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John Capano was killed outside a Seaford pharmacy
while trying to subdue a robber.

DA ON FATAL SHOOTING OF ATF AGENT BY EX-COP

JUSTIFIED

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DA ON PHARMACY FRIENDLY FIRE: NO CHARGES

Retired cop who shot ATF agent acted justifiably to perceived threat, report says

BY ANN GIVENS

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A retired Nassau police officer was justified when he fatally shot an off-duty ATF agent who was trying to stop a robbery at a Seaford pharmacy on New Year's Eve and no criminal charges will be filed, the Nassau district attorney said yesterday.

The 11-page report on the investigation into the shooting details a chaotic scene at Charlie's Family Pharmacy, where retired Nassau Police Lt. Christopher Geraghty, 54, and off-duty New York City Police Officer Joseph Arbia, 29, came upon Bureau of Alcohol, Tobacco, Firearms and Explosives agent John Capano as he struggled with robbery suspect James McGoey.

All four men had weapons, though McGoey's turned out to be an inoperable pellet gun, the report says, and it was difficult for anyone to tell who was the robber and who was the "good guy" trying to thwart him.

Both Geraghty, of Woodbury, who fatally shot Capano, and Arbia, of Seaford, who fatally shot McGoey, "acted within the parameters of the justification defense when they responded to reasonably-perceived threats of deadly force against themselves or others," the report says. "Criminal charges in this matter would be unwarranted and unsustainable."

Family members of Capano, 51, of Massapequa, declined to comment on the report.

Geraghty's lawyer, Brian J. Davis, of Garden City, said that while his client is relieved to have the investiga-

NOW ONLINE
Find complete coverage of the Capano shooting.
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tion over, it cannot take the sting out of what happened.

"The first thing he asked was how the Capanos are doing," Davis said. "This puts one part of it behind him, but he'll never be able to put the other part behind him."

Joseph Anarumo, the ATF special agent in charge of the New York field division, said in a statement the agency appreciated the thorough investigation.

"The fact remains that the responsibility for the tragic events that occurred on Dec. 31, 2011, lies with the career criminal who chose to resume his life of crime," Anarumo said.

An NYPD spokesman said Arbia is on active duty, assigned to a police command in Queens, and has no restrictions. A spokesman for the NYPD Patrolmen's Benevolent Association declined to comment on behalf of Arbia.

Capano, a 23-year ATF veteran who also went on missions in Iraq and Afghanistan, was the first agent of that agency to be killed by gunfire since the raid on a religious cult compound in Waco, Texas, in 1993.

According to the report, McGoey, 43, of Hampton Bays, entered the pharmacy, threatened the employees with a gun, and stole painkillers and money. He was released from prison in August 2011 after serving 20 years for

robbing pharmacies and other businesses, state records show.

Capano, a regular customer who was filling a prescription for his father, entered the pharmacy from the back and, realizing a robbery was underway, shouted to a fleeing McGoey to drop his weapon. When McGoey didn't, Capano fired, hitting him in the buttocks, the report says.

Moments later, after a pharmacy employee ran to a nearby deli to say a robber in the store said he was going "to kill everyone," Geraghty, the deli's owner, and Arbia, ran to the Merrick Road store. The men came upon Capano and McGoey struggling on the sidewalk for Capano's gun. They identified themselves as police, and Geraghty yelled at the men to drop the gun, the report says.

Geraghty then jumped behind Capano, put his arm around Capano's neck, and tried to grab the gun Capano and McGoey were fighting over, the report says. Geraghty repeatedly screamed, "who's the good guy," "who's the bad guy."

Suddenly, a shot fired from Capano's gun zipped past Geraghty's ear, the report says. Believing Capano was the robber and that he was trying to shoot him, Geraghty put his gun to Capano's rib cage and fired, the report says.

Arbia then shouted for McGoey to show his hands, but McGoey refused to comply. Arbia fired three shots at McGoey, the report says. Capano and McGoey both died of gunshot wounds, the report says.

With *Tania Lopez, Anthony DeStefano and Bart Jones*

The chaotic scene

The Nassau district attorney's report gave a detailed account of the New Year's Eve shooting at a Seaford pharmacy.



PHOTO BY KEVIN P. COUGHLIN

■ **Suspect James McGoey** enters Charlie's Family Pharmacy, shows his gun to the clerk and demands drugs and cash.

■ **ATF agent John Capano** enters through a back door, realizes a robbery is under way, puts his hands up and backs away.

■ McGoey says, "Don't do anything — I'll shoot," and then turns and runs toward the front door. McGoey aims at Capano. Capano then shoots at McGoey, hitting him in the buttocks. McGoey tumbles out the door; Capano follows.

■ A pharmacy worker runs to a nearby deli and tells retired **Nassau Police Lt. Christopher Geraghty** and **off-duty NYPD Officer Joseph Arbia**. They run to the front of the pharmacy, where they find Capano and McGoey grappling for a gun.

■ Geraghty and Arbia both yell that they are police officers and order the men on the sidewalk to drop the gun. When there is no response, Geraghty jumps on the back of the man nearest to him — Capano.

■ Geraghty puts his left arm around Capano's neck and reaches around him to try to grab the gun that Capano and McGoey are fighting over. Geraghty repeatedly yells, "Who's the bad guy?" There is no response.

■ Capano turns, and his hands jerk over his own right shoulder, toward Geraghty's head. Geraghty can see down the barrel of the gun and believes Capano is the robber and that he is trying to shoot him.

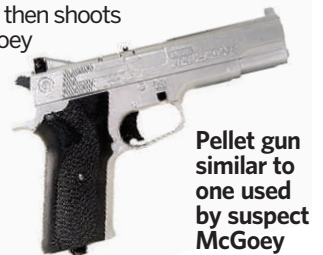
■ A shot is fired from Capano's gun, passing within about 16 inches of Geraghty's head. About the same time, Geraghty fired a shot into Capano's side.

■ Meanwhile, Arbia orders McGoey, who is within arm's distance of the gun, to show his hands. When McGoey does not comply, Arbia fires two shots at him. He looks to see whether he had hit him, and then fires a third shot, after which McGoey falls to the ground.



McGoey

Capano



Pellet gun similar to one used by suspect McGoey