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Office of Special Investigation

July 18, 2023

Report on the Investigation into the Death of Jamie Feith

INTRODUCTION

New York Executive Law Section 70-b authorizes the office of New York's 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 or a peace officer, as defined. When OSI does not seek charges, Section 70-b requires OSI to issue a public report.

This is the report of OSI's investigation of the death of Jamie Feith, who was shot and killed on April 29, 2022, by Town of Hyde Park Police Officer Joshua Kemlage. Having thoroughly investigated the matter and analyzed the law, OSI will not seek charges against Officer Kemlage because OSI concludes a prosecutor would not be able to disprove beyond a reasonable doubt that his use of deadly force against Ms. Feith was justified under New York law.

FACTS

Overview

On April 29, 2022, at 3:04 p.m.¹ Jamie Feith called 911 and said she was in a "domestic violence situation" at her home at 50 North Cross Road in the Town of Hyde Park, in Dutchess County. She reported to 911 that her husband had been both physically and verbally abusive to her. Two members of the Town of Hyde Park Police Department (HPPD), Police Officer Joshua Kemlage and Police Officer Bryan Sweeney, as well as a member of the New York State Police (NYSP), Trooper Christopher Miller, responded to the address.

Officers Kemlage and Sweeney, in uniform and marked police cars, were the first on scene. NYSP Trooper Miller arrived shortly after. 50 North Cross Road is a two-family house with a long driveway, set back in the woods on a rural street. Upon arrival, the officers went to the right, past the main entrance, and down a ramp that led to the entrance of a two-bedroom apartment. Ms. Feith answered the door and let the officers in. Also in the apartment at the time were Ms. Feith's three young children and the children's father, N.D.²

The officers separated Ms. Feith and N.D.; PO Sweeney was outside with N.D. and PO Kemlage and Trooper Miller were inside with Ms. Feith. When PO Kemlage was speaking to Mr. Feith in her bedroom, and Trooper Miller was in the living room, PO Kemlage asked Ms. Feith to provide identification for a domestic incident report and asked whether she wanted N.D. to leave. Ms. Feith started to bounce on her feet, wave her arms, and say, repeatedly, "Oh yeah," at one point bringing her face to within inches of PO Kemlage's face. PO Kemlage grabbed

¹ All times are approximate.

² Civilians' initials are used to maintain anonymity

Ms. Feith to escort her out of the bedroom to the living room. Ms. Feith reached into her back pocket, removed a folding knife, and pointed it at PO Kemplage. Trooper Miller began screaming, “Knife, knife, knife, drop the knife!” PO Sweeney, hearing the commotion, came inside. PO Kemplage wrestled Ms. Feith to the floor, but she got back up, holding the knife. Ms. Feith walked toward the officers with the knife in her hand. The officers retreated backward into the kitchen and repeatedly shouted to drop the knife. PO Sweeney Tased Ms. Feith, but the Taser had no effect. Ms. Feith moved toward PO Kemplage with the knife blade pointed outward until she was within arm’s distance. PO Kemplage fired his gun at Ms. Feith four times. Ms. Feith fell to floor, and Officer Sweeney took the knife out of her hand. The officers immediately called for an ambulance. EMS arrived, but life saving measures were unsuccessful, and Ms. Feith was pronounced dead at the scene.

OSI’s Video Review

Video from Trooper Miller’s BWC

OSI reviewed BWC footage from Trooper Miller, which shows that he arrived at 50 North Cross Road at 3:13 p.m. and that PO Kemplage and PO Sweeney were already there.³ Video shows that at 3:14 p.m. PO Kemplage knocked on the door of the side apartment and entered, followed by Trooper Miller and PO Sweeney. PO Kemplage walked directly into the living room where Jamie Feith was standing by the television; N.D. was seated at a table. Ms. Feith had visible bruises on the left side of her face, above and below her eye.

Video shows that at 3:15 p.m. PO Sweeney took N.D. outside, followed by Trooper Miller. PO Sweeney pat frisked N.D. and walked him to the side of the house. Video captured N.D. telling PO Sweeney that Ms. Feith was his girlfriend and the mother of his children; that they had been having a “very rough two months.” N.D. said that earlier in the day, before 911 was called, Ms. Feith had acted erratically and had straddled him and told him how glad she was that she met him, right before she slapped him across the face.

At 3:17 p.m. Trooper Miller went back into the apartment and video shows PO Kemplage was speaking to Ms. Feith in her bedroom. Video captured Ms. Feith telling PO Kemplage, “I need him gone. I need him gone.”

Three young children were in the apartment. Trooper Miller stayed in the living room speaking to the two older children while PO Kemplage continued to speak with Ms. Feith, who was holding her infant, in her bedroom.

³ The only relevant video of the incident was the BWC from Trooper Miller. At the time of this incident HPPD officers were not equipped with BWC. According to HPPD Chief Robert Benson HPPD has implemented body worn cameras for all officers as of April 2023. In addition, as of May 2023, HPPD has hired a behavioral specialist who will be involved in deescalating certain cases.

Video shows at 3:19 p.m. PO Kemplage left the apartment. Trooper Miller remained inside and continued speaking with the children. PO Kemplage returned at 3:21 p.m. and, in the living room, asked Ms. Feith for her ID. Ms. Feith said she had her hands full (she was holding the child), told PO Kemplage she couldn't find her ID, and handed him her wallet. PO Kemplage said he needed to fill out a domestic incident report.

At 3:23 p.m. Ms. Feith brought her three children from the living room into her bedroom and tried to close the bedroom door behind her. Video shows PO Kemplage stuck his foot in the doorway and followed her into the bedroom while Trooper Miller stood behind him in the doorway. PO Kemplage asked Ms. Feith if she wanted N.D. to leave and said, "You are having a meltdown over nothing. I am in here talking to you." Video shows that Ms. Feith started to bounce up and down in place. PO Kemplage asked Ms. Feith if she could sit down for a minute and said if she kept acting erratically, he would have to take her to the hospital. Ms. Feith stepped closer to PO Kemplage and said, "Oh yeah" repeatedly, while swaying and dancing. PO Kemplage asked Ms. Feith, "Are we really going to do this right now?" at which point Ms. Feith repeated "Oh yeah" and moved her face within inches of PO Kemplage's face.

At 3:23 p.m. video shows PO Kemplage grabbed Ms. Feith by her right shoulder and escorted her from the bedroom to the living room. Ms. Feith reached into her back pocket and removed a folding knife. Trooper Miller yelled, "Knife! Knife! Knife!" PO Kemplage wrestled Ms. Feith to the floor and tried to hold her down, and she appeared to resist being held down. PO Kemplage was unsuccessful in keeping Ms. Feith on the floor and she stood up at 3:24 p.m. Trooper Miller radioed 911 and called for additional units at 3:24:04 p.m.

At 3:24:05 video shows Ms. Feith had a knife in her hand, pointed toward the officers, as she stood up. PO Kemplage and Trooper Miller backed up toward the kitchen as PO Sweeney ran into the apartment. Either PO Sweeney or PO Kemplage yelled, "Stay back," while Trooper Miller yelled, "Drop the fucking knife!" PO Sweeney took out his Taser and pointed it at Ms. Feith while PO Kemplage took out his firearm. PO Sweeney yelled, "Taser, Taser, Taser" and activated his Taser while Trooper Miller attempted, but failed, to use his Taser. Although the prongs from PO Sweeney's Taser struck Ms. Feith, they did not seem to have an effect.

Ms. Feith, with the knife still in her hand, moved past PO Sweeney while he was Tasing her. At 3:24:14 p.m. Trooper Miller extended his arm to prevent Ms. Feith from continuing toward PO Kemplage. Ms. Feith was within arm's distance of PO Kemplage, with the blade of the knife pointed toward him, when PO Kemplage raised his firearm and shot Ms. Feith. A link to the video is here (BWC [Video](#)).



Figures 1 and 2: Two stills from Trooper Miller's body worn camera. Figure 1 shows Ms. Feith with the knife in her hand; Trooper Miller's hand is holding her back as she advances towards PO Kemlage, who has his gun drawn. Figure 2 shows Ms. Feith, with the knife in her hand and approaching PO Kemlage as he fired a shot.

PO Kemlage fired four shots, all of which struck Ms. Feith. When Ms. Feith fell PO Sweeney grabbed the knife from her hand and tossed it back into the living room before beginning to administer aid.



Figure 3, a still picture from Trooper Miller's body worn camera, showing PO Sweeney disarm Ms. Feith after she had been shot.

Witness Interviews⁴

Trooper Miller

OSI interviewed Trooper Miller in the presence of his attorney. Trooper Miller said that on April 29, 2022, he was alone on patrol in the Town of Hyde Park when he heard the 911 call come over the radio for a domestic dispute at 50 North Cross Road. HPPD officers were dispatched as the primary law enforcement officers to the scene, and he went to back them up. Trooper Miller activated his body-worn camera as he drove to the location.

Trooper Miller told OSI he had been to 50 North Cross Road on at least two prior occasions. The first time was in 2021, to do a wellness check on N.D. and the second was in January of 2022 in response to a 911 call for a domestic incident. Trooper Miller said he had not spoken to Ms. Feith on either prior occasion.

Trooper Miller told OSI that on April 29, 2022, he arrived at 50 North Cross Road slightly after

⁴ OSI tried to arrange voluntary interviews with PO Sweeney and PO Kemplage, but they declined. Pursuant to Executive Law Section 70-b, OSI subpoenaed Officers Kemplage and Sweeney to appear for testimony at the Attorney General's Office. They appeared with counsel but refused to answer substantive questions regarding the incident or their training, asserting their Fifth Amendment right against self-incrimination. To date Officers Sweeney and Kemplage have refused to speak with OSI.

PO Sweeney and PO Kemlage. When he entered the house he saw N.D. at a table, and PO Sweeney took him outside. Trooper Miller said it is common practice in domestic violence calls to separate the parties in an attempt to deescalate the situation. Trooper Miller said he initially followed PO Sweeney outside with N.D. until he felt N.D. was not a threat at which time he went back inside.

When he went inside, Trooper Miller told OSI Ms. Feith was holding an infant and speaking with PO Kemlage. Trooper Miller said that Ms. Feith seemed calm, but he observed injuries on her face, including bruising and an abrasion by her eye. Trooper Miller spoke with the other two children to distract them from the police investigation.

Trooper Miller told OSI that when PO Kemlage told Ms. Feith paperwork had to be done, he noticed a drastic change in her behavior. She became uncooperative and her behavior became erratic. She brought all the kids into her bedroom and tried to close the door, but PO Kemlage followed her and was standing in the door. Trooper Miller said he stood a few feet behind PO Kemlage and saw Ms. Feith exhibit physical behavior that wasn't normal, including jumping up and down and waving her arms and yelling repeatedly, "Oh yeah!"

Trooper Miller told OSI that he saw Ms. Feith approach PO Kemlage and put her hands on him – that Ms. Feith put her hand up towards PO Kemlage's face and chest area and pushed him. Trooper Miller said that, upon seeing Ms. Feith put her hands on PO Kemlage, he went closer to the bedroom and drew his handcuffs from his belt. As he approached, he saw PO Kemlage grab Ms. Feith by her shoulders to walk her out of the bedroom. Trooper Miller said he was going to handcuff her but as Ms. Feith came out of the bedroom, he saw her hands come from behind her back with a knife – that Ms. Feith pulled out a knife from her back pocket and unfolded it. When Trooper Miller saw the knife, he dropped his handcuffs, drew his firearm, and started screaming, "Knife, knife, knife!"

Trooper Miller told OSI that he fell backwards onto the living room couch as PO Kemlage struggled on the floor with Ms. Feith. Trooper Miller couldn't see what was happening while Ms. Feith was on the floor, but when he saw Ms. Feith get up she still had the knife in her hand. PO Kemlage and Trooper Miller were moving backwards towards the kitchen. Trooper Miller told OSI he was retreating backwards in an effort to create as much distance from her he could. Trooper Miller screamed at Ms. Feith to drop the knife but she didn't. PO Sweeney came inside as Ms. Feith was still coming towards them with the knife. Trooper Miller said he backed up as far as he could go until his back was up against a wall. Trooper Miller said he saw that PO Kemlage had his firearm out and drawn. He saw PO Sweeney draw his Taser and deploy his Taser with no effect on Ms. Feith. Trooper Miller said he drew his Taser and pulled

the trigger but it did not deploy.⁵ Ms. Feith still had the knife in her hand and had gotten close enough that Trooper Miller had his hand on her chest and was trying to push her back when PO Kemlage fired. Trooper Miller said he heard more than one shot.

Immediately after shots were fired Trooper Miller told OSI that he felt N.D. on his back and heard him screaming. Trooper Miller put N.D. in handcuffs, and he watched as PO Sweeney got on top of Ms. Feith and wrestled the knife out of her hand. He didn't see what happened to the knife after PO Sweeney disarmed her. PO Sweeney started aid. Trooper Miller went on the radio to request EMS and ran to his car to get a medical bag and an AED.⁶ He returned with the medical bag and got on the floor with PO Sweeney and tried to help render aid. As soon as he could, Trooper Miller said he got up and went back to check on the children. He told OSI that he put all the children into a bedroom told them to stay there and closed the door.

S.F.

OSI interviewed S.F., the younger brother of Ms. Feith. S.F. said Ms. Feith had suffered from mental health problems since she was in high school. S.F. told OSI he had a close relationship with his sister, her children, and N.D. He said he had last seen Ms. Feith two days before she was killed, and she did not have any bruising on her face. He said his sister and N.D. had been together over seven years, and he was aware that they had been having problems. S.F. said N.D. called him earlier in the day and said Ms. Feith was going to lie to the cops to try to get him arrested or thrown out of their house, but S.F. didn't think he was being serious.

N.D.

NYSP and OSI separately interviewed N.D. N.D. told OSI that he and Ms. Feith had been having problems in their relationship for some time. He said they had spoken about separation, and he had considered moving out, but because of the kids they were trying to make things work. N.D. said that the first time Ms. Feith called the police was in January 2022 after an incident in which she had thrown an object at N.D. and he had slapped her.⁷

N.D. said that after the January incident their relationship was never the same. He said Ms.

⁵ Trooper Miller told OSI that he believed his Taser was loaded but that he found out after the incident that it did not have a cartridge in it, which is why it did not deploy when he pulled the trigger. Trooper Miller was unaware that his Taser was not loaded on the day of the shooting.

⁶ Automated External Defibrillator.

⁷ OSI reviewed a domestic incident report from January 9, 2022, which states that when the police arrived Ms. Feith refused to provide any details about why she had called them and would not answer any questions. N.D. was also present and refused to answer any questions.

Feith drank alcohol and smoked marijuana almost every day and that they had smoked marijuana together prior to the police arriving on April 29, 2022.

N.D. told OSI he had awakened that morning at about 8:00 a.m., and they had been having a good morning until they began arguing about Ms. Feith's suspicions that N.D. had been unfaithful to her. Ms. Feith slapped N.D. and demanded to look at his phone. N.D. said he refused and she called the police. N.D. said he was surprised that Ms. Feith called the police that day, and that after she called the police, she locked herself in the bathroom. N.D. said he noticed money missing from their drawer, which caused him to call S.F. and leave a message saying he believed Ms. Feith was going to try to get him arrested that day.

N.D. said it took about ten minutes for the police to arrive and when they did Ms. Feith opened the door for them. N.D. was brought outside by PO Sweeney and pat-frisked before telling him what had happened that morning. After about five minutes he heard incomprehensible screaming coming from inside the apartment. N.D. said he was told to stay outside but he followed PO Sweeney into the apartment. N.D. said when he got into the kitchen he saw Ms. Feith holding her folding knife, staring at the cops, and walking forward. N.D. said the look in Ms. Feith's eyes was concerning to him. He said he started yelling, "don't hurt her!" and heard a Taser go off, but it didn't seem to work. N.D. said he heard multiple gunshots and saw Ms. Feith fall to the ground. N.D. screamed at the officers and was removed outside.

N.D. told OSI it was common for Ms. Feith to have a knife in her pocket, and they both frequently carried folding knives.

Recovered Evidence

Members of the NYSP Forensic Identification Unit (FIU) executed a search warrant at 50 North Cross Road and collected ballistics evidence, which included four expended .40 caliber shell casings and two deformed bullet fragments. The ballistic evidence and the .40 caliber Glock 23 fired by PO Kendlage were submitted to the NYSP Crime Laboratory (Crime Lab) for analysis. Microscopic analysis of the shell casings confirmed that PO Kendlage's gun fired all four bullets. FIU also collected two Tasers and one expended Taser cartridge from inside the apartment, as well as a knife. FIU's photo of the knife is below:



Figure 4, a photo taken by NYPS Investigator Catherine R. Desarle of the knife recovered from the scene.

Training

OSI reviewed HPPD General Order No. 0-017, about responding to domestic incidents, which states that where practicable at least two officers should be dispatched, that once on the scene they should restore order by separating the involved parties, assess the immediate safety and welfare of the involved parties including any children, assess the need for medical attention, and interview all available parties and witnesses.

OSI spoke with training officers from DCJS about the training DCJS provides to officers in Dutchess County, including HPPD, on use of force and defensive tactics. The training officers said they do not provide specific training about how to respond to a civilian armed with a knife, but train officers to evaluate the totality of the circumstances, since every incident is unique. DCJS instructs officers on the principles of the law of justification but do not train on de-escalation techniques.

Medical Examiner

Dr. Kia Newman of the Dutchess County Medical Examiner's Office conducted the autopsy. OSI attended the autopsy and reviewed Dr. Newman's report, which states the cause of

death as “gunshot wounds of the torso.”

In the report, Dr. Newman noted three entry gunshot wounds to Ms. Feith’s torso, one graze wound of her right hand, and one exit gunshot wound of the left side of the back. The direction of all the bullets was front to back. The graze wound to Ms. Feith’s right hand had both soot and stippling, which is consistent with being shot at a close distance. Two Taser probes were removed from Ms. Feith, one from the right upper quadrant of her abdomen and one between her legs. Two bullets were recovered internally and submitted to NYSF for examination.

Dr. Newman told OSI that it is impossible to determine the sequence of the gunshot wounds, or specifically which wound caused Ms. Feith’s death. Dr. Newman said that there was no single devastating injury, but several major organs were injured and each of the individual gunshot wounds could have readily caused death.

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 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).

In this case, Officer Joshua Kemplage used deadly physical force. Under PL Section 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 Section 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 Section 35.30 is the provision defining justification when a police officer or peace officer uses force to effect or attempt to effect an arrest.

PL Section 35.30(1) provides:

“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(1) are under no duty to retreat when threatened with deadly physical force, according to PL Section 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 physical 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.

First, under PL Section 35.30, PO Kendlage could use the physical force he reasonably believed to be necessary to effectuate the arrest of Ms. Feith and could use deadly force if he reasonably believed it was necessary to defend himself or another against Ms. Feith’s imminent use of deadly force.

Here, Ms. Feith had called 911 and reported domestic violence in her home. When PO Kendlage asked Ms. Feith basic questions about who she was and what had happened, she became uncooperative and then belligerent. Trooper Miller, who was present in the apartment with PO Kendlage and Ms. Feith, told OSI he saw Ms. Feith push PO Kendlage. PO Kendlage grabbed Ms. Feith to bring her out of her bedroom, at which time Ms. Feith pulled a folding knife out of her back pocket and pointed it at the officers. When Ms. Feith pulled the knife out of her back pocket, opened the blade, and pointed it at Officer Kendlage, he had reason to believe Ms. Feith was committing the crime of menacing a police officer under PL Section 120.18, a class D violent felony, which reads: “[a] person is guilty of menacing a police officer...when he or she intentionally places or attempts to place a police officer...in reasonable fear of physical injury, serious physical injury, or death by displaying a... knife...where such officer was in the course of performing his or her official duties and the

defendant knew or reasonably should have known that such victim was a police officer or peace officer." At that point, under PL Section 35.30, Officer Kemplage would have been justified in using force to arrest Ms. Feith, and, if Ms. Feith used or was about to use deadly physical force, Officer Kemplage would not have had a duty to retreat before using deadly physical force to defend himself or others. Nevertheless, when Ms. Feith ignored the officers' commands to drop the knife she was holding and, instead, continued to walk towards the officers, they retreated as far as they could go until they reached the back wall of the kitchen, according to Trooper Miller. When Ms. Feith continued to advance towards the officers, PO Sweeney used a Taser to attempt to stop Ms. Feith, with no effect. When Officer Kemplage fired at Ms. Feith, Ms. Feith was still coming toward Officer Kemplage and Trooper Miller with a knife. Applying the analysis in Goetz, a prosecutor would not be able to disprove beyond a reasonable doubt that Officer Kemplage reasonably believed it was necessary to use deadly force to defend himself and Trooper Miller.

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

Dated: July 18, 2023