



INVESTIGATION INTO THE DEATHS OF  
ANTHONY DIGERONIMO AND  
OFFICER GEOFFREY BREITKOPF

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## I. INTRODUCTION

After an exhaustive investigation into the undeniably tragic events that, on March 12, 2011, led to the deaths of Anthony DiGeronimo and Police Officer Geoffrey Breikopf, the Nassau County District Attorney's Office has concluded that no potential criminal charges will be presented to a grand jury. This report summarizes highlights of that investigation (which included interviews with police and civilian witnesses, a review of 911 calls and police radio communications, and a detailed review of forensic and ballistic evidence) and explains the legal reasons behind the decision not to present the evidence to a grand jury. This investigation was ordered by District Attorney Kathleen M. Rice and was conducted by members of her staff, including attorneys from the Major Offense Bureau, with assistance from the Nassau County Police Department's ("NCPD's") Homicide Squad.

In the evening hours of March 12, 2011, at approximately 8:10 p.m., a 911 call alerted the NCPD to a knife-wielding man (later identified as Anthony DiGeronimo<sup>1</sup>) who was scratching cars and frightening civilians. Police Officer Paul Lewis responded to the call and observed DiGeronimo clad in an unusual mask and accouterments,<sup>2</sup> carrying two large knives in his hands. After a chase, Lewis and other officers pursued DiGeronimo into his house to prevent additional violent behavior and to arrest him. Once inside the house, DiGeronimo barricaded himself in his bedroom. DiGeronimo's parents attempted to convince him to disarm and cooperate with the police. DiGeronimo, however, exited his bedroom still armed with knives. He quickly marched towards police officers, ignored commands to drop his weapons, and showed no signs of stopping or surrendering. Two police officers then fired their weapons at DiGeronimo. DiGeronimo was pronounced dead at the scene.

Following the DiGeronimo shooting, many police officers were present outside the house. These officers, who were aware that shots had been fired, were responsible for

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<sup>1</sup> Throughout this report, we will refer to Anthony DiGeronimo and members of his family with the same last name. For clarity, we will refer to Anthony DiGeronimo as simply "DiGeronimo." DiGeronimo was twenty-one years old at the time of his death.

<sup>2</sup> DiGeronimo's clothing included three large and thick black leather belts that were decorated with white shiny metal studs, thick black knife holders inserted on the right and left sides of one of the belts, a five-foot metallic chain attached to one of the belts, a three-foot metallic chain attached to a leather loop that was around the right wrist, a black sleeveless fabric t-shirt, a black t-shirt under the sleeveless shirt, dark grey cargo pants with a metallic chain through the loops of the waist, and a pair of white and red sneakers.

controlling the civilian crowd, which created a highly charged environment. Police Officer Geoffrey Breitkopf, in plainclothes and carrying an M-4 assault rifle on his shoulder, was among them. An MTA Police Officer, Jose Ramos, who did not realize that the plainclothes Breitkopf was a police officer, tried to physically stop Breitkopf from proceeding into the DiGeronimo house. MTA Officer Glen Gentile, who also did not know that Breitkopf was a police officer, observed a physical confrontation between Breitkopf and Officer Ramos, Gentile's partner. When Officer Gentile saw Breitkopf's rifle pointed in the direction of civilians and other officers during this confrontation, Gentile perceived a threat and fired one shot, striking Breitkopf in the torso. Breitkopf was pronounced dead at the hospital shortly thereafter. Less than ten minutes elapsed between the first police contact with DiGeronimo and Officer Breitkopf's shooting.

## **II. BACKGROUND AND EVENTS LEADING UP TO THE INCIDENTS**

The Nassau County District Attorney's Office interviewed Joanne DiGeronimo and David DiGeronimo, Anthony DiGeronimo's parents. According to David DiGeronimo, his son graduated from Massapequa High School and, although unemployed on the date of occurrence, had previously worked at family owned businesses and planned to join the United States Air Force. He described his son as having an intense interest in computer video games and said that his son would attend gaming events dressed in gaming-themed outfits which sometimes included weapons. He added that his son also collected knives and related paraphernalia. Joanne DiGeronimo said that her son had no history of psychiatric issues and was not on any medications. She described her son as interested in poetry, music, comic books, drawings, and collecting weapons.

David DiGeronimo recalled that at approximately 11:00 a.m. on March 12, 2011, he was in the kitchen at the family home when DiGeronimo entered wearing a gaming costume. DiGeronimo spit in the sink. This act started an argument between him and his father. David DiGeronimo asked DiGeronimo to leave the house temporarily. David DiGeronimo said that when DiGeronimo left the residence, he was still in costume and had at least one knife on him. Joanne DiGeronimo saw DiGeronimo leave the house at approximately 12:00 p.m. or 1:00 p.m. She recalled that DiGeronimo was wearing a

mask and sweatshirt, but did not know if he had a knife with him. David and Joanne DiGeronimo did not see DiGeronimo again until he returned that evening, shortly after 8:15 p.m., as described in the following section.

### **III. SUMMARY OF THE INCIDENTS**

#### **A. The Shooting of Anthony DiGeronimo**

The Nassau County District Attorney's Office reviewed 911 calls related to the incidents of March 12, 2011. On that day, at approximately 8:10 p.m., a woman, identifying herself as Terray, called 911 and said that she was a patron of Johnny McGrory's Bar on Front Street in Massapequa Park.<sup>3</sup> In the 911 recording, Terray reported seeing a white man, dressed in black clothing, walking around "with a bunch of knives hanging off of him." She reported that this man was headed east and that he was "scratching cars." Approximately three minutes later, Terray made a second 911 call and, in a frantic tone, provided an update on the man's location. Terray said that she called because she did not "know what this guy's gonna' do." Police Officer Paul Lewis<sup>4</sup> of the NCPD's 7<sup>th</sup> Precinct was dispatched to Front Street in response to these 911 calls.

At approximately 8:14 p.m., prior to Officer Lewis' arrival at the scene, a 71-year-old woman, who will be identified herein simply by her first initial, T,<sup>5</sup> was pulling her car out of a driveway in very close proximity to Johnny McGrory's Bar. As she did so, she was confronted by a knife-wielding man, later determined to be DiGeronimo. In a recorded 911 call, T reported that the man repeatedly hit her car window and put a knife to the window. T added that he "scared the living shit out of me. I'm shaking. He has a knife in his hand, and he's walking down the street." T stayed on the phone for approximately two minutes until she observed the arrival of Officer Paul Lewis.<sup>6</sup>

Officer Lewis arrived at the intersection of Front Street and Fourth Avenue at approximately 8:15 p.m. He saw T's car and was approached by her. T told him that

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<sup>3</sup> This 911 caller was interviewed by the Police Department's Homicide Squad.

<sup>4</sup> Officer Lewis was interviewed by the Nassau County District Attorney's Office.

<sup>5</sup> T was interviewed by the Nassau County District Attorney's Office.

<sup>6</sup> Although at the time T did not know Paul Lewis' name, for clarity, it is used here.

DiGeronimo<sup>7</sup> was wearing a mask, carrying a knife, and walking up Fourth Avenue. Driving a short distance, Lewis saw DiGeronimo, masked, with two large knives<sup>8</sup> in his hands and additional knives hanging from his person. According to Officer Lewis, he got out of his vehicle and repeatedly ordered DiGeronimo to drop his weapons, but DiGeronimo did not comply. Officer Lewis used his hand-held radio to request a clear channel and to make a broadcast indicating that he had a serious situation. Officer Lewis then drew his weapon and pointed it at DiGeronimo. Officer Lewis said that once he drew his weapon, DiGeronimo, while clutching his knife, with the knife's blade pointing upward, charged at him. DiGeronimo then stopped suddenly, turned, and walked up Fourth Avenue. Officer Lewis followed DiGeronimo on foot and repeatedly instructed DiGeronimo to drop his weapons. Again, DiGeronimo did not comply and did not stop.

As these events were unfolding, Officer Lewis noticed an older white man approach and, according to Officer Lewis, “bark” orders at DiGeronimo. This man was retired New York City Police Department Sergeant John Cafarella.<sup>9</sup> Cafarella was driving with his wife on Front Street in Massapequa when he saw Officer Lewis<sup>10</sup> drive quickly to the intersection of Front Street and Fourth Avenue, stop, and exit his marked police vehicle. Cafarella observed that Officer Lewis was responding to a man holding a knife. Cafarella recalled getting out of his car and telling DiGeronimo<sup>11</sup> to listen to the police. According to Officer Lewis, he heard Cafarella<sup>12</sup> say about three sentences, but he could only specifically recall the words “Why don't you drop the knives.” Officer Lewis had no other recollection of Cafarella's actions that night.

Officer Lewis said that DiGeronimo did not stop or respond, but, while still masked and with a knife in his hand, entered a single-family home located on Fourth Avenue. According to Officer Lewis, the door of the house was open and an older man at the doorway put his arm around DiGeronimo's shoulders as DiGeronimo went through the door. Officer Lewis later learned that this was DiGeronimo's house and that the man

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<sup>7</sup> While the incident was unfolding, T did not know that the knife-wielding man was named Anthony DiGeronimo.

<sup>8</sup> It is unclear if, during his time on the street, DiGeronimo sheathed or unsheathed one of his knives.

<sup>9</sup> Cafarella was interviewed by the Nassau County District Attorney's Office.

<sup>10</sup> Cafarella did not know the officer's name but, for the sake of clarity, it is used here.

<sup>11</sup> At the time, Cafarella did not know the knife-wielding man's name.

<sup>12</sup> Officer Lewis did not know John Cafarella's identity.

was DiGeronimo's father. Officer Lewis recalled that, as he approached the house, DiGeronimo's father said, "He's okay, he's not a problem. He has emotional issues."

DiGeronimo's mother, Joanne, was also present when DiGeronimo arrived home. She saw him walk down the hallway toward the back of the house and enter his bedroom. She followed DiGeronimo to his room and asked him if he was okay. She saw two knives in sheaths on DiGeronimo's chest. She tried, unsuccessfully, to take the knives out of the sheaths. DiGeronimo's mother left DiGeronimo alone in the bedroom because she needed to control her barking dogs.

Officer Lewis recalled entering the house and seeing a woman restraining two dogs. DiGeronimo's mother let one dog out of the house through the side door. She said that several police officers outside her house told her that her son had to come out. She recalled that she replied, "You're not coming in here, I have another dog." According to DiGeronimo's mother, her husband said that he would get DiGeronimo out of the room. She let the second dog out before additional officers entered the house.

Officer Richard McDonald, of the NCPD's 7<sup>th</sup> Precinct, arrived at the scene and observed Officer Lewis standing on the front lawn of the house. According to McDonald, Officer Lewis informed him that a male had confronted him with a knife. Through the glass of the front doorway of the DiGeronimo home, Officer McDonald could see a male with knives hanging off his person. Officer McDonald's recollection is that he was the first officer to enter the house, with Officer Lewis right behind him. As he was entering, Officer McDonald heard an older man tell him, "He's not going to hurt anyone, let me talk to him."

According to DiGeronimo's father, while DiGeronimo's mother was controlling the dogs, he went to DiGeronimo's bedroom and told DiGeronimo to compose himself and come out of the room. After he left the bedroom, DiGeronimo's father saw several police officers enter the house with their firearms drawn; he asked them not to hurt his son.

According to Officer Lewis, DiGeronimo's father exited the left rear bedroom in a "hurried" and "desperate" manner. Lewis noted that the father's shirt was pulled up and revealed his bare stomach. Based on these observations, Officer Lewis believed that DiGeronimo's father had possibly been stabbed or otherwise injured while in the

bedroom with DiGeronimo. Officer Lewis recalled that DiGeronimo then opened the bedroom door and displayed a large knife, but remained in the bedroom.

There were seven officers, all from the 7th Precinct, now present in the house: Stephen Parry, Shawn Warta, Richard McDonald, Paul Lewis, Keith Jaklitsch, Michael Tedesco, and Vincent Neglia. Officers remained at the opposite end of the hallway from the bedroom or in the immediately adjacent kitchen. Some of them drew their weapons, and shouted for DiGeronimo to drop his knives and not come out of the room. By the account of all the police officers, DiGeronimo did not comply.

Various officers, including specifically the two officers (Lewis and McDonald) who ultimately fired upon DiGeronimo, recall DiGeronimo opening and closing the bedroom door repeatedly. When DiGeronimo would open the door, the officers could see that DiGeronimo still had knives that were hanging on his sides, and he was wearing a face mask. One officer, Parry, described it as a gas mask.

DiGeronimo then abruptly emerged from the room and marched aggressively toward the police, with his arms raised to his head while clutching a knife with the tip pointing upward. According to Officers Lewis, McDonald, Neglia, Jaklitsch, and Parry, DiGeronimo showed no signs of surrendering, despite their ordering him (again) to drop the knife and to “get on the ground.” (Officer Warta had his back to the hallway as he was escorting DiGeronimo’s parents into the kitchen, but he heard several officers shout, several times, to drop the knife. Officer Tedesco was half in the kitchen and half in the hallway, and did not have a good or consistent view of the hallway. Immediately before the shooting, he heard “fast” footsteps and commands to put the knife down.) As DiGeronimo came towards Officers Lewis and McDonald, they each fired several shots. DiGeronimo fell to the floor. Lewis, Neglia, McDonald, and Warta recalled DiGeronimo struggling momentarily and unsuccessfully to get up again. Officer Tedesco recalled seeing a knife with a twelve-inch blade in the prostrate DiGeronimo’s hand.<sup>13</sup> Officer McDonald approached DiGeronimo and removed the knives from his person, including the knife he had to “pry” out of DiGeronimo’s hand. Officer Warta characterized it as a “Rambo” style knife. Officer McDonald checked DiGeronimo for a pulse but did not

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<sup>13</sup> Among the knives inventoried, and photographed, by the Police was a knife positioned next to a ruler. The knife (including its handle) appears to be approximately 16 inches long.



recall detecting one. Nonetheless, he and Sergeant O'Brien of the 7<sup>th</sup> Precinct handcuffed DiGeronimo. Officer Tedesco recalled DiGeronimo moving slightly at the time the handcuffs were being placed on him. At 8:32 p.m., EMT McCauley pronounced DiGeronimo dead at the scene.

Both Officer Lewis and Officer McDonald stated that Officer McDonald was the first to fire at DiGeronimo, and all their shots were fired in rapid succession. Based on an examination of their firearms, Officer Lewis fired four shots and Officer McDonald fired three shots. A comparison and examination of the bullets subsequently removed from DiGeronimo during the autopsy revealed that bullets fired by both officers struck DiGeronimo.

DiGeronimo's father and mother were present during the shooting. After the shots, Officer Jaklitsch escorted David out of the house almost immediately, and Joanne exited by herself within about a minute. Banging on a side door, she tried to reenter the house; she said she wanted to speak with her other son, but she was prevented from doing so. According to DiGeronimo's mother, she saw DiGeronimo exit the bedroom but could not recall if he was wearing a mask or holding any knives. DiGeronimo's father recalled that about thirty seconds after he left his son's room, DiGeronimo exited the bedroom. David DiGeronimo did not know if his son then had a knife. DiGeronimo's father said that he heard police officers repeatedly shouting "get on the ground" before firing their weapons. He neither observed DiGeronimo drop anything nor saw DiGeronimo stop walking toward the officers before the officers fired their weapons. Officer Neglia recalled that later in the day of the shooting, while he was staying with DiGeronimo's parents at a neighbor's home, DiGeronimo's mother confided to him that she thought her son had indicated to her earlier in the day that he was going to kill himself. She explained to Neglia that DiGeronimo's uncle had died approximately one year earlier, and before leaving the house DiGeronimo had told her, "Mom, I got your brother right here." She also said she could not recall the last time DiGeronimo had left the house.

## **B. The Shooting of Officer Geoffrey Breitkopf**

By the time DiGeronimo had been shot, numerous uniformed police officers from the NCPD Seventh Precinct, and also members of the MTA Police Department, had

gathered on the front lawn of the DiGeronimo house, with additional officers continuing to arrive.<sup>14</sup> They attended to DiGeronimo's parents or prevented civilians from approaching closer to the house. T, the second 911 caller, acknowledged that she was present at the scene because she had followed DiGeronimo to his house as Officer Lewis began pursuing him. When Officer Lewis followed DiGeronimo into the house, she waited outside and eventually heard gunfire, but she could not see what happened inside the house. After that gunfire, T said that a man in a red jacket approached her, told her to "get the fuck out of here, lady," and kicked her car door.<sup>15</sup>

Meanwhile, MTA Police Officers Glen Gentile and Jose Ramos, heard the police broadcast that shots were fired and they responded to the scene to assist. When they arrived, Officers Gentile and Ramos briefly entered the DiGeronimo house, but exited the house when they determined that the situation inside the house was secure. Officers Gentile and Ramos remained outside the house and assisted with controlling the crowd and securing the area.

T's 43-year-old son, identified here simply by his first initial, S, was also one of the civilians present at the scene.<sup>16</sup> S said that he received a call from his mother, indicating that someone had pulled a knife on her. S quickly arrived at the location that his mother described to him over the phone. There, he saw five to ten police officers and his mother near her car on Fourth Street. Two police officers prevented him from getting to his mother. He said that one police officer was holding a baton, and the other officer was holding a can of pepper spray. (Officer Gentile recalled S pushing an officer.) S saw a man screaming at his mother to get back in her car and "get the fuck out of here." By this time, the crowd had become tumultuous and the scene was chaotic. More and more civilians were arriving and officers were shouting commands to protect the integrity of the scene. S said that there were many people at the scene, and he heard someone shout at the crowd to clear the area. He left at that point. As S walked westbound, he

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<sup>14</sup> The officers who were inside of the DiGeronimo house during the time of the shooting were NCPD officers Stephen Parry, Shawn Warta, Richard McDonald, Paul Lewis, Keith Jaklitsch, Michael Tedesco, and Vincent Neglia. Among the officers who responded to the scene after the officers listed above were MTA officers Jose Ramos and Glen Gentile, and NCPD officers James McNally, Christian Schuh, Michael Beard, Robert Kiesel, Thomas Lively, and Raymond Maggi.

<sup>15</sup> Based on interviews with T and retired Sgt. John Cafarella, it is highly probable that Cafarella (who was wearing a red garment that night) was the man who kicked T's car and told her to leave.

<sup>16</sup> S was interviewed by the District Attorney's Office.

heard a single gunshot.<sup>17</sup> At that time, he did not have a view of, or attempt to return to, the scene.

Police Officer Hector Rentas recalled that he and Officer Geoffrey Breitkopf, both of the NCPD Bureau of Special Operations (“BSO”),<sup>18</sup> responded to the scene because they heard police broadcasts requesting immediate assistance. As they proceeded to the scene, Officer Rentas heard a radio transmission for a possible barricade situation, another for a male with a knife, another for shots fired, and another requesting an ambulance. Following those broadcasts, Officer Rentas heard a radio transmission to “slow down,” indicating that there was no longer an imminent emergency and responding officers should slow their response time. Officer Rentas and Officer Breitkopf arrived at the scene after the shooting, in plainclothes, and in an unmarked car. According to Officer Rentas, Officer Breitkopf exited the unmarked vehicle, went to the trunk to retrieve a department-issued M-4 rifle, and was the first of the two to approach the DiGeronimo residence. This investigation revealed that no one witnessed Officer Breitkopf identify himself as a police officer and no one recalled seeing his shield displayed. Officer Rentas, however, recalled placing his own police shield outside his clothing before exiting the unmarked vehicle. Rentas was uncertain if Officer Breitkopf did the same.

Retired Sergeant Cafarella was still outside the house after the shooting of DiGeronimo. He observed a man in civilian clothes, later identified as Officer Breitkopf, carrying an assault rifle with a magazine and shoulder strap. Cafarella said that he could not recall clearly, but he probably said the word “gun.” Moments before the shooting, another officer, Jaklitsch, heard someone say something about a gun.

MTA Officers Ramos and Gentile stated that they did not know Officer Breitkopf and did not know that he was a police officer. Gentile remembers, before he saw anything suspicious, that there was a lot of yelling. Officer Gentile also recalls NCPD officers looking at something behind him with startled expressions on their faces. Officer Gentile stated that he then saw a man, whom he thought was a civilian, with a shaved

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<sup>17</sup> This single shot was the shooting of Officer Breitkopf, described below.

<sup>18</sup> The BSO is a plainclothes unit of the NCPD that responds to hostage situations and patrols in high-crime areas of Nassau County. P.O. Geoffrey Breitkopf was a member of the NCPD for fourteen years and assigned to the BSO for eight years.

head and wearing a black “hoodie,” pass by him. Officer Ramos acknowledges that as Breitkopf walked by him, Ramos grabbed Breitkopf’s shoulder with his left hand, and Breitkopf’s gun with his right hand. Officer Ramos recalls that two NCPD uniformed officers were also present and attempted to physically stop Breitkopf. Gentile then observed the supposed civilian (actually Officer Breitkopf) yank his shoulder away from Officer Ramos’ grasp. At that moment, Gentile saw what he correctly perceived to be an M-4 assault rifle in the supposed civilian’s hands. Officer Gentile saw the purported civilian begin to struggle with two NCPD officers. During this struggle, Officer Gentile observed that the ostensible civilian’s assault rifle was raised, and moving, so that it appeared that the rifle was pointing toward the officers involved in the struggle and others. According to Officer Gentile, he perceived a deadly threat to the other officers and civilians present, and so he fired his weapon once. Officer Breitkopf was hit in the torso.

BSO Officer Rentas ran to Officer Thomas Lively and another officer, who were trying to handcuff the shot man; Rentas told Lively that Breitkopf was a police officer. At 8:24 p.m.,<sup>19</sup> an ambulance was called to transport Officer Breitkopf to Nassau University Medical Center. Officer James McNally, trained as a medic, attempted to provide lifesaving treatment while waiting for the ambulance, but efforts to revive Officer Breitkopf at the scene and at NUMC were unsuccessful. Another officer, Parry, also attempted to render assistance, and, in the presence of Officer Tedesco, cut off Breitkopf’s shirt. Neither Parry nor Tedesco recalled seeing any shield on Breitkopf. Officer Breitkopf was pronounced dead at the hospital at 9:19 p.m. by Dr. Ng.

At the scene, Sgt. Kevin Carroll of the NCPD took custody of Officer Lewis’ weapon, a 40 caliber SIG Sauer pistol, and Officer McDonald’s weapon, a 9 mm SIG Sauer pistol. Sgt. Jeffrey Geil of the MTA Police Dept. took custody of Officer Gentile’s 9 mm Glock pistol. Retired Sgt. Cafarella took Breitkopf’s weapon and gave it to Officer Keith Jaklitsch, who turned it over to the BSO.

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<sup>19</sup> That time is exactly nine minutes after Officer Lewis first arrived on Front Street and, immediately thereafter, first confronted DiGeronimo.

#### **IV. AUTOPSY OF ANTHONY DIGERONIMO**

An autopsy of Anthony DiGeronimo was performed on March 13, 2011, by Dr. Tamara Bloom, Chief Medical Examiner of Nassau County. Dr. Bloom determined that the cause of death was multiple gunshot wounds to the deceased's chest, abdomen, and left femur. Dr. Bloom noted a total of six entrance wounds and no exit wounds. There were four wounds to DiGeronimo's chest and abdominal area, one wound to his thigh, and one wound to his upper rear shoulder. All six bullets associated with these wounds were recovered from the body of the deceased and submitted to the NCPD. The bullets were then transported by Sgt. Marc Marino to the New York State Police Laboratory for analysis.

#### **V. AUTOPSY OF POLICE OFFICER GEOFFREY BREITKOPF**

An autopsy was performed on March 13, 2011, by Dr. Dorota Latuszynski, Deputy Chief Medical Examiner of Nassau County. The cause of Breitkopf's death was determined to be a gunshot wound to his chest with perforations of his heart, lungs, and liver. The entrance wound was on the far right side of the upper chest, and the bullet had traveled from right to left, through his right lung, diaphragm, liver, heart, stomach, and left lung before exiting the left side of his chest. The bullet then entered Officer Breitkopf's left upper arm, where it lodged in his muscle. The bullet was recovered and turned over to the NCPD.

#### **VI. CRIME SCENE INVESTIGATION**

Officers from the NCPD Crime Scene Unit (CSU) responded to the location. The CSU officers examined the scene, measured distances, and photographed and videotaped the area. Several of the photographs show DiGeronimo's prone body with a belt, studded with small spikes, running over his right shoulder and under his left armpit. Two chains, one with larger links, are also seen hanging from his wrist or waist. A black mask, reasonably described as a gas mask, is at DiGeronimo's feet. DiGeronimo's hands are handcuffed. Additional photographs, taken in DiGeronimo's bedroom, showed shelves with a hatchet, a mallet, swords, and several large and small knives. In the front yard of the house, CSU recovered a 9 mm Luger FC casing consistent with the bullet fired from

Officer Gentile's gun; they also recovered a blood sample from the area where Officer Breitkopf fell.

Inside the home, CSU recovered three 9 mm Luger Speer casings, consistent with the three bullets that were fired from Officer McDonald's service weapon; four 40 caliber Smith & Wesson casings, consistent with four bullets that were fired from Officer Lewis' service weapon; and a knife, leather cap, and a black and gray mask on the floor near Anthony DiGeronimo's body. CSU also recovered a blood sample and bullet fragments from the hallway floor, and a deformed bullet from under DiGeronimo's body.<sup>20</sup>

The service weapons of Officers Paul Lewis, Richard McDonald, and Glen Gentile, which had been given to their respective patrol sergeants, were turned over to CSU. The three weapons, along with all of the ballistics evidence recovered from the crime scene and the autopsies, were submitted for analysis to the Ballistics Section of the Westchester County Police Department Laboratory. Test results showed that the bullets recovered from DiGeronimo's body were consistent with bullets having been fired from Officer Lewis' and Officer McDonald's weapons. Similarly, the bullet recovered from Officer Breitkopf's body was consistent with a bullet having been fired from Officer Gentile's weapon.

## **VII. LEGAL ANALYSIS**

Police Officers McDonald and Lewis unquestionably used deadly physical force<sup>21</sup> against Anthony DiGeronimo, and Police Officer Gentile likewise used deadly physical force against Officer Geoffrey Breitkopf. The force employed caused the death of the two men against whom it was used. With respect to each shooting incident, the pertinent question is whether the use of this deadly physical force fell within the legal definition of justification. In any case where charges are filed against an officer who has discharged his weapon, prosecutors must be prepared to prove beyond a reasonable doubt that the officer was not justified in the use of deadly physical force. Penal Law §§ 25.00(1), 35.00. No such proof is possible here.

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<sup>20</sup> Officers Lewis and McDonald fired a total of seven shots at DiGeronimo. All six bullets that struck him were recovered from his body during the autopsy.

<sup>21</sup> Penal Law § 10.00(11) defines deadly force as physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

The defense of justification is set forth in Article 35 of the Penal Law. Penal Law section 35.15 provides that a person may use deadly physical force upon another individual when, and to the extent that, he reasonably believes it to be necessary to defend himself, or a third person, from what he reasonably believes to be the use or imminent use of unlawful deadly physical force by such individual. The use of deadly physical force is justified by law, therefore, when an individual honestly believes that deadly force is necessary to defend against an aggressor who is using deadly force, and when a reasonable person in the individual's position would believe the same. *People v. DiGuglielmo*, 75 A.D.3d 206, 215-16 (2d Dept.), aff'd 17 N.Y.3d 771 (2010).

Although in most cases an actor claiming justification has a duty to retreat (rather than confront and oppose deadly physical force), such a duty exists only if the actor “knows that with complete personal safety, to oneself and others, he or she may avoid the necessity of [using deadly physical force] by retreating.” Penal Law § 35.15(2)(a). Here, it would not be possible to prove beyond a reasonable doubt that Officers McDonald, Lewis, and Gentile knew that they could retreat with “complete personal safety” to themselves and/or others. Moreover, Penal Law sections 35.15(2)(a)(ii) and 35.30(1)(c) also explicitly provide that police officers do not have a duty to retreat when threatened with deadly physical force if they are attempting to make an arrest. As already noted, when the defense is raised, the burden is on the People to disprove justification beyond a reasonable doubt. Specifically, the People must demonstrate beyond a reasonable doubt that the defendant did not believe deadly force was necessary or that a reasonable person in the same situation would not have perceived that deadly force was necessary. *People v. Umali*, 10 N.Y.3d 417, 424-26 (2008).

To warrant criminal charges against Police Officers McDonald and Lewis regarding the shooting of DiGeronimo, prosecutors would need to disprove conclusively that Officers McDonald and Lewis reasonably believed that DiGeronimo was about to use deadly physical force on them and/or another person. Likewise, to justify charging Police Officer Gentile with a crime in the shooting of Officer Breitkopf, the prosecutors would need to prove that Officer Gentile did not reasonably believe that Officer Breitkopf was about to use deadly physical force on him and/or another person. The prosecution cannot sustain the burden of overcoming the justification defense in either

shooting and therefore no criminal charges are warranted despite the fatalities that resulted from these tragic incidents.

The totality of the evidence supports the conclusion that the shooting of Anthony DiGeronimo was legally justified. While Officer McDonald and Officer Lewis intentionally used deadly physical force against DiGeronimo, each acted upon a reasonable belief that DiGeronimo was armed with knives and was about to use deadly physical force. It is well established that the use or threatened use of a knife constitutes deadly physical force. *People v. Steele*, 26 N.Y.2d 526, 527-28 (1970). The officers would be permitted to introduce evidence of DiGeronimo's violent and threatening actions throughout the night, of which the officers had knowledge, in order to establish their state of mind and perception of imminent danger. *People v. Wesley*, 76 N.Y.2d 555, 559-61 (1990); *People v. Locicero*, 87 A.D.3d 1163 (2d Dept. 2011). From the perspective of the police officers, DiGeronimo was a potentially unstable individual, who was armed with knives, who allegedly menaced a woman minutes prior to police arrival, and who continuously and repeatedly ignored police commands to disarm. Even before he charged at the police officers inside his home, DiGeronimo had also inexplicably charged at Officer Lewis on the street. The officers' perception of DiGeronimo, therefore, was of a person willing to wield his knives in an aggressive and violent manner toward others.

The police appropriately pursued DiGeronimo into his house, as they had lawful grounds to arrest him for the crimes of Menacing and Criminal Possession of a Weapon in the Fourth Degree. They also had legitimate concerns about the safety of others in the house. *People v. McBride*, 14 N.Y.3d 440, 445 (2010). The police were unaware of what DiGeronimo was doing in his room and whether or not he had access to additional weapons there.<sup>22</sup> Again, they remained reasonably concerned that DiGeronimo posed a threat to members of the household as well as law enforcement personnel. DiGeronimo exited his room armed with knives and aggressively advanced toward police officers, displaying no intention to stop or obey lawful police instructions.

Significantly, DiGeronimo's parents do not present a version of events that contradicts the concern about safety presented by the police officers. The parents do not

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<sup>22</sup> Subsequently, numerous weapons were found in DiGeronimo's room.



clearly assert that DiGeronimo did not have a knife at the time of the shooting. Although uncertain as to whether DiGeronimo had a knife immediately before the shooting, they recognize that he had knives minutes before the shooting. David DiGeronimo confirms that, immediately before the shooting, the police repeatedly ordered his son to drop to the ground. Mr. DiGeronimo also advised the police that DiGeronimo had emotional issues. Indeed, there is no significant factual dispute requiring consideration by a grand jury. Therefore, the investigation into the death of Anthony DiGeronimo is now being closed.

With respect to the shooting of Officer Breitkopf, the totality of the evidence supports the conclusion that this shooting, although indescribably tragic, was not unjustified as justification is defined by law. The People would be unable to prove beyond a reasonable doubt that Officer Gentile did not reasonably believe that deadly physical force was about to be used against him or his fellow officers. Officer Gentile would be permitted to introduce evidence regarding the circumstances of the evening that led up to the shooting, of which he was aware, in order to establish his state of mind and perception of imminent danger. *Wesley*, 76 N.Y.2d 555 (1990); *Locicero*, 87 A.D.3d 1163 (2d Dept. 2011). Acting in their capacity as police officers, Officers Gentile and Ramos responded to the scene at Fourth Avenue and Front Street to assist the Nassau County Police Department in subduing a man with a knife. When they arrived at the scene, Officer Gentile indicated that he heard over the police radio that shots had already been fired. He and Officer Ramos quickly entered the DiGeronimo residence to ascertain if they could be of any assistance. By the time they entered the home, the scene inside the house had been secured and, therefore, Officers Gentile and Ramos exited the house to assist with crowd control.

Upon exiting the house, Officer Gentile stated that the scene outside the home became more and more chaotic, with more and more civilians arriving. Other officers also reported various events that led to this chaos. After the shooting of DiGeronimo, his parents, David and Joanne DiGeronimo, left the house. At one point, Joanne DiGeronimo tried to enter the side of the house to notify her other son about the events. She was quickly stopped and escorted back to the driveway by police officers. Aside from DiGeronimo's family, who had gathered outside the home, other civilians also began to gather and approach the front lawn of the house.

S recalled hearing an order to the crowd to leave the area; both T and S left the scene after hearing T cursed at and witnessing the kicking of her car door. More specifically, T was standing by her car in the street in front of the DiGeronimo house. Retired NYPD Sgt. John Cafarella admitted to yelling at her to leave. He was witnessed to have kicked her car, and to have told her to “Get the fuck out of here.” S saw his mother and attempted to gain access to her. As he tried to approach the front of the DiGeronimo house, uniformed police officers began yelling at him to stay back. They displayed a police baton and a can of pepper spray. Officer Gentile remembers pushing and shoving involving S outside the DiGeronimo house.

After all of these events, Officer Breitkopf, in plainclothes, arrived at the scene outside Fourth Avenue. Officer Gentile, standing outside the DiGeronimo house, recalled being on the front lawn of the home and hearing loud yelling. Moments before the shooting, Officer Jaklitsch heard someone say something about a gun. John Cafarella acknowledged that he may have stated the word “Gun” to the crowd of officers, as he saw Officer Breitkopf walk towards the DiGeronimo house. Officer Gentile saw uniformed NCPD officers looking at something behind him with startled expressions on their faces. At that time, in his peripheral vision, Officer Gentile saw a white man wearing a black hoodie walk past him.<sup>23</sup> This man was Officer Breitkopf, but Officer Gentile was tragically unaware of that fact. There is no evidence that Officer Breitkopf’s shield was displayed or visible. By all accounts, Officer Breitkopf was not in uniform and did not identify himself as a police officer. Officer Gentile saw an officer grab Officer Breitkopf’s shoulder, and Breitkopf shrugged his arm in an apparent effort to pull away from the officer’s grasp. Officer Gentile saw that Breitkopf was carrying what he correctly perceived to be an M-4 assault rifle. Officer Gentile observed a physical confrontation between Breitkopf and other police officers. He also observed the muzzle of the gun moving about in different directions. Officer Gentile believed at that moment that there was imminent danger. Shortly after having assisted in turning civilian S away from the crime scene, Officer Gentile believed that Officer Breitkopf was a civilian who

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<sup>23</sup> Officer Breitkopf’s head was shaved and he had a brown mustache and chin beard approximately three inches long.

was armed, resisting police commands, and who was pointing his rifle at the officers who confronted him (and also endangering civilians).

The determination of whether Officer Gentile's fear of imminent deadly physical force was reasonable must be based specifically on the circumstances that he faced at that precise moment, without the benefit of retrospective analysis. *People v. Goetz*, 68 N.Y.2d 96, 114-15 (1986); *People v. Locicero*, 87 A.D.3d 1163 (2d Dept. 2011). The NCDA has concluded that Officer Gentile's belief that deadly physical force was about to be used by what appeared to be an armed civilian, given the events that had occurred up to that point, the chaos of the surroundings, the darkness,<sup>24</sup> and the physical confrontation between his partner and the person he believed to be a civilian armed with a rifle, cannot be proven to be unreasonable. From Officer Gentile's perspective, Officer Breitkopf was an armed civilian who was using his firearm to menace officers at a scene where shots had already been fired. It is well established that the threatened use of a firearm constitutes deadly physical force. *People v. Magliato*, 68 N.Y.2d 24, 29 (1986); *People v. Borrero*, 118 A.D.2d 345, 349-50 (1st Dept. 1986); *People v. Rodriguez*, 111 A.D.2d 879 (2d Dept. 1985). Just as Officer Gentile was unaware that Officer Breitkopf was a member of law enforcement, it is evident that other officers at the scene were also unaware that Officer Breitkopf was a member of the police department because they tried to handcuff him as he fell to the ground. It was not until Officer Breitkopf's partner, Officer Hector Rentas, shouted that Officer Breitkopf was a member of BSO that officers stopped handcuffing him. Officer Gentile can make a reasonable claim that, out of concern for the safety of everyone present, he drew his weapon and fired a single shot at the individual he reasonably, but mistakenly, perceived to be dangerous.

There is no evidence concerning the death of Officer Geoffrey Breitkopf that requires consideration by a grand jury. There is no factual dispute of significance requiring a grand jury investigation. The circumstances of the shooting establish that Officer Gentile responded with deadly physical force that was unquestionably tragic but within the bounds of legal justification. Therefore, the investigation into the death of Officer Geoffrey Breitkopf is now being closed.

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<sup>24</sup> The website [www.sunrisesunset.com/calendar.asp](http://www.sunrisesunset.com/calendar.asp) establishes that on March 12, the sun sets at approximately 6:57 p.m.

## **VIII. CONCLUSION**

The Nassau County District Attorney's Office recognizes the importance of conducting a fair and impartial investigation into incidents in which a police officer discharges his or her weapon. With respect to the shooting deaths of Anthony DiGeronimo and Officer Geoffrey Breitkopf, the issue in question is whether the deadly physical force that was used fell within the parameters of the justification defense or, more precisely, whether the People could prove beyond a reasonable doubt that it did not. In both these cases, the police officers reasonably perceived threats of deadly force against themselves or others, and they acted accordingly. Although the results were unquestionably tragic, criminal charges under these circumstances would be legally unsustainable.