

**Special Investigations and  
Prosecutions Unit**

**Report on the Investigation into  
The Death of Wenzola Rountree**



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## EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (the “Executive Order”), appointing the Attorney General as special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On July 19, 2020, Wenzola Rountree (“Mr. Rountree”) became unresponsive and subsequently died following an encounter with officers of the Suffolk County Police Department (“SCPD”). Governor Cuomo subsequently issued Executive Order No. 147.39, expressly conferring jurisdiction on the Office of the Attorney General (“OAG”) to investigate any potential unlawful acts or omissions by law enforcement related to Mr. Rountree’s death.<sup>1</sup>

The Office of the Attorney General’s investigation and review of this matter included the following, among other materials:

- SCPD paperwork generated in connection with the incident;
- Audio recordings of telephone calls and radio communications to, from, and between SCPD Police Command, the SCPD Central Police Desk, SCPD officers, and emergency medical technicians;
- 911 calls from eyewitness civilians;
- Dashboard camera footage of the location behind 12 Brook Street, Patchogue, New York;
- Body-worn camera footage of the interior of 472 Ocean Avenue, Patchogue;
- Interviews of SCPD officers who were involved with and/or witnessed the incident;
- Interviews with emergency medical technicians who responded to the scene and administered aid;
- Interviews of multiple civilians who witnessed relevant aspects of the incident, including civilians who were with Mr. Rountree immediately before the police encounter;
- Medical records, including records from the responding emergency medical services personnel and from Long Island Community Hospital; and
- Autopsy report from the Office of the Chief Medical Examiner (“OCME”) of Suffolk County.

In the early morning hours of July 19, 2020, Mr. Wenzola Rountree died after a very brief encounter with members of SCPD. Based on eyewitness accounts, Mr. Rountree had spent most of the day consuming alcohol and cocaine, and growing increasingly paranoid and agitated throughout the day.

At approximately 1:00 a.m., a 911 caller stated that a naked man, high on drugs, was in the backyard of 12 Brook Street, Patchogue, New York. Police Officer Greg Sandbichler, of the SCPD Highway Patrol Unit, responded to the scene. Upon arrival, he observed Mr. Rountree naked, lying on the ground with labored breathing, sweaty, grunting and growling. He immediately called for emergency rescue personnel.

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<sup>1</sup> Executive Order 147.39 is attached as Exhibit 1.

The responding emergency medical technicians (“EMTs”), along with PO Sandbichler and Police Officers Joseph Guido (“PO Guido”) and Brian McMurray (“PO McMurray), who responded to the scene within minutes of PO Sandbichler, all reassured Mr. Rountree that they were there to help him and tried to convince him to accept medical attention. Mr. Rountree did not respond and continued to grunt and growl.

In fact, Mr. Rountree grew even more agitated and at one point, got up, started running and jumped some fences until he reached 427 Ocean Avenue. Once there, he went inside the home, which did not belong to him, and locked the door behind him. Officers Sandbichler, McMurray and Guido all followed Mr. Rountree into the home and attempted to handcuff him in order to escort him out of the house. Mr. Rountree initially struggled with the father and son who lived in the home, and then began struggling with the three officers. PO Sandbichler and Mr. Rountree fell to the ground, where PO Sandbichler and PO Guido struggled to handcuff Mr. Rountree. Shortly after the officers first physically engaged Mr. Rountree – one minute and twenty-six seconds – Mr. Rountree became unresponsive. Rescue personnel were immediately summoned into the house, and although they performed resuscitative measures on Mr. Rountree, he was pronounced dead on arrival at Long Island Community Hospital.

The medical examiner identified the cause of Mr. Rountree’s death as “acute cardiac arrest during physical altercation while under the influence of cocaine and alcohol and with underlying hypertensive and atherosclerotic heart disease.” The medical examiner noted a number of significant factors which contributed to Mr. Rountree’s death, including “acute” cocaine and alcohol intoxication, cardiomegaly (an enlarged heart), ventricular hypertrophy (a thickening of the ventricular wall), and moderate atherosclerotic stenosis of coronary arteries (narrowing or blockage of the coronary arteries). Because one of the factors leading to Mr. Rountree’s death was that he was engaged in a physical altercation immediately before his death, the medical examiner characterized the manner of death as “Homicide” (cardiac arrest during physical altercation while intoxicated). Notably, the medical examiner did not delineate which physical altercation – either between Mr. Rountree and the resident homeowner and his son, or between Mr. Rountree and the officers – either separately or in combination, contributed to Mr. Rountree’s death and to what extent.

Having now completed its investigation of this incident, the OAG has concluded that there is no affirmative evidence to establish that a crime was committed by any of the officers involved. At a minimum, the OAG has concluded that the officers’ use of minimal force to restrain Mr. Rountree could not – as the legal standard requires – be proven to be unjustified beyond a reasonable doubt. For these reasons, the OAG will not pursue a criminal prosecution in connection with this matter.

## **STATEMENT OF FACTS**

### **A. Events Leading to Law Enforcement Response**

At approximately 12:56 a.m. on July 18, 2020, Suffolk County 911 received a call from an individual (C.M.) stating that a male, apparently under the influence of drugs, was running in the

caller's backyard at 12 Brook Street in Patchogue, New York and further, that the male was "grunting and not making any sense." The call was updated minutes later to state that the male was naked and talking to himself; the sound of someone yelling loudly could be heard in the background. Information about the incident went out over the police radio at 1:03 a.m. The dispatcher relayed, in sum and substance, "Black Male, no shirt, grey sweatpants, on drugs in backyard of 12 Brook Street." The radio dispatch was updated to say that male was now naked and talking to himself and had moved to behind the deli on the corner.

Police Officer Greg Sandbichler of the Suffolk County Police Department ("SCPD"), Highway Patrol Unit was the first to arrive on scene. There, PO Sandbichler encountered a naked male – later identified to be Wenzola Rountree – lying on the ground against a fence in the backyard, covered with a pair of grey sweatpants. He later stated in an interview with the Special Investigation and Prosecutions Unit ("SIPU") team that he observed the male to be dirty and sweating, and to have "excited breathing." PO Sandbichler then put over the radio that he was "on scene" and called for rescue services to respond. Police Officer Joseph Guido, assigned to the Fifth Precinct of the SCPD, arrived shortly thereafter. By the time PO Guido arrived, the male was in a crouched position, on all fours. PO Guido also later told the SIPU team that he observed the male to be sweating and to have labored breathing. Both officers described the male as incoherent and agitated.

PO Guido was not equipped with a body-worn camera. PO Sandbichler was equipped with a body-worn camera; but at this point he did not activate it because, as per SCPD protocol, the officers determined that Mr. Rountree only required medical assistance. However, the officers' vehicles were equipped with dashboard cameras, so much of what transpired in the backyard of 12 Brook Street was captured on video.<sup>2</sup> Although there is no audio on PO Sandbichler's dash cam video, the footage corroborates both the officers' and EMTs' narrative of what occurred in the backyard.<sup>3</sup>

The officers attempted to communicate with Mr. Rountree, whom they both described as non-responsive and unintelligible. They told him repeatedly that they were only trying to help him and get him medical attention, but Mr. Rountree remained non-responsive. At one point, Mr. Rountree stated that he had been shot, but there were no visible injuries or any blood on his body. Both PO Sandbichler and PO Guido stated in an interview with the SIPU team that they attempted to gather information from the civilians present at the scene, but none were very forthcoming.

Approximately two minutes after PO Guido's arrival, Police Officer Brian McMurray of SCPD Highway Patrol arrived. He had been responding to another call, but when he heard the description over the radio of Mr. Rountree's behavior, he suspected there was drug use involved; and as a certified Drug Recognition Expert,<sup>4</sup> he responded to the scene to provide whatever aid he

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<sup>2</sup> Only department vehicles belonging to officers assigned to the SCPD Highway Patrol Unit are equipped with dashboard cameras ("dash cam"). The dash cam footage from PO Sandbichler's police car captures from the moment PO Sandbichler arrives on the scene until Mr. Rountree flees the location – essentially the entirety of the interaction between Mr. Rountree, law enforcement, and rescue personnel in the backyard of 12 Brook Street. The dash cam footage from PO McMurray's police car does not capture anything of evidentiary value or relevance.

<sup>3</sup> PO Sandbichler's dashboard camera footage can be viewed [here](#).

<sup>4</sup> A Drug Recognition Expert ("DRE") is an officer who has received specialized training and been certified by the International Association of Chiefs of Police to evaluate suspects and determine if a subject is impaired, what drug

could. He later told the SIPU team that he saw Mr. Rountree crouched on all fours and not making any sense, and that Mr. Rountree was sweating and had labored breathing. Based on the description he had received over the radio from the dispatcher, coupled with his own observations, PO McMurray hypothesized that Mr. Rountree had ingested phencyclidine (“PCP”).

Emergency Medical Technicians (“EMTs”) from the Patchogue Ambulance Company arrived on the scene in two separate ambulances, around the same time as PO McMurray. The EMTs later told the SIPU team that they saw Mr. Rountree crouched on his knees, sweating, panting, and clearly having difficulty breathing. According to EMT Matthew Olson, Mr. Rountree appeared to be very “paranoid”, even as the officers reassured him that they were there to help him. Further, according to EMT Olsen, Mr. Rountree did not appear to understand what was being said to him, did not make eye contact with anyone, and was mumbling. He also was not responsive to any attempts by the EMTs to render aid.

EMT Andrew Ginnegar, who later told the SIPU team that he was the main EMT to interact with Mr. Rountree, described Mr. Rountree as having an “altered mental status” – he was either non-responsive or providing irrelevant answers to the questions posed by the EMTs. Mr. Rountree stated that he had been shot, but there were no visible injuries. When a stretcher was brought over, Mr. Rountree refused to get on the stretcher. EMT Ginnegar also stated that no one, neither an EMT nor a police officer, put their hands on Mr. Rountree. This statement is corroborated by the dash cam video footage.

Once the EMTs arrived on the scene, the officers stepped back to allow the EMTs to treat Mr. Rountree. They spent a considerable amount of time, approximately 12 to 15 minutes, trying to talk to Mr. Rountree, calm him down, and convince him to seek medical attention, but were unsuccessful. Again, while the video does not contain audio, it does show the EMTs trying to communicate with Mr. Rountree, while the responding officers stand off to the side. At some point, the EMTs brought over a stretcher to where Mr. Rountree was lying on the ground and were encouraging Mr. Rountree to get on the stretcher and accompany them to the hospital. Mr. Rountree became even more agitated and started to crawl away. As can be seen on video, Mr. Rountree then suddenly got to his feet and ran around the fence toward the street. He ran to a second chain-link fence, and “bounced off” the fence, before running through an open gate. Mr. Rountree then reached a second chain-link fence, which he attempted to jump over, but ended up falling onto the ground. Mr. Rountree quickly picked himself up and continued running. He ran onto the front porch of a house at 472 Ocean Avenue, went through the unlocked door, then closed and locked the door behind him.

All three officers followed after Mr. Rountree once he began running. By this point, PO Sandbichler had activated his body-worn camera, capturing most of what followed on video.<sup>5</sup> (PO McMurray did not activate his body-worn camera because he still viewed Mr. Rountree simply as a person in need of medical assistance.) As Mr. Rountree was running up to 472 Ocean Avenue,

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category is causing the impairment or if a medical condition is causing the impairment. The certification course is typically conducted over two weeks (80 hours) and includes courses in physiology, vital signs, and standardized field sobriety testing (“SFST”), as well as extensive material on each of the seven categories of the drugs of abuse.

<sup>5</sup> PO Sandbichler’s body-worn camera footage can be viewed [here](#).

the officers heard someone yell that that was not his house. Someone, possibly one of the officers, can also be heard yelling, “Don’t go in there, you don’t live there, don’t open that door.”

All three officers approached the front door of the home. PO Sandbichler tried the door, but it was locked. He knocked on the door, but no one answered. POs McMurray and Guido stayed at the front door, while PO Sandbichler went around to the side of the house. While PO Sandbichler was at the side of the house, he heard yelling from inside and shouted to the residents of the home to open the door because the police were there. PO Guido later stated in an interview with the SIPU team that while he was still at the front door, he heard a woman inside the home yell, “Help, help, there’s someone in my home.” At that point, PO Guido kicked down the front door and entered the home. Almost simultaneously, a resident of the house opened the side door and PO Sandbichler entered as well.

Inside the home, a younger man (later identified as L.R. III.) pointed the officers down a hallway. PO Guido said he observed another man (later identified as L.R., Jr., the homeowner and father of L.R. III), engaged in a physical struggle with Mr. Rountree at the door to a bedroom, and L.R., Jr. can be heard yelling at Mr. Rountree to “get out [of his] room.” (The details of Mr. Rountree’s encounter with the home’s residents is corroborated by the written statements of both L.R., Jr. and L.R. III). On the body-worn camera video, Mr. Rountree appears to be holding onto the door of the bedroom while L.R., Jr, who can be seen very briefly on video, is trying to push Mr. Rountree out of the room.

According to L.R. III’s statement, Mr. Rountree broke into his father’s home and he saw Mr. Rountree walk past his bedroom towards his father’s bedroom. When he asked Mr. Rountree what he was doing, he stated that Mr. Rountree “started mumbling”, so he grabbed Mr. Rountree by his arm, but he couldn’t move him. L.R., III corroborates that his father, L.R., Jr. was yelling at Mr. Rountree to get out of his house and that he tried to push Mr. Rountree out of his bedroom, but Mr. Rountree “wouldn’t move.” Once L.R. III heard the police banging on the front door, he ran to the side door to let them in. L.R., Jr. substantiated his son’s account that he tried to push Mr. Rountree out of his bedroom, but Mr. Rountree grabbed on to the bedroom door and wouldn’t budge.

Once inside, PO Sandbichler headed toward the bedroom in the rear of the house at nearly the same time as POs Guido and McMurray. According to PO Sandbichler, Mr. Rountree charged toward PO Sandbichler, who moved slightly to the side so that they both fell to the ground together. One officer (whose identity is unclear) took Mr. Rountree’s arm. At this point, the body-worn camera footage briefly goes black, but what follows can be heard on audio. One of the officers can be heard repeating, “Easy,” while PO McMurray gives Mr. Rountree instructions to “just put your hands behind your back so we can get you outside.”

Although the body-worn camera footage is dark, it is possible to hear the officers attempting, with difficulty, to handcuff Mr. Rountree. At this point, they were all in a very narrow hallway inside the home, with almost no room to maneuver. At one point an officer (likely PO Sandbichler) can be heard saying, “I can’t get my hand down” while Mr. Rountree continued to growl. PO Guido then asked PO Sandbichler if “he could get it [Mr. Rountree’s arm]” and PO Sandbichler responded that he could not. Mr. Rountree continued to growl and PO McMurray can

again be heard saying, “Easy, we don’t want to hurt you. Just put your hands behind your back so we can get you outside. You don’t live here.”

At this point, more of the body-worn camera footage becomes clear, and Mr. Rountree can be seen kicking his leg, while the officers can be seen kneeling and bending over to handcuff Mr. Rountree, which they manage to do shortly thereafter. One minute and twenty six seconds from the time the officers first engage with Mr. Rountree, the clicking noise of the handcuffs being locked can be heard.

According to L.R., Jr.’s written statement, Mr. Rountree (whom he refers to as the “naked guy”) “was resisting, but the cops didn’t fight him.” He states that they were “just trying to calm him down, but he just kept mumbling and grunting.” L.R., Jr. also corroborates that Mr. Rountree resisted being handcuffed by “keeping his hands underneath him” while he was lying on the floor and that the “cops didn’t fight with [Mr. Rountree],” but were instead just “trying to calm the situation down.”

In a later interview with the SIPU team, both L.R., Jr., and L.R. III stated that none of the officers assaulted, choked, or put any pressure on either Mr. Rountree’s neck or back during the handcuffing process. Nor is there any evidence to suggest otherwise. Further, Mr. Rountree’s medical records from Long Island Community Hospital (formerly Brookhaven Hospital) indicate that there were no abrasions or lacerations to Mr. Rountree’s neck, no airway obstruction noted nor any abrasions or lacerations to his back, chest or extremities.

After Mr. Rountree was handcuffed, PO McMurray asked him twice whether he was okay. When Mr. Rountree, who only seconds before could be heard grunting and growling and was resisting and kicking his legs, did not respond, an officer can be heard stating, “Get the EMS guys in here.” PO Guido then asked PO Sandbichler if Mr. Rountree was still breathing, and PO Sandbichler said that he was. When PO Guido asked PO Sandbichler whether Mr. Rountree still had a pulse, he stated “a little bit, not much.” PO Sandbichler then turned Mr. Rountree onto his back and immediately started resuscitative measures. Approximately 45 seconds after rescue personnel were called, PO Sandbichler stated that Mr. Rountree was making noise, but that rescue personnel were still necessary, “just in case.” Approximately 30 seconds after that, PO Sandbichler stated that Mr. Rountree still had a pulse. Just under two minutes after they were called into the house, the EMTs arrived and began treating Mr. Rountree. They determined that he was in cardiac arrest and transported him to Long Island Community Hospital (formerly Brookhaven Hospital), where he was pronounced dead on arrival.

Only one minute and twenty six seconds elapsed from the time PO Sandbichler reached the bedroom at the rear of the house and was charged by Mr. Rountree until the time rescue personnel were called. Those one minute and twenty six seconds are also the only time that the officers had their hands on Mr. Rountree (other than when performing CPR).

During a SIPU team interview, K.R., a friend of Mr. Rountree’s, who had spent essentially the entire day with Mr. Rountree before he died, stated the following: At approximately 5:00 p.m. on July 18, 2020, Mr. Rountree arrived at K.R.’s apartment to “chill and hang and drink and smoke

some weed.” Mr. Rountree brought with him a large plastic bag containing what appeared to be powdered cocaine and a bottle of Hennessy brandy liquor.

Over the course of the next many hours, Mr. Rountree appeared to have consumed nearly all of the large bag of cocaine, as well as drunk some of the alcohol in the Hennessy bottle. According to K.R., Mr. Rountree was “snorting a lot. I mean a lot.” At around 7:00 or 8:00 that evening, Mr. Rountree began to start “acting antsy and strange.” He was sweating profusely and was growing increasingly “paranoid.” At some point, he began leaving the apartment to walk outside and then kept returning to the apartment.

At around 10:00 p.m., K.R.’s aunt and her aunt’s boyfriend came to K.R.’s apartment. Mr. Rountree, still showing signs of “paranoia,” frisked the boyfriend for weapons. Thereafter, at about 1:00 a.m., Mr. Rountree left the apartment once again. After about thirty minutes had elapsed and Mr. Rountree still had not returned, K.R. went outside to look for him. K.R. found him “on the other side of the neighbor’s fence” (at 12 Brook Street) and stated that he was “acting completely nuts.” K.R. further observed that Mr. Rountree was naked and “foaming at the mouth.” She stated that the police and EMTs were giving Mr. Rountree “his space,” and that they were telling Mr. Rountree that they were trying to help him and to convince him to go to the hospital. Mr. Rountree appeared not to be listening, and the next thing K.R. knew, Mr. Rountree “jumped the fence and ran across the street.” She observed Mr. Rountree enter a house (427 Ocean Avenue) and close the door behind him, with the police in pursuit. K.R. lost sight of all of them once they were inside the home.

### Medical Examiner

Dr. Aaron J. Rosen, a medical examiner at the Suffolk County, New York Office of the Medical Examiner, performed an autopsy on the body of Mr. Rountree on July 19, 2020.<sup>6</sup> In addition, Dr. Rosen submitted Mr. Rountree’s blood for toxicological analysis.

Dr. Rosen identified as Mr. Rountree’s cause of death: “acute cardiac arrest during physical altercation while under the influence of cocaine and alcohol and with underlying hypertensive and atherosclerotic heart disease.” At the time of his death, Mr. Rountree had a fever of 105 degrees, a mixture of cocaine and alcohol in his system, and an enlarged heart. Because the altercation with L.R., Jr. and L.R. III, as well as the subsequent struggle with the police officers likely contributed to Mr. Rountree’s death, the autopsy report identifies the cause of death as “Homicide (cardiac arrest during physical altercation while intoxicated).”

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<sup>6</sup> A portion of Dr. Rosen’s autopsy report is attached as Exhibit 2.



## LEGAL ANALYSIS

All of the crimes for which any of the officers might arguably be culpable<sup>7</sup> – reckless manslaughter, criminally negligent homicide, and reckless endangerment – contain elements that would be difficult if not impossible to prove beyond a reasonable doubt. Both reckless manslaughter<sup>8</sup> and criminally negligent homicide<sup>9</sup> demand proof, as a threshold matter, that it was objectively “reasonably foreseeable” that the officer’s conduct would contribute to Mr. Rountree’s death. In addition, reckless manslaughter would require proof that an officer was affirmatively aware of the risk of death that his or her conduct was causing, yet nonetheless chose to engage in that conduct. Criminally negligent homicide would essentially require establishing that the officer should have known the risk of death his or her conduct was causing. Although the crime of reckless endangerment<sup>10</sup> would not demand proof of causation of the death, but rather proof of risk of “serious physical injury,”<sup>11</sup> it would still require conscious awareness and disregard of that risk. In light of the superficial nature of the injuries perhaps caused by the officers, the medical examiner’s opinion that such injuries would not have caused the death of an otherwise healthy individual, and the absence of any evidence that the officers appreciated, or even should have appreciated, the uniquely vulnerable condition Mr. Rountree’s excessive drug and alcohol ingestion had put him in, it is highly unlikely that all the elements for any of these crimes could be proven beyond a reasonable doubt. Only for the crime of intentional assault<sup>12</sup> would all the elements appear to be provable.

But even if the elements for these various crimes could be established, no crime can legally be found if the officers’ conduct was justified under the law.

Under Penal Law Section 35.30(1), “[A] police officer..., in the course of effecting...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

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<sup>7</sup> This list of such crimes does not include murder (PL 125.25(1)), which would require an intent to cause Mr. Rountree’s death, or intentional manslaughter (PL 125.20(1)), which would require an intent to cause “serious physical injury” (as defined by New York law), because there is simply no affirmative evidence of any such intent on the part of any of the officers involved.

<sup>8</sup> A person is guilty of reckless manslaughter (manslaughter in the second degree, PL 125.15(1)) when he or she “recklessly causes the death of another person.” Under PL 15.05(3), “A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exist.”

<sup>9</sup> A person is guilty of criminally negligent homicide (PL 125.10) when, “with criminal negligence, he [or she] causes the death of another person.” Under PL 15.05(4), “A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.”

<sup>10</sup> A person is guilty of reckless endangerment (PL 120.20, reckless endangerment in the second degree) when he or she “recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.”

<sup>11</sup> Under PL 10.00(1), “serious physical injury” is defined as “physical injury which creates a substantial risk of death, or which cause death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

<sup>12</sup> A person is guilty of intentional assault (PL 120.00(1), assault in the third degree) when “with intent to cause physical injury to another person, he [or she] causes such injury to such person or to a third person.”

the arrest....”<sup>13</sup> When such a defense is raised, it must be disproven beyond a reasonable doubt in order to establish the officer’s criminal culpability. Although the Court of Appeals has not directly addressed the meaning of the “reasonably believe” language in Penal Law Section 35.30, it has interpreted identical language in the context of another subsection of the justification statute, Penal Law Section 35.15. In *People v Goetz*, 68 N.Y.2d 96 (1986), and then later in *People v Wesley*, 76 N.Y.2d 555 (1990), the Court of Appeals held that the phrase “reasonable belief” has both a subjective and an objective component. The subjective component is satisfied if the defendant actually believed, “honestly and in good faith,” that physical force was being used or was about to be used against him (or a third person) at the time he used physical force, and that the use of physical force was necessary in order to repel the danger, regardless of whether that belief was accurate or not. *Goetz*, 678 N.Y.2d at 114. The objective component is satisfied if a “reasonable person” under the same “circumstances” could have held those beliefs. *Id.* at 115.

To negate the defense of justification, it would therefore be necessary to prove either that the officers did not subjectively believe that the use of force was necessary or that the use of force was not objectively reasonable (or both).

Pursuant to Section 9.41 of the Mental Hygiene Law (“MHL”),<sup>14</sup> the officers were presumptively authorized to take Mr. Rountree into custody when they arrived on the scene in response to a call for help and observed Mr. Rountree naked, incoherent, speaking unintelligibly and showing signs that he was intoxicated by drugs and/or alcohol. Nonetheless, the officers’ first course of action was to attempt, albeit unsuccessfully, to communicate with Mr. Rountree and convince him to seek medical treatment. In fact, when rescue personnel arrived, the officers actually stepped back to allow the paramedics to interact with Mr. Rountree and attempt to convince him to go to the hospital with them. While still out in the backyard, no one, neither the police officers nor the EMTs, ever laid a hand on Mr. Rountree.

As is reflected in the body-worn camera footage, when the officers entered the house at 427 Ocean Avenue, before they even reached Mr. Rountree, he charged at the officers, causing him and PO Sandbichler to fall to the ground. The only force used by POs Sandbichler and Guido at that time (which was the first time any officer even made physical contact with Mr. Rountree)

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<sup>13</sup> Penal Law § 35.30(1) sets a significantly higher threshold for the use of “deadly physical force,” essentially permitting such force only when the officer reasonably believes it necessary to defend himself from “the use or imminent use of deadly physical force.” Penal Law § 10.00(11) defines deadly physical force as “[p]hysical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.” Even if the officers’ collective conduct may have been a negligible contributory cause of Mr. Rountree’s death, unlike the use of a firearm, the law would almost certainly not regard the application of minimal force to restrain an individual as force “readily capable of causing death or serious physical injury.”

<sup>14</sup> MHL 9.41 provides, “Any ... police officer who is a member of the state police or ... a sheriff’s department may take into custody any person who appears to be mentally ill and is conducting himself in a manner which is likely to result in serious harm to himself or others. “Likelihood to result in serious harm” shall mean (1) substantial risk of physical harm to himself as manifested by ... conduct demonstrating that he is dangerous to himself, or (2) a substantial risk of physical harm to other persons as manifested by ... violent behavior by which others are placed in reasonable fear of serious physical harm. Such officer may ... remove [such person] to [a] hospital ...” Further, MHL § 1.03(20) defines “Mental Illness” as “affliction with a ... mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation.” The law does not distinguish between organic mental conditions and those induced by drug intoxication.

was attempting to handcuff him for his safety, while he was resisting, trying to get up off the ground and leave the house. An officer can be heard repeating to Mr. Rountree that they did not want to hurt him and that they were only trying to help him. They did not strike, kick, or choke Mr. Rountree nor did they use their tasers or their batons in attempting to restrain him. There were no injuries on Mr. Rountree's body to indicate that he was physically assaulted by any officer. Any injuries Mr. Rountree did have were all superficial abrasions and contusions, which were consistent with crawling on the ground, jumping over fences, and engaging in a physical altercation with the residents of the home.

It would thus be impossible to prove beyond a reasonable doubt that the officers' conduct was not justified under New York law, given the facts that only one minute and thirty seconds elapsed while the officers tried to handcuff Mr. Rountree; that they used a minimal amount of force; that Mr. Rountree broke into a home that did not belong to him; and the residents of the home could be heard yelling for help.

In deciding whether to proceed with a prosecution in any particular case, the OAG is bound by its ethical obligations to the individual or individuals who are the focus of our investigation. American Bar Association's Criminal Justice Standards for the Prosecution Function, Section 3-4.3(a) states: "A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice." Further, National Prosecution Standards, Section 4-1.3, issued by the National District Attorneys Association, provides that, "Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest," and lists among the factors that may be considered: "doubts about the accused's guilt" and "insufficiency of admissible evidence to support a conviction."

It appears from a close examination of all the available evidence that it would be impossible to prove beyond a reasonable doubt that POs Sandbichler, Guido or McMurray engaged in any legally unjustifiable conduct in taking Mr. Rountree into custody. Therefore, neither homicide nor any other charges would be appropriate. For these reasons, and pursuant to our ethical obligations, the OAG has elected not to seek charges against any of the officers involved in this case.

### **RECOMMENDATIONS**

Based upon the facts and circumstances of this incident, the OAG makes no recommendations.

# EXHIBIT 1



# State of New York

## Executive Chamber

No. 147.39

### EXECUTIVE ORDER

In view of the request of Attorney General Letitia James, my order and requirement, embodied in Executive Order Number one hundred and forty-seven, dated July 8, 2015, is hereby amended to include an additional paragraph to the penultimate paragraph as amended by Executive Order Numbers 147.1 - 147.38 to read as follows:

**FURTHER**, the requirement imposed on the Special Prosecutor by this Executive Order shall include the investigation, and if warranted, prosecution:

(mm) of any and all unlawful acts or omissions or alleged unlawful acts or omissions by any law enforcement officer, as listed in subdivision 34 of section 1.20 of the Criminal Procedure Law, arising out of, relating to, or in any other way connected with the death of Wenzola Rountree on July 19, 2020, in Suffolk County.



GIVEN under my hand and the Privy Seal of the  
State in the City of Albany this thirty-  
first day of July in the year two  
thousand twenty.

BY THE GOVERNOR

*Me. C.*  
Secretary to the Governor

*Ad. James*

# EXHIBIT 2



**SUFFOLK COUNTY, NEW YORK  
OFFICE OF THE MEDICAL EXAMINER**



**REPORT OF AUTOPSY**

**NAME: WENZOLA ROUNTREE**

**ME#: 20-05549**

**PERFORMED BY: Aaron J. Rosen, M.D.**

**DATE: July 19, 2020**

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**FINAL DIAGNOSES**

- I. ACUTE COCAINE AND ALCOHOL INTOXICATION**
  - A. REPORTED HISTORY OF SUBSTANCE ABUSE**
  - B. SEE TOXICOLOGY REPORT**
  
- II. HYPERTENSIVE AND ATHEROSCLEROTIC HEART DISEASE**
  - A. CARDIOMEGALY (HEART WEIGHT: 545 GRAMS)**
  - B. LEFT VENTRICULAR HYPERTROPHY (1.7 CM)**
  - C. ATHEROSCLEROTIC STENOSIS OF CORONARY ARTERIES, MODERATE**
  
- III. MINOR ABRASIONS AND CONTUSIONS OF TORSO AND EXTREMITIES**

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**CAUSE OF DEATH:** ACUTE CARDIAC ARREST DURING PHYSICAL ALTERCATION WHILE UNDER THE INFLUENCE OF COCAINE AND ALCOHOL AND WITH UNDERLYING HYPERTENSIVE AND ATHEROSCLEROTIC HEART DISEASE

**MANNER OF DEATH:** HOMICIDE (CARDIAC ARREST DURING PHYSICAL ALTERCATION WHILE INTOXICATED)

**I HEREBY CERTIFY THAT THIS IS  
A TRUE AND CORRECT COPY.**

*Virginia Folcare*