



Office of the Bronx District Attorney

Darcel D. Clark

Report of the Investigation into the Fatal Shootings of Antonio Williams and Police Officer Brian Mulkeen

April 9, 2021

Public Integrity Bureau

STATEMENT FROM BRONX DISTRICT ATTORNEY DARCEL D. CLARK

I understand that the Williams family, the Mulkeen family, and the Bronx community will have questions about the procedures, evidence and laws that resulted in the conclusion of this year-long investigation. Transparency is paramount in restoring community trust, especially after death due to gun violence.

Unfortunately, the timeline for completing this investigation was significantly impacted by COVID-19. Shutdowns caused by the pandemic were inevitable, but nothing stood in our way to bring solace to the families affected. We exercised maximum effort and care by being as thorough as possible to bring the facts to light.

By releasing this report, we are sharing the intricate steps that we took to follow the evidence wherever it led, regardless of who it may help or hurt. The findings detailed in this report highlight the importance of the use of force and justification laws in police-involved shootings. Only the legislature is empowered to change laws like those concerning use of force and justification. My charge is to objectively investigate the facts, respect the rule of law and protect constitutional rights. While the report concludes that Mr. Williams was in possession of a loaded firearm during a lawful stop, and it does not find criminal conduct in the use of deadly physical force by the officers involved, the loss of life here presents serious concerns about the NYPD's use of force, defensive tactics and tactical trainings in their interactions with members of the public and incidents of "friendly fire."

After viewing countless hours of body worn camera footage, we can see that police officers indeed have a difficult task – to make life or death decisions within a matter of seconds. Police officers are charged with protecting the community from those who illegally possess guns and those who commit gun violence. Simultaneously, police officers are empowered to use deadly physical force to protect people in situations where there is a proportionate threat. To do this work effectively, police must earn the public trust, and each loss of a loved one in our community is a setback in developing the respectful partnership with those we must protect.

I will continue to build on community engagement and transparency by my Office by exploring the formation of a community advisory council made up of clergy, business leaders, youth, advocates, educators and non-profit stakeholders, and publishing detailed information on our website to explain the policies and protocols of our investigations into the matters involving police accountability. I would welcome an additional review mechanism, like the Office of the New York State Attorney General or an independent prosecutor, to examine the conclusions of my Office's investigations when no criminal charges are brought.

We must work in unison to end the scourge of gun violence. As we examine the report during this somber moment, let us come together in a call to action.

OVERVIEW OF INVESTIGATION

On September 29, 2019, at approximately 12:30 a.m., in front of 1128 East 229th Street in the Bronx, Police Officer Brian Mulkeen (hereinafter, “Officer Mulkeen”)¹ of the New York City Police Department shot Antonio Williams (hereinafter, “Mr. Williams”) to death, and in the moments that followed, at least one fellow member of the New York City Police Department shot and killed Officer Mulkeen.

Members of the New York City Police Department (“NYPD”) 47th precinct immediately responded to the scene. Thereafter, members of the NYPD’s Force Investigation Division (“FID”) and Bronx Homicide responded to the scene and began investigating. The Bronx District Attorney’s Office (hereinafter, “Office”) was notified of a police-involved shooting, and members of the Office’s Public Integrity Bureau responded to the scene.

This Office conducted an in-depth investigation into, not only the events of September 29, 2019, but the events leading up to that date. Throughout the investigation, the Office issued subpoenas for medical records, phone records, New York City Department of Correction records, and New York State Department of Corrections and Community Supervision records, all of which were reviewed and analyzed. The Office also conducted interviews of civilians, NYPD officers that were present on September 29, 2019, and doctors with the Office of the Chief Medical Examiner who performed autopsies on Mr. Williams and Officer Mulkeen. In addition, the Office also reviewed scores of materials and documents, including NYPD records, as well as hours of various video and audio recordings. The results of that investigation are contained herein.

¹ Brian Mulkeen was posthumously promoted to the position of Detective First Grade.

RESULTS OF THE INVESTIGATION – OVERVIEW

Mr. Williams was born on March 19, 1992, and was residing in Endicott, New York at the time of his death. Officer Mulkeen was born on March 3, 1986, and became an NYPD Police Officer on January 9, 2013. He was assigned to the NYPD Patrol Borough Bronx Anti-Crime Unit at the time of his death.

Although a complete discussion of the events leading up to the deaths of Mr. Williams and Officer Mulkeen is presented under FACTUAL SUMMARY, below, what follows is a brief outline of the events that took place on September 29, 2019.

On September 29, 2019, six members of the NYPD's Bronx Borough-Wide Anti-Crime Unit were assigned to patrol the confines of the 47th Precinct. Those officers were divided into two vehicles, with one (hereinafter, "Vehicle One") driven by Police Officer Brian Mahon (hereinafter "Officer Mahon"), with Officer Mulkeen in the front passenger seat and Police Officer Robert Wichers (hereinafter, "Officer Wichers") in the rear. Police Officer Keith Figueroa (hereinafter, "Officer Figueroa") was driving the second vehicle (hereinafter, "Vehicle Two"), with Detective Specialist Daniel Beddows (hereinafter, "Detective Beddows") seated in the front passenger seat and Sergeant Jason Valentino (hereinafter, "Sergeant Valentino") in the rear. Both vehicles were unmarked, and all six officers wore plain clothes that evening, though they were all equipped with body worn cameras.

At approximately 12:23 a.m., Mr. Williams and Williams' associate exited 1141 East 229th Street, walked through a courtyard in the direction of East 229th Street, and stopped in the vicinity of a mailbox and white SUV parked on East 229th Street. Shortly thereafter, the officers in Vehicle One drove past Mr. Williams and Williams' associate and observed suspicious behavior (described herein) and believed that Mr. Williams was in possession of a firearm. After identifying themselves as police officers, they attempted to approach Mr. Williams and Williams' associate, and Mr. Williams immediately began to flee.

Officer Wichers and Officer Mulkeen pursued Mr. Williams on foot, and a struggle ensued. During the struggle, a firearm fell from the area of Mr. Williams' waistband, and he and Officers Mulkeen and Wichers struggled for possession of the unsecured firearm. Ultimately, Mr. Williams regained possession of the firearm, at which point Officer Mulkeen shot Mr. Williams multiple times from close range.

Immediately after Officer Mulkeen discharged his weapon four times, Officer Mulkeen's fifth discharge, and Officer Wichers' only discharge occurred in rapid succession.² Almost immediately thereafter, Detective Beddows discharged his firearm.³

During the struggle, Vehicle Two arrived at the scene, and the three officers exited and began to run in the direction of Mr. Williams and Officers Mulkeen and Wichers. Upon arriving in the vicinity of the struggle, Officer Figueroa, Sergeant Valentino and then Officer Mahon each discharged their respective firearms.⁴

Mr. Williams died as a result of one of the gunshots fired by Officer Mulkeen that entered Mr. Williams' heart. Officer Mulkeen died as the result of a gunshot fired by at least one of his fellow officers.

ANTONIO WILLIAMS' BACKGROUND

Antonio Williams was born on March 19, 1992. He spent his formative years in Haverstraw, in Rockland County, New York. After attending North Rockland High School, Mr. Williams has been gainfully employed; he started his most recent job at a restaurant in Binghamton, NY, in July of 2019,

² BWC Wichers.

³ BWC Wichers; BWC Beddows.

⁴ Of the six police officers who discharged their weapons during the events of September 29, 2019, only Detective Beddows had previously discharged his weapon outside of training situations, and he had done so on two separate occasions. The NYPD reviewed those matters and found Det. Beddows' discharges to be within Department guidelines.

where he continued working until the time of his death.⁵ Mr. Williams is the father of two young children, one born in 2015 and the other in 2018.⁶

BRIAN MULKEEN'S BACKGROUND

Officer Mulkeen was born on March 3, 1986. He was a graduate of Monroe-Woodbury High School, where he served as the senior class president, graduating in the top 20% of his class. Officer Mulkeen then went to Fordham University, where he was the two-time captain of the school's Track and Field team, excelling in the weight throws (shot put, discuss, and hammer). He graduated near the top of his class in 2008 with a baccalaureate degree in Business Administration and began working at Merrill Lynch.⁷

Despite early success in the private sector, Mulkeen began working in police-precincts as a dispatcher while attending the one-year police academy in Kingston, New York. During that time, he applied for a position with the NYPD, and was accepted in 2013.

On January 9, 2013, Officer Mulkeen was appointed to the NYPD.⁸ Following his graduation from the police academy, Officer Mulkeen was assigned as a police officer to the NYPD's 48th Precinct.⁹ Approximately four years later, on April 17, 2017, Officer Mulkeen was appointed to NYPD Patrol Borough Bronx Anti-Crime.¹⁰ During Officer Mulkeen's time as a police officer, he conducted two hundred sixty-eight arrests and received recognition for excellent police duty on five occasions.¹¹

⁵ NYPD October 2, 2019 interview of civilian; NYPD September 30, 2019 interview of owner of Binghamton restaurant; NYPD September 30, 2019 interview of co-worker at Binghamton restaurant; NYPD October 2, 2019 interview of co-worker at Binghamton restaurant; NYPD October 2, 2019 interview of supervisor at Binghamton restaurant.

⁶ NYPD October 2, 2019 interview of civilian; NYPD October 7, 2019 interview of civilian.

⁷ Criminal Repository of Antonio Williams.

⁸ New York City Police Department Personnel Profile Report – Brian Mulkeen.

⁹ New York City Police Department Personnel Profile Report – Brian Mulkeen.

¹⁰ New York City Police Department Personnel Profile Report – Brian Mulkeen.

¹¹ New York City Police Department Personnel Profile Report – Brian Mulkeen.

Prior to September 29, 2019, Officer Mulkeen had never discharged his firearm outside of training situations.¹² In the over six years that Officer Mulkeen was employed by NYPD, only one allegation was made to the Civilian Complaint Review Board against him, but that allegation was not substantiated.¹³ Officer Mulkeen never received any discipline from the NYPD.¹⁴

FACTUAL SUMMARY

On Thursday, September 26, 2019, at approximately 7:44 p.m., four shots were fired in front of 1132 East 229th Drive South, and two shots were fired in the rear of 3924 Ely Avenue in the Edenwald section of the Bronx, within the confines of the 47th precinct.¹⁵ Police officers responding to 1132 East 229th Drive recovered two nine millimeter shell casings at the location and a black H&R Inc. 22 caliber revolver containing nine spent shell casings in the rear of 1153 East 229th Street, one fired bullet, and two .40 Smith and Wesson shell casings.¹⁶ No arrests were made in connection to the shootings.

On Friday, September 27, 2019, at approximately 7:00 p.m., Mr. Williams arrived at the Edenwald Houses¹⁷ and entered the building located at 1141 East 229th Street, Bronx, New York.¹⁸ Once inside of the building, Mr. Williams entered an apartment on the 12th floor, which was occupied

¹² New York City Police Department Personnel Profile Report – Brian Mulkeen.

¹³ Civilian Complaint Review Board – Brian Mulkeen.

¹⁴ New York City Police Department Central Personnel Index – Brian Mulkeen.

¹⁵ BXDA Crime Strategies Unit – 47th Precinct Violence Edenwald/Baychester Housing Developments.

¹⁶ NYPD 047 Precinct DD5 – Complaint No. 2019-047-009776; NYPD ECT DD5 – Complaint No. 2019-047-009776.

¹⁷ The Edenwald Houses comprise 42 separate buildings in the Edenwald section of Bronx County that are owned and managed by the New York City Housing Authority.

¹⁸ NYCHA Camera B15C02-1141E 229St-Walkway.

by his godmother and her children, including Williams' associate.¹⁹ Mr. Williams had traveled to the Bronx and stayed in his godmother's apartment on weekends in the past.²⁰

I. SEPTEMBER 28, 2019

On September 28, 2019, Officer Mulkeen, Officer Mahon, Officer Wichers, Officer Figueroa, Detective Beddows, and Sergeant Valentino were assigned to patrol the Edenwald Houses within the confines of the 47th Precinct as a result of the shootings on September 26, 2019.²¹ The officers all wore plain clothes that evening, were equipped with body worn cameras, and were carrying their service firearms.²² Officer Mulkeen, Officer Wichers, Officer Mahon, and Detective Beddows all carried Glock 19s, Officer Figueroa carried a Sig Sauer P226, and Sergeant Valentino carried a Smith & Wesson 5946 that evening.²³

Officer Mulkeen, Officer Mahon, and Officer Wichers were riding together in Vehicle One, an unmarked police vehicle identified as RMP 1367, with Officer Mahon driving, Officer Mulkeen seated in the front passenger seat, and Officer Wichers in the back seat behind Officer Mahon.²⁴ Officer Figueroa, Detective Beddows, and Sergeant Valentino were riding in Vehicle Two, an unmarked vehicle identified as RMP 656, with Officer Figueroa driving, Detective Beddows seated in the front passenger seat, and Sergeant Valentino in the back seat.²⁵

¹⁹ Interview of Williams' godmother, 1/29/2020.

²⁰ Interview of Williams' godmother. 1/29/2020.

²¹ Interview of Officer Mahon. 11/26/2019; Interview of Officer Wichers. 11/26/2019; Interview of Officer Figueroa. 11/26/2019; Interview of Detective Beddows. 11/20/2019; Interview of Sergeant Valentino. 11/22/2019.

²² Force Investigation Division - Preliminary Investigation Worksheet.

²³ Force Investigation Division - Preliminary Investigation Worksheet.

²⁴ Bronx Borough Crime Roll Call; Interview of Officer Mahon. 11/26/2019; Interview of Officer Wichers. 11/26/2019; BWC Wichers.

²⁵ Bronx Borough Crime Roll Call; Interview of Officer Figueroa, 11/26/2019; Interview of Detective Beddows, 11/20/2019; Interview of Sergeant Valentino, 11/22/2019.

Generally, within each vehicle, each officer has a role.²⁶ The roles include driver, runner, and spotter.²⁷ The driver is tasked with driving the vehicle, the runner is typically the fastest of the team and the first to chase if a pursuit begins, and the spotter surveys the area being patrolled for suspicious activity.²⁸ Within Vehicle One Officer Mahon was the driver, Officer Wichers was the runner, Officer Mulkeen was the spotter.²⁹ Within Vehicle Two, Officer Figueroa was the driver, Detective Beddows was the runner and Sergeant Valentino was the spotter.³⁰

II. SEPTEMBER 29, 2019 – THE INCIDENT

On September 29, 2019, at approximately 12:23 a.m., Mr. Williams exited the apartment building at 1141 East 229th Street in the Edenwald Houses, walked through the courtyard and stopped in the vicinity of a mailbox and white SUV parked on East 229th Street.³¹ Williams' associate ordered a car from Laconia Car Service to take Mr. Williams to 691 FDR Drive on the Lower East Side of Manhattan.³²

Minutes later, while traveling eastbound on East 229th Street in Vehicle One, Officers Mulkeen, Wichers, and Mahon noticed Mr. Williams and Williams' associate standing by a mailbox on the north side of East 229th Street, across from where the September 26, 2019 shooting occurred.³³ The officers drove by Mr. Williams and Williams' associate and then, seconds later at 12:29:10 a.m.,³⁴

²⁶ Interview of Sergeant Valentino, 11/22/2019.

²⁷ Interview of Sergeant Valentino, 11/22/2019.

²⁸ Interview of Sergeant Valentino, 11/22/2019.

²⁹ Interview of Officer Mahon, 11/26/2019.

³⁰ Interview of Sergeant Valentino, 11/22/2019.

³¹ NYCHA Camera B15C02-1141E 229St-Walkway; B22C04-1132 229Dr_S Compactor 1.

³² NYPD Interview of William's associate; Laconia Cab Trip Sheet.

³³ Interview of Officer Wichers, 11/26/2019; Interview of Officer Mahon, 11/26/2019; BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

³⁴All NYPD body worn cameras are synchronized to Axon's time server, which is accurate and synched to Internet Time.

Officer Mahon made a U-turn and proceeded westbound in the direction of the two men, pulling up onto the sidewalk.³⁵ The map below indicates the general position of Mr. Williams and his associate (in yellow), and the course of Vehicle 1 (in blue).



Officer Mahon and Officer Wichers observed Mr. Williams and Williams’ associate look in the direction of the officers, wide-eyed and frozen, and noticed Mr. Williams appear to say something to Williams’ associate, which they believed was Mr. Williams alerting William’s associate that they (the officers in Vehicle One) were law enforcement.³⁶ Officer Mahon Mr. Williams maneuvered himself in a manner to keep the mailbox between himself and the officers and Officer Wichers observed Mr. Williams adjusting his waistband.³⁷ While still in Vehicle One, Officer Wichers called out “Police” and observed Mr. Williams digging in his waistband.³⁸ Around the same time, Officer Mahon called out and said “Yo, police. Everything ok?”³⁹

³⁵ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

³⁶ Interview of Officer Wichers, 11/26/2019; Interview of Officer Mahon, 11/26/2019.

³⁷ Interview of Officer Wichers, 11/26/2019; Interview of Officer Mahon, 11/26/2019.

³⁸ Interview of Officer Wichers, 11/26/2019.

³⁹ Interview of Officer Wichers, 11/26/2019; Interview of Officer Wichers, 2/6/2020; BXDA Interview of Officer Mahon, 11/26/2019.

At 12:29:19 a.m., Officer Wichers exited the vehicle and Mr. Williams almost immediately turned and started running on the sidewalk westbound, away from the officers; Williams' associate remained standing where he was.⁴⁰ Officer Wichers immediately began to pursue Mr. Williams on foot.⁴¹ Seconds later, Officer Mulkeen also exited the vehicle and joined in the foot-pursuit of Mr. Williams.⁴² As the foot-pursuit began, Officer Mahon was putting the location over the radio when he observed Mr. Williams reach his right hand into the area of his waistband, indicating to Officer Mahon that Mr. Williams was in possession of a firearm.⁴³ Officer Mahon exclaimed over the radio "Oh fuck. He's got it!" referring to his belief that Mr. Williams was in possession of a firearm.⁴⁴

At 12:29:25 a.m., Mr. Williams cut between two vehicles parked on East 229th Street and began to run southbound across the street as Officer Wichers continued pursuit.⁴⁵ At 12:29:26 a.m. Mr. Williams reached his left hand toward his waist as he continued running south across East 229th Street, and continued reaching toward his waistband until he reached the opposite sidewalk.⁴⁶ Mr. Williams then turned right and ran westbound on the sidewalk until he reached the walkway between 1128 East 229th Street and 1132 East 229th Street at 12:29:31 a.m.⁴⁷ Mr. Williams then turned left and began running on that walkway, which runs south between the two buildings.⁴⁸ The map below indicates the approximate path of Mr. Williams' flight (in yellow).

⁴⁰ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁴¹ Interview of Officer Wichers, 11/26/2019; B22C04-1132 229Dr_S Compactor 1.

⁴² B22C04-1132 229Dr_S Compactor 1.

⁴³ Interview of Officer Mahon, 11/26/2019.

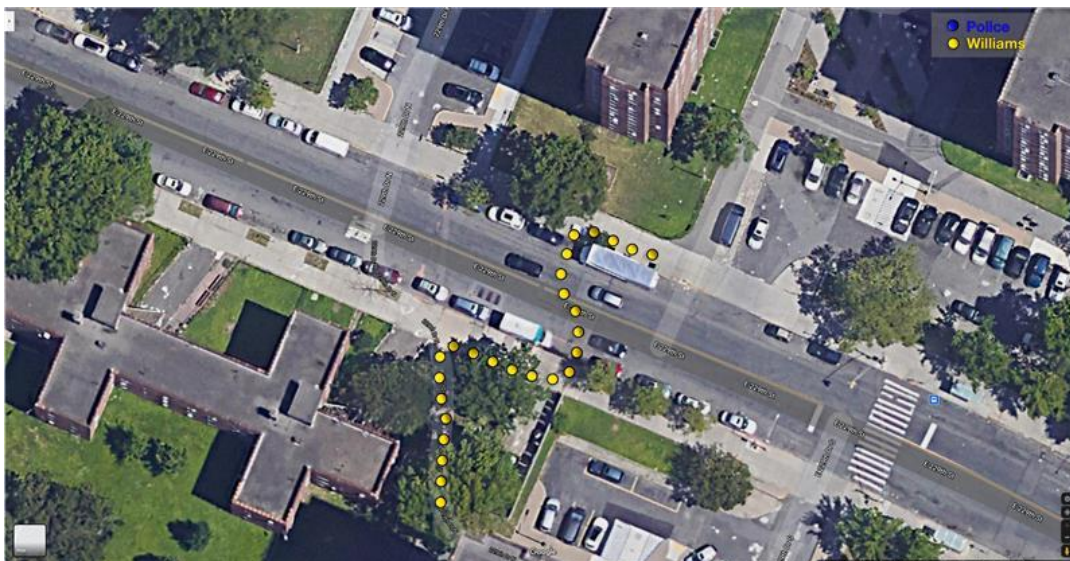
⁴⁴ Patrol Bureau Bronx Back Space; Interview of Officer Mahon, 11/26/2019.

⁴⁵ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁴⁶ BWC Wichers; Interview of Officer Wichers, 11/26/2019; Interview of Officer Mahon, 11/26/2019.

⁴⁷ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁴⁸ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.



At 12:29:33 a.m., Officer Wichers caught up to Mr. Williams on the walkway and grabbed Mr. Williams’ shirt from behind.⁴⁹ Officer Wichers, at Mr. Williams’ back, then attempted to grab Mr. Williams’ hands, while telling Mr. Williams “Let me see your hands!”⁵⁰ Officer Wichers was focused on getting Mr. Williams’ hands behind his back, but was unable to do so.⁵¹ Seconds later, Officer Wichers yelled “he bit me!” and Officer Mahon yelled over the radio “Rob, I can’t catch you!” at which time Officer Wichers yelled, a second time, “he bit me!”⁵² Officer Mahon then radioed their location as 1135 East 229th Street.⁵³

The officers assigned to Vehicle Two had stopped at the 47 Precinct Stationhouse, located at the corner of Laconia Avenue and East 229th Street (approximately 1/10 of a mile away) to use the restroom when they heard Officer Mahon’s radio transmissions, and immediately headed in the direction of 1135 East 229th Street.⁵⁴

⁴⁹ BWC Wichers.

⁵⁰ Interview of Officer Wichers, 11/26/2019 and BWC Wichers.

⁵¹ Interview of Officer Wichers, 11/26/2019.

⁵² BWC Wichers; Patrol Bureau Bronx Back Space.

⁵³ BWC Wichers; BWC Mahon; Patrol Bureau Bronx Back Space.

⁵⁴ Interview of Detective Beddows, 11/20/2019; Interview of Sergeant Valentino, 11/22/2019.

By 12:29:40 a.m. Officer Mulkeen reached Officer Wichers and joined the ongoing struggle with Mr. Williams and an officer screamed “He’s reaching, he’s reaching!”⁵⁵ The struggle continued for the next four seconds and at 12:29:46 a.m. an officer again yelled “he’s reaching, he’s reaching!”⁵⁶ Officer Wichers recalled that Mr. Williams was reaching for his waistband.⁵⁷ Next, a male voice is heard yelling “Fuck! Fuck!” and approximately four seconds later Officer Wichers yelled, “Get ‘em Mulk!”, referring to Officer Mulkeen by his nickname “Mulk.”⁵⁸ Mr. Williams was holding onto a fence directly in front of him as Officer Wichers and Officer Mulkeen struggled to put Mr. Williams’ hands behind his back and place him in handcuffs.⁵⁹ At 12:30:02 a.m., Officer Wichers and Officer Mulkeen were able to bring Mr. Williams to the ground.⁶⁰

Meanwhile, across the street at 12:29:59 a.m., Officer Mahon approached Williams’ associate, who remained by the mailbox with his hands raised in the air.⁶¹

When the officers brought Mr. Williams to the ground, Officer Mulkeen fell onto his back and left side, his head to the west, and his feet toward the east.⁶² Mr. Williams fell on top of Officer Mulkeen, face down, with his head facing southeast and feet toward the northwest.⁶³ Officer Wichers remained on his feet, standing to the north of both Officer Mulkeen and Mr. Williams.⁶⁴

⁵⁵ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁵⁶ BWC Wichers; B22C04-1132 229Dr_S Compactor 1. When recounting the struggle, Officer Wichers recalled someone yelling “he’s reaching for it!” but could not recall if it was himself or Officer Mulkeen speaking.

⁵⁷ Interview of Officer Wichers, 11/26/2019.

⁵⁸ BWC Wichers.

⁵⁹ BWC Wichers.

⁶⁰ BWC Wichers.

⁶¹ BWC Mahon; Interview of Officer Mahon, 11/26/2019.

⁶² BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁶³ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁶⁴ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

As they fell to the ground and continued to struggle, at 12:30:05 a.m., a firearm fell to the ground from the area of Mr. Williams' waistband and made a sound as it struck the pavement.⁶⁵ Officer Wichers saw the firearm lying unsecured on the ground, within Mr. Williams' grabbing distance.⁶⁶ Officer Mulkeen turned onto his left side at this point, and Mr. Williams was still laying over him, such that Officer Mulkeen was facing Mr. Williams' back.⁶⁷ Both Officer Mulkeen and Mr. Williams each reached for the unsecured firearm at this point, Officer Mulkeen with his left hand and Mr. Williams with his right hand.⁶⁸

Approximately three seconds after the firearm fell to the ground, at 12:30:08 a.m., Officer Wichers screamed in a panicked voice "He's reaching for it! He's reaching for it!"⁶⁹ Mr. Williams rolled in the direction of the unsecured firearm and further from Officer Mulkeen's grasp.⁷⁰ Officer Wichers continued to scream "He's reaching for it!" while Officer Mulkeen and Mr. Williams continued to struggle for possession of the firearm.⁷¹ Officer Wichers could see Officer Mulkeen and Mr. Williams both reaching toward the unsecured firearm, struggling to gain possession.⁷² Immediately after, Officer Wichers began striking Mr. Williams in the body and head in an attempt to stop him from reaching for the firearm.⁷³

⁶⁵ BWC Wichers; Interview of Officer Wichers, 11/26/2019.

⁶⁶ Interview of Officer Wichers, 11/26/2019.

⁶⁷ BWC Wichers; B22C04-1132 229Dr_S Compactor 1; Interview of Officer Wichers, 11/26/2019.

⁶⁸ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁶⁹ BWC Wichers.

⁷⁰ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁷¹ BWC Wichers; B22C04-1132 229Dr_S Compactor 1, Interview of Officer Wichers, 11/26/2019.

⁷² Interview of Officer Wichers, 11/26/2019.

⁷³ Interview of Officer Wichers, 11/26/2019; BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

At 12:30:13 a.m., Officer Wichers frantically yelled in a high-pitched voice “Mulk!” and then continued to strike Mr. Williams.⁷⁴

At approximately 12:30:14 a.m., Vehicle Two arrived at the location and Detective Beddows exited the front passenger side of Vehicle Two and ran toward the scene of the struggle.⁷⁵ Detective Beddows saw Officer Mahon point in the direction of where Officer Mulkeen, Officer Wichers, and Mr. Williams were struggling and heard Officer Mahon yell that the officers were chasing a man with a gun.⁷⁶ Detective Beddows recalled observing three bodies bunched together on the ground struggling.⁷⁷ He recognized Officer Mulkeen as the body closest to him, an unknown individual in the middle, and Officer Wichers to the right.⁷⁸ Seconds later, at 12:30:17 a.m., Officer Wichers yelled to Officer Mulkeen, for a final time, “Mulk! Mulk!” with panic in his voice.⁷⁹ Officer Wichers saw Officer Mulkeen and Mr. Williams both had their hands on the unsecured firearm.⁸⁰

Officer Mulkeen, keeping his left hand on the unsecured firearm, then drew his firearm with this right hand.⁸¹ At this point, Mr. Williams’ hand remained on the firearm. Mr. Williams, who had been on his hands and knees, began to get up into a kneeling position, turning southward, his back toward Office Mulkeen and East 229th Street.⁸² Officer Mulkeen continued his efforts to gain control of the firearm with his left hand, and with his right hand, he moved his firearm close to the body of

⁷⁴ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁷⁵ BWC Beddows; BWC Valentino.

⁷⁶ Interview of Detective Beddows, 11/20/2019.

⁷⁷ Interview of Detective Beddows, 11/20/2019.

⁷⁸ Interview of Detective Beddows, 11/20/2019.

⁷⁹ BWC Wichers.

⁸⁰ Interview of Officer Wichers, 11/26/2019.

⁸¹ B22C04-1132 229Dr_S Compactor 1.

⁸² B22C04-1132 229Dr_S Compactor 1

Mr. Williams.⁸³ Officer Mulkeen discharged the first round from his firearm at Mr. Williams at 12:30:21 a.m.⁸⁴ At that point, Williams was on his knees facing south, with his left side close to Officer Mulkeen's firearm.⁸⁵ After the first shot was fired, however, Mr. Williams fell backwards, his back on top of Officer Mulkeen.⁸⁶

The officers and Mr. Williams struggled for the loose firearm for fifteen seconds before Officer Mulkeen fired his first round.⁸⁷ He then discharged four more rounds within the next three seconds.⁸⁸ As will be discussed, all fifteen rounds fired by the six officers, including Officer Mulkeen, were discharged within eight seconds.

By the time Officer Mulkeen had fired his first round, Detective Beddows was running down the walkway toward the struggle.⁸⁹ Sergeant Valentino had exited Vehicle Two and was running across East 229th Street toward the struggle.⁹⁰ Within the same second, Officer Mulkeen discharged his firearm for a second time, while still lying on the ground on his back, and Officer Wichers, believing Mr. Williams was shooting, took a step back from the struggle.⁹¹

Detective Beddows continued approaching, and Sergeant Valentino and Officer Figueroa, who had also exited Vehicle Two, were on the sidewalk of East 229th Street, opposite of Williams'

⁸³ B22C04-1132 229Dr_S Compactor 1.

⁸⁴ B22C04-1132 229Dr_S Compactor 1.

⁸⁵ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁸⁶ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁸⁷ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁸⁸ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

⁸⁹ BWC Beddows; B22C04-1132 229Dr_S Compactor 1.

⁹⁰ BWC Valentino.

⁹¹ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

associate and Officer Mahon, with Officer Figueroa immediately in front of Sergeant Valentino, placing Officer Figueroa slightly closer to the location of the struggle than Sergeant Valentino.⁹²

Officer Wichers now had his firearm drawn and faced the direction of Mr. Williams.⁹³ Detective Beddows recalled hearing gunshots and not knowing where the gunshots were coming from as he continued to approach.⁹⁴

The next second, at 12:30:22 a.m., Officer Mulkeen discharged his firearm a third time as Mr. Williams remained atop Officer Mulkeen and Officer Wichers' firearm remained drawn.⁹⁵ At the same time, Officer Mahon turned away from Williams' associate and faced south in the direction of the gunshots.⁹⁶ Detective Beddows was now close to the continued struggle between Officer Mulkeen and Mr. Williams, who remained on the ground, and Officer Wichers, who was standing over Officer Mulkeen and Mr. Williams.⁹⁷ Officer Figueroa and Sergeant Valentino were still on the sidewalk just next to East 229th Street.⁹⁸

Officer Mulkeen remained lying on his back and Mr. Williams' body remained atop Officer Mulkeen.⁹⁹ Officer Mulkeen discharged his firearm at Mr. Williams a fourth time.¹⁰⁰

At 12:30:23 a.m., Mr. Williams' body remained atop Officer Mulkeen, but began to roll toward the ground on Officer Mulkeen's left side.¹⁰¹ Then, there were two shots fired in rapid succession; one

⁹² BWC Beddows; BWC Valentino; BWC Figueroa; BWC Mahon.

⁹³ BWC Wichers.

⁹⁴ Interview of Detective Beddows, 11/20/2019.

⁹⁵ BWC Wichers; BWC Beddows.

⁹⁶ BWC Mahon; B22C04-1132 229Dr_S Compactor 1.

⁹⁷ BWC Wichers; BWC Beddows; B22C04-1132 229Dr_S Compactor 1.

⁹⁸ BWC Valentino.

⁹⁹ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

¹⁰⁰ BWC Wichers; BWC Beddows.

¹⁰¹ BWC Wichers; BWC Beddows.

was Officer Mulkeen's final shot that he fired while lying on his back into the back of Mr. Williams' head.¹⁰² The other was Officer Wichers' only discharge, which he fired from a few feet away from Officer Mulkeen and Mr. Williams.¹⁰³ At the same time, Officer Mulkeen pushed Mr. Williams off of him and to his left.¹⁰⁴ Detective Beddows had arrived at the struggle and his gun was drawn and held in front of his body in the direction of Mr. Williams.¹⁰⁵ Mr. Williams' body continued to travel toward the left side of Officer Mulkeen, rolled off Officer Mulkeen and onto the ground, and stopped facedown at which point Mr. Williams ceased all movement.¹⁰⁶ Officer Figueroa and Sergeant Valentino continued to run on the sidewalk in the direction of Officer Mulkeen, Officer Wichers, Detective Beddows, and Mr. Williams.¹⁰⁷

In total, Officer Mulkeen discharged his firearm at Mr. Williams five times in about three seconds, as Officer Mulkeen was on his back with Mr. Williams on top of him.¹⁰⁸

By 12:30:24 a.m., one second after Officer Mulkeen's final discharge, Detective Beddows and Officer Wichers remained within feet of Officer Mulkeen and Mr. Williams, with their guns still drawn.¹⁰⁹ Officer Figueroa was on the sidewalk with his gun drawn and Sergeant Valentino was on the sidewalk to the left side of Officer Figueroa.¹¹⁰ Officer Figueroa's firearm was aimed in the direction of Officer Mulkeen, Officer Wichers, Detective Beddows, and Mr. Williams.¹¹¹ Officer Mahon

¹⁰² BWC Wichers.

¹⁰³ BWC Wichers.

¹⁰⁴ BWC Wichers; B22C04-1132 229Dr_S Compactor 1

¹⁰⁵ BWC Beddows.

¹⁰⁶ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

¹⁰⁷ BWC Valentino.

¹⁰⁸ BWC Wichers.

¹⁰⁹ BWC Wichers; BWC Beddows.

¹¹⁰ BWC Valentino.

¹¹¹ BWC Valentino.

continued running across the street in the direction of the other officers.¹¹² Mr. Williams remained motionless and Officer Mulkeen, still on his back, began to roll to his right, away from Mr. Williams and in the direction of East 229th Street.¹¹³ Within the next second, Detective Beddows discharged his firearm at Mr. Williams, as Mr. Williams' body was rolling off of Officer Mulkeen, from within feet of Mr. Williams and Officer Mulkeen.¹¹⁴ At least one of the officers on the sidewalk of East 229th Street discharged their firearm at nearly the exact moment that Detective Beddows discharged his firearm.¹¹⁵ Officer Mulkeen's body immediately went rigid as he was struck in the head by the gunshot discharged from the sidewalk of East 229th Street.¹¹⁶

The next second, at 12:30:25 a.m., Detective Beddows stepped back from Mr. Williams and Officer Mulkeen as both remained motionless on the ground.¹¹⁷ Officer Mahon continued to run across East 229th Street in the direction of the gunshots.¹¹⁸ Sergeant Valentino was still on the sidewalk and Officer Figueroa was on the sidewalk to the right of Sergeant Valentino.¹¹⁹ Within a second, multiple gunshots were heard as Detective Beddows continued backing away from Mr. Williams and Officer Mulkeen.¹²⁰ During the next four seconds, multiple shots were fired from the sidewalk of East 229th Street as Detective Beddows screamed multiple times "Stop shooting!", while Officer Wichers radioed "Shots fired!" multiple times.¹²¹ At 12:30:29 a.m., approximately eight seconds after Officer

¹¹² BWC Valentino.

¹¹³ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

¹¹⁴ BWC Wichers; BWC Beddows.

¹¹⁵ BWC Wichers; BWC Beddows.

¹¹⁶ BWC Wichers; BWC Beddows.

¹¹⁷ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

¹¹⁸ BWC Wichers; B22C04-1132 229Dr_S Compactor 1.

¹¹⁹ BWC Valentino.

¹²⁰ BWC Wichers.

¹²¹ BWC Wichers; Patrol Bureau Bronx Back Space.

Mulkeen discharged his firearm for the first time, the final two gunshots were fired.¹²² Officers continued to yell “stop shooting” and at 12:30:34 a.m. Officer Wichers radioed for a rush on an ambulance.¹²³

Officer Mahon was the first officer to reach Officer Mulkeen, at approximately 12:30:40 a.m., as the other officers approached and Officer Wichers exclaimed “he was grabbing the gun!”¹²⁴ Officer Mulkeen was on his back, with his head in a grassy area just over the curb of the walkway.¹²⁵ Realizing that Officer Mulkeen had been struck twice by gunfire, once in his hip and once in his head, the officers began yelling to Officer Mulkeen, shining a flashlight in his eyes trying to get him to respond, but Officer Mulkeen remained unresponsive.¹²⁶ Additional radio transmissions were made during this time.¹²⁷ Eventually, at 12:30:50 a.m., Williams’ associate, who had remained next to the mailbox, turned and ran back to his apartment at 1141 East 229th Street.¹²⁸

At approximately 12:31:08 a.m., Sergeant Valentino approached Mr. Williams, whose body came to rest, face down, several feet away from Officer Mulkeen, and began to place him in handcuffs by grabbing Mr. Williams arms.¹²⁹ Mr. Williams did not appear to be conscious at this point.¹³⁰ While cuffing Mr. Williams, a male voice yelled “Where’s the gun!” followed by “He’s got a gun! He’s got a gun!” as the officers continued to yell to rush the ambulance.¹³¹ As Sergeant Valentino finished

¹²² BWC Wichers; Patrol Bureau Bronx Back Space.

¹²³ BWC Wichers; BWC Mahon; Patrol Bureau Bronx Back Space.

¹²⁴ BWC Wichers; BWC Mahon.

¹²⁵ BWC Wichers; BWC Beddows; BWC Mahon.

¹²⁶ BWC Wichers; BWC Beddows; BWC Valentino; BWC Mahon; BWC Figueroa.

¹²⁷ BWC Wichers; BWC Beddows; BWC Valentino; BWC Mahon; BWC Figueroa; Patrol Bureau Bronx Back Space.

¹²⁸ B22C04-1132 229Dr_S Compactor 1; NYCHA Camera B15C02-1141E 229th-Walkway.

¹²⁹ BWC Wichers; BWC Valentino; B22C04-1132 229Dr_S Compactor 1.

¹³⁰ BWC Wichers; BWC Valentino; B22C04-1132 229Dr_S Compactor 1.

¹³¹ BWC Wichers; BWC Beddows; BWC Valentino; BWC Mahon.

handcuffing Mr. Williams, numerous officers from the 47th Precinct began arriving at to the scene.¹³² Sergeant Valentino then rolled Mr. Williams' body over and a firearm became visible from under Mr. Williams' body.¹³³ He proceeded to remove the firearm and toss it away from Mr. Williams' body as Detective Beddows removed Officer Mulkeen's firearm where it remained in Officer Mulkeen's right hand.¹³⁴ Sergeant Valentino picked up Mr. Williams' firearm a second time and then tossed it back on the ground.¹³⁵

During the above referenced events, Officers Mulkeen, Wichers, Mahon, and Figueroa, Detective Beddows, and Sergeant Valentino all discharged their firearms within a span of approximately eight seconds.¹³⁶ Officer Mulkeen discharged his firearm a total of five times.¹³⁷ Officer Wichers discharged his firearm one time.¹³⁸ Officer Mahon discharged his firearm one time.¹³⁹ Officer Figueroa discharged his firearm twice.¹⁴⁰ Detective Beddows discharged his firearm once.¹⁴¹ Sergeant Valentino discharged his firearm five times.¹⁴² All of the officers activated their body worn cameras during the above described events, with the exception of Officer Mulkeen.¹⁴³ The loaded and operable revolver recovered beneath Mr. Williams was not discharged during the incident.¹⁴⁴

¹³² B22C04-1132 229Dr_S Compactor 1.

¹³³ BWC Valentino.

¹³⁴ BWC Valentino; BWC Beddows.

¹³⁵ BWC Valentino; BWC Figueroa.

¹³⁶ BWC Wichers; BWC Beddows; BWC Mahon; BWC Valentino.

¹³⁷ Threat Resistance or Injury Incident Worksheet - Brian Mulkeen.

¹³⁸ Threat Resistance or Injury Incident Worksheet - Robert Wichers.

¹³⁹ Threat Resistance or Injury Incident Worksheet - Brian Mahon.

¹⁴⁰ Threat Resistance or Injury Incident Worksheet - Keith Figueroa.

¹⁴¹ Threat Resistance or Injury Incident Worksheet - Daniel Beddows.

¹⁴² Threat Resistance or Injury Incident Worksheet - Jason Valentino.

¹⁴³ BWC Beddows, BWC Figueroa, BWC Mahon, BWC Valentino, BWC Mahon.

¹⁴⁴ Invoice No. 6000024683; NYPD Police Laboratory Firearms Analysis Section - Laboratory Report No. 2019-065078.

III. OFFICER STATEMENTS CONCERNING THE SHOOTING

In this section we will discuss the statements the five surviving officers made to our Office and the reasoning they provided for discharging their weapons. The officer interviews took place in the latter half of November 2019. All five officers declined to review any body worn camera footage prior to the interviews. The interviews were conducted solely by members of the Office, and although each officer was represented by union-appointed counsel, they were interviewed separately from one another.

Officer Wichers stated that upon hearing gunshots, he stepped back from Mr. Williams and Officer Mulkeen.¹⁴⁵ At that moment, Officer Mulkeen was lying with his back on the ground, facing Mr. Williams,¹⁴⁶ who was positioned atop Officer Mulkeen with his back to Officer Wichers and was beginning to separate from Officer Mulkeen.¹⁴⁷ Officer Wichers indicated that he saw that Officer Mulkeen holding his firearm and believed that that Officer Mulkeen had fired at least some of the rounds; he also believed that Mr. Williams was firing at Officer Mulkeen.¹⁴⁸ Officer Wichers drew his firearm and fired one round at Mr. Williams from a distance of approximately five feet, stating that at that time he believed Mr. Williams was using or was about to use deadly physical force against Officer Mulkeen.¹⁴⁹

According to Detective Beddows, who discharged his weapon after Officer Wichers, upon arriving at the scene he was aware that his fellow officers were in pursuit of an individual with a

¹⁴⁵ Interview of Officer Wichers, 11/26/2019.

¹⁴⁶ BWC Wichers; Interview of Officer Wichers, 11/26/2019.

¹⁴⁷ BWC Wichers.

¹⁴⁸ Interview of Officer Wichers, 11/26/2019.

¹⁴⁹ Interview of Officer Wichers, 11/26/2019.

firearm.¹⁵⁰ Detective Beddows indicated that upon exiting his vehicle he ran towards Officer Mulkeen, Officer Wichers, and Mr. Williams, and that as he approached he heard several gunshots, but did not know who was shooting.¹⁵¹ Detective Beddows indicated that while he was drawing his weapon, he observed Mr. Williams holding a small caliber firearm.¹⁵² Detective Beddows indicated that he took aim at Mr. Williams' center mass and discharged his weapon one time from a close distance.¹⁵³

Officer Figueroa indicated that upon arriving at the scene, he was aware that the other officers were involved with a civilian armed with a firearm.¹⁵⁴ He stated that as he exited Vehicle Two and got to the curb of the sidewalk, he heard gunshots.¹⁵⁵ Officer Figueroa indicated that Detective Beddows was ahead of him running toward the other officers, and at that point he saw muzzle flashes, but did not know who was firing.¹⁵⁶ Officer Figueroa indicated that he drew his firearm and then saw Detective Beddows step back and begin to fire at the individual on the ground who appeared to be face up and attempting to stand.¹⁵⁷ At that point, believing that this individual was holding and shooting a firearm at Detective Beddows, Officer Figueroa discharged his weapon two times at the individual on the ground.¹⁵⁸

¹⁵⁰ Interview of Detective Beddows, 11/20/2019; BWC Beddows.

¹⁵¹ Interview of Detective Beddows, 11/20/2019.

¹⁵² Interview of Detective Beddows, 11/20/2019.

¹⁵³ Det. Beddows only recalled pulling the trigger of his firearm once. An inspection of his firearm after the incident revealed that his firearm had malfunctioned. Det. Beddows pistol 'stove-piped' after he discharged his first round, which occurs when a fired casing fails to properly eject from the port of the pistol, thus jamming the firearm and making it impossible for the firearm to discharge any additional rounds.

¹⁵⁴ Interview of Officer Figueroa, 11/26/2019.

¹⁵⁵ Interview of Officer Figueroa, 11/26/2019.

¹⁵⁶ Interview of Officer Figueroa, 11/26/2019.

¹⁵⁷ Interview of Officer Figueroa, 11/26/2019.

¹⁵⁸ Interview of Officer Figueroa, 11/26/2019.

Sergeant Valentino also indicated that when he and his partners were heading to the location of the incident, he was aware that his fellow officers were dealing with an individual who was armed with a firearm.¹⁵⁹ Upon arriving at the location, Sergeant Valentino stated that he saw Officer Mulkeen and Mr. Williams struggling and fall to the ground and that he heard someone scream “He’s reaching for it!”¹⁶⁰ According to Sergeant Valentino, he then observed Officer Mulkeen reach for his firearm and then heard gunshots and saw a muzzle flash.¹⁶¹ Sergeant Valentino indicated that Officer Mulkeen and Mr. Williams were on top of each other, but he could not clearly identify Officer Mulkeen.¹⁶² He stated he didn’t see who else was in the immediate area because he was focused on Mr. Williams and that when he saw a clear shot, he discharged his weapon five times.¹⁶³

Officer Mahon, having stayed with Williams’ associate, recalled hearing gunshots and then turning and running in the direction of the struggle.¹⁶⁴ Officer Mahon indicated that as he began running, he heard different caliber firearms discharge and believed his fellow officers were in a gun fight.¹⁶⁵ As he arrived at the southern sidewalk, he indicated that he saw Mr. Williams on the ground with a firearm visible and did not see Officer Mulkeen.¹⁶⁶ Officer Mahon stated that he only saw Detective Beddows fire and then he discharged his firearm one time at the direction of Mr. Williams.¹⁶⁷

¹⁵⁹ Interview of Sergeant Valentino, 11/22/2019.

¹⁶⁰ Interview of Sergeant Valentino, 11/22/2019.

¹⁶¹ Interview of Sergeant Valentino, 11/22/2019.

¹⁶² Interview of Sergeant Valentino, 11/22/2019.

¹⁶³ Interview of Sergeant Valentino, 11/22/2019.

¹⁶⁴ Interview of Officer Mahon, 11/26/2019.

¹⁶⁵ Interview of Officer Mahon, 11/26/2019.

¹⁶⁶ Interview of Officer Mahon, 11/26/2019.

¹⁶⁷ Interview of Officer Mahon, 11/26/2019.

IV. MEDICAL RESPONSE

In response to the radio calls from Officer Wichers and Officer Figueroa, numerous officers from the 47th precinct responded to the scene, arriving as Sergeant Valentino was placing Mr. Williams in handcuffs, less than one minute after the final rounds were discharged, at 12:31:23.¹⁶⁸ The five officers from Vehicles One and Two were distraught, and the responding officers from the 47th precinct scene took a few moments to appreciate what they were observing. Some assisted with medical treatment of Officer Mulkeen, and one attempted to place a tourniquet on his leg.¹⁶⁹

At 12:32:46 a.m., approximately two minutes after the last shots were fired, officers picked up Officer Mulkeen and carried him to a NYPD vehicle that left for the hospital at 12:33:54 a.m.¹⁷⁰ During this time, Officer Mulkeen remained unresponsive, and Mr. Williams remained motionless.¹⁷¹

At 12:34:59 some of the remaining officers began looking for gloves so they could provide medical aid to Mr. Williams.¹⁷² Those responding officers then checked Mr. Williams' pulse, and upon finding no pulse, began CPR on Mr. Williams at 12:35:42 a.m. and continued until Emergency Medical Services arrived.¹⁷³ Emergency Medical Services arrived at the scene at 12:38:34 a.m. and, upon contact with Mr. Williams, found him in cardiac arrest with multiple gunshots to the face¹⁷⁴ and chest.¹⁷⁵ Mr.

¹⁶⁸ BWCs of Responding Officers; B22C04-1132 229Dr_S Compactor 1.

¹⁶⁹ BWCs of Responding Officers; B22C04-1132 229Dr_S Compactor 1.

¹⁷⁰ BWC Wichers; BWC Beddows; BWC Valentino; BWC Mahon; BWC Figueroa; BWCs of Responding Officers; B22C04-1132 229Dr_S Compactor 1.

¹⁷¹ BWC Beddows; BWC Mahon; BWC Figueroa; BWCs of responding officers; B22C04-1132 229Dr_S Compactor 1.

¹⁷² BWCs of Responding Officers.

¹⁷³ BWCs of Responding Officers.

¹⁷⁴ Emergency Medical Services did not assess entry or exit wounds, but simply observed an apparent gunshot wound to Mr. Williams' face. As will be discussed in the MEDICAL EXAMINER FINDINGS section, one of the shots fired by Officer Mulkeen entered the rear of Mr. Williams' upper neck and exited by his cheek.

¹⁷⁵ Montefiore Hospital Records - Antonio Williams.

Williams was unresponsive, had no blood pressure, had no pulse, and was not breathing.¹⁷⁶ At 12:58:45 a.m. the ambulance transporting Mr. Williams left the scene in route to Montefiore Hospital.¹⁷⁷

Upon arrival at the hospital, Dr. Abad noted eight gunshot wounds to Mr. Williams' chest and abdomen and one gunshot wound to his face.¹⁷⁸ In the Montefiore Hospital Emergency Department, Mr. Williams was intubated and CPR was continued.¹⁷⁹ Mr. Williams had no pulse and no cardiac activity and at 12:59 a.m. Dr. Abad pronounced Mr. Williams deceased.¹⁸⁰

The vehicle transporting Officer Mulkeen arrived at Jacobi Medical Center at 12:42 a.m., and NYPD officers wheeled Officer Mulkeen on a stretcher into the hospital.¹⁸¹ Upon his arrival, doctors observed gunshot wounds to his head and a through-and-through gunshot wound¹⁸² in his right pelvis and right buttock.¹⁸³ The headwound was approximately four centimeters in diameter.¹⁸⁴ The doctors noted that when they first began treating Officer Mulkeen he was bleeding profusely from the wound to his pelvis and from his headwound.¹⁸⁵ Officer Mulkeen was in severe distress, unresponsive, moaning, was struggling to breathe, had abnormally low blood pressure, and medical professionals were unable to obtain a pulse.¹⁸⁶ A "Level 1 Trauma" was activated,¹⁸⁷ indicating a need for a larger

¹⁷⁶ Montefiore Hospital Records - Antonio Williams.

¹⁷⁷ Montefiore Hospital Records - Antonio Williams.

¹⁷⁸ Montefiore Hospital Records - Antonio Williams.

¹⁷⁹ Montefiore Hospital Records - Antonio Williams.

¹⁸⁰ Montefiore Hospital Records - Antonio Williams.

¹⁸¹ Jacobi Medical Center Records - Brian Mulkeen.

¹⁸² "Through-and-through" is a term used in forensics to describe a perforating gunshot wound, where a bullet has passed through a body, leaving both entry and exit wounds.

¹⁸³ Jacobi Medical Center Records - Brian Mulkeen.

¹⁸⁴ Jacobi Medical Center Records - Brian Mulkeen.

¹⁸⁵ Jacobi Medical Center Records - Brian Mulkeen.

¹⁸⁶ Jacobi Medical Center Records - Brian Mulkeen.

¹⁸⁷ Jacobi Medical Center Records - Brian Mulkeen. Level One Trauma calls are reserved for the most serious and dire medical situations.

trauma team and response team.¹⁸⁸ The medical teams began providing Officer Mulkeen blood transfusions to offset his significant blood loss, intubated him in order to assist his respiration, and placed a “foley catheter” in his bladder in order to drain potential blood as a result of the injury to his groin.¹⁸⁹

Doctors attempted emergency surgery to discover the extent of Officer Mulkeen’s injuries, including assessment by a neurosurgeon, vascular surgeon, and a urologist.¹⁹⁰ The doctors began attempting to repair Officer Mulkeen’s wounds, but during the repair, Officer Mulkeen repeatedly became “asystole.”¹⁹¹ Doctors continued to perform advanced cardiac life support but Officer Mulkeen’s heart continued to grow larger, signifying cardiac failure.¹⁹² At 3:00 a.m., Dr. Stone pronounced Officer Mulkeen deceased.¹⁹³

V. RECOVERY OF EVIDENCE

In response to the incident, numerous members of the NYPD responded to the scene in order to investigate and collect evidence, including of the NYPD’s Crime Scene Unit. Detective Hector Deleon of the Crime Scene Unit, responded to the scene and recovered, among other items, Officer Mulkeen’s black Axon body camera on the walkway, a black and grey “Titanic” .32 caliber long revolver containing four .32 caliber Smith and Wesson live cartridges, a black Glock 19 containing a chambered 9 millimeter live cartridge, a black Glock magazine containing ten 9 millimeter live cartridges, six discharged 9 millimeter shell casings recovered on the walkway, a deformed fired bullet

¹⁸⁸ Jacobi Medical Center Records – Brian Mulkeen.

¹⁸⁹ Jacobi Medical Center Records – Brian Mulkeen.

¹⁹⁰ Jacobi Medical Center Records – Brian Mulkeen.

¹⁹¹ Asystole is the state of complete cessation of electrical activity from the heart. It is the most serious form of cardiac arrest and is usually irreversible.

¹⁹² Jacobi Medical Center Records – Brian Mulkeen.

¹⁹³ Jacobi Medical Center Records – Brian Mulkeen.

recovered on the walkway, a black cellphone recovered from the walkway, eight discharged 9mm shell casings recovered from the sidewalk, a deformed fired bullet recovered from the grassy area next to the walkway.¹⁹⁴ The firearms and ballistic evidence recovered from the scene were vouchered and submitted for testing.¹⁹⁵

The NYPD Crime Scene Unit, in coordination with FID, took measurements of the scene and ultimately made rough determinations of how far Officer Figueroa, Officer Mahon, and Sgt. Valentino were from the struggle when they discharged their weapons. It was estimated that Officer Figueroa fired from approximately 19 yards away, that Sgt. Valentino fired from approximately 21 yards away, and that Officer Mahon fired from approximately 23 yards away. During our investigation, BXDA spoke with Inspector Marlon Larin, the Commanding Officer of the NYPD's Firearms and Tactics Section. Inspector Larin indicated that every NYPD officer, in addition to passing a firearms test upon entering the NYPD, must qualify two times a year at the firing range. In order to pass the firearms test, each officer must hit a target – a human silhouette – with at least 39 of 50 rounds. The officers are required to fire 30 of their rounds from a distance of 7 yards (according to Inspector Larin, statistically most gun fights occur from this approximate range), 15 rounds from a distance of 15 yards, and 5 rounds from a distance of 25 yards. Therefore, in order to pass the test, an officer must hit the target about 50% of the time from a distance of 15 to 25 yards.

During the NYPD's search for witnesses, a civilian witness reported seeing one of the males drop something under a white SUV parked in front of 1135 East 229th Street.¹⁹⁶ A second witness described observing an individual at the scene, whose description matched Williams' associate, drop a small white object on the ground and kick it under a white SUV parked in front of 1135 East 229th

¹⁹⁴ NYPD Crime Scene Unit DD5 and photographs – Complaint No. 2019-047-009868.

¹⁹⁵ NYPD Crime Scene Unit DD5 and photographs – Complaint No. 2019-047-009868.

¹⁹⁶ NYPD 047 Precinct DD5 – Complaint No. 2019-047-09873.

Street.¹⁹⁷ The white SUV was parked just west of the mailbox, feet from where Mr. Williams and Williams' associate had been standing when the officers in Vehicle One first observed them.

Detective Joseph Stynes of the 47th Precinct reviewed video surveillance, located the white SUV, which was still parked on East 229th Street, and searched the area.¹⁹⁸ Under the white SUV, Detective Stynes located a semi-transparent bag with alleged narcotics inside.¹⁹⁹ The bag and alleged narcotics were vouchered and sent to the laboratory for testing.²⁰⁰ The laboratory testing determined the alleged narcotics were methamphetamine.²⁰¹

The NYPD Crime Scene Unit sent detectives to Jacobi Medical Center and to Montefiore Hospital.²⁰² Detective Jexter Bonus responded to Jacobi Medical Center to collect evidence from Officer Mulkeen, Officer Mahon, Officer Wichers, Officer Figueroa, Detective Beddows, and Sergeant Valentino.²⁰³ The evidence collected at Jacobi Medical Center included the officers' firearms, which were then vouchered and sent to the laboratory for testing.²⁰⁴ Detective Monique Bakirdjian responded to Montefiore Hospital and collected various items of evidence,²⁰⁵ including a bag containing three pills, one pink, one blue, and one green, and a bag containing green vegetative matter.²⁰⁶ These items were found in Mr. Williams' personal property and were vouchered and

¹⁹⁷ NYPD 047 Precinct DD5 – Complaint No. 2019-047-09873.

¹⁹⁸ NYPD 047 Precinct DD5 – Complaint No. 2019-047-09873.

¹⁹⁹ NYPD 047 Precinct DD5 – Complaint No. 2019-047-09873.

²⁰⁰ Invoice No. 2000911189; NYPD Police Laboratory Controlled Substance Analysis Section - Laboratory Report No. 2019-065187.

²⁰¹ NYPD Police Laboratory Controlled Substance Analysis Section - Laboratory Report No. 2019-065187.

²⁰² NYPD Crime Scene Unit DD5 – Complaint No. 2019-047-009868.

²⁰³ NYPD Crime Scene Unit DD5 and photographs – Complaint No. 2019-047-009868.

²⁰⁴ NYPD Crime Scene Unit DD5 and photographs – Complaint No. 2019-047-009868; NYPD Voucher No. 6000024685-6000024689.

²⁰⁵ NYPD Crime Scene Unit DD5 – Complaint No. 2019-047-009868.

²⁰⁶ NYPD Crime Scene Unit DD5 and photographs – Complaint No. 2019-047-009868; NYPD Voucher No. 1001263090.

submitted to the laboratory for testing.²⁰⁷ The laboratory testing indicated the three pills were methamphetamine and the green vegetative matter was marijuana.²⁰⁸

At approximately 8:55 a.m., on September 29, 2019, Williams' godmother consented to an NYPD search of her 12th floor apartment, where Mr. Williams was staying.²⁰⁹ Her consent was oral and written on a NYPD consent to search form, which she signed in the presence of Detective Hugh Stanton of the 47th Precinct Detective Squad and Detective Mark Acevedo of FID.²¹⁰ During the search, which commenced at approximately 10:40 a.m., officers recovered a black backpack from the back bedroom of the apartment.²¹¹ The backpack contained five .32 caliber rounds, a scalpel attached to a portion of a pen and secreted inside of a pen cap, a black ZTE cellphone, Smith and Wesson live cartridges, a white Samsung cellphone, a Samsung battery, a credit card in Mr. Williams', a paycheck belonging to Mr. Williams, and various clothing and other personal items.²¹²

Crime Scene Unit Detective Carlos Pantoja responded to the New York City Office of the Chief Medical Examiner (hereinafter, "OCME") in Manhattan, for the autopsy of Officer Mulkeen.²¹³ During the autopsy, one deformed bullet and four bullet fragments were recovered from the left side of Officer Mulkeen's head.²¹⁴ These items were vouchered and sent to the NYPD Firearms Analysis section for analysis.²¹⁵

²⁰⁷ NYPD Crime Scene Unit DD5 and photographs - Complaint No. 2019-047-009868; NYPD Voucher No. 1001263090; NYPD Police Laboratory Controlled Substance Analysis Section - Laboratory Report No. 2019-065078.

²⁰⁸ NYPD Police Laboratory Controlled Substance Analysis Section - Laboratory Report No. 2019-065078.

²⁰⁹ NYPD 047 Precinct DD5 - Complaint No. 2019-047-09873; Consent to Search executed by Williams' godmother.

²¹⁰ NYPD 047 Precinct DD5 - Complaint No. 2019-047-09873; Consent to Search executed by Williams' godmother.

²¹¹ NYPD 047 Precinct DD5 - Complaint No. 2019-047-09873.

²¹² NYPD Crime Scene Unit DD5 and photographs - Complaint No. 2019-047-009868; NYPD Voucher No. 2000911365.

²¹³ NYPD Crime Scene Unit DD5 and photographs - Complaint No. 2019-047-009873.

²¹⁴ NYPD Crime Scene Unit DD5 and photographs - Complaint No. 2019-047-009873.

²¹⁵ NYPD Crime Scene Unit DD5 and photographs - Complaint No. 2019-047-009873; NYPD Voucher No. 6000024694.

On October 1, 2019, Crime Scene Unit Detective Wendy Enos responded to OCME in Queens for the autopsy of Mr. Williams.²¹⁶ During the autopsy, three deformed bullets were recovered from Mr. Williams' body.²¹⁷ These items were vouchered and sent to the NYPD Firearms Analysis Section for analysis.²¹⁸

MEDICAL EXAMINER FINDINGS

When an individual dies while in the custody of the NYPD or during an incident in which members of the NYPD discharge their firearms, an autopsy is performed by OCME to determine the cause of death. Following the death of Mr. Williams and Officer Mulkeen, autopsies were performed on their bodies.

I. ANTONIO WILLIAMS

On October 1, 2019, Dr. Sophia Rodriguez, M.D., from OCME, performed a comprehensive autopsy of Mr. Williams' body.²¹⁹ Dr. Rodriguez found that Mr. Williams was a 5'8", 265 pound male consistent with a male twenty-seven years of age.²²⁰ Dr. Rodriguez also noted that Mr. Williams had a perforating gunshot wound to head/neck (hereinafter, "Wound A"), perforating gunshot wound of the right chest (hereinafter, "Wound B"), penetrating gunshot wound of the right abdomen (hereinafter, "Wound C"), penetrating gunshot wound of the left chest (hereinafter, "Wound D"), perforating gunshot wound of the left chest (hereinafter, "Wound E"), two penetrating gunshot wounds of the left chest (hereinafter, "Wound F"), perforating gunshot wound of the right lower back/buttock (hereinafter, "Wound G"), perforating gunshot wound of the right arm (hereinafter,

²¹⁶ NYPD Crime Scene Unit DD5 and photographs - Complaint No. 2019-047-009868.

²¹⁷ NYPD Crime Scene Unit DD5 and photographs - Complaint No. 2019-047-009868.

²¹⁸ NYPD Voucher No. 6000024750.

²¹⁹ Autopsy Report - Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²⁰ Autopsy Report - Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

“Wound H”), blunt force trauma of the head and extremities, and slight to moderate atherosclerotic cardiovascular disease.²²¹

The bullet that caused Wound A entered Mr. Williams on his left neck, went through subcutaneous soft tissues, the base of the skull, and exited from his left cheek.²²² The bullet traveled “from the decedent’s back to front, left to right and upward.”²²³ The wound caused comminuted fractures to the left base of the skull and a subarachnoid hemorrhage overlying the cerebellum.²²⁴ Dr. Rodriguez observed possible gun powder flakes at the entrance of the wound and believed the bullet that caused this injury was fired within two feet of Mr. Williams.²²⁵ Dr. Rodriguez also stated that this injury was survivable.²²⁶

The bullet that caused Wound B entered Mr. Williams’ right chest travelled through the subcutaneous tissues of his right chest and exited on the right chest.²²⁷ The bullet traveled “left to right and upward” and Dr. Rodriguez stated this gunshot was not life threatening.²²⁸

Wound C was caused by a bullet that entered Mr. Williams’ right abdomen and travelled into the soft tissue of the right abdomen.²²⁹ A “mushroomed” bullet was recovered from inside of Mr. Williams’ right abdomen.²³⁰ A blade of green debris, possibly grass, was found adjacent to the bullet.²³¹

²²¹ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²² Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²³ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²⁴ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²⁵ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²⁶ Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²⁷ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²⁸ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²²⁹ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³⁰ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³¹ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

The path travelled by the bullet was right to left, slightly back to front, and downward.²³² Dr. Rodriguez stated that the bullet did not strike any vital organs and was not life threatening.²³³

The bullet that caused Wound D entered Mr. Williams' left chest, one inch below the left nipple and travelled through the "subcutaneous soft tissues, left fifth intercostal muscle, pericardial sac, heart, diaphragm, liver, right lower lobe of the lung, right fifth intercostal muscle, lateral right 6th rib and right subcutaneous soft tissues of the right chest/axillary region" where the bullet lodged in Mr. Williams' right chest tissues.²³⁴ The bullet had travelled from "left to right, slightly front to back and upward."²³⁵ It was "mushroomed" when recovered from Mr. Williams' body.²³⁶ Dr. Rodriguez observed "yellow metallic unburned gunpowder particles" at the entrance of the wound indicating to her that, similarly to Wound A, the bullet that caused Wound D was fired within two feet of Mr. Williams' body.²³⁷

The injuries associated with Wound D were extensive. Dr. Rodriguez observed injuries to the "left fifth intercostal muscle, heart, liver, right lung, right fifth intercostal muscle and right sixth rib" with "650 ml of blood within the left chest cavity and 250 ml of blood within the right chest cavity."²³⁸ Dr. Rodriguez described the heart as having "exploded" and concluded that Wound D was fatal and Mr. Williams' death was instant when it was inflicted.²³⁹

²³² Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³³ Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³⁴ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³⁵ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³⁶ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³⁷ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³⁸ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²³⁹ Interview of Dr. Sophia Rodriguez, 1/28/2020.

The bullet that caused Wound E entered Mr. Williams' left chest, traveled through subcutaneous tissues of the chest and exited the midline of Mr. Williams' chest.²⁴⁰ The bullet's path was from "left to right, slightly back to front and upward."²⁴¹ The entrance of the wound had "a dark red muzzle imprint" indicating that it was a contact wound, meaning it was inflicted by a bullet that was discharged from a firearm that was touching Mr. Williams' skin at the time of discharge.²⁴² Dr. Rodriguez described Wound E as survivable.²⁴³

Wound F was caused by two separate bullets, one entered to the left of Mr. Williams' anterior midline and the second also entered to the left of Mr. Williams' anterior midline, just slightly to the left of the first.²⁴⁴ The bullets that caused these wounds traveled "left to right and upward" and were located "mushroomed" in the right chest tissues of Mr. Williams' body.²⁴⁵ Dr. Rodriguez noted that "due to proximity and similar directions, individual tracks are indiscernible; it is unclear which projectile comes from which entrance."²⁴⁶ However, the injuries associated with Wound F were to the skin and subcutaneous tissues of the left chest.²⁴⁷ Dr. Rodriguez stated that the bullets did not hit any organs nor did the bullets enter Mr. Williams' abdominal cavity.²⁴⁸ Dr. Rodriguez determined Wound F was survivable.²⁴⁹

²⁴⁰ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴¹ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴² Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴³ Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴⁴ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴⁵ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴⁶ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴⁷ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴⁸ Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁴⁹ Interview of Dr. Sophia Rodriguez, 1/28/2020.

The bullet that caused Wound G entered Mr. Williams' right lower back and upper buttock, travelled "left to right, back to front and slightly upwards" and exited on the right side of Mr. Williams' abdomen.²⁵⁰ Injuries of Wound G were to the subcutaneous soft tissues of Mr. Williams' right hip.²⁵¹ Dr. Rodriguez stated that Wound G was survivable.²⁵²

Wound H was caused by a bullet that entered the front of Mr. Williams' right upper arm, travelled "left to right and slightly downward" and exited the back of Mr. Williams' right upper arm.²⁵³ The injury associated with Wound H were to Mr. Williams' subcutaneous tissues of his right upper arm.²⁵⁴ Dr. Rodriguez stated the wound was "irregular" and may have been a re-entrance and exit of the bullet that caused Wound B.²⁵⁵ She determined that Wound H was survivable.²⁵⁶

Dr. Rodriguez also noted abrasions to Mr. Williams' head and face, right thigh, and right elbow.²⁵⁷ Upon examination of his heart, Dr. Rodriguez determined that Mr. Williams had "slight to moderate" atherosclerotic cardiovascular disease.²⁵⁸

Elba Arango, M.S., Assistant Director of Forensic Toxicology at OCME, issued a toxicology report on October 31, 2019.²⁵⁹ Toxicology testing indicated that Mr. Williams had less than 0.1 milligrams per liter of methamphetamine in his blood and Amphetamine, methamphetamine,

²⁵⁰ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵¹ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵² Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵³ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵⁴ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵⁵ Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵⁶ Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵⁷ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵⁸ Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁵⁹ Autopsy Report – Antonio Williams.

phenylpropanolamine in his urine.²⁶⁰ Dr. Rodriguez described Mr. Williams as “high” but still aware at the time of his death.²⁶¹

Ultimately, Dr. Rodriguez determined Wound D was the fatal wound and found the cause of Mr. Williams’ death to be “gunshot wounds of head and torso” and the manner of death “homicide (shot).”²⁶²

II. BRIAN MULKEEN

On September 29, 2019, Dr. Jeremy Stuelpnagel, M.D., from OCME, performed a comprehensive autopsy of Officer Mulkeen’s body.²⁶³ Dr. Stuelpnagel found that Officer Mulkeen was a well-developed and “large-framed” male that measured 6’1” tall, weighed 296 pounds, and had appearance consistent with that of a male of thirty-three years.²⁶⁴ Dr. Stuelpnagel also noted that Officer Mulkeen had a gunshot wound to the head (hereinafter, Wound A), a gunshot wound to the torso (hereinafter, Wound B), and blunt impact injuries to his extremities.²⁶⁵

The bullet that caused gunshot Wound A entered Officer Mulkeen’s right parietal/occipital region, traveling “right to left, front to back and downward” through the skull and right parietal and occipital lobes and left occipital lobe of the brain, through the right side of the skull, and lodged in the left occipital region between Officer Mulkeen’s skull and scalp.²⁶⁶ The bullet caused a subdural and subarachnoid hemorrhage, perforation of the parietal bone on the right side with multiple fractures radiating through the right and left parietal bones and occipital bone and into the base of Officer

²⁶⁰ Autopsy Report – Antonio Williams.

²⁶¹ Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁶² Autopsy Report – Antonio Williams; Interview of Dr. Sophia Rodriguez, 1/28/2020.

²⁶³ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁶⁴ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁶⁵ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁶⁶ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

Mulkeen's skull.²⁶⁷ Additionally, the bullet caused contusions on the frontal lobes of Officer Mulkeen's brain.²⁶⁸ Dr. Stuelpnagel observed the lodged bullet to be moderately deformed and four small fragments were located in the wound track caused by the bullet.²⁶⁹ Dr. Stuelpnagel described the skull fractures as major and covering the entire rear of the skull.²⁷⁰ He explained that following the infliction of a gunshot wound such as gunshot Wound A, it is hard to determine whether an individual has any brain function, but that typically they would not, and a classic bodily reaction to a brain injury is for the body to stiffen upon infliction.²⁷¹ Dr. Stuelpnagel determined that gunshot Wound A was fatal.²⁷²

Gunshot Wound B was caused by a bullet that entered Officer Mulkeen's right lower abdomen, travelled "right to left, front to back and slightly downward" through his bladder and rectum and then exited Officer Mulkeen's left buttock.²⁷³ The bullet caused injury to the soft tissue, bladder, rectum, venous vasculature on the left side of the pelvis and caused blood coating to the pelvic origins.²⁷⁴ Dr. Stuelpnagel did not observe any stippling at the entrance of gunshot Wound B, but he observed stippling in the vicinity of Officer Mulkeen's right buttock and above his penis.²⁷⁵ Dr. Stuelpnagel concluded that a gunshot wound such as gunshot Wound B could be fatal and would require emergency surgical repair.²⁷⁶

²⁶⁷ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁶⁸ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁶⁹ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷⁰ Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷¹ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷² Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷³ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷⁴ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷⁵ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷⁶ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

Dr. Stuelpnagel also noted abrasions to Officer Mulkeen's left and right elbows, left and right hands, left forearm, and left knee, scratches to his left forearm, and contusions to his shins.²⁷⁷ Dr. Stuelpnagel also observed damage to Officer Mulkeen's heart as a result of life saving attempts performed at Jacobi Medical Center.²⁷⁸

Reinaldo Fonseca, B.S., Assistant Director of Forensic Toxicology at OCME, issued a toxicology report on October 4, 2019.²⁷⁹ Toxicology testing of Officer Mulkeen's blood and urine did not indicate any alcohol or illegal substances.²⁸⁰

Ultimately, Dr. Stuelpnagel concluded that, while gunshot Wound A was a more serious injury than gunshot Wound B, both injuries were fatal, and Officer Mulkeen's cause of death was "gunshot wounds of head and torso" and the manner of death "homicide (shot)."²⁸¹

DEPARTMENT OF FORENSIC BIOLOGY FINDINGS

The NYPD Department of Forensic Biology conducted DNA testing, which included DNA testing on the firearm recovered beneath Mr. Williams and on Officer Mulkeen's firearm.²⁸²

Swabs were collected from various parts of Officer Mulkeen's firearm.²⁸³ Blood was located on the front sight and the textured area of the trigger guard of the firearm.²⁸⁴ The front sight of the firearm and inside of the barrel of the firearm contained Mr. Williams' DNA.²⁸⁵ The textured area of

²⁷⁷ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷⁸ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁷⁹ Autopsy Report – Brian Mulkeen.

²⁸⁰ Autopsy Report – Brian Mulkeen.

²⁸¹ Autopsy Report – Brian Mulkeen; Interview of Dr. Jeremy Stuelpnagel, 2/5/2020.

²⁸² Office of the Chief Medical Examiner – Department of Forensic Biology – Laboratory Report – Lab No. FB19-06110.

²⁸³ Office of the Chief Medical Examiner – Department of Forensic Biology – Laboratory Report – Lab No. FB19-06110.

²⁸⁴ Office of the Chief Medical Examiner – Department of Forensic Biology – Laboratory Report – Lab No. FB19-06110.

²⁸⁵ Office of the Chief Medical Examiner – Department of Forensic Biology – Laboratory Report – Lab No. FB19-06110.

the trigger guard of the firearm contained DNA, 97 percent of which belonged to Mr. Williams.²⁸⁶ The slide lock, slide stop, and magazine catch of the firearm contained a mixture of DNA, 85 percent which was Mr. Williams' DNA and 15 percent which was Officer Mulkeen's DNA.²⁸⁷ The firearm grip contained DNA from three people, 82 percent of which was Mr. Williams' DNA.²⁸⁸ The swab from the back edges of the magazine butt of Officer Mulkeen's firearm contained a mixture of DNA of three people, including Mr. Williams and Officer Mulkeen.²⁸⁹ A final swab, taken from the ridged surface on the trigger of the firearm. contained an insufficient concentration of DNA for testing.²⁹⁰

Swabs were also collected from various parts of the firearm recovered beneath Mr. Williams.²⁹¹ Blood was located on the frame of the firearm, edges of the trigger, edges of the trigger guard, textured areas of the firearm grip, and textured areas of the hammer, ejector rod, and top groove of the firearm.²⁹² The DNA on the firearm frame, exterior surface of the barrel, edges of the trigger, and textured areas of the grip of the firearm belonged to Mr. Williams.²⁹³ The inside barrel of the firearm and the edges of the trigger guard of the firearm contained DNA, 93 percent of which belonged to Mr. Williams.²⁹⁴ Officer Mulkeen was excluded as the contributor of the remainder of the DNA present on the edges of the trigger guard.²⁹⁵ The textured areas of the hammer, ejector rod, and top groove of the firearm contained DNA, 95 percent of which was Mr. Williams' DNA and Officer

²⁸⁶ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁸⁷ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁸⁸ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁸⁹ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁹⁰ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁹¹ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁹² Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁹³ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁹⁴ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁹⁵ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

Mulkeen was excluded as a contributor of the remainder of the DNA present.²⁹⁶ Finally, DNA present on the headstamps of the four cartridges came from one individual, Mr. Williams.²⁹⁷

FACTUAL ANALYSIS

In this section, we discuss the factual conclusions our Office has made based upon the evidence obtained and reviewed during our investigation, including the information set forth above. As we will describe, we have concluded that Mr. Williams was in possession of a loaded firearm when Officer Mulkeen fired his weapon, causing a majority of Mr. Williams' injuries, including the fatal wound that caused his death. We also believe it is likely two other non-fatal injuries to Mr. Williams were caused by Officer Wichers and Detective Beddows.

I. ANTONIO WILLIAMS POSSESSED A LOADED FIREARM

The investigation has revealed that Mr. Williams possessed a loaded firearm throughout most of this incident and, most importantly, was in possession of that firearm when he was shot by members of the NYPD. Officer Wichers indicated that he observed Mr. Williams digging into his waistband when the officers first approached, and further indicated that during the foot-pursuit he observed Mr. Williams reach into his waistband. This was also observed by Officer Mahon, who indicated Mr. Williams was reaching into his waistband as he ran across East 229th Street, and that based upon his experience the act was consistent with possession of a firearm. Officer Mahon put over the radio "He's got it!", to alert his fellow officers that Mr. Williams was armed. That Mr. Williams was reaching into his waistband is corroborated by Officer Wichers' body worn camera.

As Officer Wichers caught up to Mr. Williams and began struggling to control his arms and hands, the officer repeatedly advised his partner that Mr. Williams was "reaching for it." The video

²⁹⁶ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

²⁹⁷ Office of the Chief Medical Examiner - Department of Forensic Biology - Laboratory Report - Lab No. FB19-06110.

from Officer Wichers' body worn camera reveals that a gray metal object falls to the ground just as Mr. Williams fell to the ground from Mr. William's torso, making an audible sound consistent with metal striking pavement. Officer Wichers indicated that as he, Officer Mulkeen, and Mr. Williams fell to the ground, a firearm fell from Mr. Williams waistband.

Officer Wichers then described seeing both Mr. Williams and Officer Mulkeen reaching for the gun and indicated that at one point both had a hand on it as they struggled. Video surveillance from a nearby building shows Officer Mulkeen and Mr. Williams both grabbing at and struggling over an item on the ground. For approximately fifteen seconds, Mr. Williams and Officer Mulkeen continued to struggle to gain control of the firearm, and the evidence indicates that then, Mr. Williams gained control of the firearm. At that point, and not before, Officer Mulkeen drew and fired his weapon at Mr. Williams.

Detective Beddows also indicated that as he ran toward the scene and came within feet of Mr. Williams, he observed Mr. Williams holding a firearm.

At the end of the incident, after the members of the NYPD began firing their weapons, Mr. Williams fell to his right, ultimately coming to rest with his face down, several feet from Officer Mulkeen. Sergeant Valentino indicated that when he approached Mr. Williams, and began to turn him over, he found the silver revolver positioned underneath Mr. Williams' body. These observations are corroborated by Sgt. Valentino's body worn camera. The evidence supports that the revolver came to rest feet away from the struggle, underneath Mr. Williams, because he carried it with him as he fell.

The forensic evidence also supports the conclusion that Mr. Williams possessed the loaded revolver recovered on scene. Mr. Williams' DNA was recovered on the revolver's frame, outside and inside the barrel, on the trigger, trigger guard, grip, hammer, ejector rod, and on the ammunition within the revolver itself. Most notably, while some of this DNA was obtained from blood on the firearm, the DNA obtained from the ammunition was not. In other words, the forensic evidence supports the

conclusion that Mr. Williams touched the ammunition before it was loaded into the revolver's cylinder.²⁹⁸

Based upon this evidence, we conclude that Antonio Williams possessed the firearm when he was first approach by the members of the NYPD in Vehicle One and that the firearm fell to the ground as he fled and struggled with Officers Mulkeen and Wichers. Further, Mr. Williams ultimately regained control of the firearm moments before he was killed by Officer Mulkeen. The video footage from the nearby building, the video and audio obtained from the officer's body worn cameras (particularly those of Officer Wichers and Detective Beddows), the officer's narratives, the actions of Officer Mulkeen, and the forensic evidence all align to support this conclusion.

II. ANTONIO WILLIAMS - CAUSE OF DEATH

Officer Mulkeen discharged his Glock 19 9mm semi-automatic pistol five times; each discharge is observable on the body worn camera of Officer Wichers. When Officer Mulkeen initially discharged his weapon, Mr. Williams was directly on top of him, his left side closer to Officer Mulkeen. Mr. Williams then rolled left off of Officer Mulkeen and away from the other officers, falling until he was on the ground, with his left side down, facing away from East 229th Street. We conclude, upon reviewing the body worn cameras, surveillance footage, and forensic evidence, that it was Officer Mulkeen's discharges that resulted in most of Mr. Williams' injuries, including Wound D, which caused his death.

Mr. Williams sustained four gunshot wounds on his left chest, Wounds D, E, F, and G, all in close proximity to one another. Each of those injuries were caused by bullets that travelled from Mr. Williams' left to his right. The fatal gunshot wound that Mr. Williams suffered, Wound D, travelled

²⁹⁸ A civilian witness positively identified the revolver as the same firearm they observed in Mr. Williams' possession one month before this incident.

from the left to right of his body, striking his heart, lungs, and other organs. There was a wide red dried marginal abrasion and yellow metallic unburned gunpowder particles at the wound site, consistent with a gunshot fired from less than two feet from Mr. Williams. The bullet that caused the injury was recovered during the autopsy and was found to be consistent with having been fired by a Glock 19 9mm pistol. Officer Mulkeen, Officer Wichers, Detective Beddows, and Officer Mahon were all armed with Glock 19 9mm pistols. Based upon when they discharged their weapons, however, only Officer Mulkeen was in a position to cause a wound with left to right trajectory. Therefore, based upon the trajectory, ballistics, and the proximity of the gunshot, we conclude that Officer Mulkeen fired the bullet that caused Wound D, which resulted in Mr. Williams' death.

The three other gunshot wounds to Mr. Williams' left side (Wounds E and F²⁹⁹) are all within 1¼ inch of one another. All three travelled from Mr. Williams' left to his right. Wound E was caused by a 'contact range' gunshot;³⁰⁰ the other two wounds had evidence of unburned gunpowder particles. All three of these wounds were fired from extremely close range. For the two gunshot wounds labeled as Wound F, the bullets were recovered, analyzed, and determined to have been fired by a Glock 19 9mm pistol. As with Wound D, based upon the trajectory, ballistics, and the proximity of these three gunshot wounds, we have concluded that these wounds were also caused by Officer Mulkeen.

The fifth and final round fired by Officer Mulkeen is visible on the body worn camera footage of Officer Wichers and, to a lesser extent, of Detective Beddows.³⁰¹ As Mr. Williams began to roll off and to the left side of Officer Mulkeen, Officer Mulkeen fired this final round at the back of Mr. Williams' head/neck, causing Wound A. The medical examiner observed a black discoloration of the

²⁹⁹ As discussed in THE MEDICAL EXAMINER'S FINDINGS, Wound F was actually caused by two separate gunshot wounds.

³⁰⁰ A contact range gunshot wound is suffered when the muzzle of the firearm is pressed against the body at the time it is fired.

³⁰¹ BWCs Wichers & Beddows at 12:30:23.

tissue surrounding, and yellow metallic flakes at the site of Wound A, all consistent with a gunshot fired from within two feet of Mr. Williams. Based upon the body worn camera footage of Officer Wichers and proximity of the wound, we conclude that Officer Mulkeen caused this gunshot wound.

One of the gunshot wounds that entered Mr. Williams' left side in the center of his chest, Wound E, may have caused other injuries to Mr. Williams. Mr. Williams suffered a gunshot wound, Wound B, to this upper right chest, near his right nipple. The bullet that caused the injury travelled from left to right, down to up, never went below Mr. William's subcutaneous tissue, and exited within approximately two inches of the entry point. This gunshot injury is aligned with the gunshot Wound E. Further, based upon the positioning of Mr. Williams body during the incident, it is unlikely that any officer other than Officer Mulkeen could have caused an injury with the left to right trajectory at the front of Mr. Williams' body.

In addition, Wound H, a gunshot wound to Mr. Williams' right arm, entered from the inside of the arm and exited just above his elbow. Based upon the positioning of Mr. Williams while shots were being fired, we have concluded that only Officer Mulkeen was in a position to cause an injury with a pronounced left to right trajectory. Moreover, the entry of Wound H was an irregular shape, consistent with a bullet that had already contacted something else before striking Mr. Williams' arm.³⁰² Given the location and trajectory of the bullet wound as well as its appearance, we conclude that Wound H was caused by the same bullet that cause Wounds B and E. Neither Wounds B, E, nor H were fatal to Mr. Williams.

III. ANTONIO WILLIAMS' OTHER GUNSHOT WOUNDS

Antonio Williams suffered two additional nonfatal gunshot wounds, Wound C and Wound G, that were not caused by Officer Mulkeen. The bullet that caused Wound C, travelled from right to left

³⁰² Interview of Dr. Sophia Rodriguez, 1/28/2020.

across Mr. Williams' abdomen and was recovered during his autopsy. Analysis revealed that the bullet was fired from a Glock 19 9mm pistol. Other than Officer Mulkeen, only Officers Wichers and Mahon, and Detective Beddows were armed with that type of weapon. After Officer Mulkeen discharged his first four rounds, he discharged his fifth round and Officer Wichers discharged his only round in rapid succession, as Mr. Williams was rolling off and to the left.³⁰³ When Officer Mahon discharged his weapon, Mr. Williams was already on the ground, with his back toward East 229th Street. Based upon the timing, positioning, and ballistics evidence, we find that Wound C was caused by Officer Wichers.

Wound G, which entered Mr. Williams' buttocks travelled from left to right, front to back, exiting by his right hip. The bullet's trajectory is consistent with the angle taken by Detective Beddows when he discharged his firearm approximately five feet of Mr. Williams. Detective Beddows also stated that he could see that his discharge struck Mr. Williams' center mass. Based upon Mr. Williams' positioning at the time of the discharge and Detective Beddows relative proximity to Mr. Williams, we have concluded that this wound was caused by Detective Beddows.

It is important to note that both Wounds C and G were nonfatal and occurred after Mr. Williams had suffered Wound D, which caused his death.

LEGAL ANALYSIS

I. THE OFFICERS' APPROACH WAS LAWFUL

Section 140.50(1) of the New York Criminal Procedure Law governs when a police officer may lawfully stop a person without an arrest warrant or probable cause to arrest the person. CPL section 140.50(1) states, "a police officer may stop a person in a public place located within such officer's employment when he reasonably suspects that such person is committing, has committed or

³⁰³ BWC Wichers.

is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.”³⁰⁴

In 1976, the New York Court of Appeals elaborated on the various types of police encounters and the standard applicable to each.³⁰⁵ In *People v. DeBour*, the New York Court of Appeals stated “a policeman’s right to request information while discharging law enforcement duties will hinge on the manner and intensity of the interference, the gravity of the crime involved and the circumstances attending the encounter.”³⁰⁶ The Court further stated one must “examine the knowledge possessed at that moment and any reasonable inferences” and that “The crucial factor is whether or not the police behavior can be characterized as reasonable which, in terms of accepted standards, requires a balancing of the interests involved in the police inquiry.”³⁰⁷ The Court set four levels, referred to as Level One through Level Four, of police intrusion, each with a standard that must be met by police officers before the intrusion may occur.³⁰⁸ The four levels have been further defined by courts in subsequent years.

Level One allows a police officer to request information from an individual if the police officer has an “objective credible reason” to request information.³⁰⁹ The “objective credible reason” does not need to be indicative of criminality.³¹⁰ The questions a police officer may ask in their request for information at Level One must be “basic, nonthreatening questions regarding, for instance, identity,

³⁰⁴ CPL § 140.50(1).

³⁰⁵ *People v. De Bour*, 40 N.Y.2d 210 (1976).

³⁰⁶ *People v. De Bour*, 40 N.Y.2d 210, at 219 (1976).

³⁰⁷ *People v. De Bour*, 40 N.Y.2d 210, 216, 217 (1976).

³⁰⁸ *People v. De Bour*, 40 N.Y.2d 210 (1976).

³⁰⁹ *People v. De Bour*, 40 N.Y.2d 210 (1976).

³¹⁰ *People v. De Bour*, 40 N.Y.2d 210 (1976).

address or destination” and may include questions that relate to the person’s reason for being in the area.³¹¹

Courts have found whether the area is known for criminal activities, the time of day, an individual’s unusual movements (even if the movements are not indicative of criminality), appearing nervous, and/or crossing the street to avoid police are circumstances that can create an objective credible reason for interference, thereby allowing the officers to request information from the individuals pursuant to Level One.³¹² It is well established that a Level One encounter can be elevated to a Level Two or Level Three encounter prior to an officer having an opportunity to conduct the common law right of inquiry in a Level One encounter.³¹³ However, an elevation from a Level One encounter to a Level Three encounter may not be based solely on one’s flight.³¹⁴

Level Two allows a police officer the common law right to inquire when the officer has a founded suspicion that criminal activity is afoot.³¹⁵ The common law right to inquire includes questioning that would lead the person to reasonably believe “that he or she is suspected of some wrongdoing and is the focus of the officer’s investigation,” such as a police officer asking a person if the police officer may search an item in their possession.³¹⁶ In determining whether a police officer’s questions have risen from a request for information to a common law right to inquire, cases must be evaluated on a case by case basis and one must look to the “content of the questions, the number of

³¹¹ *People v. Hollman*, 79 N.Y.2d 181 (1992).

³¹² See *People v. De Bour*, 40 N.Y.2d 210 (1976); *People v. White*, 117 A.D.3d 425 (1st Dept. 2014).

³¹³ See *People v. White*, 117 A.D.3d 425 (1st Dept. 2014).

³¹⁴ *People v. Holmes*, 81 N.Y.2d 1056 (1993).

³¹⁵ *People v. De Bour*, 40 N.Y.2d 210 (1976).

³¹⁶ *People v. Hollman*, 79 N.Y.2d 181 (1992).

questions asked, and the degree to which the language and nature of the questions transform the encounter from a merely unsettling one to an intimidating one.”³¹⁷

Courts have ruled that police officers had founded suspicion that criminal activity is afoot when officers have observed some of the actions described in Level One and also observed movements or observations indicative of an individual having a firearm, based on the officer’s training and experience.³¹⁸ In fact, courts have stated that it is almost common knowledge that firearms are often carried in one’s waistband and officers need not actually see the firearm.³¹⁹ Courts have found the following indicative of possessing a firearm: a waistband bulge, bracing one’s arm against the side of their jacket while reaching under the jacket in a cupping motion, walking stiffly with one’s arm braced against their waist, and repeatedly adjusting a large hard object at one’s waistband.³²⁰ However, a mere bulge in one’s pocket (without more) is not indicative of a firearm as courts have stated a pocket bulge is unlike a waistband bulge.³²¹

Level Three is greater than Level Two but does not rise to an actual arrest.³²² Level Three allows a police officer to forcibly stop and detain an individual when the police officer has reasonable suspicion that a person “has committed, is committing, or is about to commit a felony or misdemeanor.”³²³ Reasonable suspicion has been defined as “the quantum of knowledge sufficient to induce an ordinarily prudent and cautious [wo]man under the circumstances to believe criminal activity

³¹⁷ *People v. Hollman*, 79 N.Y.2d 181, 192 (1992).

³¹⁸ *People v. Pines*, 99 N.Y.2d 525 (2002); *People v. Hernandez*, 3 A.D.3d 325 (1st Dept. 2004).

³¹⁹ See *People v. Bachiller*, 93 A.D.3d 1196 (4th Dept. 2012).

³²⁰ See *People v. De Bour*, 40 N.Y.2d 210 (1976), *People v. Pines*, 99 N.Y.2d 525 (2002), *People v. Holmes*, 81 N.Y.2d 1056 (1993), *People v. Hernandez*, 3 A.D.3d 325 (1st Dept. 2004), *People v. White*, 117 A.D.3d 425 (1st Dept. 2014), *People v. Feliz*, 45 A.D.3d 437 (1st Dept. 2007).

³²¹ *People v. Holmes*, 81 N.Y.2d 1056 (1993).

³²² *People v. De Bour*, 40 N.Y.2d 210 (1976).

³²³ *People v. De Bour*, 40 N.Y.2d 210 (1976).

is at hand.”³²⁴ The analysis of reasonable suspicion should be “an evaluation of the totality of the circumstances, which takes into account the realities of everyday life unfolding before a trained officer.”³²⁵

Courts have held that a person’s flight “may be considered in conjunction with other attendant circumstances” to determine whether a police officer has reasonable suspicion, thereby allowing chase.³²⁶ Flight alone does not justify pursuit by a police officer.³²⁷ In fact, a Level One encounter with flight and nothing more does not elevate the encounter to a Level Three encounter. Yet, courts have held that an individual who flees and is observed with their hands in their waistband area in a manner indicative to police officers of someone with a weapon can elevate the encounter from a Level One to a Level Three encounter.³²⁸ As already discussed, a Level Two encounter may be elevated to a Level Three encounter by the flight of an individual thereby allowing pursuit, even when the police officer has not had an opportunity to conduct the common law inquiry allowed at the Level Two encounter.³²⁹

Level Four is the final level and it allows a police officer to arrest and take a person into custody when the police officer has probable cause to believe that the person has committed a crime.³³⁰ Probable cause exists “when evidence or information which appears to be reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of

³²⁴ *People v. Sobotker*, 43 N.Y.2d 559 (1978).

³²⁵ *People v. Graham*, 211 A.D.2d 55, 58 (1995).

³²⁶ *People v. Martinez*, 80 N.Y.2d 444, 447-448 (1992).

³²⁷ See *People v. Holmes*, 81 N.Y.2d 1056 (1993).

³²⁸ *People v. Hernandez*, 3 A.D.3d 325 (1st Dept. 2004).

³²⁹ See *People v. Hernandez*, 3 A.D.3d 325 (1st Dept. 2004); *People v. Pines*, 99 N.Y.2d 525 (1992), *People v. Holmes*, 81 N.Y.2d 1056 (1993).

³³⁰ *People v. De Bour*, 40 N.Y.2d 210 (1976).

ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and such person committed it.”³³¹

In the instant matter, the interaction between Mr. Williams and Officer Wichers, Officer Mahon, and Officer Mulkeen began as a Level One encounter, quickly elevated to a Level Two encounter, and upon Mr. Williams’ flight, elevated to a Level Three encounter, giving the officers reasonable suspicion and allowing for Officer Wichers and Officer Mulkeen’s subsequent chase of Mr. Williams. Below is a brief synopsis of the facts that led the officers to have reasonable suspicion that Mr. Williams was in possession of a firearm. The facts contained below are included in the previous FACTUAL SUMMARY section of this report.

On September 29, 2019, Officer Mahon, Officer Wichers, and Officer Mulkeen were assigned to Bronx Borough Anti-Crime and were assigned to patrol Edenwald and the surrounding vicinity as a result of recent gun and gang violence in the area. Officer Wichers recalled that as they patrolled Edenwald that evening, he hoped to ascertain information related to a recent shooting in the area.

While traveling in Vehicle One, an unmarked police vehicle, just after midnight, Officer Wichers and Officer Mahon, dressed in plain clothes, observed Williams’ associate and Mr. Williams standing near a mailbox on East 229th Street, an area within Edenwald known for gun and gang violence. Officer Mahon, the driver of Vehicle One, made a U-turn and based on their observations, he and Officer Wichers believed Mr. Williams and Williams’ associate noticed them and recognized them as police officers. Officer Mahon observed Mr. Williams and Williams’ associate look in the direction of the officers, wide-eyed and frozen, and noticed Mr. Williams appear to say something to Williams’ associate, which Officer Mahon believed was Mr. Williams alerting William’s associate that they (the officers in Vehicle One) were law enforcement. Officer Wichers and Officer Mahon then

³³¹ CPL § 70.10(2).

observed Mr. Williams begin to move around the mailbox, keeping the mailbox between himself and the police officers as Vehicle One travelled in his direction. Officer Mahon and Officer Wichers believed Mr. Williams' actions were an attempt to make himself less visible to the officers. Officer Wichers described Mr. Williams' movements as Mr. Williams trying to hide from Officer Wichers and the other officers. Officer Wichers and Officer Mahon found the behavior suspicious. Officer Wichers also observed Mr. Williams adjusting his waistband. As a result of these facts and observations, the officers had an objective credible reason to approach Mr. Williams (and Williams' associate) and request information as a Level One encounter.³³²

As such, at or about that time and while still inside Vehicle One, Officer Mahon called out, "Yo, police. Everything alright?" and Officer Wichers yelled out of the vehicle "Police," at which time Officer Wichers saw Mr. Williams dig his hand in his waistband. Officer Wichers' training and experience as a police officer allowed him to immediately recognize Mr. Williams' behavior as consistent with a person in possession of a firearm. The observation of Mr. Williams digging his hand in his waistband, a description of a movement continually held by courts to be indicative of possession of a firearm, created a founded suspicion that criminal activity was afoot, that criminal activity being the illegal possession of a firearm. Therefore, the encounter elevated from a Level One encounter to a Level Two encounter and as such, the officers possessed a common law right to inquire.

With a founded suspicion that Mr. Williams was in possession of a firearm and the common law right to inquire, Officer Wichers exited Vehicle One; within seconds, Mr. Williams turned and ran away from Officer Wichers and continued to dig his hand in his waistband as he fled, an action that, based on Officer Wichers' training and experience, he believed to be indicative of a person in possession of a firearm. Mr. Williams' flight at that moment gave Officer Wichers reasonable suspicion

³³² Had Mr. Williams began to run at this time, the police officers would not have been legally permitted to pursue Mr. Williams. However, Mr. Williams did not run at this time.

to believe that Mr. Williams was committing a felony, that being the illegal possession of a firearm, and elevated the encounter from a Level Two encounter to a Level Three encounter. Having reached a Level Three encounter, the officers were permitted to forcibly stop and detain Mr. Williams. Therefore, Officer Wichers pursued Mr. Williams and Officer Mulkeen began pursuit shortly hereafter.³³³

Upon catching up to Mr. Williams, a struggle ensued between Officer Wichers, and then Officer Mulkeen as they attempted to forcibly stop and detain Mr. Williams, as is lawful in a Level Three encounter, as discussed above. As they struggled, Mr. Williams refused to obey the officers' commands, and instead reached into his waistband. Within seconds, a firearm fell from the area of Mr. Williams' waistband and laid unsecured on the ground. At this point, the officers had probable cause to arrest Mr. Williams for the illegal possession of a firearm and had entered into a Level Four encounter.

Therefore, on September 29, 2019, Officers Mahon, Officer Wichers, and Officer Mulkeen followed search and seizure laws during all their interactions with Mr. Williams that night. We therefore conclude from these the facts that the officers' interactions from the time of their initial approach through the struggle with Mr. Williams on the sidewalk were lawful. Below we discuss the officers' use of their firearms.

II. CRIMINAL LIABILITY OF THE OFFICERS

³³³ At the time Mr. Williams ran, Officer Mahon was still behind the wheel of Vehicle One. However, Officer Mahon observed Mr. Williams run and reach toward his waist. Officer Mahon believed with complete confidence at that moment that Mr. Williams was in possession of a firearm. Nonetheless, by that time the encounter had already reached a Level Three encounter based on Officer Wichers' observations. Therefore, though relevant to the events of September 29, 2019, Officer Mahon's observations at that time are not relevant to the Fourth Amendment: Search and Seizure analysis.

In this section we will discuss the potential criminal liability of each of the officers for firing their service firearms. The standard of proof for the prosecution in all criminal actions is proof beyond a reasonable doubt. The prosecution is required to prove each and every element of the offenses beyond a reasonable doubt. Beyond a reasonable doubt has been defined as “proof that leaves you so firmly convinced of the defendant’s guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant’s identity as the person who committed the crime.”³³⁴ This is the highest legal burden in the United States.

There are three culpable mental states relevant to our analysis of the officers’ conduct. The first relates to intentional crimes; those in which an officer’s conscious objective is to engage in specific conduct or cause a specific result.³³⁵ Although intent is a subjective state of mind, objective and circumstantial evidence can be reviewed to determine an individual’s ‘conscious objective or purpose.’ For example, if an individual approaches another, states “I hate you,” and punches that individual square in the face, we can assume that his intent was to cause physical injury to the other.

The second culpable mental state we will address relates to crimes that are considered reckless. An officer acts ‘recklessly’ when he is “aware of yet consciously disregards a substantial and unjustifiable risk” that some result would occur or that some circumstance exists.³³⁶ When considering charging reckless crimes, we must assess what the officer actually perceived and disregarded, not what he should have perceived.

The third applicable mental state is criminal negligence; an individual can be said to have acted with criminal negligence when they failed to perceive a substantial and unjustifiable risk that a result

³³⁴ See New York Pattern Criminal Jury Instructions.

³³⁵ Penal Law § 15.05(1).

³³⁶ Penal Law § 15.05(3).

would occur or that a circumstance existed.³³⁷ For an officer to be guilty of a reckless crime or negligent crime, it is not enough that the officer disregarded or failed to perceive some risk; the disregard or failure must be so severe that it constitutes a “gross deviation” from the standard of conduct or care that a reasonable officer would demonstrate in that same situation. A reckless criminal actor perceives a risk, but disregards it, and the negligent criminal actor fails to perceive the risk altogether.³³⁸

Based upon all the evidence, we have concluded that each of the six officers intentionally fired their weapons during the incident and that Mr. Williams and Officer Mulkeen died as a result of those firearms discharges. The Penal Law requires us to next evaluate whether each of the officers were justified in their actions. In order to sustain charges related to the shooting, the People must be able to disprove, beyond a reasonable doubt, that the officers were justified in their actions.

III. JUSTIFICATION

Penal Law Article 35 governs the law of justification in New York. Penal Law section 35.15(2) provides that a person may only use deadly physical force upon another when and to the extent he believes it necessary to defend himself or a third person from what he believes to be the use or imminent use of deadly physical force by another. Nonetheless, the statute specifies that an individual may not use deadly physical force in self-defense if he knows he can retreat safely from the situation.³³⁹ Police officers are treated differently under Article 35, however, and may use physical force and deadly physical force in situations that most cannot. For example, police officers have no duty to retreat and may use physical force or deadly physical force when “necessary to defend the police officer . . . or

³³⁷ Penal Law § 15.05(4).

³³⁸ See *People v. Montanez*, 41 N.Y.2d 53 (1976).

³³⁹ Penal Law § 35.15(2)(a).

another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.”³⁴⁰

“Deadly physical force” is itself defined by the Penal Law as “physical force which, under the circumstances in which it used, is readily capable of causing death or other serious physical injury.”³⁴¹ This definition “hinges on the nature of the risk created – i.e., its imminence or immediacy as well as its gravity.”³⁴²

The Penal Law therefore requires us to consider whether each of the officers reasonably believed that Mr. Williams was using or was imminently going to use deadly physical force against themselves or a fellow officer.

Case law provides important guidance on the application of this law to the facts at issue. In *People v. Goetz*, and then in *People v. Wesley*, the Court of Appeals interpreted the “reasonably believes” language contained in Penal Law section 35.15(1).³⁴³ The Court set forth a two-part test for assessing an actor’s “reasonable belief.” The test requires both a subjective and objective analysis. In order to be justified in the use of deadly physical force, a defendant must have (1) actually believed deadly physical force was necessary to prevent the imminent use of deadly force by another, and (2) that belief must have been reasonable in light of the circumstances.³⁴⁴ “The reasonableness inquiry depends only upon the officer’s knowledge of circumstances immediately prior to and at the moment that he made the split-second decision to employ deadly physical force.”³⁴⁵

³⁴⁰ Penal Law § 35.30(1)(c).

³⁴¹ Penal Law § 10.00(11).

³⁴² *People v. Magliato*, 68 N.Y.2d. 24, 29 (1986).

³⁴³ *People v. Goetz*, 68 N.Y.2d. 96 (1986); *People v. Wesley*, 76 N.Y.2d 555 (1990).

³⁴⁴ *People v. Goetz*, 68 N.Y.2d 96 (1986).

³⁴⁵ *Salim v. Proulx*, 93 F.3d 86 (2d Cir. 1996)

When assessing the reasonableness of a police officer's use of physical force, the United States Supreme Court advises that every use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," and with "allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving."³⁴⁶ Therefore, when evaluating whether the officer reasonably believed deadly physical force was necessary, "it does not matter that [he] was or may have been mistaken in his belief, provided that such belief was both honestly held and reasonable."³⁴⁷

Officer Mulkeen

Officer Mulkeen discharged his weapon five times within inches of Mr. Williams, causing his death. We must therefore evaluate whether: (1) Officer Mulkeen believed this his use of deadly force was necessary to avert the imminent use of deadly force by Mr. Williams, and (2) whether a reasonable person in Officer Mulkeen's position, knowing what he knew and being in the same circumstance, would have had that same belief. In order to determine Officer Mulkeen's actual belief at the time of the shooting, we must draw our conclusions from the available evidence.

Mr. Williams fled from the police as they exited their vehicle and approached him, and he was repeatedly reaching towards the area of his waistband as he fled. When Officers Wichers and Mulkeen caught Mr. Williams, he continued to reach toward his waistband. After struggling for approximately 20 seconds, Mr. Williams and Officer Mulkeen fell to the ground, with Officer Wichers nearby. At that point, the revolver fell to the ground, within arms-reach of Mr. Williams. Officer Wichers indicated that he observed both Officer Mulkeen and Mr. Williams reaching for the firearm, and that both of their hands were on the gun.

³⁴⁶ Graham v. Connor, 490 U.S. 386, 396 (1989).

³⁴⁷ New York Pattern Criminal Jury Instructions (Justification).

Over the next approximately 15 seconds, Officers Mulkeen and Wichers continued to struggle with Mr. Williams, attempting to restrain him and place him in handcuffs while Mr. Williams continued to grab for the firearm. Throughout this time period, Officer Wichers was repeatedly shouting that Mr. Williams was “reaching for it.” Mr. Williams ultimately regained control of the firearm, and it was at that moment – and not before – that Officer Mulkeen drew his firearm and began shooting at Mr. Williams. Officer Mulkeen discharged his weapon five times within approximately three seconds, all the while with Mr. Williams on top of him, in possession of a firearm.

At the moment he discharged his firearm, Mr. Williams was on top of Officer Mulkeen, holding a firearm, having just resisted arrest and engaged in a struggle with police officers. Officer Mulkeen did not draw his firearm at any point throughout the struggle until the moments immediately before he began firing, when the evidence indicates that Mr. Williams regained control of the firearm. Based on this evidence, we have concluded that Officer Mulkeen actually believed that his own use of deadly physical force was necessary to stop Mr. Williams’ imminent use of deadly physical force.

We have also concluded that we would not be able to disprove beyond a reasonable doubt that a reasonable person in Officer Mulkeen’s position, with his knowledge, would have had the same belief. For these reasons, the People have concluded that Officer Mulkeen’s use of deadly physical force was justified as a matter of law.³⁴⁸ We have concluded that the defense of justification applies to Officer Mulkeen’s intentional acts of discharging his firearm, and, therefore, find that criminal charges for those acts would not have been warranted, even if Officer Mulkeen had survived.

Officer Wichers

³⁴⁸ We have concluded that Mr. Williams was holding the loaded weapon when Officer Mulkeen discharged his weapon. However, even if the firearm was loose and Mr. Williams was merely attempting to regain possession of the firearm, our conclusion would remain the same. Mr. Williams was attempting to evade apprehension and was struggling to regain possession of a loaded firearm. In that situation, Officer Mulkeen would have actually and reasonably believed that Mr. Williams was about to use deadly physical force. Therefore, even if Mr. Williams had not fully regained possession of the firearm, we would be unable to disprove, beyond a reasonable doubt, that Officer Mulkeen was justified in shooting

Officer Wichers discharged his weapon a single time, shooting at Mr. Williams from a few feet away. We must therefore evaluate whether Officer Wichers (1) believed this his use of deadly force was necessary to avert the imminent use of deadly force by Mr. Williams and (2) whether a reasonable person in Officer Wichers' position, knowing what he knew and being in the same circumstance, would have had that same belief.

As with Officer Mulkeen, Officer Wichers was involved in the incident from the outset. When Officer Wichers approached he observed Mr. Williams adjust and then dig in his waistband. Officer Wichers indicated that he observed Mr. Williams dig in his waistband a second time as Mr. Williams ran, and that this conduct led Officer Wichers to believe that Mr. Williams had a firearm. Nonetheless, Officer Wichers did not draw his firearm but instead attempted to get control of Mr. Williams while repeatedly shouting to alert Officer Mulkeen that Mr. Williams was "reaching for it."

During the struggle with Mr. Williams, Officer Wichers observed the firearm fall to the ground and also observed Officer Mulkeen and Mr. Williams wrestling for control of the gun. During the struggle Officer Wichers began striking Mr. Williams in the head and body, stating that he was doing whatever he could to get Mr. Williams' hands off the gun.

When the initial gunshots rang out, Officer Wichers indicated that he did not see who was shooting. Officer Wichers then stepped back from Mr. Williams and Officer Mulkeen, observed Officer Mulkeen with his back on the ground, but could not see Mr. Williams' hands. Although Officer Wichers saw Officer Mulkeen holding his own firearm, he believed that Mr. Williams had regained control of the firearm and may have been shooting at Officer Mulkeen. At that point he fired one round at Mr. Williams from a distance of approximately five feet. Officer Wichers indicated that he then saw Mr. Williams move away from Officer Mulkeen and Det. Beddows entered his line of sight to the right, firing at Mr. Williams.

Our investigation has found substantial evidence to support Officer Wichers' subjective belief, including, but not limited to, the events leading up to the shooting, Mr. Williams' efforts to regain possession of the firearm, the gunshots ringing out during the struggle, and Officer Wichers' immediate response to those gunshots all corroborate his explanation for firing a single round at Mr. Williams.

Although the evidence also shows that Officer Wichers was mistaken in his belief - Antonio Williams never fired a shot - we nonetheless find his belief reasonable. Mr. Williams fled, resisted, and physically struggled with officers in order to regain possession of his firearm. Upon hearing gunshots where only two people could have been firing, Officer Wichers' conclusion that one of those people was Mr. Williams was reasonable. Therefore, we conclude that Officer Wichers' use of deadly physical force was justified as a matter of law. We have concluded that the defense of justification applies to Officer Wichers' intentional act of discharging his firearm, and, therefore, find that criminal charges for that act are not warranted.

Detective Beddows

Detective Beddows, who discharged his weapon next, stated that upon arriving at the scene, he believed, that his fellow officers were engaging with an armed individual. He further indicated that upon exiting his vehicle, he immediately ran toward the area where Officers Mulkeen and Wichers were struggling with Mr. Williams. Detective Beddows then indicated that as he came within 15 feet, he heard several gunshots but did not know who was shooting. He continued to run toward his fellow officers, drawing his firearm as he did so. When Detective Beddows came within a few feet of the struggle, he observed Officer Mulkeen on the ground to his left and Mr. Williams rolling off Officer Mulkeen, moving to the right holding a small caliber firearm. At that point Detective Beddows raised his firearm and shot at Mr. Williams one time. He indicated that he saw that Mr. Williams was no longer moving and was no longer a threat, so he did not discharge any additional rounds.

Detective Beddows narrative is corroborated by the evidence uncovered during our investigation. His body worn camera footage and accompanying audio are wholly consistent with his statements about the incident and support his belief that Mr. Williams possessed a firearm. As he approached, he heard gunshots, observed a small caliber pistol with Mr. Williams, and concluded that Mr. Williams was an imminent threat to Detective Beddows and his fellow officers. Therefore, we found sufficient evidence to support that Detective Beddows' belief that Mr. Williams was an imminent threat to use deadly physical force when the officer fired at him.

We also find Detective Beddows' belief was reasonable. The officer was running upon a scene where his fellow officers were engaged in a physical struggle with an armed suspect and gunshots were being fired. In that split-second, Detective Beddows' conclusion that Mr. Williams had used or was about to use deadly physical force was reasonable. Therefore, we conclude that Detective Beddows' use of deadly physical force was justified as a matter of law. We have concluded that the defense of justification applies to Officer Beddows' intentional act of discharging his firearm, and, therefore, find that criminal charges for that act are not warranted.

Officer Figueroa

Officer Figueroa was the fourth officer to discharge his firearm. As with Detective Beddows, Officer Figueroa indicated that before arriving at the scene he was aware that other officers were engaged with a potentially armed civilian. Officer Figueroa stated that as he exited his car and got to the curb of the sidewalk, he began to hear gunshots. He also indicated that Detective Beddows was ahead of him running toward where other officers were, and at that point he saw muzzle flashes but did not know who was firing. Officer Figueroa said that he drew his firearm and then saw Detective Beddows step back and begin firing at an individual on the ground who appeared to be face up and attempting to stand. At that point, Officer Figueroa concluded that the individual on the ground was

holding and shooting a firearm at Detective Beddows, and Officer Figueroa discharged his weapon two times at the individual.

A review of the evidence obtained during this investigation reveals that Officer Figueroa was mistaken. At the time of Officer Figueroa's discharge, Mr. Williams had already been separated from Officer Mulkeen and was on the ground facing away from Officer Figueroa. Nonetheless, the evidence does corroborate much of Officer Figueroa's narrative. The body worn cameras show that as Officer Figueroa stepped onto the sidewalk the first gunshots were fired. Over the next four seconds, the gunshots continued and then, just as Officer Figueroa got a clear view of what was happening, Detective Beddows stepped back from the person on the ground and discharged his weapon. With this information, Officer Figueroa quickly concluded that his fellow officer was under fire and immediately discharged his weapon twice. Officer Figueroa fired two rounds less than a second after Detective Beddows.

We have determined that Officer Figueroa's belief in that moment was honestly held and reasonable. We therefore conclude that we would be unable to disprove that Officer Figueroa was justified in discharging two rounds. We have concluded that the defense of justification applies to Officer Figueroa's intentional acts of discharging his firearm, and, therefore, find that criminal charges for those acts are not warranted.

Sergeant Valentino

Sergeant Valentino was the fifth officer to discharge his weapon, which he did five times. As with Officer Figueroa and Detective Beddows, Sergeant Valentino was aware as he was headed to the scene that his fellow officers were engaged with a potentially armed suspect. Upon arriving at the location, Sergeant Valentino stated that he saw Officer Mulkeen and Mr. Williams struggling and fall to the ground and that he heard someone scream "He's reaching for it!" According to Sergeant Valentino, he then observed Officer Mulkeen reach for his firearm and then heard gunshots and saw

a muzzle flash. Sergeant Valentino indicated that Officer Mulkeen and Mr. Williams were in close proximity to one another, but that he could not clearly identify Officer Mulkeen. Sergeant Valentino did not recall seeing any other officers because he was focused on Mr. Williams and when he saw a clear shot he began firing.

Sergeant Valentino's narrative also has support from the evidence uncovered during our investigation. Indeed, as Sergeant Valentino's vehicle arrived at the scene, he would have been able to see his fellow officers struggling with Mr. Williams. With his windows rolled down, it is also likely that Sergeant Valentino heard Officer Wichers scream "he's reaching for it!" a final time. Then, as he exited the vehicle, Officer Mulkeen began firing at Mr. Williams. Because the vehicle drove several feet past the walkway, however, we do not believe that Sergeant Valentino could have seen these initial rounds. Nonetheless, he likely saw Officer Mulkeen discharge the fifth round at Mr. Williams, who was still somewhat on top of him. Sergeant Valentino began firing less than two seconds later, discharging four rounds in quick succession, and the final round half a second afterward.

Although Sergeant Valentino stated that when he began firing, he could clearly see Mr. Williams, this statement is controverted by the body worn camera evidence. In fact, by the time that Sergeant Valentino began firing, Mr. Williams had already rolled off of Officer Mulkeen, was motionless on the ground, and Officer Mulkeen was no longer in danger. Nonetheless, based upon the information Sergeant Valentino had at the time he discharged his weapon, we conclude that his belief that Officer Mulkeen's life was in danger was genuine. His claim that he observed Mr. Williams on top of Officer Mulkeen when he discharged his own weapon is likely the result of his combining and blurring a series of observations he made within the span of approximately four seconds rather than an intentional falsehood. It is therefore reasonable to conclude that Sergeant Valentino believed that Officer Mulkeen was engaged in a physical struggle with an armed perpetrator, that Officer

Mulkeen had fired at the perpetrator presumably with reason, and that Mr. Williams was a threat to the life of his fellow officer.

With this information, we conclude that we could not disprove beyond a reasonable doubt that Sergeant Valentino's belief in that moment was honestly held and reasonable, and therefore we would be unable to overcome a justification defense. We have concluded that the defense of justification applies to Sergeant Valentino's intentional acts of discharging his firearm, and, therefore, find that criminal charges for those acts are not warranted.

Officer Mahon

Officer Mahon discharged his weapon one time. Officer Mahon believed that Mr. Williams was armed, having seen him reach into his waistband as he fled from Officers Wichers and Mulkeen. About one minute later, Officer Mahon recalled hearing gunshots and immediately ran toward the shots and his fellow officers. He recalled hearing "different calibers" being discharged and concluded that his fellow officers were in a gun fight with Mr. Williams. Officer Mahon indicated that he did not see Officer Mulkeen but did see Mr. Williams on the ground visibly holding a firearm. At that point, he recalled seeing Detective Beddows firing and consequently discharged his weapon one time in the direction of Mr. Williams.

The evidence corroborates much of Officer Mahon's narrative. When Mr. Williams crossed the street, Officer Mahon radioed to his partners that he's "got it," referring to a potential firearm in Mr. Williams' possession. From across the street, Officer Mahon heard gunshots that he believed came from different firearm based upon their sound. Officer Mulkeen's initial four rounds would have been muffled given the proximity to Mr. Williams at the time of the discharged - at least one of the rounds resulted in a contact wound. The fifth and final round fired by Officer Mulkeen, followed immediately by the rounds of Officer Wichers and Detective Beddows, would have sounded different. Officer Mahon's mistaken conclusion likely made before he even arrived at the sidewalk, that his

fellow officers were engaged in a gun fight was undoubtedly reinforced when he observed Detective Beddows firing at an individual on the ground.

Yet the evidence also shows that at the time Officer Mahon fired his weapon, Mr. Williams was lying face down, away from where Officer Mahon. The firearm Mr. Williams had in his possession was underneath his body, and therefore it is doubtful that Officer Mahon actually observed the weapon at that point. Instead, we conclude that Officer Mahon mistook the individual on the ground, Offer Mulkeen, for Mr. Williams. Nonetheless, based upon what he was seeing in that moment, Officer Mahon's subjective belief that his fellow officers were engaged in a firefight with an armed suspect was honestly held. Moreover, we also conclude that his assumptions were reasonable, and therefore would not be able to disprove a justification defense as to his conduct. We have concluded that the defense of justification applies to Officer Mahon's intentional act of discharging his firearm, and, therefore, find that criminal charges for that act is not warranted.

Justification for Intentional Crimes – Completed or Attempted

Given our conclusion that we would not be able to disprove that any of the officers were justified in discharging their firearms during this incident, none could be prosecuted for any intentional crime, regardless of whether those crimes were completed or merely attempted. In other words, regardless of which of officer caused the injuries to Mr. Williams or Officer Mulkeen, none could be prosecuted for intentionally doing so or attempting to do so.

IV. RECKLESS CRIMES³⁴⁹

³⁴⁹ The law does not recognize an attempted reckless crime.

Although we will discuss whether some of the officers' actions were criminally reckless,³⁵⁰ it is important to note that justification is a defense to any crime involving the use of force, including reckless crimes.³⁵¹ In *People v. Huntley*, the Court of Appeals specifically held that justification is a defense to a charge of reckless homicide.³⁵² In other words, given our conclusion that the justification defense precludes a prosecution for any intentional crimes, we must also conclude it precludes a prosecution for any reckless crimes.

In order to establish that an officer committed a reckless crime, we would have to conclude (1) that his conduct created a substantial and unjustifiable risk that another person's death would occur; (2) that he was aware of and consciously disregarded that risk; and (3) that his disregard of that risk was a gross deviation from the standard of conduct a reasonable person would have observed in that situation.³⁵³

Officer Figueroa

Officer Figueroa stated that upon arriving at the sidewalk, he heard gunshots and observed muzzle flashes ahead of him. He then observed Detective Beddows step back and fire at an individual on the ground that was face up. Officer Figueroa concluded that the individual on the ground was a suspect and began firing in that individual's direction. It is readily apparent from his statements and

³⁵⁰ Given the facts elicited during our investigation, we do not believe a colorable argument can be made that Officer Mulkeen acted 'recklessly' with respect to his firearms discharge. Similarly, given their proximity to the incident, their discharge of a single round, and their clear line of sight to Mr. Williams, we also do not believe any reasonable claim could be made that Officer Wichers or Det. Beddows acted recklessly when they fired their weapons. Therefore, we will limit the analysis in this section to the three other officers that discharged their weapons: Officer Figueroa, Sgt. Valentino, and Officer Mahon.

³⁵¹ See *People v. McManus*, 67 N.Y.2d 541 (1984). An exception to the applicability of the defense of justification for reckless conduct is set forth in PL § 35.30(2). That section does not apply here, as the officers' use of deadly physical force under these facts was "necessary to defend the police officer...or another person from what the officer reasonably believe[d] to be the use or imminent use of deadly physical force." PL § 35.30(1)(c).

³⁵² *People v. Huntley*, 59 N.Y.2d 868 (1983)

³⁵³ See Penal Law § 15.05(3); *People v. Boutin*, 75 N.Y.2d 692, 696 (1990).

the corroborative evidence that Officer Figueroa was simply unaware that Officer Mulkeen was laying on the ground in that vicinity.

The culpable mental state of recklessness requires a factfinder to consider the risk an individual actually perceived and disregarded a risk, not one that they should have perceived. The People would be unable to prove beyond a reasonable doubt that Officer Figueroa was aware of, let alone consciously disregarded, a risk that by discharging his weapon when and where he did, he could have harmed a fellow officer. Therefore, Office Figueroa cannot be criminally charged for a reckless crime.

Sergeant Valentino

According to Sergeant Valentino's narrative, when he fired his weapon Mr. Williams was still on top of Officer Mulkeen. If we credit Sergeant Valentino's narrative, we would have to assess whether he was reckless in firing at Mr. Williams from 62 feet away while Mr. Williams was so close to Officer Mulkeen. However, as previously discussed, the evidence contradicts Sergeant Valentino's narrative; Mr. Williams had already rolled off Officer Mulkeen before Sergeant Valentino had fired a single round. Thus, when Sergeant Valentino discharged his firearm, Officer Mulkeen was directly in front of Mr. Williams. Thus, the actual risk created by his conduct differed materially from the risk he perceived. We cannot prove Sergeant Valentino was aware of the actual risk that his conduct created and therefore could not prove, beyond a reasonable doubt, his guilt of any reckless crimes.

Officer Mahon

As with Officer Figueroa, when Officer Mahon discharged his firearm, he failed to realize that the individual on the ground was Officer Mulkeen. Indeed, it appears from his narrative that Officer Mahon simply did not see Officer Mulkeen at all until he approached afterward, and likely confused his fellow officer for Mr. Williams at the time he fired. Officer Mahon's failure to perceive the risk that he might injure a fellow officer bars any prosecution of his actions under a theory that they were criminally reckless.

V. CRIMINAL NEGLIGENCE

Before determining whether any of the officers were criminal negligent when they fired their weapons, it must again be stated that justification is a defense to crimes involving the use of force, including criminal negligence.³⁵⁴ Therefore, if the justification defense would prevent a prosecution for an intentional or reckless crime, it would likewise prevent the successful prosecution of a criminal negligent crime.

A person acts with criminal negligence with respect to a death when that person (1) engages in conduct that creates or contributes to a substantial and unjustifiable risk that another person's death will occur; (2) when he fails to perceive that risk; and (3) when that risk is of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. In the context of criminally negligent homicide, “criminal liability cannot be predicated upon every careless act merely because its carelessness results in another's death . . . the elements of the crime preclude the condemnation of inadvertent risk creation unless the significance of the circumstances of fact would be apparent to one who shares the community's general sense of right and wrong.”³⁵⁵

A key distinction between criminal negligence and recklessness is the actor's awareness, or lack of awareness, of a risk. With this in mind, we conclude that the actions of Officer Figueroa, Sergeant Valentino, or Officer Mahon were not criminally negligent.

Officer Figueroa and Officer Mahon both stated that they observed a fellow officer, Detective Beddows, apparently engaging in a gunfight with an individual that was on the ground and armed with a weapon. At that point, both Officer Figueroa and Officer Mahon discharged their weapon. Neither

³⁵⁴ People v. McManus, 67 N.Y.2d 541 (1984).

³⁵⁵ People v. Haney, 30 N.Y.2d 328, 335 (1972).

of the officers realized that the individual on the ground was Officer Mulkeen. Therefore, these two officers engaged in conduct that created a substantial risk that another person's death would occur and failed to perceive that risk.

Yet, in order to establish criminal negligence, we must determine whether the officers' failure to perceive the risk – that they were shooting at a fellow officer and not an armed civilian – was a gross deviation from the standard of care that a reasonable person would observe in that situation.³⁵⁶ On this point, it is telling that two of the three officers in nearly identical positions made the same judgment in that split second. Nor can we point to the distance these officers were from Officer Mulkeen when they fired their weapons as proof of a 'gross deviation' of care. As discussed above, members of the NYPD routinely practice at distances of 45 to 75 feet, and both Officer Figueroa and Officer Mahon were within this range at the time they discharged their weapons.

While, in hindsight, one may argue that these responding officers might have waited to determine what was actually occurring, it is this precise analysis that Courts have warned against. Instead, we must assess the officers' conduct in the context of the situation in which they found themselves. In the midst of a potential firefight between an armed suspect and fellow officer, delay may come at the expense of a fellow officer's life. Officer Mahon and Officer Figueroa each came to an identical conclusion, and their failure to perceive Officer Mulkeen's presence cannot be said to be gross deviation from the level of care that another officer, in the same situation, would provide.

Sergeant Valentino

As previously discussed, Sergeant Valentino's narrative about what was before him at the time he discharged his weapons is controverted by the other evidence. However, whether we or not we fully credit his narrative, we would be unable to prove that actions were criminally negligent beyond a

³⁵⁶ See Penal Law § 15.05(4); *People v. Caban*, 14 NY3d 369 (2010).

reasonable doubt. According to Sergeant Valentino, he was fully aware of the close proximity between Mr. Williams and Officer Mulkeen when he fired his weapon, but nonetheless felt the danger presented required him to do so. Sergeant Valentino did not fail to perceive the risk, but instead opted to fire his weapon in spite of the risk. This conduct is therefore not criminally negligent.

We do not credit Sergeant Valentino's narrative in its entirety, however, because when he fired his weapon Mr. Williams was not on top of Officer Mulkeen, but on the ground farther away from Sergeant Valentino's position. As we have stated, we have concluded that Sergeant Valentino conflated the events as they rapidly unfolded, and upon seeing what appeared to be his fellow officers engaged in a gunfight, discharged his weapon in the direction of the threat. Thus, the analysis of whether Sergeant Valentino's conduct is essentially the same as it was for Officers Mahon and Figueroa.

When we assess his conduct in the context of the situation, he made essentially the same choice as the other two officers in a similar position: he fired his weapon at the perceived threat. This conduct, therefore, is not a gross deviation from that of a reasonable person in the same situation. The People would not be able to prove that Sergeant Valentino acted with criminal negligence when he discharged his weapon on September 29, 2019.

CONCLUSION

On September 29, 2019, a police-involved shooting resulted in the loss of two young men. BXDA has conducted a thorough investigation of the events and actions that preceded their deaths, the conduct of Mr. Williams, and the firearms discharges by all six officers involved, and analyzed all relevant principles of criminal law. We conclude that there is insufficient evidence to warrant the filing of criminal charges against any of the officer.

When the officers first approached Antonio Williams, he was in possession of a loaded firearm. After temporarily losing that firearm while struggling with members of the NYPD that were trying to apprehend him, he regained control of his firearm. Officer Mulkeen's actions potentially

saved not only his own life, but the lives of his fellow officers. Officer Mulkeen discharged his weapon five times while in extremely close proximity to Mr. Williams, causing his death.

While we are able to review the actions of Officer Figueroa, Officer Mahon, Officer Wichers, Detective Beddows, and Sergeant Valentino with the lens of 20/20 hindsight, the law requires us to analyze their split-second judgments within the context that they were made. Each of these officers discharged their weapons at a person they reasonably perceived to be an armed civilian that was using, or was about to use, deadly physical force against their fellow officer. There is insufficient evidence to overcome the defense of justification in relation to the conduct of the officers. Therefore, their conduct did not violate New York Penal Law, and BXDA will not pursue a criminal prosecution in connection with this matter.

Videos of incident can be viewed here: <https://bit.ly/3fZ4Jkm>