

**ATTORNEY GENERAL’S REPORT REGARDING SEPTEMBER 25,
2016 OFFICER-INVOLVED SHOOTING INCIDENT IN
CLAREMONT, NEW HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General Joseph A. Foster announces the completion of the investigation into the officer-involved shooting that occurred in Claremont, New Hampshire on September 25, 2016, that resulted in the death of Cody Lafont (age 25). The purpose of this report is to summarize the Attorney General’s factual findings and legal conclusions with regard to this officer-involved deadly force incident. The findings and conclusions in this report are based upon information gathered during the investigation, including viewing the scene of the incident, photographs, physical evidence, and numerous witness interviews.

As provided in RSA 7:6, the Attorney General is the State’s Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever law enforcement officers use deadly force, it is done in conformity with the law. Following a full investigation of this deadly force incident by the Attorney General’s Office and the New Hampshire State Police Major Crime Unit,

the Attorney General finds that Claremont Police Corporal Ian Kibbe's use of deadly force against Cody Lafont on September 25, 2016, was legally justified.

II. SUMMARY OF THE FACTS

At about 4:00 a.m. on Sunday, September 25, 2016, Cody Lafont was dropped off at his home at 53 Congress Street in Claremont by friends, after spending the evening with those and other friends. Mr. Lafont had been drinking alcohol throughout the evening, and appeared to those with him to be heavily intoxicated, but not belligerent, aggressive, or despondent. Mr. Lafont lived alone, and there was nobody with him at 53 Congress Street, a single-family residence, when his friends dropped him off and left.

Shortly after Mr. Lafont returned home, he called 911 several times. In those series of calls, the first which occurred at about 4:13 a.m. and the last of which occurred at about 4:45 a.m., Mr. Lafont requested that a police officer come to his house in order to talk to him, something he had requested many times in the past. Mr. Lafont did not sound distraught, upset, or angry in the calls, and did not indicate any intent or thoughts of harming himself or others.

In response to Mr. Lafont's calls to 911, a police officer was dispatched to his home in order to advise him in substance to stop calling 911. One of the officers on duty that evening was Corporal Ian Kibbe, who responded to Mr. Lafont's residence. Corporal Kibbe was dressed in a police uniform, and was driving alone in a marked police car. Corporal Kibbe had prior interactions with

Mr. Lafont in his capacity as a police officer, and through those prior interactions knew that Mr. Lafont could be armed. On the way to Mr. Lafont's home Corporal Kibbe was informed that Mr. Lafont likely was intoxicated and depressed, but had not expressed any suicidal ideation.

Corporal Kibbe responded alone to Mr. Lafont's residence shortly before 5:00 a.m. When Corporal Kibbe arrived, he saw what he knew to be Mr. Lafont's car parked in the driveway, and positioned his police car so that it blocked off any egress by Mr. Lafont's car and illuminated the house. Corporal Kibbe parked his car so that Mr. Lafont would be unable to drive away, which could pose a danger to himself and others given his believed inebriated condition, and so that the officer could see into the house.

Corporal Kibbe then walked up to Mr. Lafont's front door. Corporal Kibbe was armed with his service pistol, but he did not unholster the weapon. Corporal Kibbe then knocked on the front door, and Mr. Lafont opened the door. At that point, Mr. Lafont, behind an interior screen door, was accompanied by his unleashed and barking pit bull dog, and was holding in one of his hands, up at his chest, what Corporal Kibbe saw was a revolver. At that point, Corporal Kibbe repeatedly told Mr. Lafont to drop his weapon, backed up onto the lawn several yards away from Mr. Lafont, and unholstered his service pistol. Instead of dropping the revolver, Mr. Lafont opened the screen door, and his dog ran towards Corporal Kibbe and then veered off to the side, still barking.

Corporal Kibbe maintained his attention on Mr. Lafont, and continued to tell him in substance to drop his gun. Mr. Lafont did not say anything, strangely smiled at Corporal Kibbe, and then stepped towards the officer while moving the revolver that he held in the officer's direction. At that point, believing that Mr. Lafont was going to shoot him and fearing for his life Corporal Kibbe fired his service weapon three times. When Mr. Lafont fell to the floor in the doorway to his house and dropped his revolver, Corporal Kibbe approached and attempted to talk to Mr. Lafont and keep him conscious. Corporal Kibbe also reported shots fired on his police radio and called for officer backup and an ambulance.

The second and only other officer on the scene, Sergeant Wilmot, arrived at Mr. Lafont's home within minutes after Corporal Kibbe's radio call reporting shots fired and requesting assistance. After Sergeant Wilmot arrived, Mr. Lafont was handcuffed and moved away from his home's doorway, so that the residence could be secured and medical attention rendered to Mr. Lafont. At that point, however, it appeared that Mr. Lafont was dead.

After the incident, the revolver that Mr. Lafont was holding and pointed towards Corporal Kibbe was examined. The revolver was not loaded.

III. THE INVESTIGATION

A. Events Leading up to the Shooting

During the evening on Saturday, September 24, 2016, Cody Lafont was with several friends. Mr. Lafont and those friends attended car races, and also drove around to various other locations. Mr. Lafont drank alcohol steadily throughout the evening, to the point of intoxication.

Friends drove Mr. Lafont to his home at 53 Congress Street in Claremont, at one point pulling over so that Mr. Lafont, who his friends described as heavily intoxicated, could vomit. Mr. Lafont and his friends arrived at his home at about 4:00 a.m. Sunday morning, September 25. Those friends left upon dropping off Mr. Lafont, who lived alone. Nobody was home with Mr. Lafont. At about the time Mr. Lafont arrived home, he called a friend with whom he had argued the week before, but was unable to speak to anyone; Mr. Lafont did not leave any messages for his friend. Mr. Lafont had texted his stepfather about an hour earlier, “Hey pops losing my mind agains [sic].”

At the time when Mr. Lafont arrived home early Sunday morning, two officers of the Claremont Police Department were working. Sergeant Brent Wilmot was the patrol supervisor, and Corporal Kibbe was the other officer on duty. Corporal Kibbe’s shift started at midnight, and was scheduled to run until 8:00 a.m.

Beginning at about 4:13 a.m. on September 25, Cody Lafont made a series of telephone calls to 911 from his home on Congress Street. Specifically, 911 call

logs indicate calls placed by Mr. Lafont at about 4:13 a.m. to 4:17 a.m.; 4:26 a.m. to 4:27 a.m.; 4:33 a.m. to 4:35 a.m.; and 4:45 a.m. to 4:49 a.m. In the first call, routed to 911 in Vermont, in response to questioning Mr. Lafont indicated that there was no emergency but that he was “not thinking straight,” and declined any response by police, fire, or ambulance personnel. Nevertheless, the 911 operator transferred Mr. Lafont to a Claremont Police Department dispatcher. The dispatcher asked Mr. Lafont what was wrong, and he answered that he was “drunk once again.” The dispatcher asked whether Mr. Lafont wanted an ambulance, and he replied that he was “fine” but needed to deal with his depression. The dispatcher offered to send a police officer to Mr. Lafont’s residence to speak with him, and he inquired which officer and asked specifically for “Aaron.”¹ The dispatcher also asked Mr. Lafont whether he felt like he might harm himself, and he replied that he did not. The dispatcher repeated that she was going to send a police officer to Mr. Lafont’s residence to speak with him. In addition, the dispatcher transferred Mr. Lafont’s call to Sergeant Wilmot, who was at the police station.

Sergeant Wilmot was familiar with Mr. Lafont, based on numerous interactions between Mr. Lafont and the Claremont Police Department over the last several years. In particular, Sergeant Wilmot knew from these prior interactions that Mr. Lafont in the past had called the Claremont Police

¹ Mr. Lafont’s reference to “Aaron” most likely was to Lieutenant Aaron Reichert, who had responded to Mr. Lafont’s residence several times in the past.

Department after he had been drinking alcohol, and had asked for rides to various locations and for officers to talk to. Sergeant Wilmot believed that Mr. Lafont's latest call into the police department would be of a similar nature.

In Sergeant Wilmot's telephone conversation with Mr. Lafont, Mr. Lafont indicated that he was depressed but not suicidal, and wanted a police officer to come to his residence in order to speak with him. Mr. Lafont also confirmed that he had been drinking. When Sergeant Wilmot asked Mr. Lafont whether he wanted to go to a hospital, Mr. Lafont refused. Sergeant Wilmot also indicated that he would listen to whatever Mr. Lafont wanted to talk about, but Mr. Lafont insisted that he wanted to speak with an officer face-to-face at his house. Sergeant Wilmot's telephone conversation with Mr. Lafont ended after several minutes.

Mr. Lafont placed his second call to 911 at about 4:26 a.m., minutes after his telephone conversation with Sergeant Wilmot ended. In the second call, Mr. Lafont did not say anything, and ultimately hung up. In the third 911 call, placed at about 4:33 a.m., Mr. Lafont asked to speak with someone from the Claremont Police Department, and when connected to the police dispatcher, who asked him what the matter was, he replied "everything." When the dispatcher asked for clarification, Mr. Lafont said that he was supposed to be going to jail on October 24, 2016, and repeatedly said that he was not going to go.²

² See the discussion of Mr. Lafont's background, *infra*.

At about 4:42 a.m., Sergeant Wilmot placed a radio call to Corporal Kibbe, who was at home on his meal break. Sergeant Wilmot directed Corporal Kibbe to respond to 53 Congress Street and to advise Mr. Lafont to stop calling 911. In Mr. Lafont's last 911 call, placed at about 4:45 a.m., he asked again to speak to the Claremont Police Department. Mr. Lafont spoke once more with the same dispatcher, who repeatedly told him that an officer was on the way to his residence to speak with him. Mr. Lafont responded by expressing frustration that an officer had not yet responded to his residence. During that last 911 call, Sergeant Wilmot called Corporal Kibbe, notifying him that Mr. Lafont had been drinking and was calling 911 again. Corporal Kibbe replied that he was on route to Mr. Lafont's residence.

Mr. Lafont's tone throughout the recorded 911 calls that he made was steady, and although in the last call he voiced frustration that a police officer had not responded to his residence he did not sound overly upset, emotional, or distraught. Nor did Mr. Lafont make any threats or indicate that he wanted to harm himself, a police officer, or anyone else. Sergeant Wilmot described his unrecorded telephone conversation with Mr. Lafont as similar in tone.

Corporal Kibbe arrived at Mr. Lafont's residence at 53 Congress Street at about 4:49 a.m. – as documented by a radio transmission he sent to the police dispatcher to that effect – just after Mr. Lafont finished his last telephone call to 911. At about 4:50 a.m., Corporal Kibbe called in over his radio that shots had been fired and that he needed assistance. Moments after that radio transmission,

Corporal Kibbe stated that he needed an ambulance sent to the residence immediately.

Sergeant Wilmot rushed to Mr. Lafont's residence once he heard Corporal Kibbe's initial radio call for assistance, and responded to the home within minutes. There, Sergeant Wilmot saw Corporal Kibbe, whose service pistol was unholstered, and Mr. Lafont, who was lying in the front doorway of his house. Corporal Kibbe briefly told Sergeant Wilmot what transpired. Sergeant Wilmot called for an ambulance, and also directed Corporal Kibbe to handcuff Mr. Lafont, as a security precaution. Mr. Lafont's body was pulled away from the doorway, so that the officers could secure inside the residence Mr. Lafont's pit bull dog, which barked at the officers whenever they approached Mr. Lafont. Sergeant Wilmot saw that Mr. Lafont appeared to be dead, and also noticed, near his body, what appeared to be an old revolver.

B. Background Information, Corporal Ian Kibbe and Cody Lafont

Corporal Ian Kibbe joined the Claremont Police Department in about March of 2014. Prior to his tenure with the Claremont Police Department, Corporal Kibbe worked as a corrections officer in Vermont for about sixteen months, and then worked as a police officer with the Windsor Police Department in Vermont for about two years. Corporal Kibbe started his tenure with the Claremont Police Department as a patrol officer, and had been promoted to the supervisory role of corporal.

Corporal Kibbe attended various mandatory and voluntary police trainings during his law enforcement tenures in Vermont and New Hampshire. Corporal Kibbe successfully completed mental health training, training on the use of less than lethal force, as well a number of firearms trainings, including responding to active shooting situations, nighttime qualification, and basic special weapons and tactics. Before September 25, 2016, Corporal Kibbe had only discharged his firearm in response to animal threats, and had never been involved in a use of deadly force incident against a person.

Cody Lafont was a young man who had lived all of his adult life in Claremont. Mr. Lafont had several family members who lived in the area, as well as several close friends who he spent time with. Mr. Lafont struggled with clinical depression throughout much of his adult life, a condition that at times adversely affected his relationship with his friends and family, and that also adversely influenced his judgment and behavior. Sometimes when Mr. Lafont was depressed he drank as a means of self-medication, and at times drank excessively, which exacerbated his behavior when depressed. Friends and family members characterized Mr. Lafont as generally kind, gentle, and amiable, but that he could sometimes act erratically and aggressively when suffering one of his bouts of depression, which could last weeks or even months. Mr. Lafont also would have extremely low self-esteem and a low sense of self-worth when depressed. Friends and family were not aware that Mr. Lafont had any firearms in his house on September 25, 2016, and in fact believed that there were no firearms in the house.

According to Mr. Lafont's friends and family, a matter that weighed heavily on his mind in the weeks before his death was his belief that he was soon going to be incarcerated. In that respect, Court records indicate that Mr. Lafont had a court date scheduled for October 24, 2016, in connection with several misdemeanor charges, including a charge of misuse of the 911 system. Mr. Lafont was supposed to be undergoing alcohol counseling as part of those court matters, apparently had not completed what he was supposed to in that regard, and repeatedly expressed fears that he was going to go to jail for failure to complete his counseling when he appeared in court on October 24. Mr. Lafont's concerns were so intense that about a week before his death he had a heated argument with one of his closest friends in which he expressed those concerns as a cause of his aggressive behavior towards his friend.

Mr. Lafont had several interactions with officers of the Claremont Police Department in the years before his death. The vast bulk of those interactions were initiated by Mr. Lafont, who would call 911 and seek police response to his home; those calls typically occurred very early in the morning. In many of those instances, Mr. Lafont either wanted to talk with police officers or wanted rides from them. Mr. Lafont was typically intoxicated during these encounters, and while sometimes hostile or belligerent was never openly violent.³ Because of the frequency of Mr. Lafont's interactions with police, many officers were well

³ Between March and December, 2015, Mr. Lafont was placed into protective custody six times while intoxicated.

familiar with him, and of his penchant for calling up, usually intoxicated, seeking someone to talk to.

According to friends, Mr. Lafont had no hostility towards members of the Claremont Police Department. To the contrary, Mr. Lafont had a friendly relationship with many in the Claremont Police Department, and expressed his belief that officers were his friends, and were the only ones who could help or understand him when he was depressed and had been drinking.

Corporal Kibbe had several interactions with Cody Lafont prior to his encounter with him on September 25, 2016. The first time occurred in 2015, when Corporal Kibbe and another officer responded to Mr. Lafont's house at his request via a 911 call. When Corporal Kibbe and the other officer arrived at Mr. Lafont's home, they saw that Mr. Lafont had an unloaded assault rifle in his living room, pointed towards the window. Mr. Lafont was verbally abusive at points during the encounter, but was not violent.

During another encounter with Mr. Lafont at Mr. Lafont's residence, Mr. Lafont's dog was caged and barking at Corporal Kibbe. Mr. Lafont at one point told Corporal Kibbe in substance that if the officer killed Mr. Lafont's dog Mr. Lafont would kill the officer.

Corporal Kibbe also described several unremarkable passing encounters with Mr. Lafont at local Claremont events and venues.

C. Interview of Corporal Kibbe

New Hampshire State Police Major Crime Unit detectives interviewed over a dozen people during the course of the investigation, including all of the immediate neighbors of Cody Lafont. Although these witness interviews provided useful information, nobody saw either the actual shooting incident or any aspect of the very brief encounter between Mr. Lafont and Corporal Kibbe that preceded it.⁴ In addition to the absence of eyewitnesses, there also were no video or audio recordings of any part of the incident. In that regard, the Claremont Police Department does not have body cameras or patrol car cameras, and there were no other surveillance cameras or similar devices at Mr. Lafont's residence or in the vicinity to record events.

Corporal Ian Kibbe was interviewed. The interview was audio recorded with Corporal Kibbe's consent. The interview was attended by Corporal Kibbe and his lawyer and police union representative, two investigators from the New Hampshire State Police, and two prosecutors from the Attorney General's Office. Corporal Kibbe did not refuse to answer any questions, and did not stop the interview at any point.

Corporal Kibbe was working but on meal break at home when he received a radio transmission from Sergeant Wilmot to respond to Cody Lafont's residence at 53 Congress Street and direct him to stop calling 911. Corporal Kibbe

⁴ Those few neighbors who heard anything of relevance heard what sounded like three gunshots, in quick succession. One neighbor also heard a voice, which did not sound like Mr. Lafont's, yelling words that she could not make out just before gunshots. This limited information is consistent with the account provided by Corporal Kibbe *infra*.

proceeded to his car, a marked patrol cruiser, and drove to Mr. Lafont's residence, which was only about a minute away. Corporal Kibbe did not activate his siren or police lights as he proceeded to Mr. Lafont's residence. On the way to Mr. Lafont's residence, Corporal Kibbe received a telephone call from Sergeant Wilmot, who notified Corporal Kibbe that Mr. Lafont had called 911 repeatedly, that he had represented that he was depressed but not suicidal, and that he was intoxicated.

When Corporal Kibbe arrived at 53 Congress Street, he saw parked in the driveway what he recognized to be as Mr. Lafont's car. In order to ensure that Mr. Lafont did not drive off and pose a danger to himself and others in his intoxicated state, Corporal Kibbe parked his patrol car so that it blocked Mr. Lafont's car from leaving the driveway. Corporal Kibbe also positioned his patrol car so that its headlights illuminated the front of Mr. Lafont's home, to provide increased visibility and safety. Corporal Kibbe did not activate the car's siren or police lights, which was not unusual given the nature of the call that sent him to the residence.

Upon leaving his patrol car, Corporal Kibbe first checked Mr. Lafont's car, to ensure that he was not in it. Corporal Kibbe then walked up to Mr. Lafont's front door. On the way, Officer Kibbe shined his flashlight into Mr. Lafont's living room, and saw who he believed to be Mr. Lafont sitting on his couch. Corporal Kibbe waved to Mr. Lafont and pointed to the front door, and saw Mr. Lafont get up from the couch and heard his dog barking. Officer Kibbe walked up

the front steps, knocked on Mr. Lafont's front door, and announced that he was with the Claremont Police Department and needed to speak with Mr. Lafont.

Officer Kibbe was dressed in his police uniform, and wore a fleece jacket that had his badge and Claremont Police Department patches visibly displayed. Corporal Kibbe was armed with a semiautomatic pistol, an electric Taser, a baton, and OC chemical spray, all standard police-department issued and regularly carried by Corporal Kibbe and other patrol officers. Corporal Kibbe also was wearing a portable radio, with which he could communicate with the police department's central dispatch.

Officer Kibbe waited at the front door for Mr. Lafont to answer his knocks. When the front door ultimately opened, Mr. Lafont's dog, a pit bull terrier, ran into the screen door, barking at the officer. Corporal Kibbe then saw Mr. Lafont, who stood at the front door. Mr. Lafont held a bottled drink in his right hand, and held in his left hand what Corporal Kibbe saw was a revolver. Mr. Lafont was holding the revolver by the handle, with a finger on the trigger, up by his chest with the barrel pointed towards the ground.

Upon seeing Mr. Lafont armed, Officer Kibbe told him to drop his weapon. Mr. Lafont then placed the bottle he was holding in his other hand under his arm and opened the screen door between him and Corporal Kibbe. Corporal Kibbe backed down the front stairs, unholstered his service pistol, and told Mr. Lafont repeatedly to stop and to drop his gun.

When Mr. Lafont opened the screen door, his dog ran outside and towards Corporal Kibbe, but veered off to the side before reaching the officer. The dog was about five to ten feet from Corporal Kibbe, and continued to bark and growl at him. Corporal Kibbe's attention remained focused on Mr. Lafont, who was standing in the doorway at the top of the steps. Mr. Lafont continued to hold the pistol, and was smiling. Corporal Kibbe continued to direct Mr. Lafont to drop the gun that he held. Instead, Mr. Lafont, who never spoke during the encounter with Corporal Kibbe, stepped towards the officer, while at the same time starting to point the gun at Corporal Kibbe.

At that time, Corporal Kibbe fired his pistol, shooting in quick succession. Corporal Kibbe stopped firing after the third shot, when he saw Mr. Lafont drop his own weapon. Mr. Lafont fell onto the threshold of the front door, and his dog ran into the house and stood near Mr. Lafont's prone body. Corporal Kibbe shot Mr. Lafont because Mr. Lafont was not following repeated demands to drop his weapon, the officer had to assume that the firearm that Mr. Lafont was holding was loaded, and the officer believed that Mr. Lafont would actually shoot and kill him

Immediately after shooting Mr. Lafont, Corporal Kibbe called "shots fired" into his police radio, approached Mr. Lafont, and kicked the revolver away from him. Corporal Kibbe saw that Mr. Lafont was still breathing and told Mr. Lafont in substance to "stay with me" and "look at me," but received no response from Mr. Lafont. Corporal Kibbe then backed away from Mr. Lafont and did not

attempt to render medical assistance to him, because Mr. Lafont's dog was by Mr. Lafont barking at the officer, and also because Corporal Kibbe was uncertain whether anyone was in the home who could pose additional danger to him. Corporal Kibbe used his portable radio to call for medical assistance.

Corporal Kibbe estimated that the entirety of his encounter with Mr. Lafont lasted about a minute, an estimate consistent with the records of the radio transmissions that he sent to police central dispatch. Also, about a minute after Corporal Kibbe reported that shots had been fired, Sergeant Wilmot arrived at Mr. Lafont's residence. After Corporal Kibbe briefly explained to Sergeant Wilmot what happened, the sergeant directed Corporal Kibbe to handcuff Mr. Lafont. While Sergeant Wilmot provided protective cover, Corporal Kibbe returned to Mr. Lafont, handcuffed him, and pulled him away from the doorway threshold onto the top of the stairs so that Corporal Kibbe could close the front door and secure the residence and keep Mr. Lafont's dog at bay. At that time, Corporal Kibbe saw that Mr. Lafont was no longer breathing and appeared to be dead. Medical personnel who arrived shortly thereafter confirmed that Mr. Lafont was dead.

D. Cody Lafont's Injuries

The State's Deputy Chief Medical Examiner, Dr. Jennie Duval, completed an autopsy on Cody Lafont on September 26, 2016. Dr. Duval determined that Mr. Lafont was shot three times in the chest, directionality front to back, and that the cause of his death was those multiple gunshot wounds. The manner of Mr.

Lafont's death was homicide, which is a medical term meaning that the death was caused by another person. Toxicology testing on a sample of Lafont's blood is still pending.

E. Physical Evidence

The relevant physical evidence collected at the scene consisted of three discharged cartridge casings. Those were consistent with the three shots fired from Corporal Kibbe's handgun.

A revolver was also recovered at the scene, a few feet from Cody Lafont's body. The revolver was unloaded. Ammunition that fit that weapon was found inside a locked safe in Mr. Lafont's house. Mr. Lafont had purchased the revolver from an acquaintance back in January, 2013. Mr. Lafont's friends and family members all believed that his mother and stepfather had taken all of his firearms back in 2015, after an alcohol-related incident, and that he had no firearms in his possession. None of Mr. Lafont's family and friends was aware that he owned a handgun. Although testing is pending as to whether the revolver held by Mr. Lafont was operable, as is discussed *infra* the results thereof do not impact the ultimate conclusions made as to whether Corporal Kibbe's use of deadly force was justified.

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/she reasonably believes that such force is necessary to defend himself/herself or a third person from what he/she 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.

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 oneself 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 he/she reasonably believed that he/she was in 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.

Moreover, 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 excessive force claims 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.* 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*, 132 S. Ct. 987, 992 (2010).

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 (11th 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 *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*, 132 S. Ct. at 991-92 (chastising lower circuit court for not “heed[ing] 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.”).

V. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General has concluded that Cody Lafont created a dangerous situation, which he escalated to the point where it became reasonable for Corporal Ian Kibbe to conclude that he faced an imminent threat of deadly force from Mr. Lafont, and to use deadly force against him in order to protect his own life.

In that regard, Corporal Kibbe acted appropriately when responding to Mr. Lafont’s residence to inform him to stop calling 911. Given the nature of those calls, in which Mr. Lafont expressly disavowed any thoughts or intents of harming himself, as well as the history of Mr. Lafont’s prior encounters with Claremont police officers in general and Corporal Kibbe specifically, in which Mr. Lafont sometimes acted belligerently but was never actively violent, there was no reason for Corporal Kibbe to believe that he would be confronted with an imminent threat to his life. And, that belief would not have been altered by Corporal Kibbe’s brief sighting of Mr. Lafont immediately before the two actually encountered each other at Mr. Lafont’s front door. Notably in that regard, Corporal Kibbe was dressed in

obvious police garb, and had verbally announced to Mr. Lafont that he was with the police. Notably too, the area where the two men ultimately encountered one-another was illuminated by the headlights of Corporal Kibbe's patrol car, leaving little room for visual impairment or confusion by either.

The circumstances known and reasonably believed by Corporal Kibbe drastically changed once he encountered Mr. Lafont at the front door. Specifically, the officer was faced with an imminently life-threatening situation. Mr. Lafont was holding a firearm in a dangerous manner, with his finger on the trigger. Only at that time, and after Mr. Lafont did not comply with repeated demands to drop the weapon, did Corporal Kibbe unholster his own firearm. And, although the danger to the officer increased when Mr. Lafont opened his screen door and released his barking dog, Corporal Kibbe did not fire his weapon, and instead repeated his demands that Mr. Lafont drop his weapon.

Despite Corporal Kibbe's repeated directives, Mr. Lafont did not disarm himself. Nor did Mr. Lafont speak to the officer at all, let alone say anything that might have alleviated the officer's reasonable concern for his own safety. Instead, Mr. Lafont escalated the already inherently dangerous situation that Corporal Kibbe confronted even further by walking towards the officer and moving the firearm that he held towards the officer. It was only at that time that Corporal Kibbe used deadly force, and ceased his use of such after Mr. Lafont dropped his

own weapon.⁵ Based upon all of these facts and circumstances known to Corporal Kibbe when he encountered Cody Lafont, it was reasonable for Corporal Kibbe to believe that Mr. Lafont posed an imminent threat to his safety, and that when he fired his service weapon Mr. Lafont was about to use deadly force against him.

As to Cody Lafont's motives for his conduct towards Corporal Kibbe, although several inferences can be drawn from the evidence gathered, ultimately there is no clear answer as to why he behaved as he did in that particular encounter. Factors that likely affected Mr. Lafont's judgment and behavior at the time were his clinical depression, a serious condition that likely was exacerbated by his unusually heavy consumption of alcohol that evening, as well as his ongoing concern and anxiety over his belief that he was going to jail within weeks. But in the end, whether the product of one or more of these influences, or others, the fact remains that through Mr. Lafont's conduct he presented an apparent imminent threat of deadly force to Corporal Kibbe when the two encountered one another outside of Mr. Lafont's residence.

Accordingly, Corporal Ian Kibbe of the Claremont Police Department was legally justified in using deadly force against Cody Lafont, and no criminal charges will be filed against Corporal Kibbe as a result of Mr. Lafont's death.

⁵ NH law defines a "deadly weapon" as "any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, *or threatened to be used*, is known to be capable of producing death or serious bodily injury." RSA 625:11, V (emphasis added). Here, although the revolver that Mr. Lafont held was ultimately determined to be unloaded, it still was a "deadly weapon" based on the manner in which he used it at the time of his confrontation with Corporal Kibbe, who reasonably assumed that the weapon was loaded.