mr. Hickson.

As a result, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that the discharging officers were justified in firing at Mr. Hickson. Therefore, OSI will not present evidence to a grand jury and closes the matter with the issuance of this public report.

Dated: February 28, 2025.

[8] Under PL 120.11 a person commits Assault on a Police Officer when "with intent to cause serious physical injury to a person whom he knows or reasonably should know to be a police officer engaged in the course of performing his official duties, he causes such injury by means of a deadly weapon or dangerous instrument." Under PL 110.00 "a person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime."