

**Special Investigations and  
Prosecutions Unit**

**Report on the Investigation into  
The Death of Walter Perez**



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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 the special prosecutor “to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian . . . caused by a law enforcement officer.” On Saturday, September 23, 2017, Walter Perez died following an interaction with members of the Nassau County Police Department (“NCPD”). Governor Cuomo subsequently issued Executive Order No. 147.12, which expressly conferred jurisdiction upon the Attorney General to investigate any potential unlawful acts or omissions by any law enforcement officers relating to Mr. Perez’s death.

On September 23, 2017 at approximately 2:15 am, Mr. Perez’s landlord called 911 and reported that Mr. Perez was intoxicated, banging on walls, and making a lot of noise. Earlier in the night, Mr. Perez’s landlord and two tenants had observed Mr. Perez naked, dancing, and singing in a basement common area of the house. Four NCPD officers responded to Mr. Perez’s home, and they observed that Mr. Perez was naked, bleeding from a swollen right eye, sweating profusely, and positioned in a fighting stance. The officers repeatedly told Mr. Perez to calm down, and an ambulance was called to provide medical assistance and transport Mr. Perez to a hospital for mental health evaluation.

After the officers had attempted to talk to Mr. Perez for approximately ten minutes, Mr. Perez told the officers that he had something for them. He then went into his bedroom and resumed his fighting stance. Officers entered into Mr. Perez’s bedroom and determined that there were no weapons near Mr. Perez. They then attempted to handcuff Mr. Perez, and a struggle ensued, during which Mr. Perez attempted to punch one of the officers. That officer tasered Mr. Perez, using the dart-probe mode of the taser;<sup>1</sup> Mr. Perez ripped out one of the probes from his chest and pushed the officer into a closet. A second officer deployed her taser in dart-probe mode and, as a result, Mr. Perez fell to the floor. The first officer that initially deployed his taser in dart-probe mode then activated his taser again in drive-stun mode and tasered Mr. Perez multiple times as officers attempted to handcuff Mr. Perez. In total, two officers used their tasers a total of 13 times for a total of approximately 66 seconds.

A fifth officer arrived at the scene during the struggle. While on the ground, Mr. Perez continued to struggle and resisted officers’ attempts to handcuff him for a few minutes. During the struggle, Mr. Perez bit the finger of one of the officers. After being handcuffed, Mr. Perez was placed face down on the floor. An Emergency Medical Technician (EMT) responding to the prior call from the officers arrived; the EMT observed that Mr. Perez went into cardiac arrest. Emergency life-saving measures, both at the scene and en route to a nearby hospital, were not effective, and Mr. Perez died at the hospital later that night.

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<sup>1</sup> Tasers are used in “drive-stun” mode (where the instrument’s two electrodes are pressed directly against the suspect) or “dart-probe” mode (where darts are released from the instrument, pierce the skin, and can cause temporary neuromuscular incapacitation, rendering an individual unable to move). When a Taser is deployed in dart-mode, and both darts remain embedded in the subject’s skin, the officer can administer multiple five second electrical charges through the same darts by continuously depressing the trigger. Drive-stun mode delivers an electric shock that is a pain compliance technique, but does not cause override of an individual’s central nervous system.

The New York City Medical Examiner found that the cause of Mr. Perez's death was "excited delirium<sup>2</sup> due to acute cocaine intoxication following physical exertion with restraint (i.e., handcuffs) and use of a conducted electrical weapon (i.e., a taser)." The Medical Examiner noted various injuries on Mr. Perez's body, including contusions to his upper outer forehead, left eye, right eyebrow, left cheek, nose, the right and left side of his neck, an abrasion to his upper outer forehead, a laceration to his right eyelid, and a fracture of the right superior horn of the thyroid cartilage with associated hemorrhage. Given that officers and civilian witnesses saw (prior to or at the time of the officers' arrival, respectively) significant injuries to Mr. Perez's face and head, it could not be determined whether Mr. Perez sustained these injuries before the police arrived or during the officers' struggle with Mr. Perez. The Office of the Attorney General ("OAG") retained an independent expert to review the Medical Examiner's work and conclusions. This independent expert also concluded that Mr. Perez's death was caused by excited delirium.

The investigation by the OAG also included, among other investigative steps: (1) review of Mr. Perez's medical records from the hospital where he was taken by the EMTs; (2) interviews of the landlord and three tenants who witnessed Mr. Perez's behavior before the police arrived and interacted with Mr. Perez (including review of cell phone video footage they recorded prior to the officers' arrival at the scene); (3) interviews of all responding NCPD Officers and the Emergency Medical Technician who treated Mr. Perez at the scene; and (4) interviews of the NCPD officer that oversaw the NCPD's taser course.

There is insufficient evidence to warrant any criminal charges in this matter. Under New York Mental Hygiene Law, Section 9.41, police officers may take into custody any person who appears to be mentally ill and is conducting himself in a manner that is likely to result in serious harm to himself or others. As reported by Mr. Perez's landlord in his 911 call, Mr. Perez was intoxicated and banging himself against walls. Earlier in the night, Mr. Perez had been dancing naked in a common area of the basement. When the officers arrived, they observed Mr. Perez

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<sup>2</sup> Excited Delirium Syndrome (ExDS) is a medical condition that can manifest itself as a combination of anxiety, disorientation, elevated body temperature, psychomotor agitation, speech disturbances, unexpected physical strength, aggressive behavior, disorientation, hallucination, insensitivity to pain, and violent and bizarre behavior. It may result in sudden death, often through respiratory or cardiac arrest. See DC Mash, *Excited Delirium and Sudden Death: A Syndromal Disorder at the Extreme End of the Neuropsychiatric Continuum*, 7 FRONT. PHYSIOL. 435 (2016) (describing the effects of Excited Delirium). Excited delirium syndrome ("ExDS") is recognized by the New York State Division of Criminal Justice Services ("DCJS"), the National Association of Medical Examiners, and the American College of Emergency Physicians. U.S. DEP'T OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE SPECIAL REPORT. STUDY OF DEATHS FOLLOWING ELECTRO- MUSCULAR DISRUPTION (2011), at <https://www.ncjrs.gov/pdffiles1/nij/233432.pdf>; AMERICAN COLLEGE OF EMERGENCY PHYSICIANS (ACEP), WHITE PAPER ON EXCITED DELIRIUM SYNDROME (September 2009), at <http://www.fmhac.net/assets/documents/2012/presentations/krelsteinexciteddelirium.pdf>. Further, the taser manufacturer for the tasers used by the NCPD issued a warning to law enforcement that conditions such as excited delirium, severe exhaustion, drug intoxication or chronic drug abuse may result in sudden death. TASER PROTECT LIFE, TASER HANDHELD CEW WARNING, INSTRUCTIONS AND INFORMATION: LAW ENFORCEMENT (May 19, 2017). However, ExDS is not listed in either (a) the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders or (b) the World Health Organization's International Classification of Diseases. Further, there is not a clear consensus on (or concerning, or about, but not "of") what the specific trigger of ExDS is or why some individuals suffering from ExDS ultimately die and others do not.

naked, bleeding from a swollen right eye, sweating profusely, and positioned in a fighting stance. This conduct justified officers taking Mr. Perez into custody pursuant to the Mental Hygiene Law.

Furthermore, pursuant to New York Penal Law Section 35.30(1), a police officer may: (1) “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” (2) “use physical force . . . in self-defense or to defend a third person from what he or she reasonably believes to be the imminent use of physical force.” As discussed more fully below, Mr. Perez (a) refused to be taken into custody; (b) repeatedly challenged the officers to fight and held a fighting stance; (c) attempted to punch an officer; and (e) bit an officer’s hand. In response, the officers used verbal commands, their hands, the force of their bodies, and tasers to take Mr. Perez into custody.<sup>3</sup> Under these circumstances, the use of force was justified under Section 35.30(1).

This report is the fifth OAG report in the last three years of an investigation under the Executive Order addressing the use of force against a civilian who was displaying signs of a mental health and/or substance abuse crisis.<sup>4</sup> As law enforcement, academics and community advocates have noted, police responses to mental health and substance abuse crisis situations must be tailored to the situation at hand in order to prevent, to the extent possible, tragic outcomes.<sup>5</sup> The Nassau County Police Department has taken a significant step toward addressing that issue by becoming one of a growing number of agencies nationwide to begin training its members pursuant to the ICAT: Integrating Communications, Assessment, and Tactics, a training program providing officers with tools, skills, and options they need to successfully and safely defuse critical

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<sup>3</sup> Section 35 sets forth a stricter standard for the use of lethal force. The use of a taser is considered to be non-lethal force. *See, e.g., Buckley v. Haddock*, 292 Fed. Appx. 791, 796 (11th Cir. 2008); *Whitfield v. City of Newburgh*, 2015 WL 9275695, \*11 (S.D.N.Y. Dec. 17, 2015); *People v. Patterson*, 115 A.D.3d 1174, 1175 (4th Dept. 2014) (use of a taser is “non-lethal force”).

<sup>4</sup> *See* New York State Office of the Attorney General Special Investigations and Prosecutions Unit, Reports of Investigation into the Deaths of Joseph Seguin (August 2016), Richard Gonzalez (March 2017), Ariel Galarza (August 2017) and John Havener (August 2018).

<sup>5</sup> THE POLICE EXECUTIVE RESEARCH FORUM, CRITICAL ISSUES IN POLICING SERIES, GUIDING PRINCIPLES ON USE OF FORCE, at <http://www.policeforum.org/assets/guidingprinciples1.pdf> (2016); THE PRESIDENT’S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING: FINAL REPORT (2015), at <http://elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf>; INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, BUILDING SAFER COMMUNITIES: IMPROVING POLICE RESPONSE TO PERSON WITH MENTAL ILLNESS (2010), at <http://www.theiacp.org/portals/0/pdfs/ImprovingPoliceResponseToPersonsWithMentalIllnessSummit.pdf>; DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, IMPROVING RESPONSES TO PEOPLE WITH MENTAL ILLNESSES, TAILORING LAW ENFORCEMENT INITIATIVES TO INDIVIDUAL JURISDICTIONS (2010), available at [https://www.bja.gov/Publications/CSG\\_LE\\_Tailoring.pdf](https://www.bja.gov/Publications/CSG_LE_Tailoring.pdf); Melissa Reuland et al., COUNCIL OF STATE GOV’TS JUSTICE CENTER, LAW ENFORCEMENT RESPONSES TO PEOPLE WITH MENTAL ILLNESSES: A GUIDE TO RESEARCH-INFORMED POLICE AND PRACTICE (2009), at <https://www.csjusticecenter.org/wp-content/uploads/2012/12/le-research.pdf>; N.Y./N.Y.C. Mental Health-Criminal Justice Panel Report And Recommendations (2008), at <http://www.criminaljustice.ny.gov/pio/mh-cjreport.pdf>; THE COUNCIL OF STATE GOV’TS CRIMINAL JUSTICE, MENTAL HEALTH CONSENSUS PROJECT (2002), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/197103.pdf>.

incidents.<sup>6</sup> The NCPD officers plainly implemented ICAT principles and techniques during the initial portion of their interaction with Mr. Perez.

However, we urge the NCPD to critically evaluate whether additional efforts to minimize the stress during the latter portion of the incident could have been employed. Specifically, in considering the period after Mr. Perez entered his bedroom, was alone, was naked, and had no visible weapon in his hands or within his immediate reachable area, we encourage the NCPD to assess whether other techniques specifically taught in ICAT, such as continuing to monitor Mr. Perez while maintaining distance from him, were viable. Further, once the officers engaged physically with Mr. Lopez, the officers subjected him to more than three successful taser activations (both on dart-probe and drive-stun mode), which was inconsistent with NCPD's own policy.

Accordingly, we recommend that the NCPD:

- Continue to implement programs and review methods to defuse incidents involving individuals who appear to be experiencing excited delirium or a mental health crisis;
- Develop training programs cautioning NCPD officers concerning the simultaneous deployment of multiple tasers against the same civilian, as well as multiple uses of a single taser consecutively for a prolonged period;
- And finally, as we have recommended in prior reports concerning other police departments, the NCPD should work toward outfitting their officers with body-worn cameras and equipping tasers with cameras.<sup>7</sup>

### **STATEMENT OF FACTS**<sup>8</sup>

This incident can be divided into three segments: (1) the events leading up to law enforcement officers being called to Mr. Perez's apartment; (2) the interaction between the officers and Mr. Perez up to and including Mr. Perez being tasered; and (3) the response of law enforcement and medical personnel after Mr. Perez was tasered.

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<sup>6</sup> ICAT was developed by the Police Executive Research Forum with input from hundreds of police professionals from across the United States. (<https://www.policeforum.org/icat>); the Nassau County Police Department has begun to implement the program throughout its agency (<https://www.policeforum.org/icat-agencies>.)

<sup>7</sup> New York State Office of the Attorney General Special Investigations and Prosecutions Unit, Reports of Investigation into the Deaths of Miguel Espinal (December 2016), Richard Gonzalez (March 2017), Edson Thevenin (December 2017) and Wardel Davis III (January 2018).

<sup>8</sup> 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 § 63(8).

### **A. Events Preceding the Arrival of Law Enforcement**

On the date of his encounter with NCPD officers, Mr. Perez had been living in the basement apartment of a multi-family house located at 230 Doughty Boulevard in Inwood, New York, for approximately nine years. Civilian witnesses J.G. and F.R. also lived in the basement apartment. J.G. and his wife rented an individual bedroom inside the basement next to Mr. Perez's bedroom, and F.R. rented an individual bedroom located at the opposite end of the basement. The basement bedrooms are connected by a common area, which includes the kitchen. The landlord lived on the first floor of the house.

On September 23, 2017, at approximately 1:00 am, J.G. and F.R. heard yelling in the common area of the basement. Both witnesses observed that Mr. Perez was naked, out of breath, talking to himself, and singing. Mr. Perez had taken all of his belongings and thrown them into the common area. F.R. recorded Mr. Perez's behavior with his cell phone because of how strangely he was acting. J.G. called the landlord to address Mr. Perez's strange behavior. J.G. asked the landlord to come downstairs, because Mr. Perez was yelling and hitting the door to his own bedroom loudly and aggressively.

The landlord went downstairs and also observed Mr. Perez yelling, throwing things from his room, and sweating profusely. J.G., F.R., and the landlord believed Mr. Perez appeared drunk or under the influence of drugs. Mr. Perez was dancing and kept telling the landlord to "come on, come on" as if he wanted to fight. The landlord also recorded Mr. Perez's behavior on his cell phone. The landlord tried to reason with Mr. Perez for approximately 15-20 minutes. He asked Mr. Perez what was wrong, but Mr. Perez did not respond and instead kept singing and dancing naked around the common area. At some point, Mr. Perez calmed down and returned to his room. The landlord returned to his residence and J.G. returned to his room.

At approximately 2:00 am, J.G. called the landlord again, because Mr. Perez was banging on the doors and walls of his room. At 2:18 am, the landlord called 911 and reported that his tenant was making loud noises and appeared to be intoxicated. He then waited outside the house for the police to arrive.

### **B. Law Enforcement Interaction with Mr. Perez**

At approximately 2:24 am, NCPD dispatch sent a radio message to NCPD units to respond to a possible landlord-tenant dispute. The NCPD dispatch stated that the landlord made a noise complaint against his tenant: "[Complainant] states he rents a room in the basement to a male. He states the male may be intox and is making a lot of noise . . . banging and screaming in the basement. [Complainant] is afraid to go downstairs."<sup>9</sup>

At approximately 2:27 am, NCPD Officers Nicole Bettes, Jack Castronova, and Ray Moran arrived at the house where they were flagged down by the landlord, who was waiting outside. NCPD Officer Robert Sacco arrived as the other officers were still speaking with the landlord. The landlord said that this had never happened before; his tenant was extremely irate and wanted to fight the other tenants. The landlord escorted the officers downstairs into the basement. As the

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<sup>9</sup> See NCPD Dispatcher Even Information Report dated September 23, 2017; Exhibit # 1.

officers made their way down the stairs, POs Moran and Bettes heard screaming and yelling coming from the basement. Once downstairs, the officers observed Mr. Perez in the kitchen/common area. He was naked, sweating profusely, bloody, and his right eye was swollen shut. The officers observed Mr. Perez standing on a door that had been torn off the hinges of Mr. Perez's bedroom. Mr. Perez became aggressive and started yelling at the officers. He then started to count the officers and told the officers "come on" and that he "had something for them." As he stated this, Mr. Perez was holding his hands up in a fighting stance.

At approximately 2:30 am, PO Sacco stepped outside and called for an ambulance because Mr. Perez was injured and seemed emotionally disturbed. The officers attempted to calm Mr. Perez down for approximately ten minutes; however, Mr. Perez did not calm down. Eventually, Mr. Perez stated, "I have something for you" and then went into his bedroom, which was dark. POs Moran, Sacco, Bettes, and Castronova followed Mr. Perez into his bedroom. Mr. Perez went into the back left corner of the room. The officers were fearful that Mr. Perez may have been attempting to retrieve a weapon. PO Castronova was able to find the light switch and turn on the bedroom light. The officers did not observe any weapons near Mr. Perez.

At that point POs Castronova and Moran tried to handcuff Mr. Perez, who pulled away and attempted to punch PO Moran. PO Moran then removed his taser from the holster. Mr. Perez started screaming and hitting his chest saying "come on." PO Moran then stated that he was going to taser Mr. Perez. At that moment, Mr. Perez lunged towards PO Moran. PO Moran deployed his taser, striking Mr. Perez in the chest and abdomen. The taser had virtually no effect on Mr. Perez; he continued to scream, removed one of the taser probes and again lunged towards PO Moran, pushing him into a closet. PO Bettes then deployed her taser, striking Mr. Perez in the chest and abdomen area. Once the taser dart-probes were embedded into Mr. Perez skin, PO Bettes activated her taser seven times. These multiple activations appeared to affect Mr. Perez because he stopped screaming and hitting his chest.

The officers took Mr. Perez down to the floor while he continued to struggle and kick his legs. The officers struggled with Mr. Perez for several minutes as they attempted to handcuff his ankles and wrists. Mr. Perez flailed his arms and continued to resist. PO Moran activated his taser in the drive-stun mode multiple times around Mr. Perez's legs and lower body in an effort to subdue him. PO Daniel Ciovorelli then arrived at the scene; he observed the officers struggling to restrain Mr. Perez and started assisting them in their efforts to handcuff Mr. Perez. The officers were finally able to apply handcuffs to Mr. Perez's wrists and ankles. After Mr. Perez was handcuffed, he defecated on the floor, spat at the officers, and continued to yell and curse at them. Mr. Perez was then placed face down while rear-cuffed.

Based upon an interview of PO Moran and the electronic data generated by his taser, PO Moran activated his taser in dart-probe mode once and drive-stun mode five times. The duration of each activation was approximately five seconds, for a total of approximately 30 seconds.<sup>10</sup> Based upon an interview of PO Bettes and the electronic data generated by her taser, PO Bettes activated her taser in dart-probe mode seven times and the duration of each activation ranged

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<sup>10</sup> See AXON Taser Information Report dated February 16, 2018, for Taser Serial No. X13001W10 – issued to Officer Moran.

between four to six seconds, for a total of approximately 36 seconds.<sup>11</sup> Every taser application occurred before Mr. Perez was handcuffed.

### **C. Response of Law Enforcement and Medical Personnel after Mr. Perez Was Tasered**

At approximately 2:41 am, EMT Justin Angell arrived; he entered the bedroom and observed Mr. Perez lying face down and rear cuffed. At this point, POs Moran, Castronova, and Bettes were outside. POs Sacco and Civorelli had stayed with Mr. Perez and, according to their statements, they held Mr. Perez to control him as he was lying face down, but still moving. The officers requested a stretcher and spit mask from EMT Angell. POs Bettes and Castronova left the basement with EMT Angell to obtain the medical equipment and a stretcher from the ambulance. During this time, PO Civorelli noticed that Mr. Perez had calmed down. One of the police officers called for a supervisor and Sgt. Guadino responded at approximately 2:42 am.

After a few minutes, EMT Angell returned to the bedroom with the medical equipment and a stretcher. He asked the officers to place Mr. Perez on the stretcher. When Mr. Perez was placed on the stretcher, EMT Angell noticed that Mr. Perez was bluish in color and was not breathing. EMT Angell was unable to detect Mr. Perez's pulse. Mr. Perez was un-cuffed and CPR was administered by PO Bettes and EMT Angell. Prior to taking Mr. Perez to the ambulance, EMT Angell applied a heart monitor. While in the ambulance, POs Bettes and Civorelli continued to administer CPR. EMT Angell intubated Mr. Perez on the way to the hospital and administered epinephrine and Narcan©<sup>12</sup>. Mr. Perez did not regain a pulse and never started breathing again. Mr. Perez was pronounced deceased on arrival at St. John's Hospital at 3:25 am.

### **MEDICAL EXAMINERS' DETERMINATIONS**

Mr. Perez's body was examined by Dr. Declan McGuone of the Office of Chief Medical Examiner of the City of New York ("OCME") on September 23, 2017. Mr. Perez was 36 years old, 63 inches tall, and weighed 161 pounds.<sup>13</sup>

Dr. McGuone indicated three taser metallic probes penetrated the skin of Mr. Perez's anterior torso and were still attached at the time of his autopsy. Two taser probes penetrated Mr. Perez's upper left chest and one taser probe perforated his right upper abdomen and right lobe of the liver. There was one other, superficial puncture-type injury on Mr. Perez's torso that was consistent with the puncture injury caused by a taser probe.

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<sup>11</sup> See AXON Taser Information Report dated February 16, 2018, for Taser Serial No. X13001RP9 - issued to Officer Bettes.

<sup>12</sup> 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=EAIaIQobChMI9Kmf9Dz2gIVjUsNCh1mWAQgEAAAYASAAEgKGH\\_D\\_BwE](https://www.narcan.com/?gclid=EAIaIQobChMI9Kmf9Dz2gIVjUsNCh1mWAQgEAAAYASAAEgKGH_D_BwE)

<sup>13</sup> The Medical Examiner's report is attached hereto as Exhibit #2.



Dr. McGuone noted that Mr. Perez had two contusions on the right side of the neck and a fracture of the right superior horn of the thyroid cartilage with associated hemorrhage. Samples of Mr. Perez's blood and bodily fluids were submitted for toxicological analysis, and revealed the presence of cocaine and benzoylecgonine (a metabolite of cocaine.)

The manner of death was deemed as "homicide."<sup>14</sup> The cause of death was noted as: "Excited delirium due to acute cocaine intoxication following physical exertion with restraint and use of conducted electrical weapon."

Dr. James Gill, an outside Medical Examiner retained by the OAG, reviewed the OCME report. Dr. Gill also classified the cause of death as: "excited delirium due to an acute cocaine intoxication." He further noted that "cocaine-induced excited delirium is a well-described entity and a competent explanation for sudden death with or without a physical altercation."

Dr. Gill further examined the OCME report and photographs for findings that might suggest that Mr. Perez's death could have been caused by manual strangulation or carotid restraint.<sup>15</sup> He found Mr. Perez's hyoid bone intact with no strap muscle hemorrhage. Those findings – along with the fact that the anterior and posterior muscles of the neck were free of hemorrhage, Mr. Perez's neck cervical vertebrae, laryngeal cartilages and paratracheal soft tissues were atraumatic, his upper airway was unobstructed, and his laryngeal mucosa and tongue were unremarkable – support the conclusion that Mr. Perez's death was not caused by intentional or incidental pressure to his airway or blood supply. Finally, Dr. Gill did not believe that the injury to Mr. Perez's neck caused his death, in light of the fact that Mr. Perez still appeared to be conscious after he was handcuffed.

### **LEGAL ANALYSIS**

There is insufficient evidence to warrant any criminal charges in this matter. Pursuant to Mental Hygiene Law Section 9.41, a police officer may take into custody any person who appears to be mentally ill and is conducting himself in a manner that may result in serious harm to himself or another person. Pursuant to New York Penal Law Section 35.30(1), a police officer may: (1) "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" (2) "use physical force . . . in self-defense or to defend a third person from what he or she reasonably believes to be the imminent use of physical force."

At the time that NCPD officers responded to Mr. Perez's residence, the landlord had advised the officers that Mr. Perez was naked, banging on the walls, and acting aggressively toward

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<sup>14</sup> The designation "homicide," as used by a Medical Examiner, means a death at the hands of another person or persons. In and of itself, the designation does not indicate or otherwise suggest criminality.

<sup>15</sup> Hlavaty L, Sung L. Strangulation and Its Role in Multiple Causes of Death. Am J Forensic Med Pathol. 2017 Dec, 38(4); p 283 – 288; Armstrong M, Strack GB. Recognition and Documentation of Strangulation Crimes: A Review, JAMA Otolaryngol Head Neck Surg. 2016 Sep 01; 142(9): 891 – 897; Strangulation a full spectrum of blunt neck trauma. Ann Otol Rhinol Laryngol, Nov 1985; p 542-546 and Strangulation: a review of ligature, manual and postural neck compression injuries, K.V. Iserson, Annotated Emergency Medicine, March 1984; p 179 - 185.

other tenants. The NCPD officers observed that Mr. Perez's bedroom door was broken off its hinges, Mr. Perez's personal belongings were strewn across the common area, and Mr. Perez was sweating profusely and bleeding from his face. In addition, officers observed that Mr. Perez's right eye was swollen shut. Mr. Perez's conduct was irrational and he was uncooperative, which led the officers to believe he was emotionally disturbed. As a result, an ambulance was called for assistance. Under these circumstances, the NCPD officers were authorized by New York Mental Hygiene Law to take Mr. Perez into custody and take him to a hospital for evaluation. *See generally Thomas v Culberg*, 741 F. Supp. 77, 81 (S.D.N.Y. 1990) (detention under the Mental Hygiene Law does not require proof that the person being detained presented an immediate danger to others); *People v. Yaniak*, 190 Misc.2d 84 (2001); *Higgins v City of Oneonta*, 208 A.D.2d 1067 (3d Dept 1994); *Matter of Carl C*, 126 A.D.2d 640, 640 (2d Dept. 1987).

Under Penal Law Section 35, the officers also were allowed to use force to restrain Mr. Perez given the conduct he engaged in while resisting the officers. The officers spent approximately ten minutes speaking to Mr. Perez and attempting to defuse the situation. They only used force after Mr. Perez ran into his bedroom and said, "I have something for you." A struggle ensued after Mr. Perez attempted to punch PO Moran. At the moment that Mr. Perez attempted to strike PO Moran with a closed fist and pushed Officer Moran into the bedroom closet, the NCPD Officers had probable cause to believe that Mr. Perez committed the offenses of Menacing in the Third Degree (Penal Law Section 120.15), Attempted Assault in the Third Degree (Penal Law Section 120.00), and Attempted Assault on a Police Officer (Penal Law Section 120.08).<sup>16</sup>

Accordingly, the force used to subdue Mr. Perez was objectively reasonable. *See generally Graham v. Connor*, 490 U.S. 386, 396 (1989) (relevant considerations in determining whether police use of force is reasonable include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."); *see also Johnson v. City of Lincoln Park*, 434 F. Supp.2d 467, 479-80 (E.D. Mich. 2006) (holding that the use of a taser was reasonable where a fourteen-year old, who was handcuffed and surrounded by four police officers, still violently resisted arrest); *Draper v. Reynolds*, 369 F.3d 1270, 1278 (11th Cir. 2004) (holding the use of a taser to "effectuate [an] arrest" was reasonable when the individual was "hostile, belligerent, and uncooperative"); *May v. Twp. of Bloomfield*, No. 11-14453, 2013 U.S. Dist. LEXIS 74437, 2013 WL 2319323, at \*14 (E.D. Mich. 2013) (finding the uses of the taser were not excessive, as the decedent was then actively resisting arrest and fighting the officers, and was not then handcuffed or other restrained); *Turner v. City of Toledo*, 2012 U.S. Dist. LEXIS 66908, 2012 WL 1669836 (N.D. Ohio 2012) ("But even viewing the facts in the light most favorable to Plaintiff, it is undisputed that 'Mr. Turner attempted to pull his arms free from the grasp of the officers,' resulting

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<sup>16</sup> Pursuant to New York Penal Law § 120.15, a person is guilty of Menacing in Third Degree when , by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury. Penal Law § 120.15 (McKinney 2018). N.Y. Penal Law § 120.00 (McKinney 2018). a person is guilty of Assault in the Third Degree when with the intent to cause physical injury to another person, he causes such injury to such person or to a third person. N.Y. Penal Law § 120.00 (McKinney 2018).

in a 'physical struggle,' albeit one that was 'very brief [and] minor ....' [making] Lewis' use of the taser [ ] reasonable under Graham.”).<sup>17</sup>

The number of times a taser is used and the duration of the taser applications are relevant to whether the use of force was reasonable. Officer Moran activated his taser in dart-probe mode once and drive-stun mode five times and the duration of each activation was approximately five seconds, for a total of approximately 30 seconds.<sup>18</sup> PO Bettes activated her taser in dart-probe mode seven times and the duration of each activation was between four to six seconds, for a total of approximately 36 seconds.<sup>19</sup> Courts have determined that multiple taser applications may be reasonable when necessary to subdue a subject. *See Marquez v. City of Phoenix*, 693 F.3d 1167 (9th Cir. 2012); *Sheffey v. City of Covington*, 564 Fed. Appx. 783 (6th Cir. 2012) (Officer’s deployment of multiple tasers approximately 12 times in aggregate against a arrestee was reasonable because the subject continued to actively resist, struggle and bite officers); *Lee v. Metro. Gov’t of Nashville/Davidson Co.* 432 Fed. Appx 436 (6th Cir. 2011) (police used a taser a total of nine times in both dart and stun mode on a man who refused to leave a concert and engaged in strange behavior); *Sanders v. City of Fresno*, 551 F. Supp. 2d 1149, 1168-76 (E.D. CA 2008) (holding that ten total taser applications – for a total of a maximum of 70 seconds – by three officers were not unreasonable due to the suspect’s apparent physical threat to his wife, his continued resistance against officers, and the inability of multiple officers to physically subdue him); *Neal-Lomax*, 574 F. Supp.2d at 1187-88 (holding that it was reasonable to taser the defendant seven times – for a total of 31 seconds – including five times after he was handcuffed, because he resisted an officer’s attempts to place him in an ambulance).<sup>20</sup>

For the foregoing reasons, the evidence does not support criminal charges in connection with Mr. Perez’s death.

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<sup>17</sup> Courts have placed emphasis on whether, like here, officers warned a civilian that he or she would be tasered if the civilian did not stop certain conduct. *See Negron*, 976 F.Supp.2d at 367 (noting the importance of giving a warning before a taser is used); *Neal-Lomax v. Las Vegas Metropolitan Police Dept.*, 574 F. Supp.2d 1170 (Dist. Ct. D Nevada 2008) (officers gave warnings).

<sup>18</sup> *See* AXON Taser Information Report dated February 16, 2018, for Taser Serial No. X13001W10 – issued to Officer Moran, Exhibit # 3.

<sup>19</sup> *See* AXON Taser Information Report dated February 16, 2018, for Taser Serial No. X13001RP9 - issued to Officer Bettes, Exhibit # 4.

<sup>20</sup> Courts have questioned simultaneous and multiple taser use in civil matters. *See, e.g., Salgada v. City of Miami*, 85 F.Supp.3d at 1332 (refusing to grant qualified immunity for an officer that activated his taser multiple times after another officer had already successfully deployed her taser in probe deployment mode and the subject was in the process of being subdued). Unlike in *Salgada*, here, it was not clear that Mr. Perez was about to be subdued and, as noted above, in the section on the Medical Examiner, the appearance of only three probe marks on the decedent suggests that several of the taserings may not have taken effect. But, as discussed below, in the Policy Recommendations section, the officers should receive training in the effects of simultaneous and multiple taser applications.

## **POLICY RECOMMENDATIONS**

The OAG recommends that the NCPD:

- Continue to implement and review methods to defuse incidents involving individuals who appear to be experiencing excited delirium or a mental health crisis.
- Develop training programs cautioning NCPD officers concerning deployments of multiple tasers simultaneously against the same civilian and multiple use of one taser consecutively for a prolonged period.
- Outfitting NCPD officers with body-worn cameras and equipping tasers with cameras.

### **A. Continued implementation and review of methods to defuse incidents involving individuals who appear to be experiencing excited delirium or a mental health crisis.**

Initially, the OAG notes that the NCPD is among a growing number of law enforcement agencies nationwide that are implementing the ICAT: Integrating Communications, Assessment, and Tactics Program.<sup>21</sup> That program, developed by the Police Executive Research Forum with input from hundreds of police professionals from across the nation, is specifically designed to address situations involving unarmed individuals, or individuals armed with weapons other than firearms, who appear to be experiencing a mental health or other crisis.<sup>22</sup>

A guiding principle of ICAT is the Critical Decision Making (CDM) model which helps officers to gather information, assess threats, and weigh their options as they progress through incidents.<sup>23</sup> Where possible, not rushing, collecting more information, keeping a subject under observation while continuing communication, and tactically repositioning / containing the area are all expressly referenced and encouraged. Clearly, when the officers initially arrived on-scene, they recognized those principles and employed CDM techniques. For the first ten minutes of the incident, even though Mr. Perez had been engaged in belligerent behavior prior to the officers' arrival and was assuming a fighting posture relative to the officers, they did not physically engage with him. Instead, they simply tried to communicate with Mr. Perez and calm him down as they waited for the ambulance.

When Mr. Perez went to his room indicating that he wanted to “show [the officers] something,” the officers appropriately took steps to ensure he did not have a weapon, in light of his belligerent, fighting behavior and words. The officers illuminated the room where he was and saw that Mr. Perez had no weapon; nor did the officers see any type of weapon in the area (in fact,

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<sup>21</sup> See, <https://www.policeforum.org/icat-agencies>.

<sup>22</sup> See, <https://www.policeforum.org/icat>.

<sup>23</sup> See, *Id.* (Module II).

none of the information gleaned to that point gave any indication that Mr. Perez might be armed.) Under the circumstances, we encourage the NCPD to critically evaluate, employing the CDM, whether a better course of action at that point was to continue to monitor Mr. Perez, keeping space between him and the officers and using time to defuse his emotions, until the ambulance arrived - particularly since Mr. Perez was contained and visible to the officers. However, we are mindful that the OAG is reviewing the matter with “the 20/20 vision of hindsight” as opposed to the officers on scene, who must make “split-second judgments.” *Graham*, 490 U.S. at 396-397.<sup>24</sup>

## **B. Additional Training on Taser Deployment**

Officers Moran and Bettes activated their tasers simultaneously, multiple times, and each consecutively for a period of approximately 66 seconds. This application of multiple tasers repeatedly for an extended period appears to have violated departmental policy.

NCPD Procedure OPS #12430 states that officers “will discharge no more than 3 *successful* applications of the ECD [Electronic Control Device/taser] on a single subject.” The NCPD Procedure further states that “it is important to communicate the imminent use of the ECD to each other so that Members of the Force will not simultaneously discharge the ECD on a single subject.”<sup>25</sup>

NCPD Procedure OPS # 12430 is consistent with guidelines issued by the DCJS Municipal Police Training Council (“MPTC”),<sup>26</sup> which state that generally, only one taser should be used on a civilian at a time. The MPTC guidelines further states that multiple taser applications cannot be justified solely because a suspect fails to comply with a command, absent other indications that a suspect is an immediate threat or about to flee from a serious crime. The guidelines recommend

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<sup>24</sup> Moreover, The New York State Division of Criminal Justice Services’ (“DCJS”) Conducted Energy Device Course (“CEDC”), which NCPD has incorporated in its officer training, expressly addresses Excited Delirium as a condition that police officers may encounter and makes various recommendations as to how police officers should interact with individuals experiencing that condition. *See*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES CONDUCTED ENERGY DEVICE COURSE (December 2009) (DCJS updated the CEDC in 2015, but the relevant sections relating to Excited Delirium remained the same); NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES CONDUCTED ENERGY DEVICE COURSE, SECTION THREE CONDUCTED ENERGY DEVICE PRE-DEPLOYMENT, OBJECTIVE 7, PPT SLIDE 26 – 32 (Updated 2015).

The CEDC, like ICAT, instructs that when an officer encounters an individual displaying symptoms consistent with excited delirium, as was Mr. Lopez, and that person is not an *immediate* danger to himself, officers or others present, the officers should: create space and allow time for the individual to diffuse his or her agitation; ensure the scene is safe by removing any items in the immediate area of the subject that can be used as a weapon; appoint one individual as the contact officer; remain patient and give simple requests for compliance in a positive manner with offers to help and assist; avoid making continual eye contact with the individual as this may be seen as a threatening behavior; and encourage the individual to sit down as this generally has a calming effect. The CEDC further warns that using a taser in a drive-stun mode against a person experiencing symptoms of excited delirium will most likely increase that person’s agitation.

<sup>25</sup> NASSAU COUNTY POLICE DEPARTMENT PROCEDURE OPS 12430 USE OF ELECTRONIC CONTROL DEVICE (ECD)/TASER (effective June 12, 2017), at 4. *See* Exhibit # 5.

<sup>26</sup> NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, MUNICIPAL POLICE TRAINING COUNCIL, RECOMMENDED GUIDELINES FOR THE USE OF CONDUCTED ENERGY DEVICES (December, 2009).

that if more than three (3) consecutive cycles are required, officers should reassess the situation and consider transitioning to another applicable force option. The most common factors that appear to be associated with fatal or other serious outcomes resulting from the use of a taser include: (1) repeated and multiple applications; (2) cycling times that exceed 15 seconds in duration, whether the time is consecutive or cumulative; and (3) simultaneous applications by more than one taser.<sup>27</sup> Data downloaded from Officer Bettes and Moran's tasers indicate that Officer Bettes activated her taser seven times, depressing the trigger for a period of 35 seconds, and Officer Moran activated his taser six times depressing the trigger for a period of 30 seconds. The officers also appear to have deployed their tasers simultaneously at times. For the reasons stated above (Legal Analysis), this conduct does not support criminal charges. Nevertheless, the NCPD should take whatever actions it deems necessary to address the officers' violation of OPS #12430, including significant additional training.

### **C. Body-Worn Cameras and Tasers Equipped with Cameras**

We have previously issued four reports recommending that police departments equip officers with body-worn and/or dashboard cameras.<sup>28</sup> Indisputably, videotaped evidence would have greatly facilitated the investigation of this case. We use the absence of body-worn cameras as an opportunity to recommend that NCPD work toward outfitting their officers with body-worn cameras, police vehicles equipped with dashboard cameras and tasers that are equipped with cameras.<sup>29</sup>

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<sup>27</sup> MARYLAND ATTORNEY GENERAL, REPORT OF THE MARYLAND ATTORNEY GENERAL'S TASK FORCE ON ELECTRONIC WEAPONS (December 2009).

<sup>28</sup> We recommended that law enforcement agencies and policy makers work toward outfitting officers with body-worn and/or dashboard cameras in the following investigations: Wardel Davis (Buffalo PD), Miguel Espinal (NYPD), Richard Gonzalez (NYPD), and Edson Thevenin (Troy PD).

<sup>29</sup> On July 27, 2018, the OAG announced the creation of the CAMS (Capture an Account of a Material Situation) program, which will help equip local law-enforcement agencies in New York with body-worn cameras, available at <https://ag.ny.gov/press-release/ag-underwood-announces-statewide-cams-program-equip-local-law-enforcement-officers>. NCPD was qualified to participate in the program but opted not to submit an application.

# EXHIBIT 1

# Nassau County Police Department

## I/Dispatcher Event Information

<u>Agency</u>	<u>R</u>	<u>P</u>	<u>Loi Until</u>	<u>Area</u>	<u>Group</u>	<u>Event Number</u>	<u>ETA</u>	<u>Type</u>
PDCN	Y	2	12/22/17	409	DG04	170540465		DISTLT

Location: 230 DOUGHTY BLVD INWD

Type: DISTLT - Disturbance - landlord/tenant

Caller Name:

Caller Addr:

Caller Phone:

Call Source: ANI/ALI

Trunk: W62

<u>Time</u>	<u>Employee</u>	<u>Remarks</u>
02:23:35	905981	** LOI search completed at 09/23/17 02:23:35
02:23:35	905981	Y -073.741372 +040.621380
02:23:35	905981	COMPL STATES HE RENTS A ROOM IN THE BASEMENT TO MALE...HE STATES THE MALE MAY BE
02:23:35	905981	INTOS AND IS MAKING ALOT OF NOISE....BANGNG AND SCREAMING IN THE BASEMENT
02:23:35	905981	COMPL IS AFRAID TO GO DOWNSTAIRS
02:23:53	905981	*INTOX
02:24:29	905989	** Recommended unit 408A for requirement PAT2-BACKUP (1.04 mi)
02:28:20	905989	401/402 OW
02:30:01	906044	402 10-52 POSS 10-62

9/23/2017 7:43:10 AM

Dispatcher\_Event\_info



<u>Time</u>	<u>Employee</u>	<u>Remarks</u>
02:30:16	905989	2364 RESP
02:38:10	906044	408 10-43
02:38:16	906044	444 RESP
02:41:31	905989	419 ETA ON AMB?
02:41:39	905989	2364 WALKING UP
02:57:22	905989	2364 10-64 ST JOHNS TOA 0234 W/401 402 409
02:57:24	906044	2364 10-64 ST JOHNS TOA 0234 W/ 401 402 409
02:57:39	905989	COMMAND NTFD
03:02:11	905989	2364 83 42131
03:02:11	906044	2364 83
03:02:15	905989	410 OFF MEAL, OW
03:03:00	905989	419 RESP TO ST JOHNS IN REGARDS
03:44:48	906044	408 VIA MDT REQ AMT SUPERVISOR TO ST JOHNS FOR EXPOSURE PACKET
03:52:20	905982	ADV MEDCON OF SUP, AS PER MEDCON THEY ARE ON IT
04:02:01	906044	408 VIA MDT SUPV NOT NEEDED, 408 RESP W/ EXPOSURE PACKET
04:07:57	906044	AS PER COMMAND REQ COUNTY AMB TO PICK UP 2 MOS AT ST JOHNS AND TRANSPORT TO NUMC
04:09:01	906044	2354 RESP
04:09:29	905989	PCOS CH NTFD
04:12:10	905989	401 10-41 ST JOHNS
04:12:19	906044	401 REQ 10-41ST JOHNS
04:12:22	905989	412 RESP
04:12:23	906044	412 RESP
04:13:56	905989	AS PER COMMAND 5 OFFICERS GOING TO NUMC
04:14:27	905989	PCOS NTFD
04:26:48	906044	AS PER COMMAND REQ 2 MORE UNITS TO ST JOHNS TO HOLD SCENE
04:27:35	905989	404/414 RESP
04:35:55	905989	404 81 ST JOHNS
04:39:26	904165	414 81

9/23/2017 7:43:10 AM

Dispatcher\_Event\_info

Page 2

<u>Time</u>	<u>Employee</u>	<u>Remarks</u>
05:08:44	904165	54 5 MOS TO NUMC
05:08:47	905989	2354 TRANS 5 MOS TO NUMC W/ 414 404 M11336
05:33:20	906044	2354 83 MI 11350
05:37:05	904165	AS PER COMM - HAVE 405 RESP TO SCENE
06:17:24	906044	** LOI search completed at 09/23/17 06:17:24
06:17:25	906044	** LOI search completed at 09/23/17 06:17:25
06:17:25	906044	** LOI search completed at 09/23/17 06:17:25
06:17:25	906044	** LOI search completed at 09/23/17 06:17:25
06:20:06	906044	** LOI search completed at 09/23/17 06:20:06

<u>Unit</u>	<u>St</u>
2354A	TR
401A	TR
402A	TR
404C	TR
405A	AR
408A	AR
409A	TR
410C	AR
413B	ER
414C	ER
418A	AR
419C	AK
444AS	AR

disposition

# Background Event Chronology

Event Number: 170540465

<u>Date</u>	<u>Time</u>	<u>Term</u>	<u>Operator</u>	<u>Action</u>
09/23/17	02:23:35	ct23	905981	EVENT CREATED; Location= 230 DOUGHTY BLVD INWD , Cross Streets= JEFFERSON ST / MOTT AVE , Name= JOSE AYALA , Address= 280 HENRY INWOOD , Call Source= ANI/ALI , Phone Number= 917-568-2840 , Trunk= W62 Agency= PDCN , Group= DG04 , Beat= 409 , Status= A , Priority= 2 0 , Hold Type= 0 , Primary Unit= 408A , Primary Member= 9681 , Current= T , Open Current= T , Type Code= DISTLT - Disturbance - landlord/tenant
09/23/17	02:23:35	caddb-1	905981	EVENT COMMENT= ** LOI search completed at 09/23/17 02:23:35
09/23/17	02:23:35	ct23	905981	Y -073.741372 +040.621380 COMPL STATES HE RENTS A ROOM IN THE BASEMENT TO MALE...HE STATES THE MALE MAY BE INTOS AND IS MAKING ALOT OF NOISE....BANGNG AND SCREAMING IN THE BASEMENT COMPL IS AFRAID TO GO DOWNSTAIRS
09/23/17	02:23:53	ct23	905981	EVENT COMMENT= *INTOX
09/23/17	02:24:29	disp04	905989	Unit= 408A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9681 , Employee= 9700
09/23/17	02:24:57	\$408A	9681	EVENT COMMENT= ** Recommended unit 408A for requirement PAT2-BACKUP (1.04 mi) Unit= 408A , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 9681 , Employee= 9700
09/23/17	02:27:26	mdt-1	0	Unit= 408A , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9681 , Employee= 9700
09/23/17	02:28:14	disp04	905989	Unit= 401A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9661
09/23/17	02:28:15	disp04	905989	Unit= 402A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9921
09/23/17	02:28:20	disp04	905989	EVENT COMMENT= 401/402 OW
09/23/17	02:30:01	disp05	906044	EVENT COMMENT= 402 10-52 POSS 10-62
09/23/17	02:30:14	disp05	906044	Unit= 2364A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 905917
09/23/17	02:30:16	disp04	905989	EVENT COMMENT= 2364 RESP
09/23/17	02:30:17	\$2364A	905917	Unit= 2364A , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 905917
9/23/2017 7:43:16 AM				Event_Chronology

<u>Date</u>	<u>Time</u>	<u>Term</u>	<u>Operator</u>	<u>Action</u>
09/23/17	02:32:25	disp04	905989	Unit= 412A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 8721
09/23/17	02:32:33	mdt-1	0	Unit= 401A , Status= ER , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9661
				Unit= 401A , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9661
09/23/17	02:32:37	mdt-1	0	Unit= 402A , Status= ER , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9921
				Unit= 402A , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9921
09/23/17	02:32:52	disp04	905989	Unit= 409A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9648
09/23/17	02:33:32	disp04	905989	Unit= 419C , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9441
09/23/17	02:34:04	mdt-1	0	Unit= 409A , Status= ER , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9648
09/23/17	02:34:18	disp04	905989	Unit= 412A , Status= UC , Comment= Preempt , Location= 230 DOUGHTY BLVD INWD , Employee= 8721
09/23/17	02:35:33	mdt-1	0	Unit= 409A , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9648
09/23/17	02:35:37	\$409A	9648	Unit= 409A , Status= AK , Location= 230 DOUGHTY BLVD INWD , Employee= 9648
09/23/17	02:36:03	mdt-1	0	Unit= 409A , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9648
				Unit= 409A , Status= ER , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9648
09/23/17	02:38:10	disp05	906044	EVENT COMMENT= 408 10-43
09/23/17	02:38:16	disp04	905989	Unit= 444AS , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 8512
09/23/17	02:38:16	disp05	906044	EVENT COMMENT= 444 RESP
09/23/17	02:40:24	\$2364A	905917	Unit= 2364A , Status= AR , Location= 230 DOUGHTY BLVD INWD , Employee= 905917
09/23/17	02:41:31	disp04	905989	EVENT COMMENT= 419 ETA ON AMB?
09/23/17	02:41:39	disp04	905989	EVENT COMMENT= 2364 WALKING UP
09/23/17	02:42:05	mdt-1	0	Unit= 444AS , Status= ER , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 8512
09/23/17	02:42:36	\$444AS	8512	Unit= 444AS , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 8512
09/23/17	02:48:35	mdt-1	0	Unit= 444AS , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 8512
09/23/17	02:57:22	disp04	905989	EVENT COMMENT= 2364 10-64 ST JOHNS TOA 0234 W/401 402 409
09/23/17	02:57:24	disp05	906044	EVENT COMMENT= 2364 10-64 ST JOHNS TOA 0234 W/ 401 402 409
09/23/17	02:57:39	disp04	905989	EVENT COMMENT= COMMAND NTFD
09/23/17	03:02:03	disp04	905989	Unit= 410C , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9694
09/23/17	03:02:11	disp04	905989	EVENT COMMENT= 2364 83 42131
09/23/17	03:02:11	disp05	906044	2364 83
9/23/2017	7:43:16 AM			

<u>Date</u>	<u>Time</u>	<u>Term</u>	<u>Operator</u>	<u>Action</u>
09/23/17	03:02:15	disp04	905989	EVENT COMMENT= 410 OFF MEAL, OW
09/23/17	03:02:47	\$410C	9694	Unit= 410C , Status= AR , Location= 230 DOUGHTY BLVD INWD , Employee= 9694
09/23/17	03:03:00	disp04	905989	EVENT COMMENT= 419 RESP TO ST JOHNS IN REGARDS
09/23/17	03:19:45	disp04	905989	Unit= 401A , Status= UC , Comment= SIG 10 , Employee= 9661
09/23/17	03:19:51	disp04	905989	Unit= 409A , Status= UC , Comment= SIG 10 , Employee= 9648
09/23/17	03:44:48	disp04	906044	EVENT COMMENT= 408 VIA MDT REQ AMT SUPERVISOR TO ST JOHNS FOR EXPOSURE PACKET
09/23/17	03:52:20	dispscoord	905982	EVENT COMMENT= ADV MEDCON OF SUP, AS PER MEDCON THEY ARE ON IT
09/23/17	04:02:01	disp04	906044	EVENT COMMENT= 408 VIA MDT SUPV NOT NEEDED, 408 RESP W/ EXPOSURE PACKET
09/23/17	04:07:57	disp04	906044	EVENT COMMENT= AS PER COMMAND REQ COUNTY AMB TO PICK UP 2 MOS AT ST JOHNS AND TRANSPORT TO NUMC
09/23/17	04:08:56	disp04	906044	Unit= 2354A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 906032
09/23/17	04:09:01	disp04	906044	EVENT COMMENT= 2354 RESP
09/23/17	04:09:11	\$2354A	906032	Unit= 2354A , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 906032
09/23/17	04:09:29	disp05	905989	EVENT COMMENT= PCOS CH NTFD
09/23/17	04:12:10	disp05	905989	EVENT COMMENT= 401 10-41 ST JOHNS
09/23/17	04:12:19	disp04	906044	EVENT COMMENT= 401 REQ 10-41ST JOHNS
09/23/17	04:12:22	disp05	905989	EVENT COMMENT= 412 RESP
09/23/17	04:12:23	disp04	906044	EVENT COMMENT= 412 RESP
09/23/17	04:12:25	disp04	906044	Unit= 412A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 8721
09/23/17	04:13:26	mdt-1	0	Unit= 412A , Status= ER , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 8721
09/23/17	04:13:56	disp05	905989	EVENT COMMENT= AS PER COMMAND 5 OFFICERS GOING TO NUMC
09/23/17	04:14:27	disp05	905989	EVENT COMMENT= PCOS NTFD
09/23/17	04:26:48	disp04	906044	EVENT COMMENT= AS PER COMMAND REQ 2 MORE UNITS TO ST JOHNS TO HOLD SCENE
09/23/17	04:27:20	disp04	906044	Unit= 404C , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 8911
09/23/17	04:27:35	disp05	905989	Unit= 414C , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9909
09/23/17	04:27:47	\$404C	8911	EVENT COMMENT= 404/414 RESP
09/23/17	04:29:22	mdt-1	0	Unit= 404C , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 8911
				Unit= 414C , Status= ER , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9909
09/23/17	04:35:55	disp05	905989	EVENT COMMENT= 404 81 ST JOHNS
09/23/17	04:39:26	disp04	904165	EVENT COMMENT= 414 81
09/23/17	05:08:44	disp04	904165	EVENT COMMENT= 54 5 MOS TO NUMC
09/23/17	05:08:47	disp05	905989	EVENT COMMENT= 2354 TRANS 5 MOS TO NUMC W/ 414 404 M11336
09/23/17	05:17:37	disp04	904165	Unit= 418A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 8859
09/23/17	05:18:50	\$418A	8859	Unit= 418A , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 8859
9/23/2017 7:43:16 AM				

Event\_Chronology

<u>Date</u>	<u>Time</u>	<u>Term</u>	<u>Operator</u>	<u>Action</u>
09/23/17	05:18:53	\$418A	8859	Unit= 418A , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 8859
09/23/17	05:28:15	\$418A	8859	Unit= 418A , Status= AR , Location= 230 DOUGHTY BLVD INWD , Employee= 8859
09/23/17	05:33:20	disp05	906044	EVENT COMMENT= 2354 83 MI 11350
09/23/17	05:36:48	disp04	904165	Unit= 405A , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9889
09/23/17	05:37:05	disp04	904165	EVENT COMMENT= AS PER COMM - HAVE 405 RESP TO SCENE
09/23/17	05:37:06	\$405A	9889	Unit= 405A , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 9889
09/23/17	05:49:33	mdt-1	0	Unit= 405A , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 9889
09/23/17	05:56:20	\$2364A	905917	Unit= 2364A , Status= UC , Comment= AVL SIGNAL QUALITY GOOD , Location= 230 DOUGHTY BLVD INWD , Employee= 905917
09/23/17	06:14:28	disp04	905989	Unit= 404C , Status= UC , Comment= SIG 10 TO 30 , Employee= 8911
09/23/17	06:17:24	disp05	906044	Unit= 409A , Status= TR , Location= 10-64 , Employee= 9648
				Unit= 401A , Status= TR , Location= 10-64 , Employee= 9661
				Unit= 2354A , Status= TR , Location= 10-64 , Employee= 906032
				Unit= 402A , Status= TR , Location= 10-64 , Employee= 9921
09/23/17	06:17:24	caddb-1	906044	EVENT COMMENT= ** LOI search completed at 09/23/17 06:17:24
09/23/17	06:17:25	caddb-1	906044	EVENT COMMENT= ** LOI search completed at 09/23/17 06:17:25
				** LOI search completed at 09/23/17 06:17:25
				** LOI search completed at 09/23/17 06:17:25
09/23/17	06:20:06	disp05	906044	Unit= 404C , Status= TR , Location= 10-64 , Employee= 8911
09/23/17	06:20:06	caddb-1	906044	EVENT COMMENT= ** LOI search completed at 09/23/17 06:20:06
09/23/17	06:25:49	\$402A	9921	Unit= 402A , Status= UC , Comment= AVL SIGNAL LOSS , Location= 10-64 , Employee= 9921
09/23/17	06:32:46	\$412A	8721	Unit= 412A , Status= UC , Comment= AVL SIGNAL LOSS , Location= 230 DOUGHTY BLVD INWD , Employee= 8721
09/23/17	06:48:14	\$2364A	905917	Unit= 2364A , Status= AM , Comment= ST JOHNS , Location= 230 DOUGHTY BLVD INWD , Employee= 905917
09/23/17	07:01:08	\$402A	9921	Unit= 402A , Status= UC , Comment= AVL SIGNAL QUALITY GOOD , Location= 10-64 , Employee= 9921
09/23/17	07:08:01	\$2354A	906032	Unit= 2354A , Status= UC , Comment= AVL SIGNAL QUALITY GOOD , Location= 10-64 , Employee= 906032
09/23/17	07:08:35	mdt-1	0	Unit= 412A , Status= AR , Comment= Status change via I/Tracker Auto Arrive/Enroute , Location= 230 DOUGHTY BLVD INWD , Employee= 8721
09/23/17	07:14:03	\$412A	8721	Unit= 412A , Status= UC , Comment= AVL SIGNAL QUALITY GOOD , Location= 230 DOUGHTY BLVD INWD , Employee= 8721

9/23/2017 7:43:16 AM

Event\_Chronology

Page 4

<u>Date</u>	<u>Time</u>	<u>Term</u>	<u>Operator</u>	<u>Action</u>
09/23/17	07:18:28	disp04	906046	Unit= 444AS , Status= UC , Comment= SIG 10 TO 30 , Employee= 8512
09/23/17	07:21:28	\$419C	9441	Unit= 419C , Status= AK , Location= 230 DOUGHTY BLVD INWD , Employee= 9441
09/23/17	07:21:29	disp04	906046	Unit= 413B , Status= DP , Location= 230 DOUGHTY BLVD INWD , Employee= 9869
09/23/17	07:22:18	\$413B	9869	Unit= 413B , Status= ER , Location= 230 DOUGHTY BLVD INWD , Employee= 9869
09/23/17	07:39:53	\$412A	8721	Unit= 412A , Status= AM , Comment= 49789 , Location= 230 DOUGHTY BLVD INWD , Employee= 8721

# EXHIBIT 2





**OFFICE OF CHIEF MEDICAL EXAMINER  
CITY OF NEW YORK**



**REPORT OF AUTOPSY**

**Name of Decedent: Walter Orlando Cruz Perez**

**M.E. Case #: Q-17-021182**

**Autopsy Performed by: Declan McGuone, MB, BCh**

**Date of Autopsy: 09/23/2017**

**FINAL DIAGNOSES**

- I. EXCITED DELIRIUM, ANAMNESTIC:**
  - A. STATUS POST PHYSICAL EXERTION, ANAMNESTIC.**
  - B. ACUTE COCAINE INTOXICATION:**
    - 1. SEE TOXICOLOGY REPORT.**
- II. STATUS POST USE OF CONDUCTED ELECTRICAL WEAPON:**
  - A. THREE PROBES RECOVERED, ANTERIOR TORSO.**
- III. STATUS POST RESTRAINT BY POLICE, ANAMNESTIC.**
- IV. BLUNT FORCE TRAUMA OF HEAD, TORSO AND EXTEMITIES:**
  - A. ABRASIONS AND CONTUSIONS.**
- V. ATHEROSCLEROTIC CARDIOVASCULAR DISEASE:**
  - A. ABDOMINAL AORTIC ATHEROSCLEROSIS, SLIGHT.**
- VI. HEPATIC STEATOSIS AND PANCREATIC FIBROSIS:**
  - A. SEE HISTOPATHOLOGY REPORT.**
- VII. ABSENT LEFT KIDNEY.**
- VIII. SEE CARDIAC PATHOLOGY AND NEUROPATHOLOGY REPORTS.**

**CAUSE OF DEATH:**

**EXCITED DELIRIUM DUE TO ACUTE COCAINE  
INTOXICATION FOLLOWING PHYSICAL EXERTION  
WITH RESTRAINT AND USE OF CONDUCTED  
ELECTRICAL WEAPON.**

**MANNER OF DEATH:**

**HOMICIDE, (SEE ABOVE).**

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

*Yvelisse Matias* 1/23/18  
 Signed Date  
*Yvelisse Matias*

**OFFICE OF CHIEF MEDICAL EXAMINER  
CITY OF NEW YORK**

**REPORT OF AUTOPSY**

**CASE NO. Q-17-021182**

*I hereby certify that I, Declan McGuone, City Medical Examiner-II, have performed an autopsy on the body of **Walter Orlando Cruz Perez** on the 23rd of September, 2017, commencing at 9:30 AM in the Queens Mortuary of the Office of Chief Medical Examiner of the City of New York.*

**EXTERNAL EXAMINATION:**

The body is received in the supine position in a plastic body bag, secured with a white plastic seal bearing the # "51916". OCME and hospital identification tags are present on the right foot; a hospital identification bracelet is present on the left wrist.

The body is that of a well-developed, well-nourished, average-framed, 161 lb, 63" (Body Mass Index: 28.5), light brown-skinned man whose appearance is consistent with the reported age of 36 years.

The fine, wavy, black scalp hair measures up to approximately 1 1/2" in length. There is a 1/4" well-groomed beard. The nasal and facial bones are palpably intact. The eyes have clouded brown irides. The upper jaw is partially dentate; the lower jaw has intact natural teeth in a moderate state of repair. The torso is unremarkable. The external genitalia are atraumatic and of an uncircumcised normal adult male. The anus is atraumatic. The extremities are free of scars overlying subcutaneous veins or edema. The unbroken fingernails are short, clean and well kept. The toenails are thickened. A 1/4" ovoid scar is present on the anterior aspect of the proximal left upper extremity. Two faint monochromatic tattoos are present on the distal left lower extremity, (see photographs for documentation).

**POSTMORTEM CHANGES:**

Rigor mortis is moderate and symmetric in the upper and lower extremities. Livor mortis is fixed in a posterior distribution. The refrigerated body is cold.

**THERAPEUTIC PROCEDURES:**

The following are in place: taped endotracheal tube; EKG stickers on the anterior torso; intra-osseous catheter in the proximal right tibia. A 1/8" x 1/8" contusion is present on the right upper labial mucosa, (comment: may be related to therapeutic intubation).

**CLOTHING:**

The body is received clad in a hospital gown; no other garments of clothing are available for examination.

**INJURIES. (EXTERNAL AND INTERNAL):**

Injuries are stated with reference to the standard anatomic plane with the body measured in a horizontal position; no sequence is implied.

**I. BLUNT FORCE TRAUMA OF HEAD, TORSO AND EXTREMITIES:****A. HEAD:**

A 3" x 1 1/2" blue/purple contusion is present on the upper outer forehead, right of midline. A 1/2" x 1/4" superficial red abrasion is present on the upper outer forehead, left of midline. A 1 1/2" x 1/2" blue purple contusion is present above the left eyebrow; two blue/purple contusions, 1" x 1/2" and 3/4" x 1/2" are present posterior to the left eye. A faint 1/2" x 1/4" blue/purple contusion is present on the left cheek. A 3/4" x 1/2" faint blue/purple contusion and two superficial linear abrasions, 1/4" and 1/2", are present on the dorsum of the nose. The nostrils are blood stained. A 1" x 1/2" red/purple contusion is present posterior to the lateral aspect of the right eyebrow. There is marked periorbital swelling and red/purple discoloration around the right eye, extending to the right upper cheek. A 1/2" oblique superficial laceration is present below the right eyelid. Confluent conjunctival hemorrhages, up to 1/2" x 1/4", are present on the right bulbar conjunctiva. Occasional petechiae, up to 1/16", are present on the left upper palpebral conjunctiva. There are no palpable nasal or facial bone fractures. A 1/2" oblique superficial red abrasion is present behind the right ear. The left ear is swollen and discolored purple. A 1/8" oblique abrasion is present on the helix of the ear. Two superficial abrasions, each 1/4" x 1/4", are present on the left posterior parietal scalp. There is patchy subcutaneous hemorrhage over an area measuring approximately 5" x 3" deep to the right frontoparietal scalp and over an area measuring 2" x 1 1/2" deep to the left parietooccipital scalp. The skull is intact and is without fracture. There is no epidural or subdural hemorrhage. See neuropathology report.

**B. TORSO:**

Two oblique linear contusions, 1" x 1/4" and 3/4" x 1/4", are present on the right side of the neck. A 1/4" x 1/4" contusion is present on the left side of the neck. A 2 3/4" x 1" superficial oblique to horizontal red abrasion is present on the right upper anterior torso, above the nipple line. Two oblique superficial linear abrasions, 3/4" and 1/2", are present on the left lateral torso. There are multiple oblique to curvilinear blue/purple contusions on the upper posterior torso, ranging in length from 1/2" up to 7". A 2" x 1" ovoid purple contusion is present on the left upper posterolateral torso. There are occasional curvilinear red/purple contusions, ranging in length from 1" up to 3", on the left posterolateral torso. A 1/2" x 1/4" red/purple contusion is present above the right buttock. A faint 1/2" x 1/4" blue contusion is present above the left

buttock. The anterior and posterior muscles of the neck are free of hemorrhage. A hemorrhagic fracture of the right superior horn of the thyroid cartilage is present. The hyoid bone is unremarkable. There are no rib or pelvic bone fractures. The internal organs are without injury. There is blotchy testicular hemorrhage, left greater than right.

### **C. EXTREMITIES:**

#### **Right upper extremity:**

There are superficial abrasions, 1 1/2" x 1" area, on the superior aspect of the right shoulder. A 1/4" x 1/4" abrasion is present on the elbow. There are two red/purple contusions, 1" x 3/4" and 1/2" x 1/2", on the posterior aspect of the distal extremity. There are occasional superficial linear abrasions, ranging in length from 1/8" up to 1/2", on the anterior surface of the distal extremity. The proximal interphalangeal joint of the fifth digit is swollen and discolored purple. There is focal subcutaneous and fascial hemorrhage of the proximal and distal extremity on subcutaneous dissection. There are no palpable long bone fractures.

#### **Left upper extremity:**

There are three faint blue/purple contusions, 1" x 3/4", 1/2" x 1/4" and 1/4" x 1/4", on the anterior surface of the proximal extremity. A 1 1/2" x 1" red/purple contusion is present on the elbow. There are occasional superficial linear abrasions, ranging in length from 1/8" up to 1/2" at the elbow. There are blotchy red/purple contusions (3" x 2" area) on the posterior surface of the distal extremity. A 1/2" x 1/4" contusion is present on the dorsal surface of the wrist. A 1/2" oblique abrasion is present on the dorsal surface of the hand. A 1/4" x 1/4" red/purple contusion is present on the thumb. There is focal subcutaneous and fascial hemorrhage of the proximal and distal extremity on subcutaneous dissection. There are no palpable long bone fractures.

#### **Right lower extremity:**

There are occasional superficial linear abrasions, up to 1/8", on the knee. A 1" x 3/4" red/purple contusion is present on the anterior aspect of the distal extremity. A faint 1" x 1/2" blue contusion and two 1/4" x 1/8" blue contusions are present above the lateral aspect of the ankle. There is focal subcutaneous and fascial hemorrhage of around the knee and on the distal extremity on subcutaneous dissection. There are no palpable long bone fractures.

#### **Left lower extremity:**

There are occasional scattered superficial abrasions on the anterior aspect of the proximal and distal extremity ranging in length from 1/8" up to 1/2". A faint 1" x 1/2" blue contusion is present on the knee. Three faint blue/purple contusions, ranging in size from 1/2" x 1/4" up to 1 1/4" x 3/4", are present on the anterior surface of the distal extremity. A 2" curvilinear abrasion is present above the medial aspect of the

ankle. A 1/8" x 1/8" blue/purple contusion is present on the medial aspect of the foot. There are no palpable long bone fractures.

## **II. CONDUCTED ELECTRICAL WEAPON INJURIES:**

There are three probes from a conducted electrical weapon penetrating the skin of the anterior torso, two on the upper torso slightly left of midline and one on the right upper abdominal quadrant. The uppermost metallic probe, labeled "A" on the body diagram is centered 15 1/2" from the top of the head and 1/8" left of midline. It is surrounded by a 1/8" ovoid red abrasion / electrical burn. There is also a 3/4" x 1/2" zone of faint blue discoloration of the surrounding skin. There is slight associated subcutaneous hemorrhage. The second metallic probe, labeled "B" on the body diagram is centered 19 1/4" from the top of the head and 1/8" left of midline. It is surrounded by a 1/4" x 1/8" irregular red abrasion / electrical burn. There is slight associated subcutaneous hemorrhage. The third metallic probe, labeled "C" on the body diagram is centered 23" from the top of the head and 3 1/4" right of midline in the right upper abdominal quadrant. It is surrounded by a 1/8" ovoid red abrasion / electrical burn. There is slight associated subcutaneous hemorrhage. The probe perforates the anterior abdominal wall and liver capsule on the inferior aspect of the right lobe of the liver.

A length of gray metallic wire is received separately in the body bag.

*These injuries, having been described once, will not be repeated.*

### **INTERNAL EXAMINATION:**

**BODY CAVITIES:** The organs are in their normal situs without fibrous adhesions or abnormal fluid accumulations. The abdominal wall pannus is 1/4" in thickness.

**BREASTS:** There is no gynecomastia.

**HEAD:** The brain weighs 1450 gm and is retained with the dura, for neuropathologic consultation.

**NECK:** The cervical vertebrae, hyoid bone, laryngeal cartilages, and paratracheal soft tissues are atraumatic. The upper airway is unobstructed. The laryngeal mucosa is unremarkable. The tongue is unremarkable.

**CARDIOVASCULAR SYSTEM:** The heart weighs 330 gm and is retained for cardiac pathology consultation. There is focal slight atherosclerosis of the abdominal aorta. The venae cavae and pulmonary arteries are patent, and are without thrombi or emboli.

**RESPIRATORY SYSTEM:** The right lung weighs 380 gm; the left lung weighs 320 gm. Both lungs are moderately congested and edematous but are otherwise unremarkable and

are free of masses, consolidation or other focal lesions. The bronchi, bronchioles and vasculature are free of obstruction or thrombi.

**LIVER, GALLBLADDER, PANCREAS:** See conducted electrical weapon injuries above. The liver weighs 2100 gm. The soft greasy, light yellow/brown parenchyma is free of fibrosis, cirrhosis or focal lesions. The gallbladder contains approximately 10 mL of dark green liquid bile and is without gallstones. The pancreas is fibrotic but otherwise unremarkable in lobulation and color.

**HEMIC AND LYMPHATIC SYSTEMS:** The spleen weighs 170 gm and has an intact, smooth capsule and soft, maroon parenchyma without prominent white pulp. There is no lymphadenopathy. The thymus is involuted.

**GENITOURINARY SYSTEM:** See testicular injuries above. The right kidney weighs 270 gm. The left kidney is absent. The right kidney has a smooth subcapsular surface with unremarkable architecture and vasculature. The ureters maintain uniform caliber into an unremarkable bladder containing 20 mL of cloudy yellow urine. The prostate gland is unremarkable. The testes are descended.

**ENDOCRINE SYSTEM:** The pituitary, thyroid and adrenal glands are of normal color, shape, size and consistency.

**DIGESTIVE SYSTEM:** The esophagus and gastroesophageal junction are unremarkable. The stomach contains approximately 150 mL of partially digested meal consisting of unrecognizable food fragments. The gastric mucosa, small intestine and large intestine are unremarkable. The vermiform appendix is unremarkable.

**MUSCULOSKELETAL SYSTEM:** The vertebrae, clavicles, sternum, ribs and pelvis are atraumatic. The musculature is unremarkable.

**TOXICOLOGY:**

Samples are submitted for toxicologic analysis; a separate report will be issued.

**NEUROPATHOLOGY:**

The brain and dura are retained for neuropathologic consultation; a separate report will be issued.

**CARDIAC PATHOLOGY:**

The heart is retained for cardiac pathology consultation; a separate report will be issued.

**HISTOPATHOLOGY:**

Tissue sections are submitted for microscopic examination; a separate report will be issued.

**MOLECULAR BIOLOGY:**

Samples are held for potential future molecular genetic studies.

**FORENSIC BIOLOGY:**

The following are submitted to Forensic Biology: Blood spot card; fingernail clippings; swabs of the dorsal surface of both hands.

**POSTMORTEM RADIOGRAPHY:**

Full body radiographs are taken and retained.

**PHOTOGRAPHY:**

Photographs are taken.

**EVIDENCE:**

The conducted electrical weapon probes and separate piece of wire are submitted to the OCME Evidence Unit.

[Peer reviewed by M. Greenberg 12/29/2017]

Declan McGuone, M.B., B.Ch.  
City Medical Examiner-II

*The information provided above is true and correct to the best of my knowledge and belief.  
Electronically signed by Declan McGuone on Dec 29, 2017 05:23:12 PM*

**THE CITY OF NEW YORK  
OFFICE OF CHIEF MEDICAL EXAMINER  
520 FIRST AVE  
NEW YORK, NY 10016  
FORENSIC TOXICOLOGY LABORATORY**

Deceased: <b>Walter Cruz Perez</b>	Laboratory No.: <b>FT17-03876</b>	M.E. Case No.: <b>Q17-021182</b>
Autopsy by: <b>Dr. McGuone</b>		Date of Autopsy: <b>9/23/2017</b>
Specimens received: Femoral (1,2) Blood X Bile X Urine X Gastric Contents X Brain X Liver X Vitreous Humour X Other (specify): <b>Blood (Heart - 1,2)</b>		
Specimens received in laboratory by: <b>Tonya Phoenix</b>		Date Received <b>9/25/2017</b>
Equivalents: 1.0 mg/L = 1000 ng/mL = 0.1 mg/dL <span style="float: right;">1.0 mg/Kg = 1000 ng/g = 1.0 mcg/g</span>		
<p><b>RESULTS</b> <span style="float: right;">Page 1 of 1</span></p> <p><b>BLOOD (Femoral) (1 of 2)</b></p> <p>Benzoylcegonine 51 ng/mL (LC/MS)</p> <p>Cocaine &lt;50 ng/mL (LC/MS)</p> <p>Ethanol - not detected (HSGC)</p> <p>Morphine, oxycodone, oxymorphone, hydromorphone, hydrocodone, codeine - not detected (LC/MS)</p> <p>6-monoacetylmorphine, ethylbenzoylcegonine - not detected (LC/MS)</p> <p>Barbiturates, amphetamines, benzodiazepines, methadone, cannabinoids, fentanyl - not detected (IA)</p>		
This report has an associated Forensic Toxicology case file.		

Definitions of terms used in this report can be located at <http://www.nyc.gov/ocme>

CT = Color Test	GC/MS = Gas Chromatography/ Mass Spectrometry
GC = Gas Chromatography	LC = Liquid Chromatography
CA = Chemistry Analyzer	IA = Immunoassay
TLC = Thin Layer Chromatography	
UV/VIS = Ultraviolet/Visual Spectrophotometry	
LC/MS = Liquid Chromatography/ Mass Spectrometry	< = Less than
	HS = Head Space

Signed: *William Dunn* 10-2-17  
Mr. William Dunn, M.S., F-ABFT  
Assistant Director, Forensic Toxicology Laboratory

Date: 10/2/2017 AT



**THE CITY OF NEW YORK  
OFFICE OF CHIEF MEDICAL EXAMINER  
520 FIRST AVE  
NEW YORK, NY 10016  
FORENSIC TOXICOLOGY LABORATORY**

Deceased: <b>Walter Cruz Perez</b>	Laboratory No.: <b>FT17-03876</b>	M.E. Case No.: <b>Q17-021182</b>
Autopsy by: <b>Dr. McGuone</b>		Date of Autopsy: <b>9/23/2017</b>
Specimens received: Femoral (1,2) Blood X Bile X Urine X Gastric Contents X Brain X Liver X Vitreous Humour X Other (specify): <b>Blood (Heart - 1,2)</b>		
Specimens received in laboratory by: <b>Tonya Phoenix</b>		Date Received <b>9/25/2017</b>

Equivalents: 1.0 mg/L = 1000 ng/mL = 0.1 mg/dL

1.0 mg/Kg = 1000 ng/g = 1.0 mcg/g

**SUPPLEMENTARY REPORT  
RESULTS**

Page 1 of 1

**BLOOD (Femoral) (2 of 2)**  
**Synthetic cannabinoids - not detected (NMS)\***

\* See attached copy of NMS Labs report.

NOTE: Please refer to initial report dated 10/2/2017.

This report has an associated Forensic Toxicology case file.

Definitions of terms used in this report can be located at <http://www.nyo.gov/ocme>

CT = Color Test	GC/MS = Gas Chromatography/ Mass Spectrometry
GC = Gas Chromatography	LC = Liquid Chromatography
CA = Chemistry Analyzer	IA = Immunoassay
TLC = Thin Layer Chromatography	
UV/VIS = Ultraviolet/Visual Spectrophotometry	
LC/MS = Liquid Chromatography/ Mass Spectrometry	< = Less than
	HS = Head Space

Signed: \_\_\_\_\_

*William A. J. Dunn*  
**Mr. William Dunn, M.S., F-ABFT**

Assistant Director, Forensic Toxicology Laboratory

Date: 10/5/2017

AT

# EXHIBIT 3



TASER Information

Dept. Nassau County Police Dept. - NY  
Serial X13001W10  
Model TASER X26P  
Firmware Version Rev. 04.010  
Device Name X13001W10  
Health Active

Report Generated by

Name Karp, Thomas  
Badge ID bALaQTV  
Local Timezone Eastern Standard Time (UTC -05:00)  
Generated On 16 Feb 2018 15:40:42

Device (X26P)

Seq#	Local Time [dd:mm:yyyy H:mm:Sec]	Event [Event Type]	Duration [Seconds]	Temp [Degrees Celsius]	Batt Remaining [%]
1	23 Sep 2017 02:49:57	Armed		29	76
2	23 Sep 2017 02:50:26	Trigger	5		76
3	23 Sep 2017 02:50:31	Trigger	5		76
4	23 Sep 2017 02:50:39	Trigger	5		76
5	23 Sep 2017 02:50:45	Trigger	5		76
6	23 Sep 2017 02:50:51	Trigger	5		76
7	23 Sep 2017 02:50:57	Trigger	5		76
8	23 Sep 2017 02:51:03	Safe	66	34	76
9	23 Sep 2017 09:59:53	Armed		26	76
10	23 Sep 2017 09:59:54	Safe	1	26	76

# EXHIBIT 4



TASER Information

Dept. Nassau County Police Dept. - NY  
Serial X13001RP9  
Model TASER X26P  
Firmware Version Rev. 04.010  
Device Name X13001RP9  
Health Active

Report Generated by

Name Karp, Thomas  
Badge ID bALaQTV  
Local Timezone Eastern Standard Time (UTC -05:00)  
Generated On 16 Feb 2018 15:35:46

Device (X26P)

Seq #	Local Time [dd:mm:yyyy Hr:min:Sec]	Event [Event Type]	Duration [Seconds]	Temp [Degrees Celsius]	Batt Remaining [%]
1	23 Sep 2017 02:27:01	Armed		28	98
2	23 Sep 2017 02:27:09	Trigger	5		98
3	23 Sep 2017 02:27:14	Trigger	6		98
4	23 Sep 2017 02:27:22	Trigger	5		98
5	23 Sep 2017 02:27:30	Trigger	5		98
6	23 Sep 2017 02:27:39	Trigger	5		98
7	23 Sep 2017 02:27:51	Trigger	5		98
8	23 Sep 2017 02:27:56	Trigger	4		87
9	23 Sep 2017 02:28:01	Safe	60	32	97
10	23 Sep 2017 02:28:04	Armed		32	97
11	23 Sep 2017 02:32:20	Safe	256	37	97
12	23 Sep 2017 02:32:27	Armed		36	97
13	23 Sep 2017 02:33:10	Safe	43	36	97
14	23 Sep 2017 09:36:25	Armed		24	97
15	23 Sep 2017 09:36:28	Safe	3	24	97

# EXHIBIT 5



PROCEDURE TITLE

PROCEDURE NUMBER

REVISION

## Use of Electronic Control Device (ECD)/Taser

OPS 12430

4

### POLICY

The policy of the Police Department is to prevent crime and arrest offenders while protecting human life. In situations where it is necessary to engage in the lawful use of force [See Glossary], Members of the Force will use force based upon the totality of circumstances [See Glossary] using a reasonable and necessary [See Glossary] standard to effectively bring an incident or person under control. [See Policy 4200] As per accepted national guidelines, a Department-issued electronic control device (ECD) [See Definition] may be an effective tool when the use of force is reasonable and necessary.

### PURPOSE

To establish procedures for the use of electronic control devices for situations where equipment is necessary to control persons involved.

### DEFINITIONS

**ECD Authorized Member:** a Member of the Force who has successfully completed the NCPD training course in the use of the NCPD Electronic Control Device.

**Automatic Performance Power Magazine (APPM):** a lithium energy cell power supply system with an onboard memory chip that maintains a record of vital operational status information, such as remaining power level, energy cell performance, and life expectancy for the energy cell pack under varying temperatures and loads, which is graphically displayed on the device. This APPM automatically shuts off 5 seconds after pulling the trigger.

**Cartridge:** a replaceable cartridge which discharges two probes on connecting wires sending a high voltage/low current signal into a subject.

**Discharge:** the actual use of the ECD with probe discharge or Drive Stun [See Definition] against a subject.

**Display:** drawing and exhibiting the ECD as part of a warning tactic, typically accompanied by appropriate verbalization.

**Drive Stun:** discharging the ECD whereby the device makes direct contact with the intended subject's body without a cartridge in place or after the cartridge has been discharged. This mode should not be the primary method of use due to the risk presented as a result of the close proximity to the subject.

**ECD Logbook:** a logbook for tracking the intake and distribution of ECD devices and cartridges. It will document the following:

1. issuing member, if applicable,
2. date and time ECD device and/or cartridge issued or received,
3. date and time ECD device returned, if applicable,
4. receiving/returning member's name and serial number,
5. ECD device serial number,
6. used cartridge serial number,
7. new cartridge serial number, *and*
8. whether the used cartridge will be destroyed or invoiced.

**Electronic Control Device (ECD):** an electro-muscular disruptor designed to disrupt a subject's motor and sensory functions of the nervous system by deploying battery-powered electrical energy sufficient to cause motor skill dysfunction and override voluntary motor responses. The ECD utilized by NCPD is the Taser International X26P

ISSUING AUTHORITY

SIGNATURE

EFFECTIVE DATE

PAGE

Deputy Commissioner

Patrick J. Ryder

6/12/2017

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# Use of Electronic Control Device (ECD)/Taser

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	<p>yellow, model no. 11003 with an APPM battery pack auto shut off, model no. 22011.</p> <p><b>Laser Painting:</b> the act of removing the ECD from its holster and pointing the ECD at a subject and activating the ECD's laser dot to show that the device is aimed and targeted on the appropriate location on the subject.</p> <p><b>Successful Application:</b> the result of discharging an ECD where the probes make contact with the subject's body, or the unit itself makes direct contact with the subject's body, to conduct energy that affects both the sensory and motor functions of the nervous system.</p>
<b>SCOPE</b>	All Members of the Department.
<b>SOURCES</b>	<p><a href="#">Graham v. Connor, 490 U.S. 386 (1989)</a> IACP Model Policy, Electronic Control Weapons. August, 2009. <a href="#">PL Article 35.</a> (Defense of Justification) <a href="#">PL Article 205.30</a> (Resisting Arrest) Police Use of Force, Tasers, and Other Less-Lethal Weapons. U.S. Department of Justice/Office of Justice Programs/National Institute Justice. May 2011.</p>
<b>RULES</b>	<ol style="list-style-type: none"><li>1. Members of the Department will not use force except as provided by law.</li><li>2. Members of the Department while off duty <b>will not carry</b> and <b>will secure</b> the Department-issued ECD except when traveling to and from work.</li><li>3. ECDs will only be used by Members of the Department who have completed training and have been authorized to use ECDs.</li><li>4. Members of the Department, while on duty, will render aid to a sick or injured person in accordance with their level of training and summon an ambulance if necessary.</li></ol>
<b>REPLACES</b>	OPS 12430, Revision 3, dated 08/18/2016.
<b>PROCEDURE</b>	<b>A. Issuance and Maintenance</b>
<b>ECD Authorized Member</b>	<ol style="list-style-type: none"><li>1. If the ECD Authorized Member is a non-uniformed officer, <i>equips</i> himself/herself with an ECD when on duty,<ol style="list-style-type: none"><li>a. <b>except if</b> it is impractical because of the nature of the <b>current</b> assignment,</li><li>b. <b>except if</b> carrying an ECD discloses the member's identity as a Police Officer or otherwise compromises officer safety (i.e., BSO, Narcotics),<p><b>Note:</b> When part of a non-uniformed arrest team, at least one member of that team will be an ECD Authorized Member and will carry an ECD when possible.</p></li><li>c. <i>retrieves</i> an ECD from his/her command, <b>and</b></li><li>d. <i>makes</i> appropriate entries into the ECD Logbook. [<b>See Definition</b>]</li></ol></li><li>2. <i>Carries</i> the ECD in accordance with training.<p><b>Note:</b> Non-uniformed officers will be guided by training protocols specific to their assignment.</p></li></ol>



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### ECD Authorized Member

3. *Inspects* the ECD at the beginning of his tour of duty to ensure operability by:
  - a. *removing* the cartridge [See Definition] and *pointing* the ECD in a safe direction,
  - b. *releasing* the safety and *ensuring* the laser is visible and the battery status light indicates the device is energized,
  - c. *conducting* a five second spark test by depressing the trigger to see an arc and hear a sound.

**Note:** The ECD cartridge must be removed prior to conducting the spark test.
4. *Replaces* the Automatic Performance Power Magazine (APPM) [See Definition] if:
  - a. the laser is not visible,

**Note:** The member should ensure that laser function is turned on.

  - d. the battery status light does not operate,
  - e. a weak battery is indicated.

**Note:** The APPM should read above 20 percent capacity. Environmental conditions, such as extreme heat or cold, can cause variations in battery life.
5. *Responds* to the Command for replacement when a spark test fails or an APPM is needed.
6. If the ECD Authorized Member is a non-uniformed officer,
  - a. *returns* the ECD at the end of his/her tour if the ECD was **not** deployed, **and**
  - b. *makes* appropriate entries into the ECD Logbook.

### B. Use of Electronic Control Device

### ECD Authorized Member

1. *Determines* the use of force is reasonable and necessary to control a person and *evaluates* the use of an ECD.
- Note:** The totality of circumstances should be considered when deciding the force necessary to overcome resistance when trying to maintain control of a violent person or to effect an arrest.
- Note:** Factors to consider may include:
1. whether the person poses an immediate threat to the safety of the officers, himself or others,
  2. whether the person is actively resisting arrest,
  3. if a crime was committed, the severity of the crime,
  4. whether the person is attempting to evade arrest by flight,
  5. surrounding hazards.
2. *Requests* assistance, as necessary.
  3. *Initiates* Mentally Disabled Persons procedure [See OPS 1155] if necessary.
  4. *Determines* the ECD will be utilized.
- Note:** Except in exigent circumstances, the ECD generally **should not** be used to control a person in situations such as:

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ECD Authorized  
Member

1. the person is at risk of falling from a dangerous height,
2. the person is handcuffed,
3. the person is exhibiting passive resistance,
4. the person has a known heart condition,
5. after an alcohol based chemical spray has been sprayed as the fumes could ignite,
6. when combustible or flammable liquids are present,
7. the person is known to be or apparently under the age of 16, or over the age of 65,
8. the person is known to be pregnant,
9. the person is operating or riding on any moving device or vehicle such as a motor vehicle, a bicycle or skateboard.

5. *Advises* the subject, when practical, that the ECD will be utilized if the subject resists arrest or fails to comply with a lawful command.

6. *Announces* aloud to assisting officers, when practical, that the ECD is being displayed. [\[See Definition\]](#)

**Note:** It is important to communicate the imminent use of the ECD to each other so that Members of the Force *will not* simultaneously discharge the ECD on a single subject.

7. *Uses* the ECD in accordance with training received as follows:

- a. when possible, display of the ECD accompanied by appropriate verbal commands,
- b. when possible, laser painting [\[See Definition\]](#),
- c. discharging of the ECD either by probe or drive stun. [\[See Definition\]](#)

**Note:** The ECD will automatically shut off after discharging electrical energy for 5 seconds. Members of the Force will discharge *no more than* 3 successful applications [\[See Definition\]](#) of the ECD on a single subject.

8. *Restrains* the subject once compliance is met.

9. *Requests* a Patrol Supervisor, if there is none at scene.

**Note:** If the authorized member [\[See Definition\]](#) is a supervisor, requests an additional supervisor for the investigation.

10. *Assigns* additional units to the scene as requested.

Police  
Communications  
Operator

Members at the  
Scene

11. *Refrain* from removing the ECD probes from the subject's body.

12. *Checks* the subject's condition and *renders* aid if necessary.

13. *Initiate* the Aided Cases procedure [\[See OPS 1110\]](#) if any of the following conditions exist:

- a. the subject has visible injuries,
- b. the subject complains of injury,
- c. the use of force is likely to result in an injury.

14. *Initiate* Arrest Processing procedure [\[See OPS 2115\]](#) if necessary.

AMT

15. *Treats* the restrained person. [\[See OPS 1110\]](#)

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	<p><b>Note:</b> The ECD probes should only be removed by medical personnel at the hospital. However, when necessary to treat a person, an AMT can remove the probes.</p>
AMT/Police Officer Supervisor	<p>16. <i>Transports</i> the aided person to the hospital.</p> <p>17. <i>Retrieves</i> the ECD and discharged cartridge from the authorized member.</p> <p>18. <i>Retrieves</i> and <i>properly disposes</i> of any probes that did not make contact with the subject.</p> <p>19. <i>Conducts</i> an investigation of the incident.</p> <p>20. <i>Notifies</i> the Desk Officer.</p> <p>21. If serious physical injury <a href="#">[See Glossary]</a> or death resulted,</p> <ul style="list-style-type: none"><li>a. <i>maintains</i> the scene,</li><li>b. <i>secures</i> the ECD in its present state for evidentiary recording and collection.</li></ul>
Desk Officer	<p>22. If serious physical injury or death resulted,</p> <ul style="list-style-type: none"><li>c. <i>notifies</i> the Police Communications Operator Supervisor (PCOS) to contact the Deadly Force Response Team (DFRT) Coordinator,</li><li>b. <i>notifies</i> the Commanding Officer (CO) or if the CO is unavailable, <i>initiates</i> the Administrative Duty Coverage procedure <a href="#">[See ADM 2010]</a>,</li><li>c. <i>directs</i> the supervisor to secure the scene and safeguard the ECD for the responding detectives,</li><li>d. <i>notifies</i> the detective squad in the precinct of occurrence <a href="#">[See Glossary]</a> for response.</li></ul>
Detective Squad	<p>23. If serious physical injury or death resulted,</p> <ul style="list-style-type: none"><li>a. <i>responds</i> to the scene,</li><li>b. <i>investigates</i> the incident, <b>and</b></li><li>c. <i>downloads</i> the ECD.</li></ul>
	<p><b>B. Reporting and Follow-up After Discharge</b></p>
Police Officer	<p>1. <i>Prepares</i> Case Report. <a href="#">[See OPS 8110]</a></p> <p>2. <i>Prepares</i> <a href="#">PDCN Form 258</a>, Use of Force Report.</p> <p>3. <i>Forwards</i> <a href="#">PDCN Form 258</a>, before the end of his tour of duty, to the investigating supervisor.</p>
Supervisor	<p>4. <i>Properly disposes</i> of the ECD cartridge, if further investigation <b>is not</b> needed.</p> <p>5. <i>Reviews</i> and <i>completes</i> <a href="#">PDCN Form 258</a>.</p> <p>6. <i>Prepares</i> a narrative report to his CO.</p> <p>7. <i>Forwards</i> <a href="#">PDCN Form 258</a> and the narrative report, before the end of his tour of duty, to the Commanding Officer.</p>
Commanding Officer	<p>8. <i>Reviews</i> <a href="#">PDCN Form 258</a> and all reports.</p> <p>9. <i>Completes</i> <a href="#">PDCN Form 258</a>.</p> <p>10. <i>Forwards</i> the original <a href="#">PDCN Form 258</a> and all reports to the Division Chief.</p>

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### Commanding Officer

11. *Forwards* a copy of PDCN Form 258 and all reports to the Commanding Officer, Firearms Training Unit.

12. *Maintains* a copy of PDCN Form 258 and all reports in command.

### FTU Commanding Officer

13. *Reviews* all use of force reports to determine the effectiveness of the ECD.

14. *Determines* if further training is necessary.

15. If further training is necessary,

a. *prepares* a narrative report,

a. *forwards* the narrative report to the Chief of Department (TOC).

### Division Chief

16. *Reviews* PDCN Form 258 and all reports.

17. *Completes* PDCN Form 258.

18. *Forwards* PDCN Form 258 and all reports to the Chief of Department.

### Chief of Department

19. *Reviews* all use of force reports.

### D. Replacement of ECD

### ECD Authorized Member

1. *Responds* to the Command as soon as practical to obtain a new ECD cartridge, when necessary.

### Desk Officer/ Supervisor

2. *Issues* a cartridge to the authorized member.

3. *Enters* the information into the ECD logbook. [\[See Definition\]](#)