



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

Office of Special Investigation

April 1, 2026

# Report on the Investigation into the Death of James Cushman

## 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 or peace officer. When 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 James Cushman, who was shot and killed on August 30, 2024, by Town of Orchard Park Police Department (OPPD) Officers Thomas Fowler and Tanner Till.

On August 30, 2024, at 8:52 p.m., Mr. Cushman called 911 to report a disturbance at his house: he said his mother had a gun and he was armed with a knife to defend himself. As soon as OPPD Officer Fowler arrived at the house and got out of his patrol car, Mr. Cushman charged at him with a knife. Officer Fowler yelled repeatedly, "Drop the knife," and backed up. Mr. Cushman stopped abruptly, walked back to his house, and said, "You should have shot me." Officer Fowler repeated his commands to drop the knife several more times, and Mr. Cushman eventually put it down. Officer Till arrived next and ordered Mr. Cushman's mother to go inside the house. Mr. Cushman grabbed the knife and charged at Officer Fowler a second time. Both officers told OSI they backed up as they repeatedly commanded Mr. Cushman to drop the knife. As before, Mr. Cushman stopped short of Officer Fowler, walked back toward his house, and said, "Why didn't you do it?" Moments later, Officer Kowalski's patrol car turned onto the street, and Mr. Cushman charged a third time. The officers told OSI the third charge was faster and less hesitant than before, and Officer Fowler yelled repeatedly, "Drop the knife! Drop the knife!" They said when Mr. Cushman was less than 10 feet away from Officer Fowler, running toward him with a knife and not appearing to slow down or stop, the officers shot Mr. Cushman. Officer Fowler fired six rounds and Officer Till fired two. Mr. Cushman was struck seven times, in the chest, upper back/shoulder, and arms. The officers said Mr. Cushman dropped the knife, they detained him, and with the assistance of additional responding officers and a Good Samaritan (OSI does not publish the names of civilian witnesses), began rendering aid. Emergency medical personnel arrived soon, took over care, and transported Mr. Cushman to the hospital. Mr. Cushman was pronounced dead at 9:47 p.m.

Mr. Cushman was 31 years old when he died.

Mr. Cushman's interactions with the OPPD officers were recorded by a neighbor's doorbell camera and the 911 call line, which remained open during the incident. Investigators collected a knife from the middle of the street, near the officers' bullet casings.

Having thoroughly investigated the matter and analyzed the law, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that the use of deadly physical force against Mr. Cushman by Officer Fowler and Officer Till was justified under New York law and will not seek charges in this case.

When this incident occurred, OPPD did not equip its officers with body-worn cameras (BWCs). In June 2025, OPPD informed OSI that its officers are now equipped with and trained in the use of BWCs. As set forth in the final section of this report, OSI recommends that the Legislature pass, and that the Governor sign, a law requiring all police departments in the state to equip their officers with BWCs, including providing state funding for that purpose to any police department that cannot otherwise afford the expense.

## FACTS

### 911 Call

According to the recorded 911 call, on August 30, 2024, at 8:52 p.m., Mr. Cushman called 911 to report an issue at his house on Hawthorne Drive in Orchard Park. Mr. Cushman said someone was on the side of his house with a gun, and he saw a laser on his head; he also said it might have been his mother. Mr. Cushman said he was out front, walking on the grass, armed with a knife, and his mom was on the porch. The dispatcher told Mr. Cushman to remain on the phone until “the guys get there.” Mr. Cushman said he was sketched out, and if the Orchard Park Police came to his house, he was probably going to lose his mind.

Soon after, Mr. Cushman yelled, “Fuck.” The dispatcher asked, “What’s going on James?” and Mr. Cushman said, “I’m going out man.” The dispatcher asked, “What do you mean you’re going out?” Mr. Cushman said, “I’m going out with a bang.”

The line remained open and recording as Mr. Cushman interacted with the responding officers. The call recorded the muffled sounds of movement and voices, then Mr. Cushman said, “You should have done it dude.” An officer yelled, “Drop the knife,” and Mr. Cushman responded, “I can’t let you handcuff me,” and “You should have shot me dude. You should have fucking shot me bro. Why didn’t you shoot me?” After additional muffled conversation, Mr. Cushman said, “No, you’re not...you’re just going to cuff me up and do some weird shit.” With some prompting from his mother, Mr. Cushman agreed to set the knife down. The call recorded more muffled sounds of movement, then Mr. Cushman said, “Fuck. Why wouldn’t you guys do it?” His mother yelled in the background, “James, please” and the officers yelled, “Ma’am get in the house.” Mr. Cushman responded, “I’m not getting on the fucking ground.” The dispatcher said, “This is going to get ugly.” Mr. Cushman said again, “I’m not getting on the...” before radio interference garbled the recording. When the interference stopped, officers were recorded yelling, “Get on the ground,” and “Don’t move.” After additional radio interference, the officers were recorded yelling, “Get on the ground,” and “No knife. No knife,” before the line went dead.

### Video

Mr. Cushman lived on Hawthorne Drive in Orchard Park with his mother. N1 and N2, Mr. Cushman’s neighbors, also lived on Hawthorne Drive and had a doorbell camera facing west, toward the street.



Map showing Mr. Cushman's house on Hawthorne Drive (red marker), and N1/N2's doorbell camera on Hawthorne Drive (camera icon), with its viewing angle.

N1 and N2's doorbell camera video is available here: [Original Doorbell Camera Video](#). A summary of the video follows (references are to the elapsed time of the Original Doorbell Camera Video):

0:51 – Officer Fowler’s patrol car arrived from the left, approached Mr. Cushman’s house, which was just off screen to the right. It stopped to the left of Mr. Cushman’s driveway, with its overhead lights illuminated.

1:04 – Mr. Cushman yelled loudly, then ran from the right side of the screen toward the patrol car. Officer Fowler yelled, “Drop, drop, drop, drop the knife. Drop the knife,” and backpedaled away from his car with his gun drawn and up.

1:11 – Mr. Cushman advanced past the rear of Office Fowler’s patrol car, then turned around and walked back toward his house. As he walked away, Mr. Cushman said, “You should have done it.”

1:21 – Officer Fowler yelled again, “Drop the knife.” Mr. Cushman said, “I can’t let you handcuff me.”

1:30 – Mr. Cushman said, “You should have shot me. Should have fucking shot me. Why didn’t you shoot me?” as he walked toward the right side of the screen, and off camera. Officer Fowler said multiple times, “Drop the knife.”

1:46 – Officer Fowler again said, “Drop the knife.” There was unintelligible talking in the background.

1:55 – Officer Till’s patrol car arrived from the left and stopped to the left of Mr. Cushman’s driveway. It was positioned between Officer Fowler’s car and the camera.

2:11 – Officer Fowler and Officer Till (speaking to Mr. Cushman’s mother) said, “Ma’am back away,” “Back up,” “Get back in the house,” and “Get in the house.”

2:18 – Mr. Cushman yelled loudly, then ran from the right side of the screen toward the officers. The officers yelled, “Drop the knife.” Mr. Cushman stopped abruptly as he approached the street.

2:23 – Mr. Cushman yelled, “Why wouldn’t you guys do it?” as he walked back toward his house. His mother yelled, “James, please.”

2:29 – Officer Fowler said, “Ma’am get in the house.”

2:34 – Officer Till said, “James get on the ground. Get on the ground.” Officer Kowalski’s patrol car appeared on the right side of the screen, heading toward Mr. Cushman’s house.

2:41 – An officer yelled, “Get on the fucking ground man.”

2:43 – Mr. Cushman ran from the right side of the screen toward Officer Fowler and Officer Till. Officer Fowler yelled, “Drop the knife.” Mr. Cushman continued toward the patrol cars, until he was no longer visible. Officer Fowler yelled twice, loudly, “Drop the knife.”

2:48 – The officers fired eight gunshots.

2:51 – Mr. Cushman’s mother screamed in the background. The officers yelled, “Get on the ground,” and “Don’t move,” repeatedly. Mr. Cushman appeared to the left of the officers’ patrol cars. The officers and Mr. Cushman ran around until they appeared to fall in the neighbor’s driveway across the street. The officers continued to yell, “Get on the ground.”

3:20 – N1 looked out his front door.

3:38 – The Good Samaritan ran out the front door, toward the left side of the screen (where he parked his truck).

4:03 – The Good Samaritan approached the officers and said, “Officers, I have medical.” An officer responded, “Who are you?” The Good Samaritan repeated, “I have medical.” An officer responded, “Oh, okay. Come here.”

OSI sent the video to the New York State Police (NYSP) Forensic Video/Multimedia Services Unit, who performed enhancement/clarification of the audio and video. The clarified video is available here: [NYSP Clarified Doorbell Camera Video](#). The Clarified Video is shorter and ends after the officers and Mr. Cushman appear to fall in the neighbor’s driveway across the street. Person of Interest 1 is Mr. Cushman. Person of Interest 2 is Officer Fowler. Vehicle of Interest 1 is Officer Fowler’s patrol car. Vehicle of Interest 2 is Officer Till’s patrol car. Vehicle of Interest 3 is Officer Kowalski’s patrol car.

## Interviews

### Mr. Cushman’s Mother

Mr. Cushman’s mother told OSI that her son had long-term emotional and mental health issues, which were aggravated by his father’s death in April 2024. She described Mr. Cushman as paranoid, often thinking others were plotting to kill him. Mr. Cushman’s mother said she tried several times to get Mr. Cushman to agree to mental health treatment, or have him involuntarily committed, but was unsuccessful.

Mr. Cushman’s mother described numerous interactions between Mr. Cushman and OPPD officers in the year leading up to his death, including several the week of the shooting. OSI reviewed OPPD records, which reflect Mr. Cushman’s mother contacted OPPD several times with concerns about Mr. Cushman’s mental health, Mr. Cushman contacted OPPD several times with paranoid thoughts, and neighbors called several times with noise complaints. For instance, on August 29, 2024, at 4:00 a.m., Mr. Cushman called 911 and said he wanted to talk to someone. Mr. Cushman told responding officers he heard voices in the attic. OPPD officers and emergency medical personal concluded he did not meet the criteria for involuntary commitment to a hospital but put Mr. Cushman in contact with crisis services before leaving the scene.

Mr. Cushman’s mother said, on August 30, 2024, around 5:00 p.m., she came home from work and took Mr. Cushman out to dinner. On the way, Mr. Cushman asked to stop at a store where he bought an energy-drink containing kratom.<sup>1</sup> Over the course of the evening, Mr. Cushman said he had a bad feeling about things, he did not want to leave Orchard Park,

---

<sup>1</sup> According to the United States Food and Drug Administration (FDA), and the United States Drug Enforcement Administration (DEA), kratom, or *Mitragyna speciosa*, is a tropical tree native to Southeast Asia. Consumption of kratom leaves produces both stimulant effects (in low doses), and sedative effects (in high doses), and can lead to psychotic symptoms, and psychological and physiological dependence. Kratom is not a controlled substance, and products prepared from its leaves are available in the U.S. both online and in brick-and-mortar stores.

people were following them, laughing at him, and trying to poison his food. Mr. Cushman barely touched his dinner, and Mr. Cushman's mother eventually drove him home.

Back at their house on Hawthorne Avenue, Mr. Cushman's mother attempted to get Mr. Cushman to relax, sit down, and watch a movie, but he refused to remain still and paced around. Mr. Cushman walked in and out of the house several times, and at one point accused his mother of plotting against him ("You guys are all in on it"). A bit later he asked her to call crisis services. As Mr. Cushman's mother attempted to call, Mr. Cushman went outside but quickly yelled through the screen door that someone just pointed a gun at him, claiming he saw a red laser dot on his head. Mr. Cushman's mother went outside, attempted to calm him, but Mr. Cushman picked up his phone and called 911. Mr. Cushman's mother tried to get him to hang up the phone, get into her car, and drive away—fearful of what might happen when OPPD officers arrived and saw him with a knife—but Mr. Cushman became frantic and started screaming at her.

As Mr. Cushman and his mother stood in the driveway, OPPD officers arrived. Mr. Cushman's mother said Mr. Cushman walked toward the street, as if he wanted to talk to the officers. She said Mr. Cushman had one hand up, holding a knife, and when the officers saw it, "chaos ensued." Officers screamed at Mr. Cushman to drop the knife. Mr. Cushman's mother said she convinced Mr. Cushman to put the knife on the mailbox and slowly walk 3-4 feet away from it. She said she hoped to grab the knife, but the officers screamed at her to get back in the house, which started Mr. Cushman. He grabbed the knife, ran toward the street and screamed. Mr. Cushman's mother said she walked back to the house, went inside and was about to close the front door when she heard gunshots—the last thing she saw before the gunshots was Mr. Cushman running toward the street.

#### Town of Orchard Park Police Officer Thomas Fowler

Officer Fowler told OSI that he received a radio call for a disturbance at the Cushman residence that said Mr. Cushman had a knife and another person had a gun. He turned onto Hawthorne Drive and saw Mr. Cushman at the end of the driveway, holding a knife, and his mother standing in the middle of the front yard. They appeared to be talking, but Officer Fowler could not hear what they said. Officer Fowler pulled over on the side of the road near Mr. Cushman's home.

As soon as Officer Fowler got out of his patrol car, he said Mr. Cushman charged at him. Officer Fowler drew his pistol, retreated toward the rear of his patrol car, and yelled, "Drop the knife." Mr. Cushman continued toward Officer Fowler, yelling. Mr. Cushman then inexplicably stopped near the driver-side door, turned around, and walked back toward the house. As he walked away, Mr. Cushman said, "Why didn't you do it?" and "You could have done it." Officer Fowler again ordered Mr. Cushman to drop the knife and radioed that he "had one at gun point." When Mr. Cushman reached the mailbox, he set the knife on top of it and walked a short distance up the driveway. Officer Fowler said Mr. Cushman was still too close to the knife for Officer Fowler to try to safely grab it.

Officer Till arrived on scene, got out of his patrol car, and ordered Mr. Cushman's mother to go back inside. In response, Mr. Cushman turned around, grabbed the knife, and charged at both officers. Officer Fowler said he and Officer Till retreated behind their respective patrol cars, while yelling loudly, "Drop the knife." Mr. Cushman again stopped short of the officers, again said something to the effect of, "Why didn't you do it?" and again walked away from them. Officer Fowler said he and Officer Till remained behind their driver-side doors and continued to yell, "Drop the knife." Mr. Cushman did not put the knife down again.

According to Officer Fowler, a third patrol car turned down the street and approached the house, and Mr. Cushman turned around and charged at the officers a third time. Officer Fowler said Mr. Cushman's third charge was faster, more intense, and directly at him. Officer Fowler retreated toward the rear of his patrol car and shouted, "Drop the knife," but Mr. Cushman ran in a full sprint, did not slow down, and quickly closed the distance. Officer Fowler said he believed his life was in danger, believed Mr. Cushman was going to stab him, and did not feel he had any other options available to him. Officer Fowler fired at Mr. Cushman until he dropped the knife. Officer Fowler said he continued to back up and holstered his weapon, so he would have two free hands to handcuff Mr. Cushman and render aid. As he was holstering, Officer Fowler said Mr. Cushman lunged at him. Officer Fowler did not know where the knife was, so he ran across the street, and he said Mr. Cushman followed and grabbed his shoulder. When Officer Fowler saw Mr. Cushman's hands were empty, he yelled, "No knife," and struggled with Mr. Cushman until they both fell to the ground. Once Officer Till arrived, they handcuffed Mr. Cushman.

Officer Kowalski arrived, and the three officers began life-saving efforts. When Mr. Cushman lost consciousness, they removed his handcuffs. A Good Samaritan arrived and identified himself as a volunteer fireman with medical training and assisted with lifesaving efforts. Once an ambulance arrived, Officer Fowler stopped performing chest compressions and left the scene.

Officer Fowler said he interacted with Mr. Cushman one week before the shooting, when he responded to a neighbor's noise complaint. Officer Fowler said on that occasion, Mr. Cushman was angry and aggressive about the police presence at his home, but the incident ended when Mr. Cushman went back inside. Officer Fowler said it was general knowledge in the department to have a two-car response to incidents involving Mr. Cushman, since he was previously aggressive toward the police.

#### Town of Orchard Park Police Officer Tanner Till

Officer Till told OSI that he received a radio call for an altercation at the Cushman residence, where a gun was involved, and Mr. Cushman had a knife. On the way to the Cushman house, he heard Officer Fowler call over the radio, "One at gunpoint."

When Officer Till arrived on scene, he said he saw Officer Fowler behind his driver-side door with his gun drawn and Mr. Cushman pacing in his own driveway—he could not see anything in Mr. Cushman’s hands. Officer Till got out of his patrol car, took cover behind his own driver-side door, and drew his firearm. He then saw Mr. Cushman’s mother in the driveway and yelled at her to go inside the house. As Mr. Cushman’s mother walked back toward the house, Officer Till yelled at Mr. Cushman to get on the ground.

Mr. Cushman walked toward the street, and Officer Till saw an “elongated object, metallic” in his hand. Officer Till said Mr. Cushman began “moving with purpose” toward the patrol cars, and he heard Officer Fowler yell, “Drop the knife,” several times. When Mr. Cushman was about 10 feet from the officers, he hesitated, then turned back toward the house. Officer Till did not know why Mr. Cushman abruptly stopped, but heard him ask, “Why didn’t you guys do it?”

As Mr. Cushman walked back up the driveway, a third patrol car appeared on the street, and Officer Till said Mr. Cushman turned around and ran toward the officers. Officer Till said Mr. Cushman approached them much faster than before, did not hesitate, and swung his arms. Officer Fowler yelled repeatedly, “Drop the knife,” and Officer Till said he concentrated on the object in Mr. Cushman’s right hand and saw a knife. Officer Till said he thought, “I hope we don’t have to shoot this guy,” and waited as long as he could, to give Mr. Cushman every opportunity to comply and drop the knife. But Mr. Cushman ran around the front of Officer Fowler’s patrol car, and Officer Till saw Officer Fowler backpedal as Mr. Cushman gained ground on him. When Mr. Cushman was less than 10 feet from Officer Fowler, approaching quickly with a knife in his hand, Officer Till said he feared for Officer Fowler’s life. Officer Till said he felt he had no other options to disarm Mr. Cushman, so he fired at him, until Mr. Cushman dropped the knife.

After Mr. Cushman was shot and dropped the knife, Officer Till said Mr. Cushman continued toward Officer Fowler, reached for him, but stumbled. Officer Fowler attempted to handcuff Mr. Cushman, but a struggle ensued, and both ended up on the ground. Officer Till put away his firearm and helped Officer Fowler handcuff Mr. Cushman. Once they detained Mr. Cushman, Officer Till said he ran to his patrol car and retrieved his medical bag. When he returned, Officer Fowler, Officer Kowalski (who had recently arrived), and a Good Samaritan who identified himself as an EMT, had begun life-saving measures. They placed chest seals on Mr. Cushman’s front and back, a tourniquet on his arm, and attempted to find a pulse. Officer Till said they removed Mr. Cushman’s handcuffs to begin CPR, and continued life-saving efforts until relieved by emergency medical personnel.

Officer Till said he had met Mr. Cushman a few months prior to this incident, when he responded to a mental health call at a local movie theater involving Mr. Cushman. Officer Till said he remembered that Mr. Cushman did not want to go with the officers to the hospital, but he did not believe they used any hands-on contact with him during their interaction. Officer Till said he next encountered Mr. Cushman about a week before the incident, when he responded to the Cushman home at 5:30 a.m. due to a neighbor’s noise complaint. Officer

Till said he was the second officer to arrive on scene (Officer Fowler was the first), and they found Mr. Cushman in the middle of the street yelling obscenities. Officer Till said the officers talked Mr. Cushman back into his house, and again did not use any hands-on contact with him. About an hour later, Officer Till said OPPD received another noise complaint, and he responded to Mr. Cushman's house with a Lieutenant. Officer Till said they found Mr. Cushman on his front porch, throwing chairs, and visibly upset with the law enforcement presence at his home. According to Officer Till, Mr. Cushman said he wanted to fight the officers, but they advised him to "keep it down" and left the scene since it was daylight, and he was no longer "disturbing the peace." Officer Till said he was aware other officers in the department had interacted with Mr. Cushman in the past, was aware that Mr. Cushman had mental health issues, and was aware that Mr. Cushman did not like law enforcement.

#### Town of Orchard Park Police Officer Andrew Kowalski

Officer Kowalski told OSI that he was on patrol on the other side of town when he received a radio call to respond to Hawthorne Avenue. During the drive, he heard Officer Fowler say over the radio he had one at gunpoint. Officer Kowalski turned onto Hawthorne Drive and parked a few houses down from the other patrol cars. As he got out of his car, he said he saw Mr. Cushman run toward the patrol cars with an object in his hand and his arm above his head. Officer Kowalski said he heard Officer Fowler yell, "Drop the knife. Drop the knife," and feared Mr. Cushman might kill the officers. Mr. Cushman ran toward the rear of one of the patrol cars and Officer Kowalski lost sight of him. Officer Kowalski then heard a volley of gunfire. Officer Kowalski returned to his patrol car to avoid being near the line of fire, radioed, "Shots fired," and drove a few houses up the street until he saw Officers Fowler and Till. Officer Kowalski got out of his patrol car and saw Mr. Cushman lying in a driveway, handcuffed. Officer Kowalski worked part time as a paramedic and had a New York State Department of Health Emergency Medical Technician certification, so he took over medical assessment and treatment. Officer Kowalski cut open Mr. Cushman's shirt and saw several gunshot wounds to the chest and back. As he assessed Mr. Cushman's condition, a Good Samaritan arrived with a first aid kit and offered to help. The officers and the Good Samaritan applied chest seals to some of Mr. Cushman's gunshot wounds to stop the bleeding, but Mr. Cushman's condition deteriorated: he stopped breathing and became pulseless. The officers and Good Samaritan performed CPR until emergency medical personnel arrived and relieved them.

#### Neighbor 1 and Neighbor 2

N1 and N2 told OSI they lived on Hawthorne Avenue, next door to Mr. Cushman and his mother. On August 30, 2024, they were in their back yard with family and friends when they heard yelling in the street. A few moments later they saw a police car arrive near the Cushman residence. N1 looked over the fence and saw Mr. Cushman in his front yard; he also heard officers yell, "Drop the knife, get on the ground." N1 motioned for everyone to quickly go inside the house. Just before he entered, N1 saw Mr. Cushman run from his yard toward the officers in the street. N1 heard several gunshots, but did not see what happened. After the gunshots stopped, N1 and his friend (Good Samaritan) looked out the front window and saw Mr.

Cushman in the driveway across the street. Good Samaritan said he wanted to help, so he retrieved his first aid kit from his truck and walked toward the officers, while N1 and everyone else remained inside.

N1 and N2 are familiar with Mr. Cushman and said his behavior leading up to the shooting was erratic and bizarre. The day before the shooting, Mr. Cushman sent a text message to several neighbors, apologizing for his recent behavior, and saying he was seeking treatment for alcohol and anger management issues. N1 provided the message to OSI.

N1 and N2 had a doorbell camera that recorded the incident, which they provided to OPPD and OSI.

### Good Samaritan

Good Samaritan told OSI that on the evening of August 30, 2024, he was in N1 and N2's back yard with their respective families, when one of the children said, "Oh look, there's the cops." Good Samaritan then heard yelling at the house next door. N1 looked over the fence, toward the Cushmans' front yard, then motioned for everyone to quickly go inside the home. As they entered, Good Samaritan heard several gunshots—he did not see what happened. Once inside, Good Samaritan looked out the front windows and saw a man (Mr. Cushman) lying in the driveway across the street, and saw an officer run to a police car and retrieve a medical bag. Good Samaritan was a volunteer firefighter with emergency medical training and former Marine with combat medical training, so he went outside, retrieved his personal medical bag from his truck, and offered to help with medical treatment. Good Samaritan said Mr. Cushman was on his back, handcuffed, conscious, and said, "Save me, I don't want to die." Officer Kowalski appeared in charge of medical treatment and told Good Samaritan to apply chest seals to several gunshot wounds on the chest and back. Mr. Cushman's condition rapidly deteriorated, however, so the officers and Good Samaritan started chest compressions and rescue breaths and applied an AED. They continued CPR until Emergency Medical Services arrived and took over life-saving efforts.

### **Evidence Collection**

OPPD requested the assistance of the NYSP Forensic Identification Unit to document, photograph, and collect evidence.

From Hawthorne Avenue, near the rear of Officer Till's patrol car, NYSP investigators recovered eight spent shell casings, two bullet fragments, one bullet, a knife, clothing, and one set of handcuffs.



*NYSP photograph of evidence collected from Hawthorne Avenue. The knife is in the middle of the street (Marker J), near bullet casings.*



*NYSP photograph of the knife collected from Hawthorne Avenue.*

NYSP investigators also photographed and documented the number of rounds remaining in each officer's firearm. Based upon a comparison of the number of rounds issued to each officer with the number of rounds remaining in each pistol, Officer Fowler fired six rounds and OPPD Officer Till fired two rounds.

### **Medical Intervention**

According to Orchard Park 911 and radio records, at 8:56 p.m., Officer Fowler radioed, "Shots fired," and, at 8:57 p.m., EMS was notified to respond to the scene for a gunshot wound.

According to Orchard Park Fire District EMS records, at 9:04 p.m., emergency medical personnel arrived on scene and found Mr. Cushman lying in a driveway, with officers around him conducting CPR. Mr. Cushman was unconscious, not breathing, and had no pulse. There were seals over several gunshot wounds to his chest and back, and an AED was applied to his chest. EMS took over lifesaving efforts, continued CPR, gave Mr. Cushman several doses of epinephrine, and transported him to Mercy Hospital of Buffalo.

According to Mercy Hospital of Buffalo records, at 9:46 p.m., Mr. Cushman arrived in the Emergency Room. He had no pulse or heart sounds, no spontaneous breathing, and his pupils were dilated and unreactive. Since Mr. Cushman's condition had remained unchanged for more than 35 minutes, Dr. Barsoom ordered the termination of further resuscitative efforts, and pronounced Mr. Cushman dead at 9:47 pm.

### **Medical Examiner**

On August 31, 2024, Dr. Tara Mahar, Chief Medical Examiner at the Erie County Medical Examiner's Office, performed the autopsy. Dr. Mahar observed seven gunshot wounds to the torso and upper extremities: three entered the left side of the upper back near the shoulder/armpit, two entered the left side of the chest, one entered the right side of the upper back near the armpit, and one entered the left arm. All wounds generally tracked left to right, with five traveling back to front, and two front to back. There was no fouling or stippling on any of the entrance wounds. Dr. Mahar recovered three bullets during the autopsy,<sup>2</sup> the other four wounds had exit holes. The gunshots collectively damaged several organs and tissues including the left lung, several left ribs, the left humerus, the left clavicle, left diaphragm, stomach, pancreas, and small intestine. Dr. Mahar saw several other minor injuries, but concluded the cause of Mr. Cushman's death was the gunshot wounds, and the manner of death was homicide.

Dr. Mahar found a "Zyn" tobacco packet under Mr. Cushman's lip, and a standard postmortem toxicology report revealed the presence of cannabinoids in Mr. Cushman's blood. Kratom is not tested in a standard toxicology panel.

---

<sup>2</sup> The bullets were not tested by the Erie County Central Police Services laboratory because there was no question that Officer Fowler and Officer Till shot Mr. Cushman.

## LEGAL ANALYSIS

Article 35 of the New York Penal Law governs 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).

In this case, Officer Fowler and Officer Till 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(1), serious physical injury means “impairment of a person’s physical condition 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.”

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

“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 doing so by retreating...”

*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])." (Square brackets and ellipses in the 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.

Officer Fowler and Officer Till both said they responded to the Cushman residence for a report of a disturbance where Mr. Cushman had a knife and someone else had a gun. Officer Fowler said as soon as he got out of his patrol car, Mr. Cushman charged at him with a knife. Officer Fowler yelled repeatedly, "Drop the knife," and backed up. Mr. Cushman stopped abruptly, walked back to his house, and said, "You should have shot me." Mr. Cushman put the knife down temporarily, but after Officer Till arrived, he grabbed it and charged at Officer Fowler a second time. Officer Fowler and Officer Till both said they backed up, and Mr. Cushman again stopped abruptly. As he walked back toward his house, Mr. Cushman said, "Why didn't you do it?" Moments later, Officer Kowalski's patrol car appeared on the street, and Mr. Cushman charged a third time. Both officers said the third charge was faster and less hesitant than before. When Mr. Cushman was less than 10 feet from Officer Fowler, approaching quickly, with a knife in his hand, both officers said they feared for Officer Fowler's life. Both officers said they felt they had no other options to disarm Mr. Cushman, so they shot him until he dropped the knife.

Although the officers were not equipped with body-worn cameras, their accounts are corroborated by the doorbell camera video, the recorded 911 call, and multiple sources confirming Mr. Cushman had a knife. The doorbell video showed that Mr. Cushman charged at the officers three times, repeatedly said, "You should have shot me," was repeatedly ordered to, "Drop the knife," and did not stop when he ran toward them the third time. The video also confirms the officers fired their rounds in less than 2 seconds and switched from yelling "drop the knife" to "get on the ground" immediately after the gunshots. The 911 call recorded Mr. Cushman saying he had a knife, Mr. Cushman's mother confirmed he had a knife, and the NYSP recovered the knife from the middle of the street. The 911 call additionally recorded Mr. Cushman saying he was "going out with a bang."

Moreover, police officers who are attempting to make an arrest 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).

In this case, once Mr. Cushman ran toward Officer Fowler with a knife, the officers had probable cause to arrest him for an offense, such as Menacing a Police Officer, PL 120.18. Since the officers could have properly arrested Mr. Cushman for an offense, they were not

required to retreat if they reasonably believed they had to use deadly physical force to defend themselves against Mr. Cushman's use or imminent use of deadly physical force.

Therefore, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that Officer Fowler and Officer Till were justified in shooting Mr. Cushman. OSI will not seek charges and closes the matter with this report.

## RECOMMENDATION

When this incident occurred, OPPD did not equip its officers with body-worn cameras. In June 2025, OPPD informed OSI that its officers are now equipped with and trained on the use of BWCs.

As set forth more fully in OSI's Annual Report (link below), the Legislature has not taken action to require that police departments equip their officers with and require them to use body-worn cameras and dashboard cameras. OSI continues to urge the Legislature to pass such a bill, and to include in it funding for any police agency that would not otherwise be able to afford the implementation of a body-worn camera and dashboard camera program. In OSI's view, legislation requiring the use of video would effectively respond to the public's concerns about policing. Video enhances transparency, and transparency enhances trust. When policing is good, video will show that. When policing is not good, video will be the key to a meaningful response, including more reliable investigations and, as appropriate, improvements in policies and training, well-founded disciplinary decisions, and, in the most serious cases, criminal charges.

(OSI 2025 Annual Report: [2025-osi-annual-report](#))

Dated: April 1, 2026