

Westchester County District Attorney's Office

Report on the Investigation into the Fatal Shooting of Bryant Jackson



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Westchester County District Attorney's Office Report of Investigation into the Fatal Shooting of Bryant Jackson

Introduction

On April 20, 2022, as part of an FBI Westchester Safe Streets Task Force (“Task Force”) operation, Two Task Force Officers (“TFO 1” and “TFO 2”) and an FBI Agent (the “Agent”) entered a bodega located at 115 Elm Street, Yonkers, NY (“the bodega”) in order to question Bryant Jackson (“Jackson”) who was suspected of being involved in a shooting in Yonkers and other criminal activity. Inside of the bodega, Jackson shot TFO 2 in the abdomen.¹ The Agent then fired two shots, one of which killed Jackson. As discussed below, we have determined that the Agent was justified in his use of deadly physical force against Jackson. As such, the Westchester County District Attorney’s Office (“WCDAO”) will not pursue any criminal charges against the Agent in relation to the shooting of Jackson (“the shooting incident”).

Overview of Investigation

Jurisdiction

At the outset of this investigation, there was an open question as to whether the New York State Office of the Attorney General (“OAG”) was the appropriate entity to review the law enforcement involved shooting pursuant to Executive Law Section 70-b. Under that statute, OAG has the authority to investigate and prosecute criminal offenses arising from any incident in which the death of a person is caused by a police officer, a corrections officer, or certain other peace officers. On April 25, 2022, this office received correspondence from the OAG’s Office of Special Investigation stating that OAG did not have legal authority to investigate or prosecute any potential charges related to this incident under the laws of New York. Based on this determination, the WCDAO is the appropriate state prosecutor to handle this investigation.

Purpose of Investigation

The purpose of our investigation was to determine if criminal charges in relation to the shooting death of Jackson were warranted against the Agent, any other member

¹ TFO 2 survived his injuries.



of law enforcement, or any other individual. This investigation did not encompass any other potential criminality.

Individuals Relevant to the Investigation

The following individuals were involved in or are relevant to the shooting incident:

- The Agent: Discharged his weapon twice. One of the shots caused Jackson's death.
- TFO 1: First member of the Task Force to enter the bodega.
- TFO 2: Shot by Jackson once in the abdomen and survived.
- Bryant Jackson: Shot TFO 2 and was then shot by the Agent.

Legal Analysis and Conclusion

When considering the appropriateness and viability of criminal charges, we must not only consider the potential charges, but also all viable defenses to those charges. Penal Law Article 35 governs the law of justification in New York. Penal Law section 35.15(2) provides that a person may only use deadly physical force upon another when the actor reasonably believes that the other person is using or is about to use deadly physical force. Even in such circumstance, the person may not use deadly physical force if the person can retreat with complete safety to the actor and others.² Police officers are treated differently under Article 35, and can use deadly physical force, without any duty to retreat, when the officer reasonably believes that the use of deadly physical force is "necessary to defend the police officer...or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force."³

"Deadly physical force" is defined in the Penal Law as "physical force which, under the circumstances in which it used, is readily capable of causing death or other serious physical injury."⁴

In order to determine if criminal charges are warranted in relation to the shooting death of Bryant Jackson, the law requires that we evaluate whether the Agent reasonably believed his use of deadly physical force was necessary to defend against

² Penal Law section 35.15(2)(a). Notably, there are also exceptions to this duty to retreat that are provided for in this section of the penal law.

³ Penal Law section 35.30(1)(c).

⁴ Penal Law section 10.00(11).



what the Agent reasonably believed to be Jackson's use or imminent use of deadly physical force. We conclude that he did.

Case law provides guidance on the application of the defense of justification to the facts at issue. In *People v. Goetz*, and then in *People v. Wesley*, the Court of Appeals interpreted the "reasonably believes" language contained in Penal Law Article 35.⁵ The Court set forth a two-part test for assessing an actor's "reasonable belief." The test requires both a subjective and objective analysis. In order to be justified in the use of deadly physical force, a defendant must have (1) actually believed deadly physical force was necessary to prevent the imminent use of deadly force by another, and (2) that belief must have been reasonable considering the circumstances.⁶

When assessing the reasonableness of a police officer's use of physical force, the United States Supreme Court advises that every use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," and with "allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving."⁷ Therefore, when evaluating whether the officer reasonably believed deadly physical force was necessary, "it does not matter that [he] was or may have been mistaken in his belief, provided that such belief was both honestly held and reasonable."⁸

We have concluded that the Agent discharged his weapon two times in rapid succession at close range in the direction of Jackson. As the next step in our analysis, we had to determine if (1) the Agent reasonably believed that his use of deadly physical force was necessary to prevent the imminent use of deadly physical force by Jackson, and (2) whether a reasonable person in the Agent's position, knowing what he knew and being in the same circumstance, would have had that same belief.

In order to make these determinations, we evaluated all of the available evidence⁹ and concluded that just prior to the Agent's use of deadly physical force, the Agent: (1) observed TFO 2 place his hand on Jackson's sweatshirt, (2) observed Jackson's

⁵ *People v. Goetz*, 68 N.Y.2d 96 (1986); *People v. Wesley*, 76 N.Y.2d 555 (1990).

⁶ *People v. Goetz*, 68 N.Y.2d 96 (1986).

⁷ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁸ New York Pattern Criminal Jury Instructions (Justification).

⁹ The evidence consisted of surveillance video, lab reports, and additional information provided by the FBI to WCDAO for the limited purpose of this investigation.



hand inside of his sweatshirt pocket, (3) heard a gunshot, (4) heard an individual indicate that he had been “shot,” (5) shoved TFO 2 in the back to move him out of danger, and (6) believed that Jackson was moving toward him. We have further concluded that the Agent, believing that Jackson had already used deadly physical force, reasonably believed that Jackson would imminently use such force again against members of law enforcement. It is important to note that the amount of time that elapsed from Jackson’s firing his gun to the time that the Agent responded by firing his gun was less than three seconds.

We have concluded that the Agent reasonably believed that his use of deadly physical force against Jackson was necessary to prevent the further use of deadly physical force by Jackson.

We have further concluded, based on the evidence in this case, that a reasonable person in the Agent’s position and circumstance, and knowing what the Agent knew at the time would have also believed that Jackson’s continued use of deadly physical force was imminent and that the use of that same level of force was necessary to prevent further bloodshed by Jackson.

Notably, the Agent fired two shots at Jackson in a split second. We have determined that was impossible for the Agent to know if the first shot struck, or in any way sufficiently incapacitated Jackson, and thereby removed the deadly threat posed by Jackson. The shots were fired in such rapid succession that it is not easy to discern that the Agent fired two shots on first viewing of the surveillance video. Notably, the evidence shows that the Agent’s first shot merely grazed Jackson’s left arm, and it was the Agent’s second and final shot that caused Jackson to fall to the ground and that ultimately resulted in his death. For these reasons and all the reasons discussed above, we have concluded that the Agent’s firing of two shots was justified under the laws of New York.

Conclusion

Based on the information gathered during our investigation into the shooting incident and our application of the relevant statutes and case law, we have concluded that the defense of justification applies to the actions of the Agent, and that charges against the Agent related to the death of Jackson are not appropriate. This concludes our investigation into any criminality directly related to Jackson’s death.