

**ATTORNEY GENERAL’S FINAL REPORT REGARDING THE
SEPTEMBER 20, 2019 OFFICER–INVOLVED SHOOTING
IN NASHUA, NEW HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General John M. Formella announces the completion of the investigation into a nonfatal police officer use of deadly force incident that occurred in Nashua, New Hampshire on September 20, 2019. In that incident, Nashua Police Officer John Colangelo shot William Case (age 59) with a bullet, and Nashua Police Officer Matthew Foss shot at Mr. Case with a less-than-lethal projectile. The purpose of this report is to summarize the Attorney General’s factual findings and legal conclusions regarding that use of deadly force against Mr. Case.¹ The findings and conclusions in this report are based upon information gathered during the investigation, including viewing the scene of the incident as well as photographs of the scene, listening to numerous recorded interviews of witnesses and transmissions made on the night of the shooting, and reviewing numerous official reports generated during the course of the investigation.

¹ As is discussed in more detail later in this report, although Mr. Case did not die in the incident at issue, the police conduct under review still constitutes deadly force under the law:

“Deadly force” means any assault . . . 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. Purposely firing a firearm *capable of* causing serious bodily injury or death in the direction of another person . . . constitutes deadly force.

RSA 627:9, II (emphasis added). That is true both with respect to the bullet fired by Officer Colangelo and the less-than-lethal round fired by Officer Foss. Although the latter projectile is designed and utilized not to cause death, it was “fire[d from] a firearm” and is “capable of causing serious bodily injury or death.”

On January 17, 2020, a preliminary report regarding the use of deadly force incident was issued. This final report was deferred until William Case's criminal charges related to the matter, prosecuted by the Hillsborough County Attorney's Office, were resolved.²

As provided in RSA 7:6, RSA 21-M:3-b, and RSA 21-M:8, II(a), 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. When reviewing the use of deadly force by law enforcement officers, the Attorney General does not investigate or opine on the particular procedures or tactics used by the officers. Instead, the Attorney General's review of officer-involved use of deadly force incidents consists of a criminal investigation, which is limited to determining whether officers complied with the applicable law. Thus, the Attorney General's review focuses on whether, under New Hampshire law, the use of deadly force was justified because the officer reasonably believed that such force was necessary to defend himself or herself or a third party from what the officer reasonably believed was the imminent use of deadly force.

Based on the investigation of this deadly force incident, Attorney General John M. Formella finds that the use of deadly force by Officer Colangelo and Officer Foss against William Case on September 20, 2019, was legally justified.

² See N.H. Rule of Professional Conduct 3.6(a) ("A lawyer who . . . has participated in the investigation . . . of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.").

II. SUMMARY OF THE FACTS

At about 10:40 p.m. on September 19, 2019, Officer John Colangelo and three fellow members of the Nashua Police Department went to Hunt Street, a residential neighborhood, in response to a complaint that a man had threatened a pedestrian with a firearm. When the officers arrived on Hunt Street, they spoke to the complainant, who reported to them in substance that while walking home a man had approached, pointed a rifle or shotgun at him, and threatened him. The complainant gave a physical description of the suspect who had accosted him, and also pointed out the house where the suspect had been during the incident. That identified residence was 21 Hunt Street, where William Case lived, and the physical description given by the complainant was consistent with Mr. Case's appearance.

The four police officers, all in uniform, walked up to 21 Hunt Street. One of the officers knocked on the door, announced that it was the police, and asked William Case to come out in order to talk to them. Mr. Case in substance told the officers to leave him alone and to leave his property. The officers then left in order to figure out how to proceed, and after a few minutes returned to 21 Hunt Street, in an attempt to again make contact with Mr. Case. The officers called out to Mr. Case, notifying him that they were the police and wanted to talk to him. During these rekindled attempts to summon Mr. Case, officers saw him holding what appeared to be a rifle. The officers immediately withdrew from the property, radioed for backup, and set up a perimeter around 21 Hunt Street.

Officer Matthew Foss was among several police officers who responded to the call for assistance. The Nashua Police Department also deployed a "BearCat" armored

vehicle. That vehicle was positioned about 60 feet adjacent to 21 Hunt Street, and was used for cover by police officers watching over the residence, including Officer Colangelo and Officer Foss. Officer Colangelo armed himself with a duty rifle, and Officer Foss armed himself with a duty shotgun loaded with less-than-lethal rounds.

Over the ensuing approximately two-hour period, the police unsuccessfully continued to make contact with William Case, both by telephone and through loudspeaker. Over the loudspeaker, the police repeatedly identified themselves and implored Mr. Case to leave 21 Hunt Street unarmed. Police officers saw movement and activity inside the house, but Mr. Case did not respond to police overtures to talk or to leave.

At about 12:30 a.m. on September 20, William Case opened a side door to 21 Hunt Street, which faced one side of the parked BearCat where Officer Colangelo, Officer Foss, and other police officers were positioned. Mr. Case held a long gun, which the several officers who saw it described as either a rifle or a shotgun. Mr. Case initially had the gun pointed upward, but within seconds of appearing in the doorway he lowered the gun's barrel towards officers' positions at the BearCat. At that point, almost instantaneously, Officer Colangelo fired a single shot from his rifle at Mr. Case, and Officer Foss fired a single less-than-lethal round from his shotgun at Mr. Case. Mr. Case either fell or went back into the house, shutting the door behind him.

After William Case returned inside 21 Hunt Street police continued, unsuccessfully, to try to communicate with him and secure his unarmed exit from the house. Although police officers continued to see movement inside the house, Mr. Case neither attempted to leave nor responded to repeated requests to talk. The standstill

continued for several hours. Ultimately, the police fired tear gas into 21 Hunt Street. Within minutes, Mr. Case left the residence, unarmed. He had a gunshot wound to his upper torso, as well as additional trauma to his torso consistent with injury sustained from a less-than-lethal projectile. Mr. Case was hospitalized and survived his injuries.

An air rifle was found inside 21 Hunt Street near the door where officers had seen William Case holding a long gun when the shooting occurred. The air rifle's appearance was consistent with the gun seen held by Mr. Case as described by the private citizen who had been threatened and had called 911, as well as by police officers who subsequently saw Mr. Case armed with a gun.

III. THE INVESTIGATION

A. The Shooting

As of September, 2019, William Case had been living at 21 Hunt Street in Nashua for about a year. The house is a small, single-family residence located in a residential neighborhood in the middle of the city. Mr. Case lived there by himself. The house was owned by Mr. Case's brother, who rented it out to him.



21 Hunt Street (on left), as viewed from the road. The side entrance to the residence, under the open carport, was where William Case stood when shot.

William Case had a strained relationship with his neighbors on Hunt Street, as was documented in several police call-outs to the neighborhood and confirmed by neighbors interviewed as part of the shooting investigation. Neighbors had called the police on numerous separate occasions complaining of odd and antagonistic behavior by Mr. Case, such as throwing various objects into and spitting on their property. From June to September, 2019, the police had been called out to Hunt Street about a dozen times, all for complaints or incidents involving Mr. Case. The last of those callouts before the officer-involved shooting occurred on September 6, in response to a complaint that Mr. Case was spraying water at the neighbor's house. The police met and spoke to Mr. Case, who said in substance that he had been watering the grass to "wash away trap doors" and claimed that his neighbors were shooting lasers at his house and poisoning his food. The police did not arrest Mr. Case in that incident. From that and previous callouts, police officers who had interacted with Mr. Case believed that he had mental health issues.

In the months prior to the officer-involved shooting, family members of William Case who interacted and spoke with him noticed marked and troubling changes in his behavior, which they attributed to a severely deteriorating mental state. Mr. Case often expressed paranoid thoughts, particularly regarding his neighbors, such as expressed beliefs that they were tracking and poisoning him. Mr. Case also became more erratic towards and confrontational with family members, who were concerned that he may harm them or himself.

Because of issues that William Case was having with neighbors, his brother decided that he no longer wanted Mr. Case residing at 21 Hunt Street. The brother

initiated eviction proceedings against Mr. Case, and during the day on September 18, 2019, sheriffs posted eviction paperwork on the house.

Also on September 18, William Case went to a local credit union in order to apply for a car loan. Employees who saw and spoke with Mr. Case reported that he was acting bizarre and confrontational. He was visibly agitated, speaking to himself, and arguing with employees.³ Mr. Case's loan application was rejected, and he withdrew all the money from his account.

Afterwards, at about 7:00 p.m., William Case purchased an air rifle and a container of bbs. The air rifle could fire .177 caliber bbs or pellets, and had a black-colored barrel and a faux-wood stock. Around the same time when Mr. Case bought the air rifle, he spoke with his cousin and said in substance that he (Mr. Case) had a rifle and was going to shoot his neighbors because they were spying on him.

At about 9:30 p.m. the next day, September 19, Justin Gallagher was walking on Hunt Street to his residence. As Mr. Gallagher was passing 21 Hunt Street, he saw an adult male, who he had not encountered before, outside the house. The man was armed with a long gun, which Mr. Gallagher described as either a rifle or a shotgun, with a black-colored barrel and a wooden stock. Mr. Gallagher asked the man how he was. In response, the man, from just several feet away, aimed the gun that he held at Mr. Gallagher and said in substance, "You're about to find out." Mr. Gallagher, who had shot shotguns and rifles before, believed that the gun pointed at him was a real and operable firearm. Mr. Gallagher continued to walk down the street, having no further

³ Mr. Case also had been to a service station to get his car repaired, and employees who saw and interacted with him there reported similar behavior by him.

communication or interactions with the armed man. Immediately after that encounter, Mr. Gallagher called 911 and reported the incident that had just occurred.

Upon receiving the complaint from Mr. Gallagher, police officers who were familiar with William Case from previous callouts to Hunt Street believed that he could be the suspect in the threatening incident, and attempted to contact him by telephone using a number that was on file. Those attempts were unsuccessful. Mr. Case's daughter was contacted and asked about his psychological state. She in effect confirmed that Mr. Case suffered from mental illness and relayed that she did not believe that he had access to firearms.

After those efforts to contact William Case and ascertain his potential mental status, at about 10:40 p.m. on September 19, four officers from the Nashua Police Department—including Officer Colangelo—arrived on Hunt Street in response to Mr. Gallagher's 911 call. All four officers were in full uniform, and had driven to Hunt Street in marked police vehicles. While on Hunt Street, the police spoke to Mr. Gallagher, who recounted the encounter that he had with the armed man, described the suspect, and identified 21 Hunt Street as the house where the incident had occurred. One of the responding police officers, Officer Matthew Friend, had prior interactions with William Case, and knew that the physical description provided by Mr. Gallagher was consistent with Mr. Case's appearance.

The four police officers then approached 21 Hunt Street together, with the plan for Officer Friend to attempt to make contact with William Case. From outside, officers could see Mr. Case pacing inside the residence. Officer Friend knocked on the door, announced that he and the others were the police, and in substance asked Mr. Case to

come outside. Mr. Case remained inside, and told the police in substance to “fuck off” and to get off his property. After several minutes of unsuccessfully attempting to make contact with Mr. Case, the four police officers returned to Hunt Street, to decide how to proceed.

After a few minutes, the four police officers returned to 21 Hunt Street and renewed efforts to make contact with William Case. Shortly thereafter, Mr. Case entered the doorway holding a long gun, which officers who saw it consistently described as having a black-colored barrel and a wooden stock. At that time, police officers drew their own weapons and ordered Mr. Case to drop his gun. Instead, Mr. Case went back into his house. The officers withdrew to the street and radioed for additional police assistance.

Other uniformed police officers, including Officer Matthew Foss, responded to Hunt Street within minutes of the call for backup. The Nashua Police Department also dispatched to the scene a BearCat armored vehicle.

The BearCat was positioned next door to 21 Hunt Street, with the vehicle’s passenger side roughly parallel to a side entrance to the house. The police formed a perimeter around 21 Hunt Street and evacuated nearby residences. Several police officers, including Officer Colangelo and Officer Foss, used the BearCat for cover. Officer Colangelo, who was armed with a .223 caliber AR-15 style rifle, was positioned at the rear of the BearCat. Officer Foss, who was armed with a 12 gauge pump-action shotgun loaded with less-than-lethal projectiles,⁴ was positioned at the BearCat’s hood.

⁴ The less-than-lethal projectiles were “beanbag” rounds, which consisted of 12 gauge shotgun shells loaded with bags filled with lead shot. When a round is discharged from a shotgun, the lead-filled bag is propelled from the shotgun. The round is designed not to penetrate, but to cause pain and disarm, and has an effective range of up to about seventy-five feet.

Both officers faced a side entrance to 21 Hunt Street, which was about sixty feet away from Officer Colangelo and about fifty-five feet away from Officer Foss. Although the side of the house that the officers faced had a carport roof over that entrance, the area was well-illuminated by lights from the BearCat.



An overhead view of 21 Hunt Street, showing the approximate locations of Officer Colangelo (yellow), Officer Foss (green), and William Case (red, under carport roof) when the shooting occurred.



A view towards 21 Hunt Street from Officer Colangelo's approximate position at the rear of the BearCat (left) at the time of the shooting. The approximate location of the doorway where William Case appeared is highlighted in red.

Over the following approximately two hours, the police tried without success to contact William Case and to have him leave 21 Hunt Street. As part of those efforts, the police repeatedly tried to reach Mr. Case by telephone. Additionally, another police

Police officers on scene also were equipped with tasers, but were positioned outside of the effective range of those other less-than-lethal weapons for their potential use against Mr. Case.

officer who had prior interactions with Mr. Case, Andrew Fleming,⁵ called out to him using a loudspeaker. Officer Fleming reminded Mr. Case that they had spoken a couple weeks before, and told him in substance that the police were there to help and wanted to talk to him. Officers could see movement inside the home, and someone identifiable as Mr. Case was seen opening and closing windows and shades, and walking through the house. At times, Mr. Case shined a flashlight on police outside. Mr. Case also opened one of the doors to 21 Hunt Street. He was not armed, but remained inside and quickly shut the door. At no time did Mr. Case respond to police overtures either to talk or to leave.

At about 12:30 a.m. on September 20, William Case without prior announcement opened the side door to 21 Hunt Street, which faced the side of the BearCat and the several officers positioned there, including Officer Colangelo and Officer Foss. Mr. Case was holding a long gun, which officers who saw it consistently described as a rifle or a shotgun. Mr. Case stood in the doorway, and the barrel of gun that he held initially was pointed up in the air, away from nearby officers and residences. Within seconds of appearing at the doorway with the weapon, Mr. Case lowered the gun's barrel towards the BearCat and the several officers positioned there. That is when Officer Colangelo fired one shot from his rifle and Officer Foss fired one less-than-lethal projectile from his shotgun. Mr. Case appeared to have been struck, and either fell back or went back into the house.

After the shooting, the police continued to try to make contact with William Case by telephone and through loudspeaker. Although police officers occasionally saw

⁵ That prior encounter was the September 6 incident described earlier in this report.

movement inside 21 Hunt Street, Mr. Case did not respond to the contact efforts and remained inside the house.

About an hour after the shooting, members of the Nashua Special Weapons and Tactics (“SWAT”) team began arriving at Hunt Street and relieving initial responders, including Officer Colangelo and Officer Foss. For several additional hours, tactical officers continued to try to communicate with William Case, both by phone and through loudspeaker. Mr. Case still did not respond.

Shortly after 3:30 a.m., after repeated and unsuccessful attempts to contact William Case, through loudspeaker he was directed to leave 21 Hunt Street and warned in substance that if he did not comply his safety could no longer be guaranteed. At about 3:45 a.m., with still no response from Mr. Case, police fired into 21 Hunt Street canisters of oleoresin capsicum (“OC”) gas, a lachrymatory agent that causes various symptoms of physical distress, such as burning of the lungs and watery eyes, in an effort to force Mr. Case from the house. About ten minutes after the gas was deployed, Mr. Case came out of 21 Hunt Street, unarmed.

Mr. Case was taken into custody and treated for a single apparent gunshot wound to his upper torso under his armpit. Mr. Case’s front torso also had an abrasion and bruising, which was consistent with injury sustained by the less-than-lethal shot fired by Officer Foss. Mr. Case was transported to a local hospital, and although it was determined that he was stable and that his injuries were not life threatening, he was transferred to another hospital in Boston for further treatment. Mr. Case refused to sign releases for his medical records in connection with the shooting under investigation.

Shortly after William Case left 21 Hunt Street, police secured the residence. Nobody else was in the house. The air rifle that Mr. Case had purchased on September 18 was recovered on a table near the doorway where he had been shot.



The top two photos are of the air rifle purchased by William Case on September 18, 2019, and found inside 21 Hunt Street. The bottom photo is of a Ruger model 10/22, which Officer Colangelo thought Mr. Case may have been holding when shot (see Officer Colangelo's account, below).

The less-than-lethal projectile fired by Officer Foss was found inside 21 Hunt Street, by the door where William Case had been shot. Police also recovered from inside 21 Hunt Street discharged OC canister rounds, and there was damage to the house's windows and interior consistent with being caused by those projectiles.

B. Witness Accounts

There were no police-issued video recording devices that recorded any of the incident on Hunt Street on September 19 and 20, 2019.⁶ There also are no known video or audio recordings of the incident taken by private citizens. None of the area

⁶ At the time, Nashua Police officers did not wear body cameras. The Nashua Police Department began issuing body cameras to its officers last year.

surveillance footage recovered as part of the shooting investigation captured the incident. Similarly, investigators spoke with area residents, but nobody reported seeing the shooting. Mr. Case lived alone, and nobody was inside 21 Hunt Street with him at any point during his encounter with the police.

1. Police Officer John Colangelo

Officer Colangelo was interviewed on September 26, 2019. At the time, Officer Colangelo had been an officer with the Nashua Police Department for about ten years. He also was a sniper with the Nashua SWAT team, of which he had been a member for about six years. In Officer Colangelo's duties as a sniper, he had attended special courses and also participated in monthly trainings. Before the shooting on September 20, Officer Colangelo had never discharged a firearm in a nontraining scenario.

In Officer Colangelo's interview, he recounted the initial callout to Hunt Street on September 19 by himself and three other officers in response to the complaint made by Mr. Gallagher, as well as their initial interactions with William Case at 21 Hunt Street.⁷ Officer Colangelo was aware of the report that a private citizen had been threatened by a firearm. In addition, although Officer Colangelo did not see Mr. Case with a firearm while at 21 Hunt Street during initial contact attempts on September 19, he had heard another officer announce that he had seen Mr. Case with a gun before they all withdrew to Hunt Street and summoned additional police assistance.

Officer Colangelo's police vehicle was equipped with an AR-15 style semiautomatic rifle, a weapon for which he was qualified. After withdrawing from 21

⁷ Although Officer Colangelo did not recall having any prior interactions with Mr. Case, about a year before he had responded to a callout at an address different from 21 Hunt Street. Mr. Case had attempted to kill himself, and Officer Colangelo treated his wounds before paramedics arrived.

Hunt Street, Officer Colangelo armed himself with the rifle because it was more powerful and accurate from a distance. The rifle had a thirty-round magazine, and was equipped with magnifying optics that Officer Colangelo did not use and had flipped off to the weapon's side. After the BearCat arrived, Officer Colangelo positioned himself at the vehicle's rear, from where he could see different sides of 21 Hunt Street. Officer Colangelo remained at that position until the time of the shooting.

As to that event, Officer Colangelo saw William Case open the door to the side entrance of 21 Hunt Street, which faced the side of the BearCat behind which Officer Colangelo and other police officers were positioned. Mr. Case stood in the doorway, and held what Officer Colangelo believed to be a small caliber rifle, like a Ruger brand 10/22 model. Officer Colangelo recalled that the rifle held by Mr. Case had a wooden stock, but could not see the side of the weapon from his vantage point. Mr. Case initially held the gun with its barrel directed upwards, away from the BearCat and nearby officers. Officer Colangelo called out "gun," and heard others direct Mr. Case to drop his weapon.

Within seconds of William Case appearing at the doorway, Officer Colangelo saw Mr. Case lower the rifle that he held, pointing the barrel towards the BearCat and the police officers who were positioned there. Officer Colangelo recalled seeing Mr. Case panning the rifle pointed at the BearCat across the vehicle to where he (Officer Colangelo) was positioned. At that time, Officer Colangelo believed that Mr. Case was going to fire the rifle at him and nearby officers. In response, Officer Colangelo fired once at Mr. Case, and almost instantaneously heard a "bang" to his left (where Officer Foss was positioned). After Officer Colangelo fired his weapon, he no longer saw Mr. Case at the doorway, and the door was closed. Officer Colangelo heard another officer

say words to the effect that “it was a good beanbag hit.” Officer Colangelo continued to watch 21 Hunt Street from his position until relieved by tactical officers about an hour later.

2. Police Officer Matthew Foss

Officer Foss was interviewed on September 26, 2019. At the time, Officer Foss had been an officer with the Nashua Police Department for about four years. Before the shooting on September 20, Officer Foss had discharged less-than-lethal rounds in a nontraining scenario on two prior occasions. Once involved shooting a suspected rabid animal, and the other involved shooting a suicidal man who was brandishing a knife and a machete.

Officer Foss was at the police station when he heard the call from other officers for assistance on Hunt Street. He went with other officers to the scene, and there learned that the suspect located at 21 Hunt Street had pointed a gun at a neighbor and was seen by other officers in possession of a long gun.⁸

Officer Foss armed himself with a 12 gauge pump-action shotgun that another officer was not using. The shotgun was loaded with six less-than-lethal rounds, which Officer Foss was qualified to fire. After the BearCat arrived, Officer Foss positioned himself at the front of the vehicle, from where he could see a side entrance to 21 Hunt Street. Officer Foss remained at that position until the time of the shooting.

As to that event, Officer Foss saw William Case open the door to the side entrance of 21 Hunt Street, which faced the side of the BearCat behind which Officer Foss and other police officers were positioned. Mr. Case stood in the doorway, and held

⁸ Officer Foss had encountered William Case at least twice before on Hunt Street, as a result of prior callouts. Officer Foss recalled that during those other occasions Mr. Case appeared “very manic” and paranoid, but was cooperative.

what Officer Foss described as a long gun with a wooden stock. Officer Foss believed that Mr. Case was holding a firearm, although he could not ascertain its exact type. Mr. Case initially held the gun with the barrel pointed upwards, away from the BearCat and nearby officers.

Within seconds of William Case appearing at the doorway, Officer Foss saw Mr. Case lower the gun that he held, pointing the barrel towards the BearCat and the police officers positioned there. At that time, Officer Foss believed that Mr. Case was aiming his weapon and preparing to fire it at him and fellow officers. In response, Officer Foss yelled out in substance “beanbag being deployed”—taught procedure for such discharge—and fired one round from the shotgun. Officer Foss did not hear any gunfire other than his own, and when he fired he saw Mr. Case “double over” as if hit and return into 21 Hunt Street, with the door shutting behind him. Officer Foss continued to watch 21 Hunt Street from his position until relieved by tactical officers about an hour later.

3. Other Police Officers

Several other police officers were positioned by Officer Colangelo and Officer Foss when they fired at William Case. The reported accounts of those other eyewitnesses were consistent in material respects to the accounts provided by Officer Colangelo and Officer Foss. In particular, at the time of the shooting Mr. Case was holding what was described as either a rifle or a shotgun initially pointed upwards, and Mr. Case had lowered the weapon’s barrel towards the BearCat when he had been fired on. Several other police officers on-scene did not see the shooting, but reported hearing two gunshots in quick succession.

4. William Case

Investigators attempted to interview William Case on September 21, 2019. That interview was brief, because soon into it Mr. Case stated that he did not want to talk. Before ending the interview, Mr. Case stated that he felt that the police use of force against him was “not justified” and “excessive.” As to the actual incident, Mr. Case stated in substance that his neighbor had been “zapping” him and that he threatened to shoot his neighbor with a bb gun, but declined to talk further.

After William Case’s discharge from the hospital, he was arrested on charges of criminal threatening, pertaining to his confrontation with Mr. Gallagher, as well as resisting arrest and a second count of criminal threatening, pertaining to his subsequent encounter with police officers at 21 Hunt Street. In April, 2021, those charges were dismissed against Mr. Case, who had been found not competent to stand trial. RSA 135:17-a, IV.

IV. APPLICABLE LAW AND LEGAL STANDARDS

New Hampshire’s laws regarding self-defense, defense of others and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer, like a private citizen, is justified in using deadly force when he reasonably believes that such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force. Under RSA 627:9, II, “deadly force” is defined as “any assault . . . which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury.” “Purposely firing a firearm capable of causing serious bodily

injury or death in the direction of another person . . . constitutes deadly force.” RSA 627:9, II.

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. When reviewing a deadly force incident, the actor’s conduct should be viewed considering “the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection.” *N.H. Criminal Jury Instructions*, 3.10. In other words, when analyzing the reasonableness of an actor’s use of deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight. The amount of deadly force used by the actor to protect himself or another must be reasonable, and not excessive. *See State v. Etienne*, 163 N.H. 57, 70 (2011).

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 reasonably believed that he was in imminent danger from the use of deadly force by another, even if, in fact, he was not, so long as the actor’s belief was objectively reasonable.

Federal cases, while largely addressing the civil standards that apply to federal civil rights lawsuits, provide some discussion of the “reasonableness” standard for the use of force by police officers that is useful in analyzing officer-involved use of force cases in this state. In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court stated that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396. The Supreme Court continued:

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

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

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). The law must account for the fact that dangerous situations often unfold quickly and law enforcement officers sometimes need to make quick decisions under less-than-ideal circumstances. *See Huff*, 565 U.S. at 477 (finding that appeals court panel “did not heed the District Court’s wise admonition that judges

should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation.”).

These are the legal standards that help guide the Attorney General's review of the use of deadly force by a law enforcement officer in New Hampshire.

V. ANALYSIS AND CONCLUSION

Based upon all the facts and circumstances of this case, the Attorney General has concluded that it was reasonable for Police Officer John Colangelo and Police Officer Matthew Foss each to believe, when he fired his own weapon at William Case, that Mr. Case posed an imminent threat of deadly force, and that deadly force against Mr. Case was necessary in order to protect himself as well as nearby police officers from that perceived immediate deadly threat.

The initial police presence on Hunt Street was in response to a verified and valid report of criminal threatening by an identified private citizen. Pursuant to that legitimate complaint, police officers went to 21 Hunt Street to follow-up on it. In doing so, the officers identified themselves as the police to William Case, and simply asked him to speak with them. In response to the nonconfrontational police attempts to contact Mr. Case, he inexplicably approached officers armed with what those who saw him believed to be a firearm.

At that time, police officers drew their own guns and directed Mr. Case to disarm. Instead, Mr. Case kept his weapon and remained in his house. The officers who Mr. Case had confronted withdrew from the encounter, and called for backup. Ultimately, the police set up a perimeter around the premises, in order to contain the apparent threat from Mr. Case and to protect themselves and the surrounding community. And, over the hours

that ensued, the police sought to open a dialogue with Mr. Case and secure his peaceful and safe removal from 21 Hunt Street.

It is in light of these preceding relevant circumstances that the use of deadly force by Officer Colangelo and Officer Foss should be assessed. Each officer was lawfully stationed and watching 21 Hunt Street when the armed confrontation with William Case quickly unfolded. While at their positions, they saw Mr. Case open a door to his house, without warning and holding what each officer believed to be a firearm.⁹

In actuality, William Case held an air rifle rather than a firearm.¹⁰ Although using or even just brandishing an air gun can constitute the use of deadly force under appropriate circumstances,¹¹ neither of the police officers who used deadly force against Mr. Case believed that he was brandishing an air rifle. Instead, as Officer Colangelo and Officer Foss separately recounted, each believed that Mr. Case held an operable firearm. Consequently, the pertinent analysis is whether that expressed belief was reasonable.

⁹ Although “[t]he act of producing or displaying a weapon shall constitute non-deadly force,” RSA 627:9, that does not answer the different, and pertinent, question, as to whether there existed a reasonable belief that Mr. Case was imminently about to use deadly force when Officer Colangelo and Officer Foss ultimately fired on him.

Also immaterial to the analysis of the lawfulness of the police officer use of deadly force against Mr. Case is the fact that it occurred while Mr. Case was on his property. Although Mr. Case’s location would be a salient factor to consider if the relevant assessment were the propriety of his use of defensive physical force, *see* RSA 627:4, III(a), the issue here instead is the defensive use of deadly force in response to Mr. Case’s perceived use of offensive deadly force.

¹⁰ *See, e.g., State v. Beaudette*, 124 N.H. 579, 581 (1984) (noting that pellet gun is not firearm, for which “gunpowder and the capacity of discharge are the distinguishing features”).

¹¹ *See, e.g., State v. Hardy*, 896 A.2d 755, 761-64 (Conn. 2006) (citing cases); *K.C. v. State*, 49 So.3d 841, 842-43 (Fla. 4th DCA 2010); *People v. Akinlawon*, 71 N.Y.S.3d 300, 302 (N.Y. 4th Dept. 2018); *see also* RSA 625:11, V (defining “deadly weapon” as “any firearm, knife or other substance or thing which, *in the manner it is used, or threatened to be used, is known to be capable of producing death or serious bodily injury*”) (emphasis added).

Objectively viewed, each officer's expressed belief that William Case held a firearm was reasonable. It was a belief shared not only by every one of the several other police officers who saw Mr. Case with the weapon, but also by Mr. Gallagher, who saw it from only feet away. The air rifle also is similar in overall size, barrel length and bore,¹² profile, and general appearance to an actual operable firearm. Notably in this respect, the following warning is printed on the air rifle's packaging, which was found next to the gun inside 21 Hunt Street:

!WARNING: DO NOT BRANDISH OR DISPLAY THIS AIRGUN IN PUBLIC - IT MAY CONFUSE PEOPLE AND MAY BE A CRIME. POLICE AND OTHERS MAY THINK THIS AIRGUN IS A FIREARM.

Indeed, the appearance of the gun held by Mr. Case was wholly consistent with the type of actual firearm that Officer Colangelo believed it could have been. *See supra* (comparison photos of Mr. Case's air rifle with Ruger model 10/22). Additionally, there were no clearly visible indicators that could suggest that the weapon held by Mr. Case was not an actual firearm, such as a brightly-colored barrel tip.¹³ Nor did Mr. Case at any time give any indication that what he was holding was anything other than an actual firearm, and the police had no other information at that time to suggest otherwise.

¹² The difference in barrel bore diameter between a .22 caliber rifle—or the .223 caliber rifle fired by Officer Colangelo—and Mr. Case's .177 caliber air rifle—about .22 inch for the former and about .177 inch for the latter—would be virtually indistinguishable to the naked eye, let alone from about sixty feet, which is about how far away Officer Colangelo and Officer Foss were when they made their observations.

¹³ The only external feature of the weapon that could have given indication that it was an air gun is the charging handle located in front of the trigger. But neither Officer Colangelo nor Officer Foss—nor any of the several other eyewitnesses who saw Mr. Case holding the gun—reported seeing that charging handle. The failure to notice the charging handle is not surprising, given that Mr. Case held the weapon towards Officer Colangelo and Officer Foss at a distance of about sixty feet away, and the armed encounter occurred within a span of only seconds, circumstances that did not afford either officer the luxury of a close inspection.

Next in the deadly force analysis is the objective reasonableness of the belief separately expressed by Officer Colangelo and Officer Foss that William Case was about to fire the weapon that he held, and shoot at each officer and others nearby. Here, according to what Officer Colangelo and Officer Foss each separately relayed—accounts not only corroborative of one-another, but independently corroborated by the accounts of other police officers who saw Mr. Case before he was fired upon—Mr. Case initially held the weapon with the barrel pointed in the air. Nobody shot at Mr. Case at that point in time. Instead, the police held their fire, and directed Mr. Case to drop his weapon.

William Case did not disarm. Instead, he quickly escalated matters. Specifically, Mr. Case lowered the barrel of his weapon, pointing it towards Officer Colangelo, Officer Foss, and other nearby police officers. It was only when Mr. Case did so,¹⁴ that those two officers each decided to fire his own weapon at Mr. Case, before he could fire at them and fellow officers.

These circumstances, objectively viewed, created an immediate apparent life-threatening situation, not only for the firing officers, but also for the other police officers who each knew to be in the immediate vicinity. According to Officer Colangelo and Officer Foss, they fired because of a belief that William Case was about to fire the weapon that he held in a shooting position towards them and others nearby. Based upon all of the facts and circumstances known to each officer at that time, it was reasonable for

¹⁴ Officer Colangelo recalled that Mr. Case had his weapon pointed towards the BearCat and had panned the weapon directly at him (Officer Colangelo). Officer Foss recalled that Mr. Case had his weapon pointed towards the BearCat. To the extent that these accounts are inconsistent, it is not unusual for there to be inconsistencies among eyewitness accounts. This reality is particularly so in an event such as this, which was unexpected and unfolded rapidly—as to the latter, a matter of seconds.

him to believe that Mr. Case posed an imminent deadly threat, and also to believe that when he fired on Mr. Case that the latter was about to use deadly force.

Lastly, with respect to the deadly force actually employed, it was reasonable in relation to the apparent imminent deadly force faced from William Case. In that regard, each officer fired only a single shot, stopping once the immediate danger posed by Mr. Case ceased through his return into 21 Hunt Street.

For these reasons, Officer John Colangelo and Officer Matthew Foss of the Nashua Police Department each was legally justified in using deadly force against William Case, and no criminal charges will be filed against either officer.