

**ATTORNEY GENERAL'S REPORT REGARDING THE
DECEMBER 23, 2017 OFFICER-INVOLVED SHOOTING
INCIDENT IN CANAAN, NEW HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General Gordon J. MacDonald announces the completion of an investigation into the officer-involved shooting incident that occurred in Canaan, New Hampshire, on December 23, 2017. During that incident, New Hampshire State Trooper Christopher O'Toole fatally shot Jesse J. Champney (age 26), of Enfield, New Hampshire. The purpose of this report is to summarize the Attorney General's findings and conclusions.

As provided in RSA 7:6, the Attorney General is the State's Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever a law enforcement officer uses deadly force, it is done in conformity with the law. Based on the investigation of this deadly force incident, the Attorney General finds that use of deadly force by Trooper O'Toole on December 23, 2017, was legally justified.

II. THE INVESTIGATION

Since the incident on December 23, 2017, the Attorney General's Office, with the assistance of the New Hampshire State Police Major Crime Unit, has been investigating the circumstances that led to the shooting. That investigation entailed interviewing witnesses, reviewing reports and diagrams, examining the vehicle and physical evidence recovered from the scene, and reviewing available digital evidence to include audio and video recordings of portions of the incident.

A. **Interviews with the officers involved in the pursuit and shooting incident**

There were two law enforcement officers who were involved in the incident, Trooper O'Toole ("O'Toole") and Canaan Police Officer Samuel Provenza ("Provenza"). Both were interviewed and have been fully cooperative with the investigation. Their interviews are summarized below.

1. **New Hampshire State Police Trooper Christopher O'Toole**¹

Trooper Christopher O'Toole has been employed by the New Hampshire State Police for approximately four years. He worked for the Danville Police Department part-time before joining the State Police. O'Toole was assigned to the Troop F Barracks in Twin Mountain. The geographical territory of Troop F consists of Coos and Grafton Counties and includes the Town of Canaan. He is also a member of the State Police SWAT Team.

O'Toole was working the 4:00 p.m. to 1:00 a.m. shift on December 23, 2017. He was in full State Police uniform and driving a marked State Police cruiser.

Sometime after 6:00p.m., O'Toole had a telephone conversation with Provenza, during which Provenza told him about a possible stolen car, described as a red 1995 Chrysler LeBaron. Provenza said that Jesse Champney ("Champney") was suspected of stealing it. Provenza asked for O'Toole's assistance in investigating the report because Champney was "known to be hostile to law enforcement." Both O'Toole and Provenza were familiar with Champney. O'Toole understood that Champney was a convicted felon, had served time in prison, had committed numerous thefts in the past, was heavily involved in drug use, was known to be "hostile" to law enforcement, and had an active drug-related felony charge out

¹ Senior Assistant Attorney General Jeffery Strelzin and investigators from the New Hampshire State Police Major Crime Unit interviewed O'Toole in the presence of his counsel on December 27, 2017, and February 5, 2018.

of the Grafton County Superior Court. O'Toole had been trying to locate Champney for over a month to question him as a suspect in a theft case.

After speaking with Provenza, O'Toole drove east on Route 4 toward the Canaan Police Department. On his way, he spotted what appeared to be the stolen car, turning into the Evans Express Mart. O'Toole asked dispatch for a description of the stolen car, which appeared to match the car he saw. He heard dispatch notify Provenza, who stated that he was going to head there from the Canaan Police Department. As O'Toole waited for Provenza to arrive, he saw a female leave the store, walk up to the stolen car, and then go back into the store. He could not see into the car or see the driver.

When Provenza arrived, he parked his cruiser behind the car and got out. O'Toole parked next to Provenza, put on his outside white lights and blue lights, and got out of his cruiser to talk to the driver of the stolen car. As he did, the stolen car's brake lights and backup lights came on. The car moved back, and then drove away from the two officers.² While Provenza shouted commands to stop, the car sped from the parking lot. O'Toole got back into his cruiser and pursued the car with the cruiser's blue lights and siren activated. Provenza followed in his cruiser. The stolen car did not stop or slow.

The road was mostly clear, but had sections with patches of snow, slushy areas, and ice. The stolen car initially drove about forty miles per hour, and was swaying and swerving over the center line at times. At one point, it drove about sixty to seventy miles per hour.³ As the car reached the intersection with Switch Road, it slowed and moved into the other lane and then appeared to drive in "a purposeful manner" out into the open field between

² This is when Saeti Tobin is seen on video coming out of the store and getting in the car with Champney.

³ The speed limit on that road was 30 miles per hour in the area closer to town and 50 miles per hour away from town, in the area where the pursuit ended.

Switch Road and Route 4. The car continued about twenty to thirty yards in the field before O'Toole said it appeared "to become bogged down in the snow and unable to continue."

O'Toole drove up Switch Road and parked. After the car stopped in the field, he saw Champney get out of the driver's side door and run away. O'Toole notified dispatch that he would be engaging in a foot pursuit and ran after Champney. As O'Toole passed the car in the field, he told Provenza to "clear the car" or "check the car." Around the same time, O'Toole saw Champney fall, get back up and continue running, before slowing to a "quick walk."⁴

As he pursued Champney, O'Toole held his pistol in his hand in order to use the light on the pistol to illuminate Champney. O'Toole was gaining on Champney, intending to take him into custody. He was thinking of holstering his pistol so he could use his TASER instead, which would have required him to use his backup flashlight as well since the flashlight on the TASER was not strong enough for the circumstances.⁵ O'Toole told Champney to stop, and said: "Jesse, this isn't worth it. Jesse, you're not going to win." O'Toole said those things to try and "rationalize with him and trying to allow him to see the situation," and to make a "rational decision about it." His intent was to make Champney realize that he could not get away from the police and that "there were other ways to handle this than what he [Champney] was choosing to do."

While O'Toole told him that, Champney put his right hand in his jacket pocket and said, "I have a gun. I'm going to shoot you." Faced with this threat O'Toole realized that it

⁴ O'Toole did not notice it at the time, but Champney lost his boots in the snow when he tripped. From that point on, Champney was in his stocking feet.

⁵ There was no ambient or artificial lighting in the field at that time. O'Toole said that he would not have had good visibility without a flashlight.

would not be safe to transition to his TASER⁶, so he kept his firearm in his hand. O'Toole notified dispatch of Champney's statement. Champney then repeated that he had a gun and threatened to shoot O'Toole. In an effort to convince Champney to surrender, O'Toole said that he would shoot Champney first. O'Toole was trying to convince Champney that he was not making the right choice, to "realize the gravity of the situation," and to comply. Champney continued walking away with his right hand in his jacket pocket and his left hand swinging at his side in a "normal walking manner." It appeared to O'Toole that Champney had his hand in his right pocket either to "stabilize something there" or "keep it obscured from view," as his hand was not moving in a "normal walking manner." O'Toole ordered Champney to "stop" and to show his right hand, and continued alternating between those commands.

As the foot pursuit continued, O'Toole approached two large dirt mounds, which Champney had already passed. As Champney hastened toward the wood line, he told O'Toole at least one more time, "I have a gun. I'm going to shoot you." At that point, the two men were about thirty yards apart. At the dirt mounds, O'Toole realized that he was passing the "last point of cover" after which he would have no cover/protection. He briefly paused there to consider whether to pursue Champney beyond the dirt mounds, because, as O'Toole explained, the "cover" would shield him and allow him more time to react to "whatever firearm or threat [Champney] was posing." O'Toole decided to pass the cover of the dirt mounds and pursue Champney because he was concerned Champney could shoot from the wood line. That would have given Champney an advantage; a position of cover over the officers. O'Toole did not know exactly where Provenza or the passenger of the car

⁶ The TASER is not a deadly weapon and is not to be used against deadly force.

was behind him. O'Toole was concerned that Champney would "have a clear overview of Provenza, the vehicle with his passenger, and all the passing traffic on Route 4, as well as a residence and some kind of place of business that is directly adjacent" to the field on the other side of Route 4. O'Toole continued following Champney at the same pace to stay closer to him, which would allow him "to address him effectively with the pistol."⁷

As he followed Champney toward the wood line, O'Toole continued commanding Champney to stop and show his right hand. O'Toole was "hopeful" that Champney would comply with his commands and "put both hands into a surrender position" so that he could be taken "into custody peacefully." Champney did not comply and continued walking with his right hand in his jacket pocket and his left hand swinging freely as he headed toward the wood line.

After Champney crossed a frozen stream, and was about sixty to seventy feet away from O'Toole, he began to turn his entire body to the left toward O'Toole. O'Toole could not quantify the speed of that turn, but it was enough that O'Toole needed "to respond immediately." Prior to that moment, Champney had never turned his head or body toward O'Toole or "made any deviation" in his path or mannerisms along the way, despite O'Toole's repeated commands to stop and surrender. As Champney turned, his right hand was still obscured from O'Toole. He was not attempting to show O'Toole that his hand "was clear." At that point, O'Toole believed that Champney was going to shoot him, so O'Toole "fired approximately three rounds" at Champney. After firing, the smoke from those shots was highlighted by his pistol's flashlight, which obscured his view of Champney. O'Toole

⁷ O'Toole explained that based on his training and experience, he was more confident of his capabilities with his pistol at a distance of twenty five yards or less, versus more.

sidestepped to the left and saw Champney was on his back on the ground. He could see Champney's right hand, but his left hand was not visible. O'Toole ordered Champney to show him his hands, to stop moving, and not get up. Champney attempted to stand up. O'Toole, believing he must not have struck him (or that they were ineffective hits), fired three more times at Champney. He then ordered Champney to show his hands; Champney raised both hands.

O'Toole approached Champney and saw that he was wounded by gunfire. He asked Champney, "Where's your gun?" Champney replied that he did not have one. O'Toole asked Champney, "Why did you do that?" Champney did not respond or say anything but continued to try to sit up onto his elbows. O'Toole told him not to move and gave him "kind of comforting statements." O'Toole notified dispatch that shots had been fired, that the suspect was wounded, and requested an ambulance. He told Champney things like, "Jesse the ambulance is coming, it's okay. They're going to help you."

Out of concern for his safety, O'Toole did not approach Champney until Provenza came. As he waited for Provenza, O'Toole told Champney not to stand up and that an ambulance was coming. When Provenza arrived, O'Toole told him that Champney had said he had a gun and that he was going to shoot him.

Shortly after Provenza arrived, O'Toole and Provenza initiated CPR on Champney. O'Toole also handcuffed Champney in the front and searched his pants and jacket pockets, removing three knives, one of which was a dagger.⁸ Two of those knives were in Champney's front pants pockets. O'Toole was not sure from which pocket the third knife

⁸ It is a felony under RSA 159:3, I, for a convicted felon to possess certain types of weapons, including a dagger.

had been removed. They continued CPR until a first responder from the Canaan Fire Department arrived and took over until it was determined that Champney was deceased.

O'Toole explained that he shot Champney because Champney said he had a gun and threatened to shoot him, Champney's mannerisms, his failure to comply, and, ultimately, his turning to the left toward O'Toole. Based on all that, O'Toole determined that Champney posed an imminent threat of death or serious bodily injury to O'Toole, as well as to Provenza and the passenger in the vehicle, as O'Toole did not know exactly where behind him these other people were, in addition to the passing motorists on Route 4 and the residence across the street. O'Toole explained that when Champney turned toward him, Champney "increased" the threat and changed it from an "imminent threat" to a "currently unfolding happening threat."

2. Canaan Police Officer Samuel Provenza⁹

Canaan Police Officer Samuel Provenza has been a police officer since 2011. He was a part-time police officer until 2014, when he became a full-time officer. Prior to that, he was an EMT and paramedic.

Provenza was working the 4:00 p.m. to 2:00 a.m. shift with the Canaan Police Department on December 23, 2017. He was in full uniform and driving a marked police cruiser. When he arrived at the Canaan Police Department, the dispatcher gave him a pending stolen vehicle report by Justine Prentice, who had reported her red Chrysler LeBaron stolen from her home in Canaan. Provenza called Ms. Prentice, who said that her grandson (Damean Prentice) had seen her car at the Grafton Country Store earlier that day. She said

⁹ Senior Assistant Attorney General Jeffery Strelzin and investigators from the New Hampshire State Police Major Crime Unit interviewed Provenza in the presence of his counsel and union representative on December 27, 2017.

that the car had been kept at her house, was not registered, had no registration plates on it, and that the keys for the car that had been in her house were gone. Ms. Prentice was not at home and had learned her car was missing from her grandson or his girlfriend. Ms. Prentice believed Champney had taken her car because he had been at her house helping her grandson do some work at the house.

Provenza began investigating the stolen car report by trying to get a copy of the video surveillance from the store where Ms. Prentice's car was seen. He also returned a call from O'Toole, and told him about the stolen car. During that conversation, he gave O'Toole a description of the car and believed he told O'Toole that Champney was involved. Provenza was familiar with Champney and was aware that he had prior dealings with law enforcement, including having a pending warrant for failing to appear in court for a heroin charge.

A short time later, Provenza (while at the Canaan Police Department) heard O'Toole over the radio asking for the stolen car's description. O'Toole said that he was at the Evans Express Mart in Canaan.

Provenza left the Police Department and drove the third of a mile to the Evans Express Mart. On his way there, Provenza asked dispatch to notify the Enfield police as well for assistance. When Provenza got there, he saw the red Chrysler parked next to the building. Provenza parked his cruiser behind the Chrysler and next to O'Toole's cruiser. After that, the Chrysler started to back up, so Provenza hit his horn and then got out. As he walked up to the Chrysler he had difficulty seeing into the car because the windows were "foggy." The car pulled forward to the front door of the Evans Express Mart. O'Toole had his cruiser's blue lights on as a female (Saeti Tobin) came out of the store and got into the

car. The car then quickly left, with O'Toole in pursuit and Provenza behind him. Provenza had his siren and blue lights activated during the pursuit.

Provenza notified dispatch about the pursuit and asked if an Enfield Police Officer could set up spike strips to try and stop the car. The Enfield Police said they could not do that so Provenza asked for assistance from the Lebanon Police Department. As the pursuit continued, Provenza called in his location. Provenza told investigators that the road was slick and he was going about forty miles per hour, heading west on Route 4.

The pursuit ended at the intersection of Route 4 and Switch Road in Canaan, when the driver slowed down and drove the Chrysler diagonally, out into a field.¹⁰ It appeared to Provenza as if the turn into the field was done intentionally as opposed to the driver losing control. Provenza then saw a male (later identified as Jesse Champney), jump out of the driver's seat of the car and run. Provenza yelled at him "something like stop, police," but Champney did not stop. O'Toole ran after Champney. In the meantime, Provenza went up to the passenger door on the Chrysler. He could not see into the car so he used his expandable baton to break the window. Once he did, he saw Saeti Tobin ("Tobin") in the passenger seat. He told her to keep her hands up and tried to open the car door, but could not immediately do so. Eventually, the door opened, after which, Tobin got out. Shortly after that, Provenza heard multiple gunshots in the distance. He believed that there might have been some shots and then "a short pause" and some more shots. Provenza did not see the gun being fired or know who fired it.

Provenza left Tobin and ran toward the tracks he saw in the snow. He notified dispatch that shots had been fired and asked for an ambulance. As he got further out in the

¹⁰ That intersection is about 3.2 miles from the Evans Express Mart where the pursuit began.

field and passed the two dirt mounds, he saw O'Toole, who yelled "cover him" or "cover this guy." Provenza could see Champney lying on the ground on his back; he was not moving but he was making sounds and breathing. O'Toole handcuffed Champney in front and searched him. During that search, O'Toole removed several items from Champney's clothing, including multiple knives. Provenza and O'Toole subsequently began performing CPR on Champney until EMS arrived and took over.

O'Toole told Provenza that during the chase Champney said something like he had a gun or a handgun and was going to shoot O'Toole. O'Toole also said that Champney turned around and that his hand was either in his jacket or the Trooper could not see Champney's hand and "that [O'Toole] shot."

As for his prior knowledge of Champney, Provenza said that he was aware that Champney had been on the run, had been in prison before, and would sometimes run and fight with law enforcement officers.

B. Interview with Saeti Tobin

On December 23, 2017, New Hampshire State Police detectives interviewed Saeti Tobin (age 23). Her account of the events follows.

Tobin had been with Champney earlier that night. The two had been dating for about three years and were engaged.

The car that Tobin and Champney were in on December 23, 2017, belonged to their friend's grandmother. She claimed that they had borrowed the car with permission from the friend (Damean Prentice), not his grandmother (Justine Prentice) who owned the car.¹¹

¹¹ State Police detectives attempted to contact Damean Prentice to interview him, without success.

Tobin said that they had borrowed the car for twenty-four hours and were bringing it back when they encountered the police at the Evans Express Mart.

Tobin and Champney had stopped at the Evans Express Mart to buy cigarettes. She went back and forth into the Evans Express Mart store twice, and the second time she stepped out Champney pulled up and picked her up. As they pulled out of the parking lot, Tobin noticed “blues behind us.” Tobin questioned what was going on and said that Champney “must have panicked or something, he didn’t know what to do.”

Champney had been in prison before and did not want to go back. He had not been out of prison for Christmas “in a long time,” and said during the pursuit that he was not “fucking going back.” He also said that he did not do anything wrong. However, Tobin knew that “he was concerned about maybe a warrant because of court.” According to Tobin the warrant was due to a mistake by the Court or was “also on purpose.” Regardless, she said that Champney had known about the warrant for a week before the shooting incident. Tobin said that the warrant stemmed from a possession of heroin charge, where Champney had been “set up.”¹²

During the pursuit Champney “kept driving” and Tobin asked him, “What’s this for?” Champney said he did not know, did not know what to do, and asked Tobin what to do. She told him to, “Pull the fuck over!” Tobin initially said that Champney tried multiple times to pull over, but could not because the brakes were not working. She later admitted that was not true and that Champney was simply not stopping for the police. Tobin said she told him

¹² The arrest warrant was for failing to appear in court in connection with a felony charge for possession with intent to sell a drug represented to be heroin, and a misdemeanor charge of resisting arrest or detention. Both charges stemmed from an investigation and arrest by the Lebanon Police Department. The arrest warrant was issued by the Grafton County Superior Court and had been pending since November 30, 2017.

not to run from the police and to pull over. He then tried to turn onto Switch Road, but the car went up and over the banking and came to a stop.

After the car came to a stop, Champney was “panicked” and, as Tobin put it, he said, “Fuck this, I don’t know what’s going on but I’m not going back.” Champney said something to the effect of, “I’m headed. I’m not going.” He then got out of the car and ran. Tobin knew that “he was just afraid of going back [to prison].” She said she was panicking too and did not know what to do. After that, she saw at least one officer go by and then Provenza approached the car. Tobin said she was “very cooperative.” The door to the car would not open so Provenza broke the window.

Tobin got out of the car and was on the ground being handcuffed by Provenza when she heard “multiple” gunshots, “like 5, 6.” She “had no idea” which officer fired shots that night but she knew “they just shot Jesse.” She was too far away and it was too dark for her to see anything. Provenza left her and ran off, and then more police officers eventually arrived.

Tobin said that Champney did not have a gun, because “We’re both felons.” However he always had “little knives” that he used for tools, “tons of them.” She said that Champney just recently ended his parole and she said she just ended her probation. They had been trying to “wrap up” their legal matters so they could leave the area. Tobin denied that she and Champney were selling drugs “at the time,” but acknowledged using drugs. They had used Suboxone earlier that day, which they got “on the streets.”¹³

¹³ Suboxone (also known as Buprenorphine) is a synthetic opioid that is used for pain treatment and the treatment of opioid dependence.

Referring to what happened in the past with the police and on December 23, 2017, Tobin said that “obviously” what “all this” has to do with is who she and Champney are. “It’s not anything else.” “It’s who we are. That’s it. That’s what it comes down to. It comes down to my last name and his fucking last name. That’s it. And that we both have had histories with drug addiction problems, fucking past arrests...that were bullshit.” Tobin claimed that she and Champney were “targeted” by Provenza.

Tobin said that she and Champney have had “past history with anger issues and violence. We’re both known fighters, and it’s just how it is. So, people know that if there’s an issue we’re gonna fight.” She claimed that weapons would not be involved, but that they would “pound your fucking head in. That’s gonna be that, call it a day.” Tobin said that Champney had run from the police and fought with the police in the past as well. “He’s been a runner.” She also said that Champney was “institutionalized” and had “done a lot of time.”

C. Saeti Tobin’s other statements

Tobin made other statements about the incident besides those at her formal interview.

During her ride to the hospital from the scene, after the incident, Tobin told Canaan Police Officer Jason Scholand that she and Champney had seen the blue lights behind them during the pursuit. Tobin said that she had been scared and told Champney to pull over. She also said that Champney tried to pull over but could not control the car and crashed into a field.

At the hospital, Tobin told Canaan Police Officer Amanda Lewis that she was confused by the entire situation and did not know why the police had tried to stop her and Champney. Tobin said that Champney drove her to the store to buy cigarettes and when she came out of the store, two police cruisers pulled in with their blue lights on. Tobin said that

Champney had “a couple warrants” that he had tried to clear up with the court. During the pursuit that followed, Tobin said that Champney refused to pull over even after she told him to, because he did not want to go back to prison. She told Officer Lewis that Champney attempted to stop the car, but changed his mind. When he got to Switch Road, he lost control on the icy road and crashed into a snow covered field. After that, Tobin said, Champney did not know what to do, was scared, and took off running.

Later, Tobin told Officer Lewis that she believed that Champney was shot because they had borrowed Damean Prentice’s car. According to Tobin, Champney planned on returning the car at some point and did not think much of it because it was not uncommon for him to borrow vehicles. Tobin also said that she was angry about the whole situation because she believed that she was targeted because she and Champney have a history of being arrested for opiates. She told Officer Lewis that Champney was nervous and scared when he saw the blue lights because he did not want to go back to prison. Tobin also said that Champney was “tripping”¹⁴ and did not know what to do.

D. Jesse Champney’s injuries

Chief Medical Examiner Jennie Duval conducted an autopsy on Jesse Champney’s body on December 24, 2017. She determined that Champney’s cause of death was a single gunshot wound to the back, which traveled from back to front. Champney sustained three other non-fatal gunshot wounds: one to the right buttock that traveled from back to front, one shallow entry and exit wound to the right forearm that entered nearer the elbow and exited nearer the wrist, and one small graze wound to the back of the left thigh that traveled from right to left. None of the wounds was consistent with close-range gunfire.

¹⁴ “Tripping” is a term often used to describe someone who is acting under the influence of drugs.

The manner of death was ruled a homicide. As used by the Office of the Chief Medical Examiner, the term “homicide” is defined as the killing of one person by another.

A blood sample was taken at autopsy for toxicological testing. Those tests established that Champney had the following drugs in his system at the time of his death: Amphetamines (stimulants), Buprenorphine (also known as Suboxone) and its metabolite, and Methamphetamine (stimulant).¹⁵ The level of Methamphetamine indicated that Champney was experiencing “[a]cute methamphetamine intoxication” at the time of his death. According to the toxicology report, the level of Methamphetamine in Champney’s blood was capable of causing “violent and irrational behavior.”

E. Physical evidence

The New Hampshire State Police Major Crime Unit searched the scene in the field Canaan twice. They also searched the red Chrysler that Champney had been driving.

The red Chrysler was located in the field approximately seventy feet from the road. During a subsequent search, multiple personal items were located in that car. The only items of note were drug paraphernalia in a wooden box and multiple syringes and drug paraphernalia in a sunglasses case.

Champney’s body was approximately seven hundred feet from Route 4. He was about six hundred and thirty feet from the Chrysler LeBaron. Seven discharged handgun cartridge casings were recovered in two separate groupings (4 in one, 3 in the other), approximately fifty-five feet from Champney’s body. Champney was found on his back, with his feet facing toward the location of the casings. His feet were canted to the right, at an

¹⁵ Buprenorphine (Suboxone), is what Ms. Tobin told the detectives she and Champney had used the morning of December 23rd.

approximate forty-five degree angle to the casings. The handgun casings were all consistent with being discharged from O'Toole's handgun. An examination of that handgun and magazine revealed that O'Toole had fired a total of seven shots during the incident. That number of shots is consistent with the seven discharged cartridge casings found at the scene. Four areas of apparent bullet damage were found on trees located approximately one hundred and fifty feet behind where Champney's body was located.¹⁶

Three knives were recovered on the ground near Champney. The knives consisted of a dagger, a folding knife, and a folding razor-type knife. The folding knife was in a sheath, the other two were not. O'Toole told investigators that he had removed those knives from Champney's clothing after he was shot.

A spent bullet was recovered from Champney's buttock wound at autopsy. That recovered bullet was consistent with having been fired from O'Toole's handgun.

F. Digital evidence

Provenza's police cruiser was equipped with a Digital-Ally DVM-500 plus, in-car digital video system. The system's camera was located near the cruiser's windshield rear view mirror. Provenza did not have a body camera, but he was wearing a wireless microphone located on his belt that could transmit sound back to his police cruiser's recording system. O'Toole did not have a body camera or in-car audio/video system. Enfield Police Officer Jared Scholand arrived after the shooting incident. He was wearing a body camera and a microphone. Recordings were also obtained from State Police Dispatch and Hanover Dispatch, which contained some of the radio communications related to the

¹⁶ Dr. Marilyn Miller, an independent expert retained by the State, determined that the trajectory of the impacts in the trees substantiated O'Toole's statement about his shooting position.

stolen car report and the shooting incident. Relevant audio and video footage that was collected is being released along with this report.

1. Officer Provenza's audio and video recording

A copy of the audio and video recording from Provenza's cruiser camera and his wireless microphone was reviewed. The recording captured Provenza's police cruiser stopped, facing the entrance to the Evans Express Mart located at 1167 US Route 4 in Canaan. Provenza could next be seen walking in front of his police cruiser. Moments later, Tobin stepped out of the store as the red Chrysler Champney was driving pulled into the camera's view and drove very close to the door to the Evans Express Mart. O'Toole's cruiser drove up in front of Provenza's police cruiser as Tobin got into the car with Champney. O'Toole had his blue lights activated as Champney drove off with O'Toole behind him. Provenza drove out of the Evans Express Mart and followed behind O'Toole's cruiser as they pursued Champney.

The pursuit lasted about two minutes and thirty seconds before the Chrysler drove off the road to the right and out of view at the corner of Route 4 and Switch Road in Canaan. Provenza parked his cruiser at the corner of Route 4 and Switch Road. From that point on, the red Chrysler was not visible in the camera's field of view because it had driven out into the field and Provenza's cruiser camera was not facing in the direction where the Chrysler was located. Nothing of consequence was captured by the video camera after the Chrysler drove out into the field.

Provenza's wireless microphone had been activated during the pursuit and captured radio traffic between Provenza and dispatch. Once the pursuit ended, Provenza got out of his cruiser and ran to the Chrysler in the field. As that happened, Provenza yelled to Champney,

“Stop! Stop! Police! Stop!” Then, a few seconds later, Provenza said, “Stop Police. Put your hands up now!” After that, he could be heard giving commands to Tobin, telling her to put her hands up, to open the door, and to get out of the car. After that, there is an exchange between Provenza and Tobin as he tried to get her out of the car. Provenza could also be heard calling into dispatch asking for backup and a K-9. Next Provenza spoke to Tobin and gave her directions in an attempt to handcuff her.

Approximately one minute and forty-six seconds after Champney drove out into the field, Provenza’s wireless microphone captured what sounded like gunshots. Provenza called to dispatch, “Shots fired. Shots fired.” The audio from his wireless microphone became choppy and intermittent after that and did not record anything of substance.¹⁷

2. New Hampshire State Police dispatch recording and log

A copy of the audio recording and dispatch log from New Hampshire State Police dispatch was obtained and reviewed. The recording and log captured O’Toole’s communications with dispatch before, during and after the shooting incident in Canaan. O’Toole’s radio call-sign on the log is “622.” Relevant portions of the recording and dispatch log follow:

Time on dispatch log _____

Verbatim transmissions from O’Toole _____

6:24:52 p.m.

10-43.¹⁸ Westbound route 4 from Canaan Center. A red Chrysler LeBaron convertible. Stolen. Operated suspected by a Jesse Champney, ahh, wanted felon.

¹⁷ After calling out, “Shots fired,” Provenza ran out into the field where O’Toole and Champney were located. It is likely he was beyond the wireless microphone’s range.

¹⁸ This is the police dispatch code for a pursuit.

	<i>3463526 does not match.¹⁹ Roads lightly icy. Traffic medium. Speed at 40. Canaan unit with me.</i>
	<i>Operation slightly erratic.</i>
	<i>Speed at 60, traffic light,</i>
<i>6:25:38 p.m.</i>	<i>Speed at 40.</i>
<i>6:25:45 p.m.</i>	<i>Turning north on Switch Road, vehicle into the field.</i>
<i>6:25:55 p.m.</i>	<i>Operator getting out, foot chase.</i>
<i>6:26:50 p.m.</i>	<i>Advising he is armed.</i>
<i>6:27:16 p.m.</i>	<i>Saying he is armed. Saying he wants to shoot.</i>
<i>6:27:54 p.m.</i>	<i>Shots fired. Suspect down.</i>
<i>6:28:22 p.m.</i>	<i>Need an ambulance, multiple gunshot wounds on the suspect. I am okay, I am not hit.</i>
	<i>["Don't move! Stay (inaudible)."]²⁰</i>
<i>6:29:24p.m.</i>	<i>622 Switch Road and Route 4. Suspect with multiple gunshot wounds. I am not injured. I have a Canaan unit off with me. Suspect is a Jesse Champney.</i>
<i>6:30:38 p.m.</i>	<i>622, CPR in progress.</i>

3. Hanover dispatch recordings

The Hanover dispatch records included recordings from phone calls from Justine

¹⁹ O'Toole is referring to the license plate number on the red Chrysler LeBaron that Champney was driving.

²⁰ These words were spoken by Provenza and were picked up by O'Toole's radio as he spoke to dispatch. Provenza had left his position at the Chrysler after he heard the gunshots and ran out to where O'Toole and Champney were located.

Prentice and radio communications involving O'Toole and Provenza.²¹ Relevant portions of the recording and dispatch log follow:

<u>Time of start of call</u>	<u>Summary of recording</u>
5:36:43 p.m.	<i>Justine Prentice called and reported her red convertible as stolen.</i>
5:43:19 p.m.	<i>Justine Prentice called back with more details about her stolen car. Her daughter also got on the phone with dispatch and relayed information from her mother about the car.</i>
5:46:52 p.m.	<i>Dispatch notified Provenza about a pending vehicle theft.</i>
6:21:05 p.m.	<i>O'Toole reported that he has seen an older red convertible pull into Evans [Express Mart] in Canaan. He asked to confirm the vehicle's description, which dispatch confirmed for him. O'Toole said it appeared to match.</i>
6:21:56 p.m.	<i>Dispatch told Provenza that O'Toole saw the stolen car pull into Evans. Dispatch told O'Toole that Provenza was en route.</i>
6:22:16 p.m.	<i>Provenza said he was at Evans and there was one driver and one female occupant getting in the car.</i> <i>The plate on the stolen car was called into dispatch.</i>
6:23:02 p.m.	<i>Dispatch reported that the plate was registered to a green Chevy pickup that belonged to Justine Prentice. Provenza reported he was in a pursuit heading westbound on Route 4 with O'Toole in the lead.</i>
6:23:53 p.m.	<i>Provenza requested that Enfield PD set up spikes. Speed was 38 miles per hour.</i>

²¹ The fact that O'Toole and Provenza used separate police dispatch centers and reported events separately from each resulted in different times being reported for similar events.

6:24:43 p.m. Provenza was told that their policy did not call for the use of spikes. Provenza asked that Enfield be told that it was a stolen vehicle and a party wanted on a felony.

6:25:18 p.m. Provenza asked that Lebanon [PD] be contacted for assistance.

6:25:40 p.m. Provenza reported that the vehicle had crashed into a field at Switch Road and Route 4.

6:26:25 p.m. Provenza reported that a foot pursuit was underway. He asked for officers and K-9's to head their way.

6:26:51 p.m. Dispatch called another dispatch for a K-9 and then reported shots fired and a foot pursuit. Provenza's voice could be heard in the background reporting shots fired.

6:27:26 p.m. Provenza called out over the radio, "Shots fired! Shots fired!" Dispatch confirmed shots fired at 6:27 p.m.

6:27:46 p.m. Provenza asked dispatch to start EMS.

6:28:31 p.m. Provenza told dispatch to tell them [EMS] it was for a party with gunshot wounds. He also requested the fire department.

6:29:16 p.m. Provenza asked dispatch to start the fire department and reported that there was a female suspect in handcuffs at the car.

6:29:55 p.m. Provenza asked Enfield to take care of the female by the car. He also asked for an ambulance and advised the party was unconscious.

6:30:26 p.m. Provenza reported that CPR was in progress and that no law enforcement officers were injured.

6:31:04 p.m. Provenza asked that Enfield PD confirm that they have the female in custody.

6:31:24 p.m. Dispatch confirmed that Lebanon ambulance is in route.

6:32:40 p.m. Dispatch confirmed that the female is in custody. Provenza reported they will need EMS out in the field.

He also said that they may need Enfield's snow access equipment.

6:34:03 p.m.

Provenza asked dispatch to update State Police Troop F Barracks and headquarters that an OIS (officer involved shooting incident) had taken place.

6:51:20 p.m.

Provenza advised that they will not need Lebanon ambulance out at the scene. Champney was reported deceased.

4. Officer Jared Scholand's body camera

Enfield Police Officer Jared Scholand was not present during the pursuit or the shooting incident, therefore his body camera did not capture any evidence directly related to the incident. His body camera captured video of him traveling in his cruiser to the scene at the intersection of Switch Road and Route 4 in Canaan, audio of radio traffic from after the shooting incident, and audio and video of Officer Scholand's arrival at the scene as Ms. Tobin was led away by other police officers. Officer Scholand then stood by and provided security for the red Chrysler in the field.

After about thirty minutes in the field, Officer Scholand was relieved and ordered to accompany the ambulance that transported Tobin to the hospital. His body captured the audio and video of the trip to the hospital, and the interaction between the EMT and Tobin.²² During the ride, Tobin admitted to using Suboxone. The recording ended shortly after the ambulance arrived at the hospital.

G. Review by Independent Expert

As is sometimes the practice in homicide cases, the Attorney General's office retained the services of an outside expert, Dr. Marilyn Miller, to assist in the investigation. Dr. Miller

²² The audio was difficult to hear at times due to the background noise in the ambulance and the fact that Tobin was speaking softly at times.

was retained to perform an independent review of the crime scene and related evidence.²³ Her review included examining photographs, audio interviews and recordings, video recordings, diagrams, and reports. Dr. Miller concluded that the “vast majority of evidence found at the scene, their locations, and conditions, was consistent with the statements of O’Toole and Provenza.”

H. Trooper O’Toole’s prior use of force incidents

O’Toole has had two prior incidents involving the use of force as a police officer. Neither involved the use of deadly force or was indicative of improper use of force.

1. August 2014 incident

On August 17, 2014, O’Toole assisted the Lebanon Police Department in connection with a reported drug overdose. Upon arrival at the scene, two males were located inside. One was the person who had reported the overdose; the other was the apparent victim of the overdose. That man was conscious but in physical distress.

Shortly after O’Toole arrived, the man in distress swallowed a suspected bag of heroin. The Lebanon officer tried to restrain that man and get him to spit out the bag. The man tried to pull away, so O’Toole assisted the Lebanon officer by grabbing the man’s arm and pushing him onto the floor. The Lebanon officer and O’Toole encouraged the man to spit out the bag, but he did not. They released their hold on the man when it became obvious that he had swallowed the bag.

²³ Dr. Miller is a professor in the Department of Forensic Science at the Virginia Commonwealth University. She is a nationally recognized expert in crime scene investigation and reconstruction who has testified as an expert witness in court in hundreds of cases in numerous state and federal courts.

2. October 2014 incident

On October 29, 2014, O'Toole responded to a reported motor vehicle accident in the Town of Grafton. After he arrived, he discovered a car that had gone off the road and struck several trees and some brush. The driver and sole occupant of the crashed car was located in a nearby house. That driver, an adult female, was being evaluated by EMS. One of the emergency responders told O'Toole that the driver was not injured, but smelled of alcohol.

O'Toole questioned the driver, who said she was an opioid addict and made statements about not deserving to live anymore and other suicidal statements. The driver also told O'Toole that she had consumed several beers that day along with medication.

The driver was transported to the Dartmouth Hitchcock Medical Center for further evaluation in the emergency room. While there, O'Toole spoke to her and in the presence of her father, who had arrived at the hospital, and O'Toole performed a series of field sobriety tests. After the tests were completed, O'Toole told the driver she was under arrest for DWI, and asked if she would submit to a blood alcohol test. The driver agreed to the test. O'Toole then left the emergency room to get blood sample collection tubes from his police cruiser.

When O'Toole returned to the emergency room, he heard screaming coming from the driver's hospital room. The driver was screaming and saying she was feeling "crazy" and that she wanted to die. O'Toole tried to calm the driver, but she got up and said she was leaving to go home to die. Then, the driver quickly left her hospital room and headed toward the emergency room exit. O'Toole followed and grabbed her by the left arm and handcuffed her. At that point, hospital staff assisted O'Toole in restraining her and moving her back into her room. Once there, the driver was placed on her bed in restraints, while medical staff administered a sedative.

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. RSA 627:5 addresses the use of physical force by law enforcement. As to the use of deadly force, the statute provides:

A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:

(a) To defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or

(b) To effect an arrest or prevent the escape from custody of a person whom he reasonably believes:

(1) Has committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and

(2) He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

(c) Nothing in this paragraph constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.

RSA 627:5, II.

RSA 627:5, II (a) applies to these facts. RSA 627:9, II, defines "deadly force" 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." That statute further provides that, "purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person" constitutes deadly force.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." State v. Gorham, 120 N.H. 162, 163 (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 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, which is afforded by one viewing the circumstances after the fact. The amount of deadly force used by the actor to protect himself or others must also be reasonable, and not excessive. See State v. Etienne, 163 N.H. 57, 70 (2011).

In Graham v. Connor, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer’s conduct would be judged when excessive force claims were brought against him. The Court confirmed that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Id. at 396. The Court went on to explain how to determine what is reasonable in situations where police officers use force:

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

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

The Eleventh Circuit Court of Appeals 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, 2013 U.S. Dist. LEXIS 44646 *55-56 (S.D. Fl. 2013). Specifically, the law accounts for the often fast moving nature of dangerous situations and the need to make decisions in less-than-ideal circumstances. See Ryburn v. Huff, 565 U.S. at 477 (chastising the lower circuit court for not “heed[ing] the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation.”).

Finally, in any instance where a party claims they acted in self-defense, the State bears the burden of disproving that person’s claim of self-defense or defense of another, beyond a reasonable doubt. See State v. McMinn, 141 N.H. 636, 645 (1997). The burden is not on the person who used deadly force to prove that their conduct met the requirements of the law or was reasonable.

These are the legal standards that help guide the review in an officer-involved use of deadly force case.

V. ANALYSIS AND CONCLUSION

Applying the foregoing legal principles, based on the totality of the facts and circumstances of this case, O’Toole reasonably believed that the use of deadly force was warranted to defend himself against the imminent threat of deadly force from Champney.

This incident began with Provenza telling O'Toole that a car had been reported stolen and that the suspect was Champney. Provenza asked O'Toole to assist because Champney was "known to be hostile to law enforcement."

Beginning with the brief encounter in front of the Evans Express Mart, Champney disregarded Provenza's verbal commands and ignored the blue lights on O'Toole's cruiser. He then fled from the police, leading them on a vehicular pursuit.

After he drove the vehicle into the field Champney fled on foot, ignoring Provenza's announcement of police presence and his order to stop. O'Toole pursued him on foot, issuing repeated commands to stop, which Champney ignored. O'Toole tried to reason with Champney, and convince him that there were better ways to handle the situation. Champney ignored those pleas as well.

At that point, the pursuit had slowed to a fast-paced walk. Champney put his right hand into his jacket pocket, obscured from view, and told O'Toole "I have a gun, I'm going to shoot you." Champney's action transformed the incident from a foot pursuit to one involving the potential use of deadly force. At that point, it was no longer reasonable for O'Toole to transition from his handgun to his TASER. He reasonably believed he was faced with a threat of deadly force. He also perceived a danger to others since he knew that Provenza and Tobin were at some unknown distance behind him. O'Toole thus radioed to State Police Dispatch, "Advising he is armed."

Champney repeated his threat; "I have a gun, I'm going to shoot you." Again, O'Toole radioed to State Police Dispatch, "Saying he is armed. Saying he wants to shoot." O'Toole warned Champney, "I will shoot you first." His purpose was to make Champney realize that he was not making the right choice.

Champney, continuing to ignore O'Toole's commands, repeated his threat to O'Toole that he was going to shoot him. O'Toole could see Champney's left hand but his right hand was in his jacket pocket. O'Toole repeatedly ordered him to stop and show his right hand but Champney refused to comply.

Shortly after that, Champney turned toward O'Toole with his right hand still obscured. At that moment, O'Toole believed that Champney was turning to shoot at him, which prompted O'Toole to shoot at Champney to protect himself from the perceived deadly threat. After the first volley of shots, Champney continued to move and appeared to be getting up. Because Champney had not been immobilized, had not shown O'Toole his hands, and had made threats that he had a gun and would shoot O'Toole, Champney continued to pose an imminent threat to O'Toole.

O'Toole's belief that Champney had a gun and was intending to use it was objectively reasonable based on all the facts and circumstances known to O'Toole at the time. First and foremost, Champney had threatened, repeatedly, to shoot O'Toole, was behaving physically as if he had a gun, and had turned his body toward the Trooper while refusing to show his hand. That kind of "tense, uncertain, and rapidly evolving situation" is exactly the type of scenario that the Graham Court recognized can often require officers to make split-second decisions about the use of force. Those facts coupled with the other information O'Toole knew about Champney made it reasonable to conclude that Champney was willing to use deadly force rather than surrender. O'Toole was aware that Champney was known to be hostile to law enforcement and had made clear that he was not going to comply with lawful authority. O'Toole also knew that Champney had spent time in prison and if apprehended

would likely be facing more because he was a convicted felon who was just found in possession of a dangerous weapon and a reported stolen car.

The fact that after the incident it was determined that Champney actually had three weapons in the form of knives as opposed to the gun he claimed he had, does not change the analysis. The critical question is whether, at the time he fired his gun, O'Toole reasonably believed that Champney had a gun and was going to shoot him. Given Champney's explicit threats and his conduct, that belief was objectively reasonable.

That Champney was shot in the back and the buttock does not negate the reasonableness of O'Toole's belief that Champney was an imminent threat, nor does it mean that O'Toole's version of events is inaccurate. While Champney's gunshot wounds provide some evidence of his and O'Toole's positioning during portions of the shooting incident, it is not definitive evidence of their exact positions and movements during the entire incident. For example, it is not possible to determine from the wounds the exact order in which they were sustained.

Regardless, there are some conclusions and reasonable inferences that can be drawn from the evidence, including the gunshot wounds, which corroborate O'Toole's statements about the events that preceded and followed the shooting. O'Toole described firing as Champney turned to the left toward him. Since O'Toole fired a total of seven gunshots and Champney was wounded four times, three of O'Toole's gunshots missed Champney. Based on the grouping of the discharged cartridge casings, it appears that O'Toole fired four shots during his first volley of shots and three shots during the second. One plausible explanation is that O'Toole's first gunshot missed Champney as he turned to the left, when he presented the narrowest profile to O'Toole. After that first gunshot, and likely in reaction, Champney

turned away from the gunfire and O'Toole, and back to the right. When he did, he was then in a straight-on position to O'Toole. That is likely when Champney was wounded by O'Toole's three additional gunshots, which struck him in the back, buttock and arm. It appears that Champney continued turning to the right and fell to the ground, where he ended up on his back with his legs pointing toward O'Toole at an approximately forty-five degree angle to the right of O'Toole. Once on the ground, Champney attempted to get up, disobeying O'Toole's commands not to move. O'Toole fired three more gunshots, missing Champney twice, and wounding him once with a gunshot that grazed the back his left leg. The location and right-to-left trajectory of that graze wound to the back of Champney's left leg is consistent with his leg being exposed as he tried to get up off the ground with his feet toward O'Toole at an approximate forty-five degree angle. This account is the likely explanation for how Champney received his four gunshot wounds as well O'Toole and Champney's positioning and movements during the incident.

Another potential scenario however, is that Champney did not turn to the left before O'Toole fired his first shots or that O'Toole was mistaken about the turn. As previously stated, O'Toole reasonably believed Champney was an imminent lethal threat to him when he threatened to shoot O'Toole. The totality of the evidence is consistent with O'Toole's account, although there is no physical evidence that can pinpoint the exact positioning of O'Toole and Champney when the first shot was fired.

O'Toole's account of the shooting is corroborated by a number of other pieces of evidence. For example, the State Police dispatch recordings confirm O'Toole's contemporaneous reports to dispatch that Champney said he was armed and was going to shoot O'Toole. O'Toole's report to dispatch right after the shooting that he had not been

“hit,” confirms that he believed Champney had a gun. O’Toole’s questioning of Champney after the incident as to where Champney’s gun was is also consistent with O’Toole’s stated belief that Champney had a gun. O’Toole’s statements to Provenza immediately after the shooting--that Champney said he had a gun and was going to shoot O’Toole; that Champney turned around; that O’Toole could not see Champney’s hand because it was in his jacket or in a pocket; and O’Toole fired--are consistent with what O’Toole told detectives during his interview a few days later. The location of the discharged cartridge casings found at the scene is also consistent with O’Toole’s account of his positioning during the first volley of shots and the movement he made before the second volley of shots. The number and location of those casings is also consistent with Champney’s wounds. In sum, the totality of the evidence supports O’Toole’s account of Champney’s actions before, during and after the shooting incident.

Champney’s statements to Tobin during the pursuit also provide insight into his state of mind on December 23, 2017, and indicate that he was willing to take extreme measures to avoid capture, as O’Toole described.

It is not possible to determine definitively the motives for Champney’s conduct on December 23, 2017. What is clear is that at no point during a foot pursuit, which was more than 600 feet in distance, did Champney obey O’Toole’s commands or do anything else to dispel O’Toole’s ultimate belief that Champney presented an imminent threat of deadly force.

Therefore, based on all the facts and circumstances known to O’Toole on December 23, 2017, it was reasonable for him to conclude that he faced an imminent threat of deadly force from Champney. Accordingly, O’Toole was legally justified in using deadly force

against Champney and no criminal charges will be filed against O'Toole as a result of the incident that resulted in Champney's death.

[1959303]