

**Special Investigations and
Prosecutions Unit**

**Report on the Investigation into
The Death of Allan Feliz**



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EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (the “Executive Order”), appointing the Attorney General as special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On October 17, 2019, at about 2:53 p.m., in the Bronx, Sgt. Jonathan Rivera of the New York City Police Department (“NYPD”) shot Allan Feliz (“Mr. Feliz”) one time in the chest during a traffic stop, causing Mr. Feliz’s death. Governor Cuomo subsequently issued Executive Order No. 147.31, expressly conferring jurisdiction on the Office of the Attorney General (“OAG”) to investigate any potential unlawful acts or omissions by law enforcement related to Mr. Feliz’s death.¹

The Office of the Attorney General’s investigation and review of this matter included the following, among other materials:

- NYPD body camera footage from all police officers involved in the incident;
- NYPD paperwork generated in connection with the incident;
- Audio recordings of radio communications to, from, and between the NYPD police officers involved in the incident and other officers responding to the scene of the incident;
- Video footage from a civilian cell phone and from surveillance cameras in the vicinity of the incident;
- Inspection of the vehicle driven by Mr. Feliz;
- Interviews of NYPD officers who were involved in the incident, including Sgt. Rivera;
- Interview of a passenger in the vehicle during the incident;
- Medical records, including records from the responding emergency medical services and from Montefiore Hospital; and
- Autopsy and toxicology report from the Office of the Chief Medical Examiner (“OCME”) of New York City.

On the afternoon of October 17, 2019, Mr. Feliz, while driving a Volkswagen Atlas, was pulled over by police officers Edward Barrett (“PO Barrett”), Michele Almanzar (“PO Almanzar”), and Sgt. Jonathan Rivera (“Sgt. Rivera”), for an alleged failure to wear a seatbelt. In the front passenger seat of the Volkswagen was R.R. After Mr. Feliz’s vehicle came to a stop, POs Barrett and Almanzar approached the driver’s side window and requested Mr. Feliz’s driver’s license. Sgt. Rivera approached and stood by the front passenger-side door. Mr. Feliz handed PO Barrett a driver’s license in the name of – and that was later determined to belong to – Mr. Feliz’s brother, Sammy Feliz. Having been led to believe that Allan Feliz was in fact Sammy Feliz, PO Barrett used his cell phone to enter the license information into the NYPD computer system, which returned three open warrants for minor offenses.

According to the NYPD Patrol Guide, officers are instructed to take into custody persons who have outstanding court issued warrants. Because PO Barrett believed that the driver of the vehicle had outstanding warrants and was therefore subject to arrest, he asked Mr. Feliz to step

¹ Executive Order 147.31 is attached as Exhibit 1.

out of the vehicle and said that he would have to “pat down” Mr. Feliz. Mr. Feliz complied with PO Barrett’s request, and exited the vehicle; but when PO Barrett turned to hand the license and registration to PO Almanzar, Mr. Feliz stepped back into the vehicle, began to pull the door closed, and reached for the gearshift.

Believing that Mr. Feliz was now trying to drive away, PO Barrett began to pull at and then punch Mr. Feliz in an effort to remove him from the driver’s seat – as both PO Barrett and PO Almanzar repeatedly called for him to get out of the car. At the same time, Sgt. Rivera deployed his taser gun through the open passenger window, shooting two electrified prongs into Mr. Feliz’s right upper chest area. While Mr. Feliz was initially stunned by the taser, he was able to remove one of the prongs and continue his attempt to drive away. By this time, Sgt. Rivera had entered the vehicle through the passenger-side door and climbed over and onto the passenger with the stated intention of pushing Mr. Feliz out of the driver’s-side doorway. Sgt. Rivera also grappled for control of the gearshift, with Mr. Feliz repeatedly pulling the shift into drive, causing the car to jerk forward, and Sgt. Rivera repeatedly pulling it back into park. Throughout this struggle, Sgt. Rivera struck Mr. Feliz multiple times in the head with the taser gun and at one point briefly unholstered his firearm and threatened to shoot Mr. Feliz if he did not comply with their orders.

Suddenly, the vehicle accelerated several feet forward and then abruptly backwards. As it reversed, the open driver’s-side door nearly caught PO Barrett – still engaged with removing Mr. Feliz from the driver’s seat – and he had to spin toward the rear of the vehicle to avoid being knocked over. The car then jolted to a halt, causing the driver’s-side door to slam shut.

According to Sgt. Rivera, at that moment he lost sight of PO Barrett and now believed – given where PO Barrett had been standing when the vehicle surged backwards – that PO Barrett had been struck by the door and pulled under the vehicle. Sgt. Rivera said that he also believed that any further movement of the vehicle, either forward or backward, would put PO Barrett’s life at risk. Finally, Sgt. Rivera said that, in light of Mr. Feliz’s ongoing attempts to drive away, there was only one way he could ensure that the car would remain at a stop. And so he again drew his firearm and fired a single shot into Mr. Feliz’s chest.

Immediately after the shooting, Mr. Feliz became unresponsive. The officers removed him from the car and attempted to perform CPR until an ambulance arrived a few minutes later. Mr. Feliz was subsequently transported to Montefiore Hospital, where he was pronounced dead.

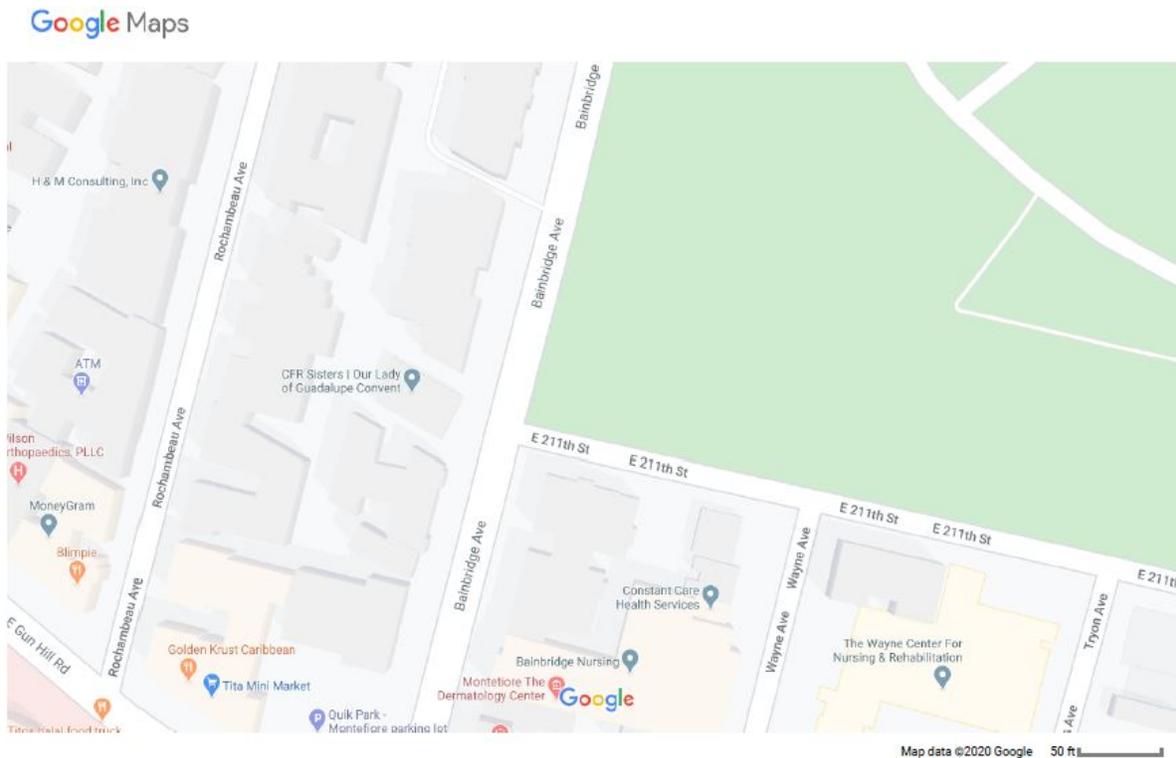
Having completed its investigation of this incident, the OAG has concluded that there is insufficient evidence to establish that Sgt. Rivera committed a crime in connection with the death of Mr. Feliz. Although Sgt. Rivera’s perception of the risk to PO Barrett, as provided in his account of the incident, was not ultimately accurate, it was a reasonable perception – or at least not an obviously unreasonable one – particularly in light of the considerable video evidence consistent with his account. Therefore, the OAG has determined that Sgt. Rivera’s use of deadly physical force could not – as the legal standard requires – be proven to be unjustified beyond a reasonable doubt. For these reasons, the OAG will not pursue a criminal prosecution in connection with this matter.

Although the OAG finds no criminal culpability in this tragic matter, we do have serious concerns about the NYPD’s handling of the incident and make a number of recommendations to address these concerns. First, as recommended in a previously-issued OAG report related to the NYPD policies and practices, we recommend that the City remove NYPD from engaging in routine traffic enforcement. Second, we recommend that the NYPD revise its policies to make clear that an officer should not display a firearm and threaten to use deadly physical force unless the use of such force is otherwise justifiable. Third, to the extent NYPD remains engaged in conducting car stops, the OAG has a series of recommendations including: (i) the NYPD should modify its must-arrest policy for SAP warrants (i.e., warrants issued for failure to appear on a summons) and for bench warrants on violations discovered during a car stop; (ii) all officers should be reminded to follow proper car stop protocols as set forth in the NYPD Vehicle Stop Manual; (iii) officers conducting a car stop should ensure that the vehicle is rendered inoperable throughout the encounter; (iv) during a car stop, officers should consider checking the motorist’s license and registration at a safe distance from the vehicle; and (v) during a car stop, an officer should not enter a vehicle over which the motorist has dominion and control. We believe that, going forward, the adoption of these recommendations would significantly limit the likelihood of the kind of escalation that resulted in Mr. Feliz’s death.

STATEMENT OF FACTS

A. Initial Car Stop

On October 17, 2019, at approximately, 2:53 pm, Allan Feliz, who was then 31 years old, was driving westbound in a Volkswagen Atlas SUV on 211th Street in the Bronx with passenger R.R. in the front passenger seat. As he neared the corner of Bainbridge Avenue, Mr. Feliz passed



a marked patrol car – driven by PO Edward Barrett, with Sgt. Jonathan Rivera in the front passenger seat and PO Michelle Almanzar in the backseat – travelling eastbound. According to PO Barrett, he observed as he passed the Volkswagen that Mr. Feliz was not wearing a seatbelt.² He made a U-turn and pulled his patrol car up along the driver’s side of Mr. Feliz’s vehicle, which was waiting at a stoplight on the corner of Bainbridge Avenue. Sgt. Rivera then instructed Mr. Feliz to turn right onto Bainbridge and pull over, which he did. PO Barrett turned onto Bainbridge and pulled the patrol car up a short distance behind.

Just before exiting the patrol car, the three officers activated their body-worn cameras, so that much of the ensuing incident (though not the actual shooting itself) is captured on their video footage.³

As POs Barrett and Almanzar approached the driver’s side of the vehicle, Sgt. Rivera approached the passenger side. While the officers questioned Mr. Feliz about where he was going and where he had been (matters unrelated to the ostensible reason for the stop), PO Barrett asked for and received from Mr. Feliz the vehicle’s registration and a driver’s license. Although PO Barrett did not know it at the time, it turned out that the driver’s license actually belonged to Mr. Feliz’s brother, Sammy Feliz. Asked by PO Barrett what his date of birth was, Mr. Feliz responded that his name was “Sammy Feliz” and provided a birth date that matched the date on the license. Based on the Sammy Feliz license, PO Barrett ran a warrant check on his NYPD cell phone – and the warrant check came back positive for three open warrants. Upon seeing this information come up, PO Barrett called out to Sgt. Rivera that Mr. Feliz had “popped”⁴

Although the offenses underlying the warrants were minor – spitting, littering, and disorderly conduct – it is NYPD policy to take anyone with such warrants into custody, almost without exception.⁵ Without saying what he intended to do, PO Barrett instructed Mr. Feliz to step out of the vehicle, telling him that he was not in trouble, and Mr. Feliz complied. PO Barrett, after asking Mr. Feliz if he had anything on him that he was “not supposed to have,”⁶

² It cannot be independently corroborated whether or not Mr. Feliz was wearing his seatbelt at the time he crossed paths with the NYPD officers. After being stopped, Mr. Feliz was found to be wearing a seatbelt. Passenger R.R. later stated that both he and Mr. Feliz had been wearing seatbelts when the patrol car passed. Sgt. Rivera and PO Almanzar both stated that they had not observed whether Mr. Feliz had been wearing a seatbelt.

³ The opening 30 seconds of footage from each of the officers’ cameras have no sound. The officers’ cameras are designed to automatically capture and retain 30 seconds of footage from immediately prior to the devices’ being activated. The footage may be found [here, here, and here](#).

⁴ The expression is a common police turn of phrase indicating that someone has an outstanding warrant. PO Barrett’s call out to Sgt. Rivera likely alerted Mr. Feliz that there was a problem.

⁵ NYPD Patrol Guide Procedure 208-78 is attached as Exhibit 2. (Under NYPD Patrol Guide Procedure 208-80, however, NYPD officers may vacate such warrants for certain victims/complainants and/or aided individuals.)

⁶ Although PO Barrett did not know it at the time, Mr. Feliz was in possession of substances that turned out to be cocaine and methamphetamine in felony-level quantities. A report reflecting the results of NYPD laboratory tests of these substances, recovered from Mr. Feliz’s pants pocket, is attached as Exhibit 3. Because Mr. Feliz was under federal parole supervision at the time of the incident, possession of these controlled substances would likely have violated the conditions of his release and, if convicted for possession of one or more felonies, subjected him to a mandatory New York State prison sentence.

informed Mr. Feliz that he was going to conduct a pat-down.⁷ And when PO Barrett turned away to hand the registration and license to PO Almanzar, Mr. Feliz stepped back into the vehicle and began to pull the door closed – at which point, the situation began to escalate rapidly.

B. Escalation

As Mr. Feliz reached for the gearshift to try to drive away, PO Barrett grabbed him and unsuccessfully tried to pull him out of the vehicle. Meanwhile, Sgt. Rivera from the open passenger-side window fired his taser gun, which deployed two dart-like prongs into Mr. Feliz's upper right chest. While the taser appeared to stun Mr. Feliz, and clearly caused enough pain for him to cry out, the prongs were not far enough apart from one another to incapacitate him – and in any event, Mr. Feliz quickly managed to pull out one of the prongs and break the electric circuit.⁸

With Mr. Feliz – who weighed approximately 240 lbs. and was 5'11" in height – holding tight to the steering wheel and bracing himself with his legs, PO Barrett began alternately punching him (including to the head) while continuing to try to pull him out of the vehicle. As both PO Barrett and PO Almanzar repeatedly called to Mr. Feliz to get out of the car, Sgt. Rivera entered the passenger-side of the vehicle and climbed onto passenger R.R. Sgt. Rivera at this point had drawn his firearm, and now shouted, "If I have to end up fucking shooting you, bro.... Yo, boss, I am going to fucking shoot you." With Mr. Feliz ignoring the officers' commands and continuing to reach for the gearshift, Sgt. Rivera reholstered his firearm, climbed fully across R.R., and began pushing Mr. Feliz and striking him in the face and head with his fist and with the taser gun.⁹

Throughout the struggle to remove Mr. Feliz from the vehicle, he continued his efforts to drive away, while PO Barrett and Sgt. Rivera attempted to stop him from doing so. According to Sgt. Rivera, he and Mr. Feliz grappled for control of the gearshift, as Mr. Feliz would pull it into drive and he (Sgt. Rivera) would push it back into park.¹⁰ Mr. Feliz's repeated contact with the gearshift is captured at various points on the body-worn camera footage, and PO Barrett and PO Almanzar can be heard yelling to "put it in park." At one point, Sgt. Rivera can be heard calling out, "It's in park." Surveillance footage from a nearby apartment building shows the Volkswagen

⁷ A pat down is a search conducted by police over the clothing of a person that is typically done prior to arrest to check for weapons or instruments that could harm the officer. It is typically followed by a more thorough search of the person if the pat down reveals suspicious objects inside the clothing.

⁸ When a taser gun is fired, two wires with probes on the ends are released and become embedded in the person's body. Each trigger pull by the officer results in a five-second burst of electricity. Holding down the trigger results in a continuous flow of electricity. If both probes are not in the body at the same time to create an electric circuit, the taser will be ineffective. According to the subsequent autopsy report on Mr. Feliz, the taser prongs were found to have entered Mr. Feliz's skin approximately 4½ inches apart from each other. Taser guns are most effective when the distance between prongs penetrate an individual at a spread of 12 inches or greater.

⁹ By R.R.'s account, Sgt. Rivera's thigh was on R.R.'s thigh, and the sergeant was using one hand for support and the other hand to hit Mr. Feliz. He also said that Sgt. Rivera was head-butting Mr. Feliz.

¹⁰ A test of the Volkswagen Atlas by OAG staff determined that in order to move the gear shift out of park, the brake must be engaged. Once the gearshift is out of park, and is in either drive, neutral, or reverse, it can move freely between all three gears, or back into park, without any further contact with the brake or accelerator.

move forward several feet then abruptly stop two or three times, even before the final back-and-forth surge immediately prior to the shooting. Even the vehicle's passenger R.R. told OAG staff that it was clear to him, and would have been "to any child," that Mr. Feliz was trying throughout the encounter to drive away.

C. Shooting

At some point during the altercation inside the vehicle, Sgt. Rivera's body-worn camera fell from his uniform and abruptly cut off¹¹ and PO Barrett's camera was knocked to the ground, and so views of the interior of the Volkswagen are lost. About twenty seconds before the shooting, however, a civilian witness activated his cell phone camera and captured relevant footage of the incident and its immediate aftermath.¹²

As Sgt. Rivera pushed and struck Mr. Feliz from inside the Volkswagen, and PO Barrett pulled on him from just outside the driver's side door, the vehicle suddenly surged forward several feet, and PO Barrett moved forward with it. Just as abruptly, the vehicle then accelerated backwards several feet, and PO Barrett had to spin back and away from the vehicle to avoid (barely) being struck by the door.¹³ (PO Almanzar was at this point on the far side of the driver's-side door, toward the front of the vehicle.) The vehicle then stopped short, and the driver's-side door slammed shut.

Less than two seconds later, Sgt. Rivera – at this point lying across R.R. and over the center console¹⁴ – fired a single shot into the chest of Mr. Feliz.¹⁵ PO Barrett, who in the cell phone video can be seen rushing back up to the driver's-side window as the gunshot is heard, said that he observed Sgt. Rivera draw his firearm, place it up to Mr. Feliz's chest, and fire. PO Almanzar said she also saw the shooting, and described Sgt. Feliz bringing his gun on a downward angle to Mr. Feliz's chest. Passenger R.R. likewise described to OAG staff seeing Sgt. Rivera bring his "chrome" firearm down toward Mr. Feliz, whose hands he said were on the steering wheel, and then hearing the gunshot.

Immediately after Mr. Feliz was shot, PO Barrett opened the driver's-side door and removed Mr. Feliz from the vehicle. The front passenger, R.R., who had remained seated during the entire incident, quickly got out of the vehicle from the passenger side. Sgt. Rivera exited the vehicle as well. Finding Mr. Feliz unresponsive, Sgt. Rivera began to perform CPR. Approximately 90 seconds later, having been called to the scene by NYPD dispatch, Emergency

¹¹ Sgt. Rivera's camera was attached to his uniform with clip, and was turned on and off with a sliding switch on the front of the device. After the incident was over, Sgt. Rivera's camera was recovered in the Volkswagen's central console, with the clip broken, and the switch in the off position. Sgt. Rivera told OAG staff he believes the camera was knocked off during the altercation and deactivated when it struck something in the vehicle.

¹² The footage may be found [here](#).

¹³ The cell phone video showed that as the Volkswagen moved in reverse, the front wheels were spinning but the back wheels were locked. Upon testing the vehicle, OAG staff found that in order to obtain that same result, the gear shift had to be in the reverse position and pressure applied simultaneously to the brake and accelerator pedals.

¹⁴ In R.R.'s account to OAG staff, Sgt. Rivera was at this point almost entirely in the vehicle, although the passenger-side door remained partially open. R.R. also described Sgt. Rivera at this point as "all over Al."

¹⁵ An analysis of Mr. Feliz's clothing by NYPD Criminologist Gina Columbo determined that the shot was fired from a distance of less than one inch from Mr. Feliz's chest.

Medical Services (“EMS”) arrived and began to provide advanced cardiac life support (“ACLS”). Mr. Feliz was transported to Montefiore Hospital, where emergency room personnel continued to provide ACLS, but to no avail. Mr. Feliz was pronounced dead at 3:18pm.

SGT. RIVERA’S ACCOUNT

As discussed in further detail below, the question of criminal culpability on the part of Sgt. Rivera depends on whether his use of deadly physical force was justified as a matter of law. The viability of a justification defense, in turn, depends on whether Sgt. Rivera actually believed that this use of force against Mr. Feliz was necessary and, if so, whether that belief was objectively reasonable. As part of its investigation into this aspect of the case, Sgt. Rivera was invited to submit to an interview with OAG staff, and on December 30, 2019, he voluntarily did so. Below is a summary of Sgt. Rivera’s account of the circumstances immediately surrounding the shooting of Mr. Feliz.

Sgt. Rivera stated, in substance, that at the time of the final forward-and-back movement of the vehicle, he was lying across the front seats, grappling with Mr. Feliz, and trying to keep the gearshift in park. PO Barrett was standing in the driver’s-side doorway, engaged with Mr. Feliz. Sgt. Rivera did not remember precisely the respective roles that he and Mr. Feliz played in the movement of the gearshift that caused the car to surge forward, stop abruptly, then surge backwards, and stop abruptly again. After the car moved backwards and the door slammed shut, however, he realized he could no longer see PO Barrett.

Sgt. Rivera said he believed, given where PO Barrett had been standing just before the vehicle reversed, that PO Barrett was no longer visible because he had been struck by the car door and knocked to the ground, and was now beneath the wheels. Convinced that any further movement of the vehicle, forward or backward, risked further serious injury or death to PO Barrett, Sgt. Rivera believed he had to do what he thought was necessary to stop the car from moving.

He said that he drew his firearm, reached over his shoulder, put the firearm to Mr. Feliz’s chest, and pulled the trigger.

Sgt. Rivera stated that, once the driver’s side door closed and he was alone in the vehicle with Mr. Feliz and his passenger, he feared for his own safety as well. In particular, he was concerned that if the vehicle drove off he could be injured in a collision, or that he could be overpowered by the two men. However, Sgt. Rivera insisted that the principal reason he believed it was necessary to shoot Mr. Feliz was to prevent PO Barrett from being crushed beneath the wheels of the car.

MEDICAL EXAMINER'S REPORT

Dr. Jeremy Stuelpnagel of the OCME conducted an autopsy of Mr. Feliz on the morning of October 18, 2019. Prior to issuing a report on Mr. Feliz's death, Dr. Stuelpnagel was provided with Mr. Feliz's emergency medical service and hospital records, clothing, and an account of the circumstances surrounding Mr. Feliz's encounter with the police. Dr. Stuelpnagel also reviewed Mr. Feliz's toxicology report at the OCME, which indicated the presence of methamphetamine.

As noted in the autopsy report,¹⁶ Mr. Feliz had blunt force injuries and lacerations consistent with the altercation with the police including to his forehead, eyes and face. Dr. Stuelpnagel determined the cause of Mr. Feliz's death was due to a "gunshot wound of torso." Specifically, the report identified that the bullet entered the left side of Mr. Feliz's upper chest, with the trajectory of the bullet traveling from "front to back, downward left to right." As the bullet continued through Mr. Feliz's body, it fractured his fifth rib and entered into his "chest cavity." From there, the bullet traveled downward, and "perforated the lower medial aspect of the left upper lung lobe before entering the pericardial sac." The bullet continued with a "wound track through the apex of [his] heart to include the right and left ventricles." The bullet then traveled "through the diaphragm to perforate the spleen and stomach." Lastly, the bullet fractured Mr. Feliz's eleventh rib before coming to "rest in the soft tissue of [his] lower back."

Since the shooting of Mr. Feliz by Sgt. Rivera was the direct cause of his death, the manner of death was identified in the autopsy report as "homicide."

LEGAL ANALYSIS

Under PL 35.30(1)(a),¹⁷ a police officer is authorized to use deadly physical force – that is, force that is readily capable of killing a person – against another person if: (1) he reasonably believes the person has committed an offense; (2) he is attempting to arrest that person, or attempting to prevent that person from escaping custody; and (3) he reasonably believes the use of deadly force is necessary to defend himself or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force. When such a defense is raised, it must be disproven beyond a reasonable doubt in order to establish the officer's criminal culpability.

Although the Court of Appeals has not directly addressed the meaning of the "reasonably believe" language in Penal Law §35.30, it has interpreted identical language in the context of

¹⁶ A copy of Dr. Stuelpnagel's autopsy report is attached as Exhibit 4, with appropriate redactions to protect Mr. Feliz's privacy. A complete copy of the report has been provided to Mr. Feliz's family.

¹⁷ "A police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; Except that deadly physical force may be used for such purposes only when he or she reasonably believes that: Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force."

another subsection of the justification statute, Penal Law §35.15. In People v. Goetz, 68 N.Y.2d 96 (1986), and then later in People v. Wesley, 76 N.Y.2d 555 (1990), the Court held that the phrase “reasonable belief” has both a subjective component and an objective component. The subjective component is satisfied if the defendant in fact actually believed, “honestly and in good faith,” that physical force was being used or was about to be used against him (or a third person) at the time he used physical force, and that the use of physical force was necessary in order to repel the danger, regardless of whether that belief was accurate or not. Goetz, 68 NY2d at 114. The objective component is satisfied if a “reasonable person” under the same “circumstances” could have held those beliefs. Id. at 115. To negate a justification defense offered by Sgt. Rivera, then, it would be necessary to prove either that the officer did not subjectively believe the use of deadly force was necessary or that the use of deadly force was not objectively reasonable (or both).

In this case, as a threshold matter, the evidence quite persuasively establishes that at the time Sgt. Rivera used deadly physical force, he had satisfied two of the three elements of PL 35.30(1)(a). That is, he had a reasonable belief that Mr. Feliz had committed an offense and he was attempting to arrest Mr. Feliz for that offense. Before Sgt. Rivera had taken any action against Mr. Feliz, Mr. Feliz had represented himself as someone (Sammy Feliz) who turned out to have multiple active warrants and was therefore subject to lawful arrest. By failing to comply with PO Barrett’s instruction, and instead stepping back into his vehicle and attempting to drive off, Mr. Feliz had on all reasonable appearances committed the offense of “resisting arrest.”¹⁸ Mr. Feliz was still resisting the officers’ efforts to take him into custody at the time Sgt. Rivera fired the fatal shot.

The evidence also strongly suggests that Sgt. Rivera satisfied the third element of the justification statute as well, namely, that he reasonably believed the use of deadly force was necessary to defend another person from what he reasonably believed to be the use or imminent use of deadly physical force. As discussed above, Sgt. Rivera told the OAG staff in substance that at the time he used deadly physical force on Mr. Feliz, he believed that it was necessary to do so in order to defend PO Barrett from the danger of being crushed under the wheels of the vehicle.

There is no obvious reason to doubt that Sgt. Rivera actually believed what he claimed to have believed. Sgt. Rivera has not offered multiple conflicting accounts of the incident. Nor is his account so inconsistent with the independently established facts of the case that it is simply unimaginable that he could have believed such a thing. It may lend at least some degree of credence to Sgt. Rivera’s characterization of what he believed at the time of the shooting that he voluntarily subjected himself to interrogation by OAG staff. In any event, it would almost certainly be impossible to prove beyond a reasonable doubt – as the legal standard requires – that Sgt. Rivera did not at least *believe* that the use of deadly physical force was necessary.

Furthermore, the totality of the evidence strongly suggests that Sgt. Rivera’s belief was reasonable. There is, after all, little question that when Mr. Feliz’s vehicle surged backwards for

¹⁸ Under PL 205.30, “A person is guilty of resisting a rest when he intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized a rest of himself or a nother person.”

the last time, PO Barrett – who had been was positioned in the hinge of the front driver’s-side door throughout the entire incident – did have to spin abruptly away from the vehicle to avoid being struck by the door, with the door slamming shut immediately thereafter. The cell phone video footage captures this sequence of events in full. Nor is there much question that, at that very time, Sgt. Rivera was lying across the front seats, engaged in an ongoing scuffle with Mr. Feliz. On this point R.R.’s recollections (and the body worn camera footage capturing the earlier part of the altercation) are substantially consistent with the account provided by Sgt. Rivera.

Because this evidence indicates that Sgt. Rivera’s line of sight would have been at least somewhat compromised by his awkward position and that his attention was necessarily focused on Mr. Feliz, it is entirely plausible that he indeed lost sight of PO Barrett altogether at the moment the vehicle surged backward. And given where PO Barrett had been standing immediately before that backwards surge, it is likewise plausible that his abrupt disappearance from Sgt. Rivera’s line of sight would have led Sgt. Rivera to believe that PO Barrett had been struck by the door and was now on the ground beneath the vehicle’s wheels. And in light of the considerable evidence that Mr. Feliz had tried repeatedly, from the moment he had jumped back into the vehicle, to put the gearshift into drive and drive away, it would hardly have been unreasonable for Sgt. Rivera to have concluded that, if Mr. Feliz were not instantly prevented from moving the vehicle, the risk of imminent death or serious injury to PO Barrett was substantial.

Ultimately, of course, Sgt. Rivera was wrong about what had happened to PO Barrett and therefore he was wrong about the urgent need to stop the vehicle. However, whether he was right or wrong on those points is not the decisive question under the law. The decisive question is whether it was *reasonable* for Sgt. Rivera to have believed it to be true.¹⁹

We believe the answer to that question is that it was likely reasonable under the circumstances – or at the very least that it would be impossible to prove beyond a reasonable doubt that this belief was unreasonable. For this reason, the OAG has concluded that no criminal charges are warranted.

RECOMMENDATIONS

The City should remove NYPD from non-criminal traffic enforcement–

The officers here claimed they stopped Mr. Feliz because he allegedly was not wearing a seatbelt. That minor infraction precipitated his interaction with the police that ultimately led to his death. OAG recently recommended in a report about the NYPD’s response to ongoing protests that the City remove the NYPD from routine traffic enforcement such as this.²⁰ As explained in the report, the vast majority of traffic stops – including this one – do not involve criminal conduct, yet often end in violence. The report also highlighted studies demonstrating

¹⁹ Indeed, the New York Court system’s own pattern jury instruction for Justification explicitly states, “It does not matter that the defendant was or may have been mistaken in his/her belief; provided that such belief was both honestly held and reasonable.”

²⁰ The Preliminary Report is available at <https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf>.

disparities in the use of force during traffic stops against Black and Latino men. The untimely death of Mr. Feliz further underscores the need for this change.

An officer should not display a firearm and threaten to use deadly physical force unless the use of such force is otherwise justifiable –

NYPD policy recognizes that “drawing a firearm prematurely or unnecessarily limits a uniformed member’s options in controlling a situation and may result in an unwarranted or accidental discharge of the firearm.”²¹ It is for this reason that the same policy discourages the drawing of a firearm in the absence of “an articulable belief that the potential for serious physical injury is present.” But the drawing of a firearm unnecessarily in the immediate presence of civilians may also have other problematic implications. It may cause one or more of the civilians to panic and react in erratic kind, perhaps escalating the level of danger in the encounter. And it may also predispose the officer to more readily discharge the firearm if matters do escalate. These same concerns are considerably heightened when the officer couples the display of a firearm with verbal threats to use deadly physical force.

During the incident involving Mr. Feliz, Sgt. Rivera brandished his firearm and threatened to shoot Mr. Feliz before deadly force was justified. It is unknown whether these actions (rationally or not) intensified Mr. Feliz’s desire to drive away, or whether having once drawn his weapon Sgt. Rivera was more inclined to draw it a second time and fire.

However, to avoid the risk that a threat of force will not dangerously escalate a situation, the OAG recommends that the NYPD, in consultation with the public and appropriate stakeholders, revisit its practices regarding when an officer may display a firearm and threaten to use deadly physical force against a civilian where the use of such force is not otherwise justified.

The NYPD should not arrest motorists for open warrants related to minor offenses–

To the extent the NYPD continues to be involved in traffic enforcement, NYPD should direct its officers not to arrest motorists for open warrants related to minor offenses. Police officers currently have authority under law to arrest any motorist who is found to have an open warrant, and it is NYPD policy under NYPD Patrol Guide Procedure 208-78 to make such arrests even on low-level warrants, almost without exception.²² It is highly unlikely that the incident involving Mr. Feliz – whose warrants (Sammy Feliz warrants) were for the violations/offenses of spitting, littering, and disorderly conduct – would have escalated in the manner it did in the absence of this automatic arrest policy.

In order to minimize the chances of just such an escalation, the OAG proposes that the NYPD adopt a new policy to replace the automatic-arrest policy. Specifically, the OAG proposes a policy under which a motorist would not be arrested on any SAP warrants (i.e., warrants issued for failure to appear on a summons) or on any bench warrant(s) issued for a violation unless (i) the arresting officer had reasonable cause to believe the motorist represented a danger to the community and (ii) a sergeant reviewed the basis for the officer’s belief and authorized the arrest

²¹ NYPD Patrol Guide Procedure 221-01 is attached as Exhibit 6.

²² See Footnote 5.

prior to motorist's being taken into custody. The OAG believes that such a policy properly balances the risks to the community and the public interest in avoiding unnecessary arrests during car stops. In addition, the OAG encourages state lawmakers to consider whether this issue might also be more fully addressed through legislation.

All officers should be reminded to follow proper car stop protocols as set forth in the NYPD Vehicle Stop Manual –

Car stops are among the most frequent types of contact between police officers and civilians. Any encounter between police officers and civilians carries with it a risk of escalation, but car stops may create additional dangers for officer and civilian alike. To reduce these risks, the NYPD has developed a series of protocols for managing car stops, which are reflected in the department's Vehicle Stop Manual.

In the case of Mr. Feliz, the officers deviated from some of these protocols. Specifically, the officers failed to notify central dispatch of the stop before engaging with the motorist. Notifying dispatch itself reminds the officers involved that a car stop has inherent risks. In addition, other units in the area can more quickly respond should an emergency arise during the stop. It is unknown whether notifying central dispatch in this case would have brought about a different outcome. Nevertheless, the OAG strongly urges that officers conduct car stops according to the protocols in the Vehicle Stop Manual (as well as the additional protocols recommended below).

Because car stops are such a central element of policing, and because they are at such risk of escalation, the OAG also recommends that all officers whose duties include car stops receive annual refresher training in properly managing such encounters. Such training should include the material covered by the Vehicle Stop Manual as well as the additional recommendations here. Although this report does not address any discriminatory conduct in connection with the incident involving Mr. Feliz, such training should also include antidiscrimination and implicit bias training (including scenario-based training) to ensure that racial profiling is not impermissibly influencing traffic stops or the nature of the officer's interaction with the motorist.

Officers conducting a car stop should ensure that the vehicle is rendered inoperable throughout the encounter –

A motorist's attempt to drive away from the scene of a car stop can create a danger to officers, civilians, and the motorist. It may also in turn trigger a use of force against the motorist that may have been avoidable had the vehicle been rendered inoperable at the start of the encounter. For this reason, the officers conducting the stop should immediately instruct the motorist to place the vehicle in park and turn off the ignition. The officer should then take possession of the motorist's keys. If the vehicle has a remote keyless ignition system, the officer should take possession of the key fob and remove it beyond the fob's transmission range. If the officers who conducted the stop of Mr. Feliz had followed this protocol, Mr. Feliz would not have been able to attempt to drive away from the scene.

During a car stop, officers should consider checking the motorist’s license and registration at a safe distance from the vehicle –

It is the policy of the NYPD during any car stop on a traffic violation to “run” the motorist’s license, while on the scene, through law enforcement databases to determine, among other things, whether the motorist has a suspended license or any open warrants.²³ Depending on the results of that inquiry, the motorist may be subject to arrest. Because that inquiry is a sensitive one and (if the inquiry returns a problematic result) may trigger resistance on the part of the motorist, the process must be managed carefully by the officers involved.

In the case of Mr. Feliz, after receiving the driver’s license and registration, PO Barrett conducted the inquiry via cell phone while standing just outside the driver’s side window. When the inquiry returned several open warrants, PO Barrett announced aloud that Mr. Feliz had “popped,” almost certainly alerting him to the likelihood of imminent arrest. And then, after asking Mr. Feliz to step out of the vehicle, PO Barrett turned to hand the documents to PO Almanzar, providing Mr. Feliz with the opportunity to quickly jump back into the vehicle – after which the incident promptly escalated.

In order to maximize officer control during a car stop, the inquiring officer should consider distancing themselves from the stopped vehicle or return to the patrol car in order to run the license and registration information. If the officers have reason to frisk the motorist, search the vehicle, or conduct an arrest, the paperwork should be left in the patrol vehicle until the end of the stop. Any conversations between the officers about investigative findings, including the results of the warrant check, should be held outside of earshot of the motorist, any passenger, or members of the public, absent exigent circumstances.

During a car stop, an officer should not enter a vehicle over which the motorist has dominion and control –

Entering fully or partially into a vehicle during a car stop while the motorist is capable of operating the vehicle can create a danger to an officer that may necessitate an otherwise-avoidable use of force on the part of the officer to extricate himself or herself. Such a risk will not of course present itself when the vehicle can be promptly rendered inoperable, as discussed above. Where the vehicle has not been rendered inoperable, however, no officer should enter the vehicle as long as the motorist has dominion and control – unless there is an articulable compelling reason to do so. In addition, the NYPD should consider broadening its current policy, which prohibits an officer from positioning himself or herself in front of a vehicle to prevent it from fleeing,²⁴ to also prohibit officers from *entering* a vehicle for that purpose.

By entering into the front seat of Mr. Feliz’s vehicle while Mr. Feliz was in the driver’s seat and the keys were in the ignition, Sgt. Rivera put himself in considerable danger (made even greater by the presence of another individual in the front passenger seat). And it is at the very least questionable whether the desire to remove Mr. Feliz from the vehicle in this case would

²³ NYPD Patrol Guide Procedure 209-09 is attached as Exhibit 5.

²⁴ The Vehicle Stop Manual states that, “Under no circumstances will you position yourself in front of a vehicle to prevent it from fleeing!!”

constitute a compelling reason for Sgt. Rivera to expose himself to that danger. A policy forbidding officers from entering a vehicle while the motorist still has dominion and control, except under narrowly-defined circumstances, may on occasion allow a motorist to successfully flee the car stop. However, the OAG believes that this concern is outweighed by the reduced likelihood of harm to officers, motorists, passengers, and members of the public.

EXHIBIT 1



State of New York

Executive Chamber

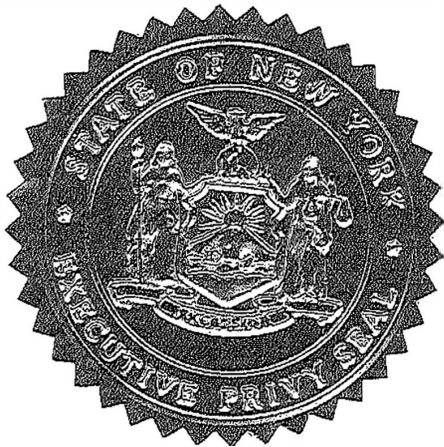
No. 147.31

EXECUTIVE ORDER

In view of the request of Attorney General Letitia James, my order and requirement, embodied in Executive Order Number one hundred and forty-seven, dated July 8, 2015, is hereby amended to include an additional paragraph to the penultimate paragraph as amended by Executive Order Numbers 147.1 - 147.30 to read as follows:

FURTHER, the requirement imposed on the Special Prosecutor by this Executive Order shall include the investigation, and if warranted, prosecution:

(ee) of any and all unlawful acts or omissions or alleged unlawful acts or omissions by any law enforcement officer, as listed in subdivision 34 of section 1.20 of the Criminal Procedure Law, arising out of, relating to or in any way connected with the death of Allan Feliz on October 17, 2019, in Bronx County.



G I V E N under my hand and the Privy Seal of the
State in the City of Albany this
eighteenth day of October in the year
two thousand nineteen.

A handwritten signature in black ink, appearing to be "Andrew Cuomo", written over a horizontal line.

BY THE GOVERNOR

A handwritten signature in black ink, appearing to be "M. C.", written over a horizontal line.

Secretary to the Governor

EXHIBIT 2



PATROL GUIDE

Section: Arrests		Procedure No: 208-78	
RETURNING AN INDIVIDUAL TO COURT TO VACATE A SUMMONS ADJUDICATION PART (SAP) WARRANT			
DATE ISSUED: 09/27/18	DATE EFFECTIVE: 09/27/18	REVISION NUMBER:	PAGE: 1 of 2

PURPOSE

To provide uniformed members of the service with direction when encountering an individual with an active Summons Adjudication Part (SAP) warrant during the course of taking enforcement action.

PROCEDURE

When a person is found to have an active SAP warrant from any New York City Court:

UNIFORMED MEMBER OF THE SERVICE

1. Remove person to command concerned for investigation.
 - a. Utilize appropriate Department resources to verify that SAP warrant is active.
 - (1) Print a copy of the SAP warrant.
2. Process arrest in accordance with *P.G. 208-03, "Arrests – General Processing,"* if person committed a crime in addition to the SAP warrant.
 - a. Issue Criminal Court summons in accordance with *P.G. 209-09, "Personal Service of Summonses Returnable to Traffic Violations Bureau or Criminal Court,"* if person committed a violation in addition to the SAP warrant and is otherwise eligible.
 - (1) Ensure that the return date on the new summons is the date the defendant will appear before the judge (the same day or the next day, depending on what time the defendant is stopped).

IF PERSON IS ISSUED A CRIMINAL COURT SUMMONS

DESK OFFICER

3. Utilize the bar code reader to scan the served Criminal Court summons into Electronic Summons Tracking System (ESTS).
4. Scan the "Original" copy of the Criminal Court summons into the network scanner.
5. Create a new summons envelope transmittal for the "Original" copy of the Criminal Court summons in ESTS and scan the Criminal Court summons directly to court.

UNIFORMED MEMBER OF THE SERVICE

6. Return defendant to the County Criminal Court Arraignment Part in the county where the defendant was stopped for the current violation, no matter where the SAP warrant(s) were issued, in order for the defendant to appear on the warrant and to adjudicate the summons issued for the current violation or infraction.
 - a. The summons issuing officer does not have to be the escorting officer.

PATROL GUIDE

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UNIFORMED MEMBER OF THE SERVICE (continued)

7. Provide the "Original" copy of the Criminal Court summons prepared for the current violation or infraction, as well as a copy of the warrant(s), to the Associate Court Clerk of the Criminal Court Arraignment Part.
8. Remain with defendant while Court staff retrieve the appropriate file(s) and/or add the matter(s) to the Court's calendar.
9. Bring defendant before the Court to adjudicate both the Criminal Court summons issued for the current violation or infraction and the outstanding warrant(s), when called.
10. Be guided by the judge, court staff, and members of the service assigned to the borough Court Section regarding the release or continued custody of the defendant.

ADDITIONAL DATA

A SAP warrant is a bench warrant issued by the Court to secure the attendance of a defendant who fails to appear for a court date in response to a Criminal Court summons. SAP warrants are distinguished by a docket number that begins with a four digit year, followed by an "S" and a letter corresponding to the Court that issued the warrant (e.g., N-New York County Criminal, K-Kings County Criminal, X-Bronx County Criminal, Q-Queens County Criminal, R-Richmond County Criminal, B-Red Hook Community Justice Center, and C-Midtown Community). For example, a warrant bearing docket number 2015SN123456 is a SAP warrant issued by the New York County Criminal Court. Furthermore, an OCA designation beginning with "A" or "B" also indicates a SAP warrant issued by the Criminal Court (e.g., OCA No: A1999138449).

*When a Criminal Court summons is issued an **ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)** is not completed nor is an arrest number generated, as the Criminal Court summons serves as the accusatory instrument.*

RELATED PROCEDURES

*Arrests – General Processing (P.G. 208-03)
 Personal Service of Summonses Returnable to Traffic Violations Bureau or Criminal Court (P.G. 209-09)
 Arrest on a Warrant (P.G. 208-42)*

FORMS AND REPORTS

ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)

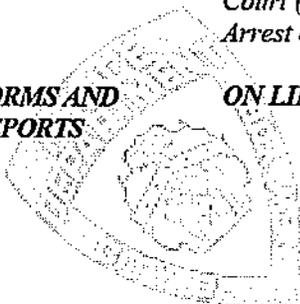


EXHIBIT 3

LABORATORY REPORT



NEW YORK CITY POLICE DEPARTMENT
 POLICE LABORATORY
 CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY # 2019-069363
 LABORATORY REPORT # 6
 COMPLAINT # 2019-052-10356
 INVOICE # 2000915861
 DATE SUBMITTED: 10/19/2019
 ANALYSIS STARTED: 10/23/2019
 ANALYSIS COMPLETED: 10/24/2019

INVOICED BY: DT3 MARK ACEVEDO Tax#:933592 Command:
 FORCE INVESTIGATION DIVISION
 PCT. OF INVOICE: 052 Precinct
 DEFENDANT(S): Allan Feliz AGE: 31

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS

EVIDENCE PRESENT AS ITEMIZED ON INVOICE: YES NO (SEE REMARKS)

RESULTS OF EXAMINATION/ANALYSIS

Item #	Qty.	Description	Results	Weight
8	1	Ziplock bag(s) cont. solid material	Cocaine	9.557 g (aggregate wt.)
9A	4	Tablet(s)	Methamphetamine	1.329 g (aggregate wt.)
9B	1	Tablet(s)	No Analysis	N/A
10	2	Paper packet(s) cont. solid material residue	NCSI	residue

SUMMARY OF ANALYSIS

Substance Identified	Item #	Weight
Cocaine	8	9.557 g (aggregate wt.)
Methamphetamine	9A	1.32 g (aggregate wt.)
NCSI	10	N/A

REMARKS

1/8 oz = 3.544 g	1/2 oz = 14.175 g	1 oz = 28.349 g	2 oz = 56.698 g	4 oz = 113.396 g	8 oz = 226.792 g	16 oz = 453.584 g = 1 lb	4535.84 g = 10 lbs
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Laboratory Item(s) #8, 9 and 10 are Invoice Item(s) #1, 2 and 3 from Invoice #2000915861.

NCSI is the abbreviation for No NYS Controlled Substance Identified.

TESTING METHODOLOGY

Unit/Item #	Item #	Methods Used
-------------	--------	--------------

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM II
RANK/TITLE

Brianna Bell
AUTHORIZER/ANALYST NAME

Brianna Bell
ANALYST SIGNATURE

367139
TAX #

10/24/2019
DATE PREPARED

10/25/2019
DATE ISSUED

LABORATORY #: 2019-069363

LABORATORY REPORT



NEW YORK CITY POLICE DEPARTMENT
 POLICE LABORATORY
 CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY # 2019-069363
 LABORATORY REPORT # 6
 COMPLAINT # 2019-052-10356
 INVOICE # 2000915861

INVOICED BY: DT3 MARK ACEVEDO Tax#:933592 Command:
 FORCE INVESTIGATION DIVISION
 PCT. OF INVOICE: 052 Precinct
 DEFENDANT(S): Allan Feliz AGE: 31

DATE SUBMITTED: 10/19/2019
 ANALYSIS STARTED: 10/23/2019
 ANALYSIS COMPLETED: 10/24/2019

Unit/Item #	Item #	Methods Used
10.1	10	Color Test, GC/MS
10.2	10	GC/MS
8	8	Color Test, GC/MS
9.1-9.4	9A	Color Test, GC/MS
9.5	9B	N/A

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

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CRIM II
 RANK/TITLE

Brianna Bell
 AUTHORIZER/ANALYST NAME

Brianna Bell
 ANALYST SIGNATURE

367139
 TAX #

10/24/2019
 DATE PREPARED

10/25/2019
 DATE ISSUED

EXHIBIT 4

EXHIBIT 5



PATROL GUIDE

Section: Summonses

Procedure No: 209-09

PERSONAL SERVICE OF SUMMONSES RETURNABLE TO TRAFFIC VIOLATIONS BUREAU OR CRIMINAL COURT

DATE ISSUED:

09/30/19

DATE EFFECTIVE:

10/01/19

REVISION NUMBER:

PAGE:

1 of 5

PURPOSE

To inform uniformed members of the service of procedures to be followed when personally serving a summons returnable to the Traffic Violations Bureau or Criminal Court.

PROCEDURE

When issuing a summons returnable to the Traffic Violations Bureau or Criminal Court:

UNIFORMED MEMBER OF THE SERVICE

1. Inform violator of the offense committed.
2. Request that violator show proof of identity and residence.
 - a. In traffic cases, examine driver's license, vehicle registration, and insurance identification card for vehicles registered in New York State.
 - b. If violator presents driver's license, check "Motorist Exhibited License" box on top of summons.

NOTE

As a general rule, the following forms of government photo identification are considered valid forms of identification:

- a. Valid Photo Driver's License (From New York State, another state, or another country)
- b. Valid passport
- c. Citizenship or naturalization papers
- d. New York State Non-Driver Identification
- e. New York State Driver's Permit
- f. Municipal Identification Card (ID NYC)
- g. Other government photo identification.

Members should note that these are general guidelines, and other forms of identification may be acceptable.

DESK OFFICER

3. Conduct license and warrant check.
 - a. If license check conducted, check "Susp/Rev" box on top of summons.
 - b. If no license and/or warrant check conducted, note reason in **ACTIVITY LOG (PD 112-145)**.
4. Remove violator to command for investigation if doubt concerning identity exists.
5. Make Command Log entry when violator is brought to command for identification, is served a summons, and immediately released.
 - a. Entry will include the following:
 - (1) Name, address, and physical description of the violator
 - (2) Location, time of incident, and reason for removal to command
 - (3) Name, rank, shield number of member who brought violator to command
 - (4) Offense(s) charged and serial number(s) of summons(es) served
 - (5) Time the violator entered and departed the command.

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NOTE *It is not necessary to follow Desk Appearance Ticket or voided arrest procedures for an offense for which a summons may be served when the only reason for bringing the violator to the command was to investigate identity.*

- UNIFORMED MEMBER OF THE SERVICE**
6. Issue summonses in numerical order.
 7. Use black or blue ink ballpoint pen and legibly print information in block letters.
 8. Enter all available information required by captions on summons with the exception of the area titled "Officer's Notes."
 9. Record only one violation per summons.
 - a. Use a separate summons for each additional offense.

NOTE *Summonses issued for multiple offenses arising out of a single traffic incident will be made returnable to the respective court responsible for the adjudication of such offenses (i.e., traffic infractions will be returnable to Traffic Violations Bureau; Administrative Code violations and traffic misdemeanors will be returnable to Criminal Court, as outlined in Patrol Guide 209-02, "Summonses and Notices of Violation Returnable Agencies").*

10. Request violator sign the bottom of the summons to acknowledge receipt.

NOTE *Requesting the violator to sign the bottom of the summons is an option of the issuing member. If the member feels that requesting the signature may precipitate a confrontation or place the member at a tactical disadvantage, the member has the option of not requesting the signature. If the violator refuses to sign, no action will be taken. Member concerned will note the refusal in **ACTIVITY LOG**.*

11. Give the violator the part of the summons designated for the agency for which the summons is returnable.
 - a. If the summons is returnable to the Traffic Violations Bureau, give the violator the copy of the summons labeled "Motorist Copy"
 - b. If the summons is returnable to Criminal Court, give the violator the copy labeled "Criminal Court."
12. Prepare a **JUVENILE REPORT SYSTEM WORKSHEET (PD377-159A)** for a violator who is at least 7 and less than 18 years of age, unless offense is a traffic infraction, violation, or VTL misdemeanor.

FOR SUMMONSES RETURNABLE TO CRIMINAL COURT:

- UNIFORMED MEMBER OF THE SERVICE**
13. Refer to new **ACTIVITY LOG (PD 112-145)** insert, **SAMPLE CRIMINAL COURT SUMMONS INFORMATIONS (PD260-211)**, after the violator has been released.
 14. Utilize the **SAMPLE CRIMINAL COURT SUMMONS INFORMATIONS** to properly complete the Criminal Court Information section on rear of summons.
 15. **SIGN** Criminal Court Information section on rear of summons.

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**UNIFORMED
MEMBER OF
THE SERVICE
(continued)**

16. Enter the information concerning the summons(es) on **CERTIFICATION OF MOVING/CRIMINAL COURT SUMMONSES SERVED (PD160-145)**.
17. Enter complete details in **ACTIVITY LOG** including:
 - a. Description of offense
 - b. Summons number
 - c. Motorist's/Defendant's name
 - d. Motorist's/Defendant's date of birth
 - e. Type, and serial number, of government photo identification used to determine name and date of birth of motorist/defendant
 - f. License plate number and state/province of registration
 - g. Make and model of vehicle
 - h. Number of passengers in vehicle.
18. Detach and retain last two copies of summons marked "Police/ Agency" and "Officer".
 - a. The white "Officer" copy will be retained by the issuing member.
 - b. The yellow "Police/Agency" copy will be returned with the **CERTIFICATION OF SUMMONSES SERVED** card.
19. Deliver the remaining copies, intact, to command at the end of tour, or as directed by commanding officer.

**ADDITIONAL
DATA**

A uniformed member of the service, when issuing a summons returnable to the Traffic Violations Bureau, will place an "X" in the appropriate captioned box when any of the following criteria apply:

- a. "Commercial Vehicle" - with a maximum gross weight in excess of 26,000 pounds
- b. "Bus" - any vehicle designed to transport more than fifteen passengers, including the driver
- c. "Hazardous Material" - any vehicle which is transporting materials required to be placarded under the Hazardous Material Transportation Act.

If a vehicle with a maximum gross weight in excess of 26,000 pounds is also placarded, as required for transporting hazardous materials, only the "Hazardous Material" box should be checked.

UNDER NO CIRCUMSTANCES WILL AN ISSUING MEMBER OF THE SERVICE WRITE ON THE SIDE MARGIN OF THE SUMMONS. This area is used by the adjudicating agency concerned. Writing in this area may result in the summons being considered unprocessable and returned to this Department.

In addition to entries in the ACTIVITY LOG, members have the option of utilizing the area on the rear of the white "Officer" copy of the summons entitled "Officer's Notes." This area is meant to serve as additional information for the issuing member to assist in recording the pertinent details of the offense.

The sections labeled "Motorist or Defendant's Employer", "Motorist or Defendant's Employer Address", and "Phone No." are designed primarily as an aid to members enforcing violations where corporate substitution is possible (Example - a summons is issued to the driver of a trucking firm for no overweight permit). The information is not required for moving violations issued to non-commercial drivers.

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**ADDITIONAL
DATA
(continued)**

A person operating a limited use vehicle (minibike, moped, etc.) on a public highway (road, street, avenue, highway, etc.) is subject to all applicable provisions of the Vehicle and Traffic Law and the Traffic Regulations ("traffic laws"), including registration and licensing requirements. Although registration and licensing provisions do not apply to bicycles, persons riding bicycles on public streets are subject to many of the same traffic laws as operators of motor vehicles.

If a limited use vehicle is unregistered and/or the operator unlicensed, the vehicle will be removed to the precinct of occurrence, impounded and invoiced. The owner may claim the vehicle on presentation of proof of ownership; however, such owner will be advised that the vehicle may not be operated on public highways until such time as it has been properly registered. The owner may be permitted to make arrangements to have such unregistered vehicle transported by a licensed tow truck to a private premise. Additionally, if the vehicle was seized because the operator was unlicensed, the owner will be issued a summons for violation of section 509(4) of the Vehicle and Traffic Law - "Authorizing Or Permitting An Unlicensed Driver To Operate A Motor Vehicle."

Operators of limited use vehicles and/or bicycles who violate applicable provisions of the traffic law will be issued a summons, provided such individuals are 16 years of age or older. In such cases, a **JUVENILE REPORT SYSTEM WORKSHEET** is NOT required.

When a bicyclist is issued a summons for a violation of the traffic laws, the word "BICYCLE" will be entered in bold print on that portion of the summons designated for the year and make of the vehicle. On the reverse side of both of the yellow motorist's copies of the summons, a line will be drawn through the instructions that direct the violator to answer the summons by mail.

Sustained attention and priority in enforcement should be given to those hazardous violations which are the major causes of most collisions, deaths and injuries on the roadways. The eighteen most **HAZARDOUS VIOLATIONS** are:

- | | |
|----------------------------------------------------------------|---------------------------------------------|
| (1) Over Maximum Speed Limit (Speeding) | (9) Failed to Yield Right of Way to Vehicle |
| (2) Failed to Yield Right of Way to Pedestrian | (10) Improper Turn |
| (3) Disobey Traffic-Control Device | (11) Unsafe Lane Change |
| (4) Driving While Using a Portable Electronic Device (Texting) | (12) Failure to Signal |
| (5) Use of Mobile Telephone (Cellphone) | (13) Overtaking and Passing School Bus |
| (6) Failure to Wear Seatbelt or Use Child Safety Seat | (14) Following Too Closely |
| (7) Reckless Driving | (15) Improper Passing |
| (8) Unlicensed Operator | (16) Backing Unsafely |
| | (17) Tinted Windows |
| | (18) Disobey Steady Red Signal |

Members of the service should be aware that section 207, subdivision 5, of the Vehicle and Traffic Law (Disposing Of A Uniform Traffic Summons), does **NOT** apply to situations where a motorist destroys or discards his/her copy of the summons that was issued by the member of the service. That section is applicable only when someone prevents or interferes with the processing of that part of the summons destined for the adjudicating body (i.e., the "court copy"). Members of the service may, however, issue a Criminal Court summons for littering (Administrative Code section 16-118, [subdivision 1]) in appropriate circumstances.

PATROL GUIDE

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**ADDITIONAL
DATA**
(continued)

A uniformed member assigned to the Highway District may serve a summons for an offense not personally observed but revealed during the course of a collision investigation. When serving such a summons, the member concerned shall draw a line through the statement on the Complaint which reads "I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE."

The issuance of a Criminal Court summons for violation of Penal Law section 240.20 - Disorderly Conduct, at the scene of an incident in which the summoning member is the complainant, occasionally results in a civilian complaint against the member. To verify and document the circumstances of the incident, the summoning member will request the response of the patrol supervisor to the scene whenever:

- a. Physical force/restraint was used by the uniformed member, OR*
 - b. It was necessary to search or handcuff the violator, OR*
 - c. Violator was placed in, or transported from the scene in, a Department vehicle.*
- The patrol supervisor will determine the validity of the charge and:*
- a. Make entry in **ACTIVITY LOG** indicating summoning member's identity and the violator's identity and condition.*
 - b. Direct issuance of summons, if violator is eligible. If the violator is not eligible, process as an arrest as per appropriate Department procedures.*

If the patrol supervisor is not available to respond, the violator will be removed to the command where the desk officer/supervisor will determine the validity of the charge and make an appropriate entry in the Command Log.

**RELATED
PROCEDURES**

*Summonses and Notices of Violation Returnable Agencies (P.G. 209-02)
Quality Control Procedures for the Processing of Summonses Returnable to Criminal Court (P.G. 209-06)*

**FORMS AND
REPORTS**

ACTIVITY LOG (PD112-145)
CERTIFICATION OF MOVING/CRIMINAL COURT SUMMONSES SERVED (PD160-145)
JUVENILE REPORT SYSTEM WORKSHEET (PD377-159A)
SAMPLE CRIMINAL COURT SUMMONS INFORMATIONS (PD260-211)



EXHIBIT 6



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Section: Tactical Operations		Procedure No: 221-01	
FORCE GUIDELINES			
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SCOPE

The primary duty of all members of the service (MOS) is to protect human life, including the lives of individuals being placed in police custody. Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy.

When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death.

In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

All MOS are responsible and accountable for the proper use of force. The application of force must be consistent with existing law and with the New York City Police Department's policies, even when Department policy is more restrictive than state or federal law. Depending upon the circumstances, both federal and state laws provide for criminal sanctions and civil liability against MOS when force is deemed excessive, wrongful, or improperly applied.

Excessive force will not be tolerated. MOS who use excessive force will be subject to Department discipline, up to and including dismissal.

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SCOPE (continued)

Failure to intervene in the use of excessive force, or report excessive force, or failure to request or to ensure timely medical treatment for an individual is serious misconduct that may result in criminal and civil liability and will result in Department discipline, up to and including dismissal. If a member of the service becomes aware of the use of excessive force or failure to request or to ensure timely medical treatment for an individual, the member must report such misconduct to the Internal Affairs Bureau Command Center. This report can be made anonymously.

NOTE

Obtaining a Confidential Identification Number from the Command Center investigator will satisfy the member's reporting responsibility, if the information is accurate and complete. Subsequent or ongoing reporting is encouraged to ensure the information is timely and complete and may be made by referencing the Confidential Identification Number.

DEFINITIONS

DE-ESCALATION - Taking action in order to stabilize a situation and reduce the immediacy of the threat so that more time, options, and/or resources become available (e.g., tactical communication, requesting a supervisor, additional MOS and/or resources such as Emergency Service Unit or Hostage Negotiation Team, etc.). The goal is to gain the voluntary compliance of the subject, when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force.

OBJECTIVELY REASONABLE STANDARD - The reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force. The Department examines the reasonableness of force viewed from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation.

EXCESSIVE FORCE - Use of force deemed by the investigating supervisor as greater than that which a reasonable officer, in the same situation, would use under the circumstances that existed and were known to the MOS at the time force was used.

CHOKEHOLD - A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.

VEHICLE RAMMING ATTACK (VRA) - A form of attack in which a perpetrator deliberately rams a motor vehicle into a crowd of people or building.

PROCEDURE - To provide members of the service with the Department's force/restraint and firearm prohibitions:

PROHIBITIONS

UNIFORMED MEMBER OF THE SERVICE

1. Uniformed members of the service are authorized under New York State law to discharge a firearm to prevent or terminate the unlawful use of force that may cause death or serious physical injury, taking into account the below prohibitions imposed by the Department.

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UNIFORMED MEMBER OF THE SERVICE (continued)

Members of the service SHALL NOT:

- a. Discharge a firearm when, in the professional judgment of a reasonable member of the service, doing so will unnecessarily endanger innocent persons
- b. Discharge firearms in defense of property
- c. Discharge firearms to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to the MOS or another person present
- d. Fire warning shots
- e. Discharge firearm to summon assistance, except in emergency situations when someone's personal safety is endangered and no other reasonable means to obtain assistance is available
- f. Discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the member of the service or another person present, by means other than a moving vehicle
- g. Discharge firearm at a dog or other animal, except to protect a member of the service or another person present from imminent physical injury and there is no opportunity to retreat or other reasonable means to eliminate the threat
- h. Cock a firearm. Firearms must be fired double action at all times.

NOTE

Drawing a firearm prematurely or unnecessarily limits a uniformed member of the service's options in controlling a situation and may result in an unwarranted or accidental discharge of the firearm. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of the service will holster the firearm as soon as practicable.

2. Members of the service SHALL NOT:

- a. Use a chokehold
- b. Use any level of force to punish, retaliate or coerce a subject to make statements
- c. Use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault

NOTE

A Conducted Electrical Weapon (CEW) should never be used in CARTRIDGE or DRIVE STUN mode on a rear-cuffed prisoner as per P.G. 221-08, "Use of Conducted Electrical Weapons (CEW)."

- d. Connect or tie rear-cuffed hands to cuffed or restrained ankles or legs
- e. Transport a subject facedown
- f. Use force to prevent a subject from swallowing alleged controlled substance or other substance, once a subject has placed suspected controlled substance in his or her mouth, or forcibly attempt to remove substance from subject's mouth or other body cavity.

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NOTE

Any violations of the above force prohibitions may be reviewed on a case-by-case basis by the Use of Force Review Board to determine whether, under the circumstance, the actions were reasonable and justified. The review may find that, under exigent or exceptional circumstances, the use of the prohibited action may have been justified and within guidelines (i.e., a "vehicle ramming attack" is the type of extraordinary event that this clause is intended to address. The objectively reasonable use of deadly physical force to terminate a mass casualty terrorist event would be legally justified and within Department guidelines).

Members who are subject to investigation, the subject of disciplinary action, civil action, or a civilian complaint related to a violation of the above prohibitions may submit a request for review of the circumstances to the Use of Force Review Board. The Use of Force Review Board will review the facts and circumstances and make a final determination of whether the force used was reasonable under the circumstances and within guidelines.

When a uniformed member of the service observes or suspects that a prisoner has ingested a narcotic or other dangerous substance, the prisoner will be transported from the place of arrest DIRECTLY to the nearest hospital facility.

