



**Office of the New York State Attorney General Letitia James**

**Office of Special Investigation**

September 13, 2023

# Report on the Investigation into the Death of Daniel Kachinoski

## SUMMARY

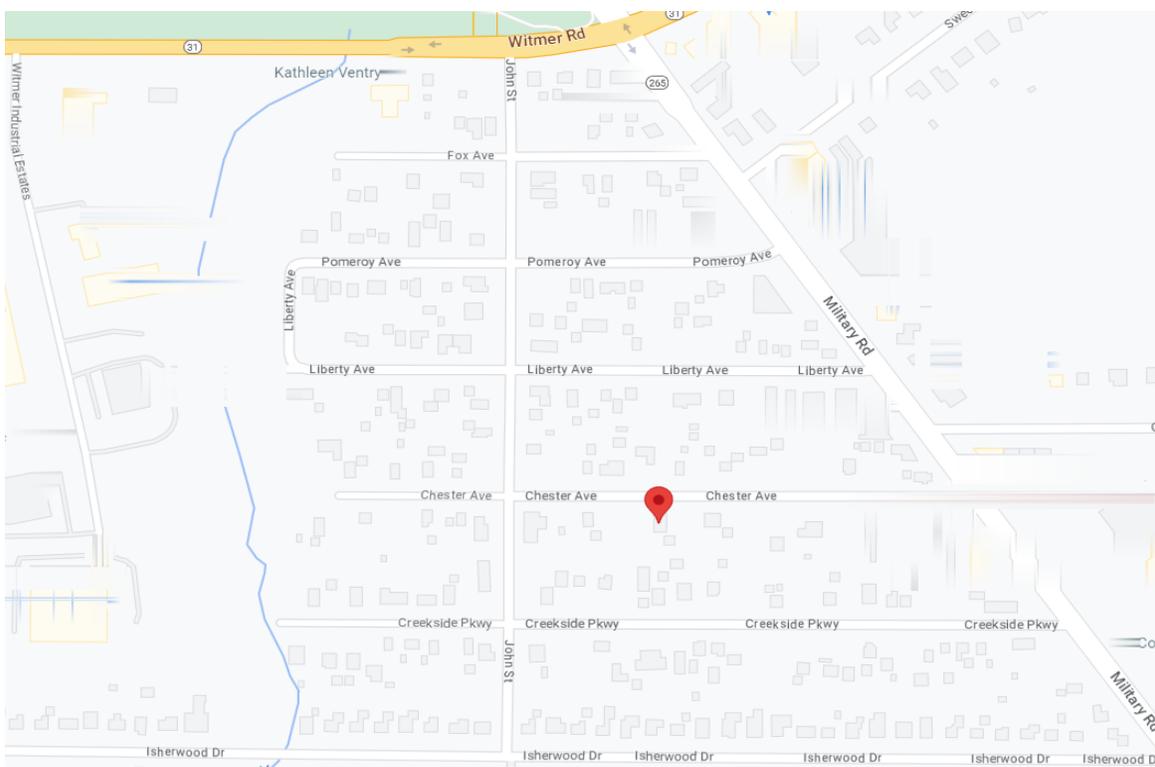
New York Executive Law Section 70-b directs the Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or a peace officer. When OSI does not seek charges against the officer, Section 70-b requires OSI to issue a public report describing its investigation.

On November 19, 2022, Town of Niagara Police Department (TNPD) Police Officer Alexander Wagner shot Daniel Kachinoski, causing his death. This is OSI's report concerning that incident. After a thorough investigation of the facts and review of the law, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that PO Wagner was justified when he shot Mr. Kachinoski and, therefore, OSI will not seek charges against him.

## FACTS

### Preliminary Information

The incident took place on a residential street in the Town of Niagara, inside the home where Mr. Kachinoski lived with his mother and son, which is shown on the map below:



The shooting was captured on police body worn cameras (BWCs) and in-home video security

footage and was preceded by 911 calls from Mr. Kachinoski and his mother. OSI has created a single, synchronized audio-video presentation from the BWC footage of POs Micale and Wagner, portions of the 911 recordings, and photos captured from in-home video security footage, which may be accessed at the link in the footnote.<sup>1</sup>

### **Pre-Police Arrival**

Based on review of the Niagara County Emergency 911 Center's audio recordings, on November 19, 2022, at 8:44 p.m., Mr. Kachinoski's mother, D,<sup>2</sup> called 911 and said her son, Daniel Kachinoski, was out of control and that she was fearful of him. D said she, Mr. Kachinoski, and his son were present in the house. At 8:46 p.m. Daniel Kachinoski called 911 and said that he wanted his mother out of the house because she threw water on him. Mr. Kachinoski said that there was an axe and knife in the home but were not being used to threaten anyone in the home.

### **Police Arrival**

The 911 Center dispatched members of TNPd to Mr. Kachinoski's home. At 8:53 p.m.<sup>3</sup> POs Angela Micale and Alexander Wagner arrived. Events at the scene were captured by the BWCs of POs Micale and Wagner, as well as an in-home security camera. Unless otherwise noted, the following facts are taken from BWC footage.

Upon arrival, POs Micale and Wagner met Mr. Kachinoski at the side door of the residence and then entered a room with a pool table, where Mr. Kachinoski and his small child were present. Mr. Kachinoski told POs Micale and Wagner that his mother had to leave the residence. PO Wagner stepped into the kitchen area, which was up a few steps from the pool-table room, to speak with D in the kitchen while PO Micale spoke with Mr. Kachinoski. D told PO Wagner that she was afraid of her son, believed he was under the influence of an unknown substance, and that he had pushed her into her room, causing two scratches on her forearm, which were observed by PO Wagner. As PO Wagner spoke to D, Mr. Kachinoski spoke loudly to PO Micale, and PO Micale asked Mr. Kachinoski to lower his voice so that both she and PO Wagner could hear both parties explain the reason for the 911 calls. Mr. Kachinoski said, referring to his mother, "no one at a time shit. She needs to get her shit and get the fuck out of my home."

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<sup>1</sup> The evidence in this matter includes: video footage from BWCs; home video security footage; dispatch recordings and associated records (911 calls, radio runs, and city dispatches); photographs (of the scene, autopsy, and physical evidence); interviews conducted by OSI; and TNPd incident reports. A compilation video of the event can be found here: [Compilation Video](#)

<sup>2</sup> OSI does not publish the names of civilian witnesses.

<sup>3</sup> All times in this report are approximate. There are micro-variations among the timestamps on the BWC footage, Taser reports and the dispatch recordings, which is not uncommon, because the media are not synchronized. The time on the BWC footage is in Coordinated Universal Time, which is five hours ahead of Eastern Standard Time (EST).

After speaking with D, PO Wagner returned to the pool-table room and asked Mr. Kachinoski the reason for the call to the home. Mr. Kachinoski, in a loud voice, accused his mother of mistreating him. PO Wagner asked Mr. Kachinoski not to yell because he was scaring the child, who remained in the pool-table room throughout the incident. Mr. Kachinoski apologized and hugged the child. PO Wagner mouthed to PO Micale, “nine forty-one, he’s nine forty-one,” referencing New York Mental Hygiene Law (MHL) Section 9.41<sup>4</sup>. In an interview with OSI, PO Micale said that she understood PO Wagner’s words to mean that he intended to take Mr. Kachinoski into custody pursuant to MHL 9.41. PO Wagner continued to talk with Mr. Kachinoski about the reason he wanted his mother to leave. PO Micale walked into the kitchen and spoke with D, who expressed her fear of Mr. Kachinoski. Mr. Kachinoski became irritated, began to yell, lit an apparent marijuana cigarette, and started smoking it. Mr. Kachinoski told PO Wagner and PO Micale to leave the house. Mr. Kachinoski walked to the door, with the child following close behind, opened it, and told PO Wagner to leave the house. PO Wagner said he wouldn’t leave, and Mr. Kachinoski asked PO Wagner if he wanted him to make him leave. PO Wagner said, “Do you really want to threaten a police officer?” and that if Mr. Kachinoski continued “acting this way I have absolutely no problem putting you in handcuffs.”

Mr. Kachinoski placed his hands in his sweatshirt pocket and PO Wagner told him to take his hands out of his pockets. Mr. Kachinoski emptied the contents of the pocket onto the pool table, said he was unarmed, and cursed at PO Wagner. The child, who stood next to Mr. Kachinoski, began to cry. PO Wagner walked around the pool table toward Mr. Kachinoski and told him to place his hands behind his back; Mr. Kachinoski refused. Again, PO Wagner ordered Mr. Kachinoski to place his hands behind his back, and Mr. Kachinoski again refused. PO Wagner unholstered his Taser, pointed it at Mr. Kachinoski and ordered him to place his hands behind his back. Mr. Kachinoski, mimicked PO Wagner’s command and walked toward PO Wagner. According to BWC video, at 9:00:16 p.m., PO Wagner pushed Mr. Kachinoski away from him and deployed his Taser, which did not seem to have any effect. Mr. Kachinoski pulled out the Taser darts and walked toward PO Wagner while PO Wagner backed away. Mr. Kachinoski yelled for PO Wagner to get out of the house.

At 9:00:20 p.m., PO Wagner deployed his Taser again, which again had no effect. PO Micale reentered the room, unholstered her Taser and took the child toward the steps leading up to the kitchen. Mr. Kachinoski walked away from PO Wagner, picked up a wooden chair, pointing the legs at the officers, and yelled for PO Wagner and PO Micale to leave his home. PO Wagner used his radio to request back-up. PO Wagner and PO Micale ordered Mr. Kachinoski to put the chair down. According to BWC video, at 9:00:35 p.m., PO Micale deployed her Taser twice toward Mr. Kachinoski; the darts hit the chair Mr. Kachinoski held. With his gun raised, PO Wagner ordered Mr. Kachinoski to put the chair down and get down on the ground. Mr.

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<sup>4</sup> NY Mental Hygiene Law Section 9.41 authorizes a peace or police officer to take into custody, for the purpose of a psychiatric evaluation, an individual who appears to be mentally ill and is behaving in a manner likely to result in serious harm to self or others.

Kachinoski walked around the pool table toward PO Wagner, with the chair raised in his left hand, and, with his right hand, picked up a knife that was lying on a table along a wall. At 9:00:48 p.m. PO Micale deployed her Taser again toward Mr. Kachinoski, with no effect. Mr. Kachinoski advanced toward PO Wagner with the knife raised in his right hand and the chair in his left hand and said, “Is this what I have to do to you motherfuckers?” At 9:00:50 p.m., as Mr. Kachinoski was within arm’s length of PO Wagner with the knife raised over his head, PO Wagner fired two shots at Mr. Kachinoski’s chest. Mr. Kachinoski fell to the ground by the stairs leading into the kitchen.



*Still image from footage from the home security camera, showing Mr. Kachinoski holding a knife in his right hand and a chair in his left hand.<sup>5</sup>*

At 9:01:18 p.m. PO Micale radioed shots fired and requested medical assistance. At 9:04:57 p.m. PO Wagner began aid to Mr. Kachinoski; New York State Trooper Randall Shenefiel arrived a few minutes later and assisted with aid until ambulance personnel arrived. Based on medical records, at 9:08:30 p.m., ambulance personnel arrived and assumed medical care of Mr.

<sup>5</sup> The time shown on the home video security camera is 11 hours 26 minutes and 12 seconds ahead of the actual time.

Kachinoski. However, Mr. Kachinoski was pronounced dead at 9:18 p.m.

### Post-Shooting Investigation

#### *Crime Scene*

At 9:30 p.m., Deputy Lisa Oliveri, a member of the Niagara County Sheriff's Office (NCSO) Crime Scene Investigation Unit, arrived and secured a TNPD-issued Glock .40 caliber handgun from PO Wagner. According to Dep. Oliveri's report, she found one .40 caliber casing on the steps leading into the kitchen and one .40 caliber casing in the kitchen near the refrigerator. Dep. Oliveri found a black and silver dagger knife in the kitchen, which PO Wagner said was the knife Mr. Kachinoski was holding above his head as he advanced toward PO Wagner.



*Crime scene photograph showing Mr. Kachinoski's knife and the place on the floor of the kitchen where Crime Scene found it.*



*A close-up crime scene photograph of Mr. Kachinoski's knife.*

### **Officer Interviews**

On January 30, 2023, OSI Senior Investigative Counsel Michael Smith and OSI Detectives Milagro Bosque and Janice Boyd interviewed POs Wagner and Micale.

### **PO Wagner**

PO Wagner said that on November 19, 2022, he worked the 2:00 p.m. to midnight shift. There was a snowstorm in progress and there were only four officers on duty. While at TNPD station, PO Wagner said he and PO Micale received a dispatch that a mother said her son was out of control and that she feared for her life. PO Wagner said he waited briefly to see if any additional information was forthcoming. PO Wagner said PO Micale wanted to go alone, but he told her he would go with her. PO Wagner said they left the station in separate vehicles. PO Wagner said that as he was driving to the location, he heard dispatch update the call, but because of the storm he was focused on driving. Prior to arriving he read the dispatch update, which indicated that a knife and an ax were in the residence; PO Wagner learned that Daniel Kachinoski, the son, had called 911, too.

PO Wagner said he arrived at the location and activated his BWC. PO Wagner said Mr. Kachinoski greeted him at the door and was calm. PO Wagner said that upon entry into the

home he observed a room with a pool table, a child, and a staircase that led to the kitchen to his right. PO Wagner said he saw the mother (D) and was speaking to her when Mr. Kachinoski began yelling, "she needs to get out." PO Micale spoke with Mr. Kachinoski in the pool-table room while PO Wagner spoke with D in the kitchen.

PO Wagner said he tried to keep his conversation with D low in volume so as not to agitate Mr. Kachinoski. PO Wagner said D explained that she arrived home from work and wanted to rest but Mr. Kachinoski was playing loud music; when she asked him to stop, he pushed her into a door; when she went into the kitchen Mr. Kachinoski approached her again and she threw a cup of water at him. PO Wagner said he saw some scratches on her arm. PO Wagner asked D whether Mr. Kachinoski was on drugs, and she said Mr. Kachinoski took Suboxone.

Based upon D's statements PO Wagner concluded that he had enough to charge Mr. Kachinoski with harassment in the second degree. PO Wagner believed that Mr. Kachinoski showed signs of being under the influence of a substance due to his bloodshot eyes and erratic behavior. PO Wagner said he quietly alerted PO Micale of his intention to take Mr. Kachinoski into custody under New York Mental Hygiene Law 9.41.

PO Wagner said Mr. Kachinoski was angry and told POs Micale and Wagner to leave, or he would make them leave. PO Wagner said he perceived that as a threat. PO Wagner said he radioed for backup and until backup officers arrived, he would attempt to gain compliance from Mr. Kachinoski or keep his distance from him.

PO Wagner said he gave commands for Mr. Kachinoski to place his hands behind his back, but Mr. Kachinoski approached him and pushed him. PO Wagner said he motioned for PO Micale to get behind Mr. Kachinoski. PO Wagner said Mr. Kachinoski refused to comply with any of his commands.

PO Wagner said he pulled out his Taser and gave Mr. Kachinoski additional commands to put his hands behind his back. However, Mr. Kachinoski got in PO Wagner's face and PO Wagner pushed him away. PO Wagner said he deployed his Taser, but it was ineffective. PO Wagner said he continued to give Mr. Kachinoski commands, but he refused to comply. PO Wagner deployed his Taser a second time and it was ineffective. PO Wagner said he re-holstered his Taser and prepared himself for a physical fight.

PO Wagner said Mr. Kachinoski picked up a chair and raised it. PO Wagner said PO Micale deployed her Taser twice, but it had no effect because the Taser darts appeared to get caught on the chair Mr. Kachinoski held. PO Wagner said Mr. Kachinoski again raised the chair and PO Wagner drew his service weapon while he gave Mr. Kachinoski commands to put the chair down. PO Wagner said Mr. Kachinoski made a motion like he was going to throw the chair, but he put it down and picked it up again. PO Wagner said that Mr. Kachinoski had the chair in one

hand and moved around the pool table in his direction. PO Wagner said Mr. Kachinoski made grunting sounds as he moved closer to him. PO Wagner said Kachinoski grabbed an object from the window area. PO Wagner was unsure what Mr. Kachinoski had in his hand until he got closer and saw that it was a knife. PO Wagner said he had not observed a knife in area, but the room was cluttered. PO Wagner said he yelled for Mr. Kachinoski to get on the ground, but Mr. Kachinoski said, "Is this what I have to do to you motherfuckers?" as he came at him with the knife raised. PO Wagner said there was little space for him to move; PO Micale was on his right and his back was to the stairs. PO Wagner said that he waited to the last possible moment to fire his weapon.

### **PO Micale**

On November 19, 2022, PO Micale said she was at the TNPD station when a dispatch came in involving a mother and her 40-year-old son. PO Micale said that dispatch advised that the caller said her son was out of control and she was fearful. PO Micale said she did not recall dispatch providing information regarding weapons in the home. PO Micale said she and PO Wagner responded to the location in separate vehicles. PO Micale said she had never responded to any previous incident at the address and did not know the parties involved.

PO Micale said that upon arrival Daniel Kachinoski met them at the door. PO Micale said that once inside, she observed the mother (D), who called 911, inside the kitchen. Mr. Kachinoski and a child were in the pool-table room. PO Micale said that the pool-table room was cluttered.

PO Micale said PO Wagner went into the kitchen to speak with D. PO Micale said she attempted to speak with Mr. Kachinoski, but the conversation was unproductive as Mr. Kachinoski spoke over her. PO Micale said that based on her observations and interactions with Mr. Kachinoski she believed he might be under the influence of a drug or suffering from a mental health issue.

PO Micale said she and PO Wagner decided to "9.41" Mr. Kachinoski. PO Micale said she and PO Wagner saw Mr. Kachinoski display signs indicating that he was a danger to himself and/or others. PO Micale said that D and the child appeared scared.

PO Micale described herself as the "cover officer" and PO Wagner as the "contact officer." PO Micale explained that the contact officer is the officer who is primarily interacting with the subject and the cover officer is in a support role. PO Micale explained that role of the officer depends on the situation and the individuals involved.

PO Micale said that while they attempted to take Mr. Kachinoski into custody, he continued to demand that the police "get out." PO Micale said PO Wagner deployed his Taser twice, but it had no effect. PO Micale said Mr. Kachinoski wore a baggy hooded sweatshirt, and the Taser prongs did not make contact. PO Micale said that as PO Wagner continued to give Mr.

Kachinoski commands, she had her handcuffs out in preparation to take him into custody. PO Micale said Mr. Kachinoski picked up a chair and was motioning as if he was going to strike PO Wagner. PO Micale deployed her Taser once, but it had no effect. PO Micale said she saw PO Wagner pull his service weapon after her initial Taser deployment.

PO Micale saw Mr. Kachinoski put the chair down and suddenly pick it up again. PO Micale said she deployed her Taser a second time, but it was again unsuccessful. PO Micale explained the Taser has two cartridges and, at that point, she and PO Wagner were out of cartridges. PO Micale said that as Mr. Kachinoski had the chair in his left hand, he walked around the pool table and picked up a knife. PO Micale said she saw the blade and described it as long, silver, sharp, and said that it looked like a sword. PO Micale said she did not see the knife prior to Mr. Kachinoski's picking it up. PO Micale said Mr. Kachinoski had the knife in his hand, over his head, and charged at PO Wagner. PO Micale said she feared that Mr. Kachinoski would kill PO Wagner. PO Micale said she then put her Taser away and pulled out her service weapon. PO Micale said PO Wagner had nowhere to retreat and had minimal space to maneuver in the pool table room. PO Micale said PO Wagner shot Mr. Kachinoski. PO Micale said she did not see where the knife landed after Mr. Kachinoski was shot. PO Micale said the whole encounter was approximately ten minutes and had escalated quickly.

### **Medical Examiner**

On November 21, 2022, Dr. Katherine Maloney, Deputy Chief Medical Examiner at the Erie County Medical Examiner's Office, conducted the autopsy. Dr. Maloney concluded that the cause of death was gunshot wounds to the neck and torso and that the manner of death was homicide. During the autopsy, Dr. Maloney found an entrance wound to the upper right side of the chest and recovered the projectile that caused that wound from the left side of the chest. Dr. Maloney also found an entrance wound to the neck and a corresponding exit wound at the upper right side of the back. The retrieved projectile was not submitted for testing because PO Wagner was the only shooter. Dr. Maloney concluded that the two shots caused the death; neither was determined to be individually fatal. Toxicological analysis of Mr. Kachinoski's blood was positive for buprenorphine<sup>6</sup> and cannabinoids.

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<sup>6</sup> Buprenorphine is an opioid medication used to treat pain and opioid addiction. According to the United States government's Substance Abuse and Mental Health Services Administration's website, "Buprenorphine is an opioid partial agonist. It produces effects such as euphoria or respiratory depression at low to moderate doses. With buprenorphine, however, these effects are weaker than full opioid agonists such as methadone and heroin. When taken as prescribed, buprenorphine is safe and effective. Buprenorphine has unique pharmacological properties that help diminish the effects of physical dependency to opioids, such as withdrawal symptoms and cravings; increase safety in cases of overdose; lower the potential for misuse."

## LEGAL ANALYSIS

Article 35 of the New York Penal Law defines the circumstances under which a person may be justified in using deadly force against another. Justification is a defense, Penal Law Section (PL) 35.00, not an affirmative defense. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1). As detailed below, based on the evidence in this investigation, a prosecutor would be unable to disprove beyond a reasonable doubt that PO Wagner's use of deadly physical force was justified.

PL 35.30 defines justification when a police officer uses deadly force while effecting or attempting to effect an arrest for an offense, as follows:

"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 PL 35.30(1) are under no duty to retreat, PL 35.15(2)(a)(ii).

The Court of Appeals, in *People v Goetz*, 68 NY2d 96, 114-115 (1986), said that "reasonable belief" has both subjective and objective components: the subjective component is satisfied if the person using force actually believed, "honestly and in good faith," that deadly force was about to be used against that person or another, and that the use of deadly force was necessary to prevent the danger; the objective component is satisfied if a "reasonable person" under the same circumstances could have held the same belief. See also *People v Wesley*, 76 NY2d 555 (1990).

Here, Mr. Kachinoski had allegedly pushed his mother, pushed PO Wagner, threatened PO Wagner with a chair, and picked up a knife. When he advanced toward PO Wagner with the knife raised, POs Wagner and Micale had reasonable cause to arrest Mr. Kachinoski for menacing a police officer or peace officer, PL 120.18,<sup>7</sup> and could have reasonably concluded

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<sup>7</sup> PL 120.18 states: "A person is guilty of menacing a police officer or peace officer when he or she intentionally places or attempts to place a police officer or peace officer in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, knife, pistol, revolver, rifle, shotgun, machine gun or other

that Mr. Kachinoski would imminently use deadly physical force against them. Under those circumstances, the officers did not have a duty to retreat before using deadly physical force.

In sum, the evidence in the investigation is insufficient to disprove beyond a reasonable doubt that PO Wagner was justified under New York law in using deadly physical force. Therefore, OSI will not seek charges and closes this matter with the issuance of this report.

Dated: September 13, 2023

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firearm, whether operable or not, where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was a police officer or peace officer. Menacing a police officer or peace officer is a class D felony.”