



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

Office of Special Investigation

December 3, 2021

# Report on the Investigation into the Death of Tyler Green

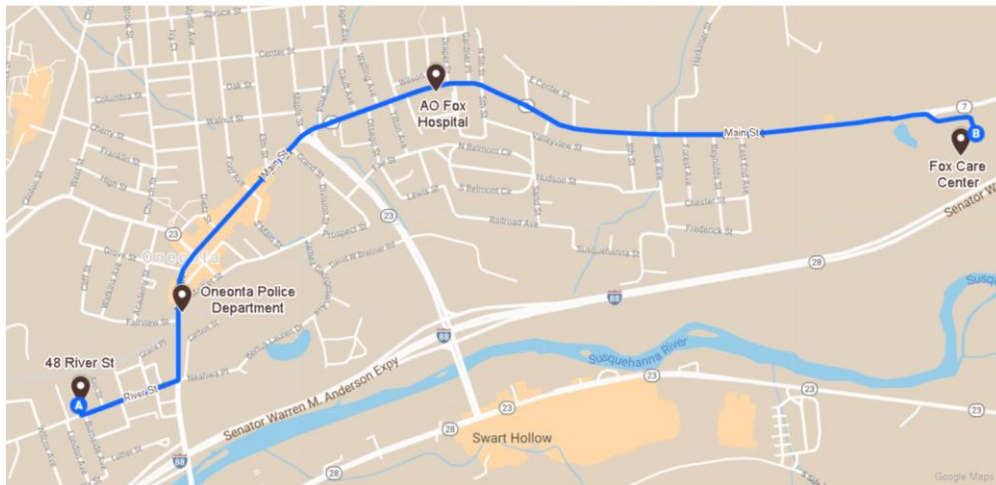
## SUMMARY

New York Executive Law § 70-b(1) authorizes the Office of the Attorney General (“OAG”) to investigate and, if warranted, prosecute offenses arising from any incident in which the death of a person is caused by a police officer. When the OAG does not seek charges, Executive Law § 70-b(6) requires issuance of a public report.

On April 6, 2021, Oneonta Police Department Sergeant Ralph Pajerski shot Tyler Green, causing his death. After a full evaluation of the facts, the OAG determines that it will not seek charges against Sgt. Pajerski because the evidence in the investigation indicates his use of deadly force was justified under Article 35 of the Penal Law.

## FACTS<sup>1</sup>

This incident took place on a residential street in the city of Oneonta. The shooting was captured by two police body worn cameras (“BWC”s) and one third party surveillance camera. The BWC footage was synthesized into one video [“The Video”] and may be accessed here: [\[The Video\]](#).<sup>2</sup> The map below shows relevant locations:



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<sup>1</sup> The evidence reviewed in this matter included: video footage (body worn camera and surveillance); dispatch recordings and associated records (911 calls, radio runs, and county and city dispatches); photographs (including those of the scene, autopsy, and physical evidence); interviews conducted by OAG personnel of EMS personnel, the Medical Examiner, CW-2, Sgt. Pajerski, and PO LaPointe; written statements by CW-1 and CW-2; incident reports written by Sgt. Pajerski and PO LaPointe; ambulance, air ambulance (helicopter), and hospital records; police reports (Oneonta Police Department and the New York State Police); Oneonta Police Departments Policies and Procedures; and the Medical Examiner’s report.

<sup>2</sup> The Video has been redacted for privacy purposes. Audio captured on radio channel communications was synchronized with the start of The Video.

At the time of this incident, Tyler Green was in a relationship with a woman (“CW-1”),<sup>3</sup> and the couple were the parents of a nearly two-year-old boy. Mr. Green and CW-1 did not live together, but CW-1 and the child would visit Mr. Green somewhat regularly. On April 6, 2021, CW-1, her sister, CW-2, and the child were visiting Mr. Green at 48 River St. in Oneonta, where he lived. In an interview with OAG, CW-2 said she noticed Mr. Green and CW-1 persistently arguing, which CW-2 said was not unusual, but she felt Mr. Green’s statements toward CW-1 were growing more aggressive and threatening. Concerned, CW-2 began surreptitiously recording some of the interactions between Mr. Green and CW-1 on her cell phone. Among the relevant statements CW-2 recorded were Mr. Green voicing a suspicion that CW-1 and CW-2 might “snitch” on him for his behavior and indicating that if they did snitch and the police were contacted, he had “AR-15s to handle anybody [he had] to handle.”<sup>4</sup>

CW-2 said she feared for the safety of her sister and the child; she told the OAG and indicated in her sworn deposition that at around 1:00 P.M., CW-2 told Mr. Green she was going to buy food at McDonald’s; instead, she drove to the Oneonta Police Department (“OPD”). CW-2 met with OPD Patrol Officer Kristen LaPointe (“PO LaPointe”), expressed concern about what was happening at Mr. Green’s house, and showed PO LaPointe some of the video footage she had just recorded, including Mr. Green saying he possessed AR-15s and threatening violence toward her sister. PO LaPointe told the OAG that she contacted her supervisor, OPD Sergeant Ralph Pajerski (“Sgt. Pajerski”), and asked him to respond with her to 48 River St. to check the welfare of CW-1 and the child.

After PO LaPointe left the OPD, CW-2 received messages from her sister and shared them with the OPD dispatcher, including a message that Mr. Green had raised a knife to her and threatened to stab her if it turned out CW-2 had gone to the police. As PO LaPointe and Sgt. Pajerski were arriving at the house (at approximately 1:12 P.M.), the dispatcher broadcast the following to them (the dispatch is audible at the start of The Video): *The female party in the lobby [CW-2] just showed a text message claiming the female she’s speaking with [CW-1] states the male has raised a knife to her and threatened to stab her if the police get involved.* Shortly afterward, as heard in The Video, Sgt. Pajerski advised by radio that he and PO LaPointe had arrived on scene and requested that detectives respond to the location, if available.

As displayed in the below photograph, 48 River St. is a multi-family dwelling; River St. runs east-west in front of the home.

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<sup>3</sup>All references to civilian witnesses will use CW (civilian witness) and a number in order to protect the privacy of those involved. The sources of information about CW-1 and Tyler Green’s relationship was CW-1’s sworn deposition, the OAG’s interview with her sister (CW-2), and information provided to the OAG by Mr. Green’s family.

<sup>4</sup> The quoted language is taken directly from the video recorded by CW-2 and reviewed by the OAG.



As captured in The Video, the officers parked their cars on West Ann St., near the rear of the house. They went to the back door and knocked but received no answer. They radioed OPD dispatch to clarify where CW-1 was within the home.

According to CW-1's written statement, when she saw the police cars turn onto West Ann St., she ran out the front door, holding the child. Mr. Green followed her into the front yard and they began arguing near River St.

What happened next was captured on BWC footage:<sup>5</sup>

Mr. Green and CW-1, holding the child, were in the front yard. PO LaPointe approached and said, "Hello." Turning and apparently seeing the officers approaching, Mr. Green reached into his front pocket and pulled out a knife. He lunged at CW-1, saying, "I'll f---ing kill her." Mr. Green fell to the ground and CW-1 began backing away, holding the child. The officers began yelling "No," "Don't do it," and "Drop the knife," and pointed their guns at Mr. Green. Still on the ground, Mr. Green lunged toward CW-1, grabbed her pant leg, causing her pants to pull down as she tried to move away, and cut her leg with the knife. CW-1 dropped the child and they both fell to the ground.

As Mr. Green held CW-1's pant leg in his left hand and the knife in his right, Sgt. Pajerski stepped forward onto Mr. Green's left arm so that Mr. Green would release his grasp on CW-1's pant leg. Still holding the knife in his right hand, Mr. Green reached around Sgt. Pajerski's leg with his right arm and appeared to try to cut the back of Sgt. Pajerski's ankle. Sgt. Pajerski stepped back as Mr. Green released CW-1's pant leg. [\[Green Slow Motion\]](#).

Sgt. Pajerski and PO LaPointe pointed their guns at Mr. Green and directed him to drop the knife. Mr. Green grabbed the child's leg and pulled the child toward him with his

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<sup>5</sup> In this portion of the report, all facts indicated with precise hours, minutes, and seconds are drawn directly from BWC footage.

left hand; with his right hand he swung the knife toward the child. The below photographs show the BWC perspective of both officers and captures the knife in Mr. Green's right hand as his left hand holds the child's leg.



At that moment, 1:14:32 P.M., Sgt. Pajerski fired two shots, each one striking Mr. Green, who immediately released his hold on the child.

Apparently unable to see whether Mr. Green was still holding the knife, the officers yelled at him to drop the knife; he kept yelling he no longer had it. Seeing the knife in the grass, Sgt. Pajerski kicked it away from Mr. Green and radioed OPD, saying, “*Shots fired. Shots fired. Send EMS [Emergency Medical Services].*” [1:15:01 P.M. – 1:15:06 P.M.] PO LaPointe kept her weapon drawn on Mr. Green, and Sgt. Pajerski handcuffed him and advised OPD Dispatch, at 1:15:39 P.M., “*Suspect secured, send EMS.*”<sup>6</sup> Sgt. Pajerski retrieved the knife from the lawn and placed it into a responding officer's patrol vehicle. Sgt. Pajerski returned to Mr. Green and told him the ambulance was on its way.

At 1:16:55 P.M., a member of Oneonta County 911 radioed that the scene at 28 River Rd. was secure, and that EMS should respond to a shooting at that location.<sup>7</sup>

OPD Acting Chief Witzenburg (“AC Witzenburg”) arrived at the scene. Mr. Green was in obvious distress, and, at 1:17:36 P.M., AC Witzenburg radioed OPD dispatch and asked for the ambulance to expedite its response. AC Witzenburg directed Sgt. Pajerski to roll Mr. Green over from his stomach onto his back. Sgt. Pajerski uncuffed Mr. Green, rolled him onto his

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<sup>6</sup> OPD officers communicate exclusively with the OPD dispatcher. When an EMS response is necessary, the officer on scene contacts the OPD dispatcher who, in turn, communicates with Otsego County Emergency 911 (“E911”), which coordinates the EMS response throughout Otsego County.

<sup>7</sup> The Oneonta Fire Department (“OFD”) provided EMS services for this call.

back, and then re-cuffed him with his arms above his head at 1:18:15 P.M.<sup>8</sup> In the meantime, PO LaPointe took CW-1 and the child into the house so that EMS could examine CW-1's knife wound.

At 1:18:26 P.M., Sgt. Pajerski rolled Mr. Green onto his right side, and could see the gunshot wound to his left side.<sup>9</sup> At 1:19:13 P.M., Sgt. Pajerski covered Mr. Green's wound with his hand<sup>10</sup> as the ambulance sirens could be heard in the distance, and at 1:19:22 P.M., the ambulance pulled up to the scene. Members of the ambulance crew arrived at Mr. Green's side at 1:19:47 P.M.

In interviews with OAG personnel, the responding OFD paramedic and emergency medical technicians ("EMTs") said they could see that Mr. Green had a left-flank abdominal wound, a seemingly less significant lower back wound, and that his lips had begun to turn blue. They determined that treatment at a Level I trauma center was necessary; A.O. Fox Hospital ("Fox Hospital") in Oneonta is not such a trauma center.<sup>11</sup> The crew put Mr. Green into the ambulance and directed Otsego County Emergency 911 ("E911") to request a medical helicopter to transport Mr. Green to a Level I care center, the closest being Albany Medical Center ("AMC").

In their interviews with OAG, the ambulance crew members said they were unable to stabilize Mr. Green. When they removed his handcuffs, Mr. Green became agitated and removed the oxygen mask and made it difficult for the crew to apply a heart monitor. The crew decided to take Mr. Green to Fox Hospital for sedation and a blood transfusion while awaiting the helicopter. The ambulance arrived at Fox Hospital at 1:31 P.M.<sup>12</sup>

In the meantime, the county dispatcher directed the helicopter to land at Fox Care Center, 1.5 miles east of Fox Hospital. The helicopter touched down at 1:51 P.M. The helicopter crew arrived at Fox Hospital at 1:58 P.M. but did not leave Fox Hospital with Mr. Green until 3:25 P.M. because a surgeon had been summoned to Fox Hospital to assess Mr. Green's condition and potentially perform surgery. The crew left with Mr. Green once the surgeon arrived, examined Mr. Green, and determined she could not meet his needs at Fox Hospital.

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<sup>8</sup> The relevant portion of OPD's Use of Force policy reads, "Use of restraining devices is mandatory on all prisoners/arrestees unless in the officer's judgement unusual circumstances exist which make the use of restraining devices impossible."

<sup>9</sup> Issues related to Mr. Green's wounds will be more fully addressed in the Medical Examiner portion of this report.

<sup>10</sup> In his interview with OAG personnel, Sgt. Pajerski said he had gauze in his car, which was parked on the street near the rear of the home but felt the ambulance would arrive on scene before he could get to his car and back and apply it; we discuss the impact of not bandaging Mr. Green's wound below, in the "Medical Examiner" section.

<sup>11</sup> A hospital's level of trauma care is determined by, among many other factors, whether or not surgeons are on staff continuously and able to operate on subjects immediately. See e.g., <https://www.amtrauma.org/page/traumalevels>.

<sup>12</sup> The times given from here onward, relating to medical treatment, are based on dispatch logs.

During the approximately 30-minute flight to Albany, Mr. Green, who was on a ventilator, went into cardiac arrest. The helicopter crew began cardio-pulmonary resuscitation, but Mr. Green never regained a pulse. Personnel at AMC could not revive Mr. Green, and at 4:36 P.M., an AMC physician declared him deceased.

## **MEDICAL EXAMINER**

Pathologist Jeffrey Hubbard, M.D.<sup>13</sup> conducted an autopsy on April 7, 2021 and confirmed that Mr. Green had been struck by two bullets. One bullet entered and exited Mr. Green's back and did not strike his spine, any major organs, or major blood vessels. However, the other bullet caused extensive and ultimately fatal damage, entering Mr. Green's left side and damaging his left kidney, pancreas, inferior vena cava, and liver. Dr. Hubbard noted that the damage to those organs and the vena cava resulted in extensive blood loss into Mr. Green's abdominal cavity.<sup>14</sup>

In a meeting with OAG on June 29, 2021, Dr. Hubbard said that the amount of blood leaving Mr. Green's circulatory system and collecting in his abdominal cavity meant that insufficient blood (and therefore insufficient oxygen) was available to sustain his organs, a condition he termed, "hemorrhagic shock." We asked Dr. Hubbard whether, if Sgt. Pajerski had bandaged Mr. Green's wound, Mr. Green's life might have been spared. Dr. Hubbard said that bandaging a wound like the one Mr. Green suffered would have been essentially cosmetic. He explained that the blood entering Mr. Green's abdominal cavity was no different from blood pooling on the ground – wherever the blood was, it was not inside vessels, circulating throughout Mr. Green's body, providing vital oxygen to his organs.

Dr. Hubbard explained that unlike gunshot wounds to the extremities, where the immediate placement of a tourniquet can save a person's life by stopping the flow of blood, wounds of this magnitude to the torso are not amenable to "on the scene" treatment. According to Dr. Hubbard, the only prospective means of saving Mr. Green's life, with an abdominal wound that damaged so many major organs, was immediate surgery at a Level 1 trauma center, where the major source(s) of internal bleeding could have been identified and remedied. However, Dr. Hubbard also believed that Mr. Green's internal injuries were such that even immediate surgery would likely not have saved his life.

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<sup>13</sup> Dr. Hubbard performed the autopsy as a contractor for the Albany County Coroner Office.

<sup>14</sup> Toxicological analysis revealed the presence of certain drugs, which, Dr. Hubbard opined, likely affected Mr. Green's behavior that day, but had no bearing on cause of death.



## LEGAL ANALYSIS

The evidence indicates Sgt. Pajerski's use of deadly physical force against Mr. Green was justified under New York Law.

When effecting or attempting to effect the arrest of an individual whom a police officer reasonably believes has committed an offense, Penal Law §35.30(1)(c) justifies the officer's use of deadly physical force when:

the officer reasonably believes that...the use of deadly physical force is necessary to defend ... another person ... from what the officer reasonably believes to be the use or imminent use of deadly physical force.<sup>15</sup>

The salient issue in this case can be re-shaped into the following question: did Sgt. Pajerski reasonably believe that deadly physical force was necessary to defend the child from what Sgt. Pajerski reasonably believed to be the use or imminent use of deadly physical force by Mr. Green?

The New York Court of Appeals has provided guidance regarding the "reasonable belief" determination. In *People v. Goetz*, 68 N.Y.2d 96 (1986), and later in *People v. Wesley*, 76 N.Y.2d 555 (1990), the court ruled that the phrase "reasonable belief" contains both subjective and objective components. The subjective prong is satisfied if the individual employing force (in this case, Sgt. Pajerski) actually believed, "honestly and in good faith" that deadly force was about to be used against [another] and that his own use of that force was necessary to repel that danger." *Goetz*, 68 N.Y.2d at 114. The objective component is satisfied if a "reasonable person" under the same "circumstances [as Sgt. Pajerski]" could have held those same beliefs. *Goetz*, *supra* at 115.

Sgt. Pajerski told members of the OAG that on the date of this incident, PO LaPointe called him and asked him to meet her at 28 River Rd.; she described the domestic dispute and advised him that Mr. Green allegedly possessed weapons. When Sgt. Pajerski and PO LaPointe approached Mr. Green and CW-1 in the front yard, Sgt. Pajerski said Mr. Green removed a knife from his pocket and yelled that he was going to kill CW-1. Sgt. Pajerski saw CW-1 fall to the ground as Mr. Green tried to cut her with the knife and saw her drop the child she had been holding. According to Sgt. Pajerski, Mr. Green lost his footing and fell forward as well, but he grabbed CW-1's pant leg and continued trying to cut her. Sgt. Pajerski said he stepped on Mr. Green's left arm to force him to release his grasp on CW-1's pants, at which point Mr. Green tried to slash Sgt. Pajerski's lower leg with his free (right) hand; as Mr. Green released CW-1's pants, Sgt. Pajerski backed away. Sgt. Pajerski said he fired his gun only after he saw Mr. Green reach for the child on the ground and knew he did not risk striking

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<sup>15</sup> New York Penal Law §35.15 similarly justifies a non-police person's use of deadly physical force to defend another person against the imminent use of deadly force but requires the person to retreat if the person "knows" retreat is possible "with complete personal safety" to that person and others. This is more fully described below.



anyone else with a bullet.

The Video corroborates Sgt. Pajerski. It shows that at the moment Sgt. Pajerski fired his weapon, Mr. Green was moving the knife toward his son's body. Mr. Green was about to use deadly physical force against another person; Sgt. Pajerski's use of deadly physical force prevented Mr. Green from succeeding and was justified by law.

At the moment he fired his weapon, Sgt. Pajerski said his sole focus was the child in Mr. Green's grasp. But CW-1, whom Mr. Green had already cut, and Sgt. Pajerki himself, whom Mr. Green tried to cut, were also in danger. Given that Mr. Green refused many orders to drop the knife, coupled with his clear willingness to use it to harm others, Sgt. Pajerski's use of deadly force would have been justified at that moment, regardless of whether Mr. Green had reached for the child.

Penal Law §35.15(2)(a) provides that a person may not use deadly force against another if, with complete safety to himself or herself and others, that person can safely retreat. Penal Law §35.30(1)(c), imposes no similar duty to retreat on police officers when effecting (or attempting to effect) an arrest. When interviewed by the OAG, Sgt. Pajerski did not say his intention was (or was not) to arrest Mr. Green at the moment this incident suddenly evolved. He said he went to the home at the request of PO LaPointe to check the welfare of CW-1 and her son; and after Mr. Green pulled out the knife, Sgt. Pajerski's exclusive focus was preventing Mr. Green from stabbing CW-1 and the child. Regardless of whether or not Sgt. Pajerski formed the specific intent to arrest Mr. Green prior to using deadly force, probable cause to make the arrest existed from the moment Sgt. Pajerski saw Mr. Green attempt to stab CW-1.

In any event, since Sgt. Pajerski's intent to arrest prior to using deadly force was unclear, we analyzed his conduct pursuant to §35.15(2) and assumed he had a duty to retreat if he could have done so without endangering himself or others, whether he actually had that duty or not. At the moment Sgt. Pajerski fired the two shots, Mr. Green's knife was on a direct trajectory toward, and mere inches away from, the child - whose life Sgt. Pajerski likely saved. No person in those circumstances, including Sgt. Pajerski, could have retreated with complete safety to the child and CW-1.

We also considered whether any failure to provide proper care by any police officer might have caused or contributed to Mr. Green's death. Sgt. Pajerski immediately called for EMS after firing his weapon. About one minute later he advised the OPD dispatcher that the scene was safe, and EMS could enter. About three minutes after the shooting AC Witzenburg asked the ambulance to expedite its response. The ambulance was ultimately on scene less than five minutes after the shots were fired.

Dr. Hubbard explained that in light of Mr. Green's injury, the only way to save his life was to get him into surgery at a trauma center to stop his internal bleeding; stopping Mr. Green's abdominal bleeding with bandages would not have saved him because it would not have stopped the blood he was losing internally.

We conclude that the evidence indicates Sgt. Pajerski's use of deadly force was justified by law and will not seek charges in this matter.

## RECOMMENDATION

**New York should join every other state in the nation and permit air ambulances to carry and provide blood to critically injured patients.**

Mr. Green was injured in a rural area where no trauma center existed capable of addressing his immediate needs. Instead, air transport was needed to take him to a Level I Trauma Facility, so he could receive the level of surgical care that might, potentially, have saved his life. Mr. Green went into cardiac arrest during transport and died; as noted in the body of this report, the medical examiner felt that Mr. Green's prognosis for survival was exceedingly slim, regardless of where in the state, geographically, his injury occurred. However, in analyzing this case, the OAG researched the issue of trauma care in rural locations broadly and learned that New York State is the only state in the nation that does not permit air ambulances to carry and transfuse blood when responding to and transporting individuals who have suffered severe trauma.<sup>16</sup> We therefore recommend that New York join every other state in the nation and permit this potentially life-saving medical treatment.

The OAG notes that the New York State Assembly and Senate have recognized this seemingly glaring impediment to medical care posed to trauma victims in rural areas. During the 2021 legislative session, both bodies passed a bill squarely addressing this issue.<sup>17</sup> As of the release of this report, that bill has not yet become law.<sup>18</sup>

Executive Law 70-B(6)(b)(ii) requires the OAG to make recommendations for "systematic or other reforms arising from [our] investigation." In this case, our awareness of the need for this law arose during our investigation into Mr. Green's death. And while there is no evidence that this would have changed the outcome for Mr. Green, there is ample evidence it may well save the lives of others. We therefore recommend that New York formally adopt this law as soon as possible.

December 3, 2021

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<sup>16</sup> See e.g. Ward, Rebekah. "Farming accident an unlikely catalyst for medevac transfusion bill." *Albany Times Union*, 16 July 2021. [<https://www.timesunion.com/news/article/Air-ambulance-bill-would-allow-on-site-blood-16303380.php>]

<sup>17</sup> <https://www.nysenate.gov/newsroom/press-releases/pamela-helming/state-senate-passes-bill-co-sponsored-senator-helming>; <https://assembly.state.ny.us/mem/Carrie-Woerner/story/97229>.

<sup>18</sup> The most recent news items related to the bill indicated that it was awaiting the signature of Former Governor Cuomo. See e.g. <https://www.wgrz.com/article/news/local/effort-underway-to-allow-blood-transfusions-on-air-ambulances-in-nys/71-b342b7e8-0918-486a-8ccc-245ac3ead9a2>; [https://www.nysana.com/index.php?option=com\\_dailyplanetblog&view=entry&year=2021&month=06&day=23&id=25:advocates-push-governor-cuomo-to-sign-air-ambulance-legislation-into-law](https://www.nysana.com/index.php?option=com_dailyplanetblog&view=entry&year=2021&month=06&day=23&id=25:advocates-push-governor-cuomo-to-sign-air-ambulance-legislation-into-law).