



Office of the New York State Attorney General Letitia James

Office of Special Investigation

August 6, 2026

Report on the Investigation into the Death of Shaun Humphrey

OVERVIEW

New York Executive Law Section 70-b (Section 70-b) authorizes the Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or peace officer. When, as in this case, OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of Shaun Humphrey, who died on August 15, 2023, following a medical event at the Erie County Holding Center (EHC) on August 8, 2023, during which he was restrained by Erie County Sheriff's Office (ECSO) deputies.

On August 8, 2023, Mr. Humphrey had been arrested, but not yet arraigned, and was detained at EHC in a pre-classification cell. ECSO Deputy Kenneth Bienko said he spoke to Mr. Humphrey throughout his shift that day, and that Mr. Humphrey appeared calm, was acting normally, and did not make any complaints about feeling ill. At 12:28 p.m., Deputy Bienko said he saw Mr. Humphrey display seizure-like behavior and roll off his bunk onto the floor. Deputy Bienko called for a medical emergency, and other ECSO deputies and facility medical staff members responded; they said they saw Mr. Humphrey apparently unresponsive in his cell. ECSO deputies provided security while medical staff assessed Mr. Humphrey. Medical staff requested that Mr. Humphrey be taken to a hospital, and, while waiting for the ambulance, administered two doses of Narcan to him. After the second dose, deputies said, and body-worn camera (BWC) video showed, Mr. Humphrey became combative, and deputies struggled to restrain him.

Based on OSI's review of the BWC videos, for a little under three minutes (from 12:41:12 to 12:43:59 p.m.), deputies struggled to handcuff Mr. Humphrey and, when they succeeded, rolled him on his side. During at least some of the struggle, at least one deputy, Sgt. Peter Athans, put his body weight on Mr. Humphrey while Mr. Humphrey was in a face-down position. After the deputies rolled Mr. Humphrey on his side, he seemed to be calm and breathing normally for a little over a minute. However, the BWCs indicated that Mr. Humphrey began to struggle again, for about one and a half minutes (from 12:45:08 to 12:46:42 p.m.), and during that time deputies put shackles on his legs. Mr. Humphrey seemed to stop struggling, and a deputy said they needed to be careful to avoid positional asphyxiation. It was not clear from the BWCs what position Mr. Humphrey was in during the second struggle, nor whether any deputies put weight or pressure on his body.

A few moments later, deputies realized Mr. Humphrey had become unresponsive. Deputies removed Mr. Humphrey from the cell and, along with medical and ambulance personnel, attempted to aid him. An ambulance took Mr. Humphrey to Buffalo General Hospital (BGH), where he remained until August 15, 2023, when he died.

Mr. Humphrey was 52 years old when he died.

The autopsy report said that the cause of death was asphyxia due to prone position with compression of torso, with acute cocaine intoxication as a contributory factor. The report said the manner of death was homicide.

Based on the investigation, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt at trial that the deputies committed a homicide crime, such as Manslaughter in the Second Degree or Criminally Negligent Homicide. Therefore, OSI will not seek charges and closes the matter with this report.

FACTS

On August 7, 2023, Mr. Humphrey was arrested after he was allegedly involved in an altercation at a gas station parking lot and was charged with Menacing in the First Degree, a class E Felony, and Harassment in the Second Degree, a violation. ECSO members took Mr. Humphrey to ECHC following his arrest; fixed security video captured Mr. Humphrey's arrival at ECHC. ECHC staff members booked and processed Mr. Humphrey and placed him in a pre-classification cell, which was also a detoxification unit (Delta Long 26) with constant observation. Mr. Humphrey was scheduled to be arraigned on August 8, 2023, at 2:30 p.m.

According to the ECSO incident report and logbook entries, on August 8, 2023, Deputy Bienko was assigned to constant observation in the detoxification unit. Based on the written logbook, at 12:15 p.m., Deputy Bienko saw Mr. Humphrey lying on his bed in his cell and, at 12:28 p.m., saw seizure-like behavior. Deputy Bienko told OSI that Mr. Humphrey rolled off his bunk onto the floor of the cell. Deputy Bienko radioed for a medical emergency; deputies and medical staff responded.

Video Evidence

OSI obtained and reviewed body-worn camera (BWC) footage from five ECHC Sergeants who responded: Peter Athans, Timothy McMahon, Mark Scanio, Joseph Kozlowski, and Michael Perkins ([Sgt. Mark Sciano BWC](#), [Sgt. Joseph Kozlowski BWC](#), [Sgt. Peter Athans BWC](#), [Sgt. Timothy McMahon BWC](#), [Sgt. Michael Perkins](#)). Other deputies who responded were not equipped with BWCs.

Based on Sgt. Athans's BWC video, at 12:30:34 p.m., he arrived at Mr. Humphrey's cell, where medical staff members and deputies were waiting outside the cell door. The video captured the sound of Mr. Humphrey snoring from inside his cell. Sgt. Athans directed deputies to open the cell door, and ECHC medical staff entered the cell with Deputy Gavin O'Neill and started

to assess Mr. Humphrey, who was on the floor, snoring and unresponsive. During this initial assessment, Deputy O'Neill asked if they should sit Mr. Humphrey up. At 12:32:10 p.m., medical staff told Sgt. Athans they wanted to send Mr. Humphrey to a hospital. Sgt. Athans walked away and told intake control to call an ambulance.

Based on the BWC video of Sgt. Scanio, who was standing just outside the cell, Deputy O'Neill stayed inside the cell and assisted medical staff as they assessed Mr. Humphrey and obtained vitals from him. At 12:34:30 p.m. medical staff administered an intranasal dose of Narcan to Mr. Humphrey, without immediate effect. At 12:36:15 p.m. Mr. Humphrey began making moaning noises and moving his arms. Sgt. Scanio told medical staff to get out of the cell, and Deputy Alex Sadowski went inside to assist Deputy O'Neill. The deputies told Mr. Humphrey that he was okay and that they were there to help him. At 12:36:43 p.m. the deputies asked Mr. Humphrey if he could sit up and Deputy Sadowski said, "We are going to help you up, man." Mr. Humphrey was apparently unable to sit up and seemed to fall back asleep. Deputy Sadowski tried moving Mr. Humphrey and said, "Shaun, Shaun, wake up. We need to see that you are okay, man," but Mr. Humphrey did not respond.

Based on BWC video, at 12:37:08 p.m. a medical staff member administered a second intranasal dose of Narcan to Mr. Humphrey. (On the BWC video, staff members called out the time of this dose as 12:39 p.m.; in this report OSI uses the timestamp on the BWC video.) Shortly after, a medical staff member said to put Mr. Humphrey on his side, which Deputy O'Neill appeared to do. At 12:37:35 p.m. the nurse inside the cell said Mr. Humphrey was responding to stimuli; she asked him how he was doing. At 12:38:04 p.m. Deputy O'Neill said, "Hey, how are you doing Shaun? There you are, there you are, hey buddy," while medical staff assessed Mr. Humphrey and took more vitals. Deputies and medical staff continued trying to obtain a response from Mr. Humphrey, who began snoring.

Based on Sgt. Athans's BWC video, at 12:40:25 p.m. Mr. Humphrey seemed to mumble, and Deputy O'Neill said, "There you are, hey, hey ... Talk to us here, buddy." At 12:41:12 p.m., Sgt. Athans entered the cell as Mr. Humphrey said, "Get out of here." Mr. Humphrey was not clearly visible on the BWC video, but the audio indicated he was yelling as deputies and Sgt. Athans tried to handcuff him. Sgt. Athans asked who had handcuffs and repeatedly told Mr. Humphrey to put his hands behind his back. Based on Sgt. Scanio's BWC video, Mr. Humphrey was face down with his elbows on the floor, pushing up and yelling. At 12:42:28 p.m. Sgt. Athans said, "Put a cuff on an arm, put a cuff on an arm." The deputies attempted to keep Mr. Humphrey down by pushing on his head, shoulders, and back, as shown in the first photo below; Sgt. Athans's knees were on Mr. Humphrey's back and shoulder.

According to BWC video, at 12:42:42 p.m. deputies had a handcuff on Mr. Humphrey's right wrist and had pulled his right arm behind his back; Sgt. Athans told Mr. Humphrey to put his other arm behind his back and to stop resisting. At 12:43:40 p.m. Sgt. Athans put a handcuff on Mr. Humphrey's left wrist, stood up, and pressed his foot on Mr. Humphrey's left shoulder to pull his left arm behind his back. A deputy said, "[Be] easier if you give me your arm, dude." Sgt. Athans got Mr. Humphrey's left arm behind his back, and deputies connected the handcuffs behind his back. At that point, at 12:43:59 p.m., Sgt. Athans said, "Put him on his side," which they did, as shown in the second photo below. At that point, Mr. Humphrey seemed to be calm and breathing normally. Two minutes and 47 seconds had passed from 12:41:12, when Mr. Humphrey said, "Get out of here," and the struggle began, to 12:43:59, when he was rolled on side.





Sgt. Athans and the other deputies told Mr. Humphrey to relax, that he had had a seizure, and they were not going to hurt him. At 12:44:25 p.m., Sgt. McMahon asked Mr. Humphrey if he was ready to be medically assessed; based on the American Medical Response (AMR) report, ambulance personnel had already arrived at ECHC but were waiting for Mr. Humphrey to be restrained. Sgt. Athans asked Mr. Humphrey if he could sit up, told the other deputies, “Leave him, leave him be, hands off,” and told Mr. Humphrey to take a couple of deep breaths.

Mr. Humphrey was not clearly visible on the BWC videos, but the BWC audio captured the sound of him beginning to yell again. At 12:45:08 p.m. Sgt. Athans told Mr. Humphrey to stop struggling. (From 12:43:59 p.m., when the deputies rolled Mr. Humphrey on his side, to 12:45:08, when, based on the audio, Mr. Humphrey seemed to start struggling again, one minute and nine seconds had passed.) At 12:45:26 p.m. BWC showed that Sgt. McMahon handed shackles to Deputy O’Neill, who appeared to put them on Mr. Humphrey’s legs with the help of other deputies. Mr. Humphrey was not clearly visible on the BWC videos, and it was not clear what position he was in, nor whether any deputies were putting weight or pressure on his body; Sgt. Athans repeatedly told him to “stop resisting” and to “stop moving.”

Based on BWC, at 12:46:42 p.m. Mr. Humphrey seemed to have stopped struggling, and Sgt. McMahon said, “Make sure we’re watching for positional asphyxiation.” Sgt. Athans responded, “That’s what we were doing, and then he started –” Sgt. McMahon said, “I know, I know. He’s a big boy.” At 12:47:24 p.m. Sgt. Athans said, “Mr. Humphrey, talk to me man, you good?” and Sgt. McMahon said, “We’re gonna have to get him on his side here, make sure he’s breathing.” Sgt. McMahon said, “Get him in the recovery position, get his ankles up.

We're gonna need medical, bring oxygen please," followed by what sounded like, "We might have to go to CPR."

From 12:45:08 p.m., when Sgt. Athans resumed telling Mr. Humphrey to stop struggling, to 12:46:42 p.m., when Mr. Humphrey seemed to stop struggling, one minute and 36 seconds had passed.

At 12:48:15 p.m. the deputies pulled Mr. Humphrey out into the hallway, removed the wrist restraints, and started CPR. The deputies, facility medical staff members, and AMR personnel rotated CPR, administered an AED, oxygen, and epinephrine. Members of the Buffalo Fire Department responded and assisted with care. At 1:17 p.m. AMR staff suspended CPR after they detected a pulse. At 1:26 p.m. AMR staff took Mr. Humphrey from the cell area and then took him to BGH.

OSI Interviews

Deputy Kenneth Bienko

OSI interviewed Deputy Bienko with his attorney on September 26, 2024. Deputy Bienko said that he had been employed by ECSO for 12 years, and that on August 8, 2023, he was working the day shift and was assigned to constantly watch Mr. Humphrey and another person. Deputy Bienko said detained people are placed on constant watch if they are in the detox unit or if they have not yet been arraigned. Deputy Bienko said that during constant watch he documents what people are doing every 15 minutes.

Deputy Bienko said he was talking to Mr. Humphrey throughout his shift, and Mr. Humphrey appeared calm and was acting normally and did not make any complaints about being ill. Deputy Bienko said Mr. Humphrey ate lunch in his cell. After lunch Mr. Humphrey walked around his cell and then lay down on his bunk and continued to talk to Deputy Bienko. Deputy Bienko said at around 12:28 p.m., as Mr. Humphrey was lying on his bed and facing the wall, he saw him rub his face, saw his hands "curl," and saw seizure-like movements. Deputy Bienko called a medical emergency over the radio, entered the gallery, and stood in front of Mr. Humphrey's cell. Deputy Bienko saw Mr. Humphrey roll off the bed onto the floor. Additional staff members and medical staff arrived at the cell, and Deputy Bienko returned to his post.

Deputy Gavin O'Neill

OSI interviewed Deputy O'Neill with his attorney on September 26, 2024. Deputy O'Neill, who had been employed by ECSO for 23 years, said he was in the linen room when he heard the "10-62" medical emergency call for the Delta Long Unit. Deputy O'Neill said he was the first

to arrive at Mr. Humphrey's cell and waited there for medical staff to arrive. Deputy O'Neill said when he entered the cell Mr. Humphrey's breathing sounded labored and heavy, and he was not responding to his name being called. Deputy O'Neill said Mr. Humphrey was lying on the cell floor with his head toward the back of the cell and his feet toward the cell door. Deputy O'Neill said he shook Mr. Humphrey's shoulders, and Mr. Humphrey's eyes were twitching. Medical staff attended to Mr. Humphrey and administered one or two doses of Narcan.

Deputy O'Neill said that as more staff arrived Mr. Humphrey seemed to come out of his "slumber," groaning, grunting, and growling. Deputy O'Neill said Mr. Humphrey became aggressive and was not complying with the commands and orders of the deputies. Deputy O'Neill said Mr. Humphrey, who was a very large man, flailed his arms and legs and turned around so that his legs were toward the back of the cell. Deputy O'Neill said he held onto Mr. Humphrey's legs, and that Mr. Humphrey lifted Deputy O'Neill into the air with his legs and body. When leg shackles were brought Deputy O'Neill held Mr. Humphrey's legs down, while three to four deputies attempted to gain control of Mr. Humphrey. Deputies handcuffed him, and Sgt. Athans then ordered deputies to get off him.

Deputy O'Neill said Mr. Humphrey was lying on the ground when he heard someone say, "He's not breathing." Deputies removed Mr. Humphrey from the cell and brought him into the gallery, and Lt. McMahon told the deputies to begin CPR.

Deputy Alex Sadowski

OSI interviewed Deputy Alex Sadowski with his attorney on September 26, 2024. Deputy Sadowski, who had been employed by ECSO since 2012, said that around lunchtime on August 8, 2023, he responded to the medical emergency call on the Delta Long Unit. Deputy Sadowski said when he arrived at the cell he saw medical staff working on Mr. Humphrey, who was snoring and unresponsive, and then became responsive and combative. Mr. Humphrey grabbed one of the nurses by the wrist, attempted to kick Deputy O'Neill, was flailing his arms and legs, making noises, and trying to get up. Deputy Sadowski said deputies were trying to gain control of Mr. Humphrey's right hand, and he (Deputy Sadowski) was holding Mr. Humphrey's right hand. He said he saw Mr. Humphrey attempt to bite Sgt. Athans.

Deputy Sadowski said deputies handcuffed Mr. Humphrey and placed him on his side, and he stopped flailing his arms and legs. Deputy Sadowski said that, shortly after, Mr. Humphrey became aggressive again and kicked Deputy O'Neill. Deputy Sadowski said he helped Deputy O'Neill hold Mr. Humphrey's legs while other staff members adjusted the handcuffs. He said deputies rolled Mr. Humphrey onto his back; he did not make any more sounds and became apparently unresponsive. Deputy Sadowski said he heard someone ask, "Is he breathing?" Staff took him out of the cell and began CPR. Deputy Sadowski said he performed two rounds of CPR.

Sergeant Peter Athans

OSI interviewed Sgt Athans on September 26, 2024. Sgt Athans, who had been employed by ECSO for 16 years, said he responded to the 10-62 code medical emergency in the Delta Long Unit. Sgt. Athans said when he arrived at Mr. Humphrey's cell he saw him on the cell floor in a prone position with his feet toward the back of the cell. Sgt. Athans said Mr. Humphrey was making noises and saying unintelligible words. Sgt. Athans said that responding medical staff had given Mr. Humphrey two doses of Narcan, and he became combative and started grabbing at the medical staff. Deputies Sadowski and O'Neill entered the cell, and Mr. Humphrey started struggling with the deputies. Sgt. Athans said he and the deputies attempted to handcuff Mr. Humphrey, but he was flailing his arms and legs and making noises. Mr. Humphrey attempted to bite Sgt. Athans's hand. Sgt. Athans said he was on Mr. Humphrey's left side and was able to place a handcuff on Mr. Humphrey's right hand.

Once Mr. Humphrey was handcuffed, deputies placed him in the recovery position, and Mr. Humphrey appeared to become calm. Sgt. Athans said he saw Mr. Humphrey's back rising and lowering, so he knew that he was breathing. Mr. Humphrey suddenly became aggressive again, and the deputies attempted to hold Mr. Humphrey in place but he stopped moving. The staff then moved Mr. Humphrey out of his cell and into the gallery. Sgt. McMahon told deputies to remove the handcuffs, and they started CPR. Sgt. Athans was on the unit until EMS took Mr. Humphrey to BGH. Sgt. Athans said he did not see any staff member strike Mr. Humphrey.

Lieutenant Tim McMahon

OSI interviewed Lt. McMahon with his attorney on September 26, 2024. Lt. McMahon, who had been with ECSO for 18 years and was a sergeant at the time of the incident, said he was eating lunch when he heard the "10-62" medical emergency code and responded to Mr. Humphrey's cell. Lt. McMahon said other staff were responding to the call, too. When Lt. McMahon arrived, he saw that Mr. Humphrey was struggling with staff, kicking, flailing, and trying to get up, and not complying with commands. Lt. McMahon said his job was to manage the situation, so he began ordering deputies to get out of the cell because there were too many people inside to be effective. Lt. McMahon said Mr. Humphrey continued struggling as staff attempted to handcuff him. Lt. McMahon said Mr. Humphrey became calm, but as staff adjusted the handcuffs, he began to fight with staff again. Lt. McMahon said Mr. Humphrey went quiet, with no movement and no signs of body tension. Lt. McMahon said staff moved Mr. Humphrey out of his cell and into the gallery, and Lt. McMahon ordered staff to remove the handcuffs and start CPR. Lt. McMahon said part of his duties entailed watching for any "wrong moves" by the deputies, and he did not see any staff member doing anything to harm Mr. Humphrey.

Witness A

According to the ECSO Supplemental Report, on August 8, 2023, ECSO Detectives Daniel Milbrant and Adam Imiolo and Deputy Daniel Klemp interviewed Witness A (OSI does not identify civilian witnesses), a detainee at ECHC. Witness A said he was in his cell in the same unit as Mr. Humphrey and heard him punching the wall and complaining about his criminal charges. Witness A overheard Mr. Humphrey speaking to a deputy, and he sounded lucid. Witness A did not have any direct communication or physical contact with Mr. Humphrey and did not provide him anything or receive anything from him.

Cell Search

According to the ECSO Incident Report, Deputy Daniel Herberger and Deputy Jeffery Hubbard searched Mr. Humphrey's cell, with negative results for contraband.

Medical Information

Buffalo General Hospital (BGH)

Based on the BGH records, upon admission to the hospital, Mr. Humphrey was unresponsive due to a "possible seizure or cardiac-related medical event." Mr. Humphrey was intubated at BGH, and hospital staff noted that he was displaying ongoing jerking movement. Mr. Humphrey was admitted to the ICU. An MRI showed that Mr. Humphrey had serious brain injury caused by lack of oxygen or blood flow to the brain. A neurological examination showed no signs of improvement and a poor prognosis of recovery.

On August 14, 2023, the multidisciplinary ICU Team, including Dr. Lucy Campbell and Dr. Musa Saeed, met with Mr. Humphrey's family, including his designated surrogate decision-maker and health care proxy. Dr. Campbell and Dr. Saeed explained Mr. Humphrey's medical condition to his family; following the discussion, hospital staff placed Mr. Humphrey on comfort care. Mr. Humphrey's designated family member gave verbal consent for Medical Orders for Life Sustaining Treatment and Do Not Resuscitate Orders. On August 15, 2023, hospital staff discontinued Mr. Humphrey's life support, and, at 10:30 p.m., he was pronounced dead by Nurse Practitioner Jannell Zent.

ECSO Medical Response Unit

On October 29, 2024, OSI interviewed Dr. Kevin McGee, the Medical Director for the ECSO Medical Response Unit and Assistant Medical Director for Erie County EMS. Dr. McGee oversees all medical operations for ECSO, including for ECHC. Dr. McGee said he reviewed the video footage of the response to Mr. Humphrey's cell and concluded that the medical staff provided timely and appropriate medical care in the situation, including access to an AED.

Medical Examiner

On August 16, 2023, Dr. Katherine Maloney conducted the autopsy at the Erie County Medical Examiner's Office. In addition, Dr. Maloney submitted Mr. Humphrey's blood and other bodily fluids for toxicologic analysis.

The final autopsy report said that the cause of Mr. Humphrey's death was "asphyxia due to prone position with compression of torso," with "acute cocaine intoxication" as a contributing factor. The final toxicology report stated that cocaine was present in Mr. Humphrey's gastric contents. In her report, Dr. Maloney noted blunt impact injuries of Mr. Humphrey's head, torso, and extremities, but said there was no skull fracture or hemorrhages. Dr. Maloney noted that the blunt impact injuries of the torso included a hemorrhage associated with resuscitation efforts. Dr. Maloney ruled the manner of Mr. Humphrey's death a "homicide," which is a classification used by the medical examiner community to mean that a death occurred at the hands of another. Dr. Maloney noted in her autopsy report that the homicide designation was not intended to imply "that there was intent to cause injury or that excessive force was used."

On February 15, 2024, and again on April 10, 2025, OSI interviewed Dr. Maloney. Dr. Maloney said that after reviewing the BWC footage, the factors that contributed to Mr. Humphrey's cause of death included Mr. Humphrey's height (6'5), weight (310 lbs.), and general health conditions, including an unhealthy, large heart (Dr. Maloney said a normal heart should weigh about 400 grams, and his was 670 grams); Mr. Humphrey's substance use; and Mr. Humphrey's agitated behavior. Dr. Maloney said the BWC footage showed Mr. Humphrey in a "half-planked" position for about four minutes, and that the deputies placed pressure on Mr. Humphrey's body to restrain him, which could cause lack of oxygen to the heart and brain. Dr. Maloney said the totality of the compressions and pressure used by the deputies to restrain Mr. Humphrey is the reason she determined the manner of death to be a homicide. Dr. Maloney stated that the homicide designation does not imply that there was intent by deputies to cause injury or death to Mr. Humphrey.

LEGAL ANALYSIS

The evidence does not support charging the officers with a homicide offense requiring that the officers *intended* to cause Mr. Humphrey's death (which would be required to charge Murder in the Second Degree, Penal Law Section (PL) 125.25) or *intended* to cause serious physical injury (which would be required to charge Manslaughter in the First Degree, PL 125.20). Therefore, OSI analyzes the case under theories of Criminally Negligent Homicide, PL 125.10, and Manslaughter in the Second Degree, PL 125.15 (1).

Criminally Negligent Homicide requires proof beyond a reasonable doubt that a person caused the death of another with criminal negligence. Under the definition of criminal negligence in

PL 15.05 (4), and in the context of Criminally Negligent Homicide, “A person acts with criminal negligence with respect to [death] when he fails to perceive a substantial and unjustifiable risk that [death] will occur.... The risk [of death] 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.”

Manslaughter in the Second Degree requires proof beyond a reasonable doubt that a person recklessly caused the death of another. Under the definition of recklessly in PL 15.05 (3), and in the context of Manslaughter in the Second Degree, “A person acts recklessly with respect to [death] when he is aware of and consciously disregards a substantial and unjustifiable risk that [death] will occur.... The risk [of death] 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.”

In comparing criminally negligent homicide with reckless manslaughter, the Court of Appeals has noted that “the necessary *underlying conduct*, exclusive of the mental element, is the same. Both felonies require a risk of death *inherent in the defendant’s act*. In criminally negligent homicide, no less than in reckless manslaughter, some culpable risk creation is essential.” (*People v Boutin*, 75 NY2d 692, 696 [1990] [internal quotations and citations removed]; see also *People v Cabrera*, 10 NY3d 370 [2008]). Applying that standard to this case, to sustain charges against the ECSO deputies, OSI would need to prove beyond a reasonable doubt that their conduct constituted “not only a failure to perceive a risk of death, but also some serious blameworthiness in the conduct that caused it.” (*Boutin*, 75 NY2d at 696).

Based on the investigation, OSI cannot sustain that burden and concludes that a prosecutor would not be able to prove beyond a reasonable doubt that the deputies’ use of force was “unjustifiable” or that it constituted a “gross deviation from the standard” of care or conduct that a reasonable person in their position would have observed in the same situation. Mr. Humphrey initially became unresponsive and rolled off his bed, experiencing an apparent health crisis, which deputies and other staff responded to and were attempting to address. While staff were attempting to assess and treat him, Mr. Humphrey became physically combative following the administration of Narcan and had to be restrained in the context of that medical emergency. Mr. Humphrey reasonably appeared to be a danger to himself and others, and failure to restrain him would have created the risk that he would not receive the necessary medical treatment.

The evidence in the investigation does not indicate that the restraint was excessive. The ECSO deputies and sergeants used their hands and handcuffs to restrain Mr. Humphrey. Based on the autopsy, interviews and statements of involved staff members, and the BWC footage, the deputies did not kick, punch, choke, or strike Mr. Humphrey, and did not appear to hold him

in the prone position for longer than necessary to get him restrained. When they noticed that Mr. Humphrey seemed unresponsive, force ceased and ECHC staff began aid. The initial period of struggle was less than three minutes, and, after a pause during which Mr. Humphrey was calm, the second period of struggle was a little over a minute and a half. Although there was video evidence that Sgt. Athans put some of his body weight on Mr. Humphrey's back, the amount of time he did that for was not clear; in any event it was not any longer than the duration of the two periods of struggle. Moreover, at the end of both periods, when Mr. Humphrey ceased struggling, deputies rolled him onto his side and into the recovery position. There is no evidence deputies administered any blows or put pressure on Mr. Humphrey's neck.

For these reasons, OSI concludes that a prosecutor at trial would not be able to prove beyond a reasonable doubt that any of the officers committed a crime. Therefore, OSI will not seek charges and closes the matter with this report.

Dated: August 6, 2026