



Office of the New York State Attorney General Letitia James

Office of Special Investigation

May 13, 2022

Report on the Investigation into the Death of Judson Albahm

INTRODUCTION

On July 8, 2015, the Governor of New York signed Executive Order No. 147, appointing the Attorney General of New York the special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On March 4, 2021, Judson Albahm died, by gunshot, fired by at least one law enforcement officer, in Onondaga County, following an extended interaction with members of several law enforcement agencies. The Attorney General’s Special Investigations and Prosecutions Unit, succeeded by the Attorney General’s Office of Special Investigation (“OSI”), investigated the matter.¹

OVERVIEW

On March 4, 2021, members of the DeWitt Police Department (“DPD”), the New York State Police (“NYSP”), and the Onondaga County Sheriff’s Office (“OCSO”) responded to a residential address on Apulia Road in Jamesville,² Onondaga County, after the mother of 17-year-old Judson Albahm called 911 and requested help to locate her son. She reported that Judson had fled in his car after a mental health mobile crisis outreach team arrived at his house for a previously scheduled evaluation.

For 30 minutes (from 12:55 P.M. to 1:25 P.M.) after he abandoned his car, officers pursued Judson on foot through terrain around his home, often trying to verbally engage with him. The incident ended when, according to the on-scene officers, Judson turned towards two of them while pointing what appeared to be a black handgun and ignoring commands to drop the gun. DPD Investigators Lucas Byron and Matthew Menard, NYSP Trooper Corey Fike, and OCSO Sergeant Amy Bollinger fired their service weapons, striking Judson several times and killing him. Judson’s gun was ultimately determined to be a black CO2-powered airgun that closely resembled a semi-automatic Glock pistol, devoid of markings to indicate it was not a real gun.

None of the four discharging officers was equipped with body-worn camera (“BWCs”), but several other officers were.³ Those officers’ BWCs captured audio of the shooting – and video

¹ Executive Law Section 70-b superseded Executive Order 147 and took effect on April 1, 2021. Because this incident occurred prior to April 1, 2021, the Attorney General’s jurisdiction falls under Executive Order 147. Under the Executive Order, the Attorney General investigated and prosecuted these matters through the Special Investigations and Prosecutions Unit (“SIPU”). Section 70-b required the Attorney General to form a unit called the Office of Special Investigation (“OSI”). In this report, the investigating unit will be referred to as OSI, whether the investigative work was done before or after April 1, 2021.

² Jamesville is a hamlet made up of the outskirts of five small towns in Onondaga County, including the Town of DeWitt.

³ At the time of this incident, NYSP Troopers were not required to wear BWCs and the OCSO did not yet have a BWC program. Although DPD had BWCs, Inv. Byron and Inv. Menard, as plain-clothed investigators, were not required to wear BWCs at the time of this incident; DPD has since modified its policy to include investigators.

of some of the law enforcement response after the shooting – but there is no video of the shooting itself.⁴

INVESTIGATION

The factual summary set forth below is derived from OSI’s independent review of police reports, sworn written statements taken by NYSP investigators on the night of the incident (before the Attorney General asserted jurisdiction under Executive Order 147), police dispatch and audio recordings, BWC video, scene photographs, psychiatric records, autopsy records, and forensic analysis reports. In addition, OSI conducted interviews with several civilian witnesses, including Judson’s mother, and several law enforcement witnesses, including DPD Lt. Christopher Fuller, Inv. Chad Frederick, and PO Ammann, and NYSP Troopers Jakob Davis and Michael Green. OSI requested interviews with all the discharging officers, and all refused to be interviewed. While DPD Inv. Byron and Inv. Menard provided sworn written statements to NYSP investigators on the night of the incident, Tr. Fike and Sgt. Bollinger did not do so, and have not given statements to investigators about this incident.⁵

FACTS

Background

This incident took place in and around the area of Apulia Rd. in the town of Jamesville. For context, the below map shows the location of Judson’s home (4XXX Apulia Rd.),⁶ the location of the shooting (less than one-half mile southwest of his home), and some other key locations.

⁴ On March 25, 2022, the Attorney General publicly released BWC videos from DPD PO Ludmila Ammann, PO Justin Baum, PO James Dean, PO Edward Mason, PO Stacey Wickes, and Sgt. Jarod Petrie, which can be accessed here: <https://ag.ny.gov/osi/footage/judson-albalm>.

⁵ A sworn written statement is signed by the officer under penalty of perjury. Under Penal Law Section 210.45, making a false written sworn statement is a Class A Misdemeanor. These statements will be referred to as “written statements” in this report.

⁶ The house number is redacted to protect privacy.



According to Judson’s mother (“CA”),⁷ on March 4, 2021, Judson Albahm, her 17-year-old son, was living with his father and two younger siblings at 4XXX Apulia Rd. in Jamesville while she lived at a separate apartment in nearby Manlius.⁸ CA said Judson had a lengthy history of mental health issues and had been hospitalized at St. Joseph’s Hospital Comprehensive Psychiatric Emergency Program (“CPEP”) just days prior to the incident.

CA said that while Judson had struggled with mental health issues for years, since early 2021, he had become increasingly unstable, and his behavior increasingly abnormal and paranoid. A review of medical records and other related evidence showed that on February 28, 2021, four days before the fatal incident, Judson drove himself to St. Joseph’s CPEP and was discharged two days later. The next day, March 3, 2021, a CPEP Mobile Crisis Outreach (“MCO”) team visited Judson at his house after CA reported that her son needed immediate assistance and expressed concerns of continued psychotic behavior. The MCO team found that Judson was not exhibiting any risky or overtly psychotic behaviors, and left after scheduling a visit for the next day, March 4, 2021, at 12:00 P.M.

March 4, 2021 (The Day of the Shooting)

Sometime around noon, CA, concerned that Judson was becoming increasingly paranoid and

⁷ Civilian witnesses are identified by their initials to protect privacy.

⁸ CA was interviewed by NYSIP investigators and, separately, by OSI.

delusional, contacted the MCO team and advised them that she was afraid that Judson was going to leave the house before they arrived. According to CA, she parked in the driveway behind Judson's car when she arrived so that he could not leave before CPEP arrived.

According to the two CPEP employees who were scheduled to conduct the March 4th MCO visit, CA called them in an excited state while they were driving to the house. As they were arriving at the house, the MCO team saw Judson enter a white car, attempt a series of three-point turns, and strike a car parked in the driveway behind his car before leaving the area by traveling south on Apulia. The MCO team then left, having had no contact with Judson. The MCO team then called St. Joseph's CPEP and asked a staff member to have a doctor sign a pick-up order.⁹ In response to the MCO team's call, a St. Joseph's psychiatrist signed a pick-up order for Judson requesting that law enforcement take him into custody and bring him to CPEP on the ground that he had "a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others."

Initial 911 Call

In a recorded 911 call at 12:22 P.M.,¹⁰ CA said: "*I need somebody, I need troopers, my son just went down Apulia Road speeding, passing cars, he's out of his mind, he just [inaudible] on the wrong side of the road, and he slammed into my car to get out of the driveway because CPEP was there to get him...or talk to him.*" CA said that Judson was driving towards the Village of Lafayette; she also said that Judson was 17 years old, wearing a dark-colored coat, and driving a white Ford Fusion. When the 911 operator asked if she was requesting the State Police, CA responded, "*Yes. A lot of them.*" When the 911 operator asked if Judson was in possession of any weapons, CA said, "*I don't know. But, if anything, they're fake guns. They're like airsoft guns that he uses to like [inaudible]... .*" At that point, the operator interrupted CA and asked if she knew whether Judson had any of his airsoft guns with him.¹¹ The following conversation took place:

CA: *No, I don't know, and he...he is...he threatens suicide by cop all the time. Like he's gonna...[inaudible]*

Operator: *Did he do that today?*

CA: *Threaten it? No. He's threatened it so many times in the past. And*

⁹ A "pick-up order" is an authorization from a licensed mental health professional (or other medical provider) for police or peace officers to take a person into custody pursuant to Section 9.45 of the Mental Hygiene Law.

¹⁰ CA's 911 call can be accessed here: [911 Call](#). In Onondaga County, all 911 calls are received by the Onondaga County Department of Emergency Communications ("DEC").

¹¹ During her interview with OSI, CA reported that she and Judson's father had taken a black "airsoft" (airgun) handgun away from Judson two years prior to the incident. CA said she thought Judson purchased a second airgun from Amazon, but said she had not seen it and did not know where Judson stored it. CA said the second airgun was what she was referring to in the 911 call.

he will do that right now if he...[inaudible]

Operator: *Has he made any threats today?*

CA: *Uh. No.*¹²

Seven minutes into the 911 call, at 12:30 P.M., CA told the operator that Judson “said he was going out of state.” CA further stated that Judson had his cell phone with him and gave the operator the cell phone number, though she stated it incorrectly. Moments later, CA informed the operator that Judson wanted to talk to her.

During an interview with OSI, CA explained that her daughter called Judson on Facetime from her phone while CA was on the phone with 911. CA said she placed her daughter’s phone against the receiver of her phone so that Judson could speak directly to the 911 operator. The operator began by asking Judson what he thought was going on, to which Judson responded, “*well, my mom just fucking parked her car behind me to try to box me in to try to start some kind of DV. CPEP trying to [inaudible]...*” Judson then said that he knew his mother was trying to put him back into CPEP. After the operator warned Judson about driving around while the police were looking for him, especially in light of what his mother had reported to 911, Judson told the operator he was going to drive to the NYSP barracks. Although the 911 operator asked Judson to stay on the phone with her while he drove to the NYSP barracks, Judson apparently hung up the phone at that point. CA told the operator she did not think Judson would actually drive to the NYSP barracks; she was correct.

Police Dispatch

While the 911 operator at DEC was speaking with CA, another dispatcher was broadcasting the information she provided over police radio channels. At 12:25 P.M., the dispatcher requested that police units respond to 4XXX Apulia Rd. for “a possible EDP [emotionally disturbed person]” and that, “[name redacted], she is requesting State Police, she is saying her son Judson Albahm, 17 year old male, is driving a Ford Fusion, color white; he just left 2 minutes ago after hitting the caller’s vehicle; CPEP was apparently there to talk to him; he left towards Lafayette on Apulia; unknown on intoxication, unknown on weapons, he does own an airsoft gun, unknown if it’s with him, he has threatened suicide by cops in the past.”

At 12:26 P.M., a dispatcher provided the following information: “Attention West Zone units: point of information. DeWitt Police responding to a possible EDP on Apulia Road near Bamerick Road. Suspect is 17-year-old Judson Albahm, just took off in a white Ford Fusion after hitting his mother’s car. There’s a ‘signal 32’ [person with resisting arrest history] on him, says threatened suicide by police in the past. Last seen on Apulia Road, toward Lafayette. Dark-

¹² CA told OSI that Judson had threatened to commit “suicide by cop” many times over several years. According to CA, when she would tell him that she was going to call 911 to get help for him, Judson would threaten “suicide by cop” by pulling out the airgun when police officers responded.

skinned white male, has a dark coat on.”

DPD Patrol Officer Stacy Wickes (PO Wickes) responded over the police radio, “So, is this going to be a request for the state for a hit and run?” The dispatcher responded, “Per our policy, it’s a Priority 1... I’ll see if I can get a state unit to respond as well.”¹³ The dispatcher then said, “*Judson is showing 32, EDP and suicidal, correction, 32, EDP and armed.*” PO Wickes responded, “Copy. We’re very familiar.” According to the written statement she provided to NYSIP investigators on the night of the incident, PO Wickes was familiar with Judson from responding to his home for several mental health calls and status checks.

Based on CA’s 911 call, several law enforcement officers with DPD, NYSIP and OCSO were dispatched to 4XXX Apulia Rd. According to the radio transmissions and dispatch records, at 12:25 P.M., DEC dispatched PO Wickes and DPD Patrol Officer James Dean (“PO Dean”) to 4XXX Apulia Rd. Two minutes later, DEC added NYSIP Trooper Corey Fike (“Tr. Fike”) and OCSO Deputies Daniel Pace (“Dep. Pace”) and Sean Coyne (“Dep. Coyne”) to the call.

According to PO Wickes’s BWC and other officers’ written statements, Tr. Fike, POs Wickes and Dean, and Dep. Pace arrived at 4XXX Apulia Road within a few minutes of each other, beginning at 12:41 pm. POs Wickes and Dean and Dep. Pace left the house to look for Judson, while Tr. Fike stayed behind to get information from CA.

CPEP Pick-Up Request

At about 12:51 P.M., a social worker from St. Joseph’s CPEP called 911 and said CPEP had a “pick-up order” for Judson based on the incident in the driveway. The 911 operator said they could not execute the “pick-up” order at that time because Judson was no longer at the residence, but that the police were aware of the incident and looking for Judson. After the call ended, at 12:54 P.M., the 911 operator added to the call notes that CPEP “will need the male picked up and would like to send an order if needed.”

¹³ Priority 1 is the highest priority level for a police response and requires an immediate police dispatch.

Encounter with Onondaga County Water Authority Employees



A few minutes later, at 12:55 P.M., according to a review of the radio transmissions and dispatch records, Tr. Fike said, “I see him running in the backyard back towards the house.” About one minute later, Tr. Fike radioed that an Onondaga County Water Authority (“OCWA”) employee (whom he described as a “DPW” employee) said “he was at the dead end of Ochsner running northbound on the train tracks. I kind of lost him back here in the woods.”

According to that OCWA employee, who was interviewed by OSI, he and two OCWA co-workers were working on Ochsner Rd., a short dead-end street that intersects with Apulia Rd. south of 4XXX Apulia Rd., when, shortly before 1:00 P.M., a teenage male walked past them from the train tracks, in a westerly direction, towards Apulia Rd. The OCWA employee said the man – later identified as Judson Albahm – was wearing a black baseball hat and dark clothing and said “hey” as he walked by. As Judson approached Apulia Rd., he appeared to see the patrol cars parked a few houses to the north on Apulia Rd. before turning around and running back east along Ochsner towards the train tracks. The OCWA employee said that Judson’s actions appeared “suspicious,” so he drove up to the marked patrol cars on Apulia Rd. and asked a Trooper if they were looking for a teenage man wearing dark clothing and a baseball hat and pointed in the direction of where he had just seen Judson running towards the train tracks. At the same time, according to the OCWA employee, he and Tr. Fike observed movement in the

wooded area behind 4XXX Apulia Rd. Tr. Fike then walked into the wooded area – in the direction of the apparent movement – and the OCWA employee drove back to the work site on Ochsner Rd.

According to radio transmissions and the written statement he provided to NYSP investigators the night of the incident, at 12:57 P.M., Dep. Pace broadcast over the police radio that Judson was heading toward the Onondaga County Department of Transportation (“DOT”) building located at 6877 County Garage Rd. At 1:01 P.M., Tr. Fike radioed, “we’ve got him located in the DOT parking lot here, by the dam.”

Based on Dep. Pace’s and Tr. Fike’s radio dispatches, several officers responded to the Onondaga County DOT Garage/Jamesville Reservoir area, including PO Wickes, Dep. Coyne and NYSP Trooper Michael Green (“Tr. Green”).

Encounter at DOT Building

According to his written statement, Dep. Pace pursued Judson across the train tracks to the area of the DOT garage on foot. Once he was on the east side of the train tracks, Dep. Pace met up with Tr. Fike, who had pursued Judson on foot from 4XXX Apulia Rd., and they observed Judson walking south through the County DOT garage employee parking lot. Dep. Pace called out for Judson to stop and show his hands. After Tr. Fike confirmed that the individual was Judson Albahm (apparently based on his familiarity with Judson from prior incidents), Judson asked if he was under arrest or the subject of a criminal investigation. According to Dep. Pace’s statement, he told Judson he was not, and Judson replied that he did not want to talk and continued walking.

At 1:04 P.M., Dep. Pace asked dispatch about CPEP’s pick-up request. Dispatcher informed Dep. Pace that CPEP needed Judson picked up and had an order they would send. Dep. Pace responded that they were on County Garage Rd. by the DOT building and would “grab him” on the pick-up order. Seconds later, Dep. Pace radioed, “*he may have a weapon here, looks like a black handgun*” and requested “less lethal.”¹⁴ After OCSO Deputy Justin Hickok radioed that he was en route with less lethal, the dispatcher stated, “*Copy. There is a note in here that he owns an airsoft gun. Unknown if he has it with him.*”

According to Dep. Pace’s written statement, as he and Tr. Fike continued across County Garage Road and Dep. Coyne pulled into a nearby parking lot as Judson continued towards the Jamesville Reservoir. According to Dep. Pace, as he, Tr. Fike and Dep. Coyne followed Judson south, he observed Judson’s white car parked in the parking lot. According to Dep. Pace, when Judson was near the Jamesville Reservoir fishing access point, about 25 yards from the officers,

¹⁴ “Less lethal” is the police vernacular used to describe weapons that do not, in the manner used, readily cause death or serious injury. Dep. Hickock was armed with a beanbag shotgun. OSCO Dep. Armstrong was also dispatched with “less lethal” force.

he stopped running, turned towards the officers and displayed what appeared to be a black Glock handgun. According to Dep. Pace, he, Tr. Fike and Dep. Coyne took cover behind Judson's white car and unholstered their service weapons.

According to the written statement he provided to NYSP investigators, Tr. Green pulled into the parking lot off County Garage Rd. at that time and observed Dep. Pace, Dep. Coyne and Tr. Fike with their service weapons drawn and pointed at Judson, who, according to Tr. Green, was facing the officers, holding what appeared to be a black handgun across the front of his waist. According to Tr. Green, Judson ignored the officers' repeated requests to drop the weapon, and said, "I'm not going to go back. If you're going to do it, you're going to have to do it here." According to Dep. Pace's written statement, Judson refused to drop the gun, despite repeated commands from the officers, and kept saying that the officers wanted to hurt him; Dep. Pace said he was telling him the officers wanted to help him. At this point, the only information the on-scene officers had about a possible weapon came from the initial dispatch: that Judson owned an airsoft gun, but his mother was unsure if he had that gun with him.



PO Wickes's BWC video shows that when she arrived at the DOT parking lot at 1:05 P.M., officers had their weapons drawn and pointed at Judson. Dep. Pace, Tr. Fike, and Dep. Coyne were taking cover behind Judson's white car, while Tr. Green was taking cover behind his own car. According to PO Wickes's written statement, Judson was standing on the other side of some large boulders at the end of County Garage Rd. with a black handgun in his hands. According to PO Wickes's written statement, due to her training as a hostage negotiator and her "good connection" with Judson from previous encounters, she thought it would be beneficial if she tried to speak with Judson to de-escalate the situation. As PO Wickes began talking to Judson, he called her by name, indicating to her that Judson knew who she was. According to PO Wickes, Judson sounded "defeated" and kept indicating that the police wanted to kill him, saying, "I know that you guys want to kill me." According to PO Wickes, she told Judson that was not true,

talked about his family, and told him that they wanted to take him to CPEP. According to Dep. Coyne's written statement, when PO Wickes mentioned taking Judson to CPEP, he responded, "Nope. CPEP doesn't do anything for me. You're going to have to kill me."

According to Dep. Wickes's written statement, corroborated by her BWC video, about three minutes after the officers arrived in the DOT parking lot, Judson ran away saying, "I don't want to talk anymore." Judson ran in a southwesterly direction, back towards Apulia Rd., and PO Wickes's BWC video shows the officers running in that direction. At 1:07 P.M. Dep. Pace radioed, "He's back on the move," and running toward Ochsner Rd.

According to the officers' written statements, Judson jumped over a fence behind the DOT parking lot, into an open field. According to Dep. Coyne, he observed a black handgun in Judson's hand, down by his side, as Judson ran away from the officers. Tr. Fike, Tr. Green, PO Wickes and Dep. Coyne drove back to Apulia Rd in the direction Judson was running.¹⁵

At 1:09 P.M., Dep. Pace asked Dep. Miles, over the police radio, whether he "had eyes" on Judson and Dep. Miles said, "He's approaching the train tracks." Dep. Pace responded, "We're not going to come around on him at this point." According to Dep. Miles's written statement, he was about 30 yards behind Judson and was yelling for him to drop the gun, which, he said, was still in Judson's hand. After running for about 100 yards, Judson ran west towards Apulia Rd., through a construction zone, and then towards Coye Road. Dep. Miles continued to yell for Judson to drop the gun as he pursued him.



¹⁵ At 1:08 P.M., PO Wickes asked dispatch for Judson's phone number. The dispatcher provided PO Wickes with the number CA provided, which, as noted above, was incorrect. PO Wickes's BWC video shows her calling that number on her cell phone at 1:08 P.M. According to PO Wickes's written statement, she got a message that the number was not accepting calls. At 1:10 P.M., CA provided the 911 operator with Judson's correct phone number. When PO Wickes called Judson's correct number at 1:12 P.M., as shown on her BWC video, the call went straight to voicemail.

OCWA 911 Call

At 1:08 P.M., as Dep. Miles was pursuing Judson along the train tracks, the same OCWA employee who previously spoke with Tr. Fike called 911. He said he was on Ochsner Rd. and saw “the kid the police were looking for” with a black gun in his hand running towards Ochsner Rd., yelling at someone. According to the 911 recording, after Judson ran by, the OCWA employee saw a uniformed police officer (presumably, Dep. Miles) running on the train tracks behind Judson, with his gun drawn. During an interview with OSI, the OCWA employee said Judson had been yelling and pointing a black handgun directly at him and his co-workers immediately before the 911 call. Although he could not understand what Judson was yelling, he was afraid that Judson was going to shoot them.

Encounter on Coye Road

At 1:10 P.M., Dep. Miles radioed, “He’s west off the tracks, towards Apulia.” Two minutes later, Dep. Miles radioed, “The Troopers on Apulia, he’s going to be coming out right almost to you. Stop there. Watch crossfire. I’m on the train tracks following him from behind.”

Several officers arrived at the intersection of Apulia and Coye Rd. as Judson was walking west along Coye Rd. with the gun in his hand, down by his side. According to NYSP Trooper Jakob Davis (“Tr. Davis”)’s written statement, he saw Judson walking north on Apulia Rd. near Coye Rd. with a black semiautomatic handgun in his left hand, prompting Tr. Davis to draw his service weapon, and direct Judson to drop the gun several times. Tr. Davis also said that Judson ignored his request and said something to the effect of, “Mind your business, this is between me and my family. I don’t want to hurt you.” According to Tr. Davis, Judson never pointed the gun at him and kept walking towards Coye Rd. At 1:13 P.M., Tr. Davis radioed, “He’s talking to me right now. He’s outside the car with a gun. He’s still just holding it at his side. He’s walking north on Apulia towards Coye.”

According to DPD Officer Edward Mason’s (“PO Mason”) written statement, as he arrived at the intersection of Apulia and Coye Rd., he saw Judson carrying a black semi-automatic pistol with no orange markings.¹⁶ PO Mason’s BWC video shows him getting out of his patrol car, with his gun drawn, at 1:13 P.M. Judson is visible in the background of the video, standing on the northeast corner of the intersection of Apulia and Coye Rd. According to PO Mason, when he yelled for Judson to drop the gun, Judson replied with either, “I want you to shoot me” or “I want you to kill me.” At 1:13:37 P.M., PO Mason’s BWC video shows that he yelled at Judson, “Buddy, I don’t want to kill you. We want to help you, man.” The BWC video then shows Judson walking south across Coye Rd., near the intersection of Apulia, saying, “Could you guys shoot me? Do it, please.” BWC video shows PO Mason got back into his patrol car and yelled for the other officers

¹⁶ Generally, under New York law, the prohibition on the sale or distribution of imitation weapons does not apply to imitation weapons marked with orange stripes on the front end and sides of the barrel.

to use his car as cover as they followed Judson west along Coye Rd.



DPD Police Officer Ludmilla Ammann (PO Ammann)'s BWC video shows her arriving near Coye Rd. at 1:13 P.M. Judson can be seen in the background of the footage. Tr. Davis and Dep. Coyne are following behind PO Mason's patrol car, apparently using the vehicle as cover, as they pursued Judson west along Coye Rd. According to PO Ammann's written statement, Judson was carrying a black handgun in his right hand, which she assumed was real, because it lacked orange markings. PO Ammann yelled, "Judson, come on, bud!" as soon as she got out of her car, but Judson did not appear to respond and continued walking west on Coye Rd. At 1:14 P.M., PO Mason radioed, "Backyard. Back porch. Apulia from Bamerick." Seconds later, as PO Mason's car approached the first driveway on Coye Rd., BWC video shows that PO Mason got out of his car and said, "I doubt if it's a real gun. I'd be shocked. He carries fake pistols." Notably, because PO Mason did not transmit this information over the police radio and none of the officers who ultimately shot Judson were present when that statement was made, that information was not received by the officers who fired their weapons.¹⁷

¹⁷ Minutes later, at about 1:20 P.M., when told by on-scene OCSO deputies that Judson was pointing a black handgun, PO Mason's BWC video shows that he responded, "probably an airsoft, but could be real." None of the officers who ultimately fired at Judson were present when PO Mason made that statement.



Coye Rd. 911 Call

At 1:15 P.M., a civilian witness from a residence on Coye Rd., who was later interviewed by OSI, called 911 and said, “There is a bunch of police officers outside my house and there is a guy with a gun right outside my house, not sure if they already got him.” Based on that civilian’s 911 call, at about 1:16 P.M., a DEC dispatcher radioed, “Attention all units, getting a call from a party at [64XX] Coye Road, stating that there is a male with a gun outside the house.” Dep. Miles radioed that he was in front of that address and asked whether the male had a long gun or a handgun. The dispatcher responded, “caller stated white male, grey jacket, *pistol in his hand*, went up the driveway towards the white Jeep.”

DPD Investigations Unit Response

According to written statements, members of the DPD Investigations Unit were at DPD police headquarters monitoring the law enforcement response to the incident. Lt. Christopher Fuller (“Lt. Fuller”) and Investigators Lucas Byron (“Inv. Byron”), Matthew Menard (“Inv. Menard”), and Chad Frederick (“Inv. Frederick”) were aware that several officers from various police agencies had been dispatched to Apulia Rd. for a mental health call involving a hit and run accident, that the subject of the call was Judson Albahm, that Judson was possibly armed with an “airsoft” gun, that Judson had fled from the scene, and that on-scene officers had advised that Judson had run away from them with a gun in his hand. When they heard that Judson had been sighted carrying a gun, they decided to leave the DPD.

Lt. Fuller and Inv. Frederick left for Apulia Rd. sometime after 1:00 P.M., followed a short time later by Invs. Byron and Menard. According to the written statements they provided to NYSP, Invs. Byron and Menard were monitoring police radio channels as they responded, and heard officers advise that Judson had fled from them with a firearm in his hand. They arrived in the

area of Apulia and Coye Rd., and heard the dispatcher say that a resident of Coye Rd. had called 911 about a male with a gun in the vicinity of their home. According to dispatch records, Inv. Menard notified dispatch that he was on scene at 1:20 P.M.



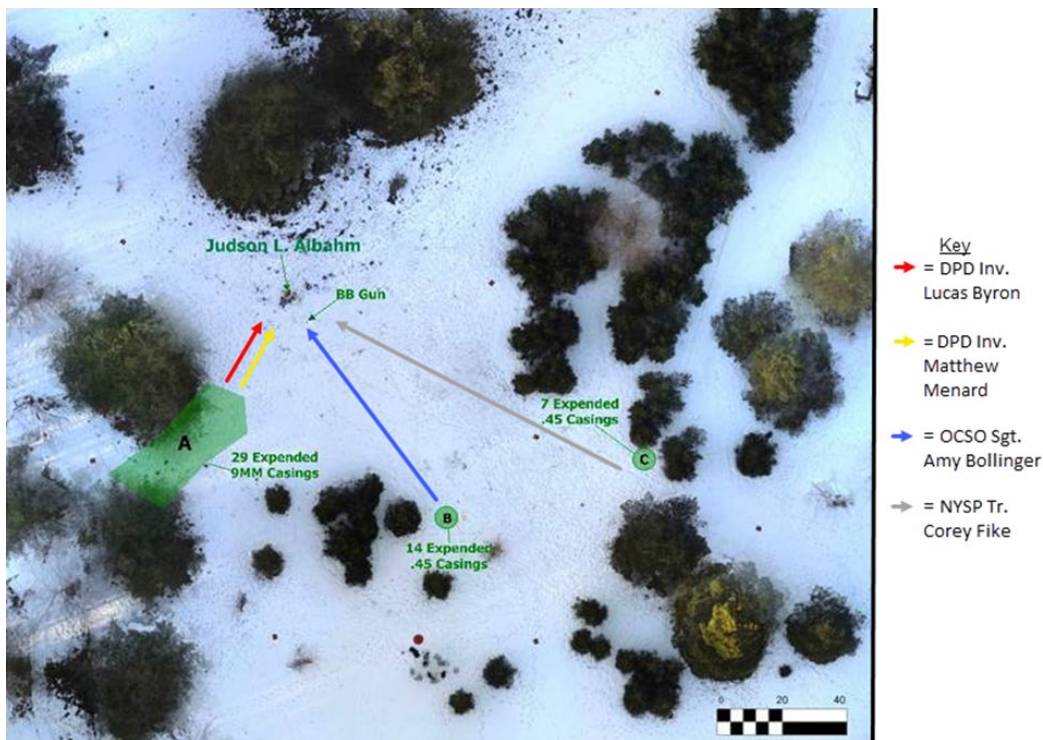
The Fatal Shooting

At 1:21 P.M., Tr. Fike radioed the first of a series of dispatches updating Judson's location and indicating that the officers were beginning to close in on him in the wooded area behind the backyards of the houses on Hedgerow Lane. Inv. Byron, at 1:24 P.M., radioed that he "had eyes on [Judson] heading towards Hedgerow." Seconds later, there was a dispatch that Judson was behind 6414 Timothy Drive. Moments later, at about 1:26 P.M., Tr. Fike advised dispatch that shots were fired.

There is no BWC footage of the shooting, as none of the officers who fired their weapons – NYSP Tr. Fike, DPD Inv. Byron, DPD Inv. Menard, and OCSO Sgt. Bollinger – were equipped with a body worn camera. However, as noted above, BWC footage from several DPD officers captured audio of the shooting. At 1:25:27 P.M., a series of about 25 shots can be heard over four to five seconds. After a pause of seven to eight seconds, at 1:25:39 P.M., a series of about 25 more shots can be heard over 10 seconds.

At 1:26 P.M., PO Ammann's BWC shows several officers – including Inv. Byron, Inv. Menard, Tr.

Fike, and Sgt. Bollinger – approaching Judson as Tr. Green removes a black handgun from the area of Judson’s body and throws it in the nearby snow. Several officers can then be seen on the BWC footage providing first aid, including chest compressions and wound care. At 1:45 P.M., after consultation with Upstate Hospital, a Jamesville Fire Department Paramedic pronounced Judson Albahm deceased at the scene, and all further lifesaving measures were discontinued.



INDIVIDUAL OFFICER ACCOUNTS

Below are the individual accounts of the officers who provided written statements and/or spoke to OSI. The discharging officers were Byron, Menard, Bollinger, and Fike. Byron and Menard provided written statements to NYSP but refused OSI’s requests for interviews; Bollinger and Fike provided neither a written statement nor an interview. The other officers whose accounts are set forth below, Fuller, Frederick, Amman, Davis, and Green, spoke to OSI and also provided written statements to NYSP investigators.

Investigator Lucas Byron

According to Inv. Byron’s written statement, as he and Inv. Menard were driving, he heard over the radio that residents had seen a man with a gun in backyards. As they pulled into the driveway at 419X Apulia,¹⁸ he said he saw a man in dark clothing – later confirmed to be Judson

¹⁸ House number partially redacted to protect privacy.

Albahm – in the woods behind the house. They entered the woods and Inv. Byron directed Judson to show his hands, but Judson continued to move through the woods with what appeared to be a black semi-automatic pistol in his hand. According to Inv. Byron, Judson refused to comply with his repeated commands to drop the gun and stopped to hide behind a tree, causing Inv. Byron to fear that Judson was getting in position to shoot at the officers. Judson then began walking east and Inv. Byron followed, continuing to direct Judson to drop the gun. As Judson entered a clearing in the woods, he turned and faced Inv. Byron, who told Judson, “[D]on’t raise that gun.” According to Inv. Byron, Judson then raised the gun and pointed it at Inv. Byron, who fired his service weapon at Judson, emptying the magazine. After Judson fell to the ground, he sat back up and began reaching for his firearm again, at which point Inv. Byron heard other officers firing their weapons.

Investigator Matthew Menard

According to Inv. Menard’s written statement, he and Inv. Byron saw Judson in the woods behind 4193 Apulia as they were pulling into the driveway. Inv. Byron commanded Judson to stop, but Judson kept moving. As they cleared the shrubs and trees behind the house and entered an open area in the woods, Inv. Menard saw that Judson was holding a black, semiautomatic pistol in his hand. As they continued through the woods, Inv. Byron yelled for Judson to drop the gun. At one point, according to Inv. Menard, Judson appeared to become more aggressive and took a position behind a tree prompting Inv. Menard to yell for Inv. Byron to watch out. Judson then continued moving through the woods, before turning around and facing Inv. Byron. Inv. Menard said he was behind and to the left of Inv. Byron and could hear Inv. Byron yelling at Judson to drop the gun. Soon after Inv. Byron gave those commands, Judson raised the gun towards Inv. Byron, and Inv. Menard immediately fired his gun, emptying his magazine and then reloading. After Judson fell to the ground, Inv. Menard saw him abruptly sit back up with the gun still in his hand and appear to again take aim at Inv. Byron. Inv. Menard then fired several more rounds from his second magazine. Once he assessed that Judson no longer posed a threat, Inv. Menard began rendering first aid.

Lieutenant Christopher Fuller

According to Lt. Fuller’s interview with OSI, although he and the other members of the DPD Investigations Unit were monitoring the radio traffic, they were not going to get involved with a “pick-up” order. They did not leave the DPD until they heard radio dispatches indicating that Judson was on the move with a gun. Lt. Fuller and Inv. Frederick responded to the scene together. After they entered the woods south of Hedgerow Lane, Inv. Frederick said he could see Judson moving toward them with a handgun in his left hand. Lt. Fuller then saw Inv. Byron and heard Invs. Byron and Menard yelling at Judson to drop the gun. He heard Judson, facing Inv. Bryon, say something to the effect of, “Don’t make me do this” while raising his left hand and pointing a gun toward Inv. Byron. As Judson continued moving toward Inv. Byron, Invs. Byron and Menard ordered him to drop the gun. Lt. Fuller then heard several shots and saw Judson

fall to the ground.

Lt. Fuller said he saw Judson then start to sit back up, raise the gun and again point it towards Invs. Byron and Menard. At that point there was a second volley of shots. After the gunfire stopped, Lt. Fuller made his way to Judson and, after one officer (Tr. Green) moved the gun from Judson's hand, saw other officers render first aid.

Investigator Chad Frederick

According to Inv. Frederick, he and Lt. Fuller parked on Timothy Drive after hearing a dispatch advising that Judson was armed with a gun heading towards Timothy Dr. As they entered the woods, Inv. Frederick could hear yelling that sounded like commands; he then saw Judson walking in his direction, from a distance of about 60 to 80 yards, holding a black handgun. He estimated that Invs. Byron and Menard were about 20 yards behind Judson and were yelling for him to drop the gun; Judson kept responding, "I'm not going to drop the gun," and, "Don't make me do this." According to Inv. Frederick, he also saw a Trooper behind and to the left of Judson. While the investigators were yelling for Judson to drop the gun, he kept raising the gun halfway, and then lowering it, in an apparent attempt to get the officers to back off. Inv. Frederick then saw Judson stop and turn towards Invs. Byron and Menard, followed by the sound of gun shots, which he assumed was an exchange of gunfire between Judson and the officers. After Judson fell to the ground, Inv. Frederick heard officers yell for Judson to drop the gun. He saw Judson rise to a seated position and point the gun at Invs. Byron and Menard again. After that, Inv. Frederick heard another series of gunshots and Judson did not move again. Inv. Frederick ran to Judson and immediately began providing first aid. He observed a black handgun to Judson's left, which he thought was a Glock pistol.

Trooper Jakob Davis

According to Tr. Davis, he, Tr. Green and Tr. Fike heard radio traffic advising that Judson was in the woods behind the house on the corner of Apulia and Coye Rd. At that location, Tr. Fike said he saw Judson in the wooded area near a shed in the backyard. As they entered the woods, Tr. Davis saw two plain-clothed DPD investigators – later identified as Inv. Byron and Inv. Menard – and the troopers walked behind them in a "loose line." They continued moving through the woods until Judson stopped in a clearing, turned around, and started walking towards Invs. Byron and Menard carrying a gun.

Tr. Davis heard one of the DPD investigators telling Judson to stop and put the gun down. When, according to Tr. Davis, Judson was about 15 feet from one of the investigators, he stopped and raised the gun, appearing to point it directly at one of the DPD investigators. Tr. Davis heard several shots and saw Judson fall to the ground. Tr. Davis moved behind a tree when the shots were fired, but from his position could see Judson attempt to get back up with the gun still in his hand. Tr. Davis then heard several more shots and saw Judson fall back down. Tr. Green

approached Judson when the gunfire ended, took the gun from his hand and placed it to Judson's side, and other officers began providing first aid.

Trooper Michael Green

According to Tr. Green, after he, Tr. Davis, and Tr. Fike arrived on Apulia Rd., Tr. Fike went to the side of a house and said he saw Judson behind a shed with a black handgun in his hand. Trs. Fike and Green both had their weapons drawn, and Tr. Davis was behind them. Tr. Fike repeatedly yelled for Judson to drop the gun, but Judson ignored those orders, turned, and ran into the woods. As the troopers pursued Judson, they saw DPD Invs. Byron and Menard.

After running about 300 yards through the wooded area, Tr. Green said Judson stopped in an opening and turned directly towards the officers. Tr. Green said Judson was holding the pistol and was waving it around while appearing to say something. According to Tr. Green, the DPD investigator closest to Judson was trying to talk to him, but Judson was acting "unpredictably," and continued to wave around the gun, which appeared to Tr. Green to be a black semiautomatic pistol. Although Judson appeared to be directly addressing the DPD investigator closest to him, Tr. Green could not hear what they were saying. As he was looking for a tree behind which to take cover, Tr. Green heard several gunshots; he did not see who fired the shots but when he turned around, he saw Judson lying on the ground. Judson then sat back up, raised his pistol, and pointed it towards one of the DPD investigators. Tr. Green then heard several more gunshots, but from his position behind the cover of the tree, did not see who fired. Tr. Green then ran to the right of Tr. Fike and saw Judson raise the pistol towards the DPD investigator again. Tr. Green then heard Tr. Fike fire several rounds. After a few moments, Tr. Green and Tr. Fike approached Judson and observed a black pistol in his left hand. Tr. Green pulled the pistol away and placed it in the snow. Several officers then began to provide first aid.



Patrol Officer Ludmilla Ammann

According to PO Ammann, after she observed Judson run away from the officers towards the woods behind Coye Road with a black handgun in his hand, she drove to Apulia and entered the wooded area to the west of Apulia behind Sgt. Bollinger and some other officers. As PO Ammann walked further into the wooded area, armed with her rifle, she saw Judson standing in a clearing in the woods with the black gun in his hand. PO Ammann was behind Sgt. Bollinger at the time, and heard officers yelling at Judson to drop the gun and pleading with him to comply. According to PO Ammann, Inv. Frederick radioed that Judson was coming right at him. PO Ammann said she then saw Judson raise the black handgun and heard several shots before seeing Judson stumble backwards.

PO Ammann had a side view of Judson at the time, and said she could see that he was pointing the gun in the direction of officers when the shots were fired. PO Ammann was not sure if it was Judson firing at the officers or officers firing at him. According to PO Ammann, Judson took a few steps back after the gunshots and then raised his gun back up. She then heard several more shots and saw Judson fall backwards to the ground. Several officers then ran up and rendered first aid. According to PO Ammann, Judson did not fall completely to the ground after the first set of gunshots. PO Ammann was not sure which officers fired their weapons, and was unsure whether Sgt. Bollinger, whom she was standing behind during the incident, fired her weapon.

FORENSIC EVIDENCE

Ballistics/Firearms Evidence

NYSP's Forensic Identification Unit ("FIU") collected each shooting officer's weapon for testing as well as all ballistics evidence from the scene. FIU submitted that evidence to the Onondaga County Center for Forensic Sciences for analysis.

- Inv. Byron was carrying a DPD-issued Glock 9 mm pistol with a 10-round magazine and one additional round in the chamber, for a total of 11 rounds. Forensic analysis confirmed that Inv. Byron fired 11 rounds. Based on microscopic comparison analysis, 11 of the cartridge casings located in the area where Inv. Byron and Inv. Menard were standing (51 to 75 feet away from Judson Albahm) were identified as having been ejected from Inv. Byron's gun.
- Inv. Menard was carrying a DPD-issued Glock 9mm pistol with two full 10-round magazines and one additional round in the chamber, for a total of 21 rounds. Forensic analysis indicated Inv. Menard fired 18 of the 21 rounds during the incident. Based on microscopic comparison analysis, 18 of the cartridge casings located in the area where

Inv. Menard was standing near Inv. Byron (51 to 75 feet away from Judson Albahm) were identified as having been ejected from Inv. Menard's gun.

- Tr. Fike was carrying a NYSP-issued Glock .45 caliber pistol with three full 13-round magazines and one additional round in the chamber. Tr. Fike also had an additional 13-round magazine, located in his duty bag in his patrol vehicle at the time of the shooting, for a total of 53 rounds of ammunition, the standard issue for NYS Troopers. Forensic analysis indicated Tr. Fike fired 7 rounds during the incident. Based on microscopic comparison analysis, the seven cartridge casings located in the area where Tr. Fike was standing (about 126 feet from Judson Albahm) were identified as having been ejected from Tr. Fike's gun.
- Sgt. Bollinger was carrying an OCSO-issued Glock .45 caliber pistol during the shooting with three 13-round magazines and one round chambered, for a total of 40 rounds. Forensic analysis indicated Sgt. Bollinger fired 14 rounds during the incident. Based on microscopic comparison analysis, the 14 cartridge casings located in the area where Sgt. Bollinger was standing (about 82 feet from Judson Albahm) were identified as having been ejected from Sgt. Bollinger's gun.

Microscopic comparison analysis, conducted on the bullets and bullet fragments recovered from Judson's body during the autopsy,¹⁹ showed:

- Two bullets and one bullet jacket (recovered from gunshot wounds to right hip, right forearm and right knee) had been fired by Inv. Menard;
- Two bullets (recovered from gunshot wounds to right forearm and right thigh) had been fired by Inv. Byron; and
- Two bullets (recovered from gunshot wounds to left upper back) had been fired by Tr. Fike.

Comparison analysis of two additional bullets could not conclusively identify or eliminate them as having been fired by Tr. Fike or Sgt. Bollinger. There is therefore no conclusive proof that any rounds fired by Sgt. Bollinger struck Judson.

Judson's Weapon

NYSP's FIU collected the black handgun recovered from Judson after the shooting and submitted it to the Onondaga County Center for Forensic Sciences for analysis. The lab determined the gun to be a Glock-style G19 Gen 3, Caliber 1.77 BB, CO2 powered airgun,

¹⁹ Not every wound corresponded to a recovered bullet or fragment, as some of the wounds were "perforating" wounds, meaning that the bullet went through the body and did not lodge in the body.

manufactured by Umarex. Lab testing determined that the airgun, which had a broken grip, was operable, but malfunctioning.²⁰



DNA Evidence

Analysis performed on the airgun by the Onondaga County Center for Forensic Sciences revealed that the DNA profile obtained from the airgun “matches the DNA profile obtained from Judson Albahm.”

MEDICAL EXAMINER’S FINDINGS

On March 5, 2021, Onondaga County Chief Medical Examiner Carolyn Revercomb, M.D., performed a post-mortem examination of Judson Albahm and issued a final case summary and autopsy report on April 20, 2021. Dr. Revercomb determined that the cause of death was multiple gunshot wounds, and the manner of death was homicide.

The autopsy found that Judson was struck by sixteen bullets, sustaining gunshot wounds to his torso and extremities, including three perforating and four penetrating wounds of the torso, two penetrating wounds of the right forearm, one penetrating wound of the left arm, a graze wound of the left hand, three perforating wounds of the right leg, and two penetrating wounds of the

²⁰ Several damaged metal parts and springs consistent with the components of the airgun were located in the vicinity of Judson’s body after the shooting, indicating that Judson’s airgun was damaged during the shooting.

right leg. Dr. Revercomb recovered eight jacketed projectiles, one projectile core and jacket, and one projectile fragment from the body and submitted them to the Onondaga County Center for Forensic Sciences for analysis.

According to Dr. Revercomb, the most serious injuries were caused by the gunshot wound to the abdomen, which injured Judson's liver and lungs, and the gunshot wound to the left side of Judson's back, which injured his lungs, heart, and aorta. Dr. Revercomb said that, although these injuries would not necessarily be immediately incapacitating in isolation, in combination they were likely not survivable, even with prompt medical treatment, due to the resulting blood loss.

LEGAL ANALYSIS

New York's justification defense is set forth in Article 35 of the Penal Law, under which certain uses of physical force or deadly physical force which would otherwise constitute an offense are lawful. Justification is a defense, not an affirmative defense: if there is evidence at trial sufficient to raise the defense of justification, the burden is on the People to disprove justification beyond a reasonable doubt (*People v Steele*, 26 NY2d 526 [1970]).

In this case, Inv. Byron, Inv. Menard, Tr. Fike, and Sgt. Bollinger used deadly physical force. Penal Law § 10.00(1) defines "deadly physical force" as "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." Penal Law § 10.00(10) defines "serious physical injury" as "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."

Article 35 contains a general provision defining justification when force is used in defense of a person, Penal Law § 35.15, and a provision defining justification when a police officer or peace officer uses force in the course of effecting or attempting to effect an arrest for an offense, Penal Law § 35.30. Based on the evidence reviewed in this investigation, OAG would not be able to disprove at trial beyond a reasonable doubt that the four officers' use of deadly physical force was justified under either provision.

Justification under Penal Law § 35.30

When Inv. Byron, Inv. Menard, Tr. Fike and Sgt. Bollinger fired at Judson, they could have reasonably believed Judson was committing criminal offenses based on their own observations and the radio dispatches, including Criminal Possession of a Firearm (Penal Law § 265.01-b), Criminal Possession of a Weapon in the Fourth Degree (Penal Law §§ 265.01[1], [2]), and Menacing in the Fourth Degree (Penal Law § 120.14[1]).

Penal Law § 35.30(1) provides:

“A police officer or a peace officer, in the course of effecting or attempting to effect an arrest ... of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest ... or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that ... (c) regardless of the particular offense which is the subject of the arrest ... the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.”

Police officers using deadly physical force pursuant to Penal Law § 35.30(1) are under no duty to retreat (Penal Law § 35.15[2][a][ii]).

As noted above, the justification defense set forth in Article 35 is predicated upon a “reasonable belief” by the actor that a certain fact or circumstance exists. The Court of Appeals interpreted the “reasonably believes” language contained in Article 35 in *People v Goetz* (68 NY2d 96 [1986]) and *People v Wesley* (76 NY2d 555 [1990]). The Court held that “reasonable belief” has a subjective component and an objective component. The subjective component is satisfied if the defendant in fact actually believed, “honestly and in good faith,” that deadly force was being used or was about to be used against him or her at the time the person used deadly physical force, and that the use of deadly physical force was necessary to repel the danger, regardless whether the belief was accurate (*Goetz*, 68 NY2d at 114). The objective component is satisfied if a “reasonable person” under the same “circumstances” could have held those beliefs (*Goetz*, 68 NY2d at 115; *Wesley*, 76 NY2d at 559).

In their written statements, Inv. Byron and Inv. Menard stated that they fired their service weapons at Judson because they believed that he was about to shoot Inv. Byron. The evidence set forth above shows that Inv. Byron’s and Inv. Menard’s stated beliefs were objectively reasonable. And while Tr. Fike and Sgt. Bollinger did not give statements about the incident and refused to be interviewed by OSI, there is no evidence that those officers’ use of deadly physical force was unreasonable.

As shown in the photographs, below, the type of airgun Judson possessed closely resembled a real firearm, specifically a Glock semi-automatic pistol, and did not have any markings to indicate it was not real. If there were any doubt that the airgun maker intended its product to resemble a Glock firearm, one would only need to look at its appropriation of the Glock logo, circled in red:

Umarex Glock G19 Airgun

(stock image)



Glock G19 Luger Pistol

(stock image)



The initial police dispatches advised officers that Judson’s mother had reported that he owned “airsoft guns” but that it was unknown if he had the airguns with him at the time. In the 911 call, CA said she did not know if Judson had any weapons with him, and added, “if anything, they’re like airsoft guns.”

The communications from dispatch and among the officers were contradictory concerning any weapon Judson may have possessed. Several communications referred to a handgun, and several referred to an airsoft gun. At 1:04 P.M., Dep. Pace radioed that he saw Judson near the DOT building, adding “*he may have a weapon here, looks like a black handgun.*” In response, the dispatcher responded: “*Copy. There is a note in here that he owns an airsoft gun. Unknown if he has it with him.*” A short time later, at 1:10 P.M., the dispatcher advised over the radio that a civilian 911 caller on Ochsner Road reported seeing a man matching Judson’s description on the train tracks with a gun in his hand. Minutes after that dispatch, at 1:13 P.M., Tr. Davis radioed, “*He’s talking to me right now. He’s outside the car with a gun.*” At 1:16 P.M., the dispatcher advised that a civilian 911 caller on Coye Road reported seeing a man with a gun outside his house. At 1:14 P.M., as PO Mason’s car approached the first driveway on Coye Rd., BWC video shows that PO Mason got out of his car and said, “*I doubt if it’s a real gun. I’d be shocked. He carries fake pistols.*” Minutes later, at about 1:20 P.M., when told by on-scene OCSO deputies that Judson was pointing a black handgun, PO Mason’s BWC video shows that he responded, “*probably an airsoft, but could be real.*”

According to the written statements of Inv. Byron and Inv. Menard, and based on the accounts from the eyewitness officers, as set forth above, just before the shooting began, Judson faced towards Inv. Byron and Inv. Menard, raised his gun and pointed it in the direction of Inv. Byron. According to Inv. Byron, Inv. Menard, and the other eyewitness officers, Judson refused

repeated commands to drop the gun and to not raise the gun. A few seconds after the first series of shots, the eyewitness officers stated that Judson, who had either stumbled or fallen backwards after those first shots, rose up and again pointed his gun in the direction of officers. Several more shots were fired, although it is not entirely clear which officers fired during the first set of shots, or which officers fired during the second set of shots.

Under the law, the fact that Judson was armed with only an airgun does not render the four shooting officers' beliefs unreasonable. The law does not require "that an actor's belief as to the intention of another person to inflict serious injury be correct in order for the use of deadly force to be justified," but it does require "that the belief comport with an objective notion of reasonableness" (Goetz, 68 NY2d at 107). *In People v Haste* (40 Misc. 3d 596 [Bronx Co. Sup. Ct. 2013]), the court said finders of fact should be instructed to focus their deliberations on the reasonableness of the officer's belief that the use of deadly physical force was necessary to defend himself. A person who reasonably believes another is about to use deadly physical force need not wait until he is struck or wounded. He may be the first to use deadly physical force, so long as he reasonably believed it was about to be used against him (see *People v Valentin*, 29 NY3d 57 [2017]). Put differently, "It does not matter that the [officers were] mistaken in [their] belief; provided that such belief was both honestly held and reasonable" (CJI2d[NY] Justification: Use of Deadly Physical Force in Defense of a Person).

Justification under Penal Law § 35.15

Even if the officers had not been attempting to arrest Judson, OAG would not be able to disprove at trial, beyond a reasonable doubt, that they were justified in using deadly physical force under Penal Law § 35.15, the general provision justifying use of force.

Penal Law § 35.15(1) states a person may:

"[U]se physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person."

Pursuant to Penal Law § 35.15(2)(a), a person may not use deadly physical force unless the person "reasonably believes that such other person is using or about to use deadly physical force." Even in such case, the person, including a police officer or a peace officer, may not use deadly physical force "if he [or she] knows that he [or she] can with complete safety to himself [or herself] and others avoid the necessity of doing so by retreating" (Penal Law § 35.15[2][a][ii]).

As discussed above, based on the evidence that many persons observed Judson in possession of what they believed to be a handgun, his refusal to comply with commands to drop the gun and to not raise the gun, and his pointing and raising of the gun in the direction of officers, Inv.

Byron, Inv. Menard, Tr. Fike, and Sgt. Bollinger could have reasonably believed that Judson was about to use deadly physical force against Inv. Byron and Inv. Menard and needed to use deadly physical force to protect themselves and their fellow officers. Each of the shooting officers could have reasonably believed that even if he or she could retreat in safety, other officers would continue to be in danger.

While the officers fired a large number of shots, the first set of shots was fired when Judson was pointing the gun at the officers, and the second set of shots was fired when Judson, after stumbling or falling backwards after the first shots, raised his arm back up and pointed the gun at the officers a second time.

Therefore, based on the law and the evidence, the Attorney General would not be able to disprove at trial beyond a reasonable doubt that Inv. Byron, Inv. Menard, Tr. Fike, and Sgt. Bollinger's actions were justified under Penal Law § 35.15 or Penal Law § 35.30.

RECOMMENDATIONS

Onondaga County Sheriff's Office Should Equip Its Officers with Body-Worn Cameras

OAG has previously issued multiple reports recommending that police departments equip officers with body-worn cameras ("BWCs").²¹ Here, none of the officers who fired a weapon was equipped with BWC. While BWC video from the responding DPD patrol officers depicts some of the police response and interactions with Judson prior to the shooting, had the discharging officers been equipped with BWCs, there would have been a clearer picture of the incident, which would have greatly facilitated the investigation of this case. OAG recognizes that, since the date of this incident, NYSP has implemented a BWC policy requiring its members to be equipped with BWCs, and DPD now requires its plain-clothed investigators to wear BWCs at all times.²² OAG commends these efforts. However, OCSO still has not implemented a BWC or a dashboard camera policy, and we use this case as an opportunity to recommend that they do so as soon as practicable.

New York's General Business Law should be Amended to Clarify the Definition of Imitation Weapon

OAG recognizes the unreasonable risk of injury and death associated with the sale and distribution of imitation guns, like the Glock-style airgun that Judson possessed at the time of the shooting, which cannot be easily distinguished from actual firearms. While current state law

²¹ OSI highlighted its many prior recommendations regarding BWCs in its [First Report Pursuant to Executive Law Section 70-b \(ny.gov\)](#) (p. 16, "Recommendations"), which was published after this incident took place.

²² "[Dewitt Police plan to equip entire department with body cameras after officer-involved shooting](#)," News 10 NBC, March 14, 2021. The New York State Police BWC program policy is available here: [NYSP BWC Policy](#).

regulates the composition of imitation weapons,²³ it is clear that these dangerous products are still widely available.

Because it was made of plastic and “substantially duplicate[d] or [could] reasonably be perceived to be an actual firearm, air rifle, pellet gun, or ‘B-B’ gun,”²⁴ the Glock-style airgun Judson possessed at the time of the shooting qualifies as an “imitation weapon” under New York Law. New York City law requires imitation weapons to be entirely brightly colored, but state law only requires bright markings on the sides and tip of the gun barrel. Because Judson’s airgun was entirely black and did not contain any bright-colored markings, it was unlawful under both laws, and cannot be legally imported, manufactured, or sold in New York state. Although CA reported that she assumed that Judson had bought the airgun from Amazon, she was not certain how, or from where, Judson obtained the gun.²⁵

Despite the fact that Judson’s airgun was unlawful under existing state law, OAG nonetheless recommends that the legislature clarify and strengthen the definition of an imitation weapon by making it consistent with the New York City Administrative Code and the Rules of the City of New York,²⁶ which provide that “fake guns” can only be sold when they are entirely certain bright colors and prohibit the sale of fake guns that are black, silver or camouflage. One such amendment, Senate Bill S687, is currently under consideration in the Senate. OAG recommends that the Legislature pass S687 or a similar bill.

In Each County, NYSP and Other Law Enforcement Agencies Should Establish a Protocol to Improve Coordination during Multi-Agency Calls

Three separate law enforcement agencies – the New York State Police, the DeWitt Police Department, and the Onondaga County Sheriff’s Office – responded to the area of 4XXX Apulia Road in response to CA’s 911 call. Although the NYSP were deemed to be the “lead” agency on the call by virtue of being the first agency assigned to the call, it is clear from the dispatch records and OSI’s investigation that NYSP did not coordinate the response and that, in fact, there was very little inter-agency coordination during the nearly 60-minute period between CA’s 911 call and the shooting.

Although officers were responding to a mental health call from a concerned family member, the three responding police agencies did not engage in any meaningful sharing of the information some officers had concerning Judson – specifically certain officers’ knowledge of his mental health issues and propensity to carry airsoft guns – before the various officers

²³ General Business Law §§ 870-872 defines imitation weapons and prohibits the sale and distribution of imitation weapons within the state.

²⁴ General Business Law § 871.

²⁵ The Attorney General’s Office previously reached a settlement agreement with Amazon and other online retailers over the sale of imitation weapons in 2015 ([AG Schneiderman Reaches Settlement, December 15, 2015](#)).

²⁶ 6 RCNY § 5-70(a); NYC Code §§ 20-750(c), 20-708.1.

responded to the scene and pursued Judson.

When large numbers of officers from multiple agencies respond to an evolving critical incident, it is imperative that a chain of command be established to direct and control the police response. A proper chain of command, with a supervisor on scene, can help ensure that all information is shared within and between the various agencies and can allow for the planning of a single, coordinated response.²⁷ Officers should work as a team, and not as individual actors, when responding to critical incidents involving persons with mental illness. Here, because of the lack of a coordinated response, there was no single person who assumed the authority to assign different roles to the various officers, establish a perimeter, request additional resources or communicate directly with Judson.

While a coordinated inter-agency response or planning would not necessarily have led to a different outcome here, OAG strongly recommends that police agencies establish protocols for inter-agency coordination for those occasions when multiple agencies respond to the same call, so that they can be better prepared to share information, make a plan, and coordinate their response.

This is especially important in those areas of the state, such as the town in this case, where a multi-agency response is likely. Therefore, in each county, the NYSP, the county sheriff, and all the town, city, and village police departments should establish a clear protocol, when more than one agency responds, to designate the person in charge, to require that all information be properly shared, and to formulate and execute a plan of action, prior to the taking of any potentially lethal actions.

May 13, 2022

²⁷ Police Executive Research Forum, *Guiding Principles on Use of Force*, available at <https://www.policeforum.org/assets/30%20guiding%20principles.pdf> (March 2016).