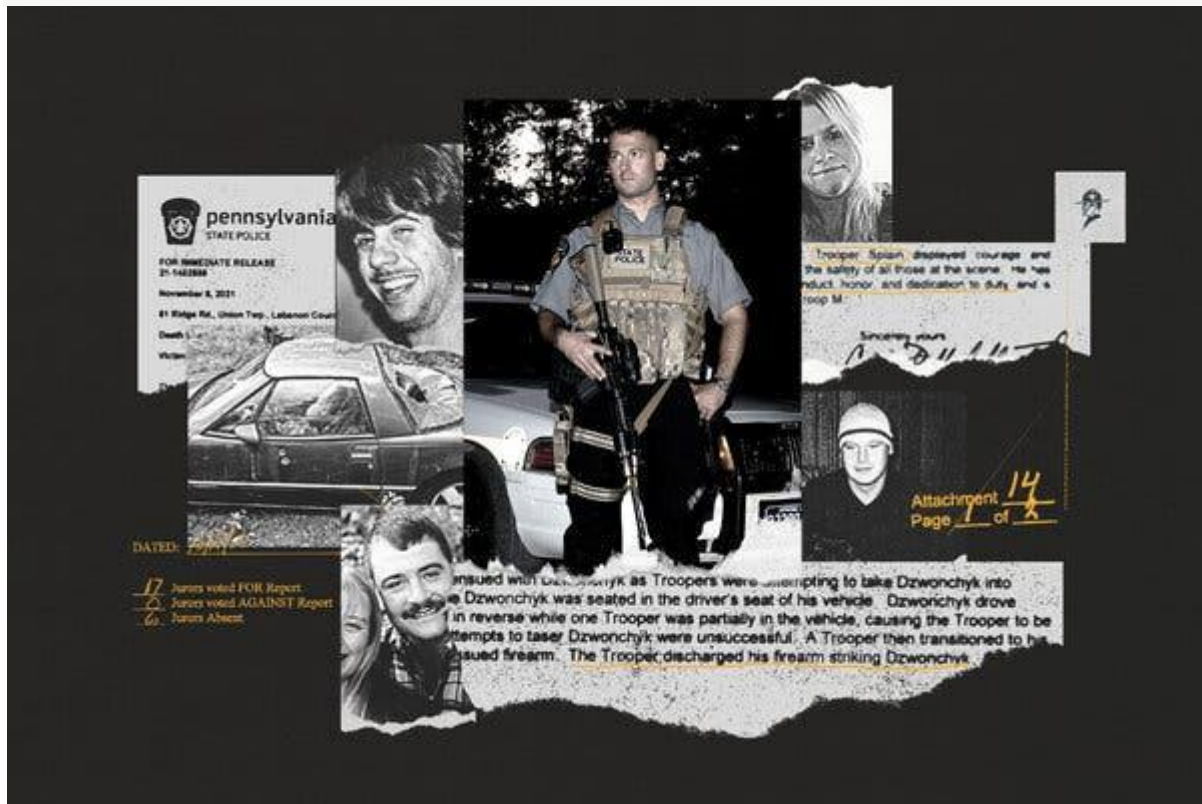


The New York Times

After 4 Killings, 'Officer of the Year' Is Still on the Job

A Pennsylvania state trooper was returned to duty following three investigations by his own agency. A fourth inquiry is underway.



Credit...Max-o-matic

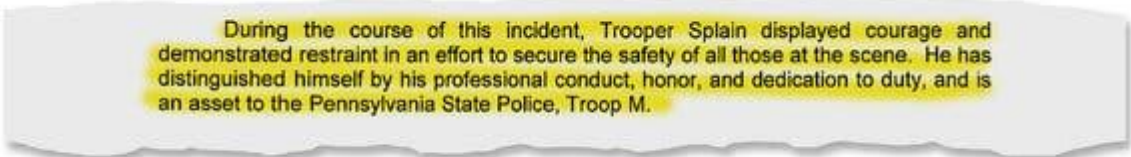
By Kim Barker, Steve Eder and David D. Kirkpatrick
Dec. 30, 2021

LEBANON, Pa. — In November 2008, Pennsylvania Trooper Jay Splain was honored at a county law enforcement banquet as a hero, the police officer of the year. The reason:

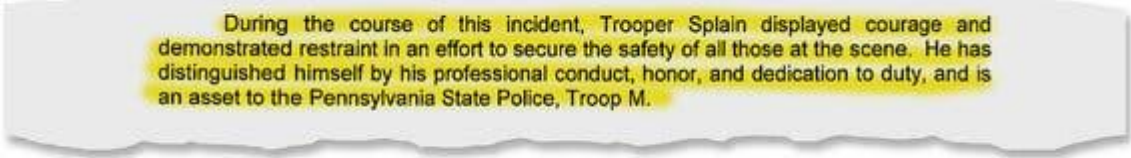
He had shot and killed a suicidal man who allegedly pointed an Uzi submachine gun at him.

That was the first killing. Trooper Splain went on to fatally shoot three more people in separate incidents, an extraordinary tally for an officer responsible for patrolling largely rural areas with low rates of violent crime. All four who died were troubled, struggling with drugs, mental illness or both. In two cases, including that of the man with the Uzi, family members had called the police for help because their relatives had threatened to kill themselves.

The most recent death was last month, when Trooper Splain shot an unarmed man in his Volkswagen Beetle. After learning that the officer had previously killed three other people over nearly 15 years, the man's sister, Autumn Krouse, asked, "Why would that person still be employed?"



During the course of this incident, Trooper Splain displayed courage and demonstrated restraint in an effort to secure the safety of all those at the scene. He has distinguished himself by his professional conduct, honor, and dedication to duty, and is an asset to the Pennsylvania State Police, Troop M.



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An excerpt from a letter recommending Jay Splain for the county's officer of the year award after he fatally shot Joseph Rotkewicz.

Trooper Splain is an outlier. Most officers never fire their weapons. Until now, his full record of killings has not been disclosed; the Pennsylvania State Police even successfully fought a lawsuit seeking to identify him and provide other details in one shooting. In the agency's more than a century of policing, no officer has ever been prosecuted for fatally shooting someone, according to a spokesman. That history aligns with a longstanding pattern across the country of little accountability for police officers' use of deadly force.

Prosecutors and a grand jury concluded that Trooper Splain's first three lethal shootings were justified, and an inquiry into the most recent one is ongoing. Rather than have independent outsiders look into the killings, the police agency has conducted its own investigations — which were led by officers from his unit — raising questions about the rigor of the inquiries.

"When a police officer has shot at and potentially killed a civilian, the public will never trust the police agency to investigate itself and be unbiased," said Tom Hogan, the former district attorney of Chester County, Pa. A Republican, he helped

write recommendations by the state prosecutors' association for independent investigations — a reform that many departments resist, but one sought by the national prosecutors' association and major policing groups.

In its review of Trooper Splain's killings, The New York Times found inconsistencies between the evidence of what occurred and what the state police said had happened. The officer appeared to have departed from police protocols in several of the fatal confrontations, according to interviews and an examination of investigative and court records.

In three of the encounters, the people killed were in vehicles. The trooper shot two unarmed drivers because they were allegedly using their vehicles as weapons, a frequent rationale, The Times found in an earlier investigation that uncovered hundreds of seemingly avoidable killings by the police — often with impunity. Many large police departments ban shooting at moving vehicles because it is very often dangerous, ineffective and unnecessary.

Editors' Picks

Trooper Splain, who is on desk duty until the pending inquiry is completed, did not return calls or reply to a letter seeking comment. The other troopers who were involved in the shootings or who led the investigations declined to comment or did not respond to messages. David Kennedy, the president of the state troopers' union, responded on Trooper Splain's behalf to written questions, saying he had acted with courage and "was forced to make split-second decisions no one hopes they ever have to make."

Cpl. Brent Miller, a spokesman for the Pennsylvania State Police, said, "We are confident we have the resources to investigate such incidents thoroughly and objectively." He referred questions on the killings to district attorneys. Asked whether Trooper Splain had ever faced disciplinary action, Cpl. Miller said that any such records were confidential.

All troopers involved in shootings must attend specialized training to assess their physical and mental fitness before returning to active duty, he said, adding that in some cases, troopers may also be required to undergo use-of-force training at the police academy.

Darrel W. Stephens, a former longtime police chief who now helps run a policing research institute at Florida State University, called the four shootings a "red flag."

"Four is incredibly unusual," he said. "That is out there on the edge." Even if the shootings can be legally justified, he said, the pattern needs to be "examined very closely" to determine why the same officer repeatedly resorted to deadly force. "Because they can, it doesn't mean they should," he said.

It's not clear how common it is for police officers to fatally shoot multiple people during their careers. No database keeps track. In 2012, an officer in Scottsdale, Ariz., retired

after his sixth fatal shooting. In 2015, a sheriff's deputy in Broward County, Fla., was involved in his fourth fatal shooting. Both officers belonged to SWAT teams, called into dangerous situations where gunfire is most common.

Trooper Splain, 41, is a patrol officer who works in largely rural swaths of Pennsylvania, where the state police rarely kill anyone. During his time on the force, he has been responsible for four of the nine fatal shootings by troopers in the three counties where they occurred, according to a Times analysis of cases identified by the research group Fatal Encounters. The killings by Trooper Splain were reported by local news outlets, although he was mentioned by name only in one case.

From a young age, Jay Splain seemed inspired by the military. The son of a radiologist and a nurse, he grew up in Allentown, Pa., and attended the elite Hill prep school outside Philadelphia. He belonged to the school's gun club. His senior yearbook page pictured him holding a rifle, cited the motto of the U.S. Marine Corps and quoted Stonewall Jackson, the Confederate general, twice.

He went on to the Virginia Military Institute, where Jackson had once been an artillery instructor. Jay Splain enrolled in a military officer training program, joined the school's competitive rifle team and the Semper Fi Society, and referred to his "warrior image" in his college yearbook bio.

But in 2004 Mr. Splain became a state trooper, with duties like making D.U.I. arrests, tracking down thieves and, on one occasion, catching a suspect in "a paintball incident," state police newsletters show. His former college roommate, Army Lt. Col. Nicholas Shallcross, said that his ambitions had shifted during college from the military to law enforcement.

Trooper Splain, the lieutenant colonel said, saw himself as "a protector."

A Call For Help

In July 2007, Joseph Rotkewicz, 37, who had bipolar disorder, took two of his brother's guns into a room of his family's home and repeatedly threatened to kill himself, pointing a gun at his head. His father had recently died, and his girlfriend had had an affair with his best friend.

For an hour, his sister, Linda Hunsicker, and a friend, Hans Frendt, tried to talk him down, Ms. Hunsicker recalled in an interview. Then Mr. Rotkewicz fired at least two shots at the ceiling. Ms. Hunsicker said her brother never threatened her or Mr. Frendt.

"He just kept begging me not to call the cops," she recalled in an interview. "I wish I would have listened."



Officers were responding to a call from Linda Hunsicker that her brother, Joseph Rotkewicz, was threatening to kill himself.

Emergency operators told her to go outside; the two men stayed indoors. Mr. Rotkewicz used electrical tape to strap the Uzi to his neck and chest, so the barrel pointed up at his chin, Mr. Frendt later said.

At about 5 p.m., at least a dozen state troopers showed up, Ms. Hunsicker recalled; a specially trained SWAT-style negotiating team typically responds to such situations. Police tried once to call the house, but Ms. Hunsicker had brought the cordless phone out with her.

With a person threatening to harm only himself, “the overarching principle is, slow things down and don’t force a confrontation,” said Ashley Heiberger, a consultant to police departments and a former captain in Bethlehem, Pa.

Entering a house to challenge someone threatening suicide “is not consistent with generally accepted law enforcement practices,” he added, “and good officers and good agencies have been emphasizing these concepts and principles for decades.”

Current Pennsylvania State Police regulations call for troopers dealing with someone who is mentally ill to “take steps to calm/de-escalate the situation, when feasible,” and to “assume a quiet, nonthreatening manner.”

Ms. Hunsicker said no one had used a bullhorn or tried other ways to resolve her brother's crisis peacefully. Instead, Trooper Splain and another trooper eventually entered the house. Mr. Frendt, still inside, later told the deputy coroner that the troopers ordered him to leave, the coroner's report said.

On his way out, he heard one of them demand that Mr. Rotkewicz drop his weapon, followed by two gunshots, the report said.

Trooper Splain shot Mr. Rotkewicz twice in the chest, records show. Pennsylvania State Police later said that Mr. Rotkewicz had pointed the Uzi at Trooper Splain.

For this, his unit named him trooper of the year. In a letter later nominating Trooper Splain for the Lehigh County officer of the year, his commanding officer wrote that Mr. Rotkewicz had a "history of mental disease" and was "threatening his life and the lives of others."

Trooper Splain had seen Mr. Rotkewicz holding the Uzi beneath his chin, the letter said, but it did not mention any electrical tape. The letter then said Mr. Rotkewicz "ignored repeated orders from Trooper Splain to stop and drop the firearm" and "lowered the gun forward" toward the trooper.

In a court filing years later, a lawyer for the state police acknowledged that Mr. Rotkewicz had affixed the Uzi "to his chest and neck by means of the black colored electrical tape." Although it's possible Mr. Rotkewicz broke the tape, the forensic pathologist who performed the autopsy wrote, "The tape has been wrapped several times about the neck and is kinked in several areas."

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Excerpted from a legal filing by Mr. Rotkewicz's sister, who sued unsuccessfully to get records related to his killing.

The Pennsylvania State Police typically assign a lead investigator from the same troop's major case team to lead the criminal inquiry. At the time, Trooper Splain worked out of the headquarters of Troop M — the same barracks as the lead investigator.

Joseph Kuhns, a criminologist at the University of North Carolina in Charlotte who did a study for the Major Cities Chiefs Association on investigations of police shootings, called it “highly unusual” to assign officers from the same unit to examine a shooting.

For almost 10 years, the state police resisted Ms. Hunsicker's efforts to obtain the police investigative report so she could find out what happened to her brother. In a court filing, her lawyer said the police's refusal to provide the report was an effort to “cover up wrongful conduct.” She didn't know the name of the officer who killed her brother until a Times reporter told her.

James B. Martin, a Republican who is the longtime district attorney of Lehigh County, said in an interview that, after meeting with the lead investigator, he had ruled the shooting justified — a decision he called a “no-brainer.” He said he did not recall any claims that the gun had been taped to Mr. Rotkewicz.

Mr. Martin saw nothing wrong with allowing the police to investigate themselves.

“The Pennsylvania State Police is a troop of 4,500 very well-qualified police officers who do an excellent job, and their integrity, as far as I'm concerned, is beyond reproach,” he said.

A Different Choice

On a Saturday in May 2017, Anthony Ardo threatened to kill himself by blowing his head off with an explosive. Addicted to drugs for years, the 47-year-old was reeling after a breakup and being evicted by his mother, Jean Monaghan. After she called 911 seeking help for him, Trooper Splain and a junior trooper, Eddie Pagan, came to her family farm and persuaded her to lure him back.

Mr. Ardo pulled up but then appeared to reverse his Buick Reatta, according to the officers' accounts. Rather than let him go, the troopers ran out the back door and got in their two patrol cars, hidden from view. They trapped the Buick between their cruisers, hopped out and drew their firearms, the troopers told police investigators.

Within seconds, the troopers began shooting, according to Ms. Monaghan. Lawyers for Ms. Monaghan said they believe that Trooper Splain, who fired nine times, killed Mr. Ardo with the last three bullets. The troopers later said they feared for their lives, according to court filings, as Mr. Ardo, sitting in the driver's seat, appeared to be lighting something around his neck. That turned out to be a common aerial firework.



Anthony Ardo. “They rushed him and didn’t even give him a chance,” his mother said.

In an interview, the dead man’s mother wondered why the officers hadn’t tried to de-escalate the situation by stepping away. “They rushed him and didn’t even give him a chance,” said Ms. Monaghan, who said she watched the confrontation from her window and later filed a wrongful-death lawsuit. She added, “They were in no way in harm’s way if they would have just backed up and left him alone.”

The review by The Times of hundreds of killings of unarmed motorists by police found that mental health crises were a recurring theme. In at least 10 cases, callers asked the police to check on the welfare of people threatening suicide or struggling from mental illness. Instead, the responding officers shot the drivers and later claimed they feared that they or someone else would be run over.

However, as demonstrated by the underlying incident, after eliminating Ardo's ability to escape (by boxing his vehicle in with the Troopers' vehicles), Troopers Pagan and Splain failed to take any steps to deescalate the situation in conformity with long-standing, nationally-accepted police procedures. Instead, Troopers Pagan and Splain unreasonably attempted to intimidate an individual, known to them to be suffering suicidal ideations, into compliance -- while placing themselves into the potential blast radius in a tension-creating manner. Troopers Pagan and Splain unreasonably created the need for use of deadly force and now attempt to rely upon that need to justify the death of Ardo.

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Excerpt from a filing in which Mr. Ardo's parents' lawyers questioned why the state police did not try to de-escalate the confrontation.

Cpl. Miller said troopers use "their discretion to assess the current situation and resources available to them for every incident." He said the agency couldn't comment on pending litigation.

Within an hour of Mr. Ardo's shooting, a state police lieutenant called John Morganelli, the district attorney in Northampton County and a Democrat, to ask how the prosecutor wanted to handle the investigation, according to a grand-jury report later made public. Mr. Morganelli decided his office would take the lead and assigned a county detective.

But the lieutenant soon told Mr. Morganelli that his higher-up bosses "would not yield the criminal investigation," the report said.



Mr. Ardo's car. He was behind the wheel and appeared to be lighting something around his neck when troopers opened fire. Credit...Gina Ardo

Apparently because of that dispute, no one interviewed either trooper for about a month. During that time, the two men talked to each other and watched dash-camera videos of the shooting, they acknowledged later. Law enforcement experts warn that allowing officers to share information before interviews can lead them to align their stories.

Trooper Splain disclosed his earlier fatal shooting to Trooper Pagan, both men said in depositions. "Most of the conversations revolved around him giving me advice as to how to handle the stress," Trooper Pagan said.

State police assigned an investigator from Troop M's major case team to lead the inquiry. Superior officers later told the grand jury that they rely on investigating troopers to report any potential conflicts of interest.

Trooper Michael Everk, the lead investigator, declined to comment for this article. He had worked with Trooper Splain on a marijuana bust, state police newsletters show. While interviewing the troopers, Trooper Everk referred to Trooper Pagan as "Eddie" several times instead of speaking more formally, as he did in other interviews.

Mr. Morganelli brought the case to a grand jury, which concluded that the shooting was justified. But the jurors also issued a second, public report accusing state police leaders of a “somewhat arrogant view of superiority” over other law enforcement agencies. The panel also found investigators gave troopers “special treatment” that is “not generally afforded to others who are the subject of a criminal investigation.”

The next year, Trooper Splain was moved to Troop L in Lebanon County.

‘The Gravest of Situations’

Pier Hess Graf, the Lebanon County district attorney, hosts an annual fund-raiser, “Back the Blue,” for a Pennsylvania nonprofit that helps the families of slain officers. Her husband is a state police corporal.

Advocates of reform say such apparent conflicts of interest highlight the need for independent, arms-length criminal investigations into killings by the police. Some police departments now call in district attorneys from neighboring counties, others have independent units to investigate fatalities. In recent years, states including California, New Jersey, and New York shifted many of these investigations to the state attorney general’s office.

But last year, Ms. Graf oversaw an investigation into another fatal shooting involving Trooper Splain. At the time, her husband was based in the same barracks.

Early on March 16, 2020, Charity Thome, 42, who had mental illness and drug addiction, fled officers after she was caught trying to break into her former home, records show.

After trying to break into her former home, Charity Thome led officers on a chase. It ended with a risky maneuver by Trooper Splain that made her car spin out.

Officer Ryan Haase of the North Lebanon Police Department started pursuing her Honda Accord; he soon told dispatchers he was ending the chase because, with few cars on the road at that hour, the woman was not endangering the public.

But then Trooper Splain and a rookie, Trooper Matthew Haber, joined him. Ms. Thome led the police on a “lengthy high-speed chase,” Ms. Graf, the district attorney, said later, with “no regard for traffic lights, signs, police sirens, other vehicles on the roadway or the safety of the general public.”

Many police departments ban high-speed pursuits of nonviolent offenders, especially if officers know who they are and can find them later. Instead, records show, Trooper Splain performed a risky maneuver to force Ms. Thome to stop.

The Accord spun out into a field. Ms. Thome then drove into Officer Haase’s S.U.V. The two troopers jumped out of their vehicle, guns drawn. “Stop, stop, get out of the car,

show me your hands,” Trooper Splain recalled shouting, according to a police interview quoted in a lawsuit filed by Ms. Thome’s family.

He fired first, followed by the rookie. Ms. Thome, hit seven times, died almost instantly, according to the lawsuit.

In an April 2020 press release describing the killing, Ms. Graf, the prosecutor, said Ms. Thome “accelerated forward and drove into” the officer’s vehicle. The release also described Troopers Splain and Haber as saying they feared multiple outcomes, including Ms. Thome reversing and running over officers or continuing “to ram” the S.U.V.

But Officer Haase estimated her speed to be five miles an hour, adding that he was more worried about damage to his vehicle than about his safety, according to his interviews with police included in the lawsuit. Neither vehicle’s airbags deployed, the lawsuit said; a photograph showed that the S.U.V. sustained minimal damage.

No police commands could be heard in a dash-camera video. Trooper Splain told police 30 seconds had elapsed between his leaving the car and shooting. The video, included in the lawsuit, shows it took only a few seconds.

“Their job was to talk her out of the vehicle and into safety,” said Thomas Kline, a lawyer for Ms. Thome’s family. “And instead, they did just the opposite, which was to fire multiple rounds of bullets into her pinned-down vehicle, leaving her defenseless and tragically dead.”

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Excerpted from a lawsuit over the death of Ms. Thome.

Agency policy says Pennsylvania state troopers should not shoot at moving vehicles unless the driver “poses an imminent danger of death or serious bodily injury,” or if shooting is the last resort to prevent a suspect in a violent felony from escaping.

In the release, Ms. Graf said she had assigned her detective bureau to oversee the investigation, which involved several agencies. It drew on the state police inquiry, which was led by an investigator based out of the same troop as Trooper Splain, The Times found.

Ms. Graf had determined that the shooting was justified after about a month — a relatively fast conclusion compared to similar inquiries reviewed by reporters. In response to questions from The Times, Ms. Graf didn't address any potential conflict of interest and said she stood by her decisions.

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An excerpt from the press release announcing the district attorney's determination in the Charity Thome case.

“Law enforcement involved in this case committed the most serious human act — they took a life,” Ms. Graf said in the press release announcing her ruling. She added, “They did so knowing the use of deadly force is necessary in only the gravest of situations.”

The 4th Killing

Andy Dzwonchyk, a 40-year-old metal worker who had once been named “loudest laugh” and voted president of his high school class, was unraveling by November.

Amy Hastings, his girlfriend of 20 years, had left, weary of his drug use. She obtained a protection order after he badgered her to come back and talked of killing himself in front of their two sons if she did not return. “Andy never threatened me or the kids,” Ms. Hastings said in an interview.

At about 10:40 p.m. on Nov. 7, Ms. Hastings called 911 because Mr. Dzwonchyk kept texting, in violation of the order. Two troopers showed up, including Jay Splain.

While Ms. Hastings talked to them, Mr. Dzwonchyk, who was caring for their sons, texted again, saying he needed a thermometer for one boy, who was sick, Ms. Hastings recalled. She went inside because it was cold. Then Mr. Dzwonchyk, who lived down the road from where she was staying, drove up.

The troopers tried to arrest Mr. Dzwonchyk in his car, but a struggle ensued, according to a police spokesman at a press conference the next morning. Trooper David Beohm said one officer had gotten caught inside the vehicle, which advanced and reversed, dragging him, although he was not injured.

“It wasn’t like a real fast back-and-forth,” Trooper Beohm said.

Mr. Dzwonchyk’s 1999 Beetle was a stick-shift, making it difficult to go forward and backward quickly. Attempts to subdue Mr. Dzwonchyk with a Taser didn’t work, according to the spokesman. Only then, he said, did the other officer fire his weapon.

That was Trooper Splain.