Office of the New York State Attorney General Letitia James

Office of Special Investigation

December 17, 2024

Report on the Investigation into the Death of Nathan Wood

SUMMARY

New York Executive Law Section 70-b authorizes the Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, prosecute offenses arising from any incident in which the death of a person is caused by a police officer. When OSI does not seek charges, as in this case, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of Nathan Wood.

OVERVIEW

On Sunday September 17, 2023, at 7:51 a.m., officers at the Johnstown Police Department (JPD), in Fulton County, received a phone call from Civilian Witness Two (CW-2) that Nathan Wood was at her house at an address on Washington Street, damaging the upstairs apartment with hammers (OSI does not publish the names of civilian witnesses). JPD Officer Ryan Wilmot responded to the house, ran onto the porch, and opened the door. Officer Wilmot saw Civilian Witness One (CW-1) lying on the floor, bleeding from his head, and CW-2 struggling with Mr. Wood, who had a hammer in his hand. Officer Wilmot got between CW-2 and Mr. Wood and shoved Mr. Wood away from CW-2. Officer Wilmot pulled out his gun and repeatedly told Mr. Wood to drop the hammer, but he did not comply. JPD Officer Jace Kollar arrived, and Officer Wilmot told Officer Kollar to get his pepper spray ready. Mr. Wood smashed a porch window with the hammer. The officers continued to tell Mr. Wood to drop the hammer.

Mr. Wood yelled that he was going to "kill" his "buddy" and ran past the officers up the stairs to the second-floor apartment with the hammer. Officer Wilmot followed Mr. Wood up the stairs and continued to tell him to drop the hammer. Mr. Wood turned, ran from the apartment doorway, and jumped toward Officer Wilmot with the hammer over his head. Officer Wilmot backed down the stairs and fired a shot at Mr. Wood. Mr. Wood struck Officer Wilmot in the face with the hammer and Officer Wilmot fired a second shot at Mr. Wood. Officer Wilmot and Mr. Wood landed on the floor at the bottom of the stairs. Mr. Wood attempted to swing the hammer at Officer Wilmot and Officer Wilmot shot two more times at Mr. Wood. Officer Kollar pulled Officer Wilmot away from Mr. Wood and took the hammer away from Mr. Wood. The officers began life saving measures on Mr. Wood, and he was transported to the local hospital, where he died from his wounds.

After a full evaluation of the facts and analysis of the law, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt at trial that the actions of Officer Wilmot were justified under Article 35 of the New York Penal Law, and therefore OSI will not seek charges against Officer Wilmot.

FACTS

Background

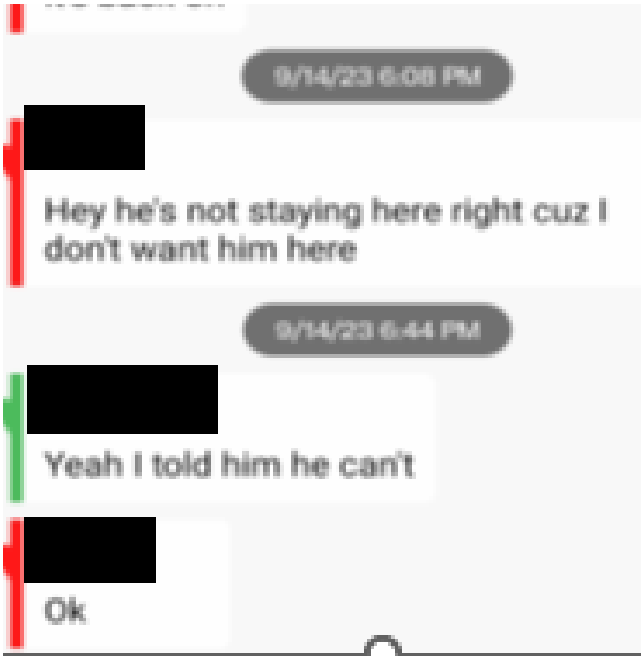
OSI interviewed CW-1, CW-2, and Civilian Witness Three (CW-3), and they provided written statements to the New York State Police (NYSP).

CW-1 and CW-2 owned the house where the incident occurred, a two-story, two-family home, and lived in the downstairs apartment. Their tenant, CW-3, Mr. Wood's twin brother, had lived in the upstairs apartment for six years. CW-1 and CW-2 said CW-3 was a good tenant, never causing problems. They knew Mr. Wood occasionally stayed with CW-3 in the apartment.

CW-3 and other family members told OSI that Mr. Wood had had drug and mental health issues for several years. Over the years, Mr. Wood would occasionally stay with CW-3 at his apartment. According to CW-3, Mr. Wood showed up at his apartment three weeks before this incident and seemed high or sleep deprived. CW-3 said Mr. Wood seemed better after a few days, but then started using methamphetamine and hallucinating, so CW-3 told Mr. Wood he had to leave. CW-3 said that on September 8, 2023, Mr. Wood showed up at his apartment at 3:00 a.m. and was pounding on the door. CW-3 did not want to wake up his landlords, so he let Mr. Wood in. CW-3 said he tried to get Mr. Wood to stay in the spare bedroom, but Mr. Wood was acting and talking strangely so he stayed in CW-3's bedroom. CW-3 called the police early in the morning and told them that Mr. Wood was at his apartment and was hallucinating. JPD came and took Mr. Wood to St. Mary's Hospital for a mental health evaluation. Mr. Wood was released a few hours later by the hospital and went back to the apartment.

The house where the incident occurred.

CW-3 said that on Wednesday, September 13, 2023, he told Mr. Wood he had to leave because he was not paying for anything, and Mr. Wood left. The next morning CW-3 said he found Mr. Wood sleeping on his apartment balcony. He let Mr. Wood take a shower at the apartment and again told him that he needed to leave. CW-3 showed Mr. Wood a text message from CW-1 that said Mr. Wood could not stay at the apartment. Mr. Wood left, but over the next two days CW-3 found Mr. Wood sleeping on his balcony or in the storage area near the top of the steps next to his apartment door.



Screenshot of text messages between CW-1 and CW-3 concerning Mr. Wood

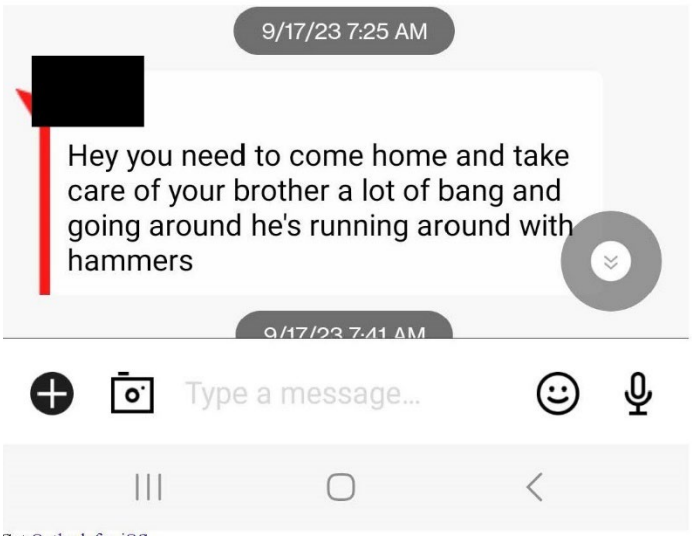
September 17, 2023

Interviews of CW-1, CW-2, and CW-3

CW-3 told OSI he had a pistol permit and owned three guns; he kept two in the trunk of his car and the third in a closet in the apartment; he said he did not keep ammunition for the third pistol in the apartment. CW-3 said that on Sunday, September 17, 2023, at 4:30 a.m., he woke up to walk his dog before going to work and, when he opened the door, saw Mr. Wood, who handed him the pistol he kept in the apartment, a .45 caliber Rock Island pistol. CW-3 put the pistol in the apartment and proceeded to walk his dog. When he returned, Mr. Wood was sitting on the steps inside and said he had a bunch of lines attached to him; he acted like he was pulling something off himself. CW-3 again told Mr. Wood to leave, because he was talking and acting strangely, and gave him clothing, shoes, and food. CW-3 and Mr. Wood walked down the stairs and outside, and CW-3 drove to work. CW-3 said he accidently left his cell phone in the apartment.

CW-2 told OSI that on Sunday September 17, 2023, at 6:45 a.m., she and her husband were at their kitchen table drinking coffee and heard crashing noises coming from the upstairs apartment. CW-2 said she thought CW-3's dog knocked something over because she knew CW-3 usually worked weekends and his car was not at the house. CW-2 then heard water running in the upstairs apartment, more crashing noises, and a dog yipping loudly.

CW-1 told OSI he heard someone running down the stairs from CW-3's apartment, so he went out to the front enclosed porch and saw Mr. Wood running down the stairs with two hammers in his hands. (CW-3 told OSI he had two hammers in his apartment: one with a wooden handle and a black head that he kept in a kitchen drawer, and a blue hammer with a rubber handle that he kept in his tool bag.) Mr. Wood looked at CW-1 and said, "Oh shit," "Who the fuck are you," "What do you want," and "Where am I?" CW-1 said he told Mr. Wood his name and that he was in New York and asked him what he was doing with the hammers. CW-1 said Mr. Wood replied, "I do not know you," and "Aliens are out here," and said he had trashed the upstairs apartment, and that the dog was hurt in the bathroom. CW-1 said he told Mr. Wood that he was not making any sense and needed to leave. CW-1 said Mr. Wood said he "could not deal with this" and ran back upstairs. CW-2 said she heard Mr. Wood scream, "Get away from me," and heard more crashes coming from the upstairs apartment. CW-1 sent a text message to CW-3 (which CW-3 did not see at the time, having forgotten his phone) to get home to check on his brother and dog.



Screenshot of the text message that CW-1 sent CW-3 the morning of the incident.

CW-1 told CW-2 to call the police. CW-2 said she called the JPD station directly because it was around the corner from their house (the direct line to the station was not recorded). CW-2 said she called the station several times and, when a police officer finally picked up, she said she

told the officer that Mr. Wood was trashing their upstairs apartment and had hammers.

While CW-1 and CW-2 were waiting for the police to arrive, Mr. Wood came back downstairs. CW-1 asked Mr. Wood to put the hammers down several times, but Mr. Wood did not comply. CW-1 said he saw the police car driving up, so he grabbed Mr. Wood to protect CW-2. CW-1 and Mr. Wood started struggling on the front porch; they fell into a window, which broke and cut CW-1's arm and hands. Mr. Wood punched CW-1 several times in the face and body. CW-1 fell to the ground, and Mr. Wood hit him on the forehead with a hammer. CW-2 said she saw CW-1's forehead bleeding so she ran to help, getting between CW-1 and Mr. Wood and getting the wood-handled hammer away from Mr. Wood.

CW-2 said Officer Wilmot arrived and approached the porch with his gun drawn. She said Mr. Wood was on the opposite end of the porch with the blue hammer in his hand and Officer Wilmot told CW-1 and CW-2 to get off the porch and radioed Fulton County dispatch to send emergency medical services (EMS) and an officer with a Taser. Officer Kollar arrived and went into the porch. CW-2 said she heard the officers yell, "Drop the hammer," and "Drop your weapon," repeatedly. CW-2 said she heard a window break and Officer Wilmot yell, "No." By this time, CW-1 and CW-2 were next door at a neighbor's house to attend to CW-1's injuries; they said they heard a scuffle on the porch and heard gunshots but did not see what had happened.

Officer Interviews

Officers Wilmot and Kollar and JPD Detective Sergeant Jon Silva were interviewed by NYSP with counsel present. They refused to be interviewed by OSI. OSI's review of NYSP's interview reports shows the following:

Officer Wilmot

Officer Wilmot said he had been a JPD police officer for over four years. He said he was working the overnight shift from Saturday, September 16, 2023, at 6:00 p.m. to Sunday, September 17, 2023, at 6:00 a.m., and working an additional six hours until 12:00 p.m. On Sunday, September 17, 2023, Officer Wilmot said he was sitting in the JPD station, near the sergeant's desk, with Officer Kollar and Detective Sergeant Silva, when the station phone rang and Officer Kollar answered. Officer Kollar had a brief conversation on the phone and said they needed to go to an address on Washington Street for a man acting crazy and destroying an apartment. Officer Wilmot drove to the address, which was about a block and a half from the police station. He saw people standing on the front porch, and a man next door pointing toward the porch. Officer Wilmot said he opened his car door and heard a man standing outside yell, "They're on the porch, they're fighting." Officer Wilmot said that he got to the porch, opened the door, and saw a man lying on the floor bleeding, and a woman hunched over and struggling with another

man. The second man, Mr. Wood, was holding a hammer with a blue handle. Officer Wilmot said he got between Mr. Wood and the woman and shoved Mr. Wood away. Officer Wilmot pulled his gun and shouted, "Drop the hammer and get on the floor," but Mr. Wood did not comply. Officer Wilmot said he told the man and the woman to get off the porch and radioed Fulton County dispatch to send emergency medical services (EMS) and an officer with a Taser (Officer Wilmot said he did not have a Taser). When the man and the woman left the porch, Officer Wilmot said he backed toward the door with his gun drawn and repeatedly yelled, "Drop the hammer and get on the floor," but Mr. Wood did not comply.

Officer Wilmot said Officer Kollar arrived, and Officer Wilmot told him to get his pepper spray ready. At that, Officer Wilmot said Mr. Wood yelled, "Oh, you are going to spray me," and swung the hammer and smashed the front porch window. He said Mr. Wood ran toward him and stopped halfway. He said he was still yelling, "Drop the hammer and get on the ground." He said Mr. Wood yelled that "he was going to kill his buddy" and ran through the doorway leading to the stairs with the hammer in his hand. Officer Wilmot said he followed Mr. Wood up the stairs. He said Mr. Wood got to the top of the stairs and was standing on the landing, moving back and forth and in and out of the doorway to the apartment. Officer Wilmot had his gun drawn and continued yell, "Drop the hammer and get on the floor," but Mr. Wood did not comply. Officer Wilmot was near the top of the stairs when, he said, Mr. Wood ran from the apartment doorway and jumped toward the top step and toward him, holding the hammer over his head. Officer Wilmot said he quickly backed down the stairs as Mr. Wood came toward him with the hammer. Officer Wilmot said he fired one shot and continued to back down the stairs. He said Mr. Wood swung the hammer and hit him in the mouth. He said he fired a second shot and landed on his back at the bottom of the stairs, and that Mr. Wood landed near his feet. Officer Wilmot said Mr. Wood swung the hammer at him again, and that he fired two more shots at Mr. Wood. Officer Wilmot said Officer Kollar grabbed Officer Wilmot and pulled him away from Mr. Wood and took the hammer from Mr. Wood.

Officer Wilmot said he holstered his gun and handcuffed Mr. Wood. He said he rolled Mr. Wood onto his back, cut open his shirt, and saw a wound on Mr. Wood's chest. Detective Sergeant Silva arrived and applied a chest seal bandage. Officer Wilmot said he removed the handcuffs and rendered aid until EMS arrived and took over.

Officer Wilmot said he stood up and had pain around his mouth and face and tasted blood in his mouth. Detective Sergeant Silva checked Officer Wilmot's face and brought him to Johnstown Fire Department medics, who checked him at the scene. Detective Sergeant Silva took Officer Wilmot's gun and magazines from him and secured them.

Officer Kollar

Officer Kollar said he had been a JPD officer for seven and a half years. He said that on Sunday

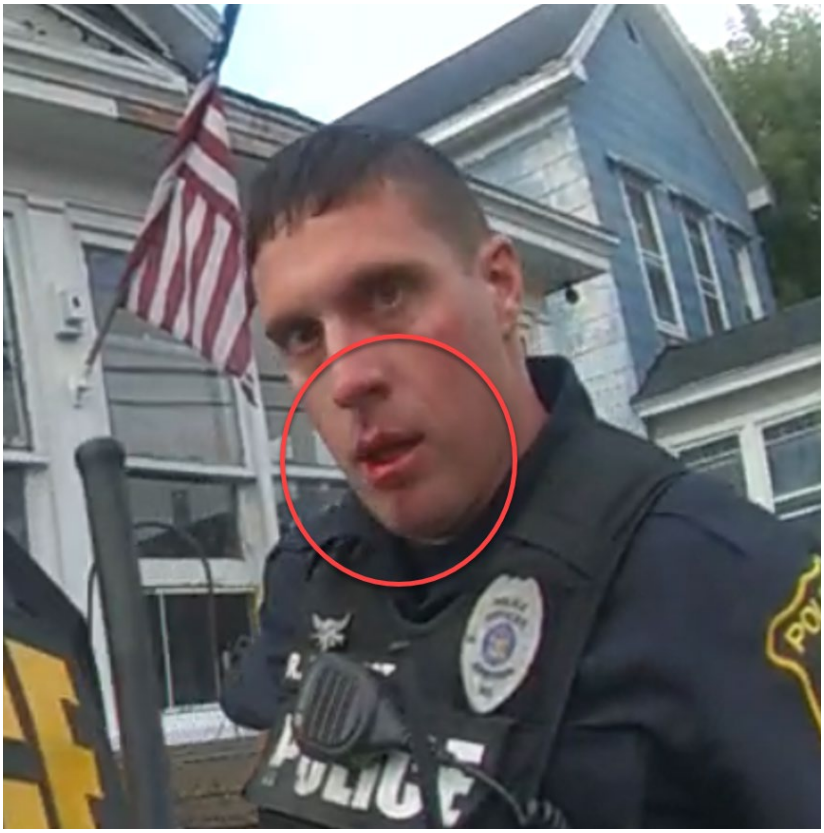
September 17, 2023, he was working an extended shift, from 12:00 a.m. to 6:00 p.m. He said he was in the JPD station with Officer Wilmot and Detective Sergeant Silva when he answered the phone and spoke to a woman who said that "Nate Wood" was at their house with a hammer, damaging the apartment. Officer Kollar told Officer Wilmot what was happening, and they left the station and went to the address given. Officer Wilmot arrived first and, as Officer Kollar was approaching the house in his patrol car, he said he heard Officer Wilmot radio that he had one person at gunpoint. Officer Kollar pulled up and saw Officer Wilmot on the enclosed front porch near the porch doorway and two people standing behind him, one of whom was bleeding from his head. He saw that Officer Wilmot had Mr. Wood at gunpoint and that Mr. Wood was holding a hammer in his right hand. Officer Kollar said he knew Mr. Wood from a previous interaction.

Officer Kollar said Officer Wilmot told him to get his pepper spray ready, which appeared to upset Mr. Wood. Mr. Wood swung the hammer and smashed out one of the porch windows. Mr. Wood started bouncing and moving around the porch with the hammer in his hand as the officers were yelling at him to "put the hammer down" and "get on the floor." Mr. Wood said he was not going to put the hammer down and ran through the door into the second-floor apartment. Officer Wilmot followed Mr. Wood up the stairway, and Officer Kollar was behind Officer Wilmot. Officer Kollar said Mr. Wood came out of the second-floor apartment doorway at the top of the stairwell and Officer Kollar turned and quickly went back down the stairs to clear the area for Officer Wilmot and went through the doorway onto the enclosed porch. Officer Kollar heard gunshots and heard Officer Wilmot yell, "Shots fired." Officer Kollar went through the doorway and saw Officer Wilmot and Mr. Wood at the bottom of the stairs; Officer Wilmot was on the floor with his head toward the porch and Mr. Wood was at the bottom of the stairs. Mr. Wood still had the hammer in his hand and was moving around, so Officer Kollar said he grabbed the hammer. Officer Kollar said he put Mr. Wood's hand behind his back and that Officer Wilmot handcuffed Mr. Wood. The officers pulled Mr. Wood away from the stairs to assess his injuries and started rendering aid. Detective Sergeant Silva arrived and assisted Officer Wilmot with aid to Mr. Wood, so Officer Kollar went up to the second-floor apartment to ensure that nobody else was in the apartment. Officer Kollar said he found a dog in the bathroom, but no people in the apartment. Officer Kollar went down the stairs and saw Johnstown EMS aiding Mr. Wood. There were several police officers and EMS personnel on the porch, so Officer Kollar went outside. Officer Kollar noticed that Officer Wilmot had blood around his mouth.

Detective Sergeant Silva

Detective Sergeant Silva said he had been a police officer since 2011 and started working at JPD in 2019. On September 17, 2023, he was working as the on-call supervisor from 6:00 a.m. to 6:00 p.m. and was in his office when he heard Officer Wilmot call out an address on the radio but was unaware of the nature of the call. Detective Sergeant Silva said he heard Officer Wilmot say he had a man at gunpoint and heard him request EMS for an injured man

who had been stuck in the head with a hammer. Detective Sergeant Silva said he left the station and, on the way, heard Officer Wilmot radio, "Shots fired." When Detective Sergeant Silva got to the address he got out of his car and people outside the house next door said police officers were inside the house at the reported address. Detective Sergeant Silva said he opened the door and saw Officers Wilmot and Kollar with Mr. Wood on the floor. He said the officers uncuffed Mr. Wood, cut open his shirt, saw a gunshot wound to his chest, and rendered aid until EMS arrived and took over. Officer Kollar and other officers cleared the upstairs apartment. Detective Sergeant Silva went outside to check on Officer Wilmot and saw that he was bleeding from his mouth. Detective Sergeant Silva secured Officer Wilmot's duty weapon and magazines, and EMS treated him at the scene.



Still from body worn camera of Gloversville Police Department Officer Bump, who arrived after the shooting, enlarged to show blood around Officer Wilmot's mouth.

Other Civilian Witnesses

OSI interviewed Civilian Witnesses A, B, C, and D. They also provided written statements to NYSP.

Witness A

Witness A was helping his girlfriend (Witness B) move out of her apartment, next door to the house where the incident occurred, on the morning of September 17, 2023. He was standing on her front steps and saw CW-1 standing on his porch with another person, Mr. Wood, but he did not know Mr. Wood. Witness A was unable to hear their conversation. A few minutes later, Witness A said he saw a JPD car drive down the street and heard CW-2 scream from the front porch area. He saw Mr. Wood swing a hammer at CW-1. Mr. Wood was holding the hammer in his right hand and swung the hammer over his head toward CW-1. Witness A said he saw CW-1 fall to the floor and heard a crashing sound but could not see CW-1, so he yelled to the police officer that Mr. Wood and CW-1 were fighting and pointed in the direction of the porch.

Witness A said the police officer ran onto the porch and soon a second police officer arrived and went onto the porch. Witness A heard the police officers yell at Mr. Wood to "Put it down, put it down." Witness A said the officer had his gun pointed at Mr. Wood. The two officers came off the porch and onto the steps and Mr. Wood was still on the porch. Witness A saw CW-1 and CW-2 come out of the house; CW-1 was bleeding from the top of his head and down his face and had cuts on his left forearm and hand. Witness A saw the officers run back onto the porch but was unable to see anything else. Witness A heard four gunshots from inside the house and saw more police officers arrive. Witness A had CW-1 sit down on the front steps of Witness B's house and Witness B wrapped CW-1's head to stop the bleeding.

Witness B

Witness B, a nurse, said that on September 17, 2023, she was moving out of her apartment and loading cars with her fiancé, Witness A. Witness A told her to stay in the apartment because Mr. Wood "hit him in the head." Witness B immediately grabbed gloves and a washcloth and then heard four gunshots. Witness B went downstairs and saw CW-1 sitting on her front porch and observed lacerations on his left arm and head. EMS arrived and began treating CW-1, and Lake Valley EMS transported CW-1 to the hospital.

Witness C

On September 17, 2023, Witness C was asleep and woke up to a popping sound, which sounded like gunshots. Witness C looked out the front window and saw JPD cars parked in front of CW-1 and CW-2's house. Witness C saw CW-1 sitting on the front steps of a neighbor's house, apparently bleeding. Witness C saw a neighbor wrapping something around CW-1's head.

Witness D

On the morning of September 17, 2023, Witness D was in the driveway and heard CW-2 screaming. Witness D went to see what was happening; CW-2 was on the steps of the house screaming and CW-1 walked out onto the front porch; his head was bleeding significantly. Witness D saw a man, Mr. Wood, on the enclosed porch holding something but could not tell what it was. Witness D saw Mr. Wood run up the stairs to the second-floor apartment. Witness D saw CW-1 walk over to the neighbor's steps, and they attended to his wounds. Witness D said the police arrived and ran to the upstairs apartment. Witness D heard all the police officers yelling "to drop the weapon" repeatedly at Mr. Wood and soon heard three to four gunshots. Witness D said that several other police officers arrived and then an ambulance came to the scene.

Video

Body Worn Camera

JPD officers were not equipped with body worn cameras (BWCs) at the time of the incident. (However, JPD has informed OSI that in December 2023 JPD implemented, equipped, and trained their officers with BWCs.) Members of other nearby departments who responded to the incident, but arrived after the shooting, were equipped with BWCs, and OSI reviewed BWC video from members of the Fulton County Sheriff's Office (Sergeant Ian Foard and Captain Joshua Serpa) and the Gloversville Police Department (Officer Destin Brooker, Officer Stephen Kolbe, Officer Tyler Bump, Sergeant Chad Buddles, Officer Robert Ruddy, and Detective Brian Knecht).

BWC video from Officer Booker showed Officer Wilmot immediately after the incident being asked by another officer if he was "all right." Officer Wilmot responded, "He got me with a hammer. No, I got hit with a fucking hammer." BWC video from Sergeant Foard showed Officer Wilmot rendering aid to Mr. Wood immediately after the incident. Officer Wilmot said, "Am I bleeding? He got me with a hammer."

CW-1 and CW-2's Home Security Camera

Four security cameras were affixed to the exterior of CW-1 and CW-2's house. Security footage segment 1[1] showed that CW-2 walked out of the house with the wooden hammer and dropped it in the grass next to the house; that Officer Wilmot arrived, got out of his car with his gun drawn, and ran into the house, and that CW-2 followed him inside. Security footage segment 2[2] showed that Officer Kollar arrived at the house and that CW-1 and CW-2 walked to the neighbor's house. The video showed that Officers Wilmot and Kollar quickly backed out of the

[1] Security footage segment 1 can be viewed here.
[2] Security footage segment 2 can be viewed here.

house, that Officer Wilmot had his gun drawn, and that they re-entered the house.

Photos of Officer Wilmot

On the day of the incident, NYSP took photos of Officer Wilmot at the JPD station in the presence of his attorney, as shown below:

Medical Information

EMS

Johnstown Fire Department Captain Shawn Humphrey

Captain Humphrey was interviewed by OSI and NYSP. He said that on September 17, 2023, at 7:55 a.m., he was on duty at the station and received a call that a man was struck in the head with a hammer and, a short time later, a call for shots fired. Captain Humphrey said he and other members of the department went to the address given and, when he arrived, he was approached by Officer Wilmot, who asked for a bottle of water and said he had been struck in the head with a hammer. Captain Humphrey observed that Officer Wilmot's bottom lip was bleeding and that there was an additional mark on his face. Captain Humphrey observed that Officer Wilmot was visibly shaking and rambling when he was talking. He decided that Officer Wilmot required medical care beyond what could be provided at the scene and had him transported to Nathan Littauer Hospital (NLH).

EMT Nathan Biron

EMT Biron was interviewed by NYSP; he refused to be interviewed by OSI. OSI's review of the NYSP interview report shows that he said that on September 17, 2023, at 7:55 a.m., he was at the Johnstown Fire Department when they received a call that a man was struck in the head with a hammer and, shortly after, a call for shots fired. The supervisor sent two rigs to the call,

and EMT Biron was in the second rig. At 8:00 a.m. he and a paramedic arrived at the address given and found Mr. Wood in the hallway by the front steps with an obvious gunshot wound to the abdomen. EMT Biron said he attached a cardiac monitor to Mr. Wood, established an IV, and began life saving measures. Mr. Wood was unresponsive, and his heart rate was low and dropping. They loaded Mr. Wood into the ambulance and he "coded." They continued lifesaving measures until they arrived at the hospital and the medical staff took over.

Paramedic James Phillips

Paramedic Phillips was interviewed by NYSP. OSI's review of NYSP's interview report shows that he said that on September 17, 2023, he was working with a partner at Lake Valley Ambulance, and they were driving to the Gloversville Station when their dispatch heard a call for a gunshot wound victim and an assault with a hammer. They arrived at the reported address and saw that CW-1's head was already wrapped. Paramedic Phillips assessed CW-1, was concerned about the severity of the wound, and recommended that he be transported to Albany Medical Center for evaluation and treatment. CW-1 told Paramedic Phillips that he attempted to talk to Mr. Wood and calm him down, but Mr. Wood attacked him with a hammer, and he tried to block the blows with his arm; he said they fell through a glass window, which cut his hand. Paramedic Phillips said CW-1's injuries were consistent with the information. On the way to the hospital CW-1 said the police ordered Mr. Wood to drop the hammer several times, but he did not, and that's when he was shot.

Hospital Records

Officer Wilmot

NLH medical records show that Officer Wilmot said he fell half a flight of stairs after being struck in the face with a hammer, had facial pain over the lower jaw and lower lip, and had mild pain and swelling to the right elbow. A CT scan of Officer Wilmot's head and face showed no acute intracranial injury or any other problems. Officer Wilmot was given ibuprofen for pain and was released.

CW-1

NLH medical records show that CW-1 had a laceration to his forehead and lacerations to his left wrist, left fingers, and left forearm, and a skin tear on his upper left shoulder. He appeared to be in mild distress and complained of general pain. X-rays of his forearm and left hand showed soft tissue injury. CT scans of his head and spine showed no acute intracranial abnormality, fracture, or subluxation (dislocation). The lacerations to his forehead and left forearm were closed with staples. The photos below were taken by NYSP of CW-1 at the hospital, showing injuries to his head, shoulder, elbow, and hand.

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Scene Investigation

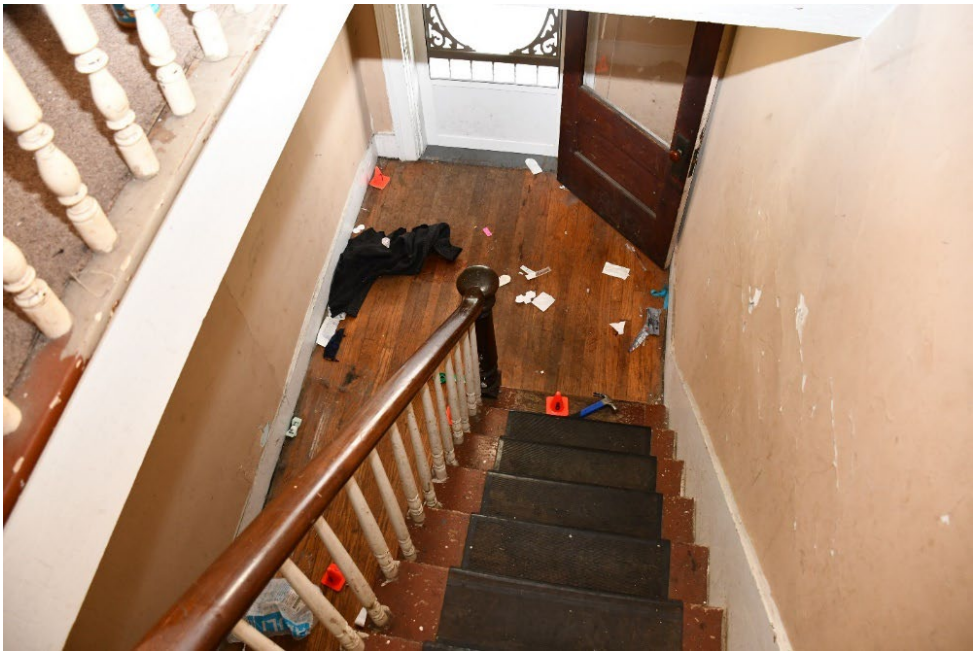
Later on the day of the incident, members of NYSP, including Forensic Investigation Unit (FIU) Investigator Ryan Carrow, went to the scene. Inv. Carrow obtained Officer Wilmot's Glock 22 .40 caliber gun, including the inserted magazine, and Officer Wilmot's two additional magazines, from JPD Chief David Gilbo. The magazines each had a capacity of 15 rounds. If the inserted magazine were fully loaded and if the firing chamber had a round in it before the shooting began, the gun would have had 16 live rounds in it. Upon examination, the inserted magazine had 11 rounds, and one round was in the chamber, consistent with Officer Wilmot's having fired 4 rounds. Officer Kollar's firearm and ammunition were examined and found to be fully loaded.

Inv. Carrow observed red staining on the porch floor, where the assault of CW-1 occurred, and on the sidewalk leading to the house next door, which was consistent with CW-1's injury and statement. Inv. Carrow observed a 16-ounce Stanley hammer in the grass next to the porch steps. Inv. Carrow observed three .40 caliber shell casings on the porch floor, and, also on the porch, a cellphone, pepper spray, eyeglasses, and medical debris.

Upstairs, Inv. Carrow observed one .40 caliber shell casing in the foyer to the second-floor apartment, just outside the apartment door, and metal fragments of a fired projectile or projectiles on the foyer floor, as well as medical debris, a knife, and Mr. Wood's sweater. Inv. Carrow observed a blue 16-ounce Kobalt hammer on the first step of the staircase leading to the upstairs apartment. He observed a defect in the riser of the seventh staircase step, which was consistent with damage by a gunshot, and recovered a fired projectile from the basement staircase, which was directly under the staircase to the second floor.

Inv. Carrow observed that CW-3's apartment appeared to have been ransacked (CW-3 said it

was neat when he left for work) and observed numerous handgun magazines and 9mm and .40 caliber ammunition throughout the living room and middle bedroom. In the rear bedroom, Inv. Carrow recovered a .45 caliber handgun, but none of the ammunition he found in the apartment was .45 caliber. Inv. Carrow observed a chunky crystal-like substance with a rolled piece of plastic on a ceramic plate.



NYSP photograph of the staircase to the second-floor apartment

NYSP photographs of the blue hammer recovered on the staircase to the upstairs apartment.

NYSP photographs of the wooden hammer recovered from the lawn in the front of the house.

NYSP photograph of the front porch, showing the broken window and glass on the couch.

Autopsy

On September 18, 2023, Dr. Michael Sikirica of Albany Medical Center conducted the autopsy of Mr. Wood at Glens Falls Hospital with the assistance of pathologist assistant William Rowley. Dr. Sikirica's autopsy report said the cause of death was bilateral hemothorax and hemoperitoneum due to perforations of the liver, left lung, and vena cava caused by gunshot wounds to the right flank and abdomen, and that the manner of death was homicide.

According to the autopsy report there were two gunshot wounds to Mr. Wood: one to the lower abdomen and one to the right flank area. Medical imaging was conducted which revealed two projectiles and fragments inside Mr. Wood's body, which Dr. Sikirica removed and which NYSP Trooper Gabler vouchered. The autopsy report also stated that Mr. Wood had acute methamphetamine intoxication, based on blood and urine analysis.

LEGAL ANALYSIS

Article 35 of the Penal Law defines the circumstances under which a person is justified in using deadly force against another. Justification is a defense, Penal Law Section (PL) 35.00, not an affirmative defense. To obtain a conviction at trial, a prosecutor must disprove a defense beyond a reasonable doubt, PL 25.00(1). The defendant is entitled to have the jury instructed on the defense of justification even if the defendant does not offer evidence, as long as the defense is implied by the prosecutor's evidence, *People v Padgett*, 60 NY2d 142 (1983); *People v Steel*, 26 NY2d 526 (1970).

PL 35.30 is the provision defining justification when a police officer or peace officer uses deadly force in making an arrest for an offense and provides, in part:

> "A police officer or a peace officer, in the course of effecting or attempting to effect an arrest … of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest … or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; except that deadly physical force may be used for such purposes only when he or she reasonably believes that … (c) regardless of the particular offense which is the subject of the arrest … the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force."

Police officers using deadly physical force pursuant to PL 35.30 are under no duty to retreat when threatened with deadly physical force, PL 35.15(2)(a)(ii).

Under PL 10.00(11), "deadly physical force" is defined as "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." Under PL 10.00(10), "serious physical injury" is defined as "physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ." Under PL 10.00(13), serious physical injury is part of the definition of "dangerous instrument," which is "any instrument … which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death

or other serious physical injury."

New York Courts have recognized that, depending on the manner in which it is used, a hammer is a dangerous instrument, readily capable of causing death or serious physical injury. In *People v Holmes*, 9 AD3d 689 (3d Dept 2004), the court stated that either a hammer or a screwdriver can be a "[d]angerous instrument" if used in a manner that "is readily capable of causing death or other serious physical injury." Courts have also recognized that striking someone with a hammer in the head is the use of deadly physical force: in *People v Gonzalez*, 187 AD3d 589 (1st Dep 2020), the court held there was no justification for defendant's use of deadly physical force, which consisted of 10 hammer blows and four stab wounds; in *People v Garcia,* 59 AD3d 211, 212 (1st Dept 2009), an assault case, the court held that defendant's striking his stepson's head and shoulder with a claw hammer was the use of deadly physical force.

Depending on how it is used, even a normally innocuous item may be a "dangerous instrument" or may be used in a way that constitutes "deadly physical force": *People v Dodt*, 61 NY2d 408 (1984), and *People v Ray*, 273 AD2d 611 (3d Dept 2000) (boots); *People v Carter*, 53 NY2d 113 (1981) (rubber boots); *People v Cwikla*, 46 NY2d 434, 442 (1979) (handkerchief used as a gag). To be held a "dangerous instrument" it is not necessary that the object actually caused serious physical injury, but it must have been capable of doing so, *People v Scipio*, 169 AD2d 596 (1st Dept 1991).

As to whether the use of deadly physical force is justified, a person is not required to wait until they are struck or wounded if they reasonably believe that deadly force is about to be used against them, *People v Valentin*, 29 NY3d 57, 62 (2017); *People v Singh*, 197 AD3d 1332 (2nd Dept 2021). A person may be the first to use deadly physical force, so long as they reasonably believed deadly force was about to be used against them; they are not in those circumstances considered to be the "initial aggressor," even though they strike the first blow or inflict the first wound. See *NY Criminal Jury Instructions 2d, Justification: Use of Deadly Physical Force in Defense of a Person*.

Under PL 35.30, the police officer who uses deadly physical force is justified when the officer reasonably believes deadly physical force is necessary to defend the officer or another against the imminent use of deadly physical force. "Reasonable belief" means that a person actually believed, "honestly and in good faith," that physical force was about to be used against them and that physical force was necessary for self-defense (subjective component), and it means that a "reasonable person" under the same "circumstances" could have believed the same (objective component), *People v Goetz,* 68 N.Y.2d 96 (1986). Therefore, before using deadly force in self-defense, the officer must honestly and in good faith believe that deadly force was about to be used against them and that deadly physical force is necessary for self-defense, and the circumstances must be such that a reasonable officer could have believed the same.

In this case, OSI concludes that a prosecutor would not be able to disprove beyond a

reasonable doubt that it was reasonable for Officer Wilmot to believe that deadly physical force was necessary to defend himself, or another person, from what he reasonably believed to be the imminent use of deadly physical force by Mr. Wood. The evidence is that Officer Wilmot responded to a report that Mr. Wood was acting erratically, damaging an apartment, and had hammers; thus, before arriving at the house, Officer Wilmot had information that Mr. Wood had committed the offense of Criminal Mischief, PL 145.00 (1). When Officer Wilmot arrived at the house, he said he saw CW-1 lying on the floor bleeding, and CW-2 struggling with Mr. Wood, who was holding a hammer in his hand. Officer Wilmot at that point had reasonable cause to believe that Mr. Wood had committed the offenses of Assault in the First or Second Degree, PL 120.10(1) or 120.05(2), and Criminal Possession of a Weapon in the Fourth Degree, PL 265.01 (2).

Officer Wilmot said he saw Mr. Wood with the blue hammer in his hand and repeatedly ordered Mr. Wood to drop the hammer. Mr. Wood failed to comply, smashed a window out with the hammer, yelled "he was going to kill his buddy," and ran to the upstairs apartment. Officer Wilmot followed Mr. Wood up the stairs. Officer Wilmot had his gun drawn and continued to order Mr. Wood to drop the hammer. Mr. Wood ran from the apartment doorway and jumped toward Officer Wilmot with the hammer over his head. Officer Wilmot tried to back down the stairs and fired one shot at Mr. Wood. Mr. Wood hit Officer Wilmot in the mouth with the hammer and Officer Wilmot fired a second shot at him and, ultimately, a third and a fourth shot.

When Mr. Wood used the hammer, a "dangerous instrument" under New York law, capable under the circumstances of inflicting serious physical injury or death, to swing at Officer Wilmot's face and head, Office Wilmot could have reasonably believed that Mr. Wood was using or threatening the use of deadly physical force. Although Mr. Wood had not yet seriously injured Officer Wilmot with the hammer when Officer Wilmot fatally shot him, Officer Wilmot was not required to wait until he was struck or wounded if he reasonably believed that Mr. Wood was about to use deadly force against him, *Valentin*, 29 NY3d at 62.

In sum, OSI concludes that a prosecutor would not be able to disprove beyond a reasonable doubt that Officer Wilmot's actions were justified under New York law. Therefore, OSI will not seek charges and closes the matter with the issuance of this report.

Dated: December 17, 2024