

**ATTORNEY GENERAL'S REPORT REGARDING THE
JULY 19, 2019 SHOOTING DEATH OF JASON BARRY IN
MANCHESTER, NEW HAMPSHIRE**

I. INTRODUCTION

The Office of the Attorney General and the Manchester Police Department have concluded an investigation into the fatal shooting of Jason Barry (age 42) in Manchester, New Hampshire on July 18, 2019. The investigation determined that Colin Bouchard (age 24) shot Jason Barry one time in the head as Mr. Barry was coming out of Mr. Bouchard's garage. Mr. Bouchard claimed that he acted in self-defense. The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to Jason Barry's death. The findings and conclusions set forth in this report are based on information gathered during the investigation, including photographs, video surveillance, audio recordings, physical evidence, and witness interviews.

As provided in RSA 626:7, I(a), when evidence is admitted establishing a defense, such as self-defense, the state must disprove such defense beyond a reasonable doubt. Based on the investigation of Jason Barry's homicide, the Attorney General finds that there is not sufficient evidence to disprove Colin Bouchard's claim of self-defense beyond a reasonable doubt. As such, no charges will be filed against Colin Bouchard in the shooting death of Jason Barry.

II. SUMMARY OF THE FACTS

On July 18, 2019, at approximately 11:46 p.m., Colin Bouchard stopped at Bonneville and Sons in Manchester to look at Jeep vehicles that were in the lot. While looking at the

Jeeps, Mr. Bouchard received a notification on his phone that his video surveillance system had picked up movement in his garage. Mr. Bouchard was able to view a ten-second video that appeared to show a man inside of his garage going through his things. At approximately 11:49 p.m., Mr. Bouchard left the Jeep dealership and drove to the rear of his house at 874 Union Street. Mr. Bouchard got out of his truck and went inside of his house to retrieve a firearm.¹

Mr. Bouchard returned to the rear of his home and walked to the door of his garage. The door was already about two feet off the ground, and Mr. Bouchard saw a man, later identified as Jason Barry, suddenly begin crawling out of the garage. Mr. Bouchard told Mr. Barry to stop but he continued to try to climb out from under the garage. Mr. Bouchard could not see one of Mr. Barry's hands and believed he saw a shadow of something in Mr. Barry's hand. Mr. Bouchard then shot Mr. Barry once in the head.

Mr. Bouchard called 911 and emergency responders began performing lifesaving measures on Mr. Barry. Mr. Barry was moved to an ambulance for transport to the hospital, but he died in the ambulance. An autopsy found that Mr. Barry died of a single gunshot wound to the head. The bullet had entered his left cheek and exited his scalp on the back right side of his head.

Mr. Bouchard agreed to be interviewed by Manchester Police Detectives and he said that when Mr. Barry came out from under the garage, and did not stop when he was told to, Mr. Bouchard feared for his life and for his property. Video surveillance from the garage,

¹ The police confirmed that Mr. Bouchard's firearm was lawfully purchased and that he was not precluded from owning a firearm as a convicted felon.

between approximately 11:48 p.m. and 11:49 p.m., shows two clips of Mr. Barry wearing a headlamp and going through items near the front of Mr. Bouchard's garage.

III. THE INVESTIGATION

Since the incident on July 18, 2019, the Attorney General's Office and the Manchester Police Department have been investigating the facts and circumstances surrounding the shooting death of Jason Barry. That investigation has entailed witness interviews; the examination of the scene; and review of reports, photographs, physical evidence, surveillance video, and recordings of 911 calls. Colin Bouchard was fully cooperative with the investigation and agreed to be interviewed.

A. 911 Call

At approximately 12:00 a.m. on July 19, 2019, 911 received a call from Colin Bouchard. Throughout the 911 call Mr. Bouchard sounded very upset, alternating between heavy breathing and crying. The call began with Mr. Bouchard giving his address of 874 Union Street to the 911 operator. The operator asked Mr. Bouchard which floor or if this was happening outside. Mr. Bouchard replied, "Apartment 1, it already happened." Mr. Bouchard sounded very upset during this call and was breathing heavily. He told the operator that "there was an intruder." After getting his phone number, the operator asked Mr. Bouchard if anyone was hurt and Mr. Bouchard responded by saying yes, "I shot somebody." As the operator told him to hold on the line while she transferred the call to the Manchester Police Department, Mr. Bouchard said, "I'm so sorry."

During the call transfer, Mr. Bouchard could be heard crying into the phone. When the Manchester Police dispatch connected, Mr. Bouchard told the dispatcher, "[H]e was going through my garage, he came out of my garage, and I just shot him. I didn't mean to."

Mr. Bouchard provided his first and last name to the police dispatch and then said, “I’m so fucked.” The dispatcher asked if Mr. Bouchard still had the gun in his hand and Mr. Bouchard said no. Mr. Bouchard then began to cry into the phone again.

Mr. Bouchard informed dispatch that the gun was on a garbage can on the side of the garage and that he (Bouchard) was on the ground. The 911 dispatcher then asked if Mr. Bouchard knew whether the person was still alive. Mr. Bouchard responded, “I don’t think he is. I got him in the face. But I didn’t mean to.” The dispatcher then asked if it was a man, and Mr. Bouchard responded, “Yes. He was going through my stuff in my garage, and he came out and I told him to, I, I had my gun in my hands, and I, I panicked because I didn’t know what he had in his hands, then I noticed he had nothing.”

After informing the police dispatcher that he had a roommate inside who was sleeping, Mr. Bouchard again said, “I’m so fucked.” He repeated this phrase again shortly thereafter. Mr. Bouchard again told the dispatcher that the gun was on the garbage can next to the garage and that he was on the ground. Mr. Bouchard could then be heard in the background yelling out to police officers on scene. Manchester Police dispatch ended the call with Mr. Bouchard at that time.

B. Initial Response to 874 Union Street

Upon receiving the 911 call, Manchester Police dispatched units to 874 Union Street. In total, approximately twelve officers responded to the initial call for service. Upon arrival, officers found Jason Barry lying on the ground in the rear of 874 Union Street near the detached garage. His body was positioned face up, with his legs partially inside the garage and his head and upper body outside of the garage. The garage door appeared broken and was open approximately two feet. Officers observed a large pool of blood around Mr.

Barry's face and body area. Because officers were not sure if there was another person inside the garage, Officers Erik Slocum and Michael Roscoe pulled Mr. Barry's body approximately 5 feet away, toward the back alley, so that they could render aid.

Officer Slocum checked for a pulse and found Mr. Barry's pulse to be rapid and strong. Mr. Barry was otherwise not breathing and unresponsive. Due to the blood on Mr. Barry's face, Officers Slocum and Roscoe did not observe any gunshot wound to Mr. Barry's face, but did see a small cut between his eyebrows. The officers located a small circular wound to the back right side of Mr. Barry's head. Officer Roscoe and Slocum attempted to render aid until Manchester firefighters and paramedics from American Medical Response (AMR) arrived.

AMR quickly prepared to transport Mr. Barry to the hospital and he was secured to a stretcher and rushed to the waiting ambulance. Prior to departing for the hospital, Mr. Barry died from his wounds.

C. On Scene Interactions with Colin Bouchard

When officers arrived at 874 Union Street, they found Colin Bouchard lying prone, face down on the pavement with his arms spread to his side and a phone leaning against his ear, speaking with 911. Officer Austin Biery placed Mr. Bouchard in handcuffs and informed him that he was not under arrest but was just being placed in handcuffs while the scene was being secured. Mr. Bouchard was taken out of the handcuffs shortly thereafter. Several officers had verbal interactions with Mr. Bouchard on scene at 874 Union Street. Those interactions are summarized here.

i. Officer Nathan Harrington

Officer Nathan Harrington made contact with Colin Bouchard on scene. Mr. Bouchard told Officer Harrington that he had a camera system set up in his garage that connected to his phone. According to Officer Harrington, Mr. Bouchard told him that he was at work when he got an alert notification from his garage camera and could see the footage of an unknown male in his garage. Mr. Bouchard told the officer that he drove home and parked his truck in the driveway, next to the garage.

Officer Harrington reported that Mr. Bouchard then proceeded to his garage door and yelled at the individual inside of the garage to come outside. Officer Harrington reported that Mr. Bouchard told him that he could still see the intruder inside of his garage via the security footage on his phone, but the individual did not respond to his announcement. Mr. Bouchard told Officer Harrington that the intruder then came outside towards him and that “it happened really fast,” he was scared, and that this is when he shot the man.

Mr. Bouchard said that after shooting the man, he went over to the man and began shaking him and yelling to him, “Are you alive,” with no response. According to Officer Harrington, Mr. Bouchard asked if he should get a lawyer and was told that it was his decision to make and he should do whatever he wished to do. Mr. Bouchard then sat down and made several statements including “I’m so fucked,” “I’m going to jail,” and “I’m going to jail for a long time.” Officer Harrington reported asking Mr. Bouchard why he thought he would go to jail, and Mr. Bouchard responded by saying, “I know how this works man, it’s called manslaughter.”

After Mr. Bouchard was transported back to the police station for an interview, Officer Harrington stayed in an interview room with Mr. Bouchard briefly before the

interview. The two engaged in what Officer Harrington described as casual conversation, and Officer Harrington learned that Mr. Bouchard worked for Sig Sauer in Newington. Officer Harrington spoke about a new model of Sig Sauer called the P365 handgun and Mr. Bouchard told the officer, “that’s what did it,” referencing the handgun that had been used to shoot Mr. Barry.

ii. Officer Michael Roscoe

Officer Michael Roscoe responded to the scene and provided initial aid to Jason Barry prior to the arrival of the fire department and paramedics. Once fire and paramedics took over, Officer Roscoe reported that he went to assist other officers as they were speaking with Mr. Bouchard. Officer Roscoe asked Mr. Bouchard to walk with him to the end of the alleyway, away from the scene.

Officer Roscoe saw that Mr. Bouchard had his cell phone out and was showing the officer a live feed coming from a remote camera system inside of the garage. Mr. Bouchard said that he was showing the officer a live feed to inform the other officers that were covering the garage that there were no other suspects inside the garage visible on the camera.

When Officer Roscoe asked Mr. Bouchard if the shooting was captured on the camera, Mr. Bouchard informed the officer that while the cameras do record, the incident was not captured on camera. The officer noted that Mr. Bouchard was speaking fast and in a shaky voice, and had trouble focusing on the conversation. Mr. Bouchard told Officer Roscoe that he was coming home from work and either believed someone was inside of his garage or that he saw it on his camera. The officer saw some scrapes on Mr. Bouchard and asked if he had been in a fight. Mr. Bouchard indicated that he had not, but that he was on

the ground assessing the man he had shot, repeating to the man, “Are you alive? Are you alive?”

iii. Officer Austin Biery

Officer Austin Biery arrived at 874 Union Street and saw Colin Bouchard lying down in the alleyway with his arms spread to his side and a phone leaning against his ear. He also saw a male lying in a pool of blood near the garage. Officer Biery placed Mr. Bouchard in handcuffs while the scene was secured. Officer Michael Pauley removed the handcuffs shortly thereafter. Officer Biery reported that he then escorted Mr. Bouchard southbound down the alleyway. He observed that Mr. Bouchard was extremely panicked and clearly very shaken.

While standing with Mr. Bouchard, Officer Roscoe came over and stood in the vicinity with Officer Biery and Mr. Bouchard. Mr. Bouchard said that he checked his camera feed on his phone while he was away from his home and saw an intruder on a camera in his garage. Mr. Bouchard then said that once at the residence, “it all happened so fast,” and that the man came from the garage and scared him prior to the shooting.

Mr. Bouchard said that after shooting the man, he grabbed the man and asked him multiple times, “Are you alive?” Officer Roscoe told Mr. Bouchard that detectives would likely speak further about the incident once back at the Manchester Police Department, and walked away.

At this time, Officer Nathan Harrington approached and stood with Mr. Bouchard and Officer Biery. Officer Biery reported that Officer Harrington began asking questions, but discontinued after being informed of the conversation between Mr. Bouchard and Officer Roscoe. Mr. Bouchard was told he could sit down and was given a bottle of water. Officer

Biery reported that Mr. Bouchard made several statements despite not being questioned. Mr. Bouchard stated things such as, he “did not know why the male was in there,” and he “did not know who the male was.” Mr. Bouchard also told Officer Biery that he was not sure if he should have shot the male and said, “It all happened so fast. I was scared.” Officer Biery also reported that Mr. Bouchard commented to Officer Harrington that he believed he would go to jail because he “knows how this works, it’s called manslaughter.”

Sergeant Morgan Lovejoy then approached and Mr. Bouchard continued to make statements about the shooting in what Officer Biery described as “a state of panic.” Mr. Bouchard asked if he needed a lawyer. He said he did not have one but asked if he should get one on several occasions. Sergeant Lovejoy advised Mr. Bouchard that the decision was up to him, but Officer Biery reported that Mr. Bouchard never explicitly requested to speak with an attorney.

Officer Biery then escorted Mr. Bouchard to the Manchester Police Department to be interviewed by detectives. During the drive to the station, Mr. Bouchard again stated that everything happened so fast and that he was scared. While sitting with Mr. Bouchard awaiting detectives, Mr. Bouchard made several more statements. Mr. Bouchard told Officer Biery that he “took a man away from his family,” and told Officer Biery he was unsure if the officer hunted, but taking any life was not easy and that he was praying for the other man. Mr. Bouchard said several times that he was extremely stressed out and was unhappy with the events that unfolded that evening. Mr. Bouchard asked for a trashcan because he felt that he was going to vomit.

iv. Sergeant Morgan Lovejoy

Sergeant Morgan Lovejoy was conducting a ride along with Officer Nathan Harrington when he was dispatched to 874 Union Street for a reported gunshot. As Sgt. Lovejoy approached the rear of 874 Union, he saw a large white male lying prone on his stomach with a cell phone up to his right ear and still on the phone with 911. The man was later identified as Mr. Bouchard. Sgt. Lovejoy asked Mr. Bouchard where the gun was and Mr. Bouchard responded that he was not armed and the gun was on top of the trash can near the garage. Sgt. Lovejoy later saw a Sig Sauer 9mm handgun on top of a trash container next to the garage.

Later, after Mr. Barry was pronounced dead by paramedics, Sgt. Lovejoy went over to Mr. Bouchard, who was speaking with Officer Biery, and asked if Mr. Bouchard would be willing to speak with detectives at the police station. Mr. Bouchard replied, "Do I need a lawyer? I don't think I should have shot him." Sgt. Lovejoy reported that he told Mr. Bouchard that contacting an attorney was up to him. Mr. Bouchard replied, "Do I need a lawyer?" and "I don't even have a lawyer." Mr. Bouchard said he was willing to come down to the Manchester Police Department and was just "nervous" and "afraid."

v. Officer Michael Pauley

Officer Michael Pauley made contact with Mr. Bouchard initially at the scene after he had been placed in handcuffs. Officer Pauley asked Mr. Bouchard whether he had a key to the side door which entered into the garage. For safety purposes, the officers did not want to crawl under the open garage door in order to clear the garage. Mr. Bouchard responded that the keys were in his pocket and that Officer Pauley could use them to get into the garage. Officer Pauley then released Mr. Bouchard from his handcuffs. Mr. Bouchard told the

officer that he has a surveillance system inside the garage and would look at it through his phone to determine if there were any other individuals in the garage. Officer Pauley looked at the live feed on the phone, but due to the darkness, the officer could not tell whether anyone was in the garage.

D. 868 Union Street

Tenants living on the second floor of 868 Union Street notified police that the front door to the building was left wide open and the door to the first floor apartment was also open. The tenants reported that the residents of the first floor apartment, Chelsea Chapman and Stephanie Thayer, did not appear to be home since their cars were not parked in the rear of the building. Manchester Police officers were concerned that the apartment may have been burglarized prior to the shooting incident and thus responded to the first floor apartment to check on the condition of anyone inside. In clearing the first floor apartment, officers observed men's clothing, two cell phones, a headlamp, knives, Frisbee golf equipment, and an empty baggie which, according to Officer Michael Pauley, appeared to have once contained an illicit drug.

Officers asked the upstairs tenant to contact Chelsea Chapman, and once connected, Officer Pauley spoke with her. Ms. Chapman advised that the front door had not been left open when she left for work. She also said that her boyfriend, Jason Barry, stays with her at the apartment and that he was home at the time that she left for work. Manchester Police dispatch looked up the name Jason Barry and was able to find a photograph to send to the officers on scene with the deceased. Officers were able to make a positive identification of Jason Barry at this time.

E. Interview of Colin Bouchard

Mr. Bouchard agreed to be transported back to the Manchester Police Department in order to be further interviewed by detectives. Mr. Bouchard was read his *Miranda* rights, and waived those rights in order to speak with Detectives Daniel Whelan and Brian O’Leary. The interview began at approximately 4:20 a.m. on July 19, 2019.

Mr. Bouchard is a 24-year-old Quality Engineer at Sig Sauer in Newington, New Hampshire. He owns the residence at 874 Union Street in Manchester, and lives on the first floor with a roommate; two tenants live on the second floor. Mr. Bouchard works the second shift at Sig Sauer, which typically goes from 2:00 p.m. until 10:45 p.m. On July 18, 2019, Mr. Bouchard woke up in the morning between 9:00 a.m. and 10:00 a.m. and left for work at approximately 1:00 p.m. Mr. Bouchard estimates that he began his shift at Sig Sauer between 2:00 p.m. and 2:30 p.m. and that he ended his shift that day between 10:45 p.m. and 11:00 p.m.

On the way home from Newington to his home in Manchester, Mr. Bouchard told detectives that he stopped at the Bonneville and Son Chrysler, Dodge, Jeep, Ram dealership at 625 Hooksett Road in Manchester. Mr. Bouchard said that he owns a Jeep Wrangler and was looking to purchase another Jeep of the same model. He said that the dealership has all of the Jeeps outside in the lot, so he stopped by on his way home from work to look at the vehicles.

Mr. Bouchard told detectives that he has a surveillance system at his home with cameras set up both inside and outside of his garage. The system is set up so that when a camera detects motion, the system will send a notification to Mr. Bouchard’s phone, along with an approximately ten-second clip of the movement that caused the camera to activate.

Mr. Bouchard said that he received an alert on his phone, and when he clicked on the video clip, he saw a man inside his garage, “snooping around” toward the front of his garage. He said he saw the man picking things up as well. Mr. Bouchard said that he did have the ability to access a live feed of his cameras but that he never activated this feature prior to the shooting.

Mr. Bouchard got back into his truck and drove from the Bonneville dealership back to his house at 874 Union Street.² Mr. Bouchard drove to the rear of his home through the alley, which is Liberty Street East Back. Mr. Bouchard has a detached garage behind his home, which is accessible from the alley. Mr. Bouchard said that he backed his truck into a parking space adjacent to the garage and went inside his house. Mr. Bouchard retrieved a Sig Sauer P365, 9mm near his couch and returned back outside. Mr. Bouchard said that his intention was to use the flashlight on his firearm to look into the garage and see if anyone was still inside his garage. Mr. Bouchard was asked if he thought about calling the police, and he said that he intended to see if anyone was still in the garage, and if so, order the person to the ground while he contacted police. Mr. Bouchard said that he was raised to be the kind of person that if there is an issue, he should try and resolve the issue himself.

Mr. Bouchard said that before he was able to even turn on the flashlight on his firearm, a man came out from under his garage. Mr. Bouchard said that the man startled him. Mr. Bouchard described the man as trying to pull himself up and out of the garage with one hand, while the other hand was hidden underneath the man. Mr. Bouchard said that he told the man to “stop,” and then shot the man. Mr. Bouchard said that he could not tell whether the man had a weapon in his hands and that he feared for both his life and his

² It is approximately one mile from the Bonneville dealership to Mr. Bouchard’s residence at 874 Union Street.

property. Mr. Bouchard reiterated that it was very dark in the garage and there was only one light in the alley, so it was hard to see what was in the man's hands. Mr. Bouchard said that the man never got to his feet before he fired the gun.

Mr. Bouchard reported that the garage door had been previously broken and that when he left for work that afternoon, he believed that the garage door was open approximately the same amount as it was when the man was crawling out from underneath it.

Mr. Bouchard was pressed throughout the interview regarding the circumstances that led to his firing the gun at Jason Barry. Mr. Bouchard repeated throughout the interview that after seeing the man on the video, he did not know who the man was, why he was in his garage at midnight, what the man's intentions were, or whether he had retrieved a weapon in the garage. Mr. Bouchard stated several times that he has several tools and sharp objects in his garage and specifically in the area of the garage where he observed the man going through his things on the video. Mr. Bouchard said that he has left firearms in his Jeep, which was inside the garage near where the man was seen on video, but Mr. Bouchard did not believe that he had left a firearm in his Jeep on that occasion.

Mr. Bouchard said that after shooting the man, he put his gun on top of the garbage can and called out to the man that he shot, asking "Sir, are you okay?" Mr. Bouchard said that he then physically checked for vitals and thought that the man was breathing. He explained that the man's breathing appeared to be dying out. Mr. Bouchard said that he did not recognize the man and had never seen him before.

Mr. Bouchard was asked about his surveillance system, and he identified it as a Netgear system.³ Mr. Bouchard said that the surveillance system is entirely cloud based and that he has previously accessed surveillance video through the cloud online. Mr. Bouchard said that he has one camera in the front of the residence, one in the rear of the residence and one in the garage. Mr. Bouchard said that the camera in the back of the house, facing the rear parking spaces and the garage, is inconsistent in terms of picking-up motion and ultimately recording any video. Mr. Bouchard said that he does not pay for the surveillance system and he is unclear for how long the video may be retrieved.⁴ Mr. Bouchard provided his login and password information for his surveillance account.

Toward the end of Mr. Bouchard's interview, detectives pressed Mr. Bouchard further about the decision to shoot Jason Barry. Mr. Bouchard was asked if after he told the man to stop, the man in fact stopped. Mr. Bouchard said that the man did not stop but kept moving out of the garage, pulling himself up with one hand while keeping one hand underneath him. Mr. Bouchard said that he could make out a shadow around the hand that was underneath the man and it looked like the man had something in his hand. Mr. Bouchard continued to reiterate that everything happened very quickly. Mr. Bouchard said that it looked like the man could have come up from the ground and done something with "malicious intent."

Mr. Bouchard reiterated that he feared for his life and his property. He said that there was a strange person he did not know or recognize that should not have been on his property,

³ The camera system is actually manufactured by Arlo Technologies, a former brand owned by Netgear, which separated Arlo into its own publically traded company in 2018.

⁴ The website for Arlo Technologies indicates that continuous video recording (CVR) subscription plans are available to record 24/7 video to the cloud in rolling 14 day blocks or up to 30 day blocks. If CVR is not enabled through a subscription, a user can view live video or receive notifications with ten seconds of recorded video from motion activated cameras. There does not appear to be an option to go back and look at specific video that was not recorded by the motion detection without a CVR plan.

that was inside his garage going through his things, after midnight, and that the only thing he could think was that the person had “malintent.” Mr. Bouchard said that he did not know what could have transpired at that point and worried about the man getting into his house. Mr. Bouchard said that in the front of the garage where the man was seen on the video, there are boxes of tools and sharp objects that could be used as weapons. Mr. Bouchard again stated that he feared for his physical safety. He repeated that this was a person that he does not know, who does not live at the property, who was in his garage going through his things late at night. Mr. Bouchard again said he feared for his life. Mr. Bouchard said that he was thinking about the Mont Vernon case and what can happen when someone breaks into your residence. Mr. Bouchard said that he feared for his life, feared for what could have transpired, and feared for his property, and that is why he fired his gun.

Detectives then tried to clarify with Mr. Bouchard whether shooting the gun was an accident or not. It is not clear if Mr. Bouchard understood the question because he responded by saying that the man came onto his property and the way that he came out of the garage it appeared he had “malintent.”

Detectives then asked Mr. Bouchard about several of the statements he made to 911 and on scene to the officers. Mr. Bouchard was asked about his statements referencing going to jail and being “fucked.” Mr. Bouchard said that he said this because it is what he believed would happen if there was loss of life. He said that there was someone at Trinity High School who was charged with involuntary manslaughter because he killed someone in a car accident. Mr. Bouchard said he assumed that when there is loss of life, “you are screwed.” Mr. Bouchard said that if he could have gone back and done everything in slow motion, things might have turned out differently, but that when someone comes into your home, onto

your property, for his own safety and the safety of his property and its occupants, he had to fire his gun.

Mr. Bouchard was asked about his statement that he “probably shouldn’t have shot him,” referring to shooting the man. Mr. Bouchard said that he wishes he did not shoot the man because of everything that comes after. He said he was in a situation that he never wanted to be in and that he has a lot of anxiety. He said that all of the things that come after an event like this is why he said he wishes he had not shot the man.

F. Interview of Chelsea Chapman

Chelsea Chapman was interviewed by Detectives Raymond Lamy and Bergeron Rosa at the Manchester Police Department. Ms. Chapman was living at 868 Union Street, on the first floor, with a roommate, Stephanie Thayer. Ms. Chapman told detectives that Jason Barry was her boyfriend but they had recently broken up. The two had been dating for a little more than three months and Mr. Barry had been staying at her apartment on a nightly basis.

Ms. Chapman said that she left the house at 5:17 p.m. on July 18, 2019. She noted the time because she knew she could not be late to work. She estimated that Stephanie Thayer left the house at approximately 3:45 p.m. She told detectives that Mr. Barry was doing well, that the two of them had been getting along, and that she thought they might be able to work out their problems.

Ms. Chapman reported that the two of them had had a good afternoon and that Mr. Barry was going to find a new place to live that Saturday. Ms. Chapman told detectives that Mr. Barry is big in the disc golf world and was hoping to play disc golf professionally. Mr. Barry had played in his first professional tournament recently. Ms. Chapman said that Mr.

Barry did not go anywhere without his Frisbee and was throwing it all the time. She reported that Mr. Barry had been doing landscaping for the same man who owns the local disc golf store, but had recently started a new job running electrical wires into new buildings. She said that Mr. Barry is very good with cable, electrical, and internet.

Ms. Chapman said that Mr. Barry's life revolved mostly around disc golf. He played seven days a week, three to four hours per day. She said that he was never without his disc. Sometimes Mr. Barry would pick Ms. Chapman up from work and just throw his disc in the parking lot while waiting for her to get off work. She said that he played in disc golf leagues several times a week. Ms. Chapman said that it would not be abnormal for Mr. Barry to go out and throw his disc at midnight or even 1:00 a.m. if he did not have to work the next day. Mr. Barry would go to the Brady Sullivan parking lot, which was approximately a ten-minute walk from Ms. Chapman's apartment, in order to throw the disc because the parking lots were very large.

Ms. Chapman said that she did not know of Mr. Barry to have any drug or alcohol problems and did not know of him doing any hard street drugs; Ms. Chapman said had seen Mr. Barry smoke marijuana or THC.

Ms. Chapman said that Mr. Barry had sent her a text at approximately 7:00 p.m. on July 18, 2019, asking her where the spare keys were. Mr. Barry did not have a key to the house but Ms. Chapman let him use the spare key when he went out. Ms. Chapman told Mr. Barry that if he went out he needed to lock the apartment. Ms. Chapman said she later got a call from the police telling her that the doors to her apartment were open and she was concerned her cat may have gotten out. She tried to call Mr. Barry but he did not answer his phone.

G. Physical Evidence

Several items of physical evidence were obtained during this investigation. During the autopsy of Mr. Barry, a pocketknife was recovered from his rear pant pocket, while a keyring, cigarette lighter, and sunglasses were recovered from his front pant pockets.

The crime scene investigators took photographs and digital scans of the garage and the alley and areas outside the garage. The garage door was partially open and bent inwards. The door was open approximately two feet. There was a large pool of dried blood at the front of the garage door with streams of blood leading into the garage. In the pool of blood, officers found a pair of blood covered glasses and near the blood pool was a bloody black shirt with a headlamp wrapped inside of it.

Officers found a discarded bullet casing resting underneath a parked vehicle next to the detached garage of 874 Union Street and a spent projectile outside of the crime scene tape in front of a car port at 884 Union Street. A black pistol holster was found on the hood of the vehicle where the casing was found and a set of keys and a tan and black P365 Sig Sauer pistol were found on top of a recycling bin along the side of the detached garage.

H. Surveillance

Surveillance was obtained from the Bonneville and Sons Jeep dealership as well as from Arlo Technologies. The video obtained from Bonneville and Sons contains two camera angles. The timestamp on the video was determined to be 5 minutes and 40 seconds fast. This report will refer to the timestamps on the video surveillance. According to the video surveillance, a tan Ford Ranger entered the north entrance of the Bonneville and Sons at 23:51:15 and parked in the middle of the lot near the Jeep vehicles. This vehicle is consistent with the tan Ford Ranger owned by Colin Bouchard. Mr. Bouchard can be seen exiting the

truck and walking to the top of the frame near the Jeep vehicles. At 23:54:10, Mr. Bouchard got back into his Ford Ranger, quickly backed up and traveled north out of the parking lot. The truck traveled quickly to an intersection, where it ran a red light onto Hooksett Road.

A warrant was issued to Arlo Technologies for all videos captured by Mr. Bouchard's surveillance system. Arlo Technologies produced three videos in response to this warrant. The timestamp for the first video is 11:48:21 p.m. on July 18, 2019. This video is ten seconds long and shows Mr. Barry in the front area of Mr. Bouchard's garage. He is standing at the passenger side of the Jeep Wrangler that is parked in the garage and is wearing a headlamp and what appears to be a shirt or other clothing wrapped around his head. Mr. Barry is seen looking through the property in the boxes at the front of the garage.

The timestamp for the second video is 11:49:17 p.m. on July 18, 2019. This video is also ten seconds long and shows Mr. Barry crouching or sitting down in front of the Jeep near the passenger side. Mr. Barry looks at the camera and then appears to be looking down around him. Mr. Barry is wearing a headlamp and glasses and his head is covered with what appears to be a piece of clothing.

The timestamp of the third video is 12:14:26 a.m. on July 19, 2019. This video is 47 seconds long and shows Officer Rob Megowen and his K-9 clearing the garage.

On July 25, 2019, Mr. Bouchard arranged to meet with two Manchester Police Detectives in order to log into his Arlo cloud account in an effort to review any potential surveillance video that may be available but not produced by Arlo Technologies. The only remaining video on Mr. Bouchard's account was the third video produced by Arlo, that being the video of Officer Megowen and his K-9 clearing the garage.

I. Autopsy Results

An autopsy was performed by Chief Medical Examiner Jennie V. Duval. Dr. Duval found that Mr. Barry suffered a single perforating gunshot wound of the head. The bullet entered on the left cheek, went through Mr. Barry's brain and exited his scalp on the back right side of his head. Dr. Duval did not find any evidence of soot, stippling, or high-velocity blood spatter on either of Mr. Barry's hands. She did not find any soot or gun powder residue on Mr. Barry's skin surface at the site of the entrance wound or within the wound track. The path of the bullet was front to back, left to right, and without significant up or down deviation. Because there was no gunshot residue seen, the range of fire was indeterminate. Dr. Duval concluded that Mr. Barry died as a result of a gunshot wound of the head and ruled his manner of death a homicide. In medical terms, homicide means the killing of one person by another.

A sample of Mr. Barry's blood was sent to NMS Labs to conduct a toxicology analysis. The Toxicology report showed that Mr. Barry's blood was positive for THC and methamphetamine. The amount of methamphetamine in Mr. Barry's system was 1500 ng/mL. Dr. Duval cautioned that every individual reacts to and tolerates drugs differently, so it is difficult to make conclusions based upon blood concentration alone. However, the reference comments provided by NMS Labs in their toxicology report note that "[b]lood levels of 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions."

IV. APPLICABLE LAW AND LEGAL STANDARDS

New Hampshire's laws regarding self-defense are set forth in RSA Chapter 627.

RSA 627:4 contains several variants of self-defense that state that an actor may be justified in using deadly force to protect himself or others in certain circumstances.⁵ Three of those variants of self-defense are potentially relevant here:

RSA 627:4, II(a), permits the use of deadly force by an actor against another when he 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 he 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 he 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." [RSA 627:9, I, defines "curtilage" as "those outbuildings which are proximately, directly and intimately connected with a dwelling, together with all the land or grounds surrounding the dwelling such as are necessary convenient, and habitually used for domestic purposes."] ["Felony for these purposes includes such crimes as first and second degree assault, burglary, robbery, rape, kidnapping, arson, murder, and theft." *N.H. Criminal Jury Instructions - 1985*, 3.11.]

Some discussion of the terms used in each of the statutory provisions is appropriate.

The law defines "deadly force" as "any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury." RSA 627:9, II. "Non-deadly force" means "any assault or

⁵ At several times during Mr. Bouchard's interview, he maintained that he feared for both his life and for his property. Deadly force is never permitted in defense of physical property, except to prevent an attempt by a trespasser to commit arson upon a premises. See RSA 627:7; 8. Since there is no evidence to suggest that Mr. Bouchard believed that Mr. Barry was attempting to commit arson, the potential justifications for the use of deadly force in this case are set forth in RSA 627:4.

confinement which does not constitute deadly force.” RSA 627:9, IV. “Unlawful force” means “deadly or non-deadly force.” *N.H. Criminal Jury Instructions - 1985*, 3.11.

“Self-defense does not require an actual danger to the defendant. Rather, the defendant must reasonably believe that the other person was about to use unlawful, deadly force [or unlawful force in the case of RSA 627:4, II(b) and (d)].” *N.H. Criminal Jury Instructions - 1985*, 3.11; *see also State v. Gorham*, 120 N.H. 162, 163-64 (1980).

Therefore, a mistaken use of deadly force could still be justified under the law if that mistake was reasonable. The term “reasonable” is “determined by an objective standard.” *State v. Leaf*, 137 N.H. 97, 99 (1993). As such, all of the circumstances surrounding the incident are to 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 - 1985*, 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. The amount of deadly force used by the actor to protect himself 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 curtilage, or 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 convict the person. *See State v. McMinn*, 141 N.H. 636, 645 (1997); RSA 626:7, I(a). There is no burden on the actor to prove that his actions were lawful.

While the three applicable variants of self-defense share some similar components, there are also some significant differences between them. In the first variant of self-defense (which will be referred to as “the deadly force variant”), the law provides that an actor is justified in using deadly force when he reasonably believes that another person is “about to use unlawful, deadly force” against him. RSA 627:4, II(a). However, with the other two variants – likely use of unlawful force by a person who is committing a burglary or likely use of unlawful force by a person in the commission of a felony against the actor within the actor’s dwelling or curtilage - there is no requirement that the actor be confronted by a person who was “about to use unlawful, deadly force,” in other words, with the deadly force that appears imminent. Instead, pursuant to RSA 627:4, II(b) and (d), an actor can use deadly force in response to unlawful force when he reasonably believes that the use of force against him is only “likely,” in other words, when the use of unlawful force is probable. Further, unlike the “deadly force variant,” the other two variants permit the use of deadly force in response to the threat of merely “unlawful force.” RSA 627:4, II(b); (d). There is no requirement that the actor face a threat of “unlawful, deadly force.” Thus, the two variants of self-defense contained in RSA 627:4, II(b) and (d), set a lower threshold for the use of deadly force by an actor in his home or the buildings and land near his home.

These are the legal standards that help guide the Attorney General’s review of the use of deadly force in this case.

V. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General has concluded that the State cannot disprove Mr. Bouchard's claims of self-defense under RSA 627:4, II(b) and (d), beyond a reasonable doubt. Because these claims of self-defense only require Mr. Bouchard to have reasonably believed that Mr. Barry was "likely to use" any unlawful, even non-deadly force, rather than deadly force, and because these self-defense claims would defeat any charges brought by the State, this review does not address whether Mr. Bouchard reasonably believed that he faced deadly force under 627:4, II(a).

While RSA 627:4, II(b) and (d) provide for different variants of self-defense, in this case the analysis is essentially the same. RSA 627:4, II(b) allows an actor to use deadly force if he reasonably believes that the other person is committing or attempting to commit a burglary and that the other person was likely to use unlawful force against anyone present. RSA 627:4, II(d) allows an actor to use deadly force if he reasonably believes that the other person is likely to use unlawful force in committing a felony against the actor's dwelling, or a building near the dwelling, or within the dwelling's curtilage. The crime of burglary satisfies the "felony" element in RSA 627:4, II(d), so for the purpose of both variants, Mr. Bouchard must have reasonably believed that Mr. Barry was committing or attempting to commit a burglary. In New Hampshire, a person is guilty of burglary "if he or she enters or remains unlawfully in a building or occupied structure, or separately secured or occupied section thereof, with purpose to commit a crime therein" RSA 635:1.

Mr. Bouchard told officers both on scene and during his later interview that he saw Mr. Barry on his video surveillance system inside his garage, going through his property, prior to arriving back at 874 Union Street. Mr. Bouchard told detectives during his interview

that there was a strange person he did not know or recognize that should not have been on his property, who was inside his garage going through his things, after midnight, and that the only thing he could think was that the person had “malintent.” Furthermore, the video surveillance shows Mr. Barry wearing a headlamp, a piece of clothing around his head, and going through items at the front of Mr. Bouchard’s garage, all while in the dark late at night. Based upon this evidence, it was reasonable for Mr. Bouchard to believe that Mr. Barry had unlawfully entered a building, namely his garage, with the purpose to commit a crime therein. *Cf. State v. Reed*, 114 N.H. 377, 379 (1974) (“Evidence of unexplained entry by breaking into a stranger’s home, findably by the defendant and another, coupled with their suspicious attempt to conceal themselves while in the yard, was sufficient evidence of intent to commit a crime within the house.”). The burglary was also taking place on Mr. Bouchard’s property, specifically inside his garage and on his curtilage. Accordingly, the evidence supports the prerequisite requirements of RSA 627:4, II(b) and (d). The remaining question is whether Mr. Bouchard reasonably believed that Mr. Barry was likely to use unlawful force against him at the time of the encounter.

There is evidence to support Mr. Bouchard’s self-defense claim, but the evidence is arguably inconsistent at times, with Mr. Bouchard making some statements that could be interpreted as calling into question his fear for his own safety at the time he shot Mr. Barry. At the same time, Mr. Bouchard’s statements must be evaluated in context, and in light of the numerous observations the police made that he was very upset after the incident, which could account for some or all of the inconsistent statements he made in the aftermath of the shooting.

During his 911 call, Mr. Bouchard expressed remorse to the operator, said he was in trouble as a result of shooting Mr. Barry (“I am so fucked”), and said that he (Mr. Bouchard) had panicked. Mr. Bouchard sounded very upset and was alternating between crying and breathing heavily as he spoke with the operator.

After the police arrived on scene, Mr. Bouchard made several statements about what had happened. However, at no point did he say anything about having seen or potentially seen anything in Mr. Barry’s hands. Mr. Bouchard also said that he did not think he should have shot Mr. Barry and that he knew how things worked, and “it’s called manslaughter.” The officers on scene noted that Mr. Bouchard was extremely panicked, had trouble focusing at times, and was clearly very shaken.

After speaking with the officers at the scene, Mr. Bouchard went to the Manchester Police Department, where he eventually spoke to detectives about the shooting incident. This interview took place about four and one half hours after the shooting itself. Mr. Bouchard voluntarily agreed to the interview and agreed to speak without a lawyer present. During this interview, Mr. Bouchard provided some details that he had not provided the 911 operator or the officers at the scene. He said that it looked like there was a shadow around Mr. Barry’s hand and that it looked like Mr. Barry had something in his hand. Mr. Bouchard said at various times that he could not tell whether there was a weapon in Mr. Barry’s hands and that it was dark and hard to see what was in Mr. Barry’s hands. Mr. Bouchard also told detectives that it looked to him like Mr. Barry could have come up from the ground and done something with “malicious intent.” Mr. Bouchard made several references to sharp items that he had in his garage that Mr. Barry may have had access to and that he feared for his life and for his physical safety. Mr. Bouchard also told detectives that when he told Mr. Barry to

stop as he was exiting the garage, Mr. Barry did not stop, but continued to pull himself forward. Taken together, despite some inconsistencies, these facts provide support for Mr. Bouchard's self-defense claim in light of the applicable legal standards.

The relevant self-defense statutes only require that Mr. Bouchard have reasonably believed that Mr. Barry was "likely" to use any unlawful force against him. The evidence shows that Mr. Bouchard was at Bonneville and Sons looking at Jeeps when he got notification of movement in his garage at home. It was nearly midnight when Mr. Bouchard got that notification. He watched the first ten-second video clip and saw Mr. Barry inside of his garage, in the dark, with a headlamp on, going through Mr. Bouchard's things. Mr. Bouchard returned home within minutes, retrieved his firearm, and walked out to his garage to determine whether the intruder was still inside. It was at this moment that Mr. Barry emerged from underneath Mr. Bouchard's garage door. Mr. Bouchard stated on multiple occasions that he could not see one of Mr. Barry's hands, and later stated that he believed he saw something in Mr. Barry's hand. Mr. Bouchard had seen Mr. Barry at the front of the garage on the video, going through Mr. Bouchard's things. Mr. Bouchard knew there were sharp tools and other objects in this area of the garage. Mr. Bouchard also said that he was scared for his life and property and thought about what had happened in the Mont Vernon case and what could happen when someone breaks into your home.⁶ Mr. Bouchard told Mr. Barry to stop as he exited the garage and Mr. Barry did not comply, but instead continued moving forward toward Mr. Bouchard.

⁶ The "Mont Vernon case" was a reference to a home invasion case that occurred in the middle of the night in Mont Vernon, New Hampshire, on October 4, 2009. During that home invasion, two residents inside a home were the victims of a random attack by several strangers. One victim was killed and the other severely injured.

The detectives also spoke with Mr. Bouchard about several of the statements he made to 911 and on scene to the officers there that were arguably inconsistent with his self-defense claim. Mr. Bouchard offered explanations for those statements and reiterated that at the time of the shooting he feared for his physical safety. The question is whether the evidence is sufficient to disprove this belief beyond a reasonable doubt. Here, the qualifying term “likely” in the phrase “likely to use any unlawful force” in RSA 627:4, II(b) and (d), makes it particularly difficult to disprove this element beyond a reasonable doubt. The term “likely” allows for some uncertainty regarding Mr. Bouchard’s level of certainty in the necessity of the use of force that night. It means that Mr. Bouchard did not have to reasonably believe that he was facing the imminent threat of unlawful force, or that he was faced with the certain use of unlawful force by Mr. Barry. Instead, the statute only requires the actor to reasonably believe that the other person is “likely to use unlawful, force.” RSA 627:4, II(b); (d). As already discussed, there is evidence to support that belief here.

Therefore, based upon the totality of these facts and the lesser standards imposed in this case for using deadly force contained in RSA 627:4, II(b) and (d), (“likely to use any unlawful force” versus “about to use unlawful, deadly force”), the evidence supports Mr. Bouchard’s claim of self-defense and is insufficient for the State to disprove Mr. Bouchard’s claim of self-defense beyond a reasonable doubt. However, given the inconsistencies in some of Mr. Bouchard’s statements and conduct, the evidence is also insufficient to conclude with certainty that his actions were justified under the law. Regardless, since the State cannot disprove Mr. Bouchard’s self-defense claim beyond a reasonable doubt, no charges will be filed against him in connection with Mr. Barry’s death.

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