

**Special Investigations and
Prosecutions Unit**

**Report on the Investigation into
The Death of DeWayne Watkins**



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EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order 147, appointing the Attorney General as a special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On June 18, 2019, DeWayne Watkins (“Mr. Watkins”) died after being shot by Syracuse Police Department (“SPD”) Officer David Craw (“PO Craw”). On October 17, 2019, Governor Cuomo issued Executive Order 147.30, expressly conferring jurisdiction over the matter to the Attorney General.

This incident took place on a residential street in the city of Syracuse and much of it was captured by a municipal camera. Additionally, the time immediately following the shooting was captured on the body worn camera (“BWC”) of Syracuse Police Department Officer Evan Hepburn (“PO Hepburn”), the first officer to arrive on-scene after PO Craw.¹ All relevant audio and video recordings were synthesized into one comprehensive, chronological video [“the Video”] and may be accessed [here](#).²

The chain of events that culminated in this shooting was set in motion when Mr. Watkins called 911 and reported that he was having trouble breathing. In turn, a Syracuse Fire Department (“SFD”) truck and an ambulance were dispatched to Mr. Watkins’ home. The SFD truck arrived first and two firefighters stepped from the vehicle and walked in the direction of Mr. Watkins’ yard, intending to render aid to the person who had called 911. Mr. Watkins was standing in his front yard and as the SFD members began walking toward him, Mr. Watkins pointed what appeared to be a pistol at one of them.³

At that point, the SFD members took cover behind their truck and one of them contacted the dispatch center to indicate that they needed police to respond to the location. The firefighter was not asked, nor did he offer, *why* police were needed at the location. PO Craw responded, knowing only that the SFD had requested priority assistance.⁴ With no notice that a man on scene (Mr. Watkins)

¹ PO Craw was not issued a BWC on the day this incident took place because of resource limitations at SPD.

² The Video contains audio from the Onondaga County Department of Emergency Communications – 911 Center (which includes 911 call reception, fire dispatch, police dispatch, and radio runs) as well as audio recorded from PO Hepburn’s BWC; it also includes video footage from the municipal camera and the BWC. The various media sources do not time-synchronize against each other but were integrated after this incident in order to generate the Video. All times referenced in this report are sourced to the time stamp on the Video, which begins as Mr. Watkins’ 911 call begins.

At the beginning of the Video, a still shot of Mr. Watkins’ home is shown to provide perspective for what will follow; that photograph was taken after the incident. Captioning is provided for the audio portion of the Video until the moment PO Craw arrives on scene; after that time there is no captioning so that the Video can be viewed unobscured.

The video plays in real time. Where gaps in audio exist, no dispatches or radio communications occurred regarding the incident. Further, as noted in the report, the video does not begin until 10:06:16, when an SPD officer monitoring city cameras manually directed a camera to Mr. Watkins’ address.

³ The item Mr. Watkins was holding was ultimately submitted to the Onondaga County Center for Forensic Sciences for analysis. The analysis determined the item to be an inoperable .177 caliber (bb) CO2 powered air gun.

⁴ According to the SFD and SPD, police are most commonly summoned to priority ambulance calls because the patient

was holding what appeared to be a pistol, PO Crow pulled his police vehicle to the side of West Calthrop St. and parked directly across from where Mr. Watkins was standing.

As PO Crow stepped from his vehicle, one of the firefighters indicated that the man standing in the yard had been pointing a pistol at them. This was the first time PO Crow learned that a weapon was implicated in the call. At this time, Mr. Watkins can be seen on the Video removing what appears to be a gun from his pocket, pointing it in the direction of PO Crow and pretending to fire it. PO Crow is not visible on the Video but he and the SFD members said that PO Crow directed Mr. Watkins to drop the weapon and then began firing.

Only seconds before PO Crow had arrived on-scene, the fire dispatcher had requested a status update from the SFD members. At that point, a firefighter reported that there was a man on scene waving a pistol at them. The fire dispatcher conveyed that information to the police dispatcher, but it was not conveyed to PO Crow until *after* he had stepped from his vehicle, during the time the shooting was actually taking place.

Mr. Watkins ultimately died due to complications of multiple gunshot wounds.

As detailed more fully below (LEGAL DISCUSSION) applying established legal principles to the evidence in this matter,⁵ the OAG determines that PO Crow's use of deadly physical force against Mr. Watkins did not constitute a crime. Pursuant to New York State Penal Law §35.30(1)(c) PO Crow was permitted to use deadly physical force against Mr. Watkins if he reasonably believed that such force was "necessary to defend [himself] ... from what [he] reasonably believed to be the use or imminent use of deadly physical force [by Mr. Watkins.]" As PO Crow stepped from his police vehicle firefighters immediately indicated that a man across the street was pointing a pistol at them. As he turned to face that man, Mr. Watkins brandished what appeared to be a pistol and began to simulate shooting it at PO Crow. Under those circumstances, PO Crow's use of deadly physical force did not violate the law.

As detailed below in RECOMMENDATIONS, while PO Crow's actions during this incident were legally justified, we find that the manner in which police officers are dispatched to assist with fire and ambulance calls in Onondaga County is problematic.⁶ It is essential that officers

is disruptive or confused and the first responders need additional help in order to render aid; incidents involving people with diabetes-induced low blood sugar were cited as a common example of the type of call for which first responders might request police assistance. As detailed in the body of the report, a request for "priority" assistance only alerts officers that their help is needed quickly.

⁵ The evidence reviewed included: Video footage; Dispatch recordings and associated records; Photographs (including those of the scene, autopsy, and physical evidence); Independent interviews (with civilians who were in the neighborhood during the incident and involved members of the SFD, OC-911, and SPD); Ambulance and hospital records; Police reports; and the Medical Examiner's report.

⁶ In making our recommendation we are aware that the Onondaga County 911 Center is accredited by the Commission on Accreditation for Law Enforcement Agencies [CALEA].

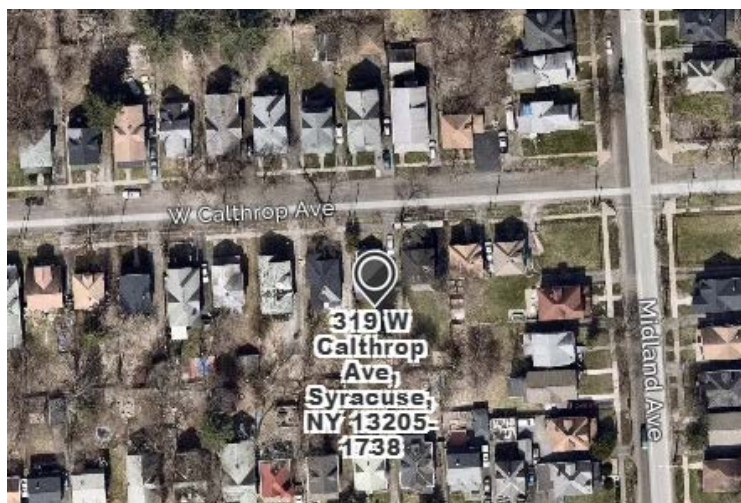
arrive at scenes with as much information as possible about what they will be confronting. Such information can dramatically affect the manner in which officers respond to incidents and can potentially save lives – their own as well as the members of the community they have been called upon to assist. We therefore urge the Onondaga County Department of Emergency Communications - 911 Center (“OCDEC”) to reevaluate the manner in which it processes first responder requests for police assistance and to establish practices that promote the gathering and sharing of as much relevant information as possible.

FACTUAL SUMMARY

In Onondaga County, 911 Call Intake, Fire Dispatch, and Police Dispatch are all co-located within the Onondaga County Department of Emergency Communications - 911 Center (“OCDEC”). When individuals call 911, they speak with call-receivers who enter their information into the computer aided dispatch (“CAD”) system. The information is then conveyed to fire dispatchers, police dispatchers, or both depending upon the nature of the call. From there, dispatchers communicate with members of the SFD and SPD verbally (on air) and electronically. Information is monitored, updated, and conveyed as it is received. When individuals call 911 complaining of breathing related issues, in addition to an ambulance, fire dispatchers send members of the fire department to assist as a matter of course.

On June 18, 2019, at 9:56:40 a.m. Mr. Watkins called 911 and reported that he was having difficulty breathing and needed assistance. The 911 call-receiver obtained relevant information from Mr. Watkins and entered it into the computer system; that information was automatically transmitted to fire dispatch. At 9:58:19, while the call-receiver was still on the phone with Mr. Watkins, a fire dispatcher directed that the SFD respond to 319 West Calthrop St. for a male with breathing problems.

West Calthrop St. runs in an east/west direction in the city of Syracuse. This incident occurred in front of 319 West Calthrop St., Mr. Watkins’ home, which sits on the south side of the street. A map of the area is reproduced below, and 319 West Calthrop St. is noted:



Two members of the SFD, a Captain (“SFD Captain”) and a Probationary Firefighter (“SFD Probationer”), responded in Mini truck #8 (“Mini 8”). They arrived at 10:04:13.⁷ The SFD Probationer parked Mini 8 on the south side of West Calthrop St., facing west, just past the front yard of 319 West Calthrop St., so that the residence would not be blocked when the ambulance arrived.

After retrieving items from their rig, the firefighters began to walk toward a man they saw standing in the front yard of 319 West Calthrop St. near a fence. However, they stopped when they saw that the man (Mr. Watkins) was holding what appeared to be a handgun and pointing it at the SFD Captain. At that point, the two took cover behind the rear passenger side of Mini 8. The below photograph is excerpted from video taken during a later portion of the incident but displays the relative positions of Mini 8, the SFD members, and Mr. Watkins in the front yard of 319 West Calthrop during this portion of the incident:



From 10:04:43 to 10:04:51, the SFD Captain communicated with fire dispatch as follows:

SFD Captain: “Mini 8 to Fire Control. Can we get the PD here?”

Fire Dispatch: “Received. You need them on a priority?”

SFD Captain: “Affirmative”

The SFD Captain did not say, nor was he asked, what the nature of the priority was. According to members of OCDEC, SFD, and SPD, requesting police on a “priority” means that the officer should respond with lights and sirens – in other words, quickly. However, the “priority” designation does not provide officers with any information whatsoever as to what type of situation they are responding to – it could be anything from a patient experiencing a diabetes related medical event to ambulance personnel needing assistance to enter a home. Dispatchers explained that *if* they are told why police are being asked to respond, they will relay that information to the responding officers. However, if dispatchers are not told why police are needed they do not ask. According to

⁷ An ambulance was separately dispatched but did not arrive until after the shooting.

the dispatchers, this practice stems from a belief that asking the person requesting police assistance (in this case the SFD) why police are needed might place the person seeking assistance in the uncomfortable or even dangerous position of having to explain that reason in front of other people. This issue is further addressed below in RECOMMENDATIONS.

The fire dispatcher entered the information into the CAD system where it was received and acted on by police dispatch. At 10:05:49, a police dispatcher requested that the two SPD cars closest to West Calthrop St. (661 - occupied by PO Craw, and 662 - occupied by PO Hepburn) respond to the “difficulty breathing call” noting that “fire is on scene requesting police on a priority.” PO Craw and PO Hepburn each acknowledged the dispatch and began traveling toward 319 West Calthrop St. Neither officer knew that a man on scene was reportedly holding a weapon.

Special Police Officer Mary Ellen Gossin (“PO Gossin”) was monitoring live footage captured by city video cameras located throughout Syracuse when she heard the dispatch communications regarding the priority call to 319 West Calthrop St. There was a city camera at the corner of West Calthrop St. and Midland Ave., but at that time the camera was facing north on Midland Ave. At 10:06:16, PO Gossin maneuvered that camera clockwise 270 degrees until it was facing west on West Calthrop St. At that point, she was able to see, and the camera was able to record, the fire truck parked on the south side of the street, the SFD members behind the fire truck, and a man standing in his front yard (Mr. Watkins). Because of this action by PO Gossin, Mr. Watkins was visible on camera (and captured in the Video) during the entirety of the shooting.

Nearly two minutes after the SFD Captain requested police on-scene, the fire dispatcher checked the status of the firefighters. From 10:06:34 to 10:06:43, the following communication occurred between the fire dispatcher and the SFD Captain:

Fire Dispatch: “Fire control [to] Mini 8. Status Check.”

SFD Captain: “Mini 8’s ok. We have a gentleman with a pistol, waving it at us.”

This was the first time that a man holding a weapon was introduced into the call. The fire dispatcher entered that information into the CAD system where it was transmitted to the police dispatcher. The fire dispatcher said he also stood up to verbally advise the police dispatcher that a weapon was on scene, because he knew that information was significant. However, the police dispatcher only recalled learning about that updated information by seeing it on her computer screen.

The video shows PO Craw’s vehicle pulling up across the street from Mr. Watkins at this point; he had no knowledge that he had entered a scene where the man standing in the front yard directly across from him had reportedly been waving a weapon at members of the fire department. PO Craw pressed the arrival button in his vehicle and exited his vehicle. At 10:07:01, after reading on the CAD that PO Craw was on scene, the police dispatcher acknowledged that “Unit 661 arrived.” At that time PO Craw was already out of the vehicle. Approximately four seconds later, the police dispatcher announced on-air that that she had just received notice that “the male has a pistol.” However, as seen on the Video and detailed below, by the time that information was conveyed to PO Craw, the shooting was already in progress.

As noted above, PO Craw parked his patrol vehicle directly across from 319 West Calthrop St. and did not seek cover, something he said he would have done had he known in advance that the man on scene was reportedly holding a pistol. The SFD Captain said he knew that PO Craw did not know what he was about to encounter, because the updated information (that the man had a pistol) had just been conveyed by him to the fire dispatcher. Therefore, the SFD Captain said as soon as PO Craw parked his car, he tried to make PO Craw aware that the man in the front yard was holding a gun by making the pistol sign, which he described as pointing his pointer finger out and thumb up. PO Craw did not recall seeing that hand signal but did recall the SFD Captain telling him, from behind Mini 8, that the male in the yard had been pointing a pistol at them.

At this point in the incident, the Video is focused on Mr. Watkins and PO Craw is not visible. At 10:06:59 (six seconds *before* the police dispatcher announces on air that a pistol has been reported on scene) Mr. Watkins can be seen on the Video removing what appears to be a weapon from his right pocket and pointing it in the direction of PO Craw. According to PO Craw and the SFD members, PO Craw loudly directed Mr. Watkins to drop the gun more than once and then fired his weapon.

The Video displays Mr. Watkins pointing his weapon toward PO Craw and then pretending to fire; he also appears to simulate experiencing kick-back before re-aiming and pretending to re-fire the weapon several times. This continues for approximately 8 seconds until Mr. Watkins falls to the ground.

From 10:07:11, after Mr. Watkins falls to the ground, until 10:07:49, the following on-air communications occurred:

PO Craw: “661 Shots fired. Officer involved.”

Police Dispatcher: “Units hold the air.”

PO Craw: “I got a ... got a male down.”

Unit 602: “Cruiser 602. Where is he?”

Police Dispatcher: “319 West Calthrop off Midland.”

PO Craw: “319 Calthrop. Male pointed a gun at me.”

During this time, Mr. Watkins can be seen on the Video moving on the ground. Until another officer (PO Hepburn) arrived on scene to assist, PO Craw did not approach Mr. Watkins.

PO Hepburn, who had heard PO Craw’s communications on air, arrived at West Calthrop St. and parked his vehicle on the north side of the street across from the house immediately east of Mr. Watkins’ house. He exited his vehicle at 10:08:26. As he approached Mr. Watkins on foot, he manually activated his BWC.⁸ The balance of the incident is captured on PO Hepburn’s BWC as

⁸The act of turning on the BWC ensures that from that point on, all activity, including audio, is recorded until the camera is turned off. Moreover, 30 seconds of footage *before* BWC activation are retroactively captured, but the

well as the city camera, although PO Hepburn's footage offers a closer vantage point and contains audio.

PO Hepburn and PO Craw can be seen on the video coordinating their approach to Mr. Watkins. PO Hepburn takes partial cover next to a tree and asks, "Where's the gun at?" PO Craw answers that it's in the front yard and PO Hepburn says, "I think it's near the fence there." As the two officers approach Mr. Watkins, PO Hepburn repeatedly directs him to show his hands and to put them "up in the air the whole time." Mr. Watkins complies, and the officers move toward him. As they approach the fence, PO Craw points to an object near the fence and says, "It's right there." The below photo, excerpted from the Video, displays PO Hepburn's drawn weapon in the upper left corner, Mr. Watkins on the left side, the object near the fence in the bottom left portion, and PO Craw approaching and pointing, on the right:



Other officers began arriving on-scene at this point. Working together, the officers handcuffed Mr. Watkins behind his back. At 10:10:02, immediately after Mr. Watkins' hands were cuffed behind him, officers called for medics to enter the scene.⁹

On the lawn near the fence, officers secured the item Mr. Watkins had been holding. Below are distant and close-up photographs of that item:

retroactive capture does not contain audio. Therefore, PO Hepburn can be seen but not heard traveling to the scene, even though his BWC was not activated until after he arrived on scene; from the moment he activated the BWC forward, both audio and video are captured.

⁹ The ambulance arrived at West Calthrop St. after the shooting but before Mr. Watkins was restrained. Officer Hepburn can be heard on his BWC telling them to "hold on". It is standard practice, known as "staging", for non-police responders to wait to enter a scene until the scene is confirmed to be safe. In this case, the ambulance staged until Mr. Watkins, who was believed to have pointed a weapon at an officer and firefighters, was restrained. This fully comported with the SPD's Use of Force Policy [Attached as Exhibit 1] The new policy, issued approximately one week before this incident, replaced a policy that provided no meaningful guidance or expectations aimed at saving lives. For instance, unlike the previous policy, SPD's new Use of Force policy provides that officers have a duty to intercede when they observe other officers using unreasonable force as well as a duty to provide swift medical assistance to injured subjects; the new policy also explicitly provides that officers should attempt to de-escalate situations whenever possible. While the majority of the new policy changes are not relevant to the circumstances of this case, we take this opportunity to favorably recognize the updated and greatly improved SPD Use of Force policy.



The Onondaga County Center for Forensic Sciences subsequently analyzed the item and determined it was a .177 cal (bb) CO2 powered air gun. However, it was found to be inoperable due to a missing barrel assembly and other parts. [See, Report, attached as EXHIBIT 2]

According to ambulance records, emergency medical technicians (“EMTs”) were at Mr. Watkins’s side at 10:09.¹⁰ They found that Mr. Watkins was “conscious, alert and confused with a patent [open] airway” and had suffered four gunshot wounds. Mr. Watkins was transported to Upstate University Hospital (“Upstate”) and maintained a normal pulse during that transport. At approximately 10:25:59, the ambulance arrived at Upstate and Mr. Watkins’ care was transferred to the hospital. He was hypotensive (low blood pressure) on arrival and hospital staff provided a blood transfusion in an effort to address that condition. Mr. Watkins was transferred to the surgical ward for exploration of his pelvic area, where one of four bullets was lodged (as detailed below, the other bullet injuries were non-penetrating wounds). During the exploratory surgery, Mr. Watkins experienced a loss of pulse and, despite the application of advanced cardiac life support, at 12:28 p.m. he was pronounced deceased.

On June 19, 2019, Onondaga County Medical Examiner Diane Vertes conducted an autopsy; she issued a final autopsy report on October 8, 2019. The findings, including Dr. Vertes’ opinion, are attached [EXHIBIT 3].¹¹ Mr. Watkins was found to have sustained four gunshot wounds:

- (i) One penetrating gunshot wound of the pelvis;
- (ii) One perforating gunshot wound of the right foot;
- (iii) One perforating gunshot wound of the left foot; and
- (iv) One grazing wound of the left heel.

None of the bullets perforated a major blood vessel, nor were any of Mr. Watkins’ major organs impacted.

¹⁰ As noted above, the police did not restrain Mr. Watkins and signal that the medics could enter the scene until 10:10:01. The discrepancy with ambulance records reflects the fact, noted in [fn2], that all agencies involved in this matter do not time synchronize their clocks against each other.

¹¹ The full autopsy, describing the more granular aspects of the analysis, is not provided.

Dr. Vertes further found that Mr. Watkins suffered from hypertensive atherosclerotic cardiovascular disease (“HASCVS”)¹² and chronic obstructive pulmonary disease (“COPD”)¹³ as well as chronic kidney disease. Analysis of Mr. Watkins’ blood samples revealed that he was legally intoxicated during the incident.

New York State Public Health Law §4143(3) requires that if a death is the result of external causes (as Mr. Watkins’ death was), the Medical Examiner must investigate and designate the death either “accidental, suicidal, or homicidal.” Dr. Vertes ruled Mr. Watkins’ CAUSE OF DEATH: “*Complications of Multiple Gunshot Wounds*” finding that the HASCVD and COPD were contributory; she ruled the MANNER OF DEATH: “*Homicide.*” Penal Law § 125.00 defines “homicide” as “conduct which causes the death of a person.” The determination that the manner of death is homicide does not resolve the separate issue of whether the homicide was justified by law.

LEGAL ANALYSIS

New York State Penal Law §35.30(1)(c) authorizes a police officer to use deadly physical force when that officer reasonably believes that such force “is necessary to defend ... [against] what the officer reasonably believes to be the use or imminent use of deadly physical force.” In nearly all cases when a police officer’s use of deadly force against a civilian is examined, the issue of whether the officer’s beliefs were reasonable generates the most deliberate and thoughtful scrutiny. In this incident, that issue can be shaped into the following question - did PO Craw *reasonably believe* that deadly physical force was necessary to defend himself from what he *reasonably believed* to be the use or imminent use of deadly physical force from Mr. Watkins?

Although the New York Court of Appeals has not squarely addressed the phrase “reasonably believe” in the context of police involved uses of force, the court has interpreted identical language contained in Penal Law §35.15(1), which provides that “[any] person may...use physical force upon another person when, and to the extent, he or she *reasonably believes* such to be necessary to defend ... from what he or she *reasonably believes* to be the use or imminent use of unlawful physical force ...” In *People v. Goetz*, 68 N.Y.2d 96 (1986), and later in *People v. Wesley*, 76 N.Y.2d 555 (1990), the court ruled that the phrase “reasonable belief” contains both subjective and objective components. The subjective prong is satisfied if the individual employing force (in this case, PO Craw) actually believed, “honestly and in good faith” that deadly force was about to be used against him and that his own use of that force was necessary to repel that danger, regardless of whether the belief was accurate. *Goetz*, 68 N.Y.2d at 114. The objective component is satisfied if a “reasonable person” under the same “circumstances” (as PO Craw) could have held those same beliefs. *Goetz*, *supra* at 115.

A distinct standard for judging the reasonableness of a police officer’s use of force was articulated by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). Addressing the question of when “the force used to effect a particular seizure is ‘reasonable’ under

¹² High blood pressure induced arterial plaque build-up.

¹³ COPD is a chronic inflammatory lung disease that causes obstructed airflow from the lungs.

the Fourth Amendment” the Court established a test that contained only an objective – with no corresponding subjective – component. And in determining whether the objective component was satisfied, the Court looked not to the beliefs of a “reasonable person” under the circumstances, but to those of a “reasonable officer on the scene.” *Graham*, 490 U.S. at 396.

In this incident, regardless of whether the reasonableness of PO Craw’s beliefs is measured by the standard set forth in *Goetz* or *Graham*, PO Craw’s use of deadly force was justified by Penal Law §35.30(1)(c). The evidence, including The Video, radio communications, and interviews with the involved individuals demonstrates that PO Craw subjectively believed he was in fear for his life and that his fear was objectively reasonable. The following facts support that determination:

- Both SFD firefighters believed Mr. Watkins was holding a pistol and immediately took cover behind their rig, requesting police assistance.
- When PO Craw arrived on scene oblivious to the potential danger he was about to confront, he parked directly across from Mr. Watkins and took no cover.
- The SFD Captain immediately notified PO Craw that the man across the street had a pistol.¹⁴
- According to PO Craw and the SFD firefighters, PO Craw immediately directed Mr. Watkins to “drop the gun.”
- The Video shows that after removing his weapon from his pocket, Mr. Watkins not only pointed it at PO Craw, but simulated shooting it (by pretending to fire, feigning kick-back, re-aiming, and re-firing) until he fell to the ground.
- PO Craw’s statement to the police dispatcher after Mr. Watkins was on the ground was that a “male pointed a gun at me.”
- When PO Hepburn arrived on-scene, the two officers coordinated their approach to Mr. Watkins, focusing their attention on where the “gun” was.
- The weapon Mr. Watkins was holding had the appearance of an actual firearm and bore no markings or other indicia that would alert a person to the fact that it was not a real gun.

That the weapon Mr. Watkins pointed at PO Craw was ultimately determined to be an inoperable BB gun does not alter the reasonableness of PO Craw’s belief that it was an actual firearm. *See Garza v. Briones*, No. 5:16-CV-251, 2018 WL 8874191, *4 (court noting that a witness who called 911 believed the decedent had been holding a pistol and that the BB gun in question was “the shape and color of an actual handgun and ha[d] no indicators, such as an orange cap on the barrel, which would mark it as a toy”); *magistrate report accepted in Garza v. Briones*,

¹⁴ The SFD Captain and SFD Probationer believed that the SFD Captain advised PO Craw that Mr. Watkins had a pistol by the SFD Captain’s hand signal (thumb up and pointer finger forward); PO Craw believed the SFD Captain verbally advised him that the man had a pistol and did not recall the SFD making a signal other than pointing at the man in the yard.

No. 5:16-CV-251, 2018 WL 8868510. Stated differently, the fact PO Crow was ultimately mistaken in his belief that Mr. Watkins was armed with an operable pistol does not change the fact that his belief was reasonable. *See 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, 1989)(citing *People v. Goetz*, 68 N.Y.2d at 107-009).

Mr. Watkins death was undoubtedly tragic. However, the OAG concludes that the use of force that resulted in his death did not constitute a crime.

RECOMMENDATION

The significance of dispatchers to law enforcement responses cannot be overstated. This fact has been highlighted by recent, nationally publicized cases where information was inaccurately conveyed to responding officers, ultimately contributing to tragic deaths.¹⁵ Indeed, the OAG issued a recommendation on this subject previously.¹⁶ But while this incident revealed what is, in our view, a shortcoming at OCDEC, it is not an issue of transmission accuracy. In this incident, once the dispatchers learned the salient fact that a man on scene was armed with a pistol, they conveyed that information swiftly and accurately. Of course, by that time it was too late to be of use to PO Crow, who was already engaged in a shooting. The dispatcher who communicated with the SFD Captain did not violate any practice or protocol by failing to obtain any information from the SFD about why they needed police assistance. To the contrary, he acted in conformity with the un-written but acknowledged practice at OCDEC of asking *no questions* when first responders request police at a scene other than whether the police should respond on a priority (quickly). We recommend that the practice at OCDEC change from one of intentional ignorance to one that enables officers to arrive at all scenes armed with as much information as possible about what they will be confronting.

Dispatchers at OCDEC explained that their current practice stems from a belief and fear that asking first responders why police assistance is needed could endanger responders who might be in a situation where that information cannot be safely conveyed. The dispatchers also said that if first responders volunteer the reason they need police assistance, the dispatchers then provide that information to the responding officers. PO Crow and PO Hepburn confirmed this, noting that

¹⁵ For instance, in the fatal shooting of Tamir Rice by a Cleveland police officer, the Cuyahoga County prosecutor characterized the failure of the dispatcher to advise responding police officers that the subject of the call “might be a juvenile” and that the gun he was pointing at people could be “fake” as “crucial mistake[s]” that may have contributed to Tamir Rice’s death; Rice was 12-years old and found to be holding a pellet gun. <https://www.chicagotribune.com/news/nationworld/ct-tamir-rice-911-dispatcher-suspended-20170314-story.html> This observation of the Rice case should not be construed as minimizing any other factors that may have contributed to Tamir Rice’s death, including racial bias. *See e.g.*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5004736/>

In another fatal incident in Weirton, WV, the dispatcher advised responding officers to watch for a weapon, but did not advise that, according to the caller, the weapon was unloaded, the subject was drunk, and he “was going to threaten the police with [the gun] just so they would shoot him”; the subject, ultimately found to be holding an unloaded weapon, was shot and killed by a responding officer. <https://features.propublica.org/weirton/police-shooting-lethal-force-cop-fired-west-virginia/>.

¹⁶ *See*, <https://ag.ny.gov/press-release/2019/attorney-general-james-special-investigations-and-prosecutions-unit-releases-1>, (Recommendation 1). *And See* <https://www.policeforum.org/assets/30%20guiding%20principles.pdf> (Principle 29).

sometimes they are told the reason they are responding to calls for assistance, and other times they respond to calls unaware of why they have been requested.

However well-intentioned the purported rationale for OCDEC's current practice, it is problematic at best. If OCDEC dispatchers were expected to ask "Reason?" or a similar word or phrase whenever a first responder requested the police, and the first responder were truly in a position where he or she could not safely answer that question, despite having just used the radio to request the police, a simple work around might be settling on a word that signals that the reason cannot be safely provided, such as "Unable" or "Negative." We do not suggest this is the only, or even the best way of handling the safety concerns that, according to OCDEC, prompted the current practice; but avoiding altogether the necessary and vital task of gathering information to provide to responding officers is clearly not the solution.

Further, the current policy puts the onus on first responders - the people trying to manage an incident with which they already need assistance - to provide the relevant information to the dispatchers without prompting. This case illustrates the problem with that model. The SFD Captain was not in a situation where he could not safely say why he needed police, he simply neglected to do so; he was only asked whether police were needed "on a priority" and in turn, that was the only information he gave. At that time, he was behind a fire truck with a fence between himself and Mr. Watkins, watching Mr. Watkins through the firetruck windows. If the SFD Captain had been asked why the police were needed, it is unrealistic to believe his life would have been further endangered by answering the question. It is also disingenuous to suppose that if prompted for information, the SFD Captain would not have provided it. In fact, when he was asked for a status update two minutes after the initial communication, he told the dispatcher that a male was waving a pistol at them. That information was processed and transmitted quickly, but not fast enough to affect the ultimate outcome.

If the fire dispatcher had been expected to ask *why* the police were needed, this matter may have ended differently. The nature of the police response to a man with a pistol is qualitatively different than the police response to a man with trouble breathing who has become combative with firefighters, which is what PO Craw assumed he was responding to. Minimally, PO Craw would not have parked his car across from, and then faced without cover, a man who had just been pointing a pistol at firefighters. And of course, if Mr. Watkins' gun had been real and his intentions sinister, the lack of information PO Craw possessed when he arrived on scene could very well have cost him his life.

Our goal in addressing this issue is not to apply 20/20 hindsight to a tragic circumstance. Rather, we seek to minimize the potential for future tragedies by ensuring that officers respond to *all* scenes armed with information that could potentially save the lives of the individuals they have been called upon to help, as well as their own. We therefore encourage all dispatch agencies, including the OCDEC, to adopt practices that promote the gathering and sharing of as much relevant information as possible before officers arrive at scenes.

EXHIBIT 1



Volume 1, Article 4 – Rules of Conduct

Section 2.00

Use of Deadly Physical Force

2.00 **POLICY:** 5, 8

The purpose of this policy is to establish procedures and guidelines governing the use of deadly physical force by sworn officers of the Syracuse Police Department and to establish procedures for reporting, investigating and evaluating the use of such force.

It is the responsibility of each officer to be aware of the requirements of Article 35.00 of the New York State Penal Law and to guide their actions based upon that law, the US Supreme Court decision in *Tennessee vs. Garner*, and Departmental policy and training.

Furthermore, any use of force by law enforcement officers must be consistent with the standard established by the United States Supreme Court in *Graham v. Connor*, which held that in order for an officer's use of force to be deemed objectively reasonable, that officer must consider: the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officer(s) or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Accordingly, officers shall employ only that level of force that is objectively reasonable and necessary to achieve their lawful objectives.

The intentional discharge of a firearm will always be considered to be the use of deadly physical force. However, deadly physical force can be expanded to include the use of other weapons and force if the intent is to cause serious physical injury. This shall include, but is not limited to, impact weapons such as batons, flashlights, motor vehicles, and bare hands.

2.10 **DEFINITIONS:** 6, 9

- A. Deadly Physical Force - Physical force which, under the circumstances in which it is used, is readily capable of producing death or serious physical injury.
- B. Serious Physical Injury - Physical injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.
- C. Reasonable Belief - Those facts and circumstances within the knowledge of the individual which would make a reasonable and prudent person tend to believe that the facts and circumstances are true.
- D. Accidental Discharge of a Firearm - A firearm will be considered "accidentally discharged" for the following reasons only: mechanical failure and/or faulty ammunition.

- E. Unintentional Discharge of a Firearm - A firearm will be considered “unintentionally discharged” under the following conditions: when it is not an accidental discharge as described above, or when it is discharged without purpose or intent.
- F. “Should” and “Should not” - Indicates a generally required or expected action, absent a rational basis for failing to conform.

2.11 PROCEDURE:

2.12 GUIDELINES: ^{2, 5, 9}

- A. Only approved equipment, firearms or impact weapons will be carried on duty and used when encountering resistance, except in extreme emergency situations when officers may use any justifiable resources at their disposal.
- B. Drawing and Displaying Weapons - Officers are justified in removing firearms from holsters and/or gun mounts if he/she reasonably believes that the situation may pose an immediate threat of death or serious physical injury to themselves or another person.
- C. Warning Shots - Warning shots are prohibited under any circumstances.
- D. Moving Vehicles - Discharging a firearm at or from a moving vehicle is prohibited unless an officer reasonably believes that the occupants of the vehicle are using or about to use deadly physical force against the officer or another person, and the officer reasonably believes there are no other reasonable means available to avert the deadly threat posed by the vehicle or its occupants.
 - 1. When confronted by an oncoming vehicle, an officer should not position him or herself into the path of the vehicle, and should make every attempt to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
 - 2. Officers should not discharge their firearm at a vehicle when it is reasonable to believe that the vehicle may contain an innocent passenger or when it is reasonably apparent that doing so may cause the vehicle to careen out of control and injure an innocent bystander.
 - 3. An officer should not discharge his or her firearm at any part of a vehicle in an attempt to disable the vehicle.
- E. Animals - Officers are justified in using firearms to destroy animals provided the specific criteria detailed in section 2.21 of this article are met.
- F. Juveniles - No distinction shall be made relative to the age of the intended target of deadly physical force.

2.13 NOTIFICATION REQUIRED: ⁵

- A. Notification Required - Officers involved in the use of deadly physical force, on or off-duty, shall immediately notify a supervisor.

1. This requirement shall not apply to firearm discharges in the following instances:
 - a. Authorized training.
 - b. Target practice.
 - c. Hunting.
2. If the officer is off-duty and outside the City of Syracuse when deadly force is employed, he/she will notify the agency who has jurisdiction and will be responsible for investigation of the incident.

2.14 OFFICER RESPONSIBILITIES: 2, 5, 7, 9

- A. Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, he/she will be responsible for:
1. Determining the existing danger level.
 2. Immediately determining the physical condition of any injured person and render first aid when appropriate and safe to do so.
 3. Notifying a supervisor.
 4. Requesting assistance and any emergency medical services.
 5. Notifying E911 of the incident and location.
 6. Securing the incident scene, protecting all physical evidence, and identifying all potential witnesses.
 7. Remaining at the scene (unless injured) until the arrival of appropriate command officers.
 - a. If the circumstances are such that the officer's continued presence at the scene may cause the development of a more hazardous situation (violent crowd), the ranking Commanding Officer on the scene may, at his/her discretion, direct the officer to respond to another location.
 8. Providing a Public Safety Statement (Form 10.8) to an on scene supervisor.
 9. Protecting their weapon for examination and submit it to an authorized member of the Crime Scene Unit.
 - a. Unless circumstances are such that it is impractical to do so, the involved officer(s) weapon will be secured and replaced with another issued weapon, at CID.
 10. Not discussing the incident with anyone except authorized personnel. Authorized personnel are as follows:

- a. Authorized investigative personnel.
 - b. Attorneys
 - c. Qualified mental health professionals
 - d. Chaplains
- B. Officers involved in the use of deadly physical force will be allowed to confer with union representatives and attorneys prior to providing sworn statements.
1. In accordance with the recommendations made by the IACP Police Psychological Services Section and consistent with established research, substantive personal interviews with the involved officers should be delayed 48 to 72 hours in order to provide them with sufficient recovery time to help enhance recall.
- C. Any officer who, while in the performance of duty, becomes involved in an incident which results in serious physical injury or death to another person will be required to participate in one post-shooting debriefing with a qualified mental health professional prior to returning to duty. Services will be provided by a Department assigned psychologist or one chosen by the requesting officer. These counseling services will be separate and independent from any Departmental investigation of the incident. All information exchanged between the involved officer and the psychologist will be protected, privileged communication. Any participation beyond the initial session is encouraged, but will be at the officer's discretion.
- D. In all cases when any person has been injured or killed as a result of a traumatic police incident, the involved officer and his/her family will have available to them the services of the Department's chaplain. This provides the officer and his/her family with a source of professional consultation to aid them in dealing with the potential moral and ethical after effects of a traumatic incident. The chaplain's services will not be related to any part of the Department's investigation of the incident. The information discussed will not be divulged to the Department, as these consultation sessions are protected, privileged communication.

2.15 ASSISTING OFFICER RESPONSIBILITIES: ⁵

- A. Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, the first responding officers on the scene will be responsible for the following:
1. Ensure that there are no further safety threats.
 2. Secure and separate suspects.
 3. Relay critical information to the dispatcher.
 4. Request emergency medical services and provide first aid as needed.
 5. Secure the scene.
 6. Locate witnesses.
 7. Prepare reports as required.

2.16 SUPERVISOR RESPONSIBILITIES: ^{1, 5, 7, 9}

- A. Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, the first supervisor on the scene will be responsible for the following:
1. Determine the existing danger level.
 2. Ensure that the injured are receiving medical attention.
 3. Assume control and maintain the integrity of the scene until properly relieved.
 4. Obtain a brief overview of the incident using the Public Safety Form (Form 10.8), and relaying pertinent public safety information immediately via radio to responding units as appropriate, and provide the completed Public Safety Form (Form 10.8) to the first arriving CID supervisor on scene.
 5. Assign an uninvolved officer to accompany the involved officer(s) until relieved by authorized investigative personnel.
 6. Ensure that the following notifications have been made by E911:
 - a. Chief of Police.
 - b. Deadly Force Investigation Team.
 - c. Deputy Chiefs.
 - d. Duty Chief.
 - e. The Officer's Commander.
 - f. Criminal Investigation Division.
 - g. Crime Scene Unit.
 - h. Office of Professional Standards.
 7. Once relieved from the scene, ensure that all applicable statements and reports are completed by all officers assigned to the incident.

2.17 COMMAND RESPONSIBILITIES: ⁵

- A. Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, command officers will be responsible for the following:
1. Render command assistance and coordinate all activities at the scene.
 2. Ensure that proper notifications have been made.

3. Brief the Chief of Police, First Deputy Chief, and Duty Chief and coordinate all activities with them.
4. Ensure that the involved officer(s) make no statements to unauthorized personnel and that they are transported to CID as soon as practical.
 - a. Ensure that an officer not involved in the incident has been assigned to accompany the involved officer(s).
5. Arrange for family notifications and transportation as necessary.

2.18 CRIMINAL INVESTIGATION DIVISION RESPONSIBILITIES: ^{5, 6}

- A. The Criminal Investigations Division will conduct investigations on:
 1. All incidents when deadly physical force is used which results in death or physical injury to another person.
 2. Cases involving the discharge of a firearm by police personnel.
- B. The Criminal Investigations Division will not conduct investigations when:
 1. Deadly Physical Force is used in the destruction of animals.
- C. When directed to do so by a supervisor, detectives assigned to the Criminal Investigations Division will immediately respond to the scene and conduct a thorough investigation.
 1. It is the responsibility of the CID Supervisor to:
 - a. Obtain a briefing on the incident.
 - b. Ensure that the involved officer is transported to CID as soon as practical.
 - c. Assign a detective to interview and obtain a statement from the involved officer(s) after they have been allowed to confer with union representatives and attorneys.
 - d. Ensure that the crime scene is processed and all evidence collected.
 - e. Assign detectives to conduct a complete investigation.
 - f. Ensure that all-necessary reports and statements are completed.
 - g. Approve all submitted reports.
 2. It is the responsibility of the CID Division Commander to:
 - a. Coordinate with the Chief, Deputy Chiefs, and Duty Chief.
 - b. Assume command of the criminal investigation.

- c. Ensure that the involved officer(s) weapon is secured as evidence by Crime Scene Unit personnel and direct an Armament Unit officer to issue the involved officer(s) a replacement weapon.
- d. Inform the Chief of Police of the status of the investigation.
- e. Establish and maintain a liaison with the District Attorney.
- f. Assemble a panel of appropriate personnel from within the Department to prepare a detailed After Action Report for the purpose of identifying possible training and/or policy concerns.
 - 1) The report should include a list of all physical evidence, investigative findings, observations, and tactical considerations relative to the incident.
 - 2) The Final Action Report shall be completed no later than 90 days from the conclusion of the criminal investigation and will remain separate from all of the incident's criminal investigation documentation.

2.19 OFFICE OF PROFESSIONAL STANDARDS (OPS) RESPONSIBILITIES: ⁵

- A. An investigation will be conducted by the Office of Professional Standards for the purpose of determining if an incident falls within the procedures and guidelines of Department policy and applicable laws:
 - 1. Whenever deadly physical force is employed and results in death or physical injury.
 - 2. In all cases involving the discharge of a firearm by police personnel, except in the destruction of animals.

2.20 RESPONSIBILITIES OF THE CHIEF OF POLICE, DEPUTY CHIEF(S) OR IN THEIR ABSENCE, THE DUTY CHIEF: ⁵

- A. The responsibilities of the Chief of Police, Deputy Chiefs, or Duty Chief are to:
 - 1. Assume overall command of the entire investigation, delegating appropriate assignments to Division Commanders, and Office of Professional Standards personnel.
 - 2. Be responsible for press coverage of the incident.
 - a. The name of the involved officer(s) will not be released for at least seventy-two (72) hours after the incident.
 - 3. Place the involved officer(s) on administrative leave or duty without loss of pay or benefits for a minimum of seventy-two (72) hours.
 - 4. Make notifications to the Mayor and Corporation Counsel.

5. At the conclusion of both the criminal and Departmental investigation, make a final determination on the action to be taken with respect to the involved officer(s).
 - a. Arrange for the involved officer(s) to undergo a debriefing with the Department's psychologist as soon as possible.
6. Avail the services of the Department chaplain to the involved officer(s) and his/her family to aid them with the after-effects of the incident.
7. Review policies, training, equipment, etc. with Division Commanders for possible improvement.

2.21 DEADLY PHYSICAL FORCE ON ANIMALS: ⁵

- A. Deadly physical force may be employed against an animal when:
 1. The animal is attacking or presenting an imminent danger of substantial harm to the officer or another person.
 2. When an animal is badly injured, diseased, threatening, or destructive.
 - a. The officer should make an effort to obtain permission from the owner of the animal, if known, prior to employing the use of deadly force.
- B. Whenever deadly physical force is used to dispatch an animal, the officer will contact E-911's channel 2 and request that the Department of Public Works (DPW) respond to remove the animal unless it is being removed by the owner or their representative.
- C. It shall be the responsibility of the involved officer's supervisor to:
 1. Investigate the use of deadly physical force against animals.
 2. Ensure that the incident is documented in a police report.
 3. Ensure that any firearm casings are recovered.

2.22 UNINTENTIONAL AND ACCIDENTAL DISCHARGES OF A FIREARM: ^{5, 6}

- A. Whenever an officer unintentionally or accidentally discharges a firearm, on or off duty, the officer will immediately notify a supervisor.
- B. The notification and reporting procedures for the unintentional or accidental discharge of a firearm resulting in physical injury shall be the same as reporting the use of deadly physical force, except a Blue Team entry is not required.
- C. Unintentional or accidental discharges of a firearm not resulting in physical injury, will be investigated by the Criminal Investigations Division and documented in applicable police reports or internal memos, except as provided in section 2.26 subsection D of this policy.

- D. The involved member's Command Officer will ensure that the Human Resources Division is notified of the incident and that the officer undergoes remedial training in firearm safety provided by the Armament Unit as soon as possible.
 - 1. The officer will not be assigned to any duties outside the PSB until such training has been received and successfully completed.

2.23 REPORTING THE USE OF DEADLY PHYSICAL FORCE: ^{2, 3, 4, 5, 6, 8}

- A. Whenever deadly physical force is used, it will be documented in all applicable police reports, a Subject Resistance Checklist (Form 4.15), Blue Team Use of Force entries, and sworn statements when:
 - 1. The use of such force results in the injury or death of a person.
 - 2. The use of force involved the intentional discharge of a firearm, whether or not a person was struck or injured by the projectile.
 - 3. A firearm is intentionally discharged for purposes other than training or recreation.
- B. A Subject Resistance Checklist and a Blue Team Entry will be done for each person that deadly physical force is used upon.
- C. If more than one officer is involved in the use of deadly physical force, a Use of Force entry describing such force used by each officer will be completed by a supervisor, as designated by the Commanding Officer of Criminal Investigations Division, in Blue Team.
- D. The completed Subject Resistance Checklist (Form 4.15) will be forwarded to the Office of Professional Standards by the investigating supervisor prior to the end of his/her shift.
- E. The completed Blue Team entry shall be forwarded through the Chain of Command to a superior officer for review upon completion of the CID's investigation. The superior officer will review the entry for accuracy and completeness, and then forward it to the Office of Professional Standards through the Blue Team System.

2.24 INVESTIGATING THE USE OF DEADLY PHYSICAL FORCE: ^{5, 9}

- A. There will be a separate criminal investigation and Departmental investigation into officer-involved incidents when deadly physical force has been used.
 - 1. The criminal investigation will be conducted by the Deadly Force Investigation Team. Additional detectives from the Criminal Investigations Division may be assigned to assist in the criminal investigation at the direction of the Commanding Officer of the Criminal Investigations Division. The purpose of the criminal investigation is to determine what occurred and whether or not there is criminal liability involved.

2. The Departmental investigation will be conducted by the Office of Professional Standards to determine whether the incident falls within Departmental policies and procedures.

2.26 ADMINISTRATIVE LEAVE/DUTIES: ^{5, 6}

- A. The Chief of Police may assign an officer to administrative leave or other duties until the investigation has been completed. Assignments will be non-disciplinary in nature and are intended to:
 1. Address the personal and emotional needs of an officer who has been involved in the use of deadly physical force that resulted in injury or death to another person.
 2. Assure the community that verification of all the facts surrounding such incidents are fully and professionally explored.
- B. While on administrative leave the officer shall remain available at reasonable times for official interviews and statements, and will be subject to recall to duty at any time.
- C. While on administrative leave the officer will not lose pay or benefits.
- D. Upon returning to duty, the officer may be assigned to administrative duty for a period of time as deemed appropriate by the officer, the officer's psychologist, and the Chief of Police.
- E. Prior to returning to full duty, officers involved in the discharge of a firearm during the employment of deadly physical force, or the unintentional or accidental discharge of a firearm, shall undergo an evaluation by the Training Division in accordance with the criteria set forth in section 2.26 subsection C of this policy. This section shall not apply when a firearm is discharged during the destruction of an animal in accordance with section 2.21 of this policy.

2.27 EVALUATING THE USE OF DEADLY PHYSICAL FORCE: ^{3, 5, 6}

- A. All supervisory officers are responsible for monitoring subordinate behavior relative to the use of deadly physical force while in the performance of duty, to ensure that Departmental policy and procedures are being followed.
 1. Supervisors must take immediate corrective action when subordinate behavior is observed to be inconsistent with the Department's policies and procedures regarding any facet of the use of force.
 2. A supervisor must notify the Office of Professional Standards in writing (forms 10.1 and/or 9.17B) when behavior that is inconsistent with the Department's policies and procedures on the use of force is observed.
- B. The Office of Professional Standards ⁵ is required to conduct an investigation whenever a complaint is made regarding the use of deadly physical force.
 1. The Office of Professional Standards shall assess and determine whether the force used was within Department policy and applicable laws.

2. The disposition of all cases logged by the Office of Professional Standards will be compiled and analyzed annually.
 - a. Information for the annual analysis will be derived from incident report final action codes and used for the purpose of identifying patterns and trends.
 - b. The disposition of all logged cases and any recommendations will be reported to the Chief of Police.
- C. The Training Division is responsible for the design and implementation of training programs relative to the use of deadly physical force. The Training Division will ensure that:
 1. All officers receive in-service training annually on the Department's "use of force" policies and procedures.
 2. All officers demonstrate proficiency with the weapon(s) they have been assigned and authorized to use.
 3. All incidents involving deadly physical force and/or the discharging of a firearm shall be reviewed and evaluated for compliance with current training standards.
- D. The Training Division will be responsible for the investigation and documentation of all unintentional or accidental firearm discharges that do not result in physical injury or death, which occur during training situations.
- E. The Chief of Police, or his/her designee, shall review all investigation and administrative reports regarding the use of deadly physical force to ensure that the force used was justified, necessary, reasonable, and in accordance with Department policy.
 1. The Chief of Police shall make the final determination of any action to be taken.

2.28 RETURN TO DUTY:

- A. Consideration should be given to officers' readiness to return to duty following a critical incident. Toward that end, upon completion of the criminal investigation and prior to returning to duty, officers involved in the discharge of a firearm during the employment of deadly physical force should:
 1. Debrief the incident with a use of force instructor, a firearms instructor, and other training instructors as appropriate.
 2. Complete a course of reality-based training designed by use of force instructors, firearms instructors, and other training instructors as appropriate.
 3. Complete a course of firearms requalification.

2.29 MISCELLANEOUS: ⁵

- A. All personnel should be sensitive to the psychological trauma that is associated with these types of incidents. Behavior such as blaming, ridiculing, joking, teasing, and isolating the involved officer(s) will only increase the potential trauma and therefore will not be tolerated or permitted.
- B. Supervisors will ensure that involved officer(s) are treated in a dignified manner.
- C. The procedures set forth in this section, where applicable, shall be used in the investigation of any in custody deaths.

POLICY REVISION HISTORY

NO	SECTION REVISED	DATE ISSUED	G.O. #
1	Deleted reference to the Crime Lab in section 2.15.	09/30/2003	03-11
2	Deleted reference to the Weapon Use Report 2.22.	03/08/2004	04-03
3	Revised section 2.22 regarding report distribution and section 2.25 regarding responsibility for annual analysis of force.	02/28/2005	2005-05
4	Revised Section 2.22 in reference to the Records Management Section.	12/21/2005	2005-20
5	All sections except section 2.12 have been updated to current procedures & re-bulleted, section 2.15 added, all subsequent sections re-numbered accordingly, the following old sub-divisions have been deleted: 2.12 A, G, H, 2.14 A1f, o, 2.15 A9-11, 2.16 A6, 2.17 A3a, d, e, f, i, 2.18 A 3, 4, 2.19 A1, 3, 6-9, 2.20 A3 a-c, 2.22 B1-5, C-F, 2.23 B, 2.25 B2, the following new sub-divisions have been added: 2.13 A2, 2.14 A8, 2.18 C1e, g, 2.20 A2a, A3, 2.21 C, 2.26 C.	04/28/2011	2011-07
6	Section 2.10 new sub D, and E added. Section 2.18 sub B2 deleted. Section 2.22, title changed, subs A, B, and C updated to current Departmental procedures. Section 2.23 sub A updated to current Departmental procedures regarding Blue Team entries, new sub B added, old subsection B moved to C and updated, new sub D added. Section 2.25 sub E added. Section 2.26 sub C3 and D added, section re-lettered accordingly.	06/15/2012	2012-19
7	Section 2.14 sub A8 updated to current Departmental procedures regarding the new Public Safety Statement. Section 2.16 sub A4 updated to current Departmental procedures regarding the new Public Safety Statement.	10/29/2013	2013-35
8	Section 2.00 updated to current Departmental procedures. Section 2.23 sub C updated to current Departmental procedures, old sub D deleted, new sub D and E added.	10/13/2015	2015-20

9	Section 2.10 sub F added. Section 2.12 sub D updated to current Departmental procedures, new subs D1-3 added. Section 2.14 sub A10e-q deleted, sub B1 & C updated to current Departmental procedures. Section 2.16 new sub A6b added, Section re-lettered accordingly. Section 2.24 sub A1 updated to current Departmental procedures. New Section 2.28 added, Section re-numbered accordingly.	06/18/2017	2017-12
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Policy is applicable to the following New York State Accreditation Standard(s):
20.1: Necessary Force (Critical Standard); 21.1: Review of Firearms Use; 21.2: Review of Force Causing Injuries; 32.3 Firearms Training; 40.2: Supervisor Responsibilities.

EXHIBIT 2

Wallie Howard, Jr.
Center for Forensic Sciences
100 ELIZABETH BLACKWELL ST.
SYRACUSE, NY 13210
PHONE 315-435-3800 FAX 315-435-5048

REPORT OF LABORATORY ANALYSIS
Report #3
FIREARMS SECTION

J. RYAN MCMAHON II
County Executive

INDU GUPTA, MD, MPH
Commissioner of Health

KATHLEEN CORRADO, PhD
Director of Laboratories

LABORATORY #: L19-0676
AGENCY CASE #: 19-331674

INVESTIGATING AGENCY: Syracuse Police Department
511 South State Street
Syracuse, NY 13202

ITEMS FOR EXAMINATION:

<u>ITEM #</u>	<u>RECEIVED</u>	<u>ITEM DESCRIPTION</u>
24	06/19/2019	Make: Crosman, Model: C11, Caliber: .177 cal (BB), Serial Number: none, CO ₂ powered airgun

RESULTS:

As submitted, Item 24 is not operable due to a missing barrel assembly and other parts and was not test fired.

Please see www.criminaljustice.ny.gov/forensic/labreportstandards.htm for definitions of significant terms used in this report. This report contains the conclusions, opinions and interpretations of the certifying examiner whose signature appears on the report. The results of analysis relate only to the items tested and apply to the items as received. This report does not constitute the entire case record. The case record may be comprised of worksheets, images, analytical data, and other documents. I certify that this report accurately reflects the results of an examination, comparison, or test performed by me. False statements made herein are punishable as a class A misdemeanor pursuant to Section 210.45 of the Penal Law of the State of New York.

AFFIRMED UNDER PENALTY OF PERJURY

Results Certified By:



Samantha Harter
Firearms Examiner

Date: 06/20/2019

EXHIBIT 3



MEDICAL EXAMINER'S OFFICE
ONONDAGA COUNTY HEALTH DEPARTMENT
CENTER FOR FORENSIC SCIENCES

J. RYAN MCMAHON II
County Executive

INDU GUPTA, MD, MPH
Commissioner of Health

CAROLYN H. REVERCOMB, MD, DABP
Chief Medical Examiner

CASE # M19-1338

NAME: DeWayne Watkins **SEX:** Male **AGE:** 74

JURISDICTION: Onondaga County


DATE/TIME OF PRONOUNCEMENT: June 18, 2019 at 12:28 PM

DATE/TIME OF EXAMINATION: June 19, 2019 at

CAUSE OF DEATH: Complications of Multiple Gunshot Wounds.

CONTRIBUTORY: HASCVD; COPD.

MANNER OF DEATH: Homicide.


Dianne Vertes, MD
Medical Examiner

10/8/2019
Date

FINAL AUTOPSY DIAGNOSES:

- I. Multiple Gunshot Wounds.
 - a. Penetrating gunshot wound of pelvis.
 - i. Entrance: Left thigh with no evidence of close range firing on the skin.
 - ii. Pathway: Skin, subcutaneous and deep soft tissues of left thigh, scrotal sac, deep and subcutaneous tissues of right thigh.
 - iii. Recovered: Large caliber, copper-colored bullet from right thigh.
 - iv. Direction: Left to right.
 - v. Associated injuries: bleeding into scrotal sac.
 - b. Perforating gunshot wound of right foot.
 - i. Entrance: Top of right foot with no evidence of close range firing on the skin.
 - ii. Pathway: Skin, subcutaneous and superficial soft tissues of right foot.
 - iii. Recovered: No bullet or metallic fragments recovered.
 - iv. Direction: Right to left and slightly downward.
 - c. Perforating gunshot wound of left foot.
 - i. Entrance: Top of left foot with no evidence of close range firing on the skin.
 - ii. Pathway: Skin, subcutaneous and deep soft tissues of left foot.
 - iii. Recovered: No bullet or metallic fragments recovered.
 - iv. Direction: Left to right, front to back and slightly downward.
 - d. Graze wound of left heel.
 - i. Pathway: skin and subcutaneous tissues of left heel.
 - ii. Recovered: No bullet or metallic fragments recovered.
 - iii. Direction: Left to right.
- II. Natural Disease.
 - a. Hypertensive Atherosclerotic Cardiovascular Disease.
 - i. Cardiomegaly (heart weight 500 g, normal mean for height 319 g).
 - ii. Coronary artery disease.
 - iii. Asymmetric left ventricular hypertrophy.
 - iv. Arteriosclerosis (aorta, iliac and cerebral vessels).
 - v. Nephrosclerosis.
 - b. Chronic Obstructive Pulmonary Disease.
 - i. Blebs and bullae, bilateral lungs.
 - ii. Status post partial resection, upper lobe, right lung.

OPINION:

The death of this 74-year-old male is attributed to complications of multiple gunshot wounds. External examination showed an elderly male with evidence of injury and medical intervention. Autopsy showed a penetrating gunshot wound extending from the left thigh, through the scrotal sac to the right thigh. A perforating gunshot wound

was present in each foot; the thick rubber of the decedent's sandals served as an intermediate target. A graze wound was present on the left heel. The decedent had chronic heart, lung and kidney disease. He had severe arteriosclerosis of the aorta and iliac arteries. Histology is waived. Screening vitreous toxicology was negative. Confirmatory testing of antemortem blood samples is positive for ethanol (.17g %) and acetaminophen.

CIRCUMSTANCES OF DEATH:

This 74-year-old male died during emergency surgery at UUH. He had sustained four gunshot wounds; the shooters were police officers. According to reports, the decedent called 911 and reported that he was having difficulty breathing. When emergency personnel arrived, he was standing on the street holding a cane and a can of beer. The decedent asked the firefighter who he was and then pulled out a weapon, presumed to be a gun. The firefighter took cover and police were summoned. The decedent reportedly aimed his weapon at the responding officers, who then shot him. The decedent was transported to the hospital. The decedent's past medical history included chronic obstructive pulmonary disease, bilateral carotid artery stenosis, cerebrovascular accident with right hemiparesis, hyperlipidemia, uncontrolled hypertension, osteoarthritis and prostate cancer s/p radiotherapy. [REDACTED]

[REDACTED]