

**Special Investigations and
Prosecutions Unit**

**Report on the Investigation into
The Death of Jonathan Maldonado**



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EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (hereafter the “Executive Order”), appointing the Office of the Attorney General (hereafter “OAG”) as the special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On Wednesday, November 29, 2017, Jonathan Maldonado (hereafter “Mr. Maldonado”) died following an interaction with members of the Town of Greenburgh Police Department (hereafter “GPD”). Governor Cuomo subsequently issued Executive Order No. 147.13, which expressly conferred jurisdiction upon the Attorney General to investigate any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Maldonado’s death.

At approximately 5:40 p.m. on November 29, 2017, Mr. Maldonado entered the Best Buy store at 299 North Central Park Avenue, Hartsdale, NY, with his uncle C.M.¹ At approximately 5:43 p.m., C.M. left the store through the front exit. A few minutes later, Best Buy store employees heard an alarm activate for a secured display product, which was later identified as an iPhone X. Immediately thereafter, at approximately 5:45 p.m., Mr. Maldonado left the store. Several Best Buy employees ran out after Mr. Maldonado.

Once outside the store in the shopping area parking lot, a Best Buy employee called out to Mr. Maldonado, “Sir, can you come over here?” Mr. Maldonado then began to run through the parking lot toward North Central Park Avenue. Four Best Buy employees ran after Mr. Maldonado, through the shopping area parking lot and onto North Central Park Avenue. The Best Buy employees chased Mr. Maldonado approximately three blocks to Harvard Drive and North Central Park Avenue, where they surrounded him to prevent him from leaving. The employees asked Mr. Maldonado to hand over the phone, but he denied having it. (The missing phone was subsequently recovered from Mr. Maldonado’s clothing.) One Best Buy employee called 911 to report what was happening and to request police assistance. Mr. Maldonado tried to walk away, but one of the Best Buy employees pushed him to the ground. At this point, Mr. Maldonado said he could not breathe. As GPD vehicles approached with their emergency lights and sirens on, Mr. Maldonado said to the Best Buy employees, “I don’t care about the cops. I just don’t want to get caught with this stuff.” Mr. Maldonado then removed a small pouch from his pants pocket, took out several small white glassine envelopes, and put them in his mouth.

Before the GPD officers arrived, the GPD dispatcher had broadcast that a shoplifter from Best Buy was in the employees’ custody. The first GPD officer on the scene came over to where Mr. Maldonado was kneeling. A Best Buy employee told the GPD Officer that Mr. Maldonado had put drugs in his mouth. The officer then took Mr. Maldonado to the ground from behind, bringing his face down onto the ground. The officer lay on Mr. Maldonado’s back, trying to remove the items from Mr. Maldonado’s mouth, and yelling for Mr. Maldonado to “spit it out.” Mr. Maldonado did not comply, and when the officer tried to handcuff him, Mr. Maldonado twisted his body and would not release his hands from underneath his body. A second GPD officer arrived at the scene and attempted to help place handcuffs on Mr. Maldonado, but Mr. Maldonado kept his hands underneath his body. A third GPD officer arrived at the scene, by which time

¹ All civilians, including civilian witnesses, are identified by initials in order to protect their privacy.

officers had control of one of Mr. Maldonado's arms, but Mr. Maldonado still had his other arm tucked under his body. The third GPD officer activated his taser in the dart-prong mode toward Mr. Maldonado's mid-lower back for a period of approximately five seconds. According to the third officer, the taser did not appear to have any effect on Mr. Maldonado. He immediately activated his taser a second time in drive-stun mode for approximately five seconds against the back of Mr. Maldonado's leg. Mr. Maldonado became limp after the second taser activation.

After Mr. Maldonado went limp, he was handcuffed behind his back and placed in a sitting position on the ground with his legs extended in front of him. GPD officers immediately performed a quick assessment of Mr. Maldonado's medical condition and concluded that he may have overdosed on narcotics. A GPD officer quickly administered several doses of Narcan by injection and by nasal spray. Several GPD emergency medical personnel arrived shortly after Mr. Maldonado was given the doses of Narcan. Mr. Maldonado remained unresponsive when the ambulance arrived. However, a responding Emergency Medical Technician (hereinafter "EMT") was able to detect a weak pulse during his medical evaluation of Mr. Maldonado. Mr. Maldonado was then placed onto a stretcher and brought inside the ambulance. At this point, one officer observed several small glassine envelopes in the back of Mr. Maldonado's mouth and removed them with a pair of forceps. (The glassines were subsequently found to contain heroin and fentanyl.) GPD officers and emergency medical personnel continued to provide emergency care to Mr. Maldonado, which included administering epinephrine and additional Narcan (intravenously), intubating him, providing oxygen, monitoring his vital signs, and performing manual CPR and chest compressions with the use of a Lucas machine. Mr. Maldonado was then taken to White Plains Hospital in cardiac arrest. Unfortunately, all efforts to revive Mr. Maldonado were unsuccessful, and hospital personnel pronounced Mr. Maldonado dead at 6:54 p.m.

An autopsy subsequently determined that the cause of Mr. Maldonado's death was "acute mixed drug intoxication (fentanyl, acetyl fentanyl, methoxy acetyl fentanyl, heroin)" – although the Medical Examiner could not rule out that the presence of the glassine envelopes in the back of Mr. Maldonado's mouth, his struggle with the police, and/or the use of the taser contributed to his death.

The investigation by the OAG included, among other investigative steps:

1. Interviews of the people who saw Mr. Maldonado's behavior before the police arrived as well as the officers' interaction with Mr. Maldonado;
2. Review of the security video showing the inside and outside of the Best Buy store at the time Mr. Maldonado was present there;
3. Review of the 911 call from the Best Buy employee;
4. Review of the police radio communications relating to the Best Buy 911 call and the apprehension of Mr. Maldonado;
5. Review of written statements provided by the three GPD officers who took Mr. Maldonado into custody;
6. Interviews of other responding GPD officers and the EMTs who treated Mr. Maldonado at the scene;

7. Review of the body-worn camera footage of several GPD officers who responded to the scene, some of which was taken by the officers involved in the interaction with Mr. Maldonado;
8. Review of the GPD investigative reports, including pictures taken at the scene, investigative notes, and witness statements;
9. Review of Mr. Maldonado's medical records from White Plains Hospital;
10. Interview of the emergency room attending physician who treated Mr. Maldonado;
11. Review of the Westchester County Medical Examiner's final autopsy report;
12. Follow-up interviews with Dr. Aleksander Milovanovic of the Westchester County Medical Examiner's office;
13. Review of the Westchester County Department of Labs and Research forensic toxicology report and forensic sciences drug analysis report;
14. Review of a report from private forensic pathologist Dr. Michael Baden; and
15. Interview of the GPD officer who oversaw the GPD's taser course.

As discussed below, the GPD officers' use of force, including deployment of the taser, did not violate New York Penal Law. New York State Penal Law Section 35.30 states:

A police officer or peace officer, in the course of effecting or attempting to effect an arrest...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.

The officers who restrained Mr. Maldonado were trying to arrest him because they had probable cause to believe that he had committed several crimes: petit larceny, evidence tampering, and ultimately, resisting arrest. The probable cause for the first two offenses arose from the information the officers had received over the radio and from several Best Buy employees at the scene. At the time of Mr. Maldonado's arrest, the GPD officers had been informed that Mr. Maldonado was suspected of stealing an electronic device from the Best Buy store, fled, and put drugs in his mouth immediately before they arrived. These facts permitted the officers to arrest Mr. Maldonado, and to use non-deadly physical force, if necessary. The fact that Mr. Maldonado had placed drugs in his mouth increased the urgency of ensuring Mr. Maldonado's safety. A GPD officer used his taser within a few seconds after first attempting to handcuff Mr. Maldonado. The GPD officers' actions did not violate New York Penal Law. Accordingly, the OAG has concluded that no criminal charges against any GPD officers are warranted.

The OAG nevertheless makes several recommendations to ensure that appropriate policies, procedures, and training are implemented with respect to the use of force by GPD officers. Specifically, the OAG recommends that the GPD (1) amend its taser use policy and training to account for the heightened risk when a targeted individual is reasonably believed to be under the influence of drugs; (2) amend its use of force policy and procedure to develop a mandatory investigation protocol whenever a death in custody occurs in connection with, or immediately after, an officer's use of force; (3) take steps to ensure that GPD officers follow the department's existing policy with regard to use of body-worn cameras; and (4) clarify its protocols for timely and respectfully notifying family members of the death of someone in police custody.

STATEMENT OF FACTS²

A chronology of this incident may be divided into four segments: first, the events leading to law enforcement officers' involvement in the incident; second, law enforcement's arrival on the scene and arrest of Mr. Maldonado; third, law enforcement's medical assessment and response after Mr. Maldonado's arrest; and fourth, the county medical examiner's conclusions and review of the examination by an outside medical examiner.

1. Events Leading to Law Enforcement Response

On November 29, 2017, Mr. Maldonado was 21 years old, 5'7" tall, and approximately 221 lbs. Mr. Maldonado's mother last saw him leaving their home at approximately 5:00 p.m. Mr. Maldonado told her that he was going to the stores on Central Park Avenue in Hartsdale. That evening, C.M., Mr. Maldonado's paternal uncle, drove to Mr. Maldonado's home and then Mr. Maldonado drove his uncle and grandmother to Central Park Avenue. Mr. Maldonado dropped his grandmother at Bob's Furniture Store; he and his uncle went to Modell's to look at sneakers, then to a Sprint store to look at cellular telephones, and then finally to Best Buy. Best Buy security camera footage shows Mr. Maldonado and his uncle entering Best Buy at approximately 5:40 p.m. The security footage shows Mr. Maldonado walking through the aisles of the store, sometimes alone and at other times with his uncle. The cameras do not capture the table where iPhones are displayed. At approximately 5:43 p.m., C.M. left the store and walked into the parking lot. Best Buy employee C.H. was standing near the iPhone display table area and heard a security alarm go off. As C.H. walked toward the iPhone display table, C.H. saw Mr. Maldonado walk past him towards the door. C.H. observed an iPhone X missing from the display table and immediately radioed store security to report that a man had just stolen an iPhone X from the display table. The security footage shows Mr. Maldonado leaving the store at approximately 5:45 p.m.

Several Best Buy employees followed Mr. Maldonado out of the store. Best Buy Asset Protection Agent D.O. yelled out to Mr. Maldonado, "Sir, can you come over here." Civilian witness S.R. had also stepped out of the Best Buy store at the same time as Mr. Maldonado. S.R. saw Mr. Maldonado walk out of the store and then saw several Best Buy employees immediately follow Mr. Maldonado. S.R. saw the Best Buy employees pursue Mr. Maldonado as he began running through the parking lot toward Central Park Avenue. Four Best Buy employees (S.V., J.R., D.O., and E.L.) chased Mr. Maldonado through the parking lot to and across Central Park Avenue then turned north on Central Park Avenue.

The Best Buy employees continued to pursue Mr. Maldonado until he stopped running and appeared out of breath. The Best Buy employees surrounded Mr. Maldonado and demanded that he return the iPhone. Mr. Maldonado denied taking anything from the Best Buy store. Best Buy employee D.O. then returned to the store and left the other Best Buy employees with Mr. Maldonado. C.M. approached the remaining Best Buy employees and asked them if there was a problem. The Best Buy employees informed C.M. that Mr. Maldonado had taken an iPhone from their store. C.M. then asked Mr. Maldonado if he had taken anything from the store. Mr. Maldonado stated that he had not and handed a set of car keys to C.M. C.M. then left the area to get their car.

² None of the information referenced in this report was obtained through the use of grand jury subpoenas.

At approximately 5:48 p.m., with Mr. Maldonado still surrounded by Best Buy employees, S.V. (who was under the misimpression that the item stolen had been a digital camera) called 911 to report the alleged larceny and to request police assistance. S.V. provided the 911 operator with a general description of Mr. Maldonado and C.M. as the perpetrators of the larceny. Mr. Maldonado then attempted to push by E.L. and walk away. J.R. grabbed Mr. Maldonado's left shoulder and pulled him to the ground. S.V. further informed the 911 operator that the Best Buy employees had Mr. Maldonado detained on the ground several blocks north of the Best Buy on Central Park Avenue and that they needed police assistance. Mr. Maldonado kept attempting to stand up and J.R. kept pushing him down to prevent him from leaving. Mr. Maldonado then stated he could not breathe and J.R. stepped back to allow Mr. Maldonado to lift himself up while still on his knees. The police dispatcher relayed the information reported by S.V. to GPD patrol officers. J.R. stated that Mr. Maldonado said, "I don't care about the cops. I just don't want to get caught with this stuff." Mr. Maldonado then removed a pouch from his pants pocket, removed several small square glassine envelopes, and placed the glassines into his mouth just seconds before the police arrived.

2. Law Enforcement Response

At approximately 5:50 p.m., GPD Police Officer Richard Maguire (hereinafter "PO Maguire") was the first patrol officer to respond to the vicinity of Central Park Avenue and Harvard Drive, where the Best Buy employees had detained Mr. Maldonado.³ This area is referred to by GPD officers as Webb Field. PO Maguire responded in uniform in a marked patrol car with lights and sirens turned on. As PO Maguire's patrol car approached Webb Field, he observed several Best Buy employees struggling with Mr. Maldonado. PO Maguire stopped his car and approached the Best Buy employees. The Best Buy employees immediately informed PO Maguire that Mr. Maldonado had just put some drugs in his mouth. PO Maguire then took Mr. Maldonado to the ground from behind, bringing Mr. Maldonado face down on the ground, with PO Maguire on Mr. Maldonado's back also facing the ground. PO Maguire tried to reach into Mr. Maldonado's mouth to prevent him from swallowing any drugs he had placed in his mouth. PO Maguire also yelled "spit it out" to Mr. Maldonado. PO Maguire attempted without success to handcuff Mr. Maldonado, who remained face-down with his arms locked underneath his body. Soon thereafter, GPD Detective Sean Freeman⁴ (hereinafter "Det. Freeman") – who is also a trained paramedic – arrived at the location, observed PO Maguire attempting to restrain Mr. Maldonado, and immediately came over to help him. The officers repeatedly directed Mr. Maldonado to give the officers his arms and to allow them to handcuff him. The officers were unable to handcuff Mr. Maldonado.

³ PO Richard Maguire's written statement is attached hereto as Exhibit 1. PO Maguire and his fellow officers, Det. Sean Freeman, and PO Jean Paul Lara, declined to be formally interviewed for this investigation. Instead, these officers provided the OAG with brief written statements describing the events leading up to Mr. Maldonado's death. Although the investigation was somewhat limited by the officers' brief statements about what was generally described as a fluid, very traumatic, and chaotic event, this limitation did not change the OAG's overall understanding of how the incident played out, in light of the information gathered from the various civilian witnesses and other independent evidence.

⁴ Det. Sean Freeman's written statement is attached hereto as Exhibit 2.

Seconds later, GPD Police Officer Jean Paul Lara⁵ (hereinafter “PO Lara”) arrived at Webb Field and tried to help PO Maguire and Det. Freeman. After repeated attempts to do so, the officers were able to get control of one of Mr. Maldonado’s arms. After struggling with Mr. Maldonado for several seconds, PO Lara shouted that he was going to use his taser, known generically as an electronic control weapon.⁶ PO Lara then drew his taser, aimed it at Mr. Maldonado’s lower back/buttocks area, and deployed it in dart-prong mode.⁷ PO Lara activated his taser for approximately five seconds and heard a crackling sound. However, during and immediately after the deployment of the taser, Mr. Maldonado continued to resist being handcuffed. Seconds later, PO Lara activated his taser a second time in drive-stun mode by pressing his taser against the back of Mr. Maldonado’s leg for approximately five seconds. At this point, PO Lara heard a brief groan from Mr. Maldonado, after which Mr. Maldonado went limp.⁸ At approximately 5:52 p.m., PO Lara notified GPD central dispatch that he had deployed his taser. At this point, Det. Freeman and PO Maguire were able to bring Mr. Maldonado’s hands behind his back and to handcuff him. The officers brought Mr. Maldonado up to a seated position, with his legs stretched straight out in front of him and his back up against PO Lara’s legs.

3. Law Enforcement’s Medical Assessment and Response After Mr. Maldonado’s Arrest

Det. Freeman performed a medical assessment of Mr. Maldonado once they were able to place him in a seated position on the ground. Mr. Maldonado’s eyes were partially open but he did not respond to Det. Freeman’s questions. At approximately 5:53 p.m., PO Lara requested an ambulance to be dispatched to Webb field. Emergency Medical Technician Jovan Thompson (hereinafter “EMT Thompson”) was sent to Webb Field to provide advanced life support care. Det. Freeman immediately went to his car to retrieve and prepare a dose of Narcan⁹ to be administered by intravenous injection. Det. Freeman returned to Mr. Maldonado, who was still unresponsive and in a seated position on the ground. The officers cut open Mr. Maldonado’s jacket and shirtsleeve to allow Det. Freeman to inject a dose of Narcan into his arm. Det. Freeman also administered a dose of Narcan to Mr. Maldonado by nasal spray.

⁵ PO Jean Paul Lara’s written statement is attached hereto as Exhibit 3.

⁶ The electronic control weapon that GPD issued to all uniformed patrol officers is the Taser X26P, manufactured by Axon.

⁷ As with all other electronic control weapons, an officer can use the Taser X26P in two ways: (1) dart-prong mode, in which the device propels two barbed probes, which are connected to a main unit by a conductive wire, that pierce a subject’s skin and deliver an electrical current of 50,000 volts of electricity and should cause incapacitation, and (2) drive-stun or direct-contact mode, in which the officer holds the device against a subject’s body, causing the electrodes located at the end of the device to come into contact with a subject.

⁸ The taser was equipped with a camera, which recorded details about its use. The video from the taser corroborated PO Lara’s description that he had targeted Mr. Maldonado’s lower back and that he had used the taser on both dart prong mode and drive-stun mode.

⁹ Narcan is a medication designed to immediately reverse an opioid overdose. It blocks the brain’s opioid receptors and restores normal breathing in people who have overdosed on fentanyl, heroin, or prescription painkillers. Its effects last for 30 to 90 minutes, which permits medical attention to be provided, at <https://www.drugabuse.gov/related-topics/opioid-overdose-reversal-naloxone-narcan-evzio>

At approximately 5:55 p.m., Lieutenant Gregory Attalienti (hereinafter “Lt. Attalienti”) arrived at Webb field and spoke with PO Maguire. PO Maguire told Lt. Attalienti that the Best Buy employees initially pursued and physically detained Mr. Maldonado. PO Maguire also said that the Best Buy employees told him that Mr. Maldonado “swallowed drugs” before the police arrived. Lt. Attalienti then notified GPD central dispatch that Mr. Maldonado may have swallowed heroin. At approximately the same time, EMT Thompson arrived at Webb field and began to assist Det. Freeman. Det. Freeman informed EMT Thompson that Mr. Maldonado had ingested some kind of opiate. PO Lara informed EMT Thompson that Mr. Maldonado had been tased. EMT Thompson also administered a dose of Narcan by nasal spray. Mr. Maldonado did not respond to the additional dose of Narcan. EMT Thompson conducted a medical assessment of Mr. Maldonado, and while evaluating his vital signs, detected a weak pulse. EMT Thompson brought a stretcher to where Mr. Maldonado was still handcuffed and seated on the ground. EMT Thompson directed PO Lara to remove one of the handcuffs from Mr. Maldonado and secure it to the side rail of the stretcher in case Mr. Maldonado awoke in a combative state. EMT Thompson and PO Lara then wheeled Mr. Maldonado into the back of the ambulance, where Det. Freeman was preparing the advanced life support equipment.

Civilian Paramedic Kenneth Marelo (hereinafter “CPM Marelo”) then went to the rear of the ambulance to help EMT Thompson and Det. Freeman. At this point, Det. Freeman began to intubate¹⁰ Mr. Maldonado, using a direct laryngoscope to establish a clear airway.¹¹ Det. Freeman observed several glassine envelopes inside of Mr. Maldonado’s mouth, near his vocal cords. Utilizing forceps, Det. Freeman removed four square white glassine envelopes later determined to contain heroin and fentanyl.¹² (The envelopes were also later determined to measure approximately one inch by three quarters of an inch and were stamped “Hands Up.”) Det. Freeman then provided artificial ventilation for Mr. Maldonado by placing an oxygen mask over his face. While Det. Freeman was intubating Mr. Maldonado, CPM Marelo and EMT Thompson administered intravenous therapy, including saline, epinephrine,¹³ and Narcan. Det. Freeman applied electrocardiogram (hereinafter “EKG”) paddles to Mr. Maldonado’s upper torso. The EKG detected no heartbeat. Det. Freeman began manual chest compressions to establish some circulation because Mr. Maldonado had no pulse. Then Det. Freeman, EMT Thompson, and CPM Marelo applied a Lucas Chest Compression system¹⁴ to Mr. Maldonado in an attempt to establish

¹⁰ Intubation is the insertion of a flexible plastic tube into the windpipe to maintain an open airway for breathing.

¹¹ Direct rigid laryngoscopy is a procedure to look at the vocal cords or larynx. A laryngoscope is a rigid, hollow tube with a light attached, at <https://www.fairview.org/patient-education/41047>.

¹² The forensic drug analysis reports are attached hereto as Exhibit 4. Westchester County Department of Labs and Research performed an analysis on the four glassines and confirmed that heroin and fentanyl were present in the substance contained inside the glassines.

¹³ Epinephrine is a medication commonly used in emergency medicine to quickly improve breathing, stimulate the heart, and raise a dropping blood pressure.

¹⁴ The LUCAS Chest Compression System is designed to deliver uninterrupted compressions at a consistent rate and depth to facilitate ROSC (return of spontaneous circulation). It delivers automated compressions from first response in the field to ambulance transport and at the hospital. See <https://www.lucas-cpr.com/resources>.

circulation while on the way to the hospital. At approximately 6:15 p.m., Mr. Maldonado was taken to White Plains Hospital. During the ride to White Plains Hospital, Det. Freeman continued to attempt to revive him. Unfortunately, all attempts to revive Mr. Maldonado were unsuccessful.

The ambulance arrived at the hospital at approximately 6:23 p.m. with Mr. Maldonado in cardiac arrest. Upon arrival, Mr. Maldonado had no pulse, his pupils were fixed and dilated, and he did not show any signs of life. Hospital medical personnel administered Narcan to Mr. Maldonado both via nasal spray and intravenous injection. They also gave Mr. Maldonado epinephrine, sodium bicarbonate,¹⁵ and calcium chloride.¹⁶ White Plains Hospital staff also continued CPR in an attempt to revive Mr. Maldonado. In addition, at approximately 6:42 p.m., hospital staff utilized an AED defibrillator to administer several shocks to Mr. Maldonado in order to revive his heartbeat. After all further attempts to revive Mr. Maldonado proved unsuccessful, Mr. Maldonado was pronounced dead at 6:54 p.m.

Hospital staff subsequently provided to GPD officers Mr. Maldonado's clothing and personal property. Among the items was the iPhone X that had been taken by Mr. Maldonado from the Best Buy store.

4. The Autopsy Report and the Independent Review of the Autopsy Report

On November 30, 2017 at approximately 1:20 p.m., Dr. Aleksander Milovanovic, Deputy Chief Medical Examiner of the Westchester County Department of Laboratories and Research, performed the autopsy of Mr. Maldonado.¹⁷ Dr. Milovanovic detailed all injuries and marks present on Mr. Maldonado's body. He also submitted samples of Mr. Maldonado's blood and urine for forensic toxicology examination. In addition, the four-glassine envelopes that Det. Freeman removed from inside Mr. Maldonado's mouth were photographed and submitted to the lab for analysis and identification.

Dr. Milovanovic requested additional information in order to determine Mr. Maldonado's cause of death. The OAG provided him the following: (a) statements given by Det. Freeman, PO Maguire, and PO Lara; (b) a written statement and interview report of civilian witness S.R.; (c) audio-taped statements of the emergency room attending physician, EMT Thompson, CPM Marello, and Best Buy employee witnesses E.L., J.R., S.V. and C.H.; (d) video from the body cameras worn by Detective Dean Annicchiarico (also a trained paramedic who responded to the scene) and PO Maguire; (e) the taser camera video; and (f) the Axon taser report.

Upon autopsy, Dr. Milovanovic noted two significant injuries. First, Mr. Maldonado's right fifth rib had an anterior lateral fracture with a small tissue hemorrhage. Dr. Milovanovic concluded that this injury was consistent with the vigorous application of CPR compressions at the time of

¹⁵ Sodium bicarbonate is a medication commonly used to treat severe metabolic acidosis (excessive acid in the body) in cardiac arrest.

¹⁶ Calcium chloride is a medication commonly used to strengthen muscular tissue throughout the body, including cardiac tissue, for the purpose of stabilizing the contraction of the heart. It is used when epinephrine has failed to revive a patient's heartbeat.

¹⁷ The Final Autopsy Report of Jonathan Maldonado is attached hereto as Exhibit 5.

Mr. Maldonado's death. The second significant injury was two superficial puncture wounds measuring 1/16 inch and located on Mr. Maldonado's right mid lower back approximately five inches from the midline. Dr. Milovanovic concluded that these wounds were consistent with taser dart marks.

The Medical Examiner also requested certain laboratory tests. The Westchester County Department of Labs and Research, Division of Forensic Toxicology (hereinafter the "Toxicology Lab") conducted both qualitative analyses (which provide information about the nature of toxins) and quantitative analyses (which provide information about the chemistry of the toxins and their concentration) of the samples of Mr. Maldonado's blood, gastric content, and urine collected during the autopsy. The qualitative tests detected the presence of fentanyl,¹⁸ acetyl fentanyl,¹⁹ morphine,²⁰ acetaminophen,²¹ and azithromycin²² in the samples. In addition, the qualitative screen detected methoxy acetyl fentanyl, delta-9 carboxy THC,²³ and salbutamol²⁴ in Mr. Maldonado's urine, and ibuprofen²⁵ and naproxen²⁶ in Mr. Maldonado's gastric content. The Toxicology Lab also conducted a confirmatory quantitative analysis, which detected the presence of fentanyl and norfentanyl²⁷ in Mr. Maldonado's blood and urine samples. In addition, the

¹⁸ Fentanyl and fentanyl-related compounds such as carfentanil, methoxy acetyl fentanyl and acetyl fentanyl are synthetic opioids. Drugs in this group have varying but often very high levels of potency. It only takes a very small amount of fentanyl or its derivatives – which can be inhaled or absorbed through the skin or mucus membranes (such as being inhaled through the nose or mouth) – to result in severe adverse reactions. *See* <https://www.dea.gov/druginfo/fentanyl.shtml>

¹⁹ Acetyl fentanyl is a powerful opioid that is closely related to fentanyl. *See* https://www.deadiversion.usdoj.gov/drug_chem_info/acetylfentanyl.pdf

²⁰ Morphine is a potent narcotic agent, and can present as a metabolite of heroin in urinary samples. *See* <https://www.ncbi.nlm.nih.gov/pubmed/1255475>

²¹ Acetaminophen is a medication used to relieve mild to moderate pain and to reduce fever. *See* <https://medlineplus.gov/druginfo/meds/a681004.html>

²² Azithromycin is an antibacterial prescription medicine used to treat certain bacterial infections in many different parts of the body. *See* <https://aidsinfo.nih.gov/drugs/104/azithromycin/0/patient>

²³ Delta (9)-tetrahydrocannabinol (THC), is the primary active component of cannabis, commonly known as marijuana. *See* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2731700/>

²⁴ Salbutamol is a common medication prescribed to provide relief of acute asthma symptoms. *See* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4707606/>

²⁵ Ibuprofen is a nonsteroidal anti-inflammatory drug used to treat pain, swelling, and fever. It can be purchased over the counter. *See* <https://www.medicinenet.com/script/main/art.asp?articlekey=11510>

²⁶ Naproxen is a nonsteroidal anti-inflammatory medication used to relieve pain, tenderness, swelling and stiffness. Individuals who take naproxen may have a higher risk of having a heart attack or stroke than individuals who do not use this medication. *See* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4707606/>

²⁷ Norfentanyl is a metabolite of fentanyl. *See* <https://pubchem.ncbi.nlm.nih.gov/compound/Norfentanyl>

quantitative analysis detected delta-9 THC, 6-monoacetylmorphine,²⁸ and codeine²⁹ in Mr. Maldonado's blood.³⁰

Dr. Milovanovic's report found Mr. Maldonado's cause of death to be "acute mixed drug intoxication" (fentanyl, acetyl fentanyl, methoxy acetyl fentanyl and heroin), and the manner of death to be "accidental." Thus, the Westchester County Medical Examiner's Autopsy Report concluded that the actions of GPD officers at the time they arrested Mr. Maldonado were not the cause of his death.

In making the determination that a death was caused by an acute intoxication, three conditions must be met: "the toxicology results must be within the given range encountered in such fatalities, the history and circumstances must be consistent with a fatal intoxication, and the autopsy must fail to disclose a disease or physical injury that has an extent or severity inconsistent with continued life."³¹

Fentanyl is a prescription opioid that is used for management of marked pain and the induction of anesthesia.³² However, over the last few years fentanyl has also become an abused substance that has led to a number of deaths in New York and across the country. According to the National Institute on Drug Abuse (part of the National Institute of Health), "fentanyl works by binding to the body's opioid receptors, which are found in areas of the brain that control pain and emotions...Opioid receptors are also found in the areas of the brain that control breathing rate. High doses of opioids such as fentanyl, can cause breathing to stop completely, which can lead to death."³³ Under certain circumstances, fentanyl can even cause breathing to cease almost immediately upon ingestion. When there is any excess strain on the heart, cardiac arrest can follow swiftly.

Research into fatal levels of fentanyl shows that patients often possess varying levels of tolerance to the substance. Therefore, it is difficult to ascertain precise levels that would lead to death. A study³⁴ in Hennepin County Minnesota examined postmortem fentanyl concentrations in

²⁸ 6-monoacetylmorphine belongs to the family of Morphinans. *See* <https://pubchem.ncbi.nlm.nih.gov/compound/520352>

²⁹ Codeine is an analgesic related to morphine but with less potent analgesic properties and mild sedative effects. *See* <https://www.ncbi.nlm.nih.gov/mesh/68003061>

³⁰ The Westchester County Department Labs and Research Report #M2017-2573 is attached hereto as Exhibit 6.

³¹ *Id.* at 36.

³² James R. Gill et al., *Reliability of Postmortem Fentanyl Concentrations in Determining the Cause of Death*, 9(1) J. MED. TOXICOLOGY 34 (2012).

³³ *See* <https://www.drugabuse.gov/publications/drugfacts/fentanyl#references>

³⁴ JG Thompson et al., *Fentanyl Concentrations in 23 Postmortem Cases from the Hennepin County Medical Examiner's Office*. 52 J. FORENSIC SCI. 978 (2007).

eight accidental “drug overdose” deaths in which fentanyl was deemed solely responsible. Of these, the mean blood concentration was 36 ng/ml (range, 5-120 ng/ml).

Postmortem, Mr. Maldonado’s fentanyl concentrations were 44 ng/ml and 94 ng/ml in his blood and urine, respectively. The fentanyl concentration in Mr. Maldonado’s body was unequivocally higher than the mean fatal blood concentrations in the Hennepin County study.

Although Dr. Milovanovic could not definitively connect Mr. Maldonado’s death to his having ingested material from the glassine envelopes found inside his mouth, the Toxicology Lab did determine that heroin and fentanyl were present in all four glassines. (The Toxicology Lab also identified very weak trace amounts of acetaminophen and morphine; however, these substances could not be confirmed because of insufficient quantities suitable for analysis.) The lab report noted that the substance inside three of the glassines was adhered to the packaging, indicating that the substance had become wet and then dried at some point before the analysis, suggesting that Mr. Maldonado’s saliva had seeped into the glassines and that some of the contents of the glassines had in turn seeped out into Mr. Maldonado’s body. According to Dr. Milovanovic, membranes in the back of the mouth would have allowed direct access to the brain for any material that leached out of the glassines; this would have had a near-immediate effect.³⁵

In addition, information provided to Dr. Milovanovic by the Westchester District Attorney’s office indicated that in January, 2018, the particular “Hands Up” brand of opioid involved in this case was associated with a fatal overdose in the City of Yonkers and with a non-fatal overdose in the hamlet of Mahopac in Putnam County.

As detailed below, Dr. Milovanovic was unable to conclusively determine the cause of Mr. Maldonado’s death. Dr. Milovanovic concluded that it was plausible that sufficient drugs seeped out of the glassines and into Mr. Maldonado’s mouth, causing a drug overdose and resulting in Mr. Maldonado’s death. But Dr. Milovanovic was unable to rule out whether other factors – including the interaction with police and taser usage – contributed to Mr. Maldonado’s death.

In a follow-up interview on February 19, 2019, Dr. Milovanovic was specifically asked what role, if any, the following factors played in Mr. Maldonado’s death: (1) the possible interference with Mr. Maldonado’s breathing caused by the four glassines in the back of his mouth; (2) the physical struggle between Mr. Maldonado and the GPD officers; and (3) the use of the taser on Mr. Maldonado.

With respect to the glassines, Dr. Milovanovic found no reason to believe that they had significantly obstructed Mr. Maldonado’s airway, as they had not been sucked into the airway but rather were clinging to the sides of Mr. Maldonado’s upper throat area. Nevertheless, insofar as they in any way interfered with Mr. Maldonado’s breathing, they would have reduced delivery of oxygen to his body. Any reduction in oxygen supply would worsen Mr. Maldonado’s slowed breathing caused by the opioids in his system. As a result, Dr. Milovanovic could not exclude the presence of the glassines as a minor contributing factor in Mr. Maldonado’s death.

³⁵ February 19, 2019, OAG interview with Dr. Milovanovic.

Both the physical struggle with the police (which included an officer taking Mr. Maldonado to the ground and forcing him face down with the officer on his back) and the use of the taser (which can trigger twitching of the targeted person's muscles) would have increased the demand for oxygen from Mr. Maldonado's body. Mr. Maldonado's earlier flight from and struggle with the Best Buy employees also likely increased his demand for oxygen. His reduced supply of oxygen coupled with an increased demand for oxygen would likely worsen Mr. Maldonado's slowed breathing. For this reason, Dr. Milovanovic could not exclude Mr. Maldonado's interaction with the GPD officers (and the Best Buy employees) as a minor contributing factor in Mr. Maldonado's death.

At the request of the Maldonado family, a private forensic pathologist, Dr. Michael Baden, performed a review of the Westchester County Medical Examiner's autopsy report and findings. OAG provided Dr. Baden with all the evidence reviewed by Dr. Milovanovic. OAG arranged for the Westchester County Medical Examiner's office to provide Dr. Baden with a complete copy of all histology microscopic slides³⁶ retained from Mr. Maldonado's autopsy. In addition, Dr. Baden, Dr. Milovanovic, and OAG attorneys met on May 18, 2018, at the Westchester County Labs and Research Center to discuss the facts and evidence relating Mr. Maldonado's death. On June 26, 2018, Dr. Baden issued his final report and findings.³⁷

Unlike Dr. Milovanovic, Dr. Baden concluded that Mr. Maldonado had died because of his interaction with police officers, rather than because of a drug overdose. The OAG was unable to obtain evidence to support the conclusion that Mr. Maldonado had developed a high tolerance for drugs. Several statements made by Mr. Maldonado's family suggest that Mr. Maldonado had not developed a high tolerance to heroin and fentanyl. On the evening of Mr. Maldonado's death, his mother told GPD officers that over the past few weeks she had become suspicious that Mr. Maldonado was illegally using drugs, but when she had him drug tested, it had only shown marijuana use.³⁸ His uncle, C.M., told the OAG that he was only aware that Mr. Maldonado had been taking painkillers. No other evidence collected in our investigation suggested that Mr. Maldonado was a chronic user of heroin or fentanyl.

Dr. Baden further pointed to the absence of the common signs of opioid consumption, such as slurred speech, confusion, impaired motor activity, nodding, sleeping, respiratory depression, pinpoint pupils, or cyanotic lips as evidence that Mr. Maldonado's death was not the consequence of an overdose.³⁹ However, Dr. Baden did not directly address the fact that Mr. Maldonado had placed permeable glassines of high-potency heroin and fentanyl in his mouth minutes before he became unresponsive. Moreover, as mentioned earlier, the evidence suggests that drugs could

³⁶ Histology microscopic slides contain body tissue specimens collected during an autopsy for future microscopic examination.

³⁷ Dr. Michael Baden's Report is attached hereto as Exhibit 7.

³⁸ GPD Case Supplemental Report by Investigator Whiting, R.E., dated November 29, 2017; statement of Mrs. Maldonado taken by GPD, November 29, 2017.

³⁹ The absence of these symptoms cannot exclude the possibility that Mr. Maldonado had used opioids earlier in the day, and that the effects of that earlier use had largely worn off by the time of the visit to Best Buy.

indeed have entered his bloodstream, at a location where the dangerous effects could be instantaneous.

Dr. Baden also suggested that the high levels of toxicity found in Mr. Maldonado's body were misleading, claiming that fentanyl levels taken from the heart may be higher post-mortem due to redistribution through the body. However, the medical examiner did not solely rely on those levels in determining that Mr. Maldonado died from an overdose of heroin and fentanyl. In any event, as Dr. Baden himself acknowledged, there is no precise level that has been determined to be fatal for everyone. Rather, studies have shown that a "relatively low postmortem concentration [of fentanyl] should not dismiss intoxication as a possible cause of death if other autopsy findings and circumstances support this conclusion."⁴⁰

Having rejected an overdose as Mr. Maldonado's cause of death, Dr. Baden concluded instead that Mr. Maldonado's death was caused exclusively by police conduct.⁴¹ In particular, he suggested that pressure on Mr. Maldonado's back as he lay face down prevented Mr. Maldonado's diaphragm from moving, resulting in respiratory arrest. In addition, or in the alternative, he suggests that the use of the taser on Mr. Maldonado caused cardiac arrest, stating:

He lost consciousness while being restrained with pressure on his back and immediately after he was tased. An electroconvulsive discharge can cause a rapid loss of consciousness and cardiac arrest by producing a cardiac arrhythmia. Back pressure, when face down on the ground and while being cuffed, can prevent the diaphragms from moving which can cause a respiratory arrest.

However, aside from the initial interaction with PO Maguire, there is no evidence that any significant or steady pressure was placed on Mr. Maldonado's back as the officers attempted to restrain him. And although Mr. Maldonado was found to be unresponsive after he was handcuffed, he did not lose consciousness while being restrained. Rather, as the accounts of all witnesses agree, Mr. Maldonado continued to struggle with the officers until PO Lara used this taser on Mr. Maldonado.

Dr. Baden's cardiac arrest theory relies on the fact that under some circumstances, placement of two prongs in dart-prong mode can create an electric circuit that directly affects the heart rhythm. There is, however, no affirmative evidence that the taser had any such effect on this occasion. PO Lara only used the taser in dart-prong mode once. The prongs made contact with Mr. Maldonado's body on the lower right side of his back near the buttocks. In this location, according to Dr. Milovanovic, it would not have been possible for the prongs to create an electric circuit that would affect the heart. Only after the taser was used in drive-stun mode, which according to Dr. Milovanovic carries no risk to the heart, did Mr. Maldonado stop struggling.

⁴⁰ James R. Gill et al., *Reliability of Postmortem Fentanyl Concentrations in Determining the Cause of Death*, 9(1) J. MED. TOXICOLOGY 34 (2012).

⁴¹ Dr. Baden also opined that the glassine envelopes that Mr. Maldonado had placed in his mouth had not obstructed his breathing and did not cause his death. This opinion is essentially consistent with Dr. Milovanovic's finding on this point.

LEGAL ANALYSIS

The Westchester County Medical Examiner's Autopsy Report concluded that the actions of GPD officers did not cause Mr. Maldonado's death. The Medical Examiner could not, however, entirely rule out the possibility that the officers' interactions with Mr. Maldonado contributed to his death. For this reason, this section will analyze whether GPD officers' use of force was authorized under the law. The facts and evidence gathered by this investigation show that the force utilized by GPD officers was legally authorized in connection with the arrest of Mr. Maldonado.

At the time he first approached the group of Best Buy employees holding Mr. Maldonado in custody, PO Maguire had probable cause to believe Mr. Maldonado had committed the crime of petit larceny (N.Y. Penal Law Section 155.25).⁴² He had learned from the dispatcher that the person in custody was a "shoplifter," which information had come to the dispatcher from the 911 call made by one of the Best Buy employees. *See, e.g., People v. Williams*, 753 N.Y.S.2d 377, 378 (2d Dept. 2003) ("Generally, the information provided by an identified citizen accusing another individual of the commission of a specific crime is sufficient to provide the police with probable cause to arrest"). And even before he interacted with Mr. Maldonado, PO Maguire had been told by another of the employees that Mr. Maldonado had swallowed drugs, and so also had probable cause to believe that Mr. Maldonado had also committed – indeed was in the process of committing – evidence tampering (N.Y. Penal Law § 215.40(2)).⁴³ The probable cause for either of these crimes provided sufficient authority for PO Maguire to arrest Mr. Maldonado. In addition, the information that Mr. Maldonado had swallowed drugs gave PO Maguire the authority to use reasonable force to recover, if possible, whatever it was Mr. Maldonado had put in his mouth before this evidence was destroyed. *See People v. Matherine*, 166 A.D.2d 322 (1st Dept. 1990) ("the reasonable use of force to prevent loss of evidence is permitted where drugs have been placed in the mouth by an arrestee"); *People v. Cooper*, 7 Misc. 3d 61, 63 (App. Term, 1st Dept. 2005) ("in the context of this rapidly unfolding police-citizen encounter, it cannot be said that the officer's momentary action in squeezing the defendant's cheeks – conduct which did not impair defendant's breathing or otherwise pose an appreciable risk of injury – constituted unreasonable or excessive force").

Under New York Penal Law, PO Maguire was legally authorized to arrest Mr. Maldonado, put his hands on Mr. Maldonado, take him to the ground, attempt to handcuff him, and attempt to reach into his mouth to recover evidence. Likewise, Mr. Maldonado's refusal to cooperate – twisting his body, failing to release his hands – permitted the officers to lawfully use some additional force.⁴⁴ While the OAG recommends certain measures that may have resulted in

⁴² "A person is guilty of petit larceny when he steals property." N.Y. Penal Law Section 155.25.

⁴³ "A person is guilty of tampering with physical evidence when: Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person." N.Y. Penal Law Section 215.40(2).

⁴⁴ "A person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person." N.Y. Penal Law Section 205.30.

different outcomes here, all in all, the GPD officers' use of force did not violate the penal law. N.Y. Penal Law Section 35.30(1).⁴⁵

In addition, federal and New York State courts have consistently found that the use of a taser does not constitute lethal force. See *Buckley v. Haddock*, 292 F. App'x. 791, 795 (11th Cir. 2008) (unpublished opinion) (use of a taser is "at most moderate, non-lethal force"); *Negron v. City of New York*, 976 F. Supp. 2d 360, 367 (E.D.N.Y. 2013) ("Common sense suggests that, in the ordinary case, the likelihood of sustaining serious, permanent injuries from a taser is relatively low"); *People v. Patterson*, 115 A.D.3d 1174, 1175 (4th Dept. 2014) (use of a taser is "non-lethal force"). Moreover, in civil cases, several courts have held that the use of a taser is reasonable where a suspect actively resists arrest.⁴⁶ See *Wright v. Deghetto*, No. 5:06CV-133-R, 2008 WL 199890 (W.D. Ky. 2008) (holding that it was reasonable to taser a suspect who was verbally combative and who resisted officers' attempts to handcuff him); *Hinton v. City of Elwood*, 997 F.2d 774, 781 (10th Cir. 1993) (approving the use of a stun gun to overcome a suspect's resistance to arrest); *Turner v. City of Toledo*, 2012 U.S. Dist. LEXIS 66908, 2012 WL 1669836 (N.D. Ohio 2012) ("But even viewing the facts in the light most favorable to Plaintiff, it is undisputed that 'Mr. Turner attempted to pull his arms free from the grasp of the officers,' resulting in a 'physical struggle,' albeit one that was 'very brief [and] minor' [making] [the officer's] use of the taser [] reasonable under Graham.")

For the foregoing reasons, the GPD officers' use of force against Mr. Maldonado did not violate New York Penal Law, and therefore, no charges are warranted.

POLICY RECOMMENDATIONS

Despite the fact that the OAG has concluded that the officers' use of force did not violate New York Penal law, we nonetheless make the following recommendations for GPD, which seek to improve the department's policies, procedures, and training.⁴⁷ Specifically, the OAG

⁴⁵ A police officer "in the course of effecting or attempting to effect an arrest...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." N.Y. Penal Law § 35.30. The section goes on to set further conditions for the use of "deadly physical force" (defined under Penal Law Section 10.00(11) as "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury"). Here, however, the officers did not use deadly physical force, as it is defined in the law.

⁴⁶ Courts have emphasized whether, like here, officers warned a civilian that he or she would be tased if the civilian did not stop certain conduct. See *Negron*, 976 F.Supp.2d at 367 (noting the importance of giving a warning before a taser is used); *Neal-Lomax v. Las Vegas Metropolitan Police Dept.*, 574 F. Supp.2d 1170 (Dist. Ct. Nevada 2008) (officers gave warnings); cf. *Brown v. City of Golden Valley*, 574 F.3d 491 (8th Cir. 2009) (use of a taser on a car passenger for refusal to exit a car stopped for speeding constituted excessive force because the officer tased the passenger without warning and use of a taser was disproportionate to the underlying crime); *Casey v. City of Federal Heights*, 509 F.3d 1278 (10th Cir. 2007) (use of a taser on a passively resisting suspect was unreasonable because the officer tased the suspect without warning and the use of force was disproportionate to the underlying crime).

⁴⁷ Executive Orders 147 and 147.13 require the Attorney General to provide the Governor "a report on all cases where (i) the special prosecutor declines to present evidence to a grand jury regarding the death of a civilian as described in this Order, whether in custody or not, allegedly caused by a law enforcement officer...The report will

recommends that the GPD (1) amend its taser use policy and training to account for the heightened risk when the targeted individual is reasonably believed to be under the influence of drugs; (2) develop a mandatory investigation protocol when a death in custody occurs in connection with, or immediately after, an officer's use of force; (3) ensure that GPD officers follow the department's existing policy with regard to use of body-worn cameras; and (4) clarify its protocols for notifying family members, in a timely and respectful fashion, of the death of a civilian in police custody.

1. Taser Use Policy and Training

Police agencies should be mindful of concerns about the use of tasers on those under the influence of drugs and take these concerns into account when developing use-of-force policies.

Numerous studies have shown that the electric current delivered by a taser is capable of causing death or serious injury, even in otherwise healthy individuals.⁴⁸ This risk is significantly heightened when the device is used on certain populations, including young children, the elderly, pregnant women, individuals under the influence of drugs and/or alcohol, and (not surprisingly) individuals with pre-existing heart conditions.⁴⁹ Most of these risks are acknowledged by the weapon's manufacturer, Axon, which itself now describes the taser as "less lethal" rather than "non-lethal."

These findings are reflected in taser-use guidelines across the country. For example, in a 2011 report, the United States Department of Justice Community Oriented Policing Services and the Police Executive Research Forum established guidelines for use-of-force practices and policies governing tasers. The report notes that "[p]ersonnel should be aware that there is a higher risk of sudden death in subjects under the influence of drugs."⁵⁰

Here, the officers had been informed that Mr. Maldonado had placed packages containing drugs in his mouth, creating the reasonable likelihood (which apparently materialized) that Mr. Maldonado would be exposed to the contents of those packages. PO Lara, nonetheless, used his taser on Mr. Maldonado twice—first in the dart-prong mode and then, immediately thereafter, in drive-stun mode. He chose to employ his taser only moments after arriving on the scene, without first determining whether Mr. Maldonado could be subdued through the three officers' use of physical force alone, and without resort to the weapon.

include, to the extent possible and lawful, an explanation of that outcome and any recommendations for systemic reform arising from the investigation."

⁴⁸ See, e.g., *Taser Electronic Control Devices Can Cause Cardiac Arrest in Humans*, *Circulation* (Vol 129, No. 1, January 7, 2014). <https://www.ahajournals.org/doi/10.1161/CIRCULATIONAHA.113.005504>

⁴⁹ *Shock Tactics, Part 7: The Vulnerable*, Reuters (February 7, 2018). <https://www.reuters.com/investigates/special-report/usa-taser-vulnerable/>

⁵⁰ DOJ Community Oriented Policing Services (COPS) and Police Executive Research Forum. *2011 Electronic Control Weapon Guidelines*, DOJ COPS: Washington, D.C. (March 2011), p.21. <https://www.policeforum.org/assets/docs/Free Online Documents/Use of Force/electronic%20control%20weapon%20guidelines%202011.pdf>

We recommend that GPD amend its policies to reflect the heightened risk of serious injury or death when certain populations, including those under the influence of drugs, are subjected to a taser, and train its officers on such policies. The policy and training should make clear that the officer should first employ lesser means of force before employing a taser, when the arrestee's vulnerabilities are reasonably known to the officer. If a taser is deployed without first employing other means, the officer should be able to articulate a legitimate justification for why exposing such person to increased risk was necessary in the first instance.

2. Mandatory Investigation Protocol

The GPD currently has no policy or procedure that would govern or guide the criminal and administrative investigations relating to civilian deaths in custody. Such a policy would ensure that these cases will be investigated systematically and thoroughly.

Here, an investigation first began shortly after Mr. Maldonado had been transported to the hospital but before he was officially pronounced dead. At approximately 6:15 p.m. on November 29, 2017, Lt. Attalienti contacted Sergeant Dan Massett of the GPD Detective Division to request that an investigation be initiated into the alleged larceny by Mr. Maldonado at the Best Buy store. At approximately 6:40 p.m., GPD officers transported Best Buy employees J.R., S.V., D.O., E.L. and C.H. from their store to GPD headquarters to be interviewed. PO Maguire, one of the officers involved in Mr. Maldonado's arrest, was originally assigned to set up the crime scene at Webb Field, maintain scene security, and recover all evidence from the scene. PO Maguire subsequently transferred to the detectives assigned to the case all of Mr. Maldonado's personal property that he recovered at the scene, as well as the four glassines Det. Freeman recovered from Mr. Maldonado's mouth. PO Lara and Det. Freeman, the two other officers involved in the arrest, were assigned to safeguard Mr. Maldonado's person, clothing, and personal property at White Plains Hospital. PO Lara recovered from among Mr. Maldonado's clothing the iPhone X that had been taken by Mr. Maldonado from the Best Buy store.

At approximately 8:55 p.m., approximately two hours after Mr. Maldonado had been pronounced dead, GPD obtained assistance from the Yonkers Police Department Detective Division (hereinafter "YPD") to investigate the alleged larceny and possession of controlled substance committed by Mr. Maldonado. YPD led the investigation from that point forward. At approximately 9:17 p.m., a number of YPD detectives responded to the scene at Webb Field. YPD processed the scene by taking measurements, photographs, and video of the areas where Mr. Maldonado had been chased by the Best Buy employees and apprehended by GPD officers. Several YPD detectives also responded to GPD headquarters to interview the Best Buy employees. From 11:48 p.m. until 1:45 a.m. the next morning, YPD detectives conducted interviews of Best Buy employees J.R., S.V., D.O., E.L., and C.H. During the interviews, YPD detectives limited their questions to facts pertaining to the alleged larceny and possession of a controlled substance by Mr. Maldonado. YPD detectives also conducted photo array identification procedures with each Best Buy employee, which confirmed that Mr. Maldonado was the individual they chased out of Best Buy. Neither GPD nor YPD detectives ever questioned the employees about the GPD

officers' apprehension of Mr. Maldonado or the use of force by PO Maguire, PO Lara, and Det. Freeman.⁵¹

As noted in previous OAG reports, it is imperative that law enforcement agencies fully investigate and abstain from prejudging an officer's use of force that results in, or occurs immediately before, a civilian death in custody. This investigation should attempt to promptly identify and interview all civilian witnesses, evaluate evidence from the scene, inspect physical evidence, recordings, etc. The integrity of any investigation into a civilian death in custody should be preserved by immediately excluding any officer directly involved in the use-of-force incident from any part of the investigation, including the recovery and safeguarding of evidence.

While the OAG acknowledges that a civilian death in custody may represent a rare occurrence in GPD law enforcement operations, the OAG recommends that GPD amend its use of force policy and procedure to incorporate a mandatory investigation component whenever a death in custody occurs in connection with, or immediately after, an officer's use of force. This amendment to the use of force policy will ensure that impartial, fair, and thorough criminal and administrative investigations are conducted.

3. Body-Worn Cameras

Many law enforcement agencies have outfitted officers with body-worn cameras with audio capability, police vehicle dashboard cameras, and electronic control weapons (aka tasers) equipped with cameras. The GPD does provide its officers with body-worn cameras with audio capability. Moreover, the GPD has implemented a policy that instructs GPD officers about the use of those cameras.⁵² However, at the time of Mr. Maldonado's apprehension, PO Maguire's body-worn camera was not activated. In addition, Det. Freeman and PO Lara did not activate their body-worn cameras when responding to Webb field to assist in the apprehension of Mr. Maldonado. Det. Freeman activated his body-worn camera only after Mr. Maldonado was already apprehended, then deactivated it after Mr. Maldonado entered the ambulance. PO Maguire activated (and then deactivated) his body-worn camera several times after Mr. Maldonado was taken into the ambulance. Therefore, there is no body-worn camera video capturing the initial encounter with Mr. Maldonado. Indisputably, videotaped evidence of the GPD officers' apprehension of Mr. Maldonado would have greatly facilitated both the criminal and administrative investigations of this incident. The GPD should ensure compliance with its own policy by better training officers on the proper use of body-worn cameras, police vehicles equipped with dashboard cameras, and tasers equipped with cameras.

In a 2014 report, the United States Department of Justice Community Oriented Policing Services and the Police Executive Research Forum detailed extensive research and analysis about the implementation of body-worn cameras in law enforcement agencies nationwide. Those agencies that have adopted body-worn camera programs have obtained many benefits, including:

⁵¹ The OAG subsequently conducted additional interviews with the civilian witnesses, during which these issues were addressed.

⁵² GPD Procedure No. 401.17: Taser Axon Body-Worn Camera is attached hereto as Exhibit 8.

the documentation of evidence; enhanced officer training; the prevention and/or resolution of citizen complaints; transparency; and improved performance and accountability.⁵³ Dashboard cameras have proven to be similarly beneficial to officers, law enforcement agencies, and members of the public alike.⁵⁴

In this particular incident, if the officers had properly utilized their body-worn cameras, investigators would have been able to view the interaction with Mr. Maldonado from each officer's vantage point in real time. As such, we recommend that GPD re-train officers and implement verification procedures to ensure that officers are properly utilizing body-worn cameras.

4. Family notifications

To avoid unnecessary trauma for the decedent's family after a death in custody, it is important that police agencies have – and follow – an established, sensitive protocol for notifying the family of that death. Although the GPD has a written protocol for notifying family members in cases involving an individual's death,⁵⁵ that protocol was not followed in Mr. Maldonado's case.

On the evening of Mr. Maldonado's death, GPD had positively identified Mr. Maldonado by 7:21 p.m. GPD officers recovered Mr. Maldonado's wallet containing his identification and other documents containing his home address. The GPD made no effort to visit Mr. Maldonado's home or to notify his family of his death. At approximately 8:11 p.m., Mr. Maldonado's family contacted the GPD headquarters directly to find out what had happened to Mr. Maldonado. A Maldonado family member was told to come to GPD Headquarters to obtain more information regarding Mr. Maldonado. At approximately 9:00 p.m., Mr. Maldonado's mother and aunt arrived at the GPD headquarters, at which point a GPD detective interviewed Mr. Maldonado's mother regarding her son's background, employment, health history, and possible drug use. The Maldonado family waited in the GPD headquarters for one hour before being notified at 11:10 p.m. that Mr. Maldonado had died in police custody. The death of Mr. Maldonado was a tragic and devastating loss to the Maldonado family and the GPD should have been more proactive in notifying his family of the death of their loved one.

⁵³ Supra note 49.

⁵⁴ *The In-Car Camera Value and Impact*, Police Chief Magazine (November 9, 2004) <https://www.policeone.com/police-products/police-technology/articles/93475-The-in-car-camera-Value-and-impact/>.

⁵⁵ GPD Procedure 601.03: Death Notifications is attached hereto as Exhibit 9.

EXHIBIT 1

STATEMENT

I, Police Officer Richard Maguire, at the request of the Office of the New York State Attorney General, make this statement.

I am employed as a police officer with the Greenburgh Police Department.

While in a marked police car during the evening of November 29, 2017, I received a radio call of a male who had committed a larceny at the Best Buy Store on North Central Avenue. I was the first police officer to arrive at Webb field which was located in the vicinity of the Best Buy store. At Webb field I saw several Best Buy employees and, who I later was Jonathan Maldonado, in a physical struggle. The store employees notified me that Mr. Maldonado had just swallowed drugs.

As I ran up to Mr. Maldonado, the store employees let go of him. I yelled to him to spit the drugs out as we were both on our feet and I attempted to gain control of Mr. Maldonado. He was pulling away from me, but was not saying anything. While we were both still standing, as I continued to shout to spit out the drugs, Mr. Maldonado resisted my attempt to control his arms. We both went to the ground. As Mr. Maldonado was on his stomach, both his arms were underneath him. As I was kneeling, I attempted to remove his right arm but he had both of his arms bunched under his body. I continued to direct him to spit out the drugs.

As he continued to resist, Detective/Paramedic Freeman arrived. He went to the other side of Maldonado where he attempted, without success, to remove his other arm. At no point, had Mr. Maldonado complied, or even responded, to any of our verbal or physical commands. That is when Officer JP Lara arrived who, after we continued to attempt to gain physical control of Mr. Maldonado, shouted that he was deploying his Taser. Once Officer Lara deployed his Taser, Mr. Maldonado released both of his arms which we were then able to remove from underneath him.

We then handcuffed his arms behind his back and placed him in a seated position so that he could be medically assessed by Paramedic Freeman and other medical personnel arriving on the scene.

DATED: 2/28/18


RICHARD MAGUIRE

EXHIBIT 2

STATEMENT

I, Detective/Paramedic Sean Freeman, at the request of the Office of the New York State Attorney General, make this statement.

I am employed as a police officer with the Greenburgh Police Department. I hold the rank of Detective which permits the Town of Greenburgh to compensate me at a higher salary since I also function as an EMT Paramedic qualified to administer advanced life support.

During the evening of November 29, 2017, while on patrol, I responded in a fly car (used to transport medical patients) to the area of Webb Field off of North Central Avenue in the Town of Greenburgh. There, I observed Police Officer Richard Maguire who was shouting "spit out the drugs" as he was attempting to physically restrain a male in his early 20s whom I later learned was Jonathan Maldonado. I had learned that Mr. Maldonado was observed stealing merchandise from a nearby Best Buy store from which he fled, on foot, while pursued by several store employees. The employees were involved in a physical altercation with Mr. Maldonado during which he swallowed some type of narcotics.

I went over to Mr. Maldonado who was on the ground with his hands underneath him while resisting the attempt of Officer Maguire to restrain him. I went to the other side of Mr. Maldonado where, while on my knees, I attempted to remove his one arm from under his torso. Mr. Maldonado was clutching both of his arm toward the center of his body which prevented Officer Maguire and me from obtaining physical control of his hands. Within seconds, Officer Lara arrived who also joined in attempting to restraint Mr. Maldonado but without success.

At about that point, Officer Lara shouted that he was deploying his Taser. Once Officer Lara used the Taser, Mr. Maldonado released his arms. We then restrained Mr. Maldonado's arms in handcuffs, behind his back, and brought him to a sitting position on the ground. Although Mr.

Maldonado's eyes were partially open, he was not responding to my verbal stimuli. I performed a medical assessment which included taking his vital signs

I then went to my fly car where I obtained and prepared a dose of Narcam (naloxone), which is a medication used to reverse the effects of an opioid overdose. I returned to Mr. Maldonado who was still seated on the ground. We cut his jacket/shirt sleeve so that Mr. Maldonado's arm was exposed where, to his left shoulder, I injected a dose of the Narcam I had drawn at the back of the fly car. Mr. Maldonado was also given a nasal dose of Narcam. It had no visible effect on him.

Mr. Maldonado was then placed on a stretcher where he was wheeled to the back of an ambulance. By then, I had begun preparing the ambulance for him by establishing a bag valve mask ventilation. Once Mr. Maldonado was in the back of the ambulance, I was assisted by EMT Thompson and Paramedic Mareello. At one point, Officer Lara was also assisting us.

I and the other medical personnel performed various functions in assessing Mr. Maldonado's physical condition, taking his vital signs and administering patient care to him. He was non-responsive. For most of the time, I was located near Mr. Maldonado's head at the top of the stretcher as his was lying on his back. I opened Mr. Maldonado's mouth. Once I looked inside his mouth, I observed several plastic baggies containing a substance located near his vocals cords. I removed the baggies with use of McGill forceps. I administered other primary and secondary care and treatment to Mr. Maldonado, including intubating him. After Mr. Maldonado lost his pulse and an EKG machine indicated that he had no heartbeat, I performed manual chest compressions. We also performed mechanical chest compressions with use of a Lucas Machine. All of our efforts to revive Mr. Maldonado were unsuccessful.

While in the back of the ambulance during the transport to the hospital I continued to attempt to revive him but he did not recover.

DATED: 3/5/18

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•
•

SEAN FREEMAN

EXHIBIT 3

STATEMENT

I, Police Officer Jean Paul Lara, at the request of the Office of the New York State Attorney General, make this statement.

I am employed as a police officer with the Greenburgh Police Department.

During the evening of November 29, 2017 I responded in my patrol car to Webb field on North Central Avenue. Soon after I exited my police car, I observed Detective/Paramedic Freeman and Police Officer Richard Maguire on the ground with a male who was on his stomach, with his arms underneath him. He was resisting their attempts to remove his arms. Officer Maguire was shouting something about spitting out drugs. As the other officers were struggling with Mr. Maldonado, I ran over to them to assist them in physically restraining him. We could not gain physical control of Mr. Maldonado whose arms which were still locked under him and resisting. He had not responded to any of our verbal commands. As I removed my Taser, I shouted "Taser."

I drew my Taser back so that when I discharged the probes there would be enough of a "spread" so that use of the Taser would be effective. I aimed for Mr. Maldonado's lower back/buttocks area. When I discharged the Taser I heard a crackling sound and Mr. Maldonado was still struggling with the other officers. So, in the stun mode I deployed the Taser to the back of Mr. Maldonado's leg at which point I heard a quick groan from him and Officer Maguire.

At that point, Paramedic Freeman and Officer Maguire were finally able to remove Mr. Maldonado's arms from underneath him and handcuffed him behind his back. I helped bring Mr. Maldonado to a seated position. I steadied him in seated position for a period of time so that Paramedic Freeman could assess his physical and medical condition.

DATED: 3/1/18.

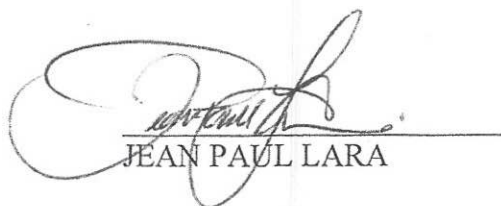

JEAN PAUL LARA

EXHIBIT 4

I, Maurice Woodbyne, certify that I am a(n) Forensic Scientist employed by the Westchester County Dept. of Laboratories & Research, Division of Forensic Sciences and that I performed an analysis and obtained results on the following item(s) received by the Laboratory in the matter of the People of the State of New York vs Johnathan Maldonado

SOURCE OF REQUEST: Yonkers, NY Police Department

AGENCY No.: 138951-17

DELIVERED BY: Det. Dennis Diedrich #606

DATE: 12/1/2017 at 1026 hrs

SPECIMEN:

1.1.1) One (1) glassine envelope containing trace tan material.

1.1.2-1.1.4) Three (3) glassine envelopes.

REQUEST:

Examination for the presence of controlled substances.

RESULTS/OPINIONS/INTERPRETATIONS:

1.1.1) Heroin and Fentanyl are present.

1.1.2-1.1.4) Initial examination only.

Unless otherwise indicated, the presence or absence of a controlled substance was confirmed and/or quantitated by gas chromatography/mass spectrometry (GCMS) against a known standard.

Standard Conversion utilized in the laboratory:

1/8 oz. = 3.543g 1/2 oz. = 14.174g 1oz. = 28.349g 2 oz. = 56.698g 4 oz. = 113.396g 8 oz. = 226.792g 16 oz. = 453.584g = 1 lb. 4535.84g = 10 lbs.

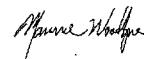
For definitions of standardized terms used in this report, go to: <http://www.criminaljustice.ny.gov/forensic/standardization/drug-analysis.html#definitions>

Trace amount: Less than the minimum sample quantity (MSQ) for the balance used.

This report does not constitute the entire case file. Copies of notes, worksheets, and other supporting materials related to this case are available upon request.

NOTICE: THE MAKING OF FALSE STATEMENTS IN THIS INSTRUMENT IS PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

I CERTIFY THAT THIS IS A TRUE AND CORRECT REPORT Signed



Maurice Woodbyne
Forensic Scientist
12/22/2017



EXHIBIT 5



Department of
Laboratories and Research
10 Dana Road Valhalla, NY 10595

AUTOPSY REPORT

M2017-2573

Report of death by Dr. Aleksandar Milovanovic M.D., Medical Examiner

Name: Jonathan Maldonado

Residence: [REDACTED]

Place of death: White Plains Hospital

Age: 21

Sex: M

Race/Ethnicity: Hispanic

Date & Time

Of Death: 11/29/2017 18:54

Examiner Notified: 11/29/2017 19:20

Of arrival at scene:

Reported By: Dr. Brown

Primary police agency: Greenburgh, NY Police Department

I hereby certify that I, Dr. Aleksandar Milovanovic, MD have performed an autopsy (in the presence of Dr. Ashar and Dr. Amolat) on the above named person at the Medical Examiner's Facility, Valhalla, NY., on 11/30/2017 at 13:20.

Signed: A. Milovanovic MD
Dr. Aleksandar Milovanovic
Pathologist/Medical Examiner

A certified true and correct copy
A. Milovanovic MD
Office of the Medical Examiner



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AUTOPSY REPORT

NAME: Jonathan Maldonado

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EXTERNAL DESCRIPTION:

The body is clad in a hospital gown and has medical interventions including endotracheal tube and orogastric tube. No clothing is received with the body. The hands are held crossed together on the belly by adhesive band. The lower face has stains of dark brown fluid. Dark brown fluid is present in the orogastric tube. Dark brown fluid is present in the mouth. The left shoulder has several drop like brown fluid stains. The mouth and lips mucosa are unremarkable. Fingernails clippings and scalp hair sample are obtained. A blood card is prepared.

The body is of a well-developed, well-nourished mildly obese swarthy male weighing 221 pounds, measuring 69 inches and appears stated age of 21 years. The body is cold and rigid. Lividity is posterior, dark purple and partly blanchable. The head is normal with medium long black scalp hair. The face is symmetric with short black mustache and contoured beard. The ears are unremarkable. The left earlobe has a stud with a clear stone. The eyes are closed. The corneas are clear, the irides are brown, and the conjunctivae are injected and free of petechial hemorrhages. The nose has intact bridge and



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septum. The nostrils are clean. The lips are unremarkable. The mouth has intact natural teeth and intact mucosa. There are no loose teeth. The neck is symmetric. The chest is symmetric. The abdomen is mildly obese. The genitalia are unremarkable circumcised male free of injury. The symmetric legs are free of injury, deformity or edema. The skin of the legs is unremarkable. The feet have all toes with unremarkable toenails. The symmetric arms are normally formed, free of deformity, and the hands have all fingers and moderately long, intact fingernails. The fingernail plates are shorter toward lateral folds and extend the free nail margin laterally. The nail plates are especially chronically short on the medial aspect of the thumbs. The symmetric back has normal curves. The anus is unremarkable.

SCARS:

The abdomen has bilateral striae. The left hand dorsal proximal back has ½ inch scar. The left upper back has obliquely oriented 2 inch scar with stiches scar.

TATTOOS:

None.



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MEDICAL INTERVENTION:

Endotracheal tube is held by adhesive tape; orogastric tube protrudes from the mouth and has dark fluid; EKG leads are on the chest; defibrillator pad is on the anterior chest; intravenous lines are on the left lateral neck, bilateral antecubital fossae, left hand dorsum. The right middle finger has oximetry probe; the hands are held together by adhesive tape. The mid chest has two round concentric compression abrasions with inner circle 1 ¼ inch in diameter and outer 2 ½ inches in diameter. A hospital identification band is on the right wrist "Maldonado, Jonathan, MR #1074358"; the left wrist has hospital identification band "John Doe, MR #1074358; 11/29/17".

INJURY:

The right anterior temple and the right lateral cheek have at least five scattered obliquely oriented, isolated, 1/8 to 3/16 inch linear scratches. Right anterior lateral neck has ¼ inch linear horizontal abrasion; right anterior lateral lower neck skin reflection reveals 2 inch long linear thin subcutaneous contusion corresponding to right lateral collar bone outline.



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Hands and forearms injuries: Distal forearm and wrist have two small contusions on the lateral aspects of the arm (pinky-ulnar side). Proximal forearms bilaterally approximately 2 inches above the wrist have oblique, linear, moderately heaped epidermis changes. Right ulnar side of the wrist has two thin linear contusions. Incision into the superficial subcutaneous tissue is free of significant hemorrhage. Right proximal forearm on the ulnar aspect has longitudinally oriented 1 x ¼ inch abrasion with no dermal contusion upon incision into the dermis. Left wrist ulnar side above the head of the ulna has 1 ¼ inch contusion which upon incision reveals no significant subcutaneous hemorrhage. Right inner medial proximal mid forearm has a 2 ¼ inch purple contusion. Right hand back (dorsum proximal to the pinky finger) has two ¼ x ¼ inch brown abrasions; small green stains are on the medial knuckles (third, fourth and fifth metacarpal phalangeal knuckles). Left wrist radial aspect has ¾ inch long linear parallel transverse faint purple contusions.

Chest injuries: Right 5th rib has anterior lateral aspect fracture with small soft tissue hemorrhage.



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Back injuries: The right mid lower back has two superficial puncture wounds 1/16 inch each, 5 inches right from the posterior midline each; 3 ¼ inches apart, position on the line 5 inches from the midline consistent with Taser dart marks. Skin incision reveals minimal subcutaneous hemorrhages. Left lower lateral posterior flank, 1 inch longitudinal linear scratch. Left upper lateral buttock, 4 inch oblique curvilinear scratch.

BODY CAVITIES:

Thoracoabdominal incision reveals 1 ¾ inch abdominal wall fat and the organs in the usual positions. Body cavities are free of effusions or adhesions. The heart is enlarged with dilated left and right ventricle and with normal atria. The lungs have vascular congestion and are normally expanded, dark red fluid edema on the sections. The liver is unremarkable. The vermiform appendix is unremarkable.

HEAD AND BRAIN:

Scalp reflection reveals unremarkable soft tissue. Skull top reflection reveals no dural or arachnoid extravasated blood. The skull is intact. The 1570 gram brain has unremarkable surfaces with thin arachnoid membrane, mildly



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vascularly congested. The brain gyri and sulci are unremarkable. The brain sections reveal unremarkable cortex and white matter, maintained corticomedullary junction and no lesions or hemorrhages. The cerebellum and brainstem sections are unremarkable. The brain base arteries have minimal atherosclerosis and no aneurysms. The upper neck spine canal is unremarkable.

NECK:

Anterior neck subcutaneous tissue and strap muscle dissection reveals no extravasated blood. The hyoid bone and laryngeal cartilages are intact. The larynx and hypopharynx are free of material and laryngeal mucosa is vascularly congested, unremarkable. The epiglottis and vocal cords are unremarkable. The thyroid gland has unremarkable size and vascularly congested sections. The tongue surface and sections are unremarkable, free of hemorrhages or scars. The tonsils are unremarkable.

HEART AND LARGE BLOOD VESSELS:

The 390 gram heart is mildly distended with smooth surfaces. The right ventricular wall thickness is 0.4 cm and the left ventricle is 1.3 cm. The heart



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muscles are dark red, free of paleness or scars. The papillary muscles are mildly flattened. The right ventricle is unremarkable. The coronary ostia have normal origin and are open. The coronary arteries have average diameter and are free of atherosclerosis. The heart muscle sections are dark red free of paleness or scars. The atrial and ventricular septae are unremarkable. The valves are unremarkable. The valve circumferences are tricuspid 12 cm, pulmonary 7 cm, mitral 10 cm and aortic 6.5 cm. The endocardium is smooth and transparent. The aorta and branches are free of atherosclerosis or aneurysms. The large veins and pulmonary arteries are free of thrombi.

LUNGS AND AIRWAYS:

The 840 gram right and 780 gram left lung are normally distended with moderate vascular congestion and mild edema and free of adhesions. The pleural spaces are free of effusions. The bronchi are unremarkable, vascularly congested. The hilar lymph nodes are prominent, especially to the periphery, sub pleural lung tissue of the upper lobes. The large bronchi have mild vascular congestion and unremarkable mucosa and are free of mucus or foreign material. The lung sections have several small lymph nodes like nodules. The lung



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sections are vascularly congested with edema fluid. The lungs are free of lesions or consolidations.

DIGESTIVE TRACT:

The esophagus is unremarkable. The esophageal gastric junction has several vertical shallow $\frac{3}{4}$ inch longitudinal fissures. The stomach serosa is intact. The stomach has 80 ml of black fluid with small soft pieces up to $\frac{1}{4}$ inch consistent with vegetable or pasta pieces and is free of recognizable powder or pills. The stomach and duodenum wall and mucosa are unremarkable, free of ulcers. The small bowel is empty and the large bowel has some formed stool in the descending sigmoid sections.

LIVER:

The 2480 gram liver has small intact capsule and normal brown homogeneous vascularly congested unremarkable sections. The gallbladder has bile.

SPLEEN, LYMPH NODES AND BONE MARROW:

The 420 gram spleen has intact smooth capsule and rubbery dark red sections. The lymph nodes and bone marrow are unremarkable with prominent



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peritracheal and hilar lymph nodes and presence of subpleural lymphoid nodular tissue in the upper lung lobes.

PANCREAS:

Unremarkable.

ADRENAL GLANDS:

Unremarkable.

URINARY TRACT:

The 230 gram right and 250 gram left kidney are smooth and vascularly congested. The cortex is mildly congested and medulla is prominently vascularly congested. The collection system and ureters are unremarkable. The urinary bladder has 15 ml of unremarkable urine and has unremarkable mucosa.

PROSTATE AND TESTES:

The prostate and testes have unremarkable size and sections.

MUSCLES AND BONES:

The muscles are unremarkable. Incisions are made in the skin of the back of the upper arm, entire back, buttocks, and entire posterior legs and are free of



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subcutaneous or muscular hemorrhages. The bones, except for the right 5th rib with minimal soft tissue hemorrhages, are intact on inspection and palpation.



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ANATOMICAL FINDINGS:

RIGHT MID LOWER BACK, TWO SUPERFICIAL PUNCTURE WOUNDS,
1/16 INCH, ^{3 1/4"} 3/4 INCH APART IN A VERTICAL DIRECTION AND 5 INCHES
RIGHT FROM MIDDLE BACK MIDLINE

HEART, 390 GRAMS, NORMAL SIZE AND SHAPE, NORMAL SEPTUM
AND NO ATRIAL DISTENTION

HEART, CORONARY ARTERIES, NORMAL CALIBER, FREE OF
ATHEROSCLEROSIS

LUNGS, VASCULAR CONGESTION AND MODERATE EDEMA, RIGHT
840 GRAMS/LEFT 780 GRAMS; PROMINENT PARATRACHEAL LYMPH
NODES AND POSSIBLE SUBPLEURAL LYMPH NODES

LIVER, UNREMARKABLE, HOMOGENEOUS VASCULAR
CONGESTION

KIDNEYS, VASCULARLY CONGESTED; UNREMARKABLE CORTEX
AND MEDULLA AND COLLECTION SYSTEM

STOMACH, 80 ML OF BLACK LIQUID WITH 1/4 INCH FOOD LIKE
PIECES; ESOPHAGEAL GASTRIC JUNCTION HAS FISSURES



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ENDOTRACHEAL TUBE IN LOWER TRACHEA POINTING TOWARD
RIGHT MAIN BRONCHUS

SMALL "PLASTIC" BAGS RECOVERED FROM DECEDENT'S THROAT
DURING INTUBATION REPORTED BY EMERGENCY MEDICAL SERVICE

RIGHT 5th RIB ^{ANT-LAT ASPECT} ~~NON-DISLOCATED~~ FRACTURE WITH
MLD SOFT TISSUE HEMORRHAGES



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CAUSE OF DEATH:

~~PENDING FURTHER STUDIES~~

Acute mixed drug intoxication: (FENTANYL, ACETYL FENTANYL,
METHOXY ACETYL FENTANYL, HEROIN)

Accident

A. Milovanovic MD
Aleksandar Milovanovic, M.D.

Pathologist/Deputy Medical Examiner

AM/dmg

December 4, 2017



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TOXICOLOGY:

BLOOD, EYE FLUID, URINE, BILE, GASTRIC, LIVER AND BRAIN

SAMPLES SUBMITTED.

HISTOLOGY:

TISSUE SAMPLES ARE SAVED AND SUBMITTED.

HYOID BONE IS SAVED.

PHOTOS ARE TAKEN.

FINGERNAIL CLIPPINGS, SCALP HAIR SAMPLES ARE OBTAINED

BLOOD CARD PREPARED

FINGERPRINTS BY WESTCHESTER COUNTY POLICE DEPARTMENT

AM
Aleksandar Milovanovic, M.D.

Pathologist/Deputy Medical Examiner

AM/dmg

December 4, 2017



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MICROSCOPIC EXAMINATION

NAME: Jonathan Maldonado

JOB NUMBER: M2017-2573

Heart, left ventricle, septum, anterior posterior wall (3): No significant pathology, focal myocardial fiber hypertrophy.

Lungs (5): No significant pathology. The bronchi have basement membrane thickening and rare eosinophils and cellular debris in the lumen. Focal alveolar macrophages accumulations. Free of granuloma, inflammation or fibrosis. Polarized light exam is negative.

Paratracheal lymph nodes (3): Normal reactive lymph nodes.

Kidney (1): Unremarkable glomeruli, tubules, interstitium and blood vessels. The bowman spaces and proximal tubules have bubbly fluid.

A. Milovanovic MD

Aleksandar Milovanovic, M.D.

Pathologist/Deputy Medical Examiner

AM:dmr

January 29, 2018

EXHIBIT 6



TOXICOLOGY REPORT

Deceased: Jonathan Maldonado

Age: 21 Years

Dr. Aleksandar Milovanovic

Samples Submitted for Analysis

_X_Blood (Site: Heart) _X_Urine _X_Vitreous Humor _X_Liver _X_Bile _X_Brain _X_Gastric Contents _X_Blood-Femoral Received Date: <u>11/30/2017</u>

Drug Screen (Qualitative)

<u>Specimen</u>	<u>Result</u>	<u>Technique</u>
Blood	Fentanyl, acetyl fentanyl, methoxy acetyl fentanyl, morphine, delta-9 carboxy THC, azithromycin, acetaminophen and naloxone present	IA or TOF
Urine	Fentanyl, acetyl fentanyl, methoxy acetyl fentanyl, morphine, 6-MAM, delta-9 carboxy THC, azithromycin, acetaminophen and salbutamol present	IA or TOF
Gastric Contents	Fentanyl, morphine, azithromycin, acetaminophen, ibuprofen and naproxen present	TOF
Gastric Contents	Acetyl fentanyl present	LCMSMS

*All documentation pertaining to this report is available in the laboratory.
Explanation of terms: www.criminaljustice.ny.gov/forensic/standardization/toxicology.html*

Confirmed Results (Quantitative)

<u>Specimen</u>	<u>Component</u>	<u>Result</u>	<u>Technique</u>
Blood (Heart)	Ethanol	Negative	GCFID
Blood (Heart)	Delta-9 THC	Not detected at a concentration of 1ng/mL	GCMS
Blood (Heart)	Delta-9 Carboxy THC (Free)	2 ng/mL	GCMS
Blood (Heart)	Delta-9 Carboxy THC (Total)	Present less than 25 ng/mL	GCMS
Blood-Femoral	Fentanyl	35 ng/mL	LCMSMS
Blood (Heart)	Fentanyl	44 ng/mL	LCMSMS
Urine	Fentanyl	94 ng/mL	LCMSMS
Gastric Contents	Fentanyl	243 ng/mL	LCMSMS
Gastric Contents	Fentanyl	19 ug/80 mL	LCMSMS
Blood-Femoral	Norfentanyl	Present less than 5.0 ng/mL	LCMSMS
Blood (Heart)	Norfentanyl	5.5 ng/mL	LCMSMS
Urine	Norfentanyl	Present greater than 100 ng/mL	LCMSMS

Signature: Elizabeth Spratt 9/5/18
Elizabeth Spratt MS, F-ABFT (Director of Toxicology)

Report Date: 9/5/18



TOXICOLOGY REPORT

Deceased: Jonathan Maldonado

Age: 21 Years Dr. Aleksandar Milovanovic

Blood (Heart)	6-Monoacetylmorphine	Not detected at a concentration of 10ng/mL	GCMS
Urine	6-Monoacetylmorphine	Present greater than 50 ng/mL	GCMS
Blood (Heart)	Codeine	Not detected at a concentration of 0.06ug/mL	GCMS
Urine	Codeine	0.94 ug/mL	GCMS
Blood (Heart)	Morphine	0.16 ug/mL	GCMS
Urine	Morphine	20.4 ug/mL	GCMS
Urine	Delta-9 Carboxy THC	27 ng/mL	GCMS

Second Supplemental Report

Signature: Elizabeth Spratt 9/5/18 Report Date: 9/5/18
 Elizabeth Spratt MS, F-ABFT (Director of Toxicology)

EXHIBIT 7

MICHAEL M. BADEN, M.D.

15 WEST 53RD STREET, NEW YORK, NEW YORK 10019
TELEPHONE: (212) 397-2732 ▪ FACSIMILE: (212) 397-2754 ▪ EMAIL: MBADEN@MAC.COM

9 July 2018

Via e-mail to Jose.Nieves@ag.ny.gov

Jose L. Nieves, Deputy Chief
Special Investigations and Prosecutions Unit
Office of the New York State Attorney General
28 Liberty Street, 14th Floor
New York, New York 10005

Re: Jonathan Maldonado, deceased

Dear Mr. Nieves:

I have reviewed the autopsy and toxicology reports, autopsy photographs, microscopic slides, hospital records and the police interview of Dr. Benjamin Brown; Best Buy surveillance videos, the Taser video and download, and officer body cam videos; written statements and interviews of Police Officers, Best Buy employees and two witnesses; the forensic laboratory toxicology report of recovered baggies; and interviews of responding EMT and paramedics, relative to the death of Jonathan Maldonado.

Mr. Maldonado, 21 years old, was pursued by Best Buy employees after he ran from the store about 5:45 p.m. on November 29, 2017. Three employees caught up

with him a few blocks away. They were followed by a supervisor who called 911 and told the employees that they were not supposed to leave the store.

The Best Buy employees said that Maldonado did not struggle as they stood around him waiting for the police to arrive. He said that he didn't do anything wrong and he gave his car keys to someone who approached him, later identified as a relative. When Maldonado tried to walk away, they said that he was pulled onto the ground on his abdomen with a hand on his back. When Maldonado said that he couldn't breathe, the hand was immediately removed from his back and he appeared to be fine. He remained on the ground, moving and talking, not struggling, and took out his wallet and removed small thin white baggies from it. He said that he didn't care if the cops came, he just did not want to be caught with the baggies. When he saw the first policeman arriving, he put them in his mouth. The officer was told that Maldonado had put the baggies in his mouth and, according to the employees, the officer immediately got on top of his back, put his hands around his mouth and told him to "spit it out." A paramedic arrived moments after and assisted in trying to get control of Maldonado. When a third officer arrived, he was struggling face down on the ground, and refusing to get his arms out from under his chest. The third officer then discharged Taser probes first into his right lower back and then drive stunned the back of his leg. According to observers, he stopped

struggling and was unresponsive immediately after the Taser discharges. He was lifted by police and placed in a seated position, still unresponsive.

The Taser download showed that it had been discharged twice at 5:53 p.m. for a total of ten seconds within a 13 second time period. The accompanying Taser video shows Mr. Maldonado on his back, on the ground, appearing lifeless, unconscious, not breathing and then being loaded onto a stretcher and placed in the ambulance.

According to police: "Once the Officer used the Taser, Mr. Maldonado released his arms. We then restrained his arms behind his back and brought him to a sitting position on the ground." and "Mr. Maldonado was on his stomach, both arms were underneath him ... Once the Taser was deployed, Mr. Maldonado released both of his arms ... We then handcuffed his arms behind his back and placed him in a seated position." He was unconscious and did not respond to Narcan (naloxone) that was immediately injected and given nasally, nor when it was again given to him in the ambulance. He did not regain consciousness.

A Best Buy shopper wrote that he heard an alarm go off and saw "5-7 Best Buy employees" following someone who was walking out of the store. They then started to run. "He seems a little loose as he runs. Arms swinging ... he was then surrounded by Best Buy employees waiting for police." And according to the shopper, arriving police grabbed him from behind, told him to "spit it out," and then

“slammed front body down flat on ground with officers on top of his back. At least 2 maybe 3 other officers pounced on him.” Maldonado kept struggling until an officer deployed a Taser and the “victim stops moving completely.”

According to the police, the decedent’s relative said in his interview that he had gone with him to Best Buy and left first. He then saw Best Buy employees following Jonathan who then gave him the car keys. When he returned with the car “three cops were already on top of him when a fourth cop showed up.”

An arriving EMT said he found Maldonado unresponsive and thought he had a “slight pulse.” Moments later when a paramedic arrived at 5:59 p.m., Maldonado was on the stretcher inside of the ambulance with no pulse and with fixed dilated pupils. Body cam video 6:01 #3 shows that there was more than a five minute delay before CPR was started after he was placed in the ambulance. In the ambulance, after there was difficulty inserting the endotracheal tube, small baggies were seen in the back of his mouth and four sealed intact baggies were “easily” removed with a forceps.

Maldonado was lifeless when he arrived at the White Plains Hospital Emergency Room at 6:23 p.m., 37 minutes after running from the Best Buy store. Dr. Brown said that he was told that he had lost consciousness after being tased. He did not respond to CPR and was pronounced dead at 6:54 p.m.

A complete autopsy was performed by medical examiner Aleksander Milovanovic, M.D. He identified "two superficial taser-type puncture wounds 3-1/4 inches apart on the right midback." There was a CPR type fracture of the right fifth anterior rib and no other external or internal injuries. There were no petechial hemorrhages in his eyes and no injuries to his neck.

The initial drug screen of Maldonado's blood taken from his heart was reported as positive for fentanyl, acetyl fentanyl, methoxy acetyl fentanyl, morphine (heroin metabolite) and THC (marijuana). Further confirmatory toxicologic tests identified just fentanyl (44 ng/ml), norfentanyl (a metabolite), morphine (0.16 ug/ml) and delta-9 carboxy THC. The four thin folded white paper baggies recovered from Maldonado's mouth were all intact and contained very small amounts of a tan powder that tested positive for fentanyl and heroin. The cause and manner of Maldonado's death were certified as "Acute mixed drug intoxication: Fentanyl, acetyl fentanyl, methoxy fentanyl, heroin. Accident."

The autopsy alone cannot determine how much tolerance for narcotic drugs an opioid addict has built up that diminishes the euphoric and the lethal effects of fentanyl and heroin. Thus, the amount of a drug needed to produce a desired euphoric effect or that will cause death varies greatly among drug abusers. The drug levels in Maldonado's blood, taken at the time of autopsy, would be sufficiently high to cause death in drug abusers with little tolerance but not in an addict who has

developed a high tolerance level. That Maldonado's level of tolerance was very high was demonstrated by his activities before he died. He did not show any of the clinical effects of a narcotic drug overdose sufficient to cause death that would have been apparent before he lost consciousness: slurred speech, confusion, impaired motor activity, nodding, sleeping, respiratory depression, pinpoint pupils, and cyanotic lips. Most significant, he did not respond to the immediate multiple administrations of Narcan which would reverse the effects of an overdose if it were present and rapidly brings an unconscious user back to consciousness.

The blood that was tested for drugs had been taken from Maldonado's heart rather than from his peripheral blood vessels. Fentanyl undergoes redistribution after death wherein fentanyl in the heart's muscle seeps into the blood in the heart's chambers and can increase the amount of fentanyl present in that blood to more than twice the level it was at the time of death.

When a fatal drug overdose occurs, fentanyl and heroin act on the brain almost immediately to depress breathing, then loss of consciousness, coma and death occur more gradually. He had no opportunity to take these drugs while he was being followed from Best Buy. If he had taken a drug overdose before he left Best Buy, he would not have remained fully conscious and alert and able to struggle with police. He lost consciousness rapidly while being restrained with pressure on his back and immediately after he was tased. An electroconvulsive discharge can

cause a rapid loss of consciousness and cardiac arrest by producing a cardiac arrhythmia. Back pressure, when face down on the ground and while being cuffed, can prevent the diaphragms from moving which can cause a respiratory arrest.

After Maldonado put the baggies in his mouth, he showed no sign or symptom of airway obstruction, no air hunger, no statements that he couldn't breathe, and no abnormal breathing which would have occurred if the baggies had sufficiently obstructed his ability to breathe.

It is my opinion, to a reasonable degree of medical certainty, based on my education, training and experience as a forensic pathologist and on the above materials that I have reviewed, that Mr. Maldonado did not show any clinical evidence that the large amount of drugs he had taken was sufficient to cause an overdose in him because he had developed a very high tolerance for the drugs; that the drug containing baggies that he placed in his mouth did not obstruct his breathing, did not cause any drugs to enter his blood stream, and did not cause his death; that he suddenly lost consciousness while he was being physically restrained with pressure on his back and with Taser use; that there was a greater than five minute delay before CPR was started; and that the cause of his death was respiratory arrest and cardiac arrest while being restrained.

My opinions are subject to modification should I receive additional information.

Very truly yours,

A handwritten signature in blue ink that reads "Michael M. Baden". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael M. Baden, M.D.
Former Chief Medical Examiner,
New York City
Former Chief Forensic Pathologist,
New York State Police

MMB:ph

EXHIBIT 8



OPERATIONS

Procedure No: **401.17**

Date Issued: 06/01/2016	TASER AXON BODY WORN CAMERA	
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PURPOSE

The purpose of this policy is to establish guidelines and limitations for the use and management of body worn audio/visual recording systems by officers employed by The Greenburgh Police Department. It is the position of The Greenburgh Police Department to implement the use of body worn audio/visual recording systems to obtain unbiased and objective views of officer encounters during interactions while in the performance of their duties. The use of this tool should prove to be effective for documenting encounters of evidentiary value to criminal, civil, and administrative investigations.

POLICY

It is the policy of the Greenburgh Police Department that all uniformed patrol personnel shall be assigned an individual body-worn audio/visual recording system during each tour of duty. Officers shall activate their body-worn audio/visual recording system when such use is appropriate pursuant to this policy. Members may only use the TASER AXON BODY 2 audio/visual recording system issued by this department.

BACKGROUND

This agency has adopted the use of the TASER AXON BODY 2 audio/visual recording system to accomplish several objectives. The primary objectives are:

1. Enhancing officer safety.
2. To allow for accurate documentation of police-public contacts, arrests, and critical incidents. The TASER AXON BODY 2 will also serve to enhance the accuracy of officer reports and testimony in court.
3. Audio and video recordings also enhance this agency's ability to review probable cause for arrest, enhances officer and suspect interaction, assists in gathering evidence for investigative and prosecutorial purposes and provides additional information for officer evaluation and training.
4. The TASER AXON BODY 2 audio/visual recording system may also be useful in documenting crime and accident scenes or other events that include the confiscation and documentation of evidence or contraband.
5. The proper use of the TASER AXON BODY 2 will foster transparency and accountability while protecting civil liberties and privacy interests.

DEFINITIONS

- B. "TASER AXON BODY 2"- A body worn audio/visual recording system primarily consisting of a camera and a controller/battery pack.
- C. "Evidence.com"- Online web-based digital media storage facility accessed at www.evidence.com. The virtual warehouse stores digitally encrypted data in a highly secure environment that is accessible to police personnel. Accessibility is limited based upon the level of security clearance assigned to the officer.
- D. "System Administrator"- The system administrator shall have full access to and user rights within the data storage system. He or she can assign and track equipment, control passwords, oversee needed repairs, delete non-evidentiary recordings, conduct audits and quality control reviews and act as a liaison with BWC representatives.
- E. "End User"- TASER AXON BODY 2 user with individual account access to Evidence.com



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- F. “Evidence Transfer Manager (ETM)- A docking station that simultaneously recharges the controller/battery pack and uploads all data captured by the TASER AXON BODY 2. The ETM ensures that evidence handling is secured and that data is not altered.
- G. “Buffering Mode”- The TASER AXON BODY 2 continuously loops video recording for a 30 second period. No audio is recorded while buffering.
- H. “Event Mode”- When placed in Event Mode, the TASER AXON BODY 2 records audio and visual data. The previous 30 seconds of buffered video is also saved.
- I. “Enforcement Related Activity”- Situations during an officer’s official duties that include, but are not limited to:
 - 1. Calls for service;
 - 2. Traffic stops;
 - 3. Search warrants
 - 4. Arrests;
 - 5. Investigatory activities;
 - 6. Confrontational/adversarial citizen contacts; and
 - 7. Prisoner/citizen transports.

PROCEDURE

J. DEVICES

- 1. The TASER AXON BODY 2 body-worn audio/visual recording system shall be individually issued to uniformed officers. The TASER AXON BODY 2 shall be worn in a manner that maximizes the camera’s ability to capture video footage of the officer’s activities.
- 2. Officers shall only use the TASER AXON BODY 2 audio/visual recording system issued by this department and no other recording device shall be authorized without the approval of the Chief of Police or his/her designee.
- 3. All agency personnel who will use or otherwise be involved with the TASER AXON BODY 2 body-worn audio/visual recording systems shall receive training to include, but not limited to: activation; deactivation; upload procedures; proper maintenance; and the department’s policy and procedures on covered practices of the TASER AXON BODY 2. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and equipment.

K. USE

- 1. At the beginning of each tour of duty, designated officers shall retrieve their individually assigned TASER AXON BODY 2 body-worn audio/visual recording system from the Evidence Transfer Manager (ETM) located at the police front desk. It shall be the responsibility of each individual officer to operate the body worn camera with reasonable care to ensure proper functionality.
- 2. Each TASER AXON BODY 2 shall be marked with a department identifier. Supervisors shall note the specific body worn camera assigned to each officer on the Department Duty and Signal Monitor (in the Officer Name box) for each tour of duty. Officers shall note same on their Daily Activity Sheet each tour of duty.
- 3. Officers shall inspect and test the body-worn camera at the beginning of each tour in order to verify it is functioning properly. Equipment malfunctions, damage, loss or theft



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shall be brought to the Tour Commander's attention as soon as possible and documented accordingly. This documentation shall be forwarded to the system administrator.

4. The TASER AXON BODY 2 shall be operated in accordance with with manufacturer's guidelines and department policies and procedures.
5. The TASER AXON BODY 2 shall be worn at all times by the assigned officer during that officers' tour of duty. The TASER AXON BODY 2 should be placed into "Buffering Mode" at the beginning of the officers' tour of duty.
6. At the conclusion of each tour of duty, officers shall return their TASER AXON BODY 2 to the ETM and insure that the TASER AXON BODY 2 is positioned properly and the charging/downloading process has commenced.

L. RECORDING

1. The TASER AXON BODY 2 shall be placed in "Event Mode" and officers shall be required to activate the recording function upon engaging in an enforcement related activity that occurs while the officer is on duty, unless:
 - a. There is an immediate threat to the officer's safety;
 - b. Turning on the TASER AXON BODY 2 would be impractical and place the officer in a tactical disadvantage;
 - c. When activating the TASER AXON BODY 2 could delay an officer's response to the safety needs of a citizen during a critical incident; or
 - d. During the course of activation, the TASER AXON BODY 2 malfunctions.
2. Officers shall document in all reports, the presence of audio/visual recordings captured by the TASER AXON BODY 2 during the course of any enforcement related activity. The aforementioned reports shall include UF-32's, Domestic Incident Reports, Uniform Traffic Tickets, Town Summonses or other Greenburgh Police Department document being generated during the law enforcement activity.
3. Officers shall alert other department members that the TASER AXON BODY 2 has been activated in "Event Mode".

M. DISCRETIONARY RECORDING

Officers shall have the latitude to continue recording in situations where a legitimate law enforcement interest outweighs an individual's privacy. Situations to include, but not be limited to:

1. Emergency medical calls or "Aided Cases".
2. Conversations with confidential informants and undercover officers;
3. Conversations with all law enforcement personnel that involve case tactics or strategy;
4. Places such as, but not limited to, locker rooms and restrooms;
5. A potential witness who requests to speak to an officer confidentially or desires anonymity;
6. A victim or witness who requests that he or she not be recorded and the situation is not confrontational;
7. A victim who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation;
8. When explosive devices are present, radio waves of the TASER AXON BODY 2 body-worn audio/visual recording system could trigger an explosive device. Therefore, these devices should not be used where an explosive is present;



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9. Officers should attempt to avoid recording people who are nude or when sensitive human areas are exposed unless considerations are outweighed by a legitimate law enforcement interest.

N. PROHIBITED RECORDING

1. Officers shall not record during routine, non-enforcement related activities.
2. Officers shall not record events that occur in department locker rooms, restrooms or any other place where there would be a reasonable expectation of privacy.
3. Officers shall not record conversations with fellow employees without their knowledge during routine, non-law enforcement related activities, such as meal period and breaks in service;
4. Officers shall not record non-work related personal activity;
5. Officers shall not record individuals who are engaged in a protest or other First Amendment protected right of speech or demonstration, unless there is at least reasonable suspicion of criminal activity, or to serve any other legitimate law enforcement purpose.

O. DEACTIVATION OF RECORDING

1. Officers shall terminate the recording when the enforcement related activity has concluded. For purposes of this provision, concluded shall mean:
 - a. The arrested subject(s) has been transported away from the scene;
 - b. The unruly/adversarial conduct has ceased **and** the subject(s) has left the area;
 - c. The incident as a whole has ended and law enforcement action is no longer necessary.
2. If the TASER AXON BODY 2 has been activated and during the course of an enforcement related activity the legitimate law enforcement interest for recording no longer outweighs an individual's privacy. The officer shall document the deactivation in writing and, when practicable, verbally on camera the reason for deactivating.

P. RECORDING STATEMENTS

1. Proper documentation shall be made anytime the TASER AXON BODY 2 captures a video statement from a suspect. The video statement shall not take the place of a written statement where applicable.
2. Documentation shall include:
 - a. All required agency reports; and
 - b. The District Attorney's Crime Report. Failure to notify the Office of the District Attorney of the recorded interview could prevent its use in court.

Q. FAILURE TO RECORD WHEN LEGITIMATE LAW ENFORCEMENT INTEREST IS PRESENT

1. If an officer fails to activate the TASER AXON BODY 2, chooses to terminate the TASER AXON BODY 2 recording or the TASER AXON BODY 2 malfunctions, the officer will articulate in a written report:
 - a. Why a recording was not made;
 - b. Why a recording was interrupted;
 - c. Why a recording was terminated;
2. The Tour Commander shall review all necessary documentation of an officer's failure to record an incident and forward same to the Commanding Officer of the Patrol Division.



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R. DATA DOWNLOAD AND MEDIA STORAGE

1. The TASER AXON BODY 2 shall be placed in the ETM docking station at the end of each shift for re-charging and downloading captured data to Evidence.com. The TASER AXON BODY 2 shall not be removed from the ETM docking station until all data has been downloaded and the battery has been fully re-charged.
2. Data shall only be downloaded to Evidence.com
3. Officers may review downloaded data at www.evidence.com
4. Downloaded data shall be maintained at Evidence.com in accordance with the New York State Archives. This shall include the minimum retention dates as follows.¹
 - a. Evidentiary data shall be retained for a minimum of 6 months
 - (1) If a determination is made that video data has evidentiary value in an on-going investigation, court proceeding or appeals process, the data shall be retained through the pendency of the case.
 - (2) The established retention schedule can be extended beyond the 6 month minimum as necessary in accordance with existing policy and procedures and all applicable laws governing retention.
 - b. Non-evidentiary data shall be retained for a minimum of 6 months.
5. Requests for copies of any data from Evidence.com shall be made to the system administrator.

S. ACCESS

1. Officers shall be permitted to review only video footage of an incident in which they were involved for purposes of:
 - a. Conducting a criminal investigation;
 - b. Preparing written reports;
 - c. Preparing for courtroom testimony or courtroom presentation;
 - d. Providing testimony pursuant to an administrative inquiry; and
 - e. Assisting the officer in professional development.
 - f. Manually entering metadata to assist in cataloging/indexing electronic data.
2. In addition to the permitted access listed in Section 1, supervisors may also review recordings as it pertains to:
 - a. Investigating alleged misconduct reports or meritorious conduct;
 - b. Whenever such recordings would be beneficial in reviewing an officer's performance; and
 - c. Recordings that are of value as training tools.
3. Prosecutors will be permitted to review video footage as it pertains to their investigations.
4. Civilians shall not be allowed to review the recordings at any scene.
5. Under no circumstances shall any recordings be used or shown for the sole purpose of bringing ridicule or embarrassment upon any person.
6. The release of recordings to any person shall be made in accordance with department policies and procedures, and pursuant to requirements as established by operation of

¹ 1. New York State Archives local government retention and disposition schedule (CO-2, MU-1 and MI-1) require law enforcement data captured from a mobile recording device be retained for a minimum of six months regardless of whether or not the data is evidentiary or non-evidentiary.



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applicable law, including but not limited to, the New York State Public Officers Law and the Freedom of Information Act ("F.O.I.A").

T. RESTRICTION

1. All images and sounds recorded by the body-worn camera are the exclusive property of the department. Tampering with, altering, erasing or editing any data captured by department issued TASER AXON BODY 2, as well as accessing, duplicating or releasing such files for non-law enforcement purposes is strictly prohibited
2. Officers shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner TASER AXON BODY 2 recordings without prior written authorization and approval of the Chief of Police or his/her designee.
3. Requests for deletion of portions of the recordings (e.g., in the event of a personal recording) must be submitted in writing and approved by the Chief of Police or his/her designee in accordance with state record retention laws. All requests and final decisions shall be kept on file.
4. Officers are encouraged to inform their supervisor of any recordings that may be of value for training purposes.

U. SUPERVISION

1. The Staff Services Division Commander shall be the system administrator of the TASER AXON BODY 2 audio/visual recording system and as such will be responsible for maintenance of hardware and supervision of data retention.
2. Patrol Supervisors must ensure all officers equipped with TASER AXON BODY 2S utilize them in accordance with policy and procedure defined herein.
3. At least on a monthly basis, the system administrator will randomly review TASER AXON BODY 2 recordings to ensure that the equipment is operating properly, that officers are using the devices in accordance with policy, and to identify any areas in which additional training or guidance is required.
4. Access is to be periodically audited by the system administrator or his/her designee to ensure that only authorized users are accessing the data for legitimate and authorized purposes.
5. The system administrator shall conduct an annual review of the policy and procedures contained herein and for making recommendations for any necessary amendments thereto.
6. The system administrator shall insure that data is not unnecessarily retained beyond the required retention period.

EXHIBIT 9



EMERGENCY MEDICAL SERVICES

Procedure No: 601.03

Date Issued: 2/12/01	DEATH NOTIFICATIONS	
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PURPOSE:

To insure the prompt notification of relatives or friends in all cases involving deceased or seriously injured person(s) when the investigation is conducted by department personnel or at the request of another police agency.

PROCEDURE:

Resident:

1. If the death of, or serious illness, or serious injury to a resident of this township should become the direct knowledge of this department, and if it is evident that the victim's family or next of kin are not aware of said death, illness or injury, the Tour Commander shall ascertain the address of the family or next of kin. He or she shall, if possible, personally go to their location and make notification of all the facts to them. If this is not possible, he or she shall assign the Patrol Sergeant to personally make this notification and in the absence of the Patrol Sergeant, the Tour Commander shall exercise his or her judgement in selecting the best qualified police officer to perform this task.

EXCEPTION: If a victim of a crime consult with a detective supervisor before notification is made.

Resident thru other agency:

2. If the death, serious illness, or serious injury to a resident of this township should come to the attention of this department through another police agency, a hospital or through some other means, and if it is evident that the victim's family or next of kin are not aware of said death, illness or injury, the Tour Commander shall effect the same procedure detailed in this manual under Subdivision 1 above, after personally verifying the facts relative to the case.

Non-resident:

3. If the death, serious illness, or serious injury to someone residing outside of this township should come to the attention of the department, and if it is evident that the victim's family or next of kin are not aware of said death, illness or injury, the Tour Commander shall insure that telephone notification to the police agency having jurisdiction over the victim's place of residence is made. This shall immediately be followed by the transmission of a teletype notification to said police agency, requesting that immediate notification be made to the victim's family or next of kin. The teletype notification shall include the pertinent facts of said death, injury or illness, if they are known to this department. In the event that facts are not known to this department, but are known to a hospital, for instance, or a physician, or the Office of the Medical Examiner of Westchester County, this information along with the pertinent telephone numbers shall be included. An **INCIDENT REPORT (UF-32)** detailing such notification shall be filed. The name, address, telephone number and relationship of the person notified shall be recorded on the UF-32.

Making notification:

4. It is very important, for several reasons, that the officer be permitted inside the residence before actual verification is made. First, a death notification conveys very personal and private information that should not be initially shared by others, nor should the next of kin's need for personal privacy be compromised at this traumatic moment. Secondly, if notification is completed at the door, officers may not be able to gain admission thereafter. In this event, should the next of kin suffer serious medical or psychological problems, the officers would not be able to assist.



EMERGENCY MEDICAL SERVICES

Procedure No: **601.03**

Date Issued: 2/12/01	DEATH NOTIFICATIONS	
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- A. Notification should be made as promptly as possible.
- B. Notification must, unless impossible, be made in person, not over the phone.
- C. The presence of a minister, relative, close friend, or neighbor should be obtained whenever possible before notification.
- D. If notification has to be made to someone alone, the officer should offer to assist the next of kin in contacting a relative or close friend, etc.
- E. The pace of the delivery of information should be dictated by the actions of the survivor. If permitted, it is best to deliver the message in a gradual but direct manner. The officer should proceed directly with business, speaking in a slow, calm manner, and proceed with the notification until complete.
- F. Details regarding the cause of death, particularly in cases of violence, accidents, or murder, should not be discussed at this time. Using such words as decapitation or killed detracts from a competent and compassionate notification and are best left to a physician or medical examiner to discuss with the next of kin at a later time.
- G. If necessary, assist the next of kin by providing transportation to the hospital.