Office of the New York State Attorney General Letitia James

Office of Special Investigation

October 7, 2024

Report on the Investigation into the Death of Todd Novick

SUMMARY

New York Executive Law Section 70-b (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. 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 Todd Novick, who was shot and killed on December 24, 2023, by Rochester Police Department (RPD) Officer Daniel Celiberti.

OVERVIEW

On December 24, 2023, at 8:28 a.m. a caller to the Monroe County 911 Center said he was in a car on Murray Street, in Rochester, and saw a white or Hispanic man, 20 or 30 years of age, wearing a dark-colored sweatsuit, holding a handgun "out in the open." The caller said the man was walking down Murray Street toward Lyell Avenue in the company of another white or Hispanic man, who was also wearing a dark-colored sweatsuit. The caller said the man with the gun stopped on Murray Street to speak with a white woman, who was wearing a white sweatshirt. The caller said he saw the man put the gun in his sweatpants.

At 8:34 a.m. Officer Celiberti arrived in his police car on Murray Street and activated his body worn camera (BWC). The BWC showed two white or Hispanic men wearing dark sweatsuits and one white woman wearing a white sweatshirt standing on the sidewalk. Officer Celiberti approached and asked the three people what they were doing. The woman said they were just talking, and one of the men, later identified as Todd Novick, said he was headed to work at a mechanic shop. Officer Celiberti asked Mr. Novick what he did at the mechanic shop, and Mr. Novick said he worked on cars.

At 8:35 a.m. as RPD Officer Jameek Thomas arrived and got out of his police car, Mr. Novick began to walk away. Officer Celiberti asked Mr. Novick to wait, and Mr. Novick began to run. BWC showed that at 8:35 a.m. Officer Celiberti ran after Mr. Novick, raised his police-issued handgun, and ordered Mr. Novick to "stop, stop, stop, drop the gun, drop the gun" as Mr. Novick removed what appeared to be a handgun from the front area of his sweatpants and momentarily held it out to his right side. Officer Celiberti fired five shots at Mr. Novick. Mr. Novick dropped what appeared to be a handgun to the ground and fell in the driveway of 345 Murray Street. Officer Thomas approached and handcuffed Mr. Novick, and the officers began to render aid.

Mr. Novick died of his wounds. A black replica handgun was recovered in the driveway of 345 Murray Street.

Having thoroughly investigated the matter and analyzed the law, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that Officer

Celiberti was justified when he shot Mr. Novick and, therefore, will not seek charges against him and closes the matter with this report.

FACTS

Enhanced Video Link

The incident took place on a residential street in the City of Rochester. Officer Celiberti's BWC video, shown first at regular speed and then at slower speed with Mr. Novick's gun circled, is here: Officer Celiberti BWC[1]

Officer Interviews

Officer Daniel Celiberti

In his interview with OSI, Officer Celiberti said the following:

On Sunday, December 24, 2023, Officer Celiberti was dispatched to Murray Street for a report of a white or Hispanic man who had been seen by a 911 caller holding a handgun. The 911 caller described the man as wearing a dark sweatsuit, and he was seen with another man. The 911 caller further said that he saw the man put the handgun into his waistband and then stop to talk to a woman wearing a white jacket on Murray Street.

Officer Celiberti proceeded to Murray Street and activated his BWC. Upon arrival he saw two white men and a white woman standing on the east side of the street, in the middle of the block. Officer Celiberti parked his patrol car on the east side of the street about 10-15 feet away from the group, got out of his patrol car, and spoke to the group. He noticed that one of the men was wearing a dark hooded sweatshirt and dark-colored sweatpants, which matched the description the 911 caller provided. Officer Celiberti asked the group what they were doing, and the man who matched the 911 caller's description, later identified as Todd Novick, said he was going to work. When Officer Celiberti asked him where he worked, Mr. Novick repeated the question and then said he worked at a mechanic shop. Officer Celiberti believed Mr. Novick was the man with the gun described by the 911 caller and that his failure to answer questions directly, based upon Officer Celiberti's experience, was done to buy time to find an untrue answer. Mr. Novick appeared agitated, fidgeted, twice brought his hands to the front of his waist, and appeared to adjust or secure something concealed in the front of his clothing. Officer Celiberti believed Mr. Novick was concealing a weapon. The other two members of the group never changed their behavior or became agitated.
Officer Thomas pulled his marked patrol car south of the group and Mr. Novick began to walk north behind the other two individuals. Officer Celiberti believed Mr. Novick was going to run,

[1] BWC footage has been edited pursuant to the Attorney General's policy to protect privacy (e.g., bystander faces, and license plates are blurred).

and as Officer Celiberti began to tell him to stop, Mr. Novick ran away, in a northwest direction, across Murray Street. Based upon his observations and information provided by the 911 caller that the man had a gun, Officer Celiberti pursued Mr. Novick and called out over the radio that Mr. Novick was running. He initially saw both of Mr. Novick's arms swinging freely in a normal running motion, but after the radio transmission, he saw Mr. Novick's right arm stop swinging, with his right elbow sticking out at his right side while his hand was angled down toward his front waistband. Based on his training and experience and the information from the 911 caller, he believed Mr. Novick was in possession of a handgun. Officer Celiberti saw Mr. Novick look over his left shoulder back toward Officer Thomas, who was running behind Officer Celiberti, which caused Officer Celiberti to fear for his and Officer Thomas's lives because he feared that Mr. Novick was looking to see where they were to fire at them. Officer Celiberti drew his gun, pointed it at Mr. Novick, and ordered him twice to stop. Mr. Novick did not stop, and Officer Celiberti saw a black handgun in his right hand. Officer Celiberti ordered Mr. Novick to drop the gun, but he did not and looked over his shoulder toward the officers.

Based on his experience with foot pursuits with people who had a concealed firearm, Officer Celiberti believed they usually discard the weapon almost immediately, but Mr. Novick did not discard the handgun and continued to hold onto it, which led Officer Celiberti to fear that Mr. Novick intended to use the gun against them. Officer Celiberti recalled the death of an RPD police officer who was killed on duty by a man running with a gun in his hand who fired backwards at the officer.

Mr. Novick ran into the driveway of a vacant house. Officer Celiberti feared Mr. Novick would run behind the house and ambush him and Officer Thomas. Officer Celiberti fired at Mr. Novick five times in quick succession to stop the threat. Officer Celiberti saw the handgun fall from Mr. Novick's hand before Mr. Novick fell to the ground.

Officer Celiberti ordered Mr. Novick to roll onto his stomach and to place his hands behind his back; Mr. Novick was handcuffed. Officer Thomas radioed for an ambulance. Officer Celiberti checked Mr. Novick for injuries and saw two bullet wounds on his back and side. Officer Celiberti applied vented chest seals over the wounds. Officer Celiberti rolled Mr. Novick on his back and searched for exit wounds but did not see any. Members of the Rochester Fire Department arrived and assumed Mr. Novick's care.

<u>Officer Jameek Thomas</u>

In his interview with OSI, Officer Thomas said the following:

On December 24, 2023, at 8:30 a.m., Officer Thomas responded to a dispatch for a 911 call of a white man with a gun on Murray Street, between Otis Street and Lyell Avenue. The 911 dispatcher provided an update that the man was standing on the sidewalk talking to a white woman. While en route to Murray Street Officer Thomas activated his BWC. Upon arrival, Officer

Thomas saw Officer Celiberti in the middle of the block speaking to two white men and a white woman. Officer Thomas parked his patrol car south of Officer Celiberti's patrol car and the group. As he got out of the car Officer Thomas saw one of the white men, later identified as Todd Novick, begin to flee northbound. Officer Thomas saw Officer Celiberti begin to pursue Mr. Novick on foot, and then joined the pursuit.

Mr. Novick's arms were swinging free as he ran but then he reached his right hand to the area of his front waist as he ran toward the driveway of 345 Murray Street. Officer Thomas could not see Mr. Novick's right hand, but it was apparent that he was reaching for something. Mr. Novick's right hand became visible again, and Officer Thomas saw what appeared to be a black handgun in his right hand. Mr. Novick looked back at Officer Thomas as he ran, which made Officer Thomas believe that Mr. Novick was preparing to use the gun against him. Officer Thomas feared for his life and reached for his gun, which was holstered on his right hip. As Officer Thomas reached for his gun, he saw Officer Celiberti, with his service weapon, fire multiple rounds in quick succession in Mr. Novick's direction. Officer Thomas was not sure how many rounds were discharged. Officer Thomas saw the man drop the gun and fall to the ground in the driveway of 345 Murray Street.

Officer Thomas and Officer Celiberti went to Mr. Novick, and Officer Celiberti ordered him to roll over onto his stomach, which he did. Officer Thomas handcuffed Mr. Novick in the prone position and radioed for emergency services. Officer Celiberti pulled up Mr. Novick's clothes to look for injuries, and Officer Thomas saw two gunshot wounds in Mr. Novick's back, one on the upper right of his back and one near the middle of the left side of his back. Officer Thomas placed his right hand on the upper right back wound and applied pressure, only removing his hand so that Officer Celiberti could apply a bandage to both wounds. Officer Thomas and Officer Celiberti turned Mr. Novick over to search for exit wounds but did not find any. Emergency personnel arrived and assumed Mr. Novick's care before transporting him to the hospital in an ambulance.

Transcript of 911 call

911: What's the address of your emergency?
Caller: Well, I'm at Murray Street. I don't know the number.
911: Okay. Do you know the nearest side street, then?
Caller: No, but there's two men. I just saw one guy with a gun, a handgun. He had it out in the open. He's walking towards Lyell Avenue, down Murray Street, towards Lyell. There's two guys that both – they got sweatshirt, sweatsuits, shirts on and pants. Black, dark and dark clothes.
911: All right. You said one had – is it a handgun?
Caller: Yeah, it's a handgun. I saw it out in the open.
911: Okay.
Caller: They were walking down that way towards Lyell now. On the one way on Murray.
911: Okay, one second. Just stay on the phone with me. And these males are they white,

black, Hispanic.
Caller: They look Spanish or white.
911: Okay. About how old?
Caller: 20. 30.
911: Okay. What color hoodies?
Caller: Dark color sweatsuits on. I'm about to be driving by any second.
911: All right. Do you know where the gun is now?
Caller: He put it in his sweatpants.
911: Okay. All right.
Caller: They're walking down the street now. Just walking across the street right now.
911: All right. Don't approach them at all. We've got officers on the way.
Caller: I'm driving by, and right now he's talking to a girl right now. The other guy went straight ahead.
911: Okay, so the one talking with the girl is the one with a gun?
Caller: Yeah, the one with the gun.
911: Okay. And the female, is she white, black, Hispanic?
Caller: She looked like she was white. She had a white sweatshirt. White hoodie.
911: Okay. All right, sir. Again, just don't approach them. We've got them checking out the area. Okay?
Caller: I'm just leaving now anyway.
911: Okay. Thank you. Bye bye.
Caller: Welcome.

Summary of Officer Celiberti's BWC Video

Officer Celiberti activated his BWC at 8:34:19 a.m. as he arrived on Murray Street (times stated in this section are from the time stamps on the video footage).[2]

8:34:24 a.m.: Officer Celiberti got out of his patrol car and asked a white woman and two white men on the sidewalk what was going on.

8:34:44 a.m.: Mr. Novick said he was going to work at a mechanic shop where he worked on cars.

8:35:02 a.m.: Officer Celiberti asked the group what they were doing there, and Mr. Novick responded that they stopped to talk.

8:35:08 a.m.: Officer Thomas's patrol car arrived, and he began to get out of the car.

[2] OSI reviewed Officer Thomas's BWC which was activated at 8:34:42 a.m. It captured the foot pursuit and shooting of Mr. Novick and is not materially different from Officer Celiberti's BWC.

8:35:09 p.m.: Mr. Novick walked around the other two people and away from Officer Celiberti.

8:35:12 a.m.: Mr. Novick began to run northbound on Murray Street.

8:35:15 a.m.: Officer Celiberti ran after Mr. Novick and radioed Mr. Novick's direction of travel.

8:35:17 a.m.: Officer Celiberti raised his handgun and ordered Mr. Novick to "stop, stop, stop, drop the gun, drop the gun" as Mr. Novick removed what appeared to be a black handgun from the front area of his sweatpants and momentarily held it out to his right side.

8:35:18 a.m.: Officer Celiberti fired five shots at Mr. Novick.

8:35:19 a.m.: Mr. Novick dropped the object that appeared to be a gun and fell to the ground in the driveway.

Still from Officer Celiberti's BWC of Mr. Novick holding what appeared to be a gun in his right hand.

Still from Officer Celiberti's BWC of Mr. Novick falling to the ground and what appeared to be a black handgun on the ground.

Post-Shooting Investigation

Crime Scene

RPD Technical Services personnel, civilian technician Elizabeth Marsden and Officer Rodney Watson, responded to Murray Street to collect evidence and take photographs. Officer Watson recovered five 9mm casings from the driveway between 345 and 359 Murray Street and near the steps and yard of 359 Murray Street. Two fragments of a projectile were recovered, one from the base of a tree in the driveway between 345 and 359 Murray Street, and one near the steps of 345 Murray Street. Officer Watson recovered what appeared to be a black handgun from the driveway of 345 Murray Street.

Crime scene photograph of the object that appeared to be a handgun in the driveway of 345 Murray Street.

Ballistics

Forensic firearms examiner Richard Hoepfl of the Monroe County Crime Laboratory examined the 9mm shell casings and the two fragments of a projectile recovered from the scene and compared them to Officer Celiberti's RPD-issued 9mm Glock handgun. In a written report, Examiner Hoepfl reported that all shell casings and one of the projectile fragments were fired from Officer Celiberti's handgun; the other projectile fragment was too damaged to be compared with Officer Celiberti's handgun.

RPD Investigator Gustavo Venosa examined the object that appeared to be a handgun, dropped by Mr. Novick, and determined it to be a 4.5 mm replica handgun. The Monroe County Crime Laboratory does not examine replica guns.

Civilian Witness Interviews[3]

911 caller

In an interview with OSI, the 911 caller said the following:

On December 24, 2023, at 8:30 a.m., the 911 caller was sitting in a parked vehicle on Murray Street, facing Lyell Avenue. The 911 caller saw two men on the opposite side of the street; one of them was crouched down with a large handgun in his hand. The men were either white or Hispanic and wearing dark-colored sweatsuits. The 911 caller saw the man who was handling the gun place it in his waistband, walk south toward Lyell Avenue, and stop to talk with a woman wearing a white hooded jacket.

Female Witness

In an interview with OSI, the female witness said the following:

On December 24, 2023, she and her male companion were on Murray Street in the City of Rochester when they saw Todd Novick. She had known Mr. Novick and his wife for a couple of months. She stopped to talk to Mr. Novick, and he showed her a black handgun, which he carried in the front of his pants. She told Mr. Novick to put the gun away; she did not know whether the gun was real or not. Within minutes, a police officer arrived, got out of the car, and asked them what they were doing. She provided a response, and then the police officer's attention turned to Mr. Novick. Mr. Novick began to run, and the police officer ran after him. She heard the police officer say Mr. Novick had a gun and then she heard three shots. She could not see the shooting because a house blocked her view.

Male Witness

In an interview with OSI, the male witness said the following:

He had known Mr. Novick for a couple of years and considered him a friend. The witness and his companion, the female witness, would see Mr. Novick and his wife often. On December 24, 2023, the witness and his companion were on Murray Street when they saw Mr. Novick. They stopped to talk with Mr. Novick, but the male witness left to go to the store on Lyell Avenue. When the male witness returned from the store he met back up with Mr. Novick and the female witness. Within minutes a police officer pulled up and Mr. Novick ran away, with the police officer behind him. The male witness heard five shots but did not see Mr. Novick struck by the shots. The female witness said to him, "The gun," and he knew she was talking about the gun

[3] OSI does not publish the names of civilian witnesses.

that Mr. Novick carried. The male witness did not see Mr. Novick with the gun that day, but Mr. Novick had showed it to him the day before; Mr. Novick carried it for protection. The male witness did not know whether the gun was real or fake. The male witness never saw Mr. Novick brandish the weapon at anyone.

Medical Examiner

On December 24, 2023, Dr. Nadia A. Granger, Chief Medical Examiner at the Monroe County Medical Examiner's Office, conducted the autopsy of Todd Novick. Dr. Granger concluded that the cause of death was gunshot wounds to the torso and that the manner of death was homicide. Dr. Granger found two entrance wounds, one in the right lower back and one in the left middle of the back. Dr. Granger recovered two partially deformed projectiles, one from the right chest wall and one in the left neck. Both deformed projectiles entered the back and traveled from right to left and lodged in the front of Mr. Novick's body.[4] Dr. Granger concluded that these shots caused the death; she did not determine whether either shot was individually fatal.

LEGAL ANALYSIS

In *People v. De Bour*, 40 NY2d 210 (1976), the Court of Appeals created a four-tiered test for evaluating police encounters. The first level allows a police officer to request information from a person based on an objective and credible reason; the reason need not indicate criminality. The second level allows a greater intrusion, short of force, based upon a founded suspicion of criminal activity. The third level allows the officer to forcibly stop and detain an individual based on a reasonable suspicion that the individual is committing, has committed, or is about to commit a crime. The fourth level allows for the arrest of the individual based upon probable cause that the individual has committed a crime. See also *People v Clermont*, 20 NYS3d 85 (2015). Police pursuits are justified where there is reasonable suspicion that a crime has been, is being, or is about to be committed. *People v Holmes*, 81 NY2d 1056 (1993). In *Holmes*, the Court of Appeals held that flight coupled with specific facts that the fleeing person may be engaged in criminal activity can justify pursuit.

Here, Officer Celiberti had descriptions of people, information about their location, and a reported observation that one of them had a gun, from a 911 caller. When Officer Celiberti arrived at the place described by the caller he found people who met those descriptions. Mr. Novick's response to Officer Celiberti's questions was inconsistent with the day being Sunday and Christmas Eve. Mr. Novick walked and then ran away. For these reasons, Officer Celiberti's pursuit of Mr. Novick was a proper level three *De Bour* interaction.

Article 35 of the Penal Law defines the circumstances under which a person may be justified in

[4] Neither fragment was tested by the Monroe Crime Laboratory because there was no question that Officer Celiberti was the shooter.

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 Officer Celiberti was justified.

PL 35.30 defines justification when a police officer uses deadly force while effecting or attempting to effect an arrest for an offense, as follows:

> "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 35.30(1) are under no duty to retreat, PL 35.15(2)(a)(ii).

The Court of Appeals, in *People v Goetz,* 68 NY2d 96, 114-115 (1986), said that "reasonable belief" has both subjective and objective components: the subjective component is satisfied if the person using force actually believed, "honestly and in good faith," that deadly force was about to be used against that person or another, and that the use of deadly force was necessary to prevent the danger; the objective component is satisfied if a "reasonable person" under the same circumstances could have held the same belief. *See also People v Wesley*, 76 NY2d 555 (1990).

Here, based upon the 911 caller's information and Mr. Novick's flight, officers had reasonable cause to arrest Mr. Novick for criminal possession of a weapon in the fourth degree, PL 265.01.[5] Further, Officer Celiberti's observation of Mr. Novick turning toward the officers, removing a black handgun from his waistband and holding it at his side during the foot pursuit on Murray Street provided Officer Celiberti with a reasonable basis to believe that Mr. Novick would imminently use deadly physical force against him.

In sum, based on the evidence in the investigation, OSI concludes that a prosecutor would not

[5] PL 265.01 states: "A person is guilty of criminal possession of a weapon in the fourth degree, when he possesses any firearm…"

be able to disprove beyond a reasonable doubt at trial that Officer Celiberti was justified under New York law in using deadly physical force. Therefore, OSI will not seek charges and closes the matter with the issuance of this report.

Dated: October 7, 2024