

**ATTORNEY GENERAL'S REPORT REGARDING AUGUST 27, 2014
OFFICER-INVOLVED SHOOTING INCIDENT IN MANCHESTER, NH**

November 6, 2014

I. INTRODUCTION

The Office of the Attorney General, the State Police Major Crimes Unit and the Manchester Police Department conducted an investigation into an officer involved shooting, which occurred in Manchester, New Hampshire on August 27, 2014. The incident resulted in injuries to Lillian Alonzo (age 49). Throughout the process, all law enforcement officers directly and indirectly involved in the incident were completely cooperative with the investigation. Because the Attorney General has concluded that Drug Enforcement Administration ("DEA") Agent Michael Connolly's discharge of a firearm was not a criminal act, but rather was accidental, Connolly will not face criminal charges in connection with the shooting incident.

II. FACTS

On August 21, 2014, United States Magistrate Judge Andrea K. Johnstone issued a federal search warrant for an apartment located at 110 Beech Street, Apartment #3, Manchester New Hampshire ("the Apartment"). Members of the DEA Southern New Hampshire High Intensity Drug Trafficking Area Task Force ("HIDTA Task Force") had gathered information that the Apartment was a location for storing money in connection with a large-scale drug operation.¹ Alonzo (who also goes by the name Lillian Nunez), was the sole resident of the Apartment.

DEA agents received information on August 26, 2014, that drug operation activity would occur the following day. On August 27, 2014, at approximately 6:00 a.m., DEA agents and SWAT team members met regarding the plan to search and seize items at the different locations. DEA agents and members of the HIDTA Task Force then created a specific plan for their entry into the apartment, separate from the SWAT team's plans for the other locations. Five agents were assigned to remain on the perimeter of the apartment. Six members of the team were assigned to enter the building in a single-file line, walk up the stairs to the third floor, and enter the apartment. All of the entry team members wore clothing or carried objects clearly marking that they were DEA agents and/or police.

DEA Agent Michael Connolly was assigned as a breacher, which means that he was the first person in the line of agents approaching the apartment, and would use a breaching device to force the entry door open if need be. The second person in the line, UC1,² acted as a shield for the entry team. UC1 held the shield in his/her left hand and his/her gun in his/her right hand in

¹ Other locations and individuals were searched and seized as a part of this operation, but because this investigation is limited to the events occurring at the Apartment on August 27, 2014, the report will be limited to that review and make reference to the other events only where relevant.

² Because all members of this operation were acting as undercover officers at the time of the incident, they will not be named in this report and instead, will be referred to as "UC1", "UC2", etc.

order to assist in clearing the apartment. Four other undercover officers, UC2, UC3, UC4 and UC5, entered the apartment in that order. The perimeter team consisted of five undercover officers, UC6, UC7, UC8, UC8 and UC10.

The team remained in place at a location close to the apartment until just before 7:00 p.m., when the DEA informed them that they were set to go to the apartment. The team drove to the location in multiple vehicles and pulled up around the apartment building. From there, the entry team assembled into their positions, entered the front door of the apartment building facing Beech Street, and proceeded up the stairs. The perimeter team went to the back staircase of the apartment building. The team had earlier been notified that there may have been a gathering of people in the back yard, but when they arrived, there was no such gathering.

A. Statements From The Entry Team Excepting Connolly

What follows is a compilation of the statements from the entry team, which were consistent with each other, and made within 24 hours of the incident. Excepted from this is Connolly's statement, which is below.

After knocking and announcing their presence, the entry team made their way into the apartment. As they moved through the apartment, they cleared each of the rooms to ensure that there were no threats before searching the apartment pursuant to the warrant. The young woman who opened the door to the apartment stayed near the doorway, as another child ran into a hallway and stood near the laundry area on the right of the hallway with another child and two other women, one of which was carrying a small child in her arms. UC1 and UC2 walked past the living room on the left and the kitchen on their right toward the hallway, off of which all three bedrooms were located. At the beginning of the hallway to the left was the first bedroom, located before the laundry area. The laundry area was set into the right side of the hallway, in between the kitchen and the bedroom on the right. Two sets of accordion doors were coming out of the hallway wall at a 90 degree angle at either end of the laundry area of the hallway.

UC1 and UC2 entered and began to clear the bedroom on the left. UC4 entered the apartment and began to calm down the young woman at the door. UC5 saw this upon his entry into the apartment, and took the young woman from UC4 so that UC4 could return to the other officers and help clear the apartment. UC5 brought the young woman into the living room, away from the hallway. At the same time, UC1 and UC2 finished clearing the first bedroom on the left. UC4 went toward the laundry area and removed the other two women and two small children from the hallway as the team worked their way through it to clear the remaining bedrooms. UC3 and Connolly worked their way down to the last bedroom on the left. The door to the bedroom was locked and closed.³ UC3 and Connolly kicked the door, but it would not open. UC3 noticed that Connolly's foot was caught in the door, causing Connolly to fall back. UC3 then heard a pop.

Just as UC4 brought the residents into the kitchen, UC5 heard a single gunshot. UC5 assumed they were taking fire. UC5 brought the young girl toward the rest of her family in the

³ Members of the entry team later expressed that they knew the house was a money house related to a large scale drug operation, and that the possibility existed that guns could be at the apartment.

kitchen, when UC5 noticed that UC4 had blood spatter on him/her. It was UC5 who noticed that Alonzo, who was still calm, was bleeding from her arm. She was immediately removed from the apartment and brought down the stairs while UC5 called 911. UC2 and UC1 went down the hallway after hearing the shot, and the bedroom door was finally opened and the room was cleared. Connolly stated, "That was me, it was an AD (meaning an accidental discharge)." UC2 notified the team that the shot had been an accidental discharge.

The entire event from entry into the home until removing Alonzo from the residence occurred in less than one minute. UC2 went to the kitchen where he/she saw blood, and then went to the end of the hallway where he/she found the bullet hole in the accordion doors near the washer and dryer. UC1 cleared the final bedroom and left via the rear staircase which lead from that final, previously locked bedroom down to the floor level of the apartment building where the perimeter team had been waiting. Two members of the perimeter team, UC6 and UC9, traveled up that staircase and met UC2 in that bedroom. UC7, UC8, and UC10 went to the front of the apartment building. UC5 went upstairs to notify UC2 of the situation, but did not re-enter the apartment after leading Alonzo out.

Sergeant Joseph Mucci of the Manchester Police Department arrived in response to a radio call from one of the members of the perimeter team requesting an ambulance and additional units to the apartment. Sgt. Mucci pulled up to the building and saw task force officers in the front door, dressed in tactical gear. UC4 applied gauze and pressure to Alonzo's arm, while UC7 applied a tourniquet to her arm. Sgt. Mucci retrieved his medical kit to assist the medical treatment already being given to Alonzo. He walked Alonzo out to the ambulance, which brought her to Elliot Hospital for further treatment, after which she was released. The bullet had traveled through Alonzo's arm, and into her abdomen. Her injuries were non life threatening.

Connolly later told UC1 that he was kicking the door, fell back, and his left hand, which was the hand he held his gun in, hit the door jam. Connolly told UC2 that he kicked the door, his hand hit the door jam, and the gun went off. UC1 and UC2 did not see these events as they were still in the first bedroom to the left when they heard the shot.

B. DEA Agent Michael Connolly's Interview

Michael Connolly is a law enforcement officer with over 28 years of law enforcement experience. Approximately twenty of those years have been as an agent for DEA New Hampshire, and 18 of those have been as the primary firearms and tactical instructor for New Hampshire DEA agents.

Connolly stated that he carried a ram on his way up the stairs and into the apartment to gain entry into the apartment if he needed to. His handgun, a Glock 9 mm, was holstered. Upon getting to the top of the stairs and approaching the front door, Connolly heard children in the apartment. For this reason, he whispered to the entry team not to use the ram on the door. Instead, he knocked on the door. One of the other members of the entry team yelled "Policia" twice and yelled for the resident(s) to open the door.

A young female opened the door, which UC1 pushed open further. UC1 entered the apartment and traveled past the living room and into the hallway straight ahead of Connolly. Connolly placed his ram down, and saw three members of the entry team pass him and begin to clear rooms in the apartment. Connolly unholstered his gun, and, holding it in his left hand, kept it close to his left side. He went to the end of the hall, and moved people to the right as he did so. He entered the last bedroom in the apartment. He was in the doorway of that room when he turned around and saw the door now immediately in front of him, presumably leading to the only un-cleared bedroom, was shut. He heard one of the members of the entry team say that the door was locked, and saw one of them try to kick the door down. The door flexed but did not pop open. Because of the close proximity between the doorway Connolly was standing in and the locked bedroom door on the other side of the hallway, Connolly was close enough to kick the door from his position. He stated, "I got it," raised his left leg, and hit the door with the sole of his foot. The door again flexed, but did not open. His gun was in his left hand pointed at the ground, with his finger outside the trigger. Connolly brought his left leg down, and prepared to hit the door again with the same foot, only this time he was trying to hit the door harder and higher so that it would open.

Upon hitting the door with his foot a second time, Connolly's boot went through the door, which was hollow and splintered open around Connolly's boot. Some of the door that was splintered caught Connolly's boot when he tried to pull his left leg back, preventing him from bringing his leg back in a standing position. Because he was caught with his left foot in the door, Connolly began to stumble toward his right shoulder, falling into the open room where he was standing. As he did so, his head turned right in the direction he was falling. As Connolly was stumbling backward, he heard a gunshot to his left. He turned in the direction of the shot and was able to get his feet under him and regain a standing position. He saw his left arm in a locked position, and noticed that his gun looked extremely black. He saw his trigger finger along the slide of the gun. He did not remember feeling recoil. He felt time slow down and wondered if the shot he heard was from him. He wondered how that happened. Sound started coming back to him and he heard UC2 shouting commands at the team. Connolly realized that the team thought they were taking rounds from someone in the apartment. Connolly holstered his gun and told UC2 that he had an "AD," which stands for accidental discharge.

Connolly stated that the only time he would ever place his finger on the trigger is to shoot. Although he does not remember feeling his hand strike anything or feeling any recoil, he noted it was possible his left hand slammed against the molding and that is what stopped him from falling to the ground, allowing him to regain his balance. He also noted that it was possible that when a person falls with one hand, the other hand can crunch in "sympathetic discharge." He had a bruise about two to three inches down his left wrist a few days after the shooting, indicating that he did in fact hit the doorway with his left wrist.

Connolly saw the other members of his team open the door to the locked bedroom. He then looked left and saw a bullet hole that traveled through two sets of accordion doors which were folded out, exposing the laundry area set into the hallway between the bedroom Connolly was standing in and kitchen/living room area. He also saw a powder burn on the left molding of the doorway he was standing in when he began to fall back. The powder burn was at approximately the same height as the bullet hole. Connolly went back into the hallway and

exited the apartment building. He waited for the Manchester Police Department to arrive and when they did so he gave them his gun. He never saw Alonzo after he kicked the door.

C. Lillian Alonzo's Statement

Lillian Alonzo, 49, was interviewed on August 28, 2014, at approximately 10:00 a.m. at the Elliot Hospital. She said that on August 27, 2014, she was at home with a friend, her daughter, and two grandchildren. She knew the friend's name was Delores but could not provide an address or last name for Delores. She said she and her friend were in the hallway near the laundry area when they heard someone say, "SWAT." She stated that when she went into the kitchen, she saw at least five people holding long guns. She said they were looking around and one of them had a pistol. She heard a shot and then felt the shot. She was taken out of the apartment by an officer and her friend and then transported to Elliot Hospital via ambulance. Officers were not able to interview Alonzo a second time as she did not return to the apartment and officers could not locate her afterward despite multiple attempts to do so.

D. Statements of Lillian Alonzo's Minor Child and Delores Minaya

Lillian Alonzo's minor child, J.A., was 10 years old at the time of the incident. Officers spoke with her very briefly after the incident, but intended to conduct a more thorough interview with her at a later time at the Child Advocacy Center, which conducts interviews with minors. However, because Alonzo could not be located after the initial interview, officers were unable to get her consent to conduct a more in-depth interview with J.A., and all the information below was as a result of that first, very brief, interview.

J.A. stated that she was in the living room with two other children and Alonzo and Minaya were in the laundry area when police arrived. She heard someone knocking at the door. She asked who was at the door, but did not hear a response. She then opened the door and police came into the house. She noticed that they said "Police" and that their clothing had "police" written on it.

Delores Minaya stated that she arrived at the apartment at 4 p.m. on the night of the incident. She was there with Alonzo, Alonzo's daughter J.A. and two other children. Minaya stated that she and Alonzo were washing clothing in the laundry area of the hallway when she heard a knock on the door. She saw J.A. open the door and saw 5 to 6 police officers enter the apartment wearing green uniforms and carrying long guns. She saw the police officers move through the apartment and kick doors. Minaya stated that she and Alonzo moved into the kitchen and grabbed the children, which is when she heard a shot coming from the hallway that hit Alonzo's arm. Minaya stated that medical assistance arrived shortly after the incident.

E. Physical Evidence

The New Hampshire State Police Forensic Laboratory tested Agent Connolly's Glock 9mm handgun that fired the bullet that entered Lillian Alonzo's arm and torso. The handgun was found to function normally. The testing also revealed that the Glock 9mm was not susceptible to

an accidental discharge due to jar-off (in other words, discharge as a result of the gun being struck or dropped).

An examination of the scene revealed what appeared to be gun powder residue on the left molding of the bedroom door where Connolly was standing when he attempted to kick open the locked bedroom door open. The height of the powder residue approximately matches the height of bullet hole. The bullet hole lines up with the area in the kitchen where blood was found and where it appears Alonzo was shot. There were also two holes in the accordion doors consistent with a bullet hole passing through. The bedroom door has markings consistent with Connolly kicking through the door. The door is hollow on the inside. All of this evidence is consistent with only one bullet being fired in the apartment.

III. LEGAL ANALYSIS

RSA Chapter 631 contains criminal charges that deal with assault and related offenses. Those potential charges were analyzed to determine if any could be charged and successfully prosecuted based on the facts in this case. For the reasons that follow, none of these charges will be brought in this case as there is no evidence to conclude a crime was committed.

Under RSA 631:1, I(a), a person is guilty of first degree assault if he purposely causes serious bodily injury to another. Pursuant to RSA 631:1, I(b), a person may also be guilty of first degree assault if he purposely or knowingly causes bodily injury to another by means of a deadly weapon. Lillian Alonzo suffered at least bodily injury in this case and for purposes of this analysis, it will also be assumed that her injuries also qualify as serious bodily injury caused by a deadly weapon. The question then becomes whether Agent Connolly acted purposely or knowingly when he caused those injuries.

To act “purposely,” means that a person’s conscious object is to cause the resulting injury. The mental state of “knowingly,” means that a person is aware that his conduct is of such a nature that the resulting injury would occur or that such circumstances exist. Here, there is no evidence that Connolly had the conscious object to cause bodily injury to Alonzo. Likewise, there is no evidence that he was aware that his conduct was of such a nature that he would fall and accidentally fire his handgun and the resulting injury would occur. In fact, Connolly did not realize that his gun had discharged until after the shot was fired when he regained his footing and realized that his team thought they were taking fire from another person in the apartment. Furthermore, Connolly could not have been aware that his conduct was of such a nature that the resulting injury to Alonzo would occur, because his view of Alonzo was blocked by the accordion doors in the laundry area, and his head was facing the direction opposite Alonzo when he accidentally discharged his gun. Based on all this, there is no evidence that Agent Connolly acted purposely or knowingly as required by these statutes.

Another statute that was considered was RSA 631:2-a, I(a). That statute provides that a person is guilty of simple assault if he knowingly or purposely causes bodily injury or unprivileged physical contact with another. Because it has been established that Connolly did not act knowingly or purposely when his gun fired, this potential offense does not apply to Connolly’s conduct either.

Four other charges that were considered are contained in RSA 631:2, I(a)-(c) and RSA 631:3, I. Under RSA 631:2, I(a), a person is guilty of second degree assault if he knowingly or recklessly causes serious bodily injury to another. Under RSA 631:2, I(b), a person is guilty of second degree assault if he recklessly causes bodily injury to another by means of a deadly weapon. Under RSA 631:2, I(c), a person is guilty of second degree assault if he recklessly, with extreme indifference to the value of human life, causes bodily injury to another. Under RSA 631:3, I, a person is guilty of reckless conduct if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.

As previously stated, there is no evidence that Agent Connolly acted knowingly when he accidentally fired his gun. As to the reckless mental state, a person acts “recklessly,” when he is aware of and consciously disregards a substantial and unjustifiable risk that exists or will result from his conduct. The risk must be of such a nature and degree that, considering the circumstances known to him, its disregard constitutes a gross deviation from the conduct that a law-abiding person would observe in the situation. Here, there is no evidence that Connolly acted recklessly. On the contrary, he was not aware of a risk that his foot would become stuck in the door and he would fall backward thereby firing his gun, such that he would be able to disregard this risk. He also did not see Alonzo, and was not even aware that he had accidentally fired his gun. Therefore, there is no evidence that Agent Connolly consciously disregarded a risk involved in accidentally firing his weapon.

The last two charges that were considered are contained in RSA 631:2-a, I(b) and RSA 631:2-a, I(c). RSA 631:2-a, I(b) provides that a person is guilty of simple assault if he recklessly causes bodily injury to another. As stated already, there is no proof that Agent Connolly acted recklessly, therefore this charge is not provable here.

RSA 631:2-a, I(c) provides that a person is guilty of simple assault if he negligently causes bodily injury to another by means of a deadly weapon. “Negligently” means that a person fails to become aware of a substantial and unjustifiable risk that exists or will result from his conduct. The risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation. Criminal negligence requires proof of more than an ordinary risk and the deviation must be more than simply unreasonable or thoughtless. “Criminal negligence requires not only the failure to perceive a more than ordinary risk, but also some serious blameworthiness in the conduct that caused it.” State v. Dion, 164 N.H. 544, 549 (2013).

Here, Agent Connolly did not engage in any conscious conduct with respect to the firing of his gun. On the contrary, it appears that he accidentally fired his weapon when he fell back and his hand hit the door frame, possibly pushing his finger into the trigger. He began to fall only because his foot became stuck in the door he was attempting to kick open to properly clear the apartment. There is no evidence of serious blameworthiness in this conduct. In fact, Connolly was exercising reasonable care under the circumstances, as he had his gun pointed down and his finger off of the trigger and on the slide while he was kicking the door. It was only because he fell backward and his left hand hit the door frame that the gun fired. Furthermore, even the result of the shooting was not discernible from Connolly’s vantage point. As he was

falling, his head was pointed toward the right, which was the direction he was falling. His left hand with his gun hit the door frame, and fired a single shot down the hallway through both sets of accordion doors blocking his view of Alonzo, and down to the kitchen. Therefore, there was no conduct that rose to a criminal level that was caused a failure to perceive a risk and thus, there was no criminal negligence.

The final consideration in the charging analysis concerned the accident defense. Although “accident” is not expressly recognized as a defense in New Hampshire’s Criminal Code, it is recognized in our criminal jury instructions and by case law as a defense that should be given at trial if the theory is supported by some evidence. *State v. Blackstone*, 147 N.H. 791, 798 (2002). Here, the obvious defense to any criminal charges would be an accident defense. When a person raises an accident defense, the State would have the burden to disprove that defense beyond a reasonable doubt at trial. In this case, the State would not be able to overcome an accident defense at trial and disprove it, beyond a reasonable doubt. That conclusion is based on all the evidence, including Agent Connolly’s lack of intent to fire his handgun and the circumstances that led to its firing.

IV. CONCLUSION

Lillian Alonzo was shot and injured during a lawful law enforcement operation. While this was a serious and unfortunate event, the Attorney General has concluded that the evidence is clear that DEA Agent Michael Connolly’s gunshot that caused Lillian Alonzo’s injuries was simply accidental. Therefore, based on all the evidence and the applicable law, Agent Connolly will not face criminal charges in connection with the shooting incident.