

**ATTORNEY GENERAL'S REPORT REGARDING FEBRUARY 9, 2017
SHOOTING DEATH IN STODDARD, NEW HAMPSHIRE**

I. INTRODUCTION

The Office of the Attorney General and the New Hampshire State Police have concluded an investigation into a fatal shooting incident that occurred in Stoddard, New Hampshire on February 9, 2017. As a result of that investigation, New Hampshire Attorney General Gordon J. MacDonald has determined that Nicole Carney (age 36) was justified in using deadly force when she shot and killed an intruder in her home, her estranged husband, Michael Carney (age 44). Accordingly, no criminal charges will be brought against Nicole Carney in connection with the shooting.

The purpose of this report is to summarize the Attorney General's findings and conclusions with regards to the incident which resulted in the death of Michael Carney.

II. SUMMARY OF THE FACTS

On February 9, 2017, Nicole Carney was at her home in Stoddard, New Hampshire with her 5 year old daughter. Nicole was separated at the time from her husband, Michael Carney. Prior to February 9th, Michael did not know that Nicole had bought her own home in Stoddard and did not know her address.¹

On February 9th, Michael had an issue with his internet service. He called the internet provider and learned that Nicole had bought her own home in Stoddard. Michael was very upset when he found that out and called and texted Nicole expressing his anger. Nicole was

¹ Nicole had implied to Michael that she had been living somewhere else with her parents.

very concerned that Michael knew her address based on his prior physical and verbal abuse. As a result, she armed herself with a rifle that her son had in the home.

At around 7:07 p.m., Nicole called 911 because Michael had showed up at the house. After that, it appeared to Nicole that Michael left. However, a short time later, Michael returned. Nicole first realized that Michael had returned when she heard him on the first floor in the house.² Nicole told Michael to leave. Instead, he moved through the house toward the stairs that led to the second floor where Nicole and her daughter were located. Nicole armed herself with her son's rifle and told Michael to leave. She described him as angry and agitated. Michael did not leave and instead walked to the foot of the stairs and then up to the landing putting him just moments away from Nicole and her daughter. Nicole then fired 2 shots from the rifle hitting Michael each time. Michael fell from the landing down to the bottom of the stairs and died instantly. Nicole called 911 and told the operator that she had shot her husband.

Nicole told the State Police that she shot Michael because was afraid that if he got up the stairs, he would overpower her, get the gun away from her and kill her.³ Nicole said that Michael had threatened to kill her in the past, told her that if he could not have her no one could and had told her that day that he wished she was dead.

III. THE INVESTIGATION

Since the incident on February 9, 2017, the Attorney General's Office and the New Hampshire State Police have been investigating the circumstances that led to the shooting. That investigation has entailed witness interviews, an examination of the scene and physical

² The physical evidence would later show that Michael had kicked a door in to get inside the house.

³ At autopsy, Michael was found to be six feet, two and one-half inches tall, and weighed two hundred and twenty-one pounds.

evidence recovered from the scene and the review of available digital evidence to include phone calls and text messages. Nicole Carney has been cooperative with the investigation, and agreed to be interviewed.

A. Nicole Carney's 911 Calls

Copies of Nicole Carney's 911 calls were obtained. On February 9, 2017, Nicole Carney made 3 911 calls from her home at 106 Moose Brook Road in Stoddard, New Hampshire. The first 911 call was made at 7:07 p.m. Parts of this call are difficult to hear clearly. Nicole sounded panicked during that call and told the operator that her ex-husband was at the house. The call appeared to disconnect mid-sentence possibly because of poor cell service.

The second 911 call was made at 7:47 p.m. Again, parts of this call are difficult to hear clearly because of poor cell service. During the call, Nicole sounded breathless and upset. She told the 911 operator that someone was at her front door and that it was her estranged husband. She asked for the police and an ambulance and then the call disconnected mid-sentence possibly because of poor cell service.

The third 911 call was made at 7:49 p.m. During that call, Nicole was hysterical. She told the 911 operator that she needed the police and an ambulance. Nicole said that her husband had showed up for the third time, that he got in and that she shot him.

The police arrived after Nicole's third 911 call and found her and her daughter upstairs in the house. Both were physically unharmed. The body of an adult male was also found in the house at the bottom of the stairs leading from the first to the second floor. He was identified as Nicole's estranged husband, Michael Carney. Michael was deceased and had 2 apparent gunshot wounds.

Nicole and her daughter were escorted from their home and the home was secured by Troopers to await a more thorough search. Nicole agreed to accompany the Troopers back to the State Police Troop C Barracks in Keene to speak with them about the incident.

B. Nicole Carney's interview with the Troopers

During her recorded interview, Nicole told the Troopers that she owned the home at Moose Brook Drive and lived there with her 5 year old daughter and 18 year old son. Until that day, Nicole's estranged husband, Michael Carney, did not know where she lived and that she had bought the house in Stoddard in May of 2016. The 2 had been living apart since March of 2016 when he kicked her out.

Michael was able to find out where Nicole lived because of a problem with his internet service. On the morning of February 9, 2017, Michael had an issue with the internet at his home in Sullivan, New Hampshire. The internet service was in Nicole's name and when Michael called the provider (FairPoint), they told him that their records for the account showed a different address on Moose Brook Drive in Stoddard. That is when Michael learned that Nicole had a house in Stoddard and was able to get the address for that house; something Nicole had tried to hide from him.

After finding out she had a house in Stoddard, Michael called and texted Nicole about the fact that she had a home on her own. Nicole confirmed that she did have her own home and said it was for the protection of her and her children. Nicole thought that things were "okay" at the end of that conversation with Michael because the situation had calmed down. Michael said that he was "at peace with things" and could "finally move on". Later in the day though, Michael started texting her and asking why she did not come by to talk about

things. She told him that she was not coming by in a snowstorm.⁴ She also said that she did not want to talk to him on the phone because things would become “heated”. Michael texted her that he was coming by but she ignored his texts.

Nicole said that the next thing she knew she saw Michael’s car driving down the road in front of her house. She surmised that he must have driven down her driveway and then turned around and left. There were some texts back and forth between Nicole and Michael and then Michael was back at Nicole’s house. Nicole called the police and told them that her husband was there and was at the door and just kept knocking. She told her daughter to stay upstairs and then Michael left. After that, she got a text from Michael saying that he was at home.

Nicole said that Michael continued to call and text her. After some time passed, Nicole heard Michael’s voice in her house and realized that he was there, inside the home. She did not know how he got in; all the doors should have been locked but she was not positive. Nicole was upstairs at that time as was her daughter. Nicole asked Michael to leave but he did not. Instead, Michael turned on a light in the kitchen. Nicole asked Michael what he was doing and why he was there and again asked him to leave. Michael still did not leave and moved from the kitchen into the foyer area closer to the stairs that led to the second floor where Nicole and her daughter were. Nicole kept telling Michael he needed to leave. Michael refused to leave and told Nicole that she “owed him explanations”. He moved closer to the stairs and then started walking up them. Nicole said Michael was agitated and very angry with her. She was standing at one point and then sat on the floor because she was “shaking” and “so afraid”. Nicole had the rifle in her hand. She said that

⁴ A snowstorm accompanied by strong winds that day had left more than a foot of snow in some areas of the State.

she had kept the rifle with her “all day because she was afraid”. Nicole had checked earlier and confirmed that the rifle was loaded. She believed that she needed the rifle to protect herself since no one was around to help her and she was not confident the police would arrive in time with the snowstorm.

As Michael headed up the stairs where Nicole and her daughter were located, Nicole said that she “panicked” and shot at Michael. Nicole believed that he was on the landing when she shot at him. She said that when Michael got up to the landing on the stairs, she knew she was going to have to shoot him. She did not want Michael getting to her daughter and she did not know what he had or what he would have done. Nicole said that she did not know whether Michael saw her with the rifle. She also could not tell if he was armed.

Nicole said it “happened so fast”. She did not remember pulling the trigger twice but knew that she did because she heard the first shot. After the first shot, Michael yelled as if in pain. Nicole assumed she hit him but did not “hit him very well” since he yelled and was still there. After the second shot, Michael slid down the stairs. Nicole ran to her room and called the police because she only gets cell service in certain spots in her house and that was one of them.

Nicole said that she shot at Michael the first time because she thought he was there to kill her. When asked why she fired at Michael a second time, she said that she “honestly thought” to herself about the fact that he was six feet four inches tall, she did not hit him good (with the first shot) and he would get “that adrenaline rush” and “be able to rush” her. Nicole said that if Michael got upstairs she did not want “him anywhere near her” meaning their 5 year old daughter. Nicole said that she also knew that if Michael got up to where she was, she would be “powerless” and having a gun would not matter because Michael would

be able to overpower her. Nicole told the Troopers that if Michael had been able to get a hold of her and had taken the gun from her, and knew that no one was there, it would not have been good for her based on his years of anger. Nicole said that before she fired the gun at Michael, he did not make any verbal threats at her. However, he did tell her earlier that day that he wished she would die.

Nicole told the Troopers that when she shot at Michael she was “protecting her child” even more than herself. She knew that if Michael had shaken off the first shot, he was coming for her. Nicole also said that the fact that Michael had learned that day that she had bought a house would be “closure for him of us”. In addition, the house she had bought in Stoddard was the same one the 2 of them had looked at before as a couple. Michael’s “mindset” was that if he could not have Nicole then no one could. He had told her about a month ago “If I can’t have you, no one can”.

Nicole sobbed during the interview and said “I’m sorry” and “I shouldn’t have done it”. She said that she should have unloaded the gun earlier and then just used it to essentially scare Michael. She said she instantly regretted it when she shot him.

Nicole told the Troopers that she had never shot her son’s rifle or one like it before. She did check the rifle that morning to see if it was loaded and worked the bolt action. Nicole said that she had wanted to familiarize herself with the rifle if she was going to use it for “safety” and figure out how to load the clip and put a bullet in the rifle. Nicole also “Googled” how to determine if the rifle’s safety was on or not.

Nicole was asked about her relationship with Michael. Nicole told the Troopers that she had been married to Michael for 7 years. Things have not been “great” the past 6 years of their marriage. Michael had been verbally abusive to Nicole in the past, telling her

she was “gross,” “trailer trash,” a “horrible wife” and a “piece of shit.” Nicole said that Michael also threatened to kill her in the past including within the past year. He would say things like he was going to bash her head in. Michael would accuse her almost daily of cheating on him. She said that was not true. Michael also told her a while ago that he was seeing a woman from Vermont but later said it was not true and he just said it to make her jealous. Nicole explained how Michael had been trying off and on to get her to come back home with him. She said that he threatened to call the police on her and she later found out that he called the police and reported that she had kidnapped their daughter and was drinking.

As far as physical abuse, Nicole said that Michael had physically assaulted her in the past, but not “very often”. She explained that last year he assaulted her a “couple of times”. One time, Michael assaulted her by hitting her in the head 3 times when she was in bed with her daughter. She also described an incident in the past where she was holding their daughter at the top of the stairs and Michael “smacked” her in the head almost causing her to fall down the stairs. Later that night, he told her that he was done with her and his daughter, that they were “useless” and that they needed to get out. Nicole said that Michael was very verbally abusive to their 5 year old daughter who was “scared to death” of Michael.

Nicole said that Michael did a lot of drinking and she had tried to get him to go to AA. She also said that they were in counseling but that it was not helpful. Nicole had been planning on getting a restraining order the next day. She told the Troopers that she had spoken to 2 other people in the past about her marital issues, Caryn Perkins and Chris Walker. Troopers spoke to those 2 people to gather information about the Carney’s prior history and relationship.

C. Information from Nicole Carney's daughter's counselor

Nicole Carney's 5-year-old daughter was not interviewed. Instead, Nicole Carney agreed to let investigators speak to her daughter's counselor in order to confirm whether her daughter had made any statements about the incident. Based on the information relayed by that counselor, it appears that the daughter did not witness the incident itself and had no relevant information about the shooting.

As far as potential information about the relationship between Nicole and Michael Carney, the daughter expressed her reluctance to visit Michael in the past and stay with him at his house. There were a variety of reasons given for that including that the daughter did not like the way Michael treated Nicole.

The counselor also relayed her impressions of, and conversations with, Nicole Carney. Nicole told the counselor that on the day of the incident, she had been getting lots of messages from Michael and he had been very threatening. Nicole said that she was afraid she was going to die and that when Michael charged at her, she shot him. According to the counselor, Nicole seemed remorseful about the shooting.

D. Interview with Caryn Perkins

Caryn Perkins is Michael Carney's sister. She told the Troopers that her brother had a very bad alcohol problem and was aware that Nicole and her brother had been having "issues". Perkins said that Michael was out of control and would accuse Nicole of things that were not true. She recounted an incident when her brother was assaultive to Nicole and shoved her.

Perkins told the Troopers that her brother was abusive and threatening to both Nicole and Nicole's daughter and that she had feared for both of their lives. Perkins believed that

her brother was jealous of Nicole's daughter and she told the Troopers that she had been afraid that Michael would kill Nicole or her daughter.

E. Interview with Chris Walker

Chris Walker told the Troopers that he has known Nicole Carney for about 21 years. He described their relationship as brother-sister. Walker had met Michael Carney about a dozen times in the past.

Walker said that the Carney marriage looked pretty normal from the outside and that Nicole tried to hide the true extent of their marital problems. Within a couple of years of being married, Nicole confided in Walker about issues with Michael and talked about his excessive drinking. Michael would drink every day sometimes as much as 2 boxes of wine in a day. More recently, Michael would go 2-3 days without drinking and then start up again. Nicole said that the breaks in drinking were part of Michael's efforts to keep from losing her. Nicole's biggest concern seemed to be trying to help Michael. Walker said he gave Nicole information about AA to pass along to Michael to try to help him.

Nicole told Walker about some times when Michael physically assaulted her. However, most of the abuse was emotional. Michael would accuse Nicole of having affairs which she denied. When Michael drank, he would text Nicole non-stop and belittle her as well. Nicole believed that Michael would kill her and was afraid for the safety of her young daughter. Nicole had told Walker about 4 or 5 instances in where she barricaded herself in her daughter's room when Michael was drunk and he said he wanted to kill them.

On the morning of February 9, 2017, Walker got a message from Nicole telling him that she had a gun. He called Nicole and asked her what was going on. Nicole was very upset and crying. Walker said that Nicole was "freaking out" and on a scale of 1 to 10, she

was a 12 on the fear scale. Nicole was upset because since FairPoint had given out her address to Michael, he now knew where she and her daughter lived. Walker was so concerned that he cut short a snowmobile trip in Vermont and started heading back to New Hampshire to Nicole's house. However, the shooting occurred before he arrived.

As Walker was driving back to New Hampshire, he continued to communicate with Nicole. She messaged him that Michael was not there yet (meaning at her house) and then later said that Michael was being very calm. Walker told her that was not "good" and that it was the "calm before the storm". Walker told Nicole she should leave the house but Nicole did not want to take her daughter out in a snowstorm on the "chance" that Michael might show up. Later, Walker got a message from Nicole that all the lights were off at the house and the doors were locked because Michael had been there twice already. She told Walker not to stop by because she did not want to make it worse for him. The next message he got from Nicole was that she was calling the police.

Walker said that prior to the incident, Nicole had been afraid that Michael would kill her for at least a year. In spite of that, Nicole did not hate Michael and made sure he saw his daughter every day.

F. Interview with Kelly Carroll

Kelly Carroll told investigators that he had been best friends with Michael Carney for 18 years. Carroll lives out-of-state, so he only saw Michael about every 6 months. They spoke on the phone about every 2 or 3 weeks.

Carroll said that he spoke with Michael about his marital issues. Michael told him that he was getting counseling and was trying to make amends with Nicole. Michael was

hopeful that he and Nicole would get back together. Carroll was aware that Michael had been unfaithful in the past but thought that Nicole might have been aware of that fact.

Prior to the incident, Carroll had been in touch with Michael's sister. She told him that Michael had been drinking a lot more. They discussed having an intervention with Michael to address his drinking but never did since Michael later appeared to be drinking less.

Carroll also said that Nicole would text him with concerns about Michael. Carroll said that he never saw Michael get physical with anybody. However, he had been told by someone else that Michael had been physical with Nicole.

Carroll said that Nicole spoke to him about the incident at Michael's funeral. She said that Michael had found out her address through the cable company. Nicole told Carroll that Michael had walked around her house, kicked in the door and barged into her house. Nicole said that earlier in the day she had taken a gun away from her son so the gun was readily available.

Carroll believed that if Michael had found out about Nicole's house that would have set him off.

G. Interview with Hunter Kempf

Hunter Kempf is Nicole Carney's teenaged son. He was at Nicole's house on the night of the incident but left shortly before Michael Carney arrived.

On the day of the incident, Hunter had been out plowing after the snowstorm. He received a text from Nicole telling him that Michael knew about the house, i.e. where she was living. Hunter said that Nicole was worried that Michael knew where she was living.

Michael said that Nicole had bought the house in Stoddard so that Hunter could live with her. Hunter had previously lived with Nicole and Michael when they were still together but had moved out over Michael's anger issues. Hunter said that Michael would get angry over the slightest things and focus his anger on whomever he blamed for the issue.

Hunter relayed examples of Michael's anger and how he and his mother dealt with those outbursts. Hunter said that he had never seen Michael assault Nicole but he believed Michael had in the past based on Nicole's behavior.

Hunter said that on the day of the incident, he had stopped by the house in Stoddard for about ten minutes to check on Nicole and plow the driveway. Nicole told Hunter that she had his rifle "in case something happens" because it was the only way to protect herself from Michael.⁵ Hunter thought that since the day was over and nothing had happened that things would be okay.

H. Text Messages

Nicole Carney agreed to let the State Police download her phone and review her communications including her text messages with Michael Carney in the days before the incident.

A review of those text messages showed that Michael complained to Nicole when he did not get his way. He also admitted that he would "get mad" at times. Michael said at one point, "I don't care anymore". They also communicated about the children and seeing the children. On February 5, 2017, Michael was very unhappy when Nicole declined to go over to this house and watch the Super Bowl with him because she was tired. He told her that it

⁵ Hunter said that he believed that he had left his rifle loaded at the house. He also said that Nicole had talked to Chris Walker about how to use the gun.

“hurts too that you don’t have any excitement about the game or want to share it with me. That hurts more”.

In a later text he told Nicole: “Sorry but I am mad at this situation and [so] lonely. It [sucks] an I am pissed. Nite.” Later, after some back and forth texts about their daughter’s illness and the Super Bowl, Michael said, “Sorry I just can’t not feel anger toward you.” Michael complained about being alone and said, “Ah. Cold dark lonely. Stinky place to be alone.” He complained he did not have anything to eat at his home and would be passive/aggressive with Nicole about seeing her. He later said, “All I think is everyone is just more comfortable with this disjointed family arrangement is all” and “I am truly sick of everyone”.

On February 8, 2017, the day before the incident, Nicole dropped off groceries for Michael at his home. She told him that she left them on the porch and that he would have to put them away himself because she thought the door was locked. Michael was unhappy about that and told her the door had been open and sarcastically told her that she went “the extra mile”. He also said that he would not put the groceries away and that “They can rot”. Nicole responded and said that she would turn around and go back and put them away. Michael responded by saying, “It’s your stupid doing. Finish it for once.”

The next day was February 9, 2017, the day of the incident. At 7:50 a.m., after some back and forth about when they would see each other, Michael said to Nicole, “Maybe time apart. See other people to see how much we love each other and if what we have is repairable or not.” Nicole responded and said, “If you want someone else go have them, no need to repair anything from there.” Michael then told her, “I don’t. I just need a LOT more

than you can offer me. You don't seem capable of it. I can't continue as is. [Man] you need to wake up."

A short time later, Michael texted Nicole that he had no internet. He said he called and that it had been suspended for non-payment of the bill. Michael then texted her, "Wtf Nicole." He told her she needed to call to resolve it and she told him she paid it last week. They argued back and forth about the bill and it was clear that Michael was angry with Nicole. At one point he said to her, "You are a real fucking gem. Let me tell you. Always threatened. On the defense." That was followed shortly by a text from Michael that said, "Fuck you." When Nicole tried to engage Michael, he texted, "Trying to have conversation. But you are the asshole you are. I hate you!!!!"

Nicole told Michael that she was working with FairPoint to get his internet back on. He was upset because he needed to work and asked her for the number to call himself. She told him she would handle it but he insisted so she sent him the number. At about 10:17 a.m., Nicole asked what FairPoint had said and Michael responded, "Call me now." At 10:28 a.m., he sent a series of texts to Nicole and said:

- *"Don't hang up on me you [ass]"⁶*
- *"I cannot believe you."*
- *"I hope you die!!!"*
- *"106 Moosebrook dr."*
- *"Hmmm wonder what that is."*
- *"On my way there."*

⁶ Presumably, these texts were sent after Michael learned from FairPoint that Nicole had a home on her own. Errors in spelling in some of the texts have been corrected for clarity.

- *“The house that is for sale. Boy you have explaining to do.”*

After that series of texts, Nicole texted a friend and said, “Mike knows about Stoddard I don’t know what to do.” About an hour later she said. “I will be fine I don’t want to drive in this and risk crashing! I have your gun with me! Everything is locked up tight and dogs in their crates just in case.”

At 1:28 p.m., Michael texted Nicole and said, “I will be calling FairPoint for details on Stoddard soon.” He then asked how their daughter was and said, “I am back to believing you have another life or more lies.” After some brief back and forth, Michael told Nicole “We also need to have a discussion on this so my brain and stomach do not go thru another several days of this till you come to Jesus.” Michael asked her to call him but she said she was talking to FairPoint. He responded with, “I will call whoever I need to. You have no doubt. Therefore you will talk to me when you are done.” Michael continued telling her she needed to call him right then and she told him to stop telling her what to do. Michael followed up with texts that said “No, I am owed answers now” and “You lie constantly”. After some more back and forth, Michael said:

- *“All your lies are about to implode.”*
- *“You will be in Karma hell no doubt.”*
- *“You owe me a call now!!!!”*
- *“Once a liar always a liar. Piece of shit.”*
- *“Literally shaking.”*
- *“I deserve a call.”*
- *“Call me.”*
- *“Well at least we know things are over now.”*

- *“Call me now or I am calling ted and the police. This has to be some sort of theft. I have no doubt you took the money from my drawer.”*

Michael went on and gave Nicole an ultimatum to call him and said he would create a Facebook page and post “all this.”. At 2:35 p.m., Nicole eventually responded and told Michael that she did not take any money and that he probably took it (the money) and moved it when he was drinking. Michael proceeded to text Nicole with a countdown to the deadline for her to call him. There was more back and forth where Michael called Nicole a liar and told her, “I can never forgive you for this one.” He told Nicole he was sorry and devastated and would “be for life”. At 2:49 p.m., he told Nicole, “Good bye.” She responded and said, “I did what I did to protect myself and my kids!” Michael responded about 10 minutes later and told Nicole there were “others” he was “interested in pursuing.”.

About an hour and a half later, Michael texted Nicole about the oil tank at his house. A short time after that discussion, he said, “Oh the lies people weave. I am amazed that I ever loved you or believed you. I cannot wait to get out of this area. This one is going to make me look like the biggest loser there is. Thanks again for being you. At least I have learned trust your gut.” He followed that with, “I knew you were evil in Sheeps [sic] clothing.” There was some more back and forth and Michael saying, “You are evil. Evil. Evil.” He told her she was a liar and deceptive and that he felt “beyond violated”.

At 5:14 p.m., Michael texted Nicole, “Well you have ended us” and then “I am sick of deceit and seeing it daily in your eyes.” He went on and told her that she was liar, had deceived him and that what she did was wrong, i.e., buying the house. Michael went on ranting at Nicole and at 5:34 p.m. said, “This time wedding ring is flat metal. And anything I see that is us being disposed of.” Michael told Nicole that she had deceived him and that

what she did was like cheating. He complained about not having money and said she had his wages “garnished”. Nicole finally told him that she would talk to him later or tomorrow but Michael said there was no need. More back and forth ensued between Nicole and Michael. He called her names and she explained that she had wanted to talk to him when their daughter was not around. He told her that they needed to talk “now or never”. Nicole told him that she was watching a movie with their daughter and would call when she went to bed.

At 6:20 p.m., Michael told Nicole, “I’m so mad you blew me off” “Who do you think you are” and “You bought a fucking house”. A few minutes later he told Nicole she was a “joke” and that she owed him “closure today”. Michael told her that he wanted to talk now but Nicole tried to convince him to wait until the next day because she wanted “emotions to be settled” and did not want their daughter around. At 6:47 p.m., Nicole said she was done for the night talking and texting. Michael begged Nicole to talk to him that night and said if she did he would leave her “alone for good”.

At 7:04 p.m., Michael texted Nicole, “Just went by Stoddard.” He asked if they could talk and if he needed “to come to [the] door.” Nicole told him to go home and that she did not want to talk with their daughter around.⁷ At 7:12 p.m. Michael texted that she would not answer and asked her to call and said, “Want closure”. He told Nicole he was asking “nice” and wanted to “do this nice”. At 7:19 p.m., Michael told Nicole that he was back at home and wanted to sleep. He told her that he would be respectful and wanted to have “closure”. Nicole told him that she would talk to him the next day when it was daylight and their daughter was not around. Michael told Nicole that he would not talk to her the next day because, “After tonite I am done.” He implored her to talk to him that night and said he was

⁷ This is all right around the time of Nicole’s first 911 call.

“fine with it” but needed answers. At 7:25 p.m., Michael continued to try and get Nicole to agree to talk and said, “I am serious when I say it is now or not. Tomorrow is a new day in my life. One without you.” At 7:27 p.m., he told Nicole, “No respect. To talk to you[r] lawful husband.”

At 7:38 p.m., Michael sent Nicole a one-word text that said, “Here.” There were no more text messages between the 2 after that. The shooting occurred shortly after that text.

I. Autopsy results

The State’s Chief Medical Examiner, Dr. Thomas A. Andrew, conducted an autopsy on Michael Carney on February 11, 2017. He determined that Michael was 6 feet, 2 1/2 inches tall, and weighed 221 pounds.⁸

Michael had 2 gunshot wounds. One was to the head and entered from just above and behind the right ear. The second was to the mid-back and entered the left side.⁹

Tests conducted on a sample of Michael’s blood revealed that he had a blood alcohol concentration of .044 (half the legal limit to drive). There were no other significant findings from the blood tests.

Dr. Andrew ruled the cause of Michael’s death as 2 gunshot wounds and the manner of death as homicide.¹⁰

⁸ On his license, Michael’s height was listed as 6’ 4’’ tall and his weight was listed as 220 pounds.

⁹ The location of these wounds is consistent with where Nicole said she was located when shot at Michael. Because of the layout of the stairs, Michael’s back would have been facing her just before he turned to the side to walk from the upper landing to the last section of the stairs leading to the second floor where Nicole and her daughter were located.

¹⁰ As used by the Office of the Chief Medical Examiner, the term “homicide” is defined as the killing of one person by another.

J. Physical evidence at the scene

The rifle that Nicole used to shoot Michael was recovered on the second floor balcony that overlooked the stairs from the first floor. That rifle was a bolt action Mossberg, .30-06 caliber. In the same vicinity was a discharged rifle cartridge casing. Michael's wounds were consistent with being caused by the Mossberg rifle.

An outside entry door to the attached garage in the back of Nicole's house was damaged. The doorframe was broken apart. It appeared that the door had been kicked in from the outside while the deadbolt and door lock were secured. The damage to the door was consistent with Michel forcing his way into the home.

The location of blood spatter and blood on the stairs leading from the first to the second floor was consistent with Michael being on the upper landing on the stairs at the time he was shot.

No other significant physical evidence was recovered at the scene.

III. THE APPLICABLE LAW AND ANALYSIS

New Hampshire's laws regarding self-defense are contained in RSA Chapter 627. RSA 627:4 states that a person may be justified in using deadly force to protect herself or others in certain circumstances. Three of those circumstances are potentially relevant here:

RSA 627:4, II(a), permits the use of deadly force by an actor against another when she reasonably believes that the other person "[i]s about to use unlawful, deadly force against the actor or a third person";

RSA 627:4, II(b) permits the use of deadly force by an actor against another when she reasonably believes that such other person "[i]s likely to use any unlawful force against a person present while committing or attempting to commit a burglary" [RSA 635:1, I, defines "burglary" as entering a building with the purpose to commit a crime therein]; and

RSA 627:4, II(d) permits the use of deadly force by an actor against another when she reasonably believes that such other person “[i]s likely to use any unlawful force in the commission of a felony against the actor within such actor’s dwelling or its curtilage.”

Some discussion of the terms used in each of the above sections is appropriate. The phrase “reasonably believes” means that the actor, i.e., the person using deadly force, “need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real.” State v. Gorham, 120 N.H. 162, 163-64 (1980). The term “reasonable” “is determined by an objective standard.” State v. Leaf, 137 N.H. 97, 99 (1993). Further, all the circumstances surrounding the incident should be considered in determining whether the actor had a reasonable belief that deadly force was necessary to defend himself or another. When reviewing a deadly force incident, the actor’s conduct should be viewed considering “the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection.” N.H. Criminal Jury Instructions, 3.10. In other words, when analyzing the reasonableness of an actor’s use of deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight, which is afforded by one viewing the circumstances after the fact. The amount of deadly force used by the actor to protect herself or others must also be reasonable, and not excessive. See State v. Etienne, 163 N.H. 57, 70 (2011).

The law also provides that people in their dwellings, or people who are anywhere they have a right to be, have no duty to retreat from the encounter before resorting to deadly force to protect themselves or others, if they were not the initial aggressor. See RSA 627:4, III(a). And finally, in any case where a person uses deadly force and later claims self-defense, the

State has the burden to disprove that self-defense claim beyond a reasonable doubt in order to secure a conviction. See State v. McMinn, 141 N.H. 636, 644-45 (1997). These are the rules that guide the analysis in this case.

In this case, Nicole Carney was faced with an intruder who broke into her locked home on the evening of February 9, 2017. Although the intruder was no stranger to Nicole, that did not reduce the danger she believed he posed or her belief that her life and the life of her daughter was at risk. On the contrary, Nicole's prior experience with the intruder, her estranged husband Michael, heightened her reasonable belief about the danger the intruder posed. Nicole said that Michael had abused and threatened her in past. In addition, he had told her earlier that day that he hoped she would die. That statement was even more concerning to Nicole since a month before Michael had told her that if he could not have her no one could.

After he broke into the house, Michael escalated the situation by refusing to leave despite numerous requests to do so. Instead, he told Nicole that she owed him an explanation and then moved from the kitchen toward the stairs which gave him access to Nicole and her daughter. After he reached the stairs, Michael continued to refuse Nicole's requests to leave and then started up the stairs. By the time Michael had reached the upper landing on the stairs, Nicole said he was agitated and very angry with her. At that point, Michael was just moments away from Nicole and her daughter and showing no signs of stopping. That is when Nicole shot Michael twice killing him.

Based on all the facts and circumstances, it was reasonable for Nicole to believe that at the time she shot Michael, he was about to use deadly force against her or her daughter, or likely to use any unlawful force against her or her daughter, in the commission of a burglary

or some other felony inside her home.¹¹ As the situation unfolded, Nicole was faced with a physically large, angry man, who had just broken into her home. Instead of leaving as he was told numerous times, Michael made it clear that he was not leaving and instead moved toward where Nicole and her daughter were located. Michael's refusal to leave the home and his movement toward Nicole and her daughter were threatening in and of themselves. However, the situation was even more threatening because of the history between Nicole and Michael that included abuse and threats by him. That history, in addition to the fact that Michael had committed a crime by breaking into the home, provided a reasonable basis for Nicole to believe that Michael was about to kill or seriously injure her or her daughter, or was likely to use unlawful force against her or her daughter in their home.

Even though Michael was not armed, Nicole's actions were still objectively reasonable in light of all the circumstances known to her at the time. She knew that Michael was physically large enough to kill or seriously injure her or her daughter even without a weapon. Nicole also believed that if Michael got to her, he was capable of taking her rifle away from her. That would have left her with no way to protect herself or her daughter from a much larger and angry man.

The text messages between Nicole and Michael also confirm that he was unstable that day and very angry with Nicole even before he showed up at her home that night. The text messages show that after he learned about Nicole's home in Stoddard, he repeatedly insulted her and at one point told her he wished she was dead. In some of the texts that followed, Michael told Nicole that he wanted to see her so he could have "closure" that she had ended

¹¹ Based on what Nicole had said about Michael's prior abuse and threats, his text messages that day, and his forced entry into her home, Nicole reasonably believed that Michael was going to commit a felony-level assault against her or her daughter.

them as a couple, and that tomorrow would be a new day in his life, a life without her. Those text messages were ominous and concerning on their own but even more so when Nicole's previous history with Michael was taken into account. It was that previous history that made Nicole concerned about how Michael might act that night should he appear at the house. A concern that Nicole had felt even before that night as evidenced by the text message she sent Michael explaining why she had bought the house without his knowledge: "I did what I did to protect myself and my kids!"

Since Nicole was not the initial aggressor that night and was in a place she had a right to be (her own home), she was not required to retreat before using deadly force. And when Nicole did use deadly force, she did not use excessive force. Nicole did not shoot Michael when he first broke into her house, or when he appeared in the kitchen, or when he first approached the stairs. Nicole also did not shoot at Michael when he started up the stairs. Instead, Nicole held off on using deadly force until it was clear that Michael would not comply with her orders to leave the house and when he was just a few moments away from reaching her and her daughter.

IV. CONCLUSION

Based on the applicable law and all the facts and circumstances of this case, the Attorney General has determined that it was reasonable for Nicole Carney to conclude that an intruder in her home, Michael Carney, was about to use deadly force against her or her daughter, or likely to use any unlawful force against her or her daughter, during the commission of a burglary or some other felony. Therefore, Nicole's subsequent use of deadly force against Michael was legally justified pursuant to RSA 627:4, II. Accordingly,

no criminal charges will be brought against Nicole Carney in connection with the shooting death of Michael Carney.

[1627390]