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Office of Special Investigation

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Report on the Investigation into the Death of Roger Lynch

SUMMARY

New York Executive Law Section 70-b authorizes the Office of the Attorney General, through the 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 of the death of Roger Lynch.

On August 6, 2021, New York State Police (NYSP) Trooper Elijah Grubb shot Roger Lynch, causing his death. After a full evaluation of the facts and the law, OSI will not seek charges against Tr. Grubb, 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 August 5, 2021, members of the Village of Delhi Police Department (DPD), Village of Walton Police Department, Delaware County Sheriff's Office, New York State University at Delhi Police Department, and NYSP responded to a house on Bob Holloway Road, in the Town of Delhi, following reports that a man, later identified as Roger Lynch, had just shot someone there and then sped off in his truck. Shortly after, members of NYSP went to Mr. Lynch's house, at 994 State Route 28 South, in the Town of Franklin, after spotting and following his truck there, and tried persuading him to come outside unarmed. The NYSP members positioned themselves in various places around Mr. Lynch's property, including in and near an armored vehicle, called a Bearcat, in the driveway. After several hours of attempted negotiations, which carried into the next morning, Mr. Lynch came out of his house and pointed a shotgun at the Bearcat. Tr. Grubb, from the turret of the Bearcat, fired one shot at Mr. Lynch, causing his death, at 6:49 a.m.¹ on August 6, 2021. Portions of the incident were captured by body worn cameras (BWCs) of responding NYSP members;² while Tr. Grubb's fatal shot was not visually captured, it was audibly captured, as detailed below.

¹ All times are approximate.

² The NYSP members who turned on their BWCs at various points during the encounter were Troopers Thomas Perry, Matthew Volpe, Adam Koehler, David Smith, and Christopher Swinton. Because Trs. Perry and Swinton were conducting scene security around the perimeter of Mr. Lynch's property, their BWCs primarily captured night-time footage in a heavily wooded area where visibility was limited. However, Tr. Perry's BWC audibly captured Tr. Grubb's fatal shot, as detailed and linked below. Trs. Koehler, Volpe, and Smith, who were in and around the Bearcat during the encounter, did not activate their BWCs prior to the fatal shot but did activate them immediately after the shot.

Pre-Police Arrival

Based on the Delaware County Department of Emergency Services 911 recordings, on August 5, 2021, at 8:19 p.m., CW-1³ called 911 and reported that his son had just been shot.⁴ CW-1 said that he and his son were at their house, on Bob Holloway Road, in the Town of Delhi; he also said, seemingly in reference to the shooter, “He’s still out there now.” While on the phone with the dispatcher, CW-1 asked his son, CW-2, if he was hit, and CW-2 shouted, “Yes I’m fucking hit.” CW-1 then told the dispatcher that the shooter’s name was Roger Lynch, and that Mr. Lynch was a friend of his and was driving a “2003 silver Toyota” and lived on “Franklin Mountain.”

At around the same time that CW-1 called 911, CW-3, a friend of CW-2’s, also called 911, from CW-1’s driveway, and reported a “gun shooting.”⁵ CW-3 told the dispatcher that “some man came up to the driveway and started shooting at [CW-2] with a shotgun.” A faint pop can then be heard in the background of the call, and CW-3 said, “Oh my god he’s shooting right now...” CW-3, who said he was in the car with his children, left the house but quickly returned while he was still on the phone with the dispatcher. He told the dispatcher that CW-2 had been shot “like five times” with bird shot and that the shooter, whom he had not seen before and knew only as “Roger,” had taken off down the road in a “grey Toyota Tacoma.” CW-3 told the dispatcher that CW-2 was bleeding badly; CW-2 can be heard moaning in apparent pain on the background of the call.

CW-2 later explained, in a sworn, written statement to NYSP, that Roger Lynch, whom he knew,⁶ had arrived at the house in his truck, noticeably intoxicated and angry. CW-2 said that after Mr. Lynch pulled in he heard a gunshot and saw Mr. Lynch pointing a shotgun at him. CW-2 said Mr. Lynch then walked toward the house and fired multiple shots at him and near him before returning to his truck and driving away.

Police Arrival

Based on review of the recorded radio transmissions,⁷ at 8:21 p.m., a dispatcher broadcast the following: “...Bob Hollow Road, Town of Delhi, reported male shot with a shotgun by a male in a grey Toyota Tacoma.” Various law enforcement members indicated they would respond

³ To protect civilian witness identities, this report names them as CW (civilian witness) and a number.

⁴ CW-1’s 911 call, redacted in accordance with Attorney General policy, is linked here: [CW-1 911 call](#).

⁵ CW-3’s 911 call, redacted in accordance with Attorney General policy, is linked here: [CW-3 911 call](#). CW-2’s fiancée also spoke to the 911 dispatcher during the call.

⁶ Mr. Lynch was previously in a relationship with CW-1’s sister, CW-4. Based on review of the NYSP reports, CW-4 told NYSP that her relationship with Mr. Lynch ended in July of 2021 and that she had last heard from Mr. Lynch at 7:35 p.m. on August 5, 2021 when he sent her an email stating, “I’m done you’re done there done.”

⁷ For purposes of this report, “radio transmissions” mean audio recordings from the Delaware County Department of Emergency Services of communications among police officers, and between dispatchers and police officers.

to the incident location, and some requested more information about the suspect's vehicle and its direction of travel; the dispatcher said the suspect's name was "possibly Roger" and that he "possibly lives on Franklin Mountain."

At 8:33 p.m., after law enforcement members had arrived at CW-1's house and started speaking with witnesses, additional information was dispatched, including a possible address for Mr. Lynch, "994 State Highway 28 South, in Oneonta,"⁸ and a possible license plate number for his truck. Based on depositions of responding officers, taken by NYSP,⁹ CW-2 had gunshot wounds to his left arm and the left side of his body, and officers rendered on-scene aid until ambulance personnel arrived and transported him to the hospital, where he was treated and later released.

As dispatchers and officers were putting information about the shooting out over the airwaves, off-duty NYSP Sergeant, driving his personal truck, was listening. Based on OSI's interview with Sgt. Gregory and his deposition, at 8:40 p.m. Sgt. Gregory saw a grey pickup truck matching the description in the transmissions while he was on State Route 28, close to Mr. Lynch's reported address. Sgt. Gregory said he followed the truck until he saw it enter an uphill, un-paved driveway at 994 State Route 28, in the Town of Franklin. Sgt. Gregory parked his truck away from the driveway entrance until he was joined by on-duty, uniformed NYSP Sergeant Michael Woytach, who was in a marked patrol cruiser.

According to OSI's separate interviews of Sgts. Gregory and Woytach and their depositions, they slowly entered the driveway using the patrol cruiser as a shield, with Sgt. Gregory on foot and Sgt. Woytach in the cruiser, until they reached the top of the incline and could see what was later confirmed to be Mr. Lynch's single-family house. Sgt. Woytach parked his cruiser 30 to 40 yards from the side entrance of the house on a level area near Mr. Lynch's truck and garage, facing the house, and used the cruiser's lights to illuminate the area. While waiting for additional law enforcement officers to arrive, Sgt. Woytach stood near the driver's side of the cruiser, leaving the door, which contained a ballistic panel, open for additional protection. Sgt. Gregory stayed at a back corner of the house's detached garage, using the garage as cover. The photographs below show Mr. Lynch's house.

⁸ For purposes of this report, "State Highway 28" and "State Route 28" are used interchangeably.

⁹ The depositions referred to in this report are signed and sworn written statements taken by NYSP.



Post-incident photograph taken by NYSP, showing Mr. Lynch's house from his driveway.



Post-incident photograph, taken by NYSP, showing the view from the initial vantage point of Sgts. Woytach and Gregory. Sgt. Gregory positioned himself at the edge of the garage (on the right side of the photograph), and Sgt. Woytach positioned himself behind the opened front driver's side door of his patrol cruiser, which was parked to the left of the garage.

Based on the radio transmissions, at 8:49 p.m. officers or dispatchers stated that, per Sgt. Woytach, the suspect was armed and had gone inside the house.¹⁰ According to Sgt. Gregory, after he and Sgt. Woytach had positioned themselves in the driveway, he yelled out to Mr.

¹⁰ Based on DPD Officer Kathryn Mitchell's deposition, while on scene at Bob Holloway Road, CW-1 told Officer Mitchell he had recently talked Mr. Lynch out of committing suicide, and that Mr. Lynch told him he was thinking about committing suicide by cop. Officer Mitchell then advised dispatchers of this information over the phone. At least one recorded transmission from a dispatcher told officers Mr. Lynch had "threatened suicide by cop."

Lynch, telling him to come out of the house with his hands up, and announcing himself and Sgt. Woytach as members of NYSP. Shortly after, Mr. Lynch came out of the side doorway of the house, onto a covered deck, holding what appeared to be a long gun; Sgt. Gregory said he could not tell whether the gun was a shotgun or a rifle.



Post-incident photograph taken by NYSP. Mr. Lynch's side doorway is circled in yellow.

Sgt. Gregory said Mr. Lynch yelled things at them from the doorway, including that he was not going back to jail and that he wanted the officers to leave. Eventually, despite commands from Sgts. Gregory and Woytach to drop the gun, Mr. Lynch pointed the gun in their direction and fired. Sgt. Woytach said Mr. Lynch appeared to discharge the gun into the ground area near the boat that was between Mr. Lynch and the officers, and that he saw a corresponding muzzle flash. Sgt. Gregory said the round (or rounds) flew over Sgt. Woytach and towards him, audibly ripping into foliage behind him in the forest-line. Sgt. Gregory said the shot was close enough to put him in fear for his and Sgt. Woytach's safety. Based on the radio transmissions, at 8:53 p.m. an officer or dispatcher stated that, per Sgt. Woytach, the subject had fired one round at officers, but no one was hurt. An officer or dispatcher then requested over the radio that a hostage negotiator respond to the scene, and that EMS respond to remain on standby.

According to Sgts. Woytach and Gregory, Sgt. Woytach called out for Mr. Lynch to provide his phone number, as Sgt. Gregory urged Mr. Lynch to surrender the weapon; Mr. Lynch yelled back a phone number and went back inside his house. Sgt. Woytach called Mr. Lynch, and their conversation lasted about an hour and a half; it was followed by fifteen more calls over more than nine hours. The calls included discussions of why Mr. Lynch shot someone in Delhi, and that Mr. Lynch wanted to kill himself and wanted the police to kill him. According to Sgt. Woytach, Mr. Lynch also said he was upset that the person he had shot earlier was not dead. Throughout the conversations, trained members of NYSP's Crisis Negotiation Team, including Investigators Joshua Greenman and Craig Starr, both of whom arrived shortly after 10:00

p.m., aided Sgt. Woytach and gave him suggestions for how to deescalate the encounter and convince Mr. Lynch to leave the residence unarmed.

Based on the radio transmissions and OSI's interviews with responding officers, between 10:30 p.m. and 11:00 p.m. members of the NYSP Special Operations Response Team (SORT)¹¹ began to arrive, some of whom were in a Bearcat. In depositions given to NYSP and in interviews with OSI, SORT members explained that they swapped out Sgt. Woytach's patrol cruiser with the Bearcat and positioned it and themselves in the same spot, facing the house, about 40 yards from the side deck. The SORT members in the Bearcat included two Team Leaders, one in the driver's seat and one in the front passenger's seat, and other members in the back; some SORT members positioned themselves just outside the Bearcat at various times. Sgt. Woytach and Invs. Greenman and Starr also, at various times, were in and near the Bearcat. One member was continuously positioned in a pop-up turret cover extending from the roof of the vehicle.

The Bearcat, manufactured by Lenco Armored Vehicles (Lenco), has steel plating, ballistic glass windows, and run-flat tires. Based on documentation from Lenco and OSI's conversation with a Sales Manager from Lenco, despite half-inch thick steel and high ballistic defeat testing results, the Bearcat is not impregnable, especially in situations involving repeated gunfire; documentation states that the Bearcat "provides more armor on the vertical surfaces than ... on the roof and the floor," in part to "maintain proper weight distribution and center of gravity." The below photographs, taken by NYSP after the incident, show the Bearcat; the pop-up turret cover is circled in yellow.



¹¹ Based on review of NYSP's Standard Operating Procedure regarding "Active Shooter/Barricade Situation/Hostage Incident," SORT provides tactical support in hostage/barricade situations.



Some SORT members and “riflemen” – NYSP members with specialized firearms training – fanned out around Mr. Lynch’s property for support and containment, including in the trees and hill-line, about 80 yards from the house. As displayed below in an aerial diagram of the scene, prepared by NYSP, the area immediately surrounding Mr. Lynch’s home is rural and consists of heavily forested terrain on three sides and a steep hill adjacent to the rear lawn.



Based on OSI's interviews with involved NYSP members and their depositions, along with review of the BWC footage capturing on-scene conversations among them, at various times during the attempted negotiations Mr. Lynch was visible through the windows of the house; officers discussed seeing Mr. Lynch smoking cigarettes and appearing to wash dishes at his sink. Some NYSP members were able to see what appeared to be a long gun on a table inside the house. At one point during the phone conversations between Mr. Lynch and Sgt. Woytach, Mr. Lynch came out of the house from the front doorway and left a handwritten note on the front ramp, as displayed below in a post-incident photograph taken by NYSP; the note is circled in yellow.



Based on OSI's interviews, Mr. Lynch requested that the officers read the note, but, given the potential danger of approaching the ramp, they did not retrieve and read it until after the encounter ended. Sgt. Woytach told Mr. Lynch they would only be able to read the note if he came outside unarmed and brought it to them, but Mr. Lynch refused to do so. The note, which was subsequently taken and preserved as evidence, expressed Mr. Lynch's remorse and desire to end his life.

As conversations between Sgt. Woytach and Mr. Lynch continued into the morning of August 6, 2021, Mr. Lynch had seemingly become distracted inside the house. According to Sgt. Woytach and Invs. Greenman and Starr, Mr. Lynch became less engaged in the conversation during this time. Inv. Starr told OSI that at one point Mr. Lynch said he was done talking and was going to watch television. Inv. Greenman contacted Mr. Lynch's cable and telephone provider and asked that Mr. Lynch's television/cable services be terminated so that Mr. Lynch would focus on the conversation with negotiators; the provider complied, but accidentally cut both television *and* telephone services. Thereafter, Sgt. Woytach, realizing that Mr. Lynch had lost phone service, continued to attempt negotiations with him using the Bearcat's

loudspeaker. Inv. Greenman said they re-contacted the provider to re-activate the telephone service, but the provider was unable to do so at the time.

Based on OSI's interviews with involved NYSP members, as the sun began to rise Mr. Lynch continued to indicate he was unwilling to come outside and surrender to NYSP. On a few occasions, Mr. Lynch stepped out of his side door and onto the deck, at times holding a long gun pointed towards himself. At 6:49 a.m. Mr. Lynch came out of his house with the long gun pointed under his chin and positioned himself on the deck by the side door, facing the Bearcat. According to NYSP members, as detailed more fully below, Mr. Lynch then leveled the gun at the Bearcat, and Tr. Grubb fired one round from his suppressed (partially silenced) AR-15 rifle, striking Mr. Lynch in the chest and propelling him back into the residence and onto the floor. Based on OSI's interviews, Trp. Grubb was inside the Bearcat, but his upper torso protruded through the top of the vehicle from behind the armored, circular plate extending up from the vehicle's roof. Trp. Grubb fired his weapon through a square opening in the metal plate, but a portion of his upper body was above the plate and potentially exposed to gunfire. At the time of the shot, other SORT members were outside the Bearcat on either side, facing Mr. Lynch's deck, and were also potentially exposed to gunfire.

Tr. Grubb's shot was audibly captured by Tr. Perry's BWC. Because Tr. Perry was in the surrounding wooded area and at a distance, his BWC did not visually capture the Bearcat or the relevant portions of Mr. Lynch's house.¹² The BWC footage, which begins at 6:27 a.m.,¹³ captured the sound of the Bearcat's horn, which was used to get Mr. Lynch's attention, and the sound of an NYSP member, presumably Sgt. Woytach, speaking to Mr. Lynch through the loudspeaker. At times, Mr. Lynch can be heard yelling back, though it is difficult to discern exactly what he said.

The following is a summary of the audio on Tr. Perry's BWC in the minutes leading up to Tr. Grubb's shot (the timestamps from the BWC are on the left):¹⁴

6:46:16 – 6:46:57: Sgt. Woytach spoke to Mr. Lynch over the loudspeaker; many words are unclear, but he was clearly trying to persuade Mr. Lynch to come outside and cooperate with police. It is unclear whether Mr. Lynch said anything in return.

¹² Based on OSI's interviews, NYSP SORT members who are inside and around a Bearcat during these types of scenarios typically do not activate their BWCs, as having to subsequently turn the footage over could reveal their otherwise covert tactical decisions, techniques, and discussions to the public, potentially decreasing the effectiveness of their tactics and/or posing safety issues in future incidents; according to NYSP, typically the incident commander makes the determination as to whether and/or which SORT members will activate BWCs during a particular incident.

¹³ OSI also reviewed two other clips from Tr. Perry's BWC, the first from 12:09 a.m. to 3:08 a.m., and the second from 3:10 a.m. to 5:04 a.m. The footage captured on these two clips consists mostly of darkness and, at times, NYSP members whispering to one another.

¹⁴ This portion of Tr. Perry's BWC is linked here: [Tr. Perry BWC](#)

- 6:47:09: Sgt. Woytach seemed to say over the loudspeaker, “Don’t do that, Roger, don’t do that,” followed seconds later by something inaudible.
- 6:47:56: An officer audible over Tr. Perry’s radio said Mr. Lynch came out with a long gun to his throat.
- 6:48:26: An officer audible on Tr. Perry’s radio said Mr. Lynch had come out on the porch for 5 to 10 seconds and then went back in the house.
- 6:48:36: Sgt. Woytach spoke to Mr. Lynch over the loudspeaker, but the words are unclear.
- 6:48:56: An officer audible on Tr. Perry’s radio said Mr. Lynch was back out on the porch with the long gun out, to his head.
- 6:49:00: Sgt. Woytach spoke to Mr. Lynch over the loudspeaker.
- 6:49:05: A possible shout was followed by the sound of a gunshot.
- 6:49:19: Sgt. Woytach asked Mr. Lynch if he’s okay over the loudspeaker, and an officer audible on Tr. Perry’s radio said, “Shot out from the Bearcat...leveled the gun at the Bearcat.”

Trs. Koehler and Volpe turned their BWCs on following Tr. Grubb’s shot:¹⁵ Tr. Volpe’s BWC started at 6:49:42 a.m., and Tr. Koehler’s started at 6:49:46 a.m.¹⁶ On the BWC footage, at 6:50:32 a.m., someone from the Bearcat said what sounds like, “I couldn’t tell if he was doing this, or if he was doing this, but either way [inaudible] the gun’s like, level;” the NYSP member who spoke is not visible on either BWC.

Based on review of the BWC footage, once Tr. Grubb fired, Sgt. Woytach called out to Mr. Lynch over the loudspeaker multiple times, with no response. SORT members in and around the Bearcat discussed their potential next steps, including using a drone to determine Mr. Lynch’s location and condition, noting that Mr. Lynch was still holding the gun when he fell backward into the house. At 6:53:25 a.m., an NYSP member, presumably Tr. Grubb, said, “I’m pretty confident I hit him [inaudible] center mass, I don’t want to be over-confident...” Based on the BWC footage and OSI’s interviews, Tr. David Smith, at 7:06 a.m., flew a drone from the

¹⁵ Tr. Volpe also briefly activated his BWC at 1:48 a.m. but turned it off about five minutes later.

¹⁶ Tr. Perry’s BWC appears to be ten seconds ahead of Tr. Koehler’s and Trooper Volpe’s BWCs. A portion of Tr. Volpe’s BWC is linked here: [Tr. Volpe BWC](#) and a portion of Tr. Koehler’s BWC is linked here: [Tr. Koehler BWC](#).

Bearcat to Mr. Lynch's house, which showed Mr. Lynch through the screen door, lying motionless on the floor.

Armed SORT members used a shield and approached the house and, at 7:09 a.m., entered through the side door. According to the SORT members, and consistent with the BWC footage, as displayed below in a still image from Tr. Koehler's BWC, when they went inside, they found Mr. Lynch's body on the floor and, in his hand, a shotgun; his finger was on the trigger and the safety was in the "off" position.



Mr. Lynch's face has been obscured.

SORT members then performed a sweep of the house to make sure no one else was inside and requested that EMS come in to assess Mr. Lynch. SORT members also removed the shotgun from Mr. Lynch's hand, and checked him for a pulse or respirations, finding none. At 7:13 a.m. EMS entered and pronounced Mr. Lynch dead.

Officer Interviews

On August 26, 2021, OSI interviewed NYSP Sgts. Gregory, Woytach, Clifton Wood, and Orry Ostrander, and NYSP Trs. Koehler, Volpe, Smith, Calvin Lee, Rexford Reynolds, and Bruce Stoffolano. On October 14, 2021, OSI interviewed NYSP Invs. Starr and Greenman. OSI also obtained and reviewed each of their depositions; there were no material differences between the information provided in their depositions and the information provided during their OSI interviews. The accounts of the involved NYSP members who were able to see Mr. Lynch at and around the time of the fatal shot are summarized below; though officers described additional portions of the events, this section summarizes only their accounts of the events

immediately before, during, and after Tr. Grubb's shot.

OSI requested to interview Tr. Grubb, but he declined.

Sgt. Woytach said that around daylight on August 6, 2021, after several hours of attempted negotiations, Mr. Lynch came out of his residence holding a long gun, with its muzzle to his chin. Sgt. Woytach told Mr. Lynch, through the loudspeaker, not to do it, and Mr. Lynch retreated into his house. A short time later, Mr. Lynch again came outside holding the long gun to his chin, and Sgt. Woytach again told him not to do it through the loudspeaker. Sgt. Woytach said at this time, he was looking at the loudspeaker microphone, and heard a round fire, followed by the sound of a casing falling into the Bearcat. He then heard the SORT member who was in the turret say, "That was mine. He leveled the shotgun."

Inv. Starr said that at around 7:15 a.m. on August 6, 2021, as he was sitting inside the Bearcat, he saw Mr. Lynch walk out of his house from the rear door. Mr. Lynch was holding what appeared to be a long gun, which he initially pointed at his neck, but then pointed towards the Bearcat. Inv. Starr said he then heard a single gunshot, followed by the sound of a casing hitting the floorboard of the Bearcat. Inv. Starr saw through the windshield that Mr. Lynch was no longer standing at the door. According to Inv. Starr, he heard the SORT member who was standing in the turret say that he shot Mr. Lynch at center mass because he had leveled the gun at him, and he heard other SORT members say that Mr. Lynch had fallen back into the home following the shot.

Inv. Greenman, who was inside the Bearcat, said he saw Mr. Lynch come out the side door onto the porch, with a long gun in his hands. Inv. Greenman said he saw Mr. Lynch put the muzzle of the shotgun under his chin. He then repositioned himself to get a better view of Mr. Lynch and, as he was doing so, heard one gunshot. Inv. Greenman then heard Tr. Grubb, who was in the turret of the Bearcat, say he fired the round.

Sgt. Ostrander, who was inside the Bearcat, said that at some point in the morning, after it became light outside, Mr. Lynch opened the side door and yelled something at negotiators, but Sgt. Ostrander was unable to hear what he said. After several minutes, Mr. Lynch came outside holding a shotgun underneath his chin, and his thumb appeared to be in the trigger guard. Mr. Lynch then went back inside and shut the door. After more attempted negotiations from the loudspeaker, Mr. Lynch came back outside from the side door, again holding the shotgun under his chin. Sgt. Ostrander said Mr. Lynch then raised the gun to his shoulder, and pointed it directly at the Bearcat, at which time Tr. Grubb fired one round from the turret of the Bearcat. Sgt. Ostrander said it appeared that Mr. Lynch was struck, as he turned and fell back into the house, with the screen door closing behind him. After officers went inside, Sgt. Ostrander saw Mr. Lynch lying on the floor, with his hand still on the pistol grip and trigger of the shotgun. Sgt. Ostrander checked Mr. Lynch for vitals, and determined he had no pulse and was not breathing.

Sgt. Wood, who was inside the Bearcat, said that at one point in the morning, he saw Mr. Lynch come outside from the side door, holding a long gun in a vertical position, with the muzzle under his chin. Mr. Lynch made comments about committing suicide before going back inside. Sgt. Woytach then told Mr. Lynch to come outside unarmed, with his hands up. A few minutes later, Mr. Lynch came back outside, again holding the long gun with the muzzle under his chin. Mr. Lynch then squared his body off with the Bearcat and leveled the long gun. Sgt. Wood said he yelled out that Mr. Lynch was leveling the gun. Sgt. Wood then heard a single gunshot and saw Mr. Lynch lunge back into the residence. Sgt. Wood said he asked Tr. Grubb if he had taken a shot, and Tr. Grubb responded that he had because Mr. Lynch leveled the long gun at him; Tr. Grubb also said he believed he had hit Mr. Lynch in the chest. After the drone obtained a visual of Mr. Lynch, Sgt. Wood, Sgt. Ostrander, and members from the arrest team went inside the house. Sgt. Wood said it appeared that Mr. Lynch was dead, and that the long gun was still in his grasp.

Tr. Volpe said that at around 7:00 a.m. he was standing outside the Bearcat and saw Mr. Lynch come out of the side door of his house holding a long gun, with the barrel under his chin. Tr. Volpe heard the negotiator tell Mr. Lynch, over the loudspeaker, to put the gun down. Mr. Lynch then said something along the lines of, "Oh no, you," and leveled the barrel of the gun toward the Bearcat. Tr. Volpe then heard one round fired from the Bearcat and saw Mr. Lynch fall back through the doorway.

Tr. Koehler said that at one point, after Mr. Lynch had opened the side door and yelled that he wasn't going to come out of the house, Mr. Lynch came out and held a long gun under his chin. Tr. Koehler said Sgt. Woytach tried to negotiate with Mr. Lynch and said, "Please don't do this." Mr. Lynch then came back out from the side door holding the long gun under his chin, yelling, "I will do it, I will do it." Mr. Lynch then shouldered the gun and pointed it at the Bearcat; Tr. Koehler said he believed Mr. Lynch was pointing it at Tr. Grubb, who was in the turret of the Bearcat. Tr. Koehler then heard Mr. Lynch say something along the lines of, "Don't you aim that gun at me," followed by a single shot. Tr. Koehler then saw Mr. Lynch flinch and fall back into the residence, with the screen door shutting behind him. Sgt. Wood asked who had shot, and Tr. Grubb said he had, when Mr. Lynch pointed the gun at him.

Evidence Collection

Following the incident, members of the NYSP Forensic Identification Unit (FIU) executed a search warrant at 994 State Route 28, processing the house and grounds. The pertinent evidence recovered by FIU is described below, based on OSI's review of the FIU reports and scene photographs, as well as OSI's observations at the scene.

FIU members collected one expended rifle casing inside the Bearcat, below the open turret from which Trp. Grubb fired, as well as Tr. Grubb's LWRC M61C 5.56mm rifle.

FIU members collected the Stevens 12-gauge shotgun that was next to Mr. Lynch's body. FIU inspected the shotgun and found one expended round in the chamber and five live rounds in the magazine, displayed below.



NYSP photos of an expended shell (left) and live rounds (right), recovered from the shotgun found next to Mr. Lynch's body.

As displayed below, FIU members also collected two expended 12-gauge shotgun shells on top of a table on the deck where Mr. Lynch stood when he came out of the side door during the encounter.



Photograph taken by NYSP, showing two expended shotgun shells, circled in yellow.

FIU members saw and photographed pellet strike marks in the wood frame of the covered deck and collected corresponding pellets that were lodged in the wood. FIU members also located

an empty box of 12-gauge shotgun rounds in Mr. Lynch's garage and thirteen live 12-gauge rounds in his truck. Numerous containers of ammunition for Mr. Lynch's shotgun, including live rounds and expended shells, were located in and around the residence.

Based on the depositions of responding law enforcement members and the crime-scene photographs, law enforcement members who responded to the initial scene on Bob Holloway Road located three expended 12-gauge shotgun shells in the driveway and plastic shotgun wadding in front of the house, which FIU members later collected.

NYSP submitted Tr. Grubb's rifle, the expended casing from the Bearcat, the projectile recovered from Mr. Lynch's body during his autopsy (as detailed below), Mr. Lynch's shotgun, and the expended shotgun shells recovered outside Mr. Lynch's house and from the initial scene on Bob Holloway Road to the NYSP Forensic Investigation Center (FIC) for analysis.

Ballistics Analysis

FIC test fired Tr. Grubb's rifle and found it to be operable. FIC microscopically examined the expended casing recovered from the Bearcat, compared it to a test fired casing from Tr. Grubb's rifle, and identified it as having been fired in the same firearm. FIC analyzed the expended jacketed bullet recovered from Mr. Lynch during the autopsy, compared it to a test fired bullet from Tr. Grubb's rifle, and determined they were fired from the same firearm.

FIC test fired the shotgun found with Mr. Lynch and determined it was operable. FIC microscopically examined the expended 12-gauge shotgun shells recovered from Mr. Lynch's side porch and from the initial scene at Bob Holloway Road, compared them to test fired shells from the shotgun, and determined they were fired from the same firearm.

Medical Examiner

On August 8, 2021, Pathologist Robert Stoppacher of Lourdes Memorial Hospital in Binghamton conducted an autopsy of Mr. Lynch's body. OSI obtained Dr. Stoppacher's Final Autopsy Report, which states that the cause of death was "Gunshot wound to the forearm/chest." Based on his report, Dr. Stoppacher observed one fatal gunshot wound to Mr. Lynch's chest with a corresponding projectile recovered from his right scapula; the location of the chest wound matched apparent blood staining and a circular perforation to the T-shirt Mr. Lynch wore at the time of the incident. In addition, Dr. Stoppacher observed a laceration to Mr. Lynch's left inner forearm, which he classified as a "tangential" gunshot wound. OSI spoke with Dr. Stoppacher on December 17, 2021; when asked, Dr. Stoppacher said the wound on Mr. Lynch's inner forearm was consistent with Mr. Lynch's arm having been extended in front of him when he was shot. Dr. Stoppacher described the wound as similar to a graze wound, but deeper and more severe.

LEGAL ANALYSIS

Article 35 of the New York Penal Law (PL) governs the circumstances under which an individual may be justified in using deadly force against another. Justification is a defense, Penal Law Section 35.00, not an affirmative defense. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, Penal Law Section 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 (Penal Law Section 35.30). As detailed below, based on the evidence reviewed in this investigation, a prosecutor would be unable to disprove beyond a reasonable doubt that Tr. Grubb's use of deadly physical force was justified under that 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 Penal Law Section 35.30(1) are under no duty to retreat (Penal Law Section 35.15[2][a][ii]).

OSI's review of the evidence shows that NYSP members clearly, and reasonably, believed that Mr. Lynch had committed an offense – including Attempted Murder in the Second Degree (Penal Law Sections 110.00/120.25[1]) and/or Assault in the First, Second, or Third Degree (Penal Law Article 120) – when he shot CW-2 on Bob Holloway Road. Further, when Mr. Lynch fired a round at Sgts. Woytach and Gregory shortly after they arrived at Mr. Lynch's residence, NYSP members had probable cause to believe that Mr. Lynch had committed additional offenses, including Attempted Murder in the First Degree (Penal Law Sections 110.00/125.27[1][a][i]), Attempted Murder in the Second Degree (Penal Law Sections 110.00/120.25[1]), Attempted Assault in the First Degree (Penal Law Sections 110.00/120.10[1]), Attempted Aggravated Assault Upon a Police Officer (Penal Law Sections 110.00/120.11), and Menacing a Police Officer (Penal Law Section 120.18).

In regard to justification, 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 that danger, regardless of whether 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 those same beliefs, 68 N.Y.2d at 115. See also *People v. Wesley*, 76 N.Y.2d 555 (1990).

Though Tr. Grubb declined to be interviewed by OSI, based on OSI’s interviews with other NYSP members who heard Tr. Grubb’s statements, and on the statements captured by BWC footage immediately following the fatal shot, it is evident that Tr. Grubb subjectively believed that shooting Mr. Lynch was necessary to stop Mr. Lynch from using deadly force against him and/or other members of NYSP.

NYSP members responded to Mr. Lynch’s house following reports that Mr. Lynch had just shot someone on Bob Holloway Road. When the first responding officers arrived at Mr. Lynch’s house, Mr. Lynch was armed and fired a round at or near Sgts. Woytach and Gregory. Throughout the encounter, Mr. Lynch refused to surrender to NYSP or to come outside unarmed. At times, Mr. Lynch came outside holding a long gun, pointed at himself. The last time Mr. Lynch came out of his house, he shouldered the gun and leveled it at the Bearcat, where Tr. Grubb was standing in the turret, prompting Tr. Grubb to fire one round at him. Not only was Tr. Grubb exposed to potential gunfire, but there were NYSP members standing outside the Bearcat and in the wooded perimeter surrounding Mr. Lynch’s house.

Under the circumstances presented above, OSI would be unable to prove that Tr. Grubb’s subjective beliefs were unreasonable.

The accounts of the NYSP members are corroborated by other evidence reviewed by OSI. The 911 recordings from CW-1 and CW-3 show that Mr. Lynch shot CW-2 prior to NYSP’s arrival at Mr. Lynch’s house. Law enforcement members who responded to Bob Holloway Road found evidence of gunfire, including injuries to CW-2 and expended 12-gauge shotgun shells, which were analyzed by FIC and determined to have been fired from the shotgun recovered inside Mr. Lynch’s house. Review of the recorded radio transmissions show that, once Sgts. Woytach and Gregory were at Mr. Lynch’s property, they could see that Mr. Lynch was armed and, then, that he fired a round in their direction. Review of the BWC footage confirms that NYSP members stayed outside Mr. Lynch’s house for several hours, into the next morning, and attempted to negotiate with Mr. Lynch to reach a peaceful resolution.

Tr. Perry’s BWC audibly captures portions of the moments surrounding the fatal shot, confirming the officers’ accounts that they were using the loudspeaker to negotiate with Mr. Lynch, and that Mr. Lynch was yelling at them and refusing to comply. Further, the BWCs

captured statements made by NYSP members contemporaneous with the shooting, indicating that Tr. Grubb fired because Mr. Lynch leveled the shotgun at the Bearcat. Finally, the crime-scene photographs and OSI's conversation with Dr. Stoppacher reveal that the wound Mr. Lynch sustained on his left forearm is consistent with his arm having been extended when he was shot by Tr. Grubb.

Overall, the evidence demonstrates that Mr. Lynch aimed his shotgun in the direction of Tr. Grubb and the Bearcat, in and near which were other NYSP members, after having previously shot CW-2 and fired at NYSP members, which Tr. Grubb reasonably perceived as an active, imminent threat to himself and the other officers on scene.

For the reasons set forth above, OSI cannot prove beyond a reasonable doubt that Tr. Grubb's use of deadly force was not justified under Article 35 of the Penal Law and will close this matter with issuance of this report.

RECOMMENDATION

OSI, and its predecessor, the Attorney General's Special Investigations and Prosecution Unit, which handled police-involved deaths from 2015 to 2021 under Executive Order 147, have consistently recommended that all police departments equip officers with BWCs.¹⁷ Here, while many of the NYSP members involved with the encounter were so equipped, those who were inside and around the Bearcat during the negotiations with Mr. Lynch did not activate their BWCs prior to Tr. Grubb's fatal shot. As noted above, NYSP SORT members told OSI that they did not activate their BWCs because, as a general matter, NYSP does not want to reveal their otherwise covert tactical decisions, techniques, and discussions to the public, as doing so could compromise future investigations by potentially decreasing the effectiveness of their tactics and/or posing an officer-safety issue. While Tr. Grubb's fatal shot was audibly captured by the BWC of an NYSP member who was around the perimeter of Mr. Lynch's house, had the members who were in and around the Bearcat activated their BWCs during the encounter, there may have been a clearer picture of the incident, including Mr. Lynch's actions leading up to the fatal shot, which would have greatly facilitated the investigation of this case.

In the present case, none of the NYSP members with whom OSI spoke provided a specific example of a tactical communication regarding Mr. Lynch that was too sensitive to be captured on BWC. More generally, the deployment of a SORT unit means that an encounter is more likely, not less likely, than many other police activities to involve a use of force. Therefore, although OSI recognizes the necessity of keeping certain police tactics confidential, the benefits of visually capturing encounters between the police and the public means that BWC use should be the default and the decision not to use BWC should be the rare exception.

¹⁷ See OSI's First and Second Reports Pursuant to Executive Law Section 70-b, both of which were published after this incident occurred: [First Report Pursuant to Executive Law Section 70-b \(ny.gov\)](#); [2022 osi annual report.pdf \(ny.gov\)](#)

Accordingly, OSI recommends that NYSP require SORT members to activate BWC during every encounter with members of the public unless the incident commander on site has a specific and articulable reason for protecting a confidential communication; in such a case, the on-site commander should direct the members directly involved in confidential communications to de-activate audio but keep video going. OSI also recommends that NYSP deploy exterior cameras on their armored vehicles, to enhance the likelihood that the activity occurring outside them will be visually captured, even in instances where NYSP members choose not to activate their BWCs due to the confidential nature of their tactics.

May 26, 2023