

STATEMENT OF  
SPECIAL DISTRICT ATTORNEY  
WEEDEN A. WETMORE  
REGARDING THE INVESTIGATION  
INTO THE DEATH OF  
SHAWN M. GREENWOOD

July 1, 2010

## Introduction

On February 23, 2010, at approximately 4:23 p.m., Shawn M. Greenwood, 29, was fatally shot by Sgt. Bryan Bangs of the Ithaca Police Department outside Pete's Wine & Liquor store located at 805 West Buffalo Street in Ithaca, New York. At the time, Sgt. Bangs was part of a multi-agency search warrant detail attempting to secure Mr. Greenwood for purposes of searching him pursuant to a warrant issued by a City Court Judge on February 17, 2010. Mr. Greenwood was shot after striking a Dryden police officer with his vehicle while attempting to evade the search warrant detail. Although emergency medical staff arrived at the scene, their attempts to save Shawn Greenwood were futile, inasmuch as one gunshot wound had passed through his heart. Indeed, although Mr. Greenwood was transported to Cayuga Medical Center for continued resuscitative efforts, he was pronounced dead at 5:20 pm.

On March 8, 2010, Tompkins County District Attorney Gwen Wilkinson filed a verified petition in the Supreme Court of Tompkins County asking for the appointment of a Special District Attorney to handle the Greenwood matter, due to a conflict of interest created by the fact that her office "works closely with all of the involved law enforcement agencies in the day-to-day operations of the office" and because of "the possible appearance of impropriety occasioned by supervision by the Tompkins County District Attorney's Office of this investigation." Acting promptly, Hon. Robert C. Mulvey, Supreme Court Justice, appointed me as Special District Attorney to conduct an investigation into the death of Shawn Greenwood.

Following my appointment, I first confirmed that an independent police investigation into Mr. Greenwood's death had immediately been commenced by the New York State Police, Troop C Bureau of Criminal Investigation (BCI), as well as Troop C's Forensic Identification Unit (FIU). The investigation was "independent" inasmuch as the investigating officers had no involvement whatsoever with the events leading up to Mr. Greenwood's death, nor any direct association with members of the New York State Police Community Narcotics Enforcement Team (CNET) Southern Tier, or other members of the multi-agency search warrant detail attempting to serve the warrant on Mr. Greenwood on February 23.

Heading up the BCI investigation was Lt. William F. McEvoy from Troop C out of Sidney, New York. Lt. McEvoy and I met early on to discuss the State Police investigation, which was proceeding on two fronts – the first consisting of fact-gathering through interviews and the recording of statements from both police and civilian witnesses, and the second consisting of the collection and forensic examination of real evidence. Thereafter, my office and I personally interviewed numerous witnesses, including Sgt. Bryan Bangs, who by then was represented by counsel, Attorney John K. Grant of Nyack, New York. Although Sgt. Bangs appeared at his interview with his lawyer, he spoke freely at length without interruption or prodding from Mr. Grant.

I met on several occasions with Senior Investigator Steven A. Anderson, head of Troop C's Forensic Identification Unit, Investigator Steven Ryan, also of FIU, and other FIU members to discuss their examinations, findings and conclusions.

I consulted with one Dr. Anthony J. Pinizzotto, who is retired from the FBI. While with the FBI, Dr. Pinizzotto was the Senior Scientist and Clinical Forensic Psychologist assigned to the FBI's Training Division, Behavioral Science Unit. He helped develop a program to assist Assistant United States Attorneys review the use of deadly force incidents by law enforcement members.

I also met with concerned community citizens at the Greater Ithaca Activities Center (GIAC) to discuss the process of my investigation and the anticipated presentation of the case to a sitting Tompkins County Grand Jury.

Finally, I spoke to surviving family and friends of Shawn Greenwood.

Following my investigation, I presented evidence in this matter to a Tompkins County Grand Jury. The Grand Jury heard testimony from 26 witnesses and examined 233 exhibits over the course of three-and-a-half days. The Grand Jury has finished its investigation and finds no basis for criminal charges against Sgt. Bryan Bangs arising out of the death of Shawn Greenwood.

Although Grand Jury proceedings by law are secret, my investigation into the death of Shawn Greenwood, conducted and developed outside the Grand Jury process, is not bound by any such rule of secrecy. Therefore, I write this letter report to Chief Edward Vallely of the Ithaca Police Department, Lt. Patrick J. Garey of CNET Southern Tier, Tompkins County Sheriff Peter Meskill, and Dryden Police Chief Margaret E. Ryan for their independent reviews as to the actions of their respective officers involved in this incident. I am also making this letter available to the public. The following is a synopsis of the evidence uncovered by the investigation.

## **I. Background**

In late 2008 through early 2009, Investigator A of CNET Southern Tier, approached numerous police agencies in Tompkins County, asking if they would volunteer members to participate in a collaborative effort to investigate mid and high-level dealers of narcotics in Tompkins County.<sup>1</sup> That request was met with positive responses, as various agencies volunteered certain officers to work throughout Tompkins County with this combined and concerted effort to fight drug trafficking. Prior

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<sup>1</sup> With the exception of Sgt. Bryan Bangs and Sgt. Fred Whitsett, the identities of the officers involved in this operation will remain confidential due to the nature of their work in narcotics investigations.

to February 23, 2010, multi-agency efforts resulted in approximately 30 investigations separate and apart from the one into Shawn Greenwood's activities.

In January 2010, Investigator B of CNET Southern Tier, while working with the other officers in Tompkins County, became the case agent for this group's investigation into the dealing of cocaine by Shawn Greenwood. Early on in the investigation, Shawn Greenwood made two sales of cocaine which were monitored by Investigator B. The locations of those sales were dictated by Mr. Greenwood. With the two controlled buys serving as probable cause, Investigator B applied for a warrant to search Mr. Greenwood, his premises, and a certain vehicle that he occasionally operated. On February 17, 2010, the Honorable Judith A. Rossiter, Ithaca City Court Justice, signed the search warrant.

On February 23, 2010, officers from the various police agencies working on this detail met at the New York State Police Troop C, Zone 3 Headquarters in Dryden, New York (known as SP Ithaca) to make plans for serving the search warrant upon Shawn Greenwood. Investigator B prepared an operation plan which included, among other things, a risk assessment. Risks noted by Investigator B included the fact that Shawn Greenwood had a prior substantial criminal history, was known to possess weapons, and was presently on parole. As to the last fact, Shawn Greenwood had been released from state prison to parole supervision on September 15, 2009 in connection with his previous conviction of Criminal Possession of a Controlled Substance in the Fifth Degree (Attempt to Sell).

The operation plan was shared with other members of the warrant detail. Thus, on February 23, 2010, all of the detail officers, including Sgt. Bryan Bangs, were aware that Shawn Greenwood had previously been convicted of numerous crimes, four of which were felonies, including Attempted Assault in the Second Degree, Criminal Possession of a Weapon in the Third Degree, Criminal Sale of a Controlled Substance in the Third Degree, and Attempted Criminal Possession of a Controlled Substance in the Fifth Degree. The detail was also aware that the felony convictions had resulted in Mr. Greenwood's incarceration and that two of his felony convictions resulted in state prison sentences. Many of the detail members, including Sgt. Bryan Bangs, were also aware that Shawn Greenwood, when taken into custody in 2005 for a drug crime, had resisted arrest by fleeing the scene and leading police on a high-speed chase, which culminated in a motor vehicle accident.

Based on this information, the detail recognized that Mr. Greenwood was a significant flight risk. First, there was tremendous incentive for Shawn Greenwood to flee due to his substantial criminal history. Undoubtedly, if arrested again, Mr. Greenwood was facing a substantial prison sentence. Secondly, Shawn Greenwood had fled police in the past. Thus, the team decided that they would first try to physically contain Greenwood in the area where they planned on serving the warrant. However, it was agreed that if Mr. Greenwood eluded the police in his car, there would be no high-speed pursuit as the detail did not want to jeopardize the safety of other motorists on

the highways. Further, Investigator A and Sgt. Bangs made it clear that if a third person (such as Shawn Greenwood's child, girlfriend or any of his girlfriend's children) was observed in Greenwood's vehicle, the mission to serve the search warrant would be terminated. Finally, the operation would also not go forward if any members of the public appeared to be in danger.

At some point on February 23, the warrant detail learned that Shawn Greenwood was going to sell cocaine that afternoon in the area of Pete's Grocery. With this information, the detail members then went over various scenarios as to how they were going to serve the search warrant. In that regard, Sgt. Bangs, because of his prior experience in executing numerous search warrants of a similar nature, and because of his training, instruction and background in Special Weapons and Tactics (SWAT), prepared the tactical plan they would use to serve the search warrant on Greenwood.

Sgt. Bangs' tactical plan called for an SUV to physically block Shawn Greenwood from behind once he parked at Pete's Grocery, coupled with an immediate surrounding of his vehicle by five police officers. As to those five officers, three, including Sgt. Bangs, were to position themselves on the driver side, while the other two would position themselves on the passenger side. Sgt. Bangs would be first on the driver side, near the driver side window and have in his hand and at the ready a firearm to use *if necessary*. The second officer on the driver side was to be Investigator C of the Tompkins County Sheriff's Department, who was to have a taser in hand and a Res-Q-Me tool, the latter to break out the driver side window. The third officer, Investigator D of the New York State Police, was designated the hands-on officer, and his assignment was to secure Greenwood with physical force. Meanwhile, on the passenger side, first in line would be Investigator E of the New York State Police and, like Sgt. Bangs, he was to have in hand a firearm, again to use *if necessary*. The second officer on the passenger side was to be Investigator F, also of the Tompkins County Sheriff's Department and, like Investigator C, was to have a taser at the ready and a Res-Q-Me tool, which he would use to break out the front passenger window. All of these officers, with the exception of Investigator D, were to physically display their identities as police officers by wearing police jackets or vests with printed shields or letters identifying them as law enforcement officers. Some would also display their shields in plain view. Investigator D was to remain dressed in plain clothes so that, if Greenwood by chance exited his vehicle and entered either Pete's Grocery or Pete's Wine & Liquor store before the police were in position to block his vehicle, he could unobtrusively follow Greenwood and surveil him. (It should be noted that Pete's Grocery and Pete's Wine & Liquor occupy the same building but with separate adjacent entrances.)

The plan also called for Investigator A and Dryden Police Sgt. Fred Whitsett to secure the storefronts of Pete's Grocery and Pete's Wine & Liquor store. Sgt. Whitsett was also tasked with the responsibility of ensuring that no third persons were in the vehicle occupied by Shawn Greenwood. Meanwhile, Investigator B was to position his vehicle at the southerly entrance to the parking lot of Pete's Grocery to block Mr.

Greenwood, should the subject somehow get past the first blocking vehicle. The team members jointly rehearsed their roles several times until approximately 4:00 pm, when they learned that the sale was about to take place.

## **II. The Shooting**

Shortly after 4:00 pm, the detail members drove to the GreenStar Cooperative Market for staging purposes. They waited there while Investigator A and Sgt. Whitsett drove to the area of Pete's Grocery to confirm the presence of Mr. Greenwood. Meanwhile, two other Ithaca police officers, Investigators G and H, were then assigned to position themselves at the south end of the grassy area located between the parking spaces and the storefront of Pete's Wine & Liquor store in order to block Shawn Greenwood from leaving the area in that direction.

Once Greenwood's vehicle was observed and Sgt. Whitsett confirmed that he was alone, the detail went into action. First, Investigator I of the Ithaca Police Department entered Pete's parking lot from the southerly entrance and positioned her vehicle immediately behind, and perpendicular to, Greenwood's van. As she did so, she noticed that the backup lights on the rear of Greenwood's van were on. As planned, a minivan carrying five detail members pulled up next to the driver side of Investigator I's SUV. Five officers immediately exited that vehicle, proceeded around the SUV and positioned themselves on both sides of Shawn Greenwood's van.

By police accounts, after the officers surrounded Greenwood's van, broke out the front driver and passenger side windows, and visually and verbally identified themselves as police officers while ordering Greenwood to show his hands, the subject did not comply with such orders, but instead began moving his vehicle forward. Also, by police accounts, the police were able to immediately open the rear sliding door on the driver side of Greenwood's van, at which point Investigator D entered the compartment.

According to both Investigators C and F, when Mr. Greenwood failed to comply with police orders, but instead proceeded to move his car forward, they deployed their tasers at him. Undeterred by the tasers, Mr. Greenwood gunned the van forward over the parking curb. Meanwhile, Sgt. Fred Whitsett, wearing glasses, a green shirt and blue jeans, found himself standing in front of Greenwood's vehicle when suddenly it jumped forward, knocking him back and to the ground. Believing he was about to be run over, Sgt. Whitsett attempted to roll out of the way of the oncoming vehicle. Sgt. Whitsett believed he was about to be killed by Greenwood's vehicle.

It should be pointed out that Sgt. Bangs' tactical plan did not call for Sgt. Whitsett to be in front of the vehicle at this point in time. Instead, Sgt. Whitsett's responsibilities, as already stated, were to address the storefront of Pete's Wine & Liquor store and confirm whether or not Mr. Greenwood was alone in his vehicle. However, when Sgt.

Whitsett observed the other officers "struggling" with Shawn Greenwood, he went to the front of the van, attempting to assist the other members of the detail.

Meanwhile, as the five officers were surrounding Mr. Greenwood's vehicle, Investigators G and H positioned their vehicle exactly as planned, at the south end of the grassy area located in front of Pete's Wine & Liquor store. Once Investigator B observed Investigator I's SUV positioned behind Mr. Greenwood's van, and by then believing there was no need to block the entrance to Pete's, he instead positioned his vehicle adjacent to the car occupied by Investigators G and H.

According to the accounts of Investigators A, B, E and I, Sgt. Whitsett was standing in front of Mr. Greenwood's vehicle when, suddenly, the van lunged forward striking the Dryden officer, causing him to fly back and fall to the ground in front of Greenwood's moving vehicle. Although Investigator H did not recognize this person as Sgt. Whitsett, he did see a person positioned immediately in front of the Greenwood van as it moved forward. All of the aforementioned witnesses thought that Sgt. Whitsett (or in Investigator H's case, an unknown third person) was in imminent danger of death or serious physical injury as Shawn Greenwood's vehicle continued forward unabated. Such witnesses recall that only after Greenwood's vehicle struck Sgt. Whitsett did they hear popping sounds consistent with gunfire. As for Investigators D, C, F and G, they did not see Sgt. Whitsett in front of the vehicle, and thus did not know whether the Dryden officer was in danger. Their inability to see Sgt. Whitsett can either be attributed to their respective vantage positions or the fact that each had his attention focused elsewhere.

According to Sgt. Bangs, as Greenwood's vehicle moved forward, he too observed someone positioned to his left and in front of the Greenwood van. However, he did not know or learn until later that it was Sgt. Whitsett. Suddenly Greenwood's van jumped violently over the curb, striking and knocking that person to the ground in front of the still moving vehicle. Fearing that Shawn Greenwood was about to run over and kill or seriously hurt this individual, Sgt. Bangs fired at Greenwood in an attempt to stop him from doing so. As trained, Sgt. Bangs aimed at Greenwood's center mass when firing his gun.

According to police accounts, Greenwood's van then turned right and continued moving until suddenly coming to a stop. Some officers observed that the vehicle stopped upon striking a tree.

Meanwhile, after initially discharging his firearm two or three times and with no response from Greenwood, Sgt. Bangs chased after the vehicle. Catching up with the van, he then found himself near the driver's mirror and between the van and the brick wall of Pete's Wine & Liquor store. At this point, Greenwood's vehicle was positioned at an angle headed toward such wall and West Seneca Street, and the left front of his van was approximately three-and-a-half feet away from the wall.

Sgt. Bangs continued yelling "Police!" and ordering Greenwood to show his hands. When Greenwood again failed to do so, but instead revved his engine, Bangs, fearful now for his own life, fired at the chest area of Shawn Greenwood in an attempt to stop the driver from moving forward and pinning him against the wall. Sgt. Bangs believes he fired one or two times from this position.

Although it is now clear that the van's right front wheel broke off when it struck a tree in front of Pete's Wine & Liquor store, Sgt. Bangs, from his vantage point on the driver side, could not see the broken wheel and thus did not know why the van had stopped. Unaware of the damage to the wheel, when Sgt. Bangs heard the engine revving, he thought the van was about to move forward or rotate into him, and either way, violently crush him against the brick wall. To Sgt. Bangs it was clear that Shawn Greenwood had already struck a person with the front of his van and demonstrated his willingness to attempt to escape the police at any cost.

### **III. Civilian Witnesses**

Civilian Witness A advised that she was in front of Pete's Grocery when she heard shouting coming from the area in front of Pete's Wine & Liquor store. When she looked in that direction, she saw a van suddenly come up over the curb and strike a man standing in front of the van, after which she heard a "pop-pop" sound. Witness A turned away because she thought the man struck by the car was about to be run over.

Witness B, upon parking his vehicle in front of Pete's Grocery, began walking to the front door of the store when he observed what he thought were police officers surrounding a green van, yelling at the driver to stop. The vehicle first appeared to back up and then move forward. He heard approximately three gunshots and thought that the operator was trying to get away at all costs.

Witness C said that she was in Pete's Wine & Liquor when she observed someone in a red, white and grey plaid flannel shirt talking to the driver of a green van. She observed a second person dressed in black run up to the green van. Thinking there was going to be a fight in the parking lot, she ran out of the liquor store until she was standing approximately twelve feet from the man dressed in the plaid shirt. She further described the man in the plaid shirt as having long blond hair, perhaps in a pony tail. She observed him in a stance with his gun drawn. When the van suddenly bucked over the curb, this witness thought that the driver was making a break for Seneca Street. She heard two popping sounds and saw what she thought were two blue wires. She believes that by the time the back of the van was even with her, gunshots had already rung out twice.

Witness D, upon exiting Pete's Wine & Liquor store observed a police officer quickly approaching a van. This witness describes the officer as wearing a black vest over a blue shirt, and saw the officer break out the driver side window with what

appeared to be a gun. When the officer instructed the driver to put his hands up, the van began moving forward over the parking curb, headed in the direction of this witness. The witness retreated two or three steps. Then, as the vehicle approached, it suddenly turned to its right, at which point this witness saw a person diving out of the way of the van and landing off to the side. He described the individual diving away as wearing a green shirt and glasses. Witness D also observed a police officer then fire a shot toward the back of the van. He described the individual shooting as wearing the same color clothing as the person who had broken out the driver side window. Witness D said that the van continued moving until it struck a tree. He then observed an officer positioned between the front driver side of the vehicle and the wall of Pete's Wine & Liquor store, firing four to five shots toward the driver side of the van.

Witness E was south of the scene across West Seneca and West State Streets, when he heard loud voices coming from across the street. Witness E first observed what he thought was a car accident, but as he continued watching, he instead observed a green van moving southward toward Pete's building at a slow pace, and toward a silver or grey-colored sedan facing north in the grass, but adjacent to, the west side of the building. He believes he heard five gunshots.

Witness F, who was also positioned south of the scene across West Seneca and West State Streets, heard people yelling "Stop!" He then heard what he believed were three gunshots, and also observed people in black vests. When he first observed the vehicle, it was moving in the dirt and on the sidewalk next to Pete's Grocery. He thought the vehicle was attempting to get to the street. He further recalls that there were police officers with vests identifying them as such and that they were repeatedly yelling to the driver to stop.

Witness G said that he parked his vehicle on the West Buffalo Street side of Pete's Grocery and began walking south toward the grocery store entrance. When approximately five feet from the entrance, this witness heard a male voice yelling, "Show me your hands! Show me your hands!" The witness looked in the direction of the voice and observed what he thought was a police officer on the passenger side of a white car wearing a blue vest displaying a police badge, holding a pistol with both hands. As the officer continued yelling, he pointed the pistol at the operator through the passenger side of the vehicle. Witness G then started to enter the grocery store, but while doing so, looked back in the direction of the officer and heard two gunshots.

#### **IV. The Collection and Examination of Real Evidence**

##### **A. Scene Evidence**

Under the direction of Investigator Rodney Westbrook, Troop C's FIU began processing evidence the night of February 23, 2010. In that regard, they processed the area of Pete's Grocery with notes, diagrams and photographs.

The scene was also forensically mapped with the use of a total work station, a device similar in appearance to a surveyor's instrument, and which took measurements of numerous items and areas of evidence at the scene.

FIU recovered various items including three shell casings and taser components. All three casings were Federal .40 Smith & Wesson caliber. One casing was found on the sidewalk area located just in front of where Greenwood's vehicle was initially parked. A second casing was found on a sidewalk that extends along the southwest face of the building occupied by Pete's Wine & Liquor store and was between the brick wall and where Greenwood's vehicle came to rest. A third casing was found on top of Greenwood's van in the area of the rear driver side.

Taser components included a single probe, presumably fired by Investigator C and found in the edge of the driver door. The second probe from Investigator C's taser was never recovered. Extending out of Shawn Greenwood's passenger side window were strands of taser wire presumably produced when Investigator F fired his taser from that side of the vehicle.

FIU also recovered a single intact projectile from Shawn Greenwood's van. The projectile was found behind the driver seat in the area where a center van bench seat would normally be located. Greenwood's vehicle was then secured and towed to SP Ithaca, where it was locked in a garage for further processing.

Prior to the transporting of Mr. Greenwood to Cayuga Medical Center, Emergency Medical Services personnel removed certain clothing items of the subject, which in turn were secured by the New York State Police. These items were later documented at Troop C's FIU in Sidney, New York. FIU technicians also responded to Cayuga Medical Center in Ithaca to secure additional clothing items of Mr. Greenwood. Greenwood's body was then transported that night to Lourdes Hospital in Binghamton, New York, for an autopsy.

FIU took photographs of both Sgt. Fred Whitsett and Sgt. Bryan Bangs. FIU also collected a Glock 27, a gun magazine with five live Federal .40 Smith & Wesson caliber rounds, and an additional loose Federal .40 Smith & Wesson caliber round, all from Sgt. Bangs.

## B. Autopsy

James Terzian, M.D., a forensic pathologist, performed an autopsy of Shawn Greenwood at Lourdes Hospital in Binghamton, New York, on February 24, 2010. Dr. Terzian's examination revealed three gunshot wounds sustained by the decedent, one of which was fatal as it passed through Greenwood's left chest, including his lung and heart. This fatal gunshot wound entered the left lateral chest area and traveled in a horizontal path, left to right and back to front. A second gunshot wound found by Dr. Terzian entered the right upper back of Shawn Greenwood, again with the path being left to right, back to front, and nearly horizontal. This gunshot wound fractured the right

fifth rib and produced abrasion and contusion of the posterior aspect of the decedent's right lung. Dr. Terzian surgically removed two gunshot projectiles from these two wounds. A third gunshot wound entered the left mid-abdomen of the decedent and traveled in an upward angle toward the decedent's right side. However, it never penetrated the peritoneum but instead exited from the epigastric region, slightly to the right of the decedent's midline. Dr. Terzian did not recover any projectile in connection with this third wound.

According to Dr. Terzian, only the gunshot wound piercing decedent's heart was fatal, as he believes the other gunshot wounds would not necessarily have eventuated in death.

### C. Evidence Obtained from Greenwood's Van and Clothing

Later on February 24, FIU began processing Greenwood's vehicle which had been secured at SP Ithaca. Recovered from the driver floor area was a large knotted plastic sandwich bag containing a white substance. A second smaller plastic sandwich bag containing a white substance was recovered from the floor area between the driver and passenger seats.

FIU also discovered evidence of a projectile having struck the driver seat on the door side of the seat. The projectile's path was at a downward angle, and it struck the interior metal frame of the driver seat and then exited out the side of the seat. The projectile ricocheted through the driver door panel, and thus FIU recovered it from the interior of the driver door.

FIU processed Mr. Greenwood's personal effects from the clothing recovered by EMS and at Cayuga Medical Center. Recovered from inside Mr. Greenwood's front pants' pockets was currency totaling \$734.37. The monetary denominations were primarily in twenty-dollar bills. The FIU also found two taser probes in the jacket worn by Shawn Greenwood at the time of the shooting. One taser probe was found in the right chest area of his jacket, while the other probe was found in the jacket's right sleeve.

### D. Laboratory Findings

The recovered shell casings and projectiles were examined and compared to Sgt. Bangs' Glock 27 pistol by the New York State Police Forensic Identification Center in Albany, New York. Forensic examination revealed that the three expended shell casings were all discharged from Sgt. Bangs' pistol. Meanwhile, all of the projectiles recovered were found to be .40 Smith & Wesson caliber rounds.

Forensic examination of the projectile found inside the driver door, and the one recovered from Mr. Greenwood's body which had pierced his heart, revealed conclusively that both were fired from Sgt. Bangs' pistol. Although the remaining

projectiles were found to be consistent with having been fired from Sgt. Bangs' pistol, they lacked sufficient individual characteristics necessary for positive identification.

Upon opening and examining the large knotted plastic sandwich bag found on the driver front floor mat area of Greenwood's van, the State Police Crime Lab found an additional three plastic bags inside, all containing a chunky white substance. Chemical analysis by the lab confirmed that all three bags contained cocaine and were of an aggregate weight slightly over 55 grams, or just under two ounces. (According to CNET, the street retail value of such cocaine ranges from \$3,000 to \$11,000, depending on how a dealer distributes his product. Presently in Ithaca, a half gram of cocaine sells for \$100.)

The remaining smaller plastic bag containing a white substance and found on the floor between the driver and front passenger seats was not analyzed by the lab.

At my request, CRT Less Lethal, Inc., of Snohomish, Washington conducted a forensic analysis of the three taser probes recovered in this case. The microscopic examination of the probes revealed no evidence of a completed circuit which would be required for taser effect. Therefore, the reasonable conclusion to be drawn is that Mr. Greenwood was not affected by the tasers.

#### E. Surveillance Video

On February 24, 2010 the New York State Police also secured from Pete's Grocery/Liquor store a DVR system that captured surveillance video footage of the incident. The DVR system was examined by Mr. James Kennedy, the manager of Forensic Video Services for the State Police Forensic Center in Albany, New York. Mr. Kennedy enhanced the surveillance footage as much as possible. However, the surveillance video is limited inasmuch as this particular video camera only shoots one frame a second rather than the thirty frames per second needed for a smooth streaming image. The surveillance camera in question is mounted above the gas pumps of Pete's Grocery, as its purpose is to film thefts of gas from the service station. Thus, the events of February 23<sup>rd</sup> are seen in the background of the video and then off to the left edge of the screen.

Although limited, the surveillance film does have some value. First, it corroborates the police officers' version of events leading up to their surrounding of Mr. Greenwood's van. In that regard, the video depicts an SUV pulling into the parking lot and positioning itself directly behind Mr. Greenwood's van while his backup lights come on. A minivan is seen entering the parking lot and stopping right next to the SUV. Police officers exit from the minivan and immediately surround Shawn Greenwood's vehicle. The film then shows the van slowly inching forward before suddenly jumping over the parking curb. It is difficult to discern what exactly transpires once Mr. Greenwood's vehicle suddenly moves forward inasmuch as the events are now taking place to the far left of the camera's attention and are distorted. However, what the surveillance video does reveal is that there was a very short window of time within

which Sgt. Bangs had to react. From the moment the vehicle abruptly moves forward over the parking curb until the shooting appears to be over, only seven seconds elapse.

## **V. The Law**

Under Article 35 of New York's Penal Law, the law permits a police officer in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom the officer reasonably believes to have committed an offense, to use physical force when and to the extent he reasonably believes such force to be necessary to effect the arrest or prevent the escape from custody. Deadly physical force may be used for such purposes when the officer reasonably believes that the offense committed by such person was a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person. Deadly physical force is defined under the law as physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

A police officer may also use deadly physical force when making an arrest or preventing an escape when it is necessary to defend the police officer or a third person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

The focus under both situations is what is reasonable. A determination of reasonableness is based on what the average reasonable person would believe and do under the same circumstances.

Additionally, in determining whether Sgt. Bangs "reasonably believed" that the use of deadly physical force was necessary, one may consider whether Sgt. Bangs was aware of Shawn Greenwood's background and reputation and, if so, to what extent, if any, that knowledge contributed to a reasonable belief that the deadly physical force Sgt. Bangs used was necessary to defend himself or a third person from what he reasonably believed was the use or imminent use of such force by Shawn Greenwood.

The use or imminent use of unlawful deadly physical force is not limited to situations where someone is firing a weapon or wielding a knife. For example, a baseball bat may have innocent uses, but if one picks it up and starts swinging at another, we readily understand that its use under such circumstances can reasonably be viewed as the imminent use of deadly physical force. In New York, a dangerous instrument is defined as any instrument, *including a vehicle*, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury.

In this case, the investigation into Shawn Greenwood's death had to determine whether or not Sgt. Bryan Bangs was justified under the circumstances presented to

him. Such determination cannot be based on hindsight, which is 20/20. Hindsight allows calm reflection *after* the fact. Here, the inquiry had to focus on whether the use of deadly physical force was or was not reasonable under the facts and circumstances reasonably believed to exist at the time.

Justification is an exculpatory defense recognized by law. Therefore, if believed, it is a complete defense and results in a finding of no criminal liability.

## **VI. Conclusion**

Early on in this investigation, I decided to present the evidence in this case to a Grand Jury. In the opinion of many prosecutors, when the actions of a police officer have caused a death, generally it is a Grand Jury comprised of citizens from the community who must review the evidence and determine whether the officer's conduct should result in criminal charges. Here, a Grand Jury was necessary to address and consider the accounts of the various witnesses to the incident and to determine the reasonableness of Sgt. Bryan Bangs' actions.

Although the Grand Jury has concluded its investigation and returned a No True Bill against Sgt. Bangs, some people may still question certain aspects of the police operation. For example, some may question why the police would attempt to arrest Shawn Greenwood under these circumstances rather than under different conditions, such as when he might be visiting his parole officer. Another question may be why would the police attempt to serve a search warrant in a public area such as the parking lot of Pete's Grocery. As to those questions, I offer the following observations.

In Tompkins County, because the general policy of the District Attorney is not to prosecute cases based solely on confidential informant buys, the police officers investigating drug cases try to apprehend the offender while he or she is possessing the drugs. Thus, the police may organize a buy-bust operation, where they will attempt to make a controlled purchase and then arrest the dealer once the sale is made. Another method of apprehending the drug dealer in possession of controlled substances is the one used in this case, which is through the use of a search warrant. Thus, after obtaining a search warrant based on probable cause, the police will attempt service of the warrant when they believe the dealer actually possesses the drugs.

My reason for mentioning this policy of the Tompkins County District Attorney's Office is not intended as a criticism, nor should it be perceived as such; rather, my reason is to provide a factual explanation for the course of action taken by the police in this case.

As for serving the warrant in a public place, such as the parking lot of Pete's Grocery and Pete's Wine & Liquor store, history and experience demonstrate that it is the drug dealer who largely dictates where sales take place. In that regard, a dealer

likes to blend into the area where he is selling drugs and, therefore, may choose a location where other people are present. A dealer may select a place because he believes it is not routinely patrolled by the police. He may also return to an area where he has successfully sold drugs in the past. Shawn Greenwood previously sold cocaine in the parking lot of Pete's Grocery, and obviously felt comfortable doing so. Had the police, in making a controlled buy, suggested a different location for the sale, Shawn Greenwood may have become suspicious and called off the deal.

After Greenwood selected the parking lot at Pete's Grocery for the sale on February 23, the warrant detail members took into consideration the public's safety as they made and rehearsed their tactical plan for executing the warrant. Although they prepared for various scenarios, unfortunately, the refusal of Shawn Greenwood to comply with police orders ultimately changed the dynamics and placed others, including police and himself, at risk. The detail members, including Sgt. Bangs, then reacted to the circumstances presented to them. Ultimately the seizure and arrest of those trafficking in controlled substances is fraught with dangers and uncertainties.

In closing, I wish to quote from the former and esteemed Manhattan District Attorney Robert M. Morgenthau, who made the following statement when investigating a death caused by a police shooting during a buy-bust operation in his county:

"Some people may be disappointed that this investigation has not resulted in an indictment. I understand that. But I would ask those people and the public in general, to bear in mind that the responsibility of the Grand Jury is to determine the facts, to apply the law to those facts, and to decide whether anyone is chargeable under the law with the commission of a crime. The Grand Jury is not a forum for the expression of political views or the resolution of policy disputes. To allow it to be used for those purposes would simply layer an injustice upon a tragedy."

  
WEEDEN A. WETMORE