

Special Investigations and Prosecutions Unit

Report on the Investigation into The Death of Wardel Davis III



**Eric T. Schneiderman
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.” On February 8, 2017, Wardel Davis, III died after a physical altercation with two members of the Buffalo Police Department (“BPD”). Governor Cuomo subsequently issued Executive Order No. 147.9, which expressly conferred jurisdiction upon the Attorney General to investigate any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Davis’s death.

Pursuant to Executive Orders No. 147 and 147.9, the investigation by the Office of the Attorney General (“OAG”) included, among other investigative steps:

- Interviews of 22 BPD officers;
- Canvasses of the neighborhood in which the incident took place for witnesses, surveillance video, or other evidence concerning the altercation;
- Review of the Erie County Medical Examiner (“Medical Examiner”) Report;
- Review of a report by an independent pathologist retained by the OAG for this investigation;
- Review of over 1,800 pages of Mr. Davis’s medical records, including both historical medical records and records relating to treatment Mr. Davis received after the altercation with the BPD officers;
- Review of communications by Mr. Davis shortly before his interaction with the two BPD officers, including cell phone video, social media, and text messages;
- Review of 911 dispatch recordings and GPS data from the police car operated by the two BPD officers.
- Review of statements and reports made by the officers involved at the scene, in Use of Force reports, to the ME, and as part of an administrative review.

As stated in greater detail below, the key facts relevant to assessing whether there were any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Davis’s death were as follows:

- On and shortly before February 7, 2017, Mr. Davis, who suffered from asthma, complained to a friend and to family of chest pain, a persistent cough, and shortness of breath.
- Later that night, BPD Officers Nicholas Parisi and Todd McAlister, while on patrol, spotted Mr. Davis, whom they knew from previous arrests, exiting a house they understood to be associated with drug dealing.

- They confronted Mr. Davis based on a suspicion that he may have engaged in an unlawful narcotics transaction.
- The officers claim Mr. Davis admitted to having drugs on his person.
- They claim that they attempted to arrest and search Mr. Davis, who briefly fled, fell, and proceeded to resist arrest violently.
- One of the officers admitted to punching Mr. Davis several times during the physical altercation, causing injuries to his face.
- The officers claimed that the use of force was necessary to protect the officers from harm and to effectuate the arrest.
- Shortly after being handcuffed, the officers claimed Mr. Davis appeared distressed and to stop breathing. The officers said they then removed the handcuffs and promptly began chest compressions.
- They also called an ambulance. EMTs and ambulance personnel took over upon their arrival and continued these measures on the scene, in the ambulance, and at the hospital.
- Mr. Davis was pronounced dead at 12:04 a.m. on February 8, 2017.

Much of what we know about Mr. Davis's interaction with the BPD officers derives from multiple statements from the officers themselves. A number of investigative steps were taken to identify other witnesses or evidence, including: (1) several canvasses of the neighborhood, which yielded one witness and two videos; (2) witness leads from Mr. Davis's family and girlfriend, which led to six additional interviews; and (3) review of Mr. Davis's cell phone and follow-up on leads obtained from the phone. These efforts did not yield evidence that directly supports or contradicts the officers' accounts of the physical interaction with Mr. Davis.¹

According to both the ME and an independent pathologist retained by the OAG, Mr. Davis's death was due to his underlying asthmatic condition, which was exacerbated by acute bronchitis and exertion due to the physical altercation with Officers Parisi and McAlister. The conclusions of the ME and the independent pathologist are supported by Mr. Davis's medical history and the complaints of illness that he made to friends and family prior to the incident.

Based on these facts, there is insufficient evidence to warrant any criminal charges in this matter. The only witnesses to the physical altercation are the two BPD officers involved in it and there is no video evidence of the altercation. The officers reported that they used force to subdue Mr. Davis

¹ These investigative steps are discussed in detail in Appendix A. The statements from the officers themselves are described in detail in Appendix B. Attached hereto as exhibits are: (1) social media communication by Mr. Davis; (2) the ME's report and notes taken by the ME concerning the ME's interview of Officers McAlister and Parisi; (3) the independent pathologist's report and his curriculum vitae; and (4) reports done by the officers reflecting their accounts of the incident.

in the course of an arrest. The medical evidence shows that Mr. Davis sustained injuries, including injuries to his face that are consistent with a struggle. The medical evidence also shows that Mr. Davis's death was precipitated by exertion and an underlying asthmatic condition, and not the injuries suffered in the altercation.

Under New York law, the officers were permitted to use reasonable force to arrest Mr. Davis and to protect themselves in response to any use of force by Mr. Davis as they tried to arrest him. Given that there is no evidence contradicting the officers' account, there is no basis to conclude that the force used by the officers was not necessary to arrest Mr. Davis.

* * *

Executive Orders No. 147 and 147.9 provide that the OAG may offer "any recommendations for systemic reform arising from the investigation." We make three recommendations for systemic reform.

First, the ME's office should adopt policies consistent with National Association of Medical Examiners ("NAME") standards.

The ME insisted on speaking with Officers McAlister and Parisi before making a scientific conclusion about the cause and manner of death. Moreover, the ME told the OAG investigative team prior to her meeting with the officers that if the officers refused to meet with her, she would (1) deem Mr. Davis's death to have been caused by positional asphyxia (*i.e.*, restraint by the officers in a manner that limited or cut off Mr. Davis's oxygen intake), and not due to his underlying asthmatic condition and (2) report that the BPD refused to cooperate with her.² Adoption of policies consistent with NAME standards would help provide assurance that the ME's investigations are conducted in a professional manner.

Second, the BPD should take steps to obtain accreditation by the New York State Division of Criminal Justice Services ("DCJS"). The accreditation process assists police agencies in evaluating and improving their overall performance. As discussed in more detail below, the BPD's investigation of this matter had shortcomings in the areas of collecting evidence and photographing the scene.³

Third, the BPD should outfit officers with body-worn cameras and marked vehicles with dashboard cameras. Videotaped evidence would have greatly facilitated the investigation of this case. We encourage the BPD and City of Buffalo policy makers to continue their efforts toward outfitting as many officers and vehicles as possible with body-worn and dashboard cameras.

² Because of the ME's actions and statements, the OAG retained an independent pathologist to review the ME's conclusion. The independent pathologist's review arrived at substantially the same conclusion as the ME (*i.e.*, that Mr. Davis's death was precipitated by exertion and his underlying asthmatic condition).

³ Approximately 150 police departments in the State of New York have been accredited by DCJS. A list of the departments can be found here: <http://www.criminaljustice.ny.gov/ops/accred/accredited-agencies.htm>.

STATEMENT OF FACTS

These are the key events occurring before, during, and after the incident relevant to assessing whether there were any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Davis's death (the "Incident").⁴

A. Relevant Events Preceding the Incident

Wardel Davis, III was born in August 1996. He lived with his paternal grandparents on the West Side of Buffalo.

Officers Nicholas J. Parisi and Todd C. McAlister were partners assigned to a detail responsible for proactively responding to quality of life complaints, including narcotics complaints.

Officers Parisi and McAlister knew Mr. Davis. On January 29, 2016, Officer Parisi arrested Mr. Davis for two misdemeanor, non-drug-related offenses. Marijuana was found on his person at that time. On November 8, 2016, Officers Parisi and McAlister arrested Mr. Davis for three misdemeanor, drug-related offenses.⁵

The November 8, 2016 arrest resulted in Mr. Davis's supervision by the Erie County Probation Department ("Probation") under its Release Under Supervision ("RUS") program. Under the terms of his RUS release, Mr. Davis was required to sign an agreement that required him to refrain from any criminal activity, including the use of illicit drugs and alcohol, submit to random drug and alcohol testing, and report to court and to Probation as required.

Records from the Erie County District Attorney's Office ("ECDA" or "District Attorney") reflect that Mr. Davis had an open Adjournment in Contemplation of Dismissal ("ACD") arising out of a prior arrest, believed to be the disposition of the January 2016 arrest. A defendant who receives an ACD must meet the conditions of the Court, including remaining arrest-free, typically for a period of six months. If the defendant is arrested again during the six-month period, the ACD can be revoked and the original charge can be reinstated. This means that the defendant can face prosecution and, if convicted, sentencing, on the previous charges in addition to the new charges.

Notations in the District Attorney's file, dated January 25, 2017, state that Mr. Davis was "not compliant" with his RUS terms, which included mandatory drug-testing. Such non-compliance generally would result in the revocation of an ACD and the reinstatement of the previously resolved January charges, along with the continued prosecution of the three misdemeanor drug-related offenses for which Mr. Davis had been arrested on November 8, 2016.

According to Probation records, Mr. Davis missed a Court-ordered appointment on February 6, 2017. He was scheduled to appear in court on February 8, 2017.

⁴ None of the information referenced in this report was obtained by grand jury subpoena.

⁵ The information relating to Mr. Davis's prior arrests is included only because it is relevant to the officer's basis for stopping Mr. Davis.

According to both Mr. Davis's grandparents and girlfriend, Mr. Davis was concerned about being remanded to jail at that court appearance.⁶

Also according to these witnesses, on and before February 7, 2017, Mr. Davis had been sick and had complained of chest pain and a persistent cough. Mr. Davis suffered from asthma from a young age. His girlfriend urged him to go to the doctor prior to the scheduled February 8, 2017 court appearance, because she believed that he would not get adequate medical care in jail.

A man who is a friend of Mr. Davis ("Witness 1"), told investigators that on and after Saturday, February 4, 2017, Mr. Davis complained about gasping for air and "losing his air" when he was sleeping. Witness 1 said that Mr. Davis's condition was "real bad."

At about 10:45 p.m., on February 7, 2017, Witness 1 had the following text exchange with Mr. Davis:⁷

Davis:	I can't breath
Witness 1:	Go To The Hospital Dude
Davis:	I'm am in a lil bite
Witness 1:	No Now
Davis:	After I make a couple more dollars
Witness 1:	Ok
Davis:	Ok I promise

Witness 1 spoke to Mr. Davis by telephone after they texted. According to Mr. Davis's phone records, Mr. Davis called Witness 1 at 10:45 p.m. They spoke for approximately six minutes and thirty seconds. Witness 1 said that, during this telephone call, Mr. Davis again stated he was feeling sick and having trouble breathing. The call ended at approximately 10:52 p.m.

B. The Incident

At 11:16 p.m., Officers Parisi and McAlister turned north onto Hoyt Street in their marked vehicle on a routine patrol. In connection with their detail, the officers knew that crack and heroin were regularly and recently sold at 19 Hoyt Street. Officer Parisi was driving and Officer McAlister was in the passenger seat. It was approximately 45 degrees and had been raining intermittently.

The officers recognized Mr. Davis exiting 19 Hoyt Street. Officer Parisi stopped the vehicle in front of 13 and 15 Hoyt Street, a little more than halfway between West Ferry and Arnold Street, at a slight angle to the curb.

⁶ That Mr. Davis may have faced increased criminal sanctions if found in violation of the terms of a court program may explain why he attempted to flee from the officers on the night of February 7, 2017.

⁷ The full screenshot of this text message is attached as Exhibit 1. Mr. Davis's photo accompanied each line of text from him. Witness 1 refused to provide his phone to law enforcement for forensic analysis. Instead, he gave the BPD a screenshot of the exchange quoted above, and he blocked out portions that followed the quoted language.

The OAG's understanding of what happened in the next four minutes is based primarily on statements made by Officers Parisi and McAlister to persons other than OAG investigators.⁸

Mr. Davis was walking south on the east side of Hoyt when Officer McAlister opened the passenger side door of the patrol vehicle and approached him. Officer McAlister ordered Mr. Davis to remove his hands from his jacket pocket and stood behind him as Officer Parisi came around the vehicle and stood in front of him. Officer McAlister stated that he immediately ordered Mr. Davis to remove his hands from his pockets.

Officer Parisi asked Mr. Davis if he had anything illegal on him. Both officers claim that Mr. Davis admitted to possessing "weed" and that he stated that he had a court appearance scheduled for the next morning. The officers claim that they told him again to remove his hands from his pockets, but that he did not. The officers said it was then that they decided to handcuff Mr. Davis to perform a search safely. Officer McAlister said that he then took out his handcuffs and grabbed Mr. Davis's left arm. The officers claim that Mr. Davis then pulled away, fled, was pursued and grabbed briefly by Officer McAlister, broke free, ran about 20 feet, fell, and then violently resisted both officers in their attempt to arrest him. In what he says was an attempt to subdue Mr. Davis and protect himself and his partner, Officer Parisi admitted to punching Mr. Davis several times in the face with a closed fist and to placing Mr. Davis's head and neck in the crook of his arm. During this time, Officer McAlister attempted to place handcuffs on Mr. Davis.⁹ The officers claim that they repeatedly told Mr. Davis to stop resisting.

During the struggle, at 11:19 pm, Officer McAlister radioed an urgent call.¹⁰ Officer McAlister mistakenly identified his location as 15 Boyd Street. Three officers responded to 15 Boyd Street and then were rerouted to 15 Hoyt Street when Officer Parisi radioed the correct location one minute later.

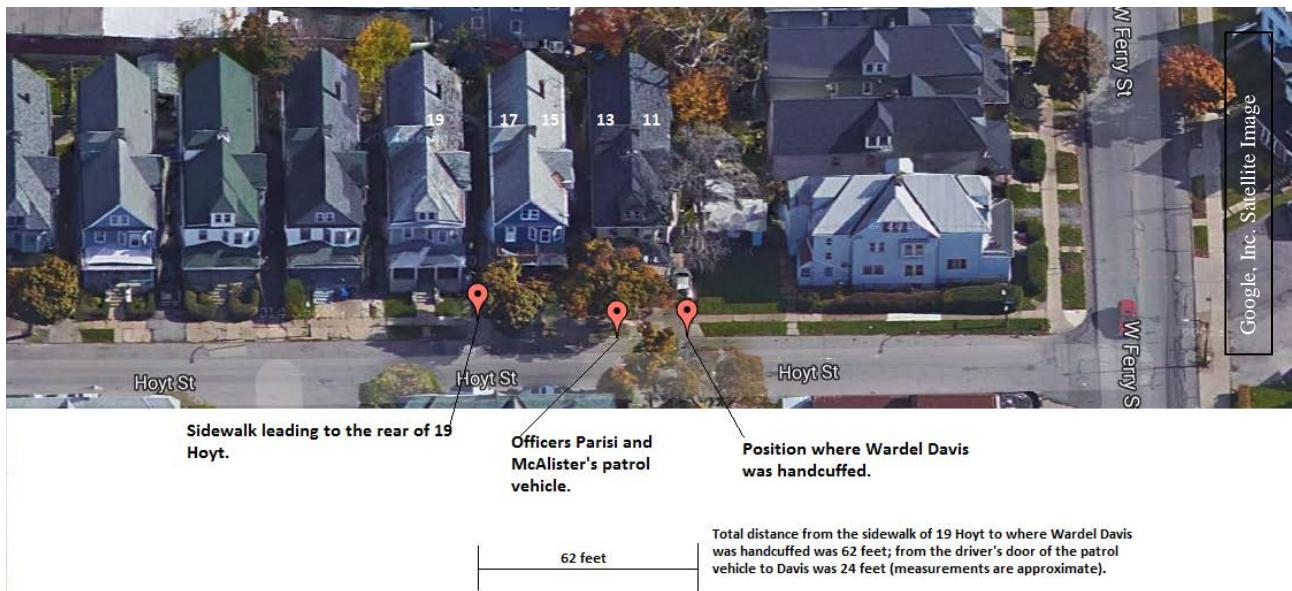
Shortly after Officer McAlister's urgent calls, the officers successfully handcuffed Mr. Davis. Officer McAlister searched Mr. Davis for weapons. The officers found no weapons or contraband, and Officer Parisi stated that he did not see Mr. Davis put anything in his mouth. The total distance between the location where the officers first saw Mr. Davis and the location where he was handcuffed was approximately 62 feet.

⁸ Officers Parisi and McAlister have a Fifth Amendment right not to speak to the OAG. They declined to speak to the OAG unless the OAG agreed to interview them jointly. The OAG declined this request for two reasons. First, well-established best practices (and the OAG's own practice for all witnesses in this investigation) make clear that witnesses, especially interested witnesses, should be interviewed separately. *See generally* 6 Wigmore §§ 1837–1838 ("The efficacy of excluding or sequestering witnesses has long been recognized as a means of discouraging and exposing fabrication, inaccuracy, and collusion."); *accord People v. McConville*, 55 Misc. 3d 501 (NY Sup. Ct. 1/11/17); *People v. Drake*, 188 Misc. 2d 210 (NY Sup. Ct. 4/6/01). Second, the OAG had available to it a number of statements made by Officers McAlister and Parisi; these statements were made to other BPD officers at the scene, on BPD forms, to BPD supervisors in connection with BPD's internal affairs review process, and to the ME. *See Appendix B.*

⁹ According to the ME's notes from her interview of the officers, the officers said that once Mr. Davis was on the ground, they used force against Mr. Davis out of concern that he was trying to swallow the drugs that he allegedly was carrying.

¹⁰ The timing is based on BPD's Computer Aided Dispatch ("CAD") radio transmissions. The CAD system timestamps were compared with the GPS timestamps and found to be within seconds to tenths of seconds in sync with each other. However, when more than one radio call is being made, the CAD system cannot timestamp each call simultaneously, and the timestamp of the call may be later than the actual radio transmission.

Map of Scene of Incident



At 11:20 p.m., the first back-up officer, Officer Joseph Bonner, arrived at 15 Hoyt Street. He described seeing Officers Parisi and McAlister in the street by a driveway with Mr. Davis, who was prone on the ground and being handcuffed by the officers. Officer Bonner saw that the officers had put one handcuff on Mr. Davis, but Mr. Davis was moving and the officers were struggling to cuff his other hand.

At 11:21 p.m., Officer Parisi radioed that Mr. Davis was in custody. Lt. Kochersberger arrived at about that time. Lt. Kochersberger observed Mr. Davis handcuffed behind his back and lying on his stomach and saw Officer McAlister pat down and then turn Mr. Davis over onto his back. As Officer McAlister rolled Mr. Davis onto his back to continue the pat-down search, Lt. Kochersberger heard Mr. Davis gasp. Lt. Kochersberger realized that Mr. Davis was in medical distress. He told the officers that Mr. Davis was not breathing and instructed them to remove the handcuffs while he called for an ambulance. He made that call at 11:22 p.m.

According to Lt. Kochersberger, Officer McAlister took one handcuff off of Mr. Davis and immediately began performing chest compressions. Altogether, the officers made five calls to dispatch in an effort to obtain an ambulance for Mr. Davis. While they waited for the ambulance to arrive, other officers who arrived on the scene took turns rendering aid to Mr. Davis, including doing chest compressions.¹¹

¹¹ This is corroborated by a civilian's video of the event.

Table of BPD Computer Aided Dispatch Calls Requesting an Ambulance

11:22:05	<ul style="list-style-type: none">• Lt. Kochersberger: “Need ADI [Ambulance Dispatch and Inspection] over to Hoyt”
11:22:36	<ul style="list-style-type: none">• Lt. Kochersberger: “Rush ADI over to Hoyt”
11:23:28	<ul style="list-style-type: none">• Lt. Kochersberger: “Is fire closer? Have them come please”
11:23:47	<ul style="list-style-type: none">• Radio: “Fire notified”
11:24:39	<ul style="list-style-type: none">• PO Sercu: “No more cars needed on Hoyt.” Lt. Kochersberger: “We do need an ambulance though.” Radio: “Got an ambulance coming and fire notified”
11:27:31	<ul style="list-style-type: none">• Lt. Swaggard: “Radio, can you step up ADI?” Radio: “Clear”
11:27:39	<ul style="list-style-type: none">• Radio: “OK, ambulance and supervisor coming for ADI
11:27:48	<ul style="list-style-type: none">• Lt. Swaggard: “Fire on scene”

At 11:27 p.m., the Fire Department arrived with Emergency Medical Technicians (“EMTs”), who took over Mr. Davis’s medical treatment. Shortly thereafter, the first of two ambulances arrived; ambulance personnel performed all subsequent medical procedures at the scene. These procedures included the preparation and administration of several doses of Narcan¹² and epinephrine, a synthetic form of adrenaline used to improve breathing and stimulate the heart. Because Mr. Davis was in full cardiac arrest, his clothes were cut off to prepare for the use of an Automatic External Defibrillator (“AED”).¹³ Because it began to rain very heavily, the EMTs and firefighters placed Mr. Davis into the ambulance and continued resuscitation efforts there. Medical personnel did not deliver a shock because the AED did not detect a heart rhythm.

At 11:43 p.m., the ambulance left the scene to transport Mr. Davis to the hospital. The ambulance personnel initially intended to take Mr. Davis to Erie County Medical Center (“ECMC”), but instead went to Buffalo General Hospital (“BGH”) because it is closer. They arrived at 11:53. Once at BGH, hospital personnel took over administering medical care to Mr. Davis.

Hospital staff continued resuscitative efforts until 12:04 a.m., when Mr. Davis was pronounced dead.

C. Processing the Scene of the Incident

As multiple other patrol units arrived on the scene, some of the officers began to look for evidence that could have been discarded. When one officer first arrived at the scene on Hoyt Street, he saw Officer Parisi “covered in mud” and found Officer Parisi’s black flashlight covered in mud next to the officers’ car. The officer noted that Officer McAlister’s portable radio and microphone were also covered in mud and lying on the ground near the location of the altercation.

¹² Narcan is the trademark name for naloxone, an opiate antidote. Opioids include heroin and prescription painkillers such as morphine, codeine, oxycodone, methadone and Vicodin.

¹³ An AED is a portable device that checks heart rhythm and delivers an electric shock in an effort to restore a normal heart rhythm.

When Officer Parisi told the officer that Mr. Davis had come from 19 Hoyt Street, he walked to the back of 19 Hoyt Street. On the pathway towards the back of the house, he saw hypodermic needles and empty glassine baggies. There appeared to be a lot of mud in the yard behind the house. Due to the heavy rainfall, however, no footprints were evident.

The BPD Homicide, Evidence, and Photography Units were called to respond to the scene at 12:11 a.m. A total of eleven photographs and a 59-second video were taken. The area behind 19 Hoyt Street was not photographed, despite the first responding officers being told Mr. Davis came from that area. No items were taken from the scene on Hoyt Street as possible evidence. The officers' radio and flashlight were picked up before being properly documented or photographed. Only half of Mr. Davis's jacket was recovered; the other half went missing. No marijuana was recovered from the scene.

SUMMARY OF MEDICAL FINDINGS

A. Autopsy Findings¹⁴

Dr. Katherine Maloney, Deputy Chief of the Erie County Medical Examiner, performed an autopsy of Mr. Davis's body. Mr. Davis was 6'2" tall and weighed 252 pounds. Dr. Maloney noted multiple "blunt impact injuries of the head, neck, torso and extremities." The majority of those injuries were contusions, *i.e.*, bruises, and abrasions less than one inch by one inch in size. Most of the injuries were located on Mr. Davis's face, particularly around his nose, lips, and cheek. Mr. Davis's left eye was swollen shut and there was a large abrasion on his right cheek and on the right side of his nose. There was also a large abrasion on his right hip with specks of grit in it.

The autopsy report noted that there were no bone or skull fractures. There were several small hemorrhages (spots of bleeding) in the neck area. The autopsy found no trauma, however, on the cervical vertebrae, hyoid bone, or tracheal and laryngeal cartilages, ruling out strangulation as a cause of death. The autopsy report noted a scalp hemorrhage on the right forehead. There was no evidence, however, of brain injury, ruling out this superficial head injury as a cause of death.

Dr. Maloney examined the organs and took tissue samples from the brain, heart, lung, liver, and kidneys for microscopic examination. She noted that the lung tissues showed microscopic evidence of acute and chronic asthma as well as acute bronchitis. The heart tissues showed moderate to marked myocyte hypertrophy, which is an enlargement of the muscle cells resulting in the thickening of the walls of the heart. The report noted the other organs were unremarkable.

The ME submitted samples of Mr. Davis's blood and bodily fluids for toxicological analysis. That analysis showed a number of legal and illicit substances in Mr. Davis's blood, including naloxone (which is the generic name for Narcan); doxylamine, an antihistamine; cocaine and its metabolites; tetrahydrocannabinol, the psychoactive ingredient in marijuana; and methadone.

The autopsy report stated that Mr. Davis's cause of death was "Acute Asthma Exacerbation Complicating Acute Bronchitis in the Setting of Physical Altercation." Dr. Maloney's final diagnoses also included the following:

¹⁴ Attached as Exhibit 2 are the ME's autopsy report and notes taken by the ME concerning the ME's interview of Officers McAlister and Parisi.

- Acute Bronchitis
- Bronchial Asthma
- Blunt Impact Injuries of the Head, Torso, and Extremities
- Obesity, Body Mass Index 32.4¹⁵

Dr. Maloney ruled the manner of death a homicide, a medical conclusion used by the medical examiner community to mean that a death occurred at the hands of another.¹⁶ She noted that the homicide designation was not intended to imply “that there was intent to cause injury or that excessive force was used.”

B. Mr. Davis’s Previous Medical Treatment Records

The OAG reviewed over 1,800 pages of medical records from at least ten of Mr. Davis’s medical providers, including primary care physicians, mental health professionals, and hospital personnel. The records indicate that Mr. Davis received a formal diagnosis of asthma at the age of 18 months. He was first diagnosed with sleep apnea at two years old and was prescribed a Bi-PAP¹⁷ when he was five years old. These conditions persisted throughout his life. In addition, he had previously been prescribed albuterol, a bronchodilator used to treat asthma, although not for several years prior to 2017.

In sum, Mr. Davis’s medical records confirmed his lifelong history of asthma and sleep apnea. They also indicate marijuana and cocaine use during the time immediately preceding his death.

C. Independent Pathologist’s Findings

On February 21, 2017, during the first meeting with the investigative team regarding her autopsy findings, Dr. Maloney insisted on speaking with the officers before forming her opinion and writing her autopsy report. Dr. Maloney’s insistence on speaking with the officers (and speaking with them together), raised OAG’s concerns that she would place undue weight on their statements in forming her medical conclusions. Additionally, Dr. Maloney suggested to OAG that she would alter her findings in a manner unfavorable to the officers if they did not agree to talk to her, by, as noted above, claiming that Mr. Davis’s death was caused by positional asphyxia. Such suggestions magnified OAG’s concerns.

Accordingly, the OAG retained an independent pathologist, Dr. Peter Ostrow, to offer an additional medical conclusion.

¹⁵ According to the American Cancer Society website, a BMI of greater than 30.0 indicates obesity, increasing one’s risk of numerous diseases, including heart disease, stroke, diabetes, and sleep apnea. <https://www.cancer.org/cancer/cancer-causes/diet-physical-activity/body-weight-and-cancer-risk/health-issues.html>

¹⁶ A medical examiner designates the manner of death as either natural, homicide, suicide, accident, undetermined, or investigation pending.

¹⁷ A B-PAP (Bilevel Positive Airway Pressure) machine is used to prevent sleep apnea, which is the cessation of breathing during sleep.

Dr. Ostrow reviewed the following information:

- Original slides of organ tissue that were made available by and viewed at the ME's Office and recuts of the slides from preserved organ tissue;
- The ME's autopsy report and case notes;
- Various historical medical records of treatment received by Mr. Davis;
- A list of prescribed medications filled by a local pharmacy for Mr. Davis since 2012;
- Statements of multiple individuals, including Mr. Davis's grandmother, girlfriend, and friends, concerning the status of Mr. Davis's health during the days and weeks before his death;
- Statement of a witness driving by the scene, who observed an officer laying over Mr. Davis;
- Social media, including the screenshot of the text conversation between Mr. Davis and Witness 1, which took place approximately 30 minutes prior to the altercation;
- A video from Mr. Davis's phone taken at 12:55 a.m. on February 7, 2017;¹⁸
- Photographs of Mr. Davis's body taken during the autopsy, at Buffalo General Hospital, and at a funeral home;
- Photographs of Hoyt Street shortly after Mr. Davis was taken to the hospital; and
- Photographs of Officers Parisi and McAlister shortly after the incident.

Dr. Ostrow concurred with Dr. Maloney's conclusions that Mr. Davis's death was caused by an acute asthma attack. In his report, Dr. Ostrow stated:

Mr. Davis' lungs were those of someone with asthma and there are components consistent with an acute asthma attack. Severe, even fatal, asthma attacks can be triggered by exercise, stress, environmental pollutants, even cold air, all of which might have played a role in this case. The vulnerability to such an attack is enhanced by the presence of a viral infection or focal lung inflammation, such as Mr. Davis apparently experienced. The major features that were present and mentioned in the autopsy report are almost identical to the classic descriptions and illustrations of asthma in pathology textbooks.¹⁹

¹⁸ This is a video in which you can hear Mr. Davis's labored breathing. It is referenced in the ME's autopsy report. This video did not contribute to the formation of Dr. Ostrow's opinions.

¹⁹ A copy of Dr. Ostrow's report and his curriculum vitae are attached hereto as Exhibit 3.

Dr. Ostrow found that the swollen eye, abrasions, and large scalp hemorrhage were not the cause of Mr. Davis's death: "As to the physical injuries sustained by Mr. Davis, there is no evidence that those injuries per se were fatal. This is based upon the lack of related internal alterations [bruising or hemorrhaging], particularly in the brain." Dr. Ostrow also found that Mr. Davis's death was not caused by positional asphyxia.

LEGAL ANALYSIS

In order to sustain a criminal charge, the evidentiary burden is on the State to: (a) prove that one or both officers committed a crime and (b) disprove that such conduct was justified as self-defense or force reasonably necessary to effect an arrest. The evidence is insufficient to meet this burden and, therefore, no criminal charges are warranted.

According to the officers, they suspected Mr. Davis was engaged in narcotics activity and sought to question him. He attempted to run away, they chased him, and a struggle ensued. An officer struck Mr. Davis in the face to subdue him, and Mr. Davis sustained injuries to his eye and other parts of his face prior to dying of what the ME and the independent pathologist attributed to an asthmatic event triggered by, among other things, physical exertion. Under the relevant law, officers are permitted to use reasonable force to effect an arrest; no evidence exists for the OAG to meet the evidentiary burden to establish that unnecessary force was used.²⁰ *People v. Lacy*, 127 A.D.2d 933 (3d Dept. 1987) (officers' admitted use of physical force was reasonable to subdue suspect who had tried fleeing police and then began punching, biting and kicking the officers); *see generally* New York State Penal Law §35.30(1) (a police officer may: (1) "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" (2) "use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest . . .").

²⁰ According to the ME's notes from her interview of the officers, the officers said that they used force against Mr. Davis both to subdue him and to stop him from swallowing drugs that Mr. Davis allegedly was carrying. Officers are permitted to use reasonable force to stop the ingestion of drugs. *See People v. Cooper*, 7 Misc. 3d 61 (App. Term, 1st Dept. 2005) ("[T]he reasonable use of force to prevent loss of evidence is permitted where drugs have been placed in the mouth by an arrestee.") (citing *People v. Matherine*, 166 A.D.2d 322 (1st Dept. 1990)).

POLICY RECOMMENDATIONS

Executive Orders No. 147 and 147.9 provide that the OAG may offer “any recommendations for systemic reform arising from the investigation.” Accordingly, we recommend the following:

(1) the ME’s office should adopt policies consistent with National Association of Medical Examiners (“NAME”) standards; (2) the BPD should take steps to become accredited by the New York State Division of Criminal Justice Services (“DCJS”); and (3) the BPD should outfit its officers with body-worn cameras.

A. Medical Examiner Policies and Procedures

The ME insisted on speaking with the officers involved (who clearly have an interest in the report’s conclusions) before making a scientific conclusion about the cause and manner of death. The ME met with the officers jointly (with their attorneys) and without a member of the investigative team. Even more worrisome was the ME’s statement to the OAG investigative team before meeting with the officers: the ME indicated that if the officers did not meet with her, she would deem the cause of Mr. Davis’s death to be “positional asphyxia” and report that the BPD refused to cooperate with her. In response, OAG specifically asked the independent expert whether he saw evidence of positional asphyxia in Mr. Davis’s autopsy, and he concluded that Mr. Davis’s death was not caused by positional asphyxia.

Adoption of policies consistent with NAME standards would help provide assurance that the ME’s investigations are conducted in a professional manner.²¹

B. BPD Should Seek State Certification²²

We strongly encourage the BPD to become a New York State-accredited law enforcement agency as a means of improving its policies and addressing some of the deficiencies that OAG noted during our review of this matter. In particular, the OAG found the BPD’s investigation of this matter lacking in the areas of evidence collection and documentation. For example, the officers’ radio and flashlight were picked up before being properly documented or photographed and half of Mr. Davis’s jacket was never recovered. There should have been better communication between the first officers on the scene and the evidence and photography units in order to ensure that all relevant areas were properly searched and all relevant investigative steps were documented.

²¹ According to Denise McNally, the Executive Director of the National Association of Medical Examiners (“NAME”), the Erie County Medical Examiner’s Office was denied accreditation in 2010, due to deficiencies in the operation of the ME’s Office.

²² According to an article in the Buffalo News dated December 11, 2017, BPD is taking steps to begin the accreditation process. <http://buffalonews.com/2017/12/11/buffalo-police-appoint-lieutenant-to-head-accreditation-process/>

According to DCJS, the accreditation program has four goals, quoted here:

1. Increased effectiveness and efficiency of law enforcement agencies utilizing existing personnel, equipment and facilities to the extent possible;
2. Promotion of increased cooperation and coordination among law enforcement agencies and other agencies of the criminal justice services;
3. Ensure appropriate training of law enforcement personnel; and
4. Promotion of public confidence in law enforcement agencies.²³

The training and protocols required by the accreditation process would serve to assist the BPD in handling future incidents.

C. BPD Should Outfit Officers with Body-Worn Cameras and Vehicles with Dashboard Cameras

Although it has instituted a pilot program, BPD does not, as a general matter, outfit its officers with body-worn cameras or its cars with dashboard cameras.²⁴ Indisputably, videotaped evidence would have greatly facilitated the investigation of this case. We encourage the BPD and City of Buffalo policymakers to continue their efforts to outfit as many officers and vehicles as possible with body-worn and dashboard cameras.

²³ See www.criminaljustice.ny.gov/ops/accred/.

²⁴ A pilot program involving 20 BPD officers is already in progress. See <http://buffalonews.com/2017/07/10/buffalo-police-want-test-body-cameras/>.

APPENDIX A

Overview of Investigative Steps to Locate Witnesses and Other Evidence Concerning the Incident

Several investigative steps were taken to identify witnesses and other evidence, to support or contradict the officers' statements about the incident including: (1) several canvasses of the neighborhood for witnesses and surveillance video; (2) leads from Mr. Davis's family and girlfriend; and (3) review of Mr. Davis's cell phone and follow-up on leads obtained from the phone.

1. Canvasses of the Neighborhood

Shortly after the incident, BPD Homicide investigators began canvassing the area for possible witnesses. Thereafter, BPD and OAG investigators, both together and separately, repeatedly attempted to interview the residents near the scene on Hoyt Street (including Arnold Street) to find witnesses. Despite numerous efforts, only one person told the OAG that he witnessed any portion of the encounter: a man who resided on Arnold Street and happened to be driving past on February 7, 2017 ("Witness 2").

On February 10, 2017, Witness 2 gave an oral statement to BPD Homicide investigators. In that statement, he stated that as he drove past the police car, he saw a handcuffed man lying on the ground and two police officers "just standing there." On February 15, 2017, he gave OAG investigators a sworn statement stating that: (1) he was coming home from work and turned onto Hoyt Street; (2) he saw a marked police car pulled over on the right side of Hoyt Street, with its headlights on, but its flashing overhead lights off; (3) two police officers and a man were on the ground in the street behind the police car; (4) "one officer [was] up on his knees with his arms out in front of him, down by the ground," and the other officer was "sort of laying with his body across the guy who was on the ground"; (5) it was dark, and Witness 2 could not see the man's face, if "the cops [were] fighting with the guy," or "if the guy on the ground was moving – he looked pretty still." Witness 2 continued to drive home. In sum, Witness 2 estimated that he watched the officers and the man on the ground for 10 seconds. The next day, he learned that the man was someone he knew from the neighborhood named "Meech" (a nickname for Mr. Davis).

Both BPD and OAG investigators canvassed the area to obtain any private or public surveillance camera footage. They recovered several surveillance tapes but none had a view of the area on Hoyt Street where Mr. Davis and the police interacted. The OAG did obtain two videos taken by civilians who resided near the scene. Neither captured any part of the confrontation between the officers and Mr. Davis. Both depicted resuscitation efforts being given to Mr. Davis; one before an ambulance was on the scene and one after.

2. Leads from Mr. Davis's Family and Girlfriend

The attorney for Mr. Davis's estate and the attorney for Mr. Davis's girlfriend provided information about eight individuals who they believed might be possible witnesses to the altercation. OAG investigators actively pursued that information and all but two of the individuals mentioned were interviewed. These six individuals told the OAG that they were unaware that there had been a confrontation between the police and Mr. Davis until they saw multiple police lights, well after the altercation was over.

Multiple efforts to find and interview the remaining two people were made by both the investigative team and Mr. Davis's family, including no less than five attempts for each of the two by the OAG. Both had moved and notices were left at their new addresses. Relatives of the two individuals were located and spoken to and asked to have the individuals contact OAG investigators. Phone contact was made on one occasion and an individual said "wrong number" and hung up. OAG investigators sought the assistance of Mr. Davis's family and their attorneys' private investigators to ascertain the location of the missing witnesses, also without success. The OAG has learned that one of the missing witnesses died of an overdose on October 5, 2017.

3. Mr. Davis's Cellphones

Mr. Davis had two phones, an iPhone and an Android. He did not have these phones on his person when he was taken to the hospital. The OAG received these phones from Mr. Davis's girlfriend, who told the OAG that she was provided them by an unknown man who saw her at a memorial display for Mr. Davis at 19 Hoyt Street. The investigative team traced the numbers of completed calls made by or to Mr. Davis on February 7, 2017 on both of his two cell phones to their subscribers. This included over 160 calls to and from over two dozen identified individuals. Repeated efforts were made to speak with each person. Several of the numbers were subsequently disconnected; some people refused to speak with the investigators. Of the individuals spoken to, no one witnessed any portion of the altercation between Mr. Davis and the officers.

Investigators also sought to interview people who had called either of Mr. Davis's phones after the altercation. At 1:30 a.m. on February 8, 2017, a fifty-two second phone call was made to Mr. Davis's iPhone from a phone owned by Mr. Davis's aunt. Investigators spoke with Mr. Davis's aunt on June 26, 2017. She said that she called Mr. Davis's phone at that date and time and someone answered, but no one spoke. Mr. Davis's aunt attempted to find out who had answered her nephew's phone. After several inquiries in the neighborhood, she found Witness 3, who told her that he was "hanging out" with Mr. Davis on the night of February 7. Mr. Davis's aunt said that Witness 3 told her that Mr. Davis feared the police in the area were about to stop him, so he asked Witness 3 to hold his two cell phones and a knife. She said that Witness 3 told her that, shortly thereafter, the police stopped Mr. Davis on Hoyt Street and told Witness 3 to leave. According to Mr. Davis's aunt, Witness 3 said he gave the phones to Mr. Davis's girlfriend after Mr. Davis's death. Once investigators had this information, they attempted to interview Witness 3, only to learn that he died of a narcotics overdose on April 15, 2017.

APPENDIX B

Overview of Officer's Statements Regarding the Incident

The OAG was able to learn the officers' account of what happened during the Incident through (1) statements made by Officers Parisi and McAlister at the scene; (2) "Use of Force" reports that each Officer created for the BPD shortly after the incident; (3) documentation of the officers' condition at the stationhouse; and (4) an account of a joint interview of the two officers conducted by the ME that is discussed in the autopsy report and is reflected in notes taken by the ME about the joint interview.²⁵ After the OAG had reviewed all of the available evidence, the OAG reviewed statements that the officers made on February 8, 2017 to the BPD as part of the BPD's administrative inquiry.

1. Officers Parisi and McAlister's Statements at the Scene

Lt. Kochersberger was the first supervisor to arrive on the scene on Hoyt Street. When he approached Officers Parisi and McAlister, they appeared disheveled and out of breath, consistent with having been in a struggle. Mr. Davis was handcuffed behind his back and on his stomach. Lt. Kochersberger asked Officer Parisi what had happened and was told that Mr. Davis had come out of 19 Hoyt Street and "at some point took off on them." Officer Parisi told Lt. Kochersberger that they were fighting with Mr. Davis and could not get him handcuffed. Officer Richard Cruz also asked both Officer Parisi and Officer McAlister individually what had happened. Each separately responded that Mr. Davis had come from 19 Hoyt, but provided no additional details.²⁶

2. Officer McAlister's and Parisi's BPD Use of Force Reports

Both officers completed BPD Use of Force Reports before the end of their shift. *See Exhibit 4.* The form is a computerized checklist wherein the officer clicks on a drop-down box to answer questions. An officer must choose among the options offered in response to the questions and cannot write in other responses. No narrative was included in either report.

a. Officer McAlister's BPD Use of Force Report

According to Officer McAlister's report, the officers used force on Mr. Davis to "prevent escape." Officer McAlister's report listed the types of resistance that Mr. Davis used against the officers as the following: "refused commands, aggressive, combative, escape, fighting with officers, fled, pushing, push off officers, and uncooperative." Officer McAlister's report further noted that Mr. Davis sustained injuries to his eye and nose, described as "bloody," and that Officer McAlister physically engaged Mr. Davis and made contact with Mr. Davis's wrists and forearms.

²⁵ Attached as Exhibit 4 are (a) the "Use of Force" reports and (b) the statements that the officers made as part of the administrative inquiry. As noted above, the ME's notes concerning the ME's interview of the officers are attached as Exhibit 2. Pursuant to *Garrity v. N.J.*, 315 U.S. 493 (1967), each officer's statements made in connection with the BPD administrative inquiry may not be used against that officer in a criminal proceeding. For that reason, the OAG reviewed these statements only after it had exhausted all other available evidence and concluded that charges were not warranted.

²⁶ According to several officers on the scene, Officers Parisi and McAlister were separated and advised not to speak to anyone.

b. Officer Parisi's BPD Use of Force Report

Officer Parisi's Use of Force report listed the reason for the use of force against Mr. Davis as "protection of officers." Officer Parisi listed the types of resistance that Mr. Davis used against the officers as the following: "aggressive, attempted to flee, combative, fighting stance, fighting with officers, foot chase, kicking, pulled away, punching, push off officers, pushing, refused commands, struggle with officers, uncooperative, violent." Officer Parisi noted that he used force and physically engaged Mr. Davis, making contact with his nose, both eyes, bicep area on both arms, and wrists.

3. Documentation of Officers Parisi's and McAlister's Condition at the Stationhouse

Both officers were transported to the B District stationhouse. They were kept separate and photographed. Their uniforms were taken into evidence. The officers' clothing was muddy, consistent with a physical altercation on a wet, muddy area. Officer Parisi had mud on his face. Officer McAlister's radio was off of his uniform. He was discovered to have sustained an injury to his wrist and was taken to a local hospital where he was treated and released. Officer McAlister voluntarily provided copies of his medical records to the OAG. Those records confirm that he sprained his right wrist as well as a finger on his left hand.

4. The Medical Examiner's Interview

Officers Parisi and McAlister refused requests by the OAG to be interviewed unless they were interviewed jointly. The OAG declined to do so, but the ME did insist on interviewing them, in the presence of their attorneys and without a member of the investigative team in attendance. That meeting occurred on April 4, 2017. Accordingly, her statements are a secondhand account of the officers' collective recollection of events.

Presented here are the statements the ME attributed to the officers in the autopsy report and in her typed "Case Notes" provided to the OAG. *See Exhibit 2.*²⁷

a. Statements Reported in the Autopsy Report

[T]hey encountered the decedent on a routine patrol of the neighborhood. While they were speaking with him, the decedent would not take his hands out of his pockets despite several requests. One of the officers²⁸ got out of the patrol car and attempted to handcuff the decedent as he was standing next to the car due to the continued placement of his hands in his pockets. He ran from them and they called for assistance [at 11:19:27 p.m.]. They stated that the decedent ran down the street about 15-20 feet then tripped and fell. They caught up with him and noticed that as he was lying prone on the ground, he appeared to be trying to get something out of his pants. They stated they were concerned this could be drugs that he might attempt to swallow. They stated that they attempted to hold his chest up and struck his face to subdue him and keep him from reaching for whatever he was trying to get as they knelt to the right of him as he lay

²⁷ A subpoena was issued for all of the ME's notes. No handwritten notes were received in response.

²⁸ The officer was identified by the ME to OAG investigators as Officer McAlister.

prone on the ground. During this time the decedent was struggling and reportedly shouting, ‘let me go.’ They were able to get his left then right hand in handcuffs at which point they called that he was in custody [at 11:21:03 p.m.].

b. The ME’s Notes of the Officers’ Statements

The officers stated that they were in the neighborhood on routine patrol in their car. They saw the decedent walk out of a house. They rolled over to him in their car and asked, ‘why are you always coming out of a drug house?’ among other questions. The decedent told them that he had marijuana on his person but nothing else. The decedent kept putting his hands into his pockets. They asked him to keep his hands out of his pockets. The officer in the passenger seat got out of the car and indicated that he was going to handcuff the decedent because the decedent kept putting his hands into his pockets. The decedent ran and the officer grabbed his hood (in a horse collar like move), spraining his finger. At that point the other officer²⁹ got out of the car and they called for back-up. They initially called in the wrong street, which was corrected by the first officer to arrive on the scene when he saw them. The decedent ran 15-20 feet down the street then tripped and fell on the wet pavement. Both officers ran after him. When they got to the decedent, he was prone and appeared to be reaching down into his pants. The officers thought he might be trying to retrieve and swallow drugs. One officer knelt beside him (to the decedent’s right) and wrapped his arm around the decedent’s upper chest trying to subdue him. During this time, the decedent was struggling and yelling, ‘let me go.’ They finally got him handcuffed and he stopped struggling. At this point, other officers had arrived. They rolled him other [sic] to search for drugs. Upon rolling him over, it was realized that he was not responsive. Resuscitation was initiated and 911 was called. Rescue breaths were not given because the decedent had blood on his face.

5. Officer Parisi’s and McAlister’s BPD P-73 Reports

On February 8, 2017, Officers Parisi and McAlister each submitted P-73 narrative reports before the end of their shift as they were ordered to do. These statements are reproduced verbatim below.

a. Statement by Officer Parisi

This report has been prepared following the order to so from Chief Joseph Gramaglia. While on patrol driving north on Hoyt St. I observed a known male, from previous arrests come from the driveway of a known drug house at 19 Hoyt st. We stopped the male at approximately 15 Hoyt St. to further investigate. I engaged the male in conversation about the known drug house he just left. I asked the male if he had any illegal drugs on him, and he stated he ‘only had weed’, and that he had court in the morning and to just let him go. The man was repeatedly reaching into his pockets after

²⁹ The officer was identified by the ME to OAG investigators as Officer Parisi.

being instructed to keep his hands where we could see them. At that point for our safety we decided we were going to momentarily handcuff him to check him more thoroughly. As we attempted to handcuff the male, he swung his arms towards ofc. Mcalister and took off northbound on Hoyt St. We chased after him and ofc. Mcalister grabbed the male by his hood from behind. The suspect started swinging at both of us in an attempt to escape. The male momentarily got loose and took off running southbound on Hoyt St. As we were chasing the male he tripped and fell to the ground at approximately 15 Hoyt St. I went to the ground in an effort to handcuff the man. I believe my partner was right behind me. We were unable to handcuff the suspect because he was violently fighting with us. Prior to being handcuffed the man was attempting to kick and punch us. Before handcuffing him I punched the man in the face with a closed fist several times trying to subdue him and to protect myself and my partner. During the course of the confrontation for a short period of time I had the suspects head and neck in the crook of my arm attempting to subdue him. During this period of time the male was talking and asking us to let him go, or words to that effect. My partner assisted putting handcuffs on the suspect. During the course of all this we told the man to stop resisting and to give us his hands. We forcibly pulled his hands to the back to get him handcuffed. Once in custody I rolled the defendant over to his back, trying to get him up and to search him. Lt. Kochersberger who had just arrived on scene noticed the male wasn't breathing. We immediately rolled the man to remove handcuffs and start CPR. As soon as handcuffs were off ofc. Mcalister administered CPR. As soon as we noticed the suspect was not breathing Lt. Kochersberger called for ambulance and asked that it be stepped up. Fire and ADI showed up on scene and took over, I was put into Lt. Kochersbergers vehicle and taken back to the station. As a result of the encounter, both of our uniforms were dirty. Photos of our uniforms were taken by Lt. Swaggard and John Fecio. We submitted our uniforms as evidence. During the course of the fight with the suspect nothing other then my closed fist was used to protect us and subdue him. Neither I nor my partner used our batons against the suspect, there was no time or opportunity to use cap spray during this incident. I learned later that the suspect Wardel Davis 8/7/1996 had expired at the Buffalo General ER. When we first encountered the male we both knew who he was from previous arrests, etc. Our past information on Mr. Davis was that he was a drug dealer. Our street contacts had confirmed that the house Mr. Davis walked out of when we approached him was being used for narcotics dealings--especially over the last three weeks. Ofc. Mcalister did not preform mouth to mouth resuscitation because Mr. Davis had some bleeding around his mouth. We did not see Mr. Davis put anything into his mouth during the struggle and fight. Before we noticed Mr. Davis was in distress he was violent. Criminal records show Mr. Davis has a lengthy arrest history. Our quick search of Mr. Davis at the scene did not produce anything. My partner was taken to ECMC for examination to his wrists and fingers.

b. Statement by Officer McAlister

This report has been prepared following an order to do so by my Chief Joe Gramaglia. On February 7, 2017 at approximately 2317hrs while on routine patrol in Bravo District, we were headed north on Hoyt from W. Ferry. We were in marked patrol vehicle 462, where I was the passenger and my partner Nick Parisi was driving. we observed a male leaving an address which we had known to be a drug house based on

previous complaints and neighborhood informants As we approached the individual while still in the marked patrol vehicle, the suspect was walking south positioned on the passenger side which would have been the east side of the street. I opened my door and approached the individual which I recognized from a previous arrest. I immediately told the suspect to take his hand out of his left jacket pocket and then I proceeded to stand behind him until my partner approached from the front. Officer Parisi asked the suspect if "he had anything illegal on him?" and the suspect stated "I have weed but I have court in the morning." the suspect began to reach in his pocket and was instructed to keep his hands out of his pockets. He kept reaching and I then told Ofc. Parisi that "I was going to cuff him." I pulled out my cuffs and grabbed his left arm to begin cuffing procedures, when the individual snatched his arm away and attempted to run. I was able to grab the suspect by his hoodie to stop him from running, but he still was able to flee. He was able to run in front of our parked patrol vehicle but was quickly grabbed. we were unable to get him to the ground and he was able to break free. Upon breaking free the suspect did swing at Officers before fleeing again. the suspect ran a short distance before slipping and falling to the ground not too far from the rear of the patrol vehicle. at that point, we were able to get on top of him and attempt to cuff him. While on the suspect I was able to inform the radio dispatcher where we were located. We constantly told the suspect to "stop resisting" but he still was not compliant with giving me his left arm. I was eventually able to get his left wrist cuffed and then the right wrist immediately followed. While cuffing him other officers arrived on scene. Once cuffed, I stood up and began to do a search of his person for weapons. At that point, LT Kochersberger observed that he may not have been breathing. I immediately removed one cuff from his wrist and began chest compressions. I completed 4 cycles of 30 compressions without respirations because his mouth was bloody. Ofc. Bonner took over compressions and I was placed in patrol vehicle 620 awaiting instruction. I was removed from the scene by Lt. Swaggard and returned to the bravo District station house. Pictures of my uniform were taken and my clothes were given to homicide. I was seen and released from ECMC for a sprained left finger and a sprained right wrist.

I have no idea what caused Wardel Davis to go into distress. I did not use my baton or cap spray against Mr. Davis.



93% 6:46 AM



Meecho Da Guwop

Active 7 hours ago



I can't breath



Go To The Hospital Dude



I'm am in a lil bite

No Now

After I make a couple more
dollars

Ok



Ok I promise



Aa





OFFICE OF THE MEDICAL EXAMINER
COUNTY OF ERIE

REPORT OF EXAMINATION



Name of Decedent: Wardel Davis III

M.E. #: 0354-17

Exam Performed by: Katherine Maloney, M.D.

Date of Exam: 2/8/2017

FINAL DIAGNOSES

- I. ACUTE ASTHMA EXACERBATION COMPLICATING ACUTE BRONCHITIS IN THE SETTING OF PHYSICAL ALTERCATION
 - II. ACUTE BRONCHITIS
 - A. SEE HISTOLOGY SECTION
 - III. BRONCHIAL ASTHMA
 - A. SEE HISTOLOGY SECTION
 - B. TREATMENT WITH BRONCHODILATORS, ANAMNESTIC
 - C. HOSPITAL ADMISSIONS FOR ASTHMA EXACERBATIONS, ANAMNESTIC
 - IV. BLUNT IMPACT INJURIES OF HEAD, TORSO AND EXTREMITIES
 - A. ABRASIONS, CONTUSIONS AND LACERATIONS OF SKIN
 - V. OBESITY, BODY MASS INDEX 32.4
-

CAUSE OF DEATH: ACUTE ASTHMA EXACERBATION COMPLICATING ACUTE BRONCHITIS IN THE SETTING OF PHYSICAL ALTERCATION

MANNER OF DEATH: HOMICIDE

**OFFICE OF THE MEDICAL EXAMINER
COUNTY OF ERIE**

REPORT OF EXAMINATION

CASE NO. 0354-17

*I hereby certify that I, **Katherine Maloney, M.D.**, Deputy Chief Medical Examiner, have performed an examination of the body of **Wardel Davis III**, on the 8th of February 2017, commencing at 8:15AM at the Erie County Medical Examiner's Office. This examination was performed in the presence of Det. Michael Mordini, Det. John Paradowski, and CST. Maria Esquilin from the Buffalo Police Department and Investigator Brian Ross from the New York State Attorney General's Office. Det. James Maroney and Det. Christopher Gerace from the Buffalo Police Department were also present for a portion of the examination.*

EXTERNAL EXAMINATION:

The body is of a well-developed, obese (BMI 32.4), average framed, 6'2", 252 lb Black man whose appearance is consistent with the given age of 20 years. There are blunt impact injuries of the head, torso and extremities described further below. The curled brown hair measures up to approximately ½". The mustache and beard measure up to 1/8" and ¼" respectively. There is red-pink foam and mucus coming out of the nose. The nose and facial bones are palpably intact. The eyes have brown irides and the anicteric conjunctivae have the findings described below. There is one earring hole in each earlobe. The oral cavity has natural dentition in good condition with the findings described below. The chest and extremities are symmetric. The abdomen is soft and non-distended, without palpable organomegaly or fluid wave. The external genitalia are of a normal circumcised adult man. The anus is unremarkable. There is an identification bracelet with the decedent's name and case number on the right ankle. A hospital identification bracelet with the name "John Doe" is located on the right wrist.

A 1" linear scar is located on the upper right side of the back. A ¼" circular scar is located on the mid anterior right thigh. A ¼" x ¼" scar is located on the mid right shin. A 5" linear, vertically-oriented scar is located on the medial right calf. Two, ½" each, adjacent linear scars are located on the proximal anterior left thigh. A monochromatic tattoo of a crown and the words, "Meech" and "Loyalty" is located on the posterior right forearm. A monochromatic tattoo of praying hands with a rosary and the words, "RIP Wardel Tequesta" is located on the anterior left forearm.

POSTMORTEM CHANGES:

There is moderate symmetrical rigor mortis of the upper and lower extremities, neck and jaw. Lividity is purple, non-fixed, and posterior. The body is cool externally due to refrigeration and warm internally.

THERAPEUTIC PROCEDURES:

In place are an endotracheal tube, single lumen intravenous catheter in the left antecubital fossa and intraosseous line in the left shin. There are mucosal hemorrhages in the larynx (comment: consistent with intubation). There are petechial hemorrhages in the falciform ligament (comment: consistent with resuscitation).

CLOTHING:

The body is clad in a hospital gown. There was no clothing available for review at the time of autopsy (comment: the decedent's clothing was collected from the hospital by the police and examined several weeks after the autopsy was performed and consisted of a previously incised blue and white hooded zip-front jacket, black jeans, gray boxer briefs, white socks and black shoes).

INJURIES:

There are blunt impact injuries of the head, neck, torso and extremities.

Blunt impact injuries of head

Two, $\frac{1}{2}$ " each, linear purple contusions are located on the mid forehead. A 1×1 " purple contusion is located just above the left eyebrow. A $2\frac{1}{2} \times 2$ " purple contusion involves the left upper and lower eyelid and surrounding skin. A $1\frac{1}{4} \times 1$ " focus of multiple red abrasions is located on the mid right cheek. A $\frac{1}{2} \times \frac{1}{4}$ " red abrasion is located on the lateral aspect of the right naris. A $\frac{3}{8} \times \frac{1}{4}$ " red abrasion is located on the medial aspect of the right naris. A $\frac{1}{2} \times \frac{1}{2}$ " purple contusion is located on the left naris. Three red abrasions measuring, from superior to inferior, $\frac{1}{4} \times \frac{1}{8}$ ", $\frac{1}{4} \times \frac{1}{8}$ " and $\frac{3}{8} \times \frac{1}{8}$ " are located on the right side of the chin below the lips.

The conjunctivae have bulbar and palpebral petechiae on the right, bulbar hemorrhages on the right, diffuse bulbar hemorrhage on the left and palpebral petechiae on the left. There are petechiae of the oral mucosa.

A $\frac{1}{16}$ " red abrasion is located at the vermillion border of the medial right side of the upper lip. A $\frac{3}{4} \times \frac{3}{4}$ " red-purple contusion is located on the mid upper lip. A $\frac{3}{8} \times \frac{1}{4}$ " red abrasion is located on the medial aspect of the left side of the upper lip. A $\frac{1}{4} \times \frac{1}{4}$ " red abrasion is located on the mid left side of the upper lip. A $\frac{1}{2}$ " laceration is located on the lateral right side of the lower inner lip. A $\frac{1}{8}$ " laceration is located on the medial right side of the lower inner lip. A $\frac{1}{4}$ " laceration is located on the medial left side of the lower inner lip. A $1 \times \frac{1}{2}$ " red contusion involves in the medial left side of the lower lip on the outer aspect of the laceration noted above.

A 2 x 2" scalp hemorrhage is located on the medial right side of the forehead. A 1-1/2 x 1" scalp hemorrhage is located on the posterior right side of the head. A 3-1/2 x 3" scalp hemorrhage is located on the lateral right side of the forehead and associated with hemorrhage in the right temporalis muscle. A 2 x 2" scalp hemorrhage is located on the lateral left side of the forehead and associated with hemorrhage in the left temporalis muscle. A 3 x 2" deep muscle hemorrhage is located in the mid right cheek.

Blunt impact injuries of neck

A 1/2 x 1/8" hemorrhage is located in the mid right sternocleidomastoid. A 1/4 x 1/8" hemorrhage is located in the proximal left sternocleidomastoid. In the distal superficial muscles of the posterior right side of the neck are a 1 x 1", 1/2 x 1/2" and 1/4 x 1/4" hemorrhage. In the mid superficial muscles of the posterior left side of the neck is a 1 x 1" hemorrhage. In the proximal mid-depth muscles of the posterior right side of the neck is a 1/2 x 1/2" hemorrhage. In the mid mid-depth muscles of the posterior left side of the neck is a 1/4 x 1/4" hemorrhage. In the proximal mid and deep-depth muscles of the posterior left side of the neck is a 1/2 x 1/2" hemorrhage.

Blunt impact injuries of torso

A 1/2 x 1/2" subcutaneous hemorrhage is located on the mid top of the right side of the torso. A 1/2 x 1/2" subcutaneous hemorrhage is located on the mid top of the left side of the torso. A 1-3/4 x 1" subcutaneous hemorrhage is located on the lateral left top of the torso/medial left shoulder.

Blunt impact injuries of extremities

Right upper extremity

A 1 x 1" subcutaneous hemorrhage is located on the distal posteromedial right arm. A 1 x 1" subcutaneous hemorrhage is located on the proximal posteromedial right forearm. A 1/4 x 1/4" pink contusion is located on the posterior right wrist. Two linear white parallel abrasions measuring 3" and 5" are located on the posterior right wrist. A 3 x 2" subcutaneous hemorrhage is located on the posterior right wrist. Two, 1/8 x 1/8" each, red abrasions are located in the webbing between the knuckles of the posterior right first and second fingers.

Left upper extremity

A 1/2 x 1/2" subcutaneous hemorrhage is located just medial to the left antecubital fossa (comment: intravenous catheter near this location). A 1 x 1" subcutaneous hemorrhage is located on the mid medial left forearm. A 3 x 2" subcutaneous hemorrhage is located on the anterior left wrist (comment: possible skin puncture in this location). A 1/4 x 1/8" and a 1/8 x 1/8" red abrasion are located in the webbing between the posterior left first and second fingers. A 1/8 x 1/8" red abrasion is located in the webbing between the posterior left second and third fingers. A 1/16" red abrasion is located on the proximal posterior left fourth finger.

Right lower extremity

A 2-1/2 x 1-1/4" focus of multiple vertically-oriented linear red abrasions is located on the proximal lateral right thigh.

Left lower extremity

A 1-1/4 x 1" pink contusion is located on the mid anterior left thigh. A ¾ x ½" pink contusion is located on the proximal to mid left shin.

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

INTERNAL EXAMINATION:

BODY CAVITIES: The organs are in their normal situs. The pericardial, pleural and peritoneal cavities contain normal amounts of serous fluid and are without hemorrhage or adhesion. The abdominal wall pannus is 1-1/2" thick.

HEAD: The brain weighs 1130 gm and is normal size and shape. A 0.7 x 0.5 x 0.5 cm tan nodule is located on the tentorium. The cerebral hemispheres are symmetrical with the usual pattern of sulci and gyri. The leptomeninges are thin and clear. The cerebral vessels are without atherosclerosis or aneurysm. The cranial nerves are normally distributed. The white and gray matter, deep nuclei and ventricles are unremarkable. There are no focal lesions. The brainstem and cerebellum are unremarkable.

NECK: The cervical vertebrae, hyoid bone and tracheal and laryngeal cartilages are without trauma. The upper airway is patent. The tongue is unremarkable.

CARDIOVASCULAR SYSTEM: The heart weighs 430 gm and has a normal distribution of left predominant coronary arteries without atherosclerotic stenosis. There is no recent thrombus. The myocardium is homogeneous, dark red and firm without pallor, hemorrhage, softening or fibrosis. The left ventricle wall is 1.5 cm, interventricular septum is 1.4 cm and the right is 0.3 cm thick. The foramen ovale is probe patent. The endocardial surfaces and four cardiac valves are unremarkable. The aorta is without atherosclerosis. The venae cavae and pulmonary arteries are patent.

RESPIRATORY SYSTEM: The right lung weighs 670 gm and the left weighs 610 gm. The red parenchyma is without masses, consolidation or obstruction. The bronchi are unremarkable.

LIVER, GALLBLADDER, PANCREAS: The liver weighs 2140 gm and has an intact capsule. The brown and yellow parenchyma is without fibrous texture. The gallbladder contains approximately 5 cc of dark green bile without stones. The pancreas is unremarkable in lobulation, color and texture.

HEMIC AND LYMPHATIC SYSTEMS: The spleen weighs 125 gm and has an intact capsule. The color, red and white pulp and consistency are unremarkable. There are enlarged peritoneal lymph nodes.

GENITOURINARY SYSTEM: The right kidney weighs 190 gm and the left weighs 200 gm. A 2 cm cortical scar is located on the upper pole of the left kidney. Each kidney has an otherwise smooth red-brown surface with an unremarkable architecture and vasculature. The ureters maintain uniform caliber into an unremarkable bladder containing approximately 60 ml of urine. The prostate is not enlarged. The testes are unremarkable.

ENDOCRINE SYSTEM: The pituitary, thyroid, and adrenal glands are normal color, size and consistency.

DIGESTIVE SYSTEM: The esophagus and gastroesophageal junction are unremarkable. The stomach contains approximately 300 cc of thin brown fluid and well masticated food without identifiable fragments of pills or tablets. The gastric mucosa, small intestine and large intestine are unremarkable. The vermiform appendix is present.

MUSCULOSKELETAL SYSTEM: The vertebrae, clavicles, sternum, ribs and pelvis are without fracture. The musculature is normally distributed and unremarkable.

TOXICOLOGY: Blood, vitreous fluid, urine and bile are submitted for toxicologic analysis. A separate report will be issued.

TISSUES FOR HISTOLOGY: Sections of brain, heart, lung, liver and kidney are submitted for microscopic examination.

Brain: No pathologic changes.

Heart: There is moderate to marked myocyte hypertrophy.

Lung: There is mucus plugging in large airways with numerous neutrophils and eosinophils within the inspissated mucus. There are mixed inflammatory infiltrates surrounding large and medium-sized airways including mononuclear cells, plasma cells, neutrophils and eosinophils. There is goblet cell metaplasia of the respiratory epithelium of the large and medium-sized airways. There is thickening of the basement membrane of the large airways as well as hyperplasia of the surrounding bronchial glands and smooth muscle. There are increased numbers of pigment-laden macrophages in the alveoli. There is patchy intra-alveolar hemorrhage.

Liver: No pathologic changes.

Kidney: No pathologic changes.

SPECIAL STUDIES: None.

PHOTOGRAPHY AND RADIOGRAPHY: Photographs are taken by the Buffalo Police Department and copies are retained. Full-body radiographs are taken and retained.

EVIDENCE COLLECTED: An air-dried blood spot card for DNA is created and retained. An air-dried blood spot card for DNA, the hospital gown, sheet from the body bag, fingernail clippings and swabs of the hands are submitted to the Buffalo Police Department.

OPINION STATEMENT: This 20 year old man was pronounced dead in the emergency room after a physical encounter with the police. In the investigation of this matter, meetings were held with the Buffalo Police Department, New York State Attorney General's Office, the police officers involved in the encounter with the decedent and the first responding officers after the encounter had occurred. The decedent's medical records from Children's Hospital from 1996 to 2013 were reviewed. Medical records from Lakeshore Hospital from 2013 to 2017 were also reviewed. The clothing worn by the police officers and the decedent and photographs taken by the Buffalo Police Department the evening of the incident of the scene and the police officers involved were examined. The timing of the calls between the police officers involved and their dispatcher, as provided by the New York State Attorney General's Office, was reviewed. Cellphone messages sent to and from the decedent, a movie from the decedent's cellphone and a movie taken by a witness were also reviewed.

The medical records from Children's Hospital indicate that the decedent had a long history of bronchial asthma as a child which was treated with an albuterol inhaler. He also had morbid obesity and sleep apnea and underwent two separate oral surgeries to correct his sleep apnea and used C-PAP and BiPAP machines at night to breathe at different times.

According to text messages sent by the decedent, the evening of his death he complained of difficulty breathing related to a respiratory illness that he had had over the past week. He was advised to go to the hospital, which he promised to do later in the evening. Approximately forty minutes before his encounter with the police, the decedent made a video with his cellphone while he was at rest that revealed a respiratory rate of approximately 25-26 breaths per minute.

Per report from the police officers involved in the incident, they encountered the decedent on a routine patrol of the neighborhood. While they were speaking with him, the decedent would not take his hands out of his pockets despite several requests. One of the officers got out of the patrol car and attempted to handcuff the decedent as he

was standing next to the car due to the continued placement of his hands in his pockets. He ran from them and they called for assistance (23:19:27). They stated that the decedent ran down the street about 15-20 feet then tripped and fell. They caught up with him and noticed that as he was lying prone on the ground, he appeared to be trying to get something out of his pants. They stated they were concerned this could be drugs that he might attempt to swallow. They stated that they attempted to hold his chest up and struck his face to subdue him and keep him from reaching for whatever he was trying to get as they knelt to the right of him as he lay prone on the ground. During this time the decedent was struggling and reportedly shouting, "let me go." They were able to get his left then right hand in handcuffs at which point they called that he was in custody (23:21:03). Two other police officers arrived at that point. The decedent was rolled on his right side to be searched, at which point one of the other police officers noticed that the decedent was not breathing. A call was made for an ambulance (23:22:05) and chest compressions were started (corroborated by witness video). Due to blood on the decedent's face, rescue breaths were not given.

Examination revealed an acute asthma attack, acute bronchitis, features of chronic asthma and blunt impact injuries of the head, torso and extremities. Toxicology testing was performed and is noncontributory. As the asthma attack precipitated by the decedent's acute bronchitis was exacerbated by the physical interaction between the decedent and the police, the manner of death is Homicide. This manner designation does not imply, however, that there was intent to cause injury or that excessive force was used.



Katherine Maloney, M.D.
Deputy Chief Medical Examiner

KFM

DRAFT: 2/8/2017

FINAL: 4/47/2017



Forensic Toxicology Laboratory
Erie County Medical Examiner's Office
Erie County Department Of Health
501 Kensington Avenue, Buffalo, NY 14214
716-961-7591

KM
4/27/17

Forensic Toxicology Postmortem Report

Decedent: Davis III, Wardel Black/Male/20 Years
Pathologist: Katherine Maloney, MD
Agency Case #: 0354-17

Laboratory Number: 0354-17
County: Erie

Specimens Submitted

<u>Collected or Submitted by / Specimen Type</u>	<u>Sample Control #</u>	<u>Container</u>	<u>Collection site</u>	<u>Approximate amount</u>	<u>Date/Time collected</u>	<u>Date rec'd in lab</u>
Maloney, M.D., Katherine						
Bile	17020908422940986	Tube, red top		2 ml	2/8/17 8:15	2/9/17
Blood	17020908424988442	Tube, plastic	Peripheral	10 ml		
Blood	17020908424394696	Tube, plastic, w/NaF	Peripheral	25 ml		
Urine	17020908430024072	Tube, plastic		50 ml		
Vitreous Humor	17020908425636323	Tube, red top		4 ml		

Results of Toxicological Examination

Qualitative Tests

<u>Specimen</u>	<u>Sample Control #</u>	<u>Test</u>	<u>Analyte Name</u>	<u>Result</u>
Blood	17020908424394696	BDS GC-MS BDS LC-MS/MS	Doxylamine Naloxone	Positive
Urine	17020908430024072	BDS GC-MS	Cocaine Doxylamine Ecgonine methyl ester Methadone	Detected, unconfirmed Positive Positive Positive Positive

Quantitative and/or Confirmatory Tests

<u>Specimen</u>	<u>Sample Control #</u>	<u>Test</u>	<u>Analyte Name</u>	<u>Result</u>
Blood	17020908424988442	BDQ LC-MS/MS Cannabinoids Quant	Doxylamine Delta-9 Carboxy Tetrahydrocannabinol Delta-9 Tetrahydrocannabinol	0.03 mg/L 1.4 mcg/L
Urine	17020908430024072	Basic Drug Quants Cocaine Quant	Methadone Benzoylecgonine Cocaine Ecgonine methyl ester	1.7 mcg/L Positive Positive Positive Positive

The following tests were run in this case. Negative findings or where a drug or other chemical was identified but was below our reporting limit may not be reported.

Test	Method of Analysis	Specimen	Sample Control #
Qualitative screen			
Acid-Neutral Drug Screen	LC-MS/MS	Blood	17020908424394696
BDS GC-MS	GC-MSD	Blood	17020908424394696
		Urine	17020908430024072
BDS LC-MS/MS	LC-MS/MS	Blood	17020908424394696
ELISA	Enzyme Immunoassay	Blood	17020908424394696
Quantitation and/or Confirmation			
Basic Drug Quants	GC-NPD	Blood	17020908424988442
		Urine	17020908430024072
BDQ LC-MS/MS	LC-MS/MS	Blood	17020908424988442
Cannabinoids Quant	LC-MS/MS	Blood	17020908424988442
Cocaine Quant	GC-MS	Blood	17020908424988442
		Urine	17020908430024072
Volatiles	Headspace-GC/FID	Blood	17020908424394696
		Urine	17020908430024072



 Christine R. Giffin, M.S.
 Chief County Toxicologist

April 27, 2017

Definition of terms used in this report can be located within the Report Standardization Manual at:
<http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>. This report does not constitute the entire case file. The file may contain worksheets, images, analytical data and other documents.

Remaining specimens will be retained for a minimum of 60 days after report date. Contact laboratory if a longer retention period is necessary.

4/4/17: I met with Tom Burton, Joe Latona, Officer Parisi and Officer McAllister. The officers stated that they were in the neighborhood on routine patrol in their car. They saw the decedent walk out of a house. They rolled over to him in their car and asked, "why are you always coming out of a drug house?" among other questions. The decedent told them that he had marijuana on his person but nothing else. The decedent kept putting his hands into his pockets. They asked him to keep his hands out of his pockets. The officer in the passenger seat got out of the car and indicated that he was going to handcuff the decedent because the decedent kept putting his hands into his pockets. The decedent ran and the officer grabbed his hood (in a horsecollar like move), spraining his finger. At that point the other officer got out of the car and they called for back-up. They initially called in the wrong street, which was corrected by the first officer to arrive on the scene when he saw them. The decedent ran 15-20 feet down the street then tripped and fell on the wet pavement. Both officers ran after him. When they got to the decedent, he was prone and appeared to be reaching down into his pants. The officers thought he might be trying to retrieve and swallow drugs. One officer knelt beside him (to the decedent's right) and wrapped his arm around the decedent's upper chest trying to hold his head up so he could not swallow drugs, while punching him in the face repeatedly trying to subdue him. During this time, the decedent was struggling and yelling, "let me go". They finally got him handcuffed and he stopped struggling. At this point, other officers had arrived. They rolled him over to search for drugs. Upon rolling him over, it was realized that he was not responsive. Resuscitation was initiated and 911 was called. Rescue breaths were not given because the decedent had blood on his face. KFM

Peter T. Ostrow, MD, PhD

[REDACTED]
[REDACTED]
June 15, 2017

Diane LaVallee
Office of the New York State Attorney General
350 Main Street
Suite 300A
Buffalo 14202

I was asked to review the case of Wardel Davis III, who died on February 8, 2017. I am an Associate professor emeritus of Pathology and Anatomical Sciences and of Neurology at UB Jacobs School of Medicine and Biomedical Sciences, board certified in Anatomic Pathology and Neuropathology, and licensed to practice Medicine in New York (#181749). My Curriculum Vitae is appended below.

The following materials were provided for me to use in my review:

- Original slides from the autopsy made available for viewing at ECMC
- Recuts of slides from preserved organ tissue
- Autopsy report (including photographs, toxicology and radiology) and notes of Dr. Katherine Maloney
- Medical Records of Wardel Davis III, from ECMC (PCP); Buffalo General (where he expired); Confidential records of [REDACTED] WCHOB; list of prescribed medications from local pharmacy;
- Statements of multiple individuals regarding the status of Mr. Davis' health during the days and weeks preceding his death;
- Statement of [REDACTED] who observed an officer laying over Mr. Davis;
- Social media, including screenshot of text conversation between Mr. Davis and his friend approximately 35 minutes prior to the police encounter and a video from Mr. Davis' phone taken at 12:55 a.m. on February 7, 2017.

On May 22, 2017, I met with AAG LaVallee and Investigator Brian Ross at the medical Examiner's office at ECMC.

A staff member of the M.E. Office gave me 8 slides from the autopsy labeled ME-17-0000354 A1 – A8, which I understand were all the slides produced at the autopsy. The slides contained the following tissues:

Slide A1- one section of kidney and one section of liver

Slide A2 - one section of lung and one section of heart

Slide A3 - one section of lung

Slide A4 - one section of lung

Slide A5 - one section of lung

SlideA 6 - one section of lung

Slide A7 -one section of lung

Slide A8 - two sections of brain

I reviewed each slide, spending the majority of time on the lung slides. I was looking for any abnormalities that were present on the slides, with particular attention to the findings that Dr. Maloney described in her review of the slides, as stated in the autopsy report: (1) mucus plugging of airways; (2) neutrophils and eosinophils within the inspissated mucus; (3) inflammatory infiltrates surrounding the large and medium-sized airways including mononuclear cells, plasma cells, neutrophils and eosinophils; (4) goblet cell metaplasia of the respiratory epithelium of the large and medium-sized airways; (5) thickening of the basement membrane of the large airways; (6) hyperplasia of the surrounding bronchial glands and smooth muscle; (7)increased numbers of pigment-laden macrophages in the alveoli; (8) patchy intra-alveolar hemorrhage.

Findings (1) through (6) are characteristic and strongly indicative of asthma, while (7) & (8) may also be seen but are non-specific.

After approximately two hours of reviewing and discussing the slides, we concluded our meeting. I had seen each of the findings described by Dr. Maloney. I also saw myocardial cell hypertrophy as described by Dr. Maloney and agreed that the kidney, liver and brain sections showed no specific or significant pathological alterations. I preferred to spend more time examining the slides, and I was later given a set of "recuts" (slides made from the same blocks of tissue as the originals) for further examination to confirm and extend my observations. In addition to the findings mentioned earlier, I also saw the following:

Megakaryocytes in pulmonary capillaries: These cells are usually seen in the bone marrow, and are not numerous in the lung. When present in larger numbers, they usually connote hypoxemia (low levels of oxygen in the blood) that has been present for at least 24 hours. I interpret this to mean there had been a deprivation of oxygen for at least a day before Mr. Davis' death. This is consistent with the reports of his health status in the days prior to his death.

Charcot-Leyden crystals: These pyramidal shaped crystals are a by-product of the breakdown of eosinophils; they are non-specific, but are among the possible findings in someone with asthma.

This combination of findings is consistent with Mr. Davis' history of asthma. It is also consistent with several comments about his health made by those who interacted with him during the last week of his life, and with the cell phone messages shortly before his police encounter in which he complained "I can't breath" and was urged to go to the hospital.

I was asked if there was evidence of positional asphyxia. Acute positional asphyxia would not have caused the airway remodeling and other reactive changes (1) through (7) that were present in the lungs. Those changes denote processes that are related to a chronic disorder, with superimposed components (macrophages; acute inflammation) of more recent duration, a few days or more.

I was asked whether the findings could have been the result of resuscitation efforts. Congestion in the lungs, i.e., the presence of more blood than should be present inside the blood vessels, and patchy hemorrhages in the air spaces could be related to resuscitation but also could be caused by other things. None of the other findings could be explained by resuscitation, but are classic features of asthma.

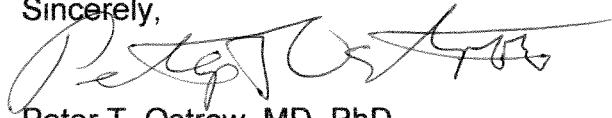
None of the findings I observed was post-mortem.

As to the physical injuries sustained by Mr. Davis, there is no evidence that those injuries per se were fatal. This is based upon the lack of related internal alterations, particularly in the brain.

In conclusion, Mr. Davis' lungs were those of someone with asthma and there are components consistent with an acute asthma attack. Severe, even fatal, asthma attacks can be triggered by exercise, stress, environmental pollutants, even cold air, all of which might have played a role in this case. The vulnerability to such an attack is enhanced by the presence of a viral infection or focal lung inflammation, such as Mr. Davis apparently experienced. The major features that were present and mentioned in the autopsy report are almost identical to the classic descriptions and illustrations of asthma in pathology textbooks. I agree with Dr. Maloney's observations and conclusions about the pathology.

These observations and opinions are based upon my knowledge, training, experience and familiarity with medical literature.

Sincerely,



Peter T. Ostrow, MD, PhD

Curriculum Vitae

Peter Tony Ostrow, M.D., Ph.D.

Current Position

Associate Professor Emeritus, Pathology and Anatomical Sciences, State University of New York at Buffalo, School of Medicine and Biomedical Sciences

Personal Data



Education

Bennett High School, Buffalo, NY, 1958-62

State University of New York at Buffalo, 1962-65, Psychology major, no degree

State University of New York, Downstate Medical Center, Brooklyn, NY, 1965-71:

M.D. *magna cum laude*

Ph.D. (Anatomy)

Postgraduate Training

Intern, Resident, Chief Resident in Anatomic Pathology, Johns Hopkins Hospital, Baltimore, MD, 1971-74

Fellow in Neuropathology, Johns Hopkins Hospital, Baltimore, MD, 1974-76

Board Certification

Anatomic Pathology

Neuropathology

Active Medical Licensure

New York 181749

Academic Appointments and Related Hospital Positions

Instructor (7/75-12/75), then Assistant Professor (1/76- 6/77) of Pathology, Johns Hopkins Hospital, Baltimore, MD

Head, Diagnostic Neuropathology, Johns Hopkins Hospital, 1976-77

Visiting Neuropathologist, Baltimore City Hospital, 1975-77; Sinai Hospital of Baltimore, 1976-77

Assistant Professor (7/77-8/81), then Associate Professor (9/81 - 7/84) of Pathology, University of Texas Medical School at Houston; joint appointments in Department of Neurology and Department of Neurobiology and Anatomy

Director, Neuropathology, UTMSH and Hermann Hospital, 1977-84;

Director, Autopsy Service, UTMSH and Hermann Hospital, 1977-80;

Consultant Neuropathologist (1980-82), then Associate Professor of Pathology (1982-84), M.D. Anderson Hospital and Tumor Institute.

Associate Dean for Curriculum and Academic Affairs, State University of New York at Buffalo, School of Medicine and Biomedical Sciences, 1984-89

Associate Professor of Pathology and Anatomical Sciences, State University of New York at Buffalo, School of Medicine and Biomedical Sciences, 1984-2012; joint appointment as Associate Professor of Neurology
Director, Neuropathology laboratory, Buffalo General Hospital/Kaleida Health, 1989-2005.

Director, Autopsy Pathology, Buffalo General Hospital/Kaleida Health, 1997-2002
Consultant Neuropathologist, Buffalo VA Medical Center, 1985-2004, Children's Hospital of Buffalo, 1984-98, Roswell Park Cancer Institute, 1993-2005.

Other Professional Activities

NIH Cardiovascular and Renal Study Section, Ad hoc member, 1983

NIH Special Study Section on Short Term Training Grants, Member, 1984, 89, 90(chairman)

NIH Neurology B1 Study Section, Member, 1985-89

NIH Reviewers Reserve, 1989-94

Medical Reporter, WIVB-TV (CBS affiliate), Buffalo, 1988-2014

Chairman, Great American Smokeout, American Cancer Society, Erie County Chapter, 1989-2000

Medical Advisory Board, Alzheimer's Disease Association, WNY Chapter, 1989-2000

Board of Directors, Alzheimer's disease association, WNY Chapter, 2001-2004

Medical Scientific Advisory Board, Association for Research of Childhood Cancer, 1991-2001

Scientific Review Committee, Margaret Duffy and Robert Cameron Troup Fund, 1993-2000

Major Thesis Advisor:

Jeffrey Stiles, Ph.D., "Growth Factors in Human Glioma" 1993-1996

Laura Hartrich, Ph.D., "Cellular Trafficking in Multiple Sclerosis" 2001-2004

President, The Boys of Birkenau, Inc., 1995-present

Board of Directors, Hauptman-Woodward Medical Research Institute, 1996-2011
Vice Chairman, 1997-2003

Co-Medical Director, Research Center for Stroke and Heart Disease, 2000-2003

Founding Director, Kenneth Alford Medical Education Center, 2002-2004

Board of Directors, Western New York Wellness Works, 2005-2010

Member, Roswell Park Medical Club, 2007 – present

Editorial Board, Buffalo Healthy Living, 2010-present

Honors and Awards

Alpha Omega Alpha

Sigma Xi

Basic Sciences Teaching Award, Freshman Class, University of Texas Medical School at Houston, 1977- 78, 1978- 79, 1979-80

Special Appreciation Award, UTMSH Sophomore Class, 1980-81

"Best Second Year Teacher," UTMSH, 1981-82, 1982-83, 1983-84

John H. Freeman Outstanding Teacher Award, Graduating Class, UTMSH, 1982
Outstanding Clinical Teaching Award, Senior Class, UTMSH, 1983, 1984, 1985
Elected Student Marshall for Commencement, UTMSH, 1982, 1984
Invited Speaker at Commencement Dinner, UTMSH, 1983, 1984, 1985
Commendation for Teaching Excellence in the Basic Sciences, SUNY at Buffalo
School of Medicine and Biomedical Sciences, 1990-91
Best Media Coverage, Great American Smokeout, New York State Division, American
Cancer Society, 1988, 1990, 1991, 1992, 1993, 1994
National GASPAR ("Great American Smokeout Par Excellence") award, 1990, 1991,
1992, 1993, 1994
"Outstanding Chairman" citation, Great American Smokeout, American Cancer
Society, Erie County Chapter, 1990
Best Television Feature ("Steps to Survival: What Women Should Know About Breast
Cancer"), American Cancer Society New York State Media Awards Competition,
1991
"Aspiration Award" for best individual news report dealing with lung disease, American
Lung Association, New York State Medical Reporting Competition, 1992
Coalition for a Tobacco Free Erie County "World No Tobacco Day" honoree, May 31,
1996
Erie-Niagara Tobacco-Free Coalition Media Award, May 10, 1999
"Golden Microphone Award," National Kidney Foundation, Western New York
Chapter, 2000
Louis and Ruth Siegel Distinguished Teaching Award for Basic Sciences, SUNY at
Buffalo School of Medicine and Biomedical Sciences, 2000
Great American Smokeout Leadership Award, American Cancer Society, Eastern
Division, 2000
"Best Doctors in America", 2000-2005
Award for outstanding CME Collaboration (national), Alliance for Continuing Medical
Education, 2003
"Gift of Life Award" National Kidney Foundation, Western New York Chapter, 2004
Commendation for Teaching Excellence in the Basic Sciences, SUNY at Buffalo
School of Medicine and Biomedical Sciences, 2004-5
Outstanding Media Partner, Western New York Tobacco Free Programs, 2006
Commendation for Teaching Excellence in the Basic Sciences, SUNY at Buffalo
School of Medicine and Biomedical Sciences, 2010-11
Special mention, New York State AP awards, "Stop Targeting Kids" TV
documentary about tobacco marketing to youth, 2010
Media Award, Medical Society of Erie County, 2012
Commendation for Teaching Excellence, SUNY at Buffalo School of Medicine
and Biomedical Sciences, 2012-13
Commendation for Teaching Excellence, SUNY at Buffalo School of Medicine
and Biomedical Sciences, 2015-16

Publications (excluding abstracts)

1. Rogers, L.W. and Ostrow, P.T. The prune belly syndrome: Report of 20 cases and description of a lethal variant. *J.Pediat.* 5:786-93, 1974.
2. White, J.J., Donahoo, J.J., Ostrow, P.T., Murphy, J., and Haller, J.A., Jr. Cardiovascular and pulmonary manifestations of pulmonary sequestration in childhood. *Ann. Thorac. Surg.* 18:286-94, 1974.
3. Merimee, T.J., Ostrow, P.T. and Aisner, S. Clinical and Pathological studies in a growth hormone-deficient dwarf. *Johns Hopkins Medical Journal*, 136:150-4, 1975.
4. Hutchins, G.M. and Ostrow, P.T. The pathogenesis of the two forms of hypertensive pulmonary vascular disease. *American Heart Journal* 92:797-803, 1976.
5. Campell, J.N., Black, P., and Ostrow, P. T. sarcoid of the cauda equina. *Journal of Neurosurgery*, 47:109-12, 1977.
6. Moxon, E.R., and Ostrow, P.T. Hemophilus influenzae meningitis in infant rats: The role of bacteremia in the pathogenesis of the age-dependent inflammatory responses in cerebrospinal fluid. *Journal of Infectious Diseases*, 135:303-7, 1977.
7. Bachman, D.S., and Ostrow, P.T. Fatal long-term sequela following radiation "cure" for ependymoma. *Ann. Neurol.* 4:319-321, 1978.
8. Ostrow, P.T., Moxon, E.R., Vernon, N., and Kapko, R. The pathogenesis of bacterial meningitis: Studies of the route of meningeal invasion following hemophilus influenzae inoculation of infant rats. *Laboratory Investigation*, 40, 678-85, 1979.
9. Kaufman, H., Cohen, G., Glass, T.F., Huchton, J.B., Pruessner, J., Ostrow, P.T., Andia-Waltenbaugh, A., and Dujovny, M. Computer-assisted tomographic atlas of the dog brain. *Journal of Computer-Assisted Tomograph.* 5:529-537, 1981.
10. Shalen, P.R., Ostrow, P.T., and Glass, P.J. White matter enhancement after central nervous system prophylaxis for leukemia: Radiation effect and methotrexate leukoencephalopathy. *Radiology*, 140: 409-412, 1981.
11. Zaccur, H.A., Mitch, W.E., Foster, G.V., Ostrow, P.T., and Tyson, J.E. A new method for studying the physiological regulation of pituitary prolactin secretion in the rat: Demonstration of rapid and reversible inhibition of prolactin secretion by dopamine. *Am.J.Physiology*, 242 (Endocrinol. Metab. 5): E226-233, 1982.
12. Hayman, L.A., Evans, R.A., Fahr, L.M., Ferrell, R.E., Ostrow, P.T., and Riccardi, V.M. Familial cavernous angiomas: Natural history and genetic study over a 5-year period. *American Journal of Medical Genetics*, 11: 147-160, 1982.
13. Disclafani, A., Kohl, S., and Ostrow, P. T. The importance of brain biopsy in suspected herpes simplex encephalitis. *Surgical Neurology*, 17:101-106, 1982.

14. Kaufman, H., Ostrow, P., and Butler,I. Brain Biopsy. Ch. 26 of Neurosurgery edited by Wilkins and Rengachary, McGraw-Hill, 1983.
15. Hayes, B., Ostrow, P.T., and Clark, D.E. Benzylamine oxidase in normal and atherosclerotic human aortae. Experimental and Molecular Pathology 38:243-254, 1983.
16. Kaufman, H.H., Pruessner, J.L., Bernstein, D.P., Borit, A., Ostrow, P.T., Cahall, D.L. A Rabbit Model of Intracerebral Hematoma. Acta Neuropathol 65:318-21, 1985.
16. Grotta, J., Ostrow, P.T., Fraifeld, E. and Hartmann, D. Fibrinogen, blood viscosity, and cerebral ischemia. Stroke, 16, 192-198, 1985.
17. Grotta, J., Spydell, J., Pettigrew, C., Ostrow, P. T., and Hunter, D. The Effect of Nicardipine on Neuronal Function Following Ischemia. Stroke 17:213-219, 1986.
18. Boileau, M., Grotta, J.C., Borit, A., Vanderlinden, C., Nath, A., Ostrow, P., Kopaniky, D. Metastatic Renal cell Carcinoma Simulating Glomus Jugulare Tumor. J. Surgical Oncology 35:201-203, 1987.
19. Rosenbaum, D.M., Grotta, J.C., Pettigrew, L.C., Ostrow, P., Strong, R., Rhoades, H., Picone, C.M., Grotta, A.T. Baclofen pre-treatment prevents glutamate release but does not protect against cerebral ischemia. Stroke 21:138-40, 1990.
20. Grotta, J., Piccone, C., Ostrow, P., Strong, R., Earls, R., Yao, I., Rhoades, H.,and Dedman, J. CGS-19755, a competitive NMDA receptor antagonist, reduces calcium-calmodulin binding and improves outcome after global cerebral ischemia. Annals of Neurology 27: 612-9, 1990
21. DeGraba, Y., Ostrow, P., Earls, R., Zong,Z., and Grotta, J. Temporal relation of calcium-calmodulin binding and neuronal damage after global ischemia in rats. Stroke, 23: 876-82, 1992
22. Ostrow PT. Miller LL. Pathology of small artery disease. [Review] [62 refs] Advances in Neurology. 62:93-123, 1993.
23. DeGraba TJ. Ostrow PT. Grotta JC. Threshold of calcium disturbances after focal cerebral ischemia in rats. Implications of the window of therapeutic opportunity. Stroke. 24(8):1212-6; discussion 1216-7, 1993.
24. Hanson SK. Grotta JC. Waxham MN. Aronowski J. Ostrow P. Calcium/calmodulin-dependent protein kinase II activity in focal ischemia with reperfusion in rats. Stroke. 25(2):466-73, 1994.
25. Pullicino PM. Jacobs L. McCall WD Jr. Garvey M. Ostrow PT. Miller LL. Spontaneous palpebromandibular synkinesia: a localizing clinical sign. Annals of Neurology. 35(2):222-8, 1994.
26. DeGraba TJ. Ostrow P. Hanson S. Grotta JC. Motor performance, histologic damage, and calcium influx in rats treated with NBQX after focal ischemia. Journal of Cerebral Blood Flow & Metabolism. 14(2):262-8, 1994.
27. Aronowski J. Ostrow P. Samways E. Strong R. Zivin JA. Grotta JC. Graded bioassay for demonstration of brain rescue from experimental acute ischemia in rats. Stroke. 25(11):2235-40, 1994.
28. Pullicino P. Ostrow P. Miller L. Snyder W. Munschauer F. Pontine ischemic

- rarefaction. Annals of Neurology. 37(4):460-6, 1995.
- 29. Blatt GL. Ahuja A. Miller LL. Ostrow PT. Soloniuk DS. Cerebellomedullary ganglioglioma: CT and MR findings. American Journal of Neuroradiology. 16(4):790-2, 1995.
 - 30. Pullicino PM. Miller LL. Alexandrov AV. Ostrow PT. Infraputaminal 'lacunes'. Clinical and pathological correlations. [Review] Stroke. 26(9):1598-602, 1995.
 - 31. Stiles JD. Ostrow PT. Balos LL. Greenberg SJ. Plunkett R. Grand W. Heffner RR Jr. Correlation of endothelin-1 and transforming growth factor beta 1 with malignancy and vascularity in human gliomas. Journal of Neuropathology & Experimental Neurology. 56(4):435-9, 1997.
 - 32. Barone TA. Plunkett RJ. Hohmann P. Lis A. Glenister N. Barcos M. Ostrow PT. Spence PM. Greenberg SJ. An experimental model of human leukemic meningitis in the nude rat. Blood. 90(1):298-305, 1997.
 - 33. The Upstate New York Stroke Consortium. Best practices for secondary stroke prevention. 2001
 - 34. Giglio P. Bakshi R. Block S. Ostrow P. Pullicino PM. Primary central nervous system lymphoma masquerading as herpes encephalitis: clinical, magnetic resonance imaging, and pathologic findings. American Journal of the Medical Sciences. 323(1):59-61, 2002.
 - 35. Kuperan, S, Ostrow, PT, Landi, M, Bakshi, B: Acute hemorrhagic leukoencephalitis vs. ADEM: FLAIR-MRI and neuropathology findings. Neurology. 60(4):721-2, 2003
 - 36. Qureshi AI, Suri MFK, Ostrow PT, Kim SH, Ali Z, Shatla AA, Guterman LR, Hopkins LN. Apoptosis as a form of cell death in intracerebral hemorrhage. Neursosurgery 52(5):1041-7, 2003.
 - 37. Ray, AD, Roberts, AJ, Lee, SD, Farkas, GA, Michlin, C, Rifkin, DI, Ostrow, PT, Krasney, JA. Exercise delays the hypoxic thermal response in rats. J Appl Physiol. 95:272-278, 2003.
 - 38. Zhao XF. Sands AM. Ostrow PT. Halbiger R. Conway JT. Bagg A. Recurrence of nodal diffuse large B-cell lymphoma as intravascular large B-cell lymphoma: is an intravascular component at initial diagnosis predictive?. Arch. Pathol Lab Med. 129:391-4, 2005.
 - 39. Pan JJ. Chang WJ. Barone TA. Plunkett RJ. Ostrow PT. Greenberg SJ Increased expression of TGF-beta1 reduces tumor growth of human U-87 Glioblastoma Cells in vivo. Cancer Immunology, Immunotherapy. 55:918-27, 2006.
 - 40. Khouri T. Gonzalez-Fernandez F. Munschauer FE. Ostrow P. A 47-year-old man with sudden onset of blindness, pleocytosis, and temporary hearing loss. Vogt-Koyanagi-Harada syndrome (Uveomeningoencephalitic syndrome). Archives of Pathology & Laboratory Medicine. 130:1070-2, 2006.
 - 41. Sternberg Z, Ostrow P, Vaughn M, Chichelli T, Munschauer F AGE-RAGE in multiple sclerosis brain. Immunological Investigations. 40(2): 197-205, 2011

Medical/Scientific Video Productions and News reports

Approximately 2,000 broadcast medical news reports on WIVB-TV, the CBS affiliate in Buffalo, 1988-2014.

Several longer medical video productions, including:

Ostrow, PT, Steps to Survival: What Women Should Know About Breast Cancer. ½ hour TV broadcast; awarded “Best TV Feature” by the American Cancer Society NYS, 1991

Ostrow, PT, Interferon in Multiple Sclerosis. 1-hour CME Program on CD-ROM, 2003

Ostrow, PT, Is Cancer in Your Family Tree? A series of broadcast news reports about familial aspects of cancer; used in collaboration with a program developed at Roswell Park Cancer Center and awarded “Best CME Collaboration by the Alliance for Continuing Medical Education, 2003

Ostrow, PT, Cognitive Impairment in Multiple Sclerosis. 1-hour CME Program on CD-ROM, 2004

Ostrow, PT, Brain Atrophy in Multiple Sclerosis. 1-hour CME program on CD-ROM, 2005

Ostrow, PT, Mombrea, M, Nelson, K, Confronting CJD and Other Prion Diseases: Science, Sense, Support. 1-hour CME and public education program on DVD, 2006, currently online at <http://www.neuropriion.org/en/DVD-2007.html>

Ostrow, PT, Mombrea, M, Keeping the Beat. ½ hour TV broadcast about implanted medical devices, WIVB-TV, 2006

Ostrow, PT, Mombrea, M, Kidney Donors: Heroes Who Save Lives, 1-hour program about kidney transplantation and living/altruistic donation, 2008

Ostrow, PT, Mombrea, M, Stop Targeting Kids. ½ hour TV broadcast about tobacco-related illness and cigarette marketing to youth, 2010. Currently online at www.stoptargetingkids.com. Special Mention New York State AP award for “Coverage of a single subject in depth,” 2010.

City of Buffalo Police Department

Homicide P-73

To: Det/Sgt. Steven Turner
Det/Sgt. Nicholas A Mourgas
Det/Sgt. James P Dunham
Det/Sgt. Carl A Lundin

Attn: Chief Dennis Richards
Captain Ronald Jentz
Lieutenant Sallie Blersch
RT Dana Hearon

From: Nicholas J Parisi
Incident Address: 15 Hoyt st.
Incident Type: Narcotics investigation

Date: 02/08/2017
Complaint Number: 17-0380827
Officer Completing P-296: Nicholas J. Parisi
First Officer On Scene: Nicholas Parisi & Todd Mcalister
Evidence Located and Where:

Person(s) Transported:

Name	DOB	Address	Phone Number

Witness(es) Names Obtained:

Name	DOB	Address	Phone Number

Vehicle(s) Involved:

Make	Model	Year	Plate

Sirs,

This report has been prepared following the order to do so from Chief Joseph Gramaglia. While on patrol driving north on Hoyt St. I observed a known male, from previous arrests come from the driveway of a known drug house at 19 Hoyt st. We stopped the male at approximately 15 Hoyt St. to further investigate. I engaged the male in conversation about the known drug house he just left. I asked

the male if he had any illegal drugs on him, and he stated he "only had weed", and that he had court in the morning and to just let him go. The man was repeatedly reaching into his pockets after being instructed to keep his hands where we could see them. At that point for our safety we decided we were going to momentarily handcuff him to check him more thoroughly. As we attempted to handcuff the male, he swung his arms towards ofc. Mcalister and took off northbound on Hoyt St. We chased after him and ofc. Mcalister grabbed the male by his hood from behind. The suspect started swinging at both of us in an attempt to escape. The male momentarily got loose and took off running southbound on Hoyt St. As we were chasing the male he tripped and fell to the ground at approximately 15 Hoyt St. I went to the ground in an effort to handcuff the man. I believe my partner was right behind me. We were unable to handcuff the suspect because he was violently fighting with us. Prior to being handcuffed the man was attempting to kick and punch us. Before handcuffing him I punched the man in the face with a closed fist several times trying to subdue him and to protect myself and my partner. During the course of the confrontation for a short period of time I had the suspect's head and neck in the crook of my arm attempting to subdue him. During this period of time the male was talking and asking us to let him go, or words to that effect. My partner assisted putting handcuffs on the suspect. During the course of all this we told the man to stop resisting and to give us his hands. We forcibly pulled his hands to the back to get him handcuffed. Once in custody I rolled the defendant over to his back, trying to get him up and to search him. Lt. Kochersberger who had just arrived on scene noticed the male wasn't breathing. We immediately rolled the man to remove handcuffs and start CPR. As soon as handcuffs were off ofc. Mcalister administered CPR. As soon as we noticed the suspect was not breathing Lt. Kochersberger called for ambulance and asked that it be stepped up. Fire and ADI showed up on scene and took over, I was put into Lt. Kochersberger's vehicle and taken back to the station. As a result of the encounter, both of our uniforms were dirty. Photos of our uniforms were taken by Lt. Swaggard and John Fecio. We submitted our uniforms as evidence. During the course of the fight with the suspect nothing other than my closed fist was used to protect us and subdue him. Neither I nor my partner used our batons against the suspect, there was no time or opportunity to use cap spray during this incident. I learned later that the suspect Wardel Davis 8/7/1996 had expired at the Buffalo General ER. When we first encountered the male we both knew who he was from previous arrests, etc. Our past information on Mr. Davis was that he was a drug dealer. Our street contacts had confirmed that the house Mr. Davis walked out of when we approached him was being used for narcotics dealings--especially over the last three weeks. Ofc. Mcalister did not perform mouth to mouth resuscitation because Mr. Davis had some bleeding around his mouth. We did not see Mr. Davis put anything into his mouth during the struggle and fight. Before we noticed Mr. Davis was in distress he was violent. Criminal records show Mr. Davis has a lengthy arrest history. Our quick search of Mr. Davis at the scene did not produce anything. My partner was taken to ECMC for examination of his wrists and fingers.

Respectfully Submitted,
Nicholas J Parisi

City of Buffalo Police Department

Homicide P-73

To: Det/Sgt. Steven Turner
Det/Sgt. Nicholas A Mourgas
Det/Sgt. James P Dunham
Det/Sgt. Carl A Lundin

Attn: Chief Dennis Richards
Captain Ronald Jentz
Lieutenant Sallie Blersch
RT Dana Hearon

From: Todd C Mcalister
Incident Address: 15 Hoyt St
Incident Type: Narcotics Investigation

Date: 02/08/2017
Complaint Number: 17-0380827
Officer Completing P-296:
First Officer On Scene: Nicholas Parisi & Todd
McAlister
Evidence Located and Where:

Person(s) Transported:

Name	DOB	Address	Phone Number

Witness(es) Names Obtained:

Name	DOB	Address	Phone Number

Vehicle(s) Involved:

Make	Model	Year	Plate

Sirs,

This report has been prepared following an order to do so by my Chief Joe Gramaglia.

On February 7, 2017 at approximately 2317hrs while on routine patrol in Bravo District, we were headed

..... north on Hoyt from W. Ferry. We were in marked patrol vehicle 462, where I was the passenger and my partner Nick Parisi was driving. we observed a male leaving an address which we had known to be a drug house based on previous complaints and neighborhood informants As we approached the individual while still in the marked patrol vehicle, the suspect was walking south positioned on the passenger side which would have been the east side of the street. I opened my door and approached the individual which I recognized from a previous arrest. I immediately told the suspect to take his hand out of his left jacket pocket and then I proceeded to stand behind him until my partner approached from the front. Officer Parisi asked the suspect if "he had anything illegal on him?" and the suspect stated "I have weed but I have court in the morning." the suspect began to reach in his pocket and was instructed to keep his hands out of his pockets. He kept reaching and I then told Ofc. Parisi that "I was going to cuff him." I pulled out my cuffs and grabbed his left arm to begin cuffing procedures, when the individual snatched his arm away and attempted to run. I was able to grab the suspect by his hoodie to stop him from running, but he still was able to flee. He was able to run in front of our parked patrol vehicle but was quickly grabbed. we were unable to get him to the ground and he was able to break free. Upon breaking free the suspect did swing at Officers before fleeing again. the suspect ran a short distance before slipping and falling to the ground not too far from the rear of the patrol vehicle. at that point, we were able to get on top of him and attempt to cuff him. While on the suspect I was able to inform the radio dispatcher where we were located. We constantly told the suspect to "stop resisting" but he still was not compliant with giving me his left arm. I was eventually able to get his left wrist cuffed and then the right wrist immediately followed. While cuffing him other officers arrived on scene. Once cuffed, I stood up and began to do a search of his person for weapons. At that point, LT Kochersberger observed that he may not have been breathing. I immediately removed one cuff from his wrist and began chest compressions. I completed 4 cycles of 30 compressions without respirations because his mouth was bloody. Ofc. Bonner took over compressions and I was placed in patrol vehicle 620 awaiting instruction. I was removed from the scene by Lt. Swaggard and returned to the bravo District station house. Pictures of my uniform were taken and my clothes were given to homicide. I was seen and released from ECMC for a sprained left finger and a sprained right wrist.

I have no idea what caused Wardel Davis to go into distress. I did not use my baton or cap spray against Mr. Davis.

Respectfully Submitted,
Todd C Mcalister

Buffalo Police Department Use Of Force Report

Incident Entered By: Officer Todd MCALISTER

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
2/8/2017	2/7/2017	23:17
Record ID #	Incident #:	IA No
17755	170380827	
Date/Time Entered		
2/8/2017 05:25		

Incident Summary

See Homicide P-73

Incident Location

- 15 Hoyt St., Direction: N, Buffalo, NY 14213

Use of Force Specific Information

Reason for Use of Force	Service Being Rendered	
Prevent Escape	Investigation	
Weather Condition	Lighting Condition	Distance to Citizen
Rain	Night	1 feet to 3 feet
Citizen Injured	Citizen Taken to Hospital	Citizen Arrested
Yes	Yes	No
More than 1 Citizen Involved		
No		

Citizen's Build	Citizen's Height
Large	6'1" to 6'3"

Officer Assessment of Citizen Condition During Incident

Officer(s) Injured	Officer(s) Taken to Hospital
Yes	Yes

Reporting/Involved Citizen Information

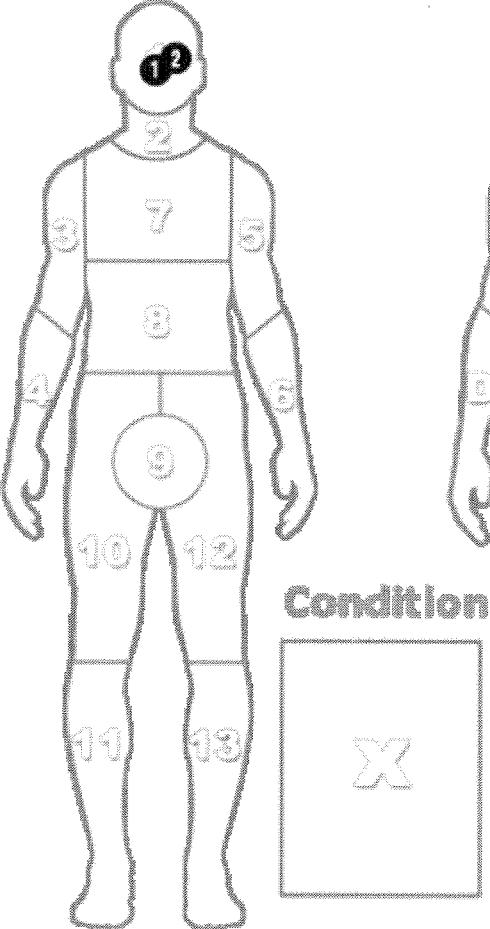
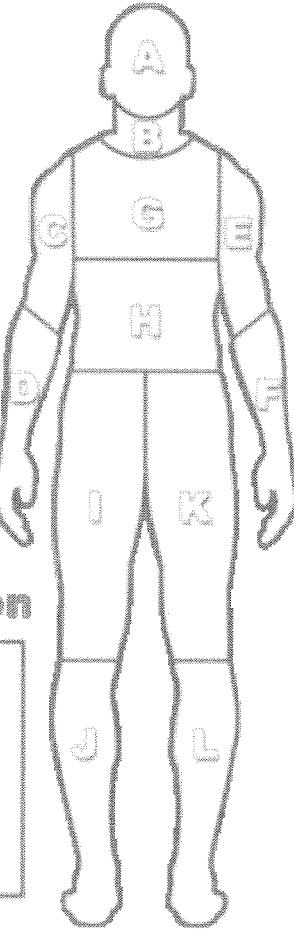
Wardel Davis

DOB: 8/7/1996 Race: Black Gender: Male

Types of Resistance Citizen Used Against Officer(s)

- Refused Commands
- Aggressive
- Combative
- Escape
- Fighting w/officers
- Fled
- Pushing
- Push off officer(s)
- Uncooperative

Injuries sustained by this citizen

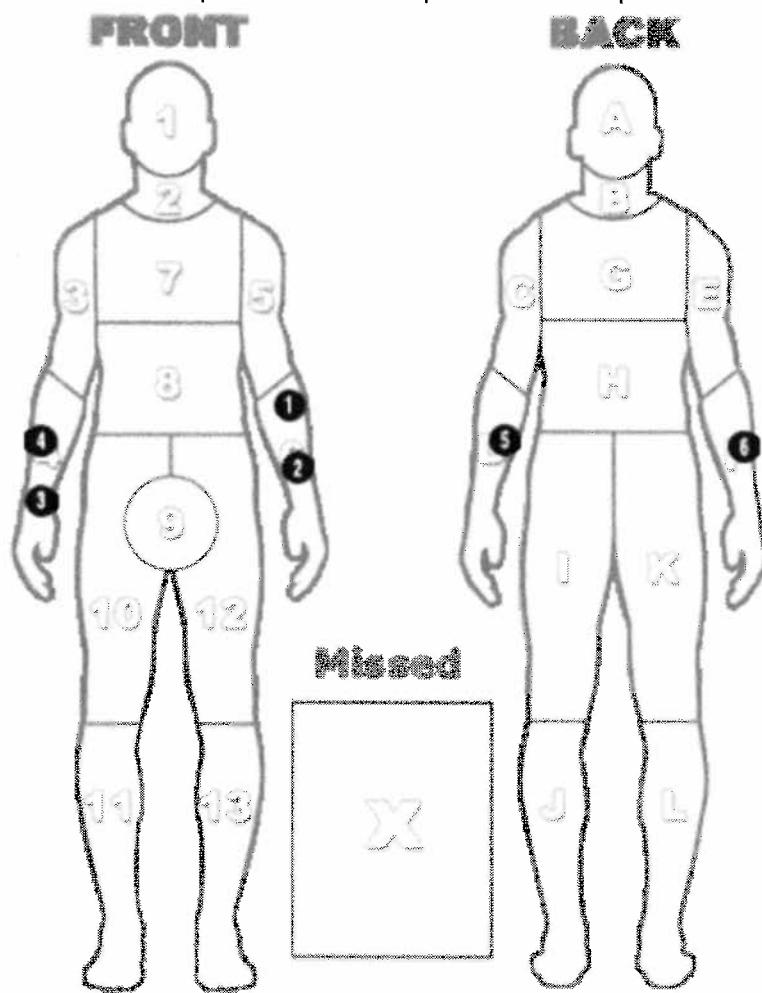
Injury	Regions	Injury Locations
Bloody	1	1, 2
	FRONT  BACK 	

Involved Officers**Officer Todd MCALISTER - DID #: 172871****Force used by this officer against the citizen**

- Physical Engagement - Was force effective: Yes

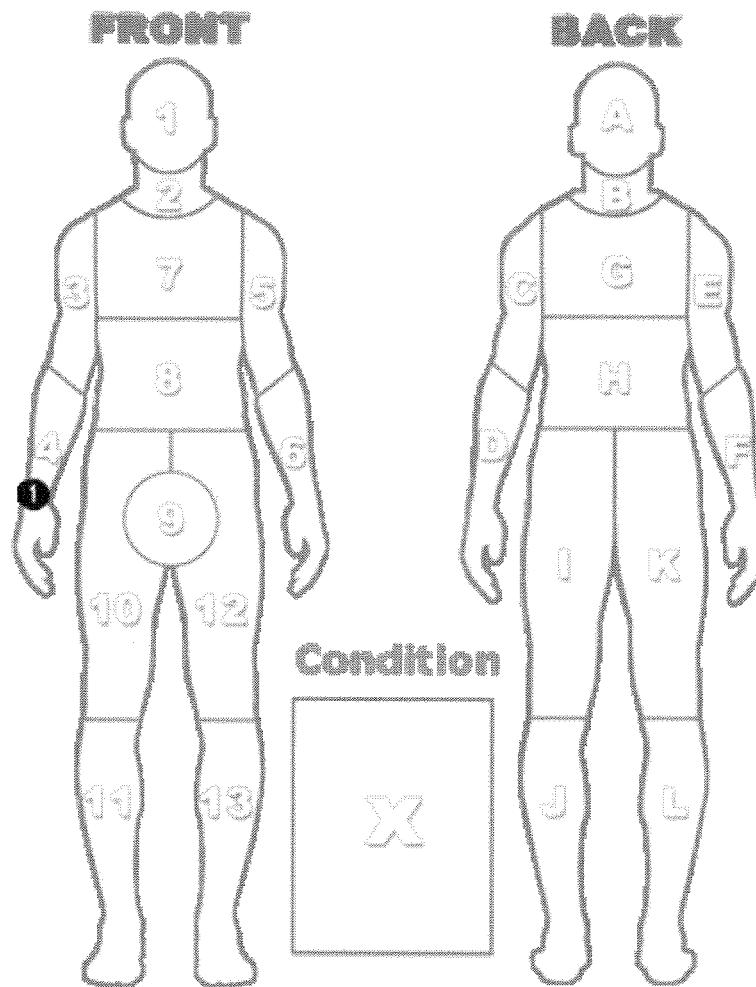
Force Used	Effective?	Regions	Points of contact

Physical Engagement | Yes | 4, 6, D, F | 1, 2, 3, 4, 5, 6



Injuries sustained by this officer

Injury	Regions	Injury Locations
Wrist	4	1



Attachments

No attachments

Chain of Command History

Sent Dt	From	To	CC	Approved
2/8/2017	Officer Todd MCALISTER	Lieutenant Christopher KOCHERSBERGER	(none)	<input checked="" type="checkbox"/>

Sender's Instructions: Respectfully Submitted, Todd McAlister

Recipient's Comments/Response: Sir: I have reviewed the aforementioned incident and find that PO McAlister used appropriate force consistent with BPD MOP regulations.

2/9/2017	Lieutenant Christopher KOCHERSBERGER	Captain Robert JOYCE	(none)	<input type="checkbox"/>
----------	--------------------------------------	----------------------	--------	--------------------------

Sender's Instructions: Sir: Please review and forward.

Recipient's Comments/Response: Unable to approve, no incident summary.

3/1/2017	Captain Robert JOYCE	Chief Joseph GRAMAGLIA	(none)	<input type="checkbox"/>
----------	----------------------	------------------------	--------	--------------------------

Sender's Instructions: Sir, unable to approve as there is no incident summary.

Recipient's Comments/Response: [Open routing]

Entering Officer Signature Line

Officer Todd MCALISTER

Chain of Command Signature Lines

Lieutenant Christopher KOCHERSBERGER

Captain Robert JOYCE

Buffalo Police Department Use Of Force Report

Incident Entered By: Police Officer Nicholas PARISI

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
2/8/2017	2/7/2017	23:17
Record ID #	Incident #:	IA No
17754	17-0380827	
Date/Time Entered		
2/8/2017 05:25		

Incident Summary

See Homicide P-73

Incident Location

- 15 Hoyt, Buffalo, NY 14213

Use of Force Specific Information

Reason for Use of Force	Service Being Rendered	
Protection of officers	Arrest	
Weather Condition	Lighting Condition	Distance to Citizen
Rain	Night	1 feet to 3 feet
Citizen Injured	Citizen Taken to Hospital	Citizen Arrested
Yes	Yes	No
More than 1 Citizen Involved		
No		
Citizen's Build	Citizen's Height	
Large	6'1" to 6'3"	
Officer Assessment of Citizen Condition During Incident		
Unknown		
Officer(s) Injured	Officer(s) Taken to Hospital	
Yes	Yes	

Reporting/Involved Citizen Information

Wardel Davis

DOB: 8/7/1996 Race: Black Gender: Male

Types of Resistance Citizen Used Against Officer(s)

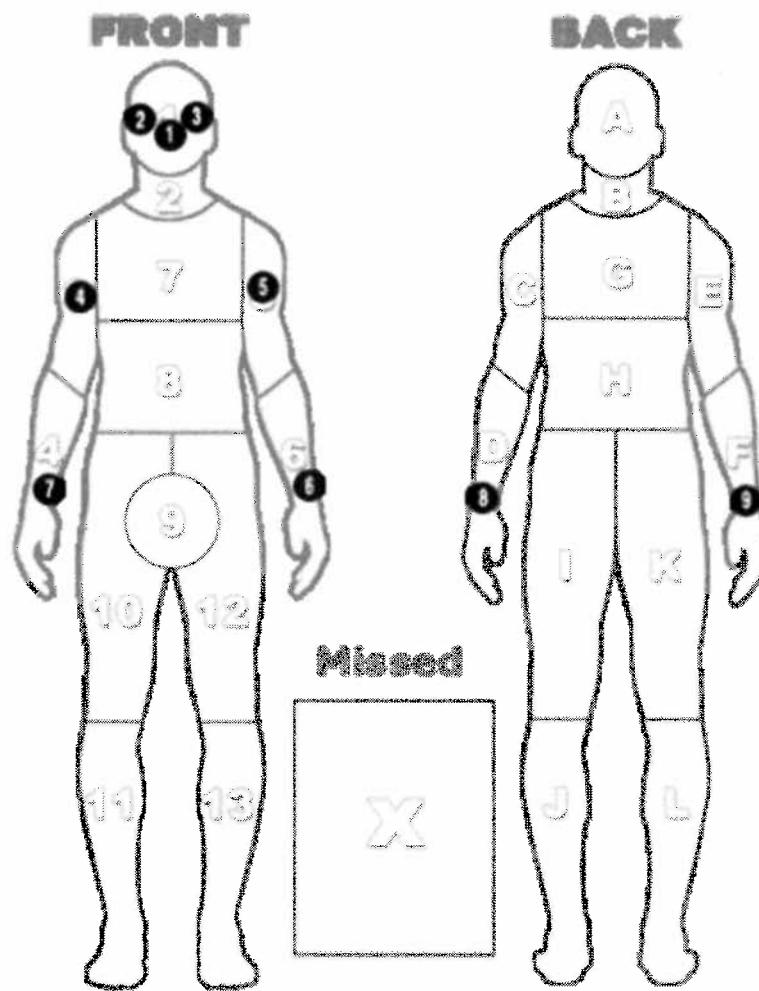
- Aggressive
- Attempted to flee
- Combative
- Fighting stance
- Fighting w/officers
- Foot chase
- Kicking
- Pulled away
- Punching
- Push off officer(s)
- Pushing
- Refused Commands
- Refused Cuffing
- Struggle w/officer(s)
- Swung at officer
- Uncooperative
- Violent

Involved Officers

Police Officer Nicholas PARISI - DID #: 168253**Force used by this officer against the citizen**

- Physical Engagement - Was force effective: Yes

Force Used	Effective?	Regions	Points of contact
Physical Engagement	Yes	1, 3, 4, 5, 6, D, F	1, 2, 3, 4, 5, 6, 7, 8, 9



Attachments

No attachments

Chain of Command History

Sent Dt	From	To	CC	Approved
2/8/2017	Police Officer Nicholas PARISI	Lieutenant Christopher KOCHERSBERGER	(none)	<input checked="" type="checkbox"/>
Sender's Instructions: Respectfully Submitted, Nicholas J. Parisi				
Recipient's Comments/Response: Sir: I have reviewed the aforementioned incident and find PO Parisi used appropriate force consistent with BPD MOP regulations.				
2/9/2017	Lieutenant Christopher KOCHERSBERGER	Captain Robert JOYCE	(none)	<input type="checkbox"/>
Sender's Instructions: Sir: Please review and forward.				
Recipient's Comments/Response: I am unable to approve due to lack of incident summary.				
3/1/2017	Captain Robert JOYCE	Chief Joseph GRAMAGLIA	(none)	<input type="checkbox"/>
Sender's Instructions: Sir, I sent an email to Internal Affairs on February 13, 2017 indicating that I am unable to approve this incident due to the fact there is no incident summary.				

Recipient's Comments/Response: [Open routing]

Entering Officer Signature Line

Police Officer Nicholas PARISI

Chain of Command Signature Lines

Lieutenant Christopher KOCHERSBERGER

Captain Robert JOYCE