

**ATTORNEY GENERAL’S PRELIMINARY REPORT REGARDING  
THE JULY 10, 2017 OFFICER-INVOLVED SHOOTING  
INCIDENT IN KEENE, NEW HAMPSHIRE**

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**I. INTRODUCTION**

New Hampshire Attorney General Gordon J. MacDonald announces the completion of a preliminary report into the officer-involved shooting that occurred in Keene, New Hampshire on July 10, 2017. That incident resulted in the nonfatal shooting of Patrick Letendre (age 28). The purpose of this report is to summarize the Attorney General’s factual findings and legal conclusions with regard to this officer-involved shooting incident. The findings and conclusions in this report are based upon information gathered during the investigation, including photographs and video of the incident scene taken by Major Crime detectives, physical evidence, and numerous witness interviews.<sup>1</sup>

As provided in RSA 7:6 and 21-M:3-b, the Attorney General is the State’s Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever a law enforcement officer uses deadly force it is done in conformity with the law. Based on the investigation of this deadly force incident, the Attorney General finds that the use of deadly force against Patrick Letendre by Keene Police Department Sergeant Christopher Simonds and Police Officer Mark Cotton on July 10, 2017, was legally justified.

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<sup>1</sup> The findings and conclusions contained in this report focus solely on whether the involved officers acted in accordance with the law in connection with their use of deadly physical force. This report is neither intended, nor should be construed, as a comment on the merits of any criminal charges that may be investigated or brought by the County Attorney against Mr. Letendre.

## **II. SUMMARY OF THE FACTS**

At approximately 2:15 p.m. on July 10, 2017, three officers from the Keene Police Department responded to an apartment located at 40 Wilford Street in Keene. The officers were Sergeant Christopher Simonds and Police Officers Mark Cotton and Matthew Bomberg. At that apartment, the three officers encountered Patrick Letendre, his girlfriend, and his girlfriend's three-year-old daughter. Mr. Letendre rented the apartment, and his girlfriend and her daughter had been living there with him for about two months. On the night of July 9<sup>th</sup>, Mr. Letendre and his girlfriend had an argument and on the morning of July 10<sup>th</sup>, she decided that she and her daughter would move out of the apartment. While the girlfriend packed and attempted to move belongings from the apartment, Mr. Letendre tried to prevent her from doing so. As a result, the girlfriend called 911 in order to obtain police assistance in leaving.

Sergeant Simonds was the first officer to arrive at 40 Wilford Street. Sergeant Simonds has approximately sixteen years of law enforcement experience. Officers Cotton and Bomberg arrived shortly thereafter. They have approximately three and six years of law enforcement experience, respectively. The police first ascertained why they had been summoned. Mr. Letendre's girlfriend relayed that she wanted them to be present while she removed belongings from the apartment. The officers agreed to stay while she removed her belongings. When the three officers arrived at 40 Wilford Street, they separated Mr. Letendre from his girlfriend and her daughter and remained at the apartment while she packed. Sergeant Simonds spent most of his time with Mr. Letendre, while Officers Cotton and Bomberg helped the girlfriend as she packed her car. Initially, Mr. Letendre was compliant and was not aggressive. As time passed, however, he said that he wanted to speak with his girlfriend and became increasingly agitated. At least twice, Mr. Letendre briefly went to the bathroom. When confronted by Sergeant Simonds about his frequent short trips to the

bathroom, Mr. Letendre admitted that he did so to drink from a bottle of whiskey that he had hidden in the bathroom.

About half an hour after the officers arrived at 40 Wilford Street, and as Mr. Letendre appeared to become more agitated, the police told the girlfriend to leave. The three officers, Mr. Letendre's girlfriend, and the girlfriend's daughter then left the apartment. Officer Bomberg assisted Mr. Letendre's girlfriend in packing her car so that she could leave. Sergeant Simonds and Officer Cotton consulted further and Sergeant Simonds decided to return to Mr. Letendre to make sure that he did not pose a danger to himself given his observed emotional state and his admitted alcohol consumption. Sergeant Simonds and Officer Cotton then went back to Mr. Letendre's apartment.

When Sergeant Simonds came to the apartment's front entrance, he opened the screen door; the front door was already open. At that same time, Mr. Letendre opened an adjacent inside bedroom door, just feet away, and started to enter the small hallway that led to the front door. After opening the bedroom door, Mr. Letendre moved his right hand from behind his back revealing that he was holding a pistol.<sup>2</sup> Mr. Letendre then pointed the firearm at his own head. At this point, Sergeant Simonds unholstered his weapon and pointed it at Mr. Letendre, stepped back onto the outside stairs to the apartment and using verbal commands repeatedly directed Mr. Letendre to drop his weapon.<sup>3</sup> Officer Cotton was behind Sergeant Simonds. Officer Cotton saw the Sergeant unholster his weapon and heard him directing Mr. Letendre to drop his weapon. Officer Cotton

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<sup>2</sup>Sergeant Simonds had seen a pistol in a closet while in Mr. Letendre's apartment, and believed that the gun Mr. Letendre held was that pistol. According to Mr. Letendre's girlfriend, he had two pistols, both of which investigators recovered.

<sup>3</sup>Attached to this preliminary report is a photograph of where the armed police confrontation with Mr. Letendre occurred, showing its proximity to nearby residences and the relative locations of Sergeant Simonds, Officer Cotton, and Mr. Letendre. The area circled in the photograph is the approximate area where Sergeant Simonds and Officer Cotton confronted an armed Mr. Letendre, who was still inside his apartment.

unholstered his own weapon and pointed it towards the apartment entrance. Officer Cotton initially could not see Mr. Letendre. However, when Officer Cotton moved, so as to remove Sergeant Simonds from his possible line of fire, he saw Mr. Letendre inside the apartment hallway, about four to five feet from the front door, pointing a pistol at his head. Sergeant Simonds estimated that during the confrontation Mr. Letendre stood about six to eight feet from him.

While Officer Bomberg was helping Mr. Letendre's girlfriend pack her car, he heard Sergeant Simonds telling Mr. Letendre to drop the gun. Officer Bomberg quickly got the girlfriend to leave the immediate area in her car. When Officer Bomberg saw that Sergeant Simonds and Officer Cotton still had their guns drawn, he went to his cruiser to get his patrol rifle.

Sergeant Simonds and Officer Cotton each repeatedly told Mr. Letendre several times in substance to drop his gun. Officer Cotton did not hear Mr. Letendre say anything in response and Sergeant Simonds recalled that Mr. Letendre only in substance told the officers to stop yelling. At one point, Mr. Letendre turned his head and upper body away from the two officers, briefly obscuring their view of his firearm. Mr. Letendre then turned his head and upper body to face the officers and moved his arm so that he was pointing the gun at the officers. At that point, Sergeant Simonds and Officer Cotton each saw that Mr. Letendre had turned his gun on them. Fearing that Mr. Letendre would shoot at them and could hit either them or nearby people such as the girlfriend and her daughter – whose whereabouts were unknown to those two officers – Sergeant Simonds and Officer Cotton both fired at Mr. Letendre. Officer Bomberg was making his way from his cruiser to the apartment with his rifle when he saw and heard several shots from Officer Cotton and Sergeant Simonds. Officer Bomberg could not see into the apartment from his vantage point and did not see Mr. Letendre at the time of the shooting. Officer Bomberg did not fire his weapon.

Sergeant Simonds and Officer Cotton each fired two shots at Mr. Letendre.<sup>4</sup> After Mr. Letendre was shot, all three officers entered his apartment. They secured the handgun that Mr. Letendre had, which was on the floor.<sup>5</sup> Officer Bomberg rendered medical assistance to Mr. Letendre until medical personnel arrived. Mr. Letendre was subsequently hospitalized and treated for a gunshot wound. Mr. Letendre suffered a single gunshot wound during the incident. The bullet entered Mr. Letendre's front lower torso and exited near his buttocks. No law enforcement officers or private citizens were physically injured during this incident.

### **III. THE INVESTIGATION**

Since the initial police response on July 10, 2017, the Attorney General's Office and the New Hampshire State Police Major Crime Unit have been investigating the circumstances that led to the confrontation between Patrick Letendre and Keene police officers that led to Mr. Letendre's shooting. That investigation has entailed numerous witness interviews and an examination of physical evidence recovered from the scene of the shooting. All of the police officers involved in the incident have also been fully cooperative with the investigation and agreed to be interviewed.<sup>6</sup>

There were no police-issued video or audio recording devices that recorded the incident. The Keene Police Department does not have body cameras and the Keene Police vehicles do not have

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<sup>4</sup> The weapons that Sergeant Simonds and Officer Cotton used to fire at Mr. Letendre are semiautomatic pistols that have a 16-shot capacity. Investigators at the scene recovered three of the four shell casings discharged from the fired weapons, and saw ballistics damage in Mr. Letendre's apartment consistent with separate gunshots having been fired.

<sup>5</sup> The recovered weapon was a semiautomatic pistol. The magazine was missing from the weapon, but there was a bullet loaded in its chamber. Testing is pending as to whether that firearm was operable.

<sup>6</sup> The last officer was interviewed on July 13<sup>th</sup>.

cameras in them. There are no known video or audio recordings of the incident taken by private citizens.<sup>7</sup>

#### **IV. APPLICABLE LAW AND LEGAL STANDARDS**

New Hampshire's laws regarding self-defense, defense of others and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer, like a private citizen, is justified in using deadly force when he reasonably believes that such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as any assault which the actor commits with the purpose of causing or which the actor knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a weapon capable of causing serious bodily injury or death in the direction of another person constitutes deadly force, even if death does not actually result.

The phrase "reasonably believes" means that the actor "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 there was a reasonable belief that deadly force was necessary to defend himself or another. See id. at 99; Aldrich v. Wright, 53 N.H. 398 (1873). The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or a police officer may still be justified in using deadly force if they reasonably believed that they were in

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<sup>7</sup> The video of the incident scene previously noted was video documentation taken by Major Crime detectives after the incident, as part of routine evidence processing.

imminent danger from the use of deadly force by another, even if, in fact, they were not, so long as the actor's belief was objectively reasonable.

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.

In Graham v. Connor, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer's conduct would be judged when civil rights claims of excessive force were brought against him. The Court confirmed that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. at 396. The Court went on to explain how to determine what is reasonable in situations where police officers use force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

Id. at 396-97; see also Ryburn v. Huff, 565 U.S. 469, 477 (2012).

The Eleventh Federal Circuit has noted that:

The Supreme Court has emphasized that there is no precise test or 'magical on/off switch' to determine when an officer is justified in using excessive or deadly force. Nor must every situation satisfy certain preconditions before deadly force can be used. Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.

Garczynski v. Bradshaw, 573 F.3d 1158, 1166 (11<sup>th</sup> Cir. 2009) (citations omitted). That is because “the law does not require perfection—it requires objective reasonableness.” Phillips v. Bradshaw, No. 11-80002-CIV-MARRA, 2013 U.S. Dist. LEXIS 44646, at \*55-56 (S.D. Fla. March 28, 2013). Specifically, the law accounts for the often fast moving nature of dangerous situations and the necessity of making decisions in less than ideal circumstances. See Huff, 565 U.S. at 477 (finding that appeals court panel “did not heed the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation.”).

These are the legal standards that help guide the review in an officer-involved use of deadly force case.

## **V. ANALYSIS AND CONCLUSION**

Based on all the facts and circumstances of this case, the Attorney General has concluded that Patrick Letendre created a dangerous situation that prompted the officer-involved shooting incident in Keene on July 10, 2017.

Sergeant Christopher Simonds, Officer Mark Cotton, and Officer Matthew Bomberg appropriately responded to a 911 call placed by Mr. Letendre’s girlfriend. During the course of that callout, circumstances rapidly changed to a life-threatening confrontation between Mr. Letendre, Sergeant Simonds, and Officer Cotton. Mr. Letendre had become increasingly agitated while the police were in his home. When the officers returned to check on Mr. Letendre’s well-being, Mr. Letendre responded by pointing a pistol at his head. At that time, Mr. Letendre posed an immediate threat not only to his own safety, but also to the safety of the officers and others nearby, including Mr. Letendre’s girlfriend, her daughter, and people in the surrounding residences. Although both officers pulled out their service pistols and aimed them at Mr. Letendre, neither officer discharged



his gun at that time. Instead, both officers repeatedly and unambiguously told Mr. Letendre in substance to drop his weapon. Mr. Letendre did not comply, but moved his weapon from his head and pointed it towards the officers, leading them reasonably to conclude that they as well as others in the immediate vicinity faced an imminent threat of deadly force from Mr. Letendre. It was at that point that the officers fired their weapons at Mr. Letendre.

While testing is still pending on whether Mr. Letendre's firearm was operable, whether or not that firearm was in fact capable of firing upon the officers does not affect the reasonableness of Sergeant Simonds's and Officer Cotton's decision to use deadly force. As noted, "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Connor, 490 U.S. at 396. Here, Mr. Letendre pointed a handgun at Officer Cotton and Sergeant Simonds. Based on the information that they had at the time, and judging from the perspective of a reasonable officer on the scene, the decision to use deadly force was reasonable.

Accordingly, Sergeant Christopher Simonds and Police Officer Mark Cotton were legally justified in using deadly force against Patrick Letendre. Therefore, no criminal charges will be filed against Sergeant Simonds or Officer Cotton.

This report is limited and not fully detailed because criminal charges may be brought against Mr. Letendre for his actions before and during the shooting incident. Whether charges will be brought is the decision of the Cheshire County Attorney. The New Hampshire Rules of Professional Conduct applicable in this case limit what attorneys may reveal about a pending matter. In particular, New Hampshire Rule of Professional Conduct 3.6 states that "[a] lawyer who is participating or who has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by

means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” Because criminal charges may be brought against Mr. Letendre for his conduct before and during the shooting incident that is the focus of this report and the Attorney General investigation, certain details are being withheld at this juncture in accordance with the dictates of the above Rule. However, once those other prosecutorial decisions have been made and any potential criminal matters have concluded, the Attorney General’s Office will issue a fully detailed final report on this officer-involved shooting incident.



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