



*Office of the New York State Attorney General Letitia James*

Office of Special Investigation

March 18, 2022

# Report on the Investigation into the Death of Brandi Baida

## SUMMARY

New York Executive Law § 70-b(1) authorizes the Office of the Attorney General (“OAG”), through the 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, Executive Law § 70-b(6) requires issuance of a public report. This is the public report of OSI’s investigation of the death of Brandi Baida.

On September 21, 2021, Auburn Police Department (“APD”) Sergeant Timothy Spingler (“Sgt. Spingler”) shot Brandi Baida, causing her death. After a full evaluation of the facts, OSI will not seek charges against Sgt. Spingler because we cannot disprove beyond a reasonable doubt that his actions were justified under Article 35 of the New York Penal Law.

## FACTS

### Preliminary Information

On September 21, 2021, members of APD, responding to reports of gunshots, saw a person, later determined to be Brandi Baida, firing a rifle from a second-story window of 12 Wheeler St., the left-side apartment of a two-family house in the City of Auburn.



*12 Wheeler St. is the left-side apartment in this house. The window Ms. Baida was firing from is circled in yellow. The right-side apartment (10 Wheeler St.) was vacant at the time of the incident.*

Two APD officers fired their service weapons in Ms. Baida’s direction, and one bullet struck and killed her. CW-4, <sup>1</sup> a neighbor who lived across the street from Ms. Baida’s apartment, recorded

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<sup>1</sup> In the interests of privacy, references to civilian witnesses use CW (civilian witness) and a number (1, 2, 3, etc.), rather than a name, and references to that witness’s address will use A-CW- (1, 2, 3, etc.) rather than the witness’s street address.

part of the incident on his cell phone (“CW-4 Cell Video”), and a Ring Video<sup>2</sup> at 3 Wheeler St. captured audio of the incident (“3 Wheeler Ring Video”). The CW-4 Cell Video, 911 calls, relevant dispatch recordings, and clips from the 3 Wheeler Ring Video, from about 11:19 to 11:41 a.m., were synthesized into one video and may be accessed here<sup>3</sup>: [Brandi Baida Compilation Video](#). A guide to the composite video is Appendix 1 to this report. A map of the street is below.



<sup>2</sup> The 3 Wheeler Ring Video captured audio of the shooting but no visual footage of the incident, because 12 Wheeler St. was outside the viewing area of the camera. Footage stored through the Ring at 3 Wheeler St. was not continuous and contained gaps.

<sup>3</sup> In the interests of privacy, the compilation video contains audio redactions of personal identifying information of civilian witnesses, including names, addresses, and phone numbers, and visual redactions of addresses, license plates, and faces of civilian witnesses. To portray the events in real time, a running clock has been added to the top right corner of the video, which may not sync precisely with the timestamps on the various media sources displayed in the video, because they are separate sources and are not universally calibrated. Attached to this report as Appendix 1 is a reference guide outlining the times of significant events on the video, using the running clock. Additionally, at one point, while CW-4 was recording, the cell phone was turned, causing the view of 12 Wheeler St. to become sideways; to assist with viewing, OSI turned the video so that 12 Wheeler St. remains right side up during the entirety of the video.

## Pre-Police Arrival

Based on 911 recordings, at 11:19:09 a.m.,<sup>4</sup> CW-1, who lived at A-CW-1, directly next door to Ms. Baida to the north, called 911 to report that he had just heard “like three gunshots.” During the call, CW-1 also told the dispatcher that a neighbor had sent him a message asking if he was shooting guns and telling him she had seen someone in the woods. CW-1 then surmised, and told the dispatcher, that someone might be shooting deer in the wooded area behind his house.

Cayuga County Emergency 911 radio runs (“radio runs”)<sup>5</sup>, show that at 11:20:47 a.m., a dispatcher broadcast a “shots-fired” call on Wheeler St. for APD Patrol Officers Michael Weeks (“PO Weeks”) and Katelyn Davis (“PO Davis”), and said the caller “[could] hear somebody shooting behind the residence.” POs Davis and Weeks acknowledged the call over the air, and APD Patrol Officer Jeremy Hinman (“PO Hinman”) radioed that he would head toward Wheeler St. as well. At that point, the source and exact location of the gunshots were unknown, but the dispatcher told the officers the name and address of the 911 caller (CW-1).

At 11:21:23 a.m. – before any APD officers had arrived – the 3 Wheeler Ring Video captured audio of a gunshot followed by a male yelling. At 11:21:59 a.m., CW-2, who lived at A-CW-2, across the street and south of Ms. Baida’s apartment, called 911 asking for officers to respond, saying that she and her neighbors heard “what sound[ed] like three gunshots.” During the call, CW-2 said that, from her residence, she could see two people outside, one of whom was yelling up to the window of 12 Wheeler St.<sup>6</sup> At 11:22:11 a.m., CW-1 called 911 a second time and said, “another fucking shot just went off.” CW-1 also told the dispatcher he was outside of his residence and the dispatcher replied that officers were on their way.

## Police Arrival/Shooting

According to the radio runs and the 3 Wheeler Ring Video, which captured a portion of Wheeler St. south of Ms. Baida’s house, PO Davis arrived on scene first, at 11:23:24 a.m. During an interview conducted jointly by OSI and the Cayuga County Sheriff’s Office (“CCSO”), PO Davis, who was familiar with Wheeler St., said that as she arrived, she drove slowly down the street to gauge whether she could hear anything relevant, believing at that point that someone had been shooting in the woods. As she proceeded, she saw CW-1 outside his residence pointing toward 12 Wheeler St. PO Davis said she parked in front of A-CW-1 and spoke briefly with CW-

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<sup>4</sup> All times in this report are approximate. There are micro-variations between the timestamps on the Ring Video clips and the times noted on the radio runs, which is not uncommon, because the media were obtained from separate sources and are not universally calibrated.

<sup>5</sup> For purposes of this report, “radio runs” refer to audio recordings of radio transmissions, capturing communications among police officers and between dispatchers and police officers.

<sup>6</sup> The description given by CW-2 of the individual yelling up to the window matches that of CW-1, the original 911 caller.

1, who told her that the male resident of 12 Wheeler St., CW-3, was inside and had stuck a gun out of the window.<sup>7</sup>

PO Davis said she then went to 12 Wheeler St. and began banging on the front door announcing herself as a police officer. According to PO Davis, she saw that a second-story window of 12 Wheeler St. was broken and heard a woman's voice shrieking inside. At that point, PO Davis believed a domestic incident was taking place inside between CW-3 and a woman. PO Davis said she stepped back and looked up at the second-story window, where she saw the barrel of a long gun emerge. At that point PO Davis drew her duty weapon, yelled commands for the person, she still could not see, to drop the gun, and took cover behind the southwest corner of the house. The radio runs show that between 11:25:00 a.m. and 11:27:00 a.m., PO Davis relayed information about what she was seeing over the air, including her direct observation of the gun barrel extending out of the window.

The APD Call Detail Report and the 3 Wheeler Ring Video show that PO Weeks and PO Hinman separately arrived on scene at 11:26 a.m. During an interview conducted jointly by OSI and CCSO, PO Weeks said that as he arrived on Wheeler St., he saw PO Davis speaking with a man outside (CW-1), and, unsure of the man's involvement, parked his patrol car to the left of PO Davis' in a manner that would block vehicular traffic. On the 3 Wheeler Ring Video, as the two patrol units arrive, a woman's voice, presumably PO Davis', can be heard yelling "drop the gun," followed by a man's voice issuing similar commands.

Based on radio runs, dispatch logs, and APD police reports, additional APD officers went to the scene and surrounded the residence. At 11:26:52 a.m., according to a radio run, APD Patrol Officer Dana Ruzicka ("PO Ruzicka") broadcast his location to other officers over the radio; the sound of gunshots is audible in the recording, followed by PO Ruzicka saying, "we've got more shots fired." On a radio run at 11:27:12 a.m. a male officer says what sounds like, "Police shots fired." Shortly after, on a radio run at 11:27:59 a.m., a male officer asks PO Weeks if he knows where "those last two shots came from"; at 11:28:05 a.m., PO Weeks says, "He fired and I fired."

During his interview with OSI and CCSO, PO Weeks said that after he parked and exited his patrol unit, he heard PO Davis shouting commands to "drop the gun," prompting him to draw his own duty weapon – a Glock 22, .40 caliber handgun – and take a position at the rear bumper of his patrol unit, which was parked in the street just north of 12 Wheeler St. PO Weeks said he then saw the barrel of a rifle sticking out of the smashed-out upstairs window of 12 Wheeler St., and began shouting "drop the gun." Shortly after, PO Weeks heard the rifle fire a shot and saw a corresponding muzzle flash. In the interview, PO Weeks said that based on

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<sup>7</sup> During his initial interview with New York State Police ("NYSP"), and confirmed during a subsequent interview with OSI, CW-1 said that he assumed CW-3 was the person shooting the rifle, because he recognized the rifle as belonging to CW-3. However, CW-1 did not actually see CW-3 inside the residence during this incident.

what he heard and saw, as well as his training and experience, he believed the person was firing a high powered rifle. PO Weeks said that he was only able to see a portion of the person's upper torso but saw that the person was Caucasian and wearing a blue shirt; he could not tell if the shooter was a man or a woman.

According to PO Weeks, he saw the barrel still protruding from the window and moving as if scanning the area. PO Weeks said he knew they were on a residential street and that PO Davis and at least one other officer were in the shooter's line of fire. Based on those considerations and believing that the person was about to use deadly force again, PO Weeks said he aimed at the torso in the window and fired one round from his duty weapon. After PO Weeks fired the first time, the subject retreated from the window. PO Weeks said that seconds later, he saw the rifle barrel reemerge, and saw the same torso, prompting him to fire a second round. According to PO Weeks, the subject again retreated from the window. Knowing that his patrol vehicle was not armored and did not offer him cover, and that he had potentially revealed his location to the shooter, PO Weeks then crouched behind his patrol unit's engine block before ultimately taking cover alongside the garage of A-CW-4. PO Weeks said that he did not fire his weapon again during the incident, which is corroborated by the physical evidence collected at the scene, as more fully detailed below.

At 11:30:32 a.m., the 3 Wheeler Ring Video captures audio of another gunshot and video of multiple officers heading north on Wheeler St., on foot; at 11:31:56 a.m., a radio run captures PO Davis confirming that the shot came from the second story window. Around this time, CW-4 began recording the incident on his cell phone from inside his house at A-CW-4.<sup>8</sup> The beginning of the CW-4 Cell Video shows multiple armed officers tactically positioning themselves around 12 Wheeler Street. Throughout this time, radio runs capture officers communicating about issuing a 911 alert to residents, shutting down roads, putting ambulances in place, and setting up a command post in the area.

The CW-4 Cell Video captures three more gunshots from the second story window of 12 Wheeler St.; the shots are clearly fired from the window, as each time a shot rings out, smoke can be seen coming from the window. At 11:36:51 a.m.,<sup>9</sup> the CW-4 Cell Video captures a shot from the window followed by officers issuing commands to drop the gun and come out of the residence.<sup>10</sup> At 11:38:30 a.m., the CW-4 Cell Video captures another shot from the window, followed again by officers issuing commands. At 11:40:44 a.m., the CW-4 Cell Video captures another shot from the window. Approximately 13 seconds later, at 11:40:57 a.m., as an individual appears at the window, the CW-4 Cell Video audibly captures another gunshot - this

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<sup>8</sup> The CW-4 Cell Video appears to begin after the gunshot heard on the 3 Wheeler Ring Video at 11:30:32 a.m.; also, swaying tree branches sporadically block the view of the second story window at 12 Wheeler St.

<sup>9</sup> While the CW-4 Cell Video does not have a timestamp, we matched the shots seen and heard on the CW-4 Cell Video to the audio and time stamps from the 3 Wheeler Ring Video.

<sup>10</sup> The CW-4 Cell Video shows that while the officers were issuing commands, they called the shooter by CW-3's name, based on their belief at that time that CW-3 was involved.

one from Sgt. Spingler's patrol rifle. At 11:41:17 a.m., the radio runs capture an officer saying "One shot fired by police." Sgt. Spingler's shot, the only one he fired, was the last gunshot fired during the incident, and marked the last time any movement was reported in connection with 12 Wheeler St.

During an interview conducted jointly by OSI and CCSO, Sgt. Spingler said that he responded to Wheeler St. with his .223 caliber short-barrel patrol rifle after hearing an on-scene officer say, "shots-fired" over the radio, which was unusual. When he arrived, he saw PO Weeks crouched behind a patrol unit, and positioned himself in front of 8 Wheeler St., with other officers. At some point, he and PO Hinman positioned themselves alongside a large tree (displayed below), southwest of 12 Wheeler St., to gain cover and a better vantage point of the window the shooter was firing from.



*The tree is circled in yellow.*

*This photograph also shows the locations of PO Weeks' patrol car (left) and PO Davis' (right).*

While on scene, Sgt. Spingler said he heard and saw multiple shots coming from the rifle in the window, despite numerous police-issued commands to drop the gun. Sgt. Spingler said it appeared to him that the subject may have been trying to hit a specific target, since the shots were spaced out and the rifle kept coming in and out of the window, and he believed the subject may have been targeting PO Weeks. Sgt. Spingler, a firearms instructor and 16-year member of APD's Emergency Response Team ("ERT"), said he could tell the gun was a high powered, large caliber rifle, with a potential effective range of approximately one mile, and recognized the threat the shooter posed to himself, the other officers on scene,<sup>11</sup> and the public. He said

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<sup>11</sup> Interviews of APD officers revealed that most officers on scene were equipped with soft armored vests, which would not protect against large caliber projectiles. Also, most officers were armed with shotguns or

he determined that if the rifle again protruded from the window and took a shot, he would fire a shot, and he communicated that intention to PO Hinman. Sgt. Spingler said that when he next saw a torso in the window, after seeing the rifle re-emerge, he fired. During his interview with OSI, Sgt. Spingler said that at the moment he fired, he believed he saw the rifle out of the window in addition to the torso but was unable to say with certainty whether he had seen the gun and the torso or just the torso.

During an interview conducted jointly by OSI and CCSO, PO Hinman, who was positioned behind the same tree as Sgt. Spingler, described what he saw and heard in the moments leading up to Sgt. Spingler's shot. PO Hinman said he saw the barrel of the rifle come out of the window and fire, and, seconds later, he saw a person step forward into the window again, at which point Sgt. Spingler fired one shot. PO Hinman said that when he saw the person step into the window, he was able to tell it was a blonde woman and said so out loud. PO Hinman said that when she stepped forward and appeared in the window, it looked as though she was still holding the rifle, possibly near her side. PO Hinman saw Sgt. Spingler's shot go through the window, toward the center of the woman's body, and then saw her step back out of view.

### **Post-Shooting**

Based on review of the CW-4 Cell Video and 3 Wheeler Ring Video, along with the interviews of Sgt. Spingler and PO Hinman, after Sgt. Spingler's shot, officers continued issuing commands for the person to drop the weapon and exit the house, because although they had visually confirmed a woman was inside, they were still under the impression that a man was inside as well.<sup>12</sup> Based on the radio runs, officers continued to communicate with one another about individuals associated with the residence in an effort to contact someone who might be inside. At 11:55:30 a.m., officers relayed over the radio that they were with CW-3, thus eliminating the possibility that he was inside the residence. CW-3, who had just arrived in the area, met with officers at the command post and told them he lived with Ms. Baida at 12 Wheeler Street. CW-3 also described the firearm inside the apartment, and the ammunition he kept there.<sup>13</sup> CW-3 also told officers about another man who was involved with Ms. Baida and might be inside – CW-5. That information was relayed over the radio. At 12:33:23 p.m., about 52 minutes after Sgt. Spingler's shot at 11:40:57 a.m., officers radioed that they had been in contact with CW-5 and confirmed he was not inside the residence either.

Review of the radio runs and APD police reports, as well as OSI's interviews with the involved

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pistols, as opposed to the patrol rifle Sgt. Spingler had.

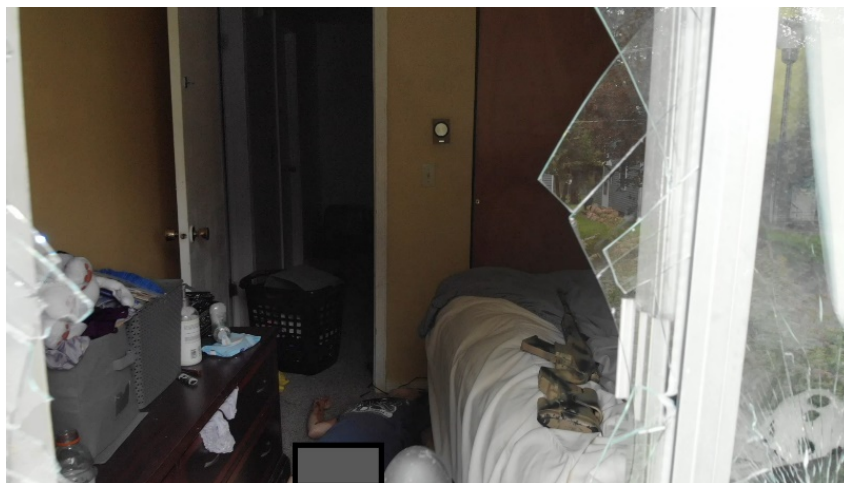
<sup>12</sup> Based on PO Hinman's interview, and corroborated by the CW-4 Cell Video, after Sgt. Spingler's shot, officers heard a male voice shouting (later determined to be a neighbor), and believed it was coming from 12 Wheeler St. The CW-4 Cell Video continues until shortly before 12:00 p.m., and the last 3 Wheeler Ring Video clip ends at 12:07 p.m.

<sup>13</sup> Based on the radio runs, an officer who was gathering information from CW-3 relayed over the air that CW-3 said there were 600 rounds of 7.62 caliber ammunition inside the residence.



officers, show that additional members of APD and other police agencies responded to the area to assist, including more members of the APD Emergency Response Team (“ERT”); members of CCSO, including trained negotiators; members of the Onondaga County Sheriff’s Office; and members of New York State Police (“NYSP”), including its Special Operations Response Team (“SORT”). NYSP SORT arrived with armored vehicles, and officers maintained a perimeter around 12 Wheeler Street while other officers attempted to negotiate with whoever may have been inside; there was no response from within 12 Wheeler St.

Members of law enforcement used multiple drones to assist in establishing a perimeter and entering the residence. Review of the drone footage and accompanying reports as well as radio runs show that initial attempts to enter the residence with the drones failed, but at 2:00 p.m., a drone successfully entered through the broken-out window from which a person had been shooting. The drone revealed an apparently deceased woman on the floor of the bedroom with a gunshot wound to her chest, and a large bolt-action rifle on the bed, with the barrel facing away from the window, as displayed below in a still image from the drone footage.



*For privacy, a portion of Ms. Baida’s body has been redacted on the still photograph.*

Officers also used drones to clear the remainder of the residence, but three upper level doors were closed, which impeded efforts to confirm that no other threats were inside the apartment. At 3:00 p.m., members of APD ERT, including PO Hinman, entered the residence to clear it, and did not find additional people inside or signs that anyone had fled during the encounter. During his interview with OSI and CCSO, PO Hinman said that while in the bedroom, he and other ERT members visually assessed Ms. Baida for signs of life; PO Hinman said that Ms. Baida was obviously deceased, as her arms appeared stiff, her mouth was open, and her eyes were open and cloudy. At 3:14:47 p.m., officers radioed that the residence was clear and secure, and paramedics could enter. Based on OSI’s conversation with CCSO Sgt. Robert Franklin, he escorted paramedic Paul Carpenter into the apartment. Mr. Carpenter assessed Ms. Baida and pronounced her deceased at 3:20 p.m.

## **EVIDENCE COLLECTION/FORENSIC TESTING**

Following the incident, members of the NYSP Forensic Identification Unit (“FIU”) executed a search warrant at 12 Wheeler St. and processed the apartment and its exterior. Members of OSI responded to the scene and were also present.

Eight expended 7.62 mm x 54R Russian caliber cartridge casings were located inside 12 Wheeler St.; five were in the bedroom Ms. Baida was firing from, two were in the upstairs hallway, and one was in the rifle chamber. FIU collected the rifle – a Mosin-Nagant bolt-action, 7.62 mm x 54R Russian caliber with an Archangel OPFOR stock – from the bedroom, along with its accompanying (empty) ten-round magazine. Multiple rounds of live ammunition, including 7.62 caliber bullets, were also located throughout the residence and inside the bedroom. Notably, multiple apparent projectile impacts and strikes were located outside, including in the roadway, on a nearby tree, and in a detached shed at 9 Wheeler St. (across the street). The rifle and casings collected inside the apartment were submitted to the NYSP Forensic Investigation Center (“FIC”) for analysis.

FIU recovered one expended .223 caliber casing from the grassy area where Sgt. Spingler was positioned when he fired his rifle. And as detailed below, multiple projectile fragments were recovered from Ms. Baida’s chest during the autopsy. Sgt. Spingler’s rifle, the recovered casing and the projectile fragments taken from Ms. Baida’s body were submitted to FIC for analysis.

FIU collected two expended .40 S&W casings in the hedgerow near PO Weeks’ patrol unit and two metal projectiles from the closet inside the bedroom from where Ms. Baida was shooting PO Weeks’ duty weapon, the shell casings, and the projectiles were submitted to FIC.

The results of the FIC Firearms Analysis are detailed below.

### **Ballistics Analysis**

FIC test fired Sgt. Spingler’s patrol rifle and found it to be operable. FIC microscopically examined the .223 casing recovered in the grassy area from which he fired, compared it to test fired casings from Sgt. Spingler’s rifle, and identified it as having been fired in the same firearm. FIC analyzed the lead bullet core fragments and bullet jacketing fragments recovered from Ms. Baida’s chest during the autopsy and found one jacketing fragment – the jacket base – suitable for further analysis. FIC microscopically examined the jacket base, compared it to a test fired bullet from Sgt. Spingler’s rifle, and determined they were fired from the same firearm.

FIC test fired the rifle found with Ms. Baida and found it to be operable. FIC microscopically examined the eight casings recovered from the residence, compared them to test fired casings from the rifle, and determined they were fired from the same firearm.

### **DNA Analysis**

FIU collected a DNA swab from the stock area of the rifle found with Ms. Baida. FIC generated a profile “consistent with DNA from at least two donors, at least one of which [was] male, with the major contributor matching Brandi Baida.”

### **MEDICAL EXAMINER’S FINDINGS**

Dr. Katrina Thompson, a Pathologist with the Onondaga County Medical Examiner’s Office, conducted Ms. Baida’s autopsy on September 22, 2021. OSI attended the autopsy, and obtained and reviewed Dr. Thompson’s final autopsy report, which lists the cause of death as “gunshot wound to the chest.” In the report, Dr. Thompson noted multiple “fragment entrance gunshot wounds” to Ms. Baida’s chest, with the “main concentration of defect to [the] right side of the chest.” Internally, Dr. Thompson noted “defects to the right lung, left lung, pericardium, and branch of the right coronary artery,” along with rib fractures. As noted above, multiple projectile fragments were recovered from Ms. Baida’s chest.

During a conversation with OSI on November 15, 2021, Dr. Thompson explained that Ms. Baida was struck in the lung and a blood vessel that feeds the heart, which ultimately caused exsanguination, or “bleeding out.” Dr. Thompson said that death likely occurred 15 to 30 minutes after Ms. Baida sustained the fatal injury. Dr. Thompson also said that even with prompt surgical intervention, Ms. Baida may not have survived her injury because of its magnitude. Based on OSI’s conversation with Dr. Thompson, “prompt” intervention would necessarily have meant Ms. Baida undergoing trauma surgery *before* she bled out, certainly no later than 30 minutes after the fatal shot, and the closest Level One Trauma Center would have been SUNY Upstate Medical University in Syracuse, located approximately 30 miles from 12 Wheeler St., which would have meant at least a 20 minute drive, even if traveling at 100 mph.

According to Dr. Thompson, despite the existence of multiple projectile fragments in Ms. Baida’s chest, her injuries were consistent with a single gunshot. Dr. Thompson said that the fragments and wounds appeared consistent with the projectile having shattered before striking Ms. Baida. Notably, based on OSI’s observations at the scene and the photographs taken by FIU, Sgt. Spingler’s shot appears to have passed through a portion of the glass windowpane that was still intact before entering Ms. Baida’s chest.

## LEGAL ANALYSIS

Article 35 of the New York Penal Law governs the circumstances under which an individual is justified in using deadly force against another. In order to obtain a conviction at trial, “The People [would be] required to prove beyond a reasonable doubt that [Sgt. Spingler] was not justified” in using deadly physical force against Ms. Baida. See N.Y. Crim. Jury Instr. 2d Penal Law § 35.15(1). *And see People v. McManus*, 67 N.Y.2d 541, 546-47 (1986): “[W]henever justification is sufficiently interposed ... the People must prove its absence to the same degree as any element of the crime charged.”

Pursuant to Penal Law § 35.15(2)(a), a person may use deadly physical force upon another person when that person “reasonably believes that such other person is using or is about to use deadly physical force.” The Court of Appeals, in *People v. Goetz*, 68 N.Y.2d 96 (1986), said that “reasonable belief” has subjective and objective components: the subjective component is satisfied if the individual employing the force actually believed, “honestly and in good faith,” that deadly force was about to be used against himself or another, and that his own use of that force was necessary to prevent or stop that danger, regardless of whether the belief was accurate, 68 N.Y.2d at 114; and the objective component is satisfied if a “reasonable person” under the same circumstances could have held those same beliefs, 68 N.Y.2d at 115. See also *People v. Wesley*, 76 N.Y.2d 555 (1990).

Based on his interview with OSI and CCSO, Sgt. Spingler subjectively believed that shooting Ms. Baida was necessary to stop her use of deadly force. Sgt. Spingler knew that shots had reportedly been fired prior to his arrival on scene, and after he arrived, he saw a person fire a rifle from the window several times. Based on his training and experience, along with the observations he made, he could tell that the weapon was a large caliber rifle, with a potential effective range of approximately one mile. Sgt. Spingler was well aware that the incident was unfolding on a residential street, where at least some residents were known to be inside their homes, with commercial businesses nearby. Further, Sgt. Spingler said that most officers on scene were outfitted with soft-armored vests, incapable of repelling a large caliber bullet, and he was armed with one of the most effective duty weapons under the circumstances and had extensive training and experience with its use. Sgt. Spingler said that during the encounter, he recognized the imminent threat that the subject’s actions were posing not only to himself, but to the other officers on scene and to the public, which is why he fired his rifle when presented with the opportunity to stop that threat. Based on these considerations, OSI would be unable to prove that Sgt. Spingler’s subjective beliefs were unreasonable.

The accounts of Sgt. Spingler and the other involved officers are corroborated by other evidence reviewed by OSI. Specifically, the 911 calls, 3 Wheeler Ring Video, and CW-4 Cell Video confirm that Ms. Baida fired the rifle prior to APD’s arrival and continued to do so several times after APD officers arrived. The Cell Video shows that Ms. Baida was aiming out of the

window each time she fired, and the physical evidence collected at the scene confirms that she was indeed firing a large caliber rifle. The evidence demonstrates that Ms. Baida's actions posed an active, imminent threat to the officers and civilians who were in the area; thus, OSI would similarly be unable to prove that Sgt. Spingler's beliefs and the actions he took were objectively unreasonable.

Penal Law § 35.15(2)(a) provides that a person may not use deadly physical force "if [that person] knows that with complete personal safety, to [that person] and others he or she may avoid the necessity of doing so by retreating." Penal Law §35.30(1)(c), imposes no similar duty to retreat on police officers when effecting (or attempting to effect) an arrest. When interviewed by OSI, Sgt. Spingler did not say his intention was (or was not) to arrest Ms. Baida at the moment he shot her – his intent was getting her to stop shooting a high-powered rifle out of her window. OSI therefore analyzed Sgt. Spingler's conduct pursuant to §35.15(2) and assumed he had a duty to retreat if he could have done so without endangering himself or others.

The evidence clearly demonstrates that Sgt. Spingler could not have retreated with complete safety to others. Ms. Baida was firing a high powered firearm out of a window in the middle of a residential neighborhood and there was no reason to believe she would cease. Under those circumstances, even if Sgt. Spingler could have retreated to his patrol car and left the area with complete safety to himself (which is in itself highly doubtful), there is no evidence that he could have done so while preserving the safety of others – including the other officers on scene and the civilians that were within the effective range of the rifle Ms. Baida was repeatedly firing.

Given the post-shooting location and position of Ms. Baida's rifle in the bedroom, along with Sgt. Spingler's inability to say with certainty whether Ms. Baida's torso was preceded by the rifle protruding from the window when he fired his weapon, OSI analyzed the reasonableness of Sgt. Spingler's actions assuming that Ms. Baida had *not* actually been aiming, or even holding, the rifle at the moment Sgt. Spingler fired. Based on the accounts of the involved officers, and as corroborated by the CW-4 Cell Video, each time the body appeared at the window, the rifle protruded from the window and was followed by a shot, despite countless police-issued commands. The CW-4 Cell Video also shows that approximately 13 seconds before Sgt. Spingler fired his fatal shot, Ms. Baida had appeared at the window and fired. Based on these circumstances, OSI would be unable to disprove that Sgt. Spingler's belief - that the subject was once again about to use deadly force when he saw the torso in the window 13 seconds later - was reasonable, even if it was not accurate. *Goetz*, 68 N.Y.2d at 107-109. Stated differently, "It does not matter [whether Sgt. Spingler] was or may have been mistaken in his belief [that Ms. Baida was about to fire again], provided that [his] belief was both honestly held and reasonable." See N.Y. Crim. Jury Instr. 2d Penal Law § 35.15(2).

OSI also considered whether the delay in entering Ms. Baida's residence following Sgt.

Spingler's shot might have contributed to Ms. Baida's death. As noted above, the Medical Examiner opined that the nature of the gunshot wound Ms. Baida sustained likely caused her death within 15 to 30 minutes. Given that Sgt. Spingler fired his fatal shot at 11:40:57 a.m., Ms. Baida likely succumbed to her injuries between 11:56 a.m. and 12:11 p.m. The Medical Examiner also opined that prompt surgical intervention, as opposed to on-scene aid, would have been necessary to save her life, even potentially. OSI's full evaluation of the facts shows that after Sgt. Spingler fired his rifle, the officers were still uncertain whether all potential threats to themselves and civilians in the area were over, as they thought there was still another person inside the residence, with access to at least one firearm and an abundance of ammunition. The officers therefore did not think they could enter the residence with complete personal safety and enlisted the assistance of additional APD members and outside agencies. It was not until 12:33 p.m. that officers knew with certainty that CW-3 and CW-5 were not inside 12 Wheeler St. The exclusion of CW-3's and CW-5's involvement did not eliminate their concern that another person might be inside the apartment; but even if officers had entered at 12:33 p.m., Ms. Baida would have died sometime between 22 and 37 minutes before that time, based on the Medical Examiner's estimation of how long she could potentially have lived. Under these circumstances, OSI cannot conclude that the officers' post-shooting conduct, during the period when it might have been possible to save Ms. Baida's life, was unreasonable.

Therefore, for the reasons set forth above, OSI cannot disprove, beyond a reasonable doubt, that Sgt. Spingler's use of deadly force was justified under Article 35 of the Penal Law.

## RECOMMENDATION

### **APD should equip its officers with body-worn cameras**

OAG has previously issued multiple reports recommending that police departments equip officers with body-worn cameras ("BWCs").<sup>14</sup> While third party cameras captured a portion of this incident, had the officers been equipped with BWCs, there may have been an even clearer picture of the incident, which would have greatly facilitated the investigation of this case. Likewise, had there not been third party cameras available to capture the incident, or had the third parties concealed the existence of such footage, there would have been no available video evidence. OAG recognizes that APD has taken meaningful steps to outfit its officers with BWCs, and commends these efforts.<sup>15</sup> Nevertheless, we use the lack of such cameras in this case as an opportunity to recommend that APD continue working toward its goal of outfitting its officers with BWCs.

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<sup>14</sup> OSI highlighted its many prior recommendations regarding BWCs in its [First Report Pursuant to Executive Law Section 70-b \(ny.gov\)](#) (p. 16, "Recommendations"), which was published after this incident took place.

<sup>15</sup> See, [Auburn Police Chief Slayton on body cameras, victim assistance, and the city's community policing plan - Fingerlakes1.com](#); see also [Police body cameras closer to reality for Cayuga County, Auburn agencies | Local News | Auburn, NY | Auburnpub.com | auburnpub.com](#)

Issued: March 18, 2022

## APPENDIX 1

Brandi Baida

September 21, 2021

### OSI Compilation Video Reference Guide

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This guide outlines the times that significant events occur on the compilation video. The times noted in this outline correspond with the running clock that on the top right corner of the video. The running clock may not sync precisely with the timestamps of the various media sources displayed in the video, because they are separate sources and are not universally calibrated.

In the interests of privacy, the compilation video contains audio redactions of personal identifying information of civilian witnesses, including names, addresses, and phone numbers, and visual redactions of addresses, license plates, and faces of civilian witnesses.

Below are the times, followed by a brief description, of significant events on the compilation video:

11:19:09: First 911 call, made by CW-1, begins

11:20:47: Radio run – dispatcher relaying information from 911 call to officers

11:21:23: Gunshot audible, followed by yelling (3 Wheeler Ring Camera)

11:21:59: Second 911 call, made by CW-2, begins

11:22:13: Third 911 call, made by CW-1, begins

11:23:24: PO Davis' patrol unit arriving on Wheeler St. (3 Wheeler Ring Camera)

11:25:56: Radio run – PO Davis relaying her observation of gun over the radio

11:26:10: Radio run of PO Davis relaying location of gun over the radio and video of POs Weeks and Hinman arriving on Wheeler St., followed by audio of police issuing commands to drop the gun (3 Wheeler Ring Camera)

11:26:52: Radio run – PO Ruzicka relaying his location, gunshots audible in background

11:27:12: Radio run – officer relaying what sounds like, “Police shots fired”

11:27:59: Radio run – officer asking PO Weeks where “last two shots came from”

11:28:05: Radio run – PO Weeks relaying “He fired and I fired”

11:30:32: Gunshot audible (3 Wheeler Ring Camera), followed by start of CW-4 Cell Video, showing officers positioning themselves near 12 Wheeler St.

11:30:38: Radio run – officer relaying “more shots fired”

11:30:48: Radio run – PO Weeks requesting backup, stating “he just fired out, couldn’t see which direction”

11:31:50: Radio run – PO Davis confirming that last shot came from second story window

11:32:11: Radio run – officer relaying “gun back out window,” followed by audio of police-issuing commands to drop the gun (CW-4 Cell Video)

11:34:27: Police-issued commands audible (CW-4 Cell Video)

11:35:07: Police-issued commands audible (CW-4 Cell Video)

11:35:41: Radio run – officer advising the barrel is out of the window, followed by audio of police issuing commands to drop the gun (CW-4 Cell Video)

11:36:37: Radio run – officer relaying “barrel’s out the window,” followed by audio of police issuing commands to drop the gun (CW-4 Cell Video)

11:36:47: Gunshot audible and smoke visible from second-story window (CW-4 Cell Video)

11:36:49: Radio run – officer relaying “more shots fired,” followed by audio of police issuing commands to drop the gun (CW-4 Cell Video)

11:38:26: Gunshot audible and smoke visible from second-story window, followed by audio of police issuing commands (CW-4 Cell Video)

11:40:41: Gunshot audible and smoke visible from second-story window, followed by audio of police issuing commands (CW-4 Cell Video)

11:40:54: Gunshot audible (CW-4 Cell Video)

11:41:09: Radio run – officer relaying “shots fired”

11:41:13: Radio run – officer relaying that there is a female subject inside

11:41:17: Radio run – officer relaying, “one shot fired by police”