

## **NEWS RELEASE**

Released by: Michael A. Delaney, Attorney General

Subject: Report of the Investigation into the shooting of Christian Badillo and the homicide of Nathaniel O. Stringfield, Jr., in Berlin, New Hampshire on November 25, 2009

Date: June 30, 2011

Release time: Immediate

Contact: Jeffery A. Strelzin, Senior Assistant Attorney General  
Chief, Homicide Unit  
New Hampshire Attorney General's Office: (603) 271-3671

---

### **I. INTRODUCTION**

The Office of the Attorney General, the New Hampshire State Police and the Berlin Police Department conducted an investigation into a shooting incident which occurred in Berlin, New Hampshire on November 25, 2009. The incident resulted in the wounding of Christian Badillo and the death of Nathaniel Stringfield, Jr.

The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to the incident. The findings and conclusions contained in this report are based on information gathered during the investigation, including autopsy reports, crime scene reports, diagrams, forensic testing, information provided from investigators, interview reports, photographs, police investigative reports, and recordings and transcripts of witness interviews.

Based on the investigation's findings, and for the reasons detailed below, the Attorney General concludes that Robert Burrill shot and wounded Christian Badillo and shot and killed Nathaniel Stringfield, Jr., after Badillo, Stringfield and Dennis Ford, had forced their way into Burrill's apartment. Robert Burrill responded to the imminent and/or likely use of deadly and/or unlawful force from the home invaders and fired two shots, hitting Badillo and Stringfield one time each. The Attorney General has concluded that Robert Burrill's use of deadly force was lawfully justified pursuant to RSA 627:4, II(a), (b) or (d).

## II. FACTUAL FINDINGS

### A. Major Witness Statements

#### (1) Robert H. Burrill, Jr. (the male apartment dweller)

Robert Burrill was interviewed after the shooting on November 26, 2009. During that recorded interview, Burrill said he was at home at his apartment in Berlin with his girlfriend Samantha Burns. He heard a knock at the door and went over to see who was there. He pulled up the shade on the door, looked out the window and saw a white male and two other men outside. Burrill asked who was there and heard one of the men say something like "Derrick" in response. Burns heard the name and told Burrill to open the door. As Burrill unlocked the door, the three men forced their way into the apartment.

After the door opened, one of the men, who was black, put a black colored pistol in Burrill's face and forced him backwards into the bathroom. As that happened, the man holding a gun to Burrill hit him while the other man, who was also black, pistol whipped Burns. The two men yelled at Burns and Burrill to give them what they had. The men asked for weed, money and a PlayStation.

Burrill and the man holding him at gunpoint moved into the bedroom. Burns was against the bureau where she was being hit by the man holding her at gunpoint. Burns was screaming and saying, "Please stop." Burrill was scared for himself and Burns. He said he had never been so scared in his life and did not think he'd see Thanksgiving the next day.

Burrill moved to the closet in the bedroom and without the intruders seeing him, reached in and picked up his .40 caliber handgun. The gun was loaded with three bullets. Burrill chambered a round into the gun and as he did that, the door moved and he began to scuffle with the man who had been holding the gun on him. The man tried to get a hold of Burrill's gun as Burrill tried to point the gun at the man. As they struggled for the gun, the man suddenly let go of Burrill and at that point Burrill shot at the man. Burrill then heard Burns scream even louder and the man who was "on her" turned and ran. Burrill pursued that man, who had a gun in his hand, and shot at him in the kitchen-area of the apartment. When asked how he felt at the time and what he was thinking, Burrill said he was scared and believed that he would have to watch his girlfriend die in front of him and then be killed as well. He said that he could not shoot at the other man who was assaulting Burns because they were "right together." Burrill thought that man was going to kill Burns. Burrill said that he did not know where the third male intruder went during the incident.

Burrill returned to the bedroom and told Burns to leave. In the meantime, Burrill called 911 as the man he'd shot in the bedroom "wobbled" out of the apartment. Burrill said that he did not recognize any of the men who entered his apartment.

Burrill was visibly shaken and upset during this interview with the police. He was also cooperative with the police and agreed to surrender his clothing and to provide buccal and gunshot residue swabs. The investigators also took photos of Burrill on the night of the incident. Injuries could be seen which were consistent with his statements about the struggle that took place during the incident.

The State Police conducted a recorded re-creation with Robert Burrill and Samantha Burns on December 17, 2009. The re-creation was done in order to better document what occurred during the home invasion.

Burrill said he heard the knock at the door and approached and moved the shade to see three men standing outside. Two were facing each other such that their faces could not be seen. One was facing the door but Burrill did not recognize him so he asked who was there and the man responded, "Dennis." Burns overheard that response as she walked up to the door and said to let him in, thinking it was a "Dennis" she knew from upstairs. As Burrill clicked the lock on the door, it flew open. The first man through the door grabbed Burrill, punched him and hit him with a handgun, forcing him backwards at the same time. At the same time, another man grabbed Burns, pushed her against the stove and was hitting her with a gun. Burrill was pushed backwards into the bathroom and fell backwards into the bathtub. The intruder then told Burrill to give them whatever they had, mentioning weed, money and Play Stations. Burrill said he would give him whatever he wanted and got out of the bathtub. The intruder stood behind Burrill with the gun pointed at his head and they ended up in the bedroom.

Burrill said it popped into his head to tell the intruder that he had everything he needed and it was in the closet. Burrill opened the door to the closet, reached in and grabbed his gun case, took the gun out and chambered a round. As he did that, the intruder who was behind the door pushed the door closed and grabbed Burrill's arm, wrestling for the gun. Burrill could see another intruder holding Burns and hitting her with a gun and putting it in her mouth. Burrill and his intruder fell onto the bed and then Burrill got his hand free and fired at his intruder. The intruder on the bed with Burrill did not seem to be doing much at that point.

As this happened, the other intruder let go of Burns and he ran into the kitchen. Burrill followed that second intruder into the kitchen and fired a shot at that intruder as he stood in the kitchen. That intruder then ran out and was gone. Burrill then turned his attention back to the intruder in the bedroom. That intruder was bleeding a lot and had gotten off the bed and was "wobbling" on his feet. Burrill was on the phone with 911 at that point and was following the intruder out of the room. Burns hit the intruder in the head and swore at him. The intruder made his way out of the kitchen and made it out the door to the outside and fell forward.

Burrill said it all happened quickly and was one non-stop fluid motion and lasted just a few minutes.

(2) Samantha Burns (the female apartment dweller)

She told the police that she and her live-in boyfriend Robert Burrill were in their apartment cleaning and cooking in preparation for Thanksgiving the next day. Burns heard a knock at the door and when Burrill asked who was there a male voice said, "Dennis." Burrill started to open the door and then three men immediately burst inside. Two of the men were wearing masks and had handguns. The third man, who was not wearing a mask, was identified by Burns as Dennis Ford. Ford told one man to grab her and the other to grab Burrill. The men immediately separated her and Burrill and began demanding money. Burns started screaming and Ford told her to "shut the fuck up." Burrill was taken into the bedroom and she was held at gunpoint, hit in the head with the gun and strangled. As this went on, the men asked for money and one mentioned getting the PlayStation game console. Burns told them they could take whatever they wanted but the men appeared to want more and kept asking for the "stash" and money.<sup>1</sup> Burns was eventually forced into the bedroom where Burrill and the other armed intruder were located. Once in the bedroom, she was held against a bureau and mirror and repeatedly hit in the head with a handgun by the man who was holding her. Burns said the attackers were "brutal" and she thought she was going to die. As this all happened, Burns was only a short distance away from Burrill and the other intruder in the bedroom.

Burns said that things got worse when the attackers kept demanding money and she and Burrill said they did not have any. The intruder holding Burns took his gun and put it in Burns's mouth. The intruder told Burns that if she didn't give them the money she would die. Burns managed to break free and run into the kitchen but was caught and dragged back into the bedroom. Burns said she blacked out for a few seconds and heard Burrill crying and then say that he would get the money. Burns did not have a view of all that went on, but said that Burrill walked at gunpoint to the closet. The next thing she heard was the sound of a gun being loaded and Burrill yelling, "Get the fuck out of the house."<sup>2</sup> She heard Burrill and his intruder struggling and then heard a gun shot in the bedroom. Both men fell onto the bed, at which time Ford, the third intruder, ran off. Her intruder then began to raise his gun and aim it, but she is not sure if he fired his gun or not.<sup>3</sup> She saw one intruder holding his head afterwards and one crawling out of the apartment. Burns ran out of her apartment up to her mother's apartment and then back down to check on Burrill.

---

<sup>1</sup> The term "stash" is often used to denote a cache of drugs.

<sup>2</sup> Burns said that Burrill kept a gun in the closet and that it was usually unloaded or had 3 bullets in it.

<sup>3</sup> Burns recalled hearing only one gunshot during the entire incident.

Burns said she did not know why the intruders broke into her home. She said that they did not have much money in the house and no drugs.<sup>4</sup> However, Burns did recall telling people at a party recently that she was going to get a big tax return.

The investigators took photos of Burns's face and neck on the night of the attack and a few days later. Injuries could be seen on her face and neck which were consistent with her statements about being choked and hit with a handgun.

(3) Christhian Badillo (wounded but surviving home invader)

The police initially attempted to interview Badillo in the hospital to get his version of events. Badillo claimed to have no memory of the incident itself. However, his mother Sonia Ortas spoke to him about the incident and she told the police that Badillo told her that it was "Dennis" who shot him during the incident, not the homeowner.<sup>5</sup>

Later on in February of 2010, Badillo contacted the Berlin Police and asked to meet to discuss the incident. During that meeting, Badillo said that he had recently recalled information about the incident. He explained that on November 25, 2009, he was working on a car at a friend's house and that Nathaniel Stringfield was present also. At some point, Dennis Ford showed up and asked if he could use his car. Badillo told him he could not and Ford said he would see him (Badillo) again and left. Afterwards, Stringfield told Badillo he wanted to go to speak to someone on Third Avenue who owed him drugs. Badillo said that Stringfield "just wanted the money."

The two drove over to Third Avenue and when they got out of their car, they were met by Dennis Ford. The three entered the Burns/Burrill apartment. Badillo said that shortly after entering he was shot in the head and that Ford was standing directly in back of him when that happened. Badillo was knocked unconscious and then woke up to the male occupant of the apartment, "Bob," yelling at him to get out. Stringfield was struggling with "Bob." Badillo left the apartment and when he got outside, saw Ford holding a gun and then Ford shot him in the shoulder. Badillo then fled the scene and went back to his apartment where he passed out. He claimed that he did not have a weapon when he entered the apartment and did not know if Stringfield had anything in his hands.

(4) Dennis Ford (third home invader)

Ford was interviewed on December 2, 2009. He denied any involvement in the home invasion and claimed to be with friends that night. Ford did tell the police that Nathaniel Stringfield called him just before the incident but that he did not mention any plans to commit a crime. Ford was arrested and charged with Burglary.

---

<sup>4</sup> Burns said the only drugs they had was a maybe a "pot" pipe. A pipe was found by the State Police during the search of the apartment.

<sup>5</sup> "Dennis" was an apparent reference to the third home invader, Dennis Ford.

(5) Neighbors

Several of Burns's and Burrill's neighbors were interviewed. Some heard nothing while others heard a loud confrontation and gunshots. For example, one neighbor, "Linda," heard a loud confrontation, Burns yelling, Burrill yelling at someone to get out of the house, and then two gunshots.

**B. Forensic Evidence**

(1) Autopsy results on Nathaniel Stringfield, Jr.

Dr. Thomas A. Andrew completed the autopsy on Nathaniel Stringfield, Jr., on November 27, 2009. Stringfield was 6 feet tall and weighed 237 pounds at autopsy. Dr. Andrew determined that the cause of death was a single gunshot wound to the back. The manner of death was homicide.

Toxicology showed that Stringfield had a blood alcohol concentration of .153, almost twice the legal limit to drive a car. The presence of Flexural and Marijuana was also detected along with evidence of prior cocaine usage.

(2) Medical evidence from Christian Badillo

Christian Badillo was treated at Dartmouth Hitchcock Medical Center for an extended period of time. He was found to have suffered three gunshot wounds during the incident, two to the head and one to his shoulder.

(3) Other forensic evidence

The State Police processed the shooting scene and surrounding area for evidence. Two weapons were located in the apartment. The first one was Robert Burrill's .40 caliber semi-automatic handgun. The second one was a BB gun which was found on the living room floor of the apartment. The living room is located off of the kitchen area of the apartment. No other gun was found even though Burrill and Burns said that each of the men who assaulted them had a gun.

Two spent .40 caliber shell casings were located in the apartment.<sup>6</sup> One was found in the bedroom under the bed and the second one was found on the kitchen floor.<sup>7</sup> Both of those shell casings were tested and found to have been discharged from Burrill's gun.

---

<sup>6</sup> This is consistent with Burrill's recollection that he fired two shots in all during the incident.

<sup>7</sup> The location of the shell casings is consistent with where Burrill said he was when he fired at the intruders.

A bullet was found on the bed in the bedroom and one was found outside in a Chrysler car which was parked right outside the apartment next to where Stringfield's body was found. DNA testing was done on the bullet found in the car but no results could be obtained. Ballistics testing on that bullet showed that it could have been fired from Burrill's gun. However, a more definite conclusion could not be reached due to impact damage to the bullet. The other bullet on the bed was also subjected to ballistics testing and found to have been fired from Burrill's gun.

The BB gun found in the apartment was black in color and looked similar to a real handgun. The lab tested the BB gun for fingerprints but no identifiable prints were found.<sup>8</sup>

Two blood stains were subjected to DNA testing. One was from the side of laundry room outside the bedroom and the other was from blood spatter on the bottom of bedroom door. Both stains were found to be Badillo's blood. A piece of human tissue consisting of skin with hair and blood was also recovered from the bedroom and subjected to DNA testing. The results indicated that the human tissue was Badillo's.

A blood stained sweatshirt was found on the bed in the bedroom. That was tested for DNA and found to belong to Badillo. Two shirts and a mask were also found outside the apartment on the ground along the route Badillo took from the crime scene after the incident.

Stringfield's body was found face down outside the entryway to the apartment. He was wearing black clothing, including a black hooded sweatshirt and a thin black hat.<sup>9</sup> A search of his clothing turned up no weapons. However, Stringfield had a bag with what appeared to be marijuana on his person and a glass smoking pipe was found near his body.

### **C. Summary of The Incident**

On November 25, 2009, at approximately 7:50 p.m., Robert Burrill (5' 11'' tall, 200 pounds, age 33) and Samantha Burns (age 29) were inside their ground floor apartment at 616 Third Avenue.

Three men who were also Berlin residents showed up at their apartment, Nathaniel Stringfield, Jr. (6' tall, 237 pounds, age 23), Christian Badillo (6' 2'' tall, 250 pounds, age 28) and Dennis Ford (5' 5'' tall, 120 pounds, age 20). The three men burst into the Burrill/Burns apartment and demanded drugs, electronics and money. Two of the men,

---

<sup>8</sup> One of the investigating troopers noted a component from the BB gun on Stringfield's person at the scene. That observation is consistent with Stringfield having been in possession of the BB gun during the incident.

<sup>9</sup> Based on the material the hat was made of, it appears that it could have been used in conjunction with the hooded sweatshirt like a mask to conceal Stringfield's face.

Stringfield and Badillo, were armed with what appeared to Burns and Burrill to be handguns.

At approximately 7:59 p.m., the Berlin Police Department was dispatched to 616 Third Avenue for a report of an unconscious person lying on the ground. Corporal Hollie Dube and Officer Geoffrey Bardeen responded to the scene. As they surveyed the situation, Corporal Dube heard a person yell, "He's getting away." She turned and saw a male holding another male who had no shirt. The male with no shirt ran away, out of sight.

Corporal Dube approached the apartment building and saw two people standing on the porch of a ground floor apartment. The two people were identified as Samantha Burns and Robert Burrill. She could also see a black male lying face down on the ground. She checked this person and confirmed he was deceased. The deceased male was later identified as Nathaniel Stringfield, Jr.

Cpl. Dube noted that Burns was extremely upset and had blood spatter on her face. Burrill motioned to a chair on the front porch and told Cpl. Dube that his gun was there. He also said, "I shot him." Cpl. Dube asked what happened and Burns and Burrill told her that three men, two black males and one white male, barged into their apartment demanding money and a PlayStation. Burrill said the two black males had guns and masks on. The two black men grabbed Burn and Burrill and forced them into the apartment. Burns said she was choked and "pistol whipped" by the man who held her.<sup>10</sup> Burrill told the men he kept his money in the closet and went into his bedroom to where the closet was located. Burrill reached into the closet, got his gun and turned towards the two armed men in the bedroom. As he did that, a scuffle ensued. Burrill fired his gun once and he believed he hit one of the men in the process.<sup>11</sup> Badillo was the man who was shot and he fell onto the bed. During this time, it appears that the third intruder, Dennis Ford, entered the bedroom and picked up Badillo's gun. After that, the other armed man, Stringfield, ran out of the bedroom with Burrill in pursuit. Burrill fired a shot at Stringfield as the two entered the apartment's kitchen. Stringfield was hit in the back and ran out of the apartment and dropped to the ground just outside the door. He was later found to be deceased at the scene.

Burrill then directed his attention back to Badillo and watched as Badillo fled from the apartment. Dennis Ford ran from the scene after the shooting, carrying at least one gun. A neighbor called the police a short time later to report that Badillo was at his apartment building at 827 Western Avenue in Berlin and was bleeding from the head and upper body.

Christhian Badillo was taken to the Dartmouth Hitchcock Medical Center where he was treated for two gunshot wounds to his head and one to his left shoulder. Badillo

---

<sup>10</sup> That man is believed to have been Stringfield.

<sup>11</sup> This man was Badillo.

was arrested on January 14, 2010 and charged with Armed Robbery for his role in the home invasion.<sup>12</sup>

Dennis Ford was not located until several days after the incident. He was interviewed and denied any involvement in the home invasion and claimed he was elsewhere when it occurred. The police checked his alibi and found that it did not hold up and on December 9, 2009, he was arrested and charged with burglary for his role in the home invasion. On June 17, 2010, Ford pled guilty to that charge and was sentenced to three to six years in the NH State Prison.

Based on the forensic evidence and other evidence, it appears that Robert Burrill's gun contained three live rounds when the incident began. He fired that gun twice during the home invasion, which is confirmed by the two shell casings found in the apartment, the two expended bullets found at the scene and the one live round Burrill removed from his gun after the incident and put in his pocket.

The fact that Stringfield and Badillo were wounded four times means that it is most likely that at least four shots were fired during the incident. Since only two shots can be accounted for by Burrill's gun, the other shots had to have come from one of the intruder's guns. The only weapon recovered at the scene besides Burrill's was a BB gun. Since Badillo had three gunshot wounds and only one can be traced back to Burrill's gun, the other two wounds must have been caused by another firearm that was removed from the scene by one of the intruders after the incident. It is possible that there are up to two missing firearms since there are at least two additional shots that cannot be traced back Burrill's gun. However, based on the review of all the evidence, it appears most likely that the intruders had two guns in all, one a BB gun and one a "real" firearm. It also appears that Stringfield had the BB gun and Badillo had the real gun when the incident began. During the struggle in the bedroom, Badillo apparently dropped his gun and the third intruder, Ford, picked up that gun and fired at least two shots, wounding Badillo in the process. Ford then left the scene taking that gun with him, which was never recovered.

### **III. LEGAL ANALYSIS**

The deadly force used by Robert Burrill in this case consisted of two separate acts. First, Burrill shot Badillo in the head while the two were struggling in the bedroom. Second, Burrill shot Stringfield in the kitchen as Stringfield ran from the bedroom. Each act will be analyzed separately after a discussion of the applicable law.

#### **A. The Applicable Law Regarding The Use Of Deadly Force**

RSA 627:4 states that a person may be justified in using deadly force to protect themselves or others in certain circumstances. Three of those circumstances are potentially relevant here:

---

<sup>12</sup> Badillo's criminal charges were eventually dismissed by the Court who found him incompetent to stand trial.

RSA 627:4, II(a) permits the use of deadly force by an actor against another “when he reasonably believes that such other person [i]s about to use unlawful, deadly force against the actor or a third person”;

RSA 627:4, II(b) permits the use of deadly force by an actor against another “when he reasonably believes that such other person [i]s likely to use any unlawful force against a person present while committing or attempting to commit a burglary”; and

RSA 627:4, II(d) permits the use of deadly force by an actor against another “when he reasonably believes that such other person [i]s likely to use any unlawful force in the commission of a felony against the actor within such actor’s dwelling or its curtilage.”

Some discussion of the terms used in each of the above-sections is appropriate. 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). That means that in deciding whether a person acted in self-defense, all the circumstances surrounding the incident should be considered. See State v. Leaf, 137 N.H. 97, 99 (1993); Aldrich v. Wright, 53 N.H. 398 (1873). In addition, the actor’s conduct should be viewed “under 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.

RSA 627:4, III establishes that in some circumstances, the actor must retreat before resorting to deadly force. See RSA 627:4, III(a). However, a person is not required to retreat from the encounter if he is “within his dwelling” or the area immediately surrounding his dwelling (the curtilage). RSA 627:4, III(a).

It is also important to note that there are two distinctions between section (a) and sections (b) and (d) above. First, section (a) requires the threat be **imminent** (*about to use* language) while sections (b) and (d) only require the threat to be **likely**. And second, section (a) requires that the actor have been faced with “unlawful, deadly force” while sections (b) and (d) drop the “deadly” requirement and only require that the actor be faced with “any unlawful force.” These distinctions indicate that the threshold for using deadly force is lower where the actor is faced with a perpetrator in his or her home who is committing or attempting to commit a burglary or committing a felony against the actor within such actor’s dwelling or its curtilage.

Finally, in a case where the actor claims self-defense, the *State* would have the burden to disprove that claim beyond a reasonable doubt in order to obtain a conviction. See State v. McMinn, 141 N.H. 636, 644-45 (1997).

### **B. The Facts of This Case**

As soon as the incident began in the apartment's kitchen/entryway, Robert Burrill and Samantha Burns could have reasonably believed that they were faced with an imminent threat of unlawful force and/or deadly force. Factors supporting that conclusion include the fact that three unknown men had forced their way into their apartment, two of the men wore masks and two of the men were armed with what appeared to be handguns. The situation escalated once the three intruders entered the apartment because two of the men, Nathaniel Stringfield and Christian Badillo, physically assaulted Burrill and Burns, threatened them with handguns and demanded money and property from Burrill and Burns. In light of all that conduct, Burrill and Burns could have reasonably believed that Stringfield and Badillo were about to use unlawful deadly force against them or likely to use unlawful force against them during the commission of a burglary or some other felony.<sup>13</sup>

The situation remained volatile even after the three men made their initial forced entry into the Burrill/Burns apartment. Instead of retreating, the two men forced Burrill and Burns went into the bedroom. As that happened, Burrill was being held by the masked and armed Badillo, who stood behind Burrill with the gun pointed at his head. Meanwhile, Burns was being held by the masked and armed Stringfield who was assaulting her.

Burrill said it popped into his head to tell the intruder that he had everything he needed and it was in the closet. Burrill opened the door to the closet, reached in and grabbed his gun case, took the gun out and chambered a round. As he did that, Badillo pushed the closet door closed and grabbed Burrill's arm, wrestling for the gun. Burrill could see Stringfield holding Burns, hitting her with a gun and putting it in her mouth. Burrill and Badillo fell onto the bed and then Burrill got his hand free and fired at Badillo, hitting him in the head.

After Burrill shot Badillo, Stringfield let go of Burns and went into the kitchen. Burns said she saw her intruder (Stringfield) raise his gun and aim it, but she was not sure if he fired his gun or not. Burrill followed Stringfield, who was still holding a gun, into the kitchen and fired a shot at him as he stood in the kitchen. Stringfield, who was mortally wounded in the back, ran out of the kitchen and then fell to the ground just outside the door.

---

<sup>13</sup> Burglaries are felonies defined by RSA 635:1 as the entry into a home with the purpose to commit a crime therein. In addition to a burglary, other potential felonies committed by Badillo and Stringfield during the home invasion included armed robbery (RSA 636:1), reckless conduct (RSA 631:3), and second degree assault (631:2).

When asked how he felt at the time and what he was thinking, Burrill said he was scared and believed he would have to watch his girlfriend die in front of him and then be killed as well. He said that he could not shoot at Stringfield while he was assaulting Burns because they were “right together.” Burrill thought that Stringfield was going to kill Burns. Burrill said that he did not know where the third man (Ford) went during the incident.

In order to determine whether Robert Burrill’s shooting of Badillo and Stringfield was justified, consideration needs to be given to all the facts and circumstances as they would have appeared to a reasonable person in Burrill’s situation at the time.

The whole incident occurred within a brief amount of time and at no time did the situation truly de-escalate. Instead, from the moment the three men (Badillo, Stringfield and Ford) entered the apartment, the situation turned violent and potentially deadly for Burrill and Burns. At the time Burrill shot Badillo in the bedroom, Burrill had seen Stringfield assaulting Burns and watched as Stringfield put a gun in her mouth. Burrill also had one other intruder in his apartment and he knew at least two of the three intruders were armed with what appeared to be handguns. Burrill was also aware that two of the intruders had demonstrated their ability and intent to use violence by breaking into his apartment and assaulting and threatening him and Burns.

As for Stringfield, he was still armed with what appeared to be a real gun and had been assaulting Burns just moments before, including putting a gun in her mouth. Looking at the totality of the circumstances, it would not have been unreasonable for Burrill to have concluded that Stringfield’s movement from the bedroom to the kitchen could have been done so that Stringfield could get to a better location to attack Burrill or to link up with the third intruder. Based on all those facts, Burrill could have reasonably believed that Stringfield still posed a threat as he was either about to use unlawful deadly force against he and Burns or likely to use unlawful force against he and Burns during the commission of a burglary or some other felony. Therefore, in Burrill’s mind the threat posed by the intruders had not ended when he shot Badillo and followed Stringfield into the kitchen. However, even if Burrill was mistaken as to the actual threat still posed by Stringfield at the time he shot him, Burrill’s belief was reasonable given the circumstances he was faced with at the time of the shooting.

As set forth above, 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.” Gorham, 120 N.H. at 163-64. In other words, Burrill could have been mistaken about the actual danger posed by Stringfield in the kitchen but still have been justified in using deadly force if his belief was reasonable. In addition, all the facts need to be considered in light of the fact that Burrill’s conduct must be viewed “under 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.

Given all the facts known by Burrill at the time, the facts support the conclusion that Burrill's use of deadly force against Badillo and Stringfield was reasonable. From the moment the incident started, Burrill was in the midst of a dynamic situation, confronted by three men, at least two of whom were armed with what appeared to be handguns. The two armed intruders, Nathaniel Stringfield, Jr., and Christian Badillo were physically large men (Stringfield was 6' tall, 237 pounds; Badillo was 6' 2" tall, 250 pounds), who were bigger than Burrill and Burns. During the course of the incident those two men, who were armed with guns, had also physically assaulted Burrill and Burns causing them to fear for their lives. Therefore, a reasonable person in Burrill's situation would have believed that Badillo and Stringfield were about to use unlawful deadly force against him or his girlfriend or likely to use any unlawful force against them during the commission of a burglary or some other felony, during the home invasion incident.

An additional factor which indicates that Burrill acted reasonably under the circumstances is that he only used the amount of force necessary to protect himself and Burns. Even though his gun was loaded with three bullets, Burrill only fired twice; once at each armed intruder. Burrill also shot Stringfield while Stringfield was still in Burrill's apartment and not when Stringfield was outside, running away. Finally, after shooting Stringfield, Burrill did not use any additional deadly force against Badillo even though Badillo was still in Burrill's apartment. Instead, Burrill watched as Badillo stumbled out of the apartment. These facts confirm that Burrill used only the amount of force that was necessary to protect himself and his girlfriend and that he acted as a reasonable person would have under the circumstances as he knew them at the time.

#### **IV. CONCLUSION**

Based on all the facts and circumstances, it was reasonable for Robert Burrill to conclude that Christian Badillo and Nathaniel Stringfield, Jr., were about to use unlawful deadly force against him or his girlfriend or likely to use any unlawful force against them during the commission of a burglary or some other felony, during the home invasion incident. Therefore, Robert Burrill's use of deadly force was legally justified pursuant to RSA 627:4, II(a), (b) or (d) and no criminal charges will be brought against Robert Burrill for the shooting of Christian Badillo and Nathaniel Stringfield, Jr., on November 25, 2009.