Office of the New York State Attorney General Letitia James

Office of Special Investigation

September 1, 2022

Report on the Investigation into the Death of David Wandell

SUMMARY

New York Executive Law Section 70-b ("Section 70-b") authorizes the Office of the Attorney General ("OAG"), through the Office of Special Investigation ("OSI"), to investigate and, if warranted, to 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, Section 70-b requires the issuance of a public report. This is the public report of OSI's investigation of the death of David Wandell.

On August 27, 2021, in a cemetery in the City of Elmira, Chemung County, five police officers from four law enforcement agencies fired shots at David Wandell, who died as a result. After a full evaluation of the facts and the law, OSI will not seek charges against those officers, because we cannot prove beyond a reasonable doubt that their actions were unjustified under Article 35 of the New York Penal Law.

FACTS

Overview

This case involved two shooting incidents at two locations in the City of Elmira. First, at Eldridge Park, Elmira Police Department ("EPD") Patrol Officer Amari Hadlock fired several shots at David Wandell after he pointed what appeared to be a gun at her; there is no evidence any of her bullets hit him. Mr. Wandell fled on foot about one mile to Woodlawn Cemetery. Several officers pursued Mr. Wandell into the cemetery where, according to the officers who fired their weapons and one civilian witness, Mr. Wandell pointed a gun at the officers. Five officers fired at Mr. Wandell; two shots were fatal.[1] The gun officers recovered by Mr. Wandell's body appeared to be a handgun but was in fact an unloaded Airsoft Pistol.

Initial Interaction with Police

On August 21, 2021, EPD Sargent Christopher Zelko issued, by email, a high priority "Chemung County Officer Safety Announcement" to all law enforcement officers in Chemung County. Sgt. Zelko advised that Mr. Wandell, the subject of a parole warrant, was back in Chemung County after absconding to North Carolina, that Mr. Wandell said he had killed a man in North Carolina, and that officers should "Use caution if you encounter David [Wandell] as he has a long history of violence." Sgt. Zelko attached two pictures of Mr. Wandell to the email. The Officer Safety Announcement, redacted to protect confidential information, is reproduced below.

[1] As discussed below, OSI was not able to determine which officers fired the two fatal shots, because the only projectiles recovered from Mr. Wandell's body during the autopsy were too degraded to permit for microscopic comparison analysis.

****
CHEMUNG COUNTY OFFICER SAFETY ANNOUNCEMENT
****

Sgt. Christopher W. Zelko
Elmira Police Department
317 E. Church St.
Elmira, NY 14901
[redacted]

From: Zelko, Christopher [redacted]
Sent: Saturday, August 21, 2021 5:24 PM
To: ^Police All Sworn Personnel [redacted]
Subject: David Wandell-Officer Safety

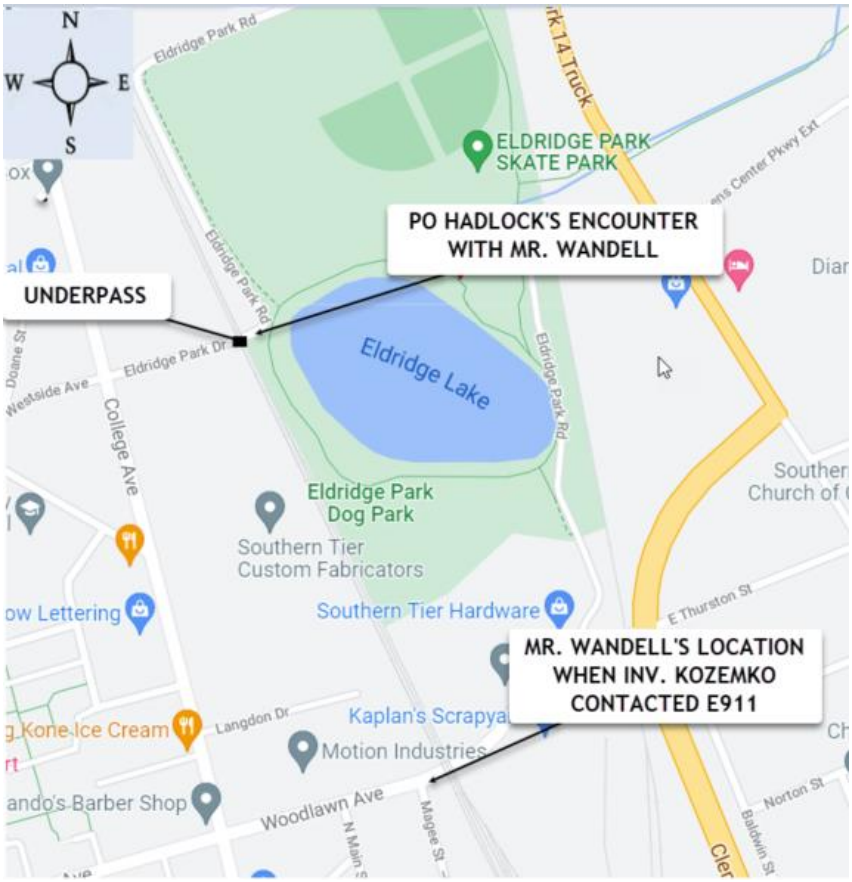
[redacted] David recently came back to Elmira from North Carolina. [redacted] David was trying [redacted] prior to going back to prison [redacted] he killed a man in a homeless camp in North Carolina as the subject would not leave his female counterpart alone. [redacted]

[redacted] David has been committing burglaries to survive and is carrying a large axe on him at all times. David is currently wanted by NYS Parole, however, his absconder case has been handed over to the US Marshals.

The information regarding the NC incident has been passed on to their Fusion Center. Extra patrols are requested [redacted] David is possibly hanging out in a camp near the river, [redacted] David allegedly has shaved his head and has a long beard at this time. Use caution if you encounter David as he has a long history of violence.

Six days after the Announcement, at 11:27 a.m. on August 27, 2021, NYSP Investigator Brian Kozemko, in plain clothes and driving an unmarked car, called the Chemung County E911 Center ("E911"), and said he was monitoring a person he believed to be David Wandell. The recorded call may be found here: Kozemko Call. Inv. Kozemko said he was following Mr. Wandell, who was walking toward Eldridge Park, but wanted assistance from uniformed officers.

The E911 dispatcher advised cars in the area that Mr. Wandell, the subject of an Officer Safety Announcement, was walking toward Eldridge Park. Inv. Kozemko, according to his NYSP paperwork and an OSI interview, continued to watch Mr. Wandell as he entered Eldridge Park. Inv. Kozemko said Mr. Wandell was wearing a camouflage coat with a backpack underneath it.



Map depicting relevant locations during Mr. Wandell's first interaction with police.

EPD Sergeant Frank Hillman, EPD Patrol Officer Jacob Kierst, and EPD Patrol Officer Amari Hadlock, all of whom knew Mr. Wandell was the subject of an Officer Safety Announcement, responded to the area. Sgt. Hillman, according to EPD reports and his OSI interview, drove into the park and saw Mr. Wandell walking north through a thicket of trees on the west side of the pond. PO Kierst, according to his OSI interview, drove into the park and monitored Mr. Wandell as he walked along the west side of the pond.

At 11:36:35 a.m., in a recorded radio transmission, PO Kierst said, "He's getting right up to the underpass now heading out toward College [Avenue]." At that time, according to PO Hadlock's interview with OSI and the NYSP, she drove her marked EPD cruiser east through the underpass and into the park, where she saw Mr. Wandell walking west on Eldridge Park Dr. At 11:36:42 a.m., PO Hadlock radioed, "I'm out," as she stepped from the vehicle.

What took place next was partially captured on PO Hadlock's Body Worn Camera ("BWC"), and, where noted, clarified by her interview with OSI and the NYSP. PO Hadlock's BWC captured visual (but not audio) footage of her encounter with Mr. Wandell; the BWCs of other officers recorded audio of her shots, but no visual footage. All relevant audio and video of the entire incident, beginning with PO Hadlock entering Eldridge Park and concluding after the fatal shooting of Mr. Wandell at Woodlawn Cemetery, has been combined into one video which may be found here: WANDELL VIDEO.[2] The WANDELL VIDEO begins with PO Hadlock's video

[2] The Wandell Video includes visual and audio BWC footage from PO Hadlock, Elmira Heights Police Department Sergeant Robert Noonan, EPD Patrol Officer Justin Baer, and EPD Patrol Officer Jacob Overbeck; audio BWC footage from EPD Patrol Officer Joshua Pratt; and recorded E911 Comm Center radio transmissions. The WANDELL VIDEO begins at 11:36:37 a.m. as PO Hadlock enters Eldridge Park, and ends at 11:50:45 a.m., after the fatal shooting, when Mr. Wandell is in handcuffs. The Wandell Video plays in real time and displays a running clock throughout; the clock does not synchronize precisely with the timestamps on the various media sources displayed in the video, because those separate sources and are not universally calibrated. Attached to this report

and EPD Patrol Officer Joshua Pratt's synchronized audio,[3] until 30 seconds into the footage, when PO Hadlock's audio begins.

PO Hadlock got out of her cruiser and turned toward Mr. Wandell. At that point, according to PO Hadlock, she saw Mr. Wandell several feet away from her with his hands against his chest and covered by a bandana. In an instant, PO Hadlock said Mr. Wandell removed the bandana, extended his hand, and pointed a black handgun at her.

PO Hadlock's hand (holding her gun) is at the top-left corner. Mr. Wandell is visible directly below. Isolated still shot taken from PO Hadlock's BWC footage.

PO Hadlock then fired seven shots at Mr. Wandell from her Glock .45 caliber EPD-issued gun as she backed away from him. There is no evidence that any of PO Hadlock's shots struck Mr. Wandell. While backing away, as seen on her BWC footage, she tripped over a parking barrier in the grass at the edge of the road and, as she fell, Mr. Wandell ran away. At that moment PO Hadlock activated her BWC; due to the camera's thirty second look-back recording feature, her BWC captured video, but not audio, of her interaction with Mr. Wandell. Although PO Hadlock's encounter with Mr. Wandell is visible on the WANDELL VIDEO, OSI slowed the speed of her footage to enable the viewer to see, as clearly as possible, what took place. The video may be found here: Hadlock Slow Motion.

Sgt. Hillman, driving south on Eldridge Park Dr. toward PO Hadlock, saw Mr. Wandell point a gun at PO Hadlock, heard shots, and saw PO Hadlock fall to the ground. He mistakenly believed Mr. Wandell had shot PO Hadlock and broadcast over the radio, "Shots fired… He's up on the tracks. He shot at our officers. He shot at our officers." In turn, the E911 dispatcher transmitted over the air, "All county units. The area of Eldridge and College. Reports of shots fired at officers."

---

is an Appendix that outlines the times of significant events depicted on the Wandell Video, using the running clock. The WANDELL VIDEO contains unredacted language that many may find offensive.

[3] PO Pratt, also in Eldridge Park because of Inv. Kozemko's request for help, heard, but did not see, the gunfire.

As seen on the WANDELL VIDEO, after the shooting, PO Hadlock stood up and initially ran toward Sgt. Hillman's truck, which he parked facing PO Hadlock's vehicle; she then ran east, toward Inv. Kozemko's car, followed by Sgt. Hillman.

Position of PO Hadlock's and Sgt. Hillman's cruisers after PO Hadlock shot at Mr. Wandell.

As shown on the WANDELL VIDEO, at 11:37:25 a.m., PO Hadlock told Sgt. Hillman, "I'm ok, I'm checking," as she checks herself for gunshot wounds. At 11:37:48 a.m., PO Hadlock said, "I don't know if I hit him…he pointed a gun right at me," and Sgt. Hillman replied, "I know. I saw it." A similar exchange took place at 11:38:58 a.m. between PO Hadlock and Inv. Kozemko. At 11:39:44 a.m., Sgt. Hillman said that Mr. Wandell's gun "looked like a revolver." Later (WANDELL VIDEO at 11:45:43 a.m.), PO Hadlock said, "As soon as [Mr. Wandell] pointed the gun," she started shooting.

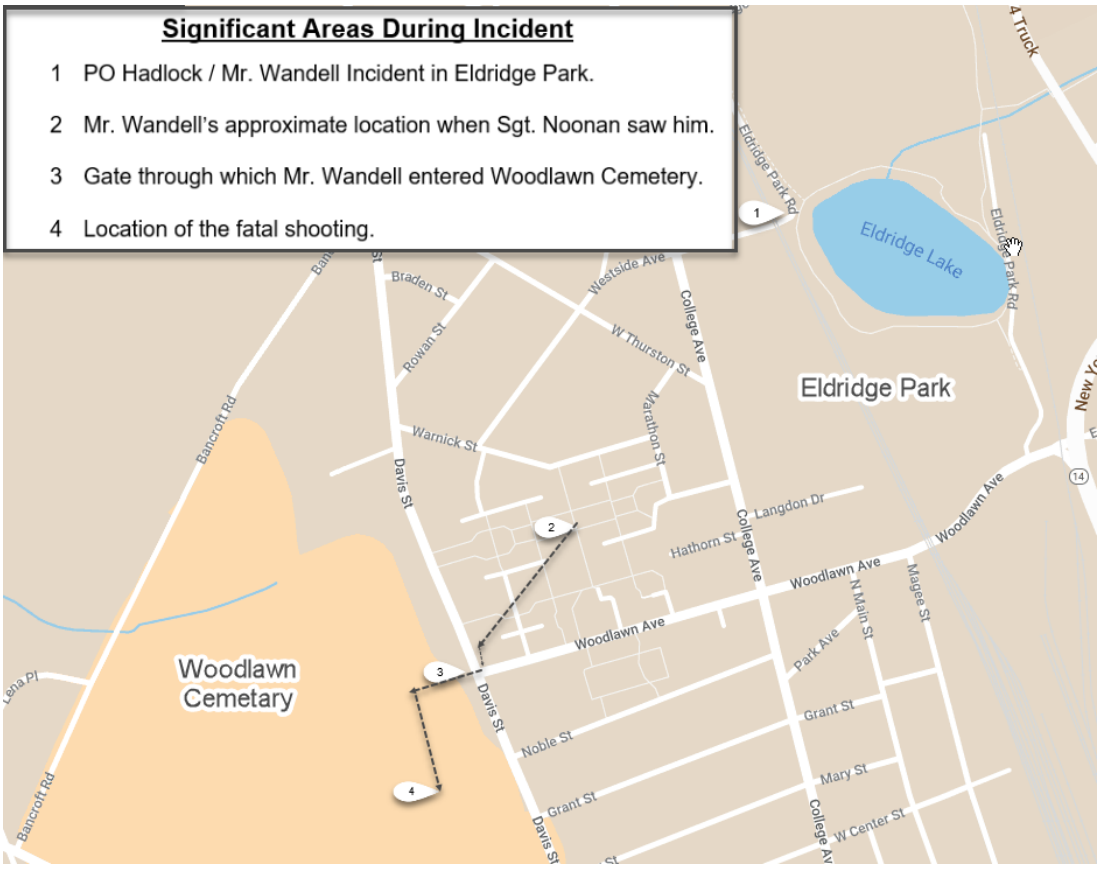
Pursuit

Upon Mr. Wandell's flight from Eldridge Park, officers from the EPD, NYSP, the Chemung County Sheriff's Office ("CCSO"), the Elmira Heights Police Department ("EHPD"), the West Elmira Police Department ("WEPD"), the Horseheads Police Department ("HPD"), and the New York State Department of Corrections and Community Supervision's Parole division ("DOCCS Parole") flocked to the area to establish a perimeter, locate Mr. Wandell, and take him into custody.

At 11:43:46 a.m., EHPD Sergeant David Noonan radioed E911 and said he may have located Mr. Wandell in Hathorn Court, heading toward Davis Street. According to Sgt. Noonan's report and his interview with OSI and NYSP, he was driving west on Warnick St. when he saw Mr. Wandell moving through the Hathorn Court apartment complex. Sgt. Noonan parked his patrol car on Warnick St. and began to follow Mr. Wandell on foot, staying about 100 yards behind him while maintaining radio contact, as shown in the WANDELL VIDEO.

As he neared Woodlawn Cemetery, Mr. Wandell began to run and Sgt. Noonan continued to follow, staying a safe distance behind, and broadcasting his whereabouts and actions to

E911. The map below depicts the area where Sgt. Noonan saw Mr. Wandell and that location relative to the first and second shooting scenes.



Shooting in Woodlawn Cemetery

Five officers fired their weapons in the cemetery – EPD Investigator William Goodwin, Chemung County Sheriff's Office ("CCSO") Deputy Zachary Hugg, EPD Sergeant Charles Kennedy, Department of Corrections and Community Supervision ("DOCCS") Parole Officer Shawn Reynolds, and NYSP Trooper Matthew Shutter. No BWC captured video of the shooting in the cemetery, but some BWC, including Sgt. Noonan's, captured audio of the shots.

Of the five officers who shot their weapons in the cemetery, only Dep. Hugg was equipped with a BWC. NYSP in the area did not yet have BWCs (Trp. Shutter), Investigators at EPD were not required to wear BWCs (Inv. Goodwin), DOCCS Parole does not require parole officers to wear BWCs (PO Reynolds), and the CCSO provides BWCs to deputies, but not sergeants (Sgt. Kennedy). Dep. Hugg, in an interview with OSI and the NYSP, said he forgot to turn on his BWC on when he jumped out of his vehicle in the cemetery but remembered to turn it on after Mr. Wandell was in handcuffs. Dep. Hugg's video may be found here: Hugg Video.[4]

As seen in the WANDELL VIDEO, as non-shooting officers with BWCs arrived, their cameras captured video of the aftermath of the shooting and recovery of the gun from next to Mr. Wandell's body.[5] Members of OSI and the NYSP interviewed every officer who fired shots,

[4] The HUGG VIDEO contains unredacted language that many may find offensive.
[5] As detailed below, one NYSP trooper tried to go over the fence to get into the cemetery and her leg was pierced by a metal fence post. Some officers with BWCs, who would otherwise have been focused on Mr. Wandell, instead concentrated on helping that trooper; we do not include that footage in the WANDELL VIDEO.

except Trp. Shutter, who, through his attorney, refused OSI's interview request.[6] Interviews with the other shooting officers are summarized below. To contextualize their narratives, the below photograph shows the approximate location of the five shooters and their distance from Mr. Wandell.

Mr. Wandell's approximate path in Woodlawn Cemetery is shown by the dotted black line. All distances shown in the photo are approximate.

6 Trp. Shutter's weapon and ammunition were secured and examined after the incident. He shot six bullets from his Glock 21, .45 caliber handgun.

Parole Officer Reynolds

Parole Officer Shawn Reynolds supervised Mr. Wandell's parole for about two weeks, ending on June 9, 2021, when Mr. Wandell failed to report. PO Reynolds sought and obtained a violation of parole warrant.

On August 27, 2021, PO Reynolds was in his unmarked car when he heard radio transmissions about a person shooting at an officer in Eldridge Park; he did not know at that point that the subject/shooter was his parolee, Mr. Wandell. As PO Reynolds, in his car, neared the intersection of Davis St. and Woodlawn Ave., he heard radio transmissions indicating that the shooter was in his immediate vicinity, and he parked his car near the cemetery entrance. At that point, PO Reynolds saw Mr. Wandell, whom he still did not recognize as his parolee but matching the broadcast description of the person who shot at an officer, moving quickly across Davis St. and into Woodlawn Cemetery.

PO Reynolds got out of his car and yelled at Mr. Wandell to get on the ground, but Mr. Wandell continued running into the cemetery and PO Reynolds chased him. As PO Reynolds ran, patrol cars passed him and he saw Mr. Wandell discard his jacket and a pink backpack, as shown in the still photograph below, taken from the BWC of West Elmira Police Department Patrol Officer Matthew Saunders.

Photograph taken in immediate aftermath of shooting depicting the gate through which Mr. Wandell entered the cemetery (far right) as well as the discarded camouflage jacket and pink backpack, each circled.

PO Reynolds said Mr. Wandell ran through graves before taking cover behind a small tree in the middle of several tombstones. By now, PO Reynolds said several officers were to his right in the cemetery and were yelling at Mr. Wandell to drop the weapon. PO Reynolds drew his own gun at that point but did not see that Mr. Wandell had a gun because Mr. Wandell was behind the tree. PO Reynolds heard gunfire after which he saw Mr. Wandell turn; PO Reynolds said he saw a black gun in Mr. Wandell's right hand and fired his weapon.

PO Reynolds's weapon and ammunition were secured and examined after the incident. PO Reynolds shot five bullets from his Glock 9 mm handgun.

Investigator William Goodwin

EPD Investigator William Goodwin ("Inv. Goodwin") was at the Department of Social Services ("DSS") in the City of Elmira, where he is regularly assigned, when he heard that David Wandell had been seen in the area of Eldridge Park. Inv. Goodman, who said he knew Mr. Wandell was the subject of an Officer Safety Announcement, said the next thing he heard was Sgt. Hillman reporting over the air that Mr. Wandell had shot at one of their officers. Inv. Goodwin left DSS and drove to a perimeter point near College Ave. and Woodlawn St., one block east of Davis St. Inv. Goodwin then heard E911 relocate officers in the direction of Woodlawn Cemetery after Sgt. Noonan announced Mr. Wandell was going in that direction.

Inv. Goodwin drove west on Woodlawn Ave., but, when he arrived at the intersection with Davis St., he did not see any police cars on scene. At that point Inv. Goodwin heard Sgt. Noonan say on air words to the effect of, "that's him there," and Inv. Goodwin saw a person entering the cemetery wearing a jersey with a number on it,[7] carrying a pink drawstring bag, which Sgt. Noonan had also noted over the air. Inv. Goodwin got out of his car and yelled, "Police stop!" He said Mr. Wandell turned, looked at him, and sprinted south into the cemetery, discarding the pink bag and jacket he had been holding.

Inv. Goodwin got back into his car and drove into the cemetery, where, he said, Mr. Wandell was running parallel to Davis St. through headstones. Inv. Goodwin parked his car and saw Mr. Wandell behind a tree; he said he could see that Mr. Wandell was holding a black handgun. Inv. Goodwin said he saw Mr. Wandell raise the gun and heard the first shot fired, but he did not know who fired it. Inv. Goodwin said he saw Mr. Wandell change position and crouch lower, which made more of Mr. Wandell's body visible to him, so he fired his gun, twice.

After Inv. Goodwin shot, he and several other officers called for Mr. Wandell to drop his weapon. EPD Patrol Officer Justin Baer (PO Baer), a member of EPD's strategic weapons and tactics ("SWAT") team, took control of the scene. Once PO Baer determined it was safe for officers to approach Mr. Wandell, Inv. Goodwin and others began to walk forward, and he saw a gun on the ground next to Mr. Wandell. As seen on the WANDELL VIDEO at 11:49:36, when Inv. Goodwin reached the gun, which he believed to be a semi-automatic handgun, he stepped on it. When another officer gave him a glove, he moved the gun about ten feet away, so it was not near the officers handcuffing Mr. Wandell and checking him for signs of life.

[7] As seen in the WANDELL VIDEO, at 11:46:55, Sgt. Noonan announced over the air that Mr. Wandell was wearing a Steelers jersey with the number "7" on it; Mr. Wandell was ultimately found to be wearing an Atlanta Falcon's jersey with the number "7" on the back.

The gun Inv. Goodwin removed from the ground near Mr. Wandell and placed about 10 feet away.

Inv. Goodwin's weapon and ammunition were secured and examined after the incident. Inv. Goodwin shot two bullets from his Glock 30, .45 caliber handgun.

Deputy Zachary Hugg

CCSO Deputy Zachary Hugg responded to Woodlawn Ave. and Davis St. after hearing the radio transmission requesting that all available county units respond to the area of Eldridge Park for shots fired at officers. From there, Dep. Hugg heard a radio transmission that the subject had been seen heading toward Woodlawn Cemetery.

Dep. Hugg drove east on Woodlawn Ave. toward Davis St., hearing as he drove that the subject was wearing a football jersey and carrying a pink bag. As Dep. Hugg approached the cemetery entrance, he saw a person in front of him matching that description. Dep. Hugg said he and at least one other marked patrol car drove into the cemetery. Mr. Wandell briefly turned toward Dep. Hugg's approaching police car before turning left and running into the graves. Dep. Hugg said that as Mr. Wandell briefly turned toward him, he had a hand at his waist and appeared to be trying to remove something; Dep. Hugg did not see a gun but assumed that was what Mr. Wandell was reaching for based on what he had heard over the radio. He parked his car on the paved road that ran parallel to Mr. Wandell's path and got out of his car with his service rifle.

Dep. Hugg said Mr. Wandell appeared to take cover behind a tree and a couple of headstones. Dep. Hugg stood with an NYSP trooper on his right and an EPD Officer on his left. He said he did not fire initially, because he did not have a very good view of Mr. Wandell and never saw his gun. But after hearing gunfire from the officers on his left and right, he believed their lives were in danger and fired three shots.[8] Dep. Hugg saw Mr. Wandell fall to the ground. After others determined it was safe to approach, Dep. Hugg and other officers moved forward; he saw Inv. Goodwin place his foot on a gun lying on the ground next to Mr. Wandell.

[8] Immediately after the shooting, as seen in the HUGG VIDEO, Dep. Hugg said his shots only hit a headstone. He reiterated this in his interview with OSI and the NYSP.

Dep. Hugg's weapon and ammunition were secured and examined after the incident. Dep. Hugg fired three shots from his .223 caliber patrol rifle.

Sergeant Charles Kennedy

Charles Kennedy, a Sergeant with the CCSO's Civil Division, was in his office in the City of Elmira when he heard over the radio that shots had been fired at officers in the vicinity of Eldridge Park. He drove to the park in his unmarked cruiser, with his patrol rifle, and spoke briefly with EPD PO Baer near the railroad tracks that run through the far west side of the park.[9]

Sgt. Kennedy heard over the radio that an officer was trailing Mr. Wandell through Hathorn/Woodlawn Court Apartments, in the direction of Woodlawn Cemetery. Sgt. Kennedy followed a marked NYSP car and CCSO car west on Woodlawn Ave. until they reached Davis St. where, Sgt. Kennedy said, he saw several officers running into the cemetery. At or near that time, Sgt, Kennedy heard on air that the subject was wearing a football jersey. Sgt. Kennedy continued to follow the marked cars and drove left (south) onto Davis, but then pulled his car onto the shoulder of Davis St., next to the cemetery.

From the shoulder of the road, between the cemetery gate and Davis St., Sgt. Kennedy looked out the open passenger window and saw that officers had stopped running, had their guns drawn, and were yelling at a person. At that point he saw Mr. Wandell behind a tree, wearing a football jersey. Sgt. Kennedy said he could see that some officers had formed a horseshoe pattern around Mr. Wandell, who appeared to be taking cover behind the tree. From Sgt. Kennedy's vantage point, leaning across the center console, Mr. Wandell's right side was visible, and Sgt. Kennedy could see a gun in Mr. Wandell's right hand, which he initially kept at his side.

Mr. Wandell was facing in the direction of the assembled officers and, according to Sgt. Kennedy, appeared unaware that Sgt. Kennedy was there. Sgt. Kennedy said he could see Mr. Wandell looking around the tree in the direction of the officers but that he kept the gun down at his side. The officers were yelling at Mr. Wandell to drop his weapon. Sgt. Kennedy said he assumed Mr. Wandell would drop the gun and Sgt. Kennedy would simply cover the officers as they took Mr. Wandell into custody. He explained that he was positioned over his cruiser console and his duty bag and had braced himself with his rifle in hand. Sgt. Kennedy said his intention was not to shoot.

However, Sgt. Kennedy said Mr. Wandell raised his weapon with a straight arm and pointed it in the direction of the officers. Sgt. Kennedy then heard three quick shots; he did not know if it was Mr. Wandell or the officers who shot, but he did not see Mr. Wandell drop his arm down. As seen in the HUGG VIDEO at 11:55:15, Sgt. Kennedy said that after the initial shots Mr. Wandell was still moving behind the tree. In his interview with OSI and the NYSP, Sgt. Kennedy said he felt officers could not strike Mr. Wandell, because he was behind a tree, and that the officers had no similar cover to protect themselves from Mr. Wandell. At that point, he said he fired one shot from his rifle and saw Mr. Wandell drop.

[9] PO Hadlock's encounter with Mr. Wandell took place next to the same train tracks, one block north.

Photograph displaying Sgt. Kennedy's unmarked cruiser and Mr. Wandell's location during the shooting. The gate into the cemetery from Woodlawn Ave. is at the far left of the photograph.

After seeing Mr. Wandell fall, Sgt. Kennedy left his vehicle intending to provide cover to the officers from a closer distance as they moved toward Mr. Wandell; however, the perimeter fence, with sharp spikes, barred his way. CCSO Deputy Jeremy Rucker, who was parked south of Sgt. Kennedy's cruiser, ran up and indicated he wanted to go over the fence. Sgt. Kennedy got on his hands and knees and Dep. Rucker stood on his back and went over the spiked fence without incident. NYSP Trooper Taylor McCarthy (Trp. McCarthy) also approached Sgt. Kennedy and tried to go over the fence in the same manner, but as she did so, a spike went through her leg and she got stuck on the fence.

Sgt. Kennedy and EPD Investigator Kyle Storm dislodged Trp. McCarthy from the fence and pushed her up, over, and into the cemetery. Inv. Storm stayed with Trp. McCarthy as Sgt. Kennedy worked with other officers to arrange traffic control that would allow ambulances to enter the cemetery.

Sgt. Kennedy's weapon and ammunition were secured and examined after the incident. Sgt. Kennedy fired one shot from his .223 caliber patrol rifle.

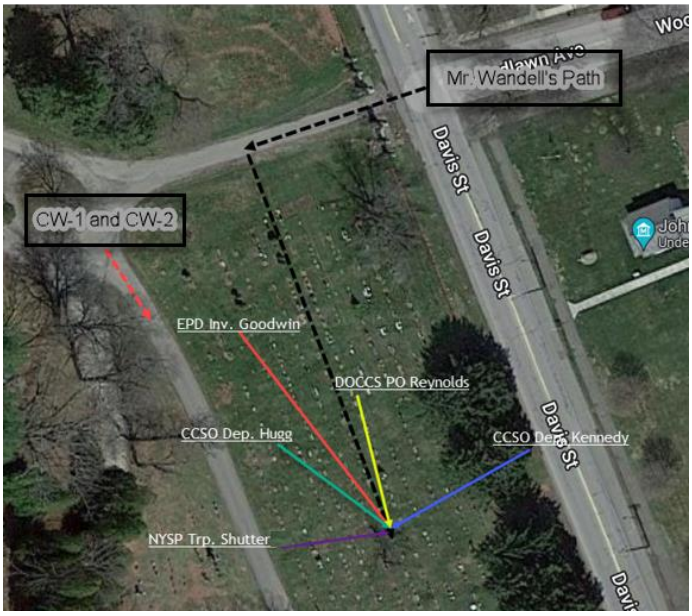
Civilian Witnesses

Woodlawn Cemetery is a large, well-known cemetery,[10] and some civilians were in the area that morning. Immediately after the incident, the NYSP and the CCSO obtained depositions from people in the vicinity during the shooting. Two people saw much of what transpired during the shooting and OSI interviewed them separately.

Civilian Witness-1 ("CW-1")[11] was walking through Woodlawn Cemetery with Civilian Witness-2 ("CW-2"), her sister-in-law. Just before the shooting, they were walking on the cemetery road that runs parallel to Davis St. when, according to CW-1, a man passed them on the left, running through the graves. For perspective, the map produced above is reproduced here, with CW-1's and CW-2's direction of travel noted.

[10] https://www.friendsofwoodlawnelmira.org/whatwedo. One of the civilian witnesses was visiting Woodlawn Cemetery to see Mark Twain's grave.

[11] OAG does not identify civilian witnesses in reports to protect their privacy.



CW-1 said the man appeared to be holding something in his right hand between his chest and head, but she could not tell what it was. She then heard people yelling, "Get down," and saw many ("what seemed like thirty") police officers in the cemetery. CW-1 and CW-2 took cover behind a large monument or tombstone (See, HUGG VIDEO at 11:52:45 a.m. for the location of the monument.)

From her vantage point, CW-1 could see the man who passed them now standing behind a tree as officers circled around him and yelled, "Get down!" and, "Put it down!" At that point, CW-1 could see that the man was holding a gun and moving it back and forth. CW-1 said the officers were trying to get the man to surrender, but it did not appear to her that he would do so.

When the shooting began, she did not watch, but heard the gunfire. CW-1 said the man did not say anything during the entire incident.

CW-2 said she was walking with CW-1 in the cemetery when a man ran by them on their left side. As he ran by them, CW-2 saw that the man was holding a gun in one hand and, it appeared to her, holding his pants up with the other. In a matter of seconds, CW-2 heard police yell, "Get down," and the man dove to the ground in the area of a small tree. CW-2 and CW-1 then hid behind a tombstone.

According to CW-2, the officers formed a horseshoe around the man and gave him many chances to drop his weapon and show his hands. CW-2 heard the shooting but did not see it.

Post-Shooting

After Mr. Wandell fell, officers began yelling commands at him. This portion of the incident is captured on the BWCs of officers who responded to the cemetery. The WANDELL VIDEO incorporates the footage that captured relevant portions of the shooting aftermath, synchronized, so that that various vantage points can be seen at one time.[12]

[12] As noted above, Trp. McCarthy lay injured inside the cemetery gate after climbing over the fence. Many responding officers initially thought she had been shot. Several officers diverted their attention to her and that BWC footage is not included in the WANDELL VIDEO.

Officers were initially unsure whether Mr. Wandell was conscious or not and repeatedly yelled at him to show his hands. Receiving no response, they began to ask if any officer could see the gun or Mr. Wandell's hands. At 11:49:18, after confirming that an officer could see Mr. Wandell's hands, PO Baer directed officers toward Mr. Wandell with their guns drawn. At 11:49:32 PO Baer said, "I see gun," as the weapon became visible on PO Baer's BWC. As noted previously, at 11:49:37, Inv. Goodwin stepped on Mr. Wandell's gun and, after receiving a glove, moved it approximately ten feet away so that officers could check Mr. Wandell for signs of life.

As seen and heard on the WANDELL VIDEO, at 11:49:33, as PO Baer approached Mr. Wandell and said, "I see gun," the weapon was visible on his BWC next to Mr. Wandell (left). Inv. Goodwin then moved it about ten feet away (right).

At about 12:00:07 p.m., Emergency Medical Technicians ("EMTs") with Erway Ambulance reached Mr. Wandell. PO Baer's BWC shows that Mr. Wandell did not display any signs of life at any time after officers reached his side. After briefly assessing Mr. Wandell, visually inspecting his wounds, and applying a heartrate monitor, the EMTs contacted Arnot Ogden Medical Center and conveyed their observations to Dr. K. Walton, who gave them permission not to engage in life-saving measures.

MR. WANDELL'S GUN

NYSP's Forensic Identification Unit ("FIU") swabbed the grip, slide, and trigger of Mr. Wandell's gun and sent the swabs to the NYSP Forensic Identification Center ("FIC") for DNA analysis. Forensic scientist Cheryl Strevell analyzed the swabs and determined that at least one male contributed to genetic material found on Mr. Wandell's gun. However, the genetic information was insufficient to allow for DNA comparison.

The gun itself was a Crosman Air Mag C11, CO2 powered gun, readily available online and in stores.[13] Normally the tip is orange, to signify that it is not an actual firearm, but as seen below, the orange paint had been removed from the tip of Mr. Wandell's gun.

[13] See, https://www.amazon.com/Crosman-Air-Mag-Airsoft-Pistol/dp/B000JFK6S2; https://www.dickssportinggoods.com/p/crosman-air-mag-c11-airsoft-gun-black-clear-16csmurmgc11xxxxxsag/16csmurmgc11xxxxxsag

Mr. Wandell's Crosman Air Mag C-11

Close up – Tip of Mr. Wandell's Crosman Air Mag C-11

AUTOPSY

On August 29, 2021, Dr. James Terzian, a forensic pathologist, performed the autopsy at Lourdes Hospital in Binghamton, New York. An OSI detective attended and spoke with Dr. Terzian. On October 25, 2021, Dr. Terzian issued his final autopsy report to the NYSP and OSI.

Dr. Terzian found six gunshot wounds on Mr. Wandell's body, two of which (#1 and #2 below) were independently fatal; the remaining four did not contribute to Mr. Wandell's death.

#1 A gunshot wound to Mr. Wandell's right forehead, with a right to left, front to back, bottom to top trajectory. Dr. Terzian removed a deformed, copper-jacketed bullet fragment from Mr. Wandell's cerebrum, which he turned over to the NYSP FIU. (See below - BALLISTICS)

#2 A gunshot wound to Mr. Wandell's left upper neck, with a left to right, top to bottom, front to back trajectory. The bullet lacerated Mr. Wandell's right carotid artery and his esophagus before fracturing two ribs and coming to rest in the lower lobe of the right lung. Dr. Terzian removed a copper jacketed projectile fragment from Mr. Wandell's lower right lung and turned it over to the NYSP FIU. (See below - BALLISTICS)

#3 A tangential (parallel and close to the skin) through and through gunshot wound to the right posterior-lateral (back and outer) forearm.

#4 A gunshot wound to the right proximal-lateral (middle and outer) forearm, which shattered Mr. Wandell's right radius and exited his right proximal-ventral (middle and underside) forearm.

#5 A through and through gunshot wound to the left proximal-ventral (middle-underside) forearm.

#6 A tangential (parallel and close to the skin) gunshot wound to the left anterior (front and center) knee, with a right to left trajectory. The bullet fractured Mr. Wandell's patella (kneecap).

Dr. Terzian explained that, although the projectile from wound #1 did not exit Mr. Wandell's skull, it did cause blow back, which generated a second, smaller hole near the entrance wound. He further explained that wound #1 caused fatal brain damage and would have killed Mr. Wandell quickly. Dr. Terzian said that wound #2 led to Mr. Wandell's near-immediate

death. He explained that the damage to Mr. Wandell's lung, where he found a projectile, coupled with the extreme loss of blood from the bullet piercing Mr. Wandell's carotid artery, resulted in a large amount of blood pooling in his inner cavity. Dr. Terzian noted that the damage to Mr. Wandell's esophagus meant that Mr. Wandell would have aspirated blood and would not have been able to breathe.

Dr. Terzian deemed the primary cause of Mr. Wandell's death exsanguination (severe loss of blood) caused by gunshot #2 piercing Mr. Wandell's right carotid artery, right subclavian artery, and right lung. He also noted the damage caused by gunshot #1 (penetration of the cerebrum), as an underlying cause of death. Dr. Terzian deemed the manner of death as homicide.[14]

When asked whether any type of immediate intervention could have saved Mr. Wandell, Dr. Terzian said that, even if emergency medical services had been on scene and immediately provided the best care possible, Mr. Wandell would still have died almost instantaneously, because of the gravity of his wounds.

BALLISTICS

As noted above, Dr. Terzian found that the gunshot wounds to Mr. Wandell's right forehead (#1) and left neck (#2) were independently fatal; he believed wound #2 killed Mr. Wandell almost immediately. Dr. Terzian removed copper jacketed bullet fragments from each wound. Of the 17 bullets collectively fired by the five shooting officers in the cemetery, the two bullet fragments taken from Mr. Wandell at autopsy were the only two bullets recovered. NYSP FIC Forensic Scientist Victoria O'Connor performed ballistics analysis and issued a report.[15]

Regarding the bullet taken from wound #1, FS O'Connor determined that it was consistent with a .45 caliber weapon and that Glock was one of six potential manufacturers. Trp. Shutter and Inv. Goodwin were the only two shooting officers armed with .45 mm handguns and both were manufactured by Glock; Trp. Shutter's weapon was a Glock 21 and Inv. Goodwin's weapon was a Glock 30. However, FS O'Connor found that the bullet had insufficient microscopic characteristics to enable her to identify or eliminate it as having been fired from Trp. Shutter's or Inv. Goodwin's guns.

FS O'Connor also analyzed the bullet fragment associated with wound #2. She determined that the fragment was too damaged and lacking in bullet characteristics to enable any type of identification or elimination analysis. According to FS O'Connor, she could not determine whether the fragment was consistent with any specific caliber of gun, including those carried by the five shooting officers; nor could she exclude any of those weapons from having fired the shot that caused wound #2.

In plain language, either Trp. Shutter or Inv. Goodwin fired the shot that resulted in one of the two fatal wounds. However, the wound that the Medical Examiner believed caused Mr. Wandell's death almost immediately could have been fired by any of the five officers' guns.

---

[14] In New York, the "Manner of Death" set forth in an autopsy is a medical determination made pursuant to New York Public Health Law Section 4143(3), which directs that medical examiners investigate deaths that occur without medical attendance and, if they are the result of external causes, deem them "accidental, suicidal, or homicidal." The homicide designation in an autopsy is not a legal culpability determination and does not resolve the separate issue of whether the homicide was justified or criminal.

[15] OSI also spoke personally with FS O'Connor on May 17, 2022.

LEGAL ANALYSIS

New York's justification defense is set forth in Article 35 of the Penal Law and makes certain uses of deadly physical force lawful, when they would otherwise constitute crimes. Penal Law Section 35.30, outlines when police officers are permitted to use deadly physical force while effecting or attempting to effect an arrest for an offense. Justification is a defense, but not an affirmative defense; if evidence of justification exists, the burden is on the People at trial to prove beyond a reasonable doubt that the actor was not justified. *People v Steele*, 26 NY2d 526 (1970). With those legal principles framing the issue, OAG has determined it would not be able to prove beyond a reasonable doubt that the use of deadly physical force against Mr. Wandell was unjustified under Penal Law Section 35.30.

Justification under Penal Law Section 35.30 (Deadly Physical Force by Police Officers)

Penal Law Section 35.30(1) provides:

> "A police 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 the officer reasonably believes that … (c) … the use of deadly physical force is necessary to defend the officer or another person from what he or she reasonably believes to be the use or imminent use of deadly physical force."

Officers using deadly physical force pursuant to Penal Law Section 35.30 are under no duty to retreat, Penal Law Section 35.15(2)(a)(ii).

Justification therefore hinges on whether an officer who used deadly force "reasonably believe[d]" that deadly physical force was being used or is about to be used by another person and that the officer's own use of deadly physical force was necessary to defend against it. The Court of Appeals interpreted "reasonably believe[d]" in *People v Goetz*, 68 NY2d 96 (1986) and *People v Wesley*, 76 NY2d 555 (1990), holding that it has a subjective and an objective component. The subjective prong is satisfied if the actor believed, "honestly and in good faith," that deadly force was being used or was about to be used against him or her at the time he or she used deadly physical force, and that the use of deadly physical force was necessary to repel the danger, regardless of whether the belief was accurate. *Goetz*, 68 NY2d at 114. The objective component is satisfied if a "reasonable person" under the same circumstances could have held those beliefs. *Goetz*, 68 NY2d at 115; *Wesley*, 76 NY2d at 559.

Penal Law Section 10.00(1) defines deadly physical force as physical force, "readily capable of causing death or other serious physical injury." Every shooting officer in the cemetery used

deadly physical force against Mr. Wandell by firing at him.[16] And since the ballistics analysis could not exclude any of the five from firing wound #2, which Dr. Terzian believed caused Mr. Wandell's death quickly, our analysis covers all shooting officers.

As shown in the WANDELL VIDEO, Mr. Wandell pointed a real-looking gun at PO Hadlock. As shown above, that gun had no markings to indicate it was anything other than a real firearm capable of causing death or serious physical injury. Sgt. Hillman and Inv. Kozemko saw Mr. Wandell point his gun at PO Hadlock, heard shots, and saw PO Hadlock fall, reasonably believing Mr. Wandell had shot at her. PO Hadlock, Sgt. Hillman, and Inv. Kozemko can all be heard on the WANDELL VIDEO talking about Mr. Wandell pointing his gun at PO Hadlock; they all believed Mr. Wandell was armed and had either shot at PO Hadlock or had not been able to shoot at her, because she shot at him as soon as he pointed his weapon at her.

After Sgt. Hillman saw PO Hadlock fall, he reported over air that Mr. Wandell had "shot at our officers," and the E911 dispatcher broadcast that message to all cars in the county. From that moment on, responding officers had probable cause to believe that Mr. Wandell had just committed the crimes of Criminal Possession of a Weapon in the Fourth Degree, Assault or Attempted Assault, and Attempted Murder, and were trying to apprehend him.[17]

The officers interviewed by OSI[18] responded to the cemetery because of the radio dispatch of shots fired at officers. Each officer interviewed by OSI, except PO Reynolds, knew the person involved was David Wandell, who was the subject of an officer safety announcement and who was wanted for violating parole. Every shooting officer except Dep. Hugg[19] and Trp. Shutter (who refused to be interviewed), said they shot after seeing Mr. Wandell raise his gun. CW-1 corroborated the officers' statements, saying she saw Mr. Wandell raise his gun while he was behind the tree. Further support is provided by PO Hadlock's BWC footage, which shows Mr. Wandell doing the same thing – pointing his gun at a uniformed police officer – less than 15 minutes earlier. And, as seen in the WANDELL VIDEO, the gun was on the ground by Mr. Wandell's feet as the officers approached him, not inside his backpack or in the pocket of his discarded jacket. In sum, the officers said they shot because they believed Mr. Wandell was shooting or was about to shoot at them or the other officers. Their subjective beliefs were objectively reasonable.

That the officers would later learn Mr. Wandell's gun was not an operable firearm does not alter the reasonableness of their beliefs when they encountered him in the cemetery. The law

---

[16] Although PO Hadlock also used deadly physical force against Mr. Wandell, we need not analyze her shots since they were not fatal; there is no evidence her shots hit Mr. Wandell.

[17] As noted previously, Mr. Wandell was also the subject of a Violation of Parole Warrant issued pursuant to Executive Law Article 12-B, which directed that he be taken into custody.

[18] As noted previously, Trp. Shutter refused to be interviewed by OSI. Every other officer voluntarily answered all questions posed by OSI about the incident and every officer in the cemetery who fired his weapon said he responded there after hearing the report of shots fired at an officer.

[19] Dep. Hugg said he did not see Mr. Wandell's gun before he fired, but knew Mr. Wandell had a gun because of the radio transmissions he'd heard. He also said Mr. Wandell was trying to remove something from his waistband as he ran toward the tree, and Dep. Hugg assumed the item he was reaching for was a gun. From Dep. Hugg's vantage point, Mr. Wandell was obscured by a tree and a headstone and Dep. Hugg said he could not see his arm. Once he heard the other officers start shooting, Dep Hugg said he assumed those officers could see the gun, which prompted him to fire.

does not require "that an actor's belief as to the intention of another person to inflict serious injury be correct … for the use of deadly force to be justified," only that, "the belief comport with an objective notion of reasonableness." *Goetz*, 68 NY2d at 107. Stated differently, the officers' mistaken belief that Mr. Wandell was armed with an operable firearm does not change the fact that their beliefs were reasonable. *See Public Adm'r of Kings County v. United States*, No. 88 CIV. 0190 (BN), 1989 WL 116307 at *7 (S.D.N.Y. Sept. 26, 1989) (citing *People v. Goetz*, 68 N.Y.2d at 107-109). As the jury would be instructed if this matter proceeded to trial, "It does not matter that the [officers were] mistaken in [their] belief; provided that such belief was both honestly held and reasonable." (CJI2d (NY) Justification: Use of Deadly Physical Force in Defense of a Person.)

Therefore, based on the law and the evidence, the Attorney General would not be able to prove at trial beyond a reasonable doubt that the officers were not justified in their use of deadly physical force pursuant to New York Penal Law Section 35.30.

Dated: September 1, 2022

APPENDIX

David Wandell
August 27, 2021
OSI Compilation Video (WANDELL VIDEO) Reference Guide

This guide is meant to accompany and supplement the WANDELL VIDEO by providing times of significant events. The times noted in this outline correspond with the running clock on the top right corner of the WANDELL VIDEO. The running clock may not sync with the timestamps of the various media sources displayed in the video, because they are from separate sources and are not universally calibrated.

In the interests of privacy, the compilation video has been redacted to remove license plates and other personal identifying information of civilians. The video has not been redacted to remove adult language.

11:36:33 WANDELL VIDEO BEGINS WITH EPD PO HADLOCK'S BWC FOOTAGE. PO Hadlock is entering Eldridge Park.

11:36:45 PO Hadlock out of her patrol car.

11:36:47 PO Hadlock's gun visible, Mr. Wandell visible, shots heard.

11:37:05 EPD Sgt. Hillman to E911, "He shot at our officer, he shot at our officer."

11:37:19 E911 to all county units, "Reports of shots fired at officers."

11:37:49 PO Hadlock to Sgt. Hillman, "He pointed a gun right at me." Sgt. Hillman to PO Hadlock, "I know I saw."

11:39:59 PO Hadlock to Inv. Kozemko, "He pointed a gun right at me." Inv. Kozemko to PO Hadlock, "I know I saw it."

11:38:35 E911 broadcasts David Wandell's name and description, partially interrupted by radio traffic.

11:41:06 E911 re-broadcasts description as, "White male. Camo coat. Backpack underneath. Winter hat. And pants. PO Hadlock adds, "He's got no hat on. Long hair. No beard."

11:41:24 E911 radios EHPD Sgt. Noonan and provides the description. [Not on Main Channel]

11:42:04 EPD PO Overbeck (not visible) talks about mistaking another person in the park for Mr. Wandell.

11:43:28 Sgt. Noonan radios E911 with the first possible sighting. [Not on Main Channel]

11:45:30 Sgt. Noonan says he believes he's following Mr. Wandell and gives location. [Not on Main Channel]

11:45:48 E911 advises all units about Sgt. Noonan's sighting and location.

11:45:46 END OF PO HADLOCK BWC FOOTAGE.

11:45:47 START OF SGT. NOONAN'S BWC FOOTAGE.
Sgt. Noonan is following Mr. Wandell through Hathorn Court / Woodlawn Apartments.

11:46:33 Video is briefly paused to show Mr. Wandell entering cemetery.

11:46:34 Sgt. Noonan to E911 Main Channel, "He took his jacket off. He's going through the cemetery, he's right there, pink pink uh- backpack."

11:46:54 Sgt. Noonan to E911 Main Channel, "He's got a Steelers jersey looks like number 7."

11:47:07 Shots begin.

11:47:15 Last shot heard.

11:47:54 EPD PO BAER'S BWC FOOTAGE ADDED TO SGT. NOONAN'S BWC FOOTAGE.
PO Baer is running toward the officers surrounding Mr. Wandell.

11:48:07 EPD PO OVERBECK'S BWC FOOTAGE ADDED TO PO BAER'S AND SGT. NOONAN'S FOOTAGE.
Video briefly paused to show location of Mr. Wandell's body from the perspective of Sgt. Noonan's, PO Baer's, and PO Overbeck's BWCs.

11:49:26 PO Baer, approaching Mr. Wandell, says, "I see gun."

11:49:32 Video briefly paused to show Mr. Wandell's gun visible on PO Baer's BWC footage.

11:49:35 PO OVERBECK'S BWC FOOTAGE REMOVED.
[PO Overbeck turned away to assist a NYSP Trooper he believed may have been shot.]

11:49:46 Mr. Wandell in handcuffs and rolled to his side.

11:49:51 Video briefly paused to show Mr. Wandell's gun under Inv. Goodwin's foot.

11:50:20 SGT NOONAN'S BWC FOOTAGE REMOVED.
[Sgt. Noonan turned away to assist an injured NYSP Trooper.]

11:50:49 VIDEO ENDS.