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A man's death and his mother's lawsuit draw attention to the NYPD's approach to the mentally ill

Bad situation made worse?

More than six years ago, police officers shot and killed Kevin Cerbelli, a mentally ill Queens man, after he barged, shirtless, into a Queens precinct station house brandishing a screwdriver and a knife.

Now, as a lawsuit filed by Cerbelli's mother, Loretta, inches closer to trial in federal court in Brooklyn, new questions have emerged about the procedures police employ in more than 50,000 encounters a year with emotionally disturbed people.

The cornerstone of the case could be an unusually blunt written assessment of the incident by a former No. 2-ranking official in the Police Department who has been hired as an expert witness by the plaintiffs.

The city has maintained that the officers' use of deadly force was justified because Cerbelli was armed, had attacked a sergeant moments earlier and had made menacing moves toward two other officers.

But John S. Pritchard III, the first deputy commissioner in 1993 and 1994 during Raymond Kelly's first stint as police commissioner, has concluded that "deficiencies" in police procedures and the actions of the officers led to Cerbelli's death.

Calling it a "recipe for disaster," Pritchard criticized police procedures that allow officers to form a semicircle around an "EDP" — the police abbreviation for "emotionally disturbed person" — and let multiple officers shout commands.

A common tactic

Both tactics were used in the Cerbelli incident and in the fatal 1999 police shooting of another emotionally disturbed man, Gidone Busch, in Borough Park, Brooklyn.

"This policy of encirclement causes the situation to escalate, creates anxiety and fear for the EDP and the officers and exacerbates the danger," Pritchard wrote in the 11-page assessment filed with the court last month.

Allowing multiple officers to shout commands, he wrote, "is an extremely irrational and dangerous policy."

Pritchard also wrote that the case points up a glaring vulnera-



Diane Hohen says both her brother Kevin, shown in framed photo, and police panicked.

bility in station house security.

"After the terrorism visited on New York City, it is shocking that we had not — and still have not — secured our precinct station houses with basic security like a guard at the entry door," Pritchard wrote.

Police officials declined to comment, citing the litigation. Lawyers in the corporation

counsel's office would not answer questions about the case.

In Loretta Cerbelli's railroad apartment in Queens, an urn containing Kevin's ashes sits in a small shrine that she has erected to her son.

"She was hurt in a fall, and she had to stop working, so, in a way, this case is her life," said her daughter, Diane Hohen, in an in-

terview at her New Hampshire home. "Part of me just wishes it would just be over with, but my mom is being a stickler about the [police] training. People need to know: They surrounded him, he bolted, he panicked, and they panicked, and they fired."

Family members said any proceeds from the lawsuit would be used to create a foundation

that would focus on issues surrounding encounters between police and the mentally ill.

In all, the contentious Cerbelli case file now runs to tens of thousands of pages. In one deposition reviewed by Newsday, the city's lawyer objected 169 times in a 140-page transcript.

The city fought disclosure of voluminous Civilian Complaint Review Board case files on police encounters with the emotionally disturbed, eventually earning a protective order that bars use of those files outside the Cerbelli case.

And then there was the controversy three years ago after the city temporarily misplaced the screwdriver and the knife from evidence storage.

A questionable discharge

Two months before he walked into the 110th Precinct station house, Cerbelli was discharged under questionable circumstances from the psychiatric unit at Elmhurst Hospital Center. A state commission later concluded the hospital made a series of errors in releasing him.

On what would be the last day of his life, Cerbelli called his mother and told her, among other things, that he had sinned and he deserved to be arrested.

The police account of the Oct. 25, 1998 incident is in a four-page report by the NYPD Queens North Investigations Unit. The report relies on the accounts of the three officers who fired their guns.

The report says Cerbelli, 30, dressed in sweatpants, entered the station house at 8:45 p.m. carrying a screwdriver and a knife. He immediately began to strike Sgt. Michael Baretto.

Officer Paul Valdes drew his weapon, yelled, "Knife!" Cerbelli ran to the opposite side of the room. Valdes and Officer Robert Ehmer yelled, "Drop the knife! Drop the knife!"

Ehmer sprayed Mace. Cerbelli "took a step" toward an officer named Consalvo, and Valdes shot Cerbelli in the shoulder. Cerbelli moved toward Valdes, who fired twice more, once while falling backward.

Cerbelli veered again toward Ehmer, who also fell backward.

In all, Cerbelli was struck

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seven times by shots from three officers, including once in the back. Valdes, Ehmer and one other officer all fired their weapons. A lieutenant named McBride was struck by a ricocheting bullet fragment. Baretto, whom Cerbelli first allegedly assaulted, sustained a bruised shoulder.

Valdes later said in a deposition that Cerbelli stabbed Baretto "numerous times." He said he saw the knife "bending in Sergeant Baretto's back."

The Police Department ruled in September 1999 that the shooting was justified.

"Kevin Cerbelli had already attacked one member of the service and it was readily apparent to the officers that further use of deadly force was likely," the four-page report concluded. "Clearly the officers had no alternative..."

Carmen Giordano, a Cerbelli lawyer, said Cerbelli, after the initial encounter, backed into a corner and found himself cut off from exits by the officers.

No immediate danger

From his review, Pritchard concluded that if the officers had time to try to convince Cerbelli to drop the weapons, there was no immediate danger.

By encircling Cerbelli, he wrote, the officers stopped him from moving in any direction without moving toward an officer. By shouting, the officers escalated the situation.

"The officers could have used this time to de-escalate the situation," he wrote. "Instead, they made it worse."

No supervisor took command of the situation. As a result, Pritchard argued, the confrontation spun out of control, and the gunfire was reflexive.

Pritchard concluded that the officers should have "moved away from Cerbelli, taken cover and used time to calm the situation," designating one officer to speak calmly with him.

The EDP training given to officers does not lay out "clear standards" for use of lethal force, Pritchard noted.

While officers in the Emergency Service Unit are specially trained to deal with those situations, they often arrive too late, he noted.

Thus, the majority of encounters involve officers with just 12 to 16 hours of such training, who are "ill-equipped to handle the situation," he stated.



A lawsuit seeks answers in the death of Kevin Cerbelli, above.

Katherine Falk, a psychiatric expert retained by the plaintiffs, concludes in her affidavit that encirclement "is a policy guaranteed to fail."

"The individual with severe mental illness is unable to differentiate reality from fantasy," she added. "What he would need at that moment was a soothing voice, not barking commands."

Pritchard and forensic consultant Thomas Kubic examined Baretto's clothing and vest and concluded that neither Baretto's vest nor his uniform shirt were pierced by anything.

Kubic said the knife "could not have bent in the manner described."

Baretto himself said in his deposition that he was struck one or two times, much less than Valdes said, records show.

"It felt like someone was whacking me in the back, like 'Hey! What's going on?'" he said.

The officer who fired the first shot, Valdes, has claimed that he decided to fire when he saw Cerbelli moving toward another officer. But Kubic writes that accounts of other officers present undermine that account. "Rather, there is some indication by other officers that Cerbelli was moving in the opposite direction," Kubic writes.

In a June 2003 deposition, Capt. Michele Lent said the EDP procedure is "not an exact science" and noted, "The police officers have to sum up what is going on in a couple of seconds."

"If there is time in a situa-

tion, we try to isolate and contain a person who is a harm to himself or others," Lent said. "If there is immediate danger, we have to respond."

Of EDPs, she said: "The scary part is, you don't know how they are going to react."

Inspector Michael Coan, a police spokesman, said Friday in a written response to Newsday that "EDP training for NYPD Officers includes 21 hours of classroom and interactive role playing."

James Fyfe, the NYPD deputy commissioner for training, told The New York Times in December 2003 that the department "has always done it right." [The NYPD declined to make Fyfe available to Newsday.]

'Challenge to the city'

Amanda Masters, a lawyer for Loretta Cerbelli from New York Lawyers for the Public Interest, said the NYPD has lagged behind other departments.

"This is a challenge to the city for their policies and training around this issue," Masters said. "The city has been unwilling to change the patrol guide policy, which remains the same as in 1985."

In 2003, Masters said, Cerbelli asked for changes to the patrol guide, a ban on the use of pepper spray on EDPs, and a sharp increase in training in techniques of non-lethal force.

"The other side has not been willing to come to the table," Masters said.