



Office of the New York State Attorney General Letitia James

Office of Special Investigation

September 14, 2023

Report on the Investigation into the Death of Rameek Smith

SUMMARY

New York Executive Law 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 Rameek Smith, which was caused by Police Officer John Echevarria, a member of the New York City Police Department (NYPD), who shot Mr. Smith on May 10, 2022. After a full evaluation of the facts and the law, OSI will not seek charges against PO Echevarria because we conclude that a prosecutor could not disprove beyond a reasonable doubt that his actions were justified under Article 35 of the New York Penal Law.

FACTS

Overview

On May 10, 2022, at 10:44 pm, Police Officer John Echevarria and Police Officer Dennis Vargas of the NYPD's Public Safety Team were patrolling the 46th and 48th Precincts in the Bronx, in uniform, in an unmarked police car; PO Echevarria was driving. They observed Mr. Smith on Third Avenue with what appeared to be a gun in his waistband. They stopped the car to speak to him, and he ran away. PO Vargas got out of the car and chased Mr. Smith on foot from Third Avenue to Claremont Parkway and Bathgate Avenue. Mr. Smith fired a gun at PO Vargas, striking him in the left arm, and PO Vargas fired at Mr. Smith. PO Echevarria was following Mr. Smith and PO Vargas in the car. After Mr. Smith shot PO Vargas, he crossed Bathgate Avenue in front of PO Echevarria with the gun in his hand. PO Echevarria got out of the car and shot Mr. Smith, striking him once in the head. Local security cameras and PO Echevarria's and PO Vargas's body worn cameras (BWCs) captured the incident.

Maps

Below are three maps.

The first two maps are still maps, which can be read if this report is printed out or read on a computer. The first map (on the left) shows the route the officers drove (blue line), and the route Mr. Smith walked (yellow line) before the pursuit began. The second map (on the right) shows the route Mr. Smith ran after the officers first stopped near him (red line). The third map is interactive and can only be fully seen if this report is read on a computer. The third map shows the route of the officers' car (blue rectangle) and Mr. Smith (yellow dot) before the officers stopped their car, and it shows the route of the pursuit after they stopped (red triangle).



OSI's Video Review

The Videos

As part of the investigation, OSI reviewed BWC video from PO Vargas ([here](#)) and PO Echevarria ([here](#)), video surveillance from 1570 Bathgate Avenue ([here](#)), 3786 Third Avenue ([here](#)), 3826 Third Avenue ([here](#)) and 3859 Third Avenue ([here](#)) and a cell phone video recorded by a civilian ([here](#)). OSI created a compilation video linked below to show the timeline of all of the videos mentioned above (Compilation Video [here](#)) A clip to view the shots fired between Mr. Smith and PO Vargas is [here](#)¹.

Summary of the videos

Security video from 3786 Third Avenue shows Mr. Smith walking northbound on the west side of Third Avenue at 10:43:00 pm and the officers' unmarked car driving northbound on the east side of Third Avenue at 10:43:23 pm.² Security video from 3826 Third Avenue, PO Vargas's BWC and PO Echevarria's BWC show that the officers stopped their car near 3826 Third Avenue at 10:44:01 pm near Mr. Smith, that Mr. Smith ran, and that PO Vargas got out of the car and chased Mr. Smith.³ PO Vargas's BWC and security video from 3826 Third Avenue show that Mr. Smith ran ahead of PO Vargas northbound on Third Avenue and turned west onto Claremont Parkway at 10:44:13 pm. At 10:44:23 pm, PO Vargas's BWC shows that Mr. Smith turned right onto Bathgate Avenue with PO Vargas following. At 10:44:24 pm, PO Vargas's BWC and security video from 1570 Bathgate Avenue show that Mr. Smith threw a plastic bag to the ground.

¹ The Compilation Video and the shooting clip include stills that are enhanced with increased exposure (+22) and contrast (+21) for clarity.

² The time stamp on the security video from 3786 Third Avenue states 10:45 pm but FID detectives noted that the time stamp was two minutes ahead when they downloaded the video.

³ NYPD's BWCs preserve video without audio for one minute prior to activation. Audio and video are both preserved from the time of activation onward. PO Vargas activated his BWC at 10:44:30 pm and PO Echevarria activated his BWC at 10:44:37 pm.



Figure 1: Still from PO Vargas's BWC showing PO Vargas's right hand as he chased Mr. Smith on Bathgate Avenue.

At 10:44:31 pm PO Vargas's BWC shows a gun to the left of Mr. Smith's torso. At 10:44:32 pm, the BWC shows a cloud of smoke above Mr. Smith's left shoulder. OSI edited a segment of PO Vargas's BWC to freeze these frames and circled Mr. Smith's gun and the gunpowder emitted from his gun after he shot at PO Vargas. These frames are also shown below as stills.



Figure 2: Still from PO Vargas's BWC with a circle drawn around Mr. Smith's gun.



Figure 3: Still from PO Vargas's BWC with a circle drawn around the cloud of smoke.

The Attorney General's Special Operations Unit (SOU) conducted an analysis of PO Vargas's BWC for this investigation.⁴ According to SOU, PO Vargas's BWC ran at 30 frames per second, or one frame per .033 of a second. SOU analyzed PO Vargas's BWC and found that the gun was first visible in Mr. Smith's hand at 10:44:31 pm and that the plume of gray smoke was visible 31 frames, or 1.03 seconds, later. SOU found that PO Vargas's gun, in his right hand, began to come up into the BWC's field of view 39 frames, or 1.30 seconds, after Mr. Smith's gun was first visible and 8 frames, or 0.26 seconds, after the plume of smoke appeared.⁵ SOU found that PO Vargas first fired at Mr. Smith 51 frames, or 1.70 seconds, after Mr. Smith's gun was first visible and 20 frames, or .67 seconds, after the smoke was first visible. (SOU's analysis of PO Vargas's first shot was based on the frame in which the audio of his shot is first audible; the video of that frame was blocked by PO Vargas's clothing.)

PO Vargas's BWC shows that he fired additional times at Mr. Smith by 10:44:37 pm. (As shown in the discussion of ballistics evidence below, PO Vargas fired a total of 11 shots.) At that point

⁴ The analysis was led by Detective Patrick Wuest, who has associate degrees in computer science and cybersecurity, a certification in criminal justice, and an IT fundamentals certification. Detective Wuest was a Police Officer in the Utica Police Department from 2019 to 2022. Detective Wuest has additional training in Open-Source Intelligence, Digital Forensics Analysis, and a High Voltage Environment training.

⁵ The time stamp in the still shows the gun in PO Vargas's right hand at 10:44:32 pm. Previous frames showed that PO Vargas's right hand was empty as it came up into the frame while he was running at 10:44:24 pm, 10:44:25 pm, 10:44:28 pm, 10:44:29 pm, and 10:44:31 pm.

Mr. Smith had run away from PO Vargas, and, at 10:44:37 pm, PO Vargas radioed shots fired and requested an ambulance, saying he had been shot. The BWC captured PO Vargas making sounds indicating his pain.



Figure 4: Still from PO Vargas's BWC showing PO Vargas's right hand holding a gun.

As PO Vargas was chasing Mr. Smith, PO Echeverria's BWC shows that he momentarily got out of the car on Claremont Avenue and got back in his car at 10:44:17 pm with his radio in his left hand while he drove with his right hand. PO Echevarria's BWC shows that he drove left onto Claremont Parkway and then right onto Bathgate Avenue. PO Echevarria held his radio in his left hand and steered the car with his right hand.

PO Echevarria's BWC shows that he got out of the car at 10:44:32 pm on Bathgate Avenue, with his radio in his left hand and nothing in his right hand. At 10:44:35 pm, PO Echevarria's BWC shows that he fired at Mr. Smith, who was beginning to run across Bathgate Avenue in front of PO Echevarria from between the parked cars. PO Echevarria went over to Mr. Smith, who was lying in the middle of the street, at 10:44:49 pm.



Figure 5: Still from PO Echevarria's BWC showing PO Echevarria with a radio in his left hand and nothing in his right hand.

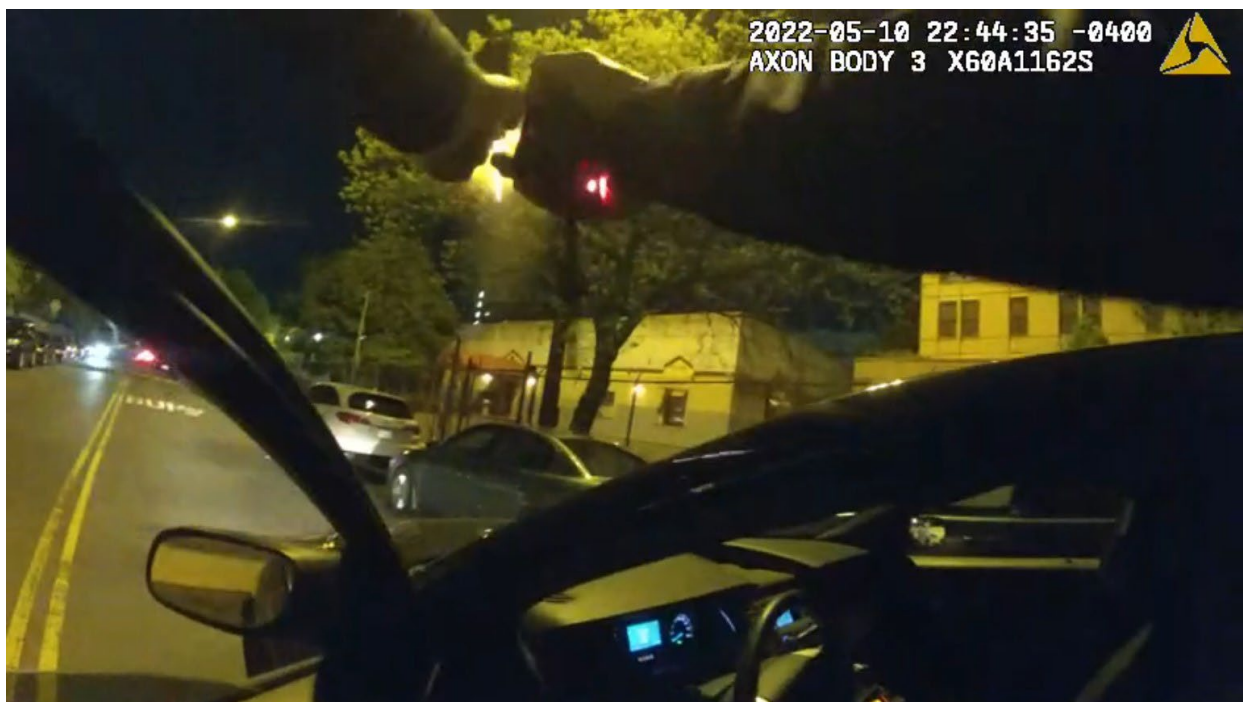


Figure 6: Still from PO Echevarria's BWC showing PO Echevarria holding his gun (at the top of the frame).

PO Echevarria's BWC shows that at 10:45:37 pm he said, "I'm moving the gun"; a scraping sound follows. His BWC shows that at 10:45:51 pm, he said, "The gun is right here," to responding officers. His BWC shows the gun on the ground near Mr. Smith's body at 10:47:24

pm as he said, again, “The gun is right here,” pointing it out to other officers. PO Echevarria’s BWC continued while he rendered medical aid to Mr. Smith.

Officer Interviews

OSI separately interviewed PO Echevarria and PO Vargas, in the presence of their union delegate and union attorney.

PO Vargas

PO Vargas said he had been partners with PO Echevarria for the past two years and that on May 10, 2022, they were assigned to cover the 42nd and 48th Precincts in the Bronx. PO Vargas was in uniform (see photos below).



Figure 7: Photograph of PO Vargas’s jacket, which shows a bullet hole in the left sleeve.



Figure 8: Photograph of PO Vargas's turtleneck shirt, with a circle around the bullet hole in the left sleeve.



Figure 9: Still from PO Kieran Brennan's BWC showing PO Vargas after he was shot.

PO Vargas said he saw Mr. Smith on Third Avenue to the officers' left (the officers were driving northbound; Mr. Smith was walking northbound on the western sidewalk). PO Vargas said there appeared to be a heavy object on Mr. Smith's right side, which came down to a point and had a shape consistent with a gun. PO Vargas said Mr. Smith was wearing a red bandana, which he believed was a gang signifier, based on his knowledge of the neighborhood.⁶

PO Vargas said that PO Echevarria made a U-turn at Claremont Parkway to drive southbound on Third Avenue. PO Vargas said Mr. Smith had crossed the street and was walking northbound on the eastern sidewalk with his right side toward the buildings, away from the officers. PO Vargas said that PO Echevarria made another U-turn on Third Avenue to drive northbound on Third Avenue. PO Vargas said PO Echevarria pulled the car over next to Mr. Smith and PO Vargas said, "Hey police," to Mr. Smith. PO Vargas said he saw Mr. Smith "blading" his body, turning the right side of his body towards the building and away from the officers. PO Vargas said he heard Mr. Smith say, in substance, I didn't do anything. PO Vargas said he got out of the car and Mr. Smith ran northbound on Third Avenue.

PO Vargas said he ran after Mr. Smith from Third Avenue to Claremont Parkway to Bathgate Avenue and yelled at Mr. Smith to stop running. PO Vargas said Mr. Smith threw a bag containing glass (based on the sound it made when it hit the ground) as Mr. Smith approached Bathgate Avenue.

PO Vargas said he did not take out his gun while chasing Mr. Smith because he thought Mr. Smith was going to toss his gun and PO Vargas did not want to have to recover Mr. Smith's gun and have his own gun in his hand. PO Vargas said he turned on his BWC when he was chasing Mr. Smith on Bathgate Avenue and saw Mr. Smith reach his hands towards the right side of his body. PO Vargas said Mr. Smith racked his gun, reached across his torso toward his left side, and fired his gun, hitting PO Vargas in his left bicep. PO Vargas said he felt a burning sensation right away. PO Vargas said he heard PO Echevarria on his radio requesting that additional units respond to Bathgate and saw Mr. Smith lying on the ground. PO Vargas said PO Echevarria kicked Mr. Smith's gun away on the ground.

PO Vargas said the ambulance he had requested had not arrived, so another officer drove him to Lincoln Hospital, where he was treated for the gunshot wound to his bicep.

⁶ Mr. Smith's red bandana is visible in security video from the elevator of his apartment building at 3859 Third Avenue ten minutes before the officers first saw him, security video from a liquor store at 3826 Third Avenue when he ran by, and PO Echevarria's BWC when he rendered aid to Mr. Smith.

PO Echevarria

PO Echevarria said he was driving an unmarked NYPD in uniform (see photo below).



Figure 10: Still from PO Steven Perez's BWC showing PO Echevarria at the scene.

PO Echevarria said he first observed Mr. Smith while he was driving northbound toward Third Avenue at “patrol speed,” which is fifteen to twenty miles per hour. PO Echevarria saw Mr. Smith walking northbound on Third Avenue and the right side of Mr. Smith’s body was facing the officers. PO Echevarria said he noticed a heavy object on the right side of Mr. Smith’s body, which came down to a point and that the shape and weight of this object were consistent with a gun. PO Echevarria said he knew the object was heavy because of the way it caused the fabric of Mr. Smith’s clothing to lean.

PO Echevarria said he saw Mr. Smith look in the direction of the officers and, at that point, his manner of walking changed from walking with his arm swinging freely to walking with his arm stiff by his side.

PO Echevarria said he made a U-turn at Claremont Parkway to drive southbound on Third Avenue and saw Mr. Smith walking northbound on the opposite side (east side) of Third Avenue. PO Echevarria said he made another U-turn on Third Avenue to drive northbound on Third Avenue. PO Echevarria said he pulled the car next to Mr. Smith and heard PO Vargas say, “Hey police,” and saw Mr. Smith suck his teeth and continue walking. PO Echevarria said he saw Mr. Smith look over his shoulder as PO Vargas got out of the car and saw Mr. Smith

run down the block. PO Echevarria said he saw Mr. Smith toss a black plastic bag at the corner and heard a clinking sound.

PO Echevarria said he saw Mr. Smith run onto the sidewalk and heard a pop-pop sound of two gunshots and saw a flash. PO Echevarria said he saw Mr. Smith turn back and fire twice. After hearing the gunshots, PO Echevarria said he turned on his BWC. PO Echevarria said Mr. Smith fired these shots from the middle of his body. PO Echevarria said that when he fired at Mr. Smith, he saw Mr. Smith pointing a gun at him and that he believed Mr. Smith to be a threat to him and PO Vargas.

PO Echevarria said after he shot Mr. Smith, he went over to him and placed him in handcuffs. PO Echevarria said he saw a gun underneath Mr. Smith between his bellybutton and face and kicked the gun to the side.

Civilian Witness Interviews

OSI and FID interviewed civilian witness JR,⁷ who was riding in a car near the shooting with a second civilian, DR. JR and DR were following DR's father PS, who was driving another car. FID interviewed JR, DR and PS. OSI attempted to interview DR and PS, but they have not responded to messages left for them by OSI staff. DR gave FID a video he recorded at the scene on his cell phone.

JR

JR told OSI he was in a car with DR, who was driving from Third Avenue onto Claremont Parkway and then Bathgate Avenue. JR saw Mr. Smith running in the street and shoot at a cop with his right hand. JR told OSI he heard Mr. Smith fire his gun first and saw the muzzle flash of a police officer firing back at Mr. Smith while the officer was standing on the left driver side of the police car. JR saw Mr. Smith fall in the street. JR said the cop was just defending himself because the deceased shot first. JR told OSI and FID he has poor eyesight. JR told FID that the shooting took place five to six car lengths from him and that he heard four to five gunshots. JR told FID that he saw cops standing over Mr. Smith and that he knew they were cops because he saw their badges.

DR

DR told FID that he was driving a car with JR as a passenger and following his father, PS, who was driving another car. DR saw a police officer turn the corner and cut off PS's and DR's cars on Claremont Parkway. DR heard a gunshot but did not see who fired the first shot. DR heard a second gunshot and saw an officer fire his gun. PS made a U-turn onto Bathgate Avenue and DR followed him. DR took out his cellphone and recorded a video. DR said he never saw a police officer on foot and that the officer was already out of his car by the time DR saw him.

⁷ Civilian's initials are used to maintain anonymity.

DR said he only heard two gunshots and saw one muzzle flash from the police officer's gun. DR said the officer's back was facing him when he saw the muzzle flash.

The video provided by DR shows that he drove on Claremont Parkway and made a lefthand turn onto Bathgate Avenue behind a black car. JR can be heard saying, "They're still there. Where the fuck is he going? Is he crazy? Come on, let's go. Let's go, let's go." As the black car and DR's car proceeded up Bathgate Avenue, officers can be seen standing around Mr. Smith, who is lying on the ground. DR and JR said to one another, "He shot at the cops first. They did the right thing. He was defending himself." Officers approached DR and JR and told them to move their car. DR and JR said they would move their car and that they did the right thing because "the kid started shooting at the cop."

PS

FID interviewed PS, who said that shortly before the shooting he saw a group of people standing on the street with two uniformed police officers at the corner of Third Avenue and Claremont Parkway. PS said a short dark-skinned male, wearing a red bandana, ran away from the police officer and the two officers started to run after him. PS saw one of the officers return to the car and activate the lights. PS lowered his car window and heard the officer who was running twice tell the man who was running to stop. PS saw the man run into the street and back onto the sidewalk. PS saw the man do a half turn and fire his gun at the police officer two or three times and the police return fire four or five times. He said he heard one of the officers say, I got hit. I got hit.

AR

FID did an audio recorded interview of a 911 caller, AR, who she said she called 911 because she heard gunshots but did not see anything. AR only saw Mr. Smith being put onto the stretcher to get into the ambulance. AR told FID she recorded video of the officers laughing at the scene after Mr. Smith and the injured officer were transported away from the scene.

WV

FID did an audio recorded interview of a neighbor of Mr. Smith, WV, who said she left the apartment building with Mr. Smith; she said she did not know where he was going. WV said she regularly bought crack from Mr. Smith inside his apartment and that she last bought from him the day before he was shot.

Ballistics Evidence

NYPD's Crime Scene Unit recovered the gun found near Mr. Smith. NYPD's Firearms Analysis Section (FAS) examined PO Echevarria's Sig Sauer P226 pistol, PO Vargas's Glock 19 pistol, and the gun recovered near Mr. Smith. FAS found that PO Vargas's gun had one live cartridge in the chamber and four live cartridges in the magazine; the gun had a capacity of 16 rounds, indicating (if the magazine had been full and one round had been in the firing chamber, as is

common NYPD practice) that 11 rounds were fired. FAS found that PO Echevarria's gun had one live cartridge in the firing chamber and seven live cartridges in the magazine; the gun had a capacity of 16 rounds, indicating (on the same basis) that eight rounds were fired. FAS found that Mr. Smith's gun had seven cartridges in the magazine and one expended shell casing stuck in the firing chamber; the gun had a capacity of 11 rounds, indicating that up to four rounds could have been fired.

Detectives from FAS conducted an operability test on the three guns and the ammunition recovered inside each gun and found the guns and ammunition to be operable. Det. Danielle Carbone tested Mr. Smith's gun and found a shell casing was stuck in the chamber of Mr. Smith's gun when it was recovered, which she explained could be caused by a mechanical malfunction or by the way the person fired the gun; when Det. Carbone tested Mr. Smith's gun there was no mechanical malfunction.

NYPD's Crime Scene Unit (CSU) recovered 21 cartridge casings, two deformed bullets and seven bullet fragments from Bathgate Avenue. Detective Robert Bustamante of FAS conducted a microscopic comparison of the ballistic evidence and concluded that two deformed bullets and eight cartridge casings were discharged from PO Echevarria's pistol; 11 cartridge casings were ejected from PO Vargas's gun, and one bullet fragment and three cartridge casings (including the one in the chamber of Mr. Smith's gun) were discharged from Mr. Smith's gun.



Figure 11: A shell casing FAS identified as discharged from Mr. Smith's gun is marked by Number 13.



Figure 12: A bullet fragment FAS identified as discharged from Mr. Smith's gun is marked by Number 2.



Figure 13: A shell casing FAS identified as discharged from Mr. Smith's gun is marked by Number 25.

DNA and Fingerprint Analysis

The New York City Office of the Chief Medical Examiner (OCME) conducted a DNA analysis of the gun recovered underneath Mr. Smith. Swabs of the slide, slide lock, sights, eject port, mag release, well, and frame showed a mixture of four DNA contributors. OCME concluded it was 9.45 quadrillion times more probable that the DNA originated from Mr. Smith and three unknown persons than originating from four unknown persons. Other swabs were inconclusive.

The Criminalist Section of the NYPD examined the gun recovered under Mr. Smith and the ammunition recovered and determined there were no latent prints suitable for identification.

Breathalyzer Testing

Sgt. Oleg Matat administered Portable Breathalyzer Tests to POs Echevarria and Vargas at the Lincoln Hospital Emergency Room on May 10, 2022 at 11:47 pm, and 11:57, respectively, in the presence of PBA representatives. Both tests showed Breath Alcohol Content of 0.000%.

Officer Training

According to NYPD materials, officers selected to join Public Safety Teams (PSTs) must complete a seven-day training, which includes constitutional policing; risk identification and mitigation; “active bystandership”; firearms and tactics; critical decision making; and tactical training on defensive tactics, take-downs, and methods of restraint.

Medical Records

Medical records show EMS took over CPR from NYPD, placed Mr. Smith in a cervical collar, controlled his bleeding, and took him to St. Barnabas Hospital. Mr. Smith was treated at the hospital for a single gunshot wound to his head, which entered and exited through the temporal aspect, causing an open skull fracture with intracranial hemorrhage, shattered frontal/maxillary sinuses, exophthalmos of the left eye and complete hyphemia of the right eye. Mr. Smith was declared dead at 3:30 am.

A police officer took PO Vargas to Lincoln Hospital. Medical records show PO Vargas suffered a gunshot wound to the medial aspect of his left upper arm, with no bone fracture. PO Echevarria was treated at Lincoln Hospital for tinnitus.

Medical Examiner

Dr. Kristen Landi of OCME performed an autopsy of Mr. Smith on May 12, 2022. According to the autopsy report, the cause of Mr. Smith’s death was “gunshot wound of head with injury of brain.” Dr. Landi’s examination found that Mr. Smith suffered a single gunshot wound to his head. A bullet entered the left temple, causing fractures of the frontal skull, facial sinuses, and orbital and nasal bones, with perforation of the left globe of the eye. Mr. Smith’s right eye

was collapsed. The bullet traveled from left to right, slightly back to front, and slightly upward, before exiting the right eyebrow. The autopsy report noted Mr. Smith suffered lacerations, abrasions and contusions to his nose, lips, tongue, fingers and right knee. Dr. Landi designated the manner of death as “homicide (shot by police).”

LEGAL ANALYSIS

Article 35 of the New York Penal Law defines the circumstances under which an individual 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).

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. As detailed below, based on the evidence reviewed in this investigation, OSI concludes a prosecutor would be unable to disprove beyond a reasonable doubt that POs Vargas’s and Echevarria’s use of deadly physical force was justified under this provision.

Penal Law 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 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, 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).

Under PL 35.30, POs Vargas and Echevarria could use the physical force they reasonably believed to be necessary to effectuate the arrest of Mr. Smith and could use deadly force if they reasonably believed it was necessary to defend themselves or another against Mr. Smith's imminent use of deadly force.

POs Vargas and Echevarria reasonably suspected that Mr. Smith possessed a gun, justifying their pursuit of Mr. Smith, based on their observations of Mr. Smith on Third Avenue and his flight from the officers when they approached him in their uniforms. *People v. Pines*, 99 N.Y. 2d 525 (2002); *People v. Martinez*, 80 N.Y. 2d 444 (1992). After Mr. Smith shot PO Vargas the officers had probable cause to arrest him for the crimes of Attempted Murder in the First Degree, PL 110/125.27(1)(a)(i),⁸ and Criminal Possession of a Weapon in the Second Degree, PL 265.03(3).⁹

Based on their interviews with OSI, POs Vargas and Echevarria subjectively believed that shooting Mr. Smith was necessary to stop Mr. Smith's use of deadly force. POs Vargas and Echevarria approached Mr. Smith after observing what they believed to be a gun at his waist. As soon as the officers approached Mr. Smith, he ran away from them. PO Vargas pursued Mr. Smith on foot. PO Vargas said he did not have his gun in his hand until Mr. Smith shot at PO Vargas and struck him in the left arm. After shooting PO Vargas, the officers knew Mr. Smith was running in the streets with a loaded gun and was willing to use it. He ran into PO Echevarria's field of view and PO Echevarria said Mr. Smith pointed the gun at him. PO Echevarria said he believed Mr. Smith to be a threat to himself and to PO Vargas. POs Vargas's and Echevarria's accounts are corroborated by the BWC videos, video surveillance, the civilian witnesses, and PO Vargas's medical records.

For these reasons, OSI concludes that a prosecutor could not disprove beyond a reasonable doubt that POs Vargas's and Echevarria's use of deadly force was justified under Article 35 of the Penal Law and will close this matter with issuance of this report.

Dated: September 14, 2023

⁸ "A person is guilty of murder in the first degree when with intent to cause the death of another person, he causes the death of such person or of a third person and the intended victim was a police officer ... who was at the time of the killing engaged in the course of performing his official duties, and the defendant knew or reasonably should have known that the intended victim was a police officer."

⁹ "A person is guilty of criminal possession of a weapon in the second degree when such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business."