

**ATTORNEY GENERAL'S REPORT REGARDING AUGUST 1, 2019
OFFICER-INVOLVED SHOOTING INCIDENT IN WEARE, NEW
HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General Gordon J. MacDonald announces the completion of the investigation into the officer-involved shooting that occurred in Weare, New Hampshire on August 1, 2019. The private citizen involved in that incident, Jeffrey Clough-Garvin (age 43), was shot by one police officer, Sergeant Austin Maguire of the Weare Police Department. However, Mr. Clough-Garvin ultimately took his own life by self-inflicted shotgun wound. In addition, Mr. Clough-Garvin shot and injured another police officer, Officer Paul Lewis, IV of the Weare Police Department. The purpose of this report is to summarize the Attorney General's factual findings and legal conclusions regarding the use of deadly force against Mr. Clough-Garvin.¹ The findings and conclusions in this report are based upon various types of information gathered during the investigation, including photographs and videos of the scene of the incident; recorded interviews of witnesses and radio transmissions made on the evening of

¹ As previously noted, and as detailed later in this report, Mr. Clough-Garvin ultimately committed suicide. That being said, a law enforcement officer fired his weapon at Mr. Clough-Garvin, causing injuries to his right lateral chest, left posterior shoulder, and upper back. Consequently, deadly physical force was used against Mr. Clough-Garvin. RSA 627:9, II ("Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force.").

the incident; video recordings that captured portions of the incident; and numerous official reports generated during the course of the investigation.

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 the use of deadly force against Jeffrey Clough-Garvin by Sergeant Austin Maguire on August 1, 2019, was legally justified.

II. SUMMARY OF THE FACTS

In the early morning of August 1, 2019, the mother of Jeffrey Clough-Garvin called 911, and reported in substance that her son was involved in a domestic dispute with his wife at their home on Buckley Road in Weare. Among the information provided by Mr. Clough-Garvin's mother was that he possessed firearms, had a history of depression, and had recently ingested a large amount of antidepressants.

Sergeant Austin Maguire and Officer William Paul Lewis, IV of the Weare Police Department were working when the 911 call was received. Those two police officers then proceeded to the Clough-Garvin residence. Both police officers were dressed in full uniforms and were wearing "body cameras"—devices worn on the torso area that create contemporaneous audio and video recordings of

events. Those recording devices were active and operable when the two police officers arrived at the residence and eventually encountered Mr. Clough-Garvin.

When Sergeant Maguire and Officer Lewis arrived at the residence, they proceeded to an entrance, where they met and spoke with Mr. Clough-Garvin's wife. She reported in substance that Mr. Clough-Garvin was armed with a shotgun, and further warned the police officers that he would shoot them.

Sergeant Maguire and Officer Lewis then entered the residence, with the former slightly ahead of the latter. Just inside the residence, Sergeant Maguire encountered Mr. Clough-Garvin, who stood partially hidden behind a wall several feet in front of Sergeant Maguire. Mr. Clough-Garvin held a gun in his hand.

Sergeant Maguire and Officer Lewis repeatedly directed Mr. Clough-Garvin to "show his hands" and to drop his weapon. Instead, Mr. Clough-Garvin raised the hand in which he held a firearm toward the police officers. In response, Sergeant Maguire shot at Mr. Clough-Garvin with his service pistol. Officer Lewis never fired his weapon. Mr. Clough-Garvin fired at the police officers, shooting Officer Lewis in the arm. When Officer Lewis announced that he had been shot, he and Sergeant Maguire left the residence and took shelter by their vehicles. Ms. Clough-Garvin, who had been outside when the exchange of gunfire occurred, joined the police officers.

Shortly after Sergeant Maguire and Officer Lewis withdrew from the residence, other law enforcement officers arrived. Officer Lewis was taken for medical treatment, and the residence was secured. Over the ensuing hours, law

enforcement attempted to communicate with Mr. Clough-Garvin, who was believed to be still inside his home, to obtain his peaceful surrender. Those various efforts went unanswered. Eventually, a law enforcement robot entered the residence and found an apparently dead Mr. Clough-Garvin. Law enforcement officers then entered the residence and confirmed that Mr. Clough-Garvin was deceased. Subsequent autopsy revealed that although Mr. Clough-Garvin had been shot three times by Sergeant Maguire in the chest, shoulder, and back, the fatal wound was self-inflicted from a shotgun.

III. THE INVESTIGATION

A. Events Leading up to Law Enforcement's Interactions with Jeffrey Clough-Garvin on August 1, 2019

Mr. Clough-Garvin lived in a single-family residence on Buckley Road in Weare with his wife and several children. Mr. Clough-Garvin had a history of depression, and had a large firearms collection.

On the evening of July 31, 2019, Mr. Clough-Garvin was home alone with his wife in their residence on Buckley Road. While there, Mr. Clough-Garvin's wife informed him that she was ending their marriage and leaving him, and the two verbally and physically fought. Over the course of several hours, Mr. Clough-Garvin repeatedly brandished a shotgun and told his wife that she could not leave, threatening to use the weapon against her and himself. Mr. Clough-Garvin's wife reported that he also fired the shotgun twice, once out a window and another time

from an outside deck. Mr. Clough-Garvin's wife also saw him ingest the entire contents of a sixty-pill bottle of Xanax, a prescription-grade anti-anxiety medication.

During Mr. Clough-Garvin's confrontation with his wife, he broke her cellphone. He used his own cellphone to contact his mother. At 11:05 p.m. on July 31, Mr. Clough-Garvin sent the following text message to his mother: "I love you mom things got out of hand here [wife] wants to divorce me, I can't live without her and I don't want to live without her I'm sorry I love you and miss you and dad and my girls! Xoxoxoe."

Mr. Clough-Garvin also called his mother during his confrontation with his wife. His mother described him as sounding sad, and recalled that he reported that he had ingested sixty Xanax pills. She also heard his wife in the background say that he had a gun and pointed the gun at her, and asked to call 911. Mr. Clough-Garvin last called his mother at about 1:19 a.m. on August 1. She spoke to him for several minutes before handing the phone to her husband so that she could call 911. Mr. Clough-Garvin's father recalled that his son's speech sounded slurred. Mr. Clough-Garvin told his father that his wife was leaving him, said goodbye, and apologized for any problems that he had caused. Mr. Clough-Garvin also told his father that he had taken "pills" and that "if that doesn't do it, I'll find something that will do it."

At about 1:37 a.m. on August 1, 2019, Mr. Clough-Garvin's mother called 911. She reported in substance that her son was home with his wife, that he had

guns and had threatened to shoot himself, and that he had said that he would resist help. Mr. Clough-Garvin's mother also informed the 911 operator that he had consumed about 60 Xanax pills.

As a result of the call for help placed by Mr. Clough-Garvin's mother, a police dispatcher issued a call for assistance to the Clough-Garvin residence on Buckley Road. At the time of the call, Sergeant Maguire and Officer Lewis were both on duty, and responded together to the call. En route, Sergeant Maguire called in for assistance from other police units. Sergeant Maguire and Officer Lewis each wore a full police uniform and was armed with a nine-millimeter semiautomatic pistol that had a fully-loaded capacity of eighteen rounds.

Upon Sergeant Maguire's and Officer Lewis's arrival at the Clough-Garvin residence, they walked up to the front door. At about that same time, Mr. Clough-Garvin's wife, believing that he was about to fall asleep in their upstairs bedroom from the medication that he had taken, went downstairs and met the police officers outside. The events that followed, all of which were recorded on the police officers' body cameras, are detailed below.

B. The Armed Encounter Between Law Enforcement and Jeffrey Clough-Garvin

The armed encounter that occurred between Jeffrey Clough-Garvin and law enforcement inside his residence spanned about half a minute in total, from the time when the two police officers entered the residence and first saw him to when they withdrew after the exchange of gunfire between Sergeant Maguire and Mr. Clough-Garvin. There were no eyewitnesses beyond Mr. Clough-Garvin, Sergeant Maguire, and Officer Lewis.² Both police officers were wearing body cameras that video recorded and audio recorded the entirety of their encounter with Mr. Clough-Garvin.

1. Recordings

The two body recordings capture the same events, from slightly different vantage points. The body camera worn by Sergeant Maguire, who was in front of Officer Lewis and had more direct contact with Mr. Clough-Garvin, shows more of the events, including capturing Mr. Clough-Garvin's position and activity. For purposes of the investigation, footage obtained from the body cameras was analyzed in an attempt to clarify the video and also in an attempt to isolate and identify gunshots. Copies of that body camera footage are available for viewing on the Attorney General's Office's website and are attached to this report. The footage contains graphic language. Although the footage is time-stamped, the

² Although Mr. Clough-Garvin's wife was present during the armed encounter, she was outside the house at the time and did not witness any of the confrontation inside the house.

times are fast by about four hours. The face of Mr. Clough-Garvin's wife has been blurred out of the recordings for privacy purposes.

As seen and heard in the video footage, Sergeant Maguire and Officer Lewis walked up to the residence together, and when Sergeant Maguire knocked on a door a woman—Mr. Clough-Garvin's wife—stepped out. She was distraught, and informed the police officers when asked if he had a firearm, “[Y]es . . . how many I don't know.” She also told Sergeant Maguire and Officer Lewis that “he's in bed, he's talking to his dad,” and that there was a shotgun “right by the bed.” She further informed the police officers that nobody else was in the house, and directed them to the bedroom where she believed Mr. Clough-Garvin was. She told the officers, “Guys, he's going to shoot you,” and further stated that she was scared and did not want to be there.

Sergeant Maguire and Officer Lewis then entered the residence. Within seconds, as Sergeant Maguire was by a corner, he encountered Mr. Clough-Garvin, who was in front of and to the left of the sergeant's position, standing by another corner to the left of the kitchen and holding an object in his arm.³ The events that followed transpired in the course of about thirty seconds.

³ In Still Photo “A” attached to this report, taken from Sergeant Maguire's body camera footage, Mr. Clough-Garvin is circled in red. Mr. Clough-Garvin remained in that general area during his encounter with Sergeant Maguire and Officer Lewis inside his residence.

The approximate locations of Mr. Clough-Garvin, Sergeant Maguire, and Officer Lewis are depicted in the overhead diagram attached to this report. Sergeant Maguire's general position is circled in blue, Officer Lewis's general position is circled in green, and Mr. Clough-Garvin's general position is circled in red. The general position where Mr. Clough-Garvin's body was found is depicted by the figure outside the bathroom, circled in yellow.

Both Sergeant Maguire and Officer Lewis repeatedly yelled to Mr. Clough-Garvin in substance to show his hands and to “drop the gun.” Those numerous directives continued for about twelve seconds. Mr. Clough-Garvin remained by the wall where he was initially spotted. Sergeant Maguire then fired his pistol several times at Mr. Clough-Garvin. Just before Sergeant Maguire fired, his body camera captured Mr. Clough-Garvin still holding an object in his hand, up around his chest area.⁴ Immediately after Sergeant Maguire fired several shots, Mr. Clough-Garvin stated, “Kill me,” and then additional gunshots were fired. During these additional gunshots, Officer Lewis shouted out an expletive and informed Sergeant Maguire that he had been shot. The two police officers then withdrew from the house, joined outside by Ms. Clough-Garvin, who had been there the entire time during the exchange of shots.

According to sound analysis of the body camera footage, the sequence of shots fired, which occurred over the span of about seventeen seconds, appears to be as follows: Sergeant Maguire fired six rounds in about two seconds; no shots were fired in the next five seconds and during that time Mr. Clough-Garvin stated, “Kill me”; Mr. Clough-Garvin fired two shots in about a second, in which Officer Lewis was struck; in the following span of about three seconds, Sergeant Maguire fired two shots while Mr. Clough-Garvin fired four shots; then Sergeant Maguire fired ten shots in the span of about six seconds.

⁴ In Still Photo “B” attached to this report, taken again from Sergeant Maguire’s body camera footage, the object held by Mr. Clough-Garvin is seen in the inner red circle.

2. Eyewitness Accounts

Sergeant Maguire and Officer Lewis gave full and separate interviews as part of this investigation. Investigators also interviewed numerous other law enforcement personnel who responded to the incident, as well as people who were familiar with Mr. Clough-Garvin. Because Sergeant Maguire and Officer Lewis were the only two people directly involved in the encounter with Mr. Clough-Garvin, only their accounts are summarized below.

a. Sergeant Maguire

Sergeant Maguire was interviewed on August 8, 2019. Sergeant Maguire at the time of the incident had been a member of the Weare Police Department for about five years, and had conducted various internships with the office prior thereto. He was up to date on firearms qualifications at the time of the incident with Mr. Clough-Garvin on August 1. Sergeant Maguire is a field training officer and a shift supervisor, the former of which was his assignment on the morning of the encounter with Mr. Clough-Garvin.

That morning, Sergeant Maguire was driving a police vehicle to a repair shop in Hillsborough, and Officer Lewis was following in his patrol car. They were the only Weare police officers on duty that morning. On the way to the repair shop, Sergeant Maguire received a radio transmission from the police dispatcher reporting an assault-related domestic disturbance at an identified

residence on Buckley Road in Weare. Upon receiving that transmission, Sergeant Maguire and Officer Lewis responded to the residence. Sergeant Maguire received several updates while driving to the residence, and recalled being informed in substance that a man in the residence had taken "60 Xanax" and did not want the woman in the residence to leave, and that a firearm may be involved in the disturbance between the two. When Sergeant Maguire heard that a weapon may be involved, he requested assistance from neighboring police agencies as well as from the State Police.

At the residence, Sergeant Maguire saw that lights were on inside, but saw no movement and could hear no sounds. He and Officer Lewis walked to the front entrance, and he knocked lightly on the door. A woman answered and left the house. She appeared to be upset, and told the police officers in substance that the man inside had taken Xanax and was upstairs in their bedroom. She also reported that the man might be armed with a shotgun, and that there was nobody else in the house. Sergeant Maguire asked the woman where the inside stairs were, and directed her to remain outside.

When Sergeant Maguire entered the house, he heard a man's voice downstairs, which he thought unusual because he thought the man would be upstairs; he could not hear what the man was saying. When Sergeant Maguire first saw the man, he was standing several feet in front of him, with part of his body obscured by a doorway or similar interior feature. Sergeant Maguire saw

that the man, who faced him, held a firearm in his hand and that the weapon was pointed toward the floor.

Sergeant Maguire told the man multiple times to drop his weapon, and also heard Officer Lewis voice similar commands. Instead, the man raised the firearm that he held in the police officers' direction. At that point, fearing that the man was going to shoot at him and Officer Lewis, Sergeant Maguire fired on the man; Sergeant Maguire was unsure who shot first, but did hear another firearm. Sergeant Maguire heard the man state in substance, "You got me," and also heard Officer Lewis announce that he had been shot. Although Sergeant Maguire could not recall the sequence of shots fired, he remembered that he discharged all of the bullets from his pistol, and had to reload the weapon.

Sergeant Maguire then left the home with the wounded Officer Lewis. While leaving, Sergeant Maguire saw Officer Lewis's pistol on the floor, retrieved it, and returned it to him. Sergeant Maguire also heard what sounded like a shell being racked into a shotgun. The two police officers, as well as the woman who they had encountered at the front door, withdrew to the parked police vehicles, where he took up a defensive position while the woman attempted to render medical aid to Officer Lewis. Soon thereafter, other police officers began to arrive.

b. Officer Lewis

Officer Lewis was interviewed on August 26, 2019. Officer Lewis at the time of the incident had been a member of the Weare Police Department for about eight months, and he was up to date on firearms qualifications at the time of the incident with Mr. Clough-Garvin on August 1.

Officer Lewis verified various aspects of the account of events leading up to the entry into Mr. Clough-Garvin's residence provided by Sergeant Maguire, including receipt of a call for assistance involving a possibly suicidal and armed man, and interaction with a visibly distraught woman outside the home. As to events that transpired when he and Sergeant Maguire entered the house, Officer Lewis characterized his recollection of those events as "foggy."

Officer Lewis recounted that shortly after entry into the residence, he heard Sergeant Maguire fire several gunshots. Officer Lewis saw a man by a wall, but could not recall whether the man was holding a gun. Officer Lewis remembered that the man said words to the effect of "I'm dead," and that he instructed the man to "show his hands." Immediately thereafter, Officer Lewis was shot in the arm, as a result of which he dropped his pistol. Officer Lewis never discharged his firearm.

After Officer Lewis was shot, he and Sergeant Maguire withdrew from the residence, during which time the sergeant retrieved Officer Lewis's weapon and gave it back to him, and they returned to their vehicles. When other police

officers arrived, Officer Lewis was taken for medical treatment, and ultimately was admitted to Concord Hospital.

Officer Lewis was shot twice in the right arm. One shot struck him in the forearm, and the other struck him in the biceps area. Although the wounds caused two separate fractures, they were not life threatening in the normal course.

C. Autopsy Results

Chief Medical Examiner Jennie Duval conducted an autopsy on Jeffrey Clough-Garvin on August 2, 2019. That autopsy revealed four gunshot wounds. The fatal wound was a shotgun wound sustained to the upper chest that caused, among other internal injuries, catastrophic damage to Mr. Clough-Garvin's left lung. Based on a skin abrasion and soot deposits associated with that shotgun wound, Dr. Duval characterized the distance of the wound as "loose contact," which occurs when a weapon's muzzle is held lightly against the skin at the time of discharge.

Mr. Clough-Garvin also sustained three separate gunshot wounds: one to his right lateral chest, one to his left posterior shoulder, and one to his left upper back. None of those gunshot wounds caused damage to Mr. Clough-Garvin's internal organs. Those three gunshot wounds, even when taken together, were not fatal and would not be fatal in the normal course.

Mr. Clough-Garvin's manner of death was determined to be a suicide, with the cause of death the self-inflicted shotgun wound to the chest.

Toxicology testing of Mr. Clough-Garvin's blood revealed the presence of significant amounts of alprazolam (commercial name Xanax), bupropion (an antidepressant), and oxycodone in his system.

D. Physical Evidence

Investigators recovered from the interior entrance area where Sergeant Maguire fired at Mr. Clough-Garvin eighteen nine-millimeter shell casings, consistent with the shots that Sergeant Maguire fired from his pistol. Officer Lewis's pistol, which also had a maximum capacity of eighteen rounds, was fully loaded and had no signs of recent discharge.

Mr. Clough-Garvin's body was found slouched over in a seated position on the floor outside a bathroom adjoining the kitchen, just feet from the corner where he was captured on video in Sergeant Maguire's body camera footage. A forty-five caliber semiautomatic pistol lay on the floor near Mr. Clough-Garvin's right hand. The pistol's top slide was locked back, a position that can occur when a semiautomatic pistol is fired until empty. The weapon's magazine had a ten-round capacity. Investigators recovered a total of six forty-five-caliber shell casings, five in the immediate vicinity of Mr. Clough-Garvin's body and one on the kitchen floor nearby. Investigators found an additional semiautomatic pistol and a revolver, each of which was loaded, in the kitchen near Mr. Clough-Garvin's body.

Also found near Mr. Clough-Garvin's body was a twelve-gauge shotgun. The shotgun's barrel was pointed toward Mr. Clough-Garvin's body, and a spent slug casing was found in the weapon's firing chamber.

Investigators also found and documented apparent ballistics damage in the area where Mr. Clough-Garvin's body was found, as well as in the area where Sergeant Maguire and Officer Lewis were positioned during their encounter with him. As to the latter location, observed apparent gunshot defects were consistent with multiple shots fired towards that area.

IV. APPLICABLE 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.” *Graham*, 490 U.S. 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 (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, 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 476-77 (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 upon all the facts and circumstances of this case, the Attorney General has concluded that Sergeant Maguire reasonably believed that his own life and the life of Officer Lewis was in imminent danger when he fired his weapon at Jeffrey Clough-Garvin. In that regard, just before the police officers entered the house they had been informed by Mr. Clough-Garvin's distraught wife that he may be armed and she expressed fear that he would shoot them. Then, upon encountering Mr. Clough-Garvin just inside the house, Sergeant Maguire saw him holding a weapon. Although the video quality of the body camera footage is insufficient to confirm the identity of the object that Mr. Clough-Garvin held when he encountered Sergeant Maguire and Officer Lewis, its shape is consistent with a firearm. Moreover, within seconds of Sergeant Maguire firing his weapon, Mr. Clough-Garvin shot at the police officers, and a pistol and shotgun—both of which had been fired—were found by his body.

When the police officers encountered Mr. Clough-Garvin, they both repeatedly and forcibly yelled at him to drop his weapon. Those directives continued for several seconds. Despite the police orders to disarm, Mr. Clough-Garvin maintained his position and continued to hold the object—which all evidence indicates was in fact a weapon—in his hand. According to Sergeant Maguire, only when Mr. Clough-Garvin began to point the weapon in his and his fellow police officer's direction did he fire his own weapon, out of fear for their safety. The last body camera footage before the initial shots were fired confirms

that Mr. Clough-Garvin was still holding an object, which was raised to his chest area.

As to the immediate danger posed by Mr. Clough-Garvin, his wife had told the police officers almost immediately upon their arrival that he would shoot them. Therefore, not only did Sergeant Maguire reasonably believe that Mr. Clough-Garvin had a firearm and was about to use it, Mr. Clough-Garvin also had the ready ability to use deadly force against the police officers. Mr. Clough-Garvin was armed with a loaded shotgun and pistol, and had access to additional loaded weapons nearby. As to the pistol, Mr. Clough-Garvin actually used that weapon against the police officers, firing at them several times and ultimately striking Officer Lewis twice.⁵ Moreover, before the police officers arrived Mr. Clough-Garvin was acting erratically and dangerously with a firearm, brandishing it towards himself and his wife and discharging it at least twice while threatening homicide and suicide.

Although when Sergeant Maguire encountered Mr. Clough-Garvin Sergeant Maguire was unaware of the exact nature of Mr. Clough-Garvin's behavior leading up to the encounter, those circumstances reinforce the danger posed by Mr. Clough-Garvin, as well as the volatile situation that the police

⁵ No bullets or fragments were recovered from Officer Lewis during his medical treatment. Thus, there is no ballistics evidence that can be analyzed in order to confirm that he had been shot by the pistol fired by Mr. Clough-Garvin. However, the body camera footage clearly shows that Officer Lewis was positioned behind Sergeant Maguire during the exchange of gunfire between Sergeant Maguire and Mr. Clough-Garvin. Given the relative positions of the two police officers, Sergeant Maguire's shots could not have hit Officer Lewis absent instantaneous ricochets of two shots nearly directly back to the point of origin.

officers faced. In the hours before the police arrived at the residence, Mr. Clough-Garvin, who had a history of depression, was despondent and expressed suicidal thoughts to multiple family members. He ingested medication in an overdose attempt, and noted that if the medication failed to kill him he would find another way to do so. Mr. Clough-Garvin also was violent, physically assaulting his wife, openly brandishing a shotgun, and actually twice discharging that weapon while threatening to use it to kill her or himself. These facts not only support the information believed by Sergeant Maguire and Officer Lewis before they actually encountered Mr. Clough-Garvin—namely, that he was armed and despondent—but also demonstrate the imminent danger that he posed to them.

Sergeant Maguire and Officer Lewis were immediately confronted by an armed man who had actually at least twice discharged a firearm earlier that night, who had expressed a desire to end his life, and who had been acting erratically and was under the influence of various medications. The situation faced by the police officers was dangerous and volatile, and became even more so when Mr. Clough-Garvin did not comply with the officers' repeated directives to disarm. Only after several seconds of unheeded commands, and when Mr. Clough-Garvin reasonably appeared to Sergeant Maguire to be about to use the weapon that he held against the police officers, did Sergeant Maguire fire his pistol at Mr. Clough-Garvin.

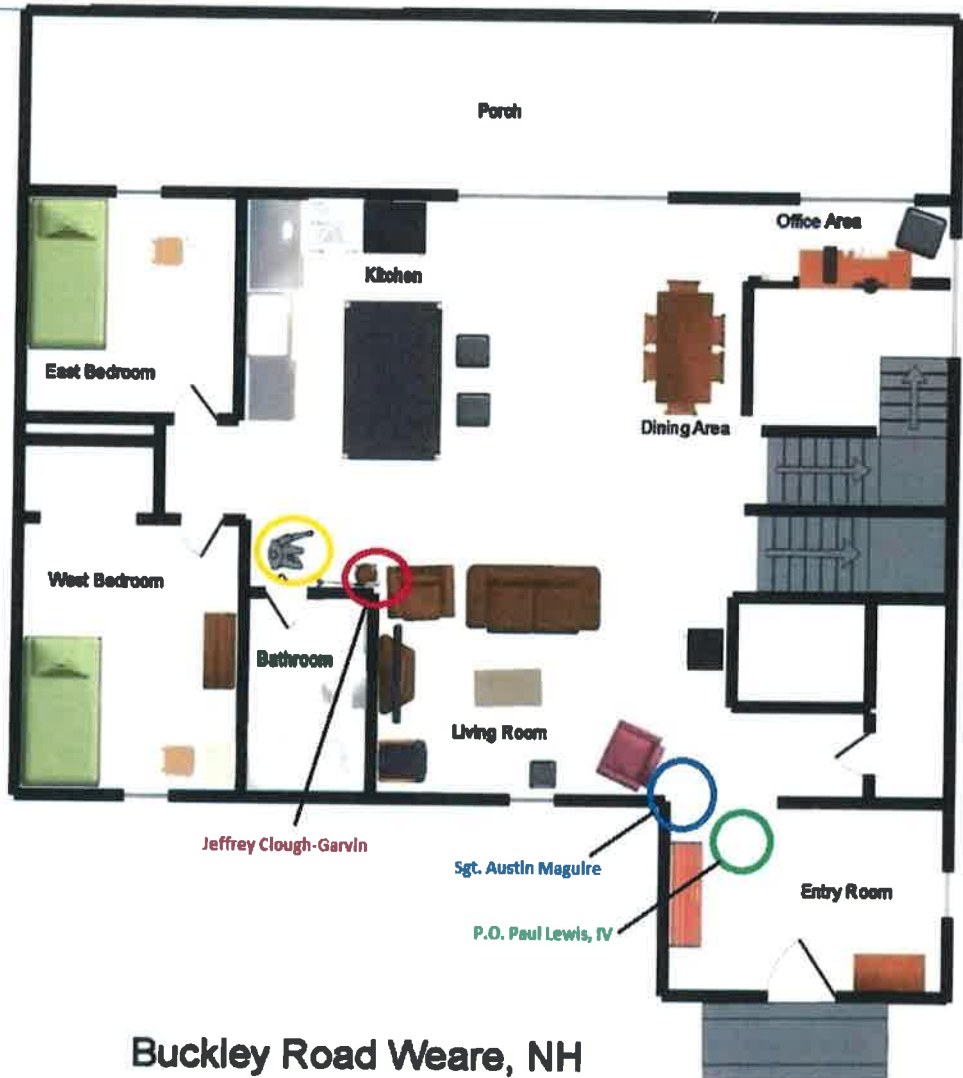
Although it appears from an audio analysis of the body camera footage that Sergeant Maguire fired his weapon before Mr. Clough-Garvin shot at the police, that does not make Sergeant Maguire's actions any less justified under the law.

See RSA 627:5, II(a) (“A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary, [t]o defend himself or a third person from what he believes is the *imminent* use of deadly force.”)

(emphasis added). From what Sergeant Maguire knew and saw, at the time when he shot at Mr. Clough-Garvin he believed that Mr. Clough-Garvin was about to use deadly force. Therefore, Sergeant Maguire’s belief was reasonable, and supports his own, lawful, use of protective deadly force.

Accordingly, Sergeant Austin Maguire of the Weare Police Department was legally justified in using deadly force against Jeffrey Clough-Garvin, and no criminal charges will be filed against him as a result of Mr. Clough-Garvin’s death.

DIAGRAM



Buckley Road Weare, NH

STILL PHOTO A

2019-08-01 T05:47:39Z
AXON BODY 2 X81081922



STILL PHOTO B

2019-08-01 T05:47:42Z
AXON BODY 2 X81081922

