



Office of the New York State Attorney General Lettla James

Office of Special Investigation

February 16, 2024

Report on the Investigation into the Death of Manuel Kelvin Beras Medina

MANUEL KELVIN BERAS MEDINA - REPORT

OVERVIEW

New York Executive Law Section 70-b directs 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 or a peace officer. When OSI does not seek charges against the officer, Section 70-b requires OSI to issue a public report describing its investigation. This is the public report of OSI's investigation of the death of Manuel Kelvin Beras Medina, who was shot and killed on November 18, 2022, by New York City Police Department (NYPD) members of a joint state, city, and federal Strike Force, in the County of New York.

On November 18, 2022, the Strike Force, working in conjunction with federal prosecutors from the United States Attorney's Office for the Southern District of New York, was attempting to purchase kilograms of cocaine from a seller believed to be at 72 Vermilyea Avenue, Apartment 1B, in Manhattan. At 8:30 p.m.,¹ Strike Force members received information that cocaine was visible in the apartment and entered the apartment and identified themselves as police officers. Mr. Medina, who was in the apartment, pulled a firearm from his waistband, racked the slide, and fired at the officers. Officers returned fire, killing Mr. Medina.

Having thoroughly investigated the facts and analyzed the law, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' use of deadly force against Mr. Medina was justified under New York law and will not seek charges against them.

FACTS

The Scene

The shooting occurred in Apartment 1B at 72 Vermilyea Avenue in the Inwood neighborhood of Manhattan. 72 Vermilyea Avenue is a five-story residential apartment building. Apartment 1B is on the ground floor. To the left of the apartment entrance is a living room area and past that is a kitchen. The kitchen has an open doorway and a half counter separating it from the living room; to the right of the entrance are bedrooms and a bathroom.

Background of Primary Police Officers Involved

OSI interviewed the NYPD officers who fired their weapons in 72 Vermilyea Avenue. They were part of a joint state, city, and federal Strike Force, comprised of NYPD Officers, New York State

¹ All times are approximate unless otherwise indicated.

Police Troopers, and Special Agents from the United States Drug Enforcement Administration (DEA) and Department of Homeland Security.

Lieutenant Michael Pomerantz became a member of the NYPD in 2008 and was appointed to the Strike Force in 2021. Lt. Pomerantz was involved in one other police involved shooting in his NYPD career: in 2015 Lt. Pomerantz responded to a 911 call of an armed robbery in the Bronx; he and his fellow officers were fired upon by Jason Polanco; Sgt. Pomerantz fired in the direction of Mr. Polanco, but did not strike him; two officers were struck by bullets fired by Mr. Polanco. Mr. Polanco was subsequently convicted after trial of state and federal charges related to the shooting.

Detective Nelson Pabon became a member of the NYPD in 1993 and was assigned to the Strike Force in 2013. He had never fired his service weapon in the line of duty except for training purposes prior to the shooting on November 18, 2022.

Det. Christopher Welch became an NYPD officer in 2008 and was assigned to the Strike Force in May of 2022. Prior to November 18, 2022, Det. Welch had never fired his weapon in the line of duty except for training.

Det. Leslie Gauvin became a member of the NYPD in 2001 and was appointed to the Strike Force in March of 2022. Prior to becoming a member of the Strike Force, Det. Gauvin shot and killed a dog that was charging at a group of pedestrians. Det. Gauvin fired one time and faced no disciplinary action because of the shooting.

OSI also interviewed the non-shooting NYPD members of the Strike Force: Det. Robert Cruz, Det. Richard Hyde, Det. Jeremy Veit, Det. Jeremy Rodriguez, Det. Robert Salerno, Sergeant Aliro Pellerano, Lt. Romaine Wilson, and Captain Thomas Fraser.

OSI requested to interview DEA Special Agent Mark Hadzywycz who was a member of the Strike Force and was present at the shooting. Agent Hadzywycz declined to speak voluntarily.

None of the Strike Force members had encountered Mr. Medina prior to November 18, 2022.

Events Leading to the Shooting

On November 18, 2022, the Strike Force was attempting to buy seven kilos of cocaine from a subject. The operation was led by Sgt. Aliro Pellerano.

According to Sgt. Pellerano, the Strike Force members met at an NYPD police precinct. All members were in plain clothes. Arrangements were made to purchase the cocaine at a restaurant in Inwood in upper Manhattan. The Strike Force members, including Sgt. Pellerano,

Lt. Pomerantz, Lt. Wilson, Cpt. Fraser, Det. Hyde, Det. Veit, Det. Salerno, Det. Rodriguez, Det. Pabon, Det. Gauvin, and Det. Welch, said they left the precinct for the restaurant around 7:00 p.m. The officers all took different unmarked police cars.

Sgt. Pellerano said that, after the officers waited on the street in the vicinity of the restaurant for around thirty minutes, the seller changed the buy location to 72 Vermilyea Avenue. Sgt. Pellerano radioed that information to the Strike Force, and the team members drove to the new location.

Upon arriving at Vermilyea Avenue between Academy Street and West 204 Street, the Strike Force members told OSI that they positioned themselves at different points on the block. Det. Gauvin and Det. Pabon told OSI that they were assigned to be “Ghosts,” meaning they would shadow the drug operation by being in the vicinity of the buy location, in plain clothes, keeping watch. Sgt. Pellerano, Lt. Pomerantz, and Cpt. Fraser were in a car a few car lengths from 72 Vermilyea Avenue.

A man, later determined to be Mr. Medina, walked out of 72 Vermilyea Avenue, talking on a cell phone. Det. Gauvin said he took a photo of Mr. Medina and texted it to the Strike Force team.

Det. Gauvin and Det. Pabon observed Mr. Medina enter the lobby of 72 Vermilyea Avenue. After entering the lobby, he went to Apartment 1B which is at the back of the lobby area on the left. Det. Pabon said he went into the building.² The door to 1B was left slightly open.

Sgt. Pellerano said he received information that drugs were visible in the apartment.³ At 8:30 p.m. Sgt. Pellerano said he gave a signal over the radio for officers to move into the apartment.

The Shooting

Det. Pabon said he entered the apartment and shouted, “NYPD police, show your hands.” Det. Pabon said he saw Mr. Medina in the living room area remove a semi-automatic firearm from his waistband and rack the slide. Det. Pabon said another person in the room, later identified as Jeffry Silvestre, was also moving for his waistband. Det. Pabon grabbed Mr. Silvestre and kept his hand on Mr. Silvestre’s hand, which was by Mr. Silvestre’s waistband. Det. Pabon said he could feel a gun in Mr. Silvestre’s waistband. Lt. Pomerantz and Det. Welch said they rushed into the apartment and as they entered yelling police Mr. Medina fired at Det. Pabon. Det. Pabon said Mr. Medina fired one time in his direction. Det. Welch, Lt. Pomerantz, and

² Det. Pabon and the other Task Force members did not wear body worn cameras because they did not want to be identifiable as police officers prior to the purchase of the drugs.

³ The nature of this information cannot be made more specific without revealing confidential Task Force methods.

Det. Pabon returned fire. Det. Gauvin said he entered the apartment and saw Mr. Medina fire. They said Mr. Medina fired as he backed into the kitchen. Det. Pabon fired until his weapon went into slide lock. Lt. Pomerantz said he fired three to four times until his gun malfunctioned. He cleared the malfunction and fired till his weapon went into slide lock and he saw Mr. Medina fall out of sight in the kitchen area. Det. Welch said he fired four times until Mr. Medina was out of sight in the kitchen. Det. Gauvin said he fired one time. Det. Welch said he saw a semi-automatic firearm at the feet of Mr. Silvestre. The officers ran out of the apartment. Mr. Silvestre was dragged out of the apartment and cuffed by Det. Pabon and Lt. Pomerantz.

Lt. Pomerantz and Det. Pabon fired their department issued service weapons, Glock 19 semi-automatic firearms loaded with Speer brand 9mm ammunition. Det. Welch and Det. Gauvin fired their off-duty weapons. Det. Welch was armed with a Smith & Wesson 3953 semi-automatic firearm. Det. Gauvin was armed with a Sig Sauer P365 semi-automatic firearm. Both weapons were loaded with NYPD approved Speer brand 9mm ammunition. Det. Welch and Det. Gauvin told OSI they carried their off-duty weapons because they were in an undercover operation and the off-duty weapons were more easily hidden from view.

NYPD's Force Investigation Division (FID) interviewed DS⁴ who lived at 72 Vermilyea Avenue. The interview was recorded. DS did not witness the shooting, but remembered hearing male voices repeatedly shouting NYPD and Police before any shots were fired.

The Aftermath

Strike Force members gathered outside Apartment 1B and yelled for Mr. Medina to come out of the apartment. There was no response. A tactical shield was brought into the building by one of the team members and the officers lined up against the stairwell opposite Apartment 1B and held the door. Det. Hyde radioed for NYPD's Emergency Services Unit (ESU) to respond. Det Hyde told OSI they feared that Mr. Medina was barricaded in the apartment.

ESU officers responded to the building in full tactical gear and were equipped with body worn cameras (BWCs). They lined up outside Apartment 1B. As seen on BWC, the first officer on the line, Det. Robert Cruz of ESU, repeatedly yelled into the apartment for Mr. Medina to come out and that they wanted to help him. There was no response. According to BWC, ESU entered the apartment at 9:28 p.m.

OSI interviewed Det. Stuart Eiel of ESU and reviewed his BWC. Det. Eiel said when he entered the apartment, he moved to the kitchen area where he saw Mr. Medina face down by a back window. The apartment was dark and a bullet had ruptured a gas line, causing a gas leak. Det. Eiel said, and his BWC confirmed, that he went over to Mr. Medina and Mr. Medina's hands were under his body. Det. Eiel removed Mr. Medina's right hand from under his body

⁴ OSI uses initials when identifying civilian witnesses.

and found Mr. Medina to be holding a gun. Det. Eiel had to shake Mr. Medina's hand to dislodge the weapon, which was in slide lock. The portion of Det. Eiel's BWC video showing him taking Mr. Medina's hands from under his body and shaking the gun loose is in the following link: [Det. Eiel BWC](#).



Still from Det. Eiel's BWC showing Det. Eiel handcuffing Mr. Medina and a gun in the top right corner of the frame.

According to BWC, Emergency Medical Technicians (EMTs) entered the apartment and tended to Mr. Medina. There were no signs of life and they declared him dead in the apartment.

Jeffrey Silvestre was arrested and subsequently charged with conspiracy to distribute narcotics and firearms offenses in the Southern District of New York. He later pleaded guilty to conspiracy to distribute narcotics. Through his attorney, Jeffrey Silvestre declined to speak with OSI.

Evidence Collection and Analysis

Ballistics Evidence

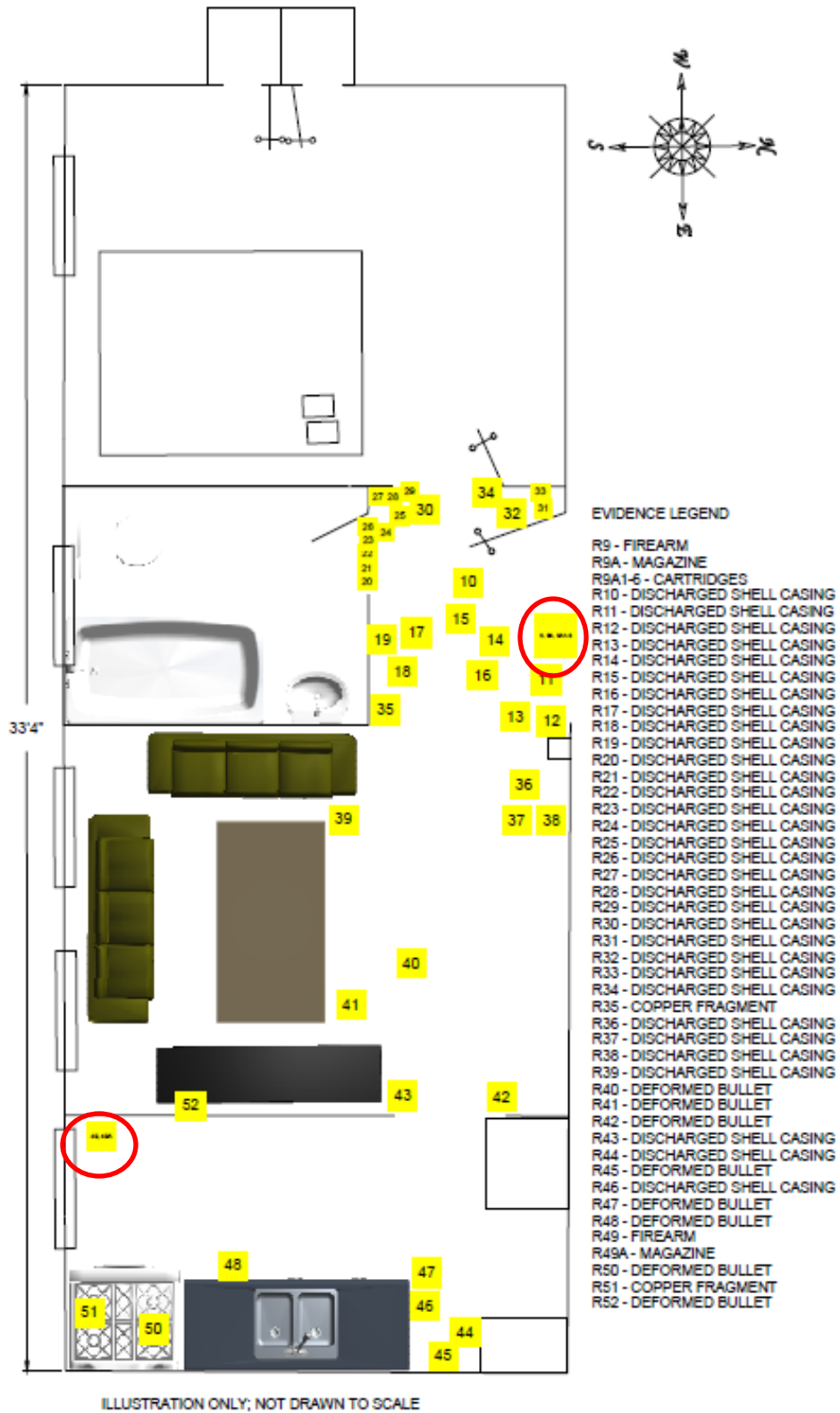
CSU processed Apartment 1B for ballistics evidence. CSU recovered two firearms in the apartment, one by the apartment door and one in the kitchen next to Mr. Medina. The firearm recovered from near the apartment door was a Taurus Millennium G2 9mm firearm loaded with five live rounds. The firearm recovered from the kitchen was a Polymer80 Inc. PF9SS; the firearm had no serial number and bore the characteristics of a "ghost gun," or a privately made firearm.



CSU photograph of the gun recovered from the kitchen, near Mr. Medina.



CSU photo of the firearm recovered from the doorway to Apartment 1B.



CSU map showing location of recovered ballistics evidence. OSI added red circles to show where firearms were recovered: Evidence Legend R9 and R9A are the gun by the front door; R49 and R49A are the gun in the kitchen.

CSU recovered thirty-seven shell casings consistent with NYPD issued ammunition and three shell casings not consistent with NYPD issued ammunition. The three casings that were not NYPD issued are R43, R44, and R46 in the above map. Shell casing R43 was recovered in the living room at the entranceway to the kitchen and shell casings R44 and R46 were recovered in the kitchen.

The NYPD police laboratory tested the officers' firearms and the firearms recovered from the apartment for operability. All the firearms, including the Polymer80 Inc. 9mm found in the kitchen, were operable.

The laboratory compared the three non-NYPD issued shell casings found in the apartment with test fires from the Polymer80 Inc. 9mm firearm recovered from the kitchen. The non-NYPD issued shell casings were found to have been ejected from the Polymer80 Inc. 9mm.

The NYPD compared the remaining shell casings from the scene with the officers' firearms and concluded that Lt. Pomerantz fired sixteen times, Det. Welch fired four times, Det. Pabon fired sixteen times, and Det. Gauvin fired once, a total of 37 shots.

Other Evidence

Pursuant to a search warrant signed by a judge in the Southern District of New York, two kilos of cocaine and United States Currency, along with other items, were recovered from Apartment 1B.

Medical Examination and Autopsy

OSI spoke with Dr. Andrea Coleman, of the City of New York Office of Chief Medical Examiner and reviewed the autopsy report she prepared. Dr. Coleman determined that the cause of Mr. Medina's death was "penetrating gunshot wound of chest with injuries of heart and lung" and the manner of his death was "homicide (shot during encounter with law enforcement)." Mr. Medina's autopsy report indicated that he suffered a gunshot wound to the left chest which went through his heart and lung. A deformed bullet was recovered from his chest cavity. The bullet travelled through his chest from left to right and front to back. Mr. Medina also suffered a perforating gunshot wound to his right forearm and one to his left forearm. Perforating means there were both entrance and exit wounds. A deformed bullet was found in Mr. Medina's clothing by his upper right arm.

LAW

Article 35 of the New York Penal Law defines the circumstances under which a person may be justified in using deadly force against another. Justification is a defense, Penal Law Section

(PL) 35.00, not an affirmative defense. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1). As detailed below, based on the evidence in this investigation, a prosecutor would be unable to disprove beyond a reasonable doubt that the use of deadly physical force by the discharging officers was justified.

In this case, the Strike Force officers used deadly physical force. Under PL 10.00(1) deadly physical force is “physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.” Under PL 10.00(10) serious physical injury is “physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

PL 35.30 is the provision defining justification when a police officer or peace officer uses force to effect or attempt to effect an arrest.

PL 35.30(1) provides:

“A police officer or a peace officer, in the course of effecting or attempting to effect an arrest ... of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest ... or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that ... (c) regardless of the particular offense which is the subject of the arrest ... the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.”

The law, therefore, delineates the circumstances where physical force and deadly physical force are justified. Deadly physical force by a police officer is justified when the officer reasonably believes deadly force is necessary to defend the officer or another against the imminent use of deadly physical force. Police officers using force pursuant to PL 35.30(1) are under no duty to retreat when threatened with deadly physical force, according to PL 35.15(2)(a)(ii).

Under Article 35, “reasonable belief” means that a person actually believed, “honestly and in good faith,” that physical force was about to be used against him and that physical force was necessary for self-defense, and that a “reasonable person” under the same “circumstances” could have believed the same. *People v. Goetz*, 68 N.Y.2d 96 (1986); *People v. Wesley*, 76 N.Y.2d 555 (1990). Therefore, before using deadly force in self-defense, a person must honestly and in good faith believe deadly force was about to be used against them, deadly

force was necessary for self-defense, and a reasonable person under the same circumstances could have believed the same.

Based on the evidence in this investigation, a prosecutor would not be able to disprove beyond a reasonable doubt that the officers' use of deadly physical force was justified under the law. Under PL 35.30, the Strike Force officers could use the physical force they reasonably believed to be necessary to effectuate the arrest of Mr. Medina and could use deadly force if they reasonably believed it was necessary to defend themselves against Mr. Medina's use or imminent use of deadly force.

Here, the officers were attempting to make an arrest after an attempt to purchase kilos of cocaine. When they made entry into the apartment, Det Pabon announced himself as a police officer and Mr. Medina fired at him, committing the Penal Law offense of attempted murder of a police officer. Dets. Pabon, Gauvin, and Welch, and Lt. Pomerantz fired at Mr. Medina until he was no longer visible in the kitchen area. The officers then retreated from the apartment. Ballistics analysis indicated that Mr. Medina fired three times. The three shell casings from the rounds fired by Mr. Medina were recovered from the living room at the entrance to the kitchen and the kitchen itself, which corroborates the officers' statements that Mr. Medina opened fire in the living room and continued to fire as he retreated into the kitchen.

In sum, based on the law and the evidence, OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that the discharging NYPD officers' use of deadly force against Mr. Medina was justified under New York law. As a result, OSI will not seek charges in the matter.

Dated: February 16, 2024.