Office of the New York State Attorney General Letitia James

Office of Special Investigation

August 30, 2024

Report on the Investigation into the Death of Raul Hardy

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 Raul Hardy, who was shot and killed on July 9, 2022, by members of the New York City Police Department (NYPD).

OVERVIEW

On July 9, 2022, at 6:08 p.m., Raul Hardy called 911 and told the operator that he would shoot cops if they came to his house. He gave his name and address in Queens. Mr. Hardy called back a few minutes later, repeated his name and address, said that he was armed, that he would change the government, and threatened to kill police officers and elected officials.

At 6:24 p.m., 10 uniformed officers from the 113th Precinct responded to Mr. Hardy's address. The officers approached the front door as Mr. Hardy slowly came outside. The officers ordered Mr. Hardy to show his hands. Mr. Hardy pointed a .380 caliber semi-automatic firearm at the officers. The officers ordered him to drop the gun and then fired. Seven officers discharged a total of 134 rounds from their service weapons. Mr. Hardy fired at least four times at the officers. Mr. Hardy was struck 17 times. He was transported to Jamaica Hospital Medical Center where he was pronounced dead at 6:56 p.m.

Having thoroughly investigated the matter and analyzed the law, OSI will not seek charges against the officers because it would not be able to disprove beyond a reasonable doubt that their use of deadly force against Mr. Hardy was justified under New York law.

OSI makes one recommendation, that NYPD train its sergeants and lieutenants at least bi-annually for situations when they and members they command interact with people who may be in a mental health crisis. This training should include devising and following effective tactical plans, de-escalation, and firearms deployment, and should be based on real world scenarios. The goal should be to preserve life whenever possible.

FACTS

The shooting occurred in Queens County in front of 205-17 116th Avenue, a single family home on a residential street where Mr. Hardy lived with his aunt and cousin.

Background of Primary Police Officers Involved

OSI interviewed the seven police officers who discharged their firearms on July 9, and two witness officers. Of the officers who fired their weapons, at the time of the interviews Sergeant Dominick Gagnon had been a member of the NYPD since 2011 and was promoted to Sergeant in the 113th Precinct in March of 2020. Officer Matthew Perullo had been a member of the NYPD since 2012 and on the day of the shooting was assigned to be Sgt. Gagnon's driver. Officer Davide Rosa, Officer Christopher Lockwood, Officer Nicholas Correggia, and Officer Steven Glibbery joined the NYPD in 2019. Officer Brendan Alles became an NYPD officer in 2021.

All the officers interviewed had never fired their weapons before in the line of duty except for training at the shooting range. None of the officers had encountered Mr. Hardy before the day of the shooting.

Events Leading to the Shooting

On the evening of July 9, 2022, at 6:08 p.m., a person identifying themselves as Raul Antonio Hardy called 911 and spoke to the 911 operator.[1] Mr. Hardy said, "Oh my god, I have a fever to kill police." He told the operator he lived at 205-17 116th Avenue in the eastside of Queens. He said, "If you bring the police to my face, I'm going to blow their fucking brains out" and "we are going to change the fucking government." Mr. Hardy ended the call by saying, "Today is your fucking day to die, motherfucker, I'm right here."

Later, at 6:14 p.m., a person again identifying himself as Raul Antonio Hardy called 911.[2] Mr. Hardy said, "I'm giving you a motherfucking warning to your fucking governor, we're going to change you." Mr. Hardy then gave his address. He said, "I'm strapped and I'm going to blow your fucking head off." The operator asked if Mr. Hardy had an emergency and he replied, "I definitely have an emergency. I'm going to blow the first police head off." He ended the call by saying, "My name is Raul Antonio Hardy, bitch, and I'm going to kill your chief."

After the first call, an NYPD dispatcher conveyed to patrol officers in the 113th Precinct in Queens that a male caller had made "threats to MOS" (an acronym standing for Members of Service, or police officers) and that the male caller was threatening to shoot police. The dispatcher gave Mr. Hardy's location. The 113th Sergeant, later identified as Sgt. Gagnon, responded to the dispatcher. After the second 911 call, the dispatcher relayed to responding officers that the caller was making threats to police and the governor and the caller had a firearm. At 6:17 p.m., Sgt. Gagnon ordered that no officer should go to the front of 205-17

[1] 911 Call: 911CALL 1
[2] 911 Call: 911CALL 2

116th Avenue and ordered all responding officers to meet at the corner of 205th Street and 116th Avenue.[3]

Ten responding officers from the 113th Precinct including Sgt. Gagnon, met at the corner of 205th Street and 116th Avenue, about half a block from Mr. Hardy's home. All the officers were in uniform and responded in pairs of two in marked police cars. Sgt. Gagnon told OSI that he was responsible for developing a tactical plan to approach Mr. Hardy's residence. Sgt. Gagnon wanted to ascertain whether Mr. Hardy was in the residence and the layout of the location including entrances and exits. He sent Officers Rosa and Lockwood around to the back of the house to see if there were any back entrances or exits. The rest of the officers and Sgt. Gagnon planned to leave their patrol cars at the end of the block and walk to Mr. Hardy's location. The plan was to then call the NYPD's Emergency Services Unit (ESU) to further engage with Mr. Hardy. Officer Perullo told OSI that the officers were shown a photo of Mr. Hardy from an NYPD database before they approached the home. There was no attempt to contact Mr. Hardy by phone.

The Shooting

OSI spoke to witnesses at neighboring homes and a man and woman seated in a car across the street from the shooting. None of the witnesses took notice of the police encounter with Mr. Hardy until they heard the shooting start. Further, the witnesses did not actually see the shooting, but rather heard the barrage of shots.

The following is an account of the shooting based on interviews with the responding officers, analyzing each firing officer's perspective and body worn camera footage separately.

Sgt. Gagnon

Sgt. Gagnon told OSI that he led the responding officers down 116th Avenue towards Mr. Hardy's residence. He said he was in the front of the line of officers, but could not recount the specifics of the officers' positioning. Sgt. Gagnon said Mr. Hardy exited the front door of 205-17 116th Avenue and was screaming. He could not remember the specifics of what was said. Sgt. Gagnon told OSI that he saw Mr. Hardy pull a firearm from his waistband and fire at the officers causing him to return fire. Sgt. Gagnon estimates Mr. Hardy fired three to five times.

According to Sgt. Gagnon's BWC,[4] as the officers approach the location, Mr. Hardy slowly opened the door to the residence. Sgt. Gagnon yelled, "Raul" and Mr. Hardy responded, "That's me, motherfucker." A number of different officers yelled for Mr. Hardy to show his hands. Sgt.

[3] NYPD ICAD; NYPD Radio Run at 6:33 audio; Interview with Sgt. Gagnon.

[4] Sgt. Gagnon's BWC: Sgt. Gagnon

Gagnon stood behind Officer Correggia who had his gun drawn. Mr. Hardy opened the front door of his house and said, "What's up, bitch?" Sgt. Gagnon ordered Mr. Hardy to show his hands and get on the ground with his service firearm pointed in Mr. Hardy's direction. Mr. Hardy replied, "Fuck you, bitch." At about 18:22:47,[5] Mr. Hardy was briefly visible on the video in what appears to be a firing stance as officers opened fire.

Still from Sgt. Gagnon's BWC showing Mr. Hardy in a firing stance and Sgt. Gagnon pointing his service weapon in Mr. Hardy's direction.

Sgt. Gagnon yelled "shots fired" into his radio. At 18:22:48, Sgt. Gagnon moved to a position more directly in front of the residence, and fired three more times. Approximately ten seconds after the initial round of shots, the firing stopped. Another shot is heard two seconds later and approximately four seconds after that, another volley of shots is heard on the video. Sgt. Gagnon warned the officers about crossfire, meaning that the officers should be cautious lest they shoot a fellow officer. Sgt. Gagnon yelled for the officers to stop shooting at 18:23:08. Sgt. Gagnon then ordered Mr. Hardy to show his hands and not to move. At 18:23:53, Sgt. Gagnon radioed for an ambulance and for ESU. Sgt. Gagnon repeatedly asked the officers if they saw any movement and was repeatedly told that Mr. Hardy was not moving. Sgt. Gagnon relayed to NYPD dispatch that Mr. Hardy did not fire at the officers. He was then told by other officers that Mr. Hardy did, in fact, fire at the officers. At 18:27:51, Sgt. Gagnon and the officers moved towards Mr. Hardy.

[5] To match the format stamped on the officers' BWC, all time will be presented in military time.

Still from Sgt. Gagnon's BWC showing Mr. Hardy lying on the ground by the bushes in front of his home as Sgt. Gagnon and Officer Correggia approach with guns drawn.

Mr. Hardy was then placed in handcuffs.

FID detectives and ballistics analysis concluded that Sgt. Gagnon discharged seventeen rounds.

As mentioned above, Sgt. Gagnon told OSI that he saw Mr. Hardy firing, but told the dispatcher when conveying the events of the shooting immediately after the shooting occurred, that Mr. Hardy did not fire at the officers. Sgt. Gagnon could not explain this discrepancy.

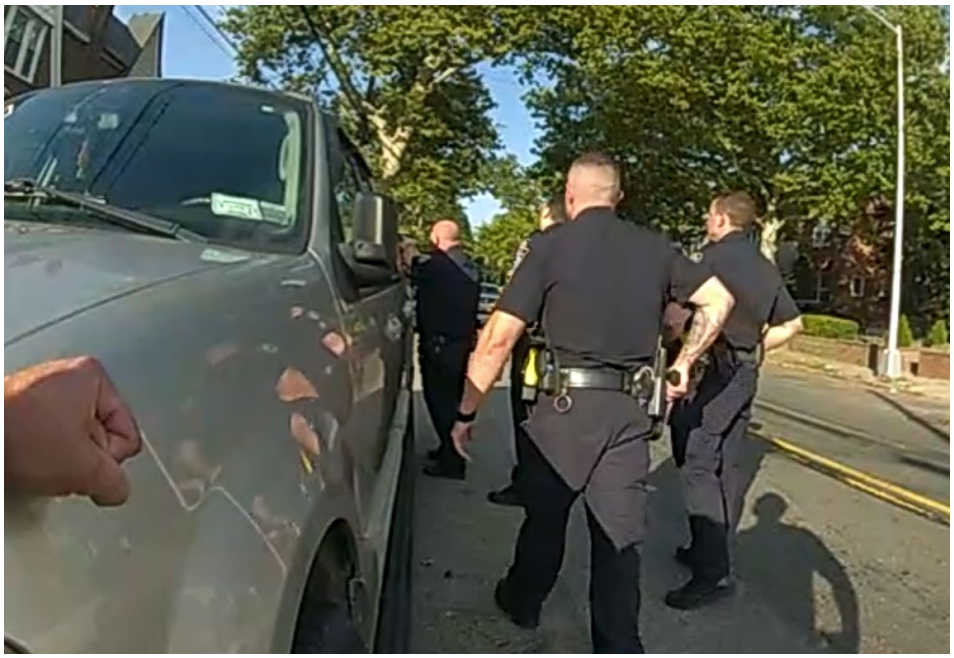
Officer Perullo

Officer Perullo told OSI that he and the other 113 Precinct Officers walked on 116th Avenue on the north side of the street and were attempting to identify Mr. Hardy's house. Officer Perullo said Mr. Hardy came out of the house screaming unintelligibly. Officer Perullo saw Mr. Hardy's hands at his waist and then Mr. Hardy pulled out a firearm from his waistband. When the shooting began, Officer Perullo took cover, drew his weapon and returned fire. After he fired, Officer Perullo told OSI that he could see Mr. Hardy behind a bush moving his arm and torso which caused Officer Perullo to fire again.

According to his BWC,[6] Officer Perullo walked behind Sgt. Gagnon and Officers Correggia, Alles and Glibbery as they approached Mr. Hardy's home at 18:21:29. At 18:22:24, officers yelled at Mr. Hardy to show his hands. The officers were lined up to the side of an SUV parked about

[6] Officer Perullo BWC: Perullo

a car length from Mr. Hardy's residence. Officer Correggia called to Mr. Hardy to show his hands with his gun drawn and pointed in Mr. Hardy's direction.



Still from Officer Perullo's BWC showing Officer Correggia, Sgt. Gagnon, Officer Alles, Officer Glibbery and Officer Perullo approaching Mr. Hardy's home.

As the officers yelled at Mr. Hardy to show his hands, Officer Perullo ran across the street. When the firing began, Officer Perullo took cover behind a parked car. At 18:22:48, Officer Perullo warned the officers about crossfire. Officer Perullo drew his firearm and fired at 18:22:53. At 18:23:06, the firing stopped. At 18:23:12 Officer Perullo put "Shots fired" over the radio. At 18:23:29, Officer Perullo warned Officer Correggia that Mr. Hardy could still be alive and yelled at Mr. Hardy to show his hands. At 18:23:51 Officer Perullo called for an ambulance over the police radio. At 18:25:05, Officer Perullo said that he and his fellow officers should render aid. At 18:27:49, the officers approached Mr. Hardy, cuffed him, and attempted to perform life saving measures.

FID detectives and ballistics analysis concluded that Officer Perullo discharged five rounds.

Officer Alles

Officer Alles was partnered with Officer Correggia. Officer Alles told OSI that the officers planned to approach Mr. Hardy's residence and then, when they were able to confirm the location and that Mr. Hardy was inside, Sgt. Gagnon was to radio for ESU. The officers lined up about one house away from the Hardy residence and used a car as cover. Before Sgt. Gagnon could radio ESU, Mr. Hardy emerged from the home. Officer Alles told OSI that Mr. Hardy seemed visibly upset and was screaming, but Officer Alles did not know what Mr. Hardy

was saying. Officers yelled at Mr. Hardy to show his hands. Officer Alles was not sure where Mr. Hardy pulled the gun from, but saw Mr. Hardy with a gun in his hand and a muzzle flash. Officer Alles told OSI that he took cover and returned fire. He could not be sure how many times he fired. Officer Alles told OSI that he thought he was going to die.

According to Officer Alles' BWC,[7] at 18:22:29 Mr. Hardy is seen on his front lawn yelling at the officers who have ordered him to show his hands.

Still from Officer Alles' BWC showing officers pointing their firearms at Mr. Hardy who is standing on the lawn in the background of the image.

Sgt. Gagnon positioned himself closer to Mr. Hardy and he and other officers continued to order Mr. Hardy to show his hands. At 18:22:36, Mr. Hardy pulled a firearm from his waist area and the officers, including Officer Alles opened fire.

[7] Officer Alles BWC: Alles

Still from Officer Alles's BWC showing Sgt. Gagnon pointing his service weapon at Mr. Hardy and Mr. Hardy pointing a gun at Sgt. Gagnon.

Mr. Hardy either fell or positioned himself behind bushes on his front lawn. The firing stopped and Officer Alles reloaded his firearm at 18:22:44. At 18:22:46, a single shot is heard followed by three to four more shots. Another volley of shots began at 18:22:52. Officer Alles repeatedly fired. The firing stopped at 18:23:04. Officer Alles then reloaded his weapon, but did not fire.

OSI enhanced and brightened Officer Alles BWC[8] to focus on Mr. Hardy as he moved behind the bushes. Although you cannot determine what Mr. Hardy is doing, he is alive and moving when he is behind the bushes at 18:22:53.

FID detectives and ballistic analysis concluded that Officer Alles discharged thirty-two rounds.

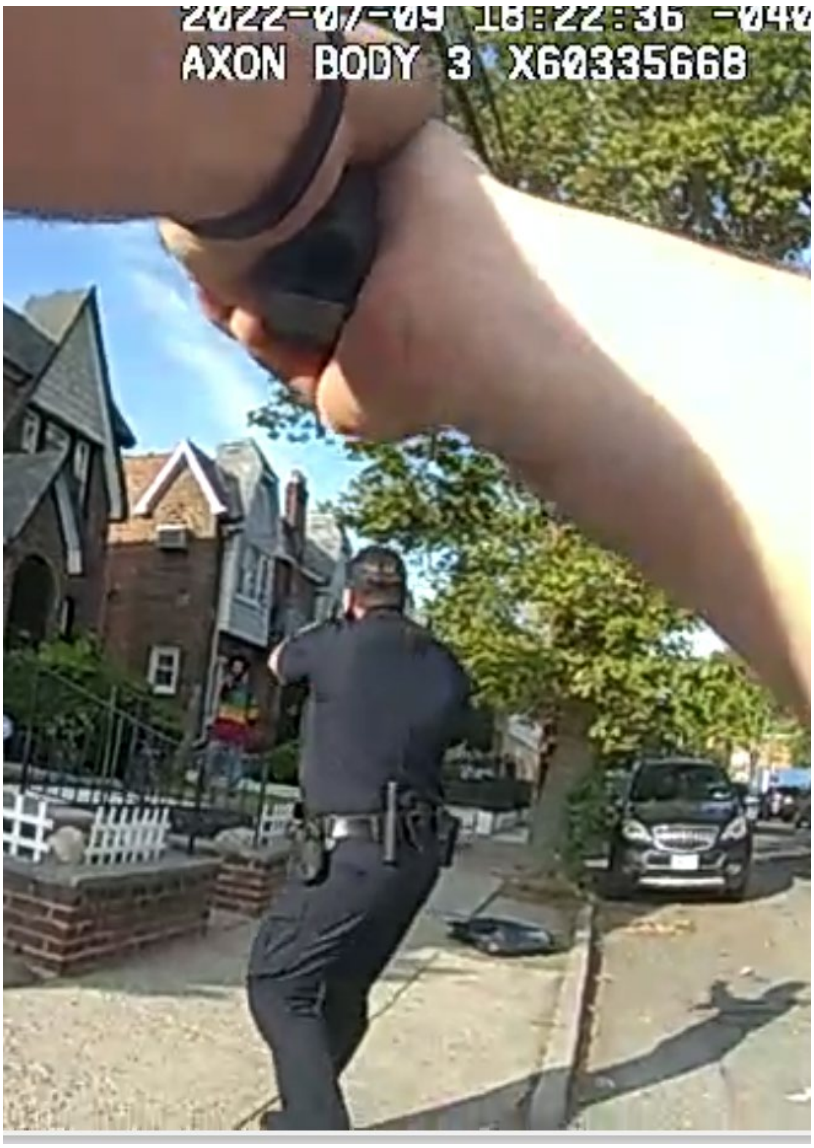
Officer Correggia

Officer Correggia told OSI that he was near the front of the line of officers as they approached Mr. Hardy's location. Officer Correggia saw Mr. Hardy come to the door of the home and then exit very quickly after Sgt. Gagnon called his name. Officer Correggia and the other officers shouted at Mr. Hardy to show his hands. Officer Correggia said that Mr. Hardy was moving his hands around his waistband area and then produced a firearm. Officer Correggia said Mr. Hardy pointed the gun in the general direction of the officers and fired. Officer Correggia saw a muzzle flash. Officer Correggia returned fire many times. When Mr. Hardy was down on the

[8] Officer Alles enhanced BWC: Alles (Enhanced)

ground by the bushes, Officer Correggia saw Mr. Hardy moving his hands and fumbling with the firearm. Officer Correggia then fired again.

According to his BWC,[9] Officer Correggia was first in the line of officers that approached Mr. Hardy's house. At 18:22:22, Mr. Hardy exited the home and Officer Correggia pointed his gun at Mr. Hardy. Officer Correggia ordered Mr. Hardy to show his hands as Officer Correggia moved closer to Mr. Hardy. At 18:22:36, Mr. Hardy raised a firearm and pointed it in the officers' direction and the officers, including Officer Correggia opened fire.



Still from Officer Correggia's BWC showing Officer Correggia and Sgt. Gagnon pointing their weapons at Mr. Hardy as Mr. Hardy points a gun at the officers.

[9] Officer Correggia BWC: Correggia

At 18:22:43, Officer Correggia discharged his magazine and radioed “shots fired.” At 18:22:57, Officer Correggia reloaded his firearm and fired repeatedly at Mr. Hardy, emptying his magazine. At 18:23:01, Officer Correggia reloaded his firearm, but did not fire. He yelled for the officers to stop shooting. At 18:23:17, Officer Correggia called for an ambulance over the police radio. In response to Sgt. Gagnon telling the dispatcher that Mr. Hardy did not fire at the officers, Officer Correggia said that Mr. Hardy shot at them. At 18:27:49, Sgt. Gagnon and Officer Correggia move to Mr. Hardy and the other officers follow.

FID detectives and ballistics analysis concluded that Officer Correggia discharged thirty-one rounds.

Officer Glibbery

Officer Glibbery told OSI that he was part of the group that approached Mr. Hardy's home. He was discussing calling in ESU with Sgt. Gagnon when Mr. Hardy exited the location. He and other officers yelled at Mr. Hardy to show his hands. Mr. Hardy screamed back at the officers, but Officer Glibbery could not make out what he was saying. Officer Glibbery saw Mr. Hardy throw a blue object from his waistband area to the ground and then draw a firearm from his waistband. Officer Glibbery could not say who fired first, but knew Mr. Hardy was firing because he saw muzzle flashes from Mr. Hardy's gun and ricochets from bullets striking the ground in front of him. Officer Glibbery told OSI that Mr. Hardy was backing up as he was shooting and then he fell to the ground, where he was still moving. Officer Glibbery said he stopped shooting when Mr. Hardy stopped moving.

According to his BWC,[10] as Mr. Hardy exited his home, Officer Glibbery raised his firearm and ordered Mr. Hardy to show his hands. At 18:22:34, Mr. Hardy yelled, "Fuck you, bitch." About four seconds later, the shooting began. Officer Glibbery crossed the street and continued firing. At 18:22:44, Officer Glibbery reloaded and emptied another magazine. The firing ended at 18:23:09. Officer Glibbery reloaded, but did not fire. In the minutes between when the firing ended and the officers approached Mr. Hardy, Officer Glibbery told Sgt. Gagnon that Mr. Hardy fired at the officers.

FID detectives and ballistic analysis concluded Officer Glibbery discharged thirty rounds.

Officer Rosa

Officer Rosa told OSI that he was partnered with Officer Lockwood. Following Sgt. Gagnon's orders, the officers circled the block in their marked police car to determine if there was a back exit to Mr. Hardy's home. There was no back exit and the officers parked their car on

[10] Officer Glibbery BWC: Glibbery

Francis Lewis Boulevard and 116th Avenue and walked to Mr. Hardy's residence. As Officer Rosa was walking on 116th Avenue to Mr. Hardy's home, he heard officers screaming at Mr. Hardy. Officer Rosa ran across the street as Mr. Hardy pulled out a firearm and began firing. Officer Rosa took cover by a parked car and returned fire. When Mr. Hardy was on the ground by the bushes, Officer Rosa said he saw Mr. Hardy moving and believed he was trying to reload his firearm. Officer Rosa fired when Mr. Hardy was on the ground.

According to his BWC,[11] Officer Rosa activated his body camera as he walked down 116th Avenue. When the firing began, Officer Rosa ran across the street and towards Mr. Hardy's home. Officer Rosa positioned himself by a parked car and opened fire. He stopped firing at 18:22:58. At 18:23:15, an officer said, "He's down, he's down" and Officer Rosa stated, "He's not moving." At 18:23:30, Officer Rosa said, "He's still moving." At 18:24:04, Officer Rosa said, "He's not moving."

FID detectives and ballistic analysis concluded Officer Rosa discharged nine rounds.

Officer Lockwood

Officer Lockwood told OSI that he was partnered with Officer Rosa on July 9, 2022. He and Officer Rosa responded to the corner of 205th Street and 116th Avenue and convened with Sgt. Gagnon and other 113th Precinct officers. Sgt. Gagnon directed him and Officer Rosa to circle the block and determine if there was a back exit for Mr. Hardy's location. Officer Lockwood said he and Officer Rosa made a loop around the block and parked on 116th Avenue and Francis Lewis Boulevard. Officer Lockwood said he and Officer Rosa walked down 116th Avenue when he heard Mr. Hardy yelling at officers. Officer Lockwood saw Mr. Hardy raise his arm with a gun in his hand and fire. Officer Lockwood took cover behind a tree and fired. When he fired, Officer Lockwood said he saw a gun in Mr. Hardy's hand both when Mr. Hardy was standing and when Mr. Hardy was on the ground. Officer Lockwood told OSI that he stopped shooting when Mr. Hardy stopped moving.

Officer Lockwood activated his BWC[12] as he was running across 116th Avenue after the firing had begun. The BWC shows Officer Lockwood took cover by a tree diagonally across the street from Mr. Hardy's home. Officer Lockwood yelled for Mr. Hardy to show his hands at 18:22:52 and opened fire. At 18:23:01, Officer Lockwood motioned for the other officers to stop firing and said, "Guys, he's down." At 18:23:18, Officer Lockwood told Sgt. Gagnon that Mr. Hardy was not moving.

FID detectives and ballistic analysis concluded Officer Lockwood discharged six rounds.

[11] Officer Rosa BWC: Rosa
[12] Officer Lockwood BWC: Lockwood

The Aftermath

Officer Lockwood approached Mr. Hardy who was lying face down and slumped on the stairs leading to the front door of 205-17 116th Avenue. Officer Lockwood cuffed Mr. Hardy and removed a .380 caliber firearm and two magazines from the ground next to Mr. Hardy.[13]

Still from Officer Lockwood's BWC showing Officer Lockwood recovering a gun and magazine from the steps and bushes by Mr. Hardy. Another magazine is visible on the step at the right of the image.

Mr. Hardy was taken by ambulance to Jamaica Hospital. Dr. Michael Amaturo and Dr. Daniel Metzger were the trauma surgeons on duty when Mr. Hardy arrived. Mr. Hardy was dead on arrival and pronounced deceased by Dr. Amaturo at 6:56 p.m. Dr. Metzger counted a total of thirty two gunshot wounds to Mr. Hardy's body.

Evidence Collection

The NYPD's Crime Scene Unit (CSU) processed the scene and recovered ballistic evidence. From the lawn and street outside of 205-17 116th Avenue, CSU recovered twenty-five fired bullets, one hundred thirty-four (134) 9mm Speer[14] shell casings, and four Winchester .380 caliber shell casings.

[13] Interview with PO Lockwood; PO Lockwood's BWC at 18:28.
[14] The NYPD exclusively used Speer brand ammunition.

A .380 caliber semi-automatic firearm along with an extended magazine and a regular sized magazine were recovered from the ground where Officer Lockwood had moved them. Both magazines were outside of the firearm and the extended magazine had a bullet hole in it. Both magazines were also loaded with .380 caliber bullets.

CSU photos of the firearm removed by Officer Lockwood from the ground next to Mr. Hardy.

CSU photos of the extended magazine removed by Officer Lockwood from the ground next to Mr. Hardy. The magazine has a bullet hole at the bottom.

CSU photos of the other magazine recovered on the ground next to Mr. Hardy.

The .380 Walther firearm was tested by the NYPD's ballistics laboratory and found to be operable. Microscopic and comparison analysis testing conducted by the ballistics lab further determined that the .380 Winchester shell casings found at the shooting scene matched the test fires from the .380 Walther firearm recovered on the ground by Mr. Hardy.

Fourteen envelopes containing projectiles were turned over to NYPD by the OCME. Intact bullets were recovered from Mr. Hardy's neck, left ankle, left back, thoracic spine, middle chest, right chest, right back, and right wrist. Bullet fragments were recovered from Mr. Hardy's left chest, left arm, right thigh, right leg, right wrist and left spine. A .22 caliber bullet was recovered from Mr. Hardy's left armpit that was left there from a previous shooting.

On July 12, 2022, a quantity of ammunition and firearm magazines was brought to the 113th Precinct. Detectives were told that the items were found in the basement 205-17 116th Avenue in Queens, Mr. Hardy's home. The items consisted of a box of Winchester .380 caliber ammunition containing fifty bullets, twenty-two loose cartridges of .380 caliber ammunition, one extended .380 caliber magazine and three normal-sized .380 caliber magazines.

Medical Examination and Autopsy

OSI interviewed Dr. Yvonne Milewski of the OCME and reviewed the autopsy report she prepared. Dr. Milewski concluded that the cause of Mr. Hardy's death was "multiple gunshot wounds to torso" and the manner of death was "homicide (shot by another person(s))." The autopsy showed that Mr. Hardy was shot three times in his chest, once in his left arm which then travelled into his chest, once in his left armpit, three times in his abdomen, once in his neck, once in his right hand, once in his left arm, once in his left wrist, once in his right leg, twice in his left thigh, once in his left leg, and once in his left foot. Mr. Hardy also suffered graze wounds to left shoulder and right hand. Mr. Hardy tested positive for alcohol and marijuana.

LEGAL ANALYSIS

New York Penal Law ("PL") Article 35 sets forth the defense of justification to crimes involving the use of physical force. Justification is a defense, not an affirmative defense, PL Section 35.00. If a defense is raised at trial, the burden is on the prosecutor to disprove it beyond a reasonable doubt, PL Section 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 N.Y.2d 526 (1970).

In this case, the seven officers who fired their service weapons used deadly physical force. Under PL Section 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 Section 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 Section 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 Section 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."

Police officers using deadly physical force pursuant to PL Section 35.30(1) are under no duty to retreat when threatened with deadly physical force, according to PL Section 35.15(2)(a)(ii).

The officer who uses deadly physical force is justified when they reasonably believe deadly force is necessary to defend the person 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 him 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 N.Y.2d 96 (1986); People v. Wesley, 76 N.Y.2d 555 (1990). Therefore, before using deadly force in self-defense, (a) a person must honestly and in good faith believe deadly force was about to be used against them and that deadly force is necessary for self-defense, and (b) a reasonable person under the same circumstances could believe the same.

Based on the evidence in this investigation, 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.

Under PL Section 35.30, the officers from the 113th Precinct could use the physical force they reasonably believed to be necessary to effectuate the arrest of Mr. Hardy and could use deadly force if they reasonably believed it was necessary to defend themselves or another against Mr. Hardy's imminent use of deadly force.

Here, the 113th Precinct officers were investigating threatening 911 calls placed by Mr. Hardy. The content of the phone calls established probable cause that Mr. Hardy committed the crime of making a terroristic threat in violation of PL Section 490.20. During the calls, Mr. Hardy identified himself by giving his first, middle and last name and his address. The officers were able to pull up a photo of Mr. Hardy from an NYPD database. When they approached Mr. Hardy's residence, Mr. Hardy opened his front door and exited. When ordered to show his hands, Mr. Hardy pulled out a semi-automatic firearm and pointed it at the officers committing the crime of menacing a police officer in violation of PL Section 120.18. Mr. Hardy raised a

firearm and pointed it in the direction of the officers. Mr. Hardy repeatedly fired his weapon as did the officers. OSI would not be able to disprove beyond a reasonable doubt that the officers' actions were justified.

In sum, the evidence in the investigation is insufficient to disprove beyond a reasonable doubt that the officers were justified under New York law in using deadly physical force. Therefore, OSI will not seek charges in the matter.

RECOMMENDATION

When the officers from the 113th Precinct were called to Mr. Hardy's address, they were confronted with a volatile situation involving an armed man in an apparent mental health crisis. OSI recommends that NYPD patrol sergeants and patrol lieutenants have mandatory training on an annual or bi-annual basis for situations when they and members they command interact with people who may be in a mental health crisis. This training should include devising and following effective tactical plans, de-escalation, and firearms deployment, and should be based on real world scenarios.[15] The goal should be to preserve life whenever possible.

OSI reviewed NYPD's training curriculums and materials for recruits and promoted officers, which are well reasoned and comprehensive on interacting with emotionally disturbed persons,[16] use of cover, muzzle control and awareness, and scene control, including defined roles, target acquisition and assessment, and tactical planning and communication. However, OSI concludes that NYPD supervisors would benefit from more frequent – at least bi-annual – training on these topics. As things stand today, supervisors' training might be many years in the past when they actually encounter situations like the one in this case.

NYPD trains officers who come in contact with an emotionally disturbed person to radio for a supervisor, who in turn is tasked with directing the response. In the course on Advanced Tactical Leadership, NYPD training divides situations into three Theaters of Operation: slowly evolving situations, moderately evolving situations, and spontaneous situations. The situation involving Mr. Hardy could be characterized, initially, as a slowly evolving situation. Mr. Hardy called 911 and, clearly agitated, threatened to kill police officers and others. He gave the 911 operator his name and address. He called at 6:08 p.m. and again at 6:14 p.m. At 6:17 p.m.,

[15] OSI is focusing this recommendation on supervising officers because of the difficulty NYPD would face in attempting to provide this amount of additional training across the more than 20,000 members of patrol. Current NYPD membership includes 21,665 police officers, 5221 detectives, 4350 sergeants, and 1697 lieutenants. See the statistical link available at https://www.nyc.gov/site/nypd/stats/reports-analysis/reports-landing.page.

[16] Emotionally disturbed person, or EDP, is the term NYPD uses. See NYPD Training Course Materials, "Policing the Emotionally Disturbed," which defines an EPD as "a person who appears to be mentally ill or temporarily deranged and is behaving in a manner likely to result in injury to them or others."

Sgt. Gagnon radioed for responding officers to meet half a block from Mr. Hardy's address. At that point, time was on the officers' side: they had time to create a tactical plan as there was no immediate threat from Mr. Hardy. Officers in a slowly evolving situation are trained to use time and distance as an advantage. However, as things turned out, only five minutes after officers responded to the scene, Mr. Hardy was shot. Although the officers had Mr. Hardy's phone number, there was no attempt to call him before approaching his address. Sgt. Gagnon sent officers to the back of Mr. Hardy's house, but not to the front, to ascertain whether he was inside or outside. The tactical advantage of time and distance was forfeited by Sgt. Gagnon when he and other officers approached Mr. Hardy's house, without cover, approximately four minutes after arriving on the scene.

When Mr. Hardy appeared at his front door with a gun in his hand the state of affairs went from a slowly evolving situation to a spontaneous situation, defined by NYPD as an "extremely fast paced situation." NYPD trains supervisors to "try to slow down, delay or distract [and] gather critical information." Various techniques are taught to deal with the stress of confronting an armed person. NYPD tells supervisors to focus on specific questions to restore situational awareness in rapidly evolving events, such as, "What is important now?" When Mr. Hardy opened the door of his house with a gun in his hand, it was important for officers to find cover, yet Sgt. Gagnon did not give that direction. Instead, officers followed Sgt. Gagnon's lead and moved closer to Mr. Hardy. NYPD trains officers to create distance in situations like this, not to close in on a subject. Ideally, with frequent training, these tactics and best practices would be fresh in a supervisor's mind when confronted with a volatile situation like the one in this case.

In their interviews with OSI, Sgt. Gagnon and the other responding officers all said they believed Mr. Hardy was emotionally disturbed based on the information conveyed by the dispatcher. NYPD trains its officers in tactics that have been proven to be effective when encountering someone in a mental health crisis. For example, NYPD tells the supervisor on the scene to designate one officer as the "contact officer," meaning the one officer who should talk with the person in crisis. The contact officer should take steps to minimize the agitation of the person, such as by communicating calmly. When Sgt. Gagnon and the other officers first encountered Mr. Hardy, multiple officers began yelling for him to show his hands. No officer was designated as a contact officer and no attempt was made to de-escalate the situation. The officers unholstered their firearms and shouted at Mr. Hardy before making any attempt at communication.

If firearms must ultimately be used, NYPD trains officers to fire in short bursts and reassess the situation after each burst. The officers in this case, however, fired a total of 134 shots at Mr. Hardy. Three officers each fired two entire magazines of ammunition. None of the officers interviewed had ever fired their weapon before this incident, except in training and range practice. OSI recommends increasing scenario-based training where officers are confronted

with simulated real-world experiences in order to become familiar, through repetition, with controlling fire in high pressure situations.

On July 9, 2022, Raul Hardy threatened to kill police officers, came to his door with a loaded firearm, and fired at uniformed members of NYPD. Officers returned fire, killing him. It is possible that there was nothing responding officers could have done that day which would have changed the outcome. However, it is clear that the techniques taught by the NYPD to prepare for and de-escalate such situations were not followed. OSI believes that more frequent training for NYPD supervisors will make it more likely that those techniques will be in the forefront of supervising officers' minds when they are in high pressure situations and therefore more likely to be used – which in turn will increase the odds that life will be preserved.

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