

**Special Investigations and
Prosecutions Unit**

**Report on the Investigation into
The Death of Tina Davis**



**Letitia James
NYS Attorney General**

EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (the “Executive Order”), appointing the Attorney General as special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On January 4, 2020, Tina Davis became unresponsive and subsequently died following an encounter with officers of the Spring Valley Police Department (“SVPD”) in Rockland County. Governor Cuomo subsequently issued Executive Order No. 147.32, expressly conferring jurisdiction on the Office of the Attorney General (“OAG”) to investigate any potential unlawful acts or omissions by law enforcement related to Ms. Davis’ death.¹

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

- SVPD paperwork generated in connection with the incident;
- Audio recordings of telephone calls and radio communications to, from, and between SVPD Police Command, the SVPD Central Police Desk, SVPD officers, and emergency medical technicians;
- Video footage from the subject location (the parking lot adjacent to 79 Fred Hecht Drive);
- Interviews of SVPD officers who were involved with and/or witnessed the incident;
- Interviews of multiple civilians who witnessed relevant aspects of the incident, including civilians who were with Ms. Davis immediately prior to the police encounter and emergency medical technicians;
- Medical records, including records from the responding emergency medical services and from Good Samaritan Hospital in Suffern; and
- Autopsy report from the Office of the Chief Medical Examiner (“OCME”) of Rockland County.

In the early morning hours of January 4, 2020, Police Officer Brandon Levey of SVPD responded to several 911 calls identifying Ms. Davis by name and reporting that she was “acting crazy,” “bugging out,” and “busting people’s car windows.” When PO Levey arrived on scene, he observed Ms. Davis chasing another woman down the street. PO Levey intervened, secured Ms. Davis by her upper arm, and escorted her down the street, where he attempted to place her in handcuffs. Ms. Davis, however, refused to comply with PO Levey’s efforts. Sergeant Thomas Koziak arrived on scene and attempted to assist PO Levey, but she continued to pull her arms away. This struggle resulted in all three individuals falling to the ground, at which point, according to PO Levey, Ms. Davis took hold of his bulletproof vest and would not release it, despite repeated instructions by both officers for her to do so. Sgt Koziak then placed his taser on Ms. Davis’s forearm, and activated the device in the “drive-stun” mode – at which point Ms. Davis reportedly released the vest and was then successfully handcuffed in front of her body. Ms. Davis continued to kick her legs until a third officer, Police Officer Sean Jordan arrived and took hold of her legs.

¹ Executive Order 147.32 is attached as Exhibit 1.

While the officers waited for an ambulance for Ms. Davis, they noticed that she had become unresponsive. They removed her handcuffs, rolled her onto her back, and began chest compressions; PO Jordan also administered Narcan. Soon thereafter, paramedics arrived on scene and continued to perform life-saving measures, but they were unable to revive her. Ms. Davis, who was subsequently transported to a hospital, was pronounced brain-dead the following day and removed from life support.

The medical examiner identified the cause of Ms. Davis' death as "Complications of anoxic encephalopathy with multi-organ failure and acute myocardial infarct approximately 42 hours status-post sudden cardiac arrest due to acute cocaine and alcohol intoxication with seizure activity, agitated behavior and police restraint." The medical examiner noted a number of significant factors which contributed to Ms. Davis' death, including the presence of a significant amount of cocaine and alcohol in her system, a "grand mal" seizure she suffered prior to the police encounter, a pre-existing heart condition, and the use of physical force by the police officers. Because the medical examiner was unable to pinpoint how and to what degree each of these factors contributed to Ms. Davis' death, the manner of death was characterized as "undetermined."

Having now completed its investigation of this incident, the OAG has concluded that there is no affirmative evidence to establish that a crime was committed by any of the officers involved. Based on the available facts available, the OAG has concluded that the officers' use of force to restrain Ms. Davis could not – as the legal standard requires – be proven to be unjustified beyond a reasonable doubt. For these reasons, the OAG will not pursue a criminal prosecution in connection with this matter.

The OAG is, however, troubled by some of the circumstances surrounding Ms. Davis' death. First, the delayed medical response to the scene – especially in light of the fact that Ms. Davis' mental health and substance abuse history was known to the SVPD, that multiple 911 callers identified Ms. Davis by name, and that one of the 911 callers had expressly indicated that Ms. Davis was "in crisis" is of concern to the OAG. The OAG thus recommends that 911 dispatchers take special care to promptly dispatch all needed emergency services (including medical and mental health services), and that officers are properly trained to interact with individuals with medical and/or mental health needs. In addition, the OAG recommends that the SVPD outfit its officers with body-worn cameras so that incidents such as this one can be more readily investigated.

STATEMENT OF FACTS

A. Events Leading to Law Enforcement Response

On January 4, 2020, at about 5:10 am,² Rockland 911 received a call (from a female caller later identified as B.G.) reporting that "Tina Davis is out here bugging the fuck out. She's busting peoples' car windows out," and identifying the location as Fred Hecht Drive in Spring Valley. B.G.'s call was transferred to the Spring Valley police department and she was informed that officers were

² This report uses the times generated by the Rockland County 911 system as its reference points.

on their way to 79 Fred Hecht Drive. (It is not clear how the department had identified the accurate street number).

The Spring Valley police department was familiar with Tina Davis, a 53-year-old resident of the city with several dozen arrests (many drug-related and many for combative behavior) as well as numerous other non-arrest encounters, dating back to the 1980s. Indeed, Ms. Davis had herself called the police department the night before (January 3) at about 10:50 pm to inform them, in an agitated manner, that someone had stolen the transmission out of her car and asking for an officer to meet her at Fred Hecht. (The officer instructed her not to go to there.) All four officers who would ultimately interact with Ms. Davis several hours later had dealt with her repeatedly in the past.

Based on the 911 call, the police dispatcher at 5:12 am called for a response to 79 Fred Hecht, transmitting, “Apparently, Tina Davis is out there smashing car windows.”

Two minutes after the first 911 call, a second female caller (later identified as C.C.) gave the address of 79 Fred Hecht Drive and reported that, “There’s this girl named Tina Davis. She smashed my windshield. She’s chasing me with a stick.” Yet another call (again from B.G.) came in less than a minute later, reporting, “Hurry up, she’s busting people’s windows. She’s going crazy. She’s in crisis,” and directing police to “the parking lot.”

Shortly after 5:15 am, the police dispatcher clarified that officers should respond to “the parking lot”; he did not, however, relay any of the additional information provided in either of the two other 911 calls.

PO Brandon Levey arrived on the scene at about 5:17 am. Like the other officers who responded that morning, PO Levey was not outfitted with a body-worn camera. Two grainy, black-and-white surveillance videos do capture some portions of the subsequent encounter.³ (The timestamps on the video footage are approximately 39 seconds behind the times generated by the Rockland County 911 system.)

PO Levey later told OAG staff that he saw Ms. Davis in the street moving toward his police vehicle, in apparent pursuit of another woman – who turned out to be 911 caller C.C. (Although her vantage point at the time of the officer’s arrival is unclear, B.G. also later stated that when the police arrived, she saw C.C. run toward them, with Ms. Davis chasing behind.)⁴

PO Levey later said that he stepped between the women and attempted to calm Ms. Davis down, but that Ms. Davis pushed past him to get to C.C. (C.C. later stated that the officer originally told Ms. Davis to get up against the hood of the police car.) This interaction cannot be seen on the

³ Please click these links to view [Video 1](#) and [Video 2](#).

⁴ On Video 1, starting at 5:17:38, the two women appear on the screen from the far right, and make their way, right to left, up the street (Fred Hecht Drive). At 5:18:05, PO Levey’s patrol vehicle appears on the screen at the upper left, and turns onto Fred Hecht Drive travelling left to right.

video (the view is obstructed), but soon thereafter the officer can be seen holding Ms. Davis' upper arm and escorting her several yards up the block and away from his patrol vehicle.⁵

According to PO Levey, he placed Ms. Davis against another vehicle, and attempted to get control of her hands in order to handcuff her behind her back. Ms. Davis did not comply, however, and pulled her arms away from him. Although difficult to make out, this interaction is captured on video.⁶

At about this time, Sgt. Thomas Koziak, who had just arrived on the scene, approached PO Levey and Ms. Davis. He later stated that he saw PO Levey attempting to handcuff Ms. Davis, and that he tried to grab Ms. Davis' arm. However, she continued to resist and, according to both officers, all three fell to the ground as a result. The videos do capture the officers attempting to handcuff Ms. Davis as well as the officers and Ms. Davis going to the ground, with Ms. Davis on her back and the two officers kneeling over her – although the cause of their doing so is not entirely clear.⁷

PO Levey stated that, with Ms. Davis spitting at him and yelling out (“you’ll have to kill me”), he was then able to get one handcuff on Ms. Davis; with her uncuffed hand, however, Ms. Davis took hold of PO Levey’s bulletproof vest, and began pulling it toward his face. According to PO Levey, despite repeatedly instructing her to let go of the vest, Ms. Davis refused to do so. Sgt. Koziak also said that he saw Ms. Davis holding on to PO Levey’s vest, and heard PO Levey tell her, “Tina, get off of my vest.”

Sgt. Koziak said he drew the taser from his belt and ordered Ms. Davis to let go of PO Levey’s vest, but she did not comply. Sgt. Koziak then removed the cartridge from the taser, put the device up against Ms. Davis’ left forearm (on the outside of the sleeve of the sweatshirt she was wearing), and engaged the device in drive-stun mode⁸ – and Ms. Davis immediately released the vest. The taser report indicates that Sgt. Koziak’s device was activated for five seconds (the full length of the cycle), although Sgt. Koziak stated he did not activate the device for the full length of the cycle. The officers were then able to gain control of Ms. Davis’ other hand, and she was handcuffed with the restraints in front of her.

Both sets of surveillance video do capture the three figures on the ground, but it is impossible to make out the interaction between them, including any grabbing of the vest, the use of the taser, or the handcuffing.

⁵ On Video 1, starting at 5:18:35, PO Levey at the top middle of the screen can be seen escorting Ms. Davis rightward down the street, and then briefly off-screen.

⁶ On Video 2, starting at 5:18:53, PO Levey and Ms. Davis appear indistinctly on the screen at the far left.

⁷ On Video 1, starting at 5:18:35, Sgt. Koziak can be seen at the top middle of the screen moving rightward down the street and briefly off-screen. At 5:19:13, the officers and Ms. Davis reappear from the right side of the screen, and all go to the ground shortly thereafter at the bottom right corner. They remain there for the remainder of the incident. On Video 2, the officers and Ms. Davis are at the bottom left corner of the screen, but the image is too unclear to be of much value.

⁸ In “drive-stun” mode, the taser’s electrodes are pressed directly against the individual. Drive-stun mode delivers an electric shock, but does not conduct an electric current through the individual’s body.

Although as mentioned above, it is unclear what her vantage point was at the time (she is not visible in the surveillance video), B.G. later said that Ms. Davis “gave them [the police] a run for their money” and that they “couldn’t hold her down.” She separately said that she saw Ms. Davis fighting with the police and they were fighting back. She said she saw Ms. Davis on the ground and heard her yelling, “Don’t put anything in my pockets.” She did not see Ms. Davis take hold of PO Levey’s vest or the deployment of the taser.

B.G. also stated that at some point during the encounter she saw Ms. Davis face-down on the ground, with one handcuff on – and an officer with his knee on her back. It is impossible to establish definitively by way of the video, but it does not appear that Ms. Davis was at any time face down on the ground.

Sgt. Koziak stated that after Ms. Davis was in handcuffs, he called over the radio for an ambulance. A recorded radio transmission shortly after 5:19 am, about a minute after Ms. Davis has gone to the ground, does call for a “medic.”

According to Sgt. Koziak, after being handcuffed, Ms. Davis continued to yell out (“kill me now”), kick her legs, and move her arms; PO Levey also recalled her kicking her legs and trying to stand up. At this point, PO Sean Jordan approached and took hold of Ms. Davis’ legs; PO Michael Pettiford also came over to assist, but (he later said) upon seeing that his help was not needed, he moved away. On the surveillance video, Ms. Davis can be seen kicking her legs until PO Jordan arrives and steps in.⁹ The officers said that Ms. Davis soon “calmed down” and stopped resisting.

While PO Levey and Sgt. Koziak waited for the ambulance (PO Jordan had by now also left the immediate area), the video shows that Ms. Davis was positioned on her side. She appears motionless throughout this period. At some point, both PO Levey and Sgt. Koziak said, they recognized that Ms. Davis’ condition was deteriorating. PO Levey said that he noticed that her breathing had become shallow; Sgt. Koziak said that she appeared to have passed out. The surveillance videos show the officers apparently using their flashlights to monitor Ms. Davis. Recordings of the police radio transmissions capture a radio call shortly after 5:21 am seeking confirmation of the medic dispatch. A second call at around 5:29 am urged the dispatcher to have the ambulance “step it up.”

At around 5:32 am – after, according to Sgt. Koziak, he had checked Ms. Davis’ pulse and found none – another (unidentified) officer approached and examined Ms. Davis, then removed her handcuffs and rolled her from her side onto her back. Sgt. Koziak then began chest compressions. PO Jordan stated that he retrieved Narcan and administered it nasally to Ms. Davis, but that it appeared to have no effect. PO Jordan can be seen on the video apparently placing something against Ms. Davis’ nose, and the recorded radio transmissions capture a call saying “Narcan administered” shortly before 5:33 am.

Paramedics arrived on scene at around 5:34 am, and after a couple of minutes took over the chest compressions from Sgt. Koziak. Ms. Davis still had no pulse. At around that same time,

⁹ On Video 1, starting at 5:20:20, PO Jordan can be at the top middle of the screen, moving rightward down the street toward the other officers and Ms. Davis.

the ambulance crew arrived, and shortly thereafter Ms. Davis was transferred to the ambulance. She was placed on a Lucas machine, which mechanically provides chest compressions. The paramedics inserted a breathing tube and administered epinephrine¹⁰ and sodium bicarbonate¹¹, after which she regained her pulse. The paramedics also used a bag-valve mask to provide oxygen to Ms. Davis' lungs. Ms. Davis, however, remained unconscious and unresponsive. The ambulance left the scene at about 5:56 am and transported Ms. Davis to Good Samaritan Hospital in Suffern. Despite additional lifesaving efforts, the hospital's emergency room staff was unable to revive Ms. Davis; she was declared brain-dead, and removed from life support the following day.

SIPU's subsequent investigation – including interviews with civilian witnesses (B.G. among them) and review of surveillance video – was able to uncover more information about Ms. Davis' doings immediately prior to her encounter with Spring Valley police.¹² Much of it was corroborated by surveillance footage and other forensic evidence.

Surveillance video from around 3:40 am outside 79 Fred Hecht captures a vehicle pull up and park along the curb; B.G., C.C., and the male driver (W.F.) exit the car and head toward the building entrance.¹³ About ten minutes later, a second car arrives and park across the street; Ms. Davis gets out and also heads toward the building entrance.¹⁴ According to multiple civilian witnesses, all four of these individuals ultimately gathered inside an apartment belonging to E.C. (aka P.).

C.C. stated that she saw Ms. Davis take some kind of drug at the gathering (provided by E.C.) and began “tripping” heavily – insisting that B.G. and E.C. had given her poison and how her heart was racing.¹⁵ E.C. also stated that Ms. Davis accused B.G. of giving her poison.

At about 5:09 am, surveillance video captures Ms. Davis leaving the building and, as she reaches the sidewalk (right where W.F.'s car is parked), she abruptly collapses onto the ground and lies motionless.¹⁶ After about one minute, she gets up just as B.G. comes out of the building and immediately appears to try to grab something out of B.G.'s hands. The two struggle over the item as C.C., W.F., and (apparently) E.C. come out of the building. Eventually, Ms. Davis stumbles and falls to the ground again, but quickly gets up again. B.G. and W.F. get into W.F.'s car. (E.C. has by this point left the scene altogether.) Ms. Davis disappears briefly from the screen, and it is around this time that B.G. makes her first 911 call.

¹⁰ Epinephrine, commonly referred to as adrenaline, is a hormone administered during emergency medical treatments to stimulate the heart during cardiac arrest.

¹¹ Sodium Bicarbonate is a chemical compound frequently used in the treatment of severe metabolic acidosis during cardiac arrest.

¹² SIPU was unable to locate several of the civilians who had been with Ms. Davis during this period; however, interviews of these witnesses had been conducted by Spring Valley detectives on the date of the incident, and audio recordings of these interviews were made available to SIPU.

¹³ Please click this link to view [Video 3](#).

¹⁴ Please click this link to view [Video 4](#).

¹⁵ C.C. also said that, earlier in the night, she had been at B.G.'s home with W.F., and that Ms. Davis had shown up there. At that time, according to C.C., Ms. Davis said that she had given B.G. money to get drugs from E.C., but that the drugs were “bad stuff.” Ms. Davis then left, only to appear later at E.C.'s apartment.

¹⁶ Please click this link to view [Video 5](#).

Over the next few minutes, Ms. Davis can be seen repeatedly striking W.F.'s car, which is later found to have a broken windshield. (It is likely at about this time that B.G. places her second 911 call.) Ms. Davis can also be seen chasing C.C. around the car and up the street. B.G., C.C., and W.F. all later stated that Ms. Davis was yelling and acting in a violent fashion. At some point, Ms. Davis apparently broke off W.F.'s antenna and began to chase C.C. with it; this is likely the "stick" C.C. mentions in her 911 call. (The broken antenna was subsequently recovered from the street.)

It is shortly thereafter that the police arrived on the scene.

Medical Examiner

Dr. Laura Carbone, the Rockland County Chief Medical Examiner, performed an autopsy on the body of Ms. Davis on January 6, 2020. Prior to issuing her report, Dr. Carbone also spoke with personnel from Good Samaritan Hospital and the Spring Valley Police Department and reviewed hospital records, police reports, civilian witness interviews, and surveillance video footage, among other materials. In addition, Dr. Carbone had Ms. Davis' blood submitted for toxicological analysis.¹⁷

Dr. Carbone, in her autopsy report,¹⁸ identified as Ms. Davis' cause of death: "Complications of anoxic encephalopathy with multi-organ failure and acute myocardial infarct approximately 42 hours status-post sudden cardiac arrest due to acute cocaine and alcohol intoxication with seizure activity, agitated behavior and police restraint."

Dr. Carbone explained to OAG staff that a number of factors contributed to Ms. Davis' death: her recent intake of cocaine and alcohol (as reflected in the toxicological analysis); the minute-long "grand mal" seizure she experienced (as captured on the surveillance video); her agitated behavior (especially the aggressive conduct mentioned by multiple witness); and the use of physical force by police officers to restrain her.

According to Dr. Carbone, these factors combined to trigger cardiac arrest on the scene; the cardiac arrest prevented sufficient oxygen from reaching Ms. Davis' brain, which compromised her brain function ("anoxic encephalopathy"), likely irreversibly; and the impaired brain function ultimately caused other organs, including her heart ("acute myocardial infarct"), to fail altogether – resulting in Ms. Davis' death.

Dr. Carbone also identified Ms. Davis' pre-existing "cardiac hypertrophy" (enlarged heart), which rendered her more vulnerable to fatal arrhythmias (irregular heart rhythms), as a contributing factor in the death.¹⁹

¹⁷ The samples submitted for testing were obtained from the hospital and were marked as having been drawn on "1/4/20, 06:30 hours."

¹⁸ A copy of Dr. Carbone's autopsy findings is attached as Exhibit 2. A complete copy of the report has been provided to Ms. Davis' family.

¹⁹ Dr. Carbone likewise identified Ms. Davis' history of bipolar disorder (information provided to her by the hospital) as a contributing factor in Ms. Davis' death, as it likely played a role both in her chronic substance abuse and her agitated behavior.

Because she said it would be impossible to tease out the precise contribution that each of the various factors (including the police use of force) played in causing Ms. Davis's death, Dr. Carbone characterized the manner of death as "undetermined."

With respect to the toxicology, Dr. Carbone noted in particular the presence in Ms. Davis' system of ethanol (alcohol), cocaine, benzoylecgonine (an inactive metabolite of cocaine), and cocaethylene (an active metabolite of cocaine). The level of benzoylecgonine (1600 ng/ml), more so even than the level of cocaine itself (460 ng/ml), found in Ms. Davis' blood strongly suggested that she had consumed a substantial quantity of cocaine prior to her cardiac arrest. More concerning still was the significant level of cocaethylene (85 ng/ml), which is generated when cocaine is consumed along with alcohol. According to Dr. Carbone, this metabolite is more cardiotoxic and neurotoxic than either cocaine or alcohol alone, and almost certainly was at least one of the major reasons for Ms. Davis' seizure and for the subsequent arrhythmia.

Although Dr. Carbone identified the police use of force as having contributed to Ms. Davis' cardiac arrest, Dr. Carbone found no basis to conclude that it had played a significant role. She noted that the physical struggle had been relatively brief and that, once handcuffed, Ms. Davis had not been restrained in a prone position. Dr. Carbone also concluded from the manner in which the taser was used – for no more than a few seconds, in the direct-contact mode, through Ms. Davis's sweatshirt – that it was not a consequential factor.

Dr. Carbone also considered allegations, arising out of reports that Ms. Davis had repeatedly referred to "bad" drugs and rumors relayed by local police officials, that Ms. Davis may have been intentionally given rat poison. However, having consulted with a toxicologist and examined Ms. Davis' hospital records, Dr. Carbone found that Ms. Davis displayed none of the indicators associated with having been exposed to such a substance: namely, bleeding from the nose and mouth or abnormalities in certain blood values. Dr. Carbone concluded that there was no evidence of poisoning.

LEGAL ANALYSIS

In order to hold any of the Spring Valley officers culpable for Ms. Davis' death, it would be necessary as a threshold matter to establish beyond a reasonable doubt that their conduct in fact caused Ms. Davis' death. For any officers conduct to have "caused" Ms. Davis' death under the law, that outcome would also have to have been "reasonably foreseeable" result of the conduct. As the Medical Examiner's analysis makes clear, establishing such proof would seem to be out of reach. Arguably, one or more of the officers could be culpable of a lesser crime, like reckless endangerment²⁰ – but (even assuming all the other elements were satisfied) only if their conduct was not legally justified.

Under PL 35.30(1), "[A] police officer..., in the course of effecting...an arrest...of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest...."

²⁰ A person is guilty of reckless endangerment (PL 120.20, reckless endangerment in the second degree) when he or she "recklessly engages in conduct which creates a substantial risk of serious physical injury to another person."

When such a defense is raised, it must be disproven beyond a reasonable doubt in order to establish the officer's criminal culpability.

There can be little doubt that the officers were legally permitted to use at least some degree of physical force on Ms. Davis. Having received the radio report of Ms. Davis "smashing car windows," and having personally witnessed Ms. Davis chasing another civilian upon arrival at the scene, PO Levey was certainly reasonable in his belief that Ms. Davis had committed an offense, and was therefore authorized to arrest her – and likewise authorized to "use physical force when and to the extent [he]...reasonably believe[d] such to be necessary to effect the arrest." The use of physical force would only be criminal if, and to the extent that, it exceeded what PO Levey and the other officers reasonably believed was necessary to effect the arrest.

If Ms. Davis did indeed continuously pull her arms away and then grab PO Levey's vest as PO Levey and Sgt. Koziak tried to handcuff her, and if Ms. Davis continued to kick her legs even after being restrained – the force that was applied against Ms. Davis, based on the available evidence, is at the very least not self-evidently unjustifiable. Leaving aside the issue of whether the use of the taser to "drive-stun" Ms. Davis, who was clearly both under the influence and in mental distress, was necessary and appropriate, it would not be unreasonable for law enforcement to use limited force to overcome the resistance involved in this encounter.

Furthermore, the officers did call for an ambulance immediately after Ms. Davis was restrained, even before she had become unresponsive, and reiterated the request several times when the ambulance failed to appear promptly. While waiting for medical personnel, the officers also apparently made sure to lay Ms. Davis on her side rather than in a more vulnerable face-down position. Finally, when they did recognize that Ms. Davis had lost her pulse, they promptly began CPR and administered Narcan.

In deciding whether to go forward with a prosecution in any particular case, the OAG is bound by its ethical obligations to the individual or individuals who are the focus of our investigation. Under the American Bar Association's Criminal Justice Standards for the Prosecution Function, "A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice." ABA, Criminal Justice Standards for the Prosecution Function, §3-4.3(a) (2017). The National Prosecution Standards issued by the National District Attorneys Association hold that, "Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest," and lists among the factors that may be considered: doubts about the accused's guilt and insufficiency of admissible evidence to support a conviction." National District Attorneys Association, National Prosecution Standards §4-1.3 (3d. ed.).

Because it appears from a close look at all the available evidence that it would not be possible to prove beyond a reasonable doubt that PO Levey, Sgt. Koziak, or any other SVPD officer engaged in any legally unjustifiable conduct in taking Ms. Davis into custody, homicide charges would not be appropriate. For these reasons, and pursuant to our ethical obligations, the OAG has elected not to seek charges against any of the officers involved in this case.

RECOMMENDATIONS

SVPD should ensure that appropriate emergency services are timely dispatched to each incident

Almost 15 minutes passed between the time Ms. Davis was handcuffed on the ground and the arrival of first-responder paramedics; still more minutes passed before the arrival of an ambulance. It was during that prolonged wait for medical assistance that Ms. Davis became unresponsive, a state from which she never recovered. Whether Ms. Davis could have been saved had trained medical personnel been on scene earlier is impossible to know; but her odds of survival, or the odds of any person in a similar condition, would certainly have been higher if medical attention had been provided sooner.

In many cases, police officers responding to an emergency call are not aware of an individual's need for medical attention until they encounter that individual. This case is different. Ms. Davis had an established history of substance abuse issues that was well-known to the Spring Valley Police Department.²¹ Furthermore, the 911 callers both explicitly named Ms. Davis and described conduct consistent with someone experiencing a drug-induced mental health crisis. (Indeed, in her second call, B.G. specifically reported that Ms. Davis was "in crisis.") Based on the 911 calls alone, the Spring Valley Police Department had more than enough information to conclude that Ms. Davis would require medical attention and likely mental health care as well.

In a situation where it is reasonably likely that medical attention will be required, we recommend that when dispatchers send officers to a scene they also activate the medical response and request that an ambulance at least stage near the scene. Had the dispatcher done so in this case, the paramedics and the ambulance would likely have been available to treat Ms. Davis shortly after she was restrained. Furthermore, where an individual is displaying signs of mental distress (including instances where drug and/or alcohol use is implicated), dispatchers should also dispatch mental health crises workers – at least in jurisdictions where these diversion services are offered. (Where they are not offered, we recommend that a program to provide such crisis workers be established.) Supplemental training may be needed to ensure that the proper responses are being activated where appropriate.

It is essential that in developing the proper response strategy to an emergency call, the dispatching agency gather as much information as possible about the unfolding incident; that includes drawing on relevant information available to the agency. But that information is only valuable if it is actually used. Where, as here, the dispatcher was likely (or should have been) aware of Ms. Davis' history, the response strategy should have taken that history into consideration. And where a dispatcher does not have access to such critical information, the agency should develop a mechanism for making it available in real time and for training its dispatchers accordingly.

²¹ According to the SVPD, however, they were not aware of Ms. Davis' mental health issues or any underlying medical conditions.

SVPD officers should be trained to properly handle individuals with medical and/or mental health needs

It cannot be ruled out that Ms. Davis became unresponsive well before the officers began to perform CPR, and therefore that the officers missed an opportunity to save her had they been more attentive to her condition. But because it is unclear when exactly, during the 10-minute wait for the ambulance, Ms. Davis became unresponsive, it is impossible to make a determination on this point. Still, we strongly recommend that SVPD ensure that all officers are properly trained in monitoring individuals who have been taken into custody, identifying when such individuals are at risk, and responding promptly and properly to any need for medical attention.

In addition, officers should be trained to handle incidents involving those suffering from a mental health episode, especially in jurisdictions that do not have specialized emergency mental health crisis workers. In particular, SVPD officers should receive training in crisis intervention. Police departments (including SVPD) should examine their use-of-force policies to take into account the unique challenges of interacting with such individuals.

SVPD should outfit its officers with body-worn cameras

We have previously issued eight reports recommending that police departments equip officers with body-worn cameras and/or dashboard cameras for police vehicles.²² Without question, videotaped evidence would have greatly facilitated the investigation of this case. We use the absence of such cameras as an opportunity to recommend that SVPD work toward outfitting their officers with body-worn cameras, police vehicles equipped with dashboard cameras, and tasers that are equipped with cameras.²³

²² New York State Office of the Attorney General Special Investigations and Prosecutions Unit, Reports of Investigation into the Deaths of Miguel Espinal (December 2016), Richard Gonzalez (March 2017), Edson Thevenin (December 2017), Wardel Davis III (January 2018), Walter Perez (February 2019), Robert Scott (May 2019), Jaime Lopez-Cabrera (October 2019), and Evgeniy Lagoda (April 2020).

²³ It is the OAG's understanding that SVPD participated in a several-weeks-long body-worn camera pilot program in 2016. However, the village found the costs of storing footage to be prohibitively expensive and have not allocated the funding to institute a body-worn camera program.

EXHIBIT 1



State of New York

Executive Chamber

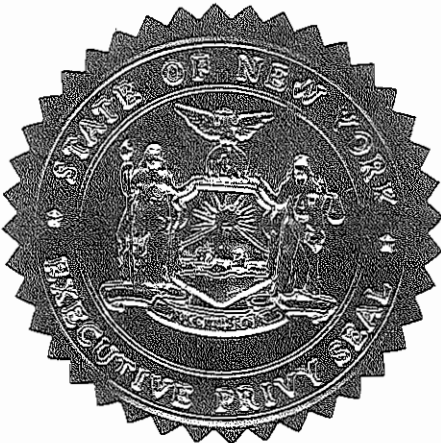
No. 147.32

EXECUTIVE ORDER

In view of the request of Attorney General Letitia James, my order and requirement, embodied in Executive Order Number one hundred and forty-seven, dated July 8, 2015, is hereby amended to include an additional paragraph to the penultimate paragraph as amended by Executive Order Numbers 147.1 - 147.31 to read as follows:

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

(ff) of any unlawful acts or alleged unlawful acts or omissions by any law enforcement officer, as listed in subdivision 34 of section 1.20 of the Criminal Procedure Law, arising out of, relating to or in any way connected with the death of Tina Davis on January 5, 2020, in Rockland County.



GIVEN under my hand and the Privy Seal of the

State in the City of Albany this

twenty-eighth day of January in the

year two thousand twenty.

BY THE GOVERNOR


Secretary to the Governor



EXHIBIT 2

ROCKLAND COUNTY
OFFICE OF THE MEDICAL EXAMINER
50 Sanatorium Road, Building A
POMONA, NEW YORK 10970
Telephone (845) 364-2826 Fax (845) 364-2896

Laura S. Carbone, M.D.
Chief Medical Examiner

Re: Death of **DAVIS, Tina (20/023)** which occurred at

Good Samaritan Hospital, 255 Lafayette Avenue, Suffern, NY on
Sunday, January 5, 2020 at 11:10 p.m.

An investigation of the above death has been made.

The cause of death is:

Complications of anoxic encephalopathy with multi-organ failure
and acute myocardial infarct approximately 42 hours status-post
sudden cardiac arrest due to acute cocaine and alcohol
intoxication with seizure activity, agitated behavior and police
restraint

**Other significant conditions contributing to death but not
related to cause given above:**

Cardiac hypertrophy; history of bipolar disorder

MANNER OF DEATH: Could not be determined

Laura S. Carbone, M.D.
Laura S. Carbone, M.D.
Chief Medical Examiner

*This report is not certified unless each page is embossed with
the Medical Examiner's seal.*