



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 Enrique Lopez

SUMMARY

New York Executive Law Section 70-b authorizes the Office of Special Investigation (OSI), of the Office of the Attorney General of New York 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 OSI to issue a public report describing the results of the investigation. This is OSI's report of its investigation into the death of Enrique Lopez, who was shot and killed on December 28, 2022, by Suffolk County Police Department (SCPD) Officer Raymond Stock.

On December 28, 2022, SCPD officers responded to a 911 call from a mental health services worker who said that Enrique Lopez had threatened a roommate in his apartment with a fire extinguisher and was behaving erratically. Officers arrived at the address provided, in Medford, and spoke to witnesses in Mr. Lopez's apartment. Officer Stock and another officer went to Mr. Lopez's room, the door to which was closed, and asked him to come out. When Mr. Lopez did not come out, Officer Stock opened the door, and the two officers entered and approached Mr. Lopez. As they tried to take hold of him by his arms, a struggle ensued and Mr. Lopez stabbed the two officers with a knife. Officer Stock shot Mr. Lopez four times, and he died from his injuries.

FACTS

The shooting took place in Mr. Lopez's residence, an apartment in an apartment complex in Medford, Suffolk County.¹ Mr. Lopez was a client of Concern Housing, a non-profit organization that provides housing, support, and case management services for people with various disabilities.²

Based on the Concern Housing records, Mr. Lopez was admitted into the program in September 2017, with a diagnosis of a type of mental illness and a history of other difficulties. OSI reviewed Mr. Lopez's records from the New York State Office of Mental Health, which had similar information.³

OSI spoke to M, Mr. Lopez's case manager with Concern Housing.⁴ M said Mr. Lopez lived at the with two other clients for five years before his death. M said she was responsible for visiting Mr. Lopez, laying out his medication, checking that he was compliant with it, making sure he attended appointments, and helping him understand and practice daily living skills.

¹ OSI is not publishing the precise address in this case because other people live at the complex and the address is not material to understanding the results of the investigation.

² Concern Housing website: <https://www.concernhousing.org/>

³ OSI provides this general information as necessary context. OSI does not publish specific information about medical or mental health conditions if not needed to understand the results of an investigation.

⁴ OSI does not publish names of civilian witnesses. M also provided a sworn-to written statement to SCPD, which was reviewed by OSI and was consistent with OSI's interview.

M wrote reports, summarizing her visits, her concerns, and Mr. Lopez's progress. M would contact Mr. Lopez's doctors and therapists if she noticed troubling developments.

According to the Concern Housing records, each of the three clients had a bedroom in the apartment, and there was a shared living space, kitchen, and bathroom. The apartments in the complex were not exclusive to Concern Housing clients. Each apartment had a separate entrance, and there was a shared parking lot.



Google map photograph of the apartment complex in Medford.



Crime scene photograph of the exterior door of Mr. Lopez's apartment.

Concern Housing records said Mr. Lopez had difficulty during the Covid lockdown, and his mental health regressed. When the Covid restrictions decreased, Mr. Lopez struggled to return to his normal routines. The records said Mr. Lopez was unable to stay compliant with his medication, therapy, and doctor appointments in the months before his death.

A review of SCPD records show that officers visited the apartment complex several times in the weeks before Mr. Lopez's death. According to M's sworn statement to SCPD, she called the police and DASH⁵ several times for wellness checks before his death "because of his behavior. I tried to get him more structured supervision because I feared he might hurt someone when he was having an episode." According to SCPD records, in a separate incident on the day of Mr. Lopez's death, SCPD officers responded to the apartment complex because a person's tires were slashed. The police report said the complainant believed the perpetrator

⁵ <https://www.fsl-li.org/dash-hotline-crisis-care-center-are-available-24-hours-a-day/>

was a resident of Mr. Lopez's apartment, but police had insufficient evidence to identify a perpetrator and make an arrest.⁶

M told OSI she came to the apartment on December 28, 2022, to lay out Mr. Lopez's medication and help his roommate, W, with his daily living skills. When she walked in, she was met by W in the living room. M said W complained that Mr. Lopez threatened him by pointing a fire extinguisher at him while holding a lighter. M said she went halfway up the stairs and heard metal banging in Mr. Lopez's room. She said she believed the banging sound was the hose of the fire extinguisher being swung around. M did not confront Mr. Lopez; she called 911.

According to the SCPD Event Detail Report,⁷ M called 911 at 4:58 p.m. According to the 911 recording, M identified herself as a case manager for Concern Housing and told the operator that she had a client who was behaving "irrationally" and exhibiting "very odd, dangerous behavior." She also described Mr. Lopez as paranoid and violent. M said she was afraid to go upstairs and deal personally with Mr. Lopez. She said Mr. Lopez was off his medication and had threatened his roommate with a fire extinguisher. According to the SCPD Event Detail Report, the police arrived at 5:03 p.m.

OSI interviewed W, who said that at about 8:30 a.m. on December 28, 2022, he saw Mr. Lopez in the living room mumbling and pacing back and forth and thought this was unusual behavior for Mr. Lopez. W said he asked Mr. Lopez if he was okay and Mr. Lopez nodded his head yes. W said he returned from work at about 3:15 p.m., went into the kitchen, and saw the fire extinguisher was out of place – it was on the floor in the first-floor bathroom instead of mounted to the wall on the second floor. W noticed the gauge on the extinguisher indicated it was partially discharged. W said he used to be a volunteer firefighter in Medford, which was why he noticed the gauge. A few minutes later, Mr. Lopez came downstairs and W saw him holding the fire extinguisher and a small butane torch. W said the torch was lit and Mr. Lopez was pointing the extinguisher hose at W "like a weapon." He said Mr. Lopez was babbling and mumbling something that he could not understand. W said he told Mr. Lopez to put down the extinguisher and go back upstairs, but Mr. Lopez would not. W left the apartment and ran into M who had just arrived. He told her what happened. W said when the police arrived he told the police what happened. W said he also told the police to check Mr. Lopez for weapons because about a week before he saw Mr. Lopez walking around with a knife on his hip. W said it looked like a hunting knife.

⁶ According to the SCPD reports, the officers who visited the apartment on December 28th prior to the shooting, and the officers who accompanied DASH during the December well-visits, were not the same officers involved in Mr. Lopez's shooting.

⁷ The Event Detail Report is automatically generated. The 911 and radio transmission system records and documents the time and nature of 911 calls and radio transmissions.

M provided a cell phone video of the incident to OSI ([Cell Phone Video Link](#)).⁸ M explained to OSI that when she was walking up the apartment stairs behind the police officers, she pressed the video record button on her phone by mistake. OSI's reviewed the recording and noted that the phone was mostly not pointed at the officers during the incident. The entire recording was about one minute and thirty seconds long and at first briefly showed the officers at Mr. Lopez's door with a blurry view, and then only showed the staircase and the wall. There was no visual image of the police opening the door or of the shooting, but there was audio as follows: an officer said, in a calm tone, said, "Hey Enrique...(unintelligible short sentence)...what's going on today?"; two seconds later there were sounds of a struggle; an officer grunted loudly; an officer yelled "... tase you"; there were four shots; M said, "get out, get out."⁹ The phone was jostled and the recording stopped. Fifteen seconds elapsed between the time the officer asked *what's going on today* and the time of the last shot.

According to the SCPD Event Detail Report, the police arrived on scene at 5:03 p.m., and they radioed shots fired at 5:09 p.m.

OSI spoke to Paramedic Kimberly Pokorny and obtained her Patient Care Report (PCR) from the incident. Ms. Pokorny told OSI she responded to the scene and evaluated Mr. Lopez. According to her PCR, Ms. Pokorny was on the scene and tending to Mr. Lopez at 5:16 p.m. Ms. Pokorny said Mr. Lopez was pulseless upon her arrival with no signs of survivability. The PCR stated Mr. Lopez's time of death was 5:17 p.m.

OSI separately interviewed Officers Raymond Stock, Brenden Gallagher, and Michael Livorio.

Officer Stock said he responded with Officer Gallagher to a radio assignment for a person with mental illness who was violent and possibly armed with a fire extinguisher, and Officer Livorio arrived shortly after. He said he spoke with Mr. Lopez's case manager when he arrived. Both Officer Stock and Officer Gallagher said they were not told by any civilian that Mr. Lopez might be armed with a knife or anything other than the fire extinguisher. Officer Gallagher said the case manager advised them that Mr. Lopez was off of his medication. Officer Stock and Officer Gallagher said they went into the apartment building and up the stairs to Mr. Lopez's room once Officer Livorio arrived. Officer Stock said he knocked on the door to Mr. Lopez's room and used a calm tone of voice to ask Mr. Lopez to come out and speak to them. Officer Stock said Mr. Lopez did not respond so he opened the door and calmly asked Mr. Lopez, "What's going on?" Officer Stock said Mr. Lopez was sitting on the bed with an "aggressive posture" – leaning forward and clenching his fists. Officer Gallagher described Mr. Lopez as "agitated and stiff."

⁸ The responding officers did not have body worn cameras (BWCs) because SCPD had not fully implemented its BWC program at that time. SCPD informs OSI the program is now fully implemented.

⁹ According to OSI's conversation with M, she was speaking to W.

Officer Stock said he believed Mr. Lopez was a danger to them and himself because of his lack of cooperation, the allegations from the case manager, and his aggressive posture. Officer Stock said he did not see a knife or any other weapon near Mr. Lopez.¹⁰ Officer Stock said he walked toward Mr. Lopez and grabbed his arm and Officer Gallagher grabbed the other arm. Officer Stock described the room as a small space. Officer Stock did not recall exactly what occurred next but said a brief struggle began. Officer Gallagher said after grabbing Mr. Lopez's arm he could not remember exactly what happened but there was a struggle and the three fell to the floor. He heard Officer Stock say "drop the knife or I will shoot" and then Officer Gallagher heard shots. Officer Gallagher told OSI he did not fire his gun.

Officer Stock said during the struggle he did not realize he was stabbed but saw Mr. Lopez holding a knife and wrestling with Officer Gallagher. Officer Stock said he fired his gun to save Officer Gallagher. Officer Stock realized he was bleeding and went downstairs and later was airlifted to Stony Brook University Medical Center. Officer Stock said he is in physical therapy and is not cleared for work. Officer Gallagher said he felt dizzy after the shooting and realized he was stabbed. He went downstairs and was airlifted to the hospital.

Officer Stock said he had never met Mr. Lopez before and had never been to the location. He also was unaware of any disturbances at the apartment complex in the days leading up to the incident. Officer Stock said he was equipped with non-lethal devices but there was not enough time or space to deploy them. When OSI asked Officer Stock what his intentions were when he grabbed Mr. Lopez's arm, Officer Stock said he was not planning to arrest and charge Mr. Lopez yet but grabbed Mr. Lopez's arm because he believed Mr. Lopez was a danger and wanted to control him and prevent violence during the investigation and while determining the next step.

Officer Gallagher said he never met Mr. Lopez or visited the apartment before. Officer Gallagher said he grabbed Mr. Lopez's arm because Mr. Lopez's tense posture indicated potential violence and he wanted to control Mr. Lopez safely while conducting the field investigation. Officer Gallagher explained they did not call DASH before entering the room because there was no time to wait for DASH, given the allegations, and it was not safe to request DASH civilians to come, given the allegations of violence.

Officer Livorio told OSI he arrived at the apartment building and met Officers Stock and Gallagher. Officer Livorio said no one advised him that Mr. Lopez might have a knife or any weapon other than the fire extinguisher. Officer Livorio told OSI he did not go into the room because it was a small space but he watched Officers Stock and Gallagher enter. Officer Livorio said he could not see what happened exactly, but Officers Stock and Gallagher struggled with Mr. Lopez and the three went to the floor. Officer Livorio said he could not see what happened during the struggle because the door partially blocked his view. Officer Livorio

¹⁰ Each officer said he did not see any weapons in the room prior to the stabbing.

said he heard three to four shots. Officer Livorio followed Officers Stock and Gallagher downstairs when he saw they were injured. Officer Livorio said he quickly returned upstairs to secure the knife by moving it out of the bedroom and to check Mr. Lopez's pulse. Officer Livorio told OSI he did not fire his gun.



Redacted crime scene photograph of Mr. Lopez's room and the torso and legs of Mr. Lopez.

OSI reviewed the medical records for Officers Stock, Gallagher, and Livorio. Officer Stock was admitted to Stony Brook Hospital on December 28, 2022, and was discharged on January 6, 2023. He had multiple stab wounds, including jugular vein and femoral artery wounds requiring surgery, and was on a ventilator for more than four days.

Officer Gallagher's medical records say he was admitted to the hospital on December 28, 2022, and discharged on December 30, 2022. He had penetrating stab wounds to the left upper chest and left upper arm, and lacerations to the left hand.

OSI reviewed Officer Livorio's medical records, which showed no injuries other than tinnitus.

OSI reviewed the personnel files of Officers Stock, Gallagher, and Livorio, which showed no firearm discharges or firearm investigations before this incident.



Knife recovered from the apartment.

OSI interviewed H, Mr. Lopez's other roommate, who said he had moved out of the apartment six months before the shooting because he was afraid of Mr. Lopez. H said Mr. Lopez often played with fire, and would start small fires and watch them burn, and would play with the fire extinguisher.

OSI canvassed for video with negative results. The apartment complex is not outfitted with video and is in a residential area, far from other houses and commercial locations. Although ballistic testing is not yet complete, SCPD seized the firearms of Officers Stock, Gallagher, and Livorio and found that Officer Stock's weapon was the only weapon with less than a full load of live rounds, indicating he was the only shooter.

LAW

New York Penal Law (PL) Article 35 sets forth the defense of justification to crimes involving the use of physical force. Justification is a defense, not an affirmative defense, 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). The defendant is entitled to have the jury instructed on the defense of justification even if the defendant does not offer evidence, as long as the defense is implied by the prosecutor's evidence. *People v. Steele*, 26 N.Y.2d 526 (1970).

In this case, Officer Stock 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 make an arrest and provides, in part:

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

Police officers using deadly physical force pursuant to PL Section 35.30 are under no duty to retreat when threatened with deadly physical force, PL 35.15(2)(a)(ii).

Under PL Section 35.30, the person who uses deadly physical force is justified when the person reasonably believes deadly force is necessary to defend the person or another against the imminent use of deadly force. “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 (subjective component), and it means that a “reasonable person” under the same “circumstances” could have believed the same (objective component). *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) a person must honestly and in good faith believe deadly force was about to be used against them or another person and that deadly force is necessary for self-defense, and (b) a reasonable person under the same circumstances could believe the same.

Based on the evidence in this investigation, a prosecutor would not be able to disprove beyond a reasonable doubt that the officer’s use of deadly physical force was justified under the law. Here, M called 911 to report Mr. Lopez had threatened a roommate with a fire extinguisher. Officers Stock, Gallagher, and Livorio were advised by the radio assignment and by M upon arrival that Mr. Lopez was a possible danger because he was off of his medication and was behaving erratically. When Officers Stock and Gallagher entered Mr. Lopez’s room to speak

to him and tried to take hold of him Mr. Lopez began fighting with them and they all fell to the floor. Officer Stock, not realizing he was stabbed, saw Mr. Lopez holding a knife and wrestling with Officer Gallagher, and Officer Stock shot Mr. Lopez. Applying the analysis in Goetz, a prosecutor would not be able to disprove beyond a reasonable doubt that Officer Stock reasonably believed it was necessary to use deadly force to defend Officer Gallagher and himself.

In sum, the evidence in the investigation is insufficient to disprove beyond a reasonable doubt that Officer Stock was justified under New York law in using deadly physical force. Therefore, OSI will not seek charges and closes the investigation with this report.

Dated: September 28, 2023