



Office of the New York State Attorney General Letitia James

Office of Special Investigation

November 7, 2025

Report on the Investigation into the Death of Daniel McAlpin

OVERVIEW

New York Executive Law Section 70-b (Section 70-b) authorizes 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. When, as in this case, OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of Daniel McAlpin.

On the evening of September 9, 2022, officers with the New York State Police (NYSP) and Ulster County Sheriff's Office (UCSO) went to Daniel McAlpin's house in Ulster County to execute an order for his hospitalization pursuant to New York Mental Hygiene Law Section 9.45. Mr. McAlpin was alone in the house, on the second floor. There was a stairway to the second floor off the kitchen, and officers spoke to Mr. McAlpin through the closed door at the base of the stairway. Mr. McAlpin said he was safe, did not intend to harm himself, and repeatedly told the officers to leave. At the direction of a NYSP sergeant, officers opened the stairway door. Mr. McAlpin was standing near the top of the stairs, holding a large knife and an Airsoft pellet gun. Officers ordered him to drop the weapons, and an officer deployed a Taser. Mr. McAlpin descended the stairs while swinging the knife. When he neared the bottom of the stairs, he turned toward NYSP Trooper Jason Wurtz, who fired two shots at him. Mr. McAlpin fell to the floor, still holding the knife. Mr. McAlpin swung the knife and moved in a way that could have been seen as an attempt to get up from the floor, and Trooper Wurtz fired three more shots at him. Mr. McAlpin died of his wounds at the scene.

After a thorough factual investigation and legal analysis, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that Trooper Wurtz's actions were justified under Article 35 of the Penal Law. Therefore, OSI will not seek charges and closes the matter with this report.

FACTS

Initial Law Enforcement Contact

According to E-911 records, at 4:12 p.m. on September 9, 2022, Mr. McAlpin's mother called 911 and reported a "mental health emergency" involving her adult son. She requested a wellness check at their house at an address in the Town of Wawarsing, Ulster County. Mr. McAlpin's mother told 911 she was in Maine and that Mr. McAlpin sounded "strange" when she spoke with him the day before (the 8th); she said she had not been able to reach him by phone that day (the 9th). Mr. McAlpin's mother said her son had a "psychiatric history" and a "history of instability." She told 911 she had just spoken with her son's employer, who said Mr. McAlpin had been acting strangely earlier that day. E-911 records showed the dispatcher notified law enforcement and requested a response for a "routine" welfare check. NYSP troopers radioed they would respond. While officers were en route, dispatch notified them that

Ulster County Mobile Mental Health (MMH) said Mr. McAlpin had “paranoia” and “religious views.”

As shown on NYSP Trooper Cody Harder’s BWC video, he and Trooper Carly Peterson arrived at Mr. McAlpin’s house at 4:36 p.m. The house was on a wooded lot, 5.5 miles from the Village of Ellenville. In an interview, Trooper Harder told OSI he was “familiar” with Mr. McAlpin because he had previously been to the house for similar calls. Trooper Harder’s BWC video showed he spoke with Mr. McAlpin for nearly 90 minutes. Throughout their conversation, Mr. McAlpin said, among other things, that he was a “messiah,” that he wanted to “save people,” was stressed because he had the “world weight of souls on my back,” was “deeply troubled” because “the devil” was inside his home and “trying to kill” him, and that he had to clean his home to get the evil out.

Trooper Harder told OSI that though Mr. McAlpin appeared to have mental health issues, he did not believe there was a sufficient basis to take Mr. McAlpin into custody involuntarily, as Mr. McAlpin was home alone and did not represent a “harm to himself, a harm to anybody else.” Trooper Harder said he tried to build rapport with Mr. McAlpin, to gain his trust in the hope that he would go to a hospital “willingly.” As BWC showed, Trooper Harder offered to take Mr. McAlpin to a hospital, but he declined. According to Trooper Peterson’s BWC video, Trooper Harder asked Mr. McAlpin if MMH workers could come to his home, and Mr. McAlpin said that was all right.

As shown on Trooper Peterson’s BWC video, Trooper Harder told Mr. McAlpin he had spoken with his mother, who said she was on her way home and would be home at 11:00 p.m. Trooper Harder told Mr. McAlpin that he could not wait for MMH and said he needed to “ask some serious questions before I leave here.” He asked if Mr. McAlpin felt like he needed to harm himself “in any way, shape, or form.” Mr. McAlpin said, “No. No. Absolutely not.” Trooper Harder asked if Mr. McAlpin felt like he needed to end his life. Mr. McAlpin said, “No. I love life. I love life.” Trooper Harder asked if Mr. McAlpin felt like he needed to “harm or kill anybody else.” Mr. McAlpin said, “I’m here trying to save people. I am not about hurting. I am a nice person. I don’t like hurting people. I don’t like hurting things.” According to Trooper Peterson’s BWC video, she and Trooper Harder stopped talking with Mr. McAlpin at 6:10 p.m. and went to their patrol cars. E-911 records say the troopers left the McAlpin home at 6:32 p.m.

Trooper Harder told OSI that his encounter with Mr. McAlpin extended his shift and that he wrote a report before signing off, which OSI has reviewed. In the incident report, Trooper Harder said Mr. McAlpin “showed signs of paranoia” and made statements about the devil and an “evil smell” inside his home. In his report, Trooper Harder said Mr. McAlpin “did not exhibit signs of self-harm or any signs to harm anyone else.” Trooper Harder told OSI he did not talk with anyone on the oncoming shift about Mr. McAlpin and that no one from law enforcement or MMH called him after his shift.



Image of the McAlpin home. The covered deck where Trooper Harder spoke with Mr. McAlpin is on the left side of the photo. The front porch door (circled) opened into the kitchen.

Mobile Mental Health Check

OSI interviewed DE and EA, the MMH counselors who went to the McAlpin home. DE said Trooper Peterson called MMH at 6:15 p.m. and asked for outreach services for Mr. McAlpin because he had been making statements such as wanting to get “baptized” that day so he could “save the world,” as he believed “the world was coming to [an] end tomorrow.” DE said Trooper Peterson told her Mr. McAlpin did not appear to pose a danger to himself or others. DE said she searched MMH’s records and found an entry for Mr. McAlpin going to the hospital for a mental health assessment in November of 2021, which included a notation saying “weapons (knives).” DE said she called Mr. McAlpin’s mother, who said there were no weapons in the house and that Mr. McAlpin was willing to speak with MMH. They agreed MMH would check on Mr. McAlpin that evening.

DE said she and EA arrived at the McAlpin home at 8:16 p.m. DE said Mr. McAlpin initially would not answer the door, but that she could hear him walking around inside the house. DE said she called Mr. McAlpin’s mother and put her on speakerphone. DE said Mr. McAlpin answered the door wearing a hat, goggles, a medical mask, and a “chest plate of some sort.” She said he was holding a “machete” and a “long gun.” (In a written statement to NYSP, EA said Mr. McAlpin was in “paintball attire” and was holding a “machete” and a “black BB or Air Soft gun.”) DE told OSI that when Mr. McAlpin opened the door, she and EA attempted to talk with him, but he said, “This is not a good time,” turned around, and closed the door. DE and EA told OSI they called their supervisor, KG, who issued an order to take Mr. McAlpin into

custody, involuntarily, for a mental health evaluation pursuant to Mental Hygiene Law Section 9.45 (MHL 9.45). EA told OSI she called 911 to ask for police assistance in taking Mr. McAlpin into custody; E-911 records showed she called at 8:35 p.m.

MHL 9.41 and the Order

The relevant portions of MHL 9.45 read, at the time, as follows:

“§ 9.45 Emergency assessment for immediate observation, care, and treatment; powers of directors of community services.

“(a) The director of community services or the director's designee shall have the power to direct the removal of any person, within his or her jurisdiction, to a hospital [as defined] or to a comprehensive psychiatric emergency program [as defined] ... if [a relative or health care worker, as defined]...or a peace officer or police officer reports to him or her that such person has a mental illness for which immediate care and treatment is appropriate and which is likely to result in serious harm to himself or herself or others. It shall be the duty of...police officers [as defined] to assist representatives of such director to take into custody and transport any such person ... Such person may then be retained in a hospital pursuant to the provisions of section 9.39 of this article or in a comprehensive psychiatric emergency program pursuant to the provisions of section 9.40 of this article.

“(b) A person otherwise determined to meet the criteria for an emergency assessment pursuant to this section may voluntarily agree to be transported to a crisis stabilization center under section 36.01 of this chapter for care and treatment and, in accordance with this article, an assessment by the crisis stabilization center determines that they are able to meet the service needs of the person.”

OSI has reviewed the written MHL 9.45 order that KG issued for Mr. McAlpin, which was a printed form with blanks that KG filled in by hand. On the order KG identified herself as designee of the Director of Community Services for Ulster County. KG said it had been reported to her by DE that Mr. McAlpin 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 him/herself or others.” The form went on to say (in the following, the form’s pre-printed text is in italics, and the handwritten portions are in regular font): *“I hereby direct under section 9.45 of the Mental Hygiene Law that peace/police officers of Ulster County Pd [sic] take this person into custody and transport him/her to [space for defined facility left blank] OR I hereby request, under section 9.45 of the Mental Hygiene Law that Ulster County Pd [sic] transport this person to [space for defined facility left blank].”*

A second page of the form, called “Information Checklist,” had Mr. McAlpin’s name, address, telephone number, date of birth and age (41 years old), a handwritten summary of DE’s description of his situation, and boxes checked for “weapons” and “alone.” It is not clear

whether this second page was formally part of the order, or whether the executing officers possessed or had seen copies of the order or the second page.

Law Enforcement Response

According to UCSO Deputy Danylo Kobyleckyj's BWC video (which can be viewed [HERE](#)), he was the first responding officer and arrived at Mr. McAlpin's house at 8:47 p.m. His BWC video showed he spoke with DE and EA, who had remained on site, and who said Mr. McAlpin had answered the door with a "blade" and a "pellet gun." They said Mr. McAlpin was calm and did not make any threats or gestures with the weapons. They told the deputy that their supervisor had issued a MHL 9.45 order. The counselors walked to the house with the deputy, knocked on the front door, and called to Mr. McAlpin, who did not respond. Deputy Kobyleckyj's BWC video showed that DE called Mr. McAlpin's mother and placed her on speakerphone. Mr. McAlpin's mother identified herself, repeatedly said "Dan," and asked him to answer the door. DE took the call off speakerphone and handed the phone to Deputy Kobyleckyj, who asked Mr. McAlpin's mother if Mr. McAlpin would be "spooked" or "agitated" if he knew law enforcement was there. DE checked the door handle and said it was unlocked.

As his BWC video showed, at 8:55 p.m. Deputy Kobyleckyj asked Mr. McAlpin's mother for permission to enter the house; she said, "Certainly." After handing the phone back to DE, the deputy opened the front door, identified himself, and said he was there to help. Mr. McAlpin was not visible on the BWC video; the audio captured him saying he wanted to stay in the house. Standing on the porch, in the kitchen doorway, Deputy Kobyleckyj asked if he could enter the house. Mr. McAlpin said, "Please go away. I need to stay calm." When the deputy said it was important to talk, Mr. McAlpin said, "It's rather important that you stay out there." Deputy Kobyleckyj said, "We really need to talk with you, and we're here to help." When the deputy asked if he could enter, Mr. McAlpin said, "I'm sorry, today's not the day. Come back tomorrow. Please." The deputy said, "I'm sorry. I unfortunately can't do that." Mr. McAlpin said, "I can't let you in." Deputy Kobyleckyj, still standing outside on the porch, shut the door.

As shown on Trooper Andrew Cruz's BWC video (which can be viewed [HERE](#)), he arrived at the front porch at 8:58 p.m. and spoke with DE, EA, and Deputy Kobyleckyj. After confirming that Mr. McAlpin was behind a closed door and refusing to come out, Trooper Cruz radioed control and said, "Be advised, we have a barricaded subject." Trooper Cruz opened the door, identified himself, and asked Mr. McAlpin if he had a knife and to please drop it. Mr. McAlpin, still not visible on BWC, said, "No" and said he did not want to talk. Trooper Cruz said he was nervous because he had heard Mr. McAlpin had "some sort of gun" in his hand. Mr. McAlpin said he had a "BB gun." Trooper Cruz asked Mr. McAlpin to "drop it on the floor" and not bring it downstairs with him. Shortly thereafter, Mr. McAlpin said, "I'm not here to be violent. I'm here to relax." Trooper Cruz asked Mr. McAlpin what type of knife he had, and Mr. McAlpin said, "A big one." In response to questioning, Mr. McAlpin said he had an "Airsoft gun" with an orange tip. Trooper Cruz said, "All you have to do is put the stuff down up there, just come down here empty handed. You can close the door and you can talk with us." Mr. McAlpin said,

“No.” Mr. McAlpin told Trooper Cruz he did not want to talk anymore and repeatedly mentioned the “Fifth Amendment.”

According to Trooper Cruz’s BWC video, at 9:12:14 p.m. Mr. McAlpin said, “We can talk tomorrow.” Trooper Cruz said, “How do I know you aren’t going to do anything to yourself, and you’re not going to hurt anybody or yourself?” Mr. McAlpin said, “I do not want to hurt anyone.” Mr. McAlpin said he wasn’t hurt and that he wasn’t going to hurt himself. He told Trooper Cruz to come back “tomorrow.” When Trooper Cruz said he couldn’t come back tomorrow, Mr. McAlpin said, “I’m not going to hurt myself. Don’t worry about that.” He said he was “Super-duper safe,” and, “I’m safe. Please go away.” Soon thereafter, Mr. McAlpin repeatedly told Trooper Cruz to leave. As shown on Trooper Cruz’s BWC video, he left the kitchen and stepped onto the porch at 9:13:55 p.m. Trooper Elias Strickland walked into the kitchen and began talking with Mr. McAlpin.

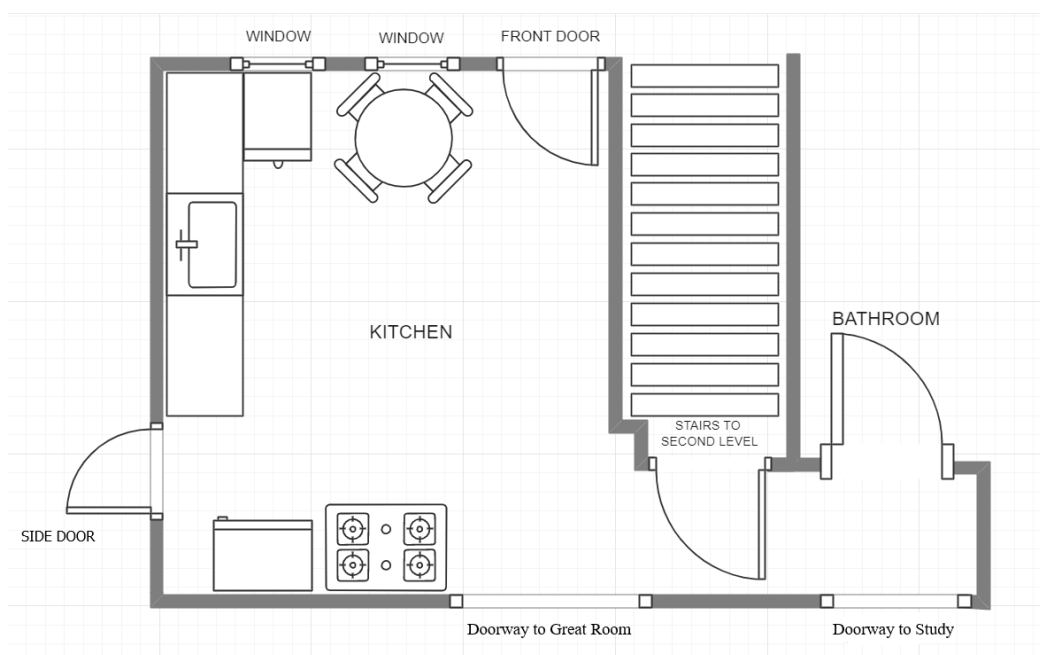


Image showing the layout of a portion of the first floor of the McAlpin home.

As shown on Trooper Strickland’s BWC video (which can be viewed [HERE](#)), he told Mr. McAlpin he needed to go to the hospital and “talk with somebody.” Trooper Strickland said, “Your options are you can just come out peacefully, or we’re going to have to arrest you. I really don’t want to arrest you.” Mr. McAlpin, still not visible on BWC, said he had a “toy gun” with an “orange tip.” Trooper Strickland said, “You can paint an orange tip on a real gun.” Mr. McAlpin said he had a “fake gun.” Trooper Cruz said Mr. McAlpin’s knife was “real” and “dangerous.” As shown on Trooper Strickland’s BWC video, at 9:19:03 p.m. Trooper Cruz asked Mr. McAlpin to compromise with him and said, “If you can drop the Airsoft gun on the ground, crack the door open, and slide it out into the hallway, you can keep the knife for now. Is that something we can agree upon?” Mr. McAlpin said he was “dealing with the devil” and did not want to put

anything down. Mr. McAlpin said Trooper Cruz should come back “tomorrow.” Trooper Cruz stated, “You know we can’t do that.”

As shown on Trooper Strickland’s BWC video, at 9:21 p.m., Trooper Cruz asked Mr. McAlpin if he would talk to a person he named, who had told officers he was “a family friend.” Though Mr. McAlpin said he did not want to talk with the friend, the Troopers escorted the friend into the kitchen. Based on the BWC, Mr. McAlpin seemed reluctant to talk with the friend; their conversation lasted less than two minutes. Trooper Cruz resumed talking with Mr. McAlpin. As they spoke, NYSP Sgt. Andrew Bukovinsky, NYSP Troopers Jason Wurtz and Matthew Hogan, and USCO Deputy Michael Rizzo entered the kitchen and positioned themselves near the closed stairway door. Mr. McAlpin said, “I do not want to hurt anyone. Please go away.” Trooper Cruz told Mr. McAlpin that no one wanted to hurt him. Mr. McAlpin raised his voice and said, “I don’t want to hurt anyone. Please go away.” Trooper Cruz said, “We want to build trust with you.” Mr. McAlpin immediately said, “I don’t want to build trust.”

As Mr. McAlpin said those words, at 9:23:46 p.m. on Trooper Strickland’s BWC video, Sgt. Bukovinsky and Trooper Wurtz opened the stairway door. Trooper Wurtz immediately moved to the right side of the doorway and pointed his service pistol up the stairway. Deputy Rizzo moved to the left side of the doorway, kneeled, and pointed an AR15 rifle up the stairway. Trooper Strickland stood over Deputy Rizzo and pointed a Taser, which also shined a bright light, up the stairway. Trooper Wurtz yelled, “Let me see your hands. Give us your hands. Let me see your hands. Drop it. Drop the weapon.” Trooper Strickland fired a Taser up the stairway; BWC audio captured the electric pulse of the Taser. BWC showed that Mr. McAlpin walked down the stairs while saying “Ow.” Trooper Strickland fired his Taser a second time. Mr. McAlpin, repeatedly saying “Ow,” continued down the stairs, swinging the knife and firing plastic pellets from the Airsoft gun. Trooper Strickland yelled, “Put the knife down.” As shown on Trooper Strickland’s BWC video, at 9:23:56 p.m. Trooper Wurtz holstered his pistol but kept his hand on it.

As shown on Trooper Wurtz’s BWC video (which can be viewed [HERE](#)), as Mr. McAlpin neared the bottom steps, he was holding a knife in his right hand and swinging it side to side, striking the stairwell walls, and holding the Airsoft rifle in his left hand. When he reached the second step up from the kitchen floor level, Mr. McAlpin extended his right arm through the stairwell doorway while swinging the knife. Trooper Wurtz unholstered and raised his pistol, pointing it at Mr. McAlpin. At 9:24:07 p.m. on Trooper Wurtz’s BWC video, Mr. McAlpin reached the bottom step and turned left toward Trooper Wurtz; his right arm was extended, with the knife pointing toward Trooper Wurtz. Trooper Wurtz stepped back into the doorway of the study off the kitchen and fired two shots at Mr. McAlpin, who fell to the floor of the hallway between the stairs and the study. While on the floor, Mr. McAlpin extended his right arm through the study threshold, raised his hand, swung the knife, and turned his body in way that could have been seen as an attempt to get up off the floor. Officers repeatedly yelled, “Drop the weapon.” Trooper Wurtz, now in the study, fired three shots at Mr. McAlpin. Mr. McAlpin’s right arm fell to the floor. Trooper Wurtz moved forward, stepped on the knife, and removed it from Mr.

McAlpin's hand. Troopers handcuffed Mr. McAlpin's hands behind his back, applied a tourniquet to his right arm, and called for Emergency Medical Services (EMS).

As shown on Trooper Wurtz's BWC video, EMS entered the hallway at 9:27 p.m. and started rendering medical aid. According to his death certificate, EMS providers pronounced Mr. McAlpin dead at the scene at 10:01 p.m.



Screenshot from Trooper Strickland's BWC video just as Sgt. Bukovinsky (left) and Trooper Wurtz (arm visible at right) started opening the stairway door.



Screenshot from Trooper Strickland's BWC video showing Deputy Rizzo (left) and Trooper Wurtz (right) pointing their service weapons at Mr. McAlpin (yellow box).



Screenshot from Trooper Strickland's BWC video showing the orange tip of the Airsoft gun (circled) as Mr. McAlpin approached the doorway at the bottom of the stairs. Trooper Wurtz (right) has his left hand on his holstered pistol.



Screenshot from Trooper Strickland's BWC video showing Mr. McAlpin as he neared the bottom of the stairwell, holding a knife (circled) in his right hand.

Officer Interviews

Trooper Andrew Cruz

OSI interviewed Trooper Andrew Cruz, who said he has been employed by the NYSP since September 2019. He said he was assigned to SP Ellenville on September 9, 2022, and started his shift at 5:00 p.m. Trooper Cruz said he was at the barracks when he heard a radio call seeking assistance with a mobile mental health call on a particular road, so he responded. Trooper Cruz said he spoke with a MMH counselor, NYSP Trooper Dylan Locke, and UCSO Deputy Danylo Kobyleckyj when he arrived at the McAlpin house. According to Trooper Cruz, they told him that when MMH counselors tried to talk to Mr. McAlpin, he answered the door with a “knife or long sword in his hand” and retreated to “an unknown location” in the house. Trooper Cruz told OSI he was not aware that Mr. McAlpin’s parents were returning home and that MMH had been speaking with his mother.

Trooper Cruz said he approached the house and went to a door that led into the kitchen. He said that, based on the information provided by 911 and the MMH counselors, he notified his supervisors that they had a “barricaded subject.” Trooper Cruz told OSI he was unsure whether he knew of the removal order pursuant to Section 9.45 of the Mental Hygiene Law at that time or if he became aware of it later.

Trooper Cruz said he stood on the porch and spoke to Mr. McAlpin from the threshold of the kitchen doorway. He said he did not know where Mr. McAlpin was in the house, as he had

never been there before. Trooper Cruz said he attempted to get Mr. McAlpin to talk with him about “what was going on, what his main concern was, why he was acting erratically.” Trooper Cruz said he used a variety of tactics to engage Mr. McAlpin in conversation to see what he could do to “de-escalate the situation.” Trooper Cruz told OSI he did not recall the specifics of what they said to each other, but he recalled Mr. McAlpin mentioning “the devil.” Trooper Cruz said Mr. McAlpin repeatedly told police to “go away” but never threatened them; he said Mr. McAlpin never threatened to harm himself.

Trooper Cruz said additional Troopers and members of the Sheriff’s Department arrived and entered the house, though he remained close to the kitchen door. He said once Sgt. Bukovinsky was on scene, he was “the highest-ranking member” and became the “person in charge that called the shots.” According to Trooper Cruz, Sgt. Bukovinsky said they “had to lay eyes” on Mr. McAlpin to make sure he had not harmed himself. Trooper Cruz said he did not recall whether officers discussed where to stand or how to locate Mr. McAlpin; he said he was not aware of any “operational plan.” He said Sgt. Bukovinsky, Trooper Wurtz, Trooper Strickland, Trooper Hogan, and Deputy Rizzo were near and around the stairway door when officers opened it. Trooper Cruz said, at the time, he was not certain the door opened to a stairwell, though he knew there was a second floor to the house.

According to Trooper Cruz, he could not see up the stairs because he was standing along the kitchen wall, which is confirmed by his BWC video. Trooper Cruz said there was “a commotion” when officers opened the door, and he heard a series of banging sounds; he said he thought it was gunshots initially, but Sgt. Bukovinsky said it was “BBs, Airsoft pellets.” He said Trooper Strickland deployed his Taser, but he could not see whether it connected with Mr. McAlpin. Trooper Cruz said he was still along the wall when he heard someone yell, “show me your hands,” followed by “at least two gunshots.” After shots were fired, he went outside to notify 911 and request emergency medical services (EMS). At the direction of Sgt. Bukovinsky, Trooper Cruz obtained a medical bag from his patrol car and returned to the kitchen to assist in lifesaving measures.

Trooper Elias Strickland

OSI interviewed Trooper Elias Strickland, who said he graduated from the NYSP training academy in September 2019. He said he was assigned to SP Kingston on September 9, 2022, and responded to the McAlpin house that evening based on a dispatch call. Trooper Strickland said MMH counselors, Trooper Cruz, and Deputy Kobyleckyj were on scene when he arrived and told him Mr. McAlpin was inside the house, upstairs. According to Trooper Strickland, they said they had a “commitment order,” which meant “the ultimate resolution” was that Mr. McAlpin needed to go to the hospital. When asked if police had discussions about how to carry out the order, Trooper Cruz said he did not recall any “exact conversations.”

Trooper Strickland said the conversation between Trooper Cruz and Mr. McAlpin did not seem “productive,” so he tried to talk with Mr. McAlpin. He said he initially spoke with Mr. McAlpin

from the kitchen doorway, but it was difficult to hear, so he stepped further into the house, near the corner of the kitchen and dining room. Trooper Strickland said his conversation with Mr. McAlpin did not seem to be productive, so he let Trooper Cruz “stay lead on it.” He said Mr. McAlpin was talking about “demons,” but he did not recall Mr. McAlpin making any threats against officers. When asked by OSI, Trooper Strickland acknowledged that Mr. McAlpin repeatedly asked officers to leave.

Trooper Strickland told OSI that as officers talked to Mr. McAlpin and attempted to get him to “calm down,” he suddenly stopped talking. Trooper Strickland said officers repeatedly tried to engage Mr. McAlpin in conversation, with no response. According to Trooper Strickland, he heard “loud noises, something bulky moving, being dropped.” He said officers were not sure what was going on, and Sgt. Bukovinsky decided that they “needed to get eyes on” Mr. McAlpin to “make sure he wasn’t hurting someone else or himself.” Trooper Strickland said Sgt. Bukovinsky was the highest-ranking member present and directed officers to open a door in the hallway to “clear” the room, which turned out to be a bathroom. He said officers thereafter “set up” on both sides of the second hallway door, with weapons drawn. Trooper Strickland said that based on the way the door swung, he suggested Trooper Wurtz open it; he said he did not realize the door opened to a stairway.

According to Trooper Strickland, once they opened the door, officers shouted commands at Mr. McAlpin. Trooper Strickland said he was on the left side of the doorway and holding a Taser; he said he was standing over Deputy Rizzo, who was kneeling. He said Trooper Wurtz was on the right side of the doorway. Trooper Strickland said he saw Mr. McAlpin at the top of the stairs, holding “a large knife” at “eye level.” Trooper Strickland told OSI Mr. McAlpin said something like, “So it’s going to be like this,” and began shooting from an Airsoft gun. Trooper Strickland said he was at the base of the stairs and that Mr. McAlpin was “at the landing,” which he estimated to be 12 feet away; he said they were “already within the range” at which a knife can be “extremely deadly.” Trooper Strickland said he deployed his Taser to “prevent a lethal situation,” but it was ineffective. Trooper Strickland said Mr. McAlpin started “advancing” down the stairs, “aggressively swinging the knife.” Trooper Strickland attempted to Tase Mr. McAlpin again, but he continued moving toward the officers. According to Trooper Strickland, when Mr. McAlpin got within three to four feet of him, he stepped backwards, dropped the Taser, and transitioned to his sidearm. Trooper Strickland said that as he transitioned Mr. McAlpin turned toward Trooper Wurtz, who shot him. Trooper Strickland said Trooper Wurtz fired multiple shots, though he was uncertain as to how many; he did not believe there was any pause between shots.

Trooper Strickland said he did not shoot Mr. McAlpin because by the time he “fully transitioned” to his service weapon and brought it “up on target,” Mr. McAlpin was already falling to the ground from Trooper Wurtz’s shots. Trooper Strickland also said he didn’t have “a safe shot” based on the positions of Troopers Wurtz and Hogan.

Trooper Strickland told OSI that when officers execute a mental health order, they prefer to “talk someone into going voluntarily,” but if that doesn’t work, they will arrest the person and “physically take them into custody.” When asked if he had received training about how to speak with someone in crisis, Trooper Strickland said, “Maybe a day in the academy.” When asked if officers developed a plan about how to take Mr. McAlpin into custody, Trooper Strickland said, “We hadn’t really gotten that far.” He said the “immediate plan” was for officers to “get eyes on” Mr. McAlpin to make sure he wasn’t “hurting himself, someone else, or devising some sort of ambush for us on the other side of the door.” He said officers could “formulate a plan as to how to get [Mr. McAlpin] out” once they had a visual on him.

Trooper Jason Wurtz

OSI interviewed Trooper Jason Wurtz, who said he has worked for the NYSP since March 2016. He was assigned to SP Gardiner on September 9, 2022, and started his shift at 7:00 p.m. He told OSI he heard the initial call for a “psych” emergency in the Town of Wawarsing but initially did not respond because it was out of his patrol zone. He said he reached out to the NYSP barracks in Highland, which covers the Town of Wawarsing, when he heard they had a “barricaded subject” with a weapon. Trooper Wurtz said he spoke with Trooper Locke while responding to the scene but did not know what type of crisis Mr. McAlpin was going through and did not have much background information. He said he was unaware that Troopers Harder and Peterson had been to the house earlier that day.

Trooper Wurtz said he spoke with a MMH counselor when he arrived at the scene. He said the counselor told him Mr. McAlpin had weapons but did not say Mr. McAlpin made any verbal threats. As shown on Trooper Wurtz’s BWC video, the MMH counselor told him Mr. McAlpin had a machete and an Airsoft gun.

According to Trooper Wurtz, he saw Trooper Cruz speaking to an “unseen subject,” so he went to the opposite side of the house, where he met Trooper Strickland, who was covering the hallway door and dining room area. Trooper Wurtz said Mr. McAlpin told officers to “go away” but did not make any threats to harm officers or himself. He said that as Trooper Cruz spoke with Mr. McAlpin and attempted to build a rapport, a Sheriff’s deputy brought a person, identified by his first name, who had described himself as a “family friend,” into the house. According to Trooper Wurtz, Mr. McAlpin told the friend to go away.

Trooper Wurtz said there were two closed doors in the hallway; he said the hallway was three feet wide and seven feet long. Trooper Wurtz said he did not know Mr. McAlpin’s position or if he was alone. He said Sgt. Bukovinsky gave a command to “clear” the rest of the house. He said he cleared the bathroom and moved into the “living room” (the study in the diagram above). Trooper Wurtz told OSI he did not hear Sgt. Bukovinsky give a verbal command to open the stairway door, but saw Sgt. Bukovinsky move to open the door. He said he assisted Sgt. Bukovinsky in opening the door after Trooper Strickland noted the direction the door would swing. Trooper Wurtz told OSI that Sgt. Bukovinsky did not develop a tactical plan prior

to opening to door; he said there were no orders regarding the use of lethal versus non-lethal force. Trooper Wurtz said he did not realize the door opened to a stairway.

According to Trooper Wurtz, when they opened the door, Mr. McAlpin was sitting on the second floor, feet on the stairs. Trooper Wurtz said Mr. McAlpin had a machete in his right hand and a firearm with an orange tip in his left hand, so he ordered Mr. McAlpin to drop the weapons and show his hands. Trooper Wurtz said Mr. McAlpin did not make any threats, either verbally or by gesture. He said Mr. McAlpin continued to sit, not moving or following commands, and Trooper Strickland attempted to Tase him. Trooper Wurtz said that he holstered his firearm (which is confirmed by his BWC video).

According to Trooper Wurtz, when Mr. McAlpin started walking down the stairs, Trooper Strickland Tased him again. Trooper Wurtz said he intended to go up the stairs to handcuff Mr. McAlpin, but Mr. McAlpin started swinging the machete at the Taser wires as he came down the stairs. He said when Mr. McAlpin reached the second step from the bottom, he turned to Trooper Wurtz and raised the machete; he said Mr. McAlpin was within one to one and a half feet of him. Trooper Wurtz told OSI he believed Mr. McAlpin was going to kill him with the machete, so he fired two shots and stepped back into the living room (study). He said Mr. McAlpin was on the hallway floor, still swinging the machete and attempting to get to his feet. Trooper Wurtz said he was not sure whether he had shot Mr. McAlpin because he did not see any blood or injuries. He said he fired three more shots because he still perceived Mr. McAlpin as a threat, aiming for “center mass” because he was trained to do so. After he fired the last shot, Trooper Wurtz stepped on the machete and removed it from Mr. McAlpin’s hand.

When asked about whether he had received training for mental health calls, Trooper Wurtz said he had received training during the NYSP academy in 2016 but had not received any additional training; he said he had been a police officer with local police agencies for 10 years prior to joining the NYSP.

Trooper Matthew Hogan

OSI interviewed Trooper Matthew Hogan, who said he has worked for NYSP since January 2013. He was assigned to SP Kingston on September 9, 2022, and started his shift at 7:00 p.m. He said he went to the McAlpin home that evening in response to a mental health call he heard over the radio. As shown on his BWC video (which can be viewed [HERE](#)), he arrived at the house at 9:10 p.m. and spoke with a MMH counselor, who said Mr. McAlpin was holding a knife when he answered the door. According to Trooper Hogan, the counselor told him there was a 9.45 mental health “pick-up order.” Trooper Hogan said he spoke with Trooper Cruz, who was talking with Mr. McAlpin.

According to Trooper Hogan, he went around the side of the house and entered the study from a covered porch; he said he was accompanied by Deputies Kobyleckyj and Rizzo. He said he spoke with Sgt. Bukovinsky prior to entering the house, but they did not discuss a tactical plan. Trooper Hogan said he and the deputies staged near the doorway between the study

and hallway, and that Sgt. Bukovinsky instructed them to hold that position. He said there were two doors in the hallway and that Trooper Wurtz and Deputy Rizzo cleared the room on the right, which was the bathroom. Trooper Hogan said Trooper Wurtz, who was directly in front of him, soon opened the second door. Trooper Hogan said he heard someone yell, "Taser," followed by the sound of a Taser, and heard Trooper Wurtz yell, "Drop it." Trooper Hogan said he heard a Taser deploy a second time and Mr. McAlpin say, "Ow," followed by the sound of an Airsoft gun being fired. He said his view of the stairwell was obstructed by the wall and Trooper Wurtz.

Trooper Hogan said that when Mr. McAlpin emerged from the stairway, he "charged" Trooper Wurtz with a knife, which was raised to shoulder height; he said Mr. McAlpin was "swinging [the knife] in the direction of Trooper Wurtz." When asked if he feared for Trooper Wurtz's safety, Trooper Hogan said he "feared for everyone's safety." Trooper Hogan said he saw Trooper Wurtz discharge his firearm, though he was unsure how many shots were fired. According to Trooper Hogan, after Mr. McAlpin dropped to the floor, he "kind of lunged towards Trooper Wurtz, still with the machete in his hand." In response to questioning from OSI, Trooper Hogan acknowledged that Mr. McAlpin's knees and legs were on the floor, but he said Mr. McAlpin made a gesture with his right arm, which was holding the knife. He said Trooper Wurtz removed the knife from Mr. McAlpin after shooting him. Trooper Hogan said officers thereafter rendered aid to Mr. McAlpin.

Sgt. Andrew Bukovinsky

OSI interviewed Sgt. Andrew Bukovinsky, who said he had been employed with the NYSP since January 2007 and became a sergeant in November of 2021. Sgt. Bukovinsky said he was at SP Ellenville when 911 said they were seeking assistance with a MHL 9.45 order. Sgt. Bukovinsky told OSI that Troopers Peterson and Harder fell under his command and that he was aware that they had been at the McAlpin house that afternoon. He said he did not speak with Troopers Harder or Peterson that evening and was not sure whether he had reviewed their reports prior to responding.

Sgt. Bukovinsky said that when he arrived at the McAlpin home, he was the "sergeant in charge" and "senior member" of law enforcement on scene. He said he spoke with a MMH counselor, who said she had a mental health pickup order for Mr. McAlpin. Sgt. Bukovinsky said that, after speaking with multiple troopers at the scene, it was his understanding that Mr. McAlpin was not willing to go to the hospital voluntarily. Sgt. Bukovinsky told OSI he did not contact the crisis negotiation team. When asked if that was the correct process for a "barricaded subject," he said Trooper Cruz was already speaking with Mr. McAlpin; he said he told Trooper Cruz to continue talking with Mr. McAlpin to "try to get him out." Sgt. Bukovinsky said he did not recall how long Trooper Cruz spoke with Mr. McAlpin.

Sgt. Bukovinsky said he walked around the outside of the house and checked windows for persons or movement. He said he was not exactly sure where Mr. McAlpin was, but based on

sound, he believed Mr. McAlpin was in the front corner of the house. He said he spoke with Troopers Wurtz and Hogan, who were in the study, and told them to maintain security on the interior doors that faced the hallway. Sgt. Bukovinsky told OSI he determined that officers had to “locate, and observe, and try to physically check Daniel.” When OSI asked about the stairway door, Sgt. Bukovinsky said he did not know the door would open to a stairwell; he said he “did not know where any of the doors led.” He said officers were not trying “to move in and get” Mr. McAlpin; he said they were trying to “identify where he was, get eyes on him, make sure he’s safe, and that there’s no one else in the home that he potentially could harm.”

Sgt. Bukovinsky told OSI that when officers “cleared” the bathroom, they did not know what was behind the door, “which is why we had lethal and less lethal” (referral to “lethal” guns and “less lethal” Tasers). When asked if there was any discussion about what officers intended to do if McAlpin was behind the door, Sgt. Bukovinsky said officers would have engaged “in conversation to check to see if he’s safe, to check to see if he’s harmed himself, and to check to see if there’s anyone else in the residence with him.”

Sgt. Bukovinsky said he did not have a clear view of the stairway when officers opened the stairwell door. He said he heard officers say, “Drop the knife, drop the weapon,” and heard Mr. McAlpin yell, though he was unsure what Mr. McAlpin said. Sgt. Bukovinsky said he heard the deployment of a Taser and an “arcing” sound, which made him think the Taser was not successful. He said Trooper Strickland reactivated his Taser and deployed it again. When asked if he was concerned about Mr. McAlpin being in an elevated position and the potential for him to “lock up” and fall down the stairs, Sgt. Bukovinsky said officers had already deployed a Taser by the time he saw Mr. McAlpin.

Sgt. Bukovinsky said he heard someone yell, “Drop it. Stop,” and soon saw a “big gold sword / knife.” He said Mr. McAlpin was swinging a knife as he came out of the stairwell and “charging troopers.” Sgt. Bukovinsky said he stepped back into the kitchen when he saw the knife and heard shots “simultaneously, very fast.” He said he did not see Trooper Wurtz shoot, as he was turned around and facing the kitchen. (In a written statement provided to NYSP on September 10, 2022, Sgt. Bukovinsky said Trooper Wurtz told him that he had fired the shots, at which point he checked Trooper Wurtz and walked away with him.)

OSI asked Sgt. Bukovinsky whether officers could have waited longer to confront Mr. McAlpin and if there were other tools available to NYSP, such as drones. Sgt. Bukovinsky acknowledged having access to drones but said there “would not have been a timely response” or a “rapid deployment.” (In his written statement to NYSP, Sgt. Bukovinsky said “approximately 10 minutes” passed from the time he “arrived on the scene” to the time he left with Trooper Wurtz after the shooting. BWC videos showed that six minutes passed from when Sgt. Bukovinsky arrived at the porch to when Trooper Wurtz shot Mr. McAlpin.)

Deputy Michael Rizzo

OSI interviewed Deputy Michael Rizzo, who said he has been employed by the Ulster County Sheriff's Office since 2015. Deputy Rizzo said he was working the evening of September 9, 2022, and heard a radio call to assist MMH with a "subject barricaded in his residence." Deputy Rizzo said control said the subject had a "sword or dagger of some sort" and an Airsoft gun.

According to Deputy Rizzo's BWC (which can be viewed [HERE](#)), other officers were present when he arrived at the McAlpin house at 9:16 p.m. Deputy Rizzo told OSI he grabbed his long rifle, which was an AR-15, because he had heard Mr. McAlpin was "barricaded" and "had weapons on him." Deputy Rizzo said that when he reached the house Deputy Kobyleckyj told him the subject was "barricaded" and "believed to be in his bedroom." Deputy Rizzo said officers advised him there was a Mental Hygiene "9.45 pick-up order" and that Mr. McAlpin had displayed weapons to the MMH counselors before going back inside the house. Deputy Rizzo said he and other officers, including Sgt. Bukovinsky, went to the side of the house and entered. He said Trooper Cruz was talking with Mr. McAlpin and pointed to the "first door" in the hallway, which he understood to mean that Trooper Cruz believed Mr. McAlpin was behind that door. Deputy Rizzo said he and other officers opened the other hallway door and "cleared" the bathroom first.

Deputy Rizzo said that when officers opened the "first door" he moved to the left side, closer to the kitchen, because the door swung the other way. Deputy Rizzo said he did not know there were stairs behind the door they opened it but saw the steps right away; he said Mr. McAlpin was near the top of the stairs. Deputy Rizzo said he dropped to one knee and pointed his rifle at Mr. McAlpin. Deputy Rizzo said he took a step back to assess after Mr. McAlpin fired the Airsoft gun; he said he was struck by pellets but not injured. He said Mr. McAlpin began swinging his "sword" or "dagger" at "anybody in his personal space, in that space that he could reach," so he placed his arm in front of a trooper and took a "side-step back" into the kitchen. Deputy Rizzo said he was in the kitchen, near a dish cabinet, when he heard gunshots. He said he was struck by broken glass from the dish cabinet, which shared a wall with the stairway; he said he had small lacerations on his arm with embedded glass. Deputy Rizzo told OSI he did not shoot at Mr. McAlpin, in part because he was using a high-powered weapon and there was a chance of crossfire.

Evidence Collection / Scene Documentation

As shown on Trooper Wurtz's BWC video, after the shooting he picked up the knife that Mr. McAlpin had been holding and carried it outside; he handed the knife to an unidentified trooper. According to Trooper Hogan's BWC video, at 9:32 p.m., he took the knife from the unidentified trooper, placed it in an evidence bag, and secured it in the trunk of a NYSP patrol car. According to a NYSP Forensic Identification Unit (FIU) report, Senior Investigator Paul Langowsky removed the knife from the patrol car, secured it as evidence, and took photos of

it. OSI has reviewed those photos, which showed the knife was 20 inches long, including the handle, and had a 13-inch blade.



Photo of the knife Mr. McAlpin was holding when Trooper Wurtz shot him.

According to a FIU report, NYSP Investigator Adam Maillet responded to the scene at 11:30 p.m. The report says Sgt. Bukovinsky secured Trooper Wurtz's service weapon and spare magazines after the shooting and placed them in the trunk of a NYSP patrol car. According to the report, Sr. Inv. Langowsky inspected and photographed Trooper Wurtz's firearm, which was a Glock Model 21 .45 caliber pistol. OSI has reviewed the photos, which showed the inserted magazine contained eight rounds and that there was one round in the pistol's firing chamber. Since the weapon held a maximum of 14 rounds (13 in magazine and one in chamber), the condition of Trooper Wurtz's weapon indicated he had fired five rounds, which is consistent with his BWC video.

The FIU report says Sr. Inv. Langowsky examined the service weapons of Troopers Cruz, Hogan, Strickland, and Locke and found that each contained 14 rounds, indicating those officers had not fired any shots, which is consistent with their BWC videos.

According to the FIU report, on the morning of September 10, 2022, Inv. Maillet and other investigators processed the scene and recovered five spent .45 caliber shell casings, which were consistent with the ammunition in Trooper Wurtz's service weapon. Investigators also recovered an Airsoft gun, as well as "numerous plastic BBs."

The FIU report states investigators searched inside the stairway and observed a “ballistic impact mark” on the left wall and a bullet path through the wall and into a built-in dish cabinet in the kitchen, and out through the glass door of the cabinet, which had shattered. The report says investigators found a “deformed projectile” on the kitchen floor, near the base of the cabinet. According to the report, investigators saw “additional deformations” inside the stairwell that were “consistent with impact marks from Airsoft pellets and strike marks from an edged instrument.”

Forensic Analysis of BWC Videos

At OSI’s request, the NYSP Forensic Video Multimedia Services Unit (Video Unit) analyzed scene photographs and the BWC videos from Troopers Strickland, Hogan, and Wurtz to determine the positions of Mr. McAlpin and the officers when Trooper Wurtz fired each shot. To obtain accurate measurements, the Video Unit scanned the McAlpin home with 3D lasers and overlaid images from the BWC videos on the scanned scene data.

Shot 1

In its report, the Video Unit said Trooper Wurtz’s right foot was in the threshold of the doorway between the study and hallway when he fired Shot 1, and Mr. McAlpin’s feet were on the stairs. The report said Mr. McAlpin’s body was “leaning forward,” and screenshots showed that his head and shoulders had passed the stairway’s doorway threshold into the hallway. According to the Video Unit’s report, the distance between Mr. McAlpin’s right bicep and Trooper Wurtz’s chest was at least 5.04 feet but no greater than 5.35 feet, though the report said Mr. McAlpin’s hand would have been closer to Trooper Wurtz because his arm was bent at the elbow. The report said Trooper Wurtz’s arms were closer to Mr. McAlpin than the measured distance because they were in front of him.

According to the Video Unit’s report, the following three BWC video screenshots depict the positions of Mr. McAlpin and officers when Trooper Wurtz fired Shot 1:



Frame 248150 from Trooper Strickland's BWC video, when Trooper Wurtz fired Shot 1. Mr. McAlpin's feet were between the second and first stairs above the kitchen floor level.



Frame 14912 from Trooper Wurtz's BWC video, when he fired Shot 1.



Frame 26431 from Trooper Hogan's BWC video, when Trooper Wurtz fired Shot 1.

Shot 2

In its report, the Video Unit said it could not determine the distance between Mr. McAlpin and Trooper Wurtz during Shot 2 because objects in the video obstructed the view of Trooper Wurtz's and Mr. McAlpin's feet, and because their positions were cut off by the BWC's field of view. According to the Video Unit's report, the following three BWC video screenshots depict the positions of Mr. McAlpin and officers when Trooper Wurtz fired Shot 2:



Frame 24824 from Trooper Strickland's BWC video, when Trooper Wurtz fired shot 2, showing Mr. McAlpin falling to the hallway floor.



Frame 14922 from Trooper Wurtz's BWC video, when he fired Shot 2.



Frame 26431 from Trooper Hogan's BWC video, when Trooper Wurtz fired Shot 2.

Shot 3

In its report, the Video Unit said Mr. McAlpin was lying on the floor, with his chest on a red tile in the hallway, when Trooper Wurtz fired Shot 3. Trooper Wurtz's BWC video showed he was standing in the study. According to the report, the distance between Mr. McAlpin's chest and Trooper Wurtz's right foot during Shot 3 was at least 4.31 feet but no greater than 4.62 feet. The report said Mr. McAlpin's arm was within the doorway of the study with his right hand in line with the door frame. The report said that since Trooper Wurtz's arms were in front of his chest, their arms were closer than the measured distance. According to the Video Unit's report, the following three BWC video screenshots depict the positions of Mr. McAlpin and officers when Trooper Wurtz fired Shot 3:



Frame 24894 from Trooper Strickland's BWC video, when Trooper Wurtz fired Shot 3, showing Mr. McAlpin lying on the floor of the hallway at the bottom of the stairs.



Frame 14992 from Trooper Wurtz's BWC video, when he fired Shot 3, showing that Trooper Wurtz was in the study and showing the staircase in the background.



Frame 26510 from Trooper Hogan's BWC video, when Trooper Wurtz fired Shot 3, showing Trooper Wurtz to the left and the banister of the staircase in the upper center.

Shot 4

In its report, the Video Unit referenced Trooper Hogan's BWC video and said Trooper Wurtz's foot placement was the same as Shot 3. The report said Mr. McAlpin's right hand was touching the area of a protruding wall, just inside the study, when Trooper Wurtz fired the fourth shot. According to the report, the distance between the portion of the wall where Mr. McAlpin's hand made contact and Trooper Wurtz's right foot was at least 2.62 feet but no greater than 2.93 feet. The report said that since the knife in Mr. McAlpin's hand was touching the floor, it would have been closer to Trooper Wurtz than the measured distance. According to the Video Unit's report, the following three BWC video screenshots depict the positions of Mr. McAlpin and officers when Trooper Wurtz fired Shot 4:



Frame 24904 from Trooper Strickland's BWC video, when Trooper Wurtz fired Shot 4.



Frame 150003 from Trooper Wurtz's BWC video, when he fired Shot 4.



Frame 26520 from Trooper Hogan's BWC video, when Trooper Wurtz fired Shot 4, showing Mr. McAlpin's right arm in the study and the knife in his hand.

Shot 5

In its report, the Video Unit referenced Trooper Hogan's BWC video and said Trooper Wurtz's foot placement had changed as he traveled backwards; the report said the back heel of Trooper Wurtz's right foot was at least 4.043 feet but no greater than 4.267 feet from the threshold of the door, which was in line with Mr. McAlpin's chest. The report said Mr. McAlpin's right arm was straight and extended when Trooper Wurtz fired Shot 5. According to the report, Mr. McAlpin's arm dropped after the shot, and the knife made a "notch" on the study's hardwood floor, which could be seen on Trooper Hogan's BWC video. According to the Video Unit report, the distance from Trooper Wurtz's right heel to the "notch" on the floor was between 1.8 and 2.1 feet. According to the Video Unit's report, the following three BWC video screenshots depict the positions of Mr. McAlpin and officers when Trooper Wurtz fired Shot 5:



Frame 24913 from Trooper Strickland's BWC video, when Trooper Wurtz fired Shot 5.



Frame 15011 from Trooper Wurtz's BWC video, when he fired Shot 5.



Frame 26529 from Trooper Hogan's BWC video, when Trooper Wurtz fired Shot 5, showing Mr. McAlpin's right arm in the study and the knife in his hand.

According to the NYSP Video Unit's report, Trooper Wurtz fired Shot 1 at Frame 14912 on his BWC video and Shot 5 at Frame 15011, a difference of 99 frames. Since the BWC recorded video at a rate of 30 frames per second, the report indicated 3.3 seconds elapsed between the first and fifth shot. The report showed Trooper Wurtz fired Shot 2 at Frame 14922 on his BWC video and Shot 3 at Frame 14992, a difference of 70 frames, which indicates 2.33 seconds elapsed between those shots.

Autopsy

On September 13, 2022, Dr. Charles Catanese, a forensic pathologist, performed an autopsy. According to the autopsy report, Dr. Catanese determined that the cause of Mr. McAlpin's death was "penetrating gunshot wounds to the trunk" and deemed the manner of death to be Homicide. The autopsy report said Mr. McAlpin sustained four gunshot wounds, which Dr. Catanese labeled A, B, C, and D for descriptive purposes; he said "no sequence" was implied:

- A. Penetrating Gunshot Wound to the Superior Chest: The entrance wound was to the upper left chest, $\frac{3}{4}$ " left of the midline. The bullet traveled front to back, left to right, and downward, passing through the left ventricle of the heart and inferior vena cava. The ME retrieved the bullet from the abdomen.
- B. Penetrating Gunshot Wound to the Lateral Chest: The entrance wound was to the lateral right chest, $5\frac{3}{4}$ " to the right of the midline. The bullet traveled front to back,

right to left, and downward, perforating the liver, lungs, large intestines, and stomach. The ME retrieved the bullet from the left flank.

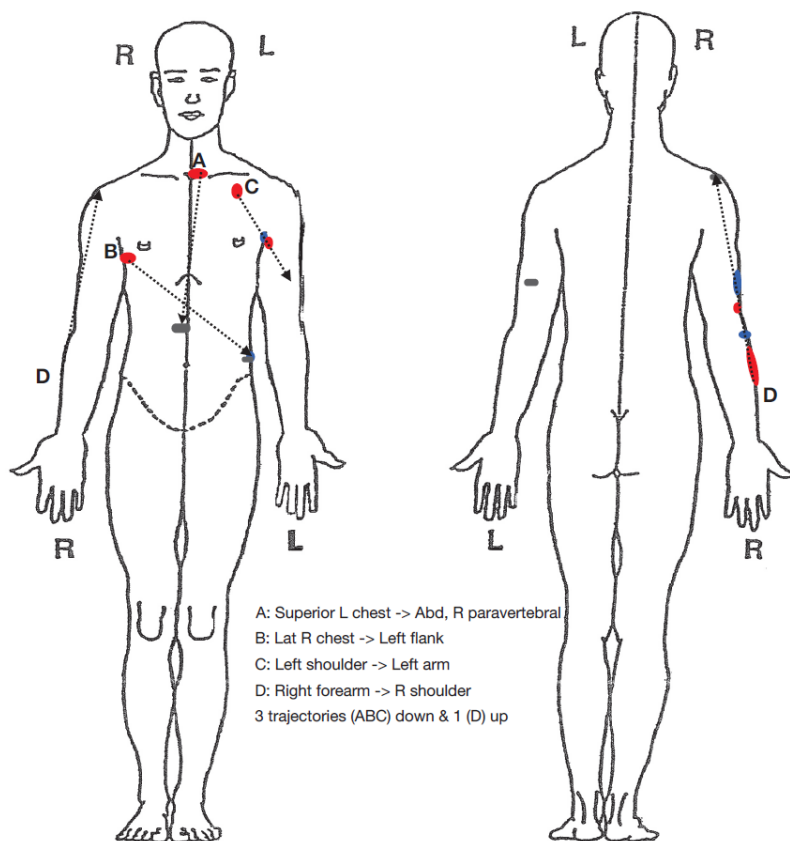
- C. Penetrating (Exit / Re-entry) Gunshot Wound to the Left Shoulder: The entrance wound was at the top of the left shoulder, 6" to the left of the midline. The bullet traveled front to back, right to left, and downward, passing through the muscles of the arm. The ME retrieved the bullet from the left arm.
- D. Tangential Penetrating (Exit / Re-entry) Gunshot Wound to the Right Forearm: The entrance wound was to the right forearm. The bullet traveled front to back, right to left, and upward, passing through tissue and across the surface of the arm. The ME retrieved the bullet from the top of the right shoulder.

As part of the autopsy, Dr. Catanese sent a blood sample to NMS Labs for toxicology testing, and the toxicology report said it was positive for Delta-9 THC, the psychoactive component of cannabis, and the metabolites Delta-9 Carboxy TXH and 11-Hydroxy Delta-9 THC.

Expert Forensic Pathologist

OSI retained Dr. Judy Melinek, a forensic pathologist, as an expert witness to determine the sequence of the gunshot wounds and whether Mr. McAlpin could have survived those wounds. Dr. Melinek graduated from University of California Los Angeles (UCLA) School of Medicine in 1996. She became a licensed physician and surgeon in California in 1998 and became a licensed physician in New York in 2001. She has been board certified in Anatomic and Clinical Pathology since 2001 and board certified in Forensic Pathology since 2002. Between 2001 and 2003 Dr. Melinek was a clinical instructor for forensic medicine at New York University (NYU) and a forensic neuropathology fellow. Between 2003 and 2004 she served as an Assistant Medical Examiner / Coroner in the Santa Clara County Office of Medical Examiner / Coroner. She served as an Assistant Medical Examiner in the San Francisco Office of the Chief Medical Examiner between 2004 and 2013. From 2013 to 2020 she worked with the Alameda County Coroner's Office as a contract forensic pathologist. Since 2020 she has served as a forensic pathologist at the Wellington District Health Board (New Zealand). Dr. Melinek has testified as an expert in forensic pathology in civil and criminal cases.

After she was retained by OSI, Dr. Melinek reviewed the death certificate, the autopsy report issued by Dr. Catanese, autopsy photos and radiology, scene photos and diagrams, recorded and written witness statements, original police BWC videos, and the NYSP Video Unit's BWC Analysis Report. After analyzing the materials, Dr. Melinek issued a written report in which she said Mr. McAlpin died from multiple gunshot wounds. Dr. Melinek said there was not one single fatal wound, as the "wounds worked in concert to lead to death via exsanguination (blood loss)."



This image, created by Dr. Melinek, shows the location of gunshot wounds, labeled A-D.

In her report, Dr. Melinek said she established the “most likely sequence of wounds” by evaluating the bullet wound trajectories recorded at autopsy “in the context of the recorded testimony and video from police body-worn cameras.” Based on the video evidence, Dr. Melinek opined that the first shot missed Mr. McAlpin but struck the stairway wall and perforated the kitchen cabinet. She said the second shot struck Mr. McAlpin in the upper left chest (wound A) as he was descending the last stair, which resulted in the “sharply downward trajectory.” She said the third and fourth shots struck Mr. McAlpin in the lateral right chest (wound B) and left shoulder (wound C), though she could not determine the exact sequence. Dr. Melinek said the fifth and final shot struck Mr. McAlpin in the right arm (wound D), as he was on the floor “reaching toward the shooting officer with a machete in his right hand.”

Dr. Melinek said that based upon the proximity of the closest health care facility and standard EMS response times, the wounds to Mr. McAlpin’s left shoulder and right forearm “could have been survivable” with prompt medical attention. Dr. Melinek said the two wounds to Mr. McAlpin’s chest, which traversed his heart, inferior vena cava, lungs, and liver, were “much more likely to cause death sooner.” She said that since gunshot wound A, which traversed the heart, was the first in the likely sequence of shots, it was “unlikely that he would have survived even if he had not been wounded by the other three shots.”

OSI shared Dr. Melinek's report and the NYSP Video Unit's report with Dr. Catanese, who performed the autopsy. On April 10, 2025, Dr. Catanese told OSI he agreed with Dr. Melinek's opinion and believes Mr. McAlpin was first struck in upper left chest; he also agreed that Mr. McAlpin would not have been able to survive this injury, even with immediate medical attention.

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, not an affirmative defense, Penal Law Section (PL) 35.00. 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, OSI concludes that a prosecutor would be unable to disprove beyond a reasonable doubt that the use of deadly physical force by the shooting officer was justified.

In this case, the shooting officer used deadly physical force. Under PL 10.00(1) deadly physical force is "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." Under PL 10.00(10) serious physical injury is "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."

PL 35.15 is the basic self-defense provision, under which the use of deadly physical force is justified if the actor reasonably believes the other person is using or is about to use deadly physical force. The provision reads in relevant part as follows:

"1. A person may, subject to the provisions of subdivision two, use 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....

"2. A person may not use deadly physical force upon another person under circumstances specified in subdivision one unless (a) The actor reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not use deadly physical force if he or she knows that with complete personal safety, to oneself and others he or she may avoid the necessity of so doing by retreating...."

Police officers attempting to make an arrest for an offense are not obligated to retreat before using deadly physical force in response to deadly physical force being used against themselves or another, even if they know they can do so in complete safety to themselves or

others. PL 35.30 and PL 35.15(2)(a)(ii). OSI recognizes that officers initially responded to Mr. McAlpin's house to take him into custody under an MHL 9.45 order, which is different from making an arrest for an offense. However, once Mr. McAlpin exited the stairs and moved toward Trooper Wurtz while swinging a knife, officers had probable cause to arrest him for an offense, such as Menacing a Police Officer, PL 120.18. Since officers could have properly arrested Mr. McAlpin for an offense, Trooper Wurtz was not required to retreat if he reasonably believed he had to use deadly physical force to defend himself against Mr. McAlpin's use or imminent use of deadly physical force.

In *People v Jairo Castillo*, 42 NY3d 628, 631 (2024), the New York Court of Appeals stated:

"The defense of justification provides that a person may use physical force to defend himself against an assailant's 'imminent use of unlawful physical force,' but does not authorize the use of 'deadly physical force . . . unless . . . [the person] reasonably believes that [the assailant] . . . is using or about to use deadly physical force' (Penal Law § 35.15). When considering a request for a justification charge, courts examine the evidence in the light most favorable to the defendant, and must provide the instruction if there is any reasonable view of the evidence that defendant was justified in his actions (see *People v Heiserman*, 39 NY3d 988, 990 [2022]). Justification has both a subjective requirement, that 'defendant . . . actually believed . . . he [was] . . . threatened with the imminent use of deadly physical force,' and an objective requirement, that defendant's 'reactions were . . . those of a reasonable man acting in self-defense' (*People v Collice*, 41 NY2d 906, 907 [1977])." (Ellipses and square brackets in original.)

Therefore, before using deadly force in self-defense, a person must honestly and in good faith believe that deadly force was about to be used against them or another and that deadly force was necessary for self-defense, and a reasonable person under the same circumstances could have believed the same.

The investigation showed that the officers who came to Mr. McAlpin's house on the evening of September 9, 2022, initially attempted to persuade him to come out of the house voluntarily, from the time Deputy Kobyleckyj arrived and began to talk to Mr. McAlpin at 8:55 p.m. to the time Sergeant Bukovinsky gave the direction to open the stairway door at 9:23 p.m.

As the BWC videos showed, officers did not immediately use deadly physical force when they opened the door and saw Mr. McAlpin armed with a knife and an Airsoft gun. Trooper Strickland Tased Mr. McAlpin, and officers repeatedly told him to put down his weapons as he advanced down the stairs. Mr. McAlpin did not follow officers' commands; he continued swinging the knife, which had a 13-inch blade, striking the stairway walls with enough force to make impact marks. Though Trooper Wurtz pointed his service weapon at Mr. McAlpin

immediately after opening the stairway door, he holstered it as Mr. McAlpin descended the stairs. When Mr. McAlpin neared the last step, still swinging the knife, Trooper Wurtz removed his pistol from its holster. When Mr. McAlpin neared the bottom of the stairway, he was holding the knife in his right hand and turned toward Trooper Wurtz, who was five feet away. Trooper Wurtz quickly raised his pistol and fired two shots in rapid succession.

Trooper Wurtz told OSI he fired the first two shots because he believed Mr. McAlpin was going to kill him with the knife. Based Mr. McAlpin's proximity to Trooper Wurtz in the hallway, the size of the knife, and the way Mr. McAlpin was swinging it, OSI concludes a prosecutor would not be able to disprove that it was reasonable for Trooper Wurtz to use deadly physical force when he fired Shots 1 and 2.

The expert retained by OSI has opined that the first shot missed Mr. McAlpin but that Shot 2 struck him in the upper left chest, causing an injury that was not survivable. Nevertheless, since Mr. McAlpin was alive when Trooper Wurtz fired Shots 3, 4, and 5, OSI must evaluate each shot fired and determine whether his continued use of deadly physical force was justified under the law. *People v Del-Debbio*, 244 AD2d 195 (1st Dept 1997), *lv den* 91 NY2d 925 (1998); *People v Colecchia*, 251 AD2d 5 (1st Dept), *lv den* 92 NY2d 895 (1998).

New York courts have consistently recognized that even if a defendant is justified in using deadly physical force at the beginning of a single, ongoing encounter with an assailant, their right to use that force terminates at the point they can no longer reasonably believe the assailant poses a threat. *People v Holmes*, 37 AD3d 1042 (4th Dept), *lv den* 8 NY3d 986 (2007); *Del-Debbio*, 244 AD2d 195; *People v Reeder*, 209 AD2d 551, (2nd Dept 1994), *lv den* 85 NY2d 913 (1995); *People v Cox*, 203 AD2d 7, (1st Dept), *lv den* 83 NY2d 1003 (1994). In *Reeder*, the defendant, who was convicted of Manslaughter in the First Degree, argued the People failed to disprove his justification defense beyond a reasonable doubt because the victim threatened him with what appeared to be a gun. Summarizing the trial testimony, the court said the defendant, "after firing one shot which struck the victim in the shoulder, shot the victim a second time as he was falling, and three more times as he lay immobile on the ground." On the ground, the victim did not possess a gun and was incapacitated from his injuries. In affirming the conviction, the court said the jury could have concluded that defendant's actions constituted an excessive use of deadly force and that it was the excessive force that caused the victim's death. *Reeder*, 209 AD2d at 551-52.

In *Holmes*, the defendant, who was convicted of Manslaughter in the First Degree, argued the People failed to disprove his justification defense beyond a reasonable doubt. Summarizing the trial testimony, the court said the record established the defendant shot the victim three times, "twice after wrestling the gun away from during a struggle." The court said all three gunshots were "either debilitating or deadly," and one gunshot was to the back of the victim's head. In affirming the conviction, the court said the jury could reasonably have concluded that "because the defendant shot the victim more than once, his 'actions constituted an excessive

use of deadly force, and ...it was the excessive portion of the force which caused the victim's death'." *Holmes*, 37 AD3d 1042, citing *People v Reeder*, 209 AD2d at 552.

OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that Trooper Wurtz was justified in firing Shots 3, 4, and 5. Trooper Wurtz told OSI he was not sure whether the first two shots had struck Mr. McAlpin when he fired Shots 3, 4, and 5, as he did not see any blood or injuries when Mr. McAlpin landed on the floor. At OSI's request, the NYSP Video Unit examined Trooper Wurtz's BWC video to see if they could identify the chest wound prior to Trooper Wurtz firing Shots 3, 4, and 5; they said the chest wound was not visible on the video.

Unlike the victims in *Reeder* and *Holmes*, Mr. McAlpin was not immediately incapacitated after the initial shots. *Reeder*, 209 AD 2d at 551-52; *Holmes*, 37 AD3d 1042. BWC videos showed that after he fell to the floor, Mr. McAlpin moved his legs, turned to his left side, and raised his right arm. Nor had Mr. McAlpin been disarmed when Trooper Wurtz fired Shots 3, 4, and 5. He still possessed the knife, and officers repeatedly yelled, "Drop the weapon." Mr. McAlpin reached through the threshold of the study and swung the knife toward Trooper Wurtz, who at one point was only two feet away. Trooper Wurtz told OSI he fired the final three rounds because he continued to perceive Mr. McAlpin as a threat, as Mr. McAlpin was attempting to get to his feet and still swinging the knife. OSI does not believe a prosecutor would be able to disprove the reasonableness of this testimony beyond a reasonable doubt.

OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that Trooper Wurtz acted reasonably when he fired Shots 3, 4, and 5. In assessing whether Trooper Wurtz reasonably feared for his life when he fired those shots, OSI considered the totality of his conduct once he opened the stairway door. Though Mr. McAlpin possessed a knife, Trooper Wurtz did not immediately use deadly physical force but instead holstered his service weapon as Mr. McAlpin descended the stairs. Trooper Wurtz removed his pistol as Mr. McAlpin entered the hallway and fired his weapon only after Mr. McAlpin turned toward him with the knife. Rather than continuously firing, Trooper Wurtz momentarily paused after Shots 1 and 2, shouted commands, and gave Mr. McAlpin an opportunity to drop the knife. Mr. McAlpin raised the knife with his right hand and moved his body in a way that could have been perceived as an attempt to get up off the floor. Mr. McAlpin's arm did not drop until after Shot 5, at which point Trooper Wurtz stopped firing. OSI believes a prosecutor would not be able to disprove that Trooper Wurtz's actions indicated that he assessed the risk that Mr. McAlpin posed at each moment and sought to use only the force necessary to terminate what he perceived to be an imminent threat to his life.

OSI also considered the requirement under PL 35.15(2)(a), quoted above, that "Even in such case [referring to the imminent use of deadly physical force against the actor], however, the actor may not use deadly physical force if he or she knows that with complete personal safety, to oneself and others he or she may avoid the necessity of so doing by retreating...." Given the tight space at the bottom of the stairway where the shooting occurred and the closely grouped

officers in that space, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Trooper Wurtz knew he could have retreated in complete personal safety to himself and others.

As a result, OSI will not seek charges against Trooper Wurtz and closes the matter with the issuance of this report.

RECOMMENDATIONS

NYSP should have protocols for involving mental health professionals when responding to mental health calls.

Chicago, Houston, Los Angeles, and other cities have protocols and programs under which police officers and mental health professionals respond together to mental health calls. The mental health professional tries to assist the person experiencing the mental health crisis while the officer addresses safety. Other mental health response programs have been piloted in the United States, such as Crisis Assistance Helping out on the Streets (CAHOOTS), under which a two-person team of a medic and a crisis team worker responds to nonviolent mental health crises, relying on de-escalation and harm reduction techniques. In the current case, had the officers on the scene used a team approach the risk of a tragic result might have been reduced.

When Troopers Harder and Peterson went to the McAlpin house at 4:36 p.m., Mr. McAlpin did not possess any weapons and said he had no intention of harming himself or others. The troopers determined they did not have a sufficient basis to take him into custody for a mental health evaluation pursuant to Section 9.41 of the Mental Hygiene Law. Since Mr. McAlpin was experiencing a mental health crisis, Trooper Harder contacted MMH and arranged to have counselors go to the house and speak with him. Mr. McAlpin agreed to speak with MMH.

During the nearly 90 minutes the troopers were with Mr. McAlpin, Trooper Harder developed a rapport with him and had a lengthy conversation with him. Though Mr. McAlpin made paranoid and delusional statements, he was actively talking. When the troopers left at 6:32 p.m. Mr. McAlpin was outside, on the porch, and unarmed. When MMH counselors arrived at 8:16 p.m. Mr. McAlpin was inside the house, holding a knife, and unwilling to talk. Since the behavior of a person experiencing a mental health crisis may dramatically change in a short period, OSI recommends that, when police contact MMH to request mental health intervention, officers should stay with the subject, continue speaking with them, and maintain a safe environment. When MMH arrives, officers should remain present to address safety issues that may arise.

When troopers and sheriff's deputies arrived later in the day to execute the MHL 9.45 order, the MMH professionals were still at the house, but the troopers and deputies did not get them directly engaged with Mr. McAlpin. OSI recognizes Mr. McAlpin's possession of a knife created a potential for violence, but officers brought a family friend with no known mental health

training into the house to (briefly) engage Mr. McAlpin in conversation. OSI recommends that when it is safe and practicable to do so, police should have mental health professionals speak directly with the subject, particularly when the subject is reluctant to talk with officers or others.

If it is not safe for mental health professionals to be present, police should seek alternate ways to involve them, such as having them talk with the subject on speakerphone, which would allow officers to monitor the conversation. Since Mr. McAlpin was upstairs and behind a closed door, conversation by speakerphone might not have been practical; however, when Mr. McAlpin became agitated and repeatedly told the troopers and deputies to leave, officers could have consulted MMH about how best to engage with Mr. McAlpin and de-escalate the situation.

These recommendations are consistent with the December 19, 2024 report issued by the Daniel's Law Task Force (which may be viewed [HERE](#)), which recommended that New York "establish a defined response protocol for a behavioral health crisis." The Task Force provided specific criteria for such a program, including that "a call regarding mental health...should receive a behavioral health response." The Task Force said behavioral response teams should be comprised of mental health professionals and mental health workers (to include peers) and/or an EMS team with mental health workers (to include peers), with law enforcement only being deployed when there is a "threat of violence."

These recommendation are also consistent with the recently amended New York Executive Law (Subdivision 8 of Section 840), which requires the Municipal Police Training Council (MPTC), in consultation with the Office of Mental Health (OMH), to develop, maintain, and disseminate written policies and procedures regarding the handling of situations involving individuals who appear to be mentally ill and are conducting themselves in a manner which is likely to result in serious harm to the person or others. The statute says training and education "shall focus on appropriate recognition and response techniques for handling emergency situations involving individuals with mental illness," including, but not limited to, how to de-escalate the situation "while minimizing the use of force and identifying alternatives to the criminal justice system."

NYSP should have protocols for sharing information before responding to mental health calls.

When Troopers Harder and Peterson left the McAlpin house, they were past their scheduled shifts; they returned to the barracks, wrote incident reports, and signed off duty. They did not speak with a supervisor or any troopers coming on shift. Sgt. Bukovinsky told OSI he was aware that Troopers Harder and Peterson were at the McAlpin house earlier but was uncertain whether he had reviewed their reports prior to going to the house. OSI recommends police agencies develop policies and protocols to timely document and share information about mental health complaints within their agency; officers who respond to mental health calls should be able to readily access information about prior calls involving the same subject.

NYSP should enhance training to increase adherence to its Crisis Negotiation policy.

NYSP Policy 37P, titled “Crisis Negotiation Program,” took effect in November 2016 and governs how NYSP members should respond to a barricaded subject or someone threatening suicide. The policy says the safety of police officers, the subject, and civilians is “the most important consideration” and cautions that “reckless and imprudent actions must be avoided.” The policy describes *time* as “a de-escalation tool” that can be employed through negotiation and “often allows a situation to be concluded without violence.”

Shortly after arriving at the house at 8:55 p.m., Trooper Cruz radioed that Mr. McAlpin was a barricaded subject and began talking with him. Sgt. Bukovinsky arrived at 9:18 p.m. Because he was the highest-ranking NYSP member present, he was scene commander. Only six minutes after Sgt. Bukovinsky assumed command, Trooper Wurtz shot and killed Mr. McAlpin.

NYSP Policy 37P says once members determine they have a barricaded subject, they should consider the situation a “Serious Emergency” and notify the Zone Commander Captain, the Bureau of Criminal Investigations (BCI) Captain, and the Crisis Negotiation Team, all of whom are supposed to respond to the scene. The policy describes crisis negotiators as a “critical element,” noting they can help officers “control the most important element – time.” The policy says responding members may initiate contact and talk with the subject to delay any violent act but states, “It is desirable to have a trained Crisis Negotiator assume the negotiator role from untrained personnel who may have initially responded and made first contact.” The policy directs members to “attempt to delay any action until a crisis negotiator arrives, if one is available.”

Sgt. Bukovinsky never requested a trained crisis negotiator, though he did encourage Trooper Cruz to continue speaking with Mr. McAlpin. Sgt. Bukovinsky decided they needed to “get eyes on” Mr. McAlpin and determine his location. When OSI asked Sgt. Bukovinsky whether he could have waited longer to confront Mr. McAlpin or potentially use drones to locate him, he said there “would not have been a timely response” or a “rapid deployment.” His response suggests he was focused on ending the situation quickly.

NYSP Policy 37P says officers should try to keep a barricaded or suicidal subject confined “to the smallest possible area” by establishing a containment perimeter. The policy says officers should continue talking with the subject and give them “time to reconsider.” If the subject ultimately is unwilling to abandon their plan for suicide, the policy says officers may attempt to seize the person but should “try not to force his or her hand.” The policy says officers should “try to slowly move closer to the person” while exercising caution. In this case, officers had no information that Mr. McAlpin was suicidal, and he repeatedly said he had no intention of harming himself or others.

Even if Sgt. Bukovinsky believed Mr. McAlpin posed a risk to himself or others, he did not talk with officers and develop a tactical plan before directing a search of the house; there was no discussion about what officers should do if they encountered Mr. McAlpin. Though NYSP policy

emphasizes the importance of communication, Sgt. Bukovinsky did not designate anyone to take the lead in talking with Mr. McAlpin when they located him. When officers opened the stairway door, they immediately pointed weapons at Mr. McAlpin and began yelling commands; within seconds, they Tased him.

Though officers knew Mr. McAlpin was on the second floor, Sgt. Bukovinsky said he did not know the hallway door opened to a stairwell; other officers said they were similarly unaware. Law enforcement could have better understood the layout of the house if they had called Mr. McAlpin's mother, who was available by phone. If officers had delayed their search, they potentially could have spoken to Mr. McAlpin's mother in person, as she had told MMH she would be home at 11:00 p.m. Once home, perhaps Mr. McAlpin's mother could have convinced her son to voluntarily come out.

Sgt. Bukovinsky and responding officers should have sought to "slow down the clock," giving them time to obtain and share the clearest possible information from Mr. McAlpin's parents about whether he had access to real firearms or whether other persons were in the house; time to await the arrival of additional resources, such as a trained negotiator to speak to Mr. McAlpin in an attempt to de-escalate the situation; and time to formulate a plan for apprehending Mr. McAlpin – possibly without bloodshed.

OAG recognizes hindsight is always clear and that crisis situations are dynamic and often difficult to manage – even for specially trained officers. Moreover, even a perfect tactical response in a dangerous and volatile situation may not end with a good result. However, the NYSP should improve its emergency response training so that all members are trained to slow down the clock, await the arrival of a crisis negotiator or specialized officers, and develop a plan whenever possible. Without such an approach, a situation may rapidly deteriorate, as it did in Mr. McAlpin's case, with tragic results.

Dated: November 7, 2025