

**ATTORNEY GENERAL OFFICE’S REPORT REGARDING THE  
NOVEMBER 15, 2020 OFFICER-INVOLVED SHOOTING INCIDENT  
IN MEREDITH, NEW HAMPSHIRE**

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**I. INTRODUCTION**

Deputy Attorney General Jane E. Young announces the completion of the investigation into the officer-involved shooting that occurred in Meredith, New Hampshire on November 15, 2020. The private citizen involved in that incident, David Donovan (age 35), was shot and killed by Meredith Police Officer Kevin O’Reilly. The purpose of this report is to summarize the Attorney General Office’s factual findings and legal conclusions regarding Officer O’Reilly’s use of deadly force against Mr. Donovan. 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, physical evidence from the shooting incident, witness interviews, radio transmissions made on the evening of the incident, video recordings that captured some of the incident, and court documents and records.

As provided in RSA 7:6 and RSA 21-M:3-b, the Attorney General is the State’s Chief Law Enforcement Officer. The Attorney General’s Office has the responsibility to ensure that whenever law enforcement officers use deadly force, it is done in conformity with the law. The Attorney General’s Office does not investigate or opine on the particular procedures or tactics used by law enforcement officers. Instead, the Attorney General Office’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 Office’s review focuses on whether, under New Hampshire law, the use of 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.

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 Deputy Attorney General finds that the use of deadly force against David Donovan by Meredith Police Officer Kevin O'Reilly on November 15, 2020, was legally justified.

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

Just after 8:00 p.m. on November 15, 2020, Officer Christopher Heney of the Meredith Police Department went to 10 Bennett Drive in Meredith in response to a call to the Meredith Police Department seeking police assistance at that address due to a reported disturbance.<sup>1</sup> The caller, Steven Fry, had been told by his sister, Erica Fry, the occupant of that residence, that David Donovan was at the home and had “flipped out and smashed her windows.”

Officer Heney responded to the call from the Meredith Police Department and arrived at the scene first.<sup>2</sup> At that time it was dark outside and it was raining. Officer Heney stopped his cruiser in the middle of the parking area in front of 10 Bennett Drive and while stopped, made contact with a male and female in the parking area.<sup>3</sup> Officer Heney rolled down his window and spoke with the two individuals who reported to Officer Heney that Mr. Donovan was “going crazy, he’s off again.” Officer Heney opened the door to his cruiser and began to get out of the car when he saw Mr. Donovan to his left. Mr. Donovan yelled at Officer Heney, asking him if he was someone—a female—whose name Officer Heney did not recognize. In response, Officer

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<sup>1</sup> The residence at 10 Bennett Drive is part of the Pinecrest Apartments complex. The complex consists of a row apartment or condominium units on either side of Bennett Drive, with a single row of parking spaces facing each row of units.

<sup>2</sup> The Meredith Police Department is less than a half mile from 10 Bennett Drive.

<sup>3</sup> The male and female that Officer Heney first encountered were later identified as Mr. Donovan's mother, Dawna Schaub, and Ms. Schaub's boyfriend, Theodore Blaisdell.

Heney identified himself to the approaching Mr. Donovan as a police officer. While speaking with Mr. Donovan, Officer Heney saw that Mr. Donovan had three knives in his hand. Officer Heney saw blood on one of the knives as well as blood on Mr. Donovan's hand.<sup>4</sup> Officer Heney described the knives as kitchen knives between four and seven inches in length. Upon seeing the knives, Officer Heney closed and locked the door to his cruiser. Mr. Donovan continued toward the cruiser and attempted to open the door to Officer Heney's cruiser. Officer Heney then radioed dispatch and requested that back up officers "step it up" because Mr. Donovan had a knife. Officer Heney placed his cruiser in reverse and backed up until he was a safe distance from Mr. Donovan. The officer then began repeatedly telling Mr. Donovan, through the open window of his cruiser, to "drop the knife."

Officer Kevin O'Reilly arrived less than one minute after Officer Heney and parked his fully-marked cruiser behind Officer Heney's cruiser. When Officer O'Reilly got out of his cruiser, his attention was drawn to a subject near the front of Officer Heney's cruiser, however Officer Heney stated to him, "that's not him" or words to that effect.<sup>5</sup> Officer O'Reilly then saw Mr. Donovan standing on the curb of the nearby sidewalk to his left. Mr. Donovan had both of his hands behind his back. Based on Officer Heney's report that Mr. Donovan was armed with a knife, Officer O'Reilly drew his firearm, which had a flashlight attached to the top of it, and ordered Mr. Donovan repeatedly to "drop his knife" and "show his hands."

Officer Heney was able to exit his cruiser as Mr. Donovan's attention was drawn to Officer O'Reilly. Once outside of his cruiser, Officer Heney could hear Officer O'Reilly repeatedly telling Mr. Donovan to "drop the knife." The officers both described Mr. Donovan as

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<sup>4</sup> As discussed in further detail below investigators learned that prior to the arrival of the police Mr. Donovan had used the knives to cut Ms. Fry and Ms. Schaub, and had stabbed Mr. Blaisdell. Officers O'Reilly and Heney were not aware that Mr. Donovan had stabbed or sliced this individuals until after the shooting occurred.

<sup>5</sup> This individual was later identified as Mr. Blaisdell.

acting strange, yelling something, and instead of dropping the knives, Mr. Donovan moved toward Officer O'Reilly and raised his arm in what both Officer Heney and Officer O'Reilly described as a Nazi-type salute. When he raised his arm in this salute, Officer O'Reilly was first able to see what appeared to be a knife in Mr. Donovan's hand.

Officer O'Reilly moved away from his cruiser and to his left.<sup>6</sup> The driver's side door to Officer O'Reilly's cruiser remained open. Mr. Donovan then said, "I'm going to take your cruiser" or words to that effect, and began to move toward the open door of Officer O'Reilly's cruiser. Officer O'Reilly then moved back toward the cruiser as well to close the gap that had been created between the officer and his cruiser. Officer O'Reilly continued to order Mr. Donovan to "drop the knife" and to "back up" or "get back" from the cruiser. Mr. Donovan then backed away from the cruiser and Officer O'Reilly moved back away from the cruiser again to his left.

Meanwhile, Officer Heney had moved to position himself at the front passenger's side of Officer O'Reilly's cruiser. Officer Heney holstered his firearm and drew his TASER. He announced to Officer O'Reilly that he was going to TASER Mr. Donovan, to which Officer O'Reilly responded affirmatively, and then Officer Heney fired his TASER at Mr. Donovan. Though Officer Heney believed one of the TASER prongs made contact with Mr. Donovan's chest, it did not have the intended effect. Instead, Mr. Donovan pulled the TASER prong out, threw it in Officer Heney's direction, and yelled, "is that all you've got?"

Mr. Donovan then turned in Officer O'Reilly's direction and began walking toward Officer O'Reilly still holding multiple knives in his hand. Mr. Donovan did not obey further commands from the officers to drop the knives. When Mr. Donovan was approximately 10 feet

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<sup>6</sup> As discussed in further detail below, Officer O'Reilly explained when interviewed that he had moved to his left so that in the event he had to use his firearm, there would not be residences in the background but instead his back drop would be the parked cars.

away and still advancing on Officer O'Reilly, the officer fired two shots in quick succession. Mr. Donovan collapsed to the ground and both Officer O'Reilly and Officer Heney immediately approached Mr. Donovan. Both officers kicked knives away from Mr. Donovan's reach and began to provide first aid assistance. Officer O'Reilly was able to see that the gunshots had hit Mr. Donovan in the stomach and right arm. Mr. Donovan was then transported to a local hospital where he later died from the gunshot wounds. The entire interaction between officers and Mr. Donovan lasted approximately two minutes.

Officer O'Reilly explained that he shot Mr. Donovan because he feared for his life. Specifically, Officer O'Reilly believed that after Officer Heney had fired his TASER at Mr. Donovan and when Mr. Donovan began walking toward him still holding multiple knives, that when Mr. Donovan reached him, in a few steps, Mr. Donovan would stab him and kill him.

Part of the incident was captured on the Ring doorbell camera device installed at 8 Bennett Drive. The video did not capture the shooting incident itself but did capture audio of the incident. In particular, at the time of the shooting, Mr. Donovan can be heard saying "fuck you" while the officers can clearly be heard repeatedly yelling, "drop the knife, drop the knife." Two gunshots can then be heard followed by additional orders to "drop the knife."

### **III. THE INVESTIGATION**

Until shortly before his death, David Donovan lived with his mother, Dawna Schaub and her boyfriend, Theodore Blaisdell, Jr., on Frances Court in Meredith. Frances Court and Bennett Drive are part of the same Pinecrest Apartments complex. According to Ms. Schaub, Mr. Donovan was addicted to, and frequently used, methamphetamine. When under the influence of methamphetamine, Mr. Donovan often hallucinated, believed that his room was full of snakes, and that Ms. Schaub and Mr. Blaisdell were the devil sent to kill him. Ms. Schaub told

investigators that Mr. Donovan's methamphetamine use had increased significantly in the past year.

Officers O'Reilly and Heney were both familiar with Mr. Donovan from several prior interactions. Ms. Schaub often asked the police for assistance when Mr. Donovan was acting particularly paranoid or delusional. This behavior often coincided with Mr. Donovan being under the influence of methamphetamine.

From January to October 2020, the Meredith Police Department responded to calls for service involving Mr. Donovan on 12 different dates. Some of those calls for service included several separate interactions between police and Mr. Donovan. For example, Meredith officers had contact with Mr. Donovan on five separate occasions over a 12-hour period at the end of February 2020. In mid-April 2020, officers had 10 separate contacts with Mr. Donovan over a 24-hour period. During a three-day period at the end of June 2020 and beginning of July 2020, the Meredith Police Department received complaints about and from Mr. Donovan five different times, three of which occurred in a 14-hour period. On July 3, 2020, Mr. Donovan was delusional and reporting that Ms. Schaub and Mr. Blaisdell were imposters that killed people and buried the bodies under their house. Ms. Schaub expressed concern for her safety and told police she had hidden all the knives in the house so that Mr. Donovan could not hurt her or himself. Meredith police arrested Mr. Donovan and brought him to a hospital to be evaluated for an involuntary emergency hospitalization. On the way to the hospital, Mr. Donovan complained that snakes were in the back of the cruiser with him and were biting him.

In their prior interactions, both Officer O'Reilly and Officer Heney described Mr. Donovan as an agreeable person that was nice to them and rarely combative. In fact, the call

notes for the various calls for service involving Mr. Donovan often referred to him as being compliant, despite his hallucinations and delusions.

On October 25, 2020, Mr. Donovan was arrested and charged with assaulting Ms. Schaub. Due to the resulting bail conditions, Mr. Donovan was prohibited from having contact with Ms. Schaub and from residing at their home on Frances Court. Therefore, Mr. Donovan began staying with his friend, Erica Fry, at 10 Bennett Drive. Ms. Fry's two young children also lived at 10 Bennett Drive.

After his arrest, and in violation of his bail conditions, Mr. Donovan continued to have contact with Ms. Schaub. Ms. Schaub knew Mr. Donovan was not supposed to have contact with her, but she was still trying to help her son combat his drug addiction.

On November 15, 2020, Mr. Donovan and Ms. Fry socialized during the day, drank alcohol, and played musical instruments. Ms. Fry made beef stew for lunch. Around lunchtime, Mr. Donovan went to Ms. Schaub's home, but returned to 10 Bennett Drive a short time later. At some point during the day, Ms. Schaub brought cigarettes to Mr. Donovan at 10 Bennett Drive.

Around 6:00 p.m. that evening, Ms. Fry went upstairs to her bedroom at 10 Bennett Drive to lie down because she had a headache. About 20 minutes later, Ms. Fry's children came running up the stairs to tell her that Mr. Donovan was "flipping out" and throwing the beef stew from lunch around the house. Ms. Fry went downstairs to find her ukulele and front window broken, and beef stew strewn about the walls. Ms. Fry called her brother, Steven Fry, to tell him about Mr. Donovan's behavior. Ms. Fry's brother then called the Meredith Police Department to report the disturbance.

Around the same time, Mr. Donovan returned to Ms. Schaub's house. Mr. Donovan told Ms. Schaub that Ms. Fry's children were throwing things around the house and being disruptive. Ms. Schaub believed Mr. Donovan was under the influence of controlled drugs. When he left, Ms. Schaub followed him back to 10 Bennett Drive to see what was happening. Ms. Schaub told Mr. Blaisdell to remain at their house and not to follow, however Mr. Blaisdell went to 10 Bennett Drive as well.

When Ms. Schaub arrived at 10 Bennett Drive, she ushered Ms. Fry's two children upstairs to ensure their safety. As she was climbing the stairs, Mr. Donovan stabbed her in her leg. Around this time, Mr. Blaisdell arrived at the residence and Mr. Donovan turned his attention to him. Mr. Donovan chased Mr. Blaisdell outside while saying, "Run, run as fast as you can, I'm the gingerbread man."

Ms. Schaub and Ms. Fry went outside and saw Mr. Donovan punching Mr. Blaisdell. Mr. Blaisdell later stated that he thought Mr. Donovan was punching him, but later realized Mr. Donovan had stabbed him multiple times. Ms. Fry tried to stop Mr. Donovan from attacking Mr. Blaisdell and in so doing sustained minor wounds to her shoulder and stomach caused by the knife.

Around this time, Officer Heney arrived as a result of Ms. Fry's brother's call to police, which reported only that a disturbance had, or was, occurring. The Meredith Police do not currently have police body cameras and their vehicles are not equipped with cruiser cameras. However, video footage was collected from the Ring camera doorbell at 8 Bennett Drive. 8 Bennett Drive is the apartment directly next to Ms. Fry's apartment. As discussed in further detail below, the video footage does not show the shooting itself, however the audio did capture the statements and sounds associated with it.



## **1. Video Footage**

As part of this investigation, video surveillance from a Ring doorbell camera located at the front door of 8 Bennett Drive was collected and reviewed. A Ring video doorbell camera is motion activated, that is, it begins recording when it detects motion within a certain distance of the camera. The movements of the officers and of Mr. Donovan in the parking area for the Pincecrest Apartments were not sufficiently close to the camera to activate the camera. The camera was instead activated at times by the movement of Ms. Fry and Ms. Schaub around the time of the shooting as they were the only individuals in the area of the camera who were close enough to trigger the motion activation. As a result, the Ring footage from 8 Bennett Drive does not capture the incident in its entirety because at times there was no movement close enough to the Ring device to activate the recording. Rather, there are 29 separate short video clips. The shooting occurs in video clip 12.<sup>7</sup> The remaining clips depict the time period after the shooting occurred showing emergency lights and personnel in the parking lot area. The Ring video footage from the beginning through clip 12 is available for viewing on the Attorney General Office's website. The footage contains graphic language. The video clips have been strung together to create a single video. No other edits to the video have been made.

The doors to 10 and 8 Bennett Drive are directly next to one another, but separated by a wall measuring approximately four and a half feet long. There is a small, cement, patio area directly in front of each door that extends the length of the wall. These patio areas merge with an asphalt walkway and then sidewalk, which extends a total length of approximately 19 and a half feet to the parking lot. The camera has only one angle and was pointed in the general direction of the parking lot. Due to the nighttime and rainy weather conditions on November 15, 2020, it is

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<sup>7</sup> One of the video clips is numbered out of order. Video clip 13 depicts events prior to the shooting, while the shooting can be heard in video clip 12.

difficult to see beyond the cars in the parking spaces directly adjacent to the sidewalk, however the audio of portions of the interactions between officers and Mr. Donovan that were recorded by the Ring video corroborate the accounts provided by Officers Heney and O'Reilly.

The video footage begins prior to the arrival of police officers at 8 Bennett Drive and first captures portions of the encounters between Mr. Donovan and Ms. Fry, Ms. Schaub, and Mr. Blaisdell during which Mr. Donovan stabbed or sliced each of those three individuals with the knives he possessed. The video initially showed Mr. Donovan leaving the residence at 10 Bennett Drive before returning back to the residence. Mr. Donovan is shown waving his arms in an exaggerated fashion as he approaches the door to the residence. The next video clip showed Ms. Schaub approaching the door to the residence at 10 Bennett Drive. The next video clip captured Mr. Blaisdell on the sidewalk in front of the residence smoking a cigarette. Mr. Blaisdell then approached the front door of the residence at 10 Bennett Drive.

The next segment of video clips captured Ms. Schaub running away from 10 Bennett Drive and then immediately running back toward the residence. Unintelligible yelling is also heard. Ms. Schaub and Mr. Blaisdell are then seen running away from the residence. Mr. Blaisdell can be heard saying, "go, go, go." Mr. Donovan followed, running after them yelling, "run, run, as fast as you can." Ms. Fry then exited the residence as well. Although it is not captured by the video, a voice can then be heard saying "David," and repeatedly shouting "stop."

Mr. Donovan is then shown walking back toward the front door of the residence, again in an exaggerated fashion, and shouting something unintelligible. At that time Ms. Fry and Ms. Schaub can be seen on the sidewalk in front of 8 Bennett Drive. The next video clip showed Mr. Donovan leaving the front door area of 10 Bennett Drive and walking to the sidewalk swinging his arms and stating, "step right up, step right up, get your one-way ticket to Hell right here."

Ms. Fry was standing in front of 10 Bennett Drive with her arms covering her face. It is at that time that the headlights from Officer Heney's police cruiser can be seen arriving in the parking area for the Pincecrest Apartments. When Mr. Donovan saw Officer Heney's cruiser, he changed direction and began running toward it. He can be heard saying repeatedly, "is that you?"

Officer Heney can be heard saying, "put the knife down." The cruiser then backed up and Mr. Donovan yelled, "Seig Heil!" Mr. Donovan continued to yell and walked toward the cruiser. Mr. Donovan's mother said, "David, down!" to which Mr. Donovan responded, "I'm not putting it down."

From this point forward in the video footage Mr. Donovan cannot be clearly seen. In addition, the arrival of Officer O'Reilly to the scene is not captured by the video and neither of the officers appear in the video footage. Nevertheless, Officers Heney and O'Reilly can be heard giving commands and Mr. Donovan can be heard responding, "fuck you, motherfucker." Ms. Schaub and Ms. Fry are at times in front of the 10 Bennett Drive residence and Ms. Schaub can be heard yelling at Mr. Donovan from that area. Over the next several clips, the following exchange takes place:<sup>8</sup>

Officer:	Drop the knife.
Mr. Donovan:	Fuck you!
Ms. Schaub:	David stop it!
Officer:	Put the knife down!
Officer:	He has a knife.
Officer:	Put it down! Put it down!

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<sup>8</sup>This transcription does not indicate which officer made which statement, though two distinct voices can be heard giving commands.

Officer: Get in the house! Get in the house!

Officer: Drop the knife David.

Officer: Drop the knife!

Officer: David get down.

Officer: Put it down.

Officer: David.

Officer: Drop the knife.

Officer: Drop the knife.

Mr. Donovan: That's all you got?

(The sound of two gun shots.)

Officer: Drop the knife.

## **2. Eyewitness Accounts**

Both Officers Heney and O'Reilly gave full interviews as part of this investigation, as did other first-hand witnesses: Ms. Fry, Ms. Schaub, and Mr. Blaisdell. Neighbors in the area who heard or saw parts of the encounter between Mr. Donovan and the officers were interviewed. Investigators also interviewed the first police officer on-scene after the shooting—who did not see or hear that event—as well as people who were familiar with Mr. Donovan or who had interacted with him earlier in the day. Some people saw only the aftermath of the incident. The accounts of only those individuals with first-hand observations of the incident are summarized below.

### **a. Officer Kevin O'Reilly**

Meredith Police Officer Kevin O'Reilly was the only law enforcement officer who discharged his firearm during the incident. Officer O'Reilly was interviewed in the presence of

counsel by the members of the New Hampshire State Police Major Crime Unit and members of the Office of the Attorney General on November 20, 2020. Officer O'Reilly has been fully cooperative with the investigation. His interview is summarized below.

Officer O'Reilly joined the Meredith Police Department on July 31, 2008, and attended the 149th New Hampshire Police Standards and Training academy in 2009. At the time of the incident, Officer O'Reilly was assigned as a patrolman and training manager, and was a firearms and TASER instructor for the Meredith Police Department. Prior to joining the Meredith Police Department, Officer O'Reilly served in the United States Air Force as a military police officer from 2002 to 2008, which included deployment overseas. Officer O'Reilly attended his required annual use of force and firearms training in October of 2020.

In his interview, Officer O'Reilly recounted his contacts with Mr. Donovan prior to November 15, 2020, and on Bennett Street that evening. Officer O'Reilly's recollection of the events of the evening of November 15, 2020, and his interactions with Mr. Donovan were substantively consistent with the available statements captured by the video footage and will not be repeated here. However, portions of the interaction, which were not captured by the Ring video due to the motion-activated nature of the device, are discussed below. In addition, the interview addressed Officer O'Reilly beliefs and thought processes as events unfolded, which are pertinent to the legal analysis of whether his use of deadly force was legally justified.

Officer O'Reilly was familiar with Mr. Donovan from previous calls for service involving Mr. Donovan as well as his mother, Ms. Schaub. Officer O'Reilly estimated that he had approximately 10 to 20 prior interactions with Mr. Donovan. Though Mr. Donovan had never admitted it to Officer O'Reilly, Ms. Schaub had repeatedly reported to Officer O'Reilly that Mr. Donovan used methamphetamine. Officer O'Reilly knew Mr. Donovan to hallucinate

when he appeared under the influence of drugs, as Mr. Donovan often believed that he was seeing snakes inside his residence. Mr. Donovan would also often accuse his parents of being serial killers and stealing other people's faces. In the past, Mr. Donovan was never angry or threatening toward Officer O'Reilly, nor did Officer O'Reilly find Mr. Donovan to be violent or intimidating. In all previous encounters with Mr. Donovan, Officer O'Reilly found him to be cooperative and compliant.

On the evening of November 15, 2020, Officer O'Reilly was scheduled to work his usual 8:00 p.m. to 4:00 a.m. shift. He wore his department-issued uniform and was wearing a protective ballistic vest, his duty belt—which included a TASER and OC spray<sup>9</sup>, and his department-issued firearm.

Around 8:02 p.m., Officer O'Reilly was in the Meredith police station when he heard the call for service from dispatch. Officer Heney was also dispatched to 10 Bennett Drive for the reported disturbance involving Mr. Donovan smashing windows. After hearing the initial call for service to 10 Bennet Drive, Officer O'Reilly went outside to his fully-marked Meredith SUV police cruiser to drive the short distance to the address. During that brief drive, Officer O'Reilly heard Officer Heney say over the radio, "have the units step it up, he has a knife."

When Officer O'Reilly arrived at 10 Bennet Drive, he initially parked his cruiser directly behind Officer Heney's cruiser. Officer O'Reilly saw a man bent over and standing in front of Officer Heney's cruiser who he initially believed to be Mr. Donovan. Officer O'Reilly did not recognize this man, however Officer Heney yelled to him that it was not Mr. Donovan.

When Officer O'Reilly first saw Mr. Donovan, he was standing on the curb of the sidewalk to Officer O'Reilly's left, with his hands behind his back. Believing Mr. Donovan was armed with a knife, Officer O'Reilly drew his firearm, which had a flashlight attached to it, and

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<sup>9</sup>"OC" spray is oleoresin capsicum spray, also commonly referred to as pepper spray.

told Mr. Donovan to “drop the knife” and “show his hands.” Mr. Donovan did not comply with either of these commands.

Mr. Donovan stayed, with his hands behind his back, on the curb and yelled things at Officer O’Reilly that Officer O’Reilly could not hear. Officer O’Reilly could hear Officer Heney giving Mr. Donovan verbal commands as well. Instead of complying with the officers’ orders, Mr. Donovan started walking toward Officer O’Reilly and raised his right arm in what Officer O’Reilly described as a Hitler-style salute. When Mr. Donovan did this, Officer O’Reilly could see something silver in Mr. Donovan’s hand, which Officer O’Reilly believed to be a knife. Mr. Donovan still refused to comply with ongoing commands to “drop the knife.”

Around this time, Officer O’Reilly became aware of other people in the parking lot area and told them to get back for their own safety. Officer O’Reilly moved to his left, away from his cruiser, to get a better angle on Mr. Donovan. After doing this, Officer O’Reilly realized that his cruiser was running and he had left the driver’s door open. Mr. Donovan walked toward Officer O’Reilly’s cruiser and told him in substance that he was going to take the cruiser.

Officer O’Reilly told Mr. Donovan to back up and drop the knife. Officer O’Reilly also moved toward Mr. Donovan in an attempt to close the gap to prevent Mr. Donovan from getting into the cruiser. Officer O’Reilly was concerned that when Mr. Donovan approached the open door to his cruiser that Mr. Donovan could gain access to the department-issued M4 rifle that was mounted in between the front driver’s and passenger’s seat. Officer O’Reilly was also concerned that Mr. Donovan could steal the cruiser, as he had left the cruiser’s engine running when he got out of the vehicle. Officer O’Reilly’s attempt to close the gap had the desired effect and Mr. Donovan backed away from the cruiser.

Officer O'Reilly then heard Officer Heney yell, "TASER!" After getting hit with the TASER probes, Officer O'Reilly said that Mr. Donovan pulled them from his chest and said something to the effect of, "is that all you got?" Mr. Donovan then turned toward Officer O'Reilly, knife still in hand, and started walking toward Officer O'Reilly. Officer O'Reilly then fired his gun twice at Mr. Donovan.

Officer O'Reilly described Mr. Donovan as having an angry look on his face during their interaction, and described Mr. Donovan's demeanor as "scary." He elaborated, stating that Mr. Donovan was, "very angry, obviously, something I've never seen from him before. Scary obviously, with the knives. Not complying to verbal commands. Just completely irrational. Scary."

At the time Officer O'Reilly shot Mr. Donovan, Mr. Donovan had taken two steps toward him, was in an aggressive stance, and was approximately 10 feet away from him, a distance that Officer O'Reilly, based on his training and experience, was aware Mr. Donovan could cover in just a few steps. Officer O'Reilly described that Mr. Donovan had a knife in his right hand with the blade pointed out toward Officer O'Reilly.

After Mr. Donovan was shot, he fell to the ground. Officers O'Reilly and Heney then removed a knife from Mr. Donovan's hand and kicked away two additional knives that were on the ground next to Mr. Donovan. Officers O'Reilly and Heney then began to administer first aid to Mr. Donovan. Less than two minutes after arriving at Bennett Drive, Officer O'Reilly informed dispatch via radio that he had shot Mr. Donovan.



**b. Officer Christopher Heney**

Officer Heney was interviewed as part of this investigation on November 16, 2020, and again on December 4, 2020.<sup>10</sup> Officer Heney's account of the incident remained consistent throughout both interviews.

Officer Heney was hired by the Meredith Police Department in 2017. Prior to that, Officer Heney worked for the New Hampton Police Department and attended the New Hampshire Police Standards and Training Academy in 2012. Officer Heney worked for the Gilford Police Department for six months, returning to the Meredith Police Department in August 2020. On November 15, 2020, Officer Heney was a patrol officer.

On November 15, 2020, Officer Heney was working his assigned shift of 3:00 p.m. to 11:00 p.m. Officer Heney was familiar with Mr. Donovan, having interacted with him in the prior months. Officer Heney knew Mr. Donovan struggled with mental health issues and substance abuse. A few weeks earlier, on October 17, 2020, Officer Heney had interacted with Mr. Donovan while he was under the influence of alcohol and drugs. At that time, Mr. Donovan was taken into protective custody due to this impairment. Officer Heney described Mr. Donovan as not making sense on October 17, 2020, but stated that he had not been combative with officers.

When Officer Heney arrived at 10 Bennett Drive, he saw a man and a woman in the parking lot, who he recognized as Ms. Schaub and Mr. Blaisdell. Ms. Schaub reported to Officer Heney that Mr. Donovan was going crazy again. Once in front of 10 Bennett Drive, Mr. Donovan ran toward Officer Heney's cruiser on the driver's side. Officer Heney was in the

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<sup>10</sup> The second interview occurred at Officer Heney's request. He explained in substance that he wanted to ensure that he had provided investigators with an accurate and complete sequence of events, and because he had been first interviewed shortly following the incident, he wanted to make sure he had not left out any information in his first interview.

process of getting out of his cruiser when he saw that Mr. Donovan had multiple knives in his hands. Officer Heney immediately got back into his cruiser and shut and locked the door before Mr. Donovan appeared next to the cruiser and tried to open the cruiser door. Officer Heney then backed up his cruiser a few feet to create distance between himself and Mr. Donovan.

Officer Heney described the knives as kitchen knives with approximately four- to seven-inch steel blades. The three knives appeared similar to each other and one knife had appeared to have blood on its blade. After backing up the cruiser, Officer Heney began giving verbal commands to Mr. Donovan, demanding that he drop the knives. At some point during this time, Officer Heney told dispatch, over the radio, that Mr. Donovan had a knife.

Shortly thereafter, Officer O'Reilly arrived and parked his cruiser behind Officer Heney's cruiser. Officer Heney had taken his gun from his holster and pointed it at Mr. Donovan while giving him verbal commands to drop the knife. Officer Heney could also hear Officer O'Reilly telling Mr. Donovan to drop the knife. Mr. Donovan was acting strange, yelling something, and instead of dropping the knife, raised his arm in what Officer Heney described as a Nazi-type salute. Based on his training and experience, Officer Heney believed that Mr. Donovan was under the influence of drugs or alcohol.

As Mr. Donovan walked toward the front of Officer O'Reilly's cruiser, Officer Heney moved backward and positioned himself on the passenger side of Officer O'Reilly's cruiser. From the illumination of the headlights of Officer O'Reilly's cruiser, Officer Heney could see two or three knives in Mr. Donovan's right hand.

While Mr. Donovan's attention was on Officer O'Reilly, Officer Heney took out his TASER and fired it at Mr. Donovan.<sup>11</sup> At least one probe made contact with Mr. Donovan, but

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<sup>11</sup> During his second interview, Officer Heney elaborated, explaining that he told Officer O'Reilly that he intended to TASER Mr. Donovan; Officer O'Reilly responded, "tase him."

did not have its desired effect. Mr. Donovan pulled the probes out, threw them in the direction of the cruiser, and yelled, “That’s all you got?!” Officer Heney tried to reload his TASER with a new cartridge<sup>12</sup>, but chose to transition back to his firearm when Mr. Donovan moved away from the front of the cruiser and toward Officer O’Reilly and his open driver’s door.

Officers Heney and O’Reilly then both told Mr. Donovan to get away from the cruiser. Officer Heney saw Mr. Donovan turn in Officer O’Reilly’s direction. Officer Heney could not see Officer O’Reilly or Mr. Donovan because he was on the other side of Officer O’Reilly’s cruiser, but he heard two pop sounds that he believed to be gunshots. Officer Heney walked around to the driver’s side of the cruiser and saw Mr. Donovan on the ground. Officer Heney also saw three knives on the ground around Mr. Donovan; one was near his hand. Officers Heney and O’Reilly immediately rendered first aid to Mr. Donovan. During his second interview, Officer Heney said he and Officer O’Reilly also found a fourth knife on Mr. Donovan’s person after Mr. Donovan had been shot and was on the ground.

Officer Heney described Mr. Donovan as angry and said that his movements were unpredictable. Mr. Donovan’s behavior was also markedly different from that of past interactions. Officer Heney told investigators this “was not the same David” they were used to dealing with. Officer Heney stated that he was scared by Mr. Donovan’s actions and feared for his life.

**c. Erica Fry**

Ms. Fry was interviewed as part of this investigation on November 20, 2020. Specific to the deadly force used by Officer O’Reilly, Ms. Fry told investigators that she did not know Mr. Donovan had a knife when interacting with police officers, but she did hear the officers warn Mr.

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<sup>12</sup> During his second interview, Officer Heney stated he dropped his TASER to the ground because he did not have another TASER cartridge with which to reload.

Donovan and tell him to put his hands up. Ms. Fry said that after this warning, Mr. Donovan made a joke and said something like “seize the day.” When Mr. Donovan put his right arm down, the police shot him. Ms. Fry told investigators that Mr. Donovan often made jokes when he was angry. Ms. Fry described Mr. Donovan as putting his arm back up after the first shot, and this is when police shot him a second time.

**d. Dawna Schaub**

Ms. Schaub was interviewed as part of this investigation on November 15, 2020. Specific to the deadly force used by Officer O’Reilly, Ms. Schaub said that she heard police officers tell her son to put the knife down. She also heard officers tell her son that they were going to TASER him. Ms. Schaub then heard two shots and her son fell to the ground.

**e. Theodore Blaisdell, Jr.**

Mr. Blaisdell was interviewed as part of this investigation on November 16, 2020. Specific to the deadly force used by Officer O’Reilly, Mr. Blaisdell told investigators that he did not realize Mr. Donovan was armed with a knife until he heard a police officer tell Mr. Donovan to drop the knife. Mr. Blaisdell heard officers repeatedly tell Mr. Donovan to drop the knife. Mr. Blaisdell also heard the officers warn Mr. Donovan that if he did not comply, they would have to TASER him. They then warned that they would have to shoot him. Mr. Blaisdell described Mr. Donovan as name calling and waving the knife around in front of his own face. Mr. Blaisdell saw Mr. Donovan pull the TASER probes out of his chest, throw them back at the officers, and ask “whether that was all they had” or words to that effect

During the interaction, Mr. Blaisdell saw the officers back up toward their cruisers while Mr. Donovan walked toward them. Mr. Blaisdell did not see Mr. Donovan get shot, but he did hear the two gunshots and heard a knife fall on the ground directly afterward.

### **3. Autopsy Results**

Chief Medical Examiner Dr. Jennie V. Duval conducted an autopsy on Mr. Donovan's remains. She determined his cause of death to be gunshot wounds to his right arm and abdomen, and that his manner of death is homicide. As used by the Office of the Chief Medical Examiner, homicide is defined as the killing of one person by another.

A sample of Mr. Donovan's blood was submitted to National Medical Services (NMS) Labs for testing. The blood alcohol concentration (BAC) in Mr. Donovan's blood was 0.165 g/100 mL.<sup>13</sup> In addition, the toxicology report indicated a methamphetamine level of 51 ng/mL. The level indicates that Mr. Donovan had used the drug methamphetamine. Methamphetamine is a DEA schedule II stimulant drug capable of causing hallucinations, aggressive behavior, and irrational reactions. The toxicology report also indicated an amphetamine level of 23 ng/mL. Amphetamine is a schedule II drug and it is also a metabolite of methamphetamine.<sup>14</sup> Mr. Donovan also had levels of Delta-9 THC in his blood. Delta-9 THC is the principle psychoactive ingredient of marijuana. Marijuana is a DEA schedule I hallucinogen. Pharmacologically, it has depressant and reality distorting effects.

### **4. Physical Evidence**

In the area where Officer O'Reilly discharged his service pistol, two shell casings were recovered. The weapon had an 18-round capacity, and upon its inspection after the fatal shooting, still contained 16 unfired rounds. One shell casing was recovered from the grassy area adjacent to the parking space where Mr. Donovan had been when he was shot and the second shell casing was discovered on the pavement leading toward that parking space. The

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<sup>13</sup> This level is more than twice the legal limit to operate a motor vehicle. See RSA 265-A:2, I(b) (legal limit is an alcohol concentration of 0.08).

<sup>14</sup> A drug metabolite is a byproduct of the body breaking down, or metabolizing, a drug—in this case methamphetamine—into a different substance. The presence of a drug metabolite is indicative of use of the parent drug of the metabolite.

locations of the spent shell casings corroborate Officer O'Reilly's statement concerning where he was positioned and where Mr. Donovan was positioned when Officer O'Reilly fired his weapon. As Officer O'Reilly had stated, he had moved to his left and away from his police cruiser at the time Mr. Donovan had turned and began to approach him. Mr. Donovan was in the area of the first parking space for the Bennet Drive apartments, almost directly adjacent to where Officer O'Reilly had parked his cruiser.

Three all-silver knives were also located in the area of the fatal shooting. There was one steak knife, one paring knife, and one peeling knife, each with a different length blade. The knives appeared to be part of a larger set located in Ms. Fry's kitchen. One knife was located in close proximity to Mr. Donovan's personal effects that had been left on the ground in the area where he fell after being shot. The other two knives were in the next parking space to the right. The location of the knives corroborated Officer O'Reilly's and Officer Heney's statements about kicking two of the knives away from Mr. Donovan's reach after he was shot, and removing a third knife from his right hand.

Officer Heney's TASER and portions of the expended cartridge were also located in this area. The wire for one of the TASER prongs was laid across the front windshield of Officer O'Reilly's cruiser, corroborating Officer Heney's statement that he was positioned at the front passenger's side when he fired the TASER at Mr. Donovan.

A fourth knife was found in Mr. Donovan's clothing after he was transported to the hospital. The fourth knife was a black and red tactical folding knife.

Within Ms. Fry's apartment there was a broken ukulele, furniture strewn about the living room, and a broken window. There was also a substance on the first floor walls, floor and ceiling that was consistent with beef stew.

#### 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 he 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.

RSA 627:9, II.

A knife is considered a deadly weapon when it is used or intended for use or threatened to be used in a manner "known to be capable of producing death or serious bodily injury." RSA 625:11, V. Serious bodily injury is defined as "any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body." RSA 625:11, VI.

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). As such, all of the circumstances surrounding the incident should 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*, 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).

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 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).

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, 2013 WL 1296331, at \*17 (S.D. Fl. Mar. 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 Office’s review of the use of deadly force by a law enforcement officer in New Hampshire.

## **V. ANALYSIS AND CONCLUSION**

Based on all the facts and circumstances of this case, Deputy Attorney General Young has concluded that Officer Kevin O’Reilly was legally justified when he fatally shot David Donovan. That is because, at that moment, the threat posed to Officer O’Reilly by Mr. Donovan constituted the imminent use of deadly force by Mr. Donovan against him. Mr. Donovan had not obeyed the police officers repeated commands to drop the knives he was wielding and instead aggressively approached Officer O’Reilly with those knives, weapons known to be capable of causing death or serious bodily injury. Therefore, based on a review of all the evidence, it was objectively reasonable for Officer O’Reilly to conclude that Mr. Donovan constituted an imminent threat of deadly force when he shot and killed him on November 15, 2020.

Mr. Donovan’s behavior on the night of November 15, 2020, was drastically different from what Officers Heney and O’Reilly had previously experienced in interacting with Mr. Donovan. Mr. Donovan was visibly armed with multiple knives for the entire encounter. Officer Heney observed this, relayed the information to Officer O’Reilly, and Officer O’Reilly also saw knives in Mr. Donovan’s hand. Consistent with their training, both officers tried to stay

a safe distance away from Mr. Donovan.<sup>15</sup> However, Mr. Donovan's failure to comply with their repeated orders made this impossible. Rather, during the interaction Mr. Donovan hardly stood still and only once moved away from Officer O'Reilly, when Officer O'Reilly had ordered Mr. Donovan to back away from the open door of Officer O'Reilly's police cruiser. At all other times, Mr. Donovan aggressively moved toward the officers and was visibly armed with the knives.

Despite being faced with the imminent use of deadly force, Officer Heney attempted the use of the less-lethal TASER. While he did so, Officer O'Reilly maintained his use of deadly force by pointing his gun at Mr. Donovan. Mr. Donovan's reaction to being hit with the TASER, pulling the prong out and yelling "is that all you've got," showed that Mr. Donovan did not intend to comply with the officers. That the TASER had not incapacitated Mr. Donovan, or even affected his aggressive and erratic behavior, only served to heighten the reasonable belief of Officer O'Reilly that Mr. Donovan intended to imminently use deadly force against him. It was only after the failed TASER deployment and Mr. Donovan's approach toward Officer O'Reilly, still brandishing the knives, that Officer O'Reilly shot and killed Mr. Donovan.

The statements of Ms. Fry, Ms. Schuab, and Mr. Blaisdell corroborate the officers' accounts of the incident as does the Ring video doorbell footage. The officers can clearly be heard and were heard by those that witnessed the incident, saying, "drop the knife" repeatedly, up until the very moment Officer O'Reilly fired his gun. Moreover, while it was not information Officer O'Reilly had at the time he fired his weapon, Mr. Donovan had already attacked others with deadly force that night. The discovery by investigators following the shooting that Mr. Donovan had stabbed or sliced Ms. Fry, Ms. Schaub, and Mr. Blaisdell prior to the arrival of the

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<sup>15</sup> Under New Hampshire law, law enforcement officers have no duty to retreat. RSA 627:5. Accordingly, the analysis as to the reasonableness of Officer O'Reilly's use of deadly force does not address whether he had a duty to retreat before he fired his weapon.

officers serves to illustrate the objective reasonableness of Officer O'Reilly belief that when Mr. Donovan advanced toward him while brandishing the knives, Mr. Donovan intended to use deadly force against him.

Therefore, based on all the facts and circumstances known to Officer Kevin O'Reilly on November 15, 2020, it was reasonable for him to conclude that he faced an imminent threat of deadly force from Mr. Donovan. Accordingly, Officer O'Reilly was legally justified in using deadly force against Mr. Donovan, and no criminal charges will be filed against Officer O'Reilly for shooting Mr. Donovan.