

**ATTORNEY GENERAL'S FINAL REPORT ON OFFICER INVOLVED SHOOTING
IN KEENE, N.H. ON APRIL 17, 2012**

May 11, 2012

I. Introduction

The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to the officer-involved shooting in Keene, New Hampshire, which occurred on April 17, 2012. The findings and conclusions contained in this report are based on information gathered during the investigation, including Julio Angel DeJesus's autopsy, shooting scene examination, diagrams, information provided from investigators, interview reports, photographs, police investigative reports, and recordings of witness interviews. All of the police officers who were involved in the incident were cooperative with the investigation.

Based on the investigation's findings, and for the reasons detailed below, we find that the use of deadly force which resulted in the death of Mr. DeJesus was a justified use of deadly force by the police officer who shot and killed him.

The investigation has revealed that the officer's use of deadly force was precipitated by Mr. DeJesus's course of conduct on April 17, 2012, which created a situation where the two police officers that fired their weapons reasonably believed that they and others were in danger of death or serious bodily injury.

Mr. DeJesus, who had been released from prison in January 2012, had a long criminal record and was out on parole at the time of the incident. At the time Keene Lt. Eli Rivera and Officer James Lamoureux encountered Mr. DeJesus, DeJesus was fleeing from a burglary in progress, leaving his co-conspirators behind. If arrested or detained, DeJesus would have returned to prison, based on his criminal record, parole status, and criminal conduct. During his escape attempt, Mr. DeJesus fled from the police, drove at a high rate of speed through the city, and nearly collided with other cars on the road.

After fishtailing around a corner, Mr. DeJesus stopped his vehicle and fled, with Keene Police Officer James Lamoureux in pursuit. He then ran back to his vehicle, got in, and accelerated the vehicle quickly at Officer Lamoureux, who was on foot in front of the vehicle. To protect himself from being struck, Officer Lamoureux discharged his gun at Mr. DeJesus and struck him once, causing his death, and bringing the incident to an end.

Based on all the facts and circumstances of this case, Officer Lamoureux's fatal shooting of Mr. DeJesus was justified under the law.

II. Summary of Facts

On April 17, 2012, at approximately 10:10 p.m., the Keene Police responded to a 911 call for noise on the roof at Diversified Computers on 255 West Street; a possible burglary in progress. The business owner later informed police that she was inside the business when she

heard a commotion on the roof. She then called 911 for assistance. Keene Police Officers Jason Thompson and James Lamoureux were the first responders to the scene.

Officer Thompson was interviewed by members of the New Hampshire State Police in the early morning hours of April 18, 2012. He advised that he initially responded to the rear of the Diversified Computer building. When he got out of his cruiser he saw a male on the roof and heard this male yell, "Police, go." Officer Thompson saw a vehicle's brake lights come on and the vehicle drive towards the front of the building where Officer Lamoureux had arrived. Officer Thompson radioed to Officer Lamoureux that a vehicle was coming in his direction and then requested more units to assist with the burglary call.

Officer James Lamoureux was interviewed by members of the New Hampshire State Police Major Crime Unit and the Attorney General's office on April 20, 2012. Officer Lamoureux reported that he responded to the front of the Diversified Computer building to investigate the report of individuals on the roof. When Officer Thompson radioed to him, "do you have the car coming around the corner at you," he observed a black, two-door vehicle with no headlights, coming around the building at a high rate of speed. Officer Lamoureux immediately pursued this vehicle with his cruiser's lights and sirens on, but the operator of the vehicle, later identified as Julio Angel DeJesus, did not stop. This vehicle was a black, 1999 Mercedes that had been stolen from Salem, NH.

The pursuit continued through the city. During the pursuit Mr. DeJesus's stolen Mercedes ran through stop signs and red lights, failed to turn on its headlights, exceeded speeds of 80 mph in 30 mph zones, and nearly collided with a number of on-coming vehicles. The pursuit ended west-bound on Marlboro Street when the Mercedes appeared to fishtail and Mr. DeJesus stopped the vehicle in the east-bound lane, adjacent to the sidewalk. He then left the vehicle and fled.

Officer Lamoureux stopped his cruiser behind the Mercedes on Marlboro Street and pursued Mr. DeJesus on foot around the residence at 345 Marlboro Street. During this pursuit Officer Lamoureux ordered Mr. DeJesus to stop and show his hands, but he continued to ignore these commands. Mr. DeJesus was dressed in all dark colored clothing, including a hooded sweatshirt pulled up over his head. Officer Lamoureux observed Mr. DeJesus put his hands in the area of the front pouch of the sweatshirt and his waistband several times while pursuing him around the residence. Further commands to stop and show his hands went unheeded.

Instead, Mr. DeJesus ran back to the stolen Mercedes and turned on the engine. Officer Lamoureux positioned himself at the driver's side window, which was rolled down, and repeatedly ordered Mr. DeJesus to get out of the car, to show his hands, and to turn off the vehicle. Officer Lamoureux had his flashlight in one hand and his duty weapon in the other while giving these commands. However, Mr. DeJesus continued to ignore all of these commands. At this time, Officer Lamoureux could see one of Mr. DeJesus's hands on the

shifter, but could not see his other hand. Mr. DeJesus then revved the engine, spun the tires and put the Mercedes in reverse. This left Officer Lamoureux positioned in front of the Mercedes at the front left corner of the vehicle.

Officer Lamoureux had become aware that Lt. Rivera had arrived and had parked his cruiser to block in the Mercedes. Lt. Rivera was initially on or near the passenger side of the Mercedes, but after the Mercedes reversed Officer Lamoureux didn't know where Lt. Rivera was located. Officer Lamoureux continued to order Mr. DeJesus to turn off the car, to show his hands and to exit the vehicle. Instead, Mr. DeJesus turned his head towards Officer Lamoureux, smirked, squealed his tires, and turned the wheel of the vehicle to the left, directly towards Officer Lamoureux. The Mercedes immediately pulled forward, spinning its tires. As that happened, Officer Lamoureux believed that he and Lt. Rivera were in immediate danger of serious bodily injury or death from the Mercedes and he fired his weapon at the driver, Mr. DeJesus.

As Officer Lamoureux fired, he moved to his right to get out of the path of the Mercedes. The Mercedes brushed his clothing as it continued onto the sidewalk, running down the street sign for Prescott Street. The Mercedes preceded towards Marlboro Street, east-bound, which intersects with Main Street. That night there were a large number of pedestrians and cars in the downtown area. Officer Lamoureux believed that if the vehicle continued, the public was in danger of serious bodily injury or death based upon how Mr. DeJesus had operated the vehicle during the earlier pursuit. He then fired his weapon multiple times at DeJesus's car, towards the driver's seat of the Mercedes. Mr. DeJesus's vehicle crashed head on into a utility pole at the easterly corner of Prescott Street and Marlboro Street and came to a stop.

Mr. DeJesus immediately got out of the Mercedes, but collapsed as Officer Lamoureux and Sgt. Derendal, who had just arrived at the scene, approached and handcuffed him. Officer Lamoureux, who is also an EMT, then immediately began medical treatment for Mr. DeJesus as an ambulance was called to the scene. In spite of those rescue efforts, Mr. DeJesus died at the scene.

When Mr. DeJesus was finally stopped, he was found to be wearing all black clothing, including black gloves, black pants, a dark hooded sweatshirt over his head, a black mask under his chin, and a portable radio around his neck. In addition, a later search of the Mercedes revealed a crow bar and other dark clothing in the trunk. All of that clothing and equipment was consistent with his role as a co-conspirator in the attempted burglary, which had brought him to the attention of the police. A further search of Mr. DeJesus's person revealed that he was not in possession of a handgun or other weapon.

Lt. Eli Rivera was interviewed by members of the New Hampshire State Police Major Crime Unit and the Attorney General's Office on April 24, 2012. Lt. Rivera stated that he joined the vehicle pursuit on April 17, 2012, in the area of Main Street and Route 101. Lt. Rivera had

watched the Mercedes drive through that intersection at a high rate of speed without headlights, headed east-bound. Lt. Rivera witnessed the Mercedes swerve into the west-bound lane on Route 101, almost hitting an oncoming vehicle, just before the Optical Avenue intersection. Lt. Rivera was behind Officer Lamoureux in the pursuit and heard over the radio that the driver was bailing out of the vehicle.

When Lt. Rivera turned onto Marlboro Street he saw Officer Lamoureux's cruiser parked in the oncoming lane of traffic, directly behind the Mercedes. Lt. Rivera then parked his SUV cruiser directly in front of the Mercedes, facing the front of his police SUV towards the sidewalk and the Prescott Street sign post.

When Lt. Rivera got out of his cruiser he started to run in front of the Mercedes. Believing a foot pursuit was still ongoing; he intended to disable the vehicle. However, at this time Lt. Rivera observed Officer Lamoureux at the driver's side window of the Mercedes. Lt. Rivera then realized that the suspect was still in the car, because the engine was revving and the tires were spinning. The Mercedes then pulled forward directly at Lt. Rivera. Lt. Rivera backed up in an attempt to avoid being struck by the vehicle, but knocked into his own cruiser. Lt. Rivera moved to his left, positioned at the front of the Mercedes on the passenger side with his duty weapon drawn and pointed downward towards the tire. At this time, Lt. Rivera thought he was going to be sandwiched between the Mercedes and his cruiser and killed. Believing that he was in danger of serious bodily injury or death, Lt. Rivera fired his weapon at the Mercedes's front tire in an attempt to stop the car. Lt. Rivera did not fire at the driver because of the risk of also shooting Officer Lamoureux.

As the Mercedes continued to move forward over the street sign post in front of Lt. Rivera's cruiser, it turned again towards Marlboro Street. Lt. Rivera believed that the public in the downtown area was in danger of serious bodily injury or death based upon the operation of the Mercedes had been driven during the initial pursuit through the downtown area. Lt. Rivera fired his gun multiple times at the Mercedes. The vehicle then collided with a utility pole at the corner of Prescott Street and Marlboro Street. At the scene, Officer Lamoureux told Lt. Rivera that he believed Lt. Rivera was going to be killed by the Mercedes.

Sgt. Thaddeus Derendal was interviewed by members of the New Hampshire State Police on April 17 and April 18, 2012. Sgt. Derendal reported that during the pursuit in this case, he was traveling on Marlboro Street east-bound, from the area of Main Street, attempting to get in front of the pursuit. As he approached Prescott Street he observed the Mercedes drive around Lt. Rivera's cruiser and head directly towards him. Sgt. Derendal attempted to block the Mercedes with his cruiser. As he got out of his vehicle he heard several gunshots and then saw the Mercedes collide into the utility pole. Mr. DeJesus immediately jumped out of the car, but then collapsed as Officer Lamoureux and Sgt. Derendal approached him. Officer Lamoureux then provided emergency medical care to Mr. DeJesus, as an ambulance was called to the scene.

At the scene Lt. Rivera told Sgt. Derendal that he thought the driver of the vehicle had tried to run him over.

Officer Steve Corrigan was interviewed by members of the New Hampshire State Police Major Crime Unit on April 18, 2012. Officer Corrigan reported that he was on duty with the Keene Police on April 17, 2012. Officer Corrigan attempted to stop the Mercedes on Route 101 with stop sticks, but did not have enough time to deploy them before the car sped past him.

When Officer Corrigan caught up to Officer Lamoureux and the Mercedes on Marlboro Street, he saw Officer Lamoureux's cruiser directly behind the Mercedes. Officer Corrigan parked his cruiser facing the front passenger side of the vehicle. As he got out of his cruiser, he observed the Mercedes back up. Officer Corrigan heard Officer Lamoureux, who was standing at the driver's side of the vehicle with his weapon drawn, ordering Mr. DeJesus to get out of the car. Officer Corrigan approached the Mercedes and broke the passenger window with his baton and also ordered the driver to get out of the car. Before he could holster his baton, the Mercedes pulled forward, drove over the street sign, and then he heard shots being fired. Officer Corrigan was not aware that Lt. Rivera had arrived on the scene until after the car pulled forward and shots were fired.

III. Physical Evidence and Autopsy Results

Julio Angel DeJesus, 35 years old, of Lawrence, Massachusetts was the driver of the Mercedes who was killed in this incident. Dr. Thomas Andrew, the Chief Medical Examiner, conducted an autopsy on Mr. DeJesus's body on April 19, 2012. Dr. Andrew determined that the cause of Mr. DeJesus's death was a single gunshot wound to the neck. The trajectory of the wound showed that the fatal bullet entered and exited the front of the left shoulder, and then re-entered at the base of the neck on the left. A partially jacketed bullet was recovered from the area of the right scapula. Chemical analysis of Mr. DeJesus' blood revealed no evidence alcohol or illegal drugs in his system, and no other findings of forensic significance. The manner of Mr. DeJesus's death has been ruled homicide, meaning that Mr. DeJesus died at the hands of another.

The scene on Marlboro Street was secured by the New Hampshire State Police and processed by members of their Major Crime Unit. Nine spent handgun shell casings were recovered at the scene in the general area where the two officers reported they were standing when they fired their weapons.

Lt. Rivera and Officer Lamoureux's weapons were secured at the scene and will be examined at the State Forensic Laboratory. Lt. Rivera's weapon was missing 3 rounds of ammunition and Officer Lamoureux's weapon was missing 6 rounds, for a total of 9 rounds missing. That is consistent with the spent shell casings found at the scene.

The Mercedes was secured at the scene and has been searched and examined by members of the Major Crime Unit. Four bullets were found lodged in the vehicle. The front, passenger side tire was blown out and the rear passenger tire was bent. There was damage to the rear axle, the right rear view mirror was ripped off, and there was scraping to the right side of the car.

All of the physical evidence recovered from the scene is consistent with the facts provided by the officers involved and present at the scene of the shooting, as outlined above. In addition, based on the evidence derived from the autopsy and the physical evidence at the scene, one of the nine shots fired by Lt. Rivera and Officer Lamoureux hit Mr. DeJesus's body. That fatal gunshot was fired by Officer Lamoureux. The trajectory of the wound caused by that gunshot is consistent with Officer Lamoureux firing at the Mercedes while he was in the area at the front of the car, as he described. None of the other shots fired by Lt. Rivera hit Mr. DeJesus.

IV. Background and State of Mind of Julio Angel DeJesus

Mr. DeJesus had a significant prior criminal record at the time of this incident. That record included felony convictions in New Hampshire for:

- 1998- Criminal Threatening;
- 1999-Theft by Unauthorized Taking;
- 1999-Receiving Stolen Property;
- 1999-Criminal Mischief;
- 1999- Five Counts of Reckless Conduct;
- 1999-Theft by Unauthorized Taking;
- 2005-Dispensing a Controlled Drug; and
- 2010-Escape from the New Hampshire State Prison.

Mr. DeJesus had been released from the New Hampshire State Prison on January 25, 2012, and was out on parole at the time of the incident.

In addition, the evidence is clear that Mr. DeJesus was involved in a burglary on the night of this incident. An employee at Diversified Computers in Keene had called the police because she heard intruders on the roof. When the police arrived and eventually searched the area, they captured two of Mr. DeJesus's co-conspirators; Jonathan Figueroa and William Rodriguez. The police also found many items, which the burglars had brought with them to commit their crime, including another stolen vehicle, dark clothing and tools to break into the targeted business.

In light of Mr. DeJesus's prior criminal record, his recent release from prison, his parole status, and his involvement in a burglary on the night of the incident he chose to resort to reckless and potentially deadly conduct in order to try and avoid capture by the police and a certain return to prison.

V. The Applicable Law and Legal Standards

New Hampshire's laws regarding self defense, defense of others and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer is justified in using deadly force when he reasonably believes that such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force. 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). All the circumstances surrounding the incident should be considered. See id. at 99; Aldrich v. Wright, 53 N.H. 398 (1873). Therefore, the use of deadly force may be justified even if the actor was not confronted with actual deadly force, as long as the actor's belief was still "reasonable" under all the facts and circumstances.

Depending on the facts and circumstances, a car may be a deadly weapon. See State v. Hull, 149 N.H. 706, 707 (2003).

Finally, when the State analyzes a person's claim of self defense or defense of another, the State has the burden to disprove that claim 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.

VI. Conclusion

The evidence demonstrates that the police encounter with Julio DeJesus began as a response to a felony burglary in progress at Diversified Computers on West Street in Keene. Rather than surrender and face a return to prison, Mr. DeJesus chose to get into a stolen Mercedes Benz automobile and flee from the police.

During his flight from the police, Mr. DeJesus put his life, the lives of the police officers pursuing him, and the public at risk of death or serious bodily injury. He did that by fleeing from the police, leading the officers on a high speed chase through the City of Keene, traveling in excess of 80 mph without headlights, ignoring traffic control signs and signals, crossing into other lanes of traffic, and nearly colliding with several vehicles. Under the circumstances, the stolen car Mr. DeJesus was driving was a deadly weapon.

The risk posed by Mr. DeJesus was compounded by his failure to comply with the police. During the pursuit, Mr. DeJesus ignored the lights and sirens of the marked police cruisers attempting to stop him. When he did stop his vehicle, Mr. DeJesus continued to be non-compliant with Officer Lamoureux's commands to stop and show his hands, as he ran from the

stolen car he had been driving, around the yard of the residence at 345 Marlboro Street, and then got back into his car in another attempt to flee.

When ordered at gunpoint to turn off his vehicle, and show his hands, Mr. DeJesus escalated an already dangerous situation by revving his car's engine, backing up, and then accelerating in the direction of Officer Lamoureux and Lt. Rivera.

Clearly, this was a fast moving, dynamic and very dangerous situation. In light of all of Mr. DeJesus's conduct that night, both officers reasonably concluded that they were in imminent danger of serious bodily injury or death from the use of deadly force. In addition, they had a reasonable belief that if Mr. DeJesus was allowed to continue to drive in the reckless manner he had been driving previously, members of the public would have been in danger of death or serious bodily injury from DeJesus's stolen car; a deadly weapon under the circumstances.

Based upon all of the facts and circumstances known to Officer Lamoureux and Lt. Rivera at the time, and examining the situation objectively from the standpoint of a reasonable police officer in the same position, it was reasonable for those officers to conclude that Mr. DeJesus was about to use deadly force against them when he failed to obey their commands, failed to show his hands, failed to turn off the car, and accelerated towards them. Therefore, Officer James Lamoureux and Lt. Elli Rivera were legally justified in using deadly force against Mr. DeJesus to defend themselves and each other, from what they reasonably perceived to be the imminent use of deadly force by Mr. DeJesus.