



*Office of the New York State Attorney General Lettla James*

Office of Special Investigation

July 21, 2023

# Report on the Investigation into the Death of Lashawn McNeil

## EXECUTIVE SUMMARY

New York Executive Law Section 70-b (Section 70-b) authorizes 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. When OSI does not seek charges, as in this case, Section 70-b requires issuance of a public report. This is OSI's report on the death of Lashawn McNeil, which was caused by Police Officer Sumit Sulan of the New York City Police Department (NYPD) on January 21, 2022, in New York County. Based on the investigation, OSI concludes that PO Sulan should not be charged with a crime because a prosecutor would not be able to disprove beyond a reasonable doubt that his actions were justified under Article 35 of the Penal Law.

## STATEMENT OF FACTS

The following report is a comprehensive account of the events that transpired on January 21, 2022.

### Pre-Shooting

On January 21, 2022, at 5:09 p.m.,<sup>1</sup> S.S.<sup>2</sup> called 911 and reported a domestic dispute with her son, Lashawn McNeil.<sup>3</sup> S.S. told the operator she was at 119 West 135<sup>th</sup> Street, Apartment 1D, with her two sons and was having a "dispute" with one of them. S.S. told the 911 operator there were no weapons in the house. She said Mr. McNeil was threatening her with physical abuse, the situation was "going to get physical", and that "he's going to cause all of us to die." S.S. told the operator she wanted the responding officers to calm the situation because she didn't want it to escalate. The operator logged the call and officers were dispatched to S.S.'s location.<sup>4</sup>

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<sup>1</sup> All times are approximate.

<sup>2</sup> OSI does not disclose the names of civilian witnesses.

<sup>3</sup> NYPD NetDispatcher Report (Event #D22012117223), 1/21/2022.

<sup>4</sup> *Id.*



Video capture of the initial encounter with S.S. (Officer Rivera BWC)

Officer Wilbur Mora’s Body-worn camera (BWC) video shows that at 6:15 p.m. he and Officers Sumit Sulan and Jason Rivera were in an NYPD patrol car having a phone conversation with S.S. Officer Mora asked her where she was, and she replied, “I’m in the house.”<sup>5</sup> Officer Mora told her that he and his fellow officers were about to ring the doorbell.<sup>6</sup> After the call ended, the three officers got out of their patrol car and entered 119 West 135 Street.<sup>7</sup> Inside the vestibule, Officer Mora used an electronic door buzzer to ring Apartment 1D.<sup>8</sup> No one answered and they were unable to enter.<sup>9</sup> Officer Mora’s BWC shows at 6:18 p.m., a female resident entered the vestibule and allowed the three officers inside.<sup>10</sup> The officers walked down a hallway to apartment 1D.<sup>11</sup> Officer Mora knocked on the door and a few second later S.S. answered.<sup>12</sup> She confirmed she had called 911.<sup>13</sup> Officer Mora’s BWC shows the three officers entered the apartment and spoke with S.S. in the living room where her son, H.S., was sitting on the couch.<sup>14</sup> She told the officers that she and Mr. McNeil kept getting into “disputes” and “arguments.”<sup>15</sup> During the conversation, Officer Rivera asked S.S. whether her “other son,” Mr. McNeil, was in the apartment, and she said he was in the “back.”<sup>16</sup> Officer Mora asked S.S. whether there were any weapons in the back, and she responded, “no, no...not at all.”<sup>17</sup>

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<sup>5</sup> Police Officer Wilbert Mora’s Body Camera Video Footage, 1/21/22 at 18:15:27-18:15:40.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 18:16:03.

<sup>8</sup> *Id.* at 18:16:19.

<sup>9</sup> *Id.*

<sup>10</sup> Police Officer Wilbert Mora’s Body Camera Video Footage, 1/21/22 at 18:18:08.

<sup>11</sup> *Id.* at 18:18:27.

<sup>12</sup> *Id.* at 18:18:34.

<sup>13</sup> *Id.* at 18:18:39-18:18:48.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Police Officer Sumit Sulan’s Body Camera Video Footage, 1/21/22 at 18:19:02.

<sup>17</sup> Police Officer Jason Rivera’s Body Camera Video Footage, 1/21/22 at 18:19:27-18:19:31.

## Shooting

Officer Rivera's BWC video shows that at 6:20 p.m. he asked S.S. to tell Mr. McNeil to come to the front.<sup>18</sup> S.S. called out to Mr. McNeil, "Shawn, they want you to come to the front."<sup>19</sup> Mr. McNeil did not respond, after which Officer Rivera walked down the hallway towards the bedroom with Officer Mora following 2-3 feet behind.<sup>20</sup> Officer Sulan remained in the living room speaking to S.S..<sup>21</sup> As Officer Rivera walked towards the bedroom, he called out to Mr. McNeil, "Hey Shawn." Mr. McNeil responded, "What's up brother, come over here." Officer Rivera's BWC shows that when he was two to three feet from the bedroom doorway, Mr. McNeil appeared in the doorway of the bedroom holding a handgun and shot him at close range.<sup>22</sup> Officer Rivera immediately fell to the ground and Officer Mora retreated in the direction of the living room.<sup>23</sup> As Officer Mora retreated, three shots, back-to-back, are heard on Officer Mora's BWC video.<sup>24</sup>

BWC video shows that Officer Mora ran into the living room to find cover behind a wall.<sup>25</sup> There, he pulled out his service weapon and fired one shot down the hallway in the direction of Mr. McNeil.<sup>26</sup> BWC audio from Officer Mora indicates Mr. McNeil shot his weapon three or four times.<sup>27</sup> Officer Mora's BWC shows he exchanged fire with Mr. McNeil and fell to the ground after getting hit. Officer Sulan, S.S., and H.S. sought cover in the kitchen, and Officer Sulan communicated over his radio what had occurred.<sup>28</sup> A four-to-five-second pause can be heard on Officer Sulan's BWC and then one gun shot is heard—this appears to be when Mr. McNeil shot Officer Rivera in the back of the head.<sup>29</sup> About 30 seconds later, a second gun shot is heard—this appears to be when Mr. McNeil shot Officer Mora in the back of the head.<sup>30</sup> BWC shows that immediately after the second shot, Officer Sulan walked into the living room, where Mr. McNeil was standing next to Officer Mora. Officer Sulan shot Mr. McNeil two times causing him to fall to the floor.<sup>31</sup> Officer Sulan then communicated over his radio, "shots fired" and went over to Officer Mora to check on him.<sup>32</sup>

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<sup>18</sup> *Id.* at 18:20:01-18:20:03.

<sup>19</sup> *Id.* at 18:20:03-18:20:05.

<sup>20</sup> Police Officer Wilbert Mora's Body Camera Video Footage, 1/21/22 at 18:20:15.

<sup>21</sup> Police Officer Sumit Sulan's Body Camera Video Footage, 1/21/22 at 18:20:19-18:20:25.

<sup>22</sup> Police Officer Jason Rivera's Body Camera Video Footage, 1/21/22 at 18:20:19-18:20:20.

<sup>23</sup> Police Officer Wilbert Mora's Body Camera Video Footage, 1/21/22 at 18:20:20-18:20:23.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 18:20:22-18:20:24.

<sup>27</sup> *Id.* at 18:20:20-18:20:26.

<sup>28</sup> Police Officer Sumit Sulan's Body Camera Video Footage, 1/21/22 at 18:20:19-18:20:25.

<sup>29</sup> *Id.* at 18:20:30.

<sup>30</sup> *Id.* at 18:21:02.

<sup>31</sup> *Id.* at 18:21:02-18:21:06.

<sup>32</sup> *Id.* at 18:21:07-18:21:31.



Still from Officer Rivera's BWC showing the hallway leading to Mr. McNeil's bedroom



Still from Officer Mora's BWC showing Officer Rivera walking towards the bedroom



Still from Officer Rivera's BWC showing Mr. McNeil shooting at Officer Rivera



Still from Officer Sulan's BWC showing Officer Sulan shooting at Mr. McNeil

### Police Arrival/Post Shooting Investigation

At 6:21 p.m., surveillance video from the first floor of 119 West 135<sup>th</sup> Street shows that Officer Sulan left apartment 1D and opened the vestibule door where numerous NYPD Officers were waiting. The responding officers entered apartment 1D and pulled Officer Rivera and Officer Mora from inside.<sup>33</sup> The video shows that the EMTs carried Mr. McNeil out of the apartment on a stretcher at 6:34 p.m. Officers Mora and Rivera and Mr. McNeil were separately transported to Harlem Hospital where each was pronounced dead.

Mr. McNeil's medical records show that he was treated for two gunshot wounds: one to his neck and another to his right arm.<sup>34</sup> During surgery, one bullet was removed from Mr. McNeil's neck.<sup>35</sup> Mr. McNeil was declared brain dead on January 23 and was taken off life support on January 24.<sup>36</sup> Officer Rivera died from his injuries on January 21 and Officer Mora died on January 23. On January 22, 25, and 26, 2022, the Office of the Chief Medical Examiner (OCME) of the city of New York conducted autopsies of Officer Rivera, Officer Mora, and Mr. McNeil, respectively.

NYPD Crime Scene Unit (CSU) searched the apartment and processed the crime scene.<sup>37</sup> On the bed inside Mr. McNeil's bedroom CSU recovered a backpack containing 1 magazine (capacity: 30) loaded with twenty-eight 5.56x45mm cartridges, eight .45 caliber cartridges, and five 9mm cartridges. Next to the backpack CSU recovered 1 loose handgun cartridge and 1 discharged handgun shell casing. Under the mattress CSU recovered a semi-automatic

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<sup>33</sup> 119 West 135 Street Lobby Surveillance Video Footage, 1/21/22 at 18:21:52-18:24:50.

<sup>34</sup> Harlem Hospital Medical Records for L. McNeil, 1/21/22.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> NYPD Laboratory #2021-048850, Reports #1, 3, 6, 7, 11, 12 and 13.

pistol with a 5.56x45mm cartridge in the chamber, and a magazine (capacity: 40) inserted containing nineteen 5.56x45mm cartridges.<sup>38</sup> Also recovered from inside the bedroom were five discharged handgun shell casings, four handgun cartridges, a Glock 45 magazine (capacity: 10) loaded with nine cartridges. The semi-automatic pistol recovered from the bedroom was tested and found to be operable.<sup>39</sup>



*CSU photograph of Mr. McNeil's bedroom*

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<sup>38</sup> The firearm discovered under mattress was designated by the NYPD as a semi-automatic pistol and not a rifle; NYPD Laboratory #2021-048850, Report #12.

<sup>39</sup> NYPD Laboratory #2021-048850, Report #12.



CSU photograph of the backpack, live handgun cartridges, magazine, and charger component, found in the bedroom



CSU photograph of magazine and 5.56x45mm cartridges found in bedroom.





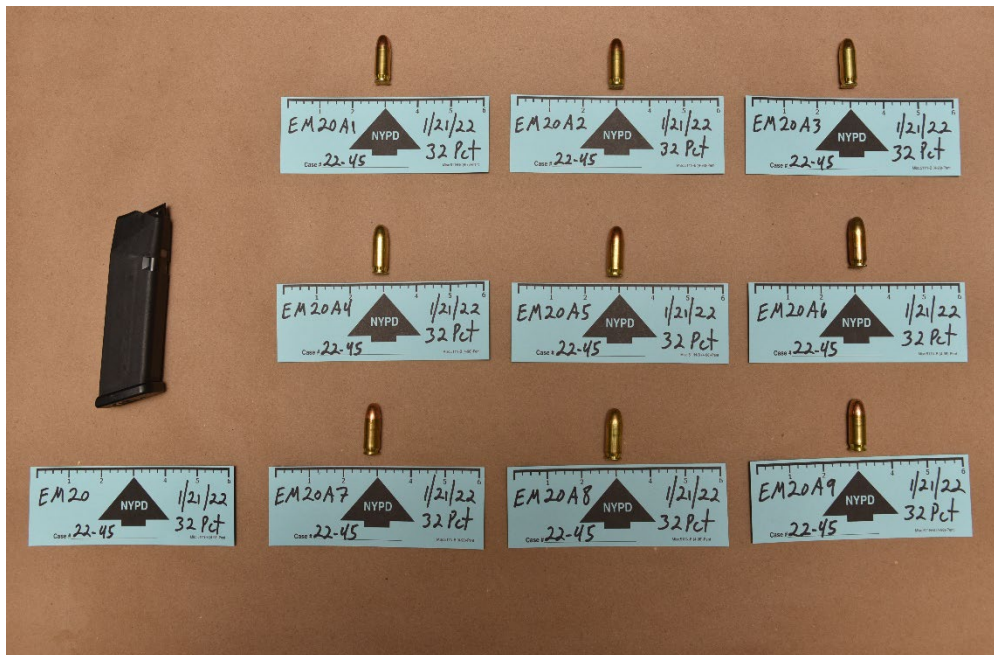
CSU photograph of semi-automatic pistol found under mattress in bedroom.



CSU photograph of semi-automatic pistol, 5.56x45mm cartridges, and magazine found in bedroom.



CSU photograph of pistol magazine found in bedroom.

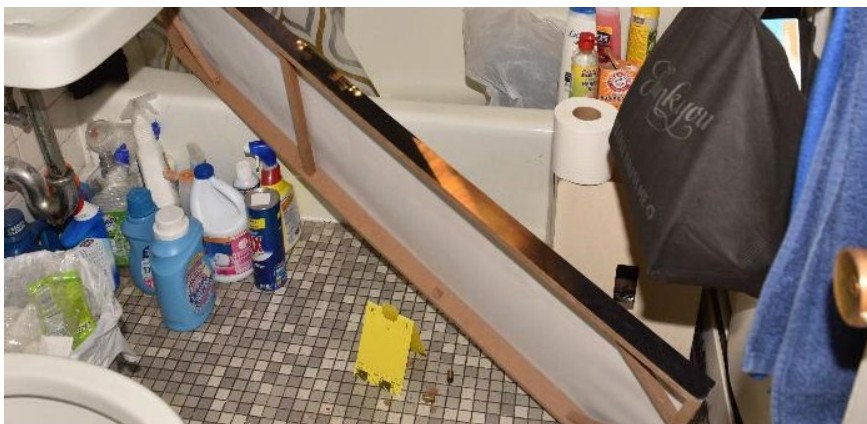


CSU photograph of pistol magazine and handgun cartridges found in bedroom.

In the hallway and bathroom adjacent to Mr. McNeil's bedroom CSU recovered 3 discharged handgun shell casings.



*CSU photograph of entrance to bathroom.*

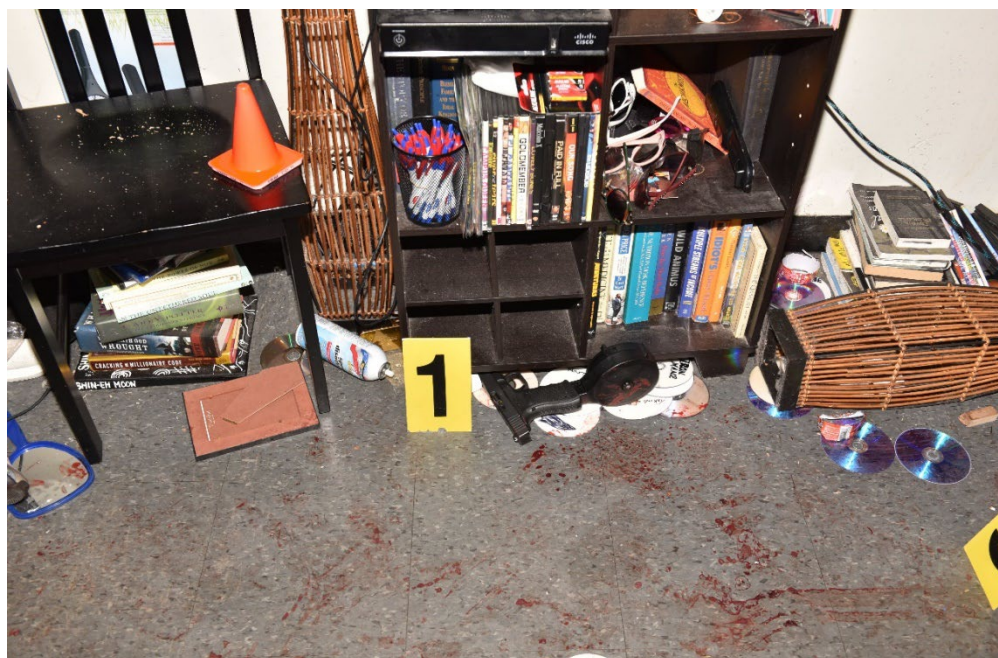


*CSU photograph of shell casings found in bathroom.*

In the living room CSU recovered a semi-automatic Glock 21 pistol (which NYPD crime lab report identified as Mr. McNeil's weapon) with 1 cartridge in the chamber and a barrel magazine (capacity: 45), loaded with 14 cartridges. The BWC videos of Officers Rivera, Mora, and Sulan show the pistol with the barrel magazine in Mr. McNeil's hand during the incident.

In the living room CSU also found a Glock 17 pistol (Officer Mora's Service Weapon) with a cartridge in the chamber and a magazine (capacity: 15) with 14 cartridges loaded; 10 discharged shell casings; 4 handgun cartridges; 3 discharged bullets; and 4 bullet fragments. Both handguns recovered from the living room (Mr. McNeil's and Officer Mora's) were tested and found to be operable.<sup>40</sup>

Microscopic analysis of shell casings and bullets found at the scene showed that 4 of the deformed bullets and 11 of the shell casings were discharged from Mr. McNeil's Glock 21 pistol,<sup>41</sup> 1 shell casing was discharged from Officer Mora's service weapon,<sup>42</sup> and 2 shell casings were discharged by Officer Sulan's service weapon.<sup>43</sup>



CSU photograph Mr. McNeil's handgun with barrel magazine on the floor of the living room.

<sup>40</sup> NYPD Laboratory #2021-048850, Reports #1 & 4.

<sup>41</sup> NYPD Laboratory #2021-048850, Report #5 & 24.

<sup>42</sup> NYPD Laboratory #2021-048850, Report #24.

<sup>43</sup> NYPD Laboratory #2021-048850, Report #26.



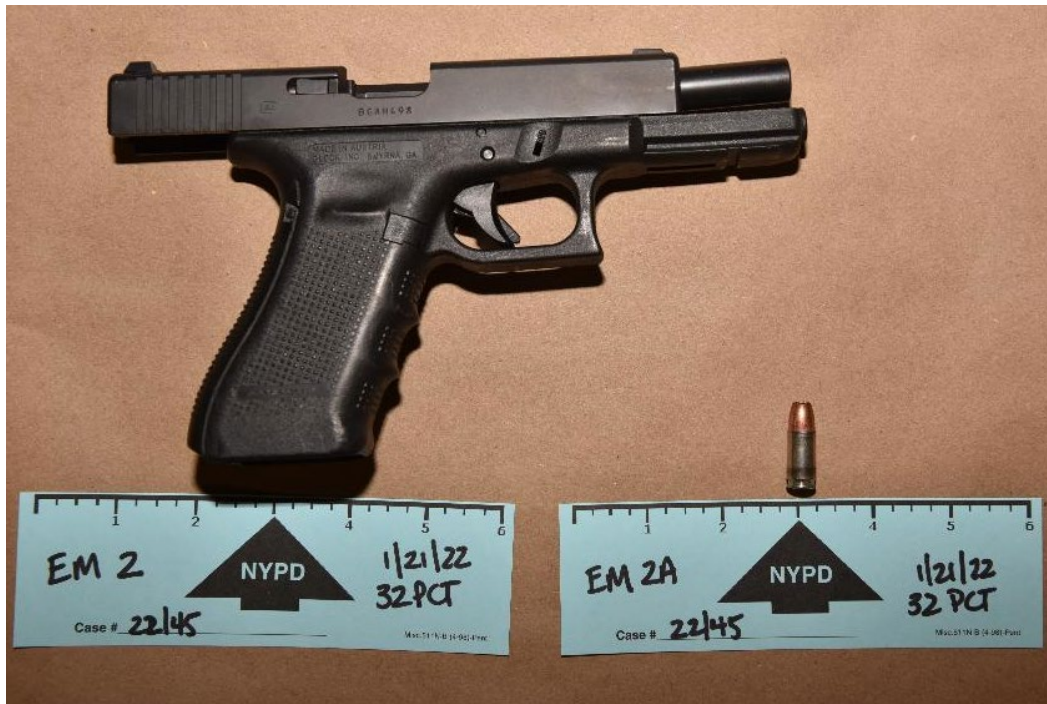
CSU photograph of handgun used by Mr. McNeil.



CSU photograph of barrel magazine from Mr. McNeil's gun.



CSU photograph of Officer Mora's service weapon on the floor of the living room.



CSU photograph of Officer Mora's service weapon.

### **S.S.'s STATEMENT**

Following the shooting, S.S. and her son, H.S., were taken to the 32<sup>nd</sup> Precinct where they were interviewed by members of the 32<sup>nd</sup> Precinct Detective Squad and the Manhattan District Attorney's Office. S.S. said that on January 21, 2022, she was at the apartment caring for H.S. Mr. McNeil was also present in the apartment. At some point in the day Mr. McNeil and S.S. got into an argument about cleaning the apartment. The argument escalated and

S.S. called 911. When the three officers arrived, S.S. told them Mr. McNeil was in the bedroom. S.S. said she was unaware whether Mr. McNeil had any firearms or whether he had been storing any in the apartment.

Due to H.S.'s medical disability he was not interviewed by OSI or the NYPD.

#### **MEDICAL EXAMINER REPORTS<sup>44</sup>**

On January 22, 2022, Dr. Kristin Hord of the New York City Office of Chief Medical Examiner (OCME) performed the autopsy of Officer Rivera and issued an autopsy report. She found that Officer Rivera sustained three gunshot wounds, one to the face, one to his head and another to his torso. The bullet to his face entered near the left cheek below his left eye. The bullet travelled through his nasal cavity, perforated the skull and brain, then became lodged in his scalp towards the rear of his skull. The bullet was removed and sent to the NYPD laboratory for analysis.<sup>45</sup> The bullet to his head entered through the right side of his head (right posterior scalp) perforated the skull and brain, then exited through the left side of his head (left anterolateral scalp). A fragment of the bullet was removed and sent to the NYPD laboratory for analysis.<sup>46</sup> The bullet to his torso entered through the back right shoulder, perforated skin and muscle tissue in the shoulder area, then exited through his left chest. Dr. Hord concluded that the cause of Officer Rivera's death was "gunshot wounds of head and torso" and that the manner of death was "homicide."

On January 25, 2022, Dr. Lauren Mecca of OCME performed the autopsy of Mr. McNeil and issued an autopsy report. She found that Mr. McNeil sustained two gunshot wounds, one to his neck and another to his upper right arm. The bullet that caused his neck wound entered through the rear right neck area, perforated the neck muscles, struck and fractured several vertebrae, then exited through the right cheek. During the autopsy, several bullet fragments were removed and sent to the NYPD laboratory for analysis. The bullet that caused the wound to Mr. McNeil's upper right arm entered through his upper right arm (below top of the shoulder) and perforated the soft tissue of the upper right arm. No exit wound was found. Dr. Mecca concluded that the cause of Mr. McNeil's death was complications from the gunshot wound to the neck and that the manner of death was "homicide."

On January 26, 2022, Dr. Kristin Roman of OCME performed the autopsy of Officer Mora and issued an autopsy report. She found that Officer Mora sustained two gunshot wounds, one to the head and another to his torso, and a graze wound. The bullet that caused the head wound entered near his left temple, perforated the skull and brain, and exited the rear of the skull.

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<sup>44</sup> OCME Autopsy Reports for Jason Rivera (M22-003760), Lashawn Mr. McNeil (M22-004032) and Wilbur Mora (M22-003984).

<sup>45</sup> Results of the analysis of the bullet were inconclusive as to which firearm it was shot from.

<sup>46</sup> Results of the analysis of the bullet were inconclusive as to which firearm it was shot from.

Two bullet fragments were removed and sent to the NYPD laboratory for analysis. The bullet that caused the graze wound perforated the top of Officer Mora's scalp but not the skull. The bullet that caused the torso wound entered through the front right shoulder, perforated skin and muscle tissue in the shoulder area, and exited through back of the shoulder. Dr. Roman concluded that Officer Rivera's cause of death was gunshot wound to the head and that the manner of death was "homicide."

## LEGAL ANALYSIS

Penal Law Section 35.15 sets forth the defense of justification for the use of physical force in self-defense and in defense of another. Justification is a complete defense to any criminal charge involving one person's use of force against another. Where evidence of justification exists, the court must instruct the jury on justification. *People v. Padgett*, 60 N.Y.2d 142, 145 (1983); *Jackson v. Edwards*, 404 F. 3d 612 (2d Cir. 2005). Justification is a defense, Penal Law Section 35.00, not an affirmative defense, which means the prosecutor at trial must disprove justification beyond a reasonable doubt, Penal Law Section 25.00(1).

In this case Officer Sulan used deadly physical force against Mr. McNeil. Under Penal Law Section 35.15 the use of deadly physical force is authorized if the actor reasonably believes that deadly physical force is necessary to defend the actor or another, and if the actor reasonably believes that the other person is using or about to use deadly physical force. If the actor is a police officer making or attempting to make an arrest for an offense, the officer is under no duty to retreat before using deadly physical force, Penal Law Section 35.15(2)(a)(ii) and Penal Law Section 35.30(1).

In *People v. Goetz*, 68 N.Y.2d 96 (1986), and later in *People v. Wesley*, 76 N.Y.2d 555 (1990), the Court of Appeals held that the phrase "reasonable belief" has both a subjective and objective component. The subjective prong is satisfied if the defendant believed, "honestly and in good faith" that deadly force was about to be used against himself or herself at the time deadly physical force was employed, and that the use of deadly physical force was necessary to repel the danger, regardless of whether that belief was accurate or not. *Goetz*, 68 N.Y.2d at 114. The objective prong is satisfied if a "reasonable person" under the same "circumstances" could have held those same beliefs. *Goetz*, supra at 115. The *Goetz* Court also said, "Statutes or rules of law requiring a person to act 'reasonably' or to have a 'reasonable belief' uniformly prescribe conduct meeting an objective standard measured with reference to how 'a reasonable person' could have acted." *Goetz*, supra at 112.

In this case, it was reasonable for Officer Sulan to believe that deadly physical force was necessary to defend himself or other officers from what he believed to be the use or imminent use of deadly physical force by Mr. McNeil. Mr. McNeil shot and killed Officers Rivera and Mora. Officer Sulan, S.S., and H.S. were in the apartment attempting to seek cover. Upon



seeing Mr. McNeil enter the living room with the gun still in in hand, it was reasonable for Officer Sulan to believe that the use of deadly physical force against him and others was imminent and that the use of deadly physical force was necessary to repel the danger.

For these reasons, OSI concludes that a prosecutor would not be able to disprove justification beyond a reasonable doubt and therefore will not seek charges against Officer Sulan in connection with the death of Lashawn McNeil.

Dated: July 21, 2023