



Office of the New York State Attorney General Letitia James
Office of Special Investigation

December 29, 2023

Report on the Investigation into the Death of Brendon Burns

OVERVIEW

New York Executive Law Section 70-b directs the Attorney General's 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. When OSI does not seek charges against the officer, Section 70-b requires OSI to issue a public report describing its investigation. This is the public report of OSI's investigation of the death of Brendon Burns, who was shot and killed on March 20, 2023, by members of the Rochester Police Department (RPD) and the Monroe County Sheriff's Office (MCSO).

On March 20, 2023, at 12:49 p.m.,¹ officers from three police agencies RPD, MCSO, and the Brighton Police Department (BPD) were conducting surveillance near a house at 5 Milburn Street, in the City of Rochester, where Brendon Burns lived with his mother. The officers, including MCSO Deputy Clayton Hillegeer, MCSO Deputy Alexandra Baker, MCSO Sgt. Christian DeVinney, and RPD Officer William Baker, later joined by RPD Sgt. Kevin Leckinger, were seeking to arrest Mr. Burns based on reports that he was involved in two shootings, one earlier that day and one a few days earlier.

The officers saw Mr. Burns leave the house on foot and discussed over the radio taking Mr. Burns into custody. Deputy Hillegeer followed Mr. Burns on foot. Mr. Burns turned toward Deputy Hillegeer and Deputy Hillegeer identified himself as a police officer. Mr. Burns reached for his waistband and ran up Vassar Street; Deputy Hillegeer pursued on foot and ordered Mr. Burns to stop reaching into his waistband. Deputy Hillegeer saw Mr. Burns take his right hand out of his waistband holding what the deputy thought was a handgun. Mr. Burns turned and raised his right arm toward Deputy Hillegeer. Deputy Hillegeer fired two shots at Mr. Burns, at least one of which struck him. Mr. Burns ran into the street toward Deputy A. Baker's car. Deputy A. Baker opened the driver's side door of her car to try to knock Mr. Burns down. Deputy A. Baker got out of her car and fired two shots at Mr. Burns. Mr. Burns fell to the ground, but got up and continued running.

Mr. Burns ran from Vassar Street to Park Avenue and was pursued on foot by PO W. Baker, Deputies Hillegeer and A. Baker, and Sgt. DeVinney. Deputy A. Baker activated her body worn camera (BWC). Mr. Burns circled back by way of Edgerton Street to the house at 5 Milburn Street, opened the rear passenger-side door of the Honda Accord parked in the driveway, took out a backpack, and walked through the back yards of houses on Milburn Street. Deputy Hillegeer took cover with Mr. Burns's mother, who had come out of the house. The other officers continued to follow Mr. Burns.

Sgt. DeVinney and PO W. Baker told Mr. Burns to drop the backpack. Mr. Burns walked up a driveway and into the back yard of 224 Barrington Street. PO W. Baker, Sgt. Leckinger, Deputy

¹ All times are approximate.

A. Baker, and Sgt. DeVinney followed on foot and took cover. Mr. Burns started to dig into the backpack. Officers gave commands for Mr. Burns to take his hands out of the bag and to put his hands up. Mr. Burns pulled the stock and the barrel of a shotgun out of the backpack and put them together. The officers shouted to Mr. Burns to drop the gun. As Mr. Burns raised the assembled shotgun toward Sgt. DeVinney, Sgt. DeVinney, Deputy A. Baker, PO W. Baker, and Sgt. Leckinger fired, striking Mr. Burns, who fell to the ground. Officers handcuffed him and rendered aid. The barrel and stock of the shotgun, a box of shotgun ammunition, and a knife were recovered near his body.

Having thoroughly investigated the matter and analyzed the law, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that the officers who fired were justified when they shot Mr. Burns and, therefore, will not seek charges against them.

FACTS

Map and Composite Video Link

The incident took place on a residential street in the City of Rochester, in the back yard of 224 Barrington Street, a few houses away from where Mr. Burns lived with his mother, at 5 Milburn Street, as shown on the map below:



Map showing the foot pursuit of Mr. Burns. Mr. Burns's house was at the spot marked by the purple star. The final shots were fired at the spot marked by the green star.

The incident was captured on Deputy A. Baker's BWC, two home video security cameras, and police radio transmissions. OSI has created a composite video from the cameras and the audio recordings, accessible at the link in the footnote.²

² [Composite video](#): All BWC and security video has been edited pursuant to the Attorney General's policy to protect privacy (e.g., bystander faces and license plates are blurred). The BWC has audio; its time stamp is one hour behind actual time. Vassar Street Video #1 has no audio; its time stamp is one hour behind actual time. Vassar Street Video #2 has audio, but no time stamp. There are micro-variations among the timestamps on the BWC footage, Vassar Street Video #1, and the police dispatch recordings because the media are not synchronized.

Prior Incidents

According to an incident report written by RPD PO Alexander Elmore, on March 17, 2023, at 10:02 p.m., a person fired a gun into an occupied Higher Level smoke shop at 490 Monroe Avenue, in the City of Rochester; PO Elmore recovered a large caliber spent lead projectile, possibly a shotgun slug, from inside the shop. According to an interview with OSI and incident reports, Sgt. Matthew Webster, the incident investigator, interviewed Civilian #1,³ who was a witness to the shooting and captured the car involved in the shooting on a dashboard camera and provided a description of the shooter; from a review of the dashcam video, Sgt. Webster determined that the car was a 2015 gray Honda CRV, registered to Mr. Burns's mother at 5 Milburn Street. On March 18, 2023, Sgt. Webster and other RPD officers conducted surveillance at 5 Milburn Street. According to Sgt. Webster, he saw the car at the address and saw, in plain view in the front seat area, a pump action shotgun. Sgt. Webster had the SUV towed and obtained a search warrant for it, which yielded two rifles, but the recovered rifles did not match the shell casings recovered from the 490 Monroe Avenue scene.

Sgt. Webster identified Mr. Burns as a suspect in the shooting based on the description of the shooter, the identification of the vehicle involved, and the recovered weapons. The Monroe Crime Analysis Center (MCAC) released a "Be On the Look Out" (BOLO) bulletin identifying Mr. Burns as the suspect in the shooting and providing the description of two vehicles registered to Mr. Burns's mother: the recovered 2015 Honda CRV and a 2005 Honda Accord.

According to an interview with OSI and an incident report, BPD PO Marcus Capeder, on March 20, 2023, at 7:00 a.m., responded to the area of 200 Hemingway Drive in the Town of Brighton, for a report, by Civilian #2, of shots fired. Civilian #2 reported that a person fired a gun from a moving car toward his pickup truck; Civilian #2 described the suspected shooter and said his car was an older model gray Honda Accord with a license plate in the back window. According to an interview with OSI and an incident report, BPD Lieutenant Allison Laubaucher received the MCAC bulletin about Mr. Burns, went to the 5 Milburn Street address and saw a car matching the description given by Civilian #2. MCAC released another bulletin identifying the suspect as Mr. Burns and the vehicle as registered to Mr. Burns's mother.

Officer Interviews

MCSO Deputy Hillegeer

In his interview with OSI, Deputy Hillegeer said the following:

On Saturday, March 18, 2023, while off-duty, he received an email from MCAC for a BOLO of a Honda CRV which was involved in a shooting on March 17, 2023, on Monroe Avenue in the town of Brighton, and an officer safety bulletin identifying Brendon Burns as the suspect in that

³ OSI does not publish the names of civilian witnesses.

shooting. On Monday, March 20, 2023, Deputy Hillegeer received an MCAC bulletin about a road rage incident, which occurred earlier that morning, where the suspect shot and struck another driver's vehicle; the suspect was identified as Brendon Burns and his vehicle was identified as a gray Honda Accord registered to Mr. Burns's mother. Deputy Hillegeer received a second MCAC bulletin that day detailing a pursuit of the Accord that morning, which was terminated due to high speeds and traffic.

At 11:45 a.m. that day Sgt. DeVinney asked Deputy Hillegeer and Deputy A. Baker to respond to 5 Milburn Street, the address of Mr. Burns's mother, to assist BPD with surveillance for the presence of the Accord or Mr. Burns. Deputy Hillegeer arrived at the location and, at 12:45 p.m., saw Mr. Burns arrive in the Accord, park in the driveway, and walk into the house. Deputy Hillegeer and the officers present discussed over the radio apprehending Mr. Burns. Deputy Hillegeer drove his unmarked patrol car to Vassar Street to put on his safety vest and saw Mr. Burns walking on Vassar Street. He radioed Mr. Burns's direction of travel to Sgt. DeVinney and Deputy A. Baker. Deputy Hillegeer drove alongside Mr. Burns on Vassar Street and then got out of his car with his handgun drawn and followed Mr. Burns on foot. Mr. Burns turned toward him and he identified himself as a police officer. Deputy Hillegeer saw Mr. Burns reach for his waistband and run northbound on Vassar Street. Deputy Hillegeer thought he was close enough to grab Mr. Burns but was concerned Mr. Burns might be armed due to the MCAC bulletins. Deputy Hillegeer holstered his gun to chase Mr. Burns and saw Mr. Burns continue to reach in his waistband with his right hand; Deputy Hillegeer unholstered his handgun and ordered Mr. Burns to stop reaching into his waistband. As Deputy Hillegeer chased Mr. Burns, Mr. Burns looked over his right shoulder at him. Mr. Burns's right hand came out of his waistband, and Deputy Hillegeer could see an object in Mr. Burns's right hand that he thought was a handgun. Mr. Burns turned toward him and raised his right arm toward him. Deputy Hillegeer feared being shot, so he fired two shots at Mr. Burns.

Deputy Hillegeer fell. He saw Mr. Burns continue to run up Vassar Street. Deputy Hillegeer saw Deputy A. Baker drive her unmarked patrol car near Mr. Burns and open her driver's side door. Deputy Hillegeer yelled to Deputy A. Baker that Mr. Burns had a gun. Deputy Hillegeer saw Deputy A. Baker shoot at Mr. Burns and saw Mr. Burns fall but then get up and continue to run north on Vassar Street toward Park Avenue.

Deputy Hillegeer ran after Mr. Burns on Park Avenue and then south onto Edgerton Street with Sgt. DeVinney. Deputy Hillegeer saw Mr. Burns run toward the elementary school and saw PO W. Baker drive toward Mr. Burns. Deputy Hillegeer lost sight of Mr. Burns but saw him again on Milburn Street running toward the house. Deputy Hillegeer heard officers yelling for Mr. Burns to drop the knife in his hand. Deputy Hillegeer saw Mr. Burns open the rear passenger-side door of the Accord in the driveway and yelled for PO W. Baker to block the driveway to block escape.

Deputy Hillegeer saw Mr. Burns's mother and he took her to the front of the house to take cover behind a car because he thought Mr. Burns had gone into the house. Mr. Burns's mother said Mr. Burns carries a knife for protection, has mental health issues, and is not taking his medication. Within minutes, Deputy Hillegeer heard gun shots from behind 5 Milburn Street and went to 224 Barrington Street where he saw Mr. Burns lying on the ground as Sgt. DeVinney and other officers rendered aid.

RPD PO W. Baker

In his interview with OSI, PO W. Baker said the following:

On March 20, 2023, at 12:40 p.m., while working an unrelated investigation, he heard a radio call from MCSO about a suspect and car that were the subject of multiple MCAC bulletins. The bulletins identified Brendon Burns as the suspect with an address of 5 Milburn Street, and the radio call indicated Mr. Burns and the car were at 5 Milburn Street. PO W. Baker went to the area to assist; as he arrived he heard a radio transmission that Mr. Burns was running north on Vassar Street. PO W. Baker drove north on Vassar Street and as neared the middle of the block he heard gunshots. He saw Mr. Burns run away from Deputy Hillegeer and cross Vassar Street; PO W. Baker's view of Mr. Burns was blocked by parked cars. PO W. Baker thought Deputy Hillegeer had been shot, so he radioed "shots fired; suspect running toward Park Avenue." PO W. Baker saw Mr. Burns run toward Deputy A. Baker's car, clutching an object in his right hand; he thought Mr. Burns was holding a gun. PO W. Baker saw Deputy A. Baker drive her car, park in front of Mr. Burns, and get out of her car, almost striking Mr. Burns with the car door. PO W. Baker saw Mr. Burns run north on Vassar Street, turn, and quickly extend his right arm away from his body. PO W. Baker heard Deputy A. Baker fire at Mr. Burns, who fell. PO W. Baker thought Mr. Burns was shot, but he jumped up and kept running, still clutching the object in his hand.

As Mr. Burns turned west on Park Avenue, PO W. Baker pursued in his patrol car. Mr. Burns turned south on Edgerton Street, ran in front of his car, and turned his right side toward him, still holding the object in his hand. PO W. Baker thought Mr. Burns would shoot him. Mr. Burns ran near the elementary school on Edgerton Street, so PO W. Baker used his car to block Mr. Burns from running toward the school. Mr. Burns fell but immediately got up and ran through the elementary school's parking lot to the intersection of Milburn Street and Edgerton Street and then on Milburn Street to his house. PO W. Baker used his car to block the driveway. Mr. Burns got a bag from the car in the driveway and walked behind his house. PO W. Baker got out of his car and pursued Mr. Burns on foot.

PO W. Baker saw Mr. Burns jump a fence and saw a large knife in Mr. Burns's hand as he reached into the bag. PO W. Baker told Mr. Burns to drop the knife and the bag, and he refused. Mr. Burns walked around the front of a house and then to the rear of the house. PO W. Baker went to the rear of the house along the opposite side. As he reached the rear he saw Mr. Burns

standing in the back yard, getting something from the bag. PO W. Baker took cover near an SUV parked in the driveway and saw Sgt. DeVinney position himself near the rear of the house. Sgt. DeVinney gave verbal commands to Mr. Burns to show his hands. Mr. Burns pulled a gun stock and a double barrel from the bag, which he quickly assembled and loaded and raised toward Sgt. DeVinney. PO W. Baker fired three shots at Mr. Burns's chest and saw Mr. Burns fall to the ground.

MCSO Deputy A. Baker

In her interview with OSI, Deputy A. Baker said the following:

On March 20, 2023, she began her workday by reviewing emails, including MCAC bulletins concerning events of March 17, 2023 and March 20, 2023, in which the suspect was identified as Mr. Burns. Sgt. DeVinney told her and Deputy Hillegeer to go to 5 Milburn Street to assist BPD with surveillance in an attempt to locate Mr. Burns. Deputy A. Baker went to the area, parked by a nearby school, and heard radio transmissions that Mr. Burns had left his house. Officers in the area discussed over the radio that they would attempt to take Mr. Burns into custody.

Deputy A. Baker saw Sgt. DeVinney, Deputy Hillegeer, and PO W. Baker drive north on Vassar Street from Milburn Street and followed them. She saw Deputy Hillegeer drive up to Mr. Burns, get out of his car, and announce to Mr. Burns that he was a police officer. Mr. Burns turned toward Deputy Hillegeer and ran north on Vassar Street. Deputy A. Baker saw Mr. Burns with his right hand in the pocket of his jacket and thought Mr. Burns was gripping a handgun. Mr. Burns turned toward Deputy Hillegeer with his right hand in his pocket, and Deputy Hillegeer said, "Don't reach." At the middle of the block Mr. Burns dropped his right shoulder, rotated right, and extended his right arm back toward Deputy Hillegeer. Deputy A. Baker heard gunshots, but her view was blocked by parked cars. Deputy Hillegeer stumbled and fell; Deputy A. Baker thought he had been shot. Mr. Burns ran toward her car and she opened the driver's side door to knock him down, but missed. Deputy A. Baker saw Mr. Burns still gripping something in his pocket as he continued north on Vassar Street. She got out of her car and fired two rounds at Mr. Burns, saw him fall, and saw him immediately get up and continue running on Vassar Street, toward Park Avenue.

Deputy A. Baker drove behind PO W. Baker toward Park Avenue and saw PO W. Baker knock Mr. Burns to the ground with his car just north of the elementary school on Edgerton Street, but Mr. Burns got up and ran through the school's parking lot, still gripping what she believed was a gun. Deputy A. Baker said she does not remember when she got out of her car to run after Mr. Burns, but she ran behind Mr. Burns as he ran through the school parking lot and crossed onto Milburn Street, and she activated her BWC. Deputy A. Baker briefly lost sight of Mr. Burns but soon saw him running toward his house at 5 Milburn Street. He went to the

Accord parked in the driveway and got a backpack from the back seat. Deputy A. Baker raised her handgun toward Mr. Burns, but Mr. Burns went to the back yard holding the backpack and what she thought was a handgun. Deputy A. Baker said Mr. Burns appeared fatigued, but she did not see blood or any sign that he had been shot.

Deputy A. Baker saw Sgt. DeVinney and PO W. Baker near her. Mr. Burns jumped over a fence and she followed him as he went toward Barrington Street. Deputy A. Baker heard PO W. Baker say Mr. Burns had a gun. Deputy A. Baker followed Mr. Burns down the driveway of 218 Barrington Street and saw him in the back yard of 224 Barrington Street, where he took the butt stock and barrel of a long gun from the backpack, snapped them together, and raised the gun toward Sgt. DeVinney. Believing Mr. Burns would shoot Sgt. DeVinney, Deputy A. Baker fired two rounds at Mr. Burns and saw him fall to the ground.

MCSO Sgt. DeVinney

Sgt. DeVinney said the following in his interview with OSI:

On Monday, March 20, 2023, he received a call from Captain Lucyshyn of RPD asking for assistance with surveillance of 5 Milburn Street for Mr. Burns, the subject of multiple MCAC bulletins. Sgt. DeVinney contacted Deputies A. Baker and Hillegeer and the three of them went to 5 Milburn Street. Sgt. DeVinney saw Mr. Burns park a gray Honda Accord in a driveway of 5 Milburn Street and walk into the house. A few minutes later Mr. Burns left the house and walked on Milburn Street toward Vassar Street. Sgt. DeVinney radioed Deputies A. Baker and Hillegeer and the three of them followed Mr. Burns. Sgt. DeVinney saw Deputy Hillegeer slow his car and attempt to stop Mr. Burns. Sgt. DeVinney parked his car and took cover behind a parked car. Sgt. DeVinney saw Mr. Burns run north on Vassar Street, away from him, so he got back into his car and followed. Sgt. DeVinney saw Mr. Burns fall and then run toward Park Avenue; Sgt. DeVinney left his car and ran after him. Someone yelled, "Shots fired, shots fired," as he ran through a cloud of gun powder. Sgt. DeVinney did not know whether anyone had been shot. Sgt. DeVinney followed Mr. Burns along Park Avenue and Edgerton Street and radioed other units to return to Mr. Burns's house. Mr. Burns ran through the parking lot of the elementary school and Sgt. DeVinney saw PO W. Baker position his car to keep Mr. Burns away from the school.

Sgt. DeVinney said he closed the distance between himself and Mr. Burns and as he reached out to grab Mr. Burns, Mr. Burns raised his hand, which was holding a knife, and Sgt. DeVinney backed off but continued to follow Mr. Burns on Milburn Street.

Mr. Burns went to a Honda Accord parked in the driveway of his house, grabbed a backpack from the rear seat, and walked behind his house. Sgt. DeVinney and Deputy A. Baker yelled commands for Mr. Burns to drop the backpack and show them his hands; Mr. Burns did not

comply. Mr. Burns began to dig through the backpack. Sgt. DeVinney again yelled for Mr. Burns to show his hands. Mr. Burns ignored his commands and jumped a fence.

Sgt. DeVinney, Deputy A. Baker, and PO W. Baker followed Mr. Burns on Barrington Street. Sgt. DeVinney walked up the driveway of 224 Barrington Street and saw Mr. Burns in the back yard digging through the backpack on the ground. Sgt. DeVinney saw the stock of a long gun and yelled for Mr. Burns to put his hands in the air and not to pick up the gun or he would shoot him. Sgt. DeVinney saw that the gun was a shotgun in two pieces; within seconds Mr. Burns put the gun together. He yelled for Mr. Burns to put the gun down. He saw Mr. Burns raise and point the gun at him. Fearing for his safety, Sgt. DeVinney fired his rifle several times until Mr. Burns fell to the ground. Sgt. DeVinney saw Mr. Burns still reach for the shotgun, so he fired another round and Mr. Burns's hand fell away from the shotgun. Sgt. DeVinney moved toward Mr. Burns and moved the weapons away from him.

RPD Sgt. Leckinger

In his interview with OSI, Sgt. Leckinger said the following:

He was on duty on March 20, 2023, when he learned of the MCAC bulletins relating to Mr. Burns. At 12:50 p.m. Sgt. Leckinger heard a radio transmission concerning a foot pursuit of Mr. Burns and a transmission of "shots fired." Sgt. Leckinger put on his ballistic vest and drove to Milburn Street. He was familiar with the area and radioed for dispatch to put the nearby elementary school on lockdown. Sgt. Leckinger saw officers in the driveway of 218 Barrington Street and got out of his car and joined them: Sgt. DeVinney, Deputy A. Baker, and PO W. Baker. Sgt. Leckinger took cover behind an SUV parked in the driveway. Mr. Burns bent over and got a box of shotgun shells from his backpack; he held an assembled shotgun in the open action for loading, snapped it closed, and pointed it at Sgt. DeVinney. Sgt. Leckinger fired four shots at Mr. Burns and saw Mr. Burns fall to the ground. Sgt. Leckinger and other officers moved toward Mr. Burns; he stepped on Mr. Burns's hand to prevent him from picking up the gun, handcuffed him, and radioed for emergency personnel.

Videos

Vassar Street

Video surveillance footage from two homes on Vassar Street captured the foot pursuit of Mr. Burns and the shots fired on Vassar Street by Deputy Hillegeer and Deputy A. Baker.

Vassar Street Surveillance Video #1⁴

⁴ Accessible here: [Vassar Street Video #1](#). The video in the link runs twice: first in regular speed and then in

12:51:49 p.m.: Deputy Hillegeer ran behind Mr. Burns with his gun drawn; Mr. Burns turned toward Deputy Hillegeer.

12:51:53 p.m.: Deputy Hillegeer closed the distance to Mr. Burns, then stumbled; Mr. Burns crossed the street in front of Deputy A. Baker's car; Deputy A. Baker opened the driver's-side door; PO W. Baker arrived and stopped behind Deputy A. Baker.

12:51:59: Mr. Burns fell in a driveway on Vassar Street, jumped up and ran toward Park Avenue; Sgt. DeVinney got out of his SUV and followed Deputy Hillegeer on foot; Deputy A. Baker and PO W. Baker followed in their cars.

Vassar Street Surveillance Video #2⁵

Deputy Hillegeer pulled his car alongside Mr. Burns, jumped out, and chased Mr. Burns on foot on Vassar Street.

Deputy A. Baker and PO W. Baker drove toward Deputy Hillegeer's pursuit of Mr. Burns; gun shots are audible; Deputy Hillegeer stumbled into a yard and Mr. Burns ran across the street in front of Deputy A. Baker's car.

Sgt. DeVinney drove on Vassar Street toward Mr. Burns.

slow motion. Times in the main text are given as the actual times; the time stamp in the video was an hour behind. There is no audio in Vassar Street Video #1.

⁵ Accessible here: [Vassar Street Video #2](#) has no time stamp. The video has audio. The video in the link runs twice: first at regular speed, and then in slow motion.



Still image from Vassar Street Video #1 showing Mr. Burns turn toward Deputy Hillegeer as he pursued Mr. Burns with his gun drawn.

Deputy A. Baker's BWC

Deputy A. Baker activated her BWC at 12:53:35 p.m. as she pursued Mr. Burns on foot on Edgerton Street.⁶

12:53:37 p.m.: Deputy A. Baker ran behind Mr. Burns through a parking lot near Edgerton Street with gun drawn, commanding him to get on the ground.

12:54:08 p.m.: Deputy A. Baker and Sgt. DeVinney ran after Mr. Burns behind a house on Edgerton Street and emerged on Milburn Street.

12:54:57 p.m.: Mr. Burns went to a car in a driveway on Milburn Street, opened the rear passenger-side door and took out a backpack, while Deputy A. Baker pointed her gun at him.

12:55:07 p.m.: Mr. Burns walked behind homes on Milburn Street; Sgt. DeVinney, PO W. Baker, and Deputy A. Baker followed and gave commands to drop the backpack.

⁶ Accessible here: [Deputy A. Baker BWC](#). Actual times are used in the main text; the time stamp on the BWC was an hour behind. After activation the BWC's "look-back" function preserved BWC video without audio from the 30 seconds before activation; from activation onward the BWC video has audio.

12:56:06 p.m.: Mr. Burns was in the backyard of the home at 224 Barrington Street bending over with his hands in the backpack.

12:56:24 p.m.: Mr. Burns got the stock and the barrel of a shotgun out of the backpack and assembled it while officers gave him commands to put the gun down.

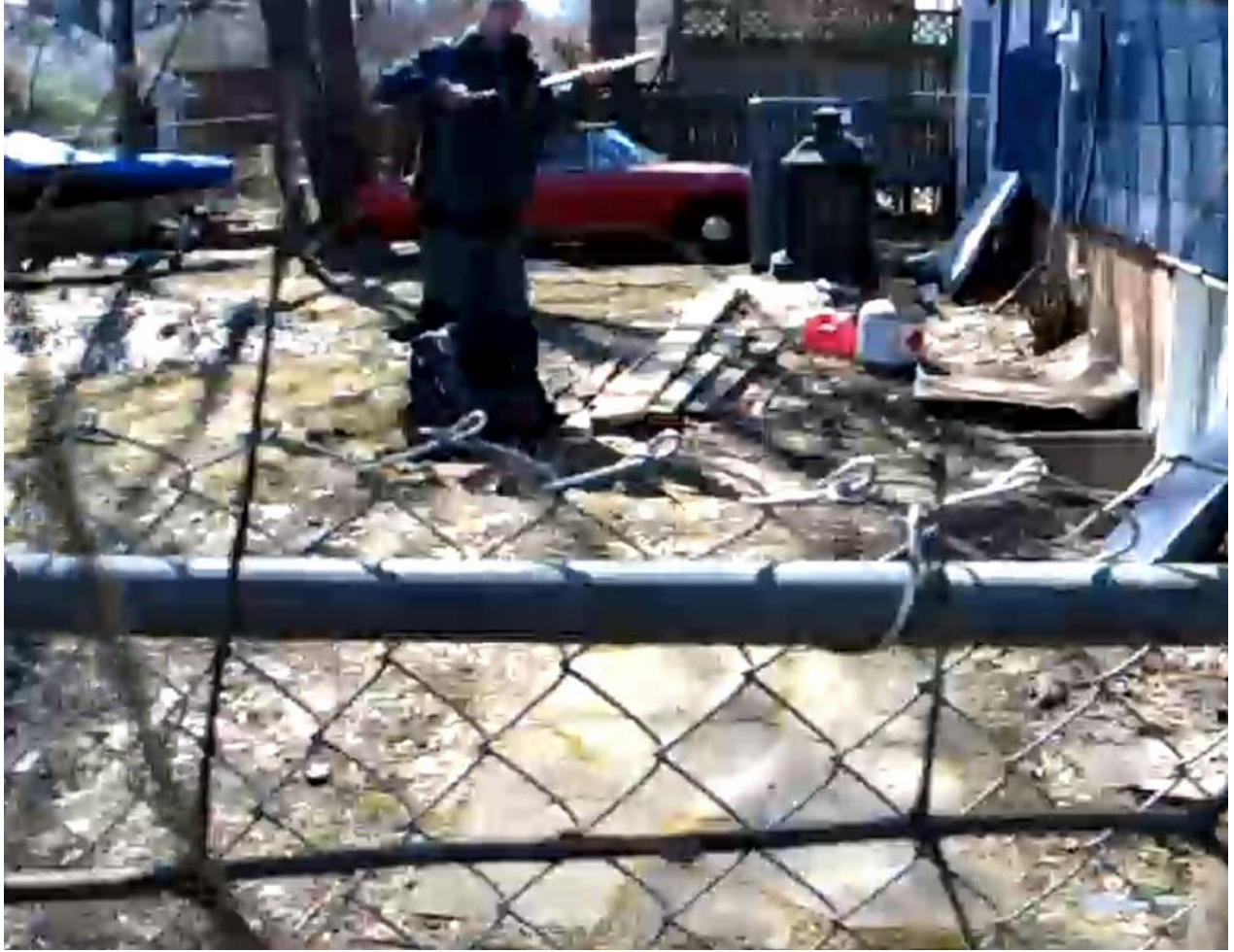
12:56:39 p.m.: Mr. Burns raised an assembled shotgun in the direction of Sgt. DeVinney; officers gave commands to put the gun down; officers fired their guns at Mr. Burns.

12:56:44 p.m.: Mr. Burns fell to the ground and officers took cover behind the SUV in the driveway next to the backyard.

12:57:07 p.m.: Sgt. DeVinney handcuffed Mr. Burns then and began to render aid.



Still from Deputy A. Baker's BWC of Mr. Burns pulling two halves of a shotgun from his backpack.



Still from Deputy A. Baker's BWC of Mr. Burns assembling the shotgun.



Still (shown twice, the second time with arrows showing the gun) from Deputy A. Baker's BWC showing Mr. Burns raising the gun in the direction of Sgt. DeVinney.

Post-Shooting Investigation

Crime Scene

Vassar Street

MCSO Technical Services personnel, Deputies Daniel Cellura, and Ryan Perruccio, responded to Vassar Street to collect evidence and take photographs. Deputy Cellura recovered a .45 caliber casing and a flashlight from the sidewalk in front of 35 Vassar Street and a 9mm caliber casing from the sidewalk in front of 30 Vassar Street. They found damage to the rear of Stever's Candies store at the corner of Park Avenue and Vassar Street, and to a Toyota Highlander parked in a driveway near the rear of the Stever's Candies store. They found a mark from a projectile on the rear of Stever's Candies; there was a broken window on the Vassar Street side of the building, corresponding to the damaged windows of the Toyota Highlander, and Deputy Cellura recovered a projectile from the frame of the broken window of the building.

Barrington Street

Civilian technicians Brittany Sands and Jason Terrigno, and PO Jason Mueller, of RPD's Technical Services Unit, responded to the scene where Mr. Burns was shot and photographed and collected these items in the back yard of 224 Barrington Street and driveway of 218 Barrington Street: four .223 caliber casings, eight .45 caliber casings, one 9mm caliber casing, a knife with a gray blade and a brown handle, a purple and black backpack with ammunition inside, one box of 12 gauge shotgun rounds, a 12 gauge shotgun barrel with possible blood, a shotgun stock with possible blood.



Crime scene photograph of the knife (16), backpack (17), and box of shotgun ammunition (18) found near the body of Mr. Burns in the back yard of 224 Barrington Street.



Crime scene photograph of the shotgun barrel found near the body of Mr. Burns in the backyard of 224 Barrington Street.



Crime scene photograph of the shotgun stock with possible blood found near the body of Mr. Burns in the backyard of 224 Barrington Street.

Medical Examiner

On March 21, 2023, Dr. Chelsea P. Milito, Associate Medical Examiner at the Monroe County Medical Examiner's Office, conducted the autopsy. Dr. Milito concluded that the cause of death was multiple gunshot wounds and that the manner of death was homicide. Dr. Milito found entrance wounds in the neck, upper and lower chest, abdomen, middle of the back, right lower arm, right hand, left lower arm, left hand, right buttock, and right upper leg. Dr. Milito recovered four projectiles, from the left upper back, right upper back, left lower arm, and right hip, and gave them to MCSO Deputy Cellura, who took them to the Monroe County Crime Laboratory. Dr. Milito concluded that the shots to the chest, abdomen, and back caused the death; she did not determine that any one shot was individually fatal.

Ballistics

Forensic firearms examiner Nicole Flaitz of the Monroe County Crime Laboratory examined the projectiles recovered from Vassar and Barrington Streets and the autopsy and compared them to the firearms used by Sgt. DeVinney, Deputies Hillegeer and A. Baker, PO W. Baker, and Sgt. Leckinger. In written reports, Examiner Flaitz reported her determinations that two projectiles from the autopsy (from the lower arm and right hip) were damaged and could not be compared with the firearms; that the projectile from the right upper back (entrance wound right middle back) was fired from Deputy Hillegeer's .45 caliber gun, and that the projectile from the left upper back (entrance wound central upper chest) was fired from Sgt. DeVinney's rifle.

The shell casings from both scenes were examined. In written reports, Examiner Flaitz determined that, from the Vassar Street scene, the .45 caliber casing was ejected from Deputy Hillegeer's handgun and the 9mm casing was ejected from Deputy A. Baker's handgun; and that, from the Barrington Street scene, the four .223 caliber casings were ejected from Sgt. DeVinney's rifle; four of the eight .45 caliber casings were ejected from Sgt. Leckinger's handgun, the other four .45 caliber casings were ejected from PO W. Baker's handgun, and the 9mm casing was ejected from Deputy A. Baker's handgun.

LEGAL ANALYSIS

Article 35 of the New York Penal Law defines the circumstances under which a person may be justified in using deadly force against another. Justification is a defense, Penal Law Section (PL) 35.00, not an affirmative defense. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1). As detailed below, based on the evidence in this investigation, a prosecutor would be unable to disprove beyond a reasonable doubt that the use of deadly physical force by PO W. Baker, Sgt. Leckinger, Sgt. DeVinney, and Deputies A. Baker and Hillegeer was justified.

PL 35.30 defines justification when a police officer uses deadly force while effecting or attempting to effect an arrest for an offense, as follows:

"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 35.30(1) are under no duty to retreat, PL 35.15(2)(a)(ii).

The Court of Appeals, in *People v Goetz*, 68 NY2d 96, 114-115 (1986), said that “reasonable belief” has both subjective and objective components: the subjective component is satisfied if the person using force actually believed, “honestly and in good faith,” that deadly force was about to be used against that person or another, and that the use of deadly force was necessary to prevent the danger; the objective component is satisfied if a “reasonable person” under the same circumstances could have held the same belief. See also *People v Wesley*, 76 NY2d 555 (1990).

Here, based upon Mr. Burns’s alleged use of firearms in two prior shootings, officers had reasonable cause to arrest Mr. Burns for reckless endangerment in the first degree, PL 120.25.⁷ Further, Deputy Hillegeer’s observations, during the foot pursuit on Vassar Street, of Mr. Burns reaching into his waistband, gripping something in his right hand, and turning toward Deputy Hillegeer, provided the deputy with a reasonable basis to believe that Mr. Burns would imminently use deadly physical force against him. Finally, when Mr. Burns assembled a shotgun and pointed it at Sgt. DeVinney, he and the other officers present, PO W. Baker, Sgt. Leckinger, and Deputy A. Baker, reasonably concluded that Mr. Burns would imminently use deadly physical force against Sgt. DeVinney.

In sum, based on the evidence in the investigation, OSI concludes that prosecutor would not be able to disprove beyond a reasonable doubt at trial that the involved officers were justified under New York law in using deadly physical force. Therefore, OSI will not seek charges and closes this matter with the issuance of this report.

Dated: December 29, 2023

⁷ PL 120.25 states: “A person is guilty of reckless endangerment in the first degree, when under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person.”