



Office of the New York State Attorney General Letitia James

Office of Special Investigation

February 4, 2022

Report on the Investigation into the Death of George Zapantis

INTRODUCTION

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147, 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.”¹ On June 21, 2020, George Zapantis died following an interaction with members of the New York City Police Department (“NYPD”). Governor Cuomo subsequently issued Executive Order No. 147.38, expressly conferring jurisdiction on the Office of the Attorney General (“OAG”) to investigate any potential unlawful acts or omissions by law enforcement related to the death of Mr. Zapantis.²

OAG’s investigation of this matter included reviewing the evidence below:

- NYPD paperwork generated in connection with the incident;
- Audio recordings of telephone calls and radio communications involving Police Command, the NYPD Central Police Desk, NYPD officers, and emergency medical technicians;
- 911 call from a civilian eyewitness;
- Body-worn camera footage of the incident;
- Civilian cell phone video footage;
- NYPD’s Taser use policy;
- Medical records, including records from the responding emergency medical services personnel and from Flushing Hospital; and
- The autopsy report from the New York City Office of Chief Medical Examiner (“OCME”).

OAG’s investigation also included interviews of:

- NYPD officers who were involved with and/or witnessed the incident;
- Emergency medical technicians who responded to the scene and administered aid;
- Civilians who witnessed aspects of the incident, including civilians who were with Mr. Zapantis before the police encounter;
- The medical examiner who performed the autopsy.

SUMMARY

At approximately 10:40 p.m. on the evening of June 21, 2020, George Zapantis was pronounced deceased after an encounter with police officers from the 109th precinct of NYPD. Officers were dispatched to the scene after a 911 caller stated that he saw people fighting and thought there was a firearm involved. When the officers arrived, they spoke to neighbors and spoke with Mr. Zapantis through his residence door, but Mr. Zapantis would not open the door and sounded confused and upset. When he did finally open the door, Mr. Zapantis was dressed in gladiator attire – including a Spartan-like helmet, leather forearm coverings, a shield, and a sword. Mr. Zapantis eventually put the sword down, but still appeared highly

¹ Executive Law 70-b, which supersedes Executive Order 147, took effect on April 1, 2021. Because this incident occurred prior to April 1, 2021, OAG’s jurisdiction falls under Executive Order 147.

² Executive Order 147.38 is attached as Exhibit 1.

agitated. The officers attempted to de-escalate the situation by talking to Mr. Zapantis and tried to contain him inside his home. Approximately ten minutes after officers arrived on scene, Mr. Zapantis pushed his way out of the apartment and a physical struggle ensued between the officers and Mr. Zapantis as they attempted to restrain him. During the struggle, Mr. Zapantis was Tased three times in dart-probe mode and once in drive-stun mode. He went into cardiac arrest and died.

The medical examiner, Dr. Kristin Landi, in her autopsy report, described the cause of Mr. Zapantis's death as "cardiac arrest due to dilated cardiomyopathy³ of undetermined etiology [cause] during physical restraint by police including conducted electrical weapon use." Dr. Landi also noted in her report that Mr. Zapantis was medically obese, had fluid in his lungs due to Covid-19, and had evidence of marijuana and anabolic steroids in his body. Because the Taser use and the physical struggle with police were among the factors contributing to his death, the medical examiner classified Mr. Zapantis's manner of death as "homicide."

OAG found no evidence that any officer put Mr. Zapantis in a chokehold, placed a knee on his back or neck, or struck or kicked him.

Having now completed its investigation, OAG concludes it would not be able to disprove beyond a reasonable doubt that the officers' conduct was justified under New York law, Penal Law Article 35. Therefore, OAG will not seek criminal charges in this matter.

STATEMENT OF FACTS

At approximately 9:25 p.m., on June 21, 2020, L.S.⁴, while out walking his dog, placed a 911 call to NYPD stating that there was a group of people fighting outside 20-39 150th Street, in Whitestone, New York, and "somebody was out pulling a gun."⁵ Officers from the 109th Precinct of the NYPD responded to 20-37 150th Street, which is a two-family home with tenants living in the upstairs and downstairs apartments. George Zapantis, his mother, and his sister lived in the downstairs apartment. V.C., S.N.,⁶ and their son lived in the upstairs apartment.

Evidence from officers' body-worn cameras

The responding officers activated their body-worn cameras ("BWC") upon arrival at the scene. The interaction between police, certain witnesses, and Mr. Zapantis is captured on video and shows the following:

³ Dilated cardiomyopathy is a disease of the heart muscle which makes it more difficult for the heart to pump blood to the rest of the body and which can lead to heart failure.

⁴ The names of civilian witnesses are being withheld to protect their privacy.

⁵ A link to the 911 call can be accessed [HERE](#).

⁶ V.C. declined to be interviewed by OAG.

PO Matthew Gilson⁷ and PO Desiree Kaisen⁸ were the first officers on the scene; other officers arrived at nearly the same time or shortly thereafter.⁹ When they arrived, the upstairs tenants, V.C. and S.N., informed Officers Gilson and Kaisen that, though they were not the ones who placed the 911 call, they had just been arguing with the downstairs tenant, Mr. Zapantis, over a light in the backyard of the home. S.N. said her husband (V.C.) had asked Mr. Zapantis not to use the light until they could determine who was responsible for the utility bill, but Mr. Zapantis continued to use the light. Earlier that evening, S.N. said her son had gone downstairs to talk with Mr. Zapantis about the light and said Mr. Zapantis “drew a sword” on her son. The upstairs neighbors denied there was any firearm involved.¹⁰ (Gilson, 21:33:17-21:34:55) S.N. spoke with OAG and confirmed that the argument with Mr. Zapantis had been over the light in the backyard and Mr. Zapantis was armed with a sword during the argument. She also reaffirmed they were not the ones who called 911.

PO Gilson and other responding officers walked to the backyard of the home with V.C. and his son via an alleyway alongside the residence. PO Gilson and other officers, including PO Cristian Almeida,¹¹ returned to the alley along the side of the house, where the door leading to Mr. Zapantis’s apartment was located. The door to Mr. Zapantis’s apartment is midway down the alley on the side of the house, which is approximately three feet in width. It is the only door to the apartment. There is an outer storm door and an inner door, the top half of which is glass and covered by a curtain. (Gilson, 21:35:00-21:38:26)



⁷ PO Gilson’s BWC Footage can be accessed [HERE](#).

⁸ PO Kaisen later resigned from NYPD. She declined to be interviewed by OAG.

⁹ Because the dispatch following the 911 call came over as a “dispute with a firearm”, many units from the 109th Precinct responded.

¹⁰ In a follow-up conversation with the officers, the 911 caller reported that he heard people arguing outside and heard someone yell “gun” but never personally observed a firearm.

¹¹ PO Almeida’s BWC Footage can be accessed [HERE](#).

Officers who remained in the backyard saw through a window into Mr. Zapantis's apartment and PO Anthony Misiano¹² described Mr. Zapantis to the officers at the side door as a "white male, grey shirt – a big guy." PO Misiano told the officers at the side door that he "saw something metal that was glistening." (Misiano, 21:36:10-21:42:52)

PO Almeida knocked on the apartment door, and no one responded; he knocked again, and no one responded. PO Gilson knocked on the door and Mr. Zapantis yelled through the door that he would not come out of the house. The officers said, "Just come out and talk," and said they needed his "side of the story." PO Almeida told Mr. Zapantis they were NYPD officers. Mr. Zapantis said he would not come out because he "was attacked two different times." Several officers told Mr. Zapantis to "put the sword down" and to put "whatever he has in his hand" on the ground. PO Almeida said that it looked like "something shiny." (Almeida, 21:37:09-21:39:36)

Mr. Zapantis told the officers a couple of times to get off his property. The officers said they were the police department and "just want[ed] to talk." Mr. Zapantis said he was going "to call [his] own police department." Among themselves, officers said Mr. Zapantis "definitely has something in his hand," which is "big" and "shiny" and looks like a "long, black pole." PO Almeida asked someone to call the supervisor and the Emergency Services Unit. PO James Walczyk¹³ said he had already called "the boss" on the radio. (Almeida, 21:39:36-21:42:00)

PO Gilson told PO Almeida what he was told by the upstairs tenants regarding the dispute, but said the officers had no reason to go into the home. POs Almeida and Gilson discussed whether Mr. Zapantis might be an "EDP" (emotionally disturbed person) or have "a mental history." PO Gilson suggested that Mr. Zapantis might open the door, so PO Gilson knocked once again, but Mr. Zapantis did not come to the door. Officers who were looking inside Mr. Zapantis's apartment through the window in the door said it appeared Mr. Zapantis was talking on the phone and had a sword holstered on his side. PO Cara Scriven¹⁴ knocked. This time, Mr. Zapantis pulled back the curtain of the upper portion of the interior door; he was wearing what looked like gladiator attire – a Spartan-like helmet and thick leather forearm coverings – and was holding a shield and wearing a sword on his hip. Mr. Zapantis opened the interior door and said he was going to "call the Marine Corps." The officers said they were from the police department, but Mr. Zapantis said he needed the Marine Corps. PO Almeida said they were "not going to hurt" him. (Almeida, 21:42:06-21:45:15)

After Mr. Zapantis came to the door dressed as a gladiator, PO Gilson said to other officers that Mr. Zapantis was "clearly EDP."¹⁵ PO Almeida agreed. PO Kaisen said, "Yeah, I mean, he's suited up." (Gilson, 21:45:30-21:45:50) PO Almeida requested that someone get a Taser and a rope to secure the door and call the supervisor and the Emergency Services Unit

¹² PO Misiano's BWC Footage can be accessed [HERE](#).

¹³ PO Walczyk's BWC Footage can be accessed [HERE](#).

¹⁴ PO Scriven's BWC Footage can be accessed [HERE](#).

¹⁵ Mr. Zapantis' mother and several of Mr. Zapantis' neighbors confirm a history of mental illness.

("ESU").¹⁶ Several officers called Emergency Medical Services ("EMS") and ESU to respond to the scene.¹⁷ (Almeida, 21:44:29-21:45:51)

Several officers told Mr. Zapantis to put the sword on the ground and not to open the door to his apartment until he had done so. Mr. Zapantis appeared to be agitated and officers told him several times to "calm down." Initially refusing to put his sword down, Mr. Zapantis said he was "allowed to defend himself" inside his home. PO Almeida said they were not going to hurt him. Mr. Zapantis asked the person he was on the phone with to call the police and then closed the door. (Almeida, 21:44:00-21:45:15)

Mr. Zapantis opened the door again, displayed a card through the window, said the officers should "call his Sergeant," and said he is a "soldier." PO Almeida told other officers to watch where they stood because they did not know whether Mr. Zapantis – because "he is military" – has any guns inside his home. (Almeida, 21:45:15-21:46:26)

PO Walczyk got a polycarbonate shield from one of the police vehicles and PO Philip Salamone¹⁸ got a rope. They attempted to secure Mr. Zapantis inside his home by tying the door closed with a rope, but the interior door opened inward and could not be tied closed. (Almeida, 21:45:43-21:47:30)

Mr. Zapantis opened the door, this time without his helmet, sword, or shield, but still wearing the leather armbands, and said he was "not armed." The officers directed him not to open the door and turn around so they could see he was not carrying a weapon. Mr. Zapantis complied, saying he was "unarmed." He began telling the officers what happened through the closed exterior storm door, describing the dispute over the backyard light. He said he was "very protective at nighttime." PO Almeida said he didn't mind Mr. Zapantis being protective, but said he could not "come out the way [he] came out." (Almeida, 21:47:28-21:48:07)

Mr. Zapantis yelled at PO Almeida, "Look at your waist" (apparently indicating PO Almeida's gun belt). PO Almeida raised his hands and responded that he had not touched his waist. Mr. Zapantis then attempted to push through the storm door, yelling that he was going to "fuck up" the officers: "I will fuck you up right now. Fuck you up. Come on bro. Come on." Mr. Zapantis, who was over six feet tall and weighed over 300 pounds, punched out the bottom pane of glass of the exterior door while the officers held up the shield to the door in an attempt to keep Mr. Zapantis inside. The officers repeatedly directed him to "get back," which Mr. Zapantis did, briefly. He continued yelling "I'll fuck you up" and repeatedly banged the glass of the storm door as the officers tried to contain him. (Almeida, 21:48:07-21:48:33)

¹⁶ According to NYPD Patrol Guide, Tactical Section, Procedure number 221-13, when dealing with a mentally ill or emotionally disturbed person, the officer should "attempt to isolate and contain the EDP while maintaining a zone of safety until arrival of patrol supervisor and Emergency Service Unit personnel." See https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-13-mentally-ill-emotionally-disturbed-persons.pdf.

¹⁷ ESU is a specialized unit in the Special Operations Division of the NYPD. Officers generally have at least five years of service before joining the unit and undergo an intensive six-month training program, learning skills such as water rescue, Hazmat, bridge and subway rescue and barricaded subjects. In particular, the training includes a three-week course, taught by psychologists, on how to identify and interact with emotionally disturbed individuals.

¹⁸ PO Salamone's BWC Footage can be accessed [HERE](#).

The officers failed to keep Mr. Zapantis inside his home. He rushed the door again, punched out the bar in the middle of the door, broke through the door, and advanced towards the officers. PO Almeida repeatedly directed Mr. Zapantis to “stop” and grabbed the straps of his undershirt after he broke through the door. PO Misiano called for a “rush on ESU” and, as Mr. Zapantis struggled with the officers, PO Misiano called out “Tase him” to his fellow officers. PO Almeida repeatedly directed Mr. Zapantis to put his hands behind his back. (Almeida, 21:48:33-21:48:43)

Multiple officers commanded him to “get down on the ground,” but Mr. Zapantis did not comply. Because of Mr. Zapantis’s size, the number of officers attempting to subdue Mr. Zapantis, and the narrow dimension of the alley, the officers struggled to gain control of Mr. Zapantis. At 21:48:43 on the body-worn camera footage, PO Salamone warned “Taser, Taser, Taser” and deployed his Taser in dart-probe mode.¹⁹ The Taser prongs appeared to strike Mr. Zapantis in his midsection and neck, but Mr. Zapantis can be seen on BWC footage pulling the Taser wire out of his abdomen and continuing to struggle. (Gilson, 21:48:54) The Taser failed to incapacitate Mr. Zapantis but did bring him to his knees. Officers continued to command Mr. Zapantis to “stop resisting” and to “get down on the ground now” and warned they would Tase him again. At 9:49:00 POs Brian Willabus and Walczyk separately but simultaneously Tased Mr. Zapantis in dart-probe mode, who yelled “No, fuck” and “help,” but then stood up from his kneeling position. (The NYPD Tasers are programmed to stop delivering a charge after five seconds). PO Almeida and other officers directed Mr. Zapantis to “put your hands behind your back.” It is unclear from the BWC footage where on his body the second set of Taser darts landed. None of the Taser deployments up to this point incapacitated Mr. Zapantis. BWC camera footage shows Mr. Zapantis continuing to struggle and resist being cuffed. (Salamone, 21:48:40-21:49:25)

At one point, Mr. Zapantis complained he was being choked by his shirt and that he “can’t breathe” while calling for help from someone named “David.” Several officers said he was not being choked, until one officer said, “the shirt, the shirt, the shirt.” PO Eric Dieumegard²⁰ cut Mr. Zapantis’s shirt with a seatbelt cutter. (Walczyk, 21:49:10-21:49:54)

After Mr. Zapantis stood up again, he appeared to put his arm behind his back, but the officers struggled to handcuff him. (In interviews with OAG, several officers said they could not get the handcuffs around Mr. Zapantis’s wrists because they were covered with the thick leather forearm coverings.) PO Almeida told Mr. Zapantis to “stop struggling,” as Mr. Zapantis shouted for “David.” At least six officers were trying, unsuccessfully, to handcuff Mr. Zapantis. They repeatedly told him to “stop resisting.” The officers got him down to the ground but struggled to get Mr. Zapantis handcuffed because he refused to give up his hands and was kicking his legs. While on the ground, PO Misiano placed his hand on Mr. Zapantis’s head and held it down to the ground. (Misiano 21:51:00) PO Dieumegard used the Taser previously used by PO Walczyk to Tase Mr. Zapantis in drive-stun mode²¹ on Mr. Zapantis’s leg. (Dieumegard, 21:49:54-21:52:00) The total Taser exposure time, including the three deployments in dart-probe mode and the one in drive-stun mode, appears to be approximately thirty-five seconds.

¹⁹ See section below on Taser use for explanations of dart-probe and drive stun modes.

²⁰ PO Dieumegard’s BWC Footage can be accessed [HERE](#).

²¹ See section below on Taser use for an explanation of drive-stun mode.

After continued struggle and yelling by Mr. Zapantis and noncompliance with the officers' directions, PO Gilson told Mr. Zapantis (incorrectly calling him David) that there was a Taser on his back, that he should put his left arm behind his back, that they "can talk about this," that he will "call his Sergeant" and that they "will all talk." PO Scriven said she "got it" and Mr. Zapantis was handcuffed. Approximately thirty-five seconds after Mr. Zapantis was drive-stunned and about one minute before he was handcuffed, Mr. Zapantis stopped screaming and resisting. (Dieumegard 21:49:51-21:53:02) Once handcuffed, BWC footage shows him still and silent. Officers rolled him on his side and PO Almeida said, "Go get the bus" (ambulance). PO Scriven checked and said Mr. Zapantis had a weak pulse. (Gilson, 21:52:02-21:54:30)

Taser Use

The NYPD Patrol Guide, Tactical Section, Procedure No. 221-08, effective date 7/1/2020,²² provides that: "A Conducted Electrical Weapon (CEW) can be an effective means of subduing aggressive suspects and emotionally disturbed persons (EDPs)... A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present."

The CEW issued to NYPD officers is the Taser International X26P, which can be used in two modes. In "dart-probe" mode, darts are released from the instrument and pierce the skin. According to the manufacturer, the dart probes can cause temporary neuromuscular incapacitation, during which an individual will often be unable to move. In "drive-stun" mode, two electrodes on the body of the Taser are pressed directly against the suspect. According to the manufacturer, while drive-stun mode delivers an electric shock, it is a pain compliance technique and does not cause the override of an individual's central nervous system or potential neuromuscular incapacitation. See <https://Taser.com/products/Taser-x26p-professional-series>.

According to the NYPD Patrol Guide, drive stun mode may be used as a countermeasure to gain separation between officers and the subject so that officers can consider another force option. See NYPD Patrol Guide, Procedure No. 221-08, effective date 6/1/16.

According to the Taser History Report, attached here as Exhibit 2, three officers used Tasers in dart-probe mode, and one officer used a Taser in drive-stun mode. PO Salamone deployed his Taser at 21:48:44 and POs Willabus and Walczyk deployed their Tasers at 21:49:01; PO Walczyk dropped his Taser at 21:49:11 as he went to handcuff Mr. Zapantis. PO Dieumegard picked up PO Walczyk's Taser and used it to drive stun Mr. Zapantis at 21:51:45.

²² Although different sections of the Patrol Guide have different effective dates, all references to the Patrol Guide in this report are from the 2021 edition of the NYPD Patrol Guide.

EMT Action

Emergency Medical Technicians (“EMTs”), who told OAG they had arrived shortly before and were waiting on the street, responded almost immediately after Mr. Zapantis was handcuffed. The EMTs asked the officers to step back while they worked on Mr. Zapantis and everyone did so except for PO Scriven, who was trapped inside the apartment vestibule behind Mr. Zapantis, and PO Gilson, who was holding Mr. Zapantis on his side. (Scriven, 21:54:30-22:00:40)

In an interview with OAG, EMT Adonay Gonzalez said that when he first observed Mr. Zapantis, he was unresponsive, cyanotic (blueish skin due to deficient oxygenation of the blood), and diaphoretic (sweaty). EMT Gonzalez remembers Mr. Zapantis being on his side, while EMT Christopher Eagen remembers Mr. Zapantis lying prone. Both EMTs told OAG that when they first encountered Mr. Zapantis he was not breathing. EMT Gonzalez told OAG he called the paramedics for advanced life support (ALS). Because of Mr. Zapantis’s position – he was wedged between the apartment entrance wall and the step leading into the apartment while PO Scriven was behind him supporting his head and shoulders – EMT Gonzalez told OAG he was unable to commence life-saving measures such as applying the BVM (bag-valve-mask) ventilation with a sufficient seal or to perform chest compressions. According to EMT Gonzalez, because of Mr. Zapantis’ size, his body position, and the narrow confines of the space, it took six to eight people to get Mr. Zapantis in a supine position (EMT Eagen remembers it taking “a couple of minutes”), start chest compressions, and “bag him” (apply the BVM). Both EMTs told OAG that they placed Mr. Zapantis in the ambulance where the ALS paramedics then took over treatment of Mr. Zapantis, but he never regained consciousness or a pulse. Both EMTs told OAG they observed two Taser prongs still attached to Mr. Zapantis’ torso.

Mr. Zapantis was transported to Flushing Hospital where life-saving measures were attempted for approximately 20 minutes before he was pronounced dead at 10:40 pm.

Other Evidence

In an interview with OAG, Mr. Zapantis’s next door neighbor, Z.M., confirmed that there was an argument between Mr. Zapantis and the upstairs neighbors. Z.M. stated that the police responded and knocked on Mr. Zapantis’s door, but that he “did not want to come out” of the house. She said she heard several officers repeat that they “just want to speak” with Mr. Zapantis. Z.M. said she heard officers say Mr. Zapantis “had a sword.” From her vantage point at the window, she was able to see Mr. Zapantis “pushing on the screen door and pushing the officers against [the] fence,” which separates the two properties. She said Mr. Zapantis was “pushing officers out of the way,” and that she “thought the fence was going to fall down.”

Z.M. saw the officers Tase Mr. Zapantis but said she saw Mr. Zapantis pull out the Taser probes and that he “went at the officers again.” Mr. Zapantis pulled out the probes “at least twice, because he didn’t go down”; and he had “amazing force.” Z.M. said she heard Mr. Zapantis yell that he could not breathe but said she didn’t “see any hands” near or on Mr. Zapantis’s neck. Z.M. said she felt that the officers were “so polite” and “didn’t use a stern tone or attitude,” and that the officers “were not aggressive” and were “very professional.”

Medical Examiner Findings

On June 23, 2020, Dr. Kristin Landi of the New York City Office of Chief Medical Examiner performed an autopsy on Mr. Zapantis. Dr. Landi reviewed the BWC footage and Taser reports, among other documents, prior to completing her autopsy report. The autopsy report identified the cause of death as “cardiac arrest due to dilated cardiomyopathy²³ of undetermined etiology [cause] during physical restraint by police including conducted electrical weapon use.” Because one of the causes contributing to Mr. Zapantis’s death was engagement with law enforcement, Dr. Landi determined that Mr. Zapantis’s manner of death was “homicide.”

In subsequent interviews with OAG, Dr. Landi described Mr. Zapantis’s heart as “dilated and floppy” and that it was “stretched out,” “unhealthy,” “weak,” and “not working well.” Stressors placed on his heart included the excitement he exhibited both before and during the police interaction, which were caused, in part, by the presence of anabolic steroids, and marijuana (THC) in his system; the fluid in his lungs due to Covid-19; the argument with the upstairs tenants and the later struggle with the police; his morbid obesity;²⁴ and the physical interaction with the police, including being Tased.

An examination of Mr. Zapantis showed five injuries on his body consistent with Taser usage, with evidence of electrical activity at those sites. “Blunt force trauma of [Mr. Zapantis’s] head, torso and extremities,” which included “abrasions and contusions” and a “subcutaneous hemorrhage,” were, according to Dr. Landi, consistent with the physical struggle between Mr. Zapantis and the officers and with being struck by the Taser probes. Dr. Landi did not find any evidence of neck compression or asphyxiation, nor anything that compromised Mr. Zapantis’s airway, nor any evidence of injury to Mr. Zapantis’ head or neck (“hyoid bone and laryngeal cartilages without injury”). Dr. Landi had various tests performed, including toxicology, histology, neuropathology, anthropology, and molecular genetics, to determine whether the Taser use on Mr. Zapantis was fatal. None of the tests performed indicated that the Taser use was the sole cause of Mr. Zapantis’s death. Based on the video footage, Dr. Landi noted that Mr. Zapantis either pulled out the Taser darts after being Tased or continued to yell out and struggle after he was Tased, which indicated to her that Mr. Zapantis did not die from the Taser’s electrical impulses alone. She also noted that Mr. Zapantis was shouting both before and after the physical struggle with the police officers, including the Taser use, and then suddenly stopped moving or talking, which is consistent with cardiac arrest.

LEGAL ANALYSIS

New York State Penal Law (“PL”) Article 35 sets forth the defense of justification to crimes involving the use of physical force. Justification is a defense, not an affirmative defense: if there is evidence at trial sufficient to raise the defense of justification, the burden is on the People to disprove justification beyond a reasonable doubt. People v. Steele, 26 N.Y.2d 526 (1970).

²³ Dilated cardiomyopathy is a disease of the heart muscle which makes it more difficult for the heart to pump blood to the rest of the body and which can lead to heart failure. The first page of Mr. Zapantis’ autopsy report is attached as Exhibit 3.

²⁴ At the time of his death, Mr. Zapantis measured 6’ 1/2” and weighed 323 pounds, with a body mass index (BMI) of 42.6. Dr. Landi described him as morbidly obese.

In this case, the officers used physical force against Mr. Zapantis; both physical force to restrain him and the use of the Taser. The physical force was a contributing cause of Mr. Zapantis's death.

PL Section 35.15 is the general provision defining justification when physical force is used in defense of a person. PL Section 35.30 is the provision defining justification when a police officer or peace officer uses physical force to effect or attempt to effect an arrest for an offense. Based on the evidence in this investigation, the prosecution would not be able to disprove beyond a reasonable doubt that the officers' use of physical force was justified under both provisions.

Justification under PL Section 35.30

When the officers Tased Mr. Zapantis and used physical force to restrain him, the evidence in the investigation indicates they could have been attempting to arrest Mr. Zapantis for an offense, could have reasonably believed he was using physical force, or would imminently use physical force, against them, and could have reasonably believed that using physical force was necessary to defend themselves.

PL Section 35.30(1) provides:

“A police officer or a 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 ... or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force.”

Under Section 35.30(1) “reasonable belief” means the officer actually believed, “honestly and in good faith” that physical force was about to be used against him and that physical force was necessary for self-defense, and that a “reasonable person” under the same “circumstances” could have believed the same. People v. Goetz, 68 N.Y.2d 96 (1986); People v. Wesley, 76 N.Y.2d 555 (1990).

Based on the evidence in this investigation, the prosecution would not be able to disprove beyond a reasonable doubt that the force used was authorized under the law. At the time officers first engaged with Mr. Zapantis, they had already spoken with the three upstairs residents who said, as confirmed on BWC footage and OAG's interview with S.N., that Mr. Zapantis had drawn his sword on one of them, which provided probable cause that Mr. Zapantis had committed the offense of Menacing in the Second Degree, PL Section 120.14(1).²⁵ See People v. Williams, 301 A.D.2d 543 (2d Dept. 2003) (“Generally, the

²⁵ “A person is guilty of menacing in the second degree when: He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.”

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.”).

Under PL Section 35.30, the officers could use physical force which they reasonably believed to be necessary to effectuate the arrest. Moreover, once Mr. Zapantis pushed out of his home and attacked the police officers, there was probable cause to arrest him for Attempted Assault in the Third Degree, PL Sections 110/120.00(1).²⁶

Justification Under PL Section 35.15

Even if the officers were not attempting to arrest Mr. Zapantis for an offense under PL Section 35.30, the justification provision relating to police officers making an arrest, the prosecution would not be able to disprove beyond a reasonable doubt that the officers were justified in using physical force under PL Section 35.15, the general provision justifying use of force.

Subdivision (1) of PL 35.15 states a person may:

“use physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person.”

As shown in the BWC footage, the responding officers believed Mr. Zapantis was likely emotionally disturbed and highly agitated. This was reasonable, based on Mr. Zapantis’s statements, conduct, and attire. Moreover, the officers had been told Mr. Zapantis had a sword, and the BWC captured their statements that they saw what appeared to be a sword through a window. The officers’ initial actions were in accord with NYPD policy to “isolate and contain” Mr. Zapantis inside his home by retrieving the rope and polycarbonate shield in an effort to secure him inside. The officers spent over ten minutes attempting to de-escalate the situation and taking no action other than to try to calm Mr. Zapantis down. They stated repeatedly that they only wished to speak with Mr. Zapantis and get his version of events. It was only after Mr. Zapantis pushed his way out of his home, said he would hurt the officers, and began charging at them, that they used any force at all on Mr. Zapantis. Once Mr. Zapantis charged at the officers, they were justified under PL 35.15 in using force to defend themselves, including the use of restraint and the use of Tasers.

Although the Taser deployments were a contributing cause of Mr. Zapantis’s death, courts hold that Taser usage does not constitute deadly physical force. See *Jones v. Treubig*, 963 F.3d 214, 225 (2d. Cir. 2020) (Taser use is “significant force” “like pepper spray” but non-lethal); *Buckley v. Haddock*, 292 F. App’x. 791, 795 (11th Cir. 2008) (unpublished opinion) (Taser use 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.*

²⁶ “A person is guilty of assault in the third degree when: with intent to cause physical injury to another person, he attempts to cause such injury to such person or to a third person.”

Sledge, 69 Misc. 3d 859, 861, (N.Y. Sup. Ct. 2020) (a Taser is not a deadly weapon); *Wehling v. Vill. of Medina*, No. 16CV00746LJVJJM, 2020 WL 5633631, at *6 (W.D.N.Y. Jan. 28, 2020), report and recommendation adopted, No. 16-CV-00746-LJV-JJM, 2020 WL 5628990 (W.D.N.Y. Sept. 21, 2020) (“The taser properly falls among that class of other non-deadly tactics, such as the use of handcuffs”); *People v. Patterson*, 115 A.D.3d 1174, 1175 (4th Dept. 2014) (use of a Taser is “non-lethal force”); *Wright v. Deghetto*, No. 5:06CV-133-R, 2008 WL 199890 (W.D. Ky. 2008) (it was reasonable to Tase 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”); *People v. Patterson*, 115 A.D.3d 1174, 1175 (4th Dept. 2014) (use of a Taser is “non-lethal force”); *Draper v. Reynolds*, 369 F.3d 1270, 1278 (11th Cir. 2004) (use of a Taser was not excessive force where a suspect who was stopped because his license plate was not illuminated was hostile, belligerent, and uncooperative); *Johnson v. City of Lincoln Park*, 434 F. Supp.2d 467, 479-80 (E.D. Mich. 2006) (the use of a Taser was reasonable where a fourteen-year old, who was handcuffed and surrounded by four police officers, still violently resisted arrest). See also Jeff Fabian, Don’t Tase Me Bro! A Comprehensive Analysis of the Laws Governing Taser Use by Law Enforcement, 62 Fla. L. Rev. 763, 766 (2010) (“Research shows that the large majority of Taser incidents result in mild or no injuries to the suspect”); U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, May 2011, Police Use of Force, Tasers, and Other Less-Lethal Weapons, <https://www.ncjrs.gov/pdffiles1/nij/232215.pdf> (Tasers have been studied extensively and found to reduce injuries to both suspects and officers alike when compared with other use of force alternatives).

The number of times a Taser is used and the duration of the Taser applications are relevant to whether the use of force was reasonable. Here, Mr. Zapantis was Tased three times in dart-probe mode and once in drive-stun mode within a span of approximately 180 seconds, for a total Taser application time of thirty-five seconds. Courts have determined that multiple Taser applications may be reasonable when necessary to subdue a subject. See *Neal-Lomax*, 574 F. Supp. 2d at 1187-88 (it was reasonable to Tase the defendant seven times, for a total of 31 seconds, including five times after he was handcuffed, because he resisted an officer’s attempts to place him in an ambulance); and *Sanders v. City of Fresno*, 551 F. Supp. 2d 1149, 1168-76 (E.D. CA 2008) (ten Taser applications by three officers for a total of 70 seconds were not unreasonable).

NYPD issues an annual Use of Force report which documents when and how civilians die after an encounter with members of NYPD. OSI reviewed the five most recent Use of Force reports, 2016 through 2020.²⁷ According to those reports, NYPD members deployed conducted electrical weapons (CEWs) close to 5,000 times in five years. However, in reviewing those reports, OSI was able to identify only three instances where a CEW was used in an incident in

²⁷ Use of Force - NYPD (nyc.gov). The Use of Force report for 2021 has not yet been issued. More detail about NYPD’s Use of Force reports is provided in the next section, Recommendation.

which a person died; in only two of those instances was the CEW determined to have contributed to the person's death. NYPD's reported experience with CEW use supports the repeated judicial determinations that CEW use is not "deadly physical force."

Therefore, based on the law and the evidence, OAG concludes it would not be able to disprove beyond a reasonable doubt that the NYPD officers' use of force against Mr. Zapantis was justified under New York law. As a result, OAG will not seek charges in this matter.

RECOMMENDATION

As noted above, the NYPD issues an annual Use of Force Report which documents all use of force incidents in a calendar year, including firearms discharges, CEW use, and other uses of force. The sections break down incidents by location, precinct, type, and personnel, among other categories, using graphs, charts, and other data. However, the section on CEW use does not indicate the incidents in which a death occurred.

The report also has four sections on civilian deaths: subjects killed during intentional discharge – adversarial conflict incidents; death in custody; death preceding custody; death no custody contemplated. In order to determine when an incident involving CEW use also involved the death of a civilian, one must read through all four sections on civilian deaths to determine which, if any, incidents involved Taser deployment.

OSI therefore recommends that, in light of public concern about CEW use, NYPD should indicate, in the CEW use section of the annual Use of Force Report, the incidents in which a death occurred.

February 4, 2022

EXHIBIT 1



State of New York

Executive Chamber

No. 147.38

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 - 147.37 to read as follows:

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

(1) 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 George Zapantis on June 21, 2020, in Queens County.



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

BY THE GOVERNOR


Secretary to the Governor

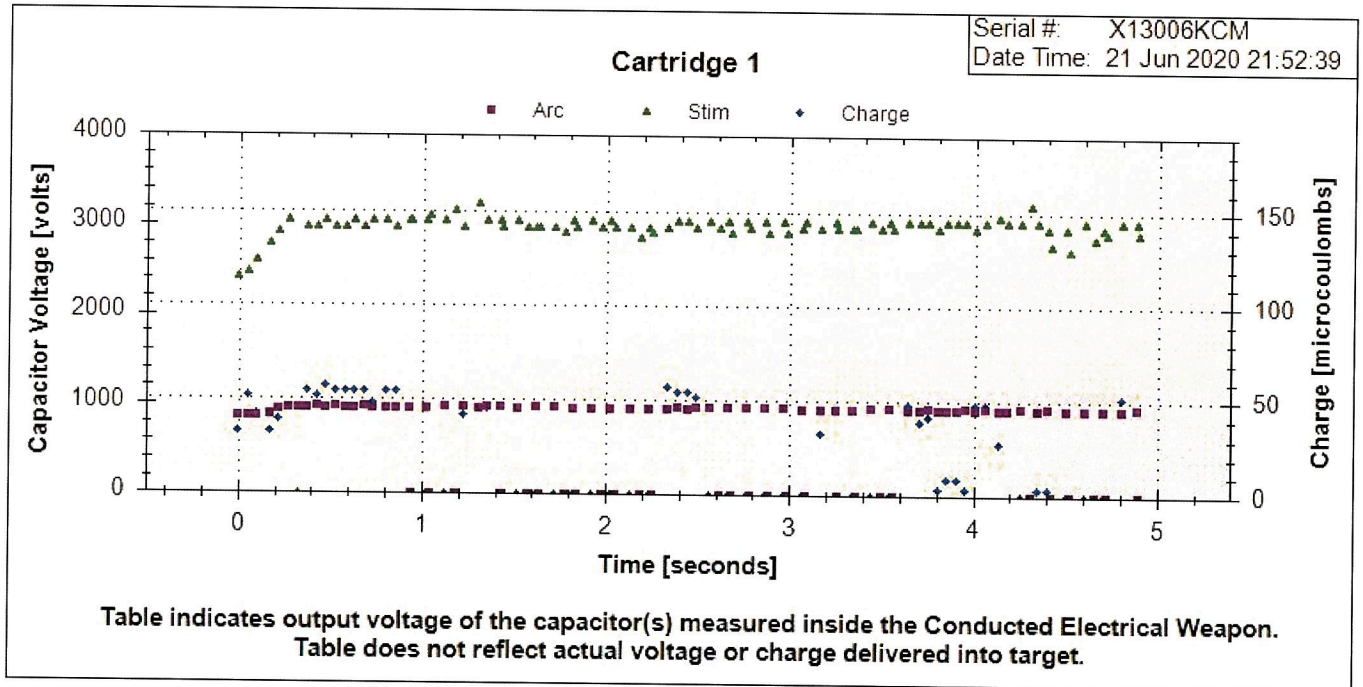


EXHIBIT 2

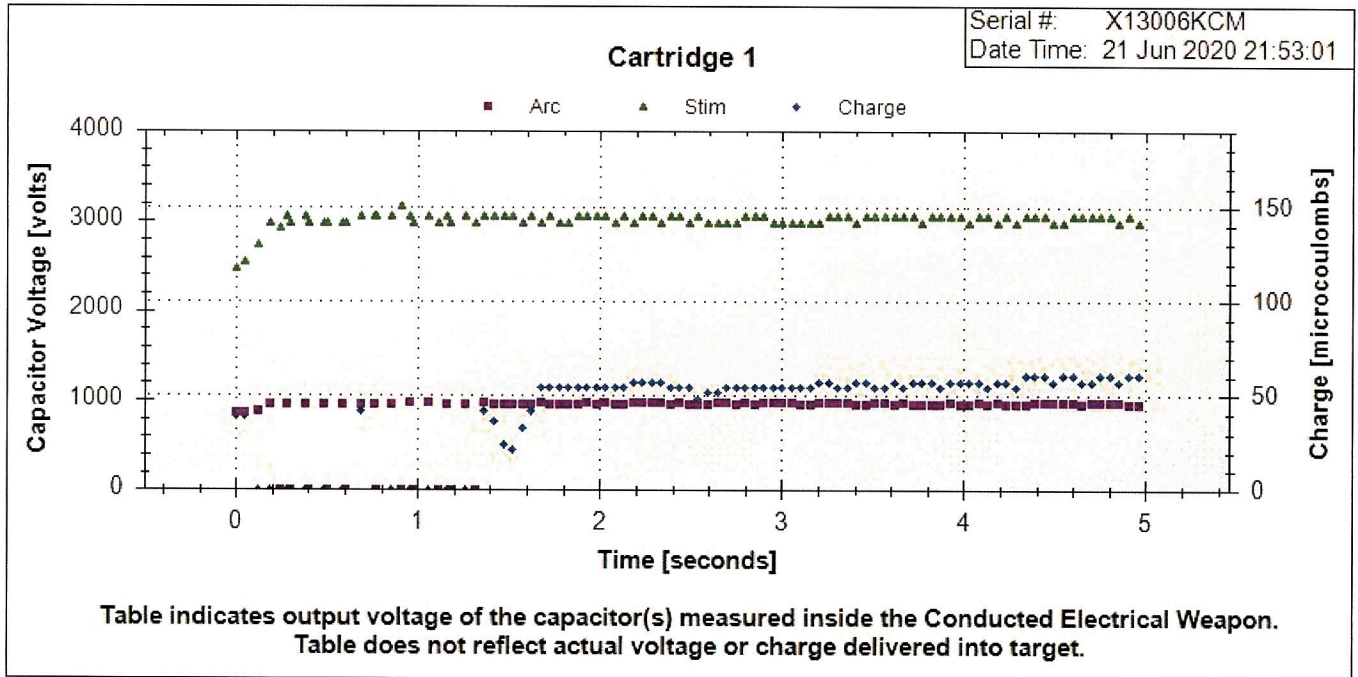
attached are the pulse logs for Tasers: X13006KCM; X13006K8P and X13006H58.

- Be advised when reading the Pulse logs that the lower graph (purple and blue lines) are the indicators for an established connection. If the blue graph line shows a disruption such as dipping below or going from above then beneath the purple graph line that would indicate a break or gap in connectivity. If the blue graph line is level with or above the purple graph line between 50 and 68 Microcoulombs that would indicate a connection at the end of the device. In addition a steady blue graph line would indicate that both probes connected with an object but there is no way to indicate the effectiveness of probe.
- **Taser X13006KCM** deployed at 21:52:39 showed no steady connection.
- **Taser X13006KCM** deployed at 21:53:01 shows a steady/established connection.
- **Taser X13006KCM** deployed at 21:55:46 shows steady/established connection
- **Taser X13006K8P** deployed at 21:52:34 shows steady/established connection.
- **Taser X13006K8P** deployed at 21:52:50 shows disruption/non connectivity.
- **Taser X13006H58** deployed at 21:52:01 shows steady/established connection.
- **Taser X13006H58** deployed at 21:52:12 shows disruption/non connectivity

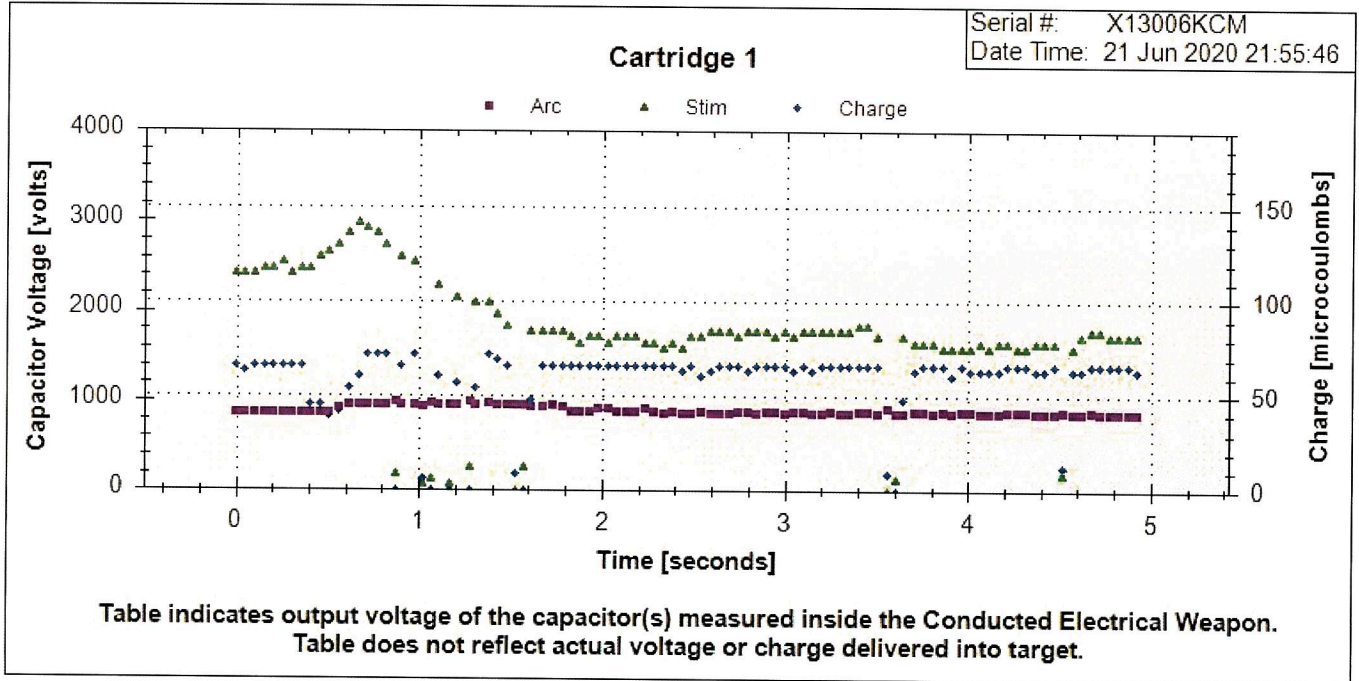
Pulse Log Graph



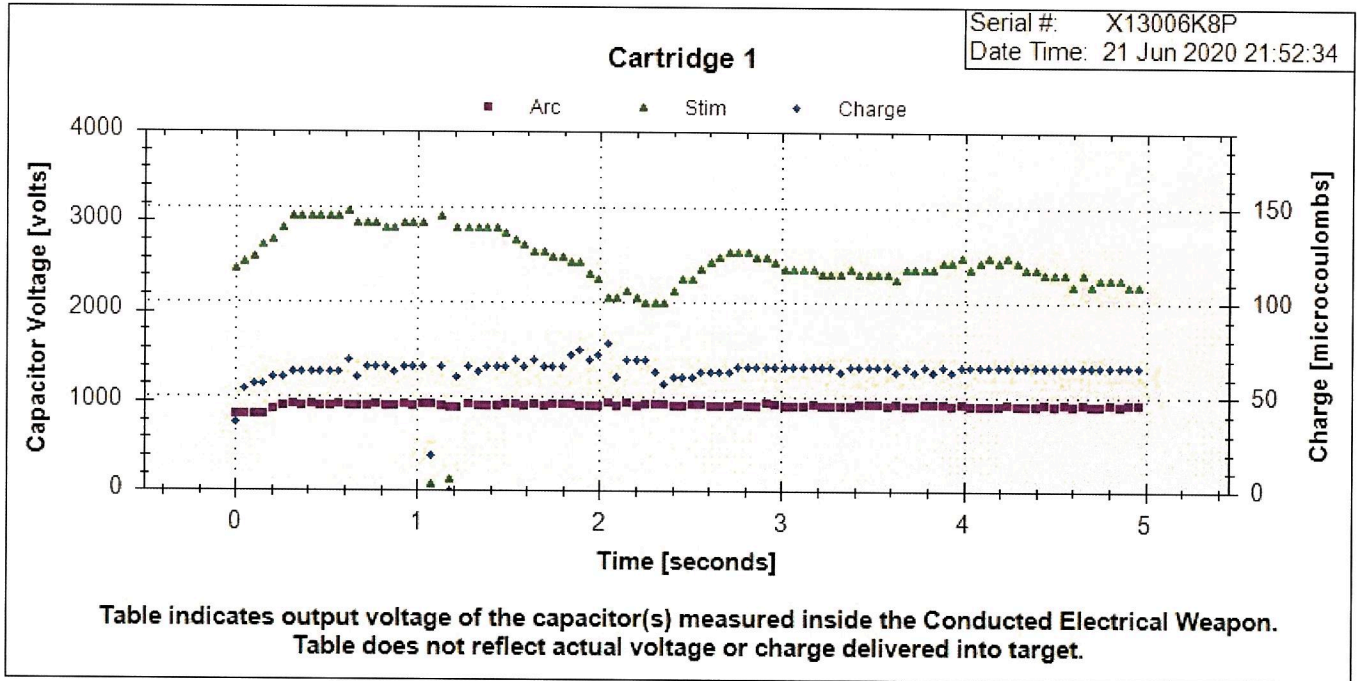
Pulse Log Graph



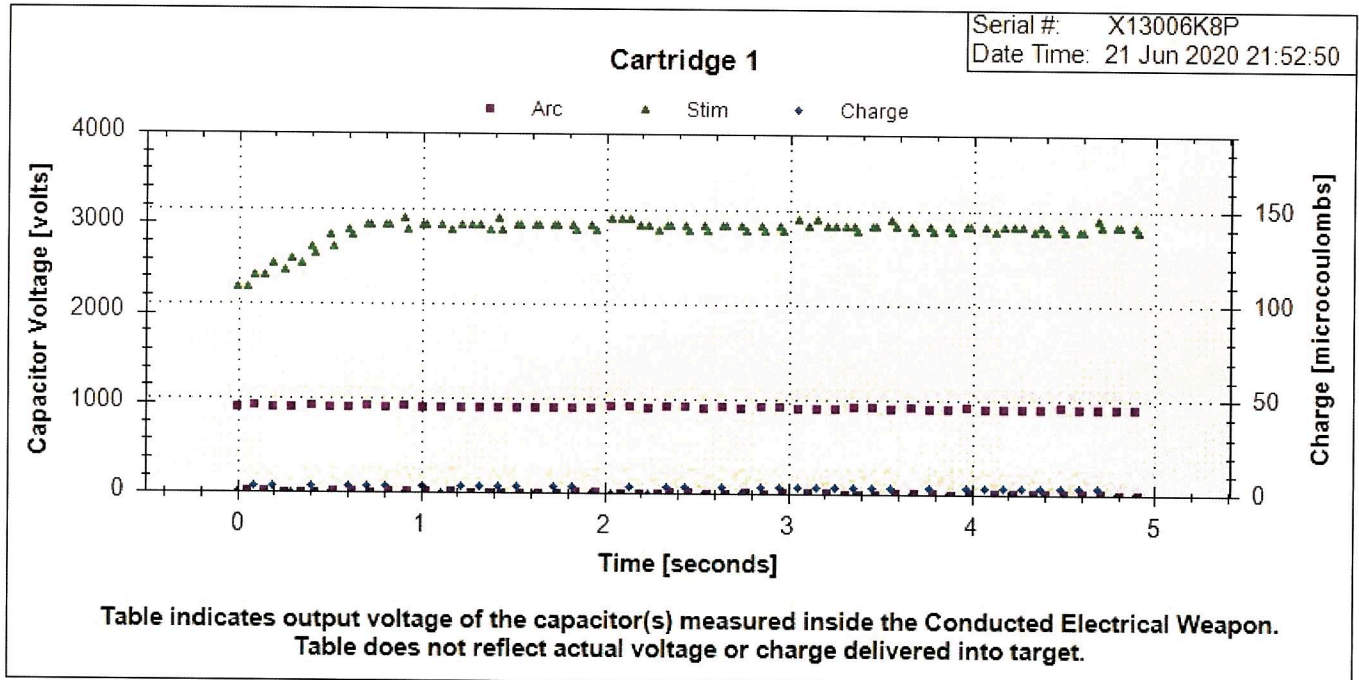
Pulse Log Graph



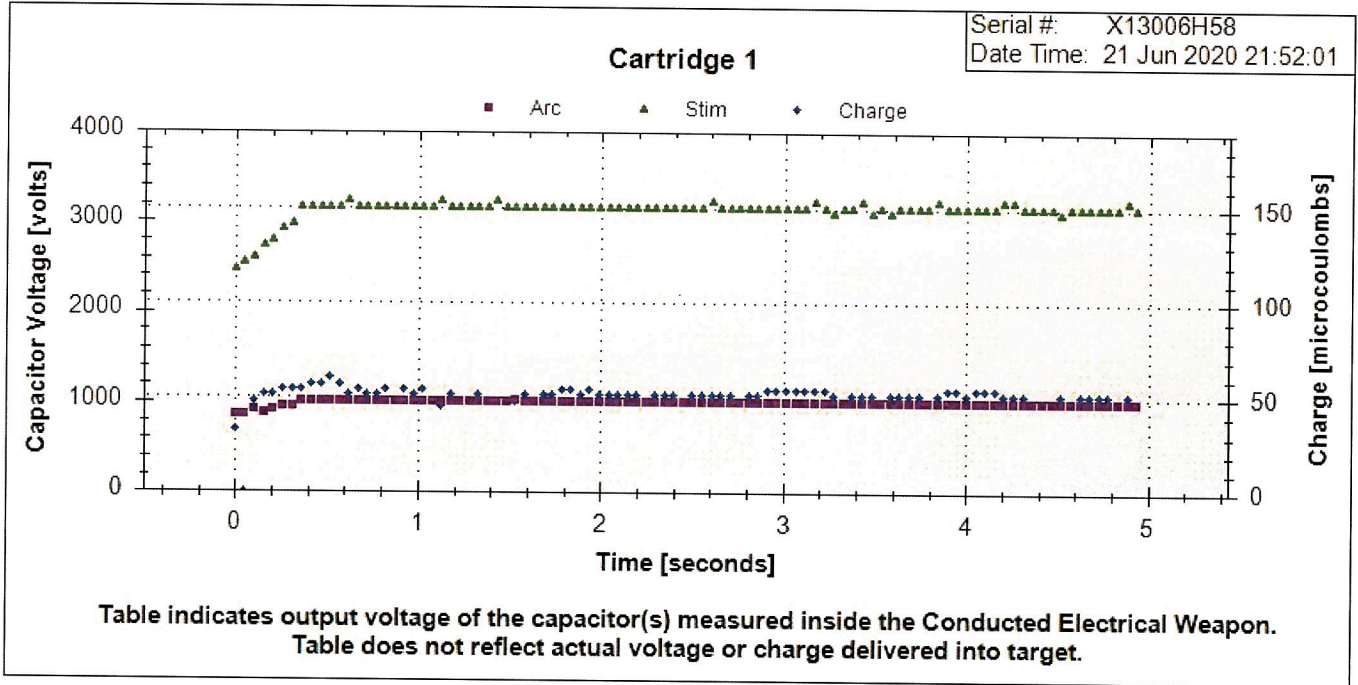
Pulse Log Graph



Pulse Log Graph



Pulse Log Graph



Pulse Log Graph

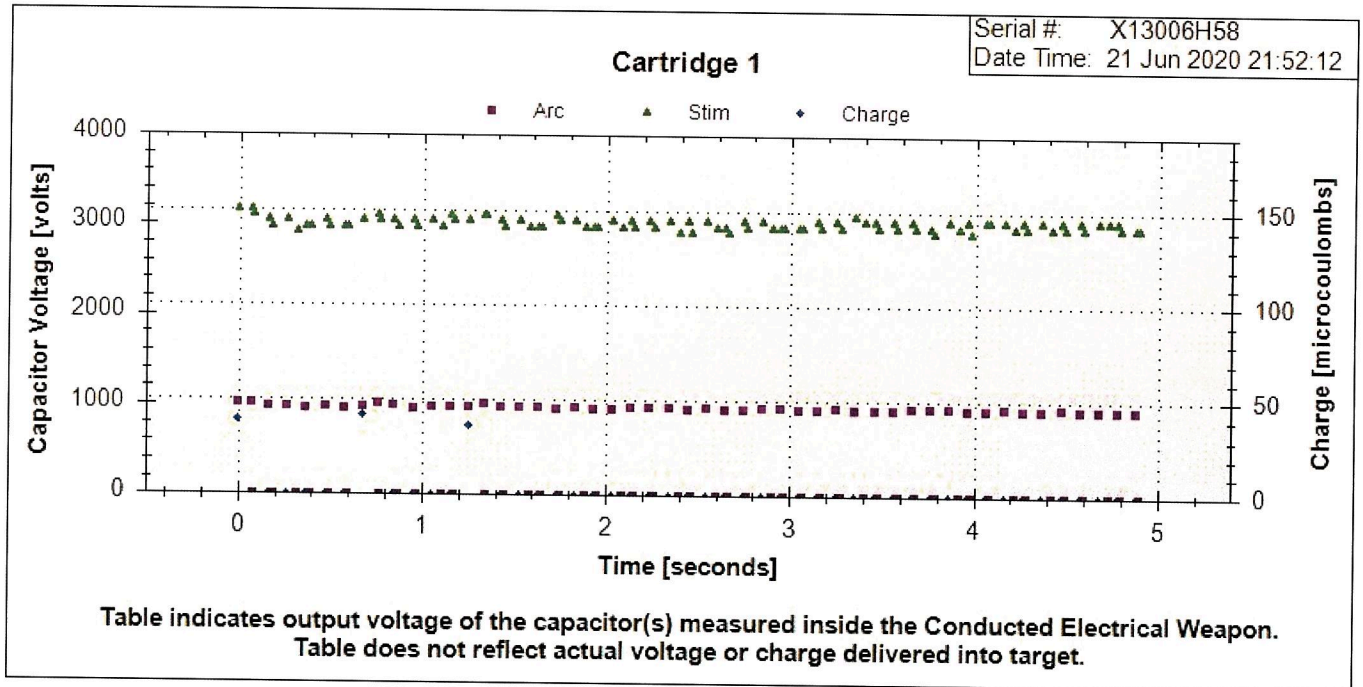


EXHIBIT 3



OFFICE OF CHIEF MEDICAL EXAMINER
CITY OF NEW YORK



REPORT OF AUTOPSY

Name of Decedent: George Zapantis

M.E. Case #: Q20-051745

Autopsy Performed by: Kristen Landi, M.D.

Date of Autopsy: 06/23/2020

FINAL DIAGNOSES

- I. DILATED CARDIOMYOPATHY OF UNDETERMINED ETIOLOGY, 520 GRAMS
 - A. TWO VARIANTS OF UNCERTAIN SIGNIFICANCE, SEE MOLECULAR GENETIC TESTING REPORT

- II. SUDDEN DEATH DURING RESTRAINT AND FOLLOWING CONDUCTED ELECTRICAL WEAPON USE BY POLICE
 - A. DART IN LEFT SIDE OF NECK
 - B. CIRCULAR ABRASIONS WITH PUNCTURES ON THE TORSO AND RIGHT LEG, SEE HISTOLOGY
 - C. BLUNT FORCE TRAUMA OF HEAD, TORSO AND EXTREMITIES
 - 1. ABRASIONS AND CONTUSIONS
 - 2. SUBCUTANEOUS HEMORRHAGE
 - D. SUPERFICIAL INCISED WOUNDS OF HANDS
 - E. HYOID BONE AND LARYNGEAL CARTILAGES WITHOUT INJURY, SEE ANTHROPOLOGY REPORT

 - F. OBESITY, 323 POUNDS (BODY MASS INDEX 42.6)

 - G. SARS-COV-2 POSITIVE
 - A. SEE HISTOLOGY
 - B. SEE NEUROPATHOLOGY REPORT

CAUSE OF DEATH:

CARDIAC ARREST DUE TO DILATED CARDIOMYOPATHY OF UNDETERMINED ETIOLOGY DURING PHYSICAL RESTRAINT BY POLICE INCLUDING CONDUCTED ELECTRICAL WEAPON USE

MANNER OF DEATH:

HOMICIDE (SEE ABOVE)

New York City Office of Chief Medical Examiner
I certify the attached are true copies of document(s) in OCME's possession.

Yvelisse Matias
Signed _____ Date 11/24/20
Yvelisse Matias