

**POLICE DEPARTMENT
CITY OF NEW YORK**

TO: Michael Martinez, Esq.

FROM: Rita Bieniewicz, Assistant Department Advocate

RE: BILL OF PARTICULARS IN DISCIPLINARY CASE NO. 86290/10, POLICE OFFICER DAWN ORTIZ, TAX REGISTRY NO 924278.

1. The following information pertains to Specification Number 1 in Disciplinary Case No. 86290/10:

- a. On November 13, 2008, Respondent and Police Officer India Archie were both assigned to the Kings County Truancy Reduction Alliance to Contact Kids, (T.R.A.C.K.) located in the basement of 2828 Neptune Avenue, Kings County, New York, which is the Coney Island Gospel Assembly. At approximately 12:45 pm, Mr. Eduardo Alvarez, the superintendent of the facility, notified Respondent that there was a male in the facility's parking lot, possibly attempting to break into a parked vehicle. Respondent and Police Officer Archie exited the building and entered the parking lot, which is an open air area, surrounded by a chain link fence. The dimensions of the parking lot are approximately 83.5 feet by 86 feet. (See attached diagram).
- b. Upon entering the parking lot, both Respondent and Police Officer Archie observed a male Hispanic, later identified as Mr. Gilberto Blanco, standing behind a green van within the perimeter of the parking lot, holding a folding chair, raised approximately to his shoulder. Also present in the parking lot were two (2) School Safety Agents; Mr. Alvarez was present outside of the parking lot. When Respondent and Police Officer Archie first observed Mr. Blanco, they were approximately twenty-five (25) to forty (40) feet away from him.
- c. Respondent and Police Officer Archie approached Mr. Blanco. Respondent gave commands in Spanish while Police Officer Archie gave commands in English, to put the chair down. Mr. Blanco did not comply but moved towards Respondent and Police Officer Archie with the chair raised to his shoulder, while moving the

chair in a striking motion. Mr. Blanco moved towards the Members of the Service in spurts, walking and then stopping completely and then walking again. Mr. Blanco did not speak during this encounter. Both Respondent and Police Officer Archie drew their service firearms from their holsters and began backing away from Mr. Blanco. Respondent had her firearm pointed towards the ground and Police Officer Archie had her firearm in her right hand; Respondent also had her pepper spray in her left hand which she returned to her holster and requested assistance over her radio. Respondent and Police Officer Archie directed the School Safety Agents to take cover; the School Safety Agents took cover behind a parked School Safety vehicle. When Mr. Blanco was approximately between ten (10) and fifteen (15) feet away from Respondent and Police Officer Archie, Respondent pointed her firearm at him and ordered him to stop and drop the chair. Mr. Blanco began to move more quickly and headed toward Respondent, with the chair raised. Both Respondent and Police Officer Archie continued to give Mr. Blanco verbal commands, in Spanish and English respectively, to stop and drop the chair; Mr. Blanco did not comply. Mr. Blanco began to swing the chair in Respondent's direction and when he was approximately one (1) to three (3) feet away from her, began to swing the chair downwards. Respondent discharged one (1) round from her service weapon. This bullet struck Mr. Blanco and he was later pronounced dead as a result of the gunshot wounds in the chest.

- d. Respondent stated that during the above-described encounter, she possessed both her Department issued asp as well as her OC spray, but she opted not to use either. Respondent further stated that when she discharged her firearm, she had already backed up or retreated as far as possible due to the presence of bushes that were directly behind her. Upon review of the crime scene evidence, including photographs of the location, diagrams drawn to scale, and interviews of the Members of the Service assigned to investigate this shooting, it is apparent that further retreat was possible. The bushes that lined the boundary line of the parking lot where both Respondent and Police Officer Archie were standing allowed for clear passage. They did not comprise a dense, impenetrable hedgerow, but are two to three separate, relatively small bushes. (See attached pictures).
- e. The Patrol Guide, Procedure No. 203-11, USE OF FORCE, directs that "All members of the service at the scene of a police incident must: use minimum necessary force and employ non-lethal alternatives, as appropriate. Respondent had a clear obligation to exercise the minimum use of force in this circumstance. By failing to retreat either in a further backward direction (beyond the hedges), or laterally to the left or right, Respondent contributed to

the close proximity between herself, Police Officer Archie, and Mr. Blanco. Respondent's failure to seek further retreat is directly linked to the level of force that became necessary to subdue Mr. Blanco. In addition, had Respondent employed the non-lethal tactic of the utilization of OC spray, it is possible that Mr. Blanco would have been adequately incapacitated from causing injury to others, including Respondent. Respondent's actions directly contributed to and escalated the incident.



Rita Bieniewicz
Assistant Department Advocate

cc: Deputy Commissioner – Trials