



Office of the New York State Attorney General Lettla James

Office of Special Investigation

April 4, 2023

Report on the Investigation into the Death of Raymierik Lopez

SUMMARY

New York Executive Law Section 70-b (Section 70-b) authorizes the Office of the Attorney General, acting through its 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 OSI does not seek charges, as in this case, Section 70-b requires issuance of a public report.

This is OSI's report of its investigation of the death of Raymierik Lopez, who was shot and killed by Lieutenant Nathan Yakubov, an off-duty member of the New York City Police Department (NYPD), on December 16, 2021, in Queens County.

Based on the investigation, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that Lt. Yakubov was justified in using deadly physical force under New York Law.

BACKGROUND

At the time of the shooting, Lt. Yakubov was employed by the NYPD for 15 years and was assigned to the 71st Precinct in Queens County.¹ In the early morning hours of December 16, 2021, he was off-duty and attending a concert at La Boom dance club, 56-15 Northern Boulevard in Queens.

Below is an aerial view of the nightclub and the location of Lt. Yakubov's parked car (text added by OSI staff to the photo) at the time of the incident. The Honda dealership shown in the photo was where security camera captured video of the incident (as described below), and the indication of Raymierik Lopez's location is the place where Mr. Lopez was found after the shooting.

¹ NYPD Personal Profile Report for Nathan Yakubov



Aerial view of the intersection of Northern Blvd. and 57th Street

STATEMENT OF FACTS

Pre-Shooting

La Boom night club surveillance video shows that Lt. Yakubov arrived at the main entrance at 12:30 a.m. on December 16, 2021.² A gold chain was visible around his neck, a gold bracelet was visible on his right wrist, and a watch was visible on his left wrist.³ Between 12:30 and 1:00 a.m., video shows Lt. Yakubov talked to security staff and entered La Boom for brief periods.⁴ At 1:07 a.m. he put on a wristband handed to him by the security guard and made his way into the club.⁵

² All times are approximate.

³ La Boom night club main entrance surveillance video, 12/16/21 at 00:30:12, 00:31:00 and 03:02:17.

⁴ *Id.* at 00:30:00 – 01:08:00.

⁵ *Id.*



Lt. Yakubov (right) exiting La Boom dance club

At 3:02 a.m. the video shows Lt. Yakubov left La Boom.⁶ He appeared to be texting on and off as he left.⁷ Outside, he had a brief conversation with a security guard, handed him his wristband, and walked in the direction of Northern Boulevard.⁸ At 3:06 a.m. surveillance cameras at Paragon Honda, 57-02 Northern Boulevard (Honda Video), show that Lt. Yakubov walked to his car, a 2019 Jaguar F-Type, which was parked near the southwest corner of the intersection.⁹ Once at his car, the brake lights flashed on and he opened the door.¹⁰ He sat down in the driver's seat with the door open and remained there until 3:09 a.m. ¹¹

Shooting

The Honda Video shows that at 3:09 a.m. a silver four door sedan drove north on 57th Street alongside Lt. Yakubov's car and stopped in the pedestrian crosswalk.¹² Three persons got out of the sedan, two from the passenger side and one from the driver's side, and approached Lt. Yakubov, who was in his car with the door open.¹³ A second or two later, the Honda Video shows that three persons ran in different directions and shows that Lt. Yakubov came out of his car.¹⁴ Acoustic sensors in the area of the shooting (part of a ShotSpotter system)¹⁵

⁶ *Id.* at 03:02:17.

⁷ *Id.* at 03:02:00-03:06:00.

⁸ *Id.*

⁹ Paragon Honda surveillance video (Northern Blvd) at 03:06:45 – 03:06:52.

¹⁰ *Id.*

¹¹ *Id.* at 03:06:45 – 03:06:52, 03:09:25.

¹² *Id.* at 03:09:26.

¹³ *Id.* at 03:09:30.

¹⁴ *Id.* at 03:09:32.

¹⁵ ShotSpotter uses acoustic sensors, software, and acoustic experts at an incident review center to detect, locate, and analyze gunshots within a coverage area. Within seconds of a shot being fired, incident reviewers add relevant tactical intelligence and publish confirmed gunshots to ShotSpotter subscribers.

detected 13 gunshots¹⁶ at 3:09 a.m.¹⁷ The Honda Video does not clearly show who or how many persons fired a gun, or who shot first, or who shot whom. After the shooting, the Honda Video shows that Lt. Yakubov walked south (approximately 10-15 feet) and then north to the silver sedan.¹⁸ He went to the rear passenger door and was there for about 2-3 seconds before the sedan drove off.¹⁹ The Honda Video then shows that Lt. Yakubov walked to the front driver's side door of his own car and, apparently, dropped to the ground.²⁰



Silver Sedan driving up to Lt. Yakubov's car



Two persons exit the sedan and approach Lt. Yakubov's car

¹⁶ ShotSpotter Investigative Lead Incident Reports 223-162960 & 223-162961.

¹⁷ Shots were detected at 03:09:28; 03:09:29; 03:09:30; 03:09:30; 03:09:31; 03:09:39.

¹⁸ Paragon Honda surveillance video (Northern Blvd), 12/16/21 at 03:09:41-03:09:53.

¹⁹ *Id.* at 03:09:56.

²⁰ *Id.* at 03:09:58.



Third person exits the sedan and approaches Lt. Yakubov's car



Three persons standing next to Lt. Yakubov's car's open door



Two persons running away from Lt. Yakubov's car



Two persons running away from Lt. Yakubov's car (Cruz circled)



C.C. running south on 57 Street²¹

911 Calls

Five 911 calls were received by NYPD reporting a shooting at the intersection of 57th Street and Northern Boulevard between 3:10 a.m. and 3:15 a.m.²² Of the 5 callers, Callers 2, 4 and 5 said they witnessed the shooting; the other callers reported the shooting but were not eyewitnesses. Caller 2, a couple, reported that they saw a group of “black” men, one of whom was wearing a “hoodie”, shooting into a silver car, after which they fled the scene.²³ Caller 4 reported she saw three or four “guys” shooting at each other but could not provide a description of the shooters and did not know if anyone had been shot.²⁴ Caller 5 reported seeing the shooting from far way but did not provide any additional details.²⁵

²¹ OSI uses initials to protect civilians’ anonymity

²² NYPD ICAD Report, 12/16/21.

²³ NYPD audio recording of Caller 2’s 911 call, 12/16/21.

²⁴ NYPD audio recording of Caller 4’s 911 call, 12/16/21.

²⁵ NYPD audio recording of Caller 5’s 911 call, 12/16/21.

Police Arrival, Post Shooting Investigation

At 3:13 a.m. members of the NYPD arrived on scene.²⁶ Responding officers approached Lt. Yakubov, who was lying face-up on the pavement with gunshot injuries to his body.²⁷ Lt. Yakubov was responsive but seriously injured.²⁸ At 3:15 a.m. FDNY EMTs arrived and began rendering aid to Lt. Yakubov.²⁹ At 3:17 a.m. he was loaded into an ambulance and taken to Elmhurst Hospital.³⁰ Medical records indicate that he sustained gunshot wounds to his forehead, chest, right arm, right hand and left thigh.³¹ Medical and police records do not indicate that bullet fragments were removed from Lt. Yakubov's body.

About half a block west of where officers found Lt. Yakubov they found Raymierik Lopez lying face down on the sidewalk. Mr. Lopez's clothes were blood stained and he was unresponsive.³² Officers recovered a pistol³³ near his body.³⁴ NYPD Officers and FDNY EMTs rendered aid to Mr. Lopez until he was loaded into an ambulance and transported to Elmhurst Hospital at 3:20 a.m.³⁵ At Elmhurst Hospital, Mr. Lopez was seen by Dr. M. Carroll; the medical records say Mr. Lopez arrived at the emergency room not breathing and without a pulse, and with gunshot wounds to his neck, upper back, buttocks and abdomen.³⁶ Mr. Lopez was pronounced dead at 3:36 a.m. by Dr. G. Almonte.³⁷

On December 17, 2022, an autopsy of Mr. Lopez was conducted by the Office of the Chief Medical Examiner (OCME) of the City of New York. Notes from the autopsy indicate one bullet was removed from Mr. Lopez's body and submitted to the NYPD laboratory for analysis. The results of the comparison analysis of that bullet were inconclusive as to which weapon it was discharged from.³⁸ (See below for discussion of the arrests of the C.C. and J.R.; no weapons were recovered in connection with those arrests.)

²⁶ NYPD ICAD Report, 12/16/21; Police Officer Ahmed Imran's Body Camera Video Footage, 12/16/21 at 03:13:23.

²⁷ Police Officer Ahmed Imran's Body Camera Video Footage, 12/16/21 at 03:13:23; Police Officer Ahmed Imran's Body Camera Video Footage at 03:13:23.

²⁸ Police Officer Florin Alexandru's Body Camera Video Footage, 12/16/21 at 03:13:33.

²⁹ Police Officer Joel Moya's Body Camera Video Footage, 12/16/21 at 03:15:02.

³⁰ *Id.* at 03:16:20.

³¹ Elmhurst Hospital Medical Treatment Records for N. Yakubov, 12/16/22.

³² Police Officer Ahmed Imran's Body Camera Video Footage, 12/16/21 at 03:13:57.

³³ NYPD Invoice #6000034940 describes a semi-automatic Taurus G2C pistol with a "defaced" serial number.

³⁴ Police Officer Ahmed Imran's Body Camera Video Footage, 12/16/21 at 03:14:14; Police Officer Cesar Lamb-Tavarez's Body Camera Video Footage, 12/16/21 at 03:15:59.

³⁵ Police Officer Scott Hannon's Body Camera Video Footage, 12/16/21 at 03:16:22 - 03:19:56; Police Officer Cesar Lamb-Tavarez's Body Camera Video Footage, 12/16/21 at 03:16:32; Police Officer Ahmed Imran's Body Camera Video Footage, 12/16/21 at 03:18:23.

³⁶ Elmhurst Hospital Medical Treatment Records for R. Lopez, 12/16/22.

³⁷ *Id.*

³⁸ *Id.*

NYPD Crime Scene Unit (CSU) Evidence Reports indicate the following items were in the possession of Lt. Yakubov and vouchered by the NYPD at Elmhurst hospital: Jaguar Key fob; vape pen; white Versace sneakers; dark grey jeans; black belt with an “inside the waistband” holster attached to it; 3 paper receipts; NYPD identification card; black wallet with an American Express card and \$16 inside of it; \$1465 in cash (front right jean pants pocket); a gold chain and bracelet; and a Rolex Date Just wristwatch.³⁹

The following items were in the possession of Mr. Lopez and vouchered by the NYPD at Elmhurst hospital: black Air Jordan sneakers; dark grey jeans; black gloves; black ski-mask; red hooded sweater; black socks; white tee shirt with graphics and a grey undershirt; \$100 in cash.⁴⁰

According to CSU Evidence Reports, CSU secured the crime scene and processed it.⁴¹ The following items were recovered at or near the southern pedestrian crosswalk of the intersection of Northern Boulevard and 57th Street: a semi-automatic Glock 19 pistol (Lt. Yakubov’s service weapon) with 1 live cartridge in the chamber and 7 in the magazine (Capacity 15); 16 discharged shell casings; 4 bullet fragments.⁴² The following was recovered near Mr. Lopez’s body: a semi-automatic Taurus G2C pistol with 1 live cartridge in the chamber and an empty and damaged extended magazine inserted (Capacity 33); 12 live cartridges (scattered). Both recovered weapons were found to be operable. Microscopic analysis of cartridge casings found at the scene show that 8 rounds were fired from Lt. Yakubov’s service weapon and 8 rounds were fired from a second unknown weapon. No bullet fragments were linked to Lt. Yakubov’s service weapon. No cartridge casings or bullet fragments were linked to the pistol found near the body of Mr. Lopez. Mr. Lopez’s DNA was found on the trigger, trigger guard, sights, slide, buttons, and hand grip of the weapon found near his body.⁴³

A CSU Evidence Report states Lt. Yakubov’s car had bullet holes in the rear driver-side door, the under carriage, and the gas tank. The rear driver-side window was shattered, and bullet holes were found in the driver’s seat and center console. A second car, a white BMW SUV, which was parked on 57th Street, facing north, near the southwest corner of the intersection, also had bullet holes, to the front and rear passenger-side doors.

³⁹ Two 100-dollar notes; fourteen 50-dollar notes; twenty-five 20-dollar notes; one 10-dollar note; three 5-dollar notes; forty 1-dollar notes.

⁴⁰ The \$100 were discovered inside Lopez’ right sneaker.

⁴¹ NYPD Laboratory #2021-048850, Reports #1, 3, 6, 7, 11, 12 and 13.

⁴² NYPD Personal Profile Report for Nathan Yakubov.

⁴³ OCME DNA Laboratory Report, Case #FB21-08180, 4/19/22. Swabs were used to collect DNA material from the trigger guard edges; textured areas on the trigger; sights; textured areas on the slide; textured buttons; and textured hand grip. Mr. Lopez’s DNA was 84.21% of the mixture, consisting of 4 contributors, found on trigger and trigger guard areas. Mr. Lopez’s DNA was 87.98% of the mixture, consisting of 4 contributors, found on sights, textured areas of the slide and textured buttons. Mr. Lopez’s DNA was 98.32% of the mixture, consisting of 3 contributors, found on the textured hand grip.



Southern crosswalk at the intersection of 57 Street and Northern Boulevard showing Lt. Yakubov's car on the left and the white BMW on the right



Driver's side of Lt. Yakubov's car



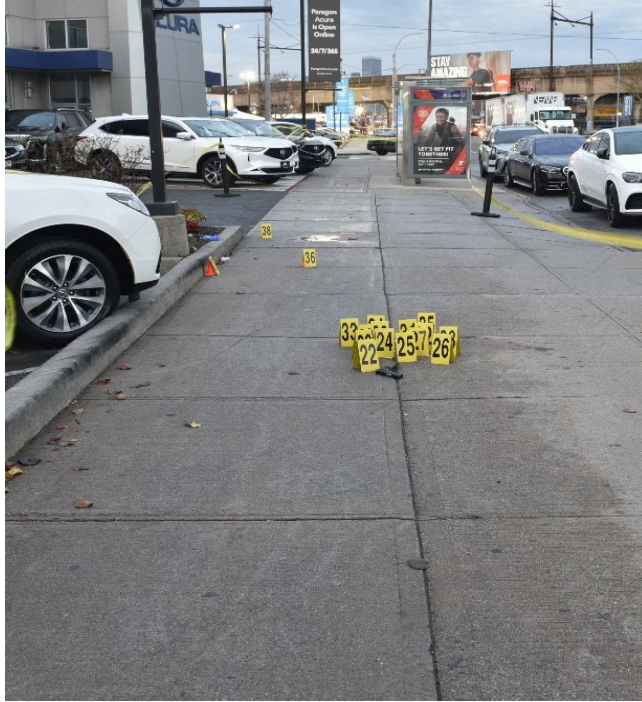
Interior of Lt. Yakubov's car, showing blood stains



Lt. Yakubov's service weapon



Damage to passenger side of white BMW parked near the shooting



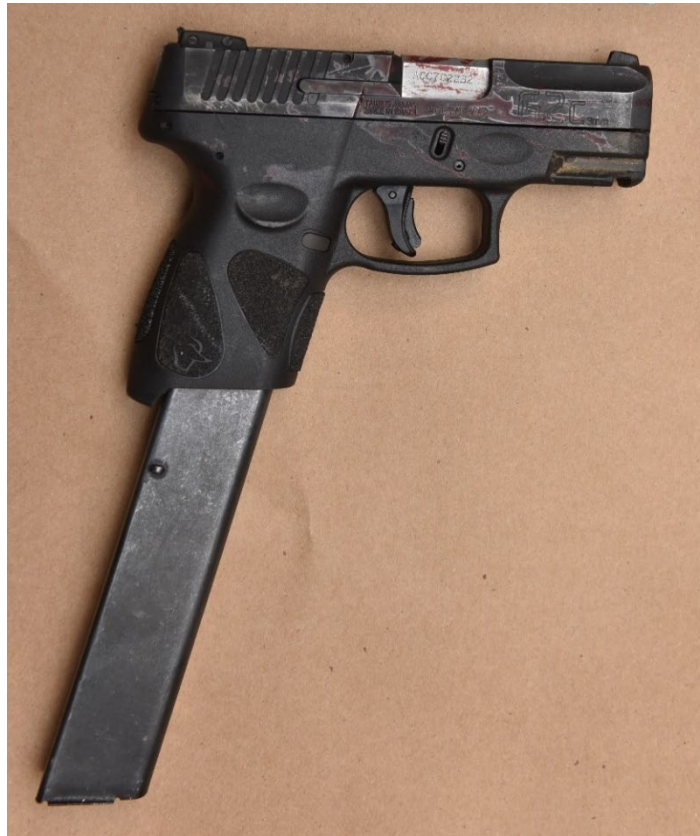
Mr. Lopez's weapon and spilled rounds



Area where Mr. Lopez was found



Mr. Lopez's weapon and spilled rounds

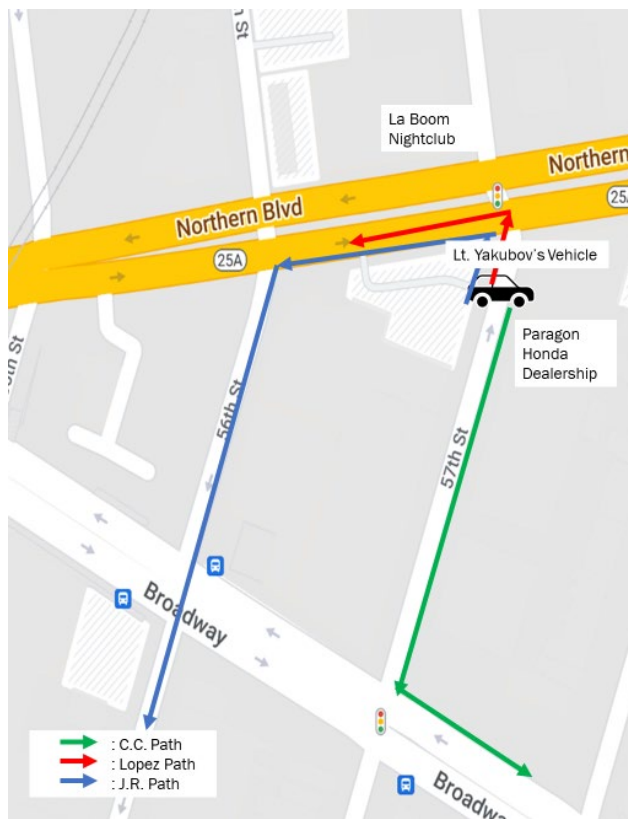


Mr. Lopez's weapon with extended magazine

Video Evidence

Surveillance video footage from nearby businesses show a person, later identified as C.C., wearing ski-mask, black hoodie, and black sweatpants, running south on 57th Street towards Broadway and getting into a car parked on Broadway between 57th and 58th Street, which

immediately drove off.⁴⁴ Mr. Lopez and a third person, later identified as J.R. ran west on Northern Boulevard towards 56th Street. Halfway between 57th Street and 56th Street, on the southern sidewalk, Mr. Lopez fell to the ground and stopped moving.⁴⁵ The third person ran west on Northern Boulevard and then south on 57th Street.⁴⁶ Surveillance video footage, including audio, from businesses on 56th Street shows that person wearing a ski-mask, a blue hoodie, and carrying a pistol as he fled.⁴⁷ That person ran to the vicinity of 34-20 56th Street where he took off his ski mask; surveillance video audio recorded a phone call the person made to someone, asking to be picked up.⁴⁸ He appeared to have an injury on his buttocks.⁴⁹ At 3:40 a.m. a silver sedan⁵⁰ arrived and picked him up.⁵¹



Paths taken by C.C., Lopez, and J.R.

⁴⁴ Paragon Honda surveillance video (Northern Boulevard), 12/16/21 at 03:09:37.

⁴⁵ Paragon Acura surveillance video (Northern Boulevard), 12/16/21 at 03:09:45.

⁴⁶ Paragon Honda surveillance video (Northern Blvd), 12/16/21 at 03:09:32.

⁴⁷ Mamajuana Restaurant Surveillance Video (56 Street), 12/16/21 at 03:10:00.

⁴⁸ Surveillance Video from 34-21 56 Street (Camera 1), 12/16/21 at 03:11:35 -03:12:46.

⁴⁹ *Id.*

⁵⁰ This was a different silver car than the one involved in the shooting.

⁵¹ *Id.* at 03:40:30



Mr. Lopez and J.R. running west on Northern Boulevard



Mr. Lopez and J.R. running west on Northern Boulevard

Thu Dec 16, 2021 03:09:43 (ET)



Mr. Lopez running west on Northern Boulevard

Thu Dec 16, 2021 03:09:45 (ET)



Mr. Lopez falling to the ground



J.R. running south on 56th Street, with a handgun in his right hand

Arrest of C.C. and J.R.

At 8:00 a.m., December 16, 2021, members of the NYPD arrested C.C.⁵² at the emergency room of Lincoln Hospital in the Bronx, where he was being treated for two gunshot wounds (entry & exit) on his left buttocks.⁵³ The arresting officers recovered a gold chain from C.C.⁵⁴ Lt. Yakubov's brother, L.Y., in an interview with NYPD, said the chain belonged to his brother.⁵⁵ Additionally, the clothing worn by C.C. matched the clothing worn by the individual caught on surveillance video running south on 57th Street following the shooting. No weapons or other items of evidence were found during C.C.'s arrest.

⁵² NYPD Case 2021-70, Follow-up Report 22.

⁵³ NYPD Case 2021-70, Follow-up Report 22.

⁵⁴ Police Officer Ahmed Abdo's Body Camera Video Footage, 12/16/21 at 05:34:48.

⁵⁵ Audio Recording of NYPD interview of L.Y., 12/16/21; L.Y. said to NYPD Detectives that he was a jeweler and on February 12, 2021 had helped broker the purchase of the chain through an individual he worked with.



C.C.'s Black Hoodie Sweater



C.C.'s Black and Blue Sweatpants



C.C.'s White and Black Air Jordan Sneakers

On December 17, 2021, members of NYPD's Force Investigation Division (FID), after reviewing C.C.'s criminal history, known accomplices, and video collected from cameras near the shooting, identified the third shooter, J.R. On December 27, 2021, an I-Card for J.R. was

activated and on January 14, 2022, J.R. was arrested in the Bronx. C.C. and J.R. are being prosecuted by the Queens County District Attorney's Office.

Witness Statements

The witnesses below were interviewed by OSI and the NYPD⁵⁶ and said the following:

C⁵⁷

C is a friend of Lt. Yakubov who witnessed the shooting. She said during the early morning hours of December 16 Lt. Yakubov was in contact with her. He invited her to the concert at La Boom and sent an Uber to bring her to the club. At 3:05 a.m. Lt. Yakubov called her and said he was waiting for her outside La Boom. As she was being dropped off on Northern Boulevard, slightly west of the 57th Street intersection, she saw the shooting through the rear window of the Uber and saw a car parked on 57th Street in the northbound lane and three persons near it who had handguns raised and were shooting at something. C was unaware at the time who or what they were shooting at. Afterwards, two of the persons started running west on Northern Boulevard, and, as they ran, continued to shoot. C saw one of the two persons fall to the ground after getting shot. She believes that one person was shot in the chest. During the shooting, C never saw Lt. Yakubov, nor did she know his location until after the shooting ended. Following the shooting, she called 911.

D⁵⁸

D is a retired NYPD Sergeant who was working as a "liaison" for La Boom on December 16, 2021. At the time of the shooting D was near the 57th Street La Boom entrance. He said he met Lt. Yakubov that night at the entrance of the club. Lt. Yakubov mentioned he was a member of the NYPD. When NYPD asked whether Lt. Yakubov was armed, D said, "everybody gets tossed here" and nobody is permitted inside La Boom with a firearm. D saw Lt. Yakubov leave La Boom and remembered him saying he was getting a "shorty" but would return. Shortly after, he heard numerous gun shots. After the shooting stopped D walked to the intersection of 57th Street and Northern Boulevard where he saw Lt. Yakubov bleeding and requesting help. He rendered aid to him until EMS arrived. D saw a second person west of where Lt. Yakubov was, who appeared to be shot.

⁵⁶ The NYPD as part of their investigation interviewed numerous witnesses; included in this report are those witnesses who were nearest the shooting when it occurred.

⁵⁷ OSI does not publish the names of civilian witnesses. C was interviewed by OSI on 12/16/22 and 1/4/22; her statements are summarized above; Audio Recording of OSI interview of C, 1/4/22.

⁵⁸ D was interviewed by OSI and the NYPD on 12/16/22; his statements are summarized above. NYPD Case 2021-70, Follow-up Report 2; Audio Recording of NYPD Interview of D, 12/16/21.

O⁵⁹

O is a former NYPD officer who was part of the security team at La Boom on December 16, 2021. O met Lt. Yakubov when he entered La Boom at 12:30 a.m. A few minutes before the shooting incident, O saw him leave La Boom; at the time Lt. Yakubov was on his cellphone talking to someone. Lt. Yakubov told O that he was going to get his “girl” and come back. O did not witness the shooting but remembers hearing 12 to 15 gunshots from the direction where Lt. Yakubov walked and saw several people running in different directions. Afterwards, O walked to the intersection of 57th Street and Northern Boulevard, where he saw Lt. Yakubov and immediately called 911.

R⁶⁰

R was one of the 911 callers. He said he saw a person, whom he later learned was a police officer, being robbed. He heard gunshots and immediately ducked. He saw the robbers run west on Northern Boulevard. He also witnessed one of the persons get shot by the “police officer.” Afterwards, R went to the site of the shooting and saw the police officer, who was injured and bleeding from the head. He called 911.

G⁶¹

G was in a parked car on Northern Boulevard at the time of the shooting. She did not witness the shooting but heard numerous gunshots and saw three men running from the intersection of 57th Street and Northern Boulevard. One man ran south on 57th Street and the two other men ran west on Northern Boulevard. G believes all three men were wearing ski masks.

B⁶²

B is a security guard who was inside Paragon Honda, 57-02 Northern Boulevard, at the time of the shooting. B stated he did not witness the shooting but did hear numerous gun shots after which he saw several people run towards the NYPD officer who was on the ground.

L⁶³

⁵⁹ O was interviewed by OSI and the NYPD on 12/16/22; his statements are summarized above. NYPD Case 2021-70, Follow-up Report 5; Audio Recording of NYPD Interview of O, 12/16/21.

⁶⁰ R was interviewed by the NYPD on 12/16/21; his statements are summarized above. Audio recording of NYPD interview of R, 12/16/21.

⁶¹ G was interviewed by OSI on 1/6/22; her statements are summarized above. OSI Investigations Division Report 150-16, 1/6/22.

⁶² B was interviewed by OSI on 1/4/22; his statements are summarized above. OSI Investigations Division Report 150-16, 1/6/2022; Audio Recording of OSI Interview of B, 1/4/2022.

⁶³ L was interviewed by the NYPD on 12/16/21; her statements are summarized above. Video recording of NYPD interview of L, 12/16/21.

L is a street vendor who was selling food near the 57th Street entrance to La Boom. At some point during the night, L heard gunshots coming from the intersection of 57th Street and Northern Boulevard. She saw 3 persons moving west on Northern Boulevard and shooting. She never saw who they were shooting at or if anyone was hurt. She saw one of the shooters standing and then falling to the ground.

LT. YAKUBOV'S ACCOUNT

OSI interviewed Lt. Yakubov. The following is a summary of the interview:

On December 15, 2021, Lt. Yakubov got off duty at 11:50 p.m. That night he had planned to attend a concert at La Boom Night Club with friends. He drove to La Boom and parked his car near the intersection of 57th Street and Northern Boulevard. Before getting out of his car, he took his holster off his waist and placed it and his service weapon underneath the driver's seat.⁶⁴ At 1:00 a.m. on December 16 he entered La Boom and sat with a group of his friends. He believes he had no more than two mixed drinks. Throughout the night he was texting with C and eventually invited her to the concert. She agreed and he ordered an Uber for her.

At 3:00 a.m. he left La Boom and walked to his car to wait for C, who was on her way there.⁶⁵ He retrieved his weapon from under the driver's seat and clipped it back onto his waist while at his car. A short time later, he noticed a car drive up 57th Street and stop at the red light. Three persons got out of the car.⁶⁶ They approached him and stood about an arm's length away. He couldn't remember what clothing they were wearing but remembered they all had on ski masks. All three persons were holding guns. They said something to him, but he couldn't recall what or if he responded. He was concentrating on the weapons they were holding and remembers them pointing them at him. At some point, he felt someone grab his chain and felt a second person reach for his chest. He realized at that point he was being robbed. He couldn't remember who shot first, how many shots were fired at him, how many shots he fired or if he shot anyone. He recalls seeing one of the persons backing away from him and firing his weapon but does not recall where the persons that robbed him went or what happened to them. Lt. Yakubov said he feared for his life and believed he was going to be killed for his gold chains.⁶⁷ He said the entire incident didn't last more than a few seconds.

⁶⁴ At the time he arrived, Lt. Yakubov's service weapon was inside a clip holster which was affixed to his waist.

⁶⁵ In his interview, Lt. Yakubov said that C would be going to the airport from the club, so he waited for her at his car so she could first put her luggage in the car before the two of them went to the club.

⁶⁶ The driver of the car remained inside the car and never exited.

⁶⁷ At the time of the robbery, Lt. Yakubov was wearing two gold chains; one remained on him after the shooting incident; the other was found on C.C. when he was arrested and identified by L.Y. (brother) as belonging to Lt. Yakubov.

After the shooting, Lt. Yakubov noticed that he had been shot in the head, chest, leg, and hand. He approached the car the three persons got out of and asked the driver for help. He continued to yell for help, pulled out his identification card, and lay down next to his car.

MEDICAL EXAMINER'S REPORT⁶⁸

On December 17, 2021, Dr. Michael Greenberg of OCME performed the autopsy of Mr. Lopez and found as follows: Lopez sustained two gunshot wounds, one to the neck/torso and another to his lower left abdomen. The bullet that caused the neck wound entered near the neck and then travelled through his right lung, right diaphragm and right ninth rib. The bullet was found lodged in Lopez' right lower back. The bullet was analyzed by the NYPD laboratory which was unable to be forensically link the bullet to the handguns used by Mr. Lopez or Lt. Yakubov.⁶⁹ The bullet that caused the wound to Mr. Lopez's lower left abdomen did not penetrate his abdominal cavity; it traversed the abdominal wall and left thigh, exiting from his left buttocks. Dr. Greenberg concluded that the cause of Mr. Lopez' death was a gunshot wound to the neck/torso, and the manner of death was "homicide (shot)."

LEGAL ANALYSIS

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 Section 35.00. If a defense is raised at trial, the burden is on the prosecutor to disprove it beyond a reasonable doubt, PL Section 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).

Subdivision 1 of PL Section 35.15 justifies the use of physical force in defense of oneself or another person when a person reasonably believes that force is necessary to defend against the use or imminent use of unlawful force by another person. Under Subdivision 2 of PL Section 35.15, a person may not use deadly physical force unless certain additional circumstances exist, such as when, under Paragraph (b), the person "reasonably believes that such other person is committing or attempting to commit a ... robbery." Unlike the more general provision, Paragraph (a), which justifies the use of deadly physical force to defend against deadly physical force, the "robbery" provision in Paragraph (b) does not impose upon the person who needs to defend himself a duty to retreat, nor does it require that the person believe that deadly physical force, as opposed to physical force, is about to be used against him.

⁶⁸ OCME Report of Autopsy of Raymierik Lopez (Q21-040565), 12/17/21.

⁶⁹ NYPD Laboratory #2021-048850, Reports #7, 12 and 13.

The New York Court of Appeals holds that “reasonable belief” must have both a subjective and an objective component: it must be both a belief that a person actually holds, and a belief that a reasonable person under the same circumstances could hold. *People v Goetz*, 68 NY2d 96 (1986); *People v Wesley*, 76 NY2d 555 (1990).

The Penal Law Section 160.00 states that Robbery is “forcible stealing,” and that

“A person forcibly steals property and commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of (1) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or (2) Compelling the owner of such property ... to deliver up the property....”

Based on the investigation in this case, a prosecutor would not be able to disprove beyond a reasonable doubt at trial that Lt. Yakubov reasonably believed: that physical force was being used or was about to be used against him; that he needed to use physical force to defend against the physical force being used against him; and that he was the victim of a robbery.

The evidence in the investigation is that at 3:09 a.m. Lt. Yakubov was approached by Lopez, J.R., and C.C., wearing ski masks, standing an arm’s length away, and pointing three handguns at him. Eyewitnesses at the scene corroborated Lt. Yakubov’s description of three men wearing ski masks and armed with handguns.

At the time of the robbery, Lt. Yakubov was seated in his car, was wearing two gold chains, a wristwatch, and a gold bracelet. One of the robbers took one of the gold chains from his neck; this gold chain was recovered when C.C. was arrested in the Bronx. Lt. Yakubov felt another robber reach for his chest, at which point he realized he was being robbed. According to Lt. Yakubov, he feared for his life throughout the incident and believed he was going to be killed for his jewelry.

Although the evidence does not establish who shot first, evidence collected from the crime scene and forensically analyzed established a shootout occurred: 8 rounds were fired from Lt. Yakubov’s service weapon and 8 rounds were fired from a second, unknown weapon. Eyewitnesses who were present during the shooting stated three men exchanged gunfire with an unknown person. The handgun found near Mr. Lopez was determined to be operable, had one live cartridge in the chamber and had his DNA on it. Video surveillance footage of the robber who fled towards 56th Street shows he was carrying a handgun, which was never found. Most importantly, Lt. Yakubov was wounded by gunfire.

Under these circumstances, a prosecutor would not be able to disprove beyond a reasonable doubt that Lt. Yakubov reasonably believed he was being robbed, that physical

force (indeed deadly force) was about to be used (and was in fact used) against him, and that he needed to use physical force to defend himself.

Alternatively, a prosecutor would not be able to disprove beyond a reasonable doubt that Lt. Yakubov's actions were justified under the more general ground of justification, PL 35.15(2)(a), which provides that a person may use deadly physical force if he or she "reasonably believes that such other person is using or about to use deadly physical force." The provision continues in pertinent part,

"Even in such case, however, the actor may not use deadly physical force if he or she knows that with complete personal safety to oneself ... he or she may avoid the necessity of so doing by retreating...."

In this case Lt. Yakubov was sitting in the front seat of his car when confronted by three men with guns, who pointed their guns at him. It would not have been physically possible for him to retreat. Once the men pointed guns at him he could have reasonably believed that deadly physical force was imminent and that the only way to defend himself was to use deadly physical force.

For the reasons set forth above, OSI cannot disprove beyond a reasonable doubt that Lt. Yakubov's use of deadly force was justified under Article 35 of the Penal Law. OSI therefore will not present charges in this case to a grand jury and closes this case with the issuance of this report.

Dated: April 4, 2023