November 18, 2024

Report on the Investigation into the Death of Mamady Cisse

OVERVIEW

New York Executive Law Section 70-b directs the Attorney General's 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. When OSI does not seek charges against the officer, Section 70-b requires OSI to issue a public report describing its investigation. This is the public report of OSI's investigation of the death of Mamady Cisse, who was shot and killed on September 9, 2023, by an officer of the New York City Police Department (NYPD) in Bronx County.

On September 9, 2023, two uniformed NYPD officers from the 45th Precinct responded to a 7-11 convenience store after a store employee came to the stationhouse and reported a person acting "suspicious and weird" in the store. Upon entering the store, the officers observed Mr. Cisse in a back aisle smoking. Mr. Cisse's hands were in the front pocket of his sweatshirt. As Mr. Cisse walked toward one of the officers the officer told him to show his hands. Mr. Cisse pulled a knife from his sweater pocket and ran toward the officer, who fired his service weapon one time at Mr. Cisse, striking him and causing his death.

Having thoroughly investigated the facts, including review of body worn camera (BWC) video and store security video,[1] and analyzed the law, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that the officer's use of deadly force against Mr. Cisse was justified under New York law and will not seek charges against the officer.

FACTS

The Scene

The shooting occurred in a 7-11 store located at 3508 East Tremont Avenue, in the Bronx. The entrance to the store is a glass door. To the left as one enters is a cashier's counter. Merchandise is organized in aisles with refrigerated items along the back wall and a coffee island in the center.

[1] These are the links to the relevant videos:

1. Liquor store video.mp4
2. 711 Dome Camera.mp4
3. 7-11 Security Video 1.mp4
4. 7-11 Security Video 2.mp4
5. 7-11 Security Video 3.mp4
6. PO Ivan Nunez BWC.mp4
7. PO Alan Viveros BWC.mp4

NYPD Crime Scene Unit (CSU) photo of the entrance to the 7-11.

CSU photo at the entrance to the 7-11. Blood is visible to the lower right, by an orange cone. At the extreme lower left, marked by another orange cone, is a black handled kitchen knife.

Background of the Officers Involved

OSI interviewed the two officers who responded to the 7-11. Officer Ivan Nunez became a member of NYPD in 2022 and was assigned to the 45th Precinct in January of 2023. Aside from training at the range, he had never fired his weapon in the line of duty before September 9, 2023. Officer Alan Viveros became a member of NYPD in January of 2023 and was assigned to the 45th Precinct in July of 2023. Neither officer had encountered Mr. Cisse prior to September 9, 2023. Both had been to the 7-11 in question, which is around the corner from the 45th Precinct stationhouse, many times.

Events Leading to the Shooting

Security video from a liquor store on Tremont Avenue, about 300 feet from the 7-11, showed that on September 9, 2023, at 2:13 p.m. Mr. Cisse, in black clothing and a carrying a black backpack, placed a bottle of Pink Whitney liquor under the back of his hooded sweatshirt and walked out of the store without paying.

Security video from the 7-11 showed that Mr. Cisse entered the store at 2:14 p.m. His backpack was on his back. He walked past the cash register to the back of the store. At 2:15 p.m. Mr. Cisse removed his backpack and placed it on a counter by the refrigerators. He opened the backpack and took out the bottle of Pink Whitney liquor and a three-pack of kitchen knives. He drank from the liquor bottle. He briefly opened a door that led to a storage area and then approached the cashier.

Still from 7-11 security video showing Mr. Cisse in a back aisle of the store at 2:15 p.m.

OSI spoke with CL[2] who was working at the 7-11 on September 9. CL said she noticed Mr. Cisse enter the store and walk to the back; she had not seen Mr. Cisse before. CL said Mr. Cisse approached her as she was working at the cash register and asked for some "loose," which she understood to mean loose cigarettes. CL told him the 7-11 did not sell loose cigarettes, but he could try the deli across the street.

Video showed that Mr. Cisse left the 7-11 at 2:17 p.m., returned at 2:22 p.m., and walked to the back of the store where he drank from the bottle of Pink Whitney. Mr. Cisse approached the cashier area again, walked around the store, stopped to spit by the coffee island, appeared to shadowbox in the area where he had left his backpack, and paced back and forth by the refrigerators.

OSI interviewed GS, CL's co-worker. When Mr. Cisse first entered the store, GS was taking his break. After his break, GS began working at the cash register. GS said Mr. Cisse approached and asked for Newport cigarettes. GS picked up a pack of cigarettes and held them out to Mr. Cisse, but Mr. Cisse did not take them. Mr. Cisse then made loops around the store walking from the back to the cashier area. CL told OSI that Mr. Cisse again said he wanted cigarettes. Video showed that at 2:29 p.m. Mr. Cisse drank from the liquor bottle. At 2:30 p.m. he walked to the front door and spit.

[2] OSI identifies civilian witness by their initials.

CL told OSI she walked outside to make a phone call, past Mr. Cisse as he stood by the door. GS told OSI that, after CL left the store, Mr. Cisse walked to the register and asked for Newport cigarettes. GS picked up a pack of cigarettes from a display case behind the register and held them out to Mr. Cisse, but Mr. Cisse did not take them. GS put the cigarettes back. GS said Mr. Cisse again asked for cigarettes and, as GS was moving to get the cigarettes, Mr. Cisse moved quickly behind the cash register. CL told OSI that, while outside the 7-11, she looked through the window of the store and saw Mr. Cisse behind the register. She then ran around the corner to the 45th Precinct stationhouse.

GS said that as Mr. Cisse walked behind the register, he pulled out a kitchen knife from his pocket. Mr. Cisse said, "This is not that type of party." GS gave Mr. Cisse a pack of Newport cigarettes. Mr. Cisse said, "Don't do nothing stupid." GS said Mr. Cisse left the register area.

Still from 7-11 security video at 2:31 p.m. showing Mr. Cisse walking behind the cash register with a knife in his left hand (circled).

Still from 7-11 security video showing Mr. Cisse as he walked from behind the cash register. A pack of cigarettes is visible in his right hand and a knife in his left hand.

Mr. Cisse walked back to the register. GS told OSI that Mr. Cisse said, “I promise you, if you do something stupid it is going to end bad,” and then demanded a lighter. GS gave Mr. Cisse a lighter. Security video showed that Mr. Cisse walked to the back of the store where he lit a cigarette at 2:32 p.m.

Still from 7-11 security video at 2:32 p.m. showing Mr. Cisse lighting a cigarette.

GS texted the store owner, who was offsite, to call 911. A call to 911 was placed by MC, the owner of the 7-11, at 2:34 p.m. He told the 911 operator that he received a text from an

employee at the 7-11 about a person who was shoplifting from the store.

Officer Nunez told OSI that he and Officer Viveros were returning to the 45th Precinct stationhouse because their shift was about to end. They were both in uniform. The officers were returning their car keys to the desk sergeant when an employee from 7-11 (CL) came into the stationhouse and said there was a person acting suspicious and weird inside the store. Officers Nunez and Viveros said she gave no further description. The desk sergeant told Officers Nunez and Viveros to go to the 7-11. According to the officers' BWCs they left the stationhouse at 2:33 p.m., walked the short distance to 7-11, and entered the store at 2:34 p.m.

The Shooting

Officer Viveros said as he entered the store he saw Mr. Cisse in the back area, smoking. Officer Nunez said he waved at Mr. Cisse to come to the front and told him he couldn't smoke in the store. Officer Viveros moved off to Mr. Cisse's left, while Officer Nunez approached head on. According to his BWC, Officer Nunez asked Mr. Cisse where he was going as Mr. Cisse moved around the coffee station. Officer Nunez said, and his BWC and store video confirmed, as Mr. Cisse stepped toward him Officer Nunez backed toward the door of the 7-11. Officer Nunez repeatedly told Mr. Cisse to take his hands out of his pocket. Video showed that Mr. Cisse's right hand was in the right pocket of his hooded sweatshirt and that a knife blade protruded from that pocket. Officer Nunez told Mr. Cisse to "take the knife out." Officer Nunez pointed his firearm at Mr. Cisse.[3]

[33] Neither Officer Viveros nor Officer Nunez was armed with a Taser.

Still from Officer Nunez's BWC showing a knife blade protruding from Mr. Cisse's right sweatshirt pocket.

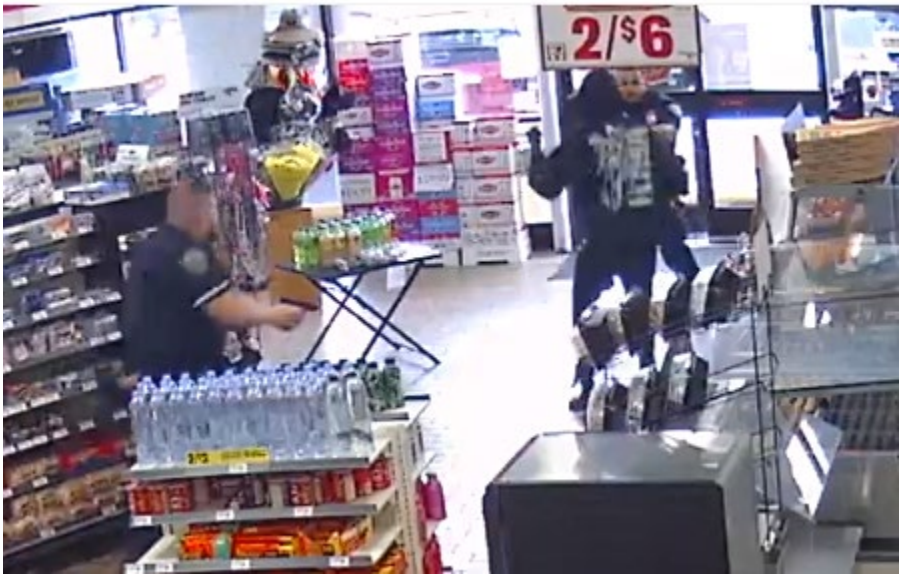
BWC showed that Mr. Cisse removed the knife from his pocket with his right hand and moved the knife over to his left hand as he continued to walk toward Officer Nunez. Officer Nunez backed away toward the door.

Still from Officer Nunez's BWC showing Mr. Cisse approaching Officer Nunez with the knife in his left hand.

BWC showed that Mr. Cisse briefly paused and then ran at Officer Nunez. Officer Nunez discharged his firearm one time, which caused Mr. Cisse to fall to the floor.

GS said he was standing by the register when Mr. Cisse approached Officer Nunez. GS saw Mr. Cisse take a knife out of his pocket and "charge" at the officer and saw the officer shoot one time.

OSI interviewed JL who was a customer at the 7-11. JL said he was in the store when the officers entered. They told Mr. Cisse to take his hands out of his pocket and JL saw Mr. Cisse remove a large kitchen knife from his sweatshirt pocket. JL said Mr. Cisse briefly shadowboxed with the knife in his hand and then went after one of the officers. JL then heard a shot.



Still from 7-11 security video showing Mr. Cisse with his left hand raised and running at Officer Nunez.

Still from 7-11 security video showing the moment Officer Nunez fired at Mr. Cisse.

The Aftermath

Officers Nunez and Viveros immediately radioed for an ambulance and began life saving measures on Mr. Cisse, performing cardio-pulmonary resuscitation and attempting to tape up Mr. Cisse's wound. Officers from the 45th Precinct responded to the 7-11. According to security video and BWC, an ambulance arrived on scene at 2:40 p.m. Emergency Medical Technicians (EMTs) and NYPD officers lifted Mr. Cisse onto a stretcher and wheeled him into the ambulance at 2:41 p.m. The ambulance left for the hospital with Mr. Cisse at 2:44 p.m. Officer Viveros rode in the ambulance with the EMTs and Mr. Cisse. Life saving measures were continued by Officer Viveros and the EMTs until they arrived at Jacobi Medical Center at 2:50 p.m. Mr. Cisse was pronounced dead by medical staff at 3:13 p.m.

Evidence Collection and Analysis

Ballistics Evidence

NYPD's Crime Scene Unit (CSU) processed the scene for ballistics evidence. One 9mm shell casing consistent with NYPD issued ammunition was found on the floor of the 7-11.

CSU photo of the vestibule area. The "3" marker denotes the shell casing.

CSU photo of the shell casing.

Officer Nunez's firearm was tested by the ballistics laboratory for operability and was found to be operable.

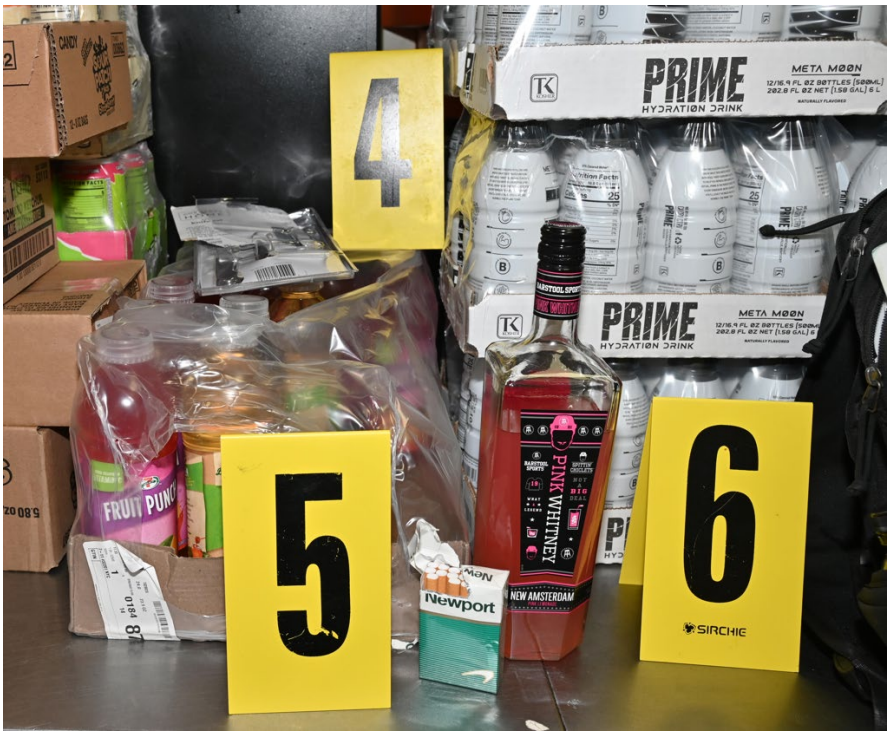
Other Evidence

CSU recovered a black handled kitchen knife on the floor by the cashier partition at the front of the store.

CSU photo of the knife.

A black backpack was found at the back of the store along with a bottle of Pink Whitney liquor. An opened pack of Newport cigarettes was next to the backpack and liquor. An opened package of kitchen knives was found next to the cigarettes on top of a case of beverages. The package contained two black handled knives that matched the knife Mr. Cisse was holding when he ran at Officer Nunez. The packaging contained space for a third knife. In the backpack, and removed by NYPD personnel, were black clothing and Mr. Cisse's birth certificate.

CSU photo of the clothing, backpack, liquor bottle, cigarettes, and package of knives on a counter at the back of the store.



CSU photo showing the package of knives at 4, the cigarettes at 5, and the liquor bottle at 6.

CSU photo of the backpack at 7, the clothing at 8 and 9, and Mr. Cisse's birth certificate at 10.

CSU photo of the three-piece knife set packaging.

Medical Examination and Autopsy

OSI reviewed the autopsy report prepared by Dr. Kristen Landi of the City of New York Office of Chief Medical Examiner. Dr. Landi determined that the cause of Mr. Cisse's death was a "gunshot wound of torso with injury of liver and major blood vessels" and that the manner of death was "homicide (shot by police)." The autopsy report said the bullet entered the lower right chest and lodged in Mr. Cisse's lower back.

LAW

Article 35 of the New York Penal Law defines the circumstances under which a person may be justified in using deadly force against another. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1). As detailed below, based on the evidence in this investigation, a prosecutor would be unable to disprove beyond a reasonable doubt that the use of deadly physical force by the discharging officers

was justified.

In this case, Officer Nunez 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."

The law, therefore, delineates the circumstances where physical force and deadly physical force are justified. Deadly physical force by a police officer is justified when the officer reasonably believes deadly force is necessary to defend the officer or another against the imminent use of deadly physical force. Police officers using force pursuant to PL 35.30(1) are under no duty to retreat when threatened with deadly physical force, according to PL 35.15(2)(a)(ii).

Under Article 35, "reasonable belief" means that a person actually believed, "honestly and in good faith," that physical force was about to be used against him and that physical force was necessary for self-defense, and that a "reasonable person" under the same "circumstances" could have believed the same. *People v. Goetz*, 68 N.Y.2d 96 (1986); *People v. Wesley*, 76 N.Y.2d 555 (1990). Therefore, before using deadly force in self-defense, a person must honestly and in good faith believe that deadly force was about to be used against them and that deadly force was necessary for self-defense, and a reasonable person under the same circumstances could have believed the same.

Based on the evidence in this investigation, a prosecutor would not be able to disprove beyond a reasonable doubt that Officer Nunez's use of deadly physical force was justified under the law. Under PL 35.30, Officer Nunez could use the physical force he reasonably believed to be necessary to effectuate the arrest of Mr. Cisse and could use deadly force if he reasonably believed it was necessary to defend himself or others against Mr. Cisse's use or imminent use of deadly force.

Here, the officers were responding to the 7-11 after an employee had complained that someone in the store was acting "suspicious and weird." Although the officers did not know this information when they entered, Mr. Cisse had displayed a knife to the cashier and taken a pack of cigarettes, committing the Penal Law offense of Robbery in the First Degree. When Officers Nunez and Viveros entered the store Mr. Cisse removed a knife from his sweatshirt pocket and ran at Officer Nunez, committing the Penal Law offense of menacing a police officer. After retreating, Officer Nunez fired one shot at Mr. Cisse, who had closed to within arm's length of Officer Nunez.

Based on the law and the evidence, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that the discharging NYPD officer's use of deadly force against Mr. Cisse was justified under New York law. As a result, OSI will not seek charges and closes the matter with this report.

Dated: November 18, 2024