

**Special Investigations and  
Prosecutions Unit**

**Report on the Investigation into  
The Death of Jose Hernandez Rossy**



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## EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (the “Executive Order”), appointing the Attorney General as special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On Sunday, May 7, 2017, Jose Hernandez Rossy died after he was shot by a member of the Buffalo Police Department (“BPD”). Governor Cuomo subsequently issued Executive Order No. 147.10, which expressly conferred jurisdiction upon the Attorney General to investigate any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Hernandez Rossy’s death.

The shooting of Mr. Hernandez Rossy was the result of a calamitous confluence of events. As described in more detail below, BPD Patrol Officer Justin Tedesco, the shooting officer, and several civilian bystanders saw (1) Mr. Hernandez Rossy and a second officer, BPD Patrol Officer Joseph Acquino, wrestling inside of Mr. Hernandez Rossy’s car after a traffic stop over what PO Acquino mistakenly believed to be a gun; (2) Mr. Hernandez Rossy attempt to drive away while wrestling with PO Acquino, only to collide into a house, after almost driving into a child on a bicycle; and (3) PO Acquino emerge from the vehicle bleeding from his head, with his ear partially detached, and shouting that he had been shot. Civilian bystanders also saw and heard Mr. Hernandez Rossy struggle with PO Tedesco, break free, and attempt to flee. PO Tedesco warned Mr. Hernandez Rossy not to flee. When PO Tedesco’s warning was not heeded, PO Tedesco shot Hernandez Rossy as he was running away. In fact, Mr. Hernandez Rossy had not been armed and, although PO Acquino was seriously injured during the struggle, he had not been shot.

Under long-standing United States Supreme Court precedent and the plain language of the relevant New York State statute, an officer may use deadly force to stop a civilian from fleeing if the officer *reasonably believes* that (1) the civilian committed a felony involving the use of force, or (2) the civilian committed any felony and was armed with a deadly weapon. These legal protections apply even if the officer’s reasonable belief is ultimately determined to be mistaken. PO Tedesco’s reasonable, but mistaken belief, resulted in Mr. Hernandez Rossy’s tragic death, but there is no basis for criminal charges.

Pursuant to Executive Orders No. 147 and 147.10, the investigation by the Office of the Attorney General (“OAG”) included, among other investigative steps:

- Interviews of POs Acquino and Tedesco;
- Interviews of eight civilian witnesses and a review of videotaped interviews with five additional civilian witnesses who saw or heard various portions of the incident;
- Review of 911 calls made by civilian witnesses;
- Review of video captured by a civilian witness and video footage captured by a residential recording device;

- Review of reports by the Erie County Medical Examiner, including autopsy, microscopy, and toxicology records;
- Review of the decedent's and injured officer's ambulance and medical records;
- Interviews of BPD officers, Buffalo Fire Department members and Emergency Medical Technicians who responded to the scene;
- Review of all BPD digital video evidence and photographs of the scene; and
- Review of DNA analyses by the County of Erie's Department of Central Police Services and ballistics analysis by an expert retained by the OAG.<sup>1</sup>

BPD's late afternoon encounter with Mr. Hernandez Rossy began when PO Tedesco and his partner, PO Acquino, attempted to stop a vehicle after noticing that its operator — Mr. Hernandez Rossy — appeared to be smoking marijuana. PO Tedesco, who was driving the patrol car, activated the horn and lights, but Mr. Hernandez Rossy did not stop his vehicle. PO Tedesco then pulled around and in front of the vehicle, cutting it off. Both officers approached the driver's side of the vehicle and observed Mr. Hernandez Rossy smoking what appeared to be a marijuana cigarette. PO Acquino then began asking Mr. Hernandez Rossy questions. According to PO Acquino, (1) Mr. Hernandez Rossy did not verbally respond to those questions; (2) Mr. Hernandez Rossy moved his hand toward the top right pocket of his jacket; and, in response, (3) PO Acquino jumped into the vehicle through the driver's side door, reaching toward Mr. Hernandez Rossy's jacket pocket. PO Acquino recalls feeling something "hard" in the pocket and he believed that he felt a "small caliber gun." He started yelling, "Gun! Gun!" At that point, Mr. Hernandez Rossy accelerated his vehicle forward with PO Acquino partially inside, splayed across Mr. Hernandez Rossy's lap.

A young boy was riding his bicycle in the street in front of Mr. Hernandez Rossy's vehicle. As Mr. Hernandez Rossy continued to drive forward, while struggling with Mr. Hernandez Rossy, PO Acquino saw the boy and turned the steering wheel to the right so the vehicle would avoid striking him. The vehicle instead struck a stop sign, then crossed a row of bushes and struck a house, before stopping. Although PO Acquino does not remember it and PO Tedesco (who was outside of the vehicle) did not see it, the vehicle was traveling at such a speed that its airbag deployed, as shown by photographs of the vehicle and forensic analysis of the airbag.

PO Acquino heard what he described as "the loudest fireworks" go off in his right ear and felt a burning sensation. He exited the vehicle bleeding, with his right ear partially detached from his head. PO Acquino believed Mr. Hernandez Rossy had just shot him in the head and began yelling to his partner various iterations of "Justin I'm shot" and "Help me!"

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<sup>1</sup>Attached hereto as exhibits are: (1) a map of the area where the incident occurred; (2) the autopsy and toxicology reports; (3) DNA, controlled substance, and primer gunshot residue analysis reports; and (4) BPD evidence collection and critical incident maps. Audio of the 911 calls and the civilian video are available for review at the OAG.

After the car struck the house (which two civilian witnesses were in at the time of the collision), PO Tedesco saw PO Acquino's bleeding head and heard PO Acquino yelling that he had been shot. PO Tedesco entered Mr. Hernandez Rossy's vehicle through the passenger's side and both officers wrestled Mr. Hernandez Rossy out of the vehicle.<sup>2</sup> Around this time, several civilians called 911 stating that an officer had been shot.

PO Tedesco then tried to restrain Mr. Hernandez Rossy, who vigorously resisted. PO Tedesco advised Mr. Hernandez Rossy that he would be shot if he did not stop resisting. By this point, PO Acquino had moved away from the struggle and was yelling, "Help me . . . I've been shot . . . Shoot him!" Mr. Hernandez Rossy twisted out of his sweatshirt and began running away. PO Tedesco again advised Mr. Hernandez Rossy that he would be shot if he did not stop. Mr. Hernandez Rossy continued to run away and PO Tedesco then fired three shots. One struck Mr. Hernandez Rossy in the arm; he continued to run for approximately two blocks after being shot. Mr. Hernandez Rossy ultimately died as a result of the gunshot wound to his arm, which ruptured his brachial artery.<sup>3</sup>

Upon arriving at the scene, BPD investigators immediately began searching for the weapon they believed Mr. Hernandez Rossy had used to shoot PO Acquino. No weapon was found. The evidence reviewed during the investigation shows that Mr. Hernandez Rossy was unarmed and that it was activity related to the crash and airbag deployment — not a gunshot — that caused PO Acquino's injury. However, the evidence also indicates that POs Acquino and Tedesco, as well as numerous civilian witnesses *believed* Mr. Hernandez Rossy had shot PO Acquino.

Under New York State law, a police officer's use of deadly physical force is justified in order to prevent or attempt to prevent the escape from custody of a person whom the officer reasonably believes to have committed an offense, if *the officer reasonably believes that*:

- "The offense committed by such person was a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person," Penal Law §35.30(1)(a)(i); or
- "The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon." Penal Law §35.30(1)(b).

*See generally Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985) (pursuant to the Fourth Amendment, if "there is probable cause to believe that [a person] has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given").

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<sup>2</sup> Neither BPD officer was equipped with a Taser.

<sup>3</sup> The physical activity (running for two blocks after being shot) would have increased Mr. Hernandez Rossy's heart rate, and in turn, likely hastened his death.

At the moment PO Tedesco shot Mr. Hernandez Rossy, he was under the erroneous, yet reasonable, belief that Mr. Hernandez Rossy had just shot PO Acquino: PO Tedesco saw PO Acquino emerge from Mr. Hernandez Rossy's vehicle bleeding from the head with his ear partially detached and shouting that Mr. Hernandez Rossy just shot him. In addition to the two officers, numerous civilian witnesses also believed Mr. Hernandez Rossy had just shot PO Acquino.

In light of the above, and as discussed fully below, the OAG finds, pursuant to Penal Law §35.30(1), that there is no basis for criminal charges.

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Executive Order No. 147 provides that the OAG may offer “any recommendations for systemic reform arising from the investigation.” We make two recommendations based upon our investigation.

*First*, given that POs Acquino and Tedesco were not equipped with Tasers, we recommend that the BPD examine outfitting its members with Tasers.

*Second*, we renew the recommendation that we recently made that the BPD become a New York State accredited law enforcement agency.<sup>4</sup> The BPD's investigation of this matter was lacking in the areas of evidence collection and documentation, including, in particular, the BPD's failure to perform — or perceive the need to perform — a prompt and complete accident reconstruction. The process of accreditation assists police agencies in evaluating and improving their overall performance by providing formal recognition that an organization meets or exceeds general expectations of quality in the field of law enforcement.

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<sup>4</sup> The OAG notes that the BPD recently announced its plan to seek accreditation. <https://www.wkbw.com/news/i-team/buffalo-police-start-accreditation-process-to-become-more-transparent>

## STATEMENT OF FACTS<sup>5</sup>

The description of this incident is divided into four segments: (1) the events leading to the stop of Mr. Hernandez Rossy's vehicle; (2) the interaction between the officers and Mr. Hernandez Rossy while Mr. Hernandez Rossy was inside his vehicle; (3) the interaction between the officers and Mr. Hernandez Rossy outside the vehicle, including the shooting; and (4) the response to, and investigation of, the shooting.

Within each section, the involved officers' recitation of what transpired is provided first and civilian witnesses' and responding officers' descriptions are provided after. No single civilian witness observed the entirety of this incident. However, as described below, many individuals saw and/or heard various portions of the incident. In order to protect their privacy, all civilian witnesses are referred to in this report as "CW" (civilian witness) followed by a number.

### **1. Events Leading To The Stop Of Mr. Hernandez Rossy's Vehicle<sup>6</sup>**

#### Involved Officers' Accounts

On May 7, 2017, BPD patrol officers Joseph Acquino and Justin Tedesco were partners on the 3:30 pm to 1:30 am shift. At approximately 5:10 pm, the pair was driving north on East Street in Buffalo, with the windows of their patrol vehicle down; PO Tedesco was the driver and PO Acquino the passenger. POs Tedesco and Acquino noticed smoke and smelled burning marijuana coming from the open window of the white Acura SUV in front of them. They continued to follow the vehicle in order to ensure that the smoke and odor were in fact emanating from the white Acura SUV.

As the SUV proceeded north on East Street, PO Tedesco activated the patrol car's lights and horn, but the vehicle did not pull over. Instead, the SUV turned right (eastbound) onto Garfield Street. According to PO Tedesco, he eventually concluded that the vehicle was not going to stop voluntarily. In order to force the vehicle to stop, PO Tedesco entered the westbound lane of Garfield Street to pass the SUV and then pulled in front of the SUV at an angle. The officers then exited the patrol car and approached the driver's side of the now stopped SUV. Although records reveal that POs Tedesco and Acquino had stopped Mr. Hernandez on at least one prior occasion, both said they did not recognize him during this incident.

#### Civilian Witnesses' Accounts:

CW-1, an eleven-year-old boy, was riding a dirt bike in the area of Hartman Place and Garfield Street when he saw a marked police vehicle trying to pull over a white SUV on Garfield Street, southwest of the intersection. He saw the police car with its lights flashing and heard its siren and horn. The patrol car then pulled in front of the white SUV, partially cutting it off and

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<sup>5</sup> None of the information referenced in this report was obtained through the use of grand jury subpoenas. Any subpoenas issued were pursuant to New York State Executive Law Section 63(8).

<sup>6</sup> Both officers waived their rights under the Fifth Amendment and spoke with representatives of the BPD and OAG.

blocking it in, causing the SUV to pull over to the curb. CW-1 noted that there was no contact between the vehicles during that maneuver.

CW-2 who lived on Hartman Place, heard a police siren, looked out his window, and saw that a police vehicle had cut off a white SUV.

CW-3 was playing with his children in front of a residence on Hartman Place when he heard what he recognized as the revving of a police vehicle. He walked to the corner of Hartman Place and Garfield Street and observed that police officers had pulled over a white SUV; he noted that the police car was situated at a 45-degree angle in front of the SUV.

## **2. The Interaction Between The Officers And Mr. Hernandez Rossy While Mr. Hernandez Rossy Was Inside His Vehicle**

### PO Acquino's Account

POs Tedesco and Acquino exited their patrol vehicle and approached Mr. Hernandez Rossy's vehicle. According to PO Acquino, he reached the driver's door first and asked, "What the f\*\*\* are you doing?" PO Acquino said that Mr. Hernandez Rossy then handed him what appeared to be a lighted marijuana blunt; PO Tedesco described PO Acquino as having "grabbed" the marijuana blunt. PO Acquino handed the burning blunt to PO Tedesco, who tried to extinguish it and then placed it on the vehicle's windshield wiper, because it was still smoldering.<sup>7</sup> PO Acquino noted that Mr. Hernandez Rossy was not verbally responsive and looked at him "dead eyed."<sup>8</sup>

According to PO Acquino, Mr. Hernandez Rossy then began to reach for his right jacket pocket. Seeing this, PO Acquino said he opened the driver's side door and again asked, "What the f\*\*\* are you doing?" and then jumped into the vehicle, reaching towards Mr. Hernandez Rossy's right hand. PO Acquino said that he felt something small and hard in Mr. Hernandez Rossy's pocket, which he believed to be a small-caliber weapon. PO Acquino then began yelling, "Gun! Gun!" Although PO Acquino acknowledged that he never saw a gun, he said he is "100%" certain that he felt one.

Mr. Hernandez Rossy then pulled PO Acquino further into the vehicle, tried to close the driver's side door, and accelerated forward. As the car accelerated, the driver's side door remained ajar, with PO Acquino partially inside and outside the vehicle.

As the SUV accelerated forward, PO Acquino looked up to see that the vehicle was about to strike a young boy riding a bicycle (CW-1). PO Acquino grabbed the steering wheel and turned the wheel clockwise, causing the SUV to jerk to the right and avoid striking the boy. At that point,

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<sup>7</sup> Afterwards, in the ensuing tumult, investigators did not recover the "blunt." However, as detailed below, post mortem analysis of Mr. Hernandez Rossy's blood revealed the presence of marijuana metabolites, and forensic analysis shows that a bag taken from his person contained marijuana.

<sup>8</sup> PO Tedesco said that if Mr. Hernandez Rossy did speak, PO Tedesco could not recall it.

the vehicle hit a stop sign and crashed into a house on the southeast corner of Hartman Place and Garfield Street.<sup>9</sup> PO Acquino recalls that he heard “the loudest fireworks” go off in his right ear and felt an extreme burning sensation before the car hit the house. Bleeding from his right ear, which was partially detached and hanging by just the lobe, PO Acquino began yelling to his partner, that he had been shot, and calling for help.

#### PO Tedesco’s Account

PO Tedesco’s timeline of these events was similar to PO Acquino’s, except that PO Tedesco recalled that PO Acquino opened the vehicle door earlier (*i.e.*, after the officers first approached the car).

After PO Acquino jumped into the car, PO Tedesco recalls hearing him yell, “What’s that? Guh! Guh! [sic]” PO Tedesco then saw PO Acquino get pulled further into the vehicle before the vehicle suddenly accelerated forward and struck the police vehicle (parked at an angle in front of the SUV) before making a “real quick jerk to the right,” after which the vehicle struck a stop sign on the southeast corner of Hartman Place and Garfield Street, jumped the curb, and hit a house.

PO Tedesco ran to the passenger side door of the SUV, jumped in, and grabbed Mr. Hernandez Rossy. Both officers and Mr. Hernandez Rossy tumbled out of the driver’s side door of the vehicle. PO Tedesco said that throughout that time, PO Acquino was calling out “blood curdling” screams for help.

#### Civilian Witnesses’ Accounts

- CW-1: After seeing the patrol car stop the SUV, CW-1 (the 11 year old boy) got off his bike to watch the interaction between the police and the driver of the SUV. The bike and the boy were then in front of and on the same side of Garfield Street as the SUV. CW-1 saw the officers approach the SUV and saw one officer pull what he described as a cigarette from the driver and open the door of the SUV. CW-1 then saw that officer lean into the vehicle, at which point the vehicle began to accelerate toward CW-1 with one of the officers inside. The SUV struck the parked police vehicle and CW-1 jumped onto his bike and rode through the intersection as the SUV struck a house. CW-1 left the scene. He was not present for the shooting and does not recall hearing any shots fired.
- CW-2: CW-2 was watching the police interact with the SUV driver from the window of his house on Hartman Place when he saw the SUV suddenly drive forward on Garfield Street and strike a house. He ran outside and saw a child from the neighborhood (CW-1) riding his bike. The child appeared dazed and upset and did not answer when CW-2 asked if he was okay. CW-2 heard one of the officers screaming for help and saying that he had been shot. At that point, CW-2 ran back to his house and told his sister to call 911.

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<sup>9</sup> Although PO Acquino was not aware of it, the impact of the SUV striking the house caused the vehicle’s airbag to deploy.

- CW-3: From the southwest corner of Hartman Place and Garfield Street, CW-3 watched the officers approach the SUV. He observed one officer remove what he assumed to be a “marijuana blunt” from the driver of the SUV. As he began walking away from the incident, CW-2 heard an engine rev and turned to see the SUV, with an officer hanging out of the driver’s door, speed through the intersection and crash into a house, almost striking a “little kid riding his bike” along the way.
- CW-4, CW-5, and CW-6: CW-4 was in her house on Hartman Place when she heard a child scream and a crash. CW-4 then ran out of her house, believing that a child had been struck by a vehicle. Instead, she saw that an SUV had crashed into a house and that police officers were struggling with a man inside the vehicle. CW-4 saw that one officer was bleeding from the ear and pleading for help. Similarly, CW-5 and CW-6 looked out of their window and door (respectively) after hearing a crash. They both saw two officers at a car that had just crashed into a house — one officer at the driver’s side and one at the passenger’s. According to CW-5, the officer on the driver’s side (PO Acquino) was bleeding from his head and “screaming the whole time . . . help . . . stop . . . call 911.” CW-6 said that PO Acquino was yelling, “Oh My God. Help me. Shoot him.”

### **3. The Interaction Between The Officers And Mr. Hernandez Rossy Outside The Vehicle, Including The Shooting**

#### PO Tedesco’s Account

After the officers and Mr. Hernandez Rossy tumbled out of the driver’s side of Mr. Hernandez Rossy’s SUV, PO Tedesco attempted to subdue Mr. Hernandez Rossy and PO Acquino, who was clearly injured, backed away.<sup>10</sup>

PO Tedesco then began to wrestle with Mr. Hernandez Rossy as Mr. Hernandez Rossy tried to break free. Throughout this, PO Acquino, whose ear was bleeding and partially detached from his head, was screaming that Mr. Hernandez Rossy just shot him and asking for help.<sup>11</sup> PO Tedesco pulled out his weapon, pointed it at Mr. Hernandez Rossy, and said “Stop, get the f\*\*\* on the ground or I’ll shoot you.” Mr. Hernandez Rossy stopped briefly but then began fighting again, pushing PO Tedesco’s gun away and maneuvering out of the sweatshirt he had been wearing.

At that point, PO Tedesco struck Mr. Hernandez Rossy on the side of the head with his gun and again directed him to stop. But, PO Tedesco could not maintain a grip on Mr. Hernandez

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<sup>10</sup> Digital video of the interaction between Mr. Hernandez Rossy and POs Tedesco and Acquino immediately after Mr. Hernandez Rossy was removed from his SUV was partially captured on CW-10’s cell phone.

<sup>11</sup> PO Acquino recalled that a woman in the street (CW-9, as discussed below) told him that he had been shot in the face, and that he asked her for help before losing consciousness.

Rossy, who was now shirtless. Mr. Hernandez Rossy began running northeast on Garfield Street toward Peoria Street. PO Tedesco got on one knee and called out, “Stop” and then fired three shots. PO Tedesco estimated that Mr. Hernandez Rossy was thirty or forty yards away (almost to Peoria St.) when PO Tedesco was done firing the shots.<sup>12</sup>

PO Tedesco initially did not think that any of the three bullets had struck Mr. Hernandez Rossy, because Mr. Hernandez Rossy continued to run away. PO Tedesco broadcasted over the BPD radio Mr. Hernandez Rossy’s description, implored dispatch to send an ambulance for PO Acquino, and began chasing Mr. Hernandez Rossy. Civilians directed PO Tedesco to the location where Mr. Hernandez Rossy was ultimately found, which was in the side yard of a residence on Tonawanda Street, approximately two blocks away from Peoria Street.

### Civilian Accounts

- CW-2: Hearing an officer yelling for help and shouting that he had been shot, CW-2 went to assist the wounded officer. CW-2 noticed a second officer stand up while struggling with Mr. Hernandez Rossy and then directed his sister (CW-10) to call 911. CW-2 heard two or three shots and ran toward Garfield Street where he observed a bald officer on his knees (PO Tedesco), who then began running toward Peoria St.<sup>13</sup> CW-2 said the other officer (PO Acquino) was still crying out for help.
- CW-4: CW-4 watched from outside her house as Mr. Hernandez Rossy struggled with POs Tedesco and Acquino. She heard one officer scream for help and another yell for Mr. Hernandez Rossy to “get down” and “stop.” The three individuals then moved away from her view. At that point, she heard, but did not see, shots fired. CW-4 noted that she heard an officer give clear orders to stop before she heard any shots fired.
- CW-6: From the door of his house, into which Mr. Hernandez Rossy had just crashed his vehicle, CW-6 saw that an officer was injured in the street and saying words to the effect of, “Shoot him. Shoot him . . . Oh my god help me.” CW-6 also saw another officer fighting with Mr. Hernandez Rossy and ordering him to get on the ground. Mr. Hernandez Rossy, who was shirtless and only had on one shoe, ran out of CW-6’s view, and CW-6 then heard three shots.
- CW-7 and CW-8: From a vehicle driving southwest on Garfield Street, CW-7 and CW-8 saw two officers struggling in the street with a man. They noted that one officer (PO Acquino) was hurt, with his ear barely attached to his head. They observed that the uninjured officer (PO Tedesco) had his weapon out and was trying

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<sup>12</sup> The OAG measured 163 feet between the shell casings ejected by PO Tedesco’s weapon and the first blood markings. That is not an exact measurement of the distance between Mr. Hernandez Rossy and PO Tedesco when the shots were fired, because shell casings do not mark the exact location where the shooter stood, and the first blood marking may have occurred some distance from where Mr. Hernandez Rossy was actually shot.

<sup>13</sup> Analysis of PO Tedesco’s weapon and ballistics evidence at the scene (*i.e.*, shell casings) confirmed that three shots were fired, although witnesses described seeing and hearing various numbers of shots.

to strike the subject with it. At that point, the subject “popped up” and ran on Garfield Street toward Peoria Street. The uninjured officer went onto one knee and fired two shots. CW-8 estimates that Mr. Hernandez Rossy was thirty to forty yards away when the shots were fired; CW-7 did not estimate the distance.

- CW-9: CW-9 was driving southwest on Garfield Street when she saw two officers — one injured — in the road struggling with a man. She exited her vehicle and approached the injured officer (PO Acquino). PO Acquino was saying, “Please help me.” CW-9 stayed with him as the other officer (PO Tedesco) continued to struggle with Mr. Hernandez Rossy. CW-9 saw Mr. Hernandez Rossy run away. She could not recall hearing any gunshots.
- CW-10: CW-10, the sister of CW-2, heard a loud bang and then heard cries of, “Help . . . I’ve been shot.” Her brother asked for her cell phone to record what was happening but almost immediately gave the phone back to CW-10 and instructed her to call 911. At about that time, CW-10 heard two or three gun shots.
- CW-11: CW-11, an acquaintance of Mr. Hernandez Rossy, ran to the intersection of Garfield Street and Hartman Place after his daughter told him a car had just struck a home down the street. He observed two officers fighting with Mr. Hernandez Rossy and said Mr. Hernandez Rossy was yelling, “Get off me . . . Get off me . . . Leave me alone. . .” According to CW-11, the officers were losing the fight and getting their “a\*\*es whipped” by Mr. Hernandez Rossy. CW-11 saw the bald officer (PO Tedesco) pull off Mr. Hernandez Rossy’s shirt and sweatshirt. The officer and Mr. Hernandez Rossy were still fighting but, according to CW-11, Mr. Hernandez Rossy was trying to avoid going down to the ground. The injured officer (PO Acquino) was yelling, “Shoot – Shoot . . . He has a gun — he shot me!” Then, according to CW-11, Mr. Hernandez Rossy began walking away from the bald officer with his hands up and the officer fired three shots. CW-11 said that Mr. Hernandez Rossy was standing near the house that the vehicle had crashed into (approximately 10-15 yards from PO Tedesco) when the shots were fired. CW-11 also said that CW-11 told the officer not to shoot, because Mr. Hernandez Rossy did not have a gun.<sup>14</sup>

More civilians began calling 911 at or around this time. The general theme was that an officer was injured and/or shot and that there had been shots fired in the area of Garfield Street. For example, one caller frantically related, “Officer down . . . He’s f\*\*\*ing shot, his ear is hanging off!” Another said, “I need the police . . . Hartman and Garfield . . . Officer down. He’s shot in the ear.” And another caller noted, “I need a marked police [car] on the corner of Hartman and Garfield. A police officer has been shot.”<sup>15</sup>

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<sup>14</sup> Although every witness recalled things such as distances and the number of shots differently, no other witness recalls anyone yelling that Mr. Hernandez Rossy was unarmed.

<sup>15</sup> One woman told the dispatcher that she was around the corner from where the events were unfolding and heard, but did not see, shots fired. She initially said that a police officer “just shot a man in the back three f\*\*\*ing times.” During the 911 call she can be heard asking her friend, “Who is on the ground shot right now?” She then said to the

#### **4. The Aftermath Of The Shooting**

##### Involved Officers' Account

After firing his weapon, PO Tedesco followed Mr. Hernandez Rossy, finding him in the area of Tonawanda Street, after other officers had already arrived. PO Tedesco first learned that Mr. Hernandez Rossy had been shot after other officers requested a tourniquet. Because other officers were tending to Mr. Hernandez Rossy, PO Tedesco returned to the area of Garfield and Peoria Streets to check on PO Acquino.

##### Civilian Witness

CW-12 lives on Tonawanda Street, two blocks away from the location of the shooting, and was in her garage listening to loud music when her dog began “freaking out.” She went outside and saw what appeared to be watered down red paint in her garden and on her fence. She called for her boyfriend and then contacted 911. At about that time, she saw a shirtless, bloody man in her neighbor’s driveway. She asked the man if he was okay; he sat up and said, “Please don’t call the cops.” CW-12 replied, “Yeah. That’s not an option.” Police officers began to arrive at that time, and CW-12 recalls that officers soon began searching for a weapon, both on Mr. Hernandez Rossy’s person and in the yards of her neighborhood.

##### First Responders' Medical Aid To Mr. Hernandez-Rossy

BPD patrol officer Jose Rivera and his partner heard broken/partial radio dispatches regarding a gun and proceeded north on Tonawanda Street. A bystander on the street flagged them down and pointed them in the direction of a gate across a driveway, behind which lay Mr. Hernandez Rossy. PO Rivera was the first officer to reach Mr. Hernandez Rossy. Several additional officers arrived almost immediately thereafter. Mr. Hernandez Rossy was breathing when PO Rivera reached him. PO Rivera asked him if he had any weapons and Mr. Hernandez Rossy responded that he did not.

Lieutenant Michael Walker arrived at the scene just after PO Rivera. Pursuant to BPD policy, Lieutenant Walker handcuffed Mr. Hernandez Rossy and called for a tourniquet while other officers began to assess Mr. Hernandez Rossy’s physical condition and render aid. After hearing Mr. Hernandez Rossy say that it was difficult for him to breathe, Officer Richard Hy rolled him onto his side, looking for a gunshot wound to the chest, legs or groin. PO Hy located one wound that appeared to be a gunshot wound through Mr. Hernandez Rossy’s left arm. PO Hy attached and tightened a tourniquet around Mr. Hernandez Rossy’s left arm, stopping the flow of blood. Approximately 30 seconds later, Buffalo Fire Department (“BFD”) personnel arrived.

Firefighter Evan Middlebrooks and other members of the BFD responded to the “officer down, officer has been shot” calls. When they arrived at approximately 5:23 pm, they found Mr.

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911 dispatcher, “Oh no the cop is hurt. I’m sorry the cop is hurt.” She stated that she did not know whether the officer had been shot and she did not know who fired the three gun shots she heard.

Hernandez Rossy lying on his stomach, handcuffed, with a tourniquet on his arm. Mr. Hernandez Rossy was alive at that point, but was starting to become faint. Firefighter Middlebrooks asked that Mr. Hernandez Rossy be un-cuffed and then rolled him over, at which point it was clear to Middlebrooks that Mr. Hernandez Rossy had begun to lose consciousness.

AMR Ambulance personnel arrived at approximately 5:27 pm. According to ambulance records, Mr. Hernandez Rossy was breathing when the AMR paramedics arrived, but he had no palpable pulse and was in cardiac arrest. Ambulance personnel performed CPR and Advanced Cardiac Life Support on the way to Kenmore Mercy Hospital's Emergency Department. At 5:50 pm, Mr. Hernandez Rossy arrived unresponsive at the hospital, with no pulse, respiration, or cardiac activity. He was pronounced deceased at 5:53 pm.

#### First Responders' Medical Aid To PO Acquino

BPD patrol officer Jonathan Bierl was a few blocks away from Garfield Street when he heard gunshots in the area. When he arrived at Garfield Street, he saw that a vehicle had crashed into a house and that PO Acquino was lying on the ground. PO Bierl ran to PO Acquino, who initially was semi-conscious. Once PO Acquino regained consciousness, he handed PO Bierl a bag full of what PO Bierl recognized to be drugs. As detailed below, the exterior of the plastic bag contained DNA consistent with PO Acquino's and Mr. Hernandez Rossy's genetic profiles; the contents of the bag were determined to be various types of illegal drugs.<sup>16</sup> AMR Ambulance transported PO Acquino to the Erie County Medical Center. The ambulance records note "31 y/o white male who is a Buffalo Police Officer and was on call when he was shot in the face in the area inferior to and at the base of the right ear." PO Acquino remained at the hospital overnight and was discharged with a diagnosis of "Gunshot wound."

### **POST-INCIDENT INVESTIGATION**

#### 1. Medical Examiner's Report

On May 8, 2017, Deputy Chief Medical Examiner Katherine Maloney performed an autopsy. On the date of his death, Mr. Hernandez Rossy was 26 years old, weighed 203 pounds, and stood 5 feet 10.5 inches tall. Signs of life saving measures were evident; defibrillator and electrocardiogram pads were present on Mr. Hernandez Rossy's torso, an endotracheal tube was inserted into his windpipe, an intraosseous line inserted into his right shin (an intraosseous line delivers fluids and medications to the bone marrow when intravenous access is unavailable), and a tourniquet was secured around his left arm.

Dr. Maloney found numerous abrasions, contusions, and lacerations to Mr. Hernandez Rossy's head, torso, and extremities. Dr. Maloney recovered two bullets from Mr. Hernandez Rossy's left leg, but found that the bullets were not recently deposited and, like the abrasions, contusions, and lacerations, did not contribute to Mr. Hernandez Rossy's death.

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<sup>16</sup> PO Acquino remembered handing PO Bierl a large bag of drugs, but PO Acquino could not recall where he had obtained it. For reasons detailed below, the OAG determined that PO Acquino took the bag of drugs from Mr. Hernandez Rossy and that the bag of drugs was likely the object PO Acquino felt in Mr. Hernandez Rossy's pocket, which PO Acquino mistook for a small weapon.

Death was attributed to a single bullet wound that perforated the brachial artery of Mr. Hernandez Rossy's left arm. The fatal bullet entered Mr. Hernandez Rossy's left arm below his rear shoulder, 2.5 inches medial (to the right) of the midpoint of the back of the arm. It exited the front of Mr. Hernandez Rossy's arm 2 inches lateral (to the left) of the midpoint. As reflected in the autopsy report, the cause of death was gunshot wound of the left upper extremity. The manner of death was homicide.<sup>17</sup>

Analysis of Mr. Hernandez Rossy's bodily fluids disclosed the presence of alprazolam (brand name Xanax, a benzodiazepine), oxycodone (an opioid narcotic), and several cannabinoids (marijuana metabolites.)

## 2. Search For A Weapon

As described above, when BPD officers found Mr. Hernandez Rossy in the driveway of a residence on Tonawanda Street, they searched him for a weapon. Members of the BPD immediately began searching the route that Mr. Hernandez Rossy had traveled after being shot by PO Tedesco for the missing weapon. For the next several hours, into the next day, the BPD with assistance from other agencies, including the New York State Police and the United States Drug Enforcement Agency, canvassed the neighborhoods in and around the shooting, including using canines skilled at locating weapons. BPD obtained a search warrant on the evening of the incident and searched Mr. Hernandez Rossy's vehicle. Despite these search efforts, no weapon was found.

In order to determine whether Mr. Hernandez Rossy fired a weapon while inside his vehicle, the OAG commissioned The McCrone Group, Inc. to perform primer gunshot residue (p-GSR) analysis.<sup>18</sup> Wayne Niemeyer, Senior Research Scientist at The McCrone Group, collected evidence from (1) the sleeves and front of the sweatshirt that Mr. Hernandez Rossy was wearing when he was driving the vehicle; and (2) two airbag swatches. After scanning electron microscopic analysis, he determined that there was "no characteristic gunshot residue particles" on the sweatshirt or the airbag. If Mr. Hernandez Rossy had fired a gun while he was seated in his vehicle, p-GSR would likely have been deposited on the sweatshirt he was wearing at the time or on the deployed airbag. Based on this evidence, along with the fact that no gun was recovered, the OAG has determined that Mr. Hernandez Rossy was not armed and did not shoot PO Acquino.

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<sup>17</sup> "Homicide" is a medical determination made pursuant to New York State Public Health Law Section 4143(3), which directs that medical examiners investigate deaths that occur without medical attendance and, if they are the result of external causes, deem them "accidental, suicidal, or homicidal." A Medical Examiner's determination that a matter was a homicide reflects a determination that death was caused by another person and does not preclude the possibility that the homicide was justified and therefore not a criminal act.

<sup>18</sup> During the series of reactions that culminates in a bullet's discharge from a gun, lead, barium and antimony (as well as other substances) are released and escape from the gun, forming a vaporous cloud called a plume. The lead, barium, and antimony condense together to form p-GSR particles as the temperature decreases in the plume. The presence of those three elements in specific proportions, is indicative of p-GSR and, when identified, indicates that a weapon may have been fired nearby. See, [https://archives.fbi.gov/archives/aboutus/lab/forensic-sciencecommunications/fsc/july2006/research/2006\\_07\\_research01.htm](https://archives.fbi.gov/archives/aboutus/lab/forensic-sciencecommunications/fsc/july2006/research/2006_07_research01.htm); <http://www.forensicmag.com/article/2014/08/gunshot-residuecollection-decisions-make-or-break-case>

Rather, the evidence indicates that PO Acquino's injury was suffered in connection with the vehicle crash and airbag deployment.

### 3. Analysis Of The Drugs PO Acquino Handed To PO Bierl

As described above, when PO Acquino regained consciousness, he handed a plastic bag containing suspected drugs to PO Bierl. PO Bierl used a blue latex glove (that he was not wearing) to take the bag without touching it. PO Bierl gave the item in the latex glove to Lieutenant Jeanette Rak, who transferred it to Lieutenant Michael Quinn. Lt. Quinn gave the bag of suspected drugs to Detective Henry Velez, a BPD evidence technician, who placed the bag into evidence, and requested that its contents be analyzed.

The plastic bag contained various smaller containers that held illegal drugs.<sup>19</sup> Specifically, there were 42 glassine envelopes containing heroin laced with butyryl fentanyl; 68 smaller bags containing cocaine, 14 alprazolam (Xanax) tablets, and 6 oxycodone tablets; and a bag of marijuana.

The bag was analyzed in order to ascertain whose DNA was present on the exterior. Four DNA profiles were present on the bag's exterior; there was "extremely strong scientific support" that Mr. Hernandez Rossy and PO Acquino were the contributors of two of the profiles. The contributors of the other two profiles are unknown.

As summarized above, PO Acquino recalled feeling something "hard" — he believed a gun — in Mr. Hernandez Rossy's sweatshirt pocket and could not recall where he obtained the bag of drugs that he handed to PO Bierl. Based on the circumstances, including DNA consistent with Mr. Hernandez Rossy's profile on the exterior of the bag, the OAG concludes that the bag of illegal drugs was the hard object PO Acquino felt in (and took from) Mr. Hernandez Rossy's pocket.

### 4. Analysis Of The Interior Of Mr. Hernandez Rossy's Vehicle

Mr. Hernandez Rossy's SUV was processed for the presence of blood and DNA.<sup>20</sup> Numerous red stains found in and on Mr. Hernandez Rossy's SUV were analyzed and confirmed to be blood. DNA profiles consistent with Mr. Hernandez Rossy and PO Acquino were found in blood stains on the front and back of the airbag. Additionally, DNA consistent with PO Acquino's

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<sup>19</sup> The fact that Mr. Hernandez Rossy was carrying narcotics — in and of itself — is irrelevant to the determination of whether the shooting was justified. However, it is probative because it tends to corroborate two factual statements by PO Acquino: first, that Mr. Hernandez Rossy grabbed for an item in his pocket and PO Acquino, upon reaching for it, felt a "hard" object and, second, that PO Acquino described Mr. Hernandez Rossy as not verbally responsive and "dead eyed." Mr. Hernandez Rossy's toxicology screen revealed the presence of three different intoxicants in his system — marijuana metabolites, benzodiazepines (Xanax), and opioids (oxycodone); each of those substances was found in the bag of drugs.

<sup>20</sup> While BPD obtained a search warrant and searched Mr. Hernandez Rossy's vehicle trying to locate a weapon on the evening of the incident, its evidence unit did not perform any sort of forensic canvass of the vehicle's interior despite visible stains that appeared to be blood. At the request of the OAG, the vehicle was transferred to the Erie County Central Police Services Forensic Laboratory where it was thoroughly processed.

DNA profile was found in blood stains on the upper exterior door frame, upper interior door frame, and lower interior door frame/floor mat.

## 5. Accident Reconstruction

The incident outside of the car, culminating in the shooting of Mr. Hernandez Rossy, was preceded by an automobile incident wherein, according to both officers and CW-1, Mr. Hernandez Rossy's vehicle struck a parked police vehicle and then, according to numerous witnesses, struck a stop sign and crashed into a home. The BPD did not perform any accident reconstruction until being asked to do so by the OAG.<sup>21</sup> While not central to the determination of whether the shooting was legally justified, determining what transpired prior to the shooting would have been helpful to complete the full narrative of this incident. BPD's failure to immediately commission reconstruction undermined that ability.

On September 25, 2017, nearly five months after the incident, the BPD provided a diagram with measurements showing the approximate location of the original stop, the direction of travel of Mr. Hernandez Rossy's vehicle, and Mr. Hernandez Rossy's direction of flight. While that diagram was helpful and far more detailed and professional than the only other diagram BPD prepared in connection with the incident, it does not constitute a proper accident reconstruction.

## LEGAL ANALYSIS

"In any prosecution for an offense, justification, as defined in sections 35.05 through 35.30, is a defense." See Penal Law §35.00. The burden rests with the prosecution to disprove the defense of justification. See *People v. Steele*, 26 N.Y.2d 526 (1970). Further, "[a] claim of justification does not excuse a criminal act, but rather renders that act lawful. . . ." See *People v. Walker*, 78 A.D.3d 63 (2d Dept. 2010).

Under New York State law, a police officer's use of deadly physical force is justified in order to prevent or attempt to prevent the escape from custody of a person whom the officer reasonably believes to have committed an offense, if *the officer reasonably believes that*:

- "The offense committed by such person was a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person," Penal Law §35.30(1)(a)(i); or
- "The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon." Penal Law §35.30(1)(b).

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<sup>21</sup> The OAG and BPD sought outside agencies to perform the reconstruction. Those agencies declined, one citing the fact that the scene had not been properly preserved for such analysis.

When a police officer uses deadly physical force against a fleeing suspect, courts reviewing such incidents to determine whether the Fourth Amendment has been violated have followed the reasonableness standard set forth in the United States Supreme Court case of *Tennessee v. Garner*, 471 U.S. 1 (1985). Four years after *Garner*, through its holding in *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court reaffirmed *Garner*'s reasonableness standard, and extended it to *all* claims of excessive police force, whether deadly or not.

In the context of the use of deadly physical force, the *Garner* Court held that “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.” *Garner*, 471 U.S. at 11. The Court stated: “Thus, if the suspect threatens the officer with a weapon *or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm*, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Id.* at 11-12 (emphasis added.)

The *Graham* reasonableness test “is not capable of precise definition or mechanical application”; it “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396. The use of force must be judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight recognizing that ‘police officers are often forced to make split second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.’” *Birdenbaker v. City of Buffalo*, 137 A.D.3d 1729, 1730 (4th Dept. 2016) (quoting *Holland v. City of Poughkeepsie*, 90 A.D.3d 841, 844 (2d Dept. 2011)), and *Graham*, 490 U.S. at 396-97).

Here, the evidence, including the forensic analysis and civilian accounts, make clear that it was reasonable for PO Tedesco to believe that Mr. Hernandez Rossy had just committed a felony involving the use of physical force and that he was attempting to escape. When PO Acquino reached into Mr. Hernandez Rossy's vehicle he yelled, “Gun! Gun!” PO Tedesco then watched as Mr. Hernandez Rossy accelerated his vehicle forward, while PO Acquino was partially inside, and almost struck a child who was on a bicycle. PO Tedesco saw his partner, PO Acquino, emerge from Mr. Hernandez Rossy's vehicle, bleeding from his head with his ear partially detached and yelling that he had been shot. Several civilian witnesses also believed PO Acquino had been shot and relayed that belief in their calls to 911. Mr. Hernandez Rossy thereafter resisted arrest and failed to heed PO Tedesco's command to stop and his warning that he would be shot if he fled.

It was therefore reasonable for PO Tedesco to believe that Mr. Hernandez Rossy had just committed several serious felonies, including the attempted murder of PO Acquino.<sup>22</sup>

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<sup>22</sup> Section 35.30(1)(b) — which addresses the prevention of an escape by an armed felon — provides a separate statutory basis for an officer's use of deadly physical force. The OAG need not address whether PO Tedesco reasonably believed that Mr. Hernandez Rossy was armed, because PO Tedesco's conduct was permissible under Section 35.30(1)(a).

The fact that PO Tedesco and PO Acquino were ultimately mistaken in their belief that Mr. Hernandez Rossy was armed with a dangerous weapon and had shot PO Acquino does not change the reasonableness of the belief they held *at the time* of the shooting. An “officer is not required to be absolutely certain of his facts before taking . . . action.” *Public Adm’r of Kings County v. United States*, No. 88 CIV. 0190 (BN), 1989 WL 116307 at \*7 (S.D.N.Y. Sept. 26, 2989) (court further noting that an officer’s belief that another is armed with a deadly weapon, or is about to use deadly physical force, may be reasonable — and the use of deadly physical force justified — even if his belief turns out to be mistaken.”).

In sum, pursuant to Penal Law Section 35.30(1) and as informed by the Supreme Court cases of *Tennessee v. Garner* and *Graham v. Connor*, there is no basis for criminal charges.

### **POLICY RECOMMENDATIONS**

Executive Order No. 147 provides that the OAG may offer “any recommendations for systemic reform arising from the investigation.” We make two recommendations based upon our investigation.

*First*, we recommend that the BPD consider outfitting its members with Tasers. While it is impossible to know what would have happened if either of the BPD officers had access to a Taser to subdue Mr. Hernandez Rossy, studies have shown that outfitting officers with Tasers can significantly reduce injuries to suspects and officers alike.<sup>23</sup> Accordingly, their use has increased in recent years. Today, more than 15,000 law enforcement and military agencies outfit their members with Tasers.<sup>24</sup> BPD is not one of those agencies.

*Second*, we renew the recommendation that we recently made that the BPD continue the process of becoming a New York State accredited law enforcement agency. The New York State Division of Criminal Justice Services offers an accreditation process that provides a “progressive and contemporary way of helping police agencies evaluate and improve their overall performance.”<sup>25</sup> The accreditation process requires police agencies to achieve and maintain various standards of excellence that constitute best practices in the field of law enforcement. The process of becoming accredited is time and labor intensive, but accredited agencies are recognized as having policies that are “conceptually sound and operationally effective.”<sup>26</sup>

Approximately 150 law enforcement agencies throughout New York State have committed the time and resources to become accredited. According to the most recent US Census Bureau data, Buffalo (Erie County) is the largest metropolitan area in the state outside of New York City.<sup>27</sup>

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<sup>23</sup> <https://www.ncjrs.gov/pdffiles1/nij/232215.pdf>

<sup>24</sup> *Id.*

<sup>25</sup> <http://www.criminaljustice.ny.gov/ops/accred/>

<sup>26</sup> *Id.*

But while scores of police departments and sheriff's offices throughout New York State are accredited, the BPD is not one of them. We recommend that the BPD undertake the accreditation process.

Four principles are addressed by accreditation:

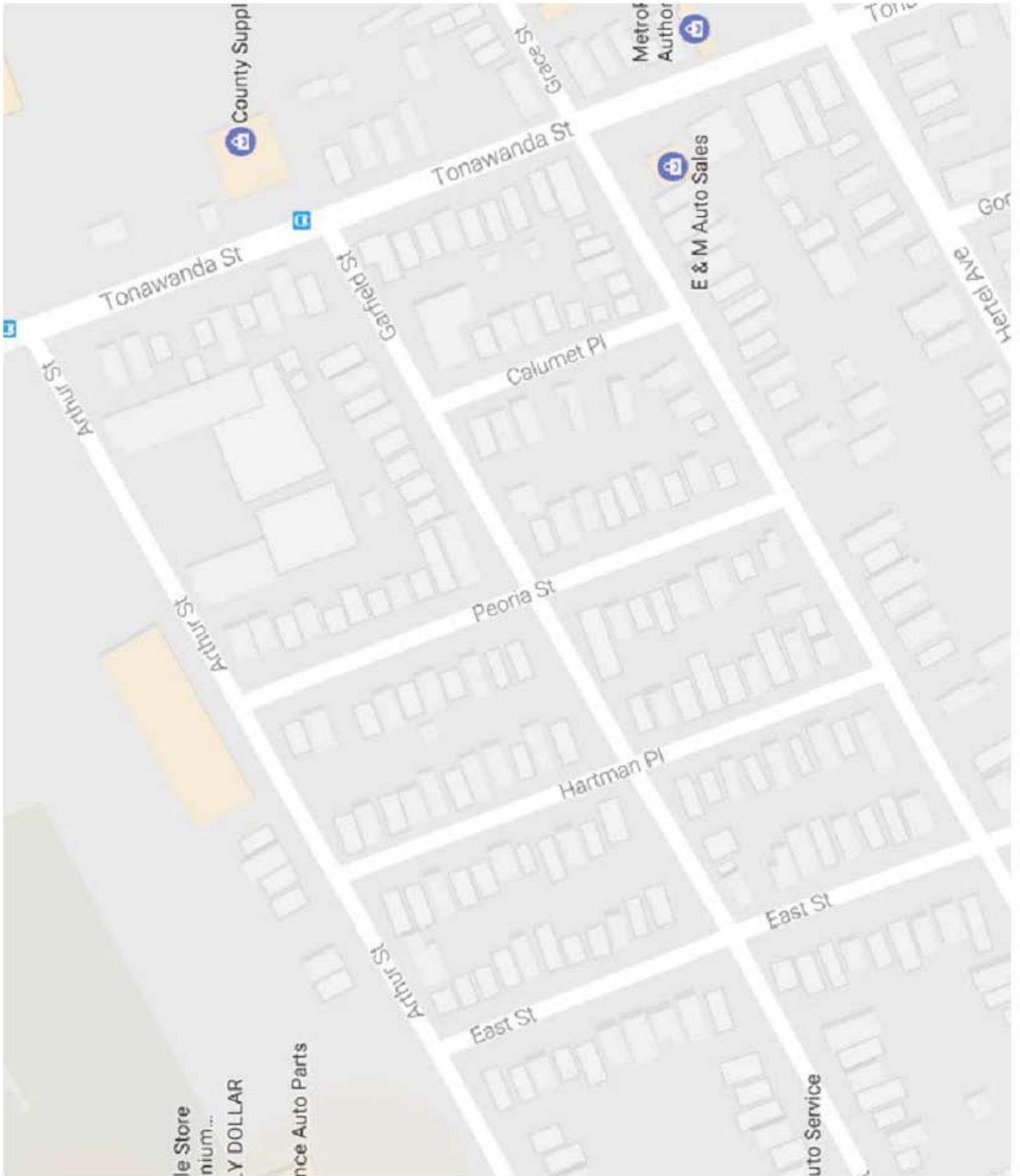
1. Increased effectiveness and efficiency of law enforcement agencies utilizing existing personnel, equipment and facilities to the extent possible;
2. Promotion of increased cooperation and coordination among law enforcement agencies and other agencies of the criminal justice services;
3. Provision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

Of note in this case, we found the BPD lacking in areas that would be addressed during the accreditation process. The collection of evidence was problematic. For example, the BPD's technicians failed to perceive the need to analyze Mr. Hernandez Rossy's vehicle for forensic evidence and instead only processed the vehicle in order to search for the weapon Mr. Hernandez Rossy (supposedly) used to shoot PO Acquino. Similarly, BPD also failed to conduct (or even perceive the need for) any type of accident reconstruction. And, the evidence collection work that was performed immediately following the incident was captured on a hand sketched map that was never converted into a properly scaled map with any sort of measurements, hardly suitable for a homicide investigation.

In sum, the training requirements and written protocol standards required by the accreditation process will undoubtedly serve to assist the BPD in handling future incidents.

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<sup>27</sup>[https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP\\_2015\\_PEPANNCHG.ST05&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2015_PEPANNCHG.ST05&prodType=table)





OFFICE OF THE MEDICAL EXAMINER  
COUNTY OF ERIE



REPORT OF EXAMINATION

Name of Decedent: Jose Hernandez-Rossy

M.E. #: 1119-17

Exam Performed by: Katherine Maloney, M.D.

Date of Exam: 5/8/2017

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FINAL DIAGNOSES

- I. PERFORATING GUNSHOT WOUND OF LEFT UPPER EXTREMITY
  - A. PERFORATION OF LEFT BRACHIAL ARTERY
  - B. EXSANGUINATION
- II. BLUNT IMPACT INJURIES OF HEAD, TORSO AND EXTREMITIES
  - A. ABRASIONS, CONTUSIONS AND LACERATIONS OF SKIN
- III. REMOTE GUNSHOT WOUNDS OF LEFT LOWER EXTREMITY
  - A. TWO BULLETS RECOVERED

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CAUSE OF DEATH: GUNSHOT WOUND OF LEFT UPPER EXTREMITY

MANNER OF DEATH: HOMICIDE

OFFICE OF THE MEDICAL EXAMINER  
COUNTY OF ERIE

REPORT OF EXAMINATION

CASE NO. 1119-17

*I hereby certify that I, Katherine Maloney, M.D., Deputy Chief Medical Examiner, have performed an examination of the body of Jose Hernandez-Rossy, on the 8<sup>th</sup> of May 2017, commencing at 8:20AM at the Erie County Medical Examiner's Office. This examination was performed in the presence of Det. Reginald Minor and CST Andrew Nostrant of the Buffalo Police Department and Inv. David Guidici of the New York State Attorney General's Office. Det. Henry Velez of the Buffalo Police Department was also present for a portion of the examination.*

**EXTERNAL EXAMINATION:**

The body is of a well-developed, well-nourished (BMI 28.7), average framed, 5'-10.5", 203 lb light-skinned man whose appearance is consistent with the given age of 26 years. There is a gunshot wound of the left upper extremity and blunt impact injuries of the head, torso and extremities described further below. The straight brown hair measures up to approximately ½". The mustache and beard measure up to ½" and 1" respectively. The nose and facial bones are palpably intact. The eyes have brown irides and the conjunctivae are without hemorrhage, petechiae or jaundice. There is one earring hole in the left earlobe. The oral cavity has natural dentition in good condition and is atraumatic. The chest and extremities are symmetric. A pair of handcuffs inscribed "MW" and with the serial number "962483" are secured on the right wrist; these are removed using a key provided by Inv. Giudici. The abdomen is soft and non-distended, without palpable organomegaly or fluid wave. The external genitalia are of a normal uncircumcised adult man. The anus is unremarkable. There is an identification bracelet with the decedent's name and case number on the left ankle. A hospital identification bracelet with the decedent's name is located on the left wrist.

A 1-1/2 x 1/8" scar is located on the left side of head just above and lateral to the eyebrow. A ½" linear scar is located on the anterior left wrist. A ½ x ½" scar is located on the mid left buttock (comment: this scar is located 7-1/2" below the top of the hip and ½" lateral to the midpoint of the thigh). A monochromatic tattoo including dice, money symbols (\$), a diamond, skulls and the letters/words, "M.O.B" and "Self Made" is located on the right forearm and posterior right hand. A monochromatic tattoo of two faces and the name/date, "Mya 7-23-14" is located on the left arm. A polychromatic tattoo of a face, doves, rosary and the letters/numbers/date, "BSOP", "Sophia", "5/11/13" is located on the left forearm.

**POSTMORTEM CHANGES:**

There is moderate symmetrical rigor mortis of the upper and lower extremities, neck and jaw. Lividity is purple, fixed, and posterior. The body is cold due to refrigeration.

**THERAPEUTIC PROCEDURES:**

In place are an endotracheal tube, defibrillator and electrocardiogram pads on the torso and an intraosseous line in the right shin. A black tourniquet (serial number 102813) is secured around the proximal left arm. The tourniquet is submitted to the police.

**CLOTHING:**

The body is clad in green boxer briefs and white socks. No additional clothing is available for review. A black rubber band is secured around the right second finger. The clothing and personal property are submitted to the police.

**INJURIES:**

There is a perforating gunshot wound of the left upper extremity, two remote gunshot wounds of the left lower extremity and blunt impact injuries of the head, torso and extremities.

**Perforating gunshot wound of medial left arm (B-A)****Entrance wound**

A gunshot entrance wound of the medial left arm is located 8-1/4" below the top of the shoulder and 2-1/2" medial (right) of the midpoint of the arm. It is a 1/2" circular perforation of the skin with a maximal margin of abrasion of 1/16" from 9 to 12 o'clock. There is no fouling or stippling of the adjacent hair-bearing skin.

**Track**

After perforating the skin and soft tissue of the medial left arm, the bullet perforates the subcutaneous and deep muscles of the arm, the left brachial artery and several large nerves before exiting through the anterolateral left arm.

There is marked tissue destruction and soft tissue hemorrhage along the wound track.

**Exit Wound**

A gunshot exit wound of the anterolateral left arm is located 9-1/4" below the top of the shoulder and 2" lateral (left) of the midpoint of the arm. It is a somewhat circular perforation with surrounding radiating lacerations measuring up to 1/2" in greatest dimension.

**Course and direction**

The direction of the bullet is: medial to lateral, back to front and distal to proximal.

**Remote penetrating gunshot wounds of left lower extremity (C/D – E/F)****Entrance wound**

Two scars which may represent a remote gunshot wounds are located on the posterior left lower extremity. The first measures 1-1/2 x 1/2" and is located 19-1/2" below the top of the iliac crest and 2-1/2" left of the midpoint of the thigh (C). The second measures 1/2

x ¼" and is located 22" below the top of the iliac crest and at the 1-1/4" left of the midpoint of the leg (D).

### **Bullet lodgment**

The two bullets are lodged in the left leg. The more proximal is located in the deep musculature adjacent to the knee 24" below the top of the iliac crest and at the midpoint of the leg (F). The more distal is located in the subcutaneous soft tissue 32-1/2" below the top of the iliac crest and 1-1/2" right of the midpoint of the leg (E).

### **Course and direction**

The direction of the bullet is: downward, back to front and left to right.

### **Bullet**

The medium caliber bullets both have no jacket. The more proximal bullet (F) is moderately deformed and inscribed "JH2" on the base. The more distal bullet (E) is slightly deformed and inscribed "JH1" on the base. The bullets are submitted to the police.

### **Blunt impact injuries**

#### **Blunt impact injuries of head**

A 2 x 1" focus of multiple linear, vertically-oriented red abrasions is located on the upper right side of the forehead near the hairline. A ¼ x ¼" focus of multiple linear, vertically-oriented red abrasions is located on the mid upper forehead near the hairline. A ½ x ¼" confluent focus of multiple linear, vertically-oriented red abrasions is located on the mid right side of the forehead. A ¾ x ¼" pink contusion is located just superior to the right upper eyelid. A 1-3/4 x ½" red abrasion is located on the lateral aspect of the right cheek. A ¼ x ¼" red abrasion is located on the medial right cheek. A ½" curvilinear red abrasion is located on the bridge of the nose. Two, 1/8 x 1/8" each, red abrasions are located on the left cheek. A ½" linear red abrasion is located just to the right of the mouth. A ¼" linear red abrasion is located on the right side of the chin. A 1/8 x 1/8" red abrasion is located on the medial right side of the chin.

#### **Blunt impact injuries of anterior torso**

A ¼" linear red abrasion is located on the upper left side of the chest. A 1/8 x 1/8" red abrasion is located on the mid medial left side of the chest. A 1/8" linear red abrasion is located on the mid right side of the chest. Twelve linear red abrasions, all somewhat parallel and obliquely-oriented with the left edge superior are located on the lower right side of the chest and mid abdomen. They measure, from superior to inferior and right to left, ½", 1", ½", 3", 1", 3", 1", 2", 2", ½", 1-1/2" and ½". Three, 1-1/2 x 1/8" each, similarly-oriented pink contusions are interspersed among these red abrasions and located on the mid upper abdomen.

#### **Blunt impact injuries of posterior torso**

A ½ x ½" subcutaneous hemorrhage is located at the inferior aspect of the neck/mid upper back. Two, ½ x ¼" each, red abrasions are located on the upper lateral left side of the back. A 1/8 x 1/8" red abrasion is located on the left side of the back adjacent to

the armpit. A 1 x 1" focus of several linear and punctate red abrasions is located on the right side of the back adjacent to the armpit. A 1-1/2 x 1/8" red abrasion is located on the mid left side of the back. A 2" curvilinear red abrasion is located on the mid right side of the back. A 3 x 1" focus of multiple parallel curvilinear red abrasions is located below this on the mid right side of the back. A 1/4 x 1/8" red abrasion is located on the mid lateral right side of the back. A 1/2 x 1/8" red abrasion is located on the mid lateral right side of the torso. Five linear red abrasions are located across the lower right side of the back. They measure, from medial to lateral 1", 1", 2", 1-1/2" and 1/4".

### **Blunt impact injuries of extremities**

#### *Right upper extremity*

A 5 x 1" focus of multiple linear and irregular small red abrasions is located on the proximal posteriolateral right arm. A 1/2 x 1/4" red abrasion is located on the mid lateral right arm. A 3-1/2 x 2" focus of multiple linear and irregular red abrasions is located on and around the posterior right elbow. There is a 1/2 x 1/2" light pink subcutaneous contusion located on the posteromedial right wrist. A 1/8 x 1/8" red abrasion is located on the mid medial anterior right hand. A 1 x 1/2" red abrasion is located on the anterior right hand/proximal right thumb. A 1/2" curvilinear red abrasion is located at the tip of the right thumb. A 1/8 x 1/8" red abrasion is located on the medial distal interphalangeal joint of the right third finger. Two, 1/8 x 1/8" each, red abrasions are located on the lateral aspect of the mid right fourth finger between the proximal and distal interphalangeal joints. A 1/2 x 1/4" red abrasion is located on the medial aspect of the mid right fourth finger between the proximal and distal interphalangeal joints

#### *Left upper extremity*

A 1" linear red abrasion is located on the mid medial left arm (comment: located 1/2" distal to the entrance wound). A 1/2" linear red abrasion is located on the posterior left elbow. Two, 1/8" each, linear red abrasions are located on the proximal anterior left forearm. A 3" curvilinear red abrasion is located on the distal anterior left forearm. A 1/8" linear red abrasion is located on the anterior left hand/proximal left thumb. A 3/4" curvilinear laceration is located at the base of the left anterolateral thumb. A 1/4" linear red abrasion is located on the anteromedial left thumb. A 1/8 x 1/8" red abrasion is located on the proximal medial left fourth finger.

#### *Right lower extremity*

A 1-1/2 x 1/2" pink contusion is located proximal to the anterior right knee. A 1/2 x 1/2" pink contusion is located on the inferior medial aspect of the anterior right knee.

#### *Left lower extremity*

A 1/2 x 1/2" pink contusion is located on the proximal anterior left knee. A 1/4 x 1/4" red abrasion is located on the proximal anterolateral left knee. A 1/2 x 1/2" red abrasion is located on the distal anterolateral left knee. A 1 x 1" subcutaneous hemorrhage is located on the proximal posterolateral left leg.

**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 3/4" thick. In addition to routine autopsy examination techniques, the decedent's torso and extremities are flayed.

**HEAD:** The scalp has no contusion. The brain weighs 1510 gm and is normal size and shape. 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 and deep nuclei are unremarkable. The ventricular system is patent and dilated. A 0.3 x 0.2 cm tan lesion is located in the central white matter of the left parietal lobe. 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 380 gm and has a normal distribution of right predominant coronary arteries. There is moderate atherosclerotic stenosis (60%) of the proximal left anterior descending coronary artery. There is no recent thrombus. The myocardium is homogeneous, dark red and firm without pallor, hemorrhage, softening or fibrosis. The left ventricle wall is 1.2 cm and the right is 0.3 cm thick. 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 290 gm and the left weighs 280 gm. The pink and black parenchyma is without masses, consolidation or obstruction. The bronchi are unremarkable.

**LIVER, GALLBLADDER, PANCREAS:** The liver weighs 1840 gm and has an intact capsule. The brown parenchyma is without fibrous texture. The gallbladder contains approximately 12 cc of dark green bile without stones. The pancreas is unremarkable in lobulation, color and texture.

**HEMIC AND LYMPHATIC SYSTEMS:** The spleen weighs 170 gm and has an intact capsule. The color, red and white pulp and consistency are unremarkable. There are no enlarged lymph nodes.

**GENITOURINARY SYSTEM:** The right kidney weighs 130 gm and the left weighs 120 gm. A 1 x 1 x 0.6 cm tan wedge-shaped lesion is located in the upper pole of the right kidney. A 0.5 x 0.5 x 0.4 cm tan wedge-shaped lesion is located in the lower pole of the left kidney. Each kidney has a smooth red-brown surface with an otherwise unremarkable architecture and vasculature. The ureters maintain uniform caliber into an unremarkable bladder containing approximately 40 ml of urine. The prostate is not enlarged. There are bilateral testicular hydroceles. The testes are otherwise 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 350 cc of pink fluid and pieces of masticated meat (chicken versus pork) and green vegetable matter 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:** None.

**SPECIAL STUDIES:** None.

**PHOTOGRAPHY AND RADIOGRAPHY:** Photographs are taken by the police 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, fingernail clippings, hand swabs, clothing, personal property, tourniquet, handcuffs and bullets are submitted to the police.

**OPINION STATEMENT:** This 26 year old man was pronounced dead in the emergency room after being shot. He has a past history of being shot in the left leg with retained bullets.

Examination revealed a perforating gunshot wound of the left arm with perforation of the brachial artery and two retained bullets in the left lower extremity. Toxicology testing was performed and is noncontributory. The manner of death is Homicide.

  
Katherine Maloney, M.D.  
Deputy Chief Medical Examiner

**KFM**

DRAFT: 5/8/2017

FINAL: 6/23/2017



*KM*  
*6/23/17*

Forensic Toxicology Postmortem Report

Decedent: **Hernandez-Rossy, Jose** Hispanic/Male/26 Years  
 Pathologist: **Katherine Maloney, MD**  
 Agency Case #: **1119-17**

Laboratory Number: **1119-17**  
 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>
<b>Maloney, M.D., Katherine</b>						
Bile	17051510033542757	Tube, red top		9 ml	5/8/17 8:20	5/15/17
Blood	17051510022596652	Tube, plastic	peripheral	8 ml		
Blood	17051510021634224	Tube, plastic, w/NaF	Heart	50 ml		
Urine	17051510032568811	Tube, plastic		40 ml		
Vitreous Humor	17051510034843398	Tube, red top		2.5 ml		

Results of Toxicological Examination

ELISA Results

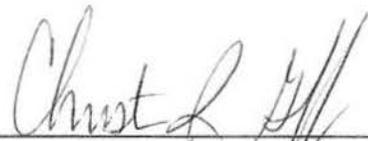
<u>Specimen</u>	<u>Sample Control #</u>	<u>Panel Test Name</u>	<u>Result</u>
Blood	17051510021634224	Benzodiazepines	Positive
Blood	17051510021634224	Cannabinoids	Positive
Blood	17051510021634224	Oxycodone	Positive

Quantitative and/or Confirmatory Tests

<u>Specimen</u>	<u>Sample Control #</u>	<u>Test</u>	<u>Analyte Name</u>	<u>Result</u>
Blood	17051510022596652	Benzodiazepine Panel 1	Alprazolam	0.03 mg/L
			Cannabinoids Quant	11-Hydroxy delta-9 Tetrahydrocannabinol
		Opioids Quant	Delta-9 Carboxy Tetrahydrocannabinol	4.0 mcg/L
			Delta-9 Tetrahydrocannabinol	33.1 mcg/L
			Oxycodone	0.07 mg/L

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.

<u>Test</u>	<u>Method of Analysis</u>	<u>Specimen</u>	<u>Sample Control #</u>
Qualitative screen ELISA	Enzyme Immunoassay	Blood	17051510021634224
Quantitation and/or Confirmation Benzodiazepine Panel 1	LC-MS/MS	Blood	17051510022596652
Cannabinoids Quant	LC-MS/MS	Blood	17051510022596652
Opioids Quant	LC-MS/MS	Blood	17051510022596652
Volatiles	Headspace-GC/FID	Blood	17051510021634224
		Urine	17051510032568811



June 22, 2017

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

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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.

COUNTY OF ERIE  
DEPARTMENT OF  
CENTRAL POLICE SERVICES  
FORENSIC LABORATORY



45 ELM STREET, FOURTH FLOOR  
BUFFALO, NEW YORK 14203-2600  
PHONE: (716) 858-7409  
FAX: (716) 858-7426

## DNA ANALYSIS REPORT

LAB NUMBER: 17-03047

INVESTIGATING AGENCY: Buffalo Police Department

CASE NAMES: Hernandez-Rossy, Jose - Defendant

CASE NO.: 17-1270585

REFERENCE NO.: LP#17-0248

DATE OF REPORT: 06/29/2017

INV. OFFICER: Velez

### Report Number 1

DNA was extracted from the items described below. It was amplified using the polymerase chain reaction (PCR) and typed using capillary electrophoresis at the following genetic loci: Amelogenin, D3S1358, D1S1656, D2S441, D10S1248, D13S317, Penta E, D16S539, D18S51, D2S1338, CSF1PO, Penta D, TH01, vWA, D21S11, D7S820, D5S818, TPOX, DYS391, D8S1179, D12S391, D19S433, FGA and D22S1045.

### Conclusion:

Based on the PCR results, the DNA profile obtained from the swab of the large plastic bag (Item #9.1) is a mixture of DNA from four individuals, including at least one male individual. The DNA profile is not suitable for entry into CODIS (DNA Databank) due to the nature of the mixture.

The DNA profile of Jose Hernandez-Rossy (Item #36) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $5.12 \times 10^{13}$  (51.2 Trillion) times more probable if the sample originated from Jose Hernandez-Rossy and three unknown individuals, rather than if it originated from four unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profile of Joseph Acquino (Item #45) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $1.01 \times 10^{12}$  (1.01 Trillion) times more probable if the sample originated from Joseph Acquino and three unknown individuals, rather than if it originated from four unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profiles of Jose Hernandez-Rossy and Joseph Acquino cannot be excluded from the DNA in the mixture. The evidence DNA profile is  $9.74 \times 10^{39}$  (9.74 Duodecillion) times more probable if the sample originated from Jose Hernandez-Rossy, Joseph Acquino and two unknown, unrelated individuals rather than if it originated from four unknown, unrelated individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profile obtained from the swab of the semi-automatic pistol (Item #21) is a mixture of DNA from four unknown individuals, including at least one male individual. The partial major DNA profile is that of an unknown male individual. The partial major DNA profile is not suitable for entry into CODIS (DNA Databank) because it does not meet the CODIS eligibility requirements.

Jose Hernandez-Rossy (Item #36) and Joseph Acquino (Item #45) are excluded as contributors to the minor portion of the genetic material in this specimen.

The DNA profile obtained from the swab of the semi-automatic pistol barrel/front area (Item #21) is a mixture of DNA from five individuals, including at least one male individual. The DNA profile is not suitable for entry into CODIS (DNA Databank) due to the nature of the mixture.

Jose Hernandez-Rossy (Item #36) is excluded as a contributor to the genetic material in this specimen.

The DNA profile of Joseph Acquino (Item #45) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least 11 times more probable if the sample originated from Joseph Acquino and four unknown individuals, rather than if it originated from five unknown individuals in the U.S. population. Therefore, there is moderate scientific support of this conclusion.

The DNA profile obtained from the swab of the front of the airbag (non-dried red stain area) (Item #29) is a mixture of DNA from five individuals, including at least one male individual. The DNA profile is not suitable for entry into CODIS (DNA Databank) due to the nature of the mixture.

The DNA profile of Jose Hernandez-Rossy (Item #36) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $4.42 \times 10^8$  (442 Million) times more probable if the sample originated from Jose Hernandez-Rossy and four unknown individuals, rather than if it originated from five unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profile of Joseph Acquino (Item #45) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $1.39 \times 10^9$  (1.39 Billion) times more probable if the sample originated from Joseph Acquino and four unknown individuals, rather than if it originated from five unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profiles of Jose Hernandez-Rossy and Joseph Acquino cannot be excluded from the DNA in the mixture. The evidence DNA profile is  $1.34 \times 10^{23}$  (134 Sextillion) times more probable if the sample originated from Jose Hernandez-Rossy and Joseph Acquino and three unknown, unrelated individuals rather than if it originated from five unknown, unrelated individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profile obtained from the swab of the back of the airbag (non-dried red stain areas) (Item #29) is a mixture of DNA from three individuals, including at least one male individual. The DNA profile is not suitable for entry into CODIS (DNA Databank) due to the nature of the mixture.

The DNA profile of Jose Hernandez-Rossy (Item #36) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least 100 times more probable if the sample originated from Jose Hernandez-Rossy and two unknown individuals, rather than if it originated from three unknown individuals in the U.S. population. Therefore, there is moderate scientific support of this conclusion.

Joseph Acquino (Item #45) is excluded as a contributor to the genetic material in this specimen.

The DNA profile obtained from the swab of the airbag housing unit/horn area (Item #46.9) is a mixture of DNA from four individuals, including at least one male individual and one female individual. The DNA profile is not suitable for entry into CODIS (DNA Databank) due to the nature of the mixture.

The DNA profile of Jose Hernandez-Rossy (Item #36) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $3.69 \times 10^6$  (3.69 Million) times more probable if the sample originated from Jose Hernandez-Rossy and three unknown individuals, rather than if it originated from four unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

Joseph Acquino (Item #45) is excluded as a contributor to the genetic material in this specimen.

Page 3 of 4

The DNA profile obtained from the swab of dried red stain 1 on the front of the airbag (Item #29) is a mixture of DNA from three individuals, including at least one male individual. The DNA profile is not suitable for entry into CODIS (DNA Databank) due to the nature of the mixture.

The DNA profile of Jose Hernandez-Rossy (Item #36) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $5.51 \times 10^{15}$  (5.51 Quadrillion) times more probable if the sample originated from Jose Hernandez-Rossy and two unknown individuals, rather than if it originated from three unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profile of Joseph Acquino (Item #45) cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $3.70 \times 10^{15}$  (3.70 Quadrillion) times more probable if the sample originated from Joseph Acquino and two unknown individuals, rather than if it originated from three unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profiles of Jose Hernandez-Rossy and Joseph Acquino cannot be excluded from the DNA in the mixture. The evidence DNA profile is at least  $9.24 \times 10^{50}$  (924 Quindecillion) times more probable if the sample originated from Jose Hernandez-Rossy, Joseph Acquino and an unknown, unrelated individual, rather than if it originated from three unknown, unrelated individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profile obtained from the swab of dried red stain 2 on the back of the airbag (Item #29) is a mixture of DNA from three individuals, including at least one male individual. The major DNA profile is that of a male individual. The major DNA profile is not suitable for entry into CODIS (DNA Databank) because it does not meet the CODIS eligibility requirements.

Jose Hernandez-Rossy (Item #36) is excluded as a contributor to the minor portion of the genetic material in this specimen.

The major DNA profile matches the DNA profile from the known buccal sample from Joseph Acquino (Item #45). The evidence DNA profile is at least  $1.04 \times 10^{17}$  (104 Quadrillion) times more probable if the sample originated from Joseph Acquino and two unknown individuals, rather than if it originated from three unknown individuals in the U.S. population. Therefore, there is extremely strong scientific support of this conclusion.

The DNA profiles obtained from the swabs of dried red stain 2-driver side upper exterior door frame (Item #46.2), dried red stain 5-driver side upper interior door frame (Item #46.5), and dried red stain 6-driver side lower interior door frame/floor mat (Item #46.6) match the DNA profile from the known buccal sample from Joseph Acquino (Item #45). The evidence DNA profiles are at least  $8.73 \times 10^{16}$  (87.3 Quadrillion) times more probable if the samples originated from Joseph Acquino rather than if they originated from an unknown individual in the U.S. population. It is concluded that Joseph Acquino is the source of the genetic material in these specimens.

The DNA profile obtained from the known blood sample from Jose Hernandez-Rossy (Item #36) was entered into CODIS (DNA Databank).

Additional known buccal samples are required for further comparison.

Presumptive Phenolphthalein Testing was positive for the presence of blood on dried red stain 1 from the driver side mirror (Item #46.1), dried red stain 2 from the driver side exterior upper door frame (Item #46.2), dried red stain 5 from the driver side interior upper door frame (Item #46.5), dried red stain 6 from driver side lower interior door frame/floor mat area (Item #46.6), dried red stain 7 from the steering wheel (Item #46.7), dried red stain 1 from the front side of the airbag (Item #29), and dried red stain 2 from the back side of the airbag (Item #29).

Page 4 of 4

Presumptive Phenolphthalein Testing was negative for the presence of blood on dried red stains from Item #46: dried red stain 3 and dried red stain 4 on the driver side running board, dried red stain 8 on the driver side plastic seatbelt frame, dried red stain 9 on the driver side visor area; and dried red stain 1 on the hook area of the tire repair tool (Item #46A). Therefore, no blood was detected on the listed dried red stains from Item #46 or on the tire repair tool (Item #46A).

No additional dried red stains were observed on the remaining areas of the inside of the vehicle (Item #46-driver and passenger front and rear areas).

No dried red stains or visible fabric separations were observed on the t-shirt or hooded zip-up jacket (Item #5). No further analysis was performed on these items at this time.

No dried red stains were observed macroscopically or microscopically with the stereoscope on the housing unit for the airbag or remaining attached fragments of the airbag (Item #46B). No further analysis was performed on this item at this time.

Items #12, #28, #37, #38, #39, #40, #46.3, #46.4, #46.7, #46.8, and #46.10 were not analyzed at this time. Please contact the lab if further analysis is required.

The autosomal STR statistical calculations in this report were generated using STRmix software which calculates a fully continuous probabilistic likelihood ratio (LR). The most conservative LR was reported using the lower bound 99% credible interval from individuals in the U.S. Caucasian, African American, and Hispanic population groups. The population allele frequencies were obtained from the NIST 1036 US Population Dataset.

The swabs collected from the semi-automatic pistol (Item #21) were consumed during testing. The DNA extracts will remain in laboratory custody.

Items #5, #12, #28, #29, #29.1, #36, #37, #38, #39, #40, #45, #46, #46A, #46B and #46B.1 will be returned to the submitting agency. Items #46.1 - #46.10 and the DNA extracts will remain in laboratory custody.

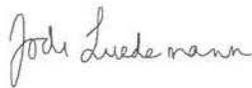
I affirm that I conducted the analysis documented herein.

This report may contain the conclusions, opinions and/or interpretations of the analyst whose signature appears on the report.

This report does not constitute the entire case record, which may include worksheets, images, analytical data, and other documents.

Report wording definitions can be found at: <http://criminaljustice.ny.gov/forensic/labreportstandards.htm>

CERTIFICATION: Pursuant to Criminal Procedure Law Sections 180.60(8) and 190.30(2), I certify that this copy is a true and accurate report concerning the results of tests and examinations which I, Jodi Luedemann, public servant and Forensic Biologist II, conducted at the Erie County Central Police Services Forensic Laboratory as recorded in this Laboratory Case Number 17-03047, Report # 1. I am aware that false statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the New York State Penal Law. Pursuant to State Technology Law §304(2) the use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand.



---

Jodi Luedemann  
Forensic Biologist II



**CONTROLLED SUBSTANCE ANALYSIS REPORT**

**LAB NUMBER: 17-03047**

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**INVESTIGATING AGENCY:** Buffalo Police Department

**CASE NAMES:** Hernandez-Rossy, Jose - Defendant

**CASE NO.:** 17-1270585

**REFERENCE NO.:** LP#17-0248

**DATE OF REPORT:** 08/24/2017

**INV. OFFICER:** Velez

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**Report Number 3**

**Item 8**                    **One sealed zip-locked bag with vegetable matter. The bag also holds debris.**

**Result/Conclusion**

The submitted exhibit was analyzed using a general screen method with gas chromatography/mass spectrometry (GC-MS). No controlled substances were identified.

**Item 9.3**                    **One sealed zip-locked bag with 14 tablet(s). The tablets are imprinted G3722. Also received an empty plastic corner.**

**Result/Conclusion**

The physical and design characteristics of the submitted exhibit(s) were compared versus labels and/or reference sources. Pharmaceutical information indicates that the exhibit(s) contain alprazolam, a controlled substance.

One of the exhibits was analyzed using gas chromatography/mass spectrometry (GC/MS) and confirmed to contain alprazolam, a controlled substance.

**Item 9.4**                    **One sealed zip-locked bag with 25 plastic corner(s) containing a powder substance. Also received an empty plastic corner.**

**Result/Conclusion**

1 of the 25 submitted exhibits was analyzed using gas chromatography-mass spectrometry (GC-MS) and confirmed to contain cocaine, a controlled substance.

**Item 9.5**                    **One sealed zip-locked bag with 18 plastic corner(s) containing a powder substance. Also received an empty plastic corner.**

**Result/Conclusion**

1 of the 18 submitted exhibits was analyzed using gas chromatography-mass spectrometry (GC-MS) and confirmed to contain cocaine, a controlled substance.

**Item 9.6**                    **One sealed zip-locked bag with 25 plastic corner(s) containing a powder substance. Also received an empty plastic corner.**

**Result/Conclusion**

1 of the 25 submitted exhibits was analyzed using gas chromatography-mass spectrometry (GC-MS) and confirmed to contain cocaine, a controlled substance.

Page 2 of 2

**Item 9.7**                    **One sealed zip-locked bag with  
1 plastic bag(s) containing vegetable matter.**

**Result/Conclusion**

The submitted material was analyzed using microscopic and chemical analysis and found to contain marihuana. The weight of the vegetable matter is less than 25 grams.

**Item 9.8**                    **One sealed zip-locked bag with  
tablet(s). The bag holds the following:  
-5 tablets imprinted IP204  
-1 tablet imprinted G3722 and a tablet piece similar in appearance**

**Result/Conclusion**

5 tablets imprinted IP204:

The physical and design characteristics of the submitted exhibit(s) were compared versus labels and/or reference sources. Pharmaceutical information indicates that the exhibit(s) contain oxycodone, a controlled substance.

One of the exhibits was analyzed using gas chromatography/mass spectrometry (GC/MS) and confirmed to contain oxycodone, a controlled substance.

The remaining exhibits were not analyzed at this time.

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I affirm that I conducted the analysis documented herein.

This report may contain the conclusions, opinions and/or interpretations of the analyst whose signature appears on the report.

This report does not constitute the entire case record, which may include worksheets, images, analytical data, and other documents.

Report wording definitions can be found at: <http://criminaljustice.ny.gov/forensic/labreportstandards.htm>

CERTIFICATION: Pursuant to Criminal Procedure Law Sections 180.60(8) and 190.30(2), I certify that this copy is a true and accurate report concerning the results of tests and examinations which I, Kaitlin Drollette, public servant and Forensic Chemist II, conducted at the Erie County Central Police Services Forensic Laboratory as recorded in this Laboratory Case Number 17-03047, Report # 3. I am aware that false statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the New York State Penal Law. Pursuant to State Technology Law §304(2) the use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand.



---

Kaitlin Drollette  
Forensic Chemist II

CC: Jennifer Sommers, NYS Attorney General's Office



**CONTROLLED SUBSTANCE ANALYSIS REPORT**

**LAB NUMBER: 17-03047**

**INVESTIGATING AGENCY:** Buffalo Police Department

**CASE NAMES:** Hernandez-Rossy, Jose - Defendant

**CASE NO.:** 17-1270585

**REFERENCE NO.:** LP#17-0248

**DATE OF REPORT:** 06/02/2017

**INV. OFFICER:** Velez

**Report Number 2**

**Item 8**                    **One sealed zip-locked bag with vegetable matter. The bag also holds debris.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9**                    **One sealed zip-locked bag with paraphernalia, described as: a rubber glove.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9.1**                **One sealed zip-locked bag with 1 plastic bag(s) containing suspected drug residue.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9.2**                **One sealed zip-locked bag with 142 glassine envelope(s) containing a powder substance. The bundles were received in 14 bundles of 10 and 1 bundle of 2.**

**Result/Conclusion**

1 of the 142 submitted exhibits was analyzed using gas chromatography-mass spectrometry (GC-MS) and confirmed to contain heroin, a controlled substance. Butyryl fentanyl and U-47700 were also identified. Butyryl fentanyl and U-47700 are classified as federally controlled substances.

The weight of the substance from item 9.2 may exceed 1/8 ounce.

The total calculated weight of the substance from item 9.2 is less than 1/2 ounce.

The number of exhibits required to support the highest weight charge from item 9.2 have not been confirmed. Please contact the laboratory for additional analysis necessary for court proceedings.

**Item 9.3**                **One sealed zip-locked bag with 14 tablet(s). The tablets are imprinted G3722. Also received an empty plastic corner.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9.4**            **One sealed zip-locked bag with  
25 plastic corner(s) containing a powder substance. Also received an empty plastic corner.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9.5**            **One sealed zip-locked bag with  
18 plastic corner(s) containing a powder substance. Also received an empty plastic corner.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9.6**            **One sealed zip-locked bag with  
25 plastic corner(s) containing a powder substance. Also received an empty plastic corner.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9.7**            **One sealed zip-locked bag with  
1 plastic bag(s) containing vegetable matter.**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 9.8**            **One sealed zip-locked bag with  
tablet(s). The bag holds the following:  
-5 tablets imprinted IP204  
-1 tablet imprinted G3722 and a tablet piece similar in appearance**

**Result/Conclusion**

No analyses were performed on the above described exhibit at the present time.

**Item 32**            **One sealed zip-locked bag with  
1 plastic bag(s) containing suspected controlled substances.**

**Result/Conclusion**

The submitted exhibit was analyzed using gas chromatography-mass spectrometry (GC-MS) and confirmed to contain cocaine, a controlled substance. The weight of the material is 20.54 +/-0.08 grams (at a 99.73% level of confidence), which is greater than 1/2 ounce but less than 4 ounces.

The combined weight of the substance from items 9.4, 9.5, 9.6 and 32 is less than 4 ounces.

All of the items were received together within a submitted sealed plastic bag.

I affirm that I conducted the analysis documented herein.

This report may contain the conclusions, opinions and/or interpretations of the analyst whose signature appears on the report.

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22 August 2017

Ms. Jennifer M. Sommers  
Deputy Chief  
New York State Office of the Attorney General  
144 Exchange Boulevard, Suite 200  
Rochester, NY 14614

**Subject: GSR Analysis/Offense Number SIPU 17-007**  
**Re: McCrone Associates Project MA62373**

Dear Ms. Sommers :

This report summarizes the results of our analyses to determine the presence/absence of primer component gunshot residue (GSR) particles on one "hoodie" type sweatshirt/jacket and two "snips" from the driver's side vehicle airbag. Analysis results were reported via our phone conversation on 02 August 2017. This work was conducted under authority of your payment via check.

### **SAMPLE RECEIPT**

The evidence items were received via UPS® Next Day Air on 16 June 2017, and were stored at laboratory ambient temperature in a locked cabinet until analysis.

You requested GSR analysis to be conducted on the sweatshirt/jacket (Item 5) and airbag items (Item 46B.1 and Item 29.1). The purpose for analysis of the airbag swatches is to determine if the igniter system utilized the same type of primer cap as used for ammunition (known for at least two airbag manufacturers). If so, then GSR-like particles would be deposited on the vehicle's interior surfaces, including the occupants.

The evidence box and contents were photographed on 28 July 2017. Documentation photographs are presented in Appendix A.

### **PREPARATION**

Standard GSR tape lift collection stubs were used to obtain samples from the sleeves and front of the sweatshirt/jacket; one GSR collection stub used for both sleeves (red boxes) and one GSR collection stub for the front (green box) as shown below:

Ms. Jennifer M. Sommers  
MA62373



One standard GSR tape lift collection stub was used to obtain samples from the two airbag swatches (both sides of each) as shown (blue shaded regions):



Prior to analysis, the tape lift stubs were carbon coated to a thickness of ~5 nm (~50Å) with the Gatan Model 681 coater in order to ensure electrical conductivity in the scanning electron microscope (SEM).

### **ANALYSIS**

The analysis is conducted in accordance with ASTM Designation E 1588-17: "Standard Practice for Gunshot Residue Analysis by Scanning Electron Microscopy/Energy Dispersive X-Ray Spectrometry."

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The analysis for this project was conducted using the JEOL 6480LV scanning electron microscope (SEM) that is equipped with an Oxford INCA<sup>®</sup> energy dispersive X-ray spectrometry (EDS) analysis system. The software program for gunshot residue analysis is used to automate the entire system and maintain control on the SEM stage movements and electron beam positioning. The pertinent SEM parameters are:

1	Beam accelerating voltage	25 kV
2	Magnification	350 X
3	Acquisition time	2 seconds live time (with 40 to 50% dead time)
4	Brightness and contrast threshold settings	Set to detect particles with average atomic number greater than manganese

An internal QA/QC GSR particle reference stub (wdnGSRstd) is included with each set of sample stubs to ensure that the system is properly detecting known GSR particles before the automated analysis is allowed to continue.

After completion of the automated analysis, up to six particles classified as characteristic GSR (i.e., containing lead-barium-antimony) are relocated, a 20 second live time EDS spectrum is obtained, and the particle composition, size and shape are confirmed. Particles consistent with GSR (such as lead-antimony, barium-antimony, and lead-barium) are confirmed by inspection of the original EDS spectra and are usually not relocated unless suspected to be a characteristic particle. All spectra associated with "unclassified" particles are re-inspected to identify potential characteristic GSR and/or consistent particles.

The analysis results are:

**Items 46B.1 and 29.1 – Airbag swatches**

No characteristic gunshot residue particles (i.e., containing the elements lead, barium, and antimony) were found on the stub.

**Item 5 – Sweatshirt/jacket sleeves**

No characteristic gunshot residue particles (i.e., containing the elements lead, barium, and antimony) were found on the stub.

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The results and conclusions, herein, have been peer-reviewed and are considered thorough and complete by McCrone Associates, Inc. The results apply exclusively to the samples analyzed and documented in this report. No further revisions will be made unless a corrective action is deemed warranted by McCrone Associates, Inc. Dissemination, interpretation, and/or reproduction, except in whole, are not recommended as doing so may alter and/or nullify the results.

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**Item 5 – Sweatshirt/jacket front**

No characteristic gunshot residue particles (i.e., containing the elements lead, barium, and antimony) were found on the stub.

The SEM/EDS data summaries are presented in Appendix B.

Upon completion of the analysis, the tape lift stubs were returned to their respective plastic vials. The vials were placed into a zip-type plastic bag which was sealed with evidence tape, and placed into the original evidence shipping box, along with the other evidence items. The box was returned to your office to the attention of Mr. David Guidici.

**CONCLUSION AND DISCUSSION**

No evidence of characteristic GSR particles was detected on the tape lift stub from Items 46B.1 and 29.1 airbag swatches. This indicates that the airbag igniter system did not utilize ammunition primer caps.

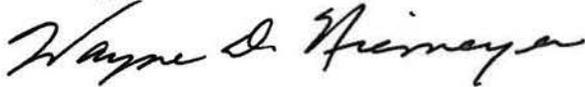
No evidence of characteristic GSR particles was detected on the tape lift stubs from Item 5 sweatshirt /jacket sleeves and front. The absence of GSR particles can be indicative of several scenarios:

- *The loss of GSR particles as a result of washing or physical activity.*
- *The sweatshirt /jacket was not in close proximity to the firearm when fired.*
- *The sweatshirt /jacket was physically blocked from having GSR deposited on it.*
- *The firearm having been of a type that does not eject significant amounts of gunshot residue.*
- *The firearm may have used ammunition with a primer composition that does not utilize lead, barium, antimony compounds.*

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Thank you for consulting McCrone Associates. If you have any questions about this report, please feel free to contact me by telephone or by e-mail at [wniemeyer@mccrone.com](mailto:wniemeyer@mccrone.com).

Sincerely,



Wayne D. Niemeyer  
Senior Research Scientist

WDN:  
Enclosure  
Ref: MA62373; Check

*McCrone Associates, Inc. conducts analysis in a laboratory accredited to ISO/IEC 17025: 2005 by the American Association for Laboratory Accreditation (A2LA) and in compliance with applicable current Good Manufacturing Practices and Good Laboratory Practices per sections 58, 210, 211 and 820 of the Federal Food, Drug, and Cosmetic Act. Please consult A2LA Certificate # 3631.01 for a list of accredited test technologies at [www.a2la.org](http://www.a2la.org).*

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The results and conclusions, herein, have been peer-reviewed and are considered thorough and complete by McCrone Associates, Inc. The results apply exclusively to the samples analyzed and documented in this report. No further revisions will be made unless a corrective action is deemed warranted by McCrone Associates, Inc. Dissemination, interpretation, and/or reproduction, except in whole, are not recommended as doing so may alter and/or nullify the results.

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**APPENDIX A**

Documentation Photographs - Offense Number SIPU 17-007

Ref: MA62373  
(15 pages)

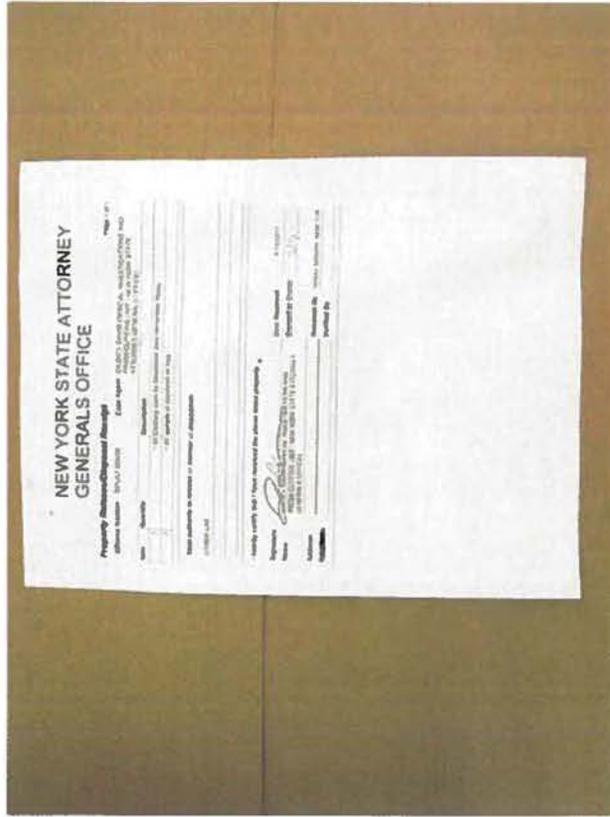
Offense Number SIPU 17-007 Documentation Photographs

MCCrone Associates, Inc.		Sample Submission Form		For Office Use Only	
Client Contact Information Name: _____ Title: _____ Address: _____ City/State/Zip: _____ Phone: _____ Email: _____		Method of Payment <input type="checkbox"/> Check # _____ <input type="checkbox"/> Credit Card (By Phone Only) A/P Contact Name: _____ Address: _____ City/State/Zip: _____ Phone: _____		Address, City, State, Zip Information Address: _____ City: _____ State: _____ Zip: _____	
Primary Contact Name: _____ Title: _____ Address: _____ City/State/Zip: _____ Phone: _____ Email: _____					
Requested TAT <input type="checkbox"/> Standard Turnaround <input type="checkbox"/> RUSH (100% surcharge) Storage Requirements <input type="checkbox"/> Ambient <input type="checkbox"/> Freeze <input type="checkbox"/> Light Sensitive <input type="checkbox"/> Other					
Samples ID and Description (List & use other identifiers) _____ _____ _____					
Analysis Request (List & use other identifiers) _____ _____ _____					
Notes to include on container _____ _____ _____					

Sample Submission Form



Offense Number SIPU 17-007 Documentation Photographs



**NEW YORK STATE ATTORNEY  
GENERALS OFFICE**

Page 1 of 1

**Property Release/Disposal Receipt**      Case Agent: GUDICI, DAVID (SPECIAL INVESTIGATIONS AND PROSECUTIONS UNIT / NEW YORK STATE ATTORNEY GENERALS OFFICE)

Offense Number: SIPU17-003720

Item	Quantity	Description
1	1 00	Clothing worn by Deceased Jose Hernandez-Rosay
2	1 00	sample of deployed air bag

State authority to release or manner of disposition:  
OTHER LAB

I hereby certify that I have received the above listed property

Signature: *[Signature]*      Date Received: 9/15/2017  
Name: GUDICI, DAVID (SPECIAL INVESTIGATIONS AND PROSECUTIONS UNIT / NEW YORK STATE ATTORNEY GENERALS OFFICE)      Owner/For Owner: SDJ  
Address:      Released By: MDAJ SANDRA NEW YORK

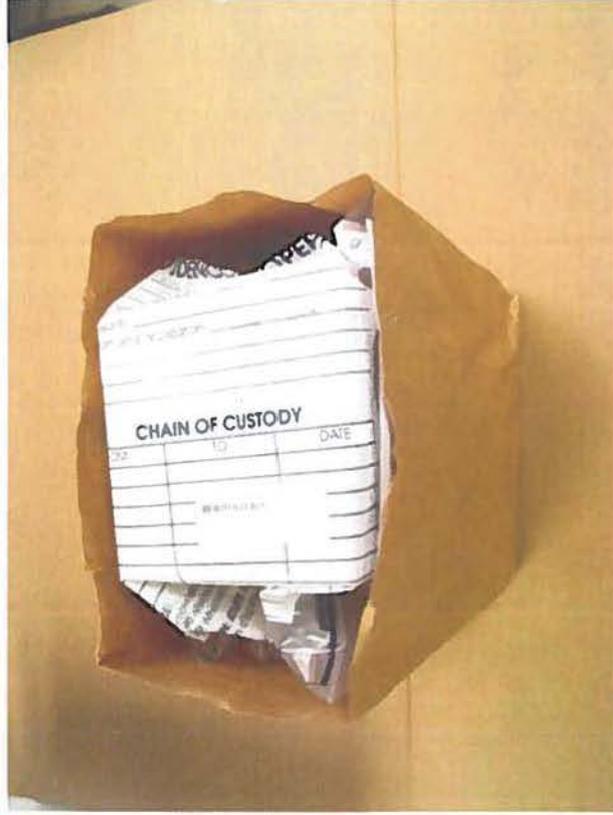
Property Release form



Offense Number SIPU 17-007 Documentation Photographs



Shipping box with top opened



Brown paper bag removed from shipping box with airbag  
swatch sample box on top

Offense Number SIPU 17-007 Documentation Photographs

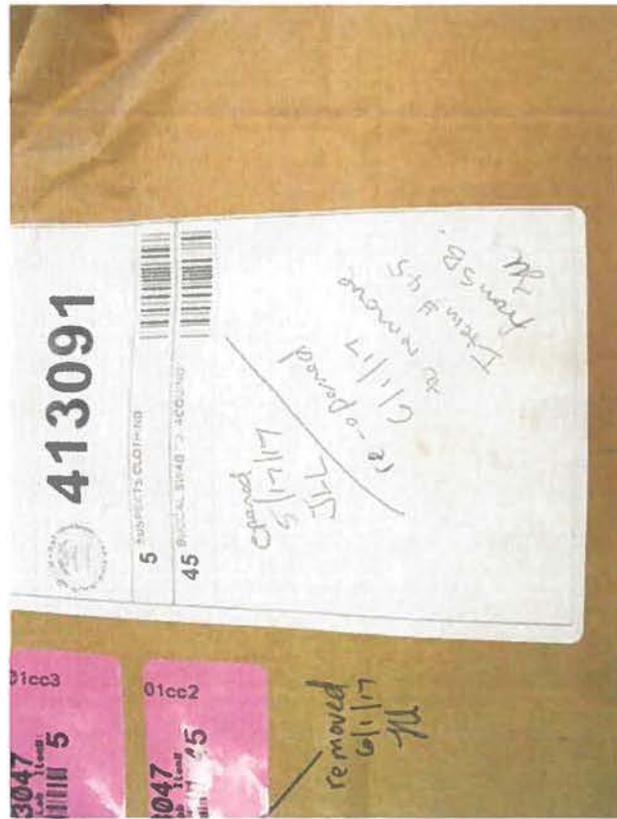


Brown paper bag with clothing evidence bag that was under the airbag switch sample box



Clothing evidence bag 1

Offense Number SPU 17-007 Documentation Photographs

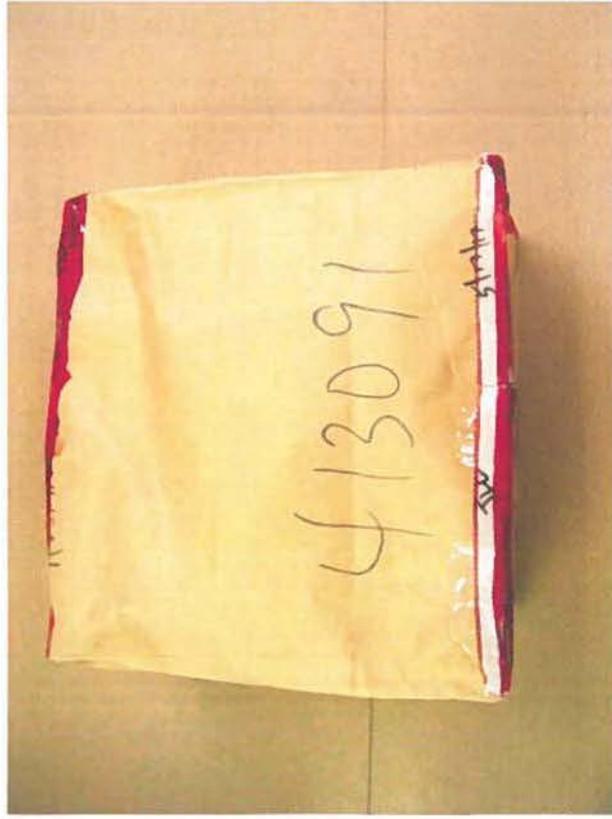


Clothing bag 1 label



Clothing bag 1

Offense Number SIPU 17-007 Documentation Photographs



Clothing bag 1

Offense Number SIPU 17-007 Documentation Photographs



Clothing bag 1 top end seals



Clothing bag 1 bottom end seals

Offense Number SIPU 17-007 Documentation Photographs

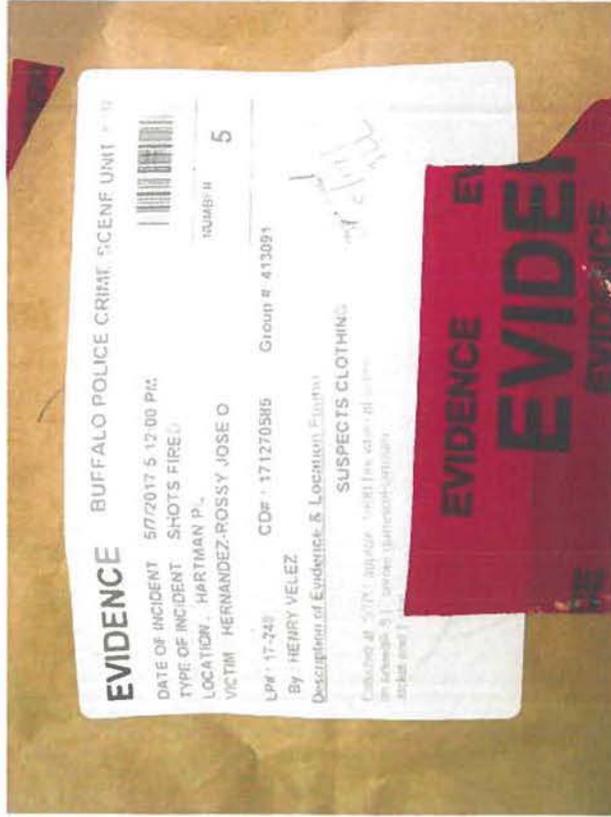


Clothing bag 2 inside clothing bag 1

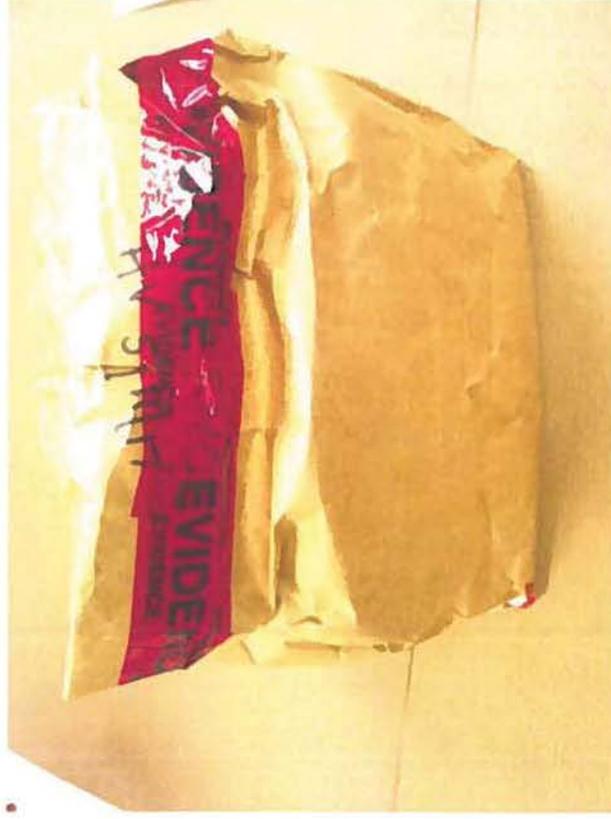


Clothing bag 2

Offense Number SIPU 17-007 Documentation Photographs



Clothing bag 2 label



Clothing bag 2 top end seal

Offense Number SIPU 17-007 Documentation Photographs



Clothing bag 2 contents upon opening



Sweatshirt/jacket removed from clothing bag 2

Offense Number SPU 17-007 Documentation Photographs



Sweatshirt/jacket unfolded

MA62373

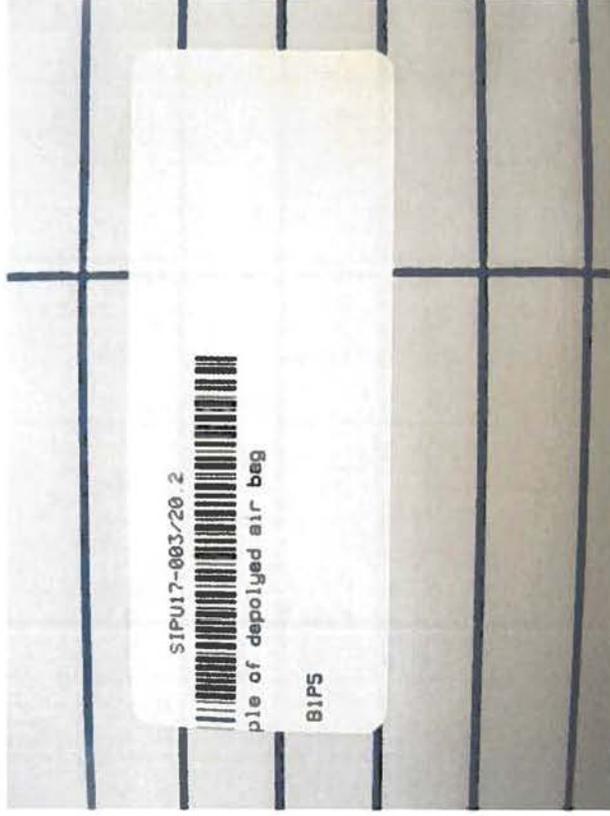
APPENDIX A



Offense Number SIPU 17-007 Documentation Photographs



Airbag swatch sample box



Label on Evidence/Property sheet

Offense Number SIPU 17-007 Documentation Photographs



Airbag switch sample box



Lab labels on airbag switch sample box

Offense Number SIPU 17-007 Documentation Photographs



Airbag switch sample box top



Airbag switch sample box opened

Offense Number SIPU 17-007 Documentation Photographs



Zip-type plastic bags with airbag swatches



Airbag swatches removed from zip-type plastic bags

**APPENDIX B**

Offense Number SIPU17-003\_20 SEM\_EDS Data Summaries

Ref: MA62373  
(3 pages)

Acquisition Date 8/1/2017 5:05:18 PM  
Total number of areas 1  
Total Duration 972.5 mins  
Database State Acquisition complete  
Reason for stop Normal  
Recipe WDN-GSR2  
Quant setup WDN\_gsrv2  
Class setup wdnGSRv15  
Quant results Weight %  
Field Area (sq. µm) 9.64E+04

Defined Classes:

Class	Rank	Characteristic	Features	% total features	Feature area (sq. µm)	% total area
wdnGSR		Characteristic	0	0.0	0.00E+00	0.000
wdnPbBaSbSn		Characteristic	0	0.0	0.00E+00	0.000
PbSb		Consistent	0	0.0	0.00E+00	0.000
BaSb		Consistent	0	0.0	0.00E+00	0.000
Sr-rich		Consistent	2	0.0	9.28E+00	8.88E-06
wdnBaSb		Consistent	0	0.0	0.00E+00	0.000
wdnPbBa		Consistent	0	0.0	0.00E+00	0.000
wdnPbSb		Consistent	1	0.0	2.51E+00	2.40E-06
wdnTiZn		Consistent	0	0.0	0.00E+00	0.000
wdnBrass_GSR		Consistent	0	0.0	0.00E+00	0.000
PbCuZn	3	Consistent	1	0.0	4.51E+00	4.32E-06
wdnPbCu	3		0	0.0	0.00E+00	0.000
wdnPbCuFe	3		0	0.0	0.00E+00	0.000
wdnSbMnCo	3		0	0.0	0.00E+00	0.000
PbSn	4		0	0.0	0.00E+00	0.000
wdnBRASS	4		27	0.2	1.21E+02	1.15E-04
wdnPb_rich	4		4	0.0	4.41E+01	4.22E-05
Fe_enviro	5		988	8.1	1.83E+04	0.018
Fe_Cr	5		24	0.2	1.69E+02	1.61E-04
Gold	5		0	0.0	0.00E+00	0.000
lighter flint	5		3	0.0	9.33E+01	8.93E-05
overlaps	5		0	0.0	0.00E+00	0.000
wdn_iron2	5		724	6.0	3.21E+03	3.07E-03
wdnAl_oxide	5		21	0.2	5.96E+01	5.70E-05
wdnBarite_mod1	5		1646	13.6	9.69E+03	9.27E-03
wdnKCl	5		422	3.5	4.46E+03	4.27E-03
wdn_minerals	5		3	0.0	6.02E+00	5.76E-06
wdnMisch_metal	5		0	0.0	0.00E+00	0.000
wdnNaCl	5		62	0.5	2.66E+02	2.55E-04
wdnOrganic	5		0	0.0	0.00E+00	0.000
wdnSi_rich	5		229	1.9	7.37E+02	7.06E-04
wdnTi_rich	5		41	0.3	1.16E+02	1.11E-04
Zn enviro	5		137	1.1	1.36E+03	1.31E-03
Bi-rich	5		0	0.0	0.00E+00	0.000
Ca-rich	5		8	0.1	2.41E+01	2.30E-05
Ag-rich	5		0	0.0	0.00E+00	0.000
Cu-rich	5		6778	55.9	7.67E+04	0.073
Tungsten	5		1	0.0	5.89E+00	5.64E-06

Defined Classes:

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 Total Duration 135.5 mins  
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 Quant setup WDN\_gsrv2  
 Class setup wdnGSRv15  
 Quant results Weight %  
 Field Area (sq. µm) 9.64E+04

Class	Rank	Features	% total features	Feature area (sq. µm)	% total area
wdnGSR		Characteristic	0	0.00E+00	0.000
wdnPbBaSbSn		Characteristic	0	0.00E+00	0.000
PbSb		Consistent	0	0.00E+00	0.000
BaSb		Consistent	0	0.00E+00	0.000
Si-rich		Consistent	1	2.01E+00	1.87E-06
wdnBaSb		Consistent	1	1.25E+00	1.17E-06
wdnPbBa		Consistent	0	0.00E+00	0.000
wdnPbSb		Consistent	0	0.00E+00	0.000
wdnTiZn		Consistent	0	0.00E+00	0.000
wdnBrass_GSR		Consistent	0	0.00E+00	0.000
PbCuZn	3		0	0.00E+00	0.000
wdnPbCu	3		0	0.00E+00	0.000
wdnPbCuFe	3		0	0.00E+00	0.000
wdnSbMnCo	3		0	0.00E+00	0.000
PbSn	4		2	6.40E+00	5.97E-06
wdnBRASS	4		4	1.10E+01	1.03E-05
wdnPb_rich	4		66	6.81E+02	6.35E-04
Fe_enviro	5		114	9.99E+02	9.32E-04
Fe_Cr	5		8	6.81E+01	6.35E-05
Gold	5		0	0.00E+00	0.000
lighter flint	5		14	5.24E+01	4.89E-05
overlaps	5		0	0.00E+00	0.000
wdn_iron2	5		30	2.67E+02	2.49E-04
wdnAl_oxide	5		0	0.00E+00	0.000
wdnBarite_mod1	5		18	7.57E+01	7.07E-05
wdnKCl	5		0	0.00E+00	0.000
wdn_minerals	5		0	0.00E+00	0.000
wdnMisch_metal	5		10	1.31E+02	1.22E-04
wdnNaCl	5		0	0.00E+00	0.000
wdnOrganic	5		0	0.00E+00	0.000
wdnSi_rich	5		28	2.92E+02	2.72E-04
wdnTi_rich	5		0	0.00E+00	0.000
Zn enviro	5		10	9.93E+01	9.27E-05
Bi-rich	5		10	5.67E+01	5.29E-05
Ca-rich	5		0	0.00E+00	0.000
Ag-rich	5		0	0.00E+00	0.000
Cu-rich	5		17	8.97E+01	8.37E-05
Tungsten	5		0	0.00E+00	0.000

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Class setup wdnGSRv15  
Quant results Weight %  
Field Area (sq. µm) 9.64E+04

Defined Classes:

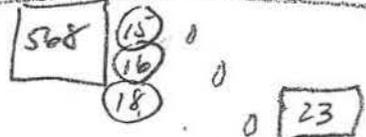
Class	Rank	Features	% total features	Feature area (sq. µm)	% total area
wdnGSR	0	Characteristic	0.0	0.00E+00	0.000
wdnPbBaSbSn	0	Characteristic	0.0	0.00E+00	0.000
PbSb	0	Consistent	0.0	0.00E+00	0.000
BaSb	0	Consistent	0.0	0.00E+00	0.000
Sr-rich	1	Consistent	0.2	3.14E+00	2.90E-06
wdnBaSb	2	Consistent	0.4	2.53E+01	2.34E-05
wdnPbBa	0	Consistent	0.0	0.00E+00	0.000
wdnPbSb	0	Consistent	0.0	0.00E+00	0.000
wdnTiZn	0	Consistent	0.0	0.00E+00	0.000
wdnBrass_GSR	0	Consistent	0.0	0.00E+00	0.000
PbCuZn	3	Consistent	0.2	2.01E+00	1.86E-06
wdnPbCu	0	Consistent	0.0	0.00E+00	0.000
wdnPbCuFe	3	Consistent	0.0	0.00E+00	0.000
wdnSbMnCo	0	Consistent	0.0	0.00E+00	0.000
PbSn	2	Consistent	0.4	1.10E+01	1.02E-05
wdnBRASS	4	Consistent	1.0	2.14E+01	1.98E-05
wdnPb_rich	4	Consistent	13.2	5.56E+02	5.15E-04
Fe_enviro	192	Consistent	39.1	1.34E+03	1.24E-03
Fe_Cr	5	Consistent	1.0	2.85E+01	2.63E-05
Gold	0	Consistent	0.0	0.00E+00	0.000
lighter flint	35	Consistent	7.1	1.05E+03	9.71E-04
overlaps	0	Consistent	0.0	0.00E+00	0.000
wdn_iron2	34	Consistent	6.9	2.89E+02	2.68E-04
wdnAl_oxide	1	Consistent	0.2	5.52E+00	5.11E-06
wdnBarite_mod1	19	Consistent	3.9	1.30E+02	1.20E-04
wdnKCl	0	Consistent	0.0	0.00E+00	0.000
wdn_minerals	0	Consistent	0.0	0.00E+00	0.000
wdnMisch_metal	22	Consistent	4.5	7.05E+02	6.52E-04
wdnNaCl	1	Consistent	0.2	4.64E+00	4.29E-06
wdnOrganic	0	Consistent	0.0	0.00E+00	0.000
wdnSi_rich	34	Consistent	6.9	4.09E+02	3.78E-04
wdnTi_rich	1	Consistent	0.2	1.38E+00	1.28E-06
Zn enviro	10	Consistent	2.0	1.37E+02	1.27E-04
Bi-rich	15	Consistent	3.1	6.09E+01	5.64E-05
Ca-rich	0	Consistent	0.0	0.00E+00	0.000
Ag-rich	0	Consistent	0.0	0.00E+00	0.000
Cu-rich	16	Consistent	3.3	1.18E+02	1.09E-04
Tungsten	1	Consistent	0.2	1.88E+00	1.74E-06



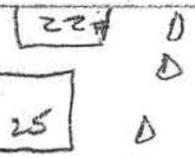
5/17/17

SHOOTING OFFICER involved  
- VEEZ (CSU)  
- HANAMAN (PHOTOS)

TOMAWANDA



CAHUMET



#107

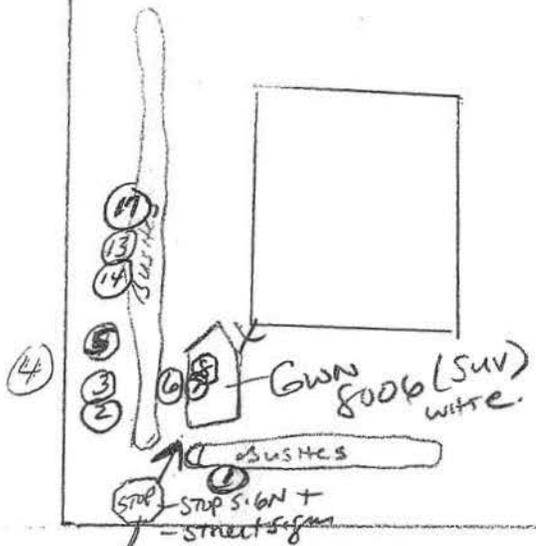
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NISSAN WHITE



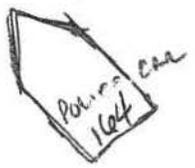
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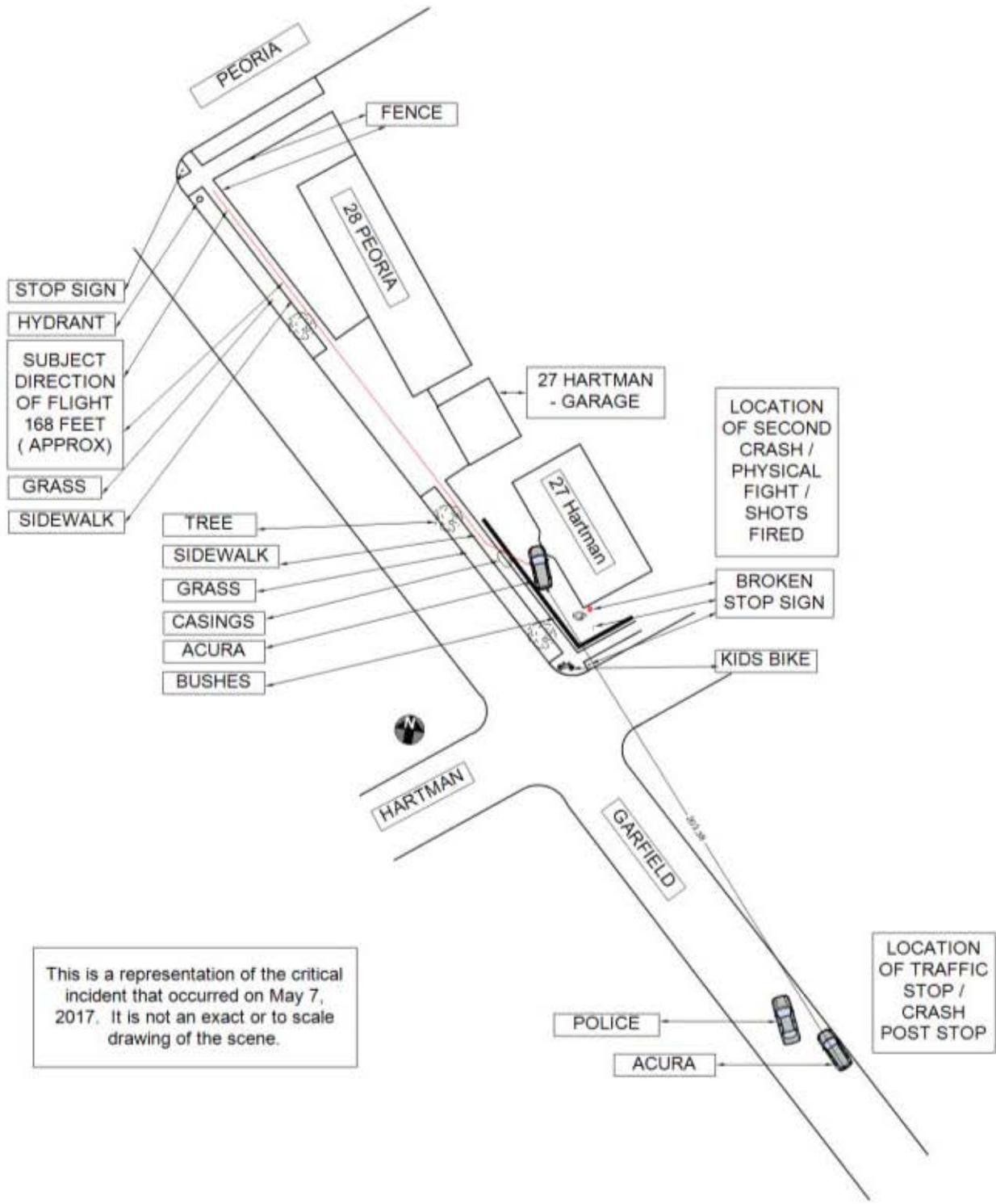
GARFIELD



HARTMAN



Date Drawn	Organization	Crime Date	Scale
SEPTEMBER 25, 2017	BUFFALO POLICE DEPARTMENT	MAY 7, 2017	NA



This is a representation of the critical incident that occurred on May 7, 2017. It is not an exact or to scale drawing of the scene.