



Office of the New York State Attorney General Letitia James

Office of Special Investigation

February 4, 2025

Death of Rakeem Tillery, on January 3, 2024

OVERVIEW

New York Executive Law Section 70-b (Section 70-b) authorizes the Attorney General's Office of Special Investigation (OSI), to investigate, and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer. When, as in this case, OSI does not seek charges, Section 70-b requires OSI to issue a public report. This is the public report of OSI's investigation of the death of Rakeem Tillery, who was shot on January 3, 2024, by members of the New York State Police (NYSP) and died of his wounds.

On January 3, 2024, at 2:53 p.m., acting on information that a man who had shot another man in Albany had fled southbound in a white Mercedes with license plate KZL7124, NYSP Troopers Steven Missale and Ronald Raymond pulled over a car matching that description on Interstate 87 (I-87) in Rockland County. The troopers were in separate cars: Trooper Missale pulled over behind the Mercedes, and Trooper Raymond pulled over behind Trooper Missale. The troopers' body worn cameras (BWCs) were activated when the troopers engaged their cars' emergency lights. As the troopers were getting out of their cars, the driver of the Mercedes, later identified as Rakim Tillery, was already out of his car and fired a gun at the troopers. Trooper Missale fired multiple shots at Mr. Tillery, who dropped his gun and fell to the roadway. As Trooper Missale ran toward Mr. Tillery, Mr. Tillery got up and came at Trooper Missale and tackled him to the ground. As Mr. Tillery and Trooper Missale grappled, Mr. Tillery grabbed for Trooper Missale's gun. Trooper Raymond came running over from his car and fired three shots at Mr. Tillery, causing Mr. Tillery to stop struggling with Trooper Missale. Mr. Tillery was pronounced dead at the scene at 3:08 p.m.

Having thoroughly investigated the matter 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. Tillery was justified and, therefore, will not seek charges.

FACTS

At 1:03 p.m. on January 3, 2024, Albany Police Department detectives responded to a block on Hudson Avenue for a reported homicide. Multiple calls to Albany 911 had reported that a man had been shot and that a white car had fled the scene moments after the shots were heard. Upon arrival police found a man lying on the sidewalk, being treated by EMS for a gunshot wound to the head. Officers questioned people at the scene who said a Black man was near the victim when the shots were fired and then got into the driver's seat of a white Mercedes Benz with black rims and sped off. Police searched the area for a gun and spent ammunition casings but found neither.

Albany police canvassed local homes for video and found a video showing the white Mercedes parking on Hudson Avenue, the victim leaving a house nearby and walking toward the Mercedes, and a person stepping out of the Mercedes right before the video ended, see *Figure 1*. Another video showed the victim lying on the ground on a sidewalk on Hudson Avenue as the Mercedes sped away, see *Figure 2*.

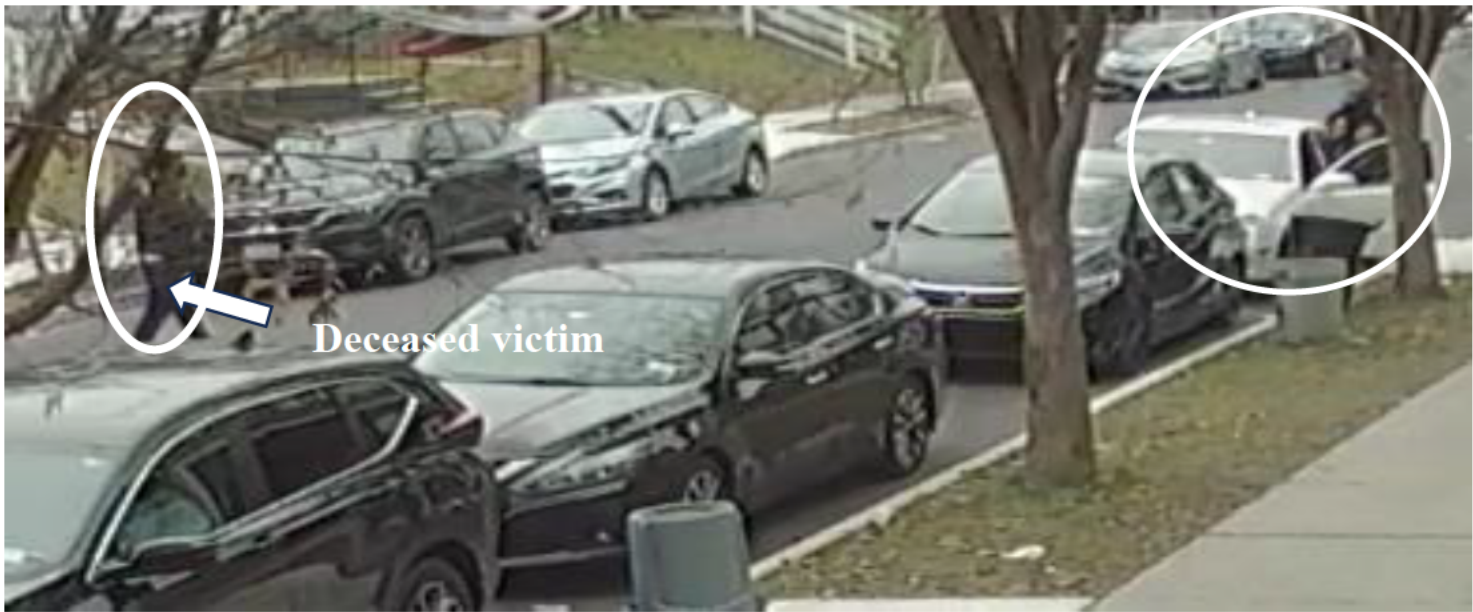


Figure 1: Still image from home security video showing the victim walking toward the white Mercedes and the driver's door of the Mercedes open with a man standing near it.

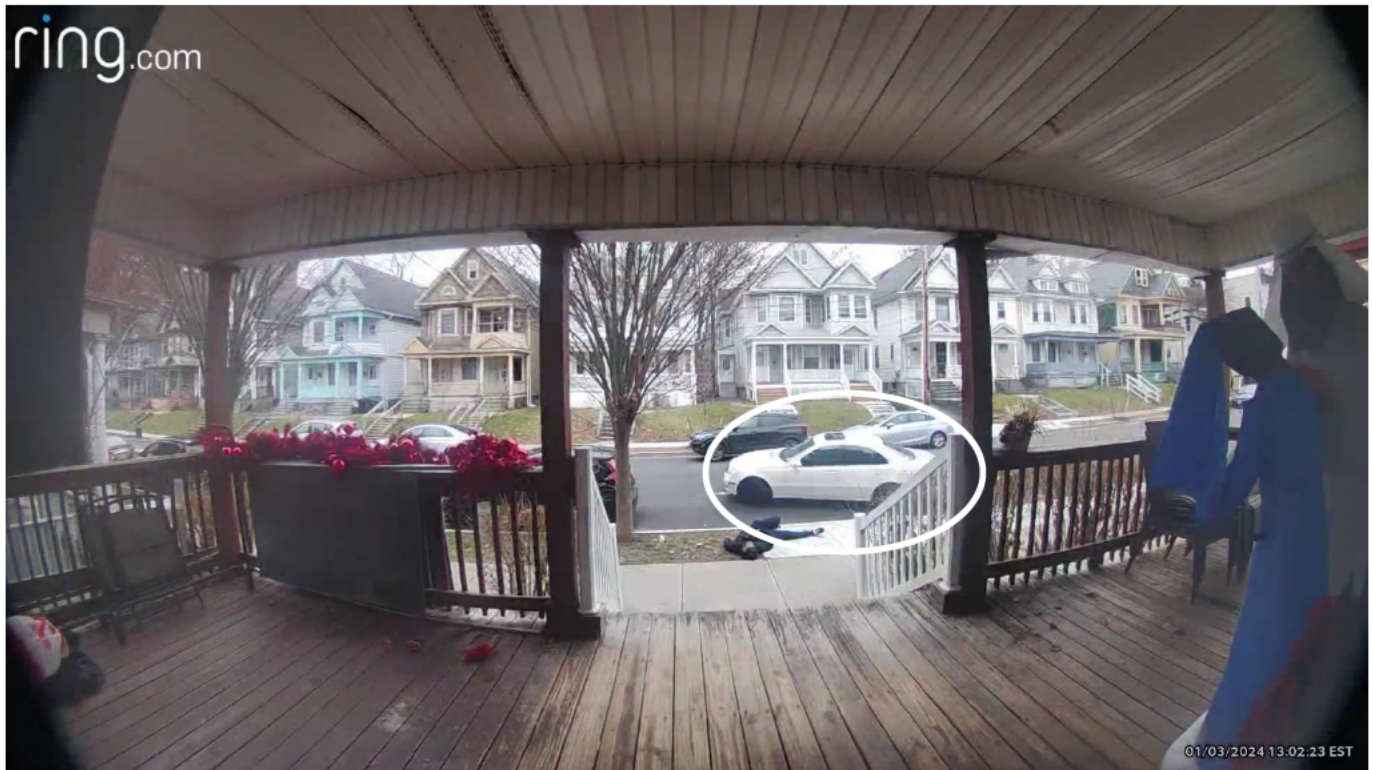


Figure 2: Still image from home security video showing the victim the ground and the white Mercedes driving away.

Using these and other videos, Albany police obtained the car's license plate number, New York KZL7124, and relayed that information to the Capitol Region Crime Analysis Center, which alerted area law enforcement to be on the lookout for the Mercedes. Albany police also told the Crime Analysis Center that no gun was recovered from the scene.

At 1:48 p.m. a license plate reader on I-87 near the People's Road overpass (mile marker 100), in Ulster County, showed NY registration KZL7124 traveling southbound. The Capitol Region Crime

Analysis Center gave this information to NYSP, informed them that the car had been seen leaving the scene of a homicide and that the weapon had not been recovered, and requested that NYSP stop the car and detain the driver. NYSP radioed to all patrol vehicles in the area the description of the car and last known location, adding “vehicle was involved in a homicide” and “no suspect description, handgun was used in the homicide and not recovered.”

At 2:54 p.m., on I-87 in Rockland County, Troopers Raymond and Missale, driving separate cars, observed the white Mercedes traveling southbound on I-87 and initiated a traffic stop, just before exit 15A, in the circled area shown below in Figure 3. The troopers BWCs, which were activated when the emergency lights in the car were engaged, showed that the white Mercedes pulled to the side of the road, that Trooper Missale pulled over behind the Mercedes, and that Trooper Raymond pulled over behind Trooper Missale. (The BWC videos can be viewed with these links:

<https://vimeo.com/1031616152/c12aa2c81a?share=copy>

<https://vimeo.com/1031616606/21e758e0a1?share=copy>.



Figure 3: Aerial image of I-87 in Ramapo, with the area of the traffic stop circled.

The troopers’ BWCs showed that the driver of the white Mercedes, later identified as Rakeem Tillery, was already outside his car as the troopers were getting out of their cars, as shown below in *Figures 4 and 5*.



Figure 4: Still image from Trooper Missale's BWC showing Mr. Tillery outside the Mercedes as Trooper Missale was getting out of his car.



Figure 5: Still image from Trooper Raymond's BWC showing Mr. Tillery outside the Mercedes as Trooper Raymond was getting out of his car.

As Trooper Missale was getting out of his car his BWC captured audio of two muffled gunshots and then showed that Trooper Missale drew his firearm and fired multiple shots at Mr. Tillery in rapid

succession. After the shots were fired, Trooper Missale's BWC showed Rakeem Tillery on the ground in the roadway, and a gun on the ground several feet away. Trooper Missale ran toward Mr. Tillery, ordering him to stay down. Mr. Tillery stood up and came at and tackled Trooper Missale to the ground, as shown below in *Figures 6, 7 and 8*.



Figure 6: Still image from Trooper Missale's BWC showing Mr. Tillery on the ground just after Trooper Missale fired the initial round of shots.



Figure 7: Still image from Trooper Missale's BWC showing Mr. Tillery coming at Trooper Missale.



Figure 8: Still image from Trooper Raymond's BWC showing Mr. Tillery tackling Trooper Missale.

The BWCs showed Trooper Missale and Mr. Tillery grappling on the ground; Mr. Tillery appeared to be trying to grab Trooper Missale's gun, see *Figure 9*.



Figure 9: Still image from Trooper Missale's BWC showing Mr. Tillery's left hand and Trooper Missale's right hand on Trooper Missale's gun.

The BWCs showed that Trooper Raymond ran toward Trooper Missale and Mr. Tillery as they grappled and fired three shots at Mr. Tillery. After the third shot Mr. Tillery ceased to struggle. At 2:55 p.m., about 53 seconds after the third shot was fired, Trooper Missale radioed for EMS to come. At that point the two troopers began to secure the scene and divert traffic; they did not begin lifesaving measures. EMS arrived at 3:07 p.m. and pronounced Mr. Tillery dead a minute later.

Autopsy

Dr. Laura Carbone of the Rockland County Medical Examiner's Office conducted the autopsy and determined that Mr. Tillery died because he was struck by three penetrating gunshot wounds to the torso and one penetrating gunshot wound to the head. ("Penetrating" means the bullets remained in the body.) Dr. Carbone deemed the manner of death to be "homicide." Dr. Carbone removed four bullets from Mr. Tillery's body and submitted them to NYSP for ballistics examination.

Ballistics

NYSP's Forensic Investigation Unit (FIU) recovered one Springfield Armory 9mm pistol from the ground where Mr. Tillery had dropped it, as shown below in *Figures 9 and 10*. The 9mm's magazine was empty. FIU recovered two 9mm shell casings from the scene, 17 .45 caliber shell casings and two bullet fragments. FIU submitted Mr. Tillery's pistol, the two troopers' pistols, both of which were .45 caliber

pistols, and the recovered shell casings and fragments to NYSP's Forensic Investigation Center (FIC) for testing.

FIC test fired the three pistols and found that all were operable. The pistols were test fired in a controlled environment using fresh ammunition. FIC then used the spent ammunition from those test shots and compared them to spent ammunition recovered from the scene and from Mr. Tillery during the autopsy. FIC analyzed the bullets recovered during the autopsy and determined that two were fired by Trooper Raymond's firearm and one by Trooper Missale's firearm. FIC found the fourth bullet from the autopsy (recovered from Mr. Tillery's shoulder) to be consistent with .45 caliber ammunition but could not match it to either trooper's gun.

Trooper Missale and Trooper Raymond were utilizing State Police-issued Glock .45 caliber pistols on the day of the incident. Each of their Glock .45 caliber pistols had a maximum capacity of 14 rounds (13 rounds in the magazine and one round in the chamber). Based on a post-shooting examination of their firearms' state of load, Trooper Missale's weapon had no remaining rounds and, therefore, had fired 14 shots, and Trooper Raymond's weapon had 11 remaining rounds and, therefore, had fired three shots, assuming the pistols had been fully loaded. FIU recovered spent shell casings from the scene and determined that 14 came from Trooper Missale's weapon and three from Trooper Raymond's.



Figure 10: FIU photo of the gun recovered from the roadway, near where Mr. Tillery initially fell.



Figure 11: FIU photo of Mr. Tillery's pistol after processing.

Police Officer Interviews

OSI asked to interview Troopers Missale and Raymond, but, through their attorneys, both refused to be interviewed.

Civilian Witness Interviews

BB

OSI interviewed BB (OSI does not publish the names of civilian witnesses) who said they were working as a school bus monitor, riding southbound on I-87 at the time of the incident. BB saw two NYSP cars pull behind the “white car” and saw the driver of the white car get out and shoot at the troopers; the troopers ducked and returned fire. BB saw muzzle flash from the white car’s driver’s handgun, which the driver was pointing at the troopers. BB said they were certain that the driver fired first.

A recording from BB’s vehicle was turned over to OSI. The recording consisted of both video and audio, but the video was pointed toward the bus’s passengers and did not capture the incident. The audio captured the sound of two shots prior to the succession of shots fired by Trooper Missale. Using the time stamps on BB’s vehicle’s video and the BWC videos, OSI was able to overlay BB’s audio with the audio and video captured on the BWCs. The resulting video is consistent with BB’s recollection that the white car’s driver shot first, as two shots were audible before either Trooper discharged his firearm.

JS

OSI interviewed JS who said they were driving southbound on I-87 at the time of the incident. JS said that as they passed the white Mercedes, which had been pulled over by two state troopers, they

observed someone open the door of the white car, step out and raise their arm. JS said they saw a gun in the person's hand and then heard multiple gun shots.

DJ

OSI interviewed DJ who said they were driving southbound on I-87 at the time of the incident and saw that two troop cars had pulled over a white Mercedes. DJ said as the troopers got out of their cars a man in the white Mercedes got out and aimed a gun at the troopers and then fired. DJ said that the man in the Mercedes, who they said was wearing a ski mask, fired at the troopers before the troopers had drawn their weapons from their holsters.

LEGAL ANALYSIS

New York Penal Law Article 35 sets forth the defense of justification to crimes involving the use of physical force. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. If a defense is raised at trial, the burden is on the prosecutor to disprove it beyond a reasonable doubt, PL 25.00(1).

As the Court of Appeals recently stated in *People v Castillo*, Slip Opinion, November 21, 2024:

“The defense of justification provides that a person may use physical force to defend himself against an assailant’s ‘imminent use of unlawful physical force,’ but does not authorize the use of ‘deadly physical force . . . unless . . . [the person] reasonably believes that [the assailant] . . . is using or about to use deadly physical force’ (Penal Law § 35.15). When considering a request for a justification charge, courts examine the evidence in the light most favorable to the defendant, and must provide the instruction if there is any reasonable view of the evidence that defendant was justified in his actions (see *People v Heiserman*, 39 NY3d 988, 990 [2022]). Justification has both a subjective requirement, that ‘defendant . . . actually believed . . . he [was] . . . threatened with the imminent use of deadly physical force,’ and an objective requirement, that defendant’s ‘reactions were . . . those of a reasonable man acting in self-defense’ (*People v Collice*, 41 NY2d 906, 907 [1977]).”

Castillo, Slip Opinion at 3 (square brackets and ellipses in the original).

Deadly physical force is force that “under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.” PL 10.00(10).

Police officers attempting to make an arrest for an offense are not obligated to retreat before using deadly physical force in response to deadly physical force being used against themselves or another, even if they know they can do so in complete safety to themselves or others, PL 35.30 and PL 35.15(2)(a)(ii).

Based on the evidence in this investigation, Troopers Missale and Raymond had received information that gave them reason to believe that Mr. Tillery might have been involved in a homicide in Albany, which gave them authority to stop his car and inquire. When Mr. Tillery fired at Trooper Missale, there was probable cause to believe that Mr. Tillery was attempting to commit the crime of Murder in the First Degree, and, therefore, Troopers Missale and Raymond had reason to arrest Mr. Tillery for an offense. Under the circumstances, a prosecutor would not be able to disprove beyond a reasonable doubt that the troopers were justified in using deadly physical force to defend themselves against Mr. Tillery's use of deadly physical force. As a result, OSI will not seek charges and will close the matter with the issuance of this report.

Dated: February 4, 2025