



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

**Office of Special Investigation**

October 13, 2023

# Report on the Investigation into the Death of Jason Jones

## SUMMARY

New York Executive Law Section 70-b (Section 70-b) authorizes the Office of the Attorney General (OAG), through the 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 OSI does not seek charges, Section 70-b requires issuance of a public report. This is OSI's report of its investigation into the death of Jason Jones.

On the evening of October 29-30, 2021, Mr. Jones became intoxicated at the Avalon Lounge, a local bar in the village of Catskill, Greene County, one block from the Catskill Police Department (CPD) stationhouse. At 1:29 a.m. on October 30, when Mr. Jones refused to leave the Avalon, staff called CPD. Mr. Jones left the bar when the officers arrived but inexplicably ran to the CPD stationhouse. Video surveillance (with no audio) inside the stationhouse lobby shows Mr. Jones interacting with Sergeant Mark Nazi,<sup>1</sup> Officer Daniel Goldpaugh, and Officer Nicholas Craig for the next twenty-five minutes.

Mr. Jones appeared intoxicated, pounded on windows, overturned a table, and removed his clothes. Eventually Mr. Jones picked up a gallon-jug of isopropyl alcohol-based hand sanitizer and, using the pump dispenser, doused himself. Sgt. Nazi told Mr. Jones he was "under arrest" and going to the hospital. According to the officers, Mr. Jones refused to go voluntarily, tensed his body for a fight, and screamed at them. Sgt. Nazi Tased Mr. Jones, causing the hand sanitizer to ignite, engulfing Mr. Jones's head and chest in flames for the next twenty-five seconds. The officers ran from the lobby, they said, to search for fire extinguishers. Sgt. Nazi returned first, though without a fire extinguisher, and patted at the last of the fire. Emergency medical personnel arrived, sedated Mr. Jones, and transported him to Albany Medical Center. Within hours, Mr. Jones was transferred to the Upstate Medical Burn Center in Syracuse, where he remained in a medically induced coma. Mr. Jones died on December 15, 2021, from heart and lung complications related to his inhalation of hot gases.

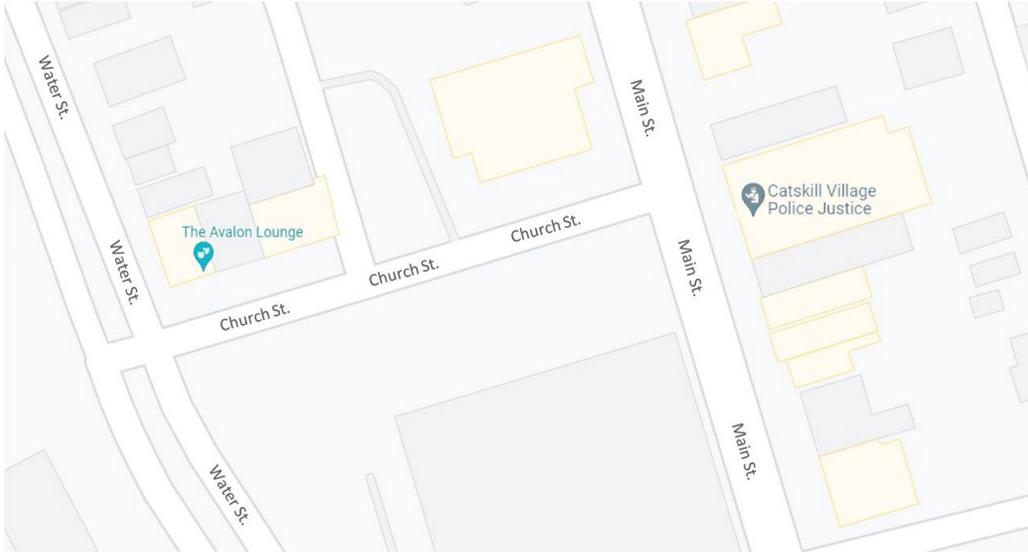
Based on the investigation, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that the officers committed a crime under New York Law.

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<sup>1</sup> Pronounced "nozy."

**PHOTOGRAPHS AND MAPS**

The incident began at the Avalon and ended at the CPD stationhouse, about 100 yards away at the end of Church St.



*Map of the intersection of Church Street and Main Street in Catskill, New York. The Avalon and the CPD stationhouse are noted.*



*Photo from the Avalon, facing east on Church St. toward the CPD stationhouse. The front door of the Avalon is on the left and CPD's lobby window is circled.*



*Photo of the front of the CPD stationhouse. The lobby window is on the left.*

## **INTERVIEWS AND STATEMENTS**

Members of OSI interviewed Avalon employees, CPD officers involved in the incident, the “Good Samaritan” who comforted Mr. Jones, and Catskill Ambulance members who responded to the stationhouse.<sup>2</sup> Their accounts are summarized below.

### **THE AVALON LOUNGE**

#### **The Bouncer<sup>3</sup>**

The Bouncer at the Avalon the night of this incident also worked as a bouncer at the bar’s predecessor, Doubles. The Bouncer is large—6 foot tall and over 300 lbs. He described Mr. Jones as bigger still: 6’3” to 6’5”, same weight, and more muscular.

The Bouncer knew Mr. Jones since grade school, but they were not close. He interacted with Mr. Jones many times as a bouncer at Doubles. Mr. Jones often became intoxicated and belligerent and was permanently banned from Doubles for too many of these incidents.

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<sup>2</sup>All witnesses had previously provided written statements to CPD. There were no material differences between their written statements and their interviews with OSI.

<sup>3</sup> Civilian witnesses are identified by description (Bouncer, Doorman, Bartender, Good Samaritan), rather than name, to maintain their anonymity. For example, in the summaries of witness interviews, below, the witnesses did not use the phrase “Good Samaritan” to refer to that person, but this report uses that phrase to maintain that person’s anonymity.

On October 29, 2021, sometime after 10:00 p.m., Mr. Jones arrived at the Avalon with friends. Initially the Bouncer refused him entry, thinking the ban from Doubles was still in effect. But the Doorman said the new owners were willing to give Mr. Jones a second chance. The Bouncer allowed Mr. Jones inside but kept a close watch on him.

About an hour and a half later, Mr. Jones started causing problems. He tried to buy three beers at once, but the Bartender refused to serve him that many. Mr. Jones argued with the Bartender, then stormed out. The Bouncer “could tell Jason was going to get into [one of] his fits,” so he placed himself at the entrance to the bar and refused to allow Mr. Jones re-entry. Mr. Jones got in The Bouncer’s face, and said he needed to pay his bill. The Bouncer told him the bill was settled and he needed to leave. Mr. Jones worked himself into a fit of rage and tried to push himself inside. He yelled in the Bouncer’s face, and said the bar was picking on him because he was gay. The Bouncer thought Mr. Jones was drunk and potentially under the influence of drugs, and he did not think he could control him. The Bouncer told the Bartender to call the police. In the meantime, Mr. Jones said he needed a hug, and a Good Samaritan who was at the bar came over and consoled him.

Within minutes three CPD officers arrived at the Avalon. The Bouncer recognized Sgt. Nazi and said Mr. Jones was causing problems. Sgt. Nazi walked over to Mr. Jones, who was now at the bar with the Good Samaritan, and said, “Jason, let’s go.” Mr. Jones walked out of the bar with Sgt. Nazi then took off running in the direction of the CPD stationhouse. Sgt. Nazi told the other officers to go after Mr. Jones while he stayed to talk to the Bouncer. But moments later Sgt. Nazi looked up at the stationhouse and said he needed to go because the situation was getting worse.

From outside the Avalon, the Bouncer looked towards the CPD stationhouse—he could see into the lobby since it was one block away. He saw Mr. Jones yelling, running in and out of the stationhouse several times, and “smashing” the windows. He thought the windows might break due to the amount of force Mr. Jones used. The Bouncer also saw Mr. Jones rip off his shirt and try to take off his pants. The three officers stood inside CPD’s lobby, near the front door, and watched Mr. Jones. The Bouncer went back into the bar, thinking “It’s in their hands now.” A short time later, the Doorman told him officers had Tased Mr. Jones.

### **The Bartender**

The Bartender at the Avalon never met Mr. Jones before that night, but he knew his reputation for “not being able to hold his alcohol very well.”

On October 29, 2021, around 10:30-11:00 p.m., when Mr. Jones entered the bar with a few friends, the Doorman warned the Bartender not to overserve him. At first there were no problems, and Mr. Jones had two beers over the next two hours. After his friends left, however, Mr. Jones tried to order three beers at once. The Bartender refused to serve that many, instead offering Mr. Jones one at a time. When Mr. Jones argued back, the Bartender realized he was drunk, and cut him off.

The Bartender saw Mr. Jones walk outside the bar and have a “mental breakdown or freak-out.” He described Mr. Jones as “emotionally irate ...crying and then yelling and then angry and then sad,” as Mr. Jones yelled about his sexuality. The Bouncer and the Doorman tried, unsuccessfully, to calm him down.

Mr. Jones attempted to push his way back into the bar, becoming aggressive towards the Bouncer. It appeared Mr. Jones was trying to wrestle the Bouncer, who was “seemingly using every ounce of his strength” to keep Mr. Jones out of the bar. The Bartender was concerned that “if he got inside, he was going to start wrecking things.” The Bouncer signaled to the Bartender. to call the police, which he did at 1:27 a.m.

According to the recorded 911 call, the Bartender told CPD Dispatcher Ralph Wagenbaugh, “I’m down the street at Avalon Lounge. We need you down here right now. We got a customer who’s attacking the bouncer, causing problems, fighting with everyone right now...We need help right now.” Dispatcher Wagenbaugh asked how many people were involved, and the Bartender said, “There’s one guy who’s fucking attacking my bouncer right now...with like maybe twenty people here. But he really needs to be taken out of here right now.”

While waiting for officers to arrive, a Good Samaritan who had been drinking at the bar intervened and hugged Mr. Jones, who stopped “raging,” briefly calmed down, and began to cry.

A few minutes after the Bartender called 911, a couple of CPD officers arrived. One walked over to Mr. Jones, put his hand on his shoulder, and asked, “Hey Jason, what’s going on buddy?” The officers walked Mr. Jones out of the bar without incident. When Mr. Jones left with the officers, the Bartender felt, “things were going to be somewhat smooth.”

The Bartender did not see Mr. Jones again that night. But minutes after Mr. Jones left, he heard customers say Mr. Jones was causing problems at the CPD stationhouse—taking off his shirt, pounding on the windows, and rubbing hand sanitizer on himself. Later that night, after closing the bar, the Bartender saw the Good Samaritan, who said he watched Mr. Jones cover himself in hand sanitizer and catch fire when the officers Tased him.

### **The Doorman**

The Doorman at the Avalon knew Mr. Jones through friends since 2012. He described Mr. Jones as very friendly, nice, and intelligent when he was sober. But the Doorman said Mr. Jones “liked to party” and would often get a little crazy or “sloppy” when drinking. Due to numerous instances of excessive drinking, Mr. Jones was barred from entering Doubles before it became the Avalon.

On October 29, 2021, Mr. Jones and some friends came to the bar when the Doorman was working. Mr. Jones asked if he could enter, but due to his previous behavior, the Doorman needed to check with his boss. Since Mr. Jones appeared clear headed, the owner allowed

Mr. Jones to enter. Mr. Jones stayed for a few hours and drank a few beers without issue. At some point Mr. Jones and his friends left the bar but returned thirty minutes later, at which time the Doorman noticed he appeared a little more “shot.”

Later that night Mr. Jones’s friends left, and the Doorman saw that Mr. Jones, now alone, was drunk. Mr. Jones tried to order three beers at once, but the Bartender refused. Mr. Jones became angry and threw a “temper tantrum” so they cut him off. Mr. Jones then became more aggressive and uncontrollable; the Doorman described it as a “mental break.” The Bouncer and the Doorman tried to intervene, offering to call a cab or find his friends, but Mr. Jones was “so gone into this mental break” that he physically pushed them back, at one point pinning the Doorman up against a wall. The Bartender called 911.

Before officers arrived, a Good Samaritan calmed Mr. Jones by offering him a hug. Mr. Jones went from rowdy and uncontrollable to crying.

When CPD officers arrived, the Doorman said they were compassionate and offered to take Mr. Jones home. The Doorman recognized Sgt. Nazi and talked to him about other matters, while two other officers escorted Mr. Jones out of the bar. Within seconds, the Doorman heard Mr. Jones scream. He turned and saw Mr. Jones run up the street to the CPD stationhouse.

The Doorman went outside and heard Mr. Jones slam through CPD’s front door. He then looked up the street and had a clear view into CPD’s lobby through the windows. The Doorman saw Mr. Jones “losing it”: he yelled, waved his arms, hit the windows with such force bar patrons and staff heard it, and removed his clothes.

The Doorman said the officers acted professionally and compassionately towards Mr. Jones that night, “giving him a lot of chances and trying to deescalate the situation.” By comparison, Mr. Jones was “aggressive,” “wiggling out,” and “going berserk.”

The Doorman did not see Mr. Jones catch fire. He heard screaming and saw Mr. Jones flailing around, but assumed Mr. Jones was trying to fight all the officers at once. He saw an ambulance arrive but did not learn about the fire until much later that night.

### **The Good Samaritan**

The Good Samaritan was having a drink at the bar on the night of the incident. He did not know Mr. Jones or any of the other witnesses, except the Bartender.

The Good Samaritan arrived at the bar around 10:00 p.m. and saw Mr. Jones with a couple of friends. He described Mr. Jones as a very big guy, the biggest in the room, who clearly had been drinking. The Good Samaritan thought Mr. Jones looked emotionally distraught. At one point Mr. Jones tried to order three drinks for himself; when the Bartender declined, Mr. Jones became annoyed.

After Mr. Jones's friends left him alone at the bar, he appeared more distraught. He walked outside and got into a confrontation with the Bouncer, saying everyone hated him because he was gay. The Bouncer and another employee (the Doorman) tried to keep him out of the bar, but Mr. Jones tried to push his way back inside. The Bartender called 911.

As the Good Samaritan watched the incident unfold, he thought, "This guy just needs a hug. He [doesn't] want to fight." Although they had never met, the Good Samaritan walked over to Mr. Jones and gave him a hug. Mr. Jones collapsed in his arms and began to cry. Mr. Jones said he was upset because he was gay, and a friend recently died. The Good Samaritan consoled Mr. Jones until he calmed down. When the officers arrived, he saw Sgt. Nazi calmly approach Mr. Jones. Mr. Jones voluntarily left the bar and walked toward the CPD stationhouse. The Good Samaritan thought the episode was over.

A few minutes later, the Good Samaritan walked outside, looked toward CPD, and saw a commotion inside. He saw Mr. Jones punch the glass windows and remove his clothes. The Good Samaritan walked to the stationhouse to see if everything was ok. He stood outside and watched through the windows as Mr. Jones threw tables and banged on the glass.

Mr. Jones was upset, but the Good Samaritan said it appeared he was "fighting with himself." Although Mr. Jones was talking, he did not appear to try to communicate with the officers. In response, the officers were trying to contain Mr. Jones, telling him to stay inside the stationhouse. Otherwise, they did not seem to interact much with Mr. Jones and their demeanor was blank. The Good Samaritan said Mr. Jones likely felt like a "caged animal."

At one point Mr. Jones walked outside and the officers followed him, eventually convincing him to go back in. Sgt. Nazi noticed the Good Samaritan watching through the window and told him, "There's nothing you can do...we got it under control," and "you can leave." The Good Samaritan stayed.

Moments later, Mr. Jones picked up a gallon jug of hand sanitizer and doused himself with it. He rubbed it all over his head and body, lathering himself up. The Good Samaritan thought Mr. Jones was trying to "wash away everything that was going on his life."

When Mr. Jones doused himself with sanitizer, the officers looked fearful, as if they were losing control of the situation. The Good Samaritan heard the officers tell Mr. Jones they were going to Tase him if he didn't calm down. The Good Samaritan thought, "this guy just doused himself in alcohol. Like, this is not a good idea."

The Good Samaritan did not see Mr. Jones act aggressively in response to the officer's warning. He said Mr. Jones did not say anything threatening or take any physical actions towards the officers; he was, "just kind of jostling around." The Good Samaritan did not see any confrontation between Mr. Jones and the officers, nor did he perceive any reason for them to Tase him.

An officer tased Mr. Jones in the abdomen and he immediately caught on fire. The Good Samaritan saw two officers run into the back, and a third go outside to get a fire extinguisher from his police car. A few moments later, Sgt. Nazi returned to the lobby and tried to put out the flames with his hands.

The Good Samaritan went inside the lobby and tried to help. Mr. Jones was no longer on fire, so the Good Samaritan hugged him. Mr. Jones cried and said he was in pain; he talked about his mother, a loved one who died, and how he did not trust the police. The Good Samaritan stayed with Mr. Jones and tried to keep him calm until EMS arrived.

## THE POLICE RESPONSE

### Catskill Police Department Sergeant Mark Nazi

Sergeant Mark Nazi was a 13-year veteran of CPD. He was familiar with Mr. Jones from his reputation in the community and personal interactions with him. For example, on September 10, 2018, Sgt. Nazi responded to a call of a male sleeping on the sidewalk outside the courthouse. Sgt. Nazi found Mr. Jones, who was depressed over the recent arrest of his uncle. The two spoke for over an hour and eventually Sgt. Nazi convinced Mr. Jones to go to the hospital for mental health treatment.

Sgt. Nazi never had any physical altercations with Mr. Jones but heard other CPD officers previously Tased him.<sup>4</sup>

On October 30, 2021, at 1:29 a.m., Sgt. Nazi was at the CPD stationhouse when Dispatcher Wagenbaugh said there was a 911 call for an unruly patron at The Avalon. Sgt. Nazi drove one block to the bar. The Bouncer said Mr. Jones was drunk and out of control; when asked to leave, Mr. Jones shoved him around and refused to go. Sgt. Nazi found Mr. Jones standing near the front of the bar and persuaded him to go outside.

Outside the bar, Sgt. Nazi asked, "Jason, what's going on man? What's wrong." Mr. Jones yelled, "Get the fuck out of my face" and inexplicably ran up Church Street, in the direction of his mother's home. Initially believing Mr. Jones was going home, Sgt. Nazi told Offs. Craig and Goldpauagh to follow him and make sure he was safe. When Sgt. Nazi saw Mr. Jones run into CPD's lobby, he and the other officers followed him there instead.

Inside CPD's lobby, Sgt. Nazi tried to talk to Mr. Jones, but the latter never responded coherently. Sgt. Nazi asked Mr. Jones what was bothering him, if they could get him any help, and if he wanted a ride home or to the hospital. Mr. Jones responded with screams: he demanded to speak to "Officer Mudge" (who did not exist) and demanded Dispatcher

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<sup>4</sup> CPD records confirm Mr. Jones was Tased on November 2, 2019, after becoming drunk at a bar and refusing to leave voluntarily. When officers attempted to arrest him, Mr. Jones fled, then physically resisted officers' attempts to detain him. One of the officers Tased Mr. Jones, while the other two placed him in handcuffs. Mr. Jones was arrested, and later pleaded guilty to Resisting Arrest (Penal Law Section 205.30), a class A Misdemeanor.

Wagenbaugh come to the lobby. When neither happened, Mr. Jones tried repeatedly to access the secure area of the stationhouse by yanking on the locked door. When the door did not open, he punched and headbutted the dispatcher's window, and overturned tables.

Sgt. Nazi noticed the Good Samaritan standing outside the stationhouse and thought he might be a friend who could help. But the Good Samaritan said he just met Mr. Jones at the bar that night. Sgt. Nazi told the Good Samaritan that Mr. Jones was becoming more erratic, he was a danger to himself and others, and they might need to Tase him.

A short time later, Mr. Jones removed his clothes. He pulled off his sweatshirt then ripped his t-shirt off "like the Hulk." Shirtless, Mr. Jones turned to Dispatcher Wagenbaugh and yelled, "This is your best? This is all you got?" referring to Sgt. Nazi and the other officers.

To Sgt. Nazi, Mr. Jones's body language was "throwing up red flags." Mr. Jones repeatedly rolled his shoulders and cracked his neck, as if he were readying for a fight. When Mr. Jones walked close to the officers, it appeared he was trying to provoke them into throwing the first punch. Sgt. Nazi said he tried to keep his body language and posture as neutral as possible. For instance, he kept his hands at his sides or over his heart, which was a calming tactic he learned in training.

Mr. Jones exited and reentered the stationhouse many times. After he entered for the last time, he picked up a bottle of NYS Clean hand sanitizer and doused himself with it. He pumped it repeatedly on his chest and back. For Sgt. Nazi, that was "the straw that broke the camel's back." He thought Mr. Jones was lubing himself up for a fight.

Based on the totality of his conduct, Sgt. Nazi felt Mr. Jones was a danger to himself or others under Mental Hygiene Law Section 9.41.<sup>5</sup> He believed something was off—Mr. Jones appeared highly emotional and volatile. Sgt. Nazi had seen numerous drunk people in his career, but this behavior was something different and much worse.

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<sup>5</sup> MHL 9.41, titled "Emergency Assessment for Immediate Observation, Care, and Treatment; Powers of Certain Peace Officers and Police Officers" says: "(a) Any peace officer, when acting pursuant to his or her special duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others. Such officer may direct the removal of such person or remove him or her to any hospital specified in subdivision (a) of section 9.39 of this article, or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 of this article, or pending his or her examination or admission to any such hospital or program, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or, if there be none, the health officer of the city or county of such action. (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."

Sgt. Nazi told Offs. Craig and Goldpaugh to take Mr. Jones into custody. Earlier in the night, he warned them if things got to that point, “We’re not hurting this kid and you guys aren’t getting hurt. If he fights us, I’m just going to Taser him. We’ll cuff him under power like we’ve trained for and that’s that.”<sup>6</sup>

Sgt. Nazi unholstered his Taser and told Mr. Jones he was “under arrest” and was “going to the hospital.” He said, “Jason, don’t fight. You’re going to get Tased.” Mr. Jones took a step back, clenched both his fists, flexed his entire upper torso in a combative stance, and screamed. Sgt. Nazi said one final time, “Jason, don’t, don’t. Let’s not do the Taser.” Mr. Jones did not comply, so Sgt. Nazi fired the Taser.

When the Taser probes hit Mr. Jones, Sgt. Nazi initially thought they would detain him without further incident, but within seconds a fireball erupted. Sgt. Nazi stopped the Taser and removed the cartridge from the handle. He then ran to get a fire extinguisher. Sgt. Nazi checked the dispatcher’s room, sergeant’s office, and the two interview rooms, but could not find one. As he searched, he yelled for Dispatcher Wagenbaugh to call an ambulance. Finding no extinguisher, Sgt. Nazi ran back to the lobby to extinguish the flames with his hands. He patted Mr. Jones, but most of the fire was already out.

Mr. Jones repeatedly asked, “Why am I here? What happened? Why did you do this to me? I just want to go home.”

While Sgt. Nazi assessed Mr. Jones’s condition, the Good Samaritan entered the lobby, and Mr. Jones immediately hugged him. Sgt. Nazi saw the Good Samaritan’s calming effect, so allowed him to stay while they waited for the ambulance.

Once paramedics arrived, they tried to get Mr. Jones to relax and go into the ambulance on his own. When Mr. Jones refused, the paramedics gave him a sedative, and officers helped him onto the stretcher.

Sgt. Nazi said he believed the Taser was the best option available to him for several reasons:

- He did not feel he could simply leave Mr. Jones alone without putting him or others in harm’s way: “I can’t with good faith release him back into the civilian world and then know that he’s not going to harm himself or anybody else.”
- He believed any attempt to physically subdue, or go “hands on,” Mr. Jones would end up injuring everyone involved. Mr. Jones was a very large man (over 6’ tall, over 300 lbs.), much larger than the officers, and his size, strength, and physicality would be difficult to control.

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<sup>6</sup> Cuffing under power means applying handcuffs while a Taser is deployed. When the Taser works as intended, its electrical current causes neuro-muscular incapacitation and prevents an individual from effectively fighting back.

- Sgt. Nazi considered, but ruled out, using pepper spray. The room was small, and the spray would have affected the officers as much as it would Mr. Jones. Also, it would likely have enraged Mr. Jones and generated more violence. And if he used pepper spray, Sgt. Nazi was trained he could not subsequently use a Taser since pepper spray is flammable.
- None of the officers was armed with a baton.
- The use of a firearm was not warranted or justified.

Sgt. Nazi was aware from training not to deploy a Taser around flammable items, including gasoline or aerosols. But Sgt. Nazi said he did not know hand sanitizer was flammable—he thought it was a simple cleaning agent.

According to CPD records, Sgt. Nazi did not have any prior use of force incidents during his career.

### **Catskill Police Department Officer Daniel Goldpaugh**

Officer Daniel Goldpaugh was relatively new to CPD and had never interacted with Mr. Jones before this incident.

On October 30, 2021, at 1:29 a.m., Off. Goldpaugh received a radio communication to respond to the Avalon for a fight and was told the Bouncer attempted to remove an unruly patron. Off. Goldpaugh was the last officer to arrive at the Avalon and was outside the bar when Mr. Jones walked out and ran up the street towards the CPD stationhouse. Sgt. Nazi, Off. Craig and Off. Goldpaugh followed.

At first Off. Goldpaugh remained outside the stationhouse and watched through the window because, he said, Mr. Jones was acting erratically and Off. Goldpaugh did not want to swarm him while the other officers tried to talk him down. When the other officers were unsuccessful and Mr. Jones tried to access the secure area of the stationhouse, Off. Goldpaugh walked in.

For the next twenty-five minutes, Mr. Jones appeared irate and rambled incoherently. Off. Goldpaugh described Mr. Jones's temperament as "up and down": one minute calm, the next screaming and angry. Mr. Jones demanded to speak to "Officer Mudge" many times even though Sgt. Nazi told him no one by that name worked at CPD. Mr. Jones punched the dispatcher's window until his forearm bled, headbutted the window, stripped off his shirt and shoes, and threw a table.

Off. Goldpaugh said the officers tried "to do whatever's going to hopefully let him blow off some steam to calm down" and talk to them. When Mr. Jones left the stationhouse multiple times, they neither stopped him nor directed him to return, since they did not want him to feel cornered. They asked many times how they could help Mr. Jones, and offered to give him a ride home, but he never responded.

Mr. Jones's behavior grew more concerning and Off. Goldpaugh thought he wanted to fight the officers. Mr. Jones looked the officers up and down, locked eyes with them, rolled his neck, flexed his fingers, and appeared to size them up. Mr. Jones got in the officers' faces, and Off. Goldpaugh felt he was testing them. When the officers did not physically respond, and instead tried to talk to him, Mr. Jones appeared irritated.

Sgt. Nazi told Offs. Craig and Goldpaugh they may need to detain Mr. Jones under Mental Health Law Section 9.41, since he appeared to be a threat to himself and the officers. He also said, "if he gets to a point that we have to take him into custody, I'm going to try to Tase him if he's trying to fight you guys."

When Mr. Jones picked up a bottle of hand sanitizer, squirted it on himself, and rubbed it into his hair, Off. Goldpaugh knew that was the final straw. Sgt. Nazi said something like, "That's it."

Sgt. Nazi told Mr. Jones he was under arrest and drew his Taser. He also signaled Offs. Craig and Goldpaugh to move in and handcuff him. Mr. Jones took a combative stance, tensed his body, and clenched his fists. Sgt. Nazi warned Mr. Jones, "I will Tase you," but Mr. Jones just screamed at them. Off. Goldpaugh believed he would not go quietly without a fight.

After Sgt. Nazi warned Mr. Jones multiple times, he deployed the Taser. Off. Goldpaugh believed the use of the Taser involved the least amount of force necessary to effect the arrest and minimize the likelihood of injuries to Mr. Jones and the officers.

Off. Goldpaugh said he was not aware that hand sanitizer was flammable before that night. During Taser training, he was warned not to use a Taser around pepper spray and other flammable substances like gasoline, but the training did not mention hand sanitizer, nor was he independently aware it was flammable.

When Sgt. Nazi deployed the Taser, Mr. Jones tensed up and fell to the ground, before bursting into flames. Sgt. Nazi shouted, "he's on fire" and "get the extinguisher" and all three officers ran to find one. Off. Goldpaugh ran to the secure area of the stationhouse and checked the communications room, sergeant's office, interview rooms, lieutenant's office, and the downstairs locker room for an extinguisher. Sgt. Nazi was with him at first, then ran back to the lobby. Off. Goldpaugh heard Sgt. Nazi yell that the flames were out before he ever found an extinguisher.

Off. Goldpaugh returned to the lobby and tried to keep Mr. Jones calm until an ambulance arrived. A Good Samaritan entered the lobby and also tried to calm him. Mr. Jones went back and forth between emotional extremes, apologizing to the officers, asking where he was, then demanding to go home.

Once the ambulance arrived, emergency medical personnel gave Mr. Jones a sedative. Offs. Craig and Goldpaugh accompanied Mr. Jones, in the ambulance, to the hospital.

### Catskill Police Department Officer Nicholas Craig

Officer Nicholas Craig was a two-year veteran of the CPD. He knew Mr. Jones from prior police interactions and was aware that many involved mental health crises resulting in Mr. Jones's hospitalization.<sup>7</sup>

On October 30, 2021, CPD received a call for disturbance at The Avalon. When Off. Craig arrived, the Bouncer said Mr. Jones was causing problems, they wanted him gone, but did not wish to press charges. As Off. Craig stood outside gathering information, Mr. Jones walked out and initially appeared to be heading home. Sgt. Nazi told Off. Craig to follow him and make sure he got home safely. Mr. Jones instead went into the CPD lobby.

Off. Craig followed Mr. Jones into the lobby and asked what was going on. Mr. Jones demanded to speak to "Officer Mudge" or Dispatcher Wagenbaugh. Mr. Jones appeared delusional, and Off. Craig thought he was having another mental health crisis. Mr. Jones repeated his demands many times, becoming increasingly belligerent and confrontational. He got in Off. Craig's face, attempted to open the door to the secure area of CPD's stationhouse, flipped tables, took off his clothes, and smashed his head against the dispatcher's window. Off. Craig thought he was out of control. The officers tried to calm him down and offered many times to take him home or to a hospital. Mr. Jones said he did not want to go to the hospital, he just wanted to talk to "Off. Mudge" or Dispatcher Wagenbaugh.

Off. Craig thought Mr. Jones was becoming a danger to himself (specifically when he smashed his head against the dispatcher's window), and that they needed to detain him under Mental Health Law Section 9.41. Sgt. Nazi said they would do so, and, if Mr. Jones resisted, they would Tase him. Off. Craig said he believed the Taser was the best option available, as it would be the least violent. He said pepper spray would likely have aggravated Mr. Jones and provoked him to fight back. CPD officers did not carry batons, and officers from other jurisdictions would not be available fast enough to assist them in a physical confrontation.

When Mr. Jones grabbed a bottle of hand sanitizer and sprayed it on himself. Sgt. Nazi told Mr. Jones he was under arrest. Mr. Jones backed into the corner. Offs. Craig and Goldpaugh moved in to restrain him, but Mr. Jones tensed up, flexed his muscles, and yelled. Offs. Craig and Goldpaugh backed off, and Sgt. Nazi deployed the Taser. Mr. Jones tensed up, dropped to the ground, then erupted into flames.

Off. Craig said he initially ran outside to get a fire extinguisher from his police car. When he saw Sgt. Nazi and Off. Goldpaugh also leave the lobby, he went back to keep an eye on Mr. Jones. As he peered around the corner, he initially thought the fire was out. But when he

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<sup>7</sup> According to CPD records Mr. Jones was taken to a hospital after police interactions on September 8, 2018; September 29, 2019; August 30, September 24, and October 7, 2020; and September 17 and October 10, 2021.

realized Mr. Jones was still burning and the other officers were not back, he ran to his police car and grabbed a fire extinguisher. Before he reached the lobby, he said he saw through the lobby window that the flames were out, so he returned the fire extinguisher to the car to prevent Mr. Jones from grabbing it and using it as a weapon.

Off. Craig reentered the lobby and saw Mr. Jones was burned on his shoulders and arms. He checked with Dispatcher Wagenbaugh that an ambulance was on the way. Mr. Jones continued to act erratically, asking why the officers Tased him and saying he was sorry. It was only after a Good Samaritan entered the lobby and consoled him that Mr. Jones calmed down.

When the ambulance arrived, medical personnel gave Mr. Jones a sedative and convinced him to get onto the stretcher. Offs. Craig and Goldpaugh accompanied Mr. Jones to the hospital in the ambulance. During the transport Mr. Jones was sedated and cooperative.

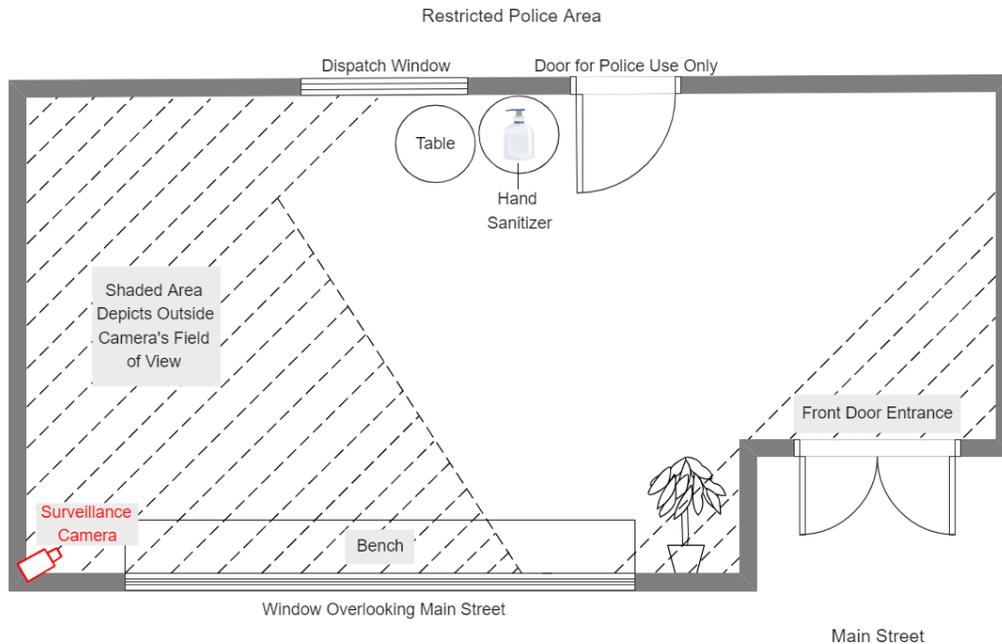
At the hospital, the officers told medical staff how Mr. Jones was injured and remained with him as he was wheeled into a trauma bay. Off. Craig heard medical staff express concern about Mr. Jones's lungs. When the original sedative wore off, Mr. Jones lifted his arms and tried to get off the stretcher, so doctors sedated him a second time.

Off. Craig said he did not know hand sanitizer was flammable prior to that night, nor was he ever warned to avoid using a Taser around it.

#### **Catskill Police Dispatcher Ralph Wagenbaugh**

Dispatcher Ralph Wagenbaugh joined CPD in February 2013. He knew Mr. Jones for many years, first meeting him in high school. During his career, Dispatcher Wagenbaugh took many calls involving Mr. Jones, often for excessive drinking and/or mental health issues. He was aware of one prior incident where CPD Officers Tased Mr. Jones. Dispatcher Wagenbaugh said Mr. Jones had a reputation for drinking too much, but not for being aggressive.

On October 30, 2021, at 1:29 a.m. Dispatcher Wagenbaugh received a 911 call from the Avalon, that an unruly patron was arguing with the bouncer. He dispatched Sgt. Nazi, Off. Goldpaugh, and Off. Craig to the call. A few minutes later Mr. Jones walked into CPD's lobby, approached the dispatcher's window and told Dispatcher Wagenbaugh he wanted to speak to face-to-face; he refused to say why. Mr. Jones said he wanted Dispatcher Wagenbaugh to come out to the lobby, or to be let inside. Dispatcher Wagenbaugh told him no, but Mr. Jones persisted. Moments later the officers arrived at the stationhouse and tried to talk to Mr. Jones.



*Diagram of CPD's Lobby.*

Dispatcher Wagenbaugh said Mr. Jones was clearly intoxicated. He stumbled around, refused to respond when officers asked how they could help, and demanded many times to speak to "Officer Mudge."

Mr. Jones became more agitated and "belligerent" as time went on. Several times he walked very close to the officers to and tried to provoke them into a fight; the officers remained passive, and stepped out of his way, giving him room if he needed to walk or vent. Mr. Jones yanked on the security door and punched and headbutted the dispatcher's window. Mr. Jones eventually removed his sweatshirt, t-shirt, boots, and socks, tearing his t-shirt in half during the process.

Mr. Jones walked outside and returned to the lobby many times, and the last time he grabbed a bottle of hand sanitizer and pumped it repeatedly on himself. He doused his head, chest, and upper back, then rubbed it into his hair.

Dispatcher Wagenbaugh saw Sgt. Nazi motion to the other officers to detain Mr. Jones. He heard Sgt. Nazi say, "If we have to go hands on, I'm just going to Tase him" and saw Sgt. Nazi grab his Taser. Dispatcher Wagenbaugh said he could hear clearly into the lobby because the two-way microphone was on. Offs. Craig and Goldpaugh walked towards Mr. Jones, who backed into the corner, flexed his arms and chest, and "made a guttural yell as if he was gearing up for a fight." Mr. Jones appeared "combative" and "aggressive," and Dispatcher Wagenbaugh thought he would resist. The officers stepped back, and Sgt. Nazi deployed the Taser.

Dispatcher Wagenbaugh heard the Taser go off, then saw Mr. Jones stiffen, slowly slump backwards, and fall to the ground. He briefly lost sight of Mr. Jones, who was below his line of sight through the dispatcher's window. A few seconds later, Dispatcher Wagenbaugh saw a flame, so he jumped from his chair, looked down to the floor, and saw Mr. Jones on fire. He immediately called for an ambulance.

According to the recorded phone call from Dispatcher Wagenbaugh to the Town of Catskill Ambulance Service, he said, "Hey it's Ralph, Catskill. I need an ambulance to our station. We got a subject lit himself on fire with hand sanitizer in our lobby." In the background of the call Mr. Jones screamed, and one of the officers yelled what sounds like "blanket" and "get down, stay down."

Dispatcher Wagenbaugh buzzed Sgt. Nazi and Off. Goldpaugh through the security door to look for a fire extinguisher. There was normally an extinguisher in the dispatcher's room, but it was inexplicably missing that night. Sgt. Nazi eventually returned to the lobby and helped extinguish the flames with his hands.

While waiting for the ambulance, Mr. Jones yelled in pain, and repeatedly asked why the officers Tased him. He also asked, "How did I get here?" "Where am I?" and "What's going on?" When a Good Samaritan walked into the lobby, Mr. Jones immediately hugged him.

The Catskill Ambulance arrived quickly and gave Mr. Jones a sedative to help with the pain. Offs. Goldpaugh and Craig accompanied Mr. Jones in the ambulance, which headed to Albany Medical Center.

### **Video Surveillance from Catskill Police Department<sup>8</sup>**

There was a single video camera inside CPD's lobby. It recorded in color but did not record audio. The camera was in the upper corner of the lobby, facing the dispatcher's window and security door. Due to the position of the camera, portions of the lobby were not in frame.

The portion of the video showing the interaction between Mr. Jones and the CPD officers begins at time stamp 10:32:16, on October 30, 2021, about nine hours ahead of the correct time, which was about 1:32 a.m. on that date. The uncorrected video time stamps are visible in the lower right corner of the stills taken from the video and are used in the descriptions below.

At 10:28:56 Sgt. Nazi walked out of the stationhouse, in response to the 911 call from the Avalon.

At 10:32:16 Mr. Jones walked into the stationhouse and headed directly to the dispatcher's window. After a few seconds, he walked around the lobby, swaying back and forth. Off. Craig joined Mr. Jones in the lobby and spoke to him. Mr. Jones crossed his arms and turned

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<sup>8</sup> On January 7, 2022, the Office of the Attorney General (OAG) released the videos, which may be accessed here: [OAG Video Release](#)

away. Sgt. Nazi entered the lobby and tried to talk to Mr. Jones, who continued to walk around the lobby with crossed arms.



At 10:34:25 Mr. Jones looked at the officers, walked toward them in a manner that could be perceived as aggressive, then backed off. Off. Craig held his vest and Sgt. Nazi held his hands at his sides.

At 10:34:44 Mr. Jones rolled his neck side to side, in a neck cracking motion, and approached Sgt. Nazi, who quickly stepped back. Mr. Jones again backed away.

At 10:35:22 Mr. Jones rolled his neck again, then gestured towards the dispatcher's window. He approached Off. Craig, who stood in front of the security door, and motioned for him to step aside. Off. Craig did not move, and Mr. Jones stepped back.

At 10:35:57 Mr. Jones walked outside, followed by the officers, only to return a few seconds later, followed by Sgt. Nazi. Mr. Jones walked to the dispatcher's window, and his attention remained fixed on it.

At 10:37:00 Mr. Jones grabbed the security door's handle and tried to open it.



When Mr. Jones was unable to open the door, he stumbled back, walked around the stationhouse, kicked the front door, and walked outside again. Sgt. Nazi followed him out.

At 10:43:28 Mr. Jones reentered the lobby, followed by the officers. He again approached the dispatcher's window and appeared to have an animated conversation with it. Mr. Jones grabbed a nearby side table and forcefully moved it aside. As Sgt. Nazi replaced the table, Mr. Jones continued to speak to the dispatcher's window and point to the security door.

At 10:44:13 Sgt Nazi walked outside, leaving Mr. Jones and Off. Craig in the lobby. Mr. Jones again grabbed the security door's handle and pulled on it multiple times. Off. Craig stood nearby, hands on his vest, watching.

At 10:44:35 Mr. Jones emptied his pockets, took off his sweatshirt, then ripped his t-shirt in half from the neckline.



Mr. Jones began to remove his pants but seemed to realize he needed to first remove his shoes, which he bent over to untie. Sgt. Nazi said something to Mr. Jones, who stopped what he was doing, stood up, and pointed at the dispatcher's window multiple times.

At 10:45:12 Off. Goldpaugh appeared. Mr. Jones removed his shoes and sat on the lobby bench. The three officers stood near the front door.

At 10:46:24 Mr. Jones stood up, spiked his shoe on the ground, and sat back down on the bench.



After a conversation with Sgt. Nazi, Mr. Jones stood up and walked around the lobby. He picked up his clothes and put them on a table near the dispatcher's window.

At 10:48:23 Mr. Jones walked out of the stationhouse again, and Sgt. Nazi followed. Seconds later, Mr. Jones stumbled back into the stationhouse. He walked in circles and gestured at the officers, who stood near the front door. Sgt. Nazi conversed with Mr. Jones.

At 10:49:00 Mr. Jones approached Sgt. Nazi. During their conversation, Sgt. Nazi shook his head "no" multiple times, and Mr. Jones flexed his muscles, rolled his neck and shoulders, and moved closer.



When Sgt. Nazi continued to shake his head "no," Mr. Jones turned towards Off. Craig, stumbled close to him, and appeared to eye him up and down. Mr. Jones walked to Off. Goldpaugh and appeared to do the same. All three officers appeared to remain calm, with their hands at their sides or on their vests.

At 10:50:01 Mr. Jones walked to the dispatcher's window and punched it.

At 10:50:40 Mr. Jones picked up his cigarettes and appeared to try to light one.



Sgt. Nazi said something while shaking his head “no.” Mr. Jones put the cigarettes down, walked towards Sgt. Nazi and motioned back towards the table. Sgt. Nazi gestured outside. In response, Mr. Jones walked to the table, picked up his shoe and slammed it down.

At 10:51:30 after extended conversation with the dispatcher’s window, Mr. Jones pushed aside one the side tables, which knocked over the bottle of hand sanitizer.

At 10:52:09 Mr. Jones punched the dispatcher’s window several times.



The officers stood around the lobby, watching. Sgt. Nazi looked out the front window, then walked outside. Mr. Jones turned towards Offs. Craig and Goldpaugh, who stood near the front door, and pointed outside. When they did not move, Mr. Jones turned his attention back to the dispatcher’s window. Sgt. Nazi returned to the lobby a minute later. Mr. Jones continued to speak to the dispatcher’s window and punched it again.

At 10:56:19 Mr. Jones walked outside a final time. All three officers followed him.

At 10:56:40 Mr. Jones reentered the lobby, followed by Sgt. Nazi and Off. Craig. At 10:56:43 Mr. Jones picked up the bottle of NYS Clean Hand Sanitizer, and pumped it repeatedly onto his shoulders, head, and back.



Sgt. Nazi said something to Mr. Jones, then motioned for Off. Craig to move towards Mr. Jones.

At 10:56:48 Sgt. Nazi unholstered his Taser. Off. Goldpaugh entered the lobby, and Sgt. Nazi pointed at Mr. Jones with his free hand.



At 10:56:51 Offs. Craig and Goldpaugh walked towards Mr. Jones. Sgt. Nazi stood nearby with the Taser at this side and appeared to give commands. Mr. Jones rubbed the hand sanitizer through his hair.



At 10:56:57 Mr. Jones stepped towards Sgt. Nazi, who raised the Taser, and appeared to give additional commands.



At 10:56:59 Mr. Jones stepped back into the corner, out of frame. Offs. Craig and Goldpauh stepped aside and appeared to ready themselves. Sgt. Nazi walked closer to Mr. Jones.



At 10:57:01 Sgt. Nazi fired the Taser, and all three officers quickly moved forward, towards Mr. Jones.

At 10:57:05 Offs. Craig and Goldpauh backpedaled, their faces and body language showing shock. All three officers were illuminated as they backed away.



At 10:57:08 Mr. Jones ran out of the corner, engulfed in flames. His upper torso, head, and back were on fire.



At 10:57:11 Sgt. Nazi and Off. Goldpaugh pounded on the security door as Off. Craig ran outside.



Sgt. Nazi and Off. Goldpaugh entered the secure area of the stationhouse. Mr. Jones was alone in the lobby, still on fire.

At 10:57:16 Off. Craig peered around the corner of the front door. Mr. Jones was on his hands and knees in the middle of the floor, with flames around his head and neck.



Mr. Jones rubbed and patted at the fire, but it did not immediately go out. At 10:57:23 Off. Craig left lobby and went back outside.

At 10:57:26, twelve seconds after leaving, Sgt. Nazi returned to the lobby. Most of the flames were out, but Sgt. Nazi rubbed and patted Mr. Jones's head until they were completely gone.



By 10:57:29 the fire was extinguished. Mr. Jones remained on his knees in the middle of the lobby, repeatedly reaching up to the officers, who motioned for him to stay on the ground.

At 10:58:02 the Good Samaritan entered the lobby and immediately hugged Mr. Jones. Mr. Jones appeared to calm down.



Between 10:57:54 and 11:00:59 the Good Samaritan knelt on the lobby floor with Mr. Jones, who was visibly red around face, neck, chest, shoulders, and upper back.

Between 11:01:00 and 11:05:00 Mr. Jones stood up, paced around, and spoke to the officers. At 11:01:58 Mr. Jones hugged Sgt. Nazi. He approached Off. Craig as if to do the same, but Off. Craig backed away.

Between 11:02:58 and 11:05:08 Mr. Jones attempted repeatedly to leave the building, but the officers blocked his path and motioned for him to sit on the bench.



At 11:05:13 Paramedic Patrick Camara entered the lobby, and spoke to the officers and the Good Samaritan, who appeared to explain what happened to Mr. Jones. Paramedic Camara left the lobby a few minutes later.

Between 11:06:17 and 11:10:14 the Good Samaritan and the officers motioned Mr. Jones towards the bench, attempting to get him to sit and calm down until the medical personnel returned.

At 11:10:14 EMT Laura Mastrantuono walked into the lobby and spoke to Mr. Jones. After a short conversation, she walked back outside, and Mr. Jones sat on the bench next to the good Samaritan.

At 11:11:48 Paramedic Camara and EMT Mastrantuono returned to the lobby. Paramedic Camara approached Mr. Jones with an object (a syringe) in his hand and then got very close to Mr. Jones (to administer a sedative).

At 11:14:41 the officers, EMS responders, and the Good Samaritan helped Mr. Jones on the stretcher. Off. Craig handcuffed Mr. Jones and, at 11:17:00, the EMS responders wheeled him out of lobby, accompanied by Off. Craig.

## **MEDICAL EVIDENCE**

### **Town of Catskill Ambulance Service**

According to Town of Catskill Ambulance Service records, they received a call for service at 1:57 a.m., and arrived at CPD at 2:04 a.m. The ambulance left CPD at 2:19 a.m. and arrived at Albany Medical Center at 2:50 a.m.

### **Patrick Camara - Paramedic**

Patrick Camara was a paramedic for eight years prior to this incident.

On October 30, 2021, he and EMT Mastrantuono received a call for a person who burned their hands with hand sanitizer. When Paramedic Camara entered CPD's lobby, he saw Mr. Jones yelling and screaming. He asked the officers and a Good Samaritan what happened, and they said Mr. Jones poured hand sanitizer on himself, was Tased, and caught fire.

Paramedic Camara told Mr. Jones to come to the ambulance for pain medication, but Mr. Jones said he was afraid of needles and wanted to be left alone. Mr. Jones appeared "animated," "combative," and unreasonable. Paramedic Camara was concerned the officers had no control over Mr. Jones and that he might attack.

Paramedic Camara's medical assessment was that Mr. Jones had 1<sup>st</sup> and 2<sup>nd</sup> degree burns on his face, neck, and hands.<sup>9</sup> His hair and goatee were singed, but overall, the injuries looked recoverable. Paramedic Camara was not concerned for Mr. Jones's airway because he was yelling and screaming—indicating he was breathing.

Paramedic Camara decided to sedate Mr. Jones. He retrieved ketamine from the ambulance, EMT Mastrantuono distracted Mr. Jones, and Paramedic Camara injected him. They retrieved a stretcher and tried to coax Mr. Jones onto it. Mr. Jones refused until the Good Samaritan persuaded him to cooperate.

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<sup>9</sup> Burns are classified as first, second, or third degree with first being the least severe and third being most severe.

During the ride to the hospital, EMT Mastrantuono drove the ambulance, while Paramedic Camara rode in the back with Mr. Jones and two officers. Paramedic Camara asked how long Mr. Jones was on fire, but they said they did not know because they were looking for extinguishers.

Paramedic Camara medically assessed Mr. Jones during the transport. Mr. Jones had burned nostrils (the nose hairs were melted), but no burns in the back of his throat, on the tongue, or in the mouth. Mr. Jones was breathing on his own, and his oxygen level was 94%.

Fifteen minutes into the ride, the sedative wore off. Mr. Jones became more “animated” and excited again, moving around, grabbing at things, and acting more aggressive. When they arrived at the hospital and transferred Mr. Jones to the Emergency Room, Mr. Jones started “throwing nurses around” until the doctors gave him an additional sedative.

### **Laura Mastrantuono – Emergency Medical Technician**

Laura Mastrantuono was an EMT for 16 years prior to this incident.

On October 30, 2021, she and Paramedic Camara received a call for a man who burned his hand with hand sanitizer. When they arrived at CPD’s stationhouse, EMT Mastrantuono saw Mr. Jones screaming in pain, spitting, and drooling. He was “belligerent,” “very combative” and “uncontrollable.” It looked to her as if he was trying to start a fight with the officers.

She saw Mr. Jones had burns on his torso, body, and face, including around his nose and mouth. EMT Mastrantuono was concerned about Mr. Jones’s ability to breathe because burns inside the body can generate swelling and close off the airway. But Mr. Jones continued to yell and scream, so he appeared to have no respiratory problems.

EMT Mastrantuono was afraid for her own safety, so she backed out of the lobby hoping the officers could calm Mr. Jones before she needed to treat him. A few moments later, a CPD officer came outside and asked the medical personnel for help. They decided to sedate Mr. Jones, and Paramedic Camara prepared a syringe.

EMT Mastrantuono entered the lobby to distract Mr. Jones. She told him, “You need to calm down,” “We’re all here to help you,” and “I’m not the police.” At first Mr. Jones responded incoherently, cursing, and screaming, “Get the fuck away from me.” Eventually he calmed down and sat on the bench. EMT Mastrantuono kept him distracted as Paramedic Camara injected the Ketamine.

EMT Mastrantuono and Paramedic Camara retrieved a stretcher from outside, but initially had a difficult time loading Mr. Jones. He continued to flail his arms and refused to cooperate. Once the sedative kicked in, they strapped Mr. Jones in and wheeled him out of the stationhouse.

EMT Mastrantuono drove the ambulance to Albany Medical Center, while Paramedic Camara and two officers rode in the back with Mr. Jones. As they approached the hospital, the

sedative wore off, and Mr. Jones flailed his arms and tried to free himself from the handcuffs.

At Albany Medical Center, hospital staff wheeled Mr. Jones into the Emergency Room, and took over his care. As she walked back to the ambulance, EMT Mastrantuono saw a security guard run towards Mr. Jones's trauma room.

### **Albany Medical Center**

According to Albany Medical Center records, Mr. Jones arrived at 2:57 a.m. and was taken to the Emergency Department. A blood draw showed his blood alcohol content was .295%.<sup>10</sup> Mr. Jones's blood was not tested for any other substances.

Mr. Jones had 30% partial thickness burns with scattered blisters to his face, neck, chest, abdomen, arms, and upper back. His hair was singed on his head, nose, mustache, and beard. Mr. Jones was combative with staff and attempted to get out of bed. He was sedated with Ketamine and placed in soft restraints. His chest x-rays showed diminished lung volumes, and his oxygen saturation was 92%—anything below 95% is medically concerning. Given the burns to his face, mouth and nose, Mr. Jones was intubated to protect his airway. At 7:00 a.m. Mr. Jones was transferred from Albany Medical Center to the Burn Center at Upstate University Hospital in Syracuse.

### **Upstate University Hospital**

According to Upstate University Hospital records, Mr. Jones was admitted to the Burn Intensive Care Unit, where he remained sedated and on a respirator. By the next day, Mr. Jones's pulmonary condition worsened, and he was placed on a blood oxygenation machine. Over the next few weeks, the burns on his skin healed, but his lungs deteriorated, leading to respiratory failure. After numerous complications and no positive progress, Mr. Jones's family withdrew further medical treatment, and transitioned him to comfort care. On December 15, 2021, Mr. Jones was pronounced dead.

### **Medical Examiner**

Dr. Brandy Shattuck of the Onondaga County Medical Examiner's Office conducted an autopsy of Mr. Jones. OSI interviewed Dr. Shattuck on March 15, 2022, after she reviewed Mr. Jones's medical records from Albany Medical Center and Upstate University Hospital. Dr. Shattuck concluded the cause of death was complications from thermal and inhalation injuries, and the manner of death was homicide. She said in plain English that Mr. Jones's symptoms throughout his hospitalization were consistent with inhalation of hot gasses, which burned and damaged his lungs. Consequently, Mr. Jones suffered hypoxemia (low blood oxygen levels), and never regained the ability to breathe on his own.

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<sup>10</sup> For comparison, .295% is over three and a half times the legal limit for drivers in New York: 0.08%.

## NEW YORK STATE CLEAN HAND SANITIZER

Mr. Jones doused himself in liquid hand sanitizer from a NYS Clean Hand Sanitizer bottle issued during the COVID-19 Pandemic.

The front of the bottle contained minimal text, including the name, a logo “New York State Making Progress Happen,” and the size “1 Gallon (3.78L).” There are no warning labels or symbols on the front of the bottle.



*Front of the NYS Clean Hand Sanitizer Bottle.*

The back of the bottle had more information, including sections on Steps to Stop the Spread of the Virus [Covid-19], Drug Facts, and Miscellaneous Bottling/Sale Information.

Under a section labeled “Drug Facts”, in small font, the bottle listed the active ingredient as “Isopropyl alcohol 75%.” It further stated, in small but bolded font:

### **Warnings**

**For External use only**

**Flammable: Keep away from fire or flame**

**Store at temperature below 100°F**



Back Label of the NYS Clean Hand Sanitizer Bottle.

There were no other warning labels or symbols on the bottle.

## POLICIES AND TRAINING

### Catskill Police Department Use of Force Policy

According to the Catskill Police Department Policy Manual, Article 52, Use of Force:

3.1 – It is the policy of the Department that the amount of force used by a member [is] objectively reasonable, necessary and lawful under the circumstances under which the use of force is employed. A member’s use of force is to be consistent with Policy & Instruction, Department training in the use of force, applicable constitutional standards and within the limits established by Article 35 of the New York State Penal Law.

3.2 – The primary duty of all members is to preserve human life. Members will use no more force than is objectively reasonable and necessary, given the facts and circumstances known or perceived by the member at the time of the incident giving rise to the use of force, to effectively bring an incident or person under control.

3.3 – While it is the ultimate objective of every member’s encounter with citizens to minimize the risk of injury to all involved, nothing in this Policy & Instruction requires that a member actually sustain or unreasonably risk physical injury before applying a reasonable use of force to protect themselves or another person, effect an arrest, overcome resistance or prevent escape.

5.1 – Force may be used by members when it is objectively reasonable and believed to be necessary to:

5.1.1. – Protect yourself or another person from an imminent unlawful use of physical force

5.1.2 – Effect the arrest or prevent the escape from custody of a person whom you reasonably believes [sic] to have committed an offense or

5.1.3 – Accomplish your lawful objective in accordance with the provisions of Article 35 or other law or statute authorizing a police officers [sic] use of physical force

5.1.4 – A police officer may use only such force as is “Objectively Reasonable” under the circumstances

5.2.1 When used, force should only be that which is objectively reasonably given the circumstances perceived by the officer at the time of the event.

5.2.2 Factors that may be used to determine the reasonableness of force include, but [are not] limited:

1. The severity of the crime or circumstances
2. The level and immediacy of a threat or resistance posed by the suspect. Risk or attempt of the suspect to escape
3. The potential for injury to the officer, citizens and suspect
4. The knowledge, training and experience of the officer
5. Other factors to be considered are officer/suspect age, size, skill level, injury or exhaustion, and the number of officers or subjects present
6. Other environmental conditions or exigent circumstances

The CPD Use of Force Continuum is listed in Appendix A of Article 52:

<u>Stage of Resistance</u>	<u>Response</u>
Verbal & Visual	Member presence, verbal direction
Passive	Physical direction, soft empty hand techniques
Active	Hard empty-handed techniques, including OC Spray and the Taser
Combative	Temporary incapacitation including baton
Destructive	Deadly physical force including firearms

### **Catskill Police Department Emotionally Disturbed and Mentally Ill Persons Policy**

According to the Catskill Police Department Policy Manual, Article 88, Emotionally Disturbed & Mentally Ill Persons:

- 6.1 If a person is conducting themselves in a manner likely to result in serious harm to themselves or other persons, a police officer is authorized to take custody of the person (citing MHL 9.41).

### **Catskill Police Department Taser Policy**

According to the Catskill Police Department Policy Manual, Article 55, Taser:

- 2.1 It is the policy of the Department to provide use of force options to members for dealing with persons who are combative, non-compliant, armed and/or violent so that situations involving such persons may be handled in a manner which deescalates and reduces the likelihood of injury to the subject, police officers and other persons.

- 6.1 In accordance with Department Policy & Instruction and Department training, the Taser may be utilized by members to gain control of or take into custody persons whom [sic] are reasonably considered to be, or objectively and reasonably exhibit the potential to be: Actively Resistant, Combative or Destructive as those terms are defined and utilized by the Department in its use of force training. The Taser may be utilized when verbal direction has been met with non-compliance and the subject appears to be aggressive or threatening towards the officer(s) or third party. The deployment of the Taser will be in compliance with Article 35 of the New York State Penal Law governing the use of force, and Article 52 of the Catskill Police Department Operational Manual.
- 6.6 The Taser may be used when attempts to subdue a subject by other tactics or with other equipment have been or will likely be ineffective or result in injury to the officer, the suspect or a third party, or when there is a reasonable expectation that it will be unsafe for an officer to approach within contact range of a subject.
- 6.9 The Taser is not to be utilized in an environment where the member knows that flammable, volatile or explosive materials are present.

### **Catskill Police Department Flammable Materials Training**

According to CPD Chief Ronald Fascello, who was interviewed by OSI, CPD officers do not receive general hazardous or flammable materials training. CPD officers are provided a 400-page Emergency Response Guidebook, to be kept in their patrol cars, advising them how to handle “the initial phase of a transportation incident involving dangerous goods/hazardous materials.” The Guidebook, according to Chief Fascello, serves as a quick reference in the event an officer encounters a spill on the roadway. Page 196 of the Guidebook warns that Isopropyl Alcohol is “highly flammable [and] will be easily ignited by heat, sparks, or flames.”

### **Taser Training**

In New York State, the Office of Public Safety (OPS), a subdivision of the Division of Criminal Justice Services, is “responsible for the review and approval of basic, supervisory and in-service training curricula and instructors” to ensure they “meet statutory requirements for curriculum content, instructor qualifications/certification and hours.”<sup>11</sup> Courses are typically taught at regional academies by a mix of law enforcement officials from a variety of departments.<sup>12</sup> OPS sets the curricula for the Basic Course for Police Officers, required by

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<sup>11</sup> See History of Basic Course for Police Officers, available at <https://www.criminaljustice.ny.gov/ops/training/bcpo/index.htm> [Sept 5, 2013].

<sup>12</sup> See Basic Course for Police Officers, available at <https://www.criminaljustice.ny.gov/ops/training/bcpo/bcpo01.htm> [Sept 5, 2023].

General Municipal Law section 209-q, and other “instructor level and in-service courses.”<sup>13</sup> For example, the current Basic Course for Police Officers requires over 700 hours of instruction on a “wide range of topics, including but not limited to Ethics & Professionalism, Cultural Diversity, Bias Related Incidents, Professional Communication, Persons with Disabilities, Crisis Intervention, Use of Physical Force & Deadly Force, Active Shooter Response and Decision Making.”<sup>14</sup>

According to Daniel Carlson, currently a Program Coordinator/Instructor at the Monroe County Public Safety Training Facility (one of OPS’s approved regional academies) and formerly an Axon Master Instructor who taught Sgt. Nazi’s Taser Instructor course, OPS does not require or oversee Taser training for officers. Since Tasers are optional and proprietary equipment, those departments who chose to issue Tasers receive training from the “Axon Academy” by Axon certified instructors using Axon approved materials. Within the Axon training structure, Axon’s own Master Instructors teach veteran police officers to become Trainers, who in turn teach the basic Axon Taser Training Academy to first time users of the Taser. According to former Master Instructor Daniel Carlson and current Master Instructor Jon Midget, Axon advises all instructors not to deviate from the Axon approved curricula and Power Point slides.

On April 14, 2013, Sgt. Nazi completed the basic Axon Taser Training Academy, and on November 7, 2017, he completed the Axon Instructor course. Sgt. Nazi attended additional Axon trainings on December 12, 2018, and January 21, 2019.

According to the Power Point slides for both the basic Axon Taser course and the Axon Instructor course, officers were told that a Taser is a Conducted Energy Weapon primarily designed to create neuro-muscular incapacitation (Taser Training Slides 19-36; Instruction Training Slides 21-31). When used in probe deployment mode, the Taser fires two electrodes that remain attached to the device via thin wires. The Taser then delivers electrical pulses through the wires to the electrodes, which cause uncontrollable muscle contractions and reduced voluntary movement. Although not designed to inflict pain, the Taser will cause some pain during involuntary muscle contractions and from contact with the probes.<sup>15</sup>

Regarding use of a Taser around flammable substances, both the basic Axon Taser course and the Axon Instructor course contained two slides on the topic that were the same. The

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<sup>13</sup> See Law Enforcement Training Recourses, available at <https://www.criminaljustice.ny.gov/ops/training/coursesevents/index.htm> [Sept 5, 2023].

<sup>14</sup> See Basic Course for Police Officers, available at <https://www.criminaljustice.ny.gov/ops/training/bcpo/bcpo01.htm> [September 4, 2023].

<sup>15</sup> A Taser has a secondary, “drive stun,” mode, which is primarily designed to inflict pain (Taser Training Slides 25, 166-171). To use drive stun, an officer presses the device against the skin or clothing of a suspect and pulls the trigger. Because the electrodes of the device are close together (compared to probe deployment), the Taser will not cause neuro-muscular incapacitation, but will inflict pain. In this case, based on the video, Sgt. Nazi deployed the Taser in probe deployment mode, not drive stun mode.

first, a Table of Contents slide for “Key Safety Guidelines,” said, “Avoid flammables & explosives” (Taser Training Slide 39; Instructor Training Slide 32). The second, a slide labeled “Avoid Flammables & Explosives” included body camera footage from a 2018 incident where a man burst into flames when officers simultaneously used pepper spray and a Taser (Taser Training Slide 41; Instructor Training Slide 34).

### Key Safety Guidelines

1. Avoid dangerous falls
2. Avoid flammables & explosives
3. Use preferred target zones
4. Restrain fast – avoid prolonged exposures
5. Use caution with sensitive populations



*These slides were included in the Taser and Taser Instructor training course materials.*

The Axon Instructor course contained additional slides on flammability, including one that provided a list of flammable substances to avoid. Prior to August 2023, Axon warned against using a Taser around “gasoline, sewer gases, meth labs, flammable personal defense sprays, hair gels, butane lighters, etc.” (Instructor Training Slide 355).

## Flammability

- TASER CEW can ignite explosive materials, liquids, fumes, gases, vapors, or other flammable substances (Gasoline, sewer gases, meth labs, flammable personal defense sprays, hair gels, butane lighters, etc.)
- Some propulsion agents (carriers) are flammable
- Do not deploy a CEW in conjunction with flammable personal defense sprays

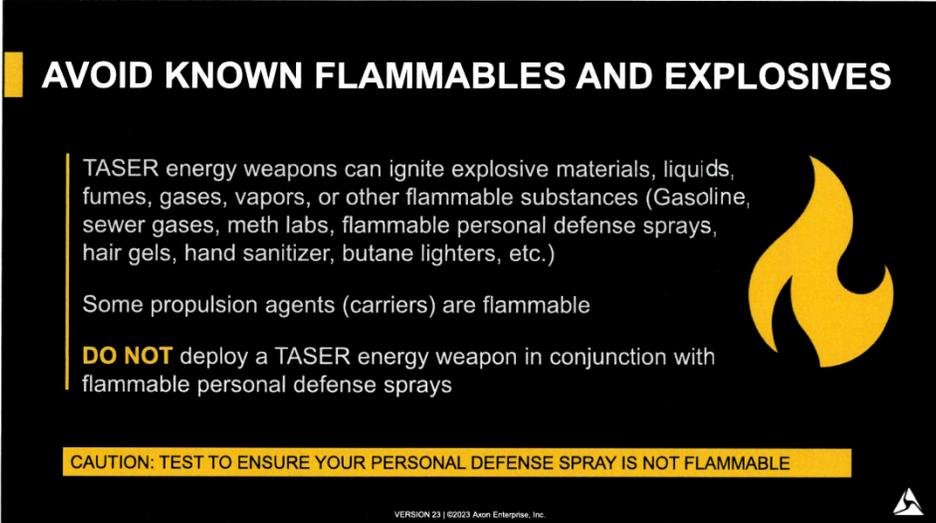
**CAUTION**

Test to ensure your personal defense spray is not flammable

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*Slide on Flammability from the Axon Instructor Training Course*

In August 2023, after this incident, Axon updated its training materials and added hand sanitizer in the list of known flammables and explosives to avoid.



**AVOID KNOWN FLAMMABLES AND EXPLOSIVES**

TASER energy weapons can ignite explosive materials, liquids, fumes, gases, vapors, or other flammable substances (Gasoline, sewer gases, meth labs, flammable personal defense sprays, hair gels, hand sanitizer, butane lighters, etc.)

Some propulsion agents (carriers) are flammable

**DO NOT** deploy a TASER energy weapon in conjunction with flammable personal defense sprays

**CAUTION: TEST TO ENSURE YOUR PERSONAL DEFENSE SPRAY IS NOT FLAMMABLE**

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*Slide on Known Flammables and Explosives updated in August 2023 to include hand sanitizer*

The Taser Training Certification Test asked, “When using the Taser x26 ECD with chemical sprays, the following must be considered” (Question 23). The correct answer, circled by Sgt. Nazi, was, “Type of propellant and base of chemical or pepper spray (for flammability).” It also asked, “TASER ECDs can ignite” (Question 33). The correct answer, circled by Sgt. Nazi, was “All of the above,” which included, “gasoline vapors,” “butane,” and “some personal defense sprays.”

According to both current Axon Master Instructor Jon Midget and former Axon Master Instructor Daniel Carlson, other than the materials contained in the Power Points, there was nothing else in the training courses on the flammability of any other substances, such as hand sanitizer or isopropyl alcohol-based liquids.

## LEGAL ANALYSIS

To secure a criminal conviction, the prosecution must prove beyond a reasonable doubt every element of the crime charged.

In this case, the evidence establishes that Sergeant Nazi, Officer Goldpaugh, and Officer Craig caused Mr. Jones's death when, acting together, they used a Taser, which ignited the hand sanitizer, which in turn caused the injuries that led to his death.<sup>16</sup> Whether they committed a crime depends on their state of mind.

### Intentional Crimes

OSI first analyzes whether the officers committed an intentional crime. A person intends a result when "his conscious objective is to cause such result," Penal Law Section (PL) 15.05(1).

#### *Intent to Cause Death*

A person commits Murder in the Second Degree, PL 125.25(1), when, with intent to cause the death of another person, he causes the death of such person.

In this case, the officers said they intended to detain Mr. Jones to take him to the hospital. When Mr. Jones caught fire, the video surveillance shows the officers react with surprise, and run out of the room. The officers said they ran to get fire extinguishers; the interviews of Dispatcher Wagenbaugh and the Good Samaritan corroborate this. Sgt. Nazi returned to the lobby to put out any lingering flames. These actions are inconsistent with a conscious objective to cause death, and there is no evidence that the officers intended to kill Mr. Jones.

Therefore, OSI concludes a prosecutor could not prove beyond a reasonable doubt that the officers committed Murder in the Second Degree.

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<sup>16</sup> Under New York law, a person "causes" another's injuries or death when that person's conduct is a sufficiently direct cause of the injuries or death, *People v Matos*, 83 NY2d 509 (1994). In this case, according to Dr. Brandy Shattuck of the Onondaga County Medical Examiner's Office, Mr. Jones suffered significant injuries to his lungs and ultimately death when he inhaled hot gases ignited by the Taser. Accordingly, OSI could likely prove beyond a reasonable doubt that the officers caused Mr. Jones' injuries and death.

Under New York law, two or more persons are criminally responsible for the same crime when they act with the same purpose and intentionally aid each other, even if they commit different acts, Penal Law Section 20.00. In this case, although Sgt. Nazi fired the Taser, Offs. Craig and Goldpaugh said they intended the same result (to detain Mr. Jones) and intentionally aided Sgt. Nazi by surrounding and attempting to handcuff Mr. Jones. Accordingly, OSI could likely prove beyond a reasonable doubt that the officers acted together and are responsible for the same crimes. Therefore, it considered the same charges for all three officers.

### ***Intent to Cause Serious Physical Injury***

A person commits Assault in the First Degree, PL 120.10(1), when, with intent to cause serious physical injury to another person, he causes such injury to such person by means of a dangerous instrument.<sup>17</sup>

A person commits Assault in the Second Degree, PL 120.05(1), when, with intent to cause serious physical injury to another person, he causes such injury to such person or to a third person.

“Serious Physical Injury” means 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 10.00(10).

In this case, the officers said they intended to detain Mr. Jones using the least amount of force necessary, so as not to harm him. The video surveillance shows the officers responded to the fire with surprise; in their interviews they said they tried to find fire extinguishers, which is corroborated in interviews of other witnesses. When he could not find an extinguisher, Sgt. Nazi tried to put out the remaining flames with his hands. These actions are inconsistent with a conscious objective to seriously wound or disfigure, and there is no other evidence that the officers intended to cause serious physical injury to Mr. Jones.

Therefore, OSI concludes a prosecutor could not prove beyond a reasonable that the officers committed Assault in the First Degree or Assault in the Second Degree.

### ***Intent to Cause Physical Injury***

A person commits Assault in the Second Degree, PL 120.05(2), when, with intent to cause physical injury to another person, he causes such injury to such person by means of a dangerous instrument.

A person commits Assault in the Third Degree, PL 120.00(1), when, with intent to cause physical injury to another person, he causes such injury to such person.

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<sup>17</sup> Dangerous instrument is defined as “any instrument, article, or substance...which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,” PL 10.00(13). Courts have generally held that Tasers and stun guns may qualify as dangerous instruments depending upon the circumstances in which they are used, *People v Johnson*, 184 AD3d 545 (1st Dept 2020) (“evidence ... supports the conclusion that defendant used a taser on the victim, which constituted a dangerous instrument because it was readily capable of causing serious physical injury under the circumstances of its use”); *People v Richard*, 30 AD3d 750 (3d Dept 2006) (upholding conviction of defendant who used an electric stun gun to shock the victim on her abdomen causing welts); *People v MacCary*, 173 AD2d 646 (2d Dept 1991) (upholding conviction of police officers who used a stun gun several times on the victim’s body for several seconds, because the manner in which it was used caused extreme pain, severe skin lesions and significant burns). OSI could likely prove beyond a reasonable doubt that the Taser in this case was a dangerous instrument.

“Physical injury” means impairment of physical condition or substantial pain, PL 10.10(9).

“Impairment of physical condition” is not defined by statute. Courts have held it does not require incapacitation, *People v Tejada*, 78 NY2d 936 (1991), but does require “more than some momentary limitation of bodily functions, no matter how grave,” *United States v Ray*, 2022 WL 17175799, \*11 (SDNY 2022), citing *People v Almonte*, 424 NYS2d 868 (Sup Ct, NY County, 1980). “For the assault to have caused an impairment of physical function, the impairment must outlast the assault,” *id.* For instance, no impairment of physical condition occurred where the victim, who was hit in the head, “passed out but regained consciousness a minute later,” felt “dizzy and achy for four or five hours” and experienced slight bleeding from the head, *People v Franklin*, 149 AD2d 617 (2d Dept 1989).

Similarly, “substantial pain cannot be defined precisely,” *People v Chiddick*, 8 NY3d 445, 447 (2007). “Substantial pain” is “more than slight or trivial pain [but need not] be severe or intense”; the injury must be viewed objectively; whether medical attention was sought is relevant to whether the pain “was significant”; and a defendant’s motive to inflict pain is a consideration in determining whether a victim suffered substantial pain, *id.*

In this case, Sgt. Nazi said he intended to safely detain Mr. Jones when he used the Taser:

“And then he just clenched and just didn’t come off the combative stance, didn’t provide his wrists for handcuffing or even just say, ‘okay, not a problem, I understand.’ So at that point, I deploy the Taser. My plan was deploy the Taser, just like in training, we’ll cuff under power. We know that’s safe. We know that’s okay. Take him into custody.”

Sgt. Nazi said he considered and rejected using other forms of force against Mr. Jones, to avoid causing him injuries:

“In my opinion, to go hands on and to take this to the ground and get him in cuffs was going to lead to injuries on our behalf as well as his behalf. I thought with the Taser, he’s not going to get injured, we’re not going to get injured. The least amount of injuries to happen will just be to deploy the Taser. Um, and that was my decision to deploy the Taser. I didn’t want three of us piling on top of him and then I have to worry about maintaining his chest and airway and back region with all the new laws on the books while I got two other guys trying to take him into custody. And again, I just thought the Taser was going to be the least amount of force that would take him into custody successfully.

...

“... in that very particular situation, I feel as if that [using pepper spray] would have amped him up and then he probably would have been just swinging blindly, which, again, not a good situation. He’s going to get hurt, we’re going to get hurt. I just didn’t want anybody to get hurt.”

Sgt. Nazi's training was that the Taser would temporarily cause neuro-muscular incapacitation and pain. Sgt. Nazi said he intended to use the Taser just long enough to allow the other officers to handcuff Mr. Jones, "to cuff under power" and the video surveillance shows he disconnected the Taser when Mr. Jones caught fire. These actions are inconsistent with a conscious objective to cause more than "momentary limitation of bodily function" or "substantial" or "significant" pain.

Therefore, OSI concludes a prosecutor could not prove beyond a reasonable doubt that the officers committed Assault in the Second Degree or Assault in the Third Degree.

### **Reckless Crimes**

OSI next analyzes whether the officers committed a reckless crime. A person acts recklessly "with respect to a result (e.g., death or physical injury) ... when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur.... The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation," PL 15.05(3).

A defendant's reckless conduct is a "sufficiently direct cause" of death or physical injury when the "ultimate harm is something which could have been foreseen as being reasonably related to the acts of the accused," *People v Susquisupa*, 167 Misc 2d 109, 111 (Sup Ct, Bronx County 1996), quoting *People v Kibbe*, 35 NY2d 407, 412 (1974).

A person commits Manslaughter in the Second Degree, PL 125.20(1), when he recklessly causes the death of another person.

A person commits Assault in the Second Degree, PL 120.05(4), when he recklessly causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

A person commits Assault in the Third Degree, PL 120.00(2), when he recklessly causes physical injury to another person.

In *People v Reagan*, 256 AD2d 487 (2d Dept 1998), the Appellate Division held there was insufficient evidence to charge the defendants with Manslaughter in the Second Degree (reckless homicide) where two of the defendants' workers drowned when they hit a water pipe while digging a ditch, even though the defendants knew the water pipe was present. The court said:

"There was no evidence presented that anyone at the scene...objected to the procedure, or went ahead *recklessly* (i.e., with a heightened awareness of a substantial and unjustifiable risk of collapse, let alone a risk of drowning). They all continued, believing the prescribed approach to be both appropriate and officially approved. All of this not only fails to support, but *negates* the element of recklessness that the defendants were aware of and 'consciously

disregard[ed]’ a ‘substantial and unjustifiable risk.’ Considering that the defendants’ conduct did not amount to a conscious disregard of a known risk, the additional statutory element – that the disregard be so extreme as to be a gross deviation from a reasonable person’s standard of conduct—is, a fortiori, not met. While tragic drownings ensued, that does not convert the defendants’ actions into criminal recklessness, except by hindsight.”

256 AD2d at 489 (*internal citations omitted*).

In the present case, for a prosecutor to prove the officers recklessly caused Mr. Jones’s death or injuries, the prosecutor would need to prove beyond a reasonable doubt that the officers were aware of and consciously disregarded the risk that the Taser would ignite the hand sanitizer, and that their disregard of that risk was “a gross deviation from the standard of conduct that a reasonable person would observe in the situation.”

The officers said they were not aware the hand sanitizer was flammable, and, like the workers in *Reagan*, none of them raised a question about the safety of using the Taser around hand sanitizer.

Axon Taser training did not explicitly inform officers that hand sanitizer was potentially flammable; it generally warned against using a Taser around “flammables and explosives,” and specifically told officers to avoid certain substances, such as gasoline and pepper spray. Axon Master Instructor Midget confirmed the trainings do not explain that certain substances (such as isopropyl alcohol-based liquids) might be flammable. The three officers in this case remembered the warning not to use a Taser around pepper spray, and Sgt. Nazi said he did not start with pepper spray because he would then be unable to use a Taser as a backup.

CPD trainings did not warn the officers that hand sanitizer was potentially flammable. CPD Chief Fascello said officers do not receive generalized training on hazardous or flammable materials. CPD officers do receive a 400-page Emergency Response Guidebook, intended as a reference book in the event of a hazardous event, such as a large chemical spill on a roadway – but they are not required to know its contents, only to have it ready if they need to reference it. Although the guidebook says isopropyl alcohol is flammable, it does not list hand sanitizer as a substance that contains it.

The bottle of hand sanitizer did not have a large and obvious warning that its contents were flammable. As shown above, the bottle said “Flammable” in relatively small print on the back, and there is no evidence the officers had ever turned the bottle over and read that warning.

Finally, the video surveillance shows the officers advance towards Mr. Jones after he doused himself in hand sanitizer, then jump back in surprise when he burst into flames. These actions are inconsistent with knowledge that hand sanitizer was flammable, and there is no

other evidence suggesting the officers consciously disregarded a risk that the Taser would ignite it.

Therefore, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that the officers consciously disregarded the risk that the Taser would cause the hand sanitizer to ignite, and thus unable to prove beyond a reasonable doubt that the officers committed Manslaughter in the Second Degree, Assault in the Second Degree, or Assault in the Third Degree.

### Negligent Crimes

Third, OSI analyzes whether the officers committed any crime of involving criminal negligence.

A person acts with criminal negligence “with respect to a result (e.g., death or physical injury) ... when he fails to perceive a substantial and unjustifiable risk that such result will occur .... The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation,” PL 15.05(4).

A person commits Criminally Negligent Homicide, PL 125.10, when, with criminal negligence, he or she causes the death of another person.

A person commits Assault in the Third Degree, PL 120.00(3), when, with criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

“Both recklessness and criminal negligence require that there be a ‘substantial and unjustifiable risk’ that death or injury will occur; that the defendant engage in some blameworthy conduct contributing to that risk; and that the defendant’s conduct amount to a ‘gross deviation’ from how a reasonable person would act. The only distinction between the two mental states is that recklessness requires that the defendant be ‘aware of’ and ‘consciously disregard’ the risk while criminal negligence is met when the defendant negligently fails to perceive the risk...the underlying conduct for both offenses is the same and involves some degree of risk creation...nonperception of a risk, even if death results, is not enough—rather the defendant must have engaged in some blameworthy conduct creating or contributing to a substantial and unjustifiable risk,” *People v Gaworecki*, 37 NY3d 225, 231 (2021) (*internal citations omitted*); see also *People v Cabrera*, 10 NY3d 370, 376 (2008); *People v Conway*, 6 NY3d 869, 872 (2006); *People v Boutin*, 75 NY2d 692, 695-96 (1990). “[C]arelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence [and the] carelessness must be such that its seriousness would be apparent to anyone who shares the community’s general sense of right and wrong,” *Conway* at 872, quoting *Boutin*.

In *People v Gaworecki*, 37 NY3d 225 (2021), the Court of Appeals held that the defendant, a drug dealer, did not commit either Manslaughter in the Second Degree (reckless homicide) or Criminally Negligent Homicide when he sold particularly strong heroin to a user, who later died of an overdose. The evidence at trial proved the defendant knew the heroin was “strong and required caution.” But the heroin’s potency did not necessarily mean there was a substantial and unjustifiable risk that death would occur, because multiple people had used the same sample and survived their encounters. It was important that there was “no evidence that defendant had been told that other people had overdosed or died after using the heroin he had sold them.” Other than “general knowledge of the injuriousness of drug-taking,” there was no other evidence that defendant knew or failed to perceive any real threat to the decedent’s life.

In *People v Cabrera*, 10 NY3d 370 (2008), the Court of Appeals dismissed a charge of Criminally Negligent Homicide when the defendant, a 17-year-old who was speeding, failed to negotiate a curve in the road, and crashed into a telephone pole, killing three of his passengers and injuring a fourth. Although the defendant was speeding, the Court said, “it takes some additional affirmative act...to transform ‘speeding’ into ‘dangerous speeding,’” such as consciously accelerating in the presence of an obvious risk. Without more, the evidence was insufficient to show “seriously condemnatory behavior” necessary to sustain a conviction for Criminally Negligent Homicide.

Similarly, in *People v Boutin*, 75 NY2d 692 (1990), the Court of Appeals dismissed a charge of Criminally Negligent Homicide when a truck driver failed to see a police car with on the side of the road and struck it, killing the officer and a driver of a disabled vehicle who were seated inside. The marked police car had its emergency lights flashing, and several witnesses testified they saw it or its lights prior to the crash. Nevertheless, there was no proof that “defendant was engaged in any criminally culpable risk-creating conduct—e.g., dangerous speeding, racing, failure to obey traffic signals or any other misconduct” prior to the crash. Accordingly, the Court held the defendant’s failure to see the patrol car “may well constitute civil negligence” but it did not establish criminal negligence.

Comparatively, in *People v Conway*, 6 NY3d 869 (2006), the Court of Appeals upheld a conviction for Assault in the Third Degree (criminally negligent assault) where a police officer accidentally shot a fleeing suspect, while trying to steer his patrol car with his gun in the same hand. In that case, the defendant “tried to jockey himself into position to apprehend a suspect fleeing on foot from his patrol car by simultaneously manipulating a gun, with his finger on the trigger, and the steering wheel with his right (nondominant) hand while reaching out of the open window of the moving car and grappling with suspect with his left hand.” Defendant, clearly trying to do too many things at once, with his finger of his nondominant hand on the trigger, engaged in blameworthy conduct that the Court quickly concluded “created or contributed to a substantial and unjustifiable risk” of an accidental discharge.

In *People v Green*, 180 AD2d 141 (1st Dept 1992), the Appellate Division upheld a conviction for Criminally Negligent Homicide where the defendant, a self-styled “licensed” operator of an enema clinic, treated a patient with a crude procedure that introduced high pressure water into his colon, causing it to rupture and the patient to die. The evidence at trial established the procedure was fringe, of the defendant’s own making, “had no medical value and was inherently dangerous.” The court noted the defendant was familiar with different and safer forms of treatment, so “she should have been aware of the risk posed by the use of her device.”

In *People v Heber*, 192 Misc 2d 412 (Sup Ct, Kings County 2002), the court refused to dismiss an indictment charging both Manslaughter in the Second Degree (reckless homicide) and Criminally Negligent Homicide where the defendant left an illegal handgun under a chair in his living room and his four-year-old nephew accidentally shot himself with it. The court said that “it is a matter of *common sense* that guns (particularly loaded guns) ought to be placed safely out of the reach of young children.” Defendant, who was a father himself, “exercised extremely poor judgment and grossly misused what is undeniably an inherently dangerous instrumentality” when he had ample time to move the handgun but chose not to. On these facts, the court found the defendants’ level of carelessness constituted “serious blameworthy conduct” sufficient to support both homicide charges.

In *People v Beckles*, 113 Misc 2d 185 (Sup Ct, NY County 1982), the court dismissed an indictment charging Criminally Negligent Homicide where the defendant struck the victim once, causing the victim to fall, strike his head on an unknown object, suffer a brain hemorrhage, and die. Although the defendant clearly intended to cause injury, there was no evidence of the “existence and visibility of dangerous objects or protrusions on the ground” that might have provided warning or notice to the defendant that his blow might cause death. “Clearly one who strikes a blow at a frail person in the midst of broken glass or on the edge of a precipice is more culpable than one who strikes a healthy man in a grass field.” Accordingly, the court held there was insufficient evidence of criminal negligence “in the absence of evidence that the circumstances would have made it obvious to a person of ordinary sensibilities that the blow or injury would create a substantial risk of death.”

In this case, Mr. Jones suffered serious injuries and ultimately death when the Taser ignited the hand sanitizer. Thus, to prove the officers committed a criminally negligent crime requires sufficient evidence they failed to perceive a substantial and unjustifiable risk the hand sanitizer was flammable, they engaged in some morally blameworthy conduct when they used the Taser, and their conduct was a gross deviation from how a reasonable person would act.

The officers all said they were not aware the hand sanitizer was flammable—it was not something they were taught or had personal experience with. Moreover, the officers said they were not aware of its ingredients or how isopropyl alcohol made the substance flammable. Sgt. Nazi said he thought “it was a simple cleaning agent.” The video

surveillance tends to corroborate their ignorance, since it clearly shows the officers were surprised by the fireball that erupted.

Neither CPD training nor Axon Taser training specifically listed hand sanitizer or isopropyl alcohol as a flammable substance or taught the chemical makeup of, or how to identify, generally flammable substances.

The bottle of hand sanitizer had a single warning about its flammability, on the back in relatively small font. Like the environment that caused the victim's death in *Beckles*, the bottle of hand sanitizer did not provide obvious notice of its contents' potential flammability.

Moreover, hand sanitizer is not commonly thought of as an inherently dangerous instrumentality. Officer Craig was probably conveying a common understanding when he said he had no concerns about using a Taser around hand sanitizer because, "I mean we put it on our hands all the time, ever since COVID and everything else...We use it every day. We cook after we use it. Whatever. Never any issues." Therefore, unlike the handgun at issue in *Heber*, it cannot be said that hand sanitizer is so obviously dangerous that everyone knows to use caution around it.

Although the Good Samaritan said he knew hand sanitizer was flammable, we do not in these circumstances impute his knowledge to the officers.

Based on the foregoing, there is insufficient evidence the officers failed to perceive a substantial and unjustifiable risk that the hand sanitizer was flammable.

Moreover, the officers said they chose the Taser because Mr. Jones appeared to be a danger to himself and others, was not compliant with verbal commands, and the Taser was the method least likely to cause him or the officers any injuries. Sgt. Nazi said, "I thought with the taser, he's not going to get injured. The least amount of possible injuries to happen will just be to deploy the taser."

The officers' use of force, generally, and use of the Taser, specifically, appear consistent with CPD policies. Section 6.1 of the Emotionally Disturbed and & Mentally Ill Persons Policy, states that a CPD officer may take into custody a person "conducting themselves in a manner likely to result in serious harm to themselves or other persons." Section 3.2 of the Use of Force Policy states, "Members will use no more force than is objectively reasonable and necessary, given the facts and circumstances known or perceived by the member at the time of the incident giving rise to the use of force, to effectively bring an incident or person under control." Section 6.1 of the Taser Policy says, "the Taser may be utilized when verbal direction has been met with non-compliance and the subject appears to be aggressive or threatening towards the officer(s) or third party." And Section 6.6 of the Taser Policy says, "the Taser may be used when attempts to subdue a subject by other tactics or with other equipment have been or will likely be ineffective or result in injury to the officer, the suspect or a third party, or when there is a reasonable expectation that it will be unsafe for an officer

to approach within contact range of a subject.” The video surveillance largely confirms the officers’ claims that Mr. Jones was aggressive towards the officers, and other methods to subdue him would likely have been ineffective or resulted in greater injuries. Thus, the evidence does not substantiate that the officers deviated from CPD policy.

Compared to the police officer’s carelessness in *Conway* (attempting to do too many things at once with his nondominant finger on the trigger of his gun), or the crude medical procedure in used *Green*, the evidence does not indicate the officers in this case were engaged in hasty, irresponsible, or irregular behavior. Instead, the video surveillance shows the officers attempted to speak to Mr. Jones for 25 minutes, until his behavior gave them reason to believe he was escalating the confrontation, and they attempted to detain him. There is no evidence the officers were aware of a prior incident where a Taser ignited hand sanitizer, such that its use would amount to a gross deviation from how a reasonable officer would act.

Nor does the evidence establish that the officers engaged morally blameworthy conduct. As the officers said in their interviews, and as the other witnesses recount the officers said at the time, the officers intended to detain Mr. Jones under Mental Hygiene Law Section 9.41 because they had reason to believe he posed a danger to himself or others. When they used the Taser, they were not otherwise engaged in misconduct, evidence of which, under *Cabrera* and *Boutin*, would be required to transform potential civil negligence into criminal liability.

Based on the foregoing, there is insufficient evidence the officers engaged in morally blameworthy conduct when they used the Taser, or that their use of it was a gross deviation from how a reasonable person would act under the circumstances.

Therefore, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt the officers were criminally negligent when they used the Taser, and thus unable to prove beyond a reasonable doubt the officers committed Criminally Negligent Homicide or Assault in the Third Degree.

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In sum, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt the officers committed any crime and will not present this case to a grand jury for consideration of criminal charges.

## **RECOMMENDATIONS**

### **The New York State Office of Public Safety Should Formulate and Oversee Taser Training, Including Comprehensive Training on Taser Use around Flammable Substances**

In New York State, the Office of Public Safety (OPS), within the Division of Criminal Justice Services, is generally responsible for the review and approval of curricula and instructors for

police officer trainings. Although OPS requires officers to undergo over 700 hours of training on a variety of topics during the Basic Course for Police Officers, it does not cover Tasers or other Conducted Energy Weapons. Instead, police departments who choose to issue Tasers must send officers to be trained by Axon approved trainers, using Axon approved materials. OPS should no longer allow Taser or CEW training to be outsourced to a private company, but instead should formulate and oversee training on this topic in the Basic Course for Police Officers, ensuring all officers receive NYS approved and updated training on the use of Tasers/CEWs.

Moreover, OPS should go well beyond Axon's general warning that officers avoid using a Taser around "flammable substances," and the short list of examples that Axon provides. The tragedy in this case shows that this training was inadequate. Prior to this incident, the short list of flammable substances in Axon's training materials omitted several commonplace ones, such as natural-gas stoves, hard liquor, and all alcohol-based cleaning and disinfecting products, including hand sanitizer. Due to the Covid-19 pandemic, the use of alcohol-based hand sanitizer increased dramatically, yet Axon did not send any updated trainings or warnings about it. More troubling, even after this tragic incident occurred, Axon did not promptly update its training, describing the incident and warning officers of the dangers of Taser use around alcohol-based hand sanitizers. Not until August 2023 did Axon finally update its Power Point slides and include hand sanitizer in the list of flammable items to avoid when discharging a Taser. Since Axon has acknowledged for years<sup>18</sup> that Tasers can ignite flammable materials, it should have provided comprehensive and timely updates to its training materials, quickly warning officers of the dangers of specific substances that go in and out of common use due to changing world events. Therefore, as OPS takes over the training on Tasers and similar weapons, it should comprehensively study all flammable substances that such weapons could ignite, list those substances in the training materials, make sure instructors train on those materials in the classroom, keep the list updated regularly, and send those updates promptly to all departments that have such weapons in use.

Dated: October 13, 2023

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<sup>18</sup> An Axon spokesperson previously said they included a general warning to avoid using a Taser around "explosive materials, liquids or vapors" since the company's founding in 1993 (see *Uncommon but 'Horrific': When Tasers Set Their Targets On Fire*, available at <https://www.statesman.com/story/news/investigates/2017/09/08/uncommon-but-horrific-when-tasers-set-their-targets-on-fire/8339191007/> [Sept 8, 2017]).