

STATE OF NEW YORK
FIFTH JUDICIAL DISTRICT COURT

IN THE MATTER OF THE INVESTIGATION INTO
THE DEATH OF ROBERT BROOKS IN MARCY CORRECTIONAL FACILITY
ON DECEMBER 10, 2024

The Court having heard the application of Assistant Attorney General [REDACTED] of the New York State Office of the Attorney General ("OAG"), Letitia James, requesting that the OAG be disqualified in this case and that a Special Prosecutor be appointed pursuant to Section 701 of the County Law to handle the above-mentioned matter, it is hereby

ORDERED. that the application in all respects is granted and that Onondaga County District Attorney William Fitzpatrick is hereby appointed Special Prosecutor pursuant to Section 701 of the County Law to proceed in the above-mentioned matter. and that the Special Prosecutor is empowered with all the powers and privileges of the Office of the District Attorney for the investigation and prosecution of the above-mentioned matter.

Signed this 2nd day of JANUARY .2025 at Syracuse. New York.

ENTER:

DBO

Gerard J. Meiri, J.S.C.

Hon. Deborah H. Karalunas, JSC
District Administrative Judge
Onondaga County Office Building
600 South State Street
Syracuse, NY 13202

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AFFIRMATION

██████████, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of New York, and I affirm the following under the penalties of perjury. I make the following statements based on my personal knowledge or on information and belief, based on conversations with members of the New York State Office of the Attorney General “(OAG)”, and review of documents in the OAG’s files.
2. I am Senior Counsel to the Criminal Justice Division of the State of New York Office of the Attorney General, Letitia James.
3. The OAG currently represents four of the thirteen corrections officers involved in the above-named incident in other actions alleging unlawful use of force.
4. Thus, as noted below, I believe it to be in the interest of justice to disqualify the OAG and appoint another special prosecutor to serve as the prosecutor in this case.

Background

5. Pursuant to Executive Law Section 70b, the OAG’s Special Investigation Unit is required to “investigate and, if warranted, prosecute any alleged criminal offense or offenses committed by a person, whether or not formally on duty, who is a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a peace officer as defined in section 2.10 of the criminal procedure law ... concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of such police officer or peace officer.”
6. A correction officer is a peace officer under CPL Section 2.10 (25).
7. Pursuant to Executive Law 70b(4), “the attorney general shall have criminal jurisdiction over any criminal conduct arising from any incident herein and shall exercise all of the powers and perform all of the duties with respect to such actions or proceedings that a district attorney

would otherwise be authorized or required to exercise or perform.”

8. Pursuant to CPL Section 1.20(32), the Attorney General is a district attorney.
9. Pursuant to Executive Law 70b, the OAG’s OSI has begun to conduct a preliminary investigation into the above matter.
10. I make this *ex parte* motion seeking the disqualification of the OAG and its assistants from prosecuting the above-referenced criminal action and seeking the creation of the position of Special Prosecutor for the purpose of investigating and prosecuting the criminal action.
11. I request the appointment of Onondaga District Attorney William Fitzpatrick as special prosecutor for all purposes, including disposition of the case and subsequent proceedings or appeals. Pursuant to County Law Section 701(4), the special district attorney so appointed “shall possess the powers and discharge the duties of the district attorney during the period for which he or she shall be appointed.”

Summary of the Facts

12. On December 9, Robert Brooks was an incarcerated individual who was transported to the Marcy Correctional Facility (“Marcy”) located at 9000 Old River Rd, Marcy, New York, 13403, in the County of Oneida. On December 9, 2024, body-worn camera footage shows numerous correctional officers at Marcy beating and kicking the handcuffed Mr. Brooks. All of the involved corrections officers have been identified.
13. Mr. Brooks was taken to a local hospital, where he was declared dead on December 10.
14. The Onondaga County Medical Examiner's Office conducted an autopsy on December 11, 2024. The autopsy revealed that Mr. Brooks had suffered multiple bruises of the face and extremities, fracture of the nasal bone, multiple soft tissue hemorrhages of the muscles of the sides of the neck, hemorrhage overlaying of the thyroid cartilage, hemorrhage of the genital area soft tissues, the penis and both testes. The Medical Examiner preliminarily reported “concerns for asphyxia due to compression of the neck as cause of death”, as well as the death being due to the actions of another. The final cause and manner of death are currently pending.
15. Pursuant to Executive Law Section 63(1), the OAG’s Office of State Counsel is required to represent the state, its officers, and its agencies in state and federal courts in actions involving almost every substantive area of the law.
16. The OAG currently represents four of the thirteen involved corrections officers (Sgt. Glenn Trombly, Officer Anthony Farina, Officer Nicholas Anzalone, and Officer Robert Kessler) in other actions involving the alleged unlawful use of force that concern allegations similar to the allegations in this case. Therefore, it is a conflict of interest for the OAG to continue to investigate and prosecute the incident involving Mr. Brooks and those same corrections officers.

17. I believe that the interests of justice and the New York Rules of Professional Conduct require that a special prosecutor be appointed to handle the investigation and prosecution of the matter described herein.
18. In view of the required disqualification, I respectfully request that this Court create a position of Special Prosecutor pursuant to Section 701 of the County Law of the State of New York for the purpose of prosecuting the above-referenced criminal case.
19. Of the district attorneys' offices in this department, the Onondaga District Attorney's Office has the most resources and staff. Onondaga County District Attorney William Fitzpatrick has indicated that he would agree to be appointed a special prosecutor in this case.

WHEREFORE, I respectfully request that Letitia James, Attorney General of the State of New York, and her Assistant Attorneys General be disqualified from prosecuting the within case, that a position of Special Prosecutor be created pursuant to Section 701 of the County Law of the State of New York, and I request such other and further relief as this Court may deem just and proper.

[Redacted Signature]

Assistant Attorney General [Redacted]
New York State Office of the Attorney General

Dated: January 2, 2025

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NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the affirmation of Assistant Attorney General [REDACTED], of the Office of the New York State Attorney General, sworn to the second day of January, 2025, the People will move this Court at a Regular Term thereof at the Courthouse located at the Onondaga County Office Building, 600 South State Street, Syracuse, NY on the second day of January, 2025, at 10 am, or as soon thereafter as counsel may be heard, for an Order pursuant to Section 701 of the County Law of the State of New York:

- 1) Disqualifying the New York State Office of the Attorney General from investigating and prosecuting the above-referenced action and any appeal taken thereon;
- 2) Creating a position of Special Prosecutor pursuant to Section 701 of the County Law for the purpose of investigating and prosecuting the above-referenced criminal action; and
- 3) Appointing Onondaga County District Attorney William Fitzpatrick as the Special Prosecutor.

Dated: January 2, 2025

Assistant Attorney General [REDACTED]
Office of the New York State Attorney General
28 Liberty
New York, NY 10005
[REDACTED]

TO: Hon. Deborah H. Karalunas, JSC
Fifth Judicial District
Onondaga County Office Building
600 South State Street
Syracuse, NY 13202