

**Special Investigations and  
Prosecutions Unit**

**Report on the Investigation into  
The Death of Michael Wallace**



**Letitia James  
NYS Attorney General**

## Executive Summary

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (the “Executive Order”), appointing the Attorney General as a special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian...caused by a law enforcement officer.” At approximately 8:30 a.m. on March 24, 2020, Michael Wallace, an unarmed civilian, was shot and killed by a uniformed member of the Schenectady Police Department in his residence in the Joseph Allen Apartments located at 780 Albany Street in the City of Schenectady, Schenectady County. Governor Cuomo subsequently issued Executive Order No. 147.34,<sup>1</sup> which expressly conferred jurisdiction upon the Office of the Attorney General (“OAG”) to investigate any potential unlawful acts or omissions by any law enforcement officer relating to Mr. Wallace’s death.

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

- All Schenectady Police Department (“SPD”) and New York State Police (“NYSP”) paperwork relating to the incident, including the original incident report, a comprehensive Forensic Investigations Unit (“FIU”) report, witness depositions, and Emergency Medical Services (“EMS”) records;
- All reports generated by the NYSP Forensic Investigations Center documenting the results of DNA testing;
- 911 recordings, radio transmissions, audio and video recordings from body-worn cameras, surveillance video recordings, multiple items of physical evidence, and more than 700 photographs;
- Mr. Wallace’s hospital and other medical records;
- Autopsy report from pathologist Dr. Michael Sikirica and toxicology report from NMS Lab; and
- Interviews by OAG staff of police and civilian witnesses.

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<sup>1</sup> EO 147.34 is attached as Exhibit 1.

On March 24, 2020 at approximately 5:20 a.m., the Schenectady County 911 received a call from an individual who identified himself as Michael Wallace and spoke in a confused manner. The 911 operator advised Mr. Wallace, who lived in the Joseph Allen Apartments at 780 Albany Street in Schenectady, that a police officer would be there shortly to meet with him. Two SPD officers responded to the location and went up to the second-floor apartment occupied by Mr. Wallace and his fiancé, K.A. The officers knocked on the door and were eventually admitted to the apartment. When the officers asked Mr. Wallace why he had called 911, Mr. Wallace began to speak non-responsively and in a nonsensical manner. One of the officers then spoke with K.A., who indicated that this was common behavior for Mr. Wallace. After Mr. Wallace assured the officers that he did not want to hurt himself, and K.A. stated that she was “good with him,” the officers left.

Nearly three hours later, at approximately 8:11 a.m., Schenectady County 911 received a call from a security guard at the Joseph Allen Apartments who reported that a couple was arguing and playing loud music in their apartment. Nine minutes later, another call came into 911 wherein the caller referenced the earlier call and stated, “He has a gun, he just pull[ed] a gun on the maintenance man here.” At approximately 8:25 a.m., five SPD officers responded to the location, were directed to Mr. Wallace’s apartment, and took up positions in the hallway on either side of Mr. Wallace’s door. After officers kicked the apartment door and announced their presence, the door abruptly swung open, and a hand holding a dark-colored pistol was thrust out from the doorway with the pistol pointing in the direction of the officers. Two officers immediately opened fire as the apartment door was closing.

Within a minute or so, K.A. exited the apartment door, which automatically closed behind her, and told the officers that Mr. Wallace had been shot and was lying in the bedroom doorway. After multiple unsuccessful efforts (via drone and robot) to confirm Mr. Wallace’s condition, officers from the Special Operations Squad (SOS) accessed the apartment at approximately 10:20 a.m., using a key provided by building security. Michael Wallace was found lying on the floor of the apartment in front of the entrance to the bedroom. Mr. Wallace was unresponsive, and he was removed by stretcher from the apartment and taken by ambulance to Ellis Hospital where he was pronounced dead at 10:40 a.m. The death certificate lists the cause of death as a bilateral hemothorax as a result of perforations of the lungs, pulmonary artery, and heart due to a gunshot

wound to the right back. The weapon that Mr. Wallace had pointed at the officers, a CO2 pellet pistol, was recovered in the area near where Mr. Wallace's body was found.

Applying established legal principles to the evidence in this matter, the OAG has determined that the use of deadly physical force against Mr. Wallace did not constitute a crime, because the defense of justification by officers cannot be disproven beyond a reasonable doubt. Penal Law (hereinafter "PL") § 35.15 sets forth the defense of justification when using physical force in self-defense, or in defense of another person against the unlawful use of physical force by a person. Justification is a complete defense to any criminal charge involving one person's use of force against another. Under the law, the People must disprove justification beyond a reasonable doubt. See N.Y. Crim. Jury Instr. 2d Penal Law §35.15(2) and, *People v. McManus*, 67 N.Y.2d 541, 546-47 (1986) ("whenever justification is sufficiently interposed by the defendant, the People must prove its absence to the same degree as any element of the crime charged").

Under PL §35.15(2), an officer is permitted to use deadly physical force in defense of himself or another person if the officer *reasonably believes* that deadly physical force is necessary to defend the officer or another from what he *reasonably believes* to be the use or imminent use of unlawful use deadly physical force by a subject. Because it was reasonable for the shooting officers to believe that deadly physical force was necessary to defend themselves or other officers from what they believed to be the use or imminent use of deadly physical force by Mr. Wallace, the OAG has determined that criminal charges should not be pursued against any officer in this case.

However, the totality of the circumstances involved in this tragic incident underscores the need for communities to develop programs that direct mental health professionals, not police officers, to mental health-related calls for assistance, where there is no indication that a police response is needed – such as Mr. Wallace's initial 911 call. We therefore recommend that SPD and its community partners work toward developing this type of response program.

## STATEMENT OF FACTS

### First Police Response

On March 24, 2020, at approximately 5:20 a.m., Schenectady County 911 received a call from an individual who identified himself as Michael Wallace.<sup>2</sup> Mr. Wallace resided at the Joseph Allen Apartments, located at 780 Albany Street, in the City of Schenectady, New York. During the call, Mr. Wallace spoke in a confused manner about his hearing deficit and other matters. The 911 operator advised Mr. Wallace that a police officer would be there shortly to meet with him, and that he should come down to the building lobby.

At approximately 5:28 a.m. two officers from the Schenectady Police Department (SPD) – Officers Alberto Beltran and Ryan Foti – responded to the location, where they were greeted by building security personnel. The officers’ body-worn cameras were activated.<sup>3</sup> The security officer told the officers that Mr. Wallace had to go to the hospital a few days earlier for a problem with his ear. Officer Beltran requested that an ambulance service be notified in case Mr. Wallace needed to return to the hospital. As the officers waited for Mr. Wallace to come down, a dispatcher advised them that the 911 operator was on the line with Mr. Wallace, who had reported that he could not come downstairs because he had no pants on. At about the same time, a building maintenance worker reached Mr. Wallace from a telephone at the front desk, and he advised the officers that Mr. Wallace was “talking about weapons.”

Officers Beltran and Foti then went up to the second-floor apartment, occupied by Mr. Wallace and his fiancé, K.A. The officers knocked on the door and Mr. Wallace, after asking how many officers were outside, stated that he was “in the nude” and needed some time to get dressed. He also told the officers that he was trying to avoid “the Pod,”<sup>4</sup> to which Officer Beltran answered, “If you want to go up voluntarily, that’s up to you.” Shortly thereafter, Mr. Wallace partially opened the door, still naked, and – speaking in quasi-military jargon – began to describe a conflict of some sort he said he was having with another, unidentified individual, while also acknowledging

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<sup>2</sup> A complete transcript of this 911 call is attached as Exhibit 2.

<sup>3</sup> Body-worn camera footage from Officer Beltran of the SPD officers’ encounter with Mr. Wallace may be accessed [here](#).

<sup>4</sup> Mr. Wallace also mentioned “the Pod” during the 911 call and his desire not to return; contextually, the Pod appears to be the psychiatric hospital.

that the account he was providing was “fictional.” Responding to further questions from Officer Beltran, Mr. Wallace denied any intention of hurting himself, and stated that his fiancé, K.A. was in the apartment with him. Mr. Wallace then closed the door.

About 90 seconds later, clothed in a pair of shorts, he opened the door to the apartment and asked the officers to come inside. When the officers asked Mr. Wallace why he had called 911, Mr. Wallace began to speak non-responsively about a being a construction zone traffic flagman and having a hearing problem. Officer Beltran then spoke with K.A., who was lying in bed. He suggested that Mr. Wallace should go to the hospital, but K.A. told the officers that this was common behavior for Mr. Wallace.

At about this time, Mohawk Ambulance Service personnel arrived on scene, having previously been summoned by the officers because of Mr. Wallace’s ear-related issue. Mr. Wallace was again asked if he wanted to go to the hospital and he was adamant that he did not. Mr. Wallace was again asked if he wanted to hurt himself and he stated, “Oh, of course not.” K.A., after informing the officers that Mr. Wallace was on lithium for his condition, stated that she was “good with him.” The officers advised the Mohawk Ambulance Service personnel that they were not needed and they all left the apartment.<sup>5</sup>

### Second Police Encounter

At approximately 8:11 a.m., Schenectady County 911 received a call from a security guard at the Joseph Allen Apartments, reporting that a couple was arguing and playing loud music in their apartment.<sup>6</sup> The security guard identified the residents of the apartment as Michael Wallace and his girlfriend. The 911 operator advised that a police officer would respond. Approximately nine minutes later, another call came into 911 from the Joseph Allen Apartments updating the prior

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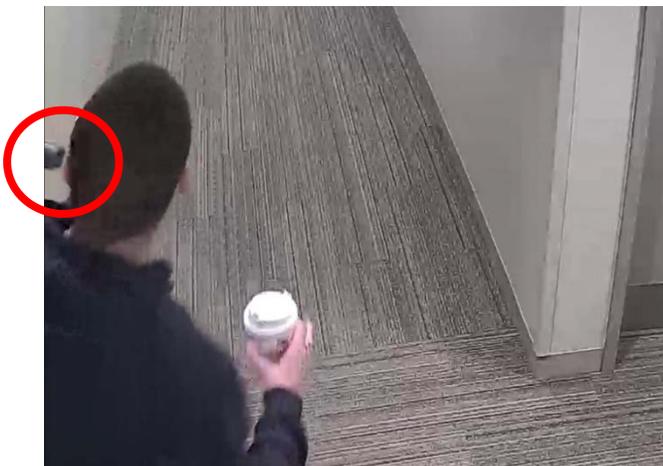
<sup>5</sup> SIPU’s subsequent investigation determined that Mr. Wallace had a long history of mental illness and was prescribed several medications to stabilize him. According to K.A., Mr. Wallace was being treated for a variety of conditions, and that his behavior when he was taking his medication was markedly different from his behavior when he was not taking his medication. (A maintenance worker in the building, who had known Mr. Wallace for approximately three years, likewise told OAG staff that Mr. Wallace would behave strangely when he went off his medications.) K.A. told investigators from the NYSP that she believed Mr. Wallace had not been taking his medication during the period leading up to the shooting incident. K.A. also told investigators that the night before, Mr. Wallace had taken a gun from a drawer in the apartment. Mr. Wallace told K.A. that the gun was a BB gun and that it needed a CO2 cartridge. According to K.A., Mr. Wallace placed the gun against his head and said, “I’ll put a cap in somebody’s ass next.”

<sup>6</sup> A complete transcript of this 911 call is attached as Exhibit 3.

call with the information that, “He has a gun.”<sup>7</sup> The caller went on to state that “He has a gun, he just pull[ed] a gun on the maintenance man here.” Asked to describe the gun, the caller handed the telephone off to another speaker, who described the gun as “a 40 cal or a 9 mil,” but added that he “really didn’t get a good look at it” because “he pretty much pulled it on me. I turned around, calmed him down. He had it to the back of my head. He calmed back down, went back in his room, and that was about it.” The 911 operator told the speaker to remain where he was, so he could speak to the police who would be arriving there momentarily.

Five SPD officers responded to 780 Albany Street at approximately 8:25 a.m. Each officer activated his body-worn camera, and their entire encounter with Mr. Wallace was captured on video.

Upon the officers’ arrival, the building’s maintenance supervisor was identified and interviewed; he told the officers that the Mr. Wallace had accosted him in a building hallway and placed a gun to the back of his head. The maintenance supervisor also confirmed to the officers that he had seen the gun and wanted the individual arrested. Surveillance video from the apartment building security cameras captured the encounter between an armed, naked Mr. Wallace and the maintenance supervisor.<sup>8</sup> Below are two still photos from the surveillance video, with the firearm is circled.

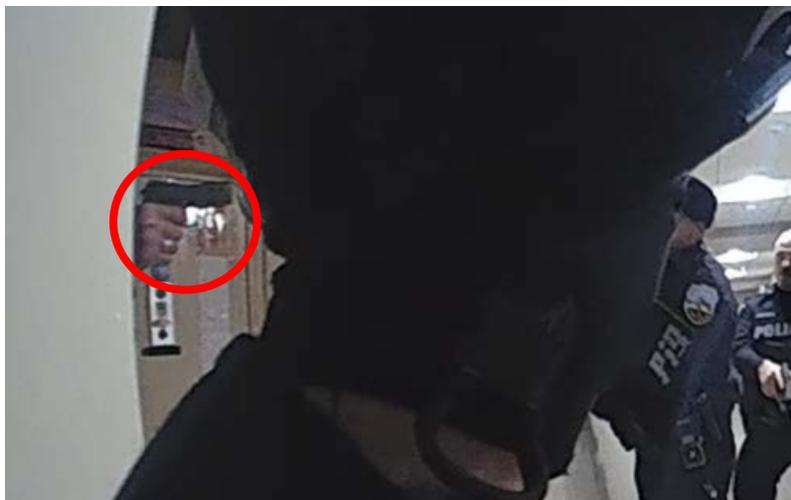


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<sup>7</sup> A complete transcript of this 911 call is attached as Exhibit 4.

<sup>8</sup> The surveillance video may be accessed [here](#).

At approximately 8:27 a.m., the five officers ascended the stairs from the lobby to the second floor and took up positions outside of Mr. Wallace’s apartment – with Officers James Plowden and Jonathan Pietrafesa on one side of the doorway, and Officers Bernardino Mancino, Timothy Higgins, and Seth North on the other. The doorway into the apartment is recessed back several inches from the main hallway wall. Officer Mancino kicked on the door and there was no response. Officer Plowden announced that he was with the Schenectady Police. Officer Mancino kicked on the door again. Five seconds later, the door to the apartment abruptly swung open, approximately three quarters of the way, and a hand holding a dark-colored pistol was thrust out from the doorway in the direction of Officers Plowden and Pietrafesa. That moment is captured in the still image below, taken from Officer Mancino’s body-worn camera video with the firearm circled.



Officers Plowden and Mancino both immediately opened fire into the doorway of the apartment. Over the course of the next three seconds, a total of seven shots were fired; one from Officer Plowden and six from Officer Mancino. The projectile fired by Officer Plowden struck the corner of the hallway wall at the recessed area that forms the apartment doorway. (The projectile strike caused a plume of drywall dust, which in turn caused the officers to believe that a shot was fired *out* of the apartment.) As shots were fired, the hand with the gun was pulled back into the apartment, and the door closed. The officers then retreated down the hallway to covered positions.

Body-worn camera footage from Officers Mancino and Pietrafesa, capturing the entire shooting incident, can be found here (the critical sequence begins at around 5:10): [Mancino Body Worn Camera Footage](#); [Pietrafesa Body Worn Camera Footage](#).

Shortly thereafter, at approximately 8:29 a.m., K.A. came out of the apartment, and was directed by police to walk backwards toward them, hands in the air, which she did. K.A. was removed from the hallway to a stairwell and handcuffed by Officer Pietrafesa. Officer Pietrafesa asked who was in the apartment and she indicated, “my fiancé.” Officer Pietrafesa asked her, “Does he have a gun? Is he shot?” K.A. replied, “He’s shot.” Asked where he was shot, she stated, “I don’t know.” Asked what her fiancé’s name was, K.A. replied, “Michael Wallace.” K.A. told the officer that she did not know where the gun was. Asked by Officer Pietrafesa where her fiancé was in the apartment, K.A. stated, “Laying by the bedroom door.” K.A. was then removed from the apartment building and brought to the Schenectady Police Department to be interviewed.

Because (notwithstanding the information provided by K.A.) the officers could not know for certain whether Mr. Wallace remained a threat, the department’s Special Operations Squad (SOS), aka the SWAT team, was called in. SOS is specially trained and equipped to make entry into potentially dangerous locations. A call for members of the SOS to respond to the police department went out at approximately 9:00 a.m. After responding to the station, assembling gear and being briefed on the situation, the SOS arrived at 780 Albany Street at approximately 10:00 a.m. The SOS first deployed a drone in an attempt to see into Mr. Wallace’s apartment from outside a second-floor window. However, the curtains had been pulled shut and the interior of the apartment was not visible. The SOS next attempted to deploy a robot to access the apartment; however, the robot malfunctioned. At approximately 10:20 a.m., officers from the SOS accessed the apartment using a key provided by building security. Members of the SOS are not fitted with body-worn cameras when they are deployed to a scene. According to Sgt. Thomas Harrigan, who was in tactical command of the SOS, Michael Wallace was found lying on the floor of the apartment in front of the entrance to the bedroom. Mr. Wallace was unresponsive, and he was removed by stretcher from the apartment and taken by ambulance to Ellis Hospital where he was pronounced dead at 10:40 a.m.

New York State Police Investigation

Shortly after Mr. Wallace was discovered deceased, the investigation into his death was turned over to the New York State Police. NYSP investigators processed the scene of the shooting, photographed and collected evidence, and conducted interviews of several witnesses. Inside Mr. Wallace's apartment, NYSP investigators located, photographed and recovered a CO2 pellet pistol on the living room floor approximately ten feet from the entry door into the apartment. The photograph below depicts the pistol and its location in the apartment.



The photograph below, at left, depicts the weapon as it was found in the apartment. The plastic grip that covers the well for the CO2 cartridge had been separated from the gun and can be seen in the lower right corner of the photograph. (The top of the plastic grip is indicated by a red circle.) No CO2 cartridge was installed in the pistol, and no projectiles capable of being fired were loaded into the pistol, at the time it was recovered. The photograph below right shows the weapon with the plastic grip in place.



Outside of the apartment, NYSP investigators identified and collected seven expended .40 caliber cartridge casings. Forensic investigators recovered a total of six projectiles from within or around the apartment - five intact projectiles and a fragmented projectile that was located in the metal frame of the front door to the apartment. (A seventh projectile was recovered from Mr. Wallace's body during the autopsy.) The photograph below shows the doorway area of Mr. Wallace's apartment after the shooting.



To the left of the door in the recessed section of the hallway wall, investigators located a projectile strike (circled) in line with another projectile strike (circled) on the opposite recessed portion of wall to the right of the door; this was the area where Officer Plowden had been standing. That projectile traveled from the wall that forms the recess at right side of the door, through the wall that forms the recess at the left of the door generally parallel with the main hallway wall and struck the side of the refrigerator in Mr. Wallace's kitchen. The projectile was recovered from the insulation between the inner wall and the outer wall of the refrigerator.

The photograph below shows multiple projectile strikes in the wall through which bullets traveled through the wall into Mr. Wallace's apartment.



Those bullet holes were fired from the left side of the door, in the area where Officer Mancino was standing.

### Autopsy Report

On March 25, 2020, an autopsy was performed on Mr. Wallace's remains by Dr. Michael Sikirica in the presence of State Police investigators who took photographs and documented significant findings related to the cause and manner of Mr. Wallace's death.<sup>9</sup> Three gunshot wounds were identified on Mr. Wallace's body: one through the upper right arm; a second to the upper right back where the projectile traveled upward and lodged in Mr. Wallace's neck; and a third to the right back where the projectile tracked through Mr. Wallace's thoracic cavity and exited his upper left chest. The death certificate lists the cause of death as a bilateral hemothorax as a result of perforations of the lungs, pulmonary artery, and heart due to a gunshot wound to the right

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<sup>9</sup> The Medical Examiner's principal findings are attached as Exhibit 5; the full autopsy is not provided.

back. The gunshot wound to the upper back that tracked through Mr. Wallace's chest perforated Mr. Wallace's lungs, pulmonary artery, and heart, and, according to Sr. Sikirica, would have caused his death within minutes.

Based on the totality of the information gathered, it appears that the fatal shot(s) were fired by Officer Mancino, who discharged multiple rounds through the wall and the door frame directly into the doorway of the apartment. It appears that Mr. Wallace turned away from the gunfire in the entryway to his apartment causing one bullet to strike him in the back of his upper right arm, and two shots in the upper right back during the three seconds that the officers were firing. The door to Mr. Wallace's apartment had a mechanism that caused the door to close by itself when not held open, and the door appears to have closed as Mr. Wallace was turning away from the gunfire. The other shooting officer, Officer Plowden, did not have a direct line of fire into the doorway inside the apartment where Mr. Wallace was standing; the projectile recovered in the refrigerator was fired from Officer Plowden's weapon.

### **Legal Analysis**

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

In this case, because Officer Mancino used deadly physical force against Mr. Wallace, the question is whether Officer Mancino *reasonably believed* that deadly physical force was necessary to defend Officers Plowden and Pietrafesa or himself from what he *reasonably believed* to be the use or imminent use of deadly physical force by Mr. Wallace. See, Penal Law §35.15(2).

In *People v. Goetz*, 68 N.Y.2d 96 (1986), and later in *People v. Wesley*, 76 N.Y.2d 555 (1990), the Court of Appeals held that the phrase “reasonable belief” has both a subjective and objective component. The subjective prong is satisfied if the defendant believed, “honestly and in good faith” that deadly force was about to be used against himself or herself at the time deadly physical force was employed, and that the use of deadly physical force was necessary to repel the danger, regardless of whether that belief was accurate or not. *Goetz*, 68 N.Y.2d at 114. The objective prong is satisfied if a “reasonable person” under the same “circumstances” could have held those same beliefs. *Goetz*, *supra* at 115. The *Goetz* Court also stated that “[s]tatutes or rules of law requiring a person to act ‘reasonably’ or to have a ‘reasonable belief’ uniformly prescribe conduct meeting an objective standard measured with reference to how ‘a reasonable person’ could have acted.” *Goetz*, *supra* at 112.

In deciding whether to proceed with a prosecution in any particular case, the OAG is bound by its ethical obligations to the individual or individuals who are the focus of our investigation. Under the American Bar Association’s Criminal Justice Standards for the Prosecution Function, “A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.”<sup>10</sup> Further, the National Prosecution Standards issued by the National District Attorneys Association hold that, “Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest,” and lists among the factors that may be considered: doubts about the accused’s guilt and insufficiency of admissible evidence to support a conviction.” National District Attorneys Association, National Prosecution Standards §4-1.3 (3d. ed.).

In this case, it was reasonable for Officer Mancino to believe that deadly physical force was necessary to defend himself or other officers from what he believed to be the use or imminent use of deadly physical force by Mr. Wallace. The officers were summoned to the scene for a report of a man with a gun. The officers spoke to the apartment building maintenance supervisor who confirmed that he had been threatened with a gun. Upon seeing a (very realistic) gun thrust out

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<sup>10</sup> ABA, Criminal Justice Standards for the Prosecution Function, §3-4.3(a) (2017).

into the hallway and pointed at officers Plowden and Pietrafesa, it was reasonable for Officer Mancino to believe that the use of deadly physical force against the officers was imminent and that the use of deadly physical force was necessary to repel the danger. For these reasons, and pursuant to our ethical obligations, the OAG has elected not to seek charges against any of the officers involved in this case.

## **RECOMMENDATION**

### I. The Schenectady Police Department Should Work with its Community Partners to Develop Response Programs that Divert Mental Health Calls to Mental Health Professionals

This case underscores a tragic reality - people with an untreated mental illness are sixteen (16) times more likely to die during an interaction with police than other civilians.<sup>11</sup> As noted above, Mr. Wallace had a lengthy history of mental illness and, at the time of this incident, he had stopped taking his medication; he was, therefore, an individual suffering from an untreated mental illness. We recommend that communities such as Schenectady work toward developing systems that permit diversion of mental health calls, such as the initial 911 call in this case, away from a law enforcement response altogether.

When Mr. Wallace first contacted 911 seeking help, the call held no indication that police were needed, other than the fact that he had dialed 911 - a default that, absent an available alternative, all but ensures a police response. And while Schenectady County is fortunate to have a Mobile Crisis Services Team,<sup>12</sup> the team currently operates as a community resource, not a 24/7 coordinated response team, the purpose of which is to divert 911 calls away from law enforcement. This case would have been tailor-made for such a response model.

In his call to 911, Mr. Wallace was somewhat incoherent but the fact that he was having a mental health issue was patently obvious. During the call Mr. Wallace provided the following information:

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<sup>11</sup> Treatment Advocacy Center. (2015). *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*. <https://www.treatmentadvocacycenter.org/overlooked-in-the-undercounted>

<sup>12</sup> See, <https://www.northernrivers.org/mobile-crisis#:~:text=Parents%2C%20guardians%2C%20or%20adults%20should,in%20your%20county%20for%20support>

- He mentioned the word “suicide” before incoherently discussing physical issues with his ear;
- He said he was “a little stressed out,” but was trying to use his “composure” and “coping mechanisms;”
- He spoke specifically about his underlying mental illness diagnoses and acknowledged that he “suffer[ed] from mental health;” and
- He said he wanted to avoid going to the psychiatric facility (“the Pod”), which was why he was using his “calmest voice possible.”

The Vera Institute for Justice’s “*Behavioral Health Crisis Alternatives, Shifting from Police from Community Responses*”<sup>13</sup> provides an excellent overview of the variety of crisis response models currently in use throughout the nation, highlighting three that have been successfully implemented in their communities. A high degree of collaboration - from dispatchers, EMS, and law enforcement to private entities, service providers, and community leaders – in order to generate the best response model, is crucial.

If a response protocol involving trained mental health professionals had been available at the time of Mr. Wallace’s 911 call, it clearly would have been better suited to his needs. In fact, based on the information contained in the original 911 call, it is difficult to identify exactly how the police could have helped Mr. Wallace at all, other than possibly instigating a Mental Hygiene Arrest (“MHA”).

Mental Hygiene Law § 9.41 authorizes a police officer to take an individual into custody for the purpose of having that person examined at an authorized hospital, when such person appears to be mentally ill and is conducting himself or herself in a manner likely to result in serious harm to that person or others; that arrest is deemed an MHA. Mr. Wallace, while obviously in distress, did not meet the criteria for an MHA, because based on the available evidence, he did not appear to pose a risk of serious harm to himself or others; he was not threatening suicide or in any way injuring himself, and K.A. said that the behavior he was exhibiting was normal and she was unconcerned for her own safety. But while Mr. Wallace did not meet the criteria for an MHA, he was clearly displaying symptoms at odds with lucidity. What took place nearly three hours later

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<sup>13</sup> See - <https://www.vera.org/behavioral-health-crisis-alternatives>

supports the fact that Mr. Wallace needed assistance, and that police officers were not the people best suited to provide it. Accordingly, we recommend that SPD work with partners to explore other, more appropriate options.

Finally, until such time as this type of call can be diverted to a mental health response from the inception, the OAG recommends that when police officers have reason to believe that an individual, like Mr. Wallace, needs intervention but does not meet the requirements necessary for an MHA, the officers contact the Mobile Crisis Response Team for follow up by mental health counselors as soon as practicable.

# EXHIBIT 1



# State of New York

## Executive Chamber

No. 147.34

### 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 - 147.33 to read as follows:

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

(hh) 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 Michael Wallace on March 24, 2020, in Schenectady 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

**Michael Wallace 911 Call – March 24, 2020 - 5:20 a.m.**

<u>Timer</u>	<u>Speaker</u>	<u>Transcript</u>
0:08	Op:	911, location of your emergency?
0:11	MW:	I think you can see now my address and my phone number, um, so you don't have it – this is it; 780 Albany Street, Apartment number [REDACTED], Joseph Allen Apartment Building, corners of Albany and Hulett, adjust further, I am ham radio.
0:28	Op:	780 Albany Street, apartment [REDACTED]
0:32	MW:	Yeah.
0:33	Op:	What's going on?
0:35	MW:	Uh, I'm sorry, I thought you were putting it over the airwaves, that's why I was asking.
0:38	Op:	No.
0:39	MW:	Mind you, I am deaf in one ear, physically, but that's not the issue. It kinda [unintelligible] suicide itself, so you can get the idea. Um, I'm only firing into the right ear, and that's the only thing you'll see in my ear other than a chirping that's coming over on your end 'cause, other than that, I'm legally deaf. And uh, kinda physically at the moment. Okay, so we gonna punishing each other further, go ahead, you have the floor.
1:06	Op:	What do you need sir?
1:08	MW:	Okay, um, all due respect, I do understand this is 911, so I'm trying to do this as calmly and clearly as possible, and if you want help, then you can start with a psychiatric address and then uh, do a psych eval over the phone and uh, as you can see due to the silent answers of the surfs the coronavirus, let's start there and work backwards. And as you can hear, mind you, I'm trying to use my composure and my coping mechanisms at the same time, because I'm a little stressed out, okay sir, you know this is like, this is the kind of information you need to be listening to for a

psychiatric evaluation. Do you understand, yes or no? Okay, sir, listen, this is the issue, I have a friend that I consider as a brother, not blood related, but as a brother, okay, okay, so you get the relation. Anyways, you have to bear in mind, I'm trying to gear it down and come back to normal baseline on a biometric level so you can understand [REDACTED] diagnosis. In your own opinion, now I remind you this is 911 so let's not take all day. So, uh, basically, and here's the thing, I have been sparring on a power struggle, mind you, military, and we are both exactly the same rank E-5; the only difference, I'm marine, he's navy, big fucking deal, okay.

- 2:37 Op: Sir, do you suffer from mental health?
- 2:38 MW: So, we're both on the same ship, and you're driving it and I'm taking a ride, that's the fucking gist of the story. Anyways, mind you we are controlling traffic
- 2:45 Op: Do you suffer from mental health?
- 2:47 MW: Sorry. Yeah, I go with that Start.
- 2:50 Op: Have you been in contact with anyone in quarantine for the last 14 days?
- 2:54 MW: Um, not to my knowledge, no.
- 2:58 Op: Okay.
- 3:00 MW: Okay, anything further, or can I continue the story? Mind you you're
- 3:04 Op: We're going to have an officer coming to speak to you.
- 3:06 MW: I'm sorry.
- 3:07 Op: You'll have a police officer there shortly to speak to you. What's your last name?
- 3:11 MW: Oh, hold on a minute. Are we going to the Pod? Yes, or no, or are we going to a medical facility in reference to a medical condition and not the Pod?

3:20 Op: You'll probably go to a medical facility in reference to the psychiatric issue.

3:23 MW: Okay, um, sir, sir, sir, with all due respect, please, I'm trying to avoid the Pod, and that's why I'm trying to use my calmest voice possible.

3:30 Op: What's your last name, sir?

3:32 MW: Sir. I'm trying to use my calmest voice.

3:33 Op: What's your last name?

3:35 MW: Oh, I'm sorry, I didn't quite catch you. I, you have to understand I am hard of hearing, I ... So you can understand, my wife, who has normal hearing, listens at a comfortable volume in my home...

3:46 Op: What's your last name?

3:47 MW: ... a ton. Sir, I'm trying to give you a reference, just please be patient. Okay, so you can understand how badly my right ear is not amplified and I'm going deaf. Now...

3:57 Op: Yeah, I know.

3:58 MW: ... do you catch the reference? Sir, I missed what you had last said, could you please repeat and you have the floor.

4:02 Op: You're Michael Wallace, correct?

4:05 MW: Yes, exactly. Michael Frank Wallace to be exact.

4:07 Op: Yeah, you called [unintelligible].

4:08 MW: Um, New York, hang on, hang on, I'll give you a little bit more information so you can pull up a picture. New York State ID [REDACTED], Social [REDACTED] [unintelligible], I'm sorry...

4:19 Op: Michael?

4:20 MW: ... [REDACTED]. Okay, now that you have that information, you have the floor.

4:25 Op: Michael, you need to go outside and meet the officer.

4:28 MW: Okay.

4:29 Op: Get yourself dressed.

4:29 MW: Um, sir...

4:30 Op: Put a coat on.

4:30 MW: ... in all due, hang on a second sir, in all due respects I'm in the nude, I need some time. If they can wait...

4:36 Op: Okay.

4:36 MW: ... patiently so I can get through this, so I can get dressed.

4:40 Op: Get dressed and go downstairs, that's okay.

4:44 MW: Okay, are they in or outside the lobby? If they can't, try and get them in, you know, any possible way, let them get comfortable, out of the cold.

4:51 Op: If they can go in the lobby, they will, otherwise, they'll be on the outside of the door.

4:51 MW: Sir, sir, sir, I'm trying to be as nice as possible. As long as they're in out of the warm tell them I'll be a few minutes, I'm in the nude, I wanted to try and get showered, I see that's not a possibility, I'm working on clothes. Mind you, I know what the elements are, I'm working and dressing accordingly. Just wait, I'll be there, in the lobby...

5:11 Op: Okay.

5:11 MW: ... of JLA.

5:12 Op: Thank you.

5:12 MW: I'm in the house, is this anything further or am I ending transmission or are you?

5:19 Op: We're ending. They'll be waiting for you.

5:22

MW:

Okay, thank you.

# EXHIBIT 3

██████████ 911 Call – March 24, 2020 - 8:11 a.m.

<u>Timer</u>	<u>Speaker</u>	<u>Transcript</u>
0:04	Op:	911, what is the location of your emergency?
0:05	TE:	Yes, hello. 780 Albany Street.
0:08	Op:	What's the emergency at 780 Albany Street?
0:11	TE:	It's 780 Albany Street and it's, um, a couple in their apartment have been fighting. Um, I went to go check up on it, because there's been a lot of music playing and they turned the music up loud and they're fighting in there. Um, you guys have been called before for them for, you know, domestic disputes between them.
0:29	Op:	Do you know what apartment number they're in?
0:31	TE:	Yes, ██████.
0:33	Op:	So, Seven Eight Zero Albany Street, Apartment ██████
0:37	TE:	[Unintelligible] Zero.
0:38	Op:	Right. Is this the Joseph Allen Apartments?
0:42	TE:	Yes.
0:43	Op:	Okay. And male and female fighting inside?
0:46	TE:	Yes.
0:53	Op:	Do you know who they are by any chance?
0:55	TE:	Yes, uh, Mike and ██████. His first name is Mike, and um, I can actually get his last name too.
1:04	Op:	That's okay.
1:04	TE:	One moment. Um, so it's, uh, yeah: Mike Wallace. And his, uh, girlfriend ██████ Michael Wallace.

1:22 Op: You said... did you say they turned the music up so you couldn't hear 'em?

1:25 TE: Right, right. Yeah it's really loud. The tenants are complaining because of it and you can hear 'em fighting over the music.

1:45 Op: And who are you to them? Just a neighbor?

1:49 TE: I'm security here. Security guard.

2:00 Op: Okay. Your last name sir?

2:02 TE: [REDACTED]

2:06 Op: First name please.

2:08 TE: [REDACTED]

2:10 Op: Okay. We'll go ahead and send them over, okay?

2:14 TE: Thank you, sir.

2:14 Op: Thank you very much [unintelligible]. Bye.

# EXHIBIT 4

██████████ and Unidentified Caller 911 Call – March 24, 2020 -  
8:20 a.m.

<u>Timer</u>	<u>Speaker</u>	<u>Transcript</u>
0:04	Op:	911, what is the location of your emergency?
0:05	Caller:	780 Albany Street, uh, we just placed a call here for, um, ██████████. He has a gun.
0:13	Op:	Now he has a gun?
0:14	Caller:	He has a gun. He just pulled a gun on the... on the... on the maintenance man here.
0:18	Op:	Oh, so now you're reporting the guy has a gun at 780 Albany Street?
0:23	Caller:	Yeah, we just, we just saw it. They went up there and knock on his door and he just pull a gun on... on... on the super.
0:39	Op:	Can you describe what the gun looked like, ma'am?
0:42	Caller:	What—hold a second. Let me... let me um, okay, what the gun look like?
0:49	MN:	[Unintelligible] a weapon, probably a 40 caliber looks like, or a 9 mil. Sir, are you there?
0:57	Op:	Yeah, I'm here.
0:58	MN:	Can you hear me?
1:00	Op:	Yeah, I can hear you.
1:01	MN:	It looked like, it looked like a [unintelligible] weapon, maybe a 40 cal., 9 mil. You know, I really didn't get a good look at it. He just pretty much pulled it on me. I turned around, calmed him down, and he had it, sort of, back of my head, and he calmed back down, went back in his room, and that was about it.

1:15 Op: He put the gun to the back of your head?

1:17 MN: Correct.

1:26 Op: What's—and what was your name, sir?

1:27 MN: [REDACTED].

1:30 Op: And spell your last name?

1:32 MN: Last name is [REDACTED].

1:39 Op: [REDACTED] ... [REDACTED], right?

1:40 MN: Correct.

1:42 Op: Okay, [REDACTED]. Okay. Okay. Alright, when the police get there, I need... just stay right there, that way you can talk to 'em as well, okay?

1:49 MN: Yes sir, sounds good.

1:50 Op: They'll... they'll be there momentarily. Thank you.

1:52 MN: [Unintelligible]

1:52 Op: Okay, alright bye.

# EXHIBIT 5

FINAL AUTOPSY REPORT

CASE #: MS-20-127  
OC-20-49 (Albany Medical Center)

DECEDENT: Michael Wallace

DATE OF BIRTH: [REDACTED]

PRONOUNCEMENT DATE: March 24, 2020

PRONOUNCEMENT TIME: 10:20 AM

DATE OF AUTOPSY: March 26, 2020, 12:40 PM

PLACE OF AUTOPSY: Albany Medical Center, Albany, NY

PROSECTOR: Michael Sikirica M.D.

ASSISTING: Ms. Katie Komdat

MEDICOLEGAL DEATH INV.: Mr. Mark Dufresne, Schenectady County

MEDICAL EXAMINER: Dr. Nadarajah Balasubramaniam, Schenectady County

Cause of Death: Bilateral hemothorax due to perforations of lungs, pulmonary artery, and heart due to gunshot wound of right back

Manner of Death: Homicide

  
Michael Sikirica, M.D./nw  
DATE: 9-28-2020