



Office of the New York State Attorney General Letitia James

Office of Special Investigation

September 16, 2022

Report on the Investigation into the Death of Simran Gordon

SUMMARY

New York Executive Law Section 70-b (“Section 70-b”) authorizes the Office of the Attorney General (“OAG”), 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 Simran Gordon.

On October 6, 2021, Rochester Police Department (“RPD”) Patrol Officer John Boyle shot Simran Gordon, causing his death. After a full evaluation of the facts and the law, OSI will not seek charges against PO Boyle because we cannot prove beyond a reasonable doubt that his actions were not justified under Article 35 of the New York Penal Law.

FACTS

Overview

On October 6, 2021, members of RPD were dispatched to an armed robbery in progress at the Family Dollar Store on 715 West Main Street, in the City of Rochester. When officers arrived, Simran Gordon was standing behind the front counter next to store employees, with both of his hands in the front pocket of his sweatshirt. The responding officers, PO Boyle and RPD Patrol Officer Mary Yare, directed Mr. Gordon to remove his hands from his pocket,¹ but Mr. Gordon did not comply and instead ran down a store aisle, followed by PO Boyle. PO Yare ran parallel to them in a different aisle. While in the aisle, Mr. Gordon and PO Boyle both fired their weapons; PO Boyle was not struck, but Mr. Gordon was, resulting in his death. Fixed surveillance cameras around Family Dollar (“Store Video”) and PO Boyle’s and PO Yare’s body worn cameras (“BWCs”) captured portions of the robbery and shooting.² OSI has synchronized PO Boyle’s and PO Yare’s BWC footage, relevant portions of the Store Video, and portions of the 911 recording into one video, which may be accessed here:³ [Gordon Compilation Video](#).

The Robbery

Review of exterior Store Video shows that at 9:31:16 p.m.,⁴ Mr. Gordon walked up to the front

¹ This appeared to be a single “kangaroo” pocket across the front of the sweatshirt, allowing Mr. Gordon to put both hands in, from each side of the pocket.

² RPD provided all BWC footage to OSI by downloading it directly from the storage platform onto an OSI-provided external hard drive, in the presence of an OSI detective.

³ In the interests of privacy, the Compilation Video contains redactions of personal identifying information of civilian witnesses, including visual redactions of their faces; as a result of those redactions, some store employee actions and facial expressions referenced in this report are not visible on the Compilation Video.

⁴ All times in this report are approximate. There are small variations among the timestamps on the various camera angles from the Store Video, the times noted on the BWC footage, and the times of radio transmissions and 911 recordings; this is not uncommon, as the media were obtained from separate sources and are not

of the Family Dollar and peered into the store. Mr. Gordon was wearing a hooded sweatshirt, with the hood tied around his face and his hands inside the front pocket. Seconds after looking in, Mr. Gordon walked into the store through the front doors. The interior Store Video shows that Mr. Gordon immediately walked up to store employee CW-1,⁵ who was standing behind a cash register approximately ten feet from the front doorway. Based on CW-1's written statement, given to RPD,⁶ Mr. Gordon asked CW-1 what time the store closed, and CW-1 told him 10:00 p.m. Mr. Gordon walked away from CW-1 and walked behind the front counter, through an opening in the center, where other employees, including two store managers, were standing. Mr. Gordon kept his hood up and his hands inside his pocket as he walked behind the counter.

Based on store manager CW-2's written statement to RPD and interview with OSI, once Mr. Gordon was behind the counter, he pressed up to CW-2 and said, "Give me the money." CW-2 said she initially thought the man was an employee and that it might be a joke, but then Mr. Gordon said, "This is for real, give me the money," and pulled a portion of a handgun out of the front pocket of his sweatshirt for her to see. CW-2 said the gun appeared to be partially wrapped in a brown paper bag, and that the top of the gun looked gray.



Store Video showing Mr. Gordon pulling an object from his front sweatshirt pocket with his left hand (circled in yellow) as he stands between CW-2 and CW-3.

According to CW-2, after showing the gun, Mr. Gordon directed her to open the cash register in front of her. CW-2 asked another manager behind the counter, CW-3,⁷ to log on and open the

synchronized.

⁵ In the interests of privacy, references to civilian witnesses use CW (civilian witness) and a number (1, 2, 3, etc.), rather than a name.

⁶ OSI called CW-1 on multiple occasions, trying to set up an independent interview; twice, CW-1 answered and said he would call back after checking his schedule, but never did. OSI also arranged two meetings at the Family Dollar to separately interview various store employees, including CW-1; CW-1 did not appear for either meeting. When OSI called CW-1 a final time, he had apparently changed his phone number, and, according to sources who know him, no longer works at the Family Dollar.

⁷ In his written statement, taken by RPD, and during a subsequent interview with OSI, CW-3, who was standing

register, which he did. Mr. Gordon told CW-2 to open the safe behind the counter; she began that process but told Mr. Gordon the safe was on a five-minute delay. In the meantime, while waiting for the safe to open, and with Mr. Gordon standing nearby, CW-2 and CW-3 removed cash from the three registers behind the counter; the Store Video shows CW-2 and CW-3 putting money from the registers in a gray plastic bag. CW-2 said Mr. Gordon spoke to her a few times during the encounter and was becoming anxious about the amount of time the safe was taking to open.

The Store Video shows that about one minute after Mr. Gordon walked into the store, a Family Dollar employee, CW-4, who had been sitting on a box behind the counter using her cell phone, left the area and walked to the end of the store opposite the front entrance. According to CW-4's written statement to RPD and her OSI interview, when she was behind the counter she saw Mr. Gordon pull a gun from his sweatshirt pocket, and, shortly after, CW-3 motioned for her to call 911 by discreetly moving his hand towards his ear; CW-4 then walked to a back storage room.⁸ Based on their OSI interviews, the remaining employees stayed behind the counter and tried to remain calm, to not draw attention or provoke a reaction from Mr. Gordon.

At 9:32:21 p.m., CW-4 called 911 from the back room, but the 911 dispatcher could not hear anyone on the line.⁹ The dispatcher called CW-4's cellphone back and they were then able to speak; as noted above, a portion of that call is part of the Compilation Video. CW-4 told the dispatcher that a man was in the store holding her managers at gunpoint; she gave a description of the man, including his clothing, and said he was waiting for a safe to open. CW-4 also told the dispatcher that the man's gun appeared to be an "army fatigue pistol." CW-4 remained on the line with the dispatcher throughout RPD's arrival and the shooting.

Police Arrival

The radio transmissions and corresponding logs show that at 9:34 p.m., a dispatcher asked if an officer was available, stating, "We've got a robbery at the Family Dollar that's been holding in the hopper, it says the manager's at gunpoint."¹⁰ PO Boyle radioed that he and PO Yare would head to the call. During an interview conducted by RPD and OSI, PO Boyle said that he and PO Yare, driving separate patrol cars, were already at another location on West Main Street and therefore available to respond quickly. PO Boyle and PO Yare were the first officers to arrive at the store, and, based on their BWC footage, walked in at 9:35:31 p.m. PO Boyle said the only information he knew as he walked in was that the call was for an armed robbery; he was unaware of any physical descriptions, clothing or otherwise, or the number of suspects

to the right of Mr. Gordon at the time, said he saw Mr. Gordon pull a black handgun from his sweatshirt pocket.

⁸ Another employee, CW-5, who was re-stocking store items, was initially behind the counter and went to the back room shortly after CW-4 and remained there throughout the incident.

⁹ CW-4 told OSI that the call did not go through due to poor cell service in the back room.

¹⁰ Based on the RPD reports and PO Boyle's interview with RPD and OSI, the dispatch was relayed over a secondary administrative channel, because the air on the primary channel was being held for an unrelated call.

involved.¹¹

What happened once PO Boyle and PO Yare arrived on scene was captured by their BWCs and is shown on the Compilation Video. PO Boyle walked into the store first, followed by PO Yare. PO Boyle had his gun drawn and at his side as he walked into the vestibule, but re-holstered as he entered the store. As PO Boyle walked in and approached the cash register closest to the front door, he asked, “Does anyone have a gun in here?” CW-1, who was still behind the register, turned his head to the left, in Mr. Gordon’s direction, and CW-6, a customer who was waiting to be cashed out at CW-1’s register, looked around; neither CW-1 nor CW-6 verbally responded to PO Boyle’s question.¹² Mr. Gordon was still behind the counter, between CW-2 and CW-3; during his interview, CW-3 told OSI that when PO Boyle asked if anyone had a gun, Mr. Gordon told him to tell the police “no.”

Following CW-1’s gesture of turning his head to the left, PO Boyle drew his gun again, keeping it pointed down and at his side, and continued walking along the front counter until he stopped where Mr. Gordon was standing behind the counter. During his interview, PO Boyle said he noticed that the store employees behind the counter were wearing red shirts, but Mr. Gordon was wearing a blue hooded sweatshirt with the hood tied tightly around his face; PO Boyle also noticed that Mr. Gordon had both hands in his front pocket. PO Boyle pointed at Mr. Gordon while looking at CW-2 to inquire if he was the suspect; CW-2 did not respond verbally, but PO Boyle said she looked scared. The BWC footage shows that PO Boyle then focused his attention on Mr. Gordon and asked to see his hands. PO Boyle had his gun out and raised but pointed slightly downward rather than directly at Mr. Gordon. Mr. Gordon did not remove his hands as PO Boyle directed, prompting PO Boyle to raise his weapon and again direct Mr. Gordon to take his hands out of his pocket. Mr. Gordon, who was wearing a face covering over his mouth, verbally responded, but his exact words cannot be clearly discerned on the BWC footage. CW-3, who was standing next to Mr. Gordon, told OSI that he heard Mr. Gordon say, “I can’t do that.”

Approximately five seconds after PO Boyle initially confronted him, Mr. Gordon, who was turned slightly to the side (with his back to the front entrance), began to walk, and then run, away from PO Boyle and PO Yare toward the south end of the store, opposite the front entrance. PO Boyle gave chase, following directly behind Mr. Gordon, and the two turned the corner and began running down the farthest aisle of the store, while PO Yare ran down the adjacent, parallel aisle.¹³ Based on PO Boyle’s BWC and his interview with RPD and OSI, PO Boyle tried to grab

¹¹ The dispatcher subsequently radioed additional details, including a description of the suspect, but no response is heard by any officers on the channel; based on the time PO Boyle and PO Yare arrived at the Family Dollar, it appears they were already inside the store when the dispatch containing additional information went out.

¹² Based on his written statement and interview conducted by RPD and OSI, CW-6 was unaware that the Family Dollar was being robbed when PO Boyle and PO Yare walked in. When he approached the register with the items he wanted to purchase, CW-1 told him only that he would need to wait.

¹³ During an interview conducted jointly by RPD and OSI, PO Yare said she chose that aisle to try and get ahead of

Mr. Gordon to stop him from fleeing, but was only able to grip his sweatshirt. One second later, a gunshot is heard on PO Boyle's BWC footage, followed immediately by four more gunshots in rapid succession. PO Boyle's footage next shows Mr. Gordon on the ground, on his left side, when the sixth and final shot is fired, clearly coming from PO Boyle's gun. Based on PO Boyle's BWC, the first shot was fired at 9:36:02 p.m., and the last shot at 9:36:06 p.m. The still photograph below, captured from PO Boyle's BWC just before the last shot, shows that the top portion of Mr. Gordon's body was past the end cap, and he was facing toward the perpendicular center aisle to his right.



During his interview, PO Boyle said that as he was chasing Mr. Gordon down the aisle and grabbing his sweatshirt, he heard a gunshot go off that sounded like it was fired right next to his head, causing his ears to ring. PO Boyle said that he and Mr. Gordon were the only two people in the aisle, and while he couldn't see Mr. Gordon's gun in that moment, he knew the shot came from him, which prompted him to fire the first four shots. PO Boyle said that, once Mr. Gordon fell to the ground, he saw he was holding the gun, and appeared to raise it toward the open aisle to his right; PO Boyle said he recognized that Mr. Gordon posed a continued threat – not only to himself but to PO Yare and potential customers and employees as well – and he fired a fifth shot. PO Boyle's BWC footage shows Mr. Gordon moving his right arm just before PO Boyle fired his last shot, but Mr. Gordon's hands and left arm are not clearly visible and the camera footage is shaky due to PO Boyle's movement.

CW-4 told OSI that from the back room, she heard approximately six gunshots ring out from the store, and on her recorded 911 call, six shots are audible in the background. CW-4, who served in the military and has experience handling firearms, told OSI she believed two guns were involved, as she heard a difference in the way the gunshots sounded. PO Boyle's BWC shows that, when the first gunshot is fired as PO Boyle is running after Mr. Gordon, PO Boyle's gun appears to be in a downward position and pointed towards the floor; once the first gunshot

Mr. Gordon and cut him off.

goes off, PO Boyle appears to raise his arm and straighten his body, consistent with entering a shooting stance, and the movements captured by the BWC correlate with the next five gunshots coming from PO Boyle's gun.¹⁴

PO Yare's BWC shows that as she reached the end cap of the adjacent aisle, she came upon Mr. Gordon as he lay on the ground. From her position, she was only able to see his head and part of his upper torso; the remainder of his body was blocked by the shelving unit. On PO Yare's BWC footage, just as PO Boyle fired his last shot, Mr. Gordon grabs an object, wrapped in brown paper, with his left hand; Mr. Gordon's right hand, which was in a cast, is not visible on the footage before the last shot is fired. PO Boyle and PO Yare then yelled for Mr. Gordon to "drop the gun," and approximately four seconds after the shot, at 9:36:10 p.m., PO Yare moved towards Mr. Gordon and said, "Boyle I got it, I got it." Once PO Yare moved away from Mr. Gordon, the object wrapped in brown paper was no longer near his hand.

During her interview with RPD and OSI, PO Yare said that as she ran down the aisle, she heard between four and six gunshots, but could not tell how many guns were involved or if there was a difference in the sound of the shots. PO Yare said as she rounded the corner at the end cap, she saw that Mr. Gordon, already on the ground, was holding onto an object and moving his hands; as she stepped closer, she was able to see that the object was a handgun, partially covered in brown paper. PO Yare said the slide of the gun was partly back, and once she determined that Mr. Gordon did not have a good grip on it, she stepped closer to him and used her foot to drag it out of his hand. PO Yare then backed away, keeping her weapon pointed at Mr. Gordon, while keeping his gun secured under her foot.

Based on the Compilation Video, after PO Boyle fired the last shot, he moved backwards to create distance, while keeping his duty weapon aimed at Mr. Gordon. At 9:36:19 p.m., PO Boyle radioed, "I know you're holding the air, but we've got shots fired, 715 West Main, male is down, still has the gun." PO Yare immediately called out, "Boyle, tell them to start EMS," and PO Boyle, hearing her say something from the other side of the aisle, asked if she was good. At 9:36:36 p.m., PO Yare radioed a request for EMS. At 9:36:50 p.m., PO Boyle again asked PO Yare, who was outside of his view, if she was good, and she responded, "Yeah, I got the gun." Less than one minute later, additional RPD officers began to arrive, provided cover, and checked all remaining aisles in the store for additional victims, witnesses, and suspects, so that they, and paramedics, could enter the aisle and approach Mr. Gordon.¹⁵ At 9:38:34 p.m., PO Boyle, while speaking to another responding officer, said, "He had one gun on him, gun's secured, I don't know if he has anything else on him. He fired one shot at me, too."

¹⁴ To aid with viewing, this portion of PO Boyle's BWC has been extracted and slowed down; the clip can be found here: [PO Boyle Clip Slow-Motion](#).

¹⁵ OSI obtained and reviewed all BWC footage from the RPD officers who responded to the scene after the shooting.

After clearing the store and confirming with PO Yare that she had the gun secured, responding officers made their way down the aisle toward Mr. Gordon. Based on RPD reports and PO Yare's BWC, at 9:40:16 p.m., officers handcuffed Mr. Gordon, and RPD Patrol Officer John Hasper assessed him for a pulse but did not find one. American Medical Response Ambulance ("AMR") paramedics and members of the Rochester Fire Department ("RFD") then arrived at Mr. Gordon's side. PO Yare's BWC footage shows that officers removed Mr. Gordon's handcuffs and the AMR paramedics moved him onto his back. The paramedics and RFD members then performed cardiopulmonary resuscitation ("CPR") and applied an automated external defibrillator ("AED"), with "no shock advised."¹⁶ At approximately 9:43 p.m., an AMR paramedic pronounced Mr. Gordon deceased.

Following PO Boyle's last shot, about four minutes passed before other responding officers, and then paramedics, entered the aisle and began trying to assess and render aid to Mr. Gordon. In their respective interviews, PO Boyle and PO Yare each said that even after the last shot was fired, they remained uncertain whether the potential threat to themselves, each other, and the people in the store was over, which is why they did not immediately approach Mr. Gordon. Specifically, PO Yare said that while she knew she had Mr. Gordon's gun secured and he appeared to have stopped moving, she was only able to see his upper half, did not see him bleeding, and did not know if he had any additional weapons. PO Yare also said that approaching Mr. Gordon would have put her in PO Boyle's crossfire. PO Boyle and PO Yare both said that while it appeared Mr. Gordon was the only suspect involved in the robbery, they did not know for certain whether he had an accomplice, and the store had not yet been cleared. As noted above, responding officers checked each aisle for additional suspects, while others provided cover; officers approached Mr. Gordon after they determined it was safe to do so.

Evidence Collection

Members of RPD's Evidence Technicians Unit ("ETU") responded to Family Dollar to process and photograph the scene; OSI also responded to the scene and personally observed the evidence before its collection.

As displayed in the below photographs, ETU photographed the gun PO Yare removed from Mr. Gordon and collected it from the area she was standing. The gun was a black Glock model 22, .40 caliber semiautomatic pistol. The brown paper wrapped around the gun was also recovered. As displayed on the right, the gun had a "stovepipe jam," meaning a fired casing did not properly eject and became trapped by the slide.

¹⁶ AEDs are fully automated. When the operator applies the pads to a person's chest the machine audibly announces, "shock advised" or "no shock advised." "No shock advised" means the operator should not proceed to apply a shock to the person, because the AED does not detect a shockable heart rhythm.



As displayed in the below photographs, ETU located one live .40 caliber round inside the chamber and 13 live .40 caliber rounds inside the magazine, which had a capacity of 15 cartridges.¹⁷



ETU processed the handgun and magazine for any potential fingerprints suitable for analysis but detected none. ETU obtained a DNA swab from the handgun, and OSI requested further analysis of the swab at the Monroe County Crime Laboratory (“Crime Lab”). As noted on the DNA report, a “DNA mixture of at least three contributors, at least one of whom was male,” was obtained from the swab, but “the mixture [was] insufficient to support an inclusion or exclusion and [was] therefore not suitable for comparison.” The serial number of Mr. Gordon’s gun had been defaced in both locations where it originally appeared.¹⁸

Notably, in the aisle where shots were fired, an apparent, fragmented projectile and metal jacking were located inside a dinnerware box on the bottom of the shelving unit to the right

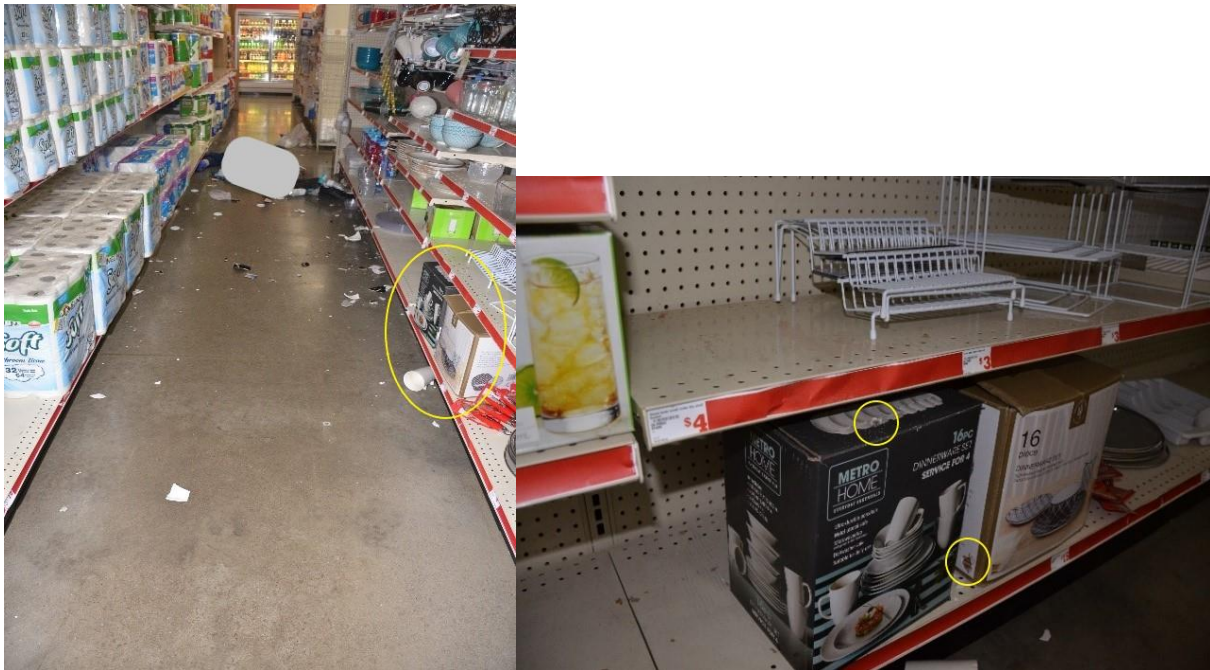
¹⁷ There is no evidence that Mr. Gordon fired more than one shot, meaning that he had one cartridge less than a full magazine when the shooting began.

¹⁸ The Crime Lab was able to restore the serial number in one location. RPD submitted the serial number into a database to inquire if the gun was stolen; OSI reviewed the inquiry results, which reveals “no hits,” meaning the gun had not been reported stolen. Based on OSI’s review of the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives National Tracing Center Report, the gun was traced to a purchaser (not Simran Gordon) in South Carolina and was purchased by that person in 2019.

of Mr. Gordon and PO Boyle. The photographs below show the fragments and jacketing within the dinnerware box, together with the dishes apparently broken by the impact of the shot.



Based on the strike marks, reflected in the photographs below, the projectile appears to have passed through the darker box on the left, before entering the adjacent box, where it ultimately came to rest after passing through and shattering the dinnerware inside.



The photograph on the left shows the overall position of the two boxes. Strike holes and projectile fragments were found in those boxes. (We have obscured the image of Mr. Gordon's body.)

The photograph on the right is a close-up view of the two boxes. The box on the left contained two strike marks: one on the top (circled) and one on the bottom right side. The box on the right had one strike mark on its left side (circled). Inside that box was an apparent fragmented projectile and metal bullet jacketing. Overall, the strike marks indicate that a bullet entered and exited the box on the left before entering, shattering the dishes, and coming to rest inside the box on the right.

The location of the boxes and strike marks indicates that the projectile was moving from Mr. Gordon toward PO Boyle, not from PO Boyle toward Mr. Gordon.

ETU collected PO Boyle's Glock Model 21, .45 caliber semiautomatic pistol; there was one live round in the chamber, and eight live rounds in the magazine, which had a capacity of 13 cartridges. Five .45 caliber spent casings were recovered on scene: two on the floor of the aisle, one on top of the right shelving unit in the aisle, one inside a coffee cup hanging on the right shelving unit, and one in front of the end cap display. The nine live rounds in the gun, and the five spent, recovered casings account for all the ammunition in PO Boyle's gun, which had a capacity of 14 rounds (13 in the magazine and one in the chamber).

ETU recovered two projectiles, in addition to the one referenced above in the dinnerware box, from inside Family Dollar: one in front of the end cap display, and one from the bottom panel of a built-in cooler at the far end of the aisle. As detailed below, Mr. Gordon sustained four gunshot wounds; multiple projectiles and projectile fragments were recovered from his body during the autopsy.

PO Boyle's gun and Mr. Gordon's gun, along with the recovered casings and projectiles, were submitted to the Crime Lab for ballistics analysis.

Ballistics Analysis

The Crime Lab test-fired Mr. Gordon's Glock 22, .40 caliber semiautomatic pistol and found it to be in working order, with no malfunctions. The Crime Lab microscopically examined the spent casing that was jammed inside the gun and identified it as having been fired from the Glock 22, .40 caliber pistol. On March 8, 2022 and March 11, 2022, OSI spoke with Nicole Flaitz, the Forensic Firearms Examiner from the Crime Lab who performed the ballistics analysis in this case. Ms. Flaitz told OSI that a "stove-pipe jam" can be caused in several ways, such as an issue with the ammunition or with the movement of the slide, but does not necessarily render a firearm inoperable, and a fired bullet can still exit the gun properly even when the casing becomes jammed. Ms. Flaitz said that the gun, in the condition she received it, did not have any obstructions or fired projectiles lodged inside. Ms. Flaitz also said that when she test-fired the gun, it did not jam.

The Crime Lab also test-fired PO Boyle's Glock 21, .45 caliber semiautomatic pistol and found it to be in working order, with no malfunctions. The Crime Lab microscopically examined each of the five .45 caliber spent casings that were recovered in the vicinity of the aisle and identified each one as having been fired from PO Boyle's gun.

The Crime Lab microscopically examined the two projectiles recovered from the built-in cooler and the area in front of the end cap display, respectively, and identified each one as having been fired from PO Boyle's gun. The Crime Lab also microscopically examined and identified two of the projectiles recovered from Mr. Gordon's body during the autopsy as having been fired from PO Boyle's gun. The Crime Lab analyzed a fired bullet core recovered from Mr. Gordon's right chest wall and a fired bullet jacket recovered from his right lung, both of which were associated with the same gunshot wound and therefore the same bullet. The bullet core was consistent with a .44 or .45 caliber projectile but was unsuitable for further comparison; the fired bullet jacket bore general characteristics consistent with .45 caliber firearms manufactured by Glock but could not be identified or eliminated as having been fired from PO Boyle's gun. However, neither the bullet core nor the bullet jacket was consistent with the .40 caliber weapon that Mr. Gordon had.

The Crime Lab determined that the projectile fragments recovered inside the dinnerware box were consistent with bullet material but were too degraded for microscopic comparison. The Crime Lab analyzed the fired bullet jacketing fragment recovered from the dinnerware box and determined that it had general characteristics consistent with firearms manufactured by Glock, among others; however, due to missing material, the Crime Lab was not able to determine the

caliber of the jacketing fragment, and, following microscopic examination, could not identify or eliminate the fragment as having been fired from either Mr. Gordon's gun or PO Boyle's gun. Ms. Flaitz did tell OSI, however, that a portion of the fragment's nose area was intact and visible, and her observations were consistent with it having a flat-nose or round-nose design, as opposed to a hollow-point design. Notably, Ms. Flaitz said that all of the projectiles fired from PO Boyle's gun were hollow-point, as were all of the live, un-fired bullets submitted to the Crime Lab from his gun. Further, Ms. Flaitz said the Crime Lab examined a live round from Mr. Gordon's gun, and determined it was a truncated bullet with a flat-nose design.

By deduction, the fragmented projectile found in the dinnerware box was fired from Mr. Gordon's gun. Six shots were fired in total – they are audible in the BWC footage and CW-4's recorded 911 call. PO Boyle's gun was missing five bullets, and Mr. Gordon's gun showed evidence of having been fired at least once. Four projectiles recovered at the scene or at the autopsy were directly linked to PO Boyle's weapon; only the bullet core retrieved from Mr. Gordon's chest wall and the projectile in the box were not direct links to his weapon. However, the bullet core from Mr. Gordon's chest wall was consistent with either a .44 or .45 caliber weapon; PO Boyle's weapon was a .45 caliber (consistent) and Mr. Gordon's weapon was a .40 caliber (inconsistent). Since that bullet could not have come from Mr. Gordon's gun, it had to have come from PO Boyle's. The projectile in the box therefore had to have come from Mr. Gordon's Glock.¹⁹

ETU also collected and photographed a grey plastic bag filled with money, located on the floor behind the front counter; a total of \$670.13 was inside the bag.

Medical Examiner

Dr. Nadia Granger, the Monroe County Chief Medical Examiner, conducted the autopsy of Mr. Gordon on October 7, 2021. OSI attended the autopsy, and obtained and reviewed Dr. Granger's final autopsy report, which lists the cause of death as "multiple gunshot wounds." In the report, Dr. Granger noted four distinct gunshot wounds, summarized below:

1. One gunshot that entered through Mr. Gordon's right hip, on the side of his body, and partially exited through the right chest, causing multiple internal injuries that included "lacerations of right kidney, adrenal gland, and liver" and "perforations of diaphragm and right lower lung lobe."
2. One gunshot that entered through the left back and exited through the left chest, causing multiple internal injuries that included "lacerations of aorta and pericardial sac" and "perforations of esophagus and left lower lung lobe."

¹⁹ As noted above, the pattern of bullet strikes in the boxes shows that the bullet was fired toward, not from, PO Boyle.

3. One gunshot that entered through the midback, causing multiple internal injuries, including “lacerations of right lower and middle lung lobes and ascending aorta” and “perforation of superior vena cava,” which carries blood to the heart.
4. One gunshot that entered through the right buttock, causing multiple internal injuries that included “lacerations of liver, pericardial sac, and right ventricle” and “perforations of diaphragm and right middle lobe.”

During an interview with Dr. Granger on March 14, 2022, she told OSI that, due to the magnitude of each gunshot wound and the internal organs damaged by each, she was unable to pinpoint which wound or wounds were the fatal wound(s); rather, Dr. Granger said that each individual wound could have been fatal on its own. Dr. Granger also opined that Mr. Gordon’s death from the gunshot wounds – collectively and individually – likely occurred within seconds to minutes. Notably, based on the BWC footage, the last gunshot fired by PO Boyle was at 9:36:06 p.m., and Mr. Gordon was pronounced deceased by paramedics at approximately 9:43 p.m. Dr. Granger opined that immediate trauma level surgery, as opposed to on-scene aid, would have been necessary to potentially save Mr. Gordon’s life, but, even then, the outcome would have been doubtful, given the major organs impacted.

LEGAL ANALYSIS

Article 35 of the New York Penal Law governs the circumstances under which an individual is justified in using deadly force against another. In order to obtain a conviction at trial, “The People [would be] required to prove beyond a reasonable doubt that [PO Boyle] was not justified” in using deadly physical force against Mr. Gordon. See N.Y. Crim. Jury Instr. 2d Penal Law Section 35.15(1). *And see People v. McManus*, 67 N.Y.2d 541, 546-47 (1986): “[W]henever justification is sufficiently interposed ... the People must prove its absence to the same degree as any element of the crime charged.”

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), and a general provision defining justification when deadly force is used by any person (Penal Law Section 35.15). As detailed below, based on the evidence reviewed in this investigation, OSI would be unable to prove beyond a reasonable doubt that PO Boyle’s use of deadly physical force was not justified under either 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.”

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).

Notably, 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]).

When interviewed by OSI and RPD, PO Boyle did not say his intention was (or was not) to arrest Mr. Gordon when he shot him – rather, he said his intent was to stop the deadly force that Mr. Gordon had just used once and then attempted to use again. It is evident, however, that PO Boyle could have reasonably believed Mr. Gordon was committing an offense – namely Robbery in the First, Second, or Third Degree (Penal Law Article 160) – even before Mr. Gordon shot at him, based on the dispatch indicating the Family Dollar was being robbed coupled with his observations of Mr. Gordon inside the store.

Once Mr. Gordon shot at PO Boyle, he would have had further probable cause to believe Mr. Gordon committed the additional offenses of 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 Criminal Possession of a Weapon in the Second Degree (Penal Law Section 265.05[3][1][b]), when he fired his gun at PO Boyle.

Considering the above, OSI initially analyzed PO Boyle’s conduct pursuant to Penal Law Section 35.30(1).

Based on his interview with RPD and OSI, PO Boyle subjectively believed that shooting Mr. Gordon was necessary to stop Mr. Gordon's use of deadly force. PO Boyle responded to the Family Dollar following a dispatch describing the incident as a robbery with "managers at gunpoint." When he entered the store, he observed Mr. Gordon, who had both hands in his pocket, behind the front counter with store employees who appeared scared. Mr. Gordon refused to remove his hands from his pocket when directed to do so and ran from PO Boyle and PO Yare. PO Boyle chased Mr. Gordon into the farthest aisle of the store and, after grabbing onto Mr. Gordon's sweatshirt, heard a gunshot that sounded like it was fired right next to his head. PO Boyle said that while he could not see Mr. Gordon's gun in the moment, he knew the gunshot came from Mr. Gordon, and, recognizing the imminent threat posed to himself, PO Yare, and the civilians in the store, PO Boyle returned fire. PO Boyle said that even after Mr. Gordon fell to the floor, he was still holding the gun and raising it toward the open aisle to his right; in that moment, knowing that Mr. Gordon had already fired once, PO Boyle said he again feared not only for his safety, but also for the safety of PO Yare and the customers and employees in the store, which is why he fired a final shot at Mr. Gordon.

Under the circumstances presented above, OSI would be unable to prove that PO Boyle's subjective beliefs were unreasonable.

PO Boyle's account is corroborated by his and PO Yare's BWC footage. Further, the Store Video and OSI's interviews of the store employees show that Mr. Gordon was armed with a gun prior to the officers arriving on scene. The BWC footage confirms that, once the officers arrived and confronted him, Mr. Gordon kept his hands inside his pocket despite the commands issued by PO Boyle and PO Yare, and then he ran from them. The physical evidence also corroborates that Mr. Gordon fired his gun, as there was a spent shell casing jammed in his gun, and a fragmented projectile recovered on scene that, by deduction, had to have come from his gun. As noted above, based on its trajectory and final resting place, that projectile appears to have been fired toward, not by, PO Boyle.

The evidence also corroborates PO Boyle's claim that Mr. Gordon was the first to fire. As noted above, PO Boyle's BWC footage shows that he was running after Mr. Gordon, with his gun apparently pointed downward, when the first gunshot was fired. After the first gunshot is heard on the BWC, the vantage point changes and becomes consistent with PO Boyle entering a shooting stance and firing four times in rapid succession, followed by a fifth, and final, gunshot, while Mr. Gordon is on the ground. PO Boyle's and PO Yare's BWC footage also corroborate that Mr. Gordon was grabbing onto his gun after he had fallen to the ground, contemporaneous with PO Boyle's last shot.

Overall, the evidence demonstrates that Mr. Gordon fired his gun in PO Boyle's direction and continued to reach for it after PO Boyle's first four shots were fired, which PO Boyle reasonably perceived as an active, imminent threat to the officers and civilians who were in the store; thus,

OSI would similarly be unable to prove that PO Boyle's subjective beliefs and the actions he took were objectively unreasonable.

As noted above, Penal Law Section 35.15 provides that any person, not only police officers, can use deadly force if that person reasonably believes that deadly force is being used or about to be used against him or her. OSI also analyzed PO Boyle's shooting under this section of law and determined that even if PO Boyle was not attempting to arrest Mr. Gordon for an offense, OSI would not be able to prove beyond a reasonable doubt that he was not justified in using deadly physical force against Mr. Gordon.

Penal Law Section 35.15(2)(a), unlike Section 35.30 governing police use of deadly force, mandates that a person may *not* use deadly physical force "if [that person] knows that with complete personal safety, to [that person] and others he or she may avoid the necessity of [using deadly physical force] by retreating."

The evidence demonstrates that if PO Boyle believed he could not have retreated with complete safety to himself or others, that belief was reasonable. PO Boyle responded to the scene of an armed robbery in progress, and saw Mr. Gordon with his hands in his pocket, and several store employees nearby. Mr. Gordon refused to comply with PO Boyle's demands to remove his hands, and then ran from him. Believing that Mr. Gordon was the suspect in an armed robbery that was actively unfolding when he arrived, PO Boyle pursued Mr. Gordon as he fled from him in a store occupied by employees, customers, and a fellow officer. According to PO Boyle, and as corroborated by the physical evidence, PO Boyle fired his gun only after Mr. Gordon fired at him. Based on Mr. Gordon's actions leading up to PO Boyle's shots, and his actions after PO Boyle fired, there is no evidence that PO Boyle could have retreated with complete safety to himself or the others in the store.

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

RECOMMENDATION

Police departments should take care when issuing public statements about a person who died in an encounter with a police officer

After the incident discussed in this report, the press reported on allegations made by the Rochester Police Department about prior crimes by Simran Gordon. The text of an online item from television station WHEC on October 7, 2021, stated:

“The suspect shot and killed by Rochester Police during a shootout at a store Wednesday night is believed to be tied to at least three people killed, Chief Cynthia Herriott-Sullivan said Thursday.

“During an update on a separate investigation, the chief took time to provide an update on the shooting. While she did not release the suspect's name, she did say investigators believe the murders happened between 2020 and 2021, though specific dates were not given.”²⁰

And the newscaster’s voiceover in the video of an online item from WHEC on October 8, 2021 stated:

“Police say they believe he [Gordon] is connected to three prior murders in the city.”²¹

OSI did not investigate these allegations about Mr. Gordon’s prior conduct because, even if true, such facts would not have been relevant to the analysis in this case: there is no reason to believe either of the officers who responded to the 911 call at the Dollar Store was aware of these allegations, and therefore no reason to believe the allegations were relevant to the reasonableness of PO Boyle’s belief that he needed to use deadly physical force.

Although not relevant to OSI’s analysis, the police department’s allegations are nonetheless problematic. We recognize that the public has an interest in knowing who the persons were who died in encounters with police, including the backgrounds of those persons. On the other hand, public statements alleging that a person committed prior crimes will not only be painful to the person’s surviving family members – causing them to feel that their relative’s character has been assailed in an effort to justify police conduct – but could even prejudice the investigation of the person’s death, by creating the erroneous impression that the alleged prior crimes are relevant to OAG’s analysis.

Therefore, police departments, when issuing statements about a decedent’s alleged prior

²⁰ [Latest: RPD says suspect shot and killed in police shootout may be tied to several murders | WHEC.com](#)

²¹ [RPD releases ID of man killed in shootout with officers on W Main Street | WHEC.com](#)

crimes, should strike a balance between the public's right to know, the interests of the decedent's surviving family members, and the integrity of the investigation of the death. At minimum, any statement by a police department about a decedent's alleged prior crimes:

- Should be well founded. Statements based on mere suspicion should be avoided;
- Should be appropriately framed as a mere allegation, unless it is a statement about an actual criminal conviction;
- Should be prominently accompanied by a caution that the alleged prior crime is not relevant to the legality of the conduct of the officers in the incident that resulted in the decedent's death.

Date: September 16, 2022