Office of the New York State Attorney General Letitia James

Office of Special Investigation

February 24, 2025

Report on the Investigation into the Death of Woody Smith

New York Executive Law Section 70-b (Section 70-b) authorizes the New York Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or peace officer. When, as in this case, OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of Woody Smith, which occurred after he was restrained by officers of the Troy Police Department (TPD), in Rensselaer County.

OVERVIEW

On October 13, 2023, Witness A called 911 and said she had returned to her home to find two people inside who did not belong there and may have entered through a window when Witness A was out. (OSI does not publish the names of civilian witnesses.) Witness A gave the 911 operator an address in the City of Troy. TPD Officers Richard Romero and Joseph Gomes responded to the 911 call and arrived at the address shortly after noon and activated their body worn cameras (BWCs). The officers saw a man, later identified as Woody Smith, climbing out of a first-floor window, ordered him to the ground with guns drawn, and struggled to get him handcuffed. During the struggle, which lasted just over a minute, Mr. Smith said he could not breathe. When the officers succeeded in handcuffing Mr. Smith they rolled him onto his side. He became unresponsive. The officers radioed for backup and for an ambulance and started to render aid. Mr. Smith arrived at a nearby hospital at 1:05 p.m. where he was pronounced dead 20 minutes later.

The medical examiner found that Mr. Smith had died from the combined effects of acute drug intoxication, hypertensive and atherosclerotic cardiovascular disease, and his exertion during the struggle with the officers.

Having thoroughly investigated the matter and analyzed the law, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Officer Romero or Officer Gomes committed a crime in connection with the death of Mr. Smith or disprove beyond a reasonable doubt that their use of force to arrest Mr. Smith was justified. Therefore, OSI will not seek charges against the officers and closes the matter with the issuance of this report.

FACTS

Both officers refused to be interviewed by OSI. Their BWC videos are available at these links, redacted according to the Attorney General's published video release policy: Officer Romero's BWC; Officer Gomes's BWC.

After the 911 call as summarized above, BWC video showed that Officer Romero arrived at the house at the address given in the call at 12:03 p.m. and spoke with Witness A and Witness B and with two other people. While Officer Romero was speaking with the two other people, Witnesses A and B said someone was still inside the house and had just locked the entrance

door. The house had only one entrance, at the rear deck, four steps up from the yard. BWC showed that Officer Gomes arrived at 12:08 p.m., a few minutes after Officer Romero arrived, and that both officers went to the door of the house. Beginning at 12:11 p.m. Officer Romero knocked repeatedly on the door and a window and yelled, "Troy Police, come to the door." At 12:13:58 p.m. Officer Gomes said, "They're coming out the side window right here." The officers ran around the house in opposite directions to confront a man, later identified as 48-year-old Woody Smith, who was standing in the yard, not far from an open window.

Still from Officer Gomes's BWC showing Mr. Smith in the yard of the house, before the officers attempted to put him in handcuffs.

BWC showed that beginning at 12:14:08 p.m., Officers Gomes and then Romero had their guns drawn and repeatedly ordered Mr. Smith to "get on the ground." After 10 seconds, Mr. Smith moved down onto his knees and then onto his left hip. As Officer Romero approached him, Mr. Smith went down onto his left side, and Officer Romero grabbed his arm at 12:14:34 p.m., and rolled him onto his stomach into a prone position. Officers Romero and Gomes attempted to pull his hands to his back and place handcuffs on his wrists. BWC captured Mr. Smith saying, "I didn't do anything wrong; I was just fixing my window." The officers were not initially able to get both of his wrists into handcuffs and began yelling, "Put your hands behind your back," and threatened to use a Taser on him (the automated Taser log showed that it was not used). As the officers struggled with him, BWC captured Mr. Smith saying repeatedly, "I can't breathe," beginning at 12:14:41 p.m. During the struggle the officers at times put their knees on his body while Mr. Smith was in a prone position.

Still from BWC showing the officers' positions while struggling with Mr. Smith.

Still from BWC showing the officers' positions while struggling with Mr. Smith.

BWC showed that the officers succeeded in handcuffing Mr. Smith at 12:15:36 p.m. and rolled him onto his side. Mr. Smith stopped speaking. One minute and two seconds had passed from the time the officers grabbed Mr. Smith's arms and began attempting to handcuff him to the time when the officers rolled Mr. Smith onto his side.

At 12:15:46 p.m., Officer Romero radioed for a medic. At 12:15:57 p.m. Sergeant David Fera arrived. Mr. Smith appeared to be unwell, making noises but not speaking clearly. At 12:16:20 p.m. Officer Romero began removing the handcuffs. At 12:16:34 p.m. Officer Romero radioed to “expedite” the medics. Sgt. Fera radioed that the man “may have ingested something.”

Still from BWC showing Officer Romero removing the handcuffs.

Still from BWC showing Officer Romero removing the handcuffs.

BWC showed that at 12:17:53 p.m. Mr. Smith appeared to be unconscious. Officer Gomes administered three doses of Narcan (a medication to reverse the effects of an opioid overdose) to him beginning at 12:19:22 p.m., and, at 12:19:46 p.m., Officer Romero began to perform chest compressions (cardiopulmonary resuscitation or CPR) on him. Other TPD officers arrived, additional doses of Narcan were administered, and officers rotated CPR. At

12:30 p.m. Troy Fire Department (TFD) Emergency Medical Technicians (EMTs) arrived and took over life-saving efforts. At 12:55 p.m. TFD transported Mr. Smith to the Samaritan Hospital in Troy.

Hospital records said Mr. Smith arrived at 1:05 p.m. in cardiac arrest with CPR in progress via a LUCAS device (a machine that performs chest compressions). He had no pulse. The hospital records said there were no signs of trauma. Resuscitation efforts continued in the emergency department but failed to achieve a return of spontaneous circulation. An electrocardiogram showed that Mr. Smith's heart was in asystole, meaning an absence of evidence of electrical or mechanical activity. Dr. Gregory Perry pronounced Mr. Smith dead at 1:25 p.m.

Medical Examiner

An autopsy of Mr. Smith's body was conducted on October 14, 2023, by Dr. Kia Newman, of the Rensselaer County Office of the Medical Examiner. As set forth in the final autopsy report Dr. Newman determined that Mr. Smith's death was caused by "acute intoxication by the combined effects of fentanyl, cocaine, and methamphetamine in an individual with hypertensive and atherosclerotic cardiovascular disease," and contributing to his death were emphysema, obesity, and the physical exertion involved in his struggle with the officers. Dr. Newman deemed the death an "accident."

OSI interviewed Dr. Newman, who said she had viewed the officers' BWC videos several times and noted Mr. Smith going onto his knees and then onto his stomach in a prone position, with the officers at times placing their knees against Smith's body during the struggle, before handcuffing Mr. Smith and placing him on his side. Dr Newman said that if the evidence were that the officers' use of force or positioning had impacted the cause of death, she would have deemed it a homicide instead of an accident. Dr. Newman said she could not opine whether Mr. Smith would have died from the drugs in his system in the absence of the struggle with the officers. Asked specifically if there was any evidence of asphyxia, Dr. Newman said she found no evidence of asphyxia in the autopsy and, in viewing the BWC videos, did not see actions by the officers that would have caused asphyxia. Dr. Newman also said, in her medical opinion, Mr. Smith was not in a prone position for a long enough period to cause positional asphyxia. Asked to explain why Mr. Smith said he could not breathe during the struggle with the officers, Dr. Newman said it was probably due to the combination of his medical condition and history, the drugs in his system, and his exertion during the struggle.

LEGAL ANALYSIS

<u>Cause of Death under Criminal Law Principles</u>

OSI concludes that while there is evidence, based on the medical examiner's findings, that the officers' struggle with Mr. Smith, which led to Mr. Smith's physical exertion, was a contributing cause of death, there is insufficient evidence to prove beyond a reasonable doubt that Officer Gomes or Officer Romero caused Mr. Smith's death.

In a criminal case concerning a death, a person may only be found guilty of a homicide crime if the evidence proves beyond a reasonable doubt that the person caused the death. A person is deemed to cause the death of another person when his or her "actions were an actual contributory cause of the death, … [forging] a link in the chain of causes which actually brought about the death," and when "the fatal result was reasonably foreseeable," *People v Stan Xu Hui Li*, 34 NY3d 357, 369 (2019); see, *People v Davis*, 28 NY3d 294, 300 (2016).

The standard to apply in determining causation is whether the defendant's conduct was a "sufficiently direct cause" of the death. *People v. Kibbe*, 35 N.Y.2d 407 (1974). "A person's conduct is a sufficiently direct cause of such injury when: one, the conduct is an actual contributory cause of such injury; and two, … the injury was a reasonably foreseeable result of the conduct." *NY Criminal Jury Instructions 2d, General Applicability, Causation*.

Dr Newman, the Medical Examiner, said that neither the officers' use of force nor their positioning of Mr. Smith had impacted the cause of his death. She did not find evidence of asphyxia in the autopsy and, having watched the BWC videos several times, did not find that the officers' actions or the positioning of Mr. Smith for the amount of time shown in the videos would have caused asphyxia.

<u>The Officers' Use of Force</u>

Article 35 of the New York Penal Law defines the circumstances under which a person may be justified in using 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).

The Court of Appeals stated recently, "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])." *People v. Jairo Castillo*, Slip Opinion, November 21, 2024.

OSI concludes that a prosecutor would be unable to disprove beyond a reasonable doubt that the officers' use of physical force was justified.

PL 35.30(1) is the provision defining justification when a police officer or peace officer uses force to make an arrest and provides, in part:

> "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"

In this case, Officer Gomes, and Officer Romero each used physical force to arrest Mr. Smith. The evidence shows that there was cause for the officers to have reasonably believed that Mr. Smith had committed an offense. A 911 caller reported an intruder. Officers Romero and Gomes went to the house and the 911 caller, Witness A, told them there was someone inside the house without permission. The officers knocked and announced themselves, and then saw Mr. Smith climbing out a window on the opposite side of the house. At that point, the officers had reasonable cause to believe that Mr. Smith had committed an offense. The officers therefore were permitted to arrest him and to use force, if necessary, to effect the arrest.

The BWCs showed that the officers did not use firearms or any other weapon to subdue Mr. Smith. The Medical Examiner said the force the officers used was not of a kind that would have caused asphyxiation. OSI concludes that the evidence shows that the officers did not use deadly physical force to arrest Mr. Smith and that a prosecutor would not be able to disprove beyond a reasonable doubt that the force used to arrest Mr. Smith was justified.

For these reasons, OSI will not seek charges and closes the matter with the issuance of this report.

Dated: February 24, 2025