

**ATTORNEY GENERAL'S REPORT ON OFFICER-INVOLVED SHOOTING IN
MANCHESTER, NH ON JUNE 3, 2013**

June 26, 2013

INTRODUCTION

The purpose of this report is to summarize the Attorney General's findings and conclusions with regards to the incident that led to the officer-involved shooting. Please note that, since the person who was shot during the incident has been charged with several crimes and his criminal case is ongoing, the amount of information contained in this report is being limited in order to protect the integrity of that ongoing criminal case.

FACTS

On June 3, 2013, at shortly before 6:00 p.m., Manchester Police Department Bicycle Officers Pat Mullen and Ferdinand Cruz responded to a call from the 7 Days Market on Union Street for a reportedly unconscious adult male. EMTs from the Manchester Fire Department had arrived prior to the police officers. By the time the bicycle officers arrived, the adult male had fled the area, driving a green Jeep Commander.

Officers Mullen and Cruz pursued the Jeep on their bicycles, attempting to stop it because the driver was believed to be impaired. The officers were wearing Manchester police uniforms. On two occasions during the pursuit, one of the officers pulled up to the front windows of the Jeep and yelled at the driver to stop. The driver of the Jeep did not stop. When the officer got right next to the driver's side window and issued the command to stop, the driver looked at him and mouthed the word "No." At this point, the bicycle officers requested back-up to assist them in stopping the vehicle.

Manchester Detective/Sergeant Joe Mucci, along with Manchester Detectives Mike Bergeron and Mike Lavallee were in the area in an unmarked GMC Yukon. Detective Lavallee was driving the Yukon, with Detective Bergeron in the front passenger seat, and Sgt. Mucci in the rear. All three officers were in plain clothes, but with police firearms, ammunition, and radios. They were wearing their police badges on chains around their necks so that they were clearly visible on their chests. The Yukon was equipped with a police siren and blue lights. The officers heard over their radio that the bicycle officers were requesting assistance to stop the Jeep. At least one of these officers remembered hearing that the male driving the Jeep had become combative when EMTs tried to assist him. The three officers in the Yukon spotted the Jeep on Beech Street, traveling south. They noted that the Jeep was being followed by an unmarked vehicle being driven by an undercover Manchester police officer, and that the two bicycle officers were behind the undercover officer, still in pursuit of the Jeep.

The Jeep turned off Beech onto Litchfield Lane, a small alley. The officers observed that the Jeep was traveling too fast for the area, and that there were pedestrians in the area who had to get out of the way of the Jeep. At about this point, Detective Lavallee activated the Yukon's lights and siren. The Jeep then turned onto Union Street, traveling towards Merrimack Street.

On Union Street, the Yukon overtook the undercover vehicle, placing the Yukon directly behind the Jeep. The operator of the Jeep, however, appeared to speed up and then made an abrupt left turn onto Merrimack Street, heading towards Pine Street. The Yukon followed, still with lights and siren activated. The Jeep suddenly turned left into a small driveway/alley between 187 and 181 Merrimack Street, which leads back onto Litchfield Lane. The Yukon was unable to make the turn into the driveway/alley. At this point, Sgt. Mucci and Detective Bergeron got out of the Yukon and began running down Merrimack Street, towards Pine, in an attempt to intercept the Jeep.

Detective Bergeron and Sgt. Mucci reached a parking lot on Merrimack Street near Pine Street in time to see the Jeep turning into the parking lot from Litchfield Lane and coming towards them at a high rate of speed. The Jeep came within five feet of Detective Bergeron, causing him to drop his police radio and flashlight and draw his firearm. Sgt. Mucci also drew his firearm, and both officers yelled at the operator of the Jeep to stop, as they pointed their firearms at him. The operator of the Jeep appeared to the officers to be impaired. Although he looked directly at the officers, he ignored their commands to stop.

At this point, Detective Lavalley, driving the Yukon, turned into the parking lot from Merrimack Street, and positioned the Yukon in front of the Jeep. Detective Lavalley did this because he feared that Sgt. Mucci and Detective Bergeron were about to be run over by the Jeep. Meanwhile, the undercover officer had driven to a point on Merrimack Street just beyond the entrance to the parking lot and positioned his vehicle there to prevent the Jeep from leaving in that direction, towards Pine Street. As Detective Lavalley drove towards the Jeep, he had his window rolled down, and was leaning out of it, shouting "Stop! Police!" The operator of the Jeep, however, rammed the Jeep into the front of the Yukon. Detective Lavalley began using the Yukon to push the Jeep back, during which the Jeep turned so that it was backed up near the building on the east edge of the parking lot. The Yukon was now positioned in front of the Jeep, with the front driver's side of each vehicle touching the other. Detective Lavalley was still using the Yukon to attempt to push the Jeep back, and the Jeep was continuing to push against the Yukon in an attempt to get away.

Detective Bergeron was standing directly in front of the Jeep, about 10-15 feet away, and Sgt. Mucci was to his left. They were both shouting commands, saying "Police! Hands up!" and "Stop!" to the operator of the Jeep. At one point, Sgt. Mucci placed his badge directly against the window of the Jeep, again ordering the operator to stop. He also attempted to pull open the passenger side door, but it was locked. He then attempted to break the passenger side window, but was unsuccessful. Detective Lavalley noted that the Jeep appeared to be about to get around the driver's side of the Yukon. He feared that if the Jeep did so, it would run over Sgt. Mucci. At about this time, Sgt. Mucci decided to fire at the tires of the Jeep in an attempt to stop it. He fired at least two shots, and one of Jeep's tires deflated.

After this, Detective Lavalley noticed that the Jeep was about to get around the Yukon. He therefore pulled out his firearm, pointed it out his window at the driver of the Jeep, and yelled that if the operator did not stop the Jeep, he would shoot. The driver of the Jeep did not stop, and, just as the Jeep was about to drive past him, Detective Lavalley fired three times at the Jeep, aiming low because of the apartment building behind the Jeep. As the Jeep pulled around the

Yukon and headed back onto Merrimack Street, Detective Bergeron dove behind the Yukon to avoid being hit; Sgt. Mucci also had to jump out of the way of the Jeep to avoid being hit. The undercover officer, from his position on Merrimack Street, had also drawn his weapon during the confrontation in the parking lot, and had identified himself as a police officer and ordered the operator of the Jeep to stop, with no success. As the Jeep broke away from the Yukon, it headed back onto Merrimack Street, directly at this officer. At this point, the undercover officer fired his weapon at the Jeep.

The operator of the Jeep turned right onto Merrimack Street, heading back the way he had come. At this time other Manchester police officers converged on the Jeep and it finally stopped. The operator, however, continued to refuse to get out the Jeep and had to be dragged out by several officers. One of the officers then had to use a Taser to get the operator of the Jeep to stop struggling with officers who were trying to handcuff him.

The Jeep's operator was subsequently identified as 37 year-old Christopher Varagianis. He was transported by ambulance from the scene of the shooting to the Elliot Hospital, where he was found to have sustained two gunshot wounds to the leg. Plainly visible within the front compartment of the Jeep was an alcoholic beverage and a syringe.

Preliminary results of the search of the parking lot where the shooting incident occurred and the Jeep Mr. Vagiainis was driving appear to confirm the officers' accounts of the shots they fired, but a more detailed account will not be possible until ballistics are completed.

LEGAL STANDARD AND ANALYSIS

Pursuant to RSA 627:5, I, a law enforcement officer may use non-deadly force on another person when he "reasonably believes it necessary to effect an arrest or detention . . . unless he knows the arrest or detention is illegal . . ." Under the facts set forth above, the officers who were pursuing Mr. Varagianis knew that he had been unconscious and had refused medical help just prior to leaving the 7 Days Market. Based on their observations of him during the attempt to stop his vehicle they had reason to believe that he was impaired, and therefore they had reason to believe it was necessary to stop him in order to investigate whether he was fit to operate a motor vehicle. Furthermore, the officers' observations of the manner in which Varagianis operated the Jeep during the pursuit also contributed to their reasonable belief that his continued operation of the vehicle presented a danger to the public. Therefore, Detective Lavallee's non-deadly use of the Yukon to try to force Varagianis to stop so that he could be detained or arrested was justified, as was the officers' display of their firearms for the same purpose. *See* RSA 627:9, IV ("[t]he act of producing or displaying a weapon shall constitute non-deadly force").

When the officers fired their weapons at the Jeep, this constituted the use of deadly force. *See* RSA 627:9, II ("Deadly force" includes firing a firearm at a vehicle in which another is believed to be). Pursuant to RSA 627:5, II(a), a law enforcement officer is justified in using deadly force when he reasonably believes such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force. Thus, the officers were justified in firing upon the Jeep if they reasonably believed that they or another person was in imminent danger of the use of force which created a substantial risk of death or serious bodily

injury. See RSA 627:9, II (“Deadly force” means any assault or confinement which the actor commits with the purpose of causing or which the actor knows will create a substantial risk of causing death or serious bodily injury).

The phrase “reasonably believes” means that the actor, i.e., the person using deadly force, “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 justifiably acted in self-defense, all the circumstances surrounding the incident should be considered from the perspective of a reasonable person. See *Leaf*, 137 N.H. at 99; *Aldrich v. Wright*, 53 N.H. 398 (1873). 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).

When reviewing a deadly force incident, 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. Thus, even a mistaken belief that deadly force was necessary could still be justified under the law if that belief was reasonable, since the law does not require the person using deadly force to “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.

CONCLUSION

When the officers fired their weapons, they were confronted with such deadly force. Mr. Varagianis accelerated the Jeep he was operating towards the officers, who were outside their own vehicles, on more than one occasion. When Sgt. Mucci initially fired his weapon at the Jeep, he fired at the tire, in an attempt to get Varagianis to comply with the officers’ lawful commands to stop the Jeep and get out. When Detective Lavallee fired his weapon at the Jeep, he reasonably believed that, unless he did so, the Jeep would run over Sgt. Mucci or Detective Bergeron. When the undercover officer fired his weapon at the Jeep, he reasonably believed that the Jeep might run him over as well. Thus, Mr. Varagianis was using the Jeep as a deadly weapon, in a way that created a substantial risk of causing death or serious bodily injury to one or more of the officers. See RSA 625:11, V (“Deadly weapon” includes any “thing, which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury”). Accordingly, based on all the facts and circumstances known to the three police officers who fired their weapons during this incident, it was reasonable for them to conclude that the use of deadly force was necessary to either protect themselves or another officer. Therefore, their use of deadly force was justified under the law.

The State Police Major Crime Unit and the Attorney General’s Office is continuing to investigate this matter. A more comprehensive written report concerning this incident will be issued by the Attorney General’s Office in the future, after all witness interviews and evidence examinations have been completed and compiled in reports for final review, and the criminal case against Mr. Varagianis has concluded.