Office of the New York State Attorney General Letitia James

Office of Special Investigation

AUGUST 6, 2024

Report on the Investigation into the Death of Michael Dotel

SUMMARY

New York Executive Law Section 70-b (Section 70-b) authorizes the Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer. When OSI does not seek charges, Section 70-b requires issuance of a public report.

This is the public report of OSI's investigation into the death of Michael Dotel, which was caused by Police Officer Alex Morgese, a member of the New York City Police Department (NYPD), on December 23, 2023. After a full evaluation of the facts and the law, OSI will not seek charges against PO Morgese because we conclude that a prosecutor would not be able to disprove beyond a reasonable doubt that his use of deadly force against Mr. Dotel was justified under New York law.

OVERVIEW

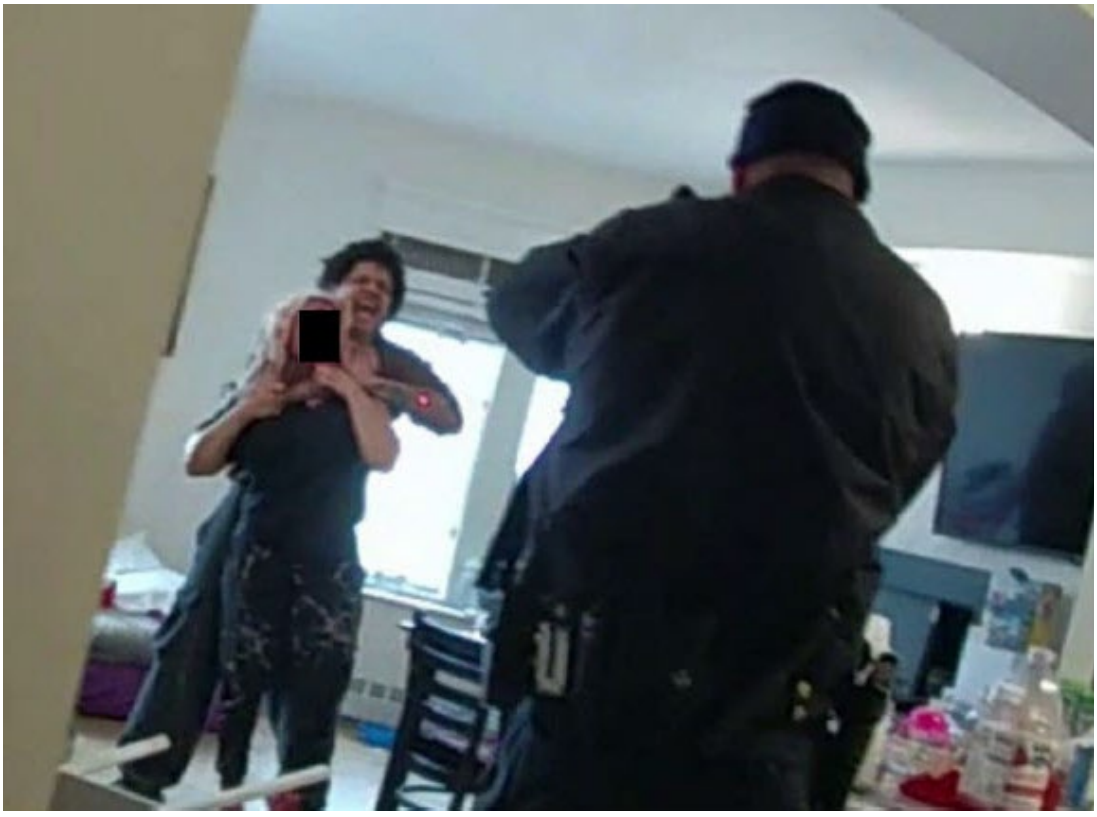
On December 23, 2023, NYPD Officers Alex Morgese and Mohammad Hossain, of the 52nd Precinct, were on patrol in the Bronx. At 11:18 a.m. the officers were sent to 2865 Creston Avenue, Apartment 13G, for a call about an emotionally disturbed person who was being violent. They arrived at 11:22 a.m., activated their body worn cameras (BWCs), and were met at the entryway of the building by R.M.[1] R.M. identified himself as the 911 caller and said his stepson, Michael Dotel, was upstairs in his apartment, was likely on drugs, had assaulted his (Mr. Dotel's) girlfriend, was acting violent, and was talking about hurting himself and others. R.M. said his wife, C.D., Mr. Dotel's mother, was also in the apartment. The officers and R.M. went upstairs in the elevator. As they walked from the elevator toward Apartment 13G dispatch reported that Mr. Dotel was armed with a knife and, as they reached the door of the apartment, shouts and screams were audible from inside.

The door to Apartment 13G was locked. PO Morgese banged on the door, demanding entry. At 11:26 a.m., Mr. Dotel's girlfriend, C.T., opened the apartment door and ran out holding her face and screaming. The officers entered the apartment, PO Morgese first and PO Hossain behind, with their Tasers drawn.

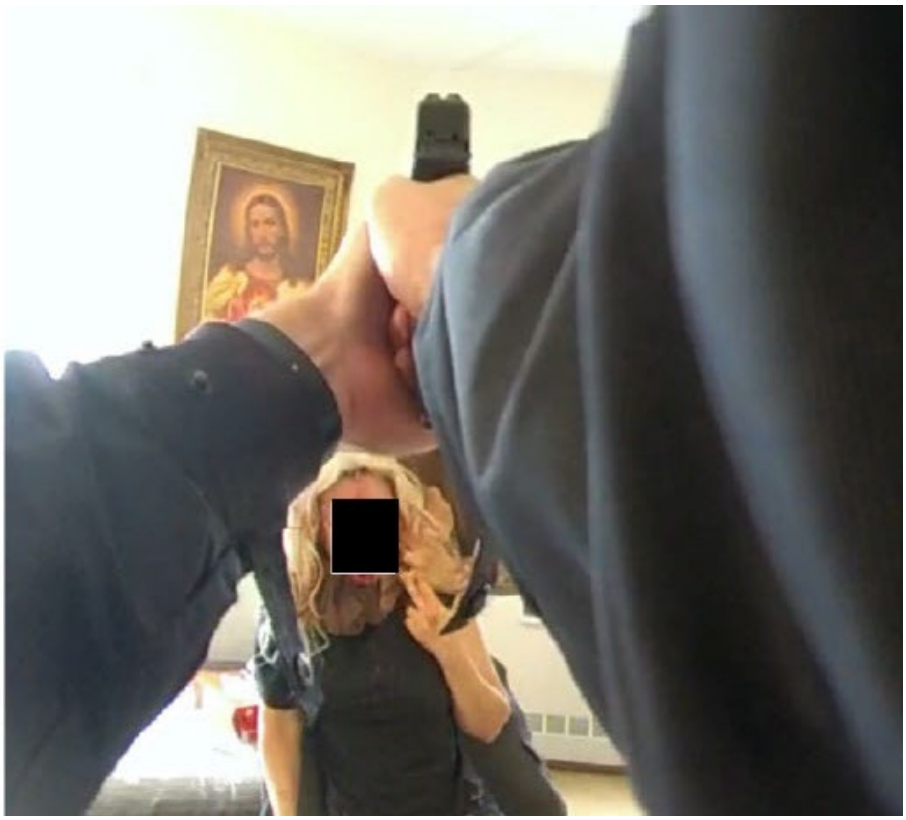
The officers' BWCs show that Mr. Dotel was standing in the living room holding C.D. in front of him in a chokehold and using her as a shield. C.D.'s face was bloody. Mr. Dotel screamed, "She's going to get it, she's going to get it, shoot me, shoot me right now!" PO Morgese told Mr. Dotel to drop the knife. Mr. Dotel continued to scream and hold his mother in a chokehold. As C.D. appeared to lose consciousness, PO Morgese fired a single shot, striking Mr. Dotel in the head. Mr. Dotel and C.D. dropped to the floor. PO Morgese began to render aid to C.D. and called for an ambulance. Other officers arrived and rendered aid to Mr. Dotel. Mr. Dotel was taken to St. Barnabas Hospital where he was pronounced dead.

[1] OSI does not publish civilians' names.

After thoroughly investigating the facts and analyzing the law, OSI concludes that a prosecutor would not be able to disprove at trial beyond a reasonable doubt that PO Morgese's actions were justified. OSI therefore will not seek charges and closes the investigation with the publication of this report.



A still from the body worn camera of Officer Hossain showing Mr. Dotel with his mother in a choke hold.



A still from the BWC of Officer Morgese immediately prior to discharging his firearm.

FACTS

BWC

The descriptions in this section are based on the BWCs of PO Morgese, who fired the shot, and his partner, PO Hossain.[2]

At 11:22 a.m. the officers got out of their police car and walked to the front door of 2865 Creston Avenue. At 11:23 a.m. Mr. Dotel's stepfather, R.M., met the officers in the entryway and opened the front door for them. As they walked to the elevator R.M. said Mr. Dotel gets violent when he is on drugs and that he had said he would kill himself and all of them.

At 11:24, in the elevator, R.M. said there was a previous incident on a train and it took 13 police officers to restrain Mr. Dotel. PO Morgese asked if Mr. Dotel carries weapons, and R.M. said Mr. Dotel used to carry a machete and an axe, but they took those and hid them. PO Morgese asked if Mr. Dotel has a knife now; R.M. said they took his knives away but there are

[2] OSI reviewed video from seventeen NYPD BWCs, which were downloaded by NYPD Force Investigation Division (FID) detectives. All the BWCs other than PO Morgese's and PO Hossain's were from officers who arrived after the shooting.

still knives in the house, and shrugged. R.M. said his wife and Mr. Dotel's girlfriend, C.T., are in the apartment and he believes Mr. Dotel hit C.T.

At 11:25 a.m. the elevator arrived on the 13th floor and, as the officers and R.M. walked from the elevator to Apartment 13G, PO Morgese got a radio message saying Mr. Dotel has a knife and that two females are injured. At the door of the apartment shouts and screams were audible. PO Morgese tried to open the apartment door, but it was locked. PO Morgese banged on the door and yelled for someone to open up. At 11:26:13 a.m. PO Morgese unholstered his Taser. At 11:26:26 a.m. the apartment door opened and C.T. ran out, holding her face and screaming. PO Morgese entered the apartment first with PO Hossain behind him.

A still from the BWC of PO Morgese showing C.T. fleeing Apartment 13G. Mr. Dotel is visible in the living room with C.D in a chokehold.

A still from BWC of PO Hossain showing PO Morgese entering apartment 13G with his Taser drawn.

PO Morgese walked toward Mr. Dotel who was standing in the living room, holding C.D. from behind, with his arm around her neck in a chokehold. C.D.'s face was bloody. At 11:26:29 a.m. Mr. Dotel screamed, "Do it, tase me, right now, I dare you, I fucking dare you. Do it, she's gonna get it." PO Morgese asked Mr. Dotel if he had a knife, and Mr. Dotel screamed, "Do it, do it, do it." PO Morgese asked Mr. Dotel where the knife is and then commanded him to drop the knife. Mr. Dotel said, "I got the knife." PO Morgese had his firearm drawn and pointed at Mr. Dotel. PO Hossain pointed his Taser at Mr. Dotel from behind a counter. PO Morgese again told Mr. Dotel to drop the knife. C.D.'s left arm seemed to go limp, she seemed to lose consciousness, and PO Morgese fired a single shot at Mr. Dotel's head. Mr. Dotel and C.D. dropped to the floor. PO Morgese helped C.D. up and walked her toward the hallway. 22 seconds passed from the time the officers entered the apartment to the time of the gunshot.

A still from BWC of PO Hossain before the shot was fired.

At 11:27:07 a.m. PO Morgese radioed shots fired and asked for an ambulance. A minute later other members of NYPD responded and began to render aid. At 11:32:09 a.m. EMTs arrived and took over aid, putting Mr. Dotel on a stretcher five minutes later to be taken to the ambulance. PO Morgese's BWC can be found here. PO Hossain's BWC can be found here.

Hallway security video

Security video from 2865 Creston's 13th floor hallway, at 11:19:06 a.m., shows that C.D. attempted to leave the apartment, that Mr. Dotel grabbed C.D. by the arm and shirt and pulled her back into the doorway. C.D. lost her balance and was partially on the floor, and dropped her jacket on the floor in the hallway as Mr. Dotel dragged her back into the apartment. Hallway video can be found here.

911 Calls

OSI reviewed two 911 calls. In the first 911 call, at 11:12:08 a.m., R.M. said his stepson was hallucinating and talking about killing himself and his family, that he "does drugs like crazy"

and is bipolar and schizophrenic, and had hit and injured his girlfriend. The second 911 call, at 11:22:39 a.m., began with sounds of screaming and things crashing. The caller screamed I'm bleeding!" and "My head!" and, in lower voice, "I'm so scared." When the caller finally began to respond to the operator's questions she spoke in a whisper and said her boyfriend is "going to kill us," that he hit her in the head with a glass, and that both the caller and the boyfriend's mother are bleeding from the head. She said he has a knife and is schizophrenic. More screaming ensued. The second 911 call continued through the shooting.

Witness Interviews

C.D.

OSI interviewed C.D. who said she was Mr. Dotel's mother. She said Mr. Dotel and his girlfriend, C.T., had been staying with her at the apartment at 2865 Creston for the past few months. C.D. said that in the evening of December 22, 2023, she, her husband, R.M., Mr. Dotel, and C.T. were in the apartment and had a drink, and everything was fine. C.D. said that when she woke up the next day Mr. Dotel was acting strange. C.D. said that while her husband was in the shower she heard noises coming from Mr. Dotel's bedroom, and she thought he had hit his girlfriend. C.D. asked Mr. Dotel if he was ok and when he answered he was not making sense. She said it seemed like he was hallucinating, was saying things about church, said, "This was going to be the end of it." He was not acting violent, but C.D, was worried so she asked her husband to go outside and call for help.

Mr. Dotel began arguing with her and telling her that she had not been a good mother. C.D. went out of her bedroom to try to talk to Mr. Dotel. She locked her bedroom door because she had weapons in her room that they had taken from Mr. Dotel previously and she didn't want him to be able to get hold of them. C.D. said she wanted to call 911 but didn't want Mr. Dotel to see her so she texted her oldest daughter, M.C., "911." C.D. wanted her daughter to call 911 but instead her daughter called them and talked to Mr. Dotel. C.D. got her coat and tried to leave the apartment, but Mr. Dotel grabbed her and dragged her back inside. C.D. said that when Mr. Dotel grabbed her, she felt dizzy, and she knew something bad was going to happen. She said Mr. Dotel punched her in the head and in her eye. She tried to calm him down but when she looked at his eyes he didn't look like her son, and she thought he was having an episode of some sort.

C.D. tried to run around the apartment to get away from Mr. Dotel. He grabbed a knife and came at her like he was going to stab her. She said he grabbed her around her neck and it was hard to breathe. C.D. said she did not remember much after Mr. Dotel grabbed her; the next memory that she has is being in the hallway with police officers who were trying to stop her head from bleeding. C.D. said she believes Mr. Dotel suffered from depression and schizophrenia but was never formally diagnosed or treated for mental health issues.

R.M.

OSI interviewed R.M. who said that on December 23, 2023, he was at home when he heard Mr. Dotel having a conversation with C.D., his wife and Mr. Dotel's mother. He could tell by the tone of Mr. Dotel's voice and what he was saying that he was not in the right frame of mind, and he suspected that he was either having psychiatric problems, or had used drugs, was suffering from hallucinations, and could become violent. R.M. called 911 and then went down to the security desk for the apartment building to let them know that he needed the police sent upstairs to his apartment immediately. R.M. said the officers arrived very fast, and he escorted them up to his apartment in the elevator. When he got to his apartment the door was locked. PO Morgese knocked on the door with his Taser in his hand and shouted, "Open up, open the door." R.M. said Mr. Dotel's girlfriend, C.T., unlocked the door and ran into the hallway. C.T. was crying and her face was injured and bloodied. R.M said he entered his apartment with the police and the first thing he saw was Mr. Dotel holding his wife and screaming, "Shoot! Shoot!"

R.M. said he saw his wife's face was bloodied and that Mr. Dotel had his arm around her neck in a chokehold and had a knife in his hand. R.M. said that the officers were screaming at Mr. Dotel to drop the knife and let go but Mr. Dotel was screaming back at them that he would kill her if they didn't shoot her. R.M. said he saw his wife lose consciousness, and he thought Mr. Dotel had broken her neck and she was dead. It was only when his wife lost consciousness that the officer fired one shot at Mr. Dotel. R.M. said Mr. Dotel was using C.D. as a shield and, if the officer had not shot Mr. Dotel, she would be dead.

C.T.

OSI interviewed C.T., who said she met Mr. Dotel in May 2023 and moved in with Mr. Dotel and his mother in September 2023. C.T. said Mr. Dotel had been having a lot of problems with his children's mother and it was causing him a lot of stress. C.T. said Mr. Dotel used drugs often. C.T. said that on December 22, 2023, Mr. Dotel had stayed up late working on an art project and using drugs. C.T. said that on December 23, 2023, she woke up around 10:00 a.m. Mr. Dotel was already awake and started yelling at her. C.T. said she couldn't understand a lot of what Mr. Dotel was saying but he was yelling at her to get him the rest of the drugs. C.T. said Mr. Dotel punched her in the head and in the chest. C.T. said she left the room after Mr. Dotel punched her because she was scared.

C.T. said Mr. Dotel started yelling at his mother, C.D., but they were speaking in Spanish, so she didn't understand all of what was being said. C.T. said C.D. tried to leave the apartment and Mr. Dotel aggressively grabbed her by the arm and started attacking her. C.T. said she

had never seen Mr. Dotel act violently toward his mother before, so she called 911. Mr. Dotel threw a glass at C.T.; it hit her in the head and she started to bleed.

C.T. said Mr. Dotel was hitting, grabbing, and trying to choke his mother, and C.T. was screaming for him to stop. C.T. said C.D. was screaming in pain. C.T. saw Mr. Dotel go to the kitchen and grab a knife and go back to attack his mother again. C.T. said she heard the police knock on the door. Mr. Dotel went to the door and locked it and went back to grab his mother again in a chokehold. C.T. ran out of the apartment and the police ran in. C.T. said she received three stitches for the wound on her head.

M.C.

OSI interviewed M.C., the sister of Mr. Dotel, who said that in the weeks prior to the incident Mr. Dotel had been using drugs, including hallucinogenic drugs. M.C. said in the morning of December 23, 2023, she received a 911 text message from their mother. M.C. called their mother and spoke with Mr. Dotel who, she said, was not coherent, repeatedly saying he was going to talk to their mother because she was not there for him when he was a child. Mr. Dotel was agitated, and M.C. was not able to reason with him over the phone, so she decided to go to the apartment to try to calm him down in person, but by the time she arrived the police had shot Mr. Dotel.

PO Morgese

OSI interviewed PO Alex Morgese of the 52nd Precinct, who has been an NYPD officer since April 2021. PO Morgese said that on December 23, 2023, he and PO Hossain were on patrol when they heard a call over the radio for an emotionally disturbed person, possibly on drugs, threatening to kill his whole family. PO Morgese said that when he and PO Hossain arrived at 2865 Creston Avenue they saw a man at the entrance of the building who was holding open the front door. They asked him if he had called 911, and he said yes, it was about his stepson. The man, later identified as R.M., asked PO Morgese if it was just the two officers and told them Mr. Dotel likes to carry knives and machetes. PO Morgese and PO Hossain rode up the elevator with R.M. to the 13th floor.

PO Morgese said that as soon as the elevator door opened, he heard screaming and at the same time received an update on his radio, from central dispatch, that upgraded the job to an assault in progress with a knife.

PO Morgese said that when they got to the door R.M. tried to open it but would only open a few inches; through the crack of the door he could see Mr. Dotel holding a woman in a headlock. PO Morgese said the screaming increased and he tried to force the door open but instead it locked completely. PO Morgese did not think he and PO Hossain could take down

the door themselves, because it was metal, and he began to call for the Emergency Services Unit when the door opened and Mr. Dotel's girlfriend, C.T., ran out into the hallway. PO Morgese saw that C.T. was bloody and screaming but he left her in the hallway and entered the apartment.

PO Morgese said he entered the apartment with PO Hossain behind him. PO Morgese had his Taser drawn and pointed at Mr. Dotel's head. PO Morgese saw Mr. Dotel standing in the living room with his mother, who was bleeding and in a chokehold. Mr. Dotel was screaming, "She's going to get it!" PO Morgese could not see Mr. Dotel's hands, so he yelled for him to show him the knife. Mr. Dotel responded by saying, "I got the knife!" PO Morgese said since he had been told over the radio that Mr. Dotel had a knife and could not see his hands he had to assume that he had a knife in his hand next to his mother's neck. PO Morgese said he thought about trying to use his Taser but quickly decided that it would be ineffective because he did not have enough space to get both prongs attached to Mr. Dotel.

PO Morgese drew his gun. He said Mr. Dotel was screaming, "Do it, do it! She's going to get it." PO Morgese said he saw C.D. pass out and collapse and believed that if he did not act within a few seconds she would die. PO Morgese fired a single shot that struck Mr. Dotel in the head. PO Morgese said Mr. Dotel and C.D. fell to the floor. PO Morgese ran to C.D. and helped her to her feet because and she was bleeding and very unsteady. PO Morgese and PO Hossain put C.D. in a chair and then PO Morgese checked on C.T. as other members of NYPD started to arrive.

PO Hossain

OSI interviewed PO Hossain of the 52nd Precinct. PO Hossain said that on December 23, 2023, he was on patrol with PO Morgese in a marked police car when they received a radio call to respond to Creston Avenue for an emotionally disturbed person who was threatening their family. PO Hossain said that Mr. Dotel's stepfather, R.M., met them in the lobby and told them that Mr. Dotel was being violent, that the has been violent towards police officers in the past and that he might have a knife. PO Hossain said R.M. told them that his wife, C.D., and Mr. Dotel's girlfriend, C.T., were in the apartment.

PO Hossain said that when they got out of the elevator, he heard screaming, and he knew that there were no back up units available because there had been several other calls that morning. PO Hossain said that PO Morgese banged on the door, but they were unable to gain entry until C.T. opened the door and ran out. PO Hossain said C.T. was bleeding from her head but he did not stop to see if she was ok because PO Morgese had entered the apartment and he had to back him up.

PO Hossain said he entered the apartment behind PO Morgese with his Taser drawn. PO Hossain said he saw Mr. Dotel with his arm around C.D.'s neck, and she was bleeding. PO Hossain said Mr. Dotel said he had a knife, but he could not see his hands. PO Hossain said he did not think C.D. was breathing.

PO Hossain moved to the right of PO Morgese to see if he could use his Taser but because of the angle he did not have a shot. PO Hossain saw C.D. lose consciousness and then PO Morgese fired one shot.

PO Hossain said he helped C.D. get on her feet because she was not fully conscious yet and took her out of the apartment, into the hall. PO Tapia and the Sergeant arrived and went into the apartment and started CPR on Mr. Dotel.

PO Tapia

OSI interviewed PO Steven Tapia of the 52nd Precinct. PO Tapia said on December 23, 2023, he was on patrol, assigned to drive Sgt. Zambrano. While at another job they heard a call on the radio for a domestic incident on Creston Avenue involving a knife. As they were pulling up to Creston Avenue, they heard shots fired over the radio.

PO Tapia and Sgt. Zambrano ran into the building, and when they got out of the elevator he saw PO Hossain standing near a woman who was bleeding from her head. PO Tapia asked PO Morgese what happened, and he said he had shot him. PO Tapia ran into the apartment, saw Mr. Dotel on the ground and started CPR. While he was still providing CPR PO Tapia started looking around the room for the knife. PO Tapia saw a kitchen knife lying on the futon near where Mr. Dotel had fallen. PO Tapia said he never touched the knife but wanted to locate it in case Mr. Dotel tried to grab for it. PO Tapia said he continued CPR on Mr. Dotel for about five minutes until PO Matos arrived and relieved him.

PO Matos

OSI interviewed PO Angel Matos, of the 52nd Precinct. PO Matos said on December 23, 2023, he was on patrol when he heard a radio call for a dispute with a knife at 2865 Creston Avenue. PO Matos said he arrived at the same time as EMS. PO Matos said he heard shots fired over the radio as he entered the building. When he got out of the elevator, he saw two women who were crying and appeared to be injured; EMS stopped in the hallway to examine them and PO Matos went into the apartment, where he saw PO Tapia doing CPR on a man who was lying on the floor. PO Matos thought PO Tapia looked like he was getting tired, so he took over CPR. While he was doing CPR PO Matos saw a knife lying on the edge of the bed to his right. EMS entered and began providing CPR.

PO Matos said he wanted to secure the knife, so he picked up a shoe box that was in the living room and put the knife in it. PO Matos said he tried to hand the shoe box with the knife to the sergeant, but was told to leave it on the kitchen counter.

Photograph taken by CSU Detective Jessica Losquadro of the knife found near Mr. Dotel.

Ballistics evidence

Following the incident, while still on scene, PO Morgese surrendered his firearm to FID. PO Morgese's firearm was a black Glock, model 17, 9mm semi-automatic pistol with a magazine capacity of 15 rounds. If one round is in the firing chamber the total capacity of the gun is 16 rounds,

Sergeant Evangelos Nikiforidis of the NYPD Crime Scene Unit (CSU) responded to the scene and inspected the state of load of PO Morgese's firearm. He found PO Morgese's firearm contained one live cartridge in the chamber and fourteen live cartridges in the magazine, which was consistent with his discharging one round. CSU recovered one discharged 9mm Speer +P shell casing, which is consistent with NYPD-issued ammunition.

Medical Examiner

OSI interviewed Dr. Victor Sanchez of the Office of Chief Medical Examiner, who performed the autopsy of Mr. Dotel, and reviewed the autopsy report he prepared. Dr. Sanchez said Mr. Dotel sustained a single penetrating gunshot wound to his head. The bullet entered through Mr. Dotel's upper jaw and traveled to the C2 vertebrae of his spinal cord causing spinal shock and near instant death. Dr. Sanchez determined that the cause of Mr. Dotel's death was a gunshot wound of the head and neck and that the manner of his death was homicide.

LEGAL ANALYSIS

Article 35 of the New York Penal Law defines the circumstances under which a person is justified in using deadly force against another. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. Unlike an affirmative defense, the prosecutor has the burden at trial of disproving a defense beyond a reasonable doubt, PL 25.00(1). In order to obtain a conviction at trial, "The People [would be] required to prove beyond a reasonable doubt that [PO Morgese] was not justified" in using deadly physical force against Mr. Dotel, N.Y. Criminal Jury Instructions 2d, PL 35.15(1). "[W]henever justification is sufficiently interposed … the People must prove its absence to the same degree as any element of the crime charged." *People v. McManus*, 67 N.Y.2d 541, 546-47 (1986).

Article 35 contains a provision defining justification when a police officer uses deadly force while effecting or attempting to effect an arrest for an offense (PL 35.30). When PO Morgese entered the apartment and saw Mr. Dotel holding his mother in a chokehold, PO Morgese had reasonable cause to arrest Mr. Dotel for Criminal Obstruction of Breathing or Blood Circulation, PL 121.11, and when he saw C.D. appear to lose consciousness he had reasonable cause to arrest Mr. Dotel for Strangulation in the Second Degree, PL 121.12. In addition, seeing C.D.'s bloodied face, having heard from dispatch a report that Mr. Dotel had a knife, having been told by R.M. that Mr. Dotel had threatened to use knives in the past, and, having commanded Mr. Dotel to drop the knife, hearing Mr. Dotel say, "I got the knife," PO Morgese had reasonable cause to arrest Mr. Dotel for Assault in the First Degree and Attempted Assault in the First Degree, PL 120.10, and PL 110/120.10.

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."

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 N.Y.2d 96 (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 or stop the danger, whether or not the belief was accurate, 68 N.Y.2d at 114; the objective component is satisfied if a "reasonable person" under the same circumstances could have held the same belief, 68 N.Y.2d at 115. See also *People v. Wesley*, 76 N.Y.2d 555 (1990).

Based on his interview with OSI, PO Morgese subjectively believed that shooting Mr. Dotel was necessary to stop Mr. Dotel's use of deadly force, and, based on the facts described above, that belief was reasonable.

Therefore, OSI concludes that a prosecutor would be unable to disprove beyond a reasonable doubt at trial that PO Morgese's actions were justified under the law and closes the matter with issuance of this report.

Dated: August 6, 2024