Special Investigations and Prosecutions Unit

Report on the Investigation into The Death of Robert L. Scott

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EXECUTIVE SUMMARY

On July 8, 2015, Governor Andrew Cuomo signed Executive Order No. 147 (the "Executive Order"), appointing the Attorney General as special prosecutor "to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer." On, May 20, 2018, Robert L. Scott died following an interaction with a Wayne County Sheriff's Department ("WCSD") deputy and two New York State Police ("NYSP") troopers. Governor Cuomo subsequently issued Executive Order No. 147.18, which expressly conferred jurisdiction upon the Attorney General to investigate any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Scott's death.

As described more fully below, the OAG's review of this incident was comprehensive and included:

- Review of 911 calls and radio transmissions;
- Interviews of civilian witnesses, including the female whom Mr. Scott was with when the officers were originally dispatched;
- Interviews of the EMTs who responded to the scene;
- Presence at the interview of the NYSP troopers;
- Review of the incident report prepared by the WCSD deputy;
- Review of the entire NYSP case file;
- Review of relevant WCSD and NYSP policies;
- Review of Mr. Scott's ambulance and hospital records;
- Review of digital video evidence captured by a camera mounted on a business located across the street from the location where Mr. Scott became unresponsive;
- Review of the NYSP controlled substances report; and
- Review of the Medical Examiner's autopsy report, including toxicology.[1]

[1] A link to the digital video may be found here. Attached are: The Final Medical Examiner's Report (Exhibit 1); The Controlled Substance Report (Exhibit 2); WCSD General Order 200, regarding "THE HANDLING, MOVEMENT, TREATMENT AND ESCAPE OF PERSONS IN LAWFUL PHYSICAL CUSTODY (Exhibit 3); NYSP Manual Section 31B4 "EXECUTE YOUR ARREST PLAN" (Exhibit 4); and NYSP Manual Section 33V3 "TAKING A MENTALLY ILL PERSON INTO CUSTODY" (Exhibit 5).

The interaction between Mr. Scott and the law enforcement officers began in the upstairs apartment of a multi-family dwelling on May 20, 2018. Shortly after 5:00 am, dispatchers received a 911 call reporting a fight in progress and law enforcement officers responded. WCSD deputy Derick Fera ("Dep Fera") arrived first and entered the house, followed shortly thereafter by NYSP troopers Justin Prusak ("Tpr Prusak") and Joseph Vinci ("Tpr Vinci"). Dep Fera heard arguing behind the door of the apartment and knocked repeatedly before opening the door. Inside he saw the female occupant of the apartment and Mr. Scott, whom Dep Fera knew. The female advised that she and Mr. Scott were not fighting but that Mr. Scott was drunk and fell over. After some further conversation, Dep Fera asked Mr. Scott and the female to keep the noise level down and then walked downstairs and outside, where he and the troopers remained.

Approximately three minutes later, the officers heard arguing and screaming coming from the apartment and they re-ascended the stairs. The female answered the door and said Mr. Scott had overdosed and was "freaking out." She also told Dep Fera that Mr. Scott and she had smoked potentially "laced" marijuana. Tprs Prusak and Vinci observed Mr. Scott naked, sweating profusely, and exhibiting signs consistent with excited delirium.[2] Dep Fera then requested an ambulance to evaluate Mr. Scott. When the ambulance arrived, Mr. Scott jumped up, pushed the officers out of the way, and ran out of the apartment.

Mr. Scott ran down the stairs, out of the house, and fell to the ground, not far from the front door, near the waiting ambulance. With an emergency medical technician ("EMT") watching, the officers worked together to handcuff Mr. Scott as he continued to resist; the officers did not use Tasers, pepper spray, or any other instruments in order to restrain him. After he was restrained, Mr. Scott became unresponsive, stopped breathing, and lost his pulse. Despite the immediate application and continuation of CPR and other life-saving measures, Mr. Scott was pronounced deceased at 6:31 am.

The Monroe County Medical Examiner's Office deemed the Cause of Death: *Complications of acute cocaine intoxication. Hypertensive cardiovascular disease is a significant contributing condition.* The Manner of Death was: *Undetermined.*[3]

Based on the totality of the evidence, the OAG finds no evidence that the force used to restrain Mr. Scott was excessive or otherwise unjustified. However, we use this incident as an opportunity to recommend that the NYSP seek funding to outfit its members with body-worn cameras.

[2] Excited (or agitated) delirium is characterized by agitation, aggression, hyperthermia, acute distress and, in some cases, sudden death. *See*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3088378/

[3] The "Cause of Death" refers to the actual disease or injury that ultimately produced the death. The "Manner of Death" refers to how the disease or injury that caused the death came about. This is more fully addressed in the "Medical Examiner's Report" section.

STATEMENT OF FACTS[4]

This incident can be divided into three general segments: (1) the events leading to and including the officers' first encounter with Mr. Scott; (2) the officers' second encounter with Mr. Scott; and (3) the response of law enforcement personnel after Mr. Scott was restrained.

1. Events Leading to and Including the Officers' First Encounter with Mr. Scott

CW-1[5] is the female occupant of an upstairs apartment within a multi-unit home in Lyons, Wayne County. According to CW-1, Mr. Scott, whom she calls "master," had been staying with her "on and off" for approximately three days prior to this incident. On May 20, 2018, Mr. Scott arrived at her apartment around 12:30 am. CW-1 said that after he arrived, Mr. Scott consumed cocaine, which he described to her as "potent." During the interaction with law enforcement detailed below, CW-1 advised that Mr. Scott had smoked possibly laced marijuana and was overdosing, but she did not disclose that Mr. Scott had consumed cocaine until after the incident was over.

Shortly before 5:00 am, CW-2 heard his upstairs neighbor (CW-1) and a male yelling at each other. CW-1 was calling the male "master" and CW-2 could hear "banging" coming from the apartment. CW-2 called 911 and advised that two people in the upstairs apartment were fighting and, based on what he could hear, CW-2 believed that the fight was "over drugs." WCSD Dep Fera and NYSP Trps Prusak and Vinci responded.[6]

Dep Fera arrived first; he entered the home, climbed the stairs leading to CW-1's apartment, and knocked several times on the door. Receiving no answer, but hearing a man and woman inside arguing, Dep Fera opened the door. CW-1, whom Dep Fera did not know, came toward the door and said she needed to put pants on. Dep Fera also saw Mr. Scott, whom he recognized through family connections, walk into a side room saying, "one sec Fera, I got to get some clothes."

As Mr. Scott stood inside a bedroom doorway, Dep Fera spoke with CW-1, advising that he had been dispatched for a report of fighting. CW-1 said she and Mr. Scott were not fighting, but that Mr. Scott had gotten drunk and fell over. Mr. Scott added that he and CW-1 were "just having a good time." Trps Prusak and Vinci arrived outside the apartment while Dep Fera was speaking with CW-1 and Mr. Scott, but they did not enter the apartment or participate in the conversation. Dep Fera obtained CW-1's and Mr. Scott's pedigree information and advised them that they needed to keep the noise level down; CW-1 and Mr. Scott agreed, saying that they were going to bed. Seeing beer bottles, but nothing illegal in plain view at that point, Dep Fera left CW-1's apartment. All three officers exited the home, but remained outside, talking.

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[4] None of the information referenced in this report was obtained through the use of grand jury subpoenas. Any subpoenas issued were pursuant to New York State Executive Law Section 63(8).

[5] Civilian witnesses whose only connection with this case was their presence in the apartment building are referred to as "CW-[ ]" in order to protect their identities.

[6] Dep Fera wrote an incident report after the incident, but did not agree to be interviewed. Trps Prusak and Vinci waived their rights and agreed to be interviewed, but did not provide sworn statements.

Digital video evidence obtained from a business located across the street captured Dep Fera arriving at the house and entering the front door at around 5:08:30 (per the time stamp). Approximately two minutes later, at 5:10:20, Trps Prusak and Vinci arrive and enter the house. At approximately 5:11:20, the three officers exit the house and stand near the front door talking.

2. <u>The Officers' Second Encounter with Mr. Scott</u>

CW-1 said that shortly after the officers left the apartment, Mr. Scott began pushing her and yelling. She noted that he was acting "paranoid" and was "not himself." CW-3, another downstairs resident of the home, called 911 and reported fighting to which the dispatcher replied that the officers were already on-scene. The officers, who had been standing outside, heard arguing from CW-1's apartment and then heard CW-1 scream. They reentered the house and went back to CW-1's apartment. CW-1 advised them that Mr. Scott was having some type of drug overdose (per Trps Prusak and Vinci) and was "freaking out" (per Dep Vera). All three officers saw that Mr. Scott was naked and sweating profusely.

Dep Fera removed CW-1 to a different room to interview her away from Mr. Scott. CW-1 told him that Mr. Scott "just started freaking out" after the two smoked marijuana, which, she said, could have been laced with another drug.

According to Trps Prusak and Vinci, Mr. Scott was exhibiting signs of excited delirium (see above, fn 2), a fact they would later relay to responding ambulance personnel. They noted that he was sweating "beyond excessive[ly]," had difficulty forming words, repeated words, did not know if he was dressed or not, and kept pacing and sitting, intermittently. At that point, Trp Prusak asked Dep Fera to call for an ambulance. Dep Fera radioed dispatch advising that he needed an ambulance to check on a male who had consumed an unknown substance. All of the officers noticed drug related items (glass crack pipe, metal pipe, red straw with white residue, and baggie with white residue) in an open tin on a table next to Mr. Scott.[7]

According to CW-1, when the officers told Mr. Scott they had called an ambulance, Mr. Scott said he did not want to go. CW-1 said that Mr. Scott became angry and agitated, but the officers simply continued to speak to him calmly; they did not interact with him physically. Tprs Prusak and Vinci were able to convince Mr. Scott to put on shorts and a tank top as everyone waited for the ambulance to arrive and initially it appeared that the officers had succeeded in calming him down.

Lyons Town Ambulance EMTs Julie Smith ("EMT Smith") and Howard Clark ("EMT Clark") responded to the scene in response to the request to check the welfare of a man believed to have consumed a drug and who was sweating profusely. Trps Prusak and Vinci said that when the ambulance arrived Mr. Scott became excited, balled up his fists, bucked his shoulders, and got close to the officers. At this point, Dep Fera left the apartment and went downstairs to explain the situation to the EMTs.

[7] CW-1 would later tell the officers that Mr. Scott consumed more cocaine during the few minutes between the officers' first and second appearances at her apartment.

Dep Fera met with EMT Smith outside the home before accompanying her up the stairs toward CW-1's apartment. EMT Clark remained outside where he removed the gurney from the ambulance and began to move it in the direction of the home. As EMT Smith was walking up the stairs with Dep Fera, she heard a male yelling aggressively at law enforcement officers who were trying to calm him down. Dep Fera advised EMT Smith to remain in the landing and he reentered the apartment.

CW-1, the troopers, Dep Fera, and EMT Smith all described Mr. Scott's exit from the apartment essentially the same, but with varying degrees of detail. CW-1 said the officers were trying to calm Mr. Scott down when Tpr Prusak placed his hand on Mr. Scott's shoulder and said the ambulance arrived. At that point, CW-1 said that Mr. Scott jumped up and ran out of the room. Trps Prusak and Vinci said that Mr. Scott stood up, "threw" his shoulders at the officers, and ran out of the apartment. They said they could not grasp Mr. Scott, because he was so sweaty. Dep Fera said that as Mr. Scott was sprinting out of the apartment, Tpr Prusak could not grasp him and Trp Vinci fell to the ground trying to stop him. Dep Fera said he tried to catch Mr. Scott in a bear hug, but Mr. Scott slipped out and ran down the stairs as Dep Fera fell to the floor near the apartment's entrance.[8] EMT Smith said that she was standing in the hallway as Mr. Scott ran out of the apartment and down the stairs, trailed by the officers.

Mr. Scott ran down the stairs and out the front door followed first by Trp Prusak and then Trp Vinci. Mr. Scott ran a short distance before he fell to the ground in the side yard initially landing approximately five yards from the front door. Mr. Scott continued to resist the officers' efforts to restrain him. According to Dep Fera, Tpr Prusak lay across Mr. Scott, while Dep Fera and Trp Vinci took control of Mr. Scott's legs. Only then, according to Dep Fera, were he and Trp Vinci able to secure Mr. Scott's right arm in handcuffs. Dep Fera said that after the officers secured Mr. Scott's right arm, Mr. Scott offered up his left arm. According to Trps Prusak and Vinci, Trp Prusak held Mr. Scott by his shoulders to control him as Trp Vinci and Dep Fera applied handcuffs. At no time did any officer strike Mr. Scott with a baton or hand; nor did they use a Taser or pepper spray.

According to EMT Clark, who was outside of the residence maneuvering the gurney, Mr. Scott ran out the front door followed by two troopers. He said the pair managed to get Mr. Scott down to the ground, but Mr. Scott was resisting and they were having a difficult time restraining him. EMT Clark said the troopers kept telling Mr. Scott to "stop resisting" and that only after Dep Fera reached them, were the three officers able to handcuff Mr. Scott.

EMT Smith said that by the time she got downstairs and could observe what was happening, the officers were in the process of handcuffing Mr. Scott and he was already on his side.[9] EMT Smith asked the officers if they thought this might be a case of excited delirium, and

[8] Dep Fera was initially wearing a body-worn camera; the instrument was later found at the top of the stairway and likely fell off of his uniform during this part of the incident. However, Dep Fera noted that the camera had not been working during his preceding two shifts and he doubted whether any data was actually captured; he was correct. The troopers were not wearing body-worn cameras.

[9] The digital video evidence showed that EMT Smith exited the home between 18 and 20 seconds after Mr. Scott went to the ground.

they replied affirmatively, noting that Mr. Scott seemed to have "excessive strength." Based upon what she observed, EMT Smith obtained sedative drugs from the ambulance, believing Mr. Scott might require medicinal sedation. However, when she returned with the drugs, Mr. Scott was lying still; he was, however, still breathing at that point.

CW-1 said that she when she got down the stairs, the officers were on top of Mr. Scott and told her to go back inside. CW-1 said when she looked again, Mr. Scott was handcuffed and the ambulance had arrived.[10]

The video footage displays Mr. Scott running from the house, trailed closely by Tpr Prusak who was followed by Trp Vinci and Dep Fera. Tpr Prusak can then be seen reaching out toward Mr. Scott and Mr. Scott falls to the ground; however, it is not entirely clear that that Tpr Prusak actually caused Mr. Scott's fall.

From the location where Mr. Scott initially falls, he does not stand up again; instead, he appears to use his arms to pull himself in the direction of the street while the officers try to stop him. However, the video is not clear and a pole partially obscures the view. Similarly, it is impossible to see exactly how the officers were ultimately able to handcuff Mr. Scott, because of the combination of the pole and a signpost partially obstructing the view, flashing ambulance lights interfering with the view, as well as the inherent resolution of the video, which the OAG enhanced to its maximum capacity. The video does show, however, that EMT Clark was present throughout the time that the officers subdued Mr. Scott and that EMT Smith exited the home approximately 18-20 seconds after Mr. Scott initially fell to the ground.

3. Law Enforcement Response after Mr. Scott was Restrained

According to Tpr Vinci, after Mr. Scott was handcuffed the officers moved him onto his side, Mr. Scott began to "look distressed, with his mouth open and no facial movements." Trp Prusak said that one of the EMTs checked Mr. Scott at that time and advised that he had no pulse. The officers un-cuffed Mr. Scott and moved him onto a stretcher, where Tprs Prusak and Vinci alternated performing chest compressions as the EMTs prepared the compression machine. Once the machine was operational, the officers and EMTs moved Mr. Scott into the ambulance. The EMTs continued CPR on the drive to the hospital and Tpr Prusak rode to the hospital in the back of the ambulance to assist.

Dep Fera said that he did not realize there was anything wrong with Mr. Scott until after the EMTs and the officers placed Mr. Scott on the gurney. When Dep Fera had originally interacted with Mr. Scott in the apartment, Mr. Scott had been angry, agitated, sweaty, and vocal. However, as he was being loaded into the ambulance, Dep Fera saw that Mr. Scott was no longer verbal and had a "vacant stare."

[10] While not critical, the ambulance actually arrived before Mr. Scott ran from the residence. Additionally, the video discloses that EMT Smith emerged from the house before CW-1 left the house the first time; EMT Smith said that Mr. Scott was on his side when she exited the house.

EMT Smith said that when she reached Mr. Scott, he was lying on his side, breathing. After discussing the transport plan with the officers and EMT Clark, she and the two troopers lifted Mr. Scott onto the stretcher and at that point she and EMT Clark realized Mr. Scott had become unresponsive. EMT Smith then checked Mr. Scott's pulse and found he did not have one; the troopers immediately removed the handcuffs, lay Mr. Scott flat on the stretcher, and assisted with resuscitation efforts. According to the ambulance records, the transport to Wayne Lyons hospital took approximately nine minutes. The EMTs continued CPR during the transport and provided two doses of epinephrine in an effort to start Mr. Scott's heart.

The ambulance arrived at Wayne Lyons Hospital at approximately 5:55 am. Hospital personnel took over chest compressions and immediately administered another dose of epinephrine as well as a single dose of Narcan©, to no avail.[11] Over the next approximately 35 minutes, hospital personnel continued CPR, administered seven more doses of epinephrine, and monitored Mr. Scott's pulse. For approximately ten minutes, brief periods occurred during which staff discerned a weak but palpable pulse. However, at 6:31 am, with no pulse perceived by monitor or palpation for approximately twenty minutes, hospital staff ended CPR and declared Mr. Scott deceased.

While Tpr Prusak accompanied the EMTs to the hospital and assisted with CPR, Dep Fera and Trp Vinci remained behind and spoke with CW-1. At that point, CW-1 advised that Mr. Scott consumed cocaine before the officers initially responded to the home, and then consumed more cocaine while the officers were outside speaking, before they returned to CW-1's apartment for the second time.

ANALYSIS OF SUSPECTED DRUGS

The bag containing a white powdery residue, located in an open tin along with what appeared to be a glass crack pipe, a metal pipe, and a red straw with white residue, was submitted to the New York State Police Crime Lab for forensic analysis. It tested positive for the narcotic drug cocaine.

MEDICAL EXAMINER'S REPORT

Dr. Lorraine Lopez-Morell conducted an autopsy on May 20, 2018. On his date of death, Mr. Scott was 58 years of age, weighed 238 pounds and measured 68 inches. He presented with minor physical impairments, none of which was found to have contributed to his death, including: obesity; minor blunt force injuries (abrasions of the left shoulder, left upper arm, left lower back, right dorsal wrist, and knees); injuries consistent with cardiopulmonary resuscitation; and multiple renal cysts. More significantly, Mr. Scott was suffering from "Hypertensive cardiovascular disease" and had a greatly enlarged heart, noted in the autopsy as "severe cardiomegaly." Samples of Mr. Scott's bodily fluids were submitted for toxicological testing. His blood was positive for cocaine as well as a cocaine metabolite (benzoylecgonine) and a cocaine contaminant (levamisole).

[11] Narcan© is the brand name of naloxone hydrochloride, which can prevent fatal opioid overdoses by displacing opioids from opiate receptors, thereby blocking their effects. Narcan has no effect on a person who has not consumed opioids; Cocaine is not an opioid. *See*, https://www.narcan.com/?gclid=EAIaIQobChMI9Kmfp9Dz2gIVjUsNCh1mWAQgEAAYASAAEgKGH_D_BwE

Dr. Lopez-Morell deemed the cause of death: *Complications of acute cocaine intoxication*, noting that hypertensive cardiovascular disease was a significant contributing condition. She deemed that the manner of death: *Undetermined.*

In a meeting with Dr. Lopez-Morell to ensure the OAG was properly interpreting her findings, she noted that she could not determine how much the underlying interaction with law enforcement might have contributed to Mr. Scott's death by, for instance, increasing his heart rate. In such circumstances, she said she deems the manner of death "Undetermined." Dr. Lopez-Morell also said that she found no internal injuries during the autopsy indicating that independent actions of the officers consistent with a use of force contributed to the death.

LEGAL ANALYSIS

As noted above, the medical examiner ruled that Mr. Scott's death was caused by acute cocaine intoxication, with hypertensive cardiovascular disease a significant contributing condition. The medical examiner could not determine whether the altercation with the officers contributed to Mr. Scott's death and if so, to what degree. The OAG finds that the officers' restraint of Mr. Scott was legal and the force employed during the restraint was reasonable and justified.

The officers were authorized to take Mr. Scott into custody pursuant to §9.41 of the Mental Hygiene Law ["MHL"], which provides that:

> Any … police officer who is a member of the state police or … a sheriff's department may take into custody any person who appears to be mentally ill and is conducting himself in a manner which is likely to result in serious harm to himself or others. "Likelihood to result in serious harm" shall mean (1) substantial risk of physical harm to himself as manifested by … conduct demonstrating that he is dangerous to himself, or (2) a substantial risk of physical harm to other persons as manifested by … violent behavior by which others are placed in reasonable fear of serious physical harm. Such officer may … remove [such person] to [a] hospital …

MHL §1.03(20) defines "Mental Illness" as "affliction with a … mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation." The law does not distinguish between organic mental conditions and those induced by drug intoxication.

Applying the plain language of the statute to the case at bar, the officers were justified in taking Mr. Scott into custody pursuant to the MHL. Although the officers did not know precisely which drug Mr. Scott had recently ingested, they could see that he was afflicted by some drug to the extent that his behavior, thinking, and judgment were altered and he was in need of immediate care. Mr. Scott was violent,[12] confused, agitated, and sweating profusely. Therefore, Mr. Scott appeared to be suffering from a "mental illness" pursuant to the MHL.

[12] CW-1's and Mr. Scott's fighting generated two separate 911 calls from two people residing in the building. After the officers left the apartment the first time, CW-1 said Mr. Scott began pushing and yelling at her. CW-1's screams

Since Mr. Scott was experiencing the effects of a drug overdose, his refusal to accept medical treatment posed a significant risk of physical harm to Mr. Scott and others. In fact, Mr. Scott's continued presence in CW-1's apartment posed a significant risk of physical harm to CW-1. (See, fn 12) Accordingly, the officers were authorized to take custody of Mr. Scott so that he could be hospitalized.

The remaining inquiry is whether the officers' use of force to restrain Mr. Scott was "objectively reasonable." *See generally Graham v. Connor*, 490 U.S. 386, 394-396 (1989)(claims of excessive force are weighed pursuant to an "objective reasonableness" standard); *Koeiman v. City of New York*, 36 A.D.3d 451 (1st Dept. 2007)(wrestling defendant to the floor after he assaulted another person and resisted officers' efforts to restrain him was objectively reasonable).[13]

In this case, the officers' actions comported with recognized best practices for dealing with individuals experiencing, what appears to be, an excited delirium event. Specifically, the officers immediately summoned EMS. Thereafter, they did not engage physically with Mr. Scott; they took no action to restrain or otherwise physically interact with him until *after* the ambulance arrived on scene and indeed after Mr. Scott ran from the house. Instead, as confirmed by CW-1, while awaiting EMS, the officers simply spoke with Mr. Scott and tried to calm him. This manner of dealing with individuals displaying signs consistent with excited delirium has been recognized as a best practice that can potentially save lives.[14]

After Mr. Scott ran from the apartment, the officers tried to restrain him and he aggressively resisted; he did not stop resisting until he was handcuffed. Yet despite Mr. Scott's active and aggressive resistance,[15] there is no evidence that officers ever struck him with their batons or hands; they did not Taser him, and they did not use pepper spray. Instead, they worked together to restrain him, without the use of instruments, so that he could receive medical care. When Mr. Scott became unresponsive, the officers immediately assisted the EMTs with his medical care, which

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caused the officers to reenter her apartment a second time, at which point CW-1 said that Mr. Scott was "freaking out."

[13] The WCSD Policy most applicable to this situation is General Order 200, regarding "THE HANDLING, MOVEMENT, TREATMENT AND ESCAPE OF PERSONS IN LAWFUL PHYSICAL CUSTODY." Dep Fera's actions comported with the policy, which requires that "Unlawful or unnecessary force shall not be used in effecting an arrest." [See Sec IB(1), Policy attached (Exhibit 3)] The NYSP Manual regarding arrests similarly directs that troopers "Use no more force than is legally and reasonably necessary to effect the arrest." [See Sec 31 B4, Policy attached (Exhibit 4)] The NYSP manual does contain a brief section entitled "Taking A Mentally Ill Person Into Custody." [See Sec 33V3, Policy attached (Exhibit 5)] While not lengthy or particularly elucidating, the troopers' actions comported with the policy.

[14] *See generally*, https://leb.fbi.gov/articles/featured-articles/excited-delirium-and-the-dual-response-preventing-in-custody-deaths; https://www.justnet.org/pdf/exds-panel-report-final.pdf; http://www.fmhac.net/assets/documents/2012/presentations/krelsteinexciteddelirium.pdf (noting that officers should be alert to signs of excited delirium, EMS should be contacted immediately, and ideally, EMS should be present before law enforcement initiates control measures).

[15] The officers advised EMT Smith that Mr. Scott displayed "super human strength."

included providing CPR.[16] The OAG concludes that the limited amount of force employed was reasonable. *See e.g., Pacheco v. City of New York*, 104 A.D.3d 548 (1st Dept. 2013)(stun gun used to subdue individual who had previously suffered seizures and was resisting efforts to move him to an ambulance so that he could be transported to the hospital was not excessive). *Cf, Wright v. City of Buffalo*, 137 A.D.3d 1739 (4th Dept. 2016)(issue of fact existed as to whether plaintiff who had suffered a seizure and was resisting efforts to be taken to the hospital pursuant to MHL §9.41, had a genuine "mental illness and was conducting himself in a manner likely to result in serious harm to himself" when, according to witnesses, he had *agreed* to go to the hospital after he "got his bearings" and, upon hearing that, the EMTs agreed that he should be given time to recover from the seizure).

Finally, the OAG notes that when police officers affirmatively act on behalf of a person who is not able to adequately aid or protect himself, they are subject to liability for any bodily harm caused by leaving that person "in a position of peril equal to that from which he was rescued … or into a new one." *Parvi v. City of Kingston*, 41 N.Y.2d 553, 559-560 (1977)(cause of action for negligence lies where police officers dropped intoxicated plaintiff at a location from which he wandered onto a roadway and was stuck by an automobile). Stated differently, an officer who affirmatively helps a person who is incapable of protecting himself cannot then allow that same helpless person to be placed into another position of peril. *Id.* at 559 (citing, Restatement (Second) of Torts §324 comment (g)). And *see, Walsh v. Cheektowaga*, 237 A.D.2d 947 (4th Dept. 1997)(cause of action for negligence lies where officers allowed intoxicated passenger to leave the scene of dwi arrest on foot, when she was subsequently struck by a train crossing railroad tracks).

Here, CW-1 initially told the officers that Mr. Scott had consumed possibly laced marijuana (after the incident was over, CW-1 advised that Mr. Scott had in fact consumed cocaine.) The officers observed Mr. Scott displaying multiple symptoms consistent with a drug overdose and took the affirmative step of calling for an ambulance. They tried to calm Mr. Scott as they waited for the ambulance to arrive, but when the ambulance reached them, Mr. Scott fled. Given Mr. Scott's condition, the officers would have been negligent and derelict in their duties had they allowed him to flee rather than take him into custody so that he could obtain medical care.

For the reasons outlined above, the OAG finds that the force used to restrain Mr. Scott was reasonable and justified.

[16] *See*, https://www.policeforum.org/assets/30%20guiding%20principles.pdf (recommending that police officers respect the sanctity of life by promptly rendering first aid).

RECOMMENDATIONS

THE NYSP SHOULD OUTFIT ITS MEMBERS WITH BODY-WORN CAMERAS

Indisputably, had Trps Prusak and Vinci been wearing body-worn cameras, a more complete picture of everything that transpired during this incident would have taken shape, particularly the events that unfolded inside of CW-1's apartment.[17] Therefore, the OAG takes this opportunity to recommend that the NYSP seek the necessary funding to implement a body-worn camera program.

The NYSP generally employs between 4,600 and 5,200 members; it is the second largest law enforcement agency in New York and the ninth largest in the nation.[18] Yet, of the twenty largest law enforcement agencies in this country, the NYSP bears the distinction of being the only agency not outfitting its members with body-worn cameras or piloting a plan to do so. In fact, as recently as October 24, 2018, the NYSP announced that it had *no* plans to outfit its members with body-worn cameras.[19] We recommend that the NYSP and the policy makers responsible for its funding reconsider that position.

Those agencies that have adopted body-worn camera programs note many associated benefits, including: the documentation of evidence, enhanced officer training, the prevention and/or resolution of citizen complaints, transparency, performance and accountability.[20] Dashboard cameras have proven to be similarly beneficial to officers, law enforcement agencies, and members of the public alike.[21] Moreover, at a time when police-civilian encounters are increasingly recorded by members of the public or on cameras mounted on buildings (as in this case) body-worn cameras provide the additional benefit of capturing events from the officer's actual perspective, to the extent possible.[22]

The NYSP has cited prohibitive costs to justify its decision not to implement a body-worn camera program.[23] We recognize and acknowledge the costs associated with cameras; not only do the cameras themselves cost money, but there are additional costs associated with data storage,

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[17] As noted above (fn 7) Dep Fera wore a malfunctioning body-worn camera that was located on the apartment landing after the incident. The troopers were not wearing cameras.

[18] https://www.bjs.gov/content/pub/pdf/csllea08.pdf

[19] https://www.mytwintiers.com/news/local-news/should-new-york-state-police-have-body-and-dash-cameras-/1547556078

[20] https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf

[21] http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=358

[22] No video recorder or camera can capture the *exact* perspective of the officer behind the wheel of a vehicle or engaged in a foot chase (or for that matter, the suspect with whom the officer is engaged). *See, e.g.*, http://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html

[23] *Id.* at fn 19.

policy development, and training officers in cameras use. However, the OAG believes that the comprehensive benefits far outweigh the costs and it appears that most major law enforcement agencies agree with that assessment. In fact, one controlled study found that the financial benefits of camera use can actually defray much of their associated costs by, for instance, reducing complaints against officers and the time required to resolve those complaints.[24] Nevertheless, fully aware of the fiscal implications, we strongly recommend that the NYSP request the necessary funding to equip its members with body-worn cameras.

[24] *See*, https://www.ncjrs.gov/pdffiles1/nij/grants/251416.pdf

EXHIBIT 1

Office of the Medical Examiner
Monroe County
New York

CASE SUMMARY
REPORT

Case Number: 18-01354
Pathologist: Lorraine Lopez-Morell, MD
Pronounced: May 20 2018 6:31AM
Other County Case
County/Origin: Wayne Co.

Name: Robert L. Scott Jr.
AKA: Robert Scott
Manner of Death: Undetermined
Cause of Death: Complications of acute cocaine intoxication

Date of Birth: [redacted]

Age: 58 Years

Part II: Hypertensive cardiovascular disease

FINAL FINDINGS

I. Complications of acute cocaine intoxication:
   a. Pulmonary edema, moderate.
   b. Became unresponsive during physical altercation.
   c. See toxicology report.
II. Hypertensive cardiovascular disease:
   a. Severe cardiomegaly, 700 grams.
   b. Left ventricular hypertrophy, 1.8 cm.
   c. Pericardial effusion, 250 mL, serosanguinous.
   d. Nephrosclerosis, moderate.
III. Obesity:
   a. Body mass index 36.18 kg/m^2.
IV. Minor blunt force injuries:
   a. Abrasion of the left shoulder.
   b. Abrasions of the left upper arm.
   c. Abrasions of the left lower back.
   d. Abrasion of the right dorsal wrist.
   e. Abrasions of the knees.
V. Injuries consistent with cardiopulmonary resuscitation:
   a. Multiple, bilateral, anterolateral and sternocostal rib fractures, minimal hemorrhage.
VI. Multiple renal cysts.

Lorraine Lopez-Morell, MD
Associate Medical Examiner
7/11/18

State of New York
County of Monroe } ss.

On the 2 day of August in the year 2018
before me, the undersigned, a Notary Public in and for the said st
personally appeared [illegible] personally
known to me whose name is subscribed to the within instrument
acknowledged to me that he / she executed the same in his / her
capacity, and that by his / her signature on the instrument, the
individual executed the instrument.

Signature of Notary

Notary [illegible] York
Qu[illegible]
My Commission Ex[illegible]

Number of Pages

Pursuant to CPL Sections 180.60-8 and 190.30-2
I certify that this is a true copy of an examination
performed by me.

(signature)
Associate Medical Examiner
(Title)
8/12/19

Office of the Medical Examiner
Monroe County
New York

AUTOPSY
REPORT

Case Number: 18-01354
Pathologist: Lorraine Lopez-Morell, MD
Other County Case
County/Origin: Wayne Co.

Name:	Robert L. Scott Jr.	**Date of Birth:**	[redacted]
AKA:	Robert Scott		
Residence:	[redacted]		
External Exam Start:	May 20 2018 1:01PM	**External Exam End:**	May 20 2018 1:27PM
Internal Exam Start:	May 20 2018 1:58PM	**Internal Exam End:**	May 20 2018 2:59PM

GROSS FINDINGS

POSTMORTEM EXAMINATION: An autopsy is performed on the body of Robert L. Scott Jr., on the 20th day of May, 2018, commencing at 1:01 PM.

EXTERNAL EXAMINATION: The body is that of a well-developed, obese adult black male (with a Body Mass Index of 36.18 kg/m^2), who weighs 238 pounds, is 68 inches in length, and appears compatible with the reported age of 58 years at the time of examination. There is an identification tag secured around the left ankle with the following handwritten information: 18-01354; Robert Scott; [redacted] Age: 58 yrs. The body is received clad in gray underwear and gray shorts. Accompanying personal effects include insurance cards, identification cards, a black rubber like bracelet with "GIVE GOOD EVERYTHING", yellow and white metal stud earrings with clear stones, and a yellow and white metal wristwatch. The body is warm over the torso and cool over the extremities. Rigor mortis is partially fixed. Blanchable purple-red livor mortis extends over the posterior surfaces of the body, except in areas exposed to pressure. The scalp hair is shaved. The irides are brown. The pupils are round, measuring 0.4 cm in diameter bilaterally. The corneae are translucent. The sclerae are white and the conjunctivae are congested. No petechial hemorrhages are identified on the sclerae, bulbar conjunctivae, facial skin, or oral mucosa. The nose is unremarkable (bloody fluid). The ears are normally formed with a single pierce marks in each earlobe. The teeth are natural and in good condition. The frenula are intact. The neck is unremarkable. The thorax is well developed and symmetrical. The abdomen is obese. The anus and back are unremarkable. The external genitalia are consistent with that of a normal adult male. The penis is circumcised. The testes are bilaterally descended within the scrotum. The upper and lower extremities are well developed and symmetrical, without absence of digits. The fingernails are evenly trimmed and clean. The toenails are irregularly trimmed and dirt encrusted. The soles of the feet are soiled. Identifying marks and scars include an irregular, hyperpigmented patch over the right dorsal forearm and a 1 ½ inch hyperpigmented scar over the left ventral wrist.

EVIDENCE OF RECENT MEDICAL/SURGICAL INTERVENTION:
An endotracheal tube is in place within the oral cavity and is affixed to the face by a collar. The right neck has a triple lumen catheter sutured in place with a surrounding purple ecchymosis and moderate soft tissue hemorrhage of the right sternocleidomastoid muscle. Defibrillator pads are over the right upper chest and left flank. Electrocardiogram pads are over the upper chest and left lower abdomen. An intraosseous catheter is in the left shin. Bandaged needle puncture marks are in each antecubital fossa. An identification band surrounds the right wrist printed with "Scott, Robert L DOB [redacted]59yrs) SEX: M MRN: 3143045 Adm Date: 5/20/2018." The left 5-8 and right 5-7 ribs are dislocated at the sternocostal joints and there are greenstick fractures of the right 2-6 and left 2-9 anterolateral ribs with minimal hemorrhage consistent with cardiopulmonary resuscitation.

EVIDENCE OF INJURY/RECENT TRAUMA:

HEALING MINOR BLUNT FORCE INJURIES
The left shoulder has a dried, red-brown brush abrasion measuring up to 3 inches in greatest dimension. The left upper arm has multiple linear, horizontal, dried, red-brown abrasions measuring up to 2 ½ inches in length. The left lower back has multiple linear parallel horizontal dried brown abrasions measuring up to 5 inches in length. The right dorsal wrist has

a red-brown dried irregular abrasion. The knees have multiple brown-red dried abrasions over the bony prominences measuring up to 5 inches.

INTERNAL EXAMINATION:

BODY CAVITIES:
The body is opened with a standard Y-shaped incision. No adhesions or abnormal collections of fluid are in any of the body cavities. All body organs are present in normal and anatomic position. The serosal surfaces are smooth and glistening.

CENTRAL NERVOUS SYSTEM:
The scalp is without laceration or hemorrhage. The skull is intact. The brain weighs 1300 grams. The dura mater and falx cerebri are intact and not adherent to the surface of the brain. The leptomeninges are thin and delicate. There is no epidural, subdural, or subarachnoid hemorrhage. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels, arise normally and are free of abnormality. Sections through the cerebral hemispheres reveal no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. The cerebral ventricles are of normal caliber. Sections through the brain stem and cerebellum are unremarkable.

NECK:
Examination of the soft tissues of the neck, including strap muscles and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact. Serial examination of the tongue is unremarkable.

CARDIOVASCULAR SYSTEM:
The heart weighs 700 grams. The pericardial sac is free of significant fluid or adhesions. The epicardial surfaces are smooth, glistening, and unremarkable. The coronary arteries arise normally and follow the distribution of a co-dominant pattern with a short intramyocardial segment of the mid-left anterior descending coronary which curves around the apex and provides approximately ¼ of the posterior circulation. The chambers and valves bear the usual size/position relationship and are unremarkable. The following circumferential valve measurements are obtained: tricuspid valve, 12.8 cm; pulmonic valve, 7.6 cm; mitral valve, 11.2 cm; and aortic valve, 6.5 cm. The myocardium is dark red-brown, firm, and free of local or regional fibrosis, erythema, pallor, or softening. The atrial and ventricular septa are intact and the septum and free walls are free of muscular bulges. The right ventricle measures 0.6 cm and the left ventricle measures 1.8 cm in thickness as measured 1 cm below the respective atrioventricular valve annulus. The interventricular septum thickness is 2.4 cm. The aorta and its major branches arise normally and follow the usual course, with mild, simple, plaque atherosclerosis of the entire aorta, especially below the origin of the renal arteries. The vena cava and its major tributaries return to the heart in the usual distribution and are unremarkable.

RESPIRATORY SYSTEM:
The right and left lungs weigh 940 and 760 grams, respectively. The pleural surfaces are smooth, glistening, and unremarkable. The upper and lower airways are unobstructed, and the mucosal surfaces are smooth and yellow-tan. The pulmonary parenchyma is dark red-purple and cut surfaces exude moderate amounts of blood and frothy fluid. The pulmonary arteries are normally developed and patent. Specifically, no thromboemboli are seen.

HEPATOBILIARY SYSTEM:
The liver weighs 1950 grams. The hepatic capsule is smooth, glistening, and intact, covering red-brown parenchyma. The gallbladder contains a moderate amount of dark green bile without stones. The extrahepatic biliary tree is patent.

GASTROINTESTINAL SYSTEM:
The esophagus is lined by gray-white smooth mucosa. The gastric mucosa is arranged in the usual rugal folds and the lumen contains 200 ml of brown fluid with partially digested food fragments. The small and large bowel are unremarkable.

The appendix is present. The colon contains progressively formed stool. The pancreas has a normal, tan, lobulated appearance.

GENITOURINARY SYSTEM:
The right and left kidneys weigh 230 and 160 grams, respectively. The renal capsules are smooth, thin, semitransparent, and strip with ease from the underlying granular, red-brown, firm, cortical surfaces with multiple clear fluid-filled cysts. The cortices are of normal thickness and delineated from the medullary pyramids. The calyces, pelves, and ureters are not dilated and free of stones. The urinary bladder contains 75 ml of clear yellow urine; the mucosa is gray-tan and trabeculated. The prostate is not enlarged.

HEMOLYMPHATIC SYSTEM:
The spleen weighs 210 grams and has a smooth intact capsule covering red-purple, soft parenchyma. The splenic white pulp is grossly indistinct.

ENDOCRINE SYSTEM:
The thyroid gland is of normal position, size, and texture. The adrenal glands are unremarkable, with a yellow cortex and gray medulla.

MUSCULOSKELETAL SYSTEM:
Other than the injuries described above, the bony framework, supporting musculature, and soft tissues are not unusual.

AUTOPSY TECHNICIANS: Ms. C. Haasis and Ms. J. Combs.

MICROSCOPY: Cassette #1: Left ventricle, lung, liver, kidney.

TOXICOLOGY: Heart blood, venous blood, vitreous humor, urine.

DNA SPECIMEN: Blood.

SPECIAL STUDIES: None.

EVIDENCE COLLECTED: Clothing, property, DNA, fingerprints.

X-RAYS: None taken.

CAUSE OF DEATH: Complications of acute cocaine intoxication.
Hypertensive cardiovascular disease is a significant contributing condition.
The manner of death is Undetermined.

On May 20, 2018 NY State Troopers and Wayne County Sheriff's Deputies were dispatched to 35 Geneva Street, Apt 4, Lyons, NY for a disturbance complaint. Per the law enforcement reports and supporting depositions the decedent, Robert L. Scott Jr. appeared to be having a medical event, possibly related to the ingestion of drugs. The subject's girlfriend reported he had been using cocaine. Emergency medical services were requested and shortly after their arrival the subject fled on foot. Review of depositions and nearby surveillance camera recordings revealed Troopers subdued the subject adjacent to the ambulance. The subject was reportedly resisting vigorously and the two Troopers and Sheriff's deputy were needed to subdue him. He then was noted to be immobile and apneic and was moved to a gurney to initiate resuscitation attempts. CPR was unsuccessful. An autopsy and toxicological testing revealed hypertensive cardiovascular disease and acute cocaine intoxication. It is unclear how much the altercation contributed to the subject's death, therefore the manner of death is best classified as Undetermined.

MICROSCOPIC EXAMINATION

HEART: The left ventricle shows mild interstitial fibrosis.

LUNG: The lung shows mild patchy intra-alveolar edema and multiple fat emboli in small caliber arteries.

LIVER: The liver shows no significant histopathologic abnormality.

KIDNEY: The kidney shows multiple globally sclerotic glomeruli and mild intimal and medial thickening of small caliber arteries. There is also patchy interstitial lymphocytic inflammation.

Decedent name: Robert Scott
Case number: 18-01354
Seal info:
Attendees: Troopers

Wayne Co.
VES
F

External date/time: 5/20/18 1:01-12
Internal date/time: 1358-1459
Witness: CH JC
ID info:

Acutely erratically
Death in custody after
+ tackle
Pen OD

OFFICE OF THE MEDICAL EXAMINER
MONROE COUNTY, NEW YORK

Height: 68 Weight: 238 36.19 Ethnicity: W/B/A/AI/Other: ____

ID tag location/info: L ankle
18-01354 Robert Scott
05/20/2018 Age: 58yr

Habitus: well-developed/well-nourished/thin/underweight/obese

Temp: warm/cool/cold (refrigerated) Rigor: fully/partially fixed/receding

Clothing:
Gray underwear
Gray short

Livor: blanchable/fixed; peripheral; anterior/posterior/

Hair: color: Shaved ; curly/wavy/straight, length:

Eyes: Irides: Brown ; Pupils: R 4 ; L 4

Property: $311
Insurance card, ID cards in pl...
"Give for..."
Black rubber-like bracelet...
Y+WM stud earrings w clear stones
Y+WM wristwatch

Corneae: translucent/clouded; Sclerae: white/icteric/

Conjunctivae: clear/injected/congested; Petechiae: Ø

Nose: Bloody fluid ; Ears: ; R ×1 ; L ×1

Mustache: yes/no/stubble; ; length: Beard: yes/no/stubble; ; length

Teeth: natural/irr absent/edentulous; good/adequate/poor; dentures: yes/no; upper/lower/partial; Frenula: intact

Genitalia: penis circ: yes/no; testes: R ✓; L ✓ ~~Breasts: mass: no/yes~~

Pubic hair: color: brown curly/wavy/straight; untrimmed/trimmed

Extremities: well-developed/symmetrical/amputations: Soiled soles of feet

Senile purpura: yes/no; Fingernails: broken T+C ; Toenails: irreg trimmed + dirt ...

Cavities: R chest Ø L chest Ø Pericardial 250 SS Peritoneal Ø

Brain: 1310 g; ok

Heart: 700 g; right/left/co-dominant ok

RCA: RV: 0.6 TV: 12.8 Micro: LV liver kidney lung

LM: circumflex ... LV: 1.8 PV: 7.6

LAD: FM segment IVS: 2.4 MV: 11.2

LCx: Aorta: mild simple athero AV: 6.5

Lungs: R 940 g; L 760 g; mod FF

Liver: 1950 g; GB: yes/no green-dark bile

Gastric: 200 ml rugae/autolyzed; GI: Brown fluid w/ PD food Appendix: yes/no

Kidneys: R 230 g; L 160 g; granular, mult cyst clear fluid Urine: 75 ml trabeculated

Genitalia: ok

Spleen: 240 g; Soft red ; Thymus: Ø g; Evidence: clothing/property/handbags/body pouch

Thyroid: unrem ; Adrenals: unrem fingernail clippings/pulled head hair/DNA

Skeletal/ribs: L5-8 + R5-7 SC fxs / R2-6 L2-9 AL fxs min hem sexual offense kit/ fingerprints/palmprints

DNA specimen: Blood; Buccal; Tissue M13 ; None

Cultures/Special studies: Ø

Radiographs: (head/chest/abdomen/pelvis/extremity/total body) Ø

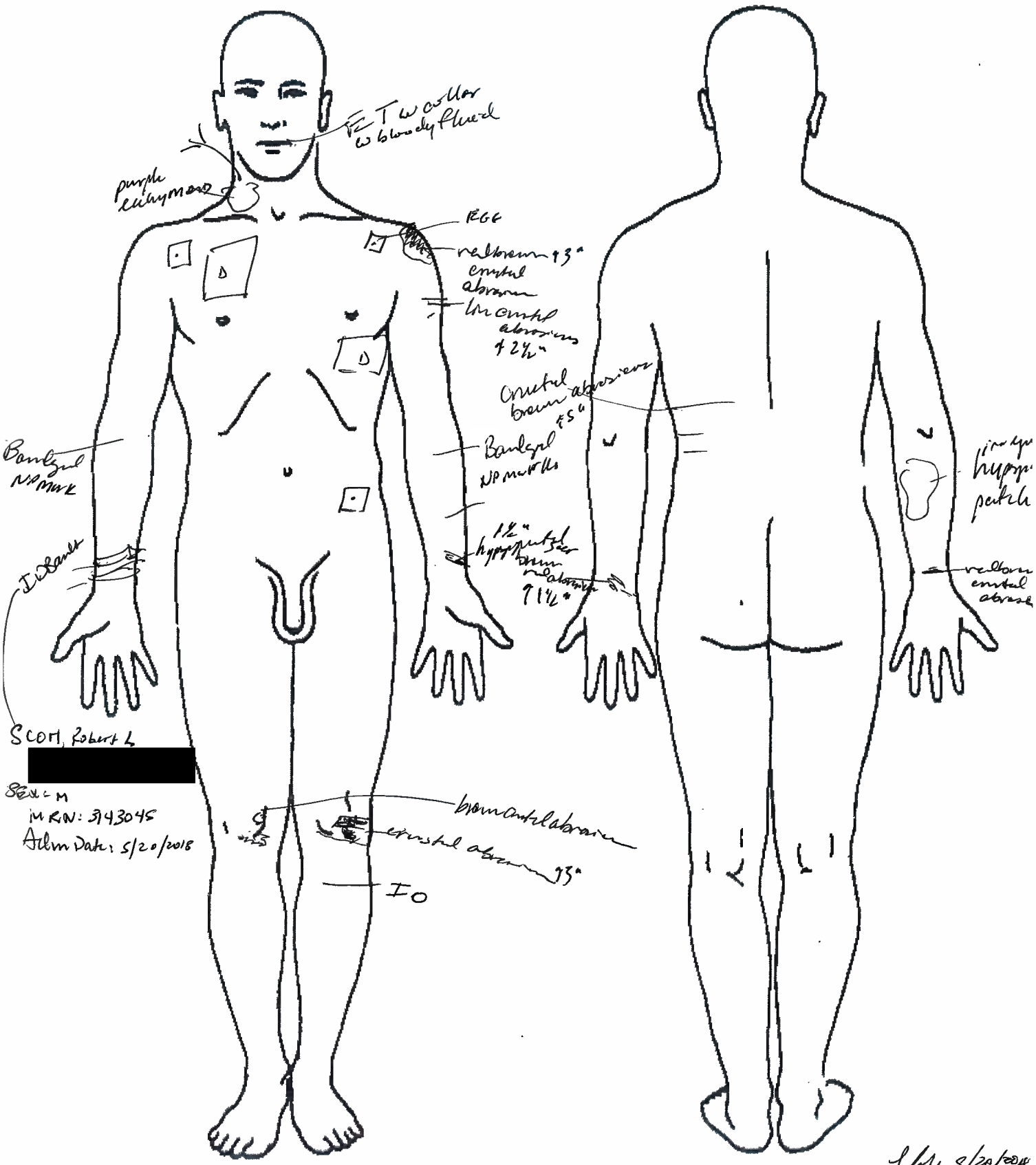
Tox: hrt/ch bld ✓; ven bld ✓; vit ✓; gastric __; bile __; urine ✓; brain __; liver __; muscle __; other ____

NMS - expanded

Monroe County
Office of the Medical Examiner
Rochester, New York
NAME: Scott, Robert

ANATOMIC DIAGRAM

FULL BODY, MALE, ANTERIOR AND POSTERIOR VIEWS
CASE NUMBER: 18-01354
PATHOLOGIST:
PRONOUNCED: 5/20/2018 6:31:00 AM



Initials/Date: 3/20/2018

NMS LABS

NMS Labs
3701 Welsh Road, PO Box 433A, Willow Grove, PA 19090-0437
Phone: (215) 657-4900 Fax: (215) 657-2972
e-mail: nms@nmslabs.com
Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

CONFIDENTIAL

Toxicology Report

Report Issued 06/03/2018 13:39

To: **10900**
Wayne County (Monroe)
Attn: Robert Zerby
740 East Henrietta Road
Rochester, NY 14623

Patient Name	SCOTT, ROBERT
Patient ID	18-01354
Chain	18149616
Age 58 Y	**DOB** [redacted]
Gender	Male
Workorder	18149616

Ym 7/11/18

Positive Findings:

Compound	Result	Units	Matrix Source
Levamisole	Positive	mcg/mL	001 - Heart Blood
Naloxone	Positive	ng/mL	001 - Heart Blood
Cocaine	470	ng/mL	001 - Heart Blood
Benzoylecgonine	2600	ng/mL	001 - Heart Blood

See Detailed Findings section for additional information

Testing Requested:

Analysis Code	Description
8052B	Postmortem, Expanded, Blood (Forensic)

Specimens Received:

ID	Tube/Container	Volume/ Mass	Collection Date/Time	Matrix Source	Miscellaneous Information
001	Gray Vial	5.25 mL	05/20/2018 14:13	Heart Blood	
002	Gray Top Tube	9.5 mL	05/20/2018 14:13	Femoral Blood	
003	Red Top Tube	5.75 mL	05/20/2018 14:13	Vitreous Fluid	
004	White Plastic Container	43 mL	05/20/2018 14:13	Urine	

All sample volumes/weights are approximations.

Specimens received on 05/22/2018.

Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
Levamisole	Positive	mcg/mL	0.25	001 - Heart Blood	LC/TOF-MS
Naloxone	Positive	ng/mL	1.0	001 - Heart Blood	LC/TOF-MS
Cocaine	470	ng/mL	20	001 - Heart Blood	GC/MS
Benzoylecgonine	2600	ng/mL	50	001 - Heart Blood	GC/MS

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. Benzoylecgonine (Cocaine Degradation Product) - Heart Blood:

   Benzoylecgonine is an inactive metabolite and chemical breakdown product of cocaine. Cocaine is a DEA Schedule II controlled central nervous stimulant drug. Effects following cocaine use can include euphoria, excitement, restlessness, risk taking, sleep disturbance, and aggression. A period of mental and physical fatigue and somnolence follow the use of cocaine after the excitant-stimulant effects wear off. Benzoylecgonine has a half-life of 6 to 10 hours. The average blood benzoylecgonine concentration in 906 impaired drivers was 1260 ng/mL (range 5 - 17600 ng/mL). Benzoylecgonine blood concentrations in patients admitted to an emergency room for cocaine related medical complaints were 1280 ng/mL (SD = 1290 ng/mL). Benzoylecgonine concentrations in plasma following oral administration of 2 g/day of cocaine over 6 days, averaged 4900 ng/mL. The average blood benzoylecgonine concentration in 37 cocaine related fatalities was 7900 ng/mL (range 700 - 31000 ng/mL).

2. Cocaine - Heart Blood:

   Cocaine is a DEA Schedule II controlled central nervous stimulant drug. Effects following cocaine use can include euphoria, excitement, restlessness, risk taking, sleep disturbance, and aggression. A period of mental and physical fatigue and somnolence follow the use of cocaine after the excitant-stimulant effects wear off. Cocaine is metabolized to the inactive compounds benzoylecgonine, ecgonine methyl ester, and ecgonine. Benzoylecgonine and ecgonine methyl ester can form from cocaine breakdown after death and even after sample collection. The average blood cocaine concentration in 906 impaired drivers was 87 ng/mL (range 5 - 2390 ng/mL). Blood cocaine concentrations in patients admitted to an emergency room for cocaine related medical complaints were 260 ng/mL (SD = 500 ng/mL). Cocaine concentrations in plasma following oral administration of 2 g/day over 6 days, averaged 1260 ng/mL. The average blood cocaine concentration in 37 cocaine related fatalities was 4600 ng/mL (range 40 - 31000 ng/mL).

3. Levamisole (Ergamisol®; Levasole®) - Heart Blood:

   Levamisole is an imidazothiazole derivative used as a veterinary antihelminthic (worming agent) in animals. It was previously used as an immunomodulator in rheumatoid arthritis and as adjuvant therapy in the treatment of colorectal cancer but was withdrawn because of sometimes-fatal agranulocytosis. It is no longer available in North America for human use. However, from July-September 2008 approximately 30% of cocaine seized by the DEA was contaminated with levamisole. Levamisole was associated with irreversible agranulocytosis in patients taking it for therapeutic purposes and in five patients following consumption of cocaine tainted with levamisole.

   The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

Reference Comments:

4. Naloxone (Narcan®) - Heart Blood:

Naloxone is a narcotic antagonist used to counter the central nervous system depression effects of opioids, including respiratory depression. It is also used for the diagnosis of suspected acute opioid overdosage. Naloxone is available as a 0.4 mg/mL solution of the hydrochloride for parenteral injection.

Naloxone is also available in combination with buprenorphine (Suboxone®) for the treatment of opioid dependence. This combination is available in tablets of 2 mg buprenorphine with 0.5 mg naloxone or 8 mg buprenorphine with 2 mg of naloxone for sublingual administration.

The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded one (1) year from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

Workorder 18149616 was electronically signed on 06/03/2018 12:29 by:

Michael E. Lamb, M.S.F.S.
Certifying Scientist

Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 50014B - Cocaine and Metabolites Confirmation, Blood - Heart Blood

-Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Benzoylecgonine	50 ng/mL	Cocaine	20 ng/mL
Cocaethylene	20 ng/mL		

Acode 52198B - Cannabinoids Confirmation, Blood - Heart Blood

-Analysis by High Performance Liquid Chromatography/ Tandem Mass Spectrometry (LC-MS/MS) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
11-Hydroxy Delta-9 THC	1.0 ng/mL	Delta-9 THC	0.50 ng/mL
Delta-9 Carboxy THC	5.0 ng/mL		

Acode 8052B - Postmortem, Expanded, Blood (Forensic) - Heart Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Barbiturates	0.040 mcg/mL	Salicylates	120 mcg/mL
Cannabinoids	10 ng/mL		

-Analysis by Headspace Gas Chromatography (GC) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Acetone	5.0 mg/dL	Ethanol	10 mg/dL

Analysis Summary and Reporting Limits:

Compound	Rpt. Limit	Compound	Rpt. Limit
Isopropanol	5.0 mg/dL	Methanol	5.0 mg/dL

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of compound classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified compound class are included. Some specific analytes outside these classes are also included. For a detailed list of all analytes and reporting limits, please contact NMS Labs.
Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnosedatives, Hypoglycemics, Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents, Opiates and Opioids.

EXHIBIT 2

NEW YORK STATE | State Police | Western Satellite Crime Laboratory

ANDREW M. CUOMO
Governor

GEORGE P. BEACH II
Superintendent

RAY A. WICKENHEISER
Director

CONTROLLED SUBSTANCES REPORT

TO: Captain BCI - Troop E
New York State Police
1569 Rochester Road
Canandaigua, New York 14425-0220

August 22, 2018
Lab Case # ***18TE-00051***

Agency Case #
8249088
E231-SP LYONS

SUPPLEMENTAL REPORT

SUBJECT: ***SCOTT, ROBERT L***
VICTIM

May 20, 2018

EXAMINATION:

Item #4A — One (1) plastic bag containing powder residue.

Cocaine - Narcotic Drug

Item #4B — One (1) plastic straw with powder residue.

No analysis performed.

NOTE:
1. The result(s) of Item(s) # 4A was determined using Gas Chromatography/Mass Spectrometry.

(CPL 190.30(2) Certification)

I, Jonathon D. Walters, Forensic Scientist III, hereby certify that I am a public servant in the employ of the New York State Police. I further certify this is the original of my report and contains the opinions and interpretations of the examination I performed in the above referenced case.

False Statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law.

Jonathon D. Walters — Forensic Scientist III

Margaret L. LaFond — Associate Director of Drug Chemistry

Definitions of terms used in this report can be located within the Report Standardization Manual at http://criminaljustice.ny.gov/forensic/labreportstandards.htm. This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.

722 Homer Street, Olean, NY 14760-1130 | (716) 373-5525 | www.troopers.ny.gov

SUPPLEMENTAL REPORT

August 22, 2018
Lab Case # ***18TE-00051***
Agency Case #
8249088

SUBJECT: ***SCOTT, ROBERT L***
VICTIM
May 20, 2018

cc: Sr Inv John A Stubbe, IV
Wayne County District Attorney
File

EXHIBIT 3

COUNTY OF WAYNE
OFFICE OF THE SHERIFF
LYONS, NEW YORK

General Order 200	Date of Issue 04-02-2004	Effective Date 04-02-2004	No. 46
Subject: Transport Policy			Revised 02-27-2017
Standard(s): 64.1			Reviewed 06/08/2017

OBJECTIVE: TO DEFINE THE POLICY OF THE WAYNE COUNTY OFFICE OF SHERIFF RELATIVE TO THE HANDLING, MOVEMENT, TREATMENT AND THE ESCAPE OF PERSONS IN LAWFUL PHYSICAL CUSTODY. SUCH POLICY WILL INSURE UNIFORMITY OF PERFORMANCE AS WELL AS ESTABLISHING SAFETY AND SECURITY MEASURES FOR THE ARRESTING OFFICER AND PRISONER.

POLICY: It is the policy of the Wayne County Sheriff's Office to follow the guidelines set forth in this general order.

DETAILS:

I. Operational Arrests

A. Whenever a member of the Wayne County Office of Sheriff makes a physical arrest of a person, such person shall be handcuffed and field searched.

1. Whenever a warrant of arrest is acted upon, officers shall be guided by Article 120 of the Criminal Procedure Law of the State of New York.

B. The arresting officer shall be responsible for the safety and security of any prisoner who is in his/her custody.

1. Unlawful or unnecessary force shall not be used in effecting an arrest, nor shall any prisoner in custody be subjected to harassment, abuse or intimidation.

2. In the event that a prisoner is ill or injured, he/she shall be provided with medical attention as soon as is practicable.

a. Where medical attention is required, a supervisor shall be promptly notified.

b. In all cases where an ill or injured prisoner is in custody, he/she shall be medically tended to before incarceration.

c. Necessary precaution should be taken with the handling of any prisoner suspected of having infectious disease (i.e. secreting body fluids relative to the disease of AIDS/HIV/Hepatitis).

C. All prisoners shall be handled with caution. Violators taken into custody for minor offenses may be fugitives from justice wanted for more serious crimes in other jurisdictions.

1. When transporting prisoners in a patrol vehicle, the prisoner shall be handcuffed with their hands behind their back, unless a transport belt is being used. Utilization of the seatbelt is also required. Leg shackles may be used.

a. Prisoners shall be placed in the screened passenger compartment of the patrol vehicle, or in the front/rear seat of C.I.D. vehicles.

b. These areas shall be searched for contraband at the beginning of each shift and immediately after transporting prisoners.

2. Where more than one prisoner is in custody and must be transported, they shall be handcuffed with hands behind their backs, unless a transport belt is being used. The assistance and equipment of another officer may be used when required.

3. Whenever a female prisoner is taken into custody and transport is required the following procedure will be followed:

a. She shall be handcuffed with her hands behind her back unless a transport belt is being used and placed in the rear screened portion of the patrol vehicle'

b. Female prisoners should be searched by a female officer. If an immediate search is necessary, the services of a female officer or female correction officer may be utilized. This requirement shall not apply if the officer reasonably suspects that he is in danger of physical injury. (Refer CPL 140.50 Stop and Frisk.)

c. Officers transporting a female prisoner shall, before departing from their location, notify the dispatcher of their odometer reading. At destination, the same procedure will be followed by calling the dispatcher.

4. When a male prisoner is taken into custody by a female officer, the male subject will be searched, handcuffed behind their backs and before departing their location, notify

the dispatcher off their odometer reading. At the destination, the same procedure will be followed by calling the dispatcher.

II. **Officers assigned to prisoner transports, dealing specifically with transports, i.e., from jail to courts, other correctional institutions, etc., shall be guided by the procedures below:**

A. Prisoners transported to court

1. Prisoners transported to court will be searched at the booking room prior to departure for court.

2. Prisoners will be handcuffed, using a transport belt, to be provided by the correctional staff.

3. Prisoners going to court at the Wayne County Hall of Justice will be kept in the designated holding cell at the courthouse until time for their court appearance. Upon arrival, transport Officers will document the following information into the inmate log book located on the desk in the holding cell:

   A. Transport Officer's name
   B. Time/Date
   G. Name of inmate

   Upon completion of the court appearance the transport officer will document in the log book what time they are departing and how many inmates they are leaving with. If there is a new remand or release of an inmate at the court the Officer is to document their name. In addition, the Officer must document in the log book any unusual occurrences that may have taken place at the hall of Justice.

4. At the time a prisoner goes before the court, the transport officer will be in close proximity to the prisoner at all times.

5. If a transport officer has reason to believe that a prisoner is an escape risk, he may take whatever security measures are necessary. The officer will make the court aware of the circumstances, and whatever security measures are being taken.

6. No one will be allowed to communicate with the prisoner in the courtroom, hallway or holding cell, except the prisoner's own attorney, unless prior approval has been obtained from the Lieutenant of Correctional Services, or his/her designee.

7. All prisoners will be searched by the transport officer, prior to returning to jail security.

B. Intake from court

1. When a new prisoner is picked up in court, for any reason, he will be searched as soon as possible.

2. All property and money will be taken from the prisoner before he is placed with prisoners that are in custody.

3. A securing order will be obtained from the court.

4. Any deviation from the above procedure will require approval by the transport officer.

C. Prisoners sentenced in court

1. If a prisoner is sentenced, it will be the transport officer's responsibility to see that the correctional staff is notified.

2. A transport officer will be responsible to see that the commitment order is obtained from the court, and that same is legally sufficient on its face.

3. A prisoner picked up as a new intake on a sentence will be dealt with as outlined in section II, B of this order

D. Transport vehicle inspection.

1. All transport vehicles will be checked in the following manor prior to and immediately following a transport.

   a. Front and back seats checked for contraband.

   b. Trunk checked for contraband as well as proper safety equipment.

   c. Standard vehicle maintenance check conducted, gas, tires, oil, water and battery.

E. Out of county transports

1. When a prisoner is transported to or from a correctional facility he/she shall be handcuffed with the use of a transport belt.

2. Handcuffs will be double locked at all times.

3. The prisoner will be placed in the back seat of the vehicle on the passenger side.

4. Leg irons may be used, if the transport officer feels, for a valid reason, that they are necessary.

5. No unauthorized stops will be made with a prisoner in the vehicle.

6. The most direct route will be taken to the destination.

F. Local transports

1. Prisoners taken to hospitals, doctors, or any other local transport will be handcuffed prior to leaving the booking room.

2. A security chain, leg cuffs or walking cuffs may be used, depending on the circumstances.

3. The prisoner will be placed in the rear of the vehicle on the passenger side.

4. No prisoner will be left alone for any reason.

5. If a physician wants private consultation with a prisoner, the prisoner will remain handcuffed and only a room that has one exit and no windows may be used. If this is not possible, the transporting officer(s) will be present in the room, regardless of any protest.

G. Family court transport- juveniles

1. Juveniles will be transported in the same manner as adults. They will be handcuffed when going to and from court. Persons being held under a P.I.N.S. petition shall not be handcuffed.

2. No one will be allowed contact with the juvenile except law guardians, private attorneys, probation officers or judges, unless prior approval has been obtained.

H. Town and Village Court transports

1. Any prisoner taken from the Wayne County Jail to a town or village court will be handcuffed as previously outlined.

2. Contact will be made with the dispatcher upon leaving the jail, and again when arriving as the destination. The reverse will be done when leaving the court.

3. A female prisoner may be transported by a male officer, if the transport can be completed within two (2) hours.

4. No prisoner taken to a town or village court will be returned to the Wayne County Jail without first securing the proper order or commitment.

I. In all cases, the officer having custody of a prisoner shall be responsible for the safety and security of such prisoner until turned over, with proper documents, to a holding facility, correctional institution or court.

1. Security responsibility shall remain with the custodial officer until such time as the prisoner is lawfully received by competent authority (i.e., corrections officer, warden, judge, etc.) and a receipt for the prisoner is obtained.

a. Prisoners brought into the Wayne County Jail shall be brought directly into the booking room, and turned over with the court remand to the booking officer. Members of the Wayne County Office of Sheriff are not obliged to obtain a body receipt. Members/ employees shall fill in the required information on the back of the remand/ securing order, after the booking officer has stamped it.

b. In instances where delivery is made to other institutions, and a receipt is not provided, the time, date, name and rank of the individual to whom the transfer is made shall be documented, and made a part of the inmate's record.

III. Unusual Circumstances

A. Any diversion, whether a deliberate attempt to effect an escape, or one which is purely coincidental, can result in the officer's attention being distracted to the extent that the prisoner's safety or security is placed in jeopardy. The officer must bear in mind that one's primary duties are to protect the prisoner from injury and to prevent escape.

B. If the transportation of a prisoner is done by a marked vehicle, clearly identifiable as one belonging to the Wayne County Office of Sheriff. It would not be unlikely, in the case of a roadside emergency, for the public to expect that such a vehicle would stop to render assistance. <u>THIS ACTION MUST BE AVOIDED.</u>

1. Only when the risk to a third party is both clear and grave and the risk to the officer and prisoner is slight, may an officer stop en route to render assistance or engage in any law enforcement activity.

2. An officer in transport alone shall never stop except in a clearly life threatening situation.

3. If two or more officers are assigned to the transport, and a stop can be safely made, one must stay with the transporting vehicle at a safe distance from the diversionary activity. Upon arrival of any other patrols, the prisoner transport should be immediately resumed.

C. Under no circumstance will an officer engaged in the transportation of a prisoner become involved in a pursuit, roadblock or other situation which creates the risk of harm to the prisoner or the officer.

IV. Transportation & Security of Sick/Injured Prisoners

A. Bearing in mind that an officer having custody of a person, is, from that point, legally responsible for the. Arrestee welfare. Consideration should be given to deferring the arrest of a seriously sick or injured person provided he presents no threat or danger that would mandate his/her being taken into Custody immediately. An alternative may be to obtain a warrant for service after the person has sought medical treatment.

B. Once in custody, an arrested person who is sick or injured must be afforded immediate medical attention commensurate with his affliction. Those in obvious need of treatment shall be transported to the closest emergency facility before being brought to the jail.

C. When justified, a prisoner may be admitted to a hospital, where there is the potential that he will present a risk to the officer, the hospital employees and to the public. The very nature of his treatment could place the officer at a disadvantage in assuring the prisoner's security. Extreme care must be taken to be certain that the prisoner is isolated from other patients and that he is not left unattended. The prisoner's easy access to knives, scalpels, scissors, needles and any other dangerous instrument cannot be discounted.

D. Whenever a person in custody (not a booked inmate) is admitted to a hospital, the officer having custody must notify the on-duty patrol supervisor immediately. Thereafter, the supervisor has two options:

1. Place the prisoner under guard until release.
If this option is selected, the supervisor shall notify Corrections. Responsibility for security of the prisoner shall remain with said supervisor while the arresting officer completes any appropriate paperwork that the Corrections Division will need. After which the responsibility for the prisoner is transferred to the Corrections Division.

2. As an alternative, the arresting officer may request notification prior to the hospital's release of the patient, at which time he/she will be taken into custody or served with an appropriate document directing his/her appearance in a court at a later date.

E. When a prisoner is taken to a medical facility, treated and released, and thereafter transported and booked into the jail, all pertinent information should be provided to the jail so that any further treatment can be arranged.

F. Sick and injured prisoners should be restrained in accordance with the policy stated herein, except upon the risk of aggravating the affliction. As a matter of policy, pregnant women should not be placed in waist chains.

G. Inmates of the Wayne County Jail are normally attended by the jail physician who may order their transportation to receive medical treatment. In the case of an emergency illness or injury, a Corrections supervisor may order the inmate taken to a hospital emergency room. The following procedures will govern the handling of an inmate who is transported to a hospital for treatment and/or admittance.

1. Upon the transportation of an inmate to a hospital, it is the responsibility of the ranking on-duty corrections officer to notify the Corrections Shift Supervisor and the Corrections Lieutenant and any other personnel as per current directive.

2. In the event an inmate is admitted to the hospital in serious condition or with an ailment likely to generate public attention or necessitating the assignment of a guard, the above notifications must be made and, in addition, the highest-ranking correction officer on duty must insure that notifications are made.

3. Correction officers who are assigned to guard hospitalized inmates are responsible for keeping the Corrections Lieutenant notified of the inmate's condition, location, and any details affecting the nature and duration of the assignment as soon as the information is developed.

4. It is the responsibility of the Corrections Lieutenant to insure that hospital security has been notified whenever an inmate is admitted. Arrangements must be made so that inmate's name and room number are not given out to the public.

5. Personnel assigned to guard a hospitalized inmate shall be armed (if weapon certified) and equipped with the following:

   a. A charged portable

   b. A pair of handcuffs

   c. A set of leg shackles and

   d. A logbook

6. The officer transporting the inmate to the hospital will obtain a medical referral form for execution by hospital personnel and shall insure that, when returned, the form is filed in the inmate's folder.

7. The officer having the duty to guard a hospitalized inmate shall maintain a log with an entry to be made at least every 15 minutes. Entries must indicate the inmate's condition, contacts with hospital personnel, special instructions, as well as commencement and ending of duty periods. This log is to be reviewed by each correction officer upon the assumption of duty and surrendered to the Corrections Lieutenant upon termination of the guard assignment.

8. The hospitalized inmate is to be kept under continuous observation with a Corrections officer on guard duty remaining in the inmate's room at all times.

9. The inmate's hospital room is to be thoroughly searched as soon as possible after assignment and he is not to leave his room unless medical procedures make it necessary.

10. The hospitalized inmate is to be permitted no visitors, nor will he be allowed to receive telephone calls without permission of the Corrections Lieutenant or Shift Supervisor.

11. The officer guarding a hospitalized inmate shall make radio or telephone contact with the jail control room at least once each hour, which contact will be logged by both the officer and by the jail. In case of emergency, the officer will contact communications for assistance.

12. It is essential that the officer guarding a hospitalized inmate remain fully alert and not be tempted to relax security because of the inmate's age, condition, or the reason for his incarceration. Once out of the jail environment, there can be many opportunities for a seemingly docile prisoner to cause harm to himself or others, to property, or to attempt an escape.

V. Transportation of the Mentally or Physically Handicapped

A. The safety of the prisoner and the transporting officer require that special care be given to transportation of the handicapped prisoner. It must not be assumed that restraining devices are not required for the handicapped prisoner; the maximum restraint that can be used without injury to the prisoner, should be used.

1. In circumstances where the handicap precludes the use of handcuffs, two officers must be assigned to the transport.

2. The transportation of a prisoner who is mentally ill requires that two officers be assigned. Restraint equipment shall be used to minimize the risk of injury to the prisoner and to the officers.

3. Officers assigned to transport of a handicapped prisoner shall obtain any medications that the prisoner might need while in custody.

VI. Special Transports

A. New York State Commission of Corrections Minimum Standards, Part 7051, allows the Sheriff to authorize an inmate's attendance at a funeral or to make a deathbed visit. Such visits are permitted only within New York State.

1. Any inmate permitted to attend a funeral or to make a death bed visit shall be under close supervision at all times during his absence from the jail, unless such inmate has been authorized to participate in a work release program.

2. Restraint equipment shall be used during transportation of the inmate for the above purpose, and all procedures set out herein shall be followed.

VII. Custodial Transfer

A. The transfer of a prisoner from the custody of one officer or facility to another often presents the opportunity for confusion, and therefore, an increased risk of disruption and escape. The following procedures, requiring an orderly and planned transfer of custody accompanied by the exchange of all relevant information, shall be observed:

1. When a prisoner who represents a known security risk or who has a serious medical problem is transported to court, the judge shall be notified in advance, thus permitting him to have an input into arrangements for a secure environment including the considered use of restraining devices inside the courtroom.

2. To insure that the prisoner being presented for transport is in fact the prisoner scheduled for transport, he will be identified by name and his physical description will be verified by his booking record.

3. A transfer packet must accompany each inmate transferred from the jail to another facility.

4. A packet must be prepared for all inmates transferred to a state correctional facility. The packet will contain a commitment, indictment, fingerprint certification, probation report, medical transfer record, prisoner conduct report(s), fingerprint card, photograph, custodial transfer sheet and a certification of jail time.

5. Whenever an inmate is released to the custody of another officer, any information related to his mental or physical condition and to his arrest history should be transferred, at least verbally. Particular attention must be given to any information indicating a tendency toward escape or suicide.

6. Upon arrival at a correctional facility, the transporting officer will secure any weapon according to facility procedures.

   A. Officers are obligated to follow procedures of facilities they visit. Unless already familiar with local restrictions, inquiry should be made to insure compliance.

7. Most facilities have lock boxes available. If not, the transporting officer shall secure one's firearm, unloaded, in the trunk of the transport vehicle. Under no circumstances shall a firearm or other weapon be introduced into a holding cell area.

8. The transporting officer shall present to the receiving officer the accompanying documents. Once these have been accepted, the transporting officer shall remove the prisoner's restraints prior to

9. The transporting officer shall obtain a written receipt, showing all pertinent details, from the receiving officer.

VIII. Escape from Custody during Transportation

It is reasonable to expect that a prisoner who has escaped or who is attempting an escape will resist recapture. Such a situation can develop into a violent confrontation and could result in injury to the officer, the prisoner or to an innocent bystander. Members and officers of the Wayne County Office of Sheriff shall be familiar with the provisions of Article 35 of the New York State Penal Law as they affect the use of force in preventing escape.

1. In the event of a prisoner escape during transportation, the transporting officer must immediately notify communications of the following:

   a. Location

b. Escapee's direction on travel

c. Description of escapee

1. Charges for which the prisoner was being held.

2. Estimation of escapee's dangerousness.

2. The officer transporting more than one prisoner will not leave the other charges to give chase to one who is attempting to escape. Rather, once the officer has taken any immediate action necessary to securing the area, the officer shall immediately resume the transport assignment.

3. Upon receipt of information from an officer that a prisoner in transit has escaped, communications personnel shall notify:

a. All in-service patrol units

b. On-duty patrol supervisor

c. The appropriate agencies, depending upon the location of the escape

d. The jail lieutenant if a corrections officer was conducting the transport

e. All other notifies required.

4. In the event a transported prisoner escapes from a member/employee of the Wayne County Office of Sheriff and such escape occurs outside the jurisdiction of Wayne County, the transporting officer shall:

a. Notify the local authority, furnishing the information required

b. Request that the local authority advise the Wayne County Office of Sheriff

c. Stand-by at the transport vehicle and await the arrival of the local authority

d. If transport cannot proceed to the original destination, arrange to place any remaining prisoners in the local county jail, pending resumption of transportation.

5. In the case of any escape, appropriate reports shall be filed, including a Subject Management Report, if Necessary. Transporting officer(s) will not conclude duty until all appropriate accusatory instruments are filed and warrants obtained.

6. All necessary remedial action to correct conditions contributing to the escape will be taken at once.

IX. Escape from custody from Wayne County Correctional Facility

A. In the event of a prisoner escape, the correction officer determining an inmate is no longer in custody must immediately inform the following:

1. Main Control

2. The Housing Control Room overseeing the missing inmate's assigned area.

3. The on duty Shift Supervisor.

B. Main Control will cease the operation of all doors allowing entry or exit from the secured facility by non-staff employee/members. A constant vigil shall be maintained of all exterior camera monitors.

C. Police Communications shall be notified via Main Control of the following:

1. Location within the facility of escape

2. Escapee's direction of travel, if known

3. Name & description of the escapee;

4. Charges for which the prisoner was being held

5. Estimation of escapee's dangerousness;

6. Inmate's last known address or possible location(s) to which inmate may be en-route.

7. 911 shall be responsible to notify the on-duty Road Patrol supervisor and all Command Staff via the major Incident Reporting form.

8. Road Patrol in the immediate area of jail shall go to channel 16 Jail frequency) on their portable.

D. All prisoners in housings areas shall be secured in their individual housing units and all prisoner movement within the facility shall cease.

1. The missing prisoner's cell shall be secured or if the prisoner is in a dormitory, the missing prisoner's personal area shall be secured by one officer who shall stand by in front of the area keeping other staff and prisoners away until it has been determined that a K-9 unit will not respond and/or until any necessary technical work has been performed. Nothing in the prisoner's cell/personal area can be touched.

2. If programs are in session prisoners shall remain secured in the program room(s).

E. The on-duty Road Patrol Supervisor shall contact the on-duty Corrections Supervisor to coordinate search efforts and manpower needs.

F. A systematic search of the entire facility will be conducted by two (2) person teams and shall maintain radio contact with Main Control at all times.

1. If Police Personnel are to be utilized to assist in searches within the secured facility, the rules prohibiting weapons shall remain in effect.

G. If it has been determined that the escapee is no longer within the confines of the secured facility, roadblocks shall be established

in accordance with General Order 237-04 under the authority of a Command Officer.

1. Teletypes and requests for outside agency assistance shall be performed as authorized by current guidelines and/or Command authority.

X. Leg Restraint: Hobbling

A person is considered hobbled when they are handcuffed, their ankles are held together with a "RIPP Hobble" restraint device and the clip end of that device is not connected to the handcuffs. The RIPP Hobble is the only department approved hobble restraint device.

1. All persons who are handcuffed and continue to resist using their legs to cause personal injury, property damage or are attempting to escape will have their legs restrained.

2. The loop of the Hobble is to be placed around the individual's ankles and then pulled taut. The officer controls the slack end of the hobble cord.

3. The individual is then placed in the police vehicle. The long lead of the RIPP Hobble will be placed outside of the rear door. The rear door shall be closed and the long lead will then be placed in the adjacent front door of the patrol vehicle leaving the lead's clip end on the front floorboard to prevent the lead from dragging on the ground.

   NOTE: Every effort should be made to place the individual in a sitting position in the Police Vehicle.

4. The "In -Custody" subject is **NEVER** to be what is commonly referred to as "Hog tied".

5. Any time the RIPP Hobble is utilized a Subject Resistance Form will be filed.

By Order of the Sheriff,

Barry C. Virts

EXHIBIT 4

31B4 Executing Your Arrest Plan

a. Remain in charge at all times.

b. Use no more force than is legally and reasonably necessary to effect the arrest.

- Be thoroughly knowledgeable about the Defense of Justification (the use of Physical Force and Deadly Physical Force) as set out in the Penal Law.

  Refer: PL § 35

c. Make the arrest quickly.

d. Keep the arrestee calm.

e. Allow the arrestee to retain as much dignity and self-respect as possible, given the circumstance of being arrested.

EXHIBIT 5

33V3 Taking A Mentally Ill Person Into Custody

(a) When you take an apparently mentally ill person into custody:

(1) Immediately notify the director of community health services or local health officer.

(2) If you must temporarily detain a mentally ill person, keep them in a safe and comfortable place.

- If available, use ample restraining devices to avoid further complications.
- Do not use a jail or lock-up.

(b) Prepare and submit an Arrest Report (form GENL-5); in the box titled: CHARGE, enter the term: MENTALLY ILL PERSON.