



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

Office of Special Investigation

July 20, 2022

# Report on the Investigation into the Death of Jeffrey McClure

## SUMMARY

### Jurisdiction

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.”<sup>1</sup> After a member of the Suffolk County Police Department (“SCPD”) shot Jeffrey McClure, causing his death, on June 7, 2020, Governor Cuomo issued Executive Order No. 147.37, conferring jurisdiction on the Attorney General to investigate any potential unlawful acts or omissions by law enforcement related to Mr. McClure’s death.<sup>2</sup>

### Summary of Facts

Mr. McClure’s father called 911 because, he said, his son was shooting a pellet or BB gun<sup>3</sup> in the house and threatening his family. Mr. McClure’s father said his son was experiencing a mental health crisis and was under the influence of alcohol and drugs. When the police got to the McClure house, they found Mr. McClure in the living room holding what they later learned was an air rifle. He pointed it at the officers and threatened to shoot them. The officers told Mr. McClure to put the weapon down, but he ran away from the officers to the basement, where, family members told the officers, a safe held other firearms. When the officers went to the basement stairs Mr. McClure again pointed the air rifle at them and threatened them. Mr. McClure went from the basement to the backyard where he again pointed the air rifle at the officers and threatened to shoot them. The officers lost sight of Mr. McClure. While the officers searched for Mr. McClure in the backyard, Mr. McClure appeared on the roof of the house, pointed his air rifle at the officers and threatened to kill them. PO Alfredo Alvarado fired and struck Mr. McClure once in the neck and once in the hip. Mr. McClure died from the bullet wound to his neck.

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<sup>1</sup> New York Executive Law Section 70-b, which supersedes Executive Order 147, took effect on April 1, 2021. Because this incident occurred prior to April 1, 2021, the OAG’s jurisdiction falls under Executive Order 147.

<sup>2</sup> A copy of Executive Order No. 147.37 is attached as Exhibit 1

<sup>3</sup> While on the phone with the 911 operator and while speaking with the officers at the scene, Mr. McClure referred to the weapon in his son’s possession variously as a BB gun, a pellet gun, and a pellet rifle. The gun the SCPD recovered when Mr. McClure died was an air rifle. The distinctions among these weapons relate to ammunition type and barrel type, see [here](#). While uncommon, pellets can cause death if an individual is struck in a vulnerable part of the body (e.g., eye, abdomen, soft tissue, etc.). The U.S. Consumer Product Safety Commission [reports](#) 4 deaths per year caused by BB guns or pellet rifles. Most injuries or fatalities from these guns occur among youths and result from accidents or product defects (see [California Senate Report on Pellet Guns and BB Guns](#)).

## Summary of Investigation

The Attorney General's investigation included:

- Review of surveillance video from the McClures' house
- Review of audio recordings of 911 calls and radio communications of SCPD members who responded to the incident and SCPD radio dispatch
- Interviews of SCPD members present at the incident<sup>4</sup>
- Interviews of SCPD homicide detectives who investigated the incident
- Interviews of civilian witnesses
- Review of the autopsy report from the Suffolk County Office of the Medical Examiner
- Review of SCPD paperwork generated in connection with this incident<sup>5</sup>

## Conclusion

Based on the investigation, the prosecution would not be able to disprove beyond a reasonable doubt at trial that PO Alvarado was justified under New York law, Penal Law Article 35, in using deadly physical force against Mr. McClure. Although criminal charges are not warranted, we offer recommendations in the final section of this report to prevent tragedies like Mr. McClure's death in the future.

## FACTS

### A. Events Leading to Law Enforcement Response

On the evening of June 7, 2020, Mr. McClure, who was 26 years old, returned to his parents' residence at 23 Grant Street, East Northport, Suffolk County, where he lived. In interviews with members of the Office of the Attorney General ("OAG"), Mr. McClure's mother, LM,<sup>6</sup> said Mr. McClure was "going off the wall." Mr. McClure's father, DM, said he returned home "all fucked up" and smelling of booze. LM and DM said he seemed depressed and suicidal, but that he was not on medication.

JT, Mr. McClure's friend, was staying at the house, in Mr. McClure's basement bedroom. In interviews with OAG, JT said Mr. McClure had psychological problems. JT said, on the

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<sup>4</sup> OAG interviewed the following officers: PO Alfredo Alvarado, PO Michael Guido, PO Christopher Casais, PO Amanda Lorber, PO Steven Capogna, PO Jeffrey Fong PO Thomas Phelan, PO Vincent Pedone, PO John Martins, Lt. Christopher Mills, Sgt. Jonathan Jumgen, and Detective Daniel Murphy.

<sup>5</sup> OAG reviewed the supplemental reports filed by these officers: PO Alfredo Alvarado, PO Michael Guido, PO Christopher Casais, PO John Martins, and PO Vincent Pedone.

<sup>6</sup> Civilian witnesses are identified by initials to protect their privacy.

evening of his death, Mr. McClure yelled at JT, smashed an ashtray, and shot at the ceiling of the living room with the BB gun.

LM told OAG that, prior to the officers' arrival, Mr. McClure pointed the gun at himself and said he would hang himself from the rafters. DM and JT told OAG they could hear Mr. McClure breaking things in the basement, and that he came out of the basement with his feet bleeding; they said he yelled at his mother and pushed her. Mr. McClure's next-door neighbor, DM2, told OAG she heard loud yelling coming from the McClure residence between 6:30 and 7:30 PM and heard the "pipping" sound of an air pellet in the McClures' backyard.

DM called 911<sup>7</sup> and said his son was "going berserk" and shooting a BB gun in the backyard; that he had not been diagnosed with a mental condition but had a history of mental problems and said he wanted to go to a mental hospital. The 911 operator said since Mr. McClure did not have a medical diagnosis the situation was "domestic." The operator asked if his son would be a problem with the police; DM said he did not know and did not know whether his son would shoot at the police, as he was "trumped up on something." DM said he suspected his son had been drinking alcohol and possibly doing cocaine or crack. The operator said it was a drug and alcohol problem and not a mental problem. DM said his son was pounding on something and shooting the pellet gun inside the house. DM said he was afraid to go inside the house and hoped his wife, who was inside the house, was safe. DM said he was positive his son only possessed a BB gun, and, while there were other weapons in a safe, his son could not open it.

The 911 dispatcher transmitted a call for police response to the McClure house, reporting a 26-year-old male had been asking to go to a mental hospital, was drinking and possibly doing drugs, and shooting a BB gun in the backyard. The police responded to the scene and the 911 operator told DM to tell the officers about the pellet gun.

## **B. Police Response to the McClure House**

PO Christopher Casais of the SCPD was the first officer to arrive. The 911 recording captures DM telling PO Casais his son is shooting a pellet rifle inside with his wife, has been threatening the family all night, is drunk, might be on something, and destroyed the house. PO Casais said in his supplemental report DM also told him that Mr. McClure was threatening to kill himself. PO Michael Guido, PO Steven Capogna, and PO Amanda Lorber, all of SCPD, arrived. In their written reports and interviews with OAG, the four officers said they approached the house and could hear loud noises inside; PO Guido said in his report that LM opened the door and said her son had a gun.

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<sup>7</sup> Link for the 911 call may be found [here](#).

PO Casais said in his report he saw Mr. McClure holding what “looked like a hunting rifle which was pointed downward” and that he (PO Casais) pointed his Taser at Mr. McClure and ordered him to drop the weapon. JT, who was in the living room, told OAG he heard officers with Tasers order Mr. McClure to drop the weapon.

The McClure residence had surveillance cameras throughout the outside of the house. The aerial photo below depicts the view of each camera channel.<sup>8</sup>

PO Casais and PO Guido said in their reports Mr. McClure raised his weapon and shouted he was going to shoot them; PO Casais and PO Guido retreated to the outside. PO Capogna and PO Lorber were behind the other officers, still outside the house, and told OAG they saw PO Casais and PO Guido jump back and shout that Mr. McClure had a gun. Video surveillance



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<sup>8</sup> There were eight video surveillance channels and seven video cameras; however, only six of these cameras recorded. Suffolk County Homicide Detectives reported that the camera for channel 6 did not record and there was no video camera for channel 8. The following surveillance channels are linked: [Channel 1](#), [Channel 2](#), [Channel 3](#), [Channel 4](#), [Channel 5](#) and [Channel 7](#). The timestamp on the video appears to be approximately thirteen (13) hours behind local time.

(minute 9:19) confirms officers jumped back from the front door and appeared to shout orders from outside the house. LM told OAG, however, that Mr. McClure did not raise the air rifle at the officers.

The officers told OAG they continued to order Mr. McClure to drop the weapon from outside the house. In his supplemental report, PO Guido said he saw LM attempt to grab the barrel of Mr. McClure's weapon and wrest it away, but Mr. McClure went to another room of the house, calling out that he was going to kill someone. The four officers reentered the house and PO Guido shouted to Mr. McClure to come out with his hands raised. LM told PO Guido Mr. McClure had gone to the basement. PO Guido and PO Casais told OAG that LM told them there was a safe in the basement with weapons and ammunition and that she was not sure if Mr. McClure could open it. LM told SCPD homicide detectives she had told the officers there was a gun locker in the house when they arrived. LM told OAG she could not recall if she had spoken to the police when they entered the house.

PO Guido and PO Casais told OAG they went to the head of the basement stairs while PO Capogna and PO Lorber stayed in the living room with LM. PO Casais said PO Guido yelled from the top of the stairs for Mr. McClure to put down the weapon. PO Guido and PO Casais said in their reports that Mr. McClure appeared at the bottom of the stairs, pointed the rifle at PO Guido and shouted that he was going to shoot him; PO Guido jumped back from the stairs and hid behind the kitchen wall while shouting at Mr. McClure to drop the weapon. PO Capogna told OAG he recalled someone shouting, "he pointed a gun at me."

Video surveillance from the backyard shows Mr. McClure using the basement door to go to the backyard (video surveillance channel 5 at minute 9:20:27). PO Lorber told OAG she saw Mr. McClure walking in the backyard and pointing a gun through a window in the house. PO Guido made a radio request for the Canine Unit ("K-9"), saying, "We have a subject with, umm, supposedly a pellet gun, I'm not sure."<sup>9</sup> PO Guido later told OAG he could not be sure if Mr. McClure's weapon was a BB gun as Mr. McClure's gun had a bigger opening in the barrel than a BB gun. The officers also requested assistance from Emergency Services and aviation.

PO Guido opened a sliding glass door to the backyard and shouted that K-9 was on the way and that Mr. McClure should put down his weapon and come out with his hands raised. PO Guido stepped onto the deck as Mr. McClure emerged from the north side of the yard. PO Guido said in his report that Mr. McClure pointed his weapon at him and threatened to shoot (video surveillance channel 5 at minute 9:20:55). PO Guido can be heard on the radio transmission shouting, "He's pointing it at me! Don't point the gun at me!" (This portion of the radio transmission starts at minute 5:40). PO Guido said in his report that he jumped back inside the house and shouted to the other officers that Mr. McClure was in the

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<sup>9</sup> Link to radio transmissions can be found [here](#). This portion of the transmission starts at minute 5:30.

backyard with his weapon, had threatened to shoot him, and that his mother was unsure if he had access to the other weapons. PO Guido shined his flashlight in the backyard and Mr. McClure was still standing outside with his rifle raised in a shooting stance (video surveillance channel 5 at minute 9:21:08). PO Guido told OAG he did not fire at Mr. McClure because he and his fellow officers were able to take cover or retreat each time Mr. McClure threatened them.

PO Alvarado said in his supplemental report that he arrived at the house a few minutes after the requests for additional assistance and heard PO Guido over the radio shouting that Mr. McClure pointed a gun at him (video surveillance channel 3 at minute 9:24:36). PO Alvarado's assignment that evening was the rifle unit, which responds to weapons and active shooter calls.<sup>10</sup>

PO Capogna said in his report he informed PO Alvarado that Mr. McClure had a gun and, although they had lost sight of him, he could be in the backyard with PO Guido and PO Casais. PO Alvarado and PO Guido said in their supplemental reports that PO Guido warned PO Alvarado that Mr. McClure's rifle looked like the assault rifle PO Alvarado was carrying. PO Alvarado said in his report that he went into the backyard after PO Guido told him an armed white male had pointed a rifle at him and other officers on the scene several times.

### **C. Confrontation on the Roof**

PO Guido, PO Alvarado, and PO Casais left the house to search the backyard for Mr. McClure (video surveillance channel 5 at minute 9:24:41). PO Alvarado turned on his rifle's flashlight attachment. PO Casais escorted LM out of the backyard and into the house through the front door (video surveillance channel 5 at minute 9:25:50). LM told OAG she saw her son climb to the roof before the officers took her into the house. PO Alvarado told OAG LM told him there was a gun safe containing other firearms. LM told OAG she told the officers her son had no access to the weapons in the safe.

PO Guido told OAG he heard a noise on the roof, saw Mr. McClure on the roof, and alerted PO Alvarado. POs Guido and Alvarado told OAG Mr. McClure then pointed his rifle at PO Alvarado, who said Mr. McClure shouted, "You want to point that gun at me, I'm going to kill you." PO Guido said Mr. McClure shouted, "If you point your gun at me I will shoot you." PO Guido and PO Alvarado said in their reports they shouted to Mr. McClure to drop his weapon and, when Mr. McClure did not do so, PO Alvarado fired at Mr. McClure. In his written statement, PO Alvarado said he feared for his and the other officers' safety and fired until he believed Mr. McClure was no longer a threat. PO Alvarado struck Mr. McClure once in the neck and once in the hip (video surveillance channel 5 starting at minute 9:25:53).

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<sup>10</sup> Officers assigned to the rifle unit receive training every three months and must shoot with 90% accuracy.

PO Casais said in his report he heard PO Alvarado and PO Guido shouting to Mr. McClure to drop his weapon and saw PO Alvarado fire several shots. PO Capogna, who was at the front of the house, told OAG he heard shouts of “Don’t point that gun at me or you will get shot” and “Drop the gun” right before hearing the gunshots. JT, who was in the living room during the entire incident, told OAG he heard the police yell “Drop the gun” before hearing gunshots.

#### **D. Investigation at the Scene**

PO Guido and PO Jeffrey Fong called for medical attention for Mr. McClure. PO John Martins and PO Thomas Phelan climbed the ladder next to the roof where they found Mr. McClure lying face down. PO Martins, who is a certified New York State Emergency Medical Technician (“EMT”), determined Mr. McClure had no pulse and was not breathing. PO Martins and PO Phelan remained on the roof until EMT Andrew Willis of the East Northport Fire Department arrived. EMT Willis confirmed Mr. McClure had no pulse and was not breathing and pronounced him dead. All three saw a black rifle at Mr. McClure’s feet.

PO Alvarado gave his rifle to PO Vincent Pedone of the SCPD, who secured it. Ballistics testing found 18 live cartridges still in the rifle. Crime scene recovered seven spent shell casings in the backyard. A microscopic comparison confirmed the casings were from PO Alvarado’s rifle. Ballistics found Mr. McClure’s gun was an operable Crossman .177 pellet caliber spring/air pellet rifle, model CBNP17SZ, serial number 714X23307.

Detectives got the key to the basement gun safe from DM and recovered: a Remington 12-gauge shotgun, two Remington green shotgun shells, one Winchester red shotgun shell, one 20-gauge Remington shotgun, one Remington .22 long rifle model 597 with a scope, nine antique firearms, additional shotgun shells, about 600 rounds of 20-gauge ammunition, and about 1,000 long rifle .22 caliber rounds of ammunition.

#### **MEDICAL EXAMINER’S REPORT**

Dr. Ruth E. Kohlmeier of the Suffolk County Office of the Medical Examiner (SCOME) performed an autopsy of Mr. McClure on June 8, 2020. Prior to issuing the autopsy report<sup>11</sup> Dr. Kohlmeier reviewed SCOME’s toxicology report and conferred with members of SCPD Homicide Squad.

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<sup>11</sup> A copy of the first page of Mr. McClure’s autopsy report is attached as Exhibit 2, with appropriate redactions to protect Mr. McClure’s privacy. A complete copy of the autopsy report has been provided to Mr. McClure’s family.

Toxicology testing detected tetrahydrocannabinol (or THC, the psychoactive component of cannabis) in Mr. McClure's blood, and a blood alcohol level of 0.23, nearly three times the legal alcohol limit of 0.08.

According to the autopsy report, the cause of Mr. McClure's death was "rifle wound of the neck and chest." The fatal gunshot entered the left side of Mr. McClure's neck and traveled to Mr. McClure's right lung, where the bullet was recovered. The bullet caused fractures to Mr. McClure's left clavicle, left rib #1, lower cervical vertebrae, and upper thoracic vertebrae. The bullet traveled through Mr. McClure's left carotid artery, left jugular vein, the soft tissues of the left side of his neck, left subclavian artery and vein, the upper lobe of the left lung, and the thoracic aorta. According to the autopsy report, Mr. McClure was also shot in his left hip, which was not fatal. There was no soot or powder tattooing at either entry wound, indicating Mr. McClure was not shot at close range. The report noted Mr. McClure suffered other injuries, including abrasions to his nose, right upper arm, fingers, and lower extremities; contusions to chest, right arm, left arm, and lower extremities; and burn markings on his chest.<sup>12</sup>

New York State Public Health Law §414333(3) requires the Medical Examiner to designate a death "accidental, suicidal, or homicidal." As PO Alvarado's shooting of Mr. McClure was the cause of death, Dr. Kohlmeier designated the manner of death as "homicide." The determination in an autopsy that the manner of death is "homicide" is a medical determination that the death was caused by another person, not a legal determination that the death was wrongful.

### **LEGAL ANALYSIS**

New York Penal Law ("PL") Article 35 sets forth the defense of justification. Justification is a defense, not an affirmative defense: if there is evidence at trial sufficient to raise the defense of justification, the burden is on the People to disprove justification beyond a reasonable doubt. People v. Steele, 26 N.Y.2d 526 (1970).

In this case, PO Alvarado used deadly physical force. Under PL Section 10.00(1) "deadly physical force" is "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." Under PL Section 10.00(10) "serious physical injury" is "physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ."

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<sup>12</sup> The investigation did not uncover information indicating how Mr. McClure sustained these other injuries.

PL Section 35.15 is the general provision defining justification when force is used in defense of a person. PL Section 35.30 is the provision defining justification when a police officer or peace officer uses force to effect or attempt to effect an arrest. Based on the evidence in this investigation, the prosecution would not be able to disprove at trial beyond a reasonable doubt that PO Alvarado's use of deadly physical force was justified under either provision.

#### Justification under PL Section 35.30

When PO Alvarado fired at Mr. McClure, he and the other officers had reason to arrest Mr. McClure, could have reasonably believed he might imminently use deadly physical force against the officers, and could have reasonably believed that deadly physical force was necessary to defend them.

The officers at the house could have reasonably believed Mr. McClure was committing offenses, including Criminal Possession of a Firearm, P.L. 265.01-b, Criminal Possession of a Weapon in the Fourth Degree, P.L. 265.01(1) and 265.01(2), and Menacing in the Fourth Degree, P.L. 120.14(1).

PL Section 35.30(1) provides:

“A police officer or a peace officer, in the course of effecting or attempting to effect an arrest ... of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest ... or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that ... (c) regardless of the particular offense which is the subject of the arrest ... the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.”

Police officers using force pursuant to PL Section 35.30(1) are under no duty to retreat. PL Section 35.15(2)(a)(ii).

Under Section 35.30(1) “reasonable belief” means the officer actually believed, “honestly and in good faith,” that physical force was about to be used against him and that physical force was necessary for self-defense, and that a “reasonable person” under the same “circumstances” could have believed the same. People v. Goetz, 68 N.Y.2d 96 (1986); People v. Wesley, 76 N.Y.2d 555 (1990).

PO Alvarado said in his written report he needed to shoot Mr. McClure to defend himself and PO Guido from being shot by Mr. McClure. The evidence set forth in the previous section of this report shows PO Alvarado could have believed this, and that the belief would have been reasonable.

First, Mr. McClure's gun resembled a real firearm. Below is a side-by-side comparison of PO Alvarado's assault rifle and Mr. McClure's gun:

PO Alvarado's rifle



Mr. McClure's Air Rifle



Over the radio, PO Guido said, "We have a subject with, umm, supposedly a pellet gun, I'm not sure." PO Alvarado said in his report that, prior to arriving on the scene, he heard PO Guido over the radio say, "He's pointing a gun at me." PO Alvarado also said in his report that, upon arriving at the scene, PO Guido told him Mr. McClure had a rifle that appeared similar to PO Alvarado's rifle. PO Alvarado lawfully relied upon the information provided by his fellow officer. People v. Ketcham, 93 N.Y.2d 416 (1999) (holding that information received from another police officer is presumptively reliable to establish probable cause, and that an officer may make a lawful arrest, even if he lacks personal knowledge, if he acts upon the direction or communication with a fellow officer).

Mr. McClure's parents told the officers on the scene there were real firearms in a gun safe in the basement, though Mr. McClure's father told the 911 operator that Mr. McClure could not open the safe and Mr. McClure's mother later said she told the officers Mr. McClure could not open the safe. A subsequent search confirmed the safe and its contents.

Mr. McClure repeatedly threatened to shoot or kill someone while holding the weapon, including when pointing the weapon at PO Alvarado and PO Guido as he stood on the roof. In fact, Mr. McClure showed he knew PO Alvarado was holding a lethal weapon when he said,

“You want to point that gun at me, I’m going to kill you” (according to PO Alvarado), or “If you point your gun at me I will shoot you” (according to PO Guido). Despite this awareness, Mr. McClure was threatening to kill PO Alvarado with his weapon, which could have reasonably indicated to PO Alvarado that Mr. McClure’s weapon was a real firearm.

Under the law, Mr. McClure’s being armed only with an air rifle would not render PO Alvarado’s belief unreasonable. The law does not require “that an actor’s belief as to the intention of another person to inflict serious injury be correct in order for the use of deadly force to be justified,” but it does require “that the belief comport with an objective notion of reasonableness.” People v. Goetz, 68 N.Y.2d 96, 107 (1986). In People v. Haste, 40 Misc.3d 596 (Sup. Ct., Bronx Co., 2013), the court said finders of fact should be instructed to focus their deliberations on the reasonableness of the officer’s belief that the use of deadly physical force was necessary to defend himself. A person who reasonably believes another is about to use deadly physical force need not wait until he is struck or wounded. He may be the first to use deadly physical force, so long as he reasonably believed it was about to be used against him. People v. Valentin, 29 N.Y. 3d 57 (2017).

#### Justification Under PL Section 35.15

Even if the officers had not been attempting to arrest Mr. McClure under PL Section 35.30, the justification provision relating to police officers making an arrest, the prosecution would not be able to disprove at trial beyond a reasonable doubt that they were justified in using deadly physical force under PL Section 35.15, the general provision justifying use of force.

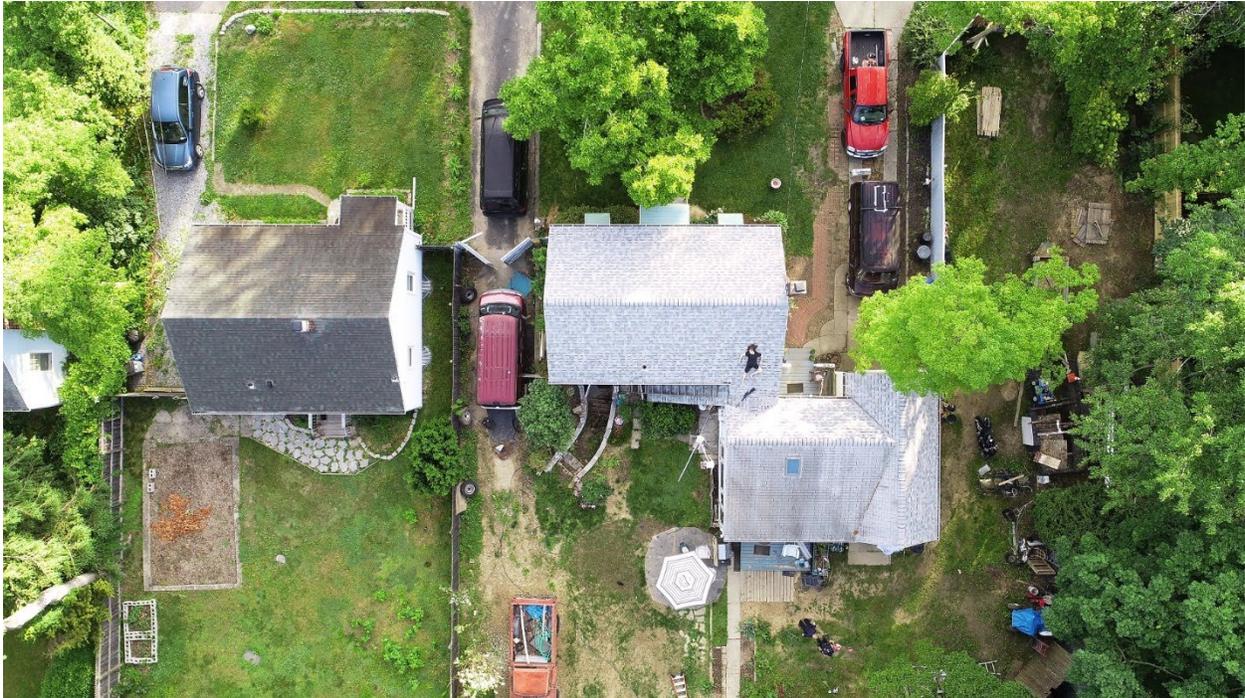
Subdivision (1) of PL 35.15 states a person may:

“use physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person.”

However, under Subdivision (2) of the same Section, a person may not use deadly physical force unless the person:

“reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not use deadly physical force if he or she knows that with complete personal safety to oneself and others he or she may avoid the necessity of so doing by retreating, except that the actor is under no duty to retreat if he or she is ... (ii) a police officer ... acting pursuant to section 35.30.”

Unlike PL Section 35.30, PL Section 35.15 imposes a duty to retreat, and, in the action prior to the shooting, officers did in fact many times retreat from Mr. McClure. However, in the final confrontation, when Mr. McClure stood on the roof, pointed his gun at PO Alvarado and PO Guido, and threatened to shoot or kill them while they stood in the open backyard, PO Alvarado could have reasonably believed there was no place to which he and PO Guido could quickly take cover or retreat. This is supported by an aerial photo of the open McClure backyard.



As discussed above, based on PO Alvarado’s observation that Mr. McClure possessed a firearm, his hearing Mr. McClure’s threats to shoot or kill him and PO Guido, and the information given to him by officers via radio transmission and in person, PO Alvarado could have reasonably believed that Mr. McClure was about to use deadly physical force against him and PO Guido, and that he needed to use deadly physical force to protect himself and PO Guido. Moreover, given his position in the open yard, PO Alvarado could have been unable to “know[] that with complete personal safety to [him]self and others he” could have “avoid[ed] the necessity of” using deadly physical force “by retreating.” Therefore, given the evidence, the prosecution would not be able to disprove at trial beyond a reasonable doubt that PO Alvarado’s actions were justified under PL Section 35.15 or PL Section 35.30.

## **RECOMMENDATIONS**

### **SCPD should enhance its program for mental health responses and officer training for such responses**

OAG recommends that SCPD enhance its county-wide program for responding to 911 reports of persons experiencing mental health crises; provide officers with the means to be in touch with mental health professionals when responding to persons experiencing mental health crisis; and better train its officers to engage with persons experiencing such crises, to make tragedies like Mr. McClure's death less likely.

Chicago, Houston, Los Angeles, and other cities have co-responder teams of police officers and mental health professionals responding together to mental health calls. The mental health professional tries to assist the person experiencing the mental health crisis while the officer addresses safety.<sup>13</sup> In the current case, such a team approach may have made a difference.

After the death of Mr. McClure, SCPD created the Behavioral Health Section and took many steps to improve its responses to mental health crises as part of the Suffolk County Police Reform and Reinvention Plan. SCPD's 911 Mental Health Call Diversion program ("MHCD") diverts "low-level, non-emergent 911 calls of persons in need of behavioral health services to mental health professionals." Emergency Complaint Operators determine whether to divert a call concerning a behavioral or mental crisis to a Mobile Crisis Team ("MCT")<sup>14</sup> of licensed nurses, psychologists and/or social workers, who join SCPD at the scene of possible mental health emergencies. This program, which was initially limited to certain days, times, and locations, is now county-wide and operates 24 hours a day, 7 days a week. However, its guidelines bar use of MCTs for domestic incidents, except when a parent calls 911 for a juvenile who is misbehaving. Notably, the 911 operator in the present case told Mr. McClure's father he was reporting a "domestic" incident, despite the obvious indicators of mental health crisis he related.

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<sup>13</sup> Other mental health response programs have been piloted in the United States, such as Crisis Assistance Helping out on the Streets ("[CAHOOTS](#)"). Under the CAHOOTS model, a two-person team of a medic and a crisis team worker responds to nonviolent mental health crises, relying on de-escalation and harm reduction techniques. In the McClure case, a CAHOOTS team would not have responded as there was a potential for violence. This is why officers should be trained in de-escalation.

<sup>14</sup> The Emergency Complaint Operator ("ECO") may choose one of three paths: (1) divert the call to the Diagnostic, Assessment and Stabilization Hub ("DASH") to offer mental health services to persons with substance abuse, mental illness, or other stressors, who do not meet criteria for psychiatric commitment; (2) send the call only to SCPD; or (3) dispatch the MCT, accompanied by an SCPD officer. The ECO may not divert calls to DASH for mental health emergencies, medical emergencies, crime victims, or domestic incidents. If the ECO sends a call to DASH, DASH will determine whether to dispatch the Mobile Crisis Team or a police-only response.

Therefore, OAG recommends MHCD be expanded to any kind of incident, including “domestic” incidents.

As noted, MHCD is limited to “low-level, non-emergent 911 calls.” SCPD will not divert a call to MHCD if violence is anticipated or weapons are suspected to be present. Therefore, it is critical that SCPD officers themselves be trained to handle mental health crises.

As part of the Suffolk County Police Reform and Reinvention Plan, SCPD now provides officers with Crisis Intervention Team (CIT) Training. CIT Training is a five-day course, involving law enforcement, mental health providers and consumers, and other community stakeholders. It includes training in identifying subjects in emotional distress, mental illness, and recovery; suicide assessment and intervention; mood/personality disorders, substance use disorders, and developmental disabilities; and communications and enhanced de-escalation techniques.

However, as of this report, only 20% of SCPD officers have been trained in CIT. Officers who are dispatched to an incident involving a person experiencing a mental health crisis may request the assistance of a CIT trained officer to assist. As only 20% of SCPD are CIT trained, it may prove difficult or time-consuming for a CIT trained officer to respond to the scene in a timely manner.

Therefore, OAG recommends that SCPD provide CIT training to all officers. As every officer in SCPD is armed with a firearm, OAG recommends that every officer also be armed with the de-escalation tools to avoid using his or her firearm. Until all officers have been trained in CIT, OAG recommends that there be several CIT trained officers and supervisors working every shift in each command.

In addition to CIT training, officers responding to mental health emergencies need to be able to call upon additional resources. SCPD has a dedicated phone line to Family Service League Inc (FSL), and mental health professionals from FSL can send a link to an officer’s SCPD issued cellphone – but only twenty SCPD officers are equipped with department issued cellphones to access this resource.

Therefore, OAG recommends that SCPD give all officers access to the FSL services.

**SCPD Should Improve Its Tactical Response Procedures:**

Only nine minutes passed from the time the first officer arrived at the McClure house until the time PO Alvarado shot and killed Mr. McClure. Upon arrival, the first responding officers did not await the arrival of a supervisor, or attempt to set up a safe perimeter, or clear the McClure house and yard of persons who might be at risk, including Mr. McClure’s mother

and father, who were in and about the house and yard the entire time, and Mr. McClure's friend JT, who was in the house the entire time.

In emergency situations where a supervisor is not on scene in a timely manner, patrol officers should be trained to designate one officer as being in charge, who could direct such preliminary actions as securing means of egress, establishing a perimeter, clearing the secured area of civilians, and identifying family members, clergy members, or mental health providers who might be able to assist.

Similarly, the first responding officers did not attempt to isolate Mr. McClure in the house and identify and prevent avenues of escape. In cases when it is not possible to prevent the movement of the subject, on-scene officers should at least ensure the subject cannot place himself at a tactical advantage, as Mr. McClure did by placing himself at a position elevated from the responding officers.

Such actions would have permitted the responding officers to "slow down the clock," giving them time to obtain and share the clearest possible information from Mr. McClure's parents as to whether Mr. McClure possessed a real firearm or had access to real firearms; time to await the arrival of a supervisor to take control of the situation; time to formulate a plan for apprehending Mr. McClure – possibly without bloodshed; and time to await the arrival of additional resources, such as a trained negotiator to speak to Mr. McClure by cell phone or loudspeaker in an attempt to de-escalate the situation.

Recognizing that the large geographical area of Suffolk County may impede the timely arrival of a trained negotiator, or of specialized tactical units, OAG recommends that SCPD train patrol officers as negotiators and to equip them with and train them in the use of basic tactical gear such as ballistics shields and less lethal devices – to buy time. At least one officer with such training should be assigned to each precinct on each shift.

OAG recognizes hindsight is always clear, and that, in reality, emergencies are dynamic and often difficult to manage – even for specially trained officers. Moreover, even a perfect tactical response in a dangerous and volatile situation may not end with a good result. However, SCPD should improve its emergency response training, so that officers are trained to clear persons at risk away from a dangerous area, to slow down the clock, await the arrival of a supervisor and specialized officers, and to develop a plan whenever possible. Without such an approach, situations may rapidly deteriorate and the other recommendations in this report – for training in de-escalation and access to and deployment of mental health resources, even if fully implemented by SCPD – will be of no use.

## SCPD Should Outfit its Officers with Body-Worn Cameras

SCPD has informed OAG that in July 2022 it will commence a pilot program in the 7<sup>th</sup> precinct in which all uniformed police officers will be outfitted with body worn cameras (“BWC”s). SCPD plans to have all uniformed police officers in Suffolk County outfitted with BWCs by the fall of 2022. Prior to outfitting the officers, SCPD will train them on how to use their BWCs. SCPD aims eventually to outfit all officers, including detectives and superior officers, with BWC. OAG has previously issued eight reports recommending police departments equip officers with BWCs and/or dashboard cameras.<sup>15</sup> Videotaped evidence would have facilitated the investigation of this case. This case had home video surveillance footage (though without audio), but not every case will have this, and investigations should not depend on third party video. BWC footage would have provided clearer images, with audio, and would have presented the events as witnessed by the responding officers.

July 20, 2022

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<sup>15</sup> New York State Office of the Attorney General Special Investigations and Prosecutions Unit, Reports of Investigations into the Deaths of the following persons (and when issued), which are available on the Attorney General’s public website: Miguel Espinal (December 2016), Richard Gonzalez (March 2017), Edson Thevenin (December 2017), Wardel Davis III (January 2018), Walter Perez (February 2019), Robert Scott (May 2019), Jaime Lopez-Cabrera (October 2019), Evgeniy Lagoda (April 2020) and Tina Davis (January 2021).

# EXHIBIT 1



# State of New York

## Executive Chamber

No. 147.37

### 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 - 147.36 to read as follows:

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

(kk) 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 other way connected with the death of Jeffrey McClure on June 7, 2020, in Suffolk County.



GIVEN under my hand and the Privy Seal of the  
State in the City of Albany this  
fifteenth day of July in the year two  
thousand twenty.

BY THE GOVERNOR

  
Secretary to the Governor



# EXHIBIT 2



SUFFOLK COUNTY, NEW YORK  
OFFICE OF THE MEDICAL EXAMINER



REPORT OF AUTOPSY

NAME: JEFFREY MICHAEL McCLURE

ME#: 2020-04690

PERFORMED BY: Ruth E. Kohlmeier, M.D.

DATE: June 8, 2020

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AUTOPSY FINDINGS

- I. Rifle Wound of the Neck and Chest (Rifle Wound A)
  - A. Entrance wound of the neck, distant range of fire
  - B. Perforating injuries of the left carotid artery, the left jugular vein, the subclavian artery and vein, and the soft tissues of the neck
  - C. Fractures of the left clavicle and left rib #1
  - D. Multiple fractures of the vertebrae (cervical and upper thoracic)
  - E. Perforating wound of the lower cervical spinal cord
  - F. Perforating wound of the thoracic aorta
  - G. Perforating and penetrating wounds of the lungs
  - H. Blood aspiration into the lungs
  - I. Bilateral hemothoraces (left chest: 650 cc; right chest: 1000 cc)
  - J. Projectile and fragment recovered from the right lung
  - K. Path of the bullet is front to back, left to right, and downward
- II. Rifle Wound of the Left Hip (Rifle Wound B)
  - A. Entrance wound of the left lateral hip region, distant range of fire
  - B. Bullet traveled in the soft tissues of the left hip and buttock
  - C. Projectile recovered in the subcutaneous tissue of the lower back
  - D. Path of the bullet is front to back, left to right, and upward
  - E. Non- fatal wound
- III. Shrapnel-type injuries of the right arm, non-fatal
- IV. Multiple abrasions and contusions of the body, non-fatal

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CAUSE OF DEATH: RIFLE WOUND OF THE NECK AND CHEST

MANNER OF DEATH: HOMICIDE

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I HEREBY CERTIFY THAT THIS IS  
A TRUE AND CORRECT COPY.

*Virginia Falcone*