April 2, 2025

# Report on the Investigation into the Death of Nyah Mway

## OVERVIEW

On June 28, 2024, Utica Police Department (UPD) officers stopped Nyah Mway and T.N., both 13 years old, while they were walking and bicycling on Shaw Street in the City of Utica. (OSI typically does not publish the names of minors, but news reports have already identified Nyah Mway by name; OSI does not publish the names of civilian witnesses.) Nyah Mway and T.N. fit the descriptions of the two people who had reportedly committed a robbery in the area the night before. As shown on UPD Officer Bryce Patterson's body worn camera (BWC), when he asked Nyah Mway if he could "pat you down" to search for weapons, Nyah Mway immediately ran away. Officer Patterson pursued him on foot, followed closely by UPD Officers Patrick Husnay and Andrew Citriniti.

During the pursuit, Nyah Mway turned and pointed what appeared to be a black handgun at Officer Patterson, who repeatedly yelled, "He's got a gun." Officer Patterson tackled Nyah Mway, causing them to land on the sidewalk, with Officer Patterson on top. Nyah Mway continued holding the apparent handgun. As Officer Patterson sought to gain control of Nyah Mway, Officer Husnay leaned over and fired a single shot into Nyah Mway's chest at close range.

Nyah Mway was transported to Wynn Hospital in Utica, where he was pronounced dead that evening.

Based on its investigation, OSI concludes Officer Husnay 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, and closes the case with this report.

## FACTS

On June 28, 2024, at 10:00 p.m., UPD Officers Patterson, Husnay, and Citriniti were patrolling near Sunset Avenue and Shaw Street as part of a Crime Prevention Unit (CPU), which included UPD officers and deputies from the Oneida County Sheriff's Office (OCSO). In interviews with OSI, Officers Patterson and Citriniti said they were patrolling that area because an armed robbery reportedly occurred nearby the night before. The officers said they were also aware of a report of a similar armed robbery on Hart Street on June 12, 2024.

### Prior Incidents

<u>June 12, 2024</u>

In a written statement provided to UPD, J.M. said two "people," whom he also referred to as "guy[s]," ran up to him and robbed him while he was walking on Hart Street at 10:00 p.m. on June 12, 2024. J.M. said they were wearing face masks and hoodies, with the hoods pulled up, but he believed they were Asian "because of their facial features, mainly the eyes." Though J.M.'s written statement did not contain a description of their height or build, according to UPD

Inv. Jacob Penree's narrative in the UPD Incident Report, J.M. said both were about 5'5" tall with "small" builds. Neither the incident report nor J.M.'s statement indicated that J.M. estimated their ages. According to the UPD Incident Report, J.M. reported the robbery at 10:32 p.m. on June 12, 2024.

A security camera at 1212 Hart Street recorded the robbery (which can be viewed here). As the security video showed, a person wearing a red hoodie pointed what appeared to be a black handgun at J.M. According to J.M., the armed person said, "give me everything." As the video showed, J.M. handed his backpack, cell phone, and headphones to the person wearing a blue or dark colored hoodie. The two people quickly ran away. No shots were fired.

*Still image from the security video of the June 12, 2024 robbery. J.M. is in the green hoodie. The person in the red hoodie is holding what appears to be a black handgun.*

June 27, 2024

In a written statement provided to UPD, Y.M. said he was walking on the 1500 block of Sunset Avenue at 10:18 p.m. on June 27, 2024, when he encountered a skinny Asian teenage "guy," whom he estimated to be 14 or 15 years old. He said the person was 5'6" tall and wearing a black hoodie, dark pants, and a black face mask. According to Y.M.'s statement, the person pointed what appeared to be a black semiautomatic handgun at him and said, "give me everything you have." Y.M. said he handed over his i-Phone, Air Pods, wallet, and backpack. Y.M. said the robber was accompanied by a "guy" on a bicycle, who rode away once the gun was pulled out.

According to the UPD Incident Report, the robbery occurred near 1540 Sunset Avenue, and Y.M. reported the incident at 10:29 p.m. on June 27, 2024.

*In the image above, the orange circle marks where the armed robbery reportedly occurred on June 27, 2024. The yellow circle marks where UPD officers encountered Nyah Mway on June 28, 2024; the red circle marks where the shooting occurred.*

## Incident

Officer Bryce Patterson

The facts in this section are based on OSI's interview of Officer Bryce Patterson and a review of his BWC (which can be viewed here, redacted pursuant to OSI's published video release policy).

Officer Patterson told OSI that as of June 28, 2024, he had worked as a patrol officer with UPD for four years and had been assigned to CPU for six months. He said CPU members would patrol "high crime areas" based upon reports UPD received for specified offenses; he said the unit's focus could change "hourly" based on what was occurring in the city. Officer Patterson said he and OCSO Deputy Stephen Cook were together in a patrol car on June 28, 2024; UPD Officers Patrick Husnay and Andrew Citriniti were in another patrol car.

Officer Patterson said a UPD sergeant radioed CPU members at 10:00 p.m. and asked them to patrol near the 1500 block of Sunset Avenue due to a recent armed robbery and "look for suspects." Officer Patterson said he was familiar with a reported robbery from the night before

because he had reviewed the incident report. Officer Patterson said the suspect was described as an "Asian male, attired in all black, with a black in color handgun," accompanied by "a light skin male, riding around on a bicycle."

According to Officer Patterson, as he drove past Shaw Street, he saw someone bicycling down the "middle of the roadway" in the 900 Block of Shaw Street. He radioed Officer Husnay, who was in the patrol car behind him. Officer Husnay turned onto Shaw Street, and Officer Patterson followed, after making a U-Turn. Officer Patterson said once he was on Shaw Street, he noticed a pedestrian with the bicyclist. He said both were "attired in all black" and had their hoods up. The pedestrian would later be identified as Nyah Mway, and the bicyclist would later be identified as T.N.

Officer Patterson said the two people moved to the sidewalk as Officer Husnay drove past, so he decided to stop them; he activated his patrol lights and radioed Officer Husnay. According to Officer Patterson's BWC, he stepped out of his patrol car at 10:18:26 p.m. As he walked toward Nyah Mway and T.N., they were on the sidewalk in front of 903 Shaw Street. Nyah Mway was standing and wearing black pants and a black hoodie, with the hood pulled up. T.N. was straddling a bicycle and was wearing black shorts and a black hoodie; he initially had the hood up but soon lowered it. When interviewed by OSI, Officer Patterson said his "suspicions were raised" because the boys were near the 1500 Block of Sunset Avenue and matched the description from the previous night's robbery, as both were "attired in all black," and one was walking while the other was on a bicycle.

BWC showed that Nyah Mway had his hands in the front pocket of his hoodie as Officer Patterson approached him. Officer Patterson said, "Hands out of your pockets." Nyah Mway removed his hands and placed them up, shoulder height, palms facing Officer Patterson. Nyah Mway was a few feet away and directly facing Officer Patterson. As Officer Patterson started to explain why he had stopped them, Nyah Mway placed his hands in the front pocket of his hoodie. Officer Patterson said, "Keep your hands out of your pockets." Nyah Mway immediately removed his hands and placed them up, shoulder height, palms facing Officer Patterson. Within seconds, Nyah Mway lowered his hands and placed them in front of his hoodie pocket.

When interviewed, Officer Patterson said "something just wasn't sitting right" because Nyah Mway kept placing his hands in front of his pocket and was "pinning his arm to his waistband." He said most people without a holster usually keep a firearm "in the front of their waistband." Officer Patterson said he believed Nyah Mway was trying to conceal his identity because he kept his hood up, whereas T.N. lowered his hood. Officer Patterson said his suspicions were further raised because Nyah Mway had a blue mask on his head, under the hood.

As Officer Patterson's BWC showed, he told the boys he stopped them because they were riding and walking in the roadway. Nyah Mway said, "Oh shit. I forgot about that." Officer Patterson said, "What do you mean you forgot about that?" Nyah Mway pointed to a house up

the street and said, “We live over there.” (According to the UPD Incident Report, Nyah Mway lived on Brinckerhoff Avenue, more than a mile from the scene.)

When interviewed, Officer Patterson said Nyah Mway backed up a little to “create space” and kept touching his waistband while looking at officers and “down the street.” Officer Patterson said that based upon his training and experience with foot pursuits, he believed Nyah Mway was “looking for a flight path, to flee.” Officer Patterson said he noticed Nyah Mway’s hoodie pocket was “heavy,” meaning something was in it; he thought Nyah Mway might have had a firearm based on the way he was acting and the appearance of the hoodie. Officer Patterson said he decided to pat frisk Nyah Mway “for officer safety purposes.” As shown on BWC, Officer Patterson said, “Can I just pat you down and make sure you don’t have any weapons on you?” Nyah Mway immediately ran away along Shaw Street; the BWC showed that he started running at 10:18:52 p.m.

As shown on BWC, Officer Patterson immediately pursued Nyah Mway on foot and radioed, “Got one running. Eastbound. He’s reaching for his waistband.” As Officer Patterson said those words, Nyah Mway, while continuing to run, turned around and pointed what appeared to be a black handgun at Officer Patterson, who was directly behind him.

Officer Patterson told OSI he could see the barrel of a black pistol pointed directly at his chest; he believed Nyah Mway was going to shoot him and that he would going to die. Officer Patterson said because he was so close to Nyah Mway and running at a “full sprint” that the only thing he could do was push Nyah Mway’s arm away. Officer Patterson told OSI he did not remove his service weapon because he would have had to slow down to unholster it, which would have given Nyah Mway an opportunity to shoot him “three or four times.” He said he had no choice but to go “hands on.”

The BWC showed that as Officer Patterson pushed Nyah Mway’s arm away, he yelled, “Gun. He’s got a gun. He’s got a gun.” Nyah Mway stumbled and fell to the roadway. As he stood up, Officer Patterson tackled him, and they landed on the sidewalk in front of 914 Shaw Street. Nyah Mway was on his back, and Officer Patterson was on top of him. Officer Patterson told OSI he was “fighting for [his] life” at that moment because Nyah Mway still had the gun in his hand. Officer Patterson said he could not secure Nyah Mway’s arms, so he gave him “two hard strikes to the face to daze him,” which is shown on BWC. Officer Patterson said that as he landed the second punch, he heard “a loud pop…a loud gunshot.” According to the BWC, the shot occurred at 10:19:06 p.m.

The BWC showed that Officer Patterson immediately stood up after the gunshot and stepped back several feet. Officer Patterson told OSI he initially thought Nyah Mway had shot him, so he checked his body for wounds. As heard on the BWC, Officer Patterson said, “What the fuck did he shoot?” Officer Patterson told OSI that UPD had recently responded to incidents in which people shot flare guns at each other, and he initially was unsure whether Nyah Mway had shot him with a flare gun.

Though not audible on Officer Patterson's BWC, he told OSI that Officer Husnay said he was the one who had shot. Officer Patterson turned toward Nyah Mway, who was on his right side. Officer Patterson said he saw the gun slowly fall out of Nyah Mway's right hand and onto the grass. The BWC showed that Officer Patterson walked toward Nyah Mway and said, "He's got the gun right there. Gun right there." Officer Husnay, who was in the roadway, walked over and picked up the gun; the gun was a foot from the sidewalk, within Nyah Mway's reach.

Officer Patterson told OSI he briefly saw the gun after Officer Husnay recovered it. Officer Patterson said the gun had a removable magazine and a slide that could be locked to the rear; he said it looked like a real gun.

*This screenshot from Officer Patterson's BWC shows the bulge in the pocket of Nyah Mway's hoodie (circled) as Officer Patterson spoke with him on the sidewalk.*

*This screenshot from Officer Patterson's BWC shows the shadow of an apparent gun in Nyah Mway's right hand (circled) as he ran from Officer Patterson.*

*This screenshot from Officer Patterson's BWC shows Nyah Mway as he turned toward Officer Patterson and pointed an apparent gun (circled) at him during the foot pursuit.*

*This screenshot from Officer Patterson's BWC shows an apparent gun (circled) in Nyah Mway's hand immediately after Officer Patterson pushed his arm during the chase.*

*This screenshot from Officer Patterson's BWC shows an apparent gun (circled) in Nyah Mway's right hand after he initially fell in the roadway.*

Officer Patrick Husnay

The facts in this section are based on a review of Officer Patrick Husnay's BWC (which can be viewed here, redacted pursuant to OSI's published video release policy). Through counsel, Officer Husnay refused to be interviewed by OSI.

As shown on Officer Husnay's BWC, he stopped his marked patrol car on Shaw Street at 10:18:36 p.m. Before stepping out of the car, he said, "Asian males. That's the report, the suspects." He immediately approached Nyah Mway and T.N., who were on the sidewalk speaking with Officer Patterson. As Officer Husnay reached them, Officer Patterson asked Nyah Mway if he could pat him down. Nyah Mway immediately ran, and Officer Patterson pursued him on foot; Officer Husnay followed.

BWC showed that as Officer Husnay ran down the street, he yelled, "Stop reaching. Stop reaching." As Officer Patterson made physical contact with Nyah Mway, Officer Husnay removed and raised his firearm as he continued running toward them. As Officer Patterson and Nyah Mway landed on the sidewalk, Officer Husnay yelled, "Fucking drop it. Drop it." At 10:19:03 p.m. on the BWC, Officer Husnay quickly moved toward them with his firearm raised.

According to his BWC, at 10:19:04 p.m. Officer Husnay stepped onto the grass between the sidewalk and street, right behind Officer Patterson. Officer Patterson was on top of Nyah Mway and was punching him. As shown on BWC, Nyah Mway still had the apparent handgun in his hand. Officer Husnay quickly moved to the right side of Officer Patterson, leaned over, and fired a single shot into the left chest of Nyah Mway at 10:19:06 p.m.

Immediately after the shot, Officers Patterson and Husnay stood up and stepped away from Nyah Mway. Within seconds, Officer Husnay radioed "shots fired" and requested an ambulance while moving into the street, keeping his firearm aimed at Nyah Mway. Officer Husnay said, "I don't know where the gun went." Officer Patterson moved closer to Nyah Mway and said, "The gun's right there." The gun was in the grass, a foot from the sidewalk, within Nyah Mway's reach. Officer Husnay picked up the gun, stepped back into the roadway, and pulled back the slide on the gun. Officer Husnay said, "It's a .22. I think it's a .22."

According to the BWC, at 10:20 p.m., as Officer Patterson was assessing Nyah Mway, he asked if there were any more shots. Officer Husnay said, "Just one shot. It was me. It was one shot. It was me." He handed Nyah Mway's weapon to Officer Citriniti and said, "I think it's a .22." Officer Citriniti asked Officer Husnay if there was a "mag," meaning magazine. Officer Husnay said, "I don't have a mag. He was aiming it at us."

*This screenshot from Officer Husnay's BWC shows an apparent gun (circled) in Nyah Mway's hand as he and Officer Patterson struggled on the sidewalk.*

*This screenshot from Officer Husnay's BWC shows Nyah Mway's gun (circled) in the grass near him shortly after the shooting.*

*This screenshot from Officer Husnay's BWC shows him holding the gun he recovered in the grass near Nyah Mway after the shooting.*

Officer Andrew Citriniti

The facts in this section are based on OSI's interview of Officer Andrew Citriniti and a review of his BWC (which can be viewed here, redacted pursuant to OSI's published video release policy).

Officer Citriniti told OSI that as of June 28, 2024, he had worked as a patrol officer with UPD for two years and had been assigned to CPU for three months. Prior to joining UPD, he had worked as a deputy in OCSO for three years. Officer Citriniti said CPU investigated crimes that were "recurring in a specific area," including weapons and "shots fired" cases.

According to Officer Citriniti, just before 10:00 p.m. on June 28, 2024, a UPD investigator radioed CPU and advised of an armed robbery that had occurred the night before around 10:00 p.m. Officer Citriniti said the investigator told them the suspect was an Asian male "attired in black" who displayed a black handgun and was "accompanied by a bicyclist." He said the suspect was described as a "younger male, late teens or twenties."

As shown on Officer Citriniti's BWC, he stepped out of the patrol car at 10:18:38 p.m. Officer Patterson was speaking with Nyah Mway and T.N., who were on the sidewalk. Shortly after Officer Citriniti walked up, Officer Patterson asked Nyah Mway if he could pat him down, and Nyah Mway immediately ran. Officer Patterson pursued Nyah Mway, followed by Officer Husnay and Officer Citriniti, who was the farthest back. Officer Citriniti told OSI he did not see Nyah Mway during the pursuit because his view was blocked by Officers Patterson and

Husnay.

BWC showed that when Officers Husnay and Citriniti arrived in front of 914 Shaw Street, Nyah Mway was on the sidewalk, and Officer Patterson was on top of him. Officer Citriniti told OSI he could see Officer Patterson's back and had no idea how Nyah Mway was positioned underneath. Officer Citriniti said he could not see Nyah Mway's hands, as his view was obstructed; however, at 10:19:04 p.m., his BWC showed Nyah Mway holding an apparent gun while underneath Officer Patterson.

As shown on BWC, Officer Citriniti was holding a flashlight; Officer Husnay had his firearm aimed at Nyah Mway. As they moved closer, Officer Citriniti went to Officer Patterson's left side and Officer Husnay went to his right side. The BWC recorded the sound of a single gunshot, and Officer Citriniti quickly moved into the street.

Office Citriniti's BWC showed Officer Husnay stepping back from the curb with the apparent gun that had been near Nyah Mway. Officer Citriniti told OSI he first saw Nyah Mway's gun after the shooting. He told OSI he did not remove his firearm because he was concerned about "flagging issue," meaning his "muzzle would point toward one of the other two officers." Officer Citriniti said he wanted to keep his hands free so he could select between his pepper spray, Taser, and firearm, depending on what was warranted.

According to BWC, at 10:20:56 p.m. Officer Husnay handed the recovered gun to Officer Citriniti and said, "I think it's a .22." BWC shows that at 10:25 p.m. Officer Citriniti turned the weapon over to UPD Officer Richard Lange to secure it as evidence.

*This screenshot from Officer Citriniti's BWC shows an apparent gun in Nyah Mway's hand, as well as the shadow of the gun on the sidewalk, seconds before the shooting.*

Civilian Cell Phone Video

A civilian witness (CW) on the front porch of 912 Shaw Street recorded the shooting and a portion of the foot pursuit on her cell phone (which can be viewed here, redacted pursuant to OSI's published video release policy). As shown on the video, CW started recording shortly after Nyah Mway started running from police, with Officer Patterson close behind him. The video showed Nyah Mway turning toward Officer Patterson as they passed 910 Shaw Street; due to distance and lighting, it is unclear from the video whether Nyah Mway had anything in his hands. As he passed 912 Shaw Street, Officer Patterson knocked him down. As he fell to the roadway, momentum carried his body forward, causing him to roll. He quickly stood up, and Officer Patterson grabbed him from behind and threw him to the sidewalk in front of 914 Shaw Street. Officer Patterson was quickly on top of him and started punching him.

As shown on CW's video, right after Officer Patterson punched Nyah Mway, Officer Husnay moved to Officer Patterson's right side and leaned over. Within a second, a single gunshot can be heard. After the gunshot, all three officers quickly stepped away from Nyah Mway. The video showed that Officer Husnay kept his firearm aimed at him.

*This image from CW's video shows Nyah Mway holding the apparent handgun (circled) as Officer Patterson threw him to the sidewalk.*

## Physical Evidence

Nyah Mway's Weapon

As shown on BWC, Officer Husnay recovered an apparent handgun in the grass next to Nyah Mway immediately after the shooting and turned it over to Officer Citriniti. Officer Citriniti's BWC showed that he turned the weapon over to UPD Officer Richard Lange at 10:25 p.m. at the scene. According to the UPD Incident Report, Officer Lange secured the weapon in the trunk of his patrol car and transferred it to Officer Michael Flo at the UPD police station at 12:38 a.m.

Officer Flo photographed the weapon, swabbed it for DNA, and secured it in evidence; the weapon was listed as a "Glock 17 Gen 5 BB Gun (serial # DA47861)" on the Incident Report, though UPD later determined it was pellet gun. The gun was metal, painted matte black, and had the "Glock" insignia stamped on both sides of the slide. It was a replica of an actual Glock pistol; the words "Officially Licensed Product of Glock" were printed on the handle.

OSI submitted the weapon to the New York State Police (NYSP) Forensic Identification Unit (FIU) for fingerprint and DNA analysis. According to an FIU "Latent Print Report," on July 17, 2024, NYSP Inv. Christopher Aubertine examined the gun but did not find any latent prints, though he noted in his report that UPD had "previously swabbed for DNA." After conducting the latent print examination, Inv. Aubertine separately swabbed the slide, grip, and trigger guard of the gun for DNA comparison.

OSI submitted the DNA swabs obtained by UPD, the DNA swabs obtained by NYSP Inv. Aubertine, and a "Blood Stain Card" that the Onondaga County Medical Examiner's Office created with blood from Nyah Mway's body to the NYSP Forensic Investigation Center (FIC) in Albany for DNA analysis. Since BWC showed Officer Husnay touched the gun with his bare hands, OSI requested that he provide a DNA sample to be submitted to FIC for comparison purposes; through his attorney, Officer Husnay refused to provide a DNA sample.

On December 4, 2024, FIC issued a "Biological Science DNA Case Report" (DNA Report), which said the swabs obtained by UPD were "consistent with four donors" and that "this evidence is 3.3895 octillion times more likely to be observed if the donors are [Nyah Mway] and three randomly selected, unrelated individuals rather than four randomly selected, unrelated individuals."

The DNA report said the three swabs obtained by NYSP FIU were "consistent with three donors." For the "Swabs from Slide," the report said, "this evidence is 5.0817 octillion times more likely to be observed if the donors are [Nyah Mway] and two randomly selected, unrelated individuals rather than three randomly selected, unrelated individuals." For the "Swabs from Grip," the report said, "this evidence is 626.00 sextillion times more likely to be observed if the donors are [Nyah Mway] and two randomly selected, unrelated individuals rather than three randomly selected, unrelated individuals." For the "Swabs from Trigger Guard," the report said, "this evidence is 2.1173 quintillion times more likely to be observed

if the donors are [Nyah Mway] and two randomly selected, unrelated individuals rather than three randomly selected, unrelated individuals."

According to the UPD Incident Report, UPD Officer Silas Fry recovered the magazine from the pellet gun on the northern side of the road in front of 914 Shaw Street at 3:07 a.m. on June 29, 2024.

*The image above shows the Glock 17 Gen 5 pellet gun that Nyah Mway possessed during the incident.*

Officer Firearms

According to the UPD Incident Report, Officer Husnay turned over his duty belt and service weapon (Smith & Wesson M&P 45, Serial # NBH5508) to Sgt. Kerry Carville at the station at 10:43 p.m. In the Incident Report, Sgt. Carville said she transferred those items to Officer Michael Flo, the on-call Crime Scene Unit officer, at 11:28 p.m. The report indicates Officer Flo examined Officer Husnay's service weapon and conducted a round count; the firearm contained 10 rounds, and the spare magazines were fully loaded with 10 rounds each. The round count is consistent with Officer Husnay having fired one shot, which is consistent with his BWC. The Incident Report says UPD Officer Silas Fry recovered one spent Winchester 45 Auto casing from the sidewalk in front of 914 Shaw Street at 3:08 a.m. on June 29, 2024.

According to the UPD Incident report and BWC video, Officer Flo separately examined Officer Patterson's and Officer Citriniti's service weapons and spare magazines at the station shortly after 11:30 p.m. Both firearms were fully loaded with 11 rounds (10 rounds in each inserted magazine, plus one round in each firing chamber); their spare magazines were fully loaded with 10 rounds each. The round count showed Officers Patterson and Citriniti did not fire any shots, which is consistent with their BWCs.

### Medical Examiner

On June 29, 2024, Dr. Carolyn Revercomb, a forensic pathologist with the Onondaga County Medical Examiner's Office in Syracuse, performed the autopsy of Nyah Mway. According to the autopsy report, Dr. Revercomb determined that the cause of his death was a single gunshot wound that penetrated his left chest. Dr. Revercomb ruled the manner of death to be homicide. The report said the toxicology screening was "negative."

## LEGAL ANALYSIS

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, OSI concludes that a prosecutor would be unable to disprove beyond a reasonable doubt that the use of deadly physical force by the shooting officer was justified.

In this case, the shooting officer 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."

Therefore, 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).

In its recent decision in *People v. Jairo Castillo*, 42 N.Y.3d 628, 631 (2024), the New York Court of Appeals stated:

"The defense of justification provides that a person may use physical force to defend himself against an assailant's 'imminent use of unlawful physical force,' but does not authorize the use of 'deadly physical force . . . unless . . . [the person] reasonably believes that [the assailant] . . . is using or about to use deadly physical force' (Penal Law § 35.15). When considering a request for a justification charge, courts examine the evidence in the light most favorable to the defendant, and must provide the instruction if there is any reasonable view of the evidence that defendant was justified in his actions (see *People v Heiserman*, 39 NY3d 988, 990 [2022]). Justification has both a subjective requirement, that 'defendant . . . actually believed . . . he [was] . . . threatened with the imminent use of deadly physical force,' and an objective requirement, that defendant's 'reactions were . . . those of a reasonable man acting in self-defense' (*People v Collice*, 41 NY2d 906, 907 [1977])." (Ellipses and square brackets in original.)

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 or another and that deadly force was necessary for self-defense, and a reasonable person under the same circumstances could have believed the same.

BWC showed that Nyah Mway, during the foot pursuit, pointed an apparent handgun at Officer Patterson, who yelled, "Gun. He's got a gun. He's got a gun." After falling in the roadway and being thrown on to the sidewalk, Nyah Mway continued to hold the weapon. BWC showed that as Officer Husnay approached the sidewalk, he yelled, "Drop it. Fucking Drop It." Nyah Mway continued to hold the weapon. When interviewed by OSI, Officer Patterson said he saw Nyah Mway drop the gun after he was shot. Though OSI has determined that Nyah Mway possessed a pellet gun replica of a Glock pistol, Officer Husnay's statements after the shooting indicate he believed it was an actual firearm.

OSI concludes a prosecutor would not be able to disprove that it was reasonable for Officer Husnay to believe he needed to use deadly physical force under these circumstances. Therefore, OSI will not seek charges against Officer Husnay in connection with the death of Nyah Mway and closes the matter with the issuance of this report.

Dated: April 2, 2025