



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

Office of Special Investigation

February 18, 2026

# Report on the Investigation into the Death of Miles Digneau

## OVERVIEW

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 the public report of OSI's investigation of the death of Miles Digneau, who was shot and killed on March 21, 2025, by Oswego County Sheriff's Office (OCSO) Deputy Corey Whitney.

On March 21, 2025, Dep. Whitney and New York State Police (NYSP) Trooper Junyla Sabari responded to Mr. Digneau's house, in the Town of Constantia, to check Mr. Digneau's mental health after a family member placed a phone call to a suicide hotline expressing concern with Mr. Digneau's behavior. At the same time, OCSO Dep. Charles Costello responded to Mr. Digneau's house to serve him with an order of protection, which directed Mr. Digneau to stay away from his three-year-old son, who was at Mr. Digneau's house with him.

Shortly after the officers arrived, while in Mr. Digneau's garage, Dep. Costello told Mr. Digneau that a family member would be coming to pick up his son due to the order of protection, and Mr. Digneau attempted to leave the garage while holding his son. Tr. Sabari took Mr. Digneau's son from him, and a struggle ensued between Mr. Digneau and Deps. Whitney and Costello. During the struggle, Mr. Digneau swung a metal C-clamp at the officers, which struck Tr. Sabari's head. Shortly after, Dep. Whitney discharged his firearm, striking Mr. Digneau, and issued commands for Mr. Digneau to "drop it." Mr. Digneau died of his wounds. The incident was captured by Dep. Whitney's and Tr. Sabari's body-worn cameras (BWCs); Dep. Costello was not equipped with a BWC. (OAG previously released portions of the BWC videos; see [Investigation into the death of Miles Digneau | New York State Attorney General.](#))

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

Mr. Digneau was 32 years old when he died.

## FACTS

Based on the Oswego County 911 Center's logs and audio recordings, on March 21, 2025, at around 12:06 p.m., a call-taker from the 988 Center, a suicide and crisis hotline, called Oswego County dispatchers to inform them that Witness One (W1; OSI does not publish the names of civilian witnesses), a family member of Mr. Digneau's, had placed a call reporting

that Mr. Digneau was “having a psychotic episode;” W1 also requested a “response” to Mr. Digneau’s house on Cook Road. The 988 Center call-taker said W1 reported that Mr. Digneau’s young son was at his house with him and that Mr. Digneau could be “a danger to himself or others.” W1 also expressed concern that officers would arrive and decline to take Mr. Digneau to the hospital. According to the call-taker, W1 said Mr. Digneau did not own any firearms, but thought he might have a BB gun that looked real. W1 also said Mr. Digneau might have taken a substance, which could be escalating his behavior.

Based on the 911 Center’s logs and recorded radio transmissions, at 12:09 p.m., an Oswego County dispatcher radioed, “...received a call from [W1] stating ... Miles Digneau is having a psychotic episode, possibly has a BB gun in the residence, possible drug use.” Based on the BWC videos and OSI’s interviews with Dep. Costello and Tr. Sabari, Tr. Sabari and Dep. Whitney responded to Mr. Digneau’s house in response to the dispatch, and Dep. Costello, a member of OCSO’s Civil Division, responded at the same time to serve Mr. Digneau with an order of protection (signed by an Oswego County judge) that directed Mr. Digneau to stay away from his son, W2, among other parties. According to Dep. Costello, while he was on his way, he and Dep. Whitney talked on the phone to discuss their response; during the phone call, Dep. Whitney told Dep. Costello that he had responded to Mr. Digneau’s house earlier that morning for a separate call, and Mr. Digneau was initially holding a baseball bat and pickaxe but was ultimately compliant. (OSI reviewed Dep. Whitney’s BWC video showing this earlier interaction. Dep. Whitney went to Mr. Digneau’s house in response to a 911 call by Mr. Digneau reporting that someone was driving around impersonating his father. When Dep. Whitney arrived, at 7:35 a.m., Mr. Digneau was outside holding a bat and pickaxe but put them down right away; after Mr. Digneau vented to Dep. Whitney, Dep. Whitney offered to call Mobile Crisis, but Mr. Digneau ultimately said he did not need any assistance and Dep. Whitney left.)

Based on OSI’s interview of Dep. Costello and Dep. Whitney’s BWC video, Dep. Costello and Dep. Whitney both arrived at Mr. Digneau’s home around 12:48 p.m. Dep. Costello got there first and was already walking up to the house as Dep. Whitney parked his police car; as shown on her BWC video, Tr. Sabari first went to the nearby home of W1 to obtain information from W1 and W1’s spouse, W3, and did not arrive at Mr. Digneau’s house until 12:55 p.m. Dep. Whitney’s BWC video, which begins at 12:48:09 p.m., showed that upon their arrival, Dep. Costello spoke with Mr. Digneau at the threshold of the garage; W2 was with Mr. Digneau while they spoke. Dep. Costello explained the order of protection to Mr. Digneau and asked him questions about the protected parties listed on the order; Mr. Digneau was initially evasive about whether W2 was one of the people listed on the order. During the conversation, Mr. Digneau told Dep. Costello that Dep. Costello served him with similar papers two or three years ago, and that Mr. Digneau and Dep. Costello had a disagreement during the encounter; Dep. Costello responded, “We did? ... I don’t really do that anymore.”

At 12:52 p.m., as they continued to speak, Mr. Digneau confirmed W2's date of birth, and Dep. Costello said, "So you've got a stay-away order of protection against him now, how do you want to handle this?" Mr. Digneau responded evasively again, and Dep. Costello said, "I don't know what that means," and told Mr. Digneau that he was going to put paperwork in his car; Mr. Digneau and Dep. Costello briefly spoke about Dep. Costello's new car before Dep. Costello walked away to his car. In his interview with OSI, Dep. Costello said he went to his car to make phone calls and obtain more information about the order of protection. Specifically, Dep. Costello said he called W2's mother and confirmed that W2 was a protected party and then called W1 and arranged for W1 to come to Mr. Digneau's house to pick up W2.

While Dep. Costello was in his car making phone calls, Dep. Whitney stayed with Mr. Digneau and spoke to him in the driveway. Dep. Whitney asked Mr. Digneau questions about motorcycles that were in his driveway and Mr. Digneau explained work he had done on them; during this time, Mr. Digneau was holding W2. At 12:55:35 p.m., in response to one of Dep. Whitney's questions, Mr. Digneau invited Dep. Whitney into the garage to show him another motorcycle. Dep. Whitney followed Mr. Digneau into the garage, and the two continued to speak amicably; during their conversation, Mr. Digneau put W2 down. Tr. Sabari also arrived at this time and followed Mr. Digneau and Dep. Whitney into the garage. At 12:56:18 p.m., Mr. Digneau saw Tr. Sabari in the garage and said, "How are you?" and she replied, "Hi, remember me? It's been a while." Mr. Digneau indicated he remembered her and then continued speaking to Dep. Whitney about the motorcycle, which was on a large lifting table.

At 12:57:46 p.m., Dep. Costello walked into the garage and said to Mr. Digneau, "So I've got [W1] coming up to take your son...;" Mr. Digneau replied, "No, that's not happening..." and picked W2 up. Dep. Costello said, "You have a stay-away order of protection with him, dude. I don't want to fricking get in a fight with you, especially with your son in your hands." Mr. Digneau said, "It's not gonna happen," and walked toward Dep. Costello in an apparent attempt to leave the garage. Dep. Costello used his hand to push Mr. Digneau back, and Mr. Digneau walked the other way and stepped onto the motorcycle lifting table, while still holding W2. Mr. Digneau stepped off the table and walked forward, toward the front of the garage, and, at 12:58:10 p.m., Tr. Sabari grabbed W2 out of Mr. Digneau's arms. Deps. Costello and Whitney attempted to grab hold of Mr. Digneau, and a struggle ensued. During the struggle, Deps. Costello and Whitney tried gaining control of Mr. Digneau by striking and grabbing onto him and issuing commands for him to give them his hands, but he pulled away and physically resisted; Mr. Digneau's garage was filled with tools, worktables, and other items, which Mr. Digneau and Deps. Costello and Whitney were bumping into during the struggle. During this time, W2 was standing nearby crying and reaching out for Mr. Digneau; Tr. Sabari was trying to assist Deps. Costello and Whitney in detaining Mr. Digneau while also keeping W2 back.

At 12:58:40 p.m., as the struggle continued, Dep. Whitney's BWC fell off him and onto the floor. At 12:58:49 p.m., Dep. Costello said what sounded like, "Taser," and Tr. Sabari pulled

her Taser out of its holster and pointed it at Mr. Digneau, as displayed in the below still image from her BWC video.



Seconds later, Mr. Digneau grabbed a metal C-clamp from the top of a toolchest and swung it at the officers, as displayed in the below still image from Tr. Sabari's BWC video; based on OSI's interview with Tr. Sabari and the BWC videos subsequently showing her injury, Mr. Digneau struck Tr. Sabari in the head with the C-clamp when he swung it.





As Mr. Digneau swung the C-clamp, the BWCs captured the sound of a Taser. Based on the BWC videos and review of Dep. Whitney's Taser log, Dep. Whitney deployed his Taser at Mr. Digneau. The below still image from Tr. Sabari's BWC video shows the wires coming from Dep. Whitney's Taser just after Mr. Digneau swung the clamp; Dep. Whitney's Taser is circled in red.



After Mr. Digneau swung the clamp, he began falling backward on top of a pile of items; as he was falling, Dep. Costello grabbed onto Mr. Digneau and crouched over him in an apparent attempt to gain control of him. At this time, Tr. Sabari's BWC video captured the C-clamp, apparently in motion and near Mr. Digneau's right side, as displayed below (the C-clamp is circled in yellow).



About two seconds later, at 12:59:01 p.m., the BWCs captured the sound of gunshots followed by Dep. Whitney shouting, "... Stop, Miles, drop it now, drop it now" and Mr. Digneau saying what sounds like, "I don't have nothing." Dep. Whitney's BWC, which was on the floor and had been kicked around during the struggle, did not capture Mr. Digneau during the shots, and Tr. Sabari's arm was covering her BWC during the shots.

As a visual aide, OSI slowed down the portion of Tr. Sabari's BWC video beginning at 12:58:50 p.m. – shortly before Mr. Digneau grabbed the C-clamp from the toolchest – through the sound of the shots (the video is linked [here](#)). As shown on the slowed-down video, as Mr. Digneau was on the ground struggling with Dep. Costello, the C-clamp was in motion, though it is difficult to decipher whether Mr. Digneau had it in his grasp or it was falling. The video showed that just before Tr. Sabari's BWC became obstructed, Mr. Digneau appeared to move his right arm or side toward Dep. Costello; less than two seconds later, Dep. Whitney fired his gun.

As displayed in the below still image, once Tr. Sabari's BWC became unobstructed after the shots were fired, it showed Mr. Digneau on the ground and on his back as Dep. Whitney pointed his gun at him.



At 12:59:10 p.m., Dep. Whitney shouted, "Charlie, you good?" Dep. Costello replied that he was good, and then said to Mr. Digneau, "You tried to hit me in the head with a God damn C-clamp, dude." At 12:59:12 p.m., Tr. Sabari radioed, "...shots fired, hold the air," and brought W2, who was crying, to the back of the garage. Deps. Costello and Whitney told Mr. Digneau to roll over, but Mr. Digneau did not and asked them to let him stand up. As they continued telling him to roll over, Dep. Whitney said, "You're shot, I gotta help you." At 1:00:14 p.m., Tr.

Sabari walked back toward the front of the garage and her BWC video showed Dep. Costello moving Mr. Digneau at the threshold of the garage and saying, "...I'm gonna handcuff ya, and then we're gonna tend to you." Dep. Costello told Dep. Whitney or Tr. Sabari to call an ambulance, and Dep. Whitney said, "I think they did;" at 1:00:25 p.m., Tr. Sabari radioed, "...do we have an ambulance...?" and a dispatcher responded, "Negative, we can start one."

At 1:00:34 p.m., as Dep. Costello was handcuffing Mr. Digneau's hands behind his back, Dep. Whitney again asked, "Charlie, you okay?" Dep. Costello responded, "One hundred percent, dude. He never [unintelligible] me with anything." At 1:00:43 p.m., Dep. Whitney radioed, "...update on EMS, one male, [gunshot wounds] to the torso." Once Mr. Digneau was handcuffed, Deps. Whitney and Costello and Tr. Sabari administered aid to Mr. Digneau, applying first-aid supplies to his chest wound and encouraging him to continue talking and breathing; around this time, another OCSO member arrived and assisted with the aid.

At 1:04:12 p.m., as they were tending to Mr. Digneau, Dep. Whitney said to Tr. Sabari, "Hey, your head." Tr. Sabari said, "Yeah he hit me with something, but I feel fine, he whacked me with some metal pole or something;" as Tr. Sabari said this, Mr. Digneau said, "Sorry." (The below still image from Dep. Whitney's BWC, which Dep. Whitney picked up from the garage floor and put back on at 1:01:25 p.m., shows blood from Tr. Sabari's injury as responding officers and emergency personnel subsequently rendered aid to Mr. Digneau, as detailed below.)



At 1:06:35 p.m., Tr. Sabari radioed, "Just confirming, EMS has been expedited?" and the dispatcher confirmed that emergency personnel were on their way. The officers continued rendering aid and applying pressure to Mr. Digneau's wounds. Emergency personnel began arriving at 1:15 p.m. and administered life-saving measures to Mr. Digneau; based on the



ambulance and hospital records, Mr. Digneau was transported to Upstate University Hospital, where he was pronounced dead.

Based on Dep. Whitney's BWC video, at 1:16:30 p.m., while explaining to responding emergency personnel where Mr. Digneau's wounds were, Dep. Whitney said to Dep. Costello, "What'd I shoot, two or three, do you know?" Dep. Costello said, "I believe two," and then said, while appearing to point to an item on the garage floor, "You only shot because you saw him trying to hit me in the head with that fucking thing..." Dep. Whitney said, "Yeah, dude he was gonna, he had that fucking thing in his hand ... he was swinging it, dude. I thought he, I thought he hit you, Charlie."

## **OSI Interviews**

Through his attorney, Dep. Whitney declined OSI's interview request.

### Dep. Costello

OSI and OCSO members interviewed Dep. Costello, in the presence of his attorney, during a walk-through of the scene. OCSO members then took a sworn, written deposition from Dep. Costello based on the information he gave during the walk-through interview.

Dep. Costello said that after making phone calls in his car, he walked into the garage to tell Mr. Digneau that W1 was coming to pick up W2, and that he did not want to set Mr. Digneau up for failure since he was currently violating the order of protection by holding W2; Mr. Digneau began moving away from him and stepping onto and over objects, in the direction of Tr. Sabari, causing Dep. Costello to become "increasingly concerned" for W2's wellbeing. Dep. Costello said that as Mr. Digneau stepped off the lifting table, he attempted to strike Dep. Costello in the head with a closed fist; Dep. Costello moved away to avoid the strike and saw Tr. Sabari grab W2 from Mr. Digneau. According to Dep. Costello, Mr. Digneau then grabbed Dep. Costello around the torso, and Dep. Whitney grabbed Mr. Digneau around his leg; the three of them fell toward the ground and a struggle ensued. Dep. Costello said that during the struggle, he looked at Tr. Sabari and suggested she use her Taser. At some point, Mr. Digneau broke free, and Dep. Costello tried bringing him to the ground to "subdue him;" Dep. Costello said it was difficult to gain control of Mr. Digneau and use "appropriate techniques" due to the tight space of the garage, which was filled with metal and other objects.

According to Dep. Costello, as he tried bringing Mr. Digneau to the ground, they ended up "amongst debris," and he saw Mr. Digneau swing a large metal C-clamp at his head. Dep. Costello said he was in fear for his life and disengaged, but Mr. Digneau continued to swing the C-clamp at him; Dep. Costello said he then heard two "pop" noises that he initially assumed were Taser deployments. After hearing the noises, he saw Mr. Digneau on the

ground with Taser wires near him, and told Mr. Digneau to roll over so he could handcuff him. Dep. Costello said Dep. Whitney told Mr. Digneau to roll over so they could save his life since he had been shot, which is when Dep. Costello realized that Dep. Whitney had fired his gun at Mr. Digneau. Dep. Costello said he assisted with rendering aid to Mr. Digneau and then brought W2 to his car to calm him down until W1 arrived.

When asked by OSI, Dep. Costello said he saw Mr. Digneau fall back after hearing the pop noises but was not sure whether Mr. Digneau was standing when the shots were fired because it all happened very quickly. Dep. Costello did not see whether Mr. Digneau had the C-clamp in his hand when he heard the shots, but saw him swinging it just before, and saw a C-clamp on the floor next to where Mr. Digneau was lying after the shots were fired. Dep. Costello said he remembered thinking that the C-clamp could kill him if he got hit in the head with it when he saw Mr. Digneau swinging it at him.

#### Tr. Sabari

OSI interviewed Tr. Sabari in the presence of her attorney. Tr. Sabari explained that based on prior interactions with Mr. Digneau, OCSO and NYSP members would try to provide “back-up” to one another when dealing with him, if possible. Tr. Sabari said she was going to respond to the earlier call at Mr. Digneau’s house but was ultimately “disregarded” by Dep. Whitney, meaning her response wasn’t needed. Tr. Sabari said she was aware that after Dep. Whitney left Mr. Digneau’s house that morning, he did not believe Mr. Digneau’s behavior met the criteria for law enforcement to take him into custody under Mental Hygiene Law (MHL) 9.41,<sup>1</sup> so he explained to Mr. Digneau’s family how to obtain a “Pick-Up Order.”<sup>2</sup>

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<sup>1</sup> MHL 9.41, titled “Emergency Assessment for Immediate Observation, Care, and Treatment; Powers of Certain Peace Officers and Police Officers” says, in pertinent part: “(a) Any ... police officer ... 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... or any comprehensive psychiatric emergency program ...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...”

<sup>2</sup> MHL 9.45, titled “Emergency Assessment for Immediate Observation, Care, and Treatment; Powers of Directors of Community Services” says, in pertinent part: “(a) The director of community services ... shall have the power to direct the removal of any person, within their jurisdiction, to a hospital ... or to a comprehensive psychiatric emergency program ... if the parent, adult sibling, spouse, domestic partner ..., or child of the person, the committee or legal guardian of the person, a licensed psychologist, registered professional nurse or certified social worker currently responsible for providing treatment services to the person, a supportive or intensive case manager currently assigned to the person by a case management program which program is approved by the office of mental health for the purpose of reporting under this section, a licensed physician, health officer, peace officer or police officer reports to the director of community services or the director’s designee that such person

Before responding to Mr. Digneane's house that afternoon, Tr. Sabari decided to first stop at W1's house, which was near Mr. Digneane's; while she was on her way, Tr. Sabari called W1 and W1 told her she had obtained a "Pick-Up Order" through "Mobile Crisis." Tr. Sabari said she knew Mobile Crisis did not have the capacity to issue orders, so she told W1 she would call them to try and figure it out. Tr. Sabari said when she got to W1's house, W3 showed her nonsensical messages that Mr. Digneane had been sending, which concerned W1 and W3. Tr. Sabari said she then called Oswego County Mobile Crisis and spoke with a representative who confirmed that they did not issue an order and that they were not dispatching any of their members to Mr. Digneane's house because he had declined their services earlier that morning, and, given the nature of the complaint and Mr. Digneane's history, they did not want to respond without police present. Tr. Sabari said at that point, she did not feel Mr. Digneane's behavior, as explained to her, met the criteria for law enforcement officers to take Mr. Digneane into custody pursuant to MHL 9.41.

Tr. Sabari said when she arrived at Mr. Digneane's house, Dep. Whitney, Mr. Digneane, and W2 were just outside the garage, and Dep. Costello was on the phone in his car. Tr. Sabari said she, Dep. Whitney, and Mr. Digneane walked into the garage, and Dep. Whitney and Mr. Digneane made small talk about bikes; she had no concern at that time about Mr. Digneane's demeanor. Tr. Sabari said as Dep. Costello entered the garage, Mr. Digneane was "cornered" given the setup of the garage and positions of the parties, but the interaction was "civil" at that point. According to Tr. Sabari, once Dep. Costello told Mr. Digneane that W1 was coming to pick up W2 due to the order of protection, "things escalate[d]." Tr. Sabari said Mr. Digneane told the officers to leave, and then climbed over the motorcycle while holding W2, in an apparent attempt to leave the garage. Tr. Sabari said she grabbed W2 because she did not know what Mr. Digneane's intentions were, and, knowing that Mr. Digneane's family did not feel it was safe for him to be with W2, did not want Mr. Digneane to flee into the surrounding woods or inside the house with W2. Deps. Costello and Whitney tried to get Mr. Digneane into custody and a struggle ensued. Tr. Sabari set W2 to the side and tried to assist Deps. Costello and Whitney; Tr. Sabari said she took out her handcuffs, but they were unable to get him into custody.

Tr. Sabari said that after a few moments, she and Dep. Whitney pulled out their Tasers. Tr. Sabari said it was her intention to deploy her Taser at Mr. Digneane, but she was not able to "get a clear shot" and did not want to risk tasing one of the deputies; Tr. Sabari said she knew Dep. Whitney deployed his Taser because she could hear and see it. According to Tr. Sabari, Mr. Digneane's behavior did not change despite the Taser deployment. At one point, W2 emerged, and Tr. Sabari got hit by Mr. Digneane with a metal object; Tr. Sabari said she could

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has a mental illness for which immediate care and treatment is appropriate and that is likely to result in serious harm to self or others. It shall be the duty of peace officers, when acting pursuant to their special duties, or police officers who are members of an authorized police department, or force or of a sheriff's department to assist representatives of such director to take into custody and transport any such person."

not see what the object was at that time but felt the impact and the blood running down her face. Tr. Sabari said she turned to grab W2, which is when she heard two gunshots go off; she then saw Dep. Whitney with his gun in his hand, and Mr. Digneau lying on his back or his side. Tr. Sabari said she did not see Dep. Whitney draw his gun and only heard the shots. Tr. Sabari said Dep. Costello put Mr. Digneau in handcuffs, and she and the other officers rendered aid to Mr. Digneau while waiting for the ambulance.

Tr. Sabari said she was transported to the hospital in a second ambulance that arrived (Mr. Digneau was transported in the first), where she received three staples to close her head injury.

### Scene Processing/Evidence Collection

Following the shooting, OCSO members searched Mr. Digneau's garage, with members of OSI present. Based on the scene photographs, OCSO reports, and OSI's observations, OCSO members collected one spent 9mm casing and one fired 9mm bullet from the garage. As detailed below, one 9mm bullet was recovered by the Onondaga County Medical Examiner's Office during Mr. Digneau's autopsy.

OCSO members also collected two metal C-clamps from the garage – one near the entrance of the garage, and one near where Mr. Digneau was last captured on BWC video before the shots were fired; based on the location and characteristics of the latter (displayed in the below images), it appears to be the C-clamp that was used by Mr. Digneau during the incident.



*Still image from Tr. Sabari's BWC video showing the C-clamp on the ground, shortly after the shots were fired, as Dep. Costello was moving Mr. Digneau to handcuff him.*



*Crime scene photograph taken by OCSO during the search of the garage.*

Based on the OCSO Incident Reports, while on scene, OCSO Lieutenant Brian Wills collected Dep. Whitney's firearm, a Glock 17 9mm semiautomatic pistol. Lt. Wills subsequently conducted an accounting of the gun, which was captured by BWC; based on the video, Dep. Whitney's pistol had one live round in its firing chamber and 15 live rounds in its accompanying magazine (the fully loaded capacity of the gun was 18, consisting of 17 rounds in the magazine and one round in the chamber).

### **FIC Ballistics Analysis**

OCSO members submitted Dep. Whitney's gun, the spent casing, and the fired bullets to the NYSP Forensic Investigation Center (FIC) for analysis; based on the FIC Firearms Report, FIC microscopically examined the spent casing and the two fired bullets and determined they were fired from Dep. Whitney's gun.

### **Medical Examiner**

Pathologist Katrina Monday conducted the autopsy at the Onondaga County Medical Examiner's Office. Based on Dr. Monday's Final Autopsy Report, the cause of Mr. Digneau's death was "multiple gunshot wounds," and the manner of death was homicide. Specifically, Dr. Monday said Mr. Digneau sustained two "indeterminate-range" gunshot wounds – one to the right side of his back and one to the back of his right arm; Dr. Monday also noted an exit wound on the right side of his chest. As noted above, a projectile was recovered during the



autopsy, from the “upper right side of [Mr. Digneane’s] back.” Based on the Toxicology Report, analysis of Mr. Digneane’s postmortem blood revealed the presence of methamphetamine and tetrahydrocannabinol (THC).

OSI met with Dr. Monday to discuss her findings. Dr. Monday explained that one shot entered the right side of Mr. Digneane’s back, passed through his lung, and exited his chest; Dr. Monday said this was the fatal wound. When asked, Dr. Monday said chest wounds of this nature are sometimes survivable, but prompt intubation and trauma-level care would be required, and even then, she could not say he would have survived. Dr. Monday said the other shot entered the back of his right arm, near his elbow, and the projectile lodged in his shoulder; Dr. Monday said this shot likely would not have caused Mr. Digneane’s death on its own.

Dr. Monday said the location and trajectory of the wounds is consistent with Mr. Digneane having been moving or positioned with his right side turned or exposed, as opposed to lying flat on his back. Dr. Monday also said Mr. Digneane could have had his right arm raised or could have been in a standing position. Dr. Monday said the two gunshot wounds were in a similar area on Mr. Digneane’s body, indicating two close-in-time gunshots. Dr. Monday said the gunshot wounds were the sole cause of Mr. Digneane’s death, and the injuries she noted in her report to his head, torso, and extremities were superficial and not fatal. When asked, Dr. Monday said she did not see Taser probe marks on Mr. Digneane’s body, but said clothing could stop them from forming.

## LEGAL ANALYSIS

Article 35 of the New York Penal Law governs the circumstances under which a person may be justified in using deadly force against another. Justification is a defense, not an affirmative defense, Penal Law Section (PL) 35.00. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1). In this case the People would be required to prove beyond a reasonable doubt that Dep. Whitney was not justified in his use of deadly physical force.

As the Court of Appeals stated in *People v Castillo*, 42 NY3d 628 (2024):

“The defense of justification provides that a person may use physical force to defend himself against an assailant’s ‘imminent use of unlawful physical force,’ but does not authorize the use of ‘deadly physical force . . . unless . . . [the person] reasonably believes that [the assailant] . . . is using or about to use deadly physical force’ (Penal Law § 35.15). When considering a request for a justification charge, courts examine the evidence in the light most favorable to the defendant, and must provide the instruction if there is any reasonable view of the evidence that defendant was justified in his actions (see *People v Heiserman*, 39 NY3d 988, 990 [2022]). Justification has

both a subjective requirement, that ‘defendant . . . actually believed. . . he [was] . . . threatened with the imminent use of deadly physical force,’ and an objective requirement, that defendant’s ‘reactions were . . . those of a reasonable man acting in self-defense’ (*People v Collice*, 41 NY2d 906, 907 [1977]).”

*Castillo*, 42 NY3d at 631 (square brackets and ellipses in the original).

Article 35 contains a provision defining justification when a police officer uses deadly force while effecting or attempting to effect an arrest for an offense, PL 35.30. Based on the circumstances, Dep. Whitney could have reasonably believed that Mr. Digneau was committing the offense of Criminal Contempt in the Second Degree, PL 215.50, and Resisting Arrest, PL 205.30, when he tried leaving the garage with W2 and physically resisted and fought with the officers when they tried detaining him. If acting pursuant to PL 35.30, a police officer need not retreat when faced with the imminent use of deadly physical force, PL 35.15(2)(a)(ii).

PL 35.30(1) provides, in pertinent part:

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

Deadly physical force is defined as “physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.” PL 10.00(11). Serious physical injury means “impairment of a person’s physical condition which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.” Under PL 10.00(13), serious physical injury is part of the definition of “dangerous instrument,” which is “any instrument ... 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.”

In *People v Holmes*, 9 AD3d 689 (3d Dept 2004), the court stated that either a hammer or a screwdriver can be a “dangerous instrument” if used in a manner that “is readily capable of causing death or other serious physical injury;” in *People v Amato*, 1 AD3d 713 (3d Dept 2003), the court found that a “metal tool,” which the defendant used to hit the victim on the head with, was a “dangerous instrument.” Depending on how it is used, even a normally innocuous item may be a “dangerous instrument” or may be used in a way that constitutes “deadly physical force:” *People v Dodt*, 61 NY2d 408 (1984), and *People v Ray*, 273 AD2d 611 (3d Dept 2000) (boots); *People v Carter*, 53 NY2d 113 (1981) (rubber boots); *People v Cwikla*, 46 NY2d 434, 442 (1979) (handkerchief used as a gag). To be held a “dangerous instrument” it is not necessary that the object actually caused serious physical injury, but it must have been capable of doing so, *People v Scipio*, 169 AD2d 596 (1st Dept 1991).

Based on the investigation, a prosecutor would not be able to disprove that Dep. Whitney subjectively believed that shooting Mr. Digneau was necessary to stop his imminent use of deadly force. While the BWCs did not capture what Mr. Digneau was doing at the moment of the shots, immediately after Dep. Whitney fired, he shouted at Mr. Digneau to “drop it;” seconds later, Dep. Whitney asked Dep. Costello if he was okay. Later, while emergency personnel were tending to Mr. Digneau, Dep. Whitney said to Dep. Costello, “... he had that fucking thing in his hand ... he was swinging it, dude. I thought he, I thought he hit you, Charlie.”

In addition, a prosecutor would not be able to disprove that Dep. Whitney’s subjective belief that deadly physical force was necessary to stop Mr. Digneau from using deadly physical force was reasonable. Tr. Sabari’s BWC showed that about five seconds before the shots were fired, Mr. Digneau swung a large metal C-clamp at the officers, which injured Tr. Sabari; during this time, Dep. Whitney deployed his Taser at Mr. Digneau. Mr. Digneau ended up on the ground and in an apparent struggle with Dep. Costello, and the BWC showed the C-clamp either still in his hand or in his immediate vicinity. About two seconds later, both BWCs captured the sound of two gunshots and Dep. Whitney yelling for Mr. Digneau to “drop it.” The metal C-clamp was later recovered in the area where Mr. Digneau was shot. During his interview, Dep. Costello told OSI that as he was struggling with Mr. Digneau, he saw Mr. Digneau swing the C-clamp at him and felt in fear for his life.

In sum, based on the evidence in this investigation, OSI concludes that a prosecutor would be unable to disprove beyond a reasonable doubt that Dep. Whitney’s use of deadly physical force was justified under the law and will close the matter with the issuance of this report.

## **RECOMMENDATION**

**OCSO, and all police agencies, should equip all officers with BWCs.**

OSI has issued many reports recommending that law enforcement agencies equip officers with BWCs. OSI reviewed OCSO's BWC Policy, which states that members of the OCSO Civil Division must utilize a BWC "during all evictions and property seizures," but that a BWC may be utilized for other civil processes "at the member's discretion." As noted above, Dep. Costello, a member of OCSO's Civil Division, was not equipped with a BWC during the incident. While Dep. Whitney and Tr. Sabari were both equipped with and activated their BWCs, neither BWC captured Mr. Digneau at the moment Dep. Whitney fired the shots. Had Dep. Costello also been equipped with a BWC, it might have captured a clearer picture of the incident, which would have greatly facilitated the investigation and provided the public with greater transparency of the events.

**The Legislature should pass, and the Governor should sign, the Daniel's Law bill.**

The Legislature is considering a bill called Daniel's Law, named after Daniel Prude, who died after a police encounter in 2020, in Rochester (S3670 and A4617). The Attorney General urges the Legislature to pass, and the Governor to sign, this bill.

The bill summarizes its objectives this way:

"It is the purpose of this act to promote the public health, safety and welfare of all citizens by broadly ensuring a public health-based response to anyone in New York experiencing a mental health, alcohol use or substance use crisis; to offer and ensure the most appropriate response to, and treatment of, individuals experiencing crisis due to mental health conditions, alcohol use or substance use conditions; and to deescalate crisis situations so that as few New Yorkers as possible experience nonconsensual transport, use of force, or criminal consequences as a result of mental health, alcohol use or substance abuse crises. The necessity to establish a defined response protocol for behavioral health and substance use crises has never been more urgent."

The bill, if passed, would direct every local government to engage in planning to

"... specifically address the development of an effective crisis response system that includes the use of non-police, community-run crisis first responder teams utilizing peers and independent emergency medical technicians as first responders. To ensure the development of a comprehensive and inclusive plan, the crisis services planning effort must include at least fifty-one percent peers and family peers, and the remaining

forty-nine percent must be family members and emergency medical response providers who shall be independent of any local government's emergency services department, and operated by a non-governmental 24 organization via a contract with the local government providers of crisis services, 9-8-8 personnel, and other non-governmental community agencies which may come in contact with a person experiencing a mental health or alcohol use or substance use crisis.” In other provisions, the bill would provide state funding for crisis response programs and require that crisis response teams be available seven days a week, 24 hours a day. In addition, the bill would require that “whenever an emergency hotline in New York state, such as 911 or 311, receives a call regarding an individual experiencing a mental health, alcohol use or substance use crisis, such hotline will refer such call to the crisis response team for the relevant geographic area.”

**OCSO, and all police agencies, should implement written policies and improve training regimens for dealing with people in crisis.**

During the investigation, OSI learned that, at the time of Mr. Digneau's death, OCSO did not have a written policy in place regarding responding to and handling calls associated with people in crisis. OCSO provided OSI with documentation showing that OCSO members, including Deps Whitney and Costello, have undergone de-escalation and scenario-based training; nevertheless, OSI continues to recommend that police agencies develop and maintain written policies and procedures and improve training not only in de-escalation but in basic tactical responses when dealing with a person in crisis.

While Dep. Costello responded to Mr. Digneau's home to serve him with an order of protection, Dep. Whitney and Tr. Sabari were dispatched in response to a call from a family member expressing concern with Mr. Digneau's mental health. Though the caller mentioned the possibility of Mr. Digneau having a BB gun, there was no indication that Mr. Digneau was actively armed or threatening anyone with a weapon at that time. Given the nature of the call, improved training and a designated procedure might have given the officers more tools to de-escalate the situation and take their time handling the order of protection in a way that ensured their safety as well as the safety of Mr. Digneau and W2. Additionally, while Tr. Sabari contacted Mobile Crisis before responding to Mr. Digneau's home, the officers did not otherwise arrange for any mental health professionals to speak with Mr. Digneau prior to attempting to serve the order of protection. OSI recommends that when it is safe and practicable to do so, police should have mental health professionals speak directly with the subject. If it is not safe for mental health professionals to be present, police should seek alternate ways to involve them, such as having them talk with the subject on speakerphone, which would allow officers to monitor the conversation, or consulting with mental health professionals about how best to engage with the subject and de-escalate the situation.



As explained in the 2025 OSI Fifth Annual Report ([20251001-2025-osi-annual-report.pdf](#)), the Legislature recently added Subdivision 8 to Section 840 of New York's Executive Law, requiring the state's Municipal Police Training Council, in consultation with the state's Office of Mental Health, to develop, maintain, and disseminate written policies and procedures regarding the handling of situations involving individuals who appear to be mentally ill and are conducting themselves in a manner which is likely to result in serious harm to the person or others. The statute says training and education "shall focus on appropriate recognition and response techniques for handling emergency situations involving individuals with mental illness," including, but not limited to, how to de-escalate the situation "while minimizing the use of force and identifying alternatives to the criminal justice system." Similarly, the December 19, 2024 report by the Daniel's Law Task Force recommends that New York "establish a defined response protocol for a behavioral health crisis." The Task Force provided specific criteria for such a program, including that "a call regarding mental health...should receive a behavioral health response." The Task Force said behavioral response teams should be comprised of mental health professionals and mental health workers and/or an EMS team with mental health workers, with law enforcement only being deployed when there is a "threat of violence."

With the caution that members of OSI are not mental health clinicians and emphasizing that a written policy or improved training would not necessarily have changed the outcome in this case, we highlight here, as we have done in prior Investigation Reports and Annual Reports, the need for policies and improved training when it comes to dealing with people in crisis. OSI continues to recommend that the state provide funding for any agency that cannot otherwise pay for the improved level of training now required by Executive Law 840(8).

Dated: February 18, 2026