



Office of the New York State Attorney General Lettla James

Office of Special Investigation

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Report on the Investigation into the Death of Christopher Van Kleeck

REPORT ON THE INVESTIGATION INTO THE DEATH OF CHRISTOPHER VAN KLEECK

SUMMARY

New York Executive Law Section 70-b (“Section 70-b”) authorizes the Office of the Attorney General (“OAG”) 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 OAG does not seek charges, Section 70-b requires issuance of a public report. This is OAG’s report on its investigation into the death of Christopher Van Kleeck.

On June 12, 2021, Town of Wallkill Police Department (“TWPD”) Officer Daniel Graham (“PO Graham”) shot Christopher Van Kleeck, causing his death. OAG will not seek charges in this matter because, based on the evidence in our investigation, we cannot disprove beyond a reasonable doubt that the officer’s actions were justified under Article 35 of the New York Penal Law.

FACTS

Background

Mr. Van Kleeck began showing signs of schizophrenia in 2016 when he was 26 years old, according to an OAG interview with Mr. Van Kleeck’s father, B.V.¹ He told OAG that Mr. Van Kleeck’s condition improved when he took Depakote, a mood stabilizer, but in 2019 and again in 2021, he refused to take his medication, leading to a deterioration in his mental health. TWPD Officers told OAG in interviews that they were aware of or had been involved in confrontations with Mr. Van Kleeck dating back to 2019, and there was a designation in their patrol cars warning them that a violent, emotionally disturbed person (“EDP”) resided at the Van Kleeck home at 4 Avenue A in the town of Middletown in Orange County.

On March 18, 2019, Mobile Mental Health (“MMH”),² a response team of a licensed clinician and a practitioner trained in responding to individuals in mental health crises, requested police assistance to have Mr. Van Kleeck evaluated after he slapped his father and said he would kill him while armed with a knife, according to TWPD records reviewed by OAG. Pursuant to Mental Hygiene Law (“MHL”) Sections 9.39³ and 9.45,⁴ an organization

¹ OAG uses the initials of civilian witnesses to protect their privacy.

² MMH was recently renamed the Orange County Crisis Mobile Response Team.

³ MHL § 9.39 provides that a hospital may receive and retain for emergency involuntary admission an individual “alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others.”

⁴ MHL § 9.45 states that “The director of community services or his designee shall have the power to direct the removal of any person, within his jurisdiction, to a hospital approved by the commissioner...if the parent,

such as MMH has the authority to have individuals involuntarily brought to a hospital for evaluation and, if appropriate, involuntarily committed. Five TWPD members including PO Graham responded to the Van Kleeck home that day, according to the TWPD incident report.

When police arrived, Mr. Van Kleeck walked out of the home with a folding pocketknife clipped to his jean pocket, according to the report written by PO Graham. His report indicates Mr. Van Kleeck was eventually persuaded to leave the knife inside the home but kept his fist clenched and appeared ready to fight when he returned to the front lawn. Sgt. Daniel Ward of TWPD, according to the report and as he confirmed in an interview with OAG, entered the rear of the home, directed Mr. Van Kleeck's family away from the front door to clear any potential line of fire, and locked the front door to prevent Mr. Van Kleeck from reentering the home. PO Graham wrote in his report that he then attempted to take Mr. Van Kleeck into custody by grabbing his arm to put handcuffs on him but Mr. Van Kleeck tensed up and resisted. He wrote that multiple officers grabbed Mr. Van Kleeck and employed joint manipulation techniques to secure him in handcuffs. They brought Mr. Van Kleeck to the hospital to be evaluated and secured the knife in evidence. No charges were filed.

On April 10, 2019, MMH contacted TWPD to request assistance with Mr. Van Kleeck who was refusing to go to the hospital to be evaluated in accordance with an MHL order. According to TWPD records, five officers responded to the Van Kleeck home. In an interview with OAG, PO Craig Cucci, who responded that night, said Mr. Van Kleeck threatened to kill the officers, telling them he would "stab you in the face," as he came towards them. PO Cucci said they took Mr. Van Kleeck down to the ground and placed handcuffs on him as he resisted. According to the incident report, and as confirmed in the OAG interview with PO Cucci, they took Mr. Van Kleeck to Orange Regional Medical Center ("ORMC")⁵ for evaluation and assisted hospital staff with securing Mr. Van Kleeck to a bed with restraints.

In that same month, Mr. Van Kleeck was placed on Assisted Outpatient Treatment (AOT), pursuant to MHL Section 9.60, according to OAG interviews with Mr. Van Kleeck's parents. An AOT is court ordered treatment for individuals with severe mental illness who have a history of non-compliance with treatment and where a clinical determination is made that the individual is unlikely to survive in the community without intervention. Police and medical records from April 2019 to April 2021 indicate that Mr. Van Kleeck had no police contact or hospitalizations while on AOT. Mr. Van Kleeck's mother, P.V., told OAG in an interview that his symptoms lessened and his behavior improved over this period. However, P.V. and B.V. said that in April 2021, Mr. Van Kleeck's AOT was modified to "enhanced," and

spouse, or child of the person, a licensed physician, health officer, peace officer or police officer reports to him that such person has a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others." Law enforcement officers are obligated to act on a properly executed § 9.45 application.

⁵ ORMC was renamed Garnet Health Medical Center in June 2021.

he was no longer compelled to take his medication. He soon stopped taking his medication, and his mental health deteriorated rapidly, leading to multiple confrontations with police in May 2021, according to TWPD records and OAG interviews with P.V., B.V., and TWPD officers.

Incidents Leading up to the Shooting

May 6 Incident

According to the Computer-Aided Dispatch (CAD) report reviewed by OAG, on May 6, 2021, B.V. contacted Orange County Crisis Call Center (“OCCCC”) ⁶ and reported that Mr. Van Kleeck was hallucinating. He requested MMH and warned them they should not come to the home without police officers due to Mr. Van Kleeck’s violent and aggressive behavior. Seven members of the TWPD as well as members of the Orange County Crisis Mobile Response Team (“MRT,” the new name for MMH) responded, according to the TWPD incident report.

When officers arrived with MRT, they spoke to B.V. and P.V., who described Mr. Van Kleeck as hallucinating, according to the TWPD incident report. Officers told Mr. Van Kleeck to come with them for a mental health evaluation. Mr. Van Kleeck, who was 5’11” and weighed 227 pounds, ⁷ responded, “I’m not going, and I will kill all of you if you make me go,” as quoted in the incident report and corroborated through an OAG interview with PO Cucci. As officers approached Mr. Van Kleeck, he swung at Officer Cucci and punched Sgt Adamac in the hand. The officers took Mr. Van Kleeck to the ground and handcuffed him. PO Hudson hurt his leg in the fall. Mr. Van Kleeck continued to fight, kicking PO Clark in the shoulder and attempting to kick PO Cucci in the face. The officers secured Mr. Van Kleeck in the police cruiser and took him to ORMC pursuant to MHL Sections 9.39 and 9.41. ⁸ Sgt Adamac developed a nerve disorder from Mr. Van Kleeck’s punch to his hand and PO Hudson broke his leg; both officers are still out on disability, according to TWPD members interviewed by OAG. Notably, the last officer to respond that day was PO Graham, although the report did not state whether he was involved in subduing Mr. Van Kleeck.

According to OAG interviews with B.V. and P.V. and CAD calls reviewed by OAG, Mr. Van Kleeck was committed for eight days and released on May 14th. B.V. called Orange County Mental Health (“OCMH”) the day he was released and reported that Mr. Van Kleeck’s

⁶ OCCCC is a call center that residents of Orange County can reach by dialing 311. It is staffed with mental health professionals who provide counseling or support for people in crisis or individuals with substance abuse issues, mental illness, developmental disabilities, or are victims of sexual assault. OCCCC can dispatch MRT for in-person assistance, route calls to the police if the situation is considered dangerous, or put individuals in touch with services or peer counselors.

⁷ His height and weight are listed in the autopsy report.

⁸ MHL § 9.41 authorizes a police officer to take into custody a person who appears to be mentally ill and is conducting himself in a manner which is likely to result in serious harm to himself or others, and to bring that person to a hospital specified in MHL § 9.39.

condition was worse than when he was hospitalized and he was angry that the hospital had released him in that state, according to the CAD report. When the OCMH counselor told B.V. to call 911 if he felt threatened, he responded that he was afraid the police would shoot Mr. Van Kleeck, according to the CAD report.

May 17 Incident

According to a mental health referral call reviewed by OAG, three days after Mr. Van Kleeck was released from ORMC, his parents called his social worker, D.G., to report that Mr. Van Kleeck was not taking his medication and was hallucinating, having paranoid thoughts, and threatening to hurt them. D.G. requested a wellness check and advised that the police should be sent along with MRT due to the potential for violence. Four TWPDP officers responded along with a member of MRT. PO Leguillow told OAG that, prior to arriving at the home, the four officers were briefed and advised that this was a dangerous situation.

According to the police incident report and the OAG interviews with Mr. Van Kleeck's parents and TWPDP officers Cucci and Leguillow, Mr. Van Kleeck told the officers he would fight them if they tried to take him to the hospital. Mr. Van Kleeck then walked towards PO Cucci and tried to punch him. PO Cucci fired his Taser and struck Mr. Van Kleeck in the chest, but PO Cucci told OAG it was ineffective and Mr. Van Kleeck continued to struggle. Sgt Steuber then Tased Mr. Van Kleeck, striking him in the abdomen. After being shocked a second time, Mr. Van Kleeck began to comply, and TWPDP were able to handcuff him and take him to ORMC for evaluation. B.V. and P.V. told OAG that he was released after a few hours at the hospital.

May 18 Incident

According to B.V.'s interview with OAG and the TWPDP incident report, Mr. Van Kleeck's treating psychiatrist, Dr. T.W., decided that Mr. Van Kleeck should be evaluated and contacted the police to execute an MHL Section 9.45 order. Five TWPDP officers responded to the Van Kleeck home, according to the TWPDP incident report. PO Clark of the TWPDP told OAG that Mr. Van Kleeck was initially resistant to being evaluated, but complied after they threatened him with a Taser. B.V. told OAG that Mr. Van Kleeck was released from the hospital after a few hours. B.V. told a New York State Police ("NYSP") Investigator in a recorded interview the day of Mr. Van Kleeck's death that Mr. Van Kleeck had attempted to buy a rifle from his landlord, G.L., to use in a shootout with the police the next time they came to arrest him.

June 12, 2021, The Day of the Shooting

Morning

In an interview with OAG, B.V. said on the morning of June 12, 2021, around 10 a.m., Mr. Van Kleeck became agitated as they drove to the laundromat.⁹ B.V. said his son told him he was “the big boss,” that he would “slap [him] around,” and threatened to punch him after his coffee spilled off the dashboard. B.V. told OAG that he dropped off Mr. Van Kleeck at home and left for work.

Back at the Van Kleeck home, P.V. spent the morning upstairs doing paperwork with the kitchen door locked to keep herself separated from Mr. Van Kleeck, according to an interview she gave to OAG. She said that she always kept the door locked to the upstairs section where she and B.V. lived since Mr. Van Kleeck had returned from the hospital on May 14. B.V. told OAG they had removed all the knives from the kitchen.

In her interview with OAG, P.V. said that around 11 a.m. Mr. Van Kleeck banged on the door and demanded she drive him twenty-five minutes to a bookstore in Newburgh. She said she did not want to bring him there and left a message with B.V. telling him to come home. To stall for time, she told Mr. Van Kleeck the car was overheating and needed coolant. P.V. and Mr. Van Kleeck walked out of the house to the car. She told him not to touch the car, but Mr. Van Kleeck tried to refill it with coolant anyway. P.V. said she waited at the passenger side door for him to reach the trunk of the car and then locked the car doors and shut the hood. She said Mr. Van Kleeck turned, looked at her, and said “you can’t keep me here. I will gut you like a fish and daddy too”; he was wearing a six-inch folding hunting knife on his belt. She said he had worn the knife constantly since his last hospitalization. Mr. Van Kleeck followed her into the house and called her a c**t as she locked the kitchen door and went upstairs to call B.V., according to her interview with NYSP.

Afternoon: Mr. Van Kleeck and his Parents

The following is captured on B.V.’s cellphone as a video recording and was reviewed by OAG.¹⁰

At 2:43 p.m., B.V. arrived home and began recording. He walked into the kitchen and asked Mr. Van Kleeck why he threatened to gut his mother like a fish. Mr. Van Kleeck said he was angry she would not take him to the bookstore, and then, when his father attempted to pick

⁹ P.V. and B.V. gave recorded interviews with the New York State Police on the day of the shooting. The statements they gave are consistent with statements given to OAG except for the moments immediately surrounding the shooting, as discussed below.

¹⁰ B.V.’s cellphone videos are not published with this report to protect B.V. and P.V.’s privacy.

up his books, said “You really need to quit being a nosy-body...cause you might not like it.” B.V. asked Mr. Van Kleeck what he was going to do to him and told Mr. Van Kleeck to come outside. They circled each other on the lawn with their hands up to fight, yelling and cursing. Eventually, Mr. Van Kleeck disengaged and walked inside the home as B.V. told P.V. to call OCCCC.

Once OCCCC was mentioned, Mr. Van Kleeck’s demeanor became angrier. He turned around, kicked the glass out of the bottom part of the door, and screamed at B.V. and P.V., “You think this is a fucking game? It’s not! You’re going down. When I get put in jail, you’re all going fucking down!” B.V. asked Mr. Van Kleeck where they were going down to, and Mr. Van Kleeck responded “down in the pit. I’m just going to open it up and have trees toss you in there, both of you.” B.V. said in the interview with State Police that Mr. Van Kleeck kept swinging at him as he backed away and punched him in the hand.

At 2:52 p.m., P.V. called OCCCC requesting help.¹¹ In the cellphone video, Mr. Van Kleeck turned his attention to P.V. and told her to “get off the fucking phone” as she yelled at him to get away from her. He said to her multiple times, “Tell them not to come and I’ll calm down” and that he did not want to go to the hospital. P.V. gave the phone to Mr. Van Kleeck, who told the counselor that his father called him outside to fight and he took him up on it and hit him in the hand. He said to her that everyone was safe, and everything had calmed down. While Mr. Van Kleeck was talking to OCCCC, P.V. was recorded on the cellphone video saying to B.V., “He’s got that knife.” B.V. responded, “He hasn’t pulled it out yet.” After Mr. Van Kleeck hung up with OCCCC, he again asked to go to the store. B.V. said “no” and they continued to argue about cleaning up the shattered glass from the door.

At 3:08 p.m., B.V. was on the front lawn with Mr. Van Kleeck and had the cellphone recording in his pocket after Mr. Van Kleeck demanded he put it away. Mr. Van Kleeck was recorded telling B.V. that if he pulled out his phone and called the police “it will ruin all my fun and it is over.” A few minutes later, he told B.V. that if he goes to jail, it will be for a real reason. P.V. asked him about when he said he would gut her like a fish and Mr. Van Kleeck responded, “I didn’t just say you, did I?” He then said, “It is legal to gut someone like a fish if you have a license.” P.V. told NYSP Investigators the day of the shooting that she was just trying to stay away from Mr. Van Kleeck at this point. She said every time he approached her, she would back away, “I’m a 130-pound woman and he is a 240-pound man, so I’m not going near him, no.”

G.L. approached the family at 3:14 p.m. after hearing them argue, according to the cellphone recording. P.V. said in the interview with OAG that she and B.V. went to G.L.’s house for a brief time before returning to the house. At 3:25 p.m., P.V. made a second call to

¹¹ [Link](#) to the first call from P.V. to OCCCC.

OCCCC; OSI reviewed the recording.¹² She asked the counselor to send someone to talk to her son. Mr. Van Kleeck took the phone from P.V. and told the OCCCC counselor not to send anyone because the situation was now calm. The counselor asked to speak to P.V., and he said no, telling her “I really can’t because you guys can’t come here because if you do it’s going to be game over. I don’t care if you come, if the police come, it’s going to be game over, so don’t come...This is not a fucking game anymore.” P.V. tried to speak and he told her to “shut the fuck up!” He then said to the OCCCC counselor he would not let her talk to his mother. He said, “I fucking promise you, if you come here, it is game over for them, for you, and as many cops as I can take out. I don’t give a fuck if this is a threat.” He then confirmed he would take out police officers if they came to his house because he was “sick of this shit...I told the police to fucking shoot me in the head the last time they were here over two years ago and they didn’t do it.” He said the police were trying to recruit him, cursed at the counselor, and hung up the phone.

The OCCCC counselor called back and Mr. Van Kleeck answered the phone.¹³ He told her in the recorded phone call, reviewed by OAG, that he was serious about his threats and said, “Don’t antagonize me. Don’t poke a bear, do not poke a fucking bear.” The counselor warned him that she did not have a lot of choice in how to respond because of the threats he was making. Mr. Van Kleeck responded, “do not be surprised if you read about me in the newspaper,” and hung up the phone. According to the NYSP interview with P.V., he then smashed the phone by throwing it to the ground.

In an audio recording reviewed by OAG, the OCCCC counselor contacted TWPD at 3:30 p.m. and summarized the situation, warning the police dispatcher that Mr. Van Kleeck had threatened to take out any responding officer.¹⁴ After a brief delay, the police dispatcher told the counselor that she was familiar with Mr. Van Kleeck and described him as a “very big man” and an EDP with whom the department had “major dealings” in the past. She told her she was sending three TWPD officers, the NYSP, and potentially members of the Orange County Sheriff’s Office (“OCSO”) to the Van Kleeck home.

Afternoon: Officer Response and Shooting

Sgt Daniel Ward of TWPD told NYSP Investigators in a recorded interview that on June 12, 2021, he was at the station when the call came in to respond to the Van Kleeck home. He recognized the Van Kleeck name and requested help from other agencies because a number of TWPD officers were on a security detail and because of Mr. Van Kleeck’s violent history with the department. He said that he, PO Graham, and PO Michael Rinaldo were the only TWPD members able to immediately respond to the Van Kleeck home.

¹² [Link](#) to second phone call from P.V. to OCCCC.

¹³ [Link](#) to OCCCC callback to P.V.’s phone.

¹⁴ [Link](#) to call between OCCCC and TWPD dispatcher.

At 3:35 p.m., Officer Daniel Graham,¹⁵ a four-year veteran of the TWPD, began driving to the Van Kleeck home in his patrol car. The dashboard camera footage captured the radio dispatch as PO Graham weaved through traffic: “person’s name is going to be Chris Van Kleeck...troopers to assist you...a woman reached out for help; Mr. Van Kleeck grabbed the phone...He states that any officer going to that location will be taken out...she states that he came up on them... heard a woman screaming there at that residence.”¹⁶

At 3:37 p.m., PO Graham’s patrol car arrived at the front of the house, according to two security cameras from 270 Schutt Road that captured the shooting.¹⁷ The cameras were across the street and roughly 300 feet away from the Van Kleeck home. The footage, reviewed by OAG, shows P.V., B.V., and Mr. Van Kleeck standing close together on the front lawn. Seven minutes and thirty-five seconds into the video (7:35), B.V. edged away from Mr. Van Kleeck and broke into a full run a few seconds later. Mr. Van Kleeck chased him and was a few feet behind him, a little more than an arm’s length away. B.V. ran to the left, dodging behind a parked trailer, while Mr. Van Kleeck continued running towards the patrol car. Glass exploded outward from the patrol car’s windshield as PO Graham shot three times at Mr. Van Kleeck, who stumbled and fell in the street just as he reached the end of the bumper a few feet from the driver’s side door.



Screenshot (7:41) of security camera footage zoomed in to show Mr. Van Kleeck chasing after B.V. with Patrol Car 81 parked near the trailer.

¹⁵ Officer Daniel Graham, through his attorney, refused OAG’s request for an interview.

¹⁶ [Link](#) to PO Graham’s dashboard camera footage capturing the communications from the dispatcher.

¹⁷ [Link](#) to an enlarged portion of the security camera footage showing the shooting; [Link](#) to an enlarged portion of the security camera footage showing the shooting from a second angle.

The time from the moment the patrol car stopped in front of the Van Kleeck house to the moment Mr. Van Kleeck fell in the street was no more than six seconds.

The dashboard camera of PO Graham's patrol car recorded the shooting from PO Graham's perspective.¹⁸ The dashboard camera footage, reviewed by OAG, shows the patrol car rolled to a stop at the edge of the lawn just after 3:35 p.m. A trailer sat a few feet away, to the right, from the driver's perspective. Seconds after the patrol car stopped moving, P.V. ran into the frame a few feet and stopped. She was about ten feet from the patrol car, standing on the lawn near the trailer. A moment later, Mr. Van Kleeck ran towards the patrol car holding what appeared to be two knives with the blades pointed downward. PO Graham fired the first bullet through the windshield just as Mr. Van Kleeck came into view, shooting at a rightward angle towards the yard.



Screenshot from Patrol Car 81's dashboard camera showing PO Graham's first shot at Mr. Van Kleeck as he appears to run towards the driver's side of PO Graham's patrol car

Mr. Van Kleeck ran towards the car, ducking as he approached. PO Graham fired a second shot when Mr. Van Kleeck reached the front bumper on the passenger side.

¹⁸ [Link](#) to the portion of Graham's dashboard camera footage showing the shooting.



Screenshot (3:39) from PO Graham's dashboard camera showing the second shot fired at Mr. Van Kleeck, who was visibly holding a knife in his right hand.

Mr. Van Kleeck cut across the front of the car. He was apparently a few feet from the bumper. When Mr. Van Kleeck ran past the midpoint of the car, PO Graham fired the third shot. Mr. Van Kleeck was struck in the head and his momentum carried him out of the camera frame. B.V. was not seen at any point in the dashboard camera. Dashboard camera from another patrol vehicle, which arrived moments after the shooting, showed PO Graham's driver side window was rolled up.



Screenshot (3:39) from PO Graham's dashboard camera showing the third shot by PO Graham. Mr. Van Kleeck's mother stood near the road and witnessed the entire event from that vantage point.

According to B.V.'s interview with an NYSP Investigator, before PO Graham arrived, Mr. Van Kleeck went back into the home to retrieve his jackknife, which had a three-inch blade. He then walked outside, with the jackknife in his hand and the Bowie knife on his belt, and they continued to argue on the front lawn with Mr. Van Kleeck standing three to four feet from him. He told the investigator that when PO Graham's patrol car stopped in front of the house, Mr. Van Kleeck "went berserk," pulled out the Bowie knife, and "raised it up like he was going to stab me and I ran towards the police car." B.V. said Mr. Van Kleeck was within four to five feet of him as he chased him with raised knives in both hands. He said to the investigator, "If he came down with that knife, he would have gotten me if I didn't dodge to the left behind [a] trailer" in the yard near the patrol car. He said he heard three gunshots.

According to P.V.'s interview with NYSP Investigators, Mr. Van Kleeck retrieved a second knife at some point after he smashed the phone on the ground following the call with OCCCC. She told OAG she warned B.V. to watch out and heard Mr. Van Kleeck say that he was not going to go down alone. She told NYSP Investigators that she saw the whole thing. She said to the NYSP Investigators that when PO Graham arrived, Mr. Van Kleeck pulled out his other knife and went after B.V. with a pocketknife in his left hand and a six-inch blade in his right hand, holding them above his head with the blade pointed downward. She said Mr. Van Kleeck chased B.V. and then changed targets to the police officer when he saw PO Graham open the car door to get out. She said PO Graham closed the door and fired three shots through the windshield. She said if the officer had stepped out of the car, Mr. Van Kleeck "would have lunged at him and gotten the cop." She said in the interview, "In my eyes, the officer was justified. Chris was coming at him with two knives. He was trying to get out to come to the situation and he didn't make it out of the car. The door was open, and the door was closed."

Afternoon, After the Shooting

Dashboard camera recorded PO Graham at 3:38 p.m. immediately calling out "shots fired" after shooting Mr. Van Kleeck. EMS and supervisors were dispatched directly thereafter, according to radio runs reviewed by OAG. PO Rinaldo and Sgt. Ward arrived less than a minute after the shooting. The dashboard camera of PO Rinaldo's patrol vehicle shows PO Graham standing in the street with his gun drawn, pointed at Mr. Van Kleeck lying wounded in the street, with a knife visible near Mr. Van Kleeck's left hand.



Snapshot from PO Rinaldo's dashboard camera footage showing PO Rinaldo kicking away a knife near Mr. Van Kleeck moments after the shooting.

PO Graham and Sgt Ward rolled Mr. Van Kleeck over and placed him in handcuffs and began life-saving measures. There was a large amount of blood coming from a head wound. According to footage from the security cameras at 270 Schutt Road, EMS arrived on scene at 3:43 p.m. EMS placed Mr. Van Kleeck on a stretcher, loaded him into the ambulance, and took him to the hospital at 3:53 p.m., according to the security camera and dashboard camera footage. Garnet Health Medical Center Emergency Department pronounced Mr. Van Kleeck deceased at 4:14 p.m., according to OAG Detective Supervisor Walter Lynch, who responded to the scene.

Evidence Collection

NYSP Investigators responded and assumed control of the scene while members of the TWP, OCSO, NYSP, and Middletown Police Department (“MPD”) set up a perimeter and managed the flow of traffic. NYSP Investigators conducted interviews with B.V. and P.V. and obtained consent to retrieve relevant videos from B.V.’s cellphone and to search their home for NYSP Forensic Identification Unit (FIU) processing. NYSP recovered two knives, a folding knife with a four-inch blade and a hunting knife with a five-inch blade, lying near Mr. Van Kleeck. NYSP investigators secured PO Graham’s sidearm, a Glock 21 pistol with a 13-round magazine. They counted the rounds, finding one Federal 45 Auto round in the chamber and nine rounds in the magazine. NYSP Investigators recovered two shell casings from inside PO Graham’s vehicle. OAG, in coordination with NYSP Investigators, collected the evidence in the days that followed.¹⁹

¹⁹ NYSP Investigators canvassed the area and recovered security camera footage from 270 Schutt Road. They recorded interviews with Sgt. Ward and PO Rinaldo and obtained past TWP incident reports concerning



Picture of the two knives recovered from near Mr. Van Kleeck.

Medical Examiner's Findings

D.O. Jennifer Roman performed the autopsy and issued a final report on September 21, 2021. She concluded that Mr. Van Kleeck's cause of death was a gunshot wound of the head, and that the manner of death was a homicide caused by a gunshot of a police officer.²⁰ She wrote that a single bullet penetrated the left temporal area of Mr. Van Kleeck's head and perforated numerous parts of his brain before coming to rest on the right side of his head. She described the bullet as "markedly deformed" and "medium in caliber." The toxicology report indicated Mr. Van Kleeck had marijuana and nicotine in his blood. No other drugs were found, including antipsychotic agents.

Christopher Van Kleeck and radio runs from OCSO, TWP, and MPD. OAG secured and reviewed Christopher Van Kleeck's treatment records from GHMC and Rockland Psychiatric Center, TWP training records and use of force policies, and interviewed TWP PO Robert Clark, PO Craig Cucci, PO Alex Leguillow, Sgt Daniel Ward, recently promoted Sgt. Michael Rinaldo, and Sgt. Jeremy Warner.

²⁰ Cause of death is the specific disease or injury that leads to death; manner of death is the determination of how that disease or injury occurred. In New York, the "Manner of Death" set forth in an autopsy is a medical determination made pursuant to New York State Public Health Law § 4143(3), which directs that medical examiners investigate deaths that occur without medical attendance and, if they are the result of external causes, deem them "accidental, suicidal, or homicidal." The homicide designation in an autopsy is not a legal culpability determination.

OAG Interviews with P.V. and B.V.

OAG interviewed P.V. and B.V.²¹ Their statements were consistent with those given in the earlier NYSP interviews but for a few notable exceptions. First, they repeatedly emphasized that they never felt Mr. Van Kleeck was a danger to them. As for the day Mr. Van Kleeck died, most of the description of events was the same except for the immediate actions just before the shooting. They both said that Mr. Van Kleeck was now 10 to 15 feet away from B.V. as he chased him in the front lawn, and said they were not sure he was chasing anyone specifically. B.V. said he did not know if his son was going after the officer; he may have just stumbled in the street. P.V. said she was not sure if Mr. Van Kleeck was going after the officer and that he had gone towards the police officer because his pants were falling and he stumbled in his direction.

OAG Interview with TWPD Trainer

OAG interviewed Sgt. Jeremy Warner of the TWPD on January 13, 2022 to gain a better understanding how officers are trained in the use of force and whether PO Graham's action on June 12, 2021, comported with that training. On October 18, 2019, PO Warner trained PO Graham and other members of TWPD on proper use of force. Training included a PowerPoint presentation outlining the defense of justification with citations to the New York Penal Law along with a series of simulations conducted with blank munitions designed to confront the officers with situations they might encounter in the field. Officers were taught to evaluate unfolding events using the "OODA LOOP," a tactical system that emphasizes quick decisions. OODA stands for "Observe—Orient—Decide—Act." The training materials state "Decide and Act must be performed quickly under stress with the risk of severe consequences."²²

Orange County's Emergency Response Policy

OAG spoke to Angela Jo Henze, the Managing Director of the Mental Health Association in Orange County, regarding Orange County's emergency communication system response on June 12, 2021. The day of the incident, P.V. sought help from OCCCC, which a resident of Orange County can reach by dialing 311. Ms. Henze said the county changed its policy for how calls involving an individual in crisis are handled. She said that if an OCCC counselor determines a caller is an immediate danger to themselves or others by meeting certain

²¹ OAG interviewed P.V. and B.V. separately in the presence of a representative of their attorney.

²² Sgt. Warner, who had his attorney present, gave a general outline of the training method used to teach these subjects but refused to go into specifics such as the details of what specific simulations they put the officers through, whether the OODA LOOP was incorporated into the simulations, and whether the classes could be failed due to deficient performance.

criteria,²³ that call is transferred to 911 right away. As part of the transfer, the counselor gives 911 a verbal briefing and a CAD incident report, which allows the 911 dispatcher to see what details have already been collected. The 911 dispatcher can request that the 311 counselor stay on the line to assist the caller, according to an OCCCC workflow document reviewed by OAG. MRT is then notified so they can determine whether to send out a response team that would wait for law enforcement to secure the scene. Both MRT and law enforcement have access to the CAD reports as they respond, according to the document. Ms. Henze said calls with similar facts to the Van Kleeck case would now be transferred immediately to the police with the goal of intervening before the matter could escalate.

LEGAL ANALYSIS

Under New York Penal Law Section (“Penal Law”) 35.15(1)(a) a person “may use physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person....” Under Penal Law 35.15(2)(a), a person may use deadly physical force upon another person when that person “reasonably believes that such other person is using or about to use deadly physical force.” However, a person may not use deadly physical force “if he [or she] knows that he [or she] can with complete safety to himself [or herself] and others avoid the necessity of doing so by retreating.” Penal Law Section 35.15(2)(a)(ii). A police officer does not have a duty to retreat when attempting to effect an arrest of a person the officer reasonably believes to have committed an offense. Penal Law Sections 35.15 (2)(a)(ii) and 35.30.

The New York Court of Appeals established a two-prong test to determine the reasonableness of a person’s use of deadly physical force. In *People v Goetz*, 68 NY2d 96 (1986), and later in *People v Wesley*, 76 NY2d 555 (1990), the Court held that the phrase “reasonable belief” has both a subjective component and an objective component. The subjective component is satisfied if the defendant in fact actually believed, “honestly and in good faith,” that deadly force was being used or was about to be used against him or her at the time the person used deadly physical force, and that the use of deadly physical force was necessary to repel the danger, regardless whether the belief was accurate. *Goetz*, 68 NY2d at 114. The objective component is satisfied if a “reasonable person” under the same “circumstances” could have held those beliefs. *Goetz* at 115; *Wesley*, 76 NY2d at 559.

PO Graham, who had responded to at least two incidents in the past where Mr. Van Kleeck had resisted or threatened police officers, would be able to present evidence concerning

²³ According to an OCCCC training Power Point reviewed by OAG, criteria for assessing the dangerousness of an individual in crisis would include a history of violence or aggression, past police involvement, risk factors such as weapons in the home, and a review of the MRT’s high risk list.

these incidents at trial. The Court of Appeals held in *People v. Miller*, 39 NY2d 543 (1976), that a defendant in a criminal case, “where justification is at issue,” may introduce evidence of the victim’s general reputation for violence and proof of “prior specific acts of violence of which the defendant had knowledge, provided that the acts sought to be established are reasonably related to the crime of which the defendant stands charged.” The defendant’s knowledge of prior violent acts is relevant to his subjective state of mind and the objective reasonableness of his action, and the trier of fact must consider the circumstances as the defendant found them. *Goetz*, 68 NY2d at 113. Accordingly, the trier of fact could consider whether those incidents supported PO Graham’s assertion that he honestly believed Mr. Van Kleeck was intent on using deadly physical force and whether such belief was objectively reasonable under the circumstances.

TWPD Best Practices 215.00 (VII) sets forth TWPD’s policy regarding the use of deadly physical force. According to the policy, officers “are authorized by New York State law to discharge a firearm to prevent or terminate the unlawful use of force that may cause death or serious physical injury.” In determining whether the use of force was justified, the policy states that the police officer’s actions will be judged under an objectively reasonable standard: “a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time the force was used.” The policy goes on to list factors that may be used in determining the reasonableness of the force, including “the level of immediacy of threat posed by the suspect,” “the potential for injury to citizens, officers, or suspects,” and “officer/subject considerations such as the age, size, relative strength, skill level...and the number of officers or subjects.”

In order to convict PO Graham for unlawfully causing the death of Mr. Van Kleeck, OAG would have the burden of disproving beyond a reasonable doubt that PO Graham subjectively believed that Mr. Van Kleeck was about to use deadly physical force or that such belief was objectively reasonable. See *People v Steele*, 26 NY2d 526 (1970). For the reasons outlined below, OAG finds that after reviewing the evidence, we could not carry this burden based on the evidence in the investigation.

Beginning the analysis with the “circumstances” as PO Graham likely knew them when he arrived at the Van Kleeck home on June 12, he was aware of three pieces of information that could have informed his actions. First, the evidence shows that PO Graham was told by the radio dispatcher that Mr. Van Kleeck had taken the phone from the woman who had reached out for help, that a woman was heard screaming at the residence, and, most salient, that Mr. Van Kleeck had threatened to “take out” any responding officers. Second, TWPD patrol car computers had a designation for the Van Kleeck home, warning officers that a violent, emotionally disturbed person resided at the home. Third, PO Graham was

aware of, because he was present at, at least two incidents where Mr. Van Kleeck had physically resisted being taken into custody or threatened to kill TWPD officers.

There is compelling evidence that PO Graham had a “reasonable belief” Mr. Van Kleeck was intent on inflicting deadly physical force on B.V. and that the potential use of deadly physical force was imminent at the time he fired at Mr. Van Kleeck. The video footage from across the street shows Mr. Van Kleeck chasing B.V. with a few feet separating them. The dashboard camera shows Mr. Van Kleeck holding two knives with the blade facing downward as he ran at PO Graham; two knives were recovered near his body. B.V. told the NYSP Investigator that Mr. Van Kleeck was trying to stab him, with only four to five feet separating them, and that, if he had not dodged behind the trailer, Mr. Van Kleeck would have stabbed him, which is consistent with the security camera footage.

The evidence taken together is persuasive that a reasonable person in PO Graham’s position, under pressure and required to make a split-second decision, could believe, based on the radio communications, PO Graham’s prior interactions with Mr. Van Kleeck, and his visual observations of Mr. Van Kleeck chasing B.V. across the lawn with two raised knives and little distance between them, that it was reasonable to shoot Mr. Van Kleeck to protect B.V.’s life. That B.V. dodged behind the trailer less than a second before PO Graham fired his first shot does not change the analysis, as it would be unrealistic to believe a police officer in that situation could have recognized the changed circumstances and altered his or her course of action in that small span of time.

It is also reasonable to believe that PO Graham shot Mr. Van Kleeck to save his own life. The dashboard camera shows Mr. Van Kleeck looking at PO Graham as he ran towards the patrol car with the knives visible in his hands, possibly appearing intent on attacking him. While there is a question as to the imminency of the danger Mr. Van Kleeck posed to PO Graham, who was sitting inside a car with the door closed and the window rolled up, a reasonable person could have decided not to trust that a pane of glass could withstand blows from a 227-pound man holding two knives who had earlier threatened to take out responding officers. P.V., who had a clear view of the critical moments of the shooting, seemingly agreed in her interview with NYSP. She said to the NYSP Investigator that Mr. Van Kleeck was intent on attacking PO Graham, and even though he had closed the door to the patrol car before firing, in “[her] eyes, the officer was justified. [Mr. Van Kleeck] was coming at him with two knives.”

OAG finds that based on the evidence PO Graham did not have a duty to retreat under Penal Law Sections 35.15 (2)(a)(ii) and 35.30. Once PO Graham observed Mr. Van Kleeck chasing P.V. with two knives, he had a reasonable basis to arrest Mr. Van Kleeck for menacing²⁴ or

²⁴A person commits Menacing in the Second Degree when “he or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying

attempted assault²⁵ and, acting as a police officer attempting to make an arrest, had no duty to retreat. Alternatively, even if he were not acting as a police officer attempting to make an arrest, the evidence indicates he could not have retreated with complete safety for himself or B.V. based on Mr. Van Kleeck's proximity to both potential targets at the moment of the shooting and his apparent determination to attack as he ran at those targets with knives drawn. If PO Graham had withdrawn by driving his car, B.V. would have been left vulnerable to an attack by Mr. Van Kleeck.

Therefore, for the reasons set forth above, OAG cannot disprove beyond a reasonable doubt that PO Graham was justified in using deadly physical force against Mr. Van Kleeck under Article 35 of the New York Penal Law.

September 30, 2022

a...dangerous instrument." Penal Law Section 120.14(1). A knife is a dangerous instrument under Penal Law Section 10.00.

²⁵A person commits Assault in the Second Degree when, "with intent to cause physical injury to another person, he causes such injury to such person...by means of a...dangerous instrument." A person is guilty of Attempted Assault in the Second Degree when he or she intended to commit the crime of Assault in the Second Degree and "engaged in conduct which tended to effect the commission of that crime." Penal Law Section 110.00.