

**Special Investigations and
Prosecutions Unit**

**Report on the Investigation into
The Death of Jaime Lopez-Cabrera**



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EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147, appointing the Attorney General as a special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On September 25, 2018, Jaime Roderigo Lopez-Cabrera (“Mr. Lopez-Cabrera”) was fatally shot by New York State Police (“NYSP”) Trooper Kevin Wolensky (“Trp Wolensky”). On November 26, 2018, Governor Cuomo issued Executive Order No. 147.20, which expressly conferred jurisdiction over the matter upon the Attorney General.

This incident unfolded behind a building that housed a restaurant and liquor store in Stanfordsville, New York. A camera mounted outside the building captured much of the activity before and after the fatal encounter. During the shooting itself, Mr. Lopez-Cabrera was facing away from the camera and partially obscured by a minivan. A link to the video may be accessed [here](#). A full recitation of the facts is contained in the body of the report (FACTUAL SUMMARY) and a brief overview is presented below:

- At approximately 10:30 a.m. on September 25, 2018, Mr. Lopez-Cabrera’s wife, (“CW-Wife”)¹, who had one day earlier obtained an order of protection against him, found Mr. Lopez-Cabrera inside the office of Coyote Flaco, a restaurant they owned together. CW-Wife also saw knives in the office, which was unusual, but she would later say that she never saw Mr. Lopez-Cabrera touch them. At some point, however, CW-Wife saw a drill/electric screwdriver in one of Mr. Lopez-Cabrera’s front pockets. CW-Wife could also see that Mr. Lopez-Cabrera, who had a history of alcoholism, had been drinking. She left the office and locked herself in her minivan, which was parked outside the building. Mr. Lopez-Cabrera followed her out and began to place objects behind the minivan in an apparent attempt to prevent her from leaving. At some point, CW-Wife called Mr. Lopez-Cabrera’s brother, (“CW-Brother”), who told her that he would call the police.
- CW-Brother, who was driving to Dutchess County from New York City at the time, ultimately spoke with law enforcement officials in Dutchess County.² He said his brother Jaime had a knife and was using it to threaten his sister-in-law at Coyote Flaco. Dispatchers in turn directed law enforcement officers, including Trooper Katherine Gorey (“Trp Gorey”) and Trp Wolensky to respond to Coyote Flaco. NYSP dispatch advised Trp Gorey that “*Jaime Lopez [was] threatening a female with a knife.*” Dutchess County 911 (“DC-911”) further advised Trp Gorey that “*a male called, advised that his brother has a knife at [Coyote Flaco] and is threatening people.*” Trp Wolensky heard the communication between DC-911 and Trp Gorey and in a subsequent later communication with NYSP dispatch, confirmed that he was heading to the “*menacing call.*”

¹ To protect their privacy, we designate civilian witnesses as “CW” followed by a word or number. Mr. Lopez-Cabrera’s wife is designated “CW-Wife” and his brother is designated “CW-Brother”; all other civilian witnesses are designated CW-1, CW-2, etc.

² As fully detailed in the FACTUAL SUMMARY, through no fault of CW-Brother, the process of communicating with the appropriate authorities was arduous.

- Trp Gorey arrived at Coyote Flaco first and found CW-Wife and Mr. Lopez-Cabrera behind the building. At that point, CW-Wife was inside a minivan parked between the rear of the building and a small red vehicle. Mr. Lopez-Cabrera was standing outside the driver side window of the minivan, and various objects, including a garbage receptacle, were behind the minivan.

For the balance of this Summary we outline what is visible on the video.

- Trp Gorey walks to the passenger side of the minivan where she appears to speak with CW-Wife. At first, Mr. Lopez-Cabrera stays at the driver side of the minivan, but as CW-Wife and Trp Gorey communicate through the passenger side window, Mr. Lopez-Cabrera walks around the front of the minivan toward Trp Gorey.
- As Mr. Lopez-Cabrera approaches Trp Gorey, she motions for him to stop and he does. Trp Gorey then motions for him to raise his hands and he does so. At this point (approximately 63 seconds after Trp Gorey arrived at the rear of the restaurant) Trp Wolensky is seen arriving at the rear of Coyote Flaco. Mr. Lopez-Cabrera stays at the front of the minivan with his hands now down; he appears to put his hand in the left front pocket of his sweatpants and, during the duration of the incident visible on the video, does not remove it.
- Trp Wolensky ultimately walks around and then in front of the red car, facing Mr. Lopez-Cabrera, who backs up toward the front driver side of the minivan; his left hand remains in his pocket and he and Trp Wolensky are facing each other. At this point, Trp Gorey walks to the rear of the minivan and starts to remove the objects Mr. Lopez-Cabrera had placed there. As Trp Gorey is behind the driver side of the minivan, Mr. Lopez-Cabrera begins walking in her direction; she motions for him to stop and he does so, near the driver side door. At this point, Trp Wolensky, with his weapon drawn, moves from the front of the red car toward the front of the minivan, closer to Mr. Lopez-Cabrera.
- Mr. Lopez-Cabrera is facing Trp Wolensky and, the video shows, has an unobstructed view of Trp Wolensky's weapon pointed at him. Mr. Lopez-Cabrera then begins walking directly toward Trp Wolensky, who walks backward between the minivan and the red car, with his gun continuously pointed at Mr. Lopez-Cabrera. Mr. Lopez-Cabrera continues to walk toward Trp Wolensky and Trp Wolensky continues backing away from Mr. Lopez-Cabrera, until, as Mr. Lopez-Cabrera begins closing the gap between them, Trp Wolensky fires his weapon twice, striking Mr. Lopez-Cabrera with both shots.
- After dragging Mr. Lopez-Cabrera by one hand away from the side of the minivan and restraining him with handcuffs, Trp Wolensky reaches into Mr. Lopez-Cabrera's left front pocket and removes an electronic screwdriver, approximately nine inches long.
- Mr. Lopez-Cabrera ultimately died as a result of two gunshot wounds to his torso.

Three people saw or heard all or part of the incident – CW-Wife, Trp Gorey, and Trp Wolensky. NYSP Investigators and members of the Office of the Attorney General (“OAG”) interviewed each

of them and their statements are referenced throughout the FACTUAL SUMMARY; only Trp Wolensky's statement is addressed in this overview.³

Trp Wolensky told the OAG that at the moment he shot Mr. Lopez-Cabrera he thought Mr. Lopez-Cabrera was going to stab him and that he had no choice other than to shoot Mr. Lopez-Cabrera, because:

- The original dispatch information was that Mr. Lopez-Cabrera was armed with a knife;
- When Trp Wolensky arrived at the scene of the unfolding incident, Trp Gorey told him that Mr. Lopez-Cabrera had a weapon;
- Mr. Lopez-Cabrera would not remove his hand from his left front pocket;
- Trp Wolensky could see the outline of an object he believed to be a knife in Mr. Lopez-Cabrera's left front pocket;
- While moving toward Trp Wolensky, despite being told repeatedly to remove his hand from his pocket, Mr. Lopez-Cabrera said "No I don't want to"; and
- Mr. Lopez-Cabrera had increased his pace toward Trp Wolensky and was closing the gap between them.

As detailed more fully below (LEGAL DISCUSSION), applying established legal principles to the evidence in this matter,⁴ the OAG determines that Trp Wolensky's use of deadly physical force against Mr. Lopez-Cabrera did not constitute a crime, because the defense of justification cannot be disproven beyond a reasonable doubt. Pursuant to New York State Penal Law (hereinafter "PL") §35.30(1)(c), Trp Wolensky was permitted to use deadly physical force against Mr. Lopez Cabrera if Trp Wolensky reasonably believed that such force was "necessary to defend [himself] ... from what [he] reasonably believed to be the use or imminent use of deadly physical force [by Mr. Lopez-Cabrera.]" Further, the reasonableness of Trp Wolensky's belief at the time he used deadly force

³ The NYSP and the OAG interviewed CW-Wife separately. Trp Gorey provided a compelled statement to the NYSP and then separately and voluntarily spoke with the OAG. The OAG reviewed Trp Gorey's compelled interview, since, as the non-shooter, there were no apparent *Garrity* issues. (*See Garrity v State of New Jersey*, 385 U.S. 493 (1967)(establishing the principle that public employees cannot be compelled, by threat of termination, to provide information that may tend to incriminate them.) Trp Wolensky waived his Fifth Amendment rights and voluntarily presented himself for an interview with the OAG. If Trp Wolensky provided a compelled statement to the NYSP, the OAG did not review it, because of *Garrity* issues. Neither Trp Gorey, Trp Wolensky, nor CW-Wife viewed the video of the incident prior to their interviews with the OAG. Trooper Gorey's statement to the NYSP, a summary of her statement to the OAG, and a summary of Trp Wolensky's statement to the OAG are attached as Exhibits 1, 2, and 3, respectively.

⁴ The evidence reviewed included: the video footage captured from the camera outside of Coyote Flaco; dispatch recordings and associated records from NYC-911, DC-911, and Troop K communications; photographs of the scene; interviews with CW-Wife, Trp Wolensky, Trp Gorey, members of Mr. Lopez-Cabrera's family, EMTs and other first responders, and other individuals with information about the incident; ambulance and hospital records; all related police reports; and the medical examiner's report.

depended “upon [his] knowledge of circumstances immediately prior to and at the moment that he made the split-second decision to employ deadly force.” *Cowan ex rel. v. Breen*, 352 F.3d 756 (2d. Cir 2003)(quoting *Salim v. Proulx*, 93 F.3d 86 (2d. Cir. 1996). Applying those principles to this matter, as fully detailed below, criminal prosecution is not warranted.

* * *

Executive Order No. 147 provides that the OAG may offer “any recommendations for systemic reform arising from the investigation. Despite our finding that Trp Wolensky’s use of deadly force does not warrant criminal prosecution, the OAG nonetheless offers specific recommendations that might prevent deaths such as this in the future.

- New York should join the ever-growing number of states requiring that police officers receive comprehensive training in de-escalation techniques;⁵
- Law enforcement agencies should evaluate their training protocols regarding sharp-edged weapons;
- Law enforcement agencies should partner with local mental health organizations to engage in outreach and education on issues surrounding mental health and substance abuse, including guidance in how friends and family should properly communicate with emergency call-takers; and
- As we have previously noted, the NYSP and the policy makers responsible for its funding should join the thousands of other law enforcement agencies across the country that have worked to equip their members with body worn cameras.

FACTUAL SUMMARY

Coyote Flaco and Tequilas Wine and Spirits (“Tequilas”) both occupy a building located on the northwest side of Route 82 in the town of Stanfordville. There is an adjacent post office with space between the two buildings allowing vehicles to drive between and park behind them. In the photograph below, the red building on the left is Coyote Flaco/Tequilas and the gray building on the right is the post office; Route 82 runs in front of both buildings.

⁵ See generally <http://govred.com/blog/deescalation-training-state-requirements/>;
<https://www.policeforum.org/assets/30%20guiding%20principles.pdf>



The incident described in this report occurred behind the Coyote Flaco building in an area not visible from the roadway.

A. THE CIRCUMSTANCES BEFORE TRP GOREY'S AND TRP WOLENSKY'S ARRIVAL AT COYOTE FLACO.

1. CW-WIFE AND MR. LOPEZ-CABRERA AT COYOTE FLACO

On September 24, 2018, CW-Wife obtained an order of protection against her husband, Mr. Lopez-Cabrera, with whom she owned Coyote Flaco restaurant.⁶ The following day, at approximately 10:30 a.m., she drove to Coyote Flaco with her two-year-old son. She parked her minivan outside a rear door that opened into an office, next to a red car that was also parked in that area. The below photograph shows CW-Wife's minivan parked between the back of the Coyote Flaco building and the red car:

⁶ According to CW-Wife, she hoped that the order of protection would cause Mr. Lopez-Cabrera to address his alcohol abuse.



CW-Wife found Mr. Lopez-Cabrera inside the office and told him he could not be there, because of the order of protection. CW-Wife could smell alcohol on Mr. Lopez-Cabrera's breath and saw two knives in the office, but later told investigators that she never saw Mr. Lopez-Cabrera touch them. CW-Wife also saw Mr. Lopez-Cabrera put a green electric screwdriver/drill tool in his pocket. She believed Mr. Lopez-Cabrera was going to scratch her car with the tool but that he was never able to do so because there was no attached tip. After the incident, CW-Wife told investigators that Mr. Lopez-Cabrera never threatened her with the screwdriver/drill, a knife, or any other item.

At this point, CW-Wife called Mr. Lopez-Cabrera's brother, CW-Brother, and he told her he would call the police. CW-Wife then left the building and locked herself and her son in the minivan. Mr. Lopez-Cabrera, who had followed her out of the building, began putting objects such as toys and a garbage bin behind the minivan in an apparent attempt to keep her from leaving.

CW-Wife then called CW-1,⁷ a friend who lived nearby, and asked CW-1 to come to the restaurant and take CW-Wife's son away, because she did not want the child there when the police arrived. When CW-1 arrived, CW-Wife carried her son to CW-1's vehicle. CW-1, who knew CW-Wife and Mr. Lopez-Cabrera, said that during her brief interaction with them that morning they both appeared upset and Mr. Lopez-Cabrera appeared intoxicated. After taking her child to CW-1's vehicle, CW-Wife returned to her minivan and locked herself inside while CW-1 left. CW-Wife explained that she wanted to stay until the police came so that she could give them a copy of the order of protection.

⁷ To protect their privacy, we have designated civilian witnesses as Civilian Witness - ("CW-") 1, 2, 3, etc.

2. CW-BROTHER'S COMMUNICATIONS WITH NEW YORK CITY 911 ("NYC-911") AND THE NYSP⁸

a. *NYC-911 Call*

CW-Brother (Mr. Lopez-Cabrera's brother) went to New York City on the morning of September 25 and was leaving the city to return to Dutchess County when CW-Wife called him about Mr. Lopez-Cabrera. CW-Brother told CW-Wife that he would call the police; he dialed 911 from his car. However, because of his location, CW-Brother was connected with NYC-911 instead of Dutchess County 911 ("DC-911"). Based upon the NYC-911 dispatch recording, his first words about the incident were:

"... I'm calling for my brother. He has a knife and he's threatening my sister-in-law in uh ... Stanfordville NY..."

The dispatcher, clearly unfamiliar with Dutchess County or Stanfordville, struggled, over the next two minutes and twenty seconds, to understand exactly where the incident was occurring and how to properly spell the road, town, and county. Understandably frustrated, CW-Brother finally indicated that he would figure it out himself and hung up.

b. *First NYSP Troop K Communication*

CW-Brother then googled the phone number for the NYSP Troop K station in Poughkeepsie ("Troop K"), which is about seven miles from Stanfordville.⁹ By calling Troop K directly, CW-Brother bypassed DC-911. A trooper answered the phone at Troop K and CW-Brother immediately said:

"...[M]y brother he has a knife in the restaurant he's threatening my sister-in-law inside the restaurant."

When the trooper responds, "Your brother is doing what?" CW-Brother says:

"He has a knife... My sister-in-law called me to call you. Can you go check please?"

⁸ CW-Wife and CW-Brother provided somewhat differing accounts of what CW-Wife told CW-Brother when she called him. Regardless of the content of their conversation, the excerpted communications presented here are quoted directly from the actual audio recordings and capture what CW-Brother told law enforcement after speaking with CW-Wife.

⁹ NYSP members of Troop K cover all or part of Columbia, Dutchess, Putnam and Westchester counties.

c. **Second NYSP Troop K Communication**

The trooper who first answered the phone at Troop K was unable to understand CW-Brother and turned the phone over to a different member of the NYSP. CW-Brother tells that person:

“...[M]y brother’s in the restaurant. He’s drunk. He has a knife. My sister-in-law is there. She has a restriction order against him.”

The NYSP member asked him if his brother was threatening anyone, and CW-Brother replied:

“Um yes my sister-in-law.”

This member of the NYSP then told CW-Brother that they would send someone to Coyote Flaco. CW-Brother thanked him and hung up.

d. **NYC-911 Communication to DC-911**

In the meantime, the original NYC-911 dispatcher called DC-911 and said that she had just received a call from a man who hung up. The NYC-911 dispatcher, who gave DC-911 an address that returned to Coyote Flaco, further told them that the male caller said that “his brother [had] a knife and [was] threatening his sister-in-law...”

3. **NYSP TROOP K AND DC-911’s COMMUNICATIONS WITH TRP GOREY AND TRP WOLENSKY**

Trp Gorey was responding to a car accident when the NYSP Troop K dispatcher rerouted her to “Coyote Flaco for Jamie Lopez threatening a female with a knife.” Trp Gorey acknowledged the call and began driving toward Stanfordville.

DC-911, having just received the notification from NYC-911 and unaware that CW-Brother had already called Troop K directly, used the police channel heard by all police units in the area to ask if there were any available units near Coyote Flaco. Over the radio, Trp Gorey asked, “*Is this call in regards to somebody threatening somebody else with a knife?*” and said she was on the way to that call. The DC-911 dispatcher said, “*We received a call from NYC-911 stated that a male called advised that his brother has a knife at that location is threatening people and then hung up.*” Trp Gorey then asked that a second unit also be sent to the call. Hearing those communications, Trp Wolensky advised DC-911 and Trp Gorey that he was enroute. The NYSP Troop K dispatcher then called Trp Wolensky to confirm that he was responding to the “*menacing call.*”

B. TRP GOREY AND TRP WOLENSKY'S ARRIVAL AND INTERACTION WITH MR. LOPEZ-CABRERA.¹⁰

According to dispatch records, Trp Gorey arrived at the scene at 11:12:26. Finding the front restaurant doors locked, she made her way between the Coyote Flaco building and the post office, to the rear of the restaurant. As shown on the video, when Trp Gorey rounds the back corner of the building and first sees Mr. Lopez-Cabrera, he is standing outside the driver side of CW-Wife's minivan, speaking with her through the half-open window. On the video, Mr. Lopez-Cabrera appeared to briefly look toward Trp. Gorey as she approached, but he immediately turns back to CW-Wife. Mr. Lopez-Cabrera continues speaking to CW-Wife as Trp Gorey walks toward him.

At that point, CW-Wife opens the minivan door and begins to exit the vehicle, but Trp Gorey motions for her to close the door. Trp Gorey then walks to the passenger side of the minivan and speaks with CW-Wife through the window. CW-Wife hands Trp Gorey the order of protection and, according to Trp Gorey, points to Mr. Lopez-Cabrera. Trp Gorey said she understood that gesture to mean that Mr. Lopez-Cabrera was not supposed to be there. At that point, the video shows Mr. Lopez-Cabrera walking around the front of the minivan, from the driver side to the passenger side.

Trp Gorey turns toward Mr. Lopez-Cabrera and the two face each other. Trp Gorey is by the minivan's passenger side window and Mr. Lopez-Cabrera is near its front headlamp. Trp Gorey, holding the order of protection in one hand, motions with her other hand for Mr. Lopez-Cabrera to stop, and he does so. Trp Gorey then motions for Mr. Lopez-Cabrera to raise his hands, and again he does so. According to Trp Gorey, at that point she asked Mr. Lopez-Cabrera if he had any weapons; she said Mr. Lopez-Cabrera responded by tapping his left pocket with his left hand while saying the word "weapon" and laughing. However, CW-Wife said she told Trp Gorey at some point during the incident that Mr. Lopez-Cabrera did not have a weapon. Mr. Lopez-Cabrera is facing away from the camera during this portion of the incident. He brings his left hand to his left pocket (which contained the screwdriver/drill) but it is impossible to see whether he laughed or tapped his pocket before putting his hand inside. Mr. Lopez Cabrera does not remove his left hand from his left pocket for the duration of the video.

According to dispatch records, Trp Wolensky arrived at the scene at 11:14:22, approximately two minutes after Trp Gorey. The video shows Trp Wolensky rounding the back corner of the building and catching sight of Trp Gorey and Mr. Lopez-Cabrera as they are facing each other at the passenger side of the minivan. The below photo, excerpted from the video, shows this moment as Trp Wolensky approaches from behind the minivan:

¹⁰ Trp Gorey and Trp Wolensky did not know Mr. Lopez-Cabrera or CW-Wife and had not responded to any previous calls at that location.



Trp Gorey said that at this point, she drew her weapon but kept it in the “low ready” position. In this position, an unholstered weapon is pointed in a safe direction, generally at the ground. According to the video, however, Trp Gorey never actually removed her weapon from her holster at this point in the encounter. On the video, Trp Gorey then looks behind her in the direction of Trp Wolensky, although she would later say that while she knew he was there, she did not actually see him. During this portion of the incident, the video shows that Mr. Lopez-Cabrera remains standing at the front of the minivan with his hands down.

Trp Gorey and Trp Wolensky both said that as soon as Trp Wolensky arrived, Trp Gorey told him Mr. Lopez-Cabrera had a weapon. At that point, Trp Wolensky said he drew his weapon and continued walking behind the minivan and the red car and then up the passenger side of the red car.¹¹ According to Trp Wolensky, Mr. Lopez-Cabrera had his left hand in his pocket and it was obvious to Trp Wolensky that Mr. Lopez-Cabrera was gripping an object. Trp Wolensky believed that object to be a large handled knife. Trp Wolensky also said that Mr. Lopez-Cabrera was swaying and appeared intoxicated. According to Trp Wolensky, he repeatedly told Mr. Lopez-Cabrera to show his hands, but Mr. Lopez-Cabrera would not do so and instead he “just smirked”.

According to the video, Mr. Lopez-Cabrera backs away from Trp Wolensky, moving from the front passenger side of the minivan to the front driver side. At that point, Trp Gorey goes to the back of the minivan and begins removing objects to enable CW-Wife to back out and leave. While Trp Gorey is behind the vehicle on the driver side, Mr. Lopez-Cabrera begins walking toward her and Trp Gorey motions with her hand for him to stop; Mr. Lopez-Cabrera does stop, near the driver side door. In the photo below, excerpted from the video, Mr. Lopez-Cabrera is facing Trp Gorey, whose hand is raised in a signal for him to stop; Trp Wolensky’s legs are visible in front of the red car:

¹¹ Trp Wolensky is a K-9 handler and as such, wears a modified uniform belt. In order to accommodate the items required to manage their dogs, K-9 handler members of the NYSP do not carry Tasers or OC (oleoresin capsicum) spray on their belts.



At this point, Trp Wolensky moves from the front of the red car toward the front of the minivan and stops in the space between the two cars as Trp Gorey resumes removing objects from behind the minivan.

At this point, according to the video, Mr. Lopez-Cabrera looks toward and has an unobstructed view of Trp Wolensky with his gun drawn and pointed at him. Mr. Lopez-Cabrera leaves the driver side of the minivan and begins walking directly toward Trp. Wolensky. Trp Wolensky backs up and then walks backward between the minivan and the red car as Mr. Lopez-Cabrera continues to walk toward him. The photo below, excerpted from the video, shows this moment:



According to the video counter, Trp Wolensky shoots Mr. Lopez-Cabrera approximately seven seconds after Mr. Lopez-Cabrera leaves the driver side of the minivan and begins walking toward him, and less than one minute (approximately 47 seconds) after Trp Wolensky first enters the scene at the rear of the restaurant.

CW-Wife said she heard but did not see the shooting, because at the moment the shots were fired, she was seated in the minivan and had turned toward Trp Gorey (now on the driver side) and was saying in Spanish, “don’t shoot, he doesn’t have anything on him.”

Trp Gorey said she did not see the shooting either. Instead, she described seeing a quick movement in her peripheral vision through the minivan windows, followed by two shots. The video shows that as Mr. Lopez-Cabrera walks toward Trp Wolensky, Trp Gorey begins walking up the driver side of the minivan with her weapon drawn. She then re-holsters her weapon and reversed course, going toward the rear of the van; it was then that Trp Wolensky fired his weapon.

Trp Wolensky said that as Mr. Lopez-Cabrera came toward him, he repeatedly directed him to show his hands; according to Trp Wolensky, Mr. Lopez-Cabrera replied, “No I don’t want to.” Trp Wolensky said that he kept backing up as Mr. Lopez-Cabrera continued walking toward him, but that Mr. Lopez-Cabrera was increasing his pace and gaining ground. And, Trp Wolensky said that Mr. Lopez-Cabrera kept his left hand in his pocket and would not remove it. Trp Wolensky estimated that Mr. Lopez-Cabrera was less than ten feet away from him when Trp Wolensky fired the two fatal shots.

C. ACTIONS FOLLOWING THE SHOOTING.

On the video, after Mr. Lopez-Cabrera falls to the ground, Trp Wolensky is seen approaching him, dragging him by one arm away from the side of the minivan and handcuffing him behind his back. According to Trp Wolensky and Trp Gorey, during this time Trp Wolensky was directing Trp Gorey to call dispatch and request an expedited medic. The video shows Trp Wolensky communicating with Trp Gorey and Trp Gorey then running from the back of the building toward the front.¹² Records and recordings from DC-911 indicate that at 11:15:56, Trp Gorey reported that a male had been shot and requested that a medic be expedited to the scene.

Trp Wolensky said that after he handcuffed Mr. Lopez-Cabrera, he reached into his pocket, where he believed he would find a knife. Instead, he found what he would later describe as an “electrical multi tool,” which he said he tossed away from the immediate area. The video displays Trp Wolensky reaching into Mr. Lopez-Cabrera’s left pant pocket after Mr. Lopez-Cabrera is restrained, removing an item, and tossing it away. A photograph of that item, which CW-Wife described as an electric screwdriver/drill, is below:

¹² Trp Gorey and Trp Wolensky had portable radios, but those radios were ineffective for communicating with dispatchers; Trp Gorey had to use the radio in her police car in order to report that Mr. Lopez-Cabrera had been shot.



Until Trp Gorey returns, Trp Wolensky stays with Mr. Lopez-Cabrera, who can be seen on the video moving at times. When Trp Gorey returns, she stays with Mr. Lopez-Cabrera while Trp Wolensky goes to his police vehicle to obtain a medical bag; he takes CW-Wife with him. During this period of time, the video captures Mr. Lopez-Cabrera moving intermittently and Trp Gorey communicating with him. When Trp Wolensky and CW-Wife return with the medical bag, Trp Wolensky directs CW-Wife to remain behind the van, toward the rear corner of the building. At that point, Trp Wolensky and Trp Gorey put on gloves and begin to apply gauze and absorbent trauma pads to Mr. Lopez-Cabrera's chest and back.

CW-2, a volunteer firefighter who was working near Coyote Flaco, heard transmissions stating that a person had been shot outside the restaurant and he went there to offer help. Approximately one minute after CW-2 arrived, CW-3, who had medical training from prior military service, also arrived and offered to assist. CW-3 asked if the troopers had any "quick clot"¹³ and Trp Gorey is then seen on the video running in the direction of her vehicle to get it. When she returns, the troopers remove the handcuffs from Mr. Lopez-Cabrera and CW-2 and CW-3 help to roll him fully onto his back; they all continue to administer basic first aid until members of several ambulance crews arrive.

Approximately ten minutes after Trp Gorey's initial request that a medic be expedited, members of the East Clinton Rescue Squad, Stanford Rescue Squad, and Northern Dutchess Paramedics Emergency Medical Services (NDP-EMS) began to arrive. The Stanford and East Clinton Rescue Squads (closest to the scene) had been responding to other calls when they were originally

¹³ Quikclot® is a substance applied to gauze or other lads that stops bleeding faster than normal by expediting clotting. See, <https://quikclot.com/QuikClot/About-QuikClot>

dispatched to the shooting; those units had to be re-routed to Coyote Flaco, which increased their response times. East Clinton Rescue Squad's ambulance arrived first and was ultimately used as the transport unit.

One paramedic (from NDP-EMS) and two emergency medical technicians (one from East Clinton and the other from Stanford) transported Mr. Lopez-Cabrera to Mid-Hudson Regional Hospital, approximately twenty miles away. Pursuant to the ambulance records, the ambulance left the scene at 11:35:14 and arrived at the hospital at 11:59:24. During the transport, emergency medical personnel provided care that included the insertion of an intra osseous cannula, an endotracheal tube, and a thoracic needle.¹⁴ They also provided epinephrine and atropine¹⁵ when Mr. Lopez-Cabrera's pulse dropped; however, as they prepared to administer CPR,¹⁶ Mr. Lopez-Cabrera regained a pulse. When they arrived at the hospital, Mr. Lopez-Cabrera had blood pressure and a pulse.

However, at the hospital despite the nearly immediate application of advanced resuscitation techniques, Mr. Lopez-Cabrera's condition deteriorated rapidly. At 12:30 pm, Mr. Lopez-Cabrera was pronounced deceased.

D. SUMMARY OF MEDICAL EXAMINER FINDINGS.

On September 25, 2018, Dutchess County Deputy Medical Examiner Kia Newman, MD ("Dr. Newman") performed a comprehensive autopsy of Mr. Lopez-Cabrera's body at the Dutchess County Medical Examiner's Office. (See Exhibit 4). Dr. Newman noted that Mr. Lopez-Cabrera was approximately 5'3" and weighed 124 pounds at the time of his death;¹⁷ his body was "well-nourished" and appeared consistent with his reported age of 41 years.

Dr. Newman identified two penetrating gunshot wounds to Mr. Lopez-Cabrera's torso. The first wound had an entrance (left side of chest) and no exit; it reflected a bullet trajectory from Mr. Lopez-Cabrera's front to back, downward and slightly left to right. The projectile fractured one of Mr. Lopez-Cabrera's ribs, perforated his diaphragm, stomach, and other interior tissues before lodging in Mr. Lopez-Cabrera's lumbar vertebrae, where Dr. Newman recovered it. The second wound had an entrance (left side of chest) and exit (left side of back) and also reflected a front to

¹⁴ An Intraosseous (io) cannula permits the infusion of substances into an individual's bone marrow and is used in circumstances where the venous system of delivery (intravenous (iv)) is compromised or otherwise unavailable. *See e.g.* <https://emedicine.medscape.com/article/908610-overview>. An endotracheal tube is a conduit placed through the mouth into the trachea to assist a compromised person to breathe. *See e.g.* <https://www.verywellhealth.com/endotracheal-tube-information-2249093>. Thoracic needles facilitate decompression of the thorax; a needle is inserted through the chest wall into the pleural lung space to allow trapped air to escape. *See e.g.* <https://www.jove.com/science-education/10233/needle-thoracostomy>.

¹⁵ Epinephrine and atropine are drugs used to manage hypotensive (marked low blood pressure) and bradycardic (marked slow heart beat) events. *See, e.g.* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4269359/>.

¹⁶ CPR is a life-saving procedure performed when the heart stops beating; it normally involves chest compressions and rescue breathing. *See, e.g.,* https://cpr.heart.org/AHA/ECC/CPRAandECC/AboutCPRECC/WhatIsCPR/UCM_499896_What-is-CPR.jsp.

¹⁷ At the time of the incident, Trp Wolensky was 6 feet tall and weighed approximately 200 pounds.

back, downward and slightly left to right trajectory. The bullet grazed one of Mr. Lopez-Cabrera's ribs, perforated his diaphragm and a portion of his small intestine, and grazed a kidney before exiting Mr. Lopez-Cabrera's back. Dr. Newman noted that both bullet paths contributed to hemorrhaging of Mr. Lopez-Cabrera's left lung.

Toxicological analysis of Mr. Lopez-Cabrera's blood revealed that his blood alcohol content was .244g/100mL (.24 BAC).

Dr. Newman determined that the Cause of Death was "GUNSHOT WOUNDS OF THE TORSO" and deemed the Manner of Death "HOMICIDE." In this and any other case, a Medical Examiner's determination that the manner of death is homicide, does not resolve the issue of whether the homicide was justified. "Homicide" is a medical determination made pursuant to New York State Public Health Law Section 4143(3), which directs that medical examiners investigate deaths that occur without medical attendance and, if they are the result of external causes, designate them "accidental, suicidal, or homicidal."

LEGAL DISCUSSION

Justification is a complete defense to any criminal charge involving one person's use of force against another and where evidence of justification exists, a justification instruction must be provided to the trier of fact. *See, People v. Padgett*, 60 N.Y.2d 142, 145 (1983); *Jackson v. Edwards*, 404 F. 3d 612 (2d Cir. 2005). Under the law, the People must disprove justification beyond a reasonable doubt. *See* N.Y. Crim. Jury Instr. 2d Penal Law §35.15(2) and, *People v. McManus*, 67 N.Y.2d 541, 546-47 (1986) (“whenever justification is sufficiently interposed by the defendant, the People must prove its absence to the same degree as any element of the crime charged.”)

When a police officer uses deadly physical force, Penal Law §35.30(1)(c) provides that the officer is justified in using that force in effecting or attempting to effect an arrest of an individual whom the officer reasonably believes to have committed an offense, when the officer:

reasonably believes that...the use of deadly physical force is necessary to defend the police officer ... from what the officer reasonably believes to be the use or imminent use of deadly physical force.

In nearly all cases when a police officer's use of deadly force against a civilian is examined, the issue that requires the most deliberate and thoughtful scrutiny is whether the officer's beliefs were reasonable. In this case, the question is whether Trp Wolensky *reasonably believed* that deadly physical force was necessary to defend himself from what he *reasonably believed* to be the use or imminent use of deadly physical force by Mr. Lopez-Cabrera.¹⁸ In the context of a potential criminal prosecution, that issue can be reshaped into the following question: Can the People prove beyond a reasonable doubt that Trp Wolensky *did not* reasonably believe deadly force was necessary to defend himself from what he believed to be the use or imminent use of deadly force by Mr. Lopez-Cabrera? *See People v. Umali*, 10 N.Y.3d 417, 425 (2008). *See also Cowan ex rel. v. Breen*, 352 F.3d 756, 762 (2d Cir 2003) (resolution of whether or not the use of deadly force was excessive centers on whether, at the moment it was employed, the officer “reasonably believed that ... his life [was] in danger”).

Although the New York State Court of Appeals has not directly interpreted the “reasonably believes” language contained in Penal Law §35.30(1)(c), the Court has interpreted identical language in Penal Law §35.15(1), which provides that “[a] person may...use physical force upon another person when, and to the extent, he or she *reasonably believes* such to be necessary to defend himself ... from what he or she *reasonably believes* to be the use or imminent use of unlawful physical force ...” In *People v. Goetz*, 68 N.Y.2d 96 (1986), and later in *People v. Wesley*, 76 N.Y.2d 555 (1990), the Court held that the phrase “reasonable belief” has both a subjective and objective

¹⁸ As noted in the FACTUAL SUMMARY, Trp Wolensky heard dispatches that Mr. Lopez-Cabrera was “threatening people with a knife” at Coyote Flaco. The NYSP dispatcher then confirmed with him that he was responding to the “menacing call.” When he arrived, according to both Trp Wolensky and Trp Gorey, Trp Gorey told Trp Wolensky that Mr. Lopez-Cabrera had a weapon. Trp Wolensky would therefore have reasonably believed that Mr. Lopez-Cabrera had committed an offense (Menacing in the Second Degree (Penal Law §120.14) or Harassment in the Second Degree (Penal Law §240.26(1)), and he and Trp Gorey would have been permitted to arrest him.

component. The subjective prong is satisfied if the defendant believed, “honestly and in good faith” that deadly force was about to be used against himself or herself at the time deadly physical force was employed, and that the use of deadly physical force was necessary to repel the danger, regardless of whether that belief was accurate or not. *Goetz*, 68 N.Y.2d at 114. The objective prong is satisfied if a “reasonable person” under the same “circumstances” could have held those same beliefs. *Goetz*, *supra* at 115. The *Goetz* Court also stated that “[s]tatutes or rules of law requiring a person to act ‘reasonably’ or to have a ‘reasonable belief’ uniformly prescribe conduct meeting an objective standard measured with reference to how ‘a reasonable person’ could have acted.” *Goetz*, *supra* at 112.

New York courts have used the *Goetz* framework to interpret Penal Law §35.30(1)(c) in both criminal and civil cases. For instance, a Bronx Supreme Court dismissed a manslaughter indictment against an officer because the Grand Jury had not been properly instructed on the *Goetz* standard, noting that “the prosecutor should have explained. . . that the focal point of [the Grand Jury’s] deliberations on this issue should be . . . whether [Police Officer Haste] reasonably believed that the use of deadly physical force was necessary to defend himself . . .” *People v. Haste*, 40 Misc.3d 596 (Sup. Ct. Bronx Co. 2013)(citing *Goetz* 68 N.Y.2d at 115). In *Brown v. State*, 250 A.D.2d 796 (2d Dept. 1998), the court interpreted the meaning of reasonableness under Penal Law §35.30 to resolve a state law tort claim for battery against a police officer. The court cited *Goetz* and *Wesley*, and noted that “[p]ursuant to Penal Law § 35.30(1)(c), an officer may not use deadly physical force upon another person unless he or she reasonably believes that the use of deadly physical force is necessary.” *Brown*, 250 A.D.2d at 797.

A distinct standard for judging the reasonableness of a police officer’s use of physical force was articulated by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). Addressing the question of when “the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment” the Court established a test that contained an objective – with no corresponding subjective – standard. And in determining whether the objective component was satisfied, the Court looked not to the beliefs of a “reasonable person” under the circumstances, but to those of a “reasonable officer on the scene.” *Graham*, 490 U.S. at 396.

Although New York courts have not expressly looked to *Graham* to interpret the language of §35.30(1)(c), federal District Courts in this state as well as the Second Circuit Court of Appeals have done so in adjudicating battery claims against police officers. In *Chamberlain v. City of White Plains*, 986 F.Supp.2d 363, 398 (S.D.N.Y. 2013), for example, the court ruled that, since the §35.30 reasonableness standard “is the exact same [standard] as the one used to analyze a Fourth Amendment excessive force claim,” §35.30 should be read to call for a *Graham* reasonable officer analysis. *See also Jamison v. Metz*, 541 Fed. Appx. 15 (2d Cir. 2013).

The *Graham* standard cautions against evaluating an officer’s decisions and actions from a purely retrospective vantage point unflavored by the realities of policework. Instead, *Graham* advises that every use of force must be judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight recognizing that ‘police officers are often forced to make split second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.’” *Birdenbaker v. City of Buffalo*, 137 A.D.3d 1729, 1730 (4th Dept. 2016) (quoting *Holland v. City of Poughkeepsie*,

90 A.D.3d 841, 844 (2d Dept. 2011)(quoting *Graham*, 490 U.S. at 396-397)).

“The reasonableness inquiry depends *only* upon the officer’s knowledge of circumstances immediately prior to and at the moment that he made the split-second decision to employ deadly force.” *Salim v. Proulx*, 93 F.3d 86, 92 (2d Cir.1996). Objective reasonableness will not be shown if it is obvious “that no reasonably competent officer would have concluded in that moment that his use of deadly force was necessary.” *Pub. Adm’r of Queens Cnty. ex rel. Guzman v. City of New York*, No. 06–CV7099, 2009 WL 498976, at *5 (S.D.N.Y. Feb. 24, 2009) (citing *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

Here, whether the reasonableness of Trp Wolensky’s beliefs is analyzed pursuant to the framework outlined in *Goetz* or *Graham*, we conclude that we could not disprove justification beyond a reasonable doubt.

First, the OAG summarized and analyzed Trp Wolensky’s subjective beliefs. Specifically, at the moment Trp Wolensky fired the fatal shots, he said he believed Mr. Lopez-Cabrera was going to stab him, because:

- The original dispatch information was that Mr. Lopez-Cabrera was armed with a knife and threatening people;

This is verified by the dispatch recordings which demonstrate that Trp Wolensky heard that Mr. Lopez-Cabrera “has a knife at [Coyote Flaco and] is threatening people” after which Trp. Wolensky confirmed that he was reporting to the “menacing call”.

- When he arrived at the scene of the unfolding incident, Trp Gorey told him that Mr. Lopez-Cabrera had a weapon;

This is independently corroborated by Trp Gorey, who said she told Trp Wolensky that Mr. Lopez-Cabrera had a weapon and by the video, which shows Trp Gorey turning toward Trp Wolensky and appearing to speak with him as he arrives.

- Mr. Lopez-Cabrera would not remove his hand from his left front pocket;

This is corroborated by the video, which shows that once Mr. Lopez-Cabrera brought his left hand down while facing Trp Gorey, his left hand is never visible again.

- Trp Wolensky could see the outline of an object he believed to be “a thick handled knife” in Mr. Lopez-Cabrera’s left front pocket;

This is independently corroborated by the video, which shows that after restraining Mr. Lopez-Cabrera, Trp Wolensky reached into his left (and no other) pocket and removed the electric screwdriver / drill.

- While moving toward Trp Wolensky, despite being told repeatedly to remove his hand from his pocket, Mr. Lopez-Cabrera said, “No I don’t want to.”;

Whether or not Mr. Lopez-Cabrera spoke cannot be verified or corroborated, because the video does not contain audio and while Mr. Lopez-Cabrera was advancing toward Trp Wolensky, his face was not directed toward the camera.

- Mr. Lopez-Cabrera had increased his pace toward Trp Wolensky and Trp Wolensky believed he was closing the gap between them.

Whether or not Mr. Lopez-Cabrera increased his pace is impossible to discern from the video. However, it does appear that the gap between the two was decreasing.

Second, the OAG considered the objective reasonableness of Trp Wolensky's subjective beliefs. Specifically, members of the OAG met with members of the NYSP training unit to determine how Trp Wolensky was taught to perceive and respond to potential knife threats. Trp Wolensky's recruit class was taught:

- Through dramatized video scenarios and vivid photographic depictions, that knife attacks can unfold within seconds and cause grave injuries including death;
- To see the hands when encountering a subject armed with a knife and that if a subject will not show his entire hand to an officer, the refusal to do so should be interpreted as a danger cue;
- There is a 21 foot reactionary gap¹⁹ when dealing with knife-armed subjects (We further address this below, in RECOMMENDATIONS); and
- A firearm is the weapon of choice to use against a knife.

Based upon the facts outlined above, the OAG concludes that it could not prove beyond a reasonable doubt that Trp Wolensky did not subjectively believe that deadly force was necessary to defend himself from what he believed to be the imminent use of deadly force by Mr. Lopez-Cabrera. Further, since virtually every piece of evidence that shaped Trp Wolensky's subjective belief was independently corroborated, the OAG further concludes that it could not prove beyond a reasonable doubt that the beliefs Trp Wolensky held were not objectively reasonable – whether judged from the perspective of a reasonable person (*Goetz*) or a reasonable officer on scene, knowing what Trp Wolensky knew (*Graham*). The fact that Trp Wolensky was ultimately mistaken in his belief that Mr. Lopez-Cabrera was armed with a knife does not affect whether that belief was reasonable. *Public Adm'r of Kings County v. United States*, No. 88 CIV. 0190 (BN), 1989 WL 116307 at *7 (S.D.N.Y. Sept. 26, 1989)(citing *People v. Goetz*, 68 N.Y.2d at 107-009).

Mr. Lopez-Cabrera's death was tragic. But after an extensive investigation and analysis, we have determined that criminal prosecution is not possible.

¹⁹ A reactionary gap describes the distance officers are taught to keep between themselves and a subject in order to appropriately respond to a sudden threat.

RECOMMENDATIONS

I. New York Should Mandate De-Escalation Training for all Police Officers.²⁰

When last examined nationally (December, 2017), twenty-one states had acted to require that police officers receive de-escalation training;²¹ New York was not one of those states and that has not changed. In situations where there is no indication that a subject possesses a firearm, de-escalation techniques encourage officers to slow down, create space between themselves and a subject, and, where possible, use communication-based strategies to defuse potentially dangerous situations. When employed, these techniques carry the potential to save lives in situations that might otherwise evolve into fatal uses of force.²² Yet even as courts urge the use of these techniques in their decisions²³ and other states act to require that officers receive this type of training, New York has taken no action. We recommend that the state legislature require that, as a condition of employment, all New York law enforcement officers receive training in how to defuse incidents using de-escalation techniques.²⁴

Before discussing this specific recommendation, we take this opportunity to outline broadly the requirements for police training in New York. In doing so, we recognize that many agencies in this state train their members to a level that far exceeds what is required by law, including the NYSP. However, Executive Order 147 requires that we provide recommendations for “systemic reform arising from the investigation” and accordingly, this report addresses the issue of training statewide.

In New York, all individuals hired by municipal police agencies to become police officers must, within one year of appointment, successfully complete an approved Basic Course for Police

²⁰ We recognize that the term ‘de-escalation’ can carry different meanings. For this report we use the Department of Justice definition, specifically “the strategic slowing down of an incident in a manner that allows officers more time, distance, space and tactical flexibility during dynamic situations ...”. <https://www.justice.gov/opa/pr/justice-department-applauds-adoption-police-department-wide-tactical-de-escalation-training>

²¹ <https://www.apmreports.org/story/2017/12/20/more-states-training-police-to-use-words-not-guns;>
<http://govred.com/blog/deescalation-training-state-requirements/>

²² See e.g. <https://theintercept.com/2017/11/09/baltimore-police-deescalation-video/> (detailing an encounter between a Baltimore Police Officer trained in de-escalation and a male with a knife; includes video); see also e.g., <https://sanfrancisco.cbslocal.com/2018/10/31/san-francisco-police-credit-de-escalation-training-for-fewer-use-of-force-incidents/>

²³ See, e.g., *Elizondo v. Green*, 671 F. 3d 506, 511-512 (5th Cir. 2012)(DeMoss, concurring)(“Either law enforcement procedures or our law must evolve if we are to ensure that more avoidable deaths do not occur at the hands of those called to ‘protect and serve.’ Saving lives remains job number one for every law enforcement agency, and it is imperative that they have better procedures in place to deal with those persons who are young, intoxicated, mentally ill, or otherwise likely to react poorly in already volatile situations.”)

²⁴ These techniques are tools. We do not imply that de-escalation will be appropriate in all circumstances; nor do we suggest that de-escalation training will obviate every use of force. We seek to ensure that law enforcement officers in this state possess the tools and training they need to resolve as many incidents as possible without deadly force while recognizing that sometimes that will not be possible.

Officers (“basic course”) administered by the New York State Division of Criminal Justice Services (“DCJS”).²⁵ Once an officer completes the basic course (informally known as the police academy) and is certified by DCJS, the state of New York does not require any further in-service training as a condition of that officer’s continued employment, unless and until the officer is promoted to a first-line supervisory position.²⁶

DCJS offers a voluntary accreditation process that constitutes a “progressive and contemporary way of helping police agencies evaluate and improve their overall performance.”²⁷ Accreditation requires an agency to achieve and maintain various standards, including the provision of 21 hours of yearly in-service training to its members.²⁸ However, the accreditation process is voluntary and of the 514 law enforcement agencies in New York, fewer than 1/3 are accredited.²⁹ Moreover, while twenty-one hours of annual training is required to maintain accreditation, there is no requirement that any part of that training cover de-escalation.³⁰

Unlike municipal police agencies, DCJS does not provide administrative oversight to the NYSP;³¹ the NYSP provides its own, comprehensive, twenty-six-week basic course and regular in-service training for its members. We thoroughly reviewed Trp Wolensky’s training records and members of the NYSP’s training unit met with members of the OAG to explain his training history. Trp Wolensky’s training was lengthy and comprehensive. But while it contained a segment dedicated to responding to incidents involving “mental health” crises (within which was a module on substance abuse, including alcohol intoxication), it did not include general de-escalation training designed to provide tools that could be used to defuse a wide range of incidents.

We applaud the fact that the NYSP and other agencies now offer training to assist officers in how to respond to calls involving individuals who may be suffering from various forms of mental impairments, including intoxication. However, that training is best adapted to circumstances where

²⁵ See, New York State General Municipal Law (GML) §209-q (1)(a); <https://www.criminaljustice.ny.gov/ops/training/bcpo/bcpo01.htm>. New York State Executive Law §840, exempts New York City from General Municipal Law §209-q and the NYPD therefore conducts its own basic academy. See <https://www1.nyc.gov/site/nypd/bureaus/administrative/training-recruit.page>

²⁶In that case, the officer must complete an approved course in police supervision. See New York State General Municipal Law §209-q (1-a).

²⁷ <http://www.criminaljustice.ny.gov/ops/accred/>

²⁸ The OAG has previously recommended that police agencies seek and obtain DCJS accreditation: <https://ag.ny.gov/sites/default/files/oagreport-andrewkearse.pdf>, https://ag.ny.gov/sites/default/files/oag_report_-_wardel_davis_iii.pdf

²⁹ <https://www.bjs.gov/content/pub/pdf/csllea08.pdf> ; <https://www.criminaljustice.ny.gov/ops/accred/accredited-agencies.htm>

³⁰ https://www.criminaljustice.ny.gov/ops/docs/accred/standards_compliance_verification_manual.pdf. The required areas are firearms training, legal updates, a review of the use of force, and the use of deadly force. We understand that de-escalation may be woven into use of force or other trainings, but it is not required as a stand-alone block of training.

³¹ See, New York State Executive Law §214.

the officer knows that he or she is responding to a mental-health (or substance abuse) related incident. In other words, if a call is dispatched as: a person off medication who is acting erratically, or a highly intoxicated individual who is acting belligerently, or a distraught person who is potentially suicidal, or a delusional individual acting strangely, the officer, with notice of the situation he or she is entering, is likely to respond pursuant to the training the officer received.³² The value of that type of training cannot and should not be overstated.

Generalized, communications-based de-escalation training, is broader and provides officers with more tools they can use across a host of scenarios. The Integrating Communications, Assessment, and Tactics [“ICAT”] training program, developed by the Police Executive Research Forum [“PERF”],³³ is the type of general de-escalation training program we encourage for all police officers.³⁴ ICAT’s mission is to teach officers to “safely and professionally resolve critical incidents involving subjects who may pose a danger to themselves or others but who are not [known to be] armed with firearms”.³⁵ Programs like ICAT use scenario-based training to teach officers a variety of de-escalation strategies (beyond simply drawing their firearms and/or shouting commands) that can be employed in a variety of circumstances. In fact, providing tools for defusing incidents involving individuals like Mr. Lopez-Cabrera, who are believed to be armed with a knife but not a gun, is a hallmark of the ICAT training.

Trp Wolensky shot Mr. Lopez-Cabrera 47 seconds after entering the scene. It does not appear that he employed any techniques during those 47 seconds to try to defuse the situation; the extent of his communications with Mr. Lopez-Cabrera was to repeatedly command that Mr. Lopez-Cabrera show his hands while pointing a gun at him. Simply put, Trp Wolensky acted as he was trained to act. In urging law enforcement agencies to carefully re-evaluate their use of force training and policies, PERF has recognized that in many of the use-of-force incidents that ultimately prove controversial, “[the officers’] *actions reflected the training they received.*”³⁶ The OAG similarly recognizes the value and importance of de-escalation training. Pursuant to the directive contained in Executive Order-147’s directive that we make recommendations aimed at “systemic reform”, we recommend that the legislature act to require that police officers in New York be trained accordingly.

³² As we note below, Recommendation Three, officers ideally know as much about the situation they are entering as possible; but we recognize that does not always happen.

³³ <https://www.policeforum.org/about>. “The Police Executive Research Forum (PERF) is an independent research organization that focuses on critical issues in policing. Since its founding in 1976, PERF has identified best practices for fundamental issues such as reducing police use of force; developing community policing and problem-oriented policing; using technologies to deliver police services to the community; and evaluating crime reduction strategies.” *And see* <https://www.policeforum.org/about-icat>

³⁴ The OAG cites ICAT as the *type* of program we recommend; the OAG is not expressly endorsing ICAT over any other training program, but rather, is recommending that officers be trained in the types of scenario-based techniques that the ICAT program covers extensively.

³⁵ <https://www.policeforum.org/icat-mission-statement> [“Reducing the need to use deadly force, upholding the sanctity of life, building community trust, and protecting officers from physical, emotional, and legal harm are the cornerstones of ICAT.”]

³⁶ <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>

II. Law Enforcement Agencies Should Evaluate their Training Protocols Regarding Sharp-Edged Weapons Training.

In addition to showing vivid photographs of knife wounds, Trp Wolensky's training on sharp-edged weapons included an extended clip from a dated (1988) film entitled, *Surviving Sharp Edged Weapons*,³⁷ as well as references to the 21-foot Reactionary Gap. The training generally appeared focused on instilling a conditioned understanding in officers that people armed with knives or other sharp-edged weapons can rapidly cover a variety of distances in a very short amount of time and thereby inflict grievous injury. Training police officers in this manner would seem to naturally promote a conditioned fear of anyone who reportedly possesses a knife (such as Mr. Lopez-Cabrera) and is within 21 feet of the officer. However, training in this manner also completely ignores the fact that data collected over the last thirteen years shows that nationwide, law enforcement officers have been fatally injured by individuals brandishing sharp-edged weapons of any type (including knives), three times.³⁸

PERF and other experts have noted that outdated concepts such as the "21-foot rule" should be replaced with training designed to "use distance and cover to create a 'reaction gap' or 'safe zone' between [the officer] and the individual..."³⁹ We recommend that all law enforcement agencies consider modifying their training in accordance with this principle.

To be clear, we do not minimize the tragic death of any law enforcement officer, nor do we fail to recognize that knives are dangerous instruments readily capable of causing serious physical injury, including death. We do however recommend that all law enforcement agencies re-evaluate their training protocols regarding sharp-edged weapons with an eye toward actual data and proportionate responses that recognize the sanctity of all life – officers and the subjects with whom they interact.

III. Law Enforcement Agencies, in Partnership with Local Mental Health Providers and Organizations, are Encouraged to Educate Families of Individuals Suffering from Conditions that Affect their Mental Health on How to Properly Communicate with Call-takers.

The tragic facts of this case illustrate how important it is that family members of individuals suffering from any type of condition that affects their mental health, including substance abuse or

³⁷See, <https://letterboxd.com/film/surviving-edged-weapons/>

³⁸ See, - <https://media.nbcbayarea.com/documents/FBI+Data.pdf> (Summary of incidents through 2016); and see, <https://ucr.fbi.gov/leoka/2017/tables/table-28.xls> (2017) and <https://ucr.fbi.gov/leoka/2018/tables/table-28.xls> (2018). Note - the numbers reflect street encounters, such as this case, not sharp-edged weapon attacks in correctional facilities.

³⁹ See e.g. <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>; <https://www.nbcbayarea.com/investigations/Numbers-Show-Police-Training-Drill-May-Be-Causing-Unnecessary-Deaths--453491163.html>; <https://www.criminallegalnews.org/news/2018/jan/19/confronting-myth-police-suspect-knife-confrontations/>

intoxication, communicate fully and accurately with call-takers.⁴⁰ Law enforcement agencies, in partnership with mental health advocacy and outreach groups, can play a vital role in educating families about this principle. The ultimate goal of this type of education is to ensure that responding officers have as much accurate knowledge of the issues they will encounter before they arrive on scene. We recommend that law enforcement agencies partner with mental health providers and other organizations to provide public education outreach relative to this issue.

As detailed in the FACTUAL SUMMARY, through no fault of his own, the process by which CW-Brother communicated with the police to summon assistance was arduous. He was initially connected with NYC-911, where the dispatcher had difficulty understanding him and had no familiarity with Dutchess County. Next, he called the NYSP directly, where again, the first person he spoke with had difficulty understanding him. Finally, he spoke with another member of the NYSP (not a dispatcher) who advised that they would send someone to Coyote Flaco. During each of the three calls, CW-Brother said that his brother had a knife and was threatening his sister-in-law. Only during the last call (with a non-dispatcher) did CW-Brother mention that his brother was drunk; the thrust of each call was that his brother was threatening his sister-in-law with a knife.⁴¹

Each of those calls impacted the information conveyed to Trp Wolensky and Trp Gorey. The dispatcher from NYC-911 contacted DC-911 and related that a man was threatening a woman with a knife; in turn, that information was broadcast over the air and heard by Trp Wolensky and Trp Gorey. Similarly, the NYSP dispatcher confirmed that Trp Wolensky was responding to a “menacing” call.

The law enforcement response to a call involving, for example, a despondent, highly intoxicated person with life-affecting personal issues is qualitatively different than the law enforcement response to a man threatening a woman with a knife.⁴² Agencies can play a vital role in educating “family members on the types of information and details they should provide when calling 911 for an incident involving their loved ones”⁴³ in order to remove stigmas and save lives. We recommend

⁴⁰ <https://www.policeforum.org/assets/30%20guiding%20principles.pdf> [Principle 30: “Information Sharing - Educate the families of persons with mental illness on communicating with call-takers”]. See also, <https://www.nami.org/Find-Support/Family-Members-and-Caregivers/Calling-911-and-Talking-with-Police> [“Share all the information you can with your 911 operator. Tell the dispatcher that your loved one is having a mental health crisis and explain her mental health history and/or diagnosis. If the police who arrive aren't aware that a mental health crisis is occurring, they cannot handle the situation appropriately.”]

⁴¹ To be sure, dispatchers must be trained to obtain all critical information from callers and to accurately convey that information to police officers responding to a scene.

See, <https://www.policeforum.org/assets/30%20guiding%20principles.pdf> [Principle 29: “Well trained call-takers and dispatchers are essential to the police response to critical incidents.”] However, CW-Brother never actually spoke with a dispatcher in Dutchess County. The NYC-911 dispatcher, completely unfamiliar with Dutchess County, spent a good deal of time trying to determine *where* the incident was unfolding so that she could connect CW-Brother with a dispatcher in the correct county. CW-Brother ended that call after becoming understandably frustrated with the dispatcher’s inability to understand him. After that, CW-Brother called the NYSP trooper barracks directly; he spoke with a trooper, not a dispatcher.

⁴² We use this as an example only and do not suggest that Mr. Lopez-Cabrera was despondent or had personal issues.

⁴³ Id at fn40.

they do so.

IV. The New York State Police should outfit its members with body cameras.

As we recently [noted](#), the NYSP is the second largest law enforcement agency in New York and the ninth largest in the nation.⁴⁴ Yet of the twenty largest law enforcement agencies nationwide, the NYSP is the only one not outfitting its members with body-worn cameras or piloting a plan to do so.⁴⁵ And while not directly relevant to this matter, the NYSP is one of only five state police agencies nationwide that do not outfit vehicles with dashboard cameras.⁴⁶ We recommend that the NYSP and the lawmakers responsible for its funding work to remedy this.

Indisputably, had Trp Wolensky and Trp Gorey been wearing body-worn cameras, a more complete picture of what transpired during this incident would have been available, particularly in terms of Mr. Lopez-Cabrera's actions, affect, and words as he approached Trp Wolensky. We therefore again encourage the NYSP and the lawmakers responsible for its funding to join the thousands of other law enforcement agencies around the state and country that have worked to equip their members with body-worn cameras.

⁴⁴ <https://www.bjs.gov/content/pub/pdf/csllea08.pdf>

⁴⁵ While dashboard cameras are not directly relevant here, we further note that New York is one of only five states where the primary state law enforcement agency (again, the NYSP) is not equipped with dashboard cameras. See, <https://www.nbcnewyork.com/news/local/NY-State-Police-Lag-Behind-Agencies-Nationwide-on-Camera-Use-513023311.html>

⁴⁶ <https://www.nbcnewyork.com/news/local/NY-State-Police-Lag-Behind-Agencies-Nationwide-on-Camera-Use-513023311.html>

EXHIBIT 1

NEW YORK STATE POLICE

STATE OF NEW YORK

-- VS. --

JAMIE LOPEZ

Defendant(s)

INCIDENT LOCATION:

STATE OF NEW YORK LOCAL CRIMINAL COURT

COUNTY OF DUTCHESS

TOWN of STANFORD

LOCATION OF DEPOSITION:

STATE OF NEW YORK

COUNTY OF DUTCHESS

TOWN of PLEASANT VALLEY

On Date 09/25/2018 at Time Started 05:27 PM Full Name: KATHERINE M GOREY

State The Following:

In sum and substance, this account of events is given to the best of my recollection.

On September 25, 2018, I was working a one tour out of SP Poughkeepsie, which runs from 7:00 a.m. until 7:00 p.m. I was operating marked patrol vehicle 2K36 and was assigned to post 810, which covers Stanford, Washington and Millbrook.

Sometime this morning, I was dispatched by Troop K Communications to respond to an automobile accident on the Taconic State Parkway, near Nine Partners Road. Knowing that accidents can be time consuming, I stopped at the Dunkin Donuts on Route 44, near the Taconic State Parkway to use the rest room. When I got back to my vehicle, Troop K Communications Dispatcher Charlene called me on the radio. She told me that she was re-routing me from the accident, and sending me to Coyote Flaco, on Route 82, in the Town of Stanford for a man threatening somebody with a knife. I was traveling westbound at that point. I turned my lights on and did a u-turn and started heading east on Route 44 towards Route 82.

Dutchess County 911 polled, looking for an available unit in the same area that I was heading to. I contacted DC911 via my radio and confirmed with them that they were polling for the same incident that I was heading to. DC911 advised me that they had received a 911 call from New York City advising that there was a man with a knife, threatening people. At that time, I heard two other State Police units answer up to say that would be responding to assist. One unit was in Lagrange and the other unit was in Beekman. Another unit answered up and I asked DC911 to send that unit as it was the closest.

Notice

(Penal Law §210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

this 25th day of SEPTEMBER, 2018

- OR -

* Subscribed and Sworn to before me

this day of

[Signature of Deponent]

(SIGNATURE OF DEPONENT)

[Signature of Witness]

(WITNESS)

INV. KATHERINE M GOREY 5281 (NAME OF PERSON TAKING DEPOSITION)

Time Ended 09/25/2018 07:13 PM

* This form need be sworn to only when specifically required by the court

NEW YORK STATE POLICE

State The Following:

On my way to the scene, I looked at the CAD call on my computer and saw that in the description portion it read that the male was intoxicated. I notified DC911 that I was approximately 2 miles out from the scene. I then heard Trooper Kevin Wolensky advise that he was enroute from Troop. I contacted DC911 and asked them to clarify the location of the involved parties at the scene, but they did not have that information. All of my radio transmissions were through DC911 and when I arrived on scene, I hit "On Scene" on my computer.

I pulled into the front of the Coyote Flaco restaurant. I noticed that the restaurant was dark inside. I attempted to gain access in the building but the doors were locked. The restaurant has a liquor store attached and as I moved toward that part of the building, I noticed that one of the windows of the liquor store was cracked. I immediately began thinking that something might have happened at that location.

I walked around the right side of the building and I observed a male subject standing close to the driver's side door of a grey Kia SUV. I observed a woman sitting in the driver's side seat, with the window up. The woman tried to get out of the vehicle but I told her stay in the car. I also noticed a lot of items piled up behind the vehicle, which made me think that the woman was trapped there and was unable to leave.

The male looked Hispanic, with brown hair and brown eyes. He was skinny and wearing pants, a shirt and shoes. He appeared to be intoxicated as he was unstable and had glassy, bloodshot eyes. I addressed the male by saying "Sir, Trooper Gorey, State Police, what's going on?". The male did not respond to me.

The male began moving toward the front of the vehicle. I originally maintained a position at the driver's side rear of the vehicle. I then moved to the passenger side of the vehicle and the woman rolled down the passenger window. She handed me an Order of Protection. I took the Order of Protection and folded it around my notebook. I thought immediately that I was going to be arresting this guy. I was weary because of the original complaint that the male had a knife.

The male stepped over and put his hands up, which were empty. I asked the male if he had a weapon on him, at which time he tapped the outside of his left front pants pocket, laughed and nodding and he said "weapon". I immediately pulled out my Division issued gun. I kept my gun at the low ready, with my finger off the trigger and outside of the trigger guard. I threw my notebook with the Order of Protection inside the passenger side window of the car. At this point, I hear Wolensky arrive. I advised Wolensky that the male said he had a weapon in his left front pants pocket. Wolensky also had his side arm out at this time. The male then put his left hand in his left front pants pocket, which is the pocket he claimed to have a weapon in. The male did not respond to any of my or Wolensky's commands to show us his hands. He put his hand in his left pocket and began running toward the driver's side of the vehicle, where the woman was still sitting.

At the time that we were addressing the male, both Wolensky and I were on the passenger side of the Kia. The female may have screamed, although I don't remember, but I recall something drawing my attention to her. I holstered up because I was going to move to the drivers side of vehicle to address her and did not want to approach her with my gun out. As I moved toward her side of the vehicle, I began moving the items that were piled up behind the car, in case we needed to back her out. I believe that the woman, again, tried to get out of the car, and I told her stay in the vehicle. I had progressed half way up the driver's side of the car when I saw the male lunge at Wolensky. To the best of my recollection, the male was standing on an angle to Wolensky, when he

Hull

Notice

(Penal Law §210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

this 25TH day of SEPTEMBER, 2018

- OR -

* Subscribed and Sworn to before me

this _____ day of _____

Trooper Matthew Gorey
(SIGNATURE OF DEPONENT)

Sgt. Timothy W. Miller
(WITNESS)

Time Ended
09/25/2018 07:13 PM
IN. K. [Signature] 5251
(NAME OF PERSON TAKING DEPOSITION)

* This form need be sworn to only when specifically required by the court

NEW YORK STATE POLICE

State The Following:

made an explosive movement toward Wolensky's direction. I then saw Wolensky take evasion action by moving a couple steps backward. I could not see the male's hands at this point. I then heard two shots, but I did not observe the male get shot or fall to the ground because I was on the other side of the car, and the vehicle was obstructing my view.

I told the female to stay in the vehicle. I spent a period of time restraining the woman in the vehicle from getting out and approaching the male. I walked around the vehicle and observed the male lying on his right side, in a fetal position, facing away from me, handcuffed behind his back. His head was positioned to the north, and his feet were to the south. Wolensky told me to radio for EMS to expedite to the scene. I returned to my vehicle and called DC911 and asked for an ambulance. I then used my cell phone and called Charlene in Communications by dialing (845) 677-7323. I told Charlene that the male was shot and that we needed a supervisor.

I returned to Wolensky and he went to his vehicle to get his EMS bag. I stayed with the male, who was trying to get up and was groaning. Wolensky returned and we applied pressure to males chest and back. Wolensky told me to apply gauze to the male's back, but I did not observe any blood on his back. Wolensky applied pressure to the males chest. Wolensky then told me to secure a green item, which was on the ground, a short distance from the male. I assumed by the way Wolensky was talking, that the item was the weapon that the male on him. I picked up the item, and believed it to be a drill, without a drill bit in it. I do not recall the shape of the drill or what position it was in. I put it in one of gauze bags which we had used to render aid to the male. After placing it in the gauze bags, I put it in Wolensky's EMS bag.

Stanford Fire Department arrived on scene and I gave them all of my Quick Clot. They asked me what we have and I informed them that the male had two gunshot wounds to the chest, which is information I assumed because I had heard two shots. I did not provide them with any further information.

Throughout this incident the only conversation that I had with the woman in the vehicle was through hand gestures. I could not understand anything that the woman was saying out loud, as she was speaking in Spanish and I do not speak nor understand the Spanish language.

I did not have any prior knowledge of complaints at this location, nor have I had any personal interactions with either party involved.

Notice

(Penal Law §210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

this 25TH day of SEPTEMBER, 2018

- OR -

* Subscribed and Sworn to before me

this _____ day of _____

Tapper Katherine Vareny
(SIGNATURE OF DEPONENT)

SKIN Timothy W. Miller
(WITNESS)

INV. KIRBY 5281
(NAME OF PERSON TAKING DEPOSITION)

Time Ended
09/25/2018 07:13 PM

* This form need be sworn to only when specifically required by the court

EXHIBIT 2

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

On October 3, 2018, Special Investigations and Prosecutions Unit (SIPU) members went to New York State Police (NYSP), Troop K Headquarters located at 2541 State Route 44 Salt Point, NY. SIPU members Bureau Chief Wanda Perez- Maldonado, Assistant Attorney General (AAG) Jose Nieves, Investigator (INV) Dennis Churns and INV Royal J. Remington (WRITER) were present. SIPU members met with NYSP Trooper Katherine M. Gorey (GOREY) and her NYSP Police Benevolent Association attorney, Richard Mulvaney in the library at Troop K Headquarters. At about 10:35AM SIPU members conducted an interview with GOREY in reference to the September 25, 2018 NYSP involved shooting death of Jaime Roderigo Lopez-Cabrera (DECEDENT) which had occurred in the rear of the Coyote Flaco restaurant located at 6063 New York 82 Stanfordville, NY . The interview was approximately three hours and ten minutes, which included intermittent breaks for GOREY to speak with her attorney concluding at about 1:45PM. WRITER took notes during the interview. WRITER attached the notes to this report and they were scanned into ACISS.

In sum and substance GOREY gave the following account of questions asked of her by INV Churns. GOREY stated she was 36 years of age and lives in Dutchess County. She began her career with the NYSP on November 3, 2013, assigned to NYSP-Binghamton where she received her field training. Upon leaving Binghamton, she worked in NYSP- Endwell, Deposit and Somers. She came to NYSP Poughkeepsie approximately three years ago.

GOREY described the events of September 25, 2018 as follows. She was working one shift (7:00AM-7:00PM) assigned to post 810, which covers Stanfordville, Washington, and Millbrook. An early call came in involving a tractor-trailer accident. Trooper Kevin Wolensky (WOLENSKY) called 911 for the accident. While at the station GOREY heard WOLENSKY radio that he needed to close the road saying there was commercial vehicle involved. GOREY drove to the scene located at State Route 44 in Pleasant Valley. She observed Troopers on the scene so she responded to Vassar Brothers Hospital in Poughkeepsie to check on the children who were on the bus and the operator of the minivan. This call came in at 7:00AM. The school needed information about the children on the bus for insurance purposes. When she cleared the hospital GOREY observed another accident. She was not sure of the time. She said the Town of Poughkeepsie Police department was on scene and advised her there were no injuries so she cleared. She parked her NYSP Troop car at the Kary institute on State Route 82 and Clinton Corners Road where she began doing her notes. As she was doing her notes, she heard NYSP dispatch trying to reach a Trooper for another accident at the Taconic State Parkway and 9 Partners Road. GOREY stopped to use the restroom at Dunkin Donuts and then started in route to the scene.

As she was leaving Dunkin Donuts heading to the Taconic Parkway, GOREY received a message from NYSP dispatch that she was being rerouted to another call. She clicked on the message and it said there was a male at the Coyote Flaco in Stanfordville threatening someone with a knife. 911

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

also reached out and there were multiple radio transmissions. GOREY did a U-turn and 911 polled for an address in the same area. She called 911 and told that they had received a call from New York City 911 saying that someone threatened people in the restaurant with a knife. She asked 911 to poll for a backup and heard NYSP units answer that they were in route. In addition, a Dutchess County Sheriff's office car stated they were responding. Another vehicle had answered up and GOREY told 911 to send the closest car as two who had answered would take forty-five minutes to respond. While in route, GOREY asked 911 if they knew where they were in the restaurant. 911 indicated to her that they did not know where they were in the restaurant, saying they had no information. GOREY stated she was about two miles away from the scene when she heard WOLENSKY say he was in route from Troop K Headquarters.

When arriving on the scene, GOREY radioed 911 and told them they could show her on scene. When first pulling in, she saw the restaurant straight ahead. To the right of the restaurant, she observed a liquor store and a post office. The restaurant doors were locked and she noticed a chip in a window of one of the stores. That was the last thing that she saw before turning the corner. GOREY turned the corner and went toward the rear of the buildings where she saw a silver grayish SUV with DECEDENT standing very close to the driver's side window, inches from a woman in the car. There were lots of stuff behind the woman's car. GOREY observed toys and garbage cans. The woman tried to get out of the vehicle, GOREY told her to stay in the car, and the woman closed the door. GOREY then went to the opposite side of the car where she engaged the DECEDENT. She identified herself to him as Trooper Gorey State Police. She then asked DECEDENT what was going on and he did not answer. The woman in the vehicle rolled down the window and handed her a piece of paper which GOREY recognized as an Order of Protection (OOP). The woman was pointing at the DECEDENT. GOREY interpreted that as DECEDENT was not supposed to be there. GOREY did not read the OOP thinking that DECEDENT would be coming in to the station and they would figure it out. At that time GOREY stated that DECEDENT appeared very antsy, was constantly shifting his weight, and his balance was off. He was rocking and unsteady on his feet. His eyes were blood shot and watery. When she was in route to the call, GOREY stated one of the radio transmissions stated that there was a possible intoxicated male. GOREY put the OOP in the middle of her notebook and put it in the woman's car. GOREY recalled that it was raining and the woman had her window down. GOREY then asked DECEDENT if he had any weapons on him. DECEDENT said "weapon" pointed to his left pocket while laughing. He was smiling, nodding, and tapping his left pocket. GOREY then drew her NYSP issued Glock 45ACP. At that point, she heard a noise behind her, glanced and saw WOLENSKY who is a K-9 handler who works out of NYSP Troop K Headquarters. At that point GOREY and WOLENSKY asked DECEDENT to see his hands. DECEDENT was shifting his weight, would not show them his hands, and tried to move around. GOREY and WOLENSKY continued to tell the DECEDENT to show them his hands. DECEDENT then ran toward the woman who was in the car. GOREY stated she told, tried to communicate to WOLENSKY, what she believed to be immediately

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

upon his arrival at the scene, that DECEDENT had a weapon in his left pocket. She did not remember the exact words she used when she told WOLENSKY. GOREY holstered up saying she did not know if WOLENSKY knew the woman was in the car and went around to the side where the woman was. She believed the woman may have been yelling but did not know what she said. She told the woman to stay in the car. Thought was to keep the woman in the car and get her out of there. GOREY went to the rear of the vehicle where she began moving the propane tank, car seat, child's toy and a whole bunch of other stuff. At that time, she saw WOLENSKY on the hill. GOREY saw out of the right corner of her eye through the window what she described as a quick movement. She said she was in the rear of the vehicle, closer to the woman on the driver's side of the vehicle. At that point, she heard, "pop, pop". She told the woman to stay in the car and went back to the other side of the car where she saw the DECEDENT on the ground, handcuffed. WOLENSKY told her to call EMS and have them expedite. GOREY stated that she had forgot to tell us that she had picked up her personal cell phone which had a pinkish case and used it to call NYSP dispatch. She told them to send the Sergeant here, "We shot him". She stated she was never issued a NYSP phone. She ran back to WOLENSKY and he said he was going to get his EMS bag. He told her to stay with DECEDENT. The woman was now standing outside the car crying. WOLENSKY and GOREY exchanged some words, with GOREY telling WOLENSKY that she thought the woman should stay in the car and not have to watch. WOLENSKY told GOREY he had told the woman to stand there so they could watch her and that they needed to interview her about what happened. WOLENSKY came back with his EMS bag, took out gauze, and applied it to DECEDENT's chest. GOREY applied a gauze to DECEDENT's back. She had gloves on and applied pressure. She did not lift up his shirt. Stanfordville Fire Department showed up on scene and asked GOREY if she had quick clot. GOREY went back to her troop car and brought it in the back. GOREY stated quick clot was a substance used to clot blood. GOREY recalled the Fire Department member asking WOLENSKY if it (the wound) was through and through and he told him yes. GOREY believed they were trying to decide if the quick clot would be a good fit for this type of injury. GOREY believed not because there were internal injuries. WOLENSKY then asked GOREY to pick up an object and pointed to the object on the ground. He told her to pick it up for him. She picked it up and put it in the blue EMS bag. According to GOREY, it looked like a bright green colored drill. She did not know if it was open or closed, just wanted to put it in the gauze bag. The woman came over and GOREY grabbed her and told her to let them work. At that time NYSP supervisors and NYSP INV McMorris responded. INV McMorris then began talking to the woman in Spanish. The Fire Department ambulance then transported DECEDENT to Mid-Hudson Regional Hospital in Poughkeepsie.

After giving her account of the events that happened as they pertained to this incident, GOREY was asked follow up questions by AAG Jose Nieves. GOREY gave the following answers in response to the questions asked of her.

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

She attended the 201st NYSP Academy with WOLENSKY. She did not interact with him at the academy. She has known WOLENSKY since early September 2018 when he came to Troop K Headquarters. They were never partners. They backed up each other on calls.

While on this call GOREY stated she was in possession of NYSP issued Taser, OC spray, and flashlight. She did not know what weapons WOLENSKY had but did not believe he had a Taser. She said K-9 may have different requirements than she would. WOLENSKY had a K-9 with him that day which he left in his Troop car.

The 911 call came in as a man in the restaurant threatening people with a knife. She knew to go to the rear because the restaurant was closed. The response time after receiving the 911 call was under ten minutes.

When she first got to the back of the restaurant, DECEDENT was right next to the woman's window.

She never encountered DECEDENT prior to this incident. When NYSP dispatched they said he was Jaime Lopez.

DECEDENT was standing there and was wobbly. Her first words to the woman in the car were "State Police" and she told the woman to stay in the car. She did not know if the woman spoke English at this time. GOREY walked to the passenger's side and DECEDENT walked over. She stated, "Trooper Gorey State Police. What's going on here?" DECEDENT was in front of the woman's vehicle and she could see both of them. That is when the woman handed her the OOP. The woman was in the driver's seat. DECEDENT was walking around and did not say anything until GOREY asked him if he had any weapons. DECEDENT put his hands up while GOREY had OOP in her hand. GOREY stated it sounded like DECEDENT was confirming what she was asking. She told him to "stop, don't move". He did not comply and was saying weapon when he tapped his left pocket with his left hand. GOREY did not see a weapon, bulge or outline of one. She did not know where WOLENSKY was but knew he was behind her somewhere. She walked toward the woman's side after DECEDENT said weapon. Then she went to the rear of the vehicle to move the aforementioned items. GOREY believed he had a weapon. When she went to the back of the vehicle, she began moving the stuff and at some point observed WOLENSKY on the hill when she had looked up. GOREY saw a quick movement, believing it was both WOLENSKY and DECEDENT moving very quickly. GOREY noted that after she went home that night she called the NYSP INV at 2:30AM to say she remembered WOLENSKY being on a hill. She stated that she was moving the stuff at the time so the woman could get out of there. She saw the quick movement as she was moving to the driver's side and she heard "pop, pop". At that time GOREY stated she was dealing with the woman who was saying "No, No." She told her to stay in the

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

car. GOREY did not know where DECEDENT was when she saw WOLENSKY on the hill. She did not see him.

She does not know at this time if the woman spoke English.

GOREY drew her weapon between the cars put the weapon in the low ready position. She stated, "Show me your hands, don't move". DECEDENT did not comply. She did not recall seeing his hands. That is when DECEDENT shoved his left hand into his left pocket. She did not remember seeing his hands. GOREY holstered and went to the rear of the vehicle to move the items.

After getting the OOP, GOREY stated her intent was to pat him down and follow procedure. She did not pat him because WOLENSKY had showed up and DECEDENT had placed his hand in his pocket. GOREY did not approach DECEDENT because she deemed him a threat and he was not complying with verbal commands given to him.

She lost sight of DECEDENT when she went to the rear of the car. She did not know how WOLENSKY got on the hill. When she was in the rear of the car she heard WOLENSKY tell DECEDENT to, "Show me your hands, Show me your hands" more than once. She did not hear DECEDENT respond verbally. Just before hearing the two shots, GOREY did not know if WOLENSKY said anything. She did not draw her weapon again after going to the back of the car.

GOREY was told there was a video of the incident. She did not see the video nor did she see a camera on the scene.

GOREY stated that after WOLENSKY shot DECEDENT, and DECEDENT was on the ground, WOLENSKY told her to stay with DECEDENT; he was going to get his EMS bag. She told DECEDENT to stay there. It was after that when WOLENSKY directed her to the drill on the ground. She said it was several minutes later after WOLENSKY had returned when he directed her to the drill. She did not know for sure how long it was though. When WOLENSKY had directed her to the drill on the ground, she believes he said, "Can you grab that for me"? The drill was on the ground. She picked it up, put it in plastic, and placed it in the EMS bag. It was the first time she saw the drill. She did not check DECEDENT for weapons at this time. The first time she saw the drill was on the ground, she was not sure of the exact location of the drill. DECEDENT was between the two cars on the scene when she picked up the drill. GOREY estimated that the drill was approximately two feet away from the DECEDENT when she picked it up.

After answering the follow-up questions, AAG Jose Nieves asked GOREY if there was anything in her statement or supporting deposition given to the NYSP the night of the incident that she wished to change or clarify. She responded as follows.

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

She stated that she had given her deposition after going to the hospital and coming back to NYSP Troop K headquarters. GOREY stated, "It was a lot that day." She wanted to clarify that her statement given to us about headquarters giving DECEDENT's name was not in her supporting deposition given to the NYSP. She believed the dispatcher, with no additional information other than a threatening, intoxicated male, gave DECEDENT's name.

When GOREY gave her deposition to NYSP, she forgot about the post office. She said the liquor store window was cracked; it may have been the post office.

GOREY wanted to point out that when describing to us that the woman was using hand gestures and pointing at DECEDENT was not in her deposition.

She also said that the order of things in her deposition might be out of sequence. Referring to page 2 of her deposition, paragraph 5, where it reads, "I originally maintained a position at the driver's side rear of the vehicle. I then moved to the passenger side of the vehicle and the woman rolled down the passenger's window." After this sentence GOREY thinks is when the woman pointed at DECEDENT indicating him and may have shook her head in acknowledgement and then handed her the OOP.

GOREY also wanted to clarify that on the same page and paragraph of her deposition, the sentence, "I took the OOP and folded it around my notebook". She said that she actually folded up the OOP and put it inside her notebook so her hands could be free. She thought she was going to arrest him and search him as she had received the call as a man with a knife. She was not 100 percent sure, when she put the notebook down.

On page 2 of her deposition, paragraph 6, where it reads, "He put his hand in his left pocket and began running toward the driver's side of the vehicle, where the woman was still sitting". GOREY wanted to clarify that she meant to say, "He put his left hand in his left pocket, turned and began running toward the driver's side of the vehicle, where the woman was still sitting". She also wanted to say that she was not sure how much time had elapsed between when DECEDENT put his hand into his pocket and ran to the driver's side of the car. She was also unsure if DECEDENT was running to the driver's side window.

Referring to paragraph 7 on page 2 of her deposition, GOREY pointed out that a sentence was out of order. The first sentence of paragraph 7, "At the time that we were addressing the male, both Wolensky and I were on the passenger side of the Kia". That sentence should appear in paragraph 6 right before the sentence that reads, "He put his hand in his left pocket and began running toward the driver's side of the vehicle, where the woman was still sitting".

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

Referring to paragraph 7 on page 2 of her deposition, where it reads, "but I recall something drawing my attention to her". GOREY stated that what drew her attention to the woman was when the DECEDENT was walking over to her car.

Also referring to paragraph 7 on page 2 of her deposition, GOREY commented that her intention was to back the woman out of there. That is when she started moving the objects behind her car. She also told the woman to stay in the car several times.

Referring to paragraph 7 on page 2 of her deposition, where it reads, "I holstered up because I was going to move to the driver's side of vehicle to address her and did not want to approach her with my gun out". GOREY stated that after the word because, the sentence should read, "in case I needed to back her out".

GOREY made the following comments pertaining to what she had said in her deposition pertaining to the fatal encounter between DECEDENT and WOLENSKY. She stated that she woke up that night and recalled WOLENSKY being on a hill with his gun drawn. She called the NYSP INV to tell her that. The woman tried to get out of the car and she told her to stay in her car. She saw DECEDENT standing at an angle to WOLENSKY, at which time she saw him lunge at and make an explosive movement toward WOLENSKY. GOREY stated she was bending down when she observed the movement. She stated that the way it was written in her statement was wrong. She said it should have said she saw a quick movement and not said she saw DECEDENT lunge and make an explosive movement toward WOLENSKY. She stated she saw the movement through the vehicle windows. GOREY was moving when she saw the movement. The movement, according to GOREY was so quick and she believed the movement was toward her from the other direction. When she gave the deposition, GOREY believed DECEDENT was lunging at WOLENSKY. She could not give an answer as to if WOLENSKY and DECEDENT were near each other. She observed the movement out of the peripheral vision of her right eye through the window. GOREY stated she made assumptions that DECEDENT lunged at and made an explosive movement toward WOLENSKY and that WOLENSKY took evasive action. At the time she gave her deposition, GOREY believed WOLENSKY took steps back because the movement was continuous. She could not say how many seconds lapsed between the quick movement and when the shots were fired. Although she did not see it, GOREY believed WOLENSKY was moving back toward her when she saw the quick movement. She did not remember if DECEDENT had his hand in his pocket when she saw the quick movement.

On page 3 of her deposition, paragraph 4 where it reads, "Stanford Fire Department arrived on scene". GOREY said it should read, "Two male volunteers arrived on scene". She also said she was not sure if an ambulance was on scene yet.

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(4) TO Chief Sullivan	(5) FROM CHURNS, DENNIS	

(6) SUBJECT: Interview of NYSP Trooper Katherine Gorey

As to the methodology used to take her deposition, GOREY stated the following. Two NYSP investigators typed her statement. They took notes, while they were interviewing her, took a break and then started typing it up right there. When completed, they let her read it. After reading it, she told them the sequence was off and they told her that is why the deposition said, "In sum and substance". She signed the statement after she read it. GOREY stated that she was required to give this deposition and failure to do so could result in disciplinary action.

Investigation to continue.

EXHIBIT 3

(1) OFFICE Poughkeepsie	(2) ATTORNEY Wanda Perez-Maldonado	(3) CASE NUMBER SIPU18-018
(4) TO Chief John Sullivan	(5) FROM Remington, Royal	

(6) SUBJECT: Interview of NYSP Trooper Kevin Wolensky

On October 13, 2018, Special Investigations and Prosecutions Unit (SIPU) members went to New York State Police (NYSP) Troop K Headquarters located at 2541 State Route 44 Salt Pointe, NY. SIPU members Bureau Chief Wanda Perez-Maldonado, Assistant Attorney General (AAG) Jose Nieves, Investigator (INV) Dennis Churns and INV Royal J. Remington (WRITER) were present. SIPU members met with NYSP Trooper Kevin G. Wolensky (WOLENSKY) and his NYSP Police Benevolent Association Attorney, Richard Mulvaney in the library at Troop K Headquarters. At about 10:45AM, SIPU members conducted an interview with WOLENSKY in reference to the September 25, 2018 NYSP involved shooting death of Jaime Roderigo Lopez-Cabrera (DECEDENT) which occurred in the rear of the Coyote Flaco restaurant located at 6063 New York 82 Stanfordville, NY. The interview was approximately 2 hours long, which included intermittent breaks for WOLENSKY to consult with his attorney. The interview concluded at about 12:45PM. WRITER took notes during the interview, and attached them to this report. Notes were scanned into ACISS.

In sum and substance, WOLENSKY gave the following account of questions asked of him by WRITER. WOLENSKY identified himself as Trooper Kevin G. Wolensky. His shield number is 2364. He is assigned to Troop K Headquarters. WOLENSKY gave the following chronology of his law enforcement career. He began his career with the Town of Wallkill Police Department in 2008 and left in 2010. In 2010, he was hired by the Town of Poughkeepsie Police Department and worked there until 2013. In 2013, he was hired by NYSP and graduated from the basic academy in July of 2013. He did his field training out of NYSP Stormville and Troop K Headquarters. He graduated from the K-9 academy on September 7, 2018 and assigned to Troop K Headquarters on September 8, 2018. He has worked out of Troop K Headquarters for approximately one month and has been with the NYSP for four and one half years.

On September 25, 2018, WOLENSKY was working 1 shift, which is from 7AM to 7PM. He was assigned to Troop Car 2K81, which is his assigned vehicle that he takes home with him, as he is a K-9 handler. He was driving from his residence to the station when at 7 AM he pulled up on a school bus accident involving a tractor-trailer and a minivan. 38 kids were on the bus. The accident was on Route 44 in Pleasant Valley. After handling the accident, he went to Troop and arrived at 10:45 AM. Once arriving he took his K-9 out and went to the back corner of Troop Headquarters to exercise the dog and let the dog go to the bathroom. While doing this, he heard the NYSP dispatcher trying to raise him over the radio about a subject menacing people with a knife. He acknowledged the call and told them he was in route. He heard Trooper Gorey (GOREY) on the radio asking who else was coming. He went car-to-car radio frequency with GOREY and told her he was leaving Troop and gave his ETA. The call was to Coyote Flaco Restaurant and bar on route 82 in Stanford.

On his way there, WOLENSKY radioed GOREY on car-to-car telling her he was about two minutes out. Shortly after he heard GOREY say she was on scene. That was the last radio transmission

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he heard from her. When he pulled up he saw GOREY's car out front but did not see anyone in front. He parked his car next to hers. He had his K-9 with him. WOLENSKY got out of his car, went to the front of the building, and pulled the door handle to the restaurant. It was locked and he did not see anyone inside. He made his way down the building, which included a liquor store and another building. He checked those doors as well and he tried to figure out where they were. WOLENSKY pointed out that there is a problem with their portable radios. He explained that once he got out of the car the portable radio only allows you to transmit to the channel that the car radio is on. He said getting GOREY on the portable radio would be near impossible.

WOLENSKY made his way to the back of the building. He had never been on a call at this location so he was not familiar with the layout. When he got to the rear, he observed GOREY standing next to the driver's side of a red minivan. The windows on the minivan were up. He observed a female inside the minivan crying hysterically. He observed DECEDENT standing in front of the minivan on the outside of it. WOLENSKY stated he went to the passenger's side of the minivan to leave space between him and GOREY. At that point, he said he was parallel with GOREY.

WOLENSKY gave the following account of questions asked of him by AAG Jose Nieves. He trains and qualifies with his NYSP issued firearm two times per year, once in the spring and again in the fall. He also had firearms training and qualification while he attended the NYSP basic academy. The training includes classroom scenarios. There was limited firearms training in the K-9 academy he attended. Firearms were discharged to get the dogs used to hearing them go off but there were no qualifications done in the K-9 academy. The firearms training scenarios done in the spring and fall of each year included deploying from a car, and shooting and moving from behind a car, shooting at long range and other various lengths.

WOLENSKY receives training in the use of deadly physical force twice a year at the spring and fall qualifications. Prior to every shoot, troopers are read their policy on the use of deadly physical force. The last time he qualified was approximately two weeks ago right after the event. He explained that his weapon was taken from him after the shooting and he was issued a new one and had to qualify with the new weapon that same day. The qualification was a set qualification course. Prior to that, the last time he qualified was at the spring shoot this year. He did not remember what month he qualified.

WOLENSKY stated he received the use of force training in the basic academy in class and had to take written tests. After getting out of the basic academy, the use of deadly physical force is read to troopers two times per year at firearms training. He said troopers receive less than lethal use of force training once a year. They receive training on the Taser, OC spray, and defensive tactics, which include hand-to-hand fighting and wrestling. The last time he had this training was in the winter of 2017 to 2018.

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WOLENSKY stated his understanding of the NYSP use of force policy was a force continuum beginning with verbal commands, soft hand tactics, OC spray, Taser (all less than lethal) and finally the use of deadly physical force.

WOLENSKY stated that he had his dog with him on the day of the shooting. He said his dog is considered a type of use of force. He did not take his dog out of the vehicle. He stated he did not take his dog out because he did not know where everyone was, did not know what was going on, so he could not access the situation appropriately. When he got to the back, he had no sight of the dog. He had a door popper to open the door for the dog to get out but did not know if it would work through a building. The dog had never been used for handler protection and WOLENSKY did not know if the dog could make it out of the car without being hit by a car. At that time, he made a decision that it was not appropriate to take the dog out. He stated he can use his dog in less than lethal situations and depends on the scenario. There could be scenarios that would allow him to use his dog, including both armed and unarmed subjects. He has had no domestic situations or domestic training scenarios that have involved the use of his dog. He has had training scenarios that include car stops, combative scenarios, which are all one on one encounters with the dog added in the mix. WOLENSKY stated the dog could turn on uniformed officers. The dog is trained to listen to the handler and the handler directs the dog to where he wants the dog to travel.

WOLENSKY stated he has known GOREY since September 10, 2018. He learned that he attended the basic academy with her but not interacted with her.

WOLENSKY stated that as a K-9 handler, he wears a modified uniform. He has no Taser or OC spray. He has a baton but does not carry it on his belt. He carries his gun, magazines, K-9 door opener, and electric shock deliverer on his belt. He said the shock deliverer has buttons from one to ten. This device is used to control the dog in certain situations by delivering a shock to the dog's collar. The intensity of the shock is controlled with buttons on the shock deliverer, with one being the lowest and ten being the highest. WOLENSKY stated that his firearm is what he carries with him on his person. He stated he could not fit the less than lethal use of force items on his belt and sit in the car. He said that there are calls that he responds on where he is the primary responder but in this instance GOREY was.

WOLENSKY stated the radio dispatch that he received on this call from NYSP dispatcher was to assist GOREY on a call involving a subject menacing people with a knife at Coyote Flaco. After receiving the call, WOLENSKY estimated it took him five minutes to arrive on the scene. When he first arrived, he did not see any people or talk to anyone. While walking to the rear he did not speak with anyone.

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When WOLENSKY arrived at the rear of the restaurant, all he took notice of was a red minivan saying that is all he saw at the time. Initially GOREY communicated to him that, "He has a weapon". At that time, he observed DECEDENT in front of the minivan and a female in the minivan in the driver's seat. WOLENSKY stated he was on the passenger's side of the minivan, parallel with GOREY who was on the driver's side of the minivan. WOLENSKY took his gun out. At that time, DECEDENT started toward GOREY. WOLENSKY stated that is when he moved up. He was standing by the passenger's side front door and he could see GOREY. He could see GOREY from her torso up to her head. She was near the mirror. GOREY said he had a weapon. WOLENSKY could see GOREY making a motion with her hand, but did not remember what side. WOLENSKY continued to stay there. He stated he never encountered DECEDENT prior to this call. Eventually WOLENSKY learned DECEDENT's name was Jaime Lopez. At this time, DECEDENT was standing in front of the minivan with his hand inside of his left hand sweat pants pocket. WOLENSKY stated it was obvious to him that DECEDENT was gripping an object as he could see an outline of what he believed to be a thick handled knife. WOLENSKY estimated DECEDENT to be approximately 15 or more feet away at this point. DECEDENT had watery, bloodshot eyes. He smirked a few times when WOLENSKY gave him verbal commands. DECEDENT was swaying the whole time but had not yet said anything. DECEDENT appeared to be intoxicated although WOLENSKY did not smell the odor of alcohol. WOLENSKY shouted verbal commands to DECEDENT "Show me your hands"! "Take your hands out of your pocket!" He kept repeating these commands. That is when DECEDENT took his attention off WOLENSKY and moved toward GOREY who was near the driver's side door, and the female in the driver's side of the minivan. DECEDENT was standing in the front of the minivan, driver's side. He walked at GOREY and the female at a normal pace. The entire time WOLENSKY said DECEDENT had his hand in his pocket. WOLENSKY said he drew his weapon because of the circumstances. He explained the original dispatch was man with a knife menacing people. DECEDENT had his hand in his pocket. GOREY told WOLENSKY DECEDENT had a weapon. WOLENSKY believed that the reasonable use of force for a man with a knife would be deadly physical force under these circumstances.

WOLENSKY continued by saying that as DECEDENT was going toward GOREY, WOLENSKY walked toward DECEDENT and rose the intonation of his voice while giving the verbal commands previously stated. At that time, WOLENSKY had moved from the passenger's side of the minivan to the front passenger's side of the minivan. WOLENSKY said the minivan was the only vehicle he saw there. He did not know what GOREY did when subject walked toward her. As WOLENSKY was screaming verbal commands at DECEDENT, DECEDENT was looking at GOREY and the female in the minivan. DECEDENT was three to four feet off the front of the minivan at this time. DECEDENT did not get to GOREY or the woman in the minivan. WOLENSKY believed DECEDENT may have got about six to eight feet away from GOREY and then changed direction.

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DECEDENT's right hand was still out and his left hand was still inside his left pocket at this time. WOLENSKY could not recall if DECEDENT was doing anything with his face at this point. DECEDENT had now changed his direction and had focused his attention on WOLENSKY and started moving toward him. WOLENSKY stated DECEDENT was now moving toward him. At some point during DECEDENT's movement toward WOLENSKY, WOLENSKY issued a verbal command to DECEDENT saying, "Show me your hands". DECEDENT looked him in the eyes and replied, "No I don't want to" as he continued moving toward WOLENSKY. That was the first time WOLENSKY knew that DECEDENT spoke and understood English. WOLENSKY stated that DECEDENT was gaining ground on him and increased his speed toward him. WOLENSKY was backing up the whole time. At some point after this, WOLENSKY fired two shots. He said the minivan was to his left side and he could not remember how far back he was when he fired the shots. When WOLENSKY fired, he estimated DECEDENT to be ten feet or less from him. At the time of the shots, DECEDENT still had his left hand in his pocket. WOLENSKY did not attempt to remove the object before firing the shots. He kept repeating verbal commands for DECEDENT to show his hands and take his hand out of his pocket the whole time.

WOLENSKY did not know where GOREY was when he fired his weapon. His entire focus was on DECEDENT. He said nothing to GOREY and she said nothing to him.

WOLENSKY stated he fired his weapon as he thought he had no other option. WOLENSKY believed DECEDENT was going to kill him and felt his actions were threatening. DECEDENT was not complying with WOLENSKY's verbal commands. DECEDENT understood what he was saying. The call came in as a subject with knife. GOREY told him he had a weapon. DECEDENT was closing the gap on him. WOLENSKY believed he had a knife and thought DECEDENT was going to stab him. WOLENSKY said based on these circumstance that he was faced with he believed he could use deadly physical force.

After firing his weapon, WOLENSKY ran up to DECEDENT and handcuffed him behind his back. WOLENSKY then took what he believed to be a weapon out of DECEDENT's pocket. He described the weapon removed as an electrical multi tool saying it was not a knife. He threw it four to five feet away from him. The next time he remembered seeing GOREY was after handcuffing DECEDENT and throwing the weapon. He thought GOREY was straight ahead of him when he saw her. GOREY was at the rear of the minivan when he saw her and he told her to stay with DECEDENT so he could get his medical bag. At this time, WOLENSKY noticed the female in the minivan standing near the rear of the minivan. He told the woman to come with him and asked her if she spoke English. She said yes and attempted to get her name but there was some kind of barrier. He brought her back and told her to stand there. WOLENSKY got his bag, returned to the subject and began to administer first aid. He applied big absorbent trauma pads to DECEDENT's front and back to prevent bleeding.

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WOLENSKY then got on the radio and told EMS to expedite. At that point, a civilian described by WOLENSKY as a white male came over and WOLENSKY asked him if he was an EMS and he said he was.

WOLENSKY said it felt like he was walking back when he fired the shot. He said DECEDENT never stopped coming at him. At the time he shot, WOLENSKY did not recall if DECEDENT was making any facial expression. He did not know if GOREY was carrying a Taser. He said Tasers are regularly issued to troopers as well as OC spray and batons and troopers are expected to carry them on duty. He did not know what GOREY was carrying. He again stated that he fired two times.

WOLENSKY did not call for backup because the situation had escalated so fast. He was already aware that the closest back up was responding from Lagrange and was 15 to 20 minutes away. On the way to the call, WOLENSKY had recalled someone responding from Lagrange but could not remember who it was. WOLENSKY did not get on the radio to put out the weapon, as when he first arrived DECEDENT was not coming at him initially. The situation was not escalating initially and the closest back up was in Lagrange. The situation escalated after GOREY said DECEDENT had a weapon. He and GOREY did not discuss tactics as he felt the situation was now escalating and it was not the time to discuss tactics.

In regards to telling GOREY to get on the radio and expedite EMS, he said he did not know if she did or not but he did.

After the shooting, NYSP Communications Sergeant (SGT) Wetz came to the scene. WOLENSKY stated when he looked up, there were approximately 20 troopers and Investigators on scene. SGT Wetz approached WOLENSKY and told him that he was not going to ask him any questions other than did he fire his weapon. WOLENSKY replied that he had and SGT Wetz secured his weapon at that time. He stated that no one spoke to him other than Wetz at that time.

WOLENSKY stated he has not spoken with GOREY about the incident. He took a week and a half off from work after the shooting and then returned. He said he was not aware of any videos of the shooting. He has not viewed any videos, read any witness statements or seen any photos of the scene prior to coming to this interview.

AAG Nieves showed two photos of the scene to WOLENSKY and he asked him was there anything he wanted to clarify or change after viewing the photos. He stated that the photo containing the two state police cars in front of the restaurant must have been taken afterword because they were not his and GOREY's cars. After looking at the photo containing the minivan and another red vehicle parked adjacent to it, WOLENSKY indicated that the vehicle he was referring to was the one closest to

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the building. That vehicle was grey and not red. WOLENSKY stated he did not believe he was ever near the other vehicle, which was red, and parked, adjacent to the grey minivan he was referencing.

WOLENSKY stated this was the first time he had ever fired his weapon on duty.

Investigation is continuing.

EXHIBIT 4



**OFFICE OF THE MEDICAL EXAMINER
DUTCHESS COUNTY**



REPORT OF AUTOPSY

Name of Deceased: Jaime Lopez

M.E. Case #: DC18-741

Autopsy performed by: Kia Newman, M.D.

Date of Autopsy: 9/25/18

FINAL DIAGNOSES

I. PERFORATING GUNSHOT WOUND OF THE TORSO:

- a. INJURIES OF THE DIAPHRAGM, SMALL INTESTINE, MESENTERY AND KIDNEY
- b. RIB FRACTURE
- c. HEMOPERITONEUM, 750 mL

II. PENETRATING GUNSHOT WOUND OF THE TORSO:

- a. INJURIES OF THE DIAPHRAGM, STOMACH, SMALL INTESTINE, AND MESENTERY
- b. RIB AND VERTEBRAL FRACTURE
- c. PROJECTILE RECOVERED
- d. HEMOPERITONEUM (see I. c.)

III. BLUNT FORCE INJURIES:

- a. ABRASIONS: CONTUSIONS

V. POSTMORTEM TOXICOLOGY RESULTS:

- a. ETHANOL (peripheral blood): 244 mg/dL
 - b. BLOOD ALCOHOL CONCENTRATION (BAC): 0.244 g/100 mL
 - c. CAFFEINE (peripheral blood): POSITIVE
 - d. ETOMIDATE (peripheral blood): POSITIVE
 - e. LIDOCAINE (peripheral blood): POSITIVE
 - f. ETHANOL (vitreous fluid): 299 mg/dL
-

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Jaime Lopez

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CAUSE OF DEATH: GUNSHOT WOUNDS OF THE TORSO

MANNER OF DEATH: HOMICIDE

DC18-741

Jaime Lopez

**OFFICE OF THE MEDICAL EXAMINER
DUTCHESS COUNTY
REPORT OF AUTOPSY**

M.E. CASE NO. DC18-741

I hereby certify that I, Kia K. Newman, M.D., Dutchess County Deputy Medical Examiner, performed an autopsy on the body identified as *Jamie Lopez* on the 25th day of September of 2018, commencing at 2:30 PM, at the Dutchess County Medical Examiner's Office, in the presence of Investigator's Kent Smith, Investigator Shannon Alport, Sergeant Investigator Michael Hectmanm, Trooper Courtney Steimach and Trooper Catherine Desane of the New York State Police, Chief Investigator Gary Leigh and Chief Assistant District Attorney Matthew Weishaupt of the Dutchess County District Attorney's Office and Mr. Eric Benjamin of the Dutchess County Medical Examiner's Office who assisted with the autopsy.

EXTERNAL EXAMINATION:

The body is received in the supine position in a white plastic body bag. The body is that of a normally developed, well-nourished light tan skinned Hispanic, approximately 5'3", approximately 124 lbs (BMI: 22), man who appears the reported age of 41 years. The scalp has grey and black straight hair and is approximately ½" in length. There is facial hair stubble up to 1/4". The irides are brown. The corneae are clear. The sclerae are icteric. The conjunctivae have no congestion, hemorrhage or petechiae. The teeth appear natural and are in fair condition. The ears are unremarkable. The nose and facial bones are palpably intact. The trachea is midline. The torso is symmetric, and the abdomen is flat; a 1 x ¾" umbilical hernia is noted. Gunshot wounds of the torso and therapeutic procedures are described further below. There is dried reddish-brown blood mostly on the torso and upper extremities. The genitalia are those of an adult male and the testes are in the scrotal sac. The anus is unremarkable. The fingernails are short and have debris beneath the distal aspects of the nails. The lower extremities have a sparsity of hair.

SCARS/TATTOOS AND OTHER IDENTIFYING FEATURES:

A ¼" oval brown scar is on the medial aspect of the right shin. Irregular scars are on both knees.

POSTMORTEM CHANGES:

There is slight forming rigor mortis of the hands, neck and jaw. Lividity is pale pink, blanches with pressure and on the posterior surface of the body except in areas exposed to pressure. The body is cool to the touch.

CLOTHING AND ACCOMPANYING EFFECTS:

The decedent is clad in a pair of Hanes grey underwear. Underneath the body there are: a pair of blue, shorts and yellow shorts which have been previously cut by emergency personnel; a pair of blue Nautica shorts previously cut by emergency personnel; an Aeropostale long sleeved blue shirt which has been previously cut by emergency personnel. The shirt has two defects on the left side of the chest, each approximately ¼" and a defect on the lower left posterior aspect of the shirt also approximately ¼"; the defects correspond with the injuries reported below. A pair of black and red sneakers (an electrocardiogram lead pad is adhered to the bottom of the left sneaker) and one white and black sock are in a brown paper-bag brought to the office by Investigator Kent Smith.

There is a slight amount of brown debris on the blue shorts and shirt. A grey metal hand-cuff is secured on the left wrist.

THERAPEUTIC PROCEDURES:

An endotracheal tube passes through the mouth and has its terminus in the trachea. A nasal cannula is in place. A green stabilization collar is around the neck. Numerous electrocardiogram lead pads are on the chest and lower quadrants of the abdomen. A defibrillator pad is on the left inguinal region; beneath this pad is a vascular catheter extending into the left inguinal region. A defibrillator pad is on the left flank. A defibrillator pad is on the right

DC18-741

Jaime Lopez

knee. A defibrillator pad is on the left side of the back, covering a wound which is further described below. An intraosseous catheter is in the right shoulder. A blood pressure cuff is around the right arm. Gauze is over a puncture mark on the right ante-cubital fossa. An intraosseous catheter is in the right shin. An intravascular catheter is in the left ante-cubital fossa. A thoracotomy incision extends across the medial aspect of the chest; there is 3-3/4" separation between the superior and inferior aspects of the chest. This incision extends through the 4th and 5th ribs and body of the sternum and exposes the heart and lungs; the pericardial sac has been previously incised. A 1/2 x 1/4" focal yellow area of dry skin and abrasion on the left axilla associated with the thoracotomy (Comment: consistent with rib spreader) and a 2" linear incision just above the left lateral aspect of the thoracotomy defect. A sagittal laparotomy incision with 1-3/4" in width extends from the medial aspect of the chest to the umbilicus; there is protruding omentum through the defect.

A band-aid with adherent gauze is on the lateral aspect of the left arm. Numerous adhesive outlines are on the ventral aspect of the left forearm; these outlines are associated with faint green-yellow contusions. Around the right ankle is a hospital identification bracelet.

INJURIES (EXTERNAL AND INTERNAL):

There are two gunshot wounds to the torso. The injuries are described with the body in the standard anatomic position; 12 o'clock designates towards the head. There are additional injuries described after the gunshot wound; no sequence is implied.

PENETRATING GUNSHOT WOUND OF THE TORSO:

ENTRANCE: An entrance-type gunshot wound is on the left side of the chest, 19-1/2" below the top of the head and 3/4" to the left of the anterior midline. It is a 1/2 x 5/16" oval defect with a circumferential reddish-orange abrasion margin ranging from 1/16" to 1/8" in width (1/8" from the 10 o'clock to the 3 o'clock margin). There is a pale purple-pink 1/16" contusion surrounding the entrance wound. No soot or stippling is associated with the wound. There is a perforation in the shirt corresponding to the location of the entrance wound.

TRACK: After perforating the skin and soft tissues of the left side of the anterior torso, the bullet fractures the inferior aspect of the 8th rib, perforates the diaphragm, perforates the stomach, perforates the mesentery, perforates the psoas muscle and fractures the body of the lateral aspect of the 1st lumbar vertebra where a deformed copper jacketed projectile is recovered.

DIRECTION: The direction of the path of the wound is front to back, downward and slightly left to right.

PERFORATING GUNSHOT WOUND OF THE TORSO:

ENTRANCE: An entrance-type gunshot wound is on the left side of the chest, 21-1/2" below the top of the head and 2-1/2" to the left of the anterior midline. It is a 1/2 x 5/16" oval defect with a circumferential red-orange abrasion margin 1/16" in width. There is a pale purple-pink 1/16" contusion surrounding the entrance wound. No soot or stippling is associated with the wound. There is a perforation in the shirt corresponding to the location of the entrance wound.

TRACK: After perforating the skin and soft tissues of the left side of the anterior torso, the bullet grazes the superior aspect of the 10th rib, perforates the diaphragm, perforates the jejunum, grazes the left kidney, and exits the left side of the back, just below the medial aspect of the 12th rib.

Exit: An exit-type gunshot wound is on the left side of the back, 22-1/2" below the top of the head and 2-1/4" to the left of the posterior mid-line. It is a 1/2 x 1/2" irregular defect with a skin tag at the 5 o'clock position. Circumferentially, the wound has a 2-1/2 to 1" in width blue-green contusion. There is a perforation in the shirt corresponding to the location of this exit wound.

DIRECTION: The direction of the path of the wound is front to back, downward and slightly left to right.

Associated with the gunshot wounds are: hemorrhage of the anterior aspect of the lower lobe of the left lung; approximately 30 mL of liquid blood within the left pleural cavity; 750 mL of liquid blood within the peritoneal cavity.

DC18-741

Jaime Lopez

BLUNT FORCE INJURIES:

A punctate red scab is on the tip of the nose. A ½ x ½" cluster of pink punctate contusions are on the right side of the face over the lateral aspect of the zygomatic arch. A 2-1/2 x 1-1/4" oval purple-blue contusion with slight yellowing of the edges is on the left side of the face, over the medial aspect of the mandible. A ½ x ¼" blue-yellow contusion is on the superior aspect of the right shoulder. A 2-1/2 x 1-1/2" oval green contusion is on the posterior aspect of the right shoulder. A ¼ x ¼" oval purple contusion is on the medial aspect of the right arm. A ¾ x ½" green contusion is on the lateral aspect of the right side of the chest. A ¼ x ¼" irregular pale blue contusion is on the lower aspect of the right side of the back. A ½ x ½" oval pink-purple contusion is on the lateral aspect of the right side of the knee. A 2-1/2 x ¾" irregular green contusion is on the posterior aspect of the right thigh. Two, ¼ x ¼" irregular purple contusions are on the right calf.

The injuries listed above, having been described once, will not be repeated.

INTERNAL EXAMINATION:**BODY CAVITIES:**

The organs are in their normal situs. The pericardial, pleural and peritoneal cavities are without adhesions. The abdominal wall pannus is 1/2" thick.

HEAD:

The skull and dura are intact. A biparietal incision is made and the calvarium removed. There are no epidural, subdural or subarachnoid hemorrhages. The leptomeninges are thin and clear. The brain is 1310 gm. From the convexities, the cerebral hemispheres appear symmetrical without cerebral cortical edema. The base of the brain shows intact cranial nerves I-XII; the Circle of Willis, basilar and vertebral arteries show a no atheromatous plaques. Coronal sections of the cerebral hemispheres show an unremarkable cortical ribbon, unremarkable underlying white matter, unremarkable deep central nuclei, unremarkable hippocampi and unremarkable ventricles. Serial sections of the brainstem show normal pigmentation of the substantia nigra and locus ceruleus. Sagittal and parasagittal sections of the cerebellum are unremarkable.

NECK ORGANS AND CERVICAL SPINE:

An anterior neck dissection is performed. The strap muscles are unremarkable. The airway is unobstructed and has a pale tan mucosa. The cervical vertebrae, hyoid bone, tracheal and laryngeal cartilages and paratracheal soft tissues are without injury.

CARDIOVASCULAR SYSTEM:

The heart is 400 gm. The coronary arteries follow their usual distribution with right dominance. There is no significant degree of coronary atherosclerosis. The myocardium is reddish-brown and unremarkable. The left ventricle wall is 1.2 cm thick and the right ventricle wall is 0.2 cm thick. The cardiac chambers are normally related and configured. The endocardial surfaces and four cardiac valves are unremarkable. The aorta has no atherosclerosis. The venae cavae and pulmonary arteries are patent.

RESPIRATORY SYSTEM:

See "injuries" section. The right lung is 250 gm and the left lung is 240 gm. The lungs are both atelectatic. The pleural surfaces are smooth and glistening. The pulmonary parenchyma is purple-red, spongy, congested and without consolidations. The intrapulmonary airways are patent and have a smooth tan lining; the blood vessels are unobstructed.

HEPATOBIILIARY SYSTEM:

The liver is 1180 gm and has an intact glistening capsule. The yellow-tan parenchyma is firm and appears nodular on cut-section. The gallbladder contains 100 mL of yellowish-green mucoid bile; the mucosa is unremarkable; there are no calculi or sludge.

DC18-741

Jaime Lopez

GASTROINTESTINAL SYSTEM:

See "injuries" section. The gastro-esophageal junction is free of ulcerations and has a prominent vasculature. The stomach contains less than 5 mL of bloody mucoid material; no pills are identified. The gastric and duodenal mucosas are free of ulcerations. The appendix is unremarkable. The pancreas is without hemorrhage or fat necrosis.

HEMATOPOIETIC AND LYMPHATIC SYSTEM:

The spleen is 250 gm and has a slightly wrinkled intact capsule. The splenic parenchyma is moderately firm and dark purple with indistinct white pulp. There is no apparent lymphadenopathy.

GENITOURINARY SYSTEM:

See "injuries" section. The left kidney is 140 gm. The right kidney is 120 gm. The capsules strip with ease from the underlying smooth red-brown surfaces. The cortices and medulla are normally related. The pelvises and ureters are unobstructed and drain into a normally configured moderately trabeculated empty urinary bladder. The prostate gland appears unremarkable.

ENDOCRINE SYSTEM:

The pituitary, thyroid and adrenal glands are a normal color, size and consistency.

MUSCULOSKELETAL SYSTEM:

The body is symmetric and normally developed. The clavicles and pelvis are without fracture. The musculature is normally distributed.

POSTMORTEM TOXICOLOGY:

Samples of peripheral blood and vitreous fluid are submitted for testing. Samples retained include heart blood, stomach contents, and liver.

POST-MORTEM RADIOGRAPHY:

Post mortem radiographs are taken and retained.

PHOTOGRAPHY:

Photographs are taken.

EVIDENCE:

Clothing, fingernail scrapings, fingerprints, oral and buccal swabs, hair, hand-cuff, sneakers, and projectile are retained as evidence and are released to Investigator Shannon Alport of the New York State Police.

MICROSCOPIC EXAMINATION:

A total of 1 cassette (heart, lung, liver, and kidney) is submitted for H&E staining.

PHOTOGRAPHY:

Photographs are taken.

DC18-741

Jaime Lopez

Microscopic Examination:

Heart: The sections of myocardium shows no significant histopathological changes.

Lungs: Sections show scattered foamy macrophages and vascular congestion; no significant histopathologic changes are noted.

Kidney: The section of kidney shows no significant histopathological changes.



Kia K. Newman, M.D.
Dutchess County Deputy Medical
Examiner

Date:

Final report: 11/01/2018



NMS Labs

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3701 Welsh Road, PO Box 433A, Willow Grove, PA 19090-0437
Phone: (215) 657-4900 Fax: (215) 657-2972
e-mail: nms@nmslabs.com

Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 10/04/2018 10:10

Patient Name LOPEZ, JAIME
Patient ID DC18-0741
Chain 18282606
Age 41 Y
Gender Male
Workorder 18282606

To: 10196
Dutchess County Office of the Medical Examiner
Attn: Dr. Dennis Chute
168 Washington Street
Poughkeepsie, NY 12601

Page 1 of 3

Positive Findings:

Table with 4 columns: Compound, Result, Units, Matrix Source. Rows include Ethanol, Blood Alcohol Concentration (BAC), Caffeine, Etomidate, and Lidocaine.

See Detailed Findings section for additional information

Testing Requested:

Table with 2 columns: Analysis Code, Description. Row: 8052B Postmortem, Expanded, Blood (Forensic)

Specimens Received:

Table with 5 columns: ID, Tube/Container, Volume/Mass, Collection Date/Time, Matrix Source, Miscellaneous Information. Row: 001 Gray Top Tube, 11.2 mL, 09/25/2018 02:55, Peripheral Blood

All sample volumes/weights are approximations.
Specimens received on 09/27/2018.

**Detailed Findings:**

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
Ethanol	244	mg/dL	10	001 - Peripheral Blood	Headspace GC
Blood Alcohol Concentration (BAC)	0.244	g/100 mL	0.010	001 - Peripheral Blood	Headspace GC
Caffeine	Positive	mcg/mL	0.20	001 - Peripheral Blood	LC/TOF-MS
Etomidate	Positive	mcg/mL	0.10	001 - Peripheral Blood	LC/TOF-MS
Lidocaine	Positive	mcg/mL	0.20	001 - Peripheral Blood	LC/TOF-MS
Ethanol	Confirmed	mg/dL	10	001 - Peripheral Blood	Headspace GC

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:**1. Caffeine (No-Doz) - Peripheral Blood:**

Caffeine is a xanthine-derived central nervous system stimulant. It also produces diuresis and cardiac and respiratory stimulation. It can be readily found in such items as coffee, tea, soft drinks and chocolate. As a reference, a typical cup of coffee or tea contains between 40 to 100 mg caffeine.

The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

2. Ethanol (Ethyl Alcohol) - Peripheral Blood:

Ethyl alcohol (ethanol, drinking alcohol) is a central nervous system depressant and can cause effects such as impaired judgment, reduced alertness and impaired muscular coordination. Ethanol can also be a product of decomposition or degradation of biological samples. The blood alcohol concentrations (BAC) can be expressed as a whole number with the units of mg/dL or as a decimal number with units of g/100 mL which is equivalent to % w/v. For example, a BAC of 85 mg/dL equals 0.085 g/100 mL or 0.085% w/v of ethanol.

3. Etomidate (Amidate®) - Peripheral Blood:

Etomidate is a non-barbiturate hypnotic without analgesic activity. It is especially used in patients with cardiovascular problems since it has few effects on this system. IV administration of etomidate produces rapid hypnosis, which lasts approximately 3 to 5 minutes.

The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

4. Lidocaine (Xylocaine®) - Peripheral Blood:

Lidocaine is an amide type of anesthetic that is used as a topical and injectable analgesic, antiarrhythmic, and in resuscitative efforts. It is also used as a 'cutting' agent in some drugs of abuse, especially cocaine. It is generally administered as an intravenous bolus injection of 50 to 1000 mg to control arrhythmia. MEGX (monoethylglycinexylidide) is an active metabolite of lidocaine.

In resuscitative failure, most of the administered drug remains confined to the intravascular injection pathway. Often the drug is still present in the postmortem blood collected from the heart sampled at autopsy.

The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded one (1) year from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

CERTIFICATION: Pursuant to New York Criminal Procedure Law Section 190.30(2), I certify that this copy is a true and accurate report that has not been altered, which testing was conducted at NMS Labs Inc. as recorded in this laboratory report, the work order number and report information are provided on page 1 of this report.



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Workorder 18282606
Chain 18282606
Patient ID DC18-0741

Page 3 of 3

Workorder 18282606 was electronically signed on 10/04/2018 09:13 by:

Paul Miller,
Certifying Scientist

Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 52250B - Alcohols and Acetone Confirmation, Blood - Peripheral Blood

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Isopropanol	5.0 mg/dL
Ethanol	10 mg/dL	Methanol	5.0 mg/dL

Acode 8052B - Postmortem, Expanded, Blood (Forensic) - Peripheral Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Barbiturates	0.040 mcg/mL	Salicylates	120 mcg/mL
Cannabinoids	10 ng/mL		

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Isopropanol	5.0 mg/dL
Ethanol	10 mg/dL	Methanol	5.0 mg/dL

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of compound classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified compound class are included. Some specific analytes outside these classes are also included. For a detailed list of all analytes and reporting limits, please contact NMS Labs.

Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hyposedatives, Hypoglycemics, Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents, Opiates and Opioids.



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Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 10/08/2018 10:12

Patient Name LOPEZ, JAIME

Patient ID DC18-741

Chain 18286167

Age Not Given DOB Not Given

Gender Male

Workorder 18286167

To: 10196
Dutchess County Office of the Medical Examiner
Attn: Dr. Dennis Chute
168 Washington Street
Poughkeepsie, NY 12601

Page 1 of 3

Positive Findings:

Table with 4 columns: Compound, Result, Units, Matrix Source. Row 1: Ethanol, 299, mg/dL, 001 - Vitreous Fluid

See Detailed Findings section for additional information

Testing Requested:

Table with 2 columns: Analysis Code, Description. Row 1: 8051FL, Postmortem, Basic, Fluid (Forensic)

Specimens Received:

Table with 5 columns: ID, Tube/Container, Volume/Mass, Collection Date/Time, Matrix Source, Miscellaneous Information. Row 1: 001, Red Top Tube, 4.75 mL, 09/25/2018 02:55, Vitreous Fluid

All sample volumes/weights are approximations.

Specimens received on 10/01/2018.



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Workorder 18286167
Chain 18286167
Patient ID DC18-741

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Detailed Findings:

Table with 6 columns: Analysis and Comments, Result, Units, Rpt. Limit, Specimen Source, Analysis By. Rows include Ethanol with results 299 and Confirmed.

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

- 1. Ethanol (Ethyl Alcohol) - Vitreous Fluid:

Ethyl alcohol (ethanol, drinking alcohol) is a central nervous system depressant and can cause effects such as impaired judgment, reduced alertness and impaired muscular coordination.

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded one (1) year from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

CERTIFICATION: Pursuant to New York Criminal Procedure Law Section 190.30(2), I certify that this copy is a true and accurate report that has not been altered, which testing was conducted at NMS Labs Inc. as recorded in this laboratory report, the work order number and report information are provided on page 1 of this report.

Workorder 18286167 was electronically signed on 10/08/2018 09:59 by:

[Handwritten signature of Paul Miller]

Paul Miller,
Certifying Scientist

Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive.

Acode 52250FL - Alcohols and Acetone Confirmation, Fluid - Vitreous Fluid

-Analysis by Headspace Gas Chromatography (GC) for:

Table with 4 columns: Compound, Rpt. Limit, Compound, Rpt. Limit. Lists Acetone, Ethanol, Isopropanol, and Methanol with their respective reporting limits.

Acode 8051FL - Postmortem, Basic, Fluid (Forensic) - Vitreous Fluid

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Table with 4 columns: Compound, Rpt. Limit, Compound, Rpt. Limit. Lists various substances like Amphetamines, Barbiturates, Benzodiazepines, Buprenorphine, Cannabinoids, Cocaine, Fentanyl, Methadone, Methamphetamine, and Opiates with their reporting limits.



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Workorder 18286167
Chain 18286167
Patient ID DC18-741

Page 3 of 3

Analysis Summary and Reporting Limits:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Oxycodone / Oxymorphone	10 ng/mL	Phencyclidine	10 ng/mL

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Isopropanol	5.0 mg/dL
Ethanol	10 mg/dL	Methanol	5.0 mg/dL



OFFICE OF THE MEDICAL EXAMINER
DUTCHESS COUNTY



NAME: Jaime Lopez
CASE #: DC18-741

SUPPLEMENTAL CASE INFORMATION

9/25/18 Contacted MHRH Lab and no bloods were drawn.

Spoke to LiveOnNY and explained
Spoke w/ Cindy Godfrey and
authorized per Dr Newman corneas were approved. Ms. Godfrey asked about long bone for post
autopsy recovery and Dr Newman authorized.

Prepared by: Bready Date: 9/25/18



OFFICE OF THE MEDICAL EXAMINER
DUTCHESS COUNTY



AUTOPSY NOTES

M.E.# DC18 741

NAME OF DECEASED: JAIMIE LOPEZ

OVERALL APPEARANCE: Well nourished

AGE: 41 RACE: H SEX: M HEIGHT: 6ft WEIGHT: 173

HAIR: grey-black B/M: stable EYES: Brown & yellowish

DENTITION: good GENITALIA: adult male

CHEST: See diagram ABDOMEN: Flat & see diagram BACK: see diagram

EXTREMITTIES: UPPER: _____ LOWER: _____

CLOTHING: grey boxer shorts & body, under the body;

Brown paper bag - brought by Kent Smith -
black & red - mkt. sneakers & 1 sock

POSTMORTEM FINDINGS:

rigor forming
discoid
1.1/10.2
+ fluid yellow
to
750 ml
liquid blood
in peritoneum

ORGAN WEIGHTS: H: 400 RL: 250 LL: 240 L: 1180 S: 250 RK: 120 LK: 140

THY: _____ UT: _____ B: 13/10 FLUIDS: URINE 0 GASTRIC 0 BILE 100

< 5 ml of
& consistency

EXAMINED BY: KIA Neuman MD DATE: 9-24-13

VITREOUS

TOXICOLOGY

suspended

HISTOLOGY

Heart, Lung
Liver, Kidney

MICROBIOLOGY

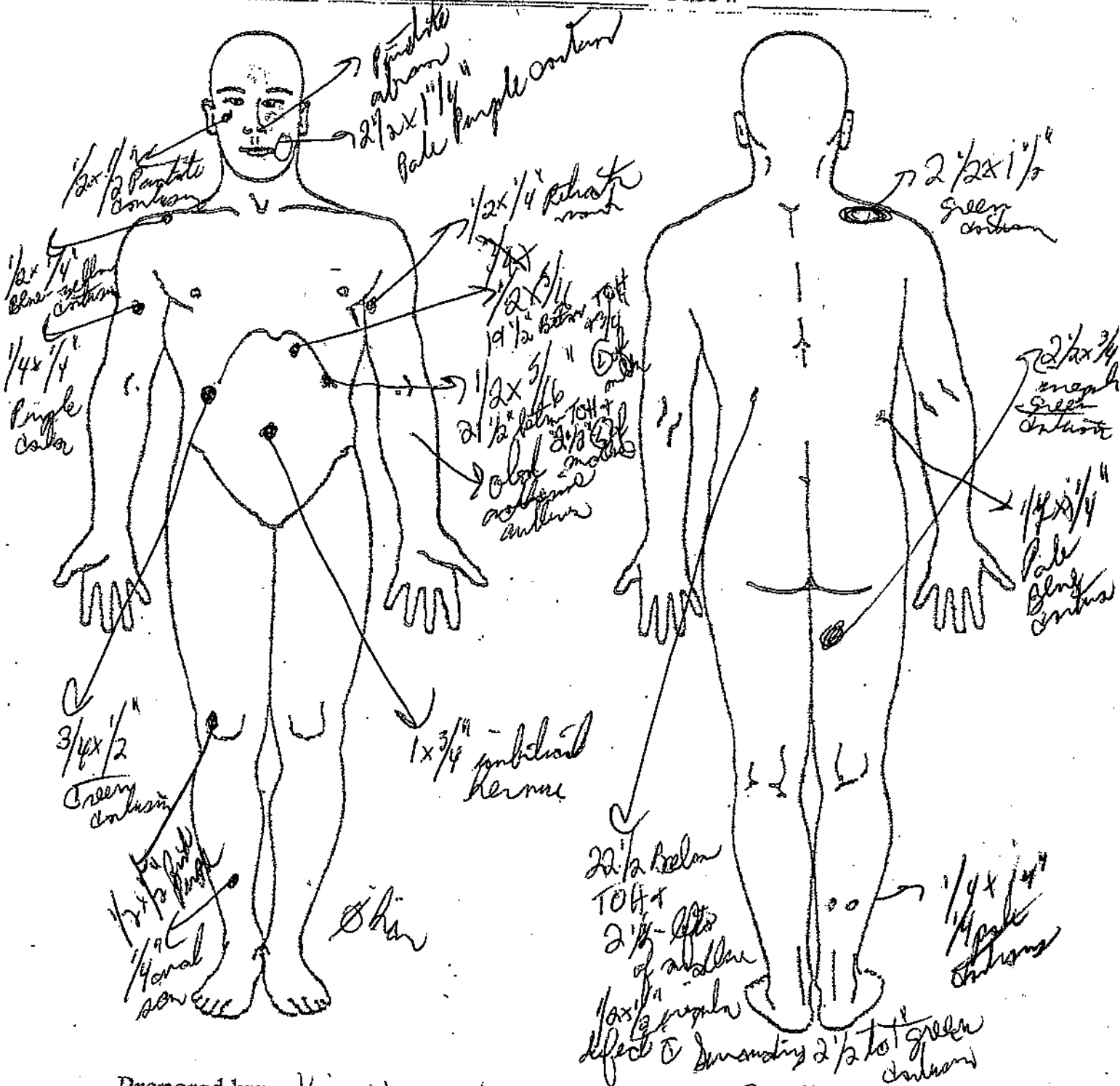
PHOTOS: YN
XRAYs: YN
NEURO: YN
EVIDENCE: YN



OFFICE OF THE MEDICAL EXAMINER
DUTCHESS COUNTY

Name of deceased JAIME LOPEZ

Case # DC18 741



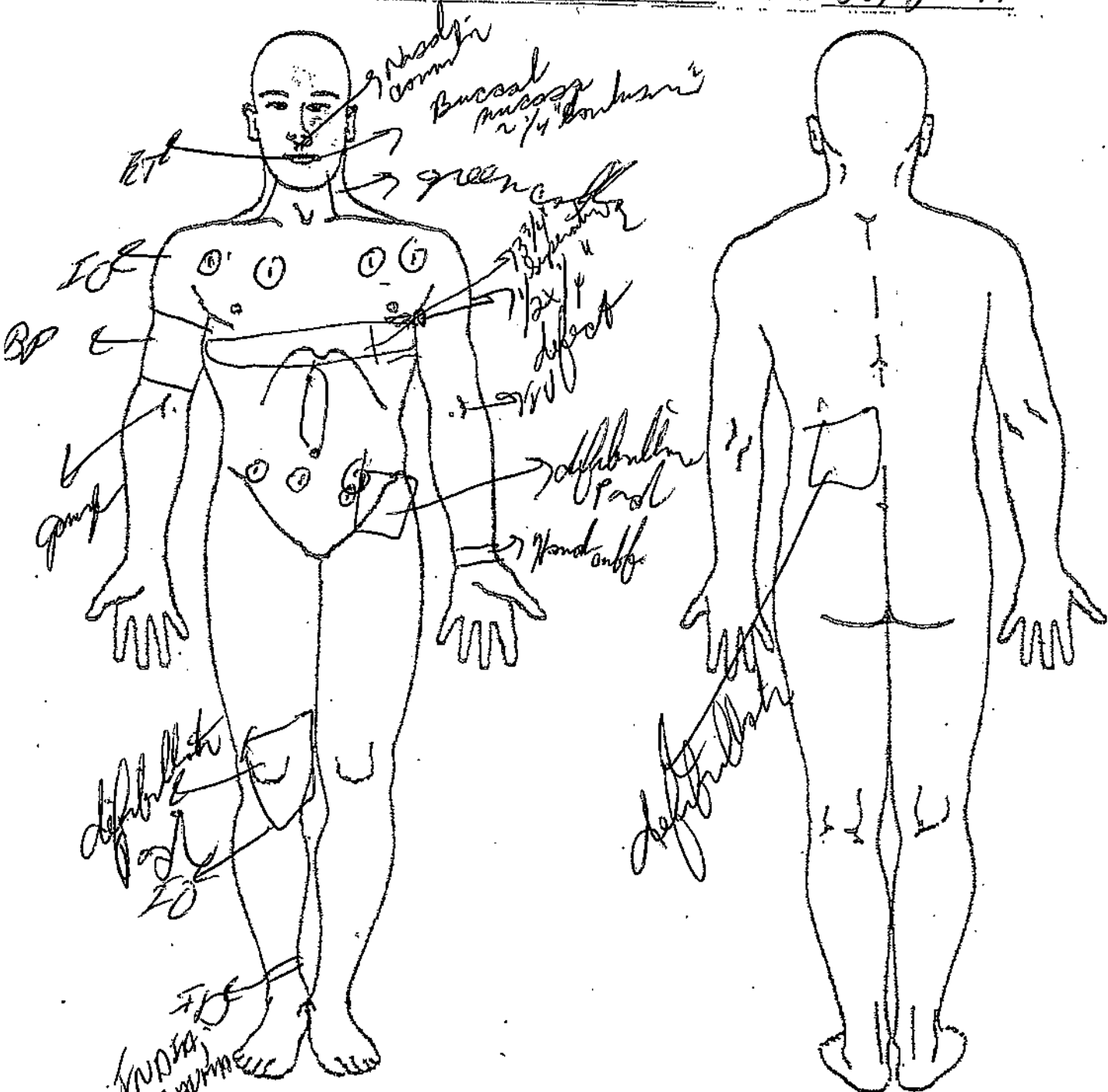
Prepared by: K.A. Newman MD

Date: 9-24-18



OFFICE OF THE MEDICAL EXAMINER
DUTCHESS COUNTY

Name of deceased JAMES LOPEZ Case # 0018-741



Prepared by: K.A.K. Newman Date: 230pm

9-25-18