

ATTORNEY GENERAL'S REPORT REGARDING THE MAY 10, 2015 HOMICIDE IN MANCHESTER, NEW HAMPSHIRE

I. INTRODUCTION

The Office of the Attorney General and the Manchester Police Department have concluded an investigation into a fatal shooting incident that occurred in Manchester, New Hampshire on May 10, 2015. As a result of that investigation, New Hampshire Attorney General Joseph A. Foster has determined that the shooting death of Jesus Rodriguez (age 25 of Manchester), by Jose Gonzalez (age 36), was a justified use of deadly force under the law.

The purpose of this report is to summarize the Attorney General's findings and conclusions with regards to the incident, which resulted in the death of Jesus Rodriguez.

II. FACTS

A. Overview of the incident.

On May 10, 2015, at approximately 3:40 p.m., Manchester police officers responded to the area of 144 Lake Avenue in Manchester for a reported shooting. When officers arrived, they discovered Jesus Rodriguez outside, with apparent gunshot wounds. Emergency medical responders arrived to treat Jesus, but he did not survive.

The man who shot Jesus was still in the immediate area when the police arrived and was identified as Jose Gonzalez. Gonzalez surrendered himself and his handgun to the police without incident. Gonzalez told the police that during an argument with Jesus

Rodriguez, Jesus had advanced on him with a tire iron and that he had shot Jesus in defense of himself and others.

The investigation quickly revealed that another shooting incident had taken place shortly after the one that led to Jesus's death. According to Gonzalez and others, a man with a gun appeared in the hallway of the apartment where Gonzalez was located and pointed a gun at Gonzalez. Fearing that man was about to shoot him, Gonzalez fired one shot at that man, who fled. A short time later, Jesus Rodriguez's cousin, Angel Rodriguez, was seen dumping a handgun in a nearby trash bin. The gun was recovered from the trash bin and Angel was arrested for being a felon in possession of that gun, as well as falsifying physical evidence for disposing of the gun in the trash bin.

The New Hampshire Attorney General's Office was notified about Jesus Rodriguez's death and joined the Manchester Police Department in their investigation into the circumstances surrounding his death. The investigation included documenting the area where the shooting occurred and collecting physical evidence at the scene. That physical evidence included Jose Gonzalez's gun, discharged cartridge casings from Gonzalez's gun, and two metal tire irons that were located on the ground near where the shooting occurred.

Several people were interviewed, including those who witnessed all or a part of the incident. Based on those witness interviews, the most credible version of events reveals that the shooting was preceded by an argument that Jesus Rodriguez started with Elizabeth Sanchez. Jesus then made threatening statements and was aggressive. Things escalated when Jesus went to his Jeep, took out two metal tire irons, and advanced on

Jose Gonzalez holding one or both of them. As Jesus got close to Gonzalez with the tire iron or irons in his hand, Gonzalez fired two shots, killing Jesus.

Jesus Rodriguez's cousin, Angel Rodriguez appeared with a gun after the shooting and acting in a threatening manner towards Gonzalez. Gonzalez fired one shot at Angel, who then ran away. The police arrived shortly thereafter.

B. Witness interviews.

1. Jose M. Gonzalez

Jose M. Gonzalez agreed to go to the Manchester Police Department after the incident. Once there, he waived his Miranda rights and agreed to be interviewed. The interview was audio and video recorded.

On May 10, 2015, Gonzalez and his girlfriend Carmen Sanchez went to see her mother at 144 Lake Avenue. His girlfriend went inside and Jose remained outside in the parking lot. His father-in-law, Jose Rodriguez joined Gonzalez outside.¹

Jesus Rodriguez was also outside arguing with two men. Jesus said hello to Gonzalez and the two shook hands.² Jesus told Gonzalez that the two guys he was arguing with had tried to call the cops on him last night. Jesus also said that in reference to the two men he had to "make these guys respect."

Gonzalez's girlfriend Carmen Sanchez and his sister-in-law, Elizabeth Sanchez, came outside. Jesus started calling Elizabeth a "snitch." At first it was joking and then

¹ Gonzalez refers to Carmen's father Jose as his "father-in-law" even though he and Carmen are not married. Although Jose Rodriguez and Jesus Rodriguez share the same last name, they are not related.

² Gonzalez told police that he had met Jesus about 3 years earlier and had never had a problem with him before.

Jesus said that her baby was going to look like him.³ Jesus also kept calling Elizabeth a snitch. Gonzalez's girlfriend told Jesus to apologize, but he refused and continued to say that Elizabeth was a snitch. Gonzalez then asked Jesus why Elizabeth was a snitch and what she had done. That made Jesus mad and he said, "This motherfucker wants something!" Jesus then told all the kids to go upstairs. Next, Jesus said, "This motherfucker wants something, I'm gonna show this motherfucker how shits done around here." Gonzalez responded and told Jesus, "I'm just asking, what did she do to be snitch." Jesus responded and said, "No, fuck that, I'm gonna show this guy how it's done around here." When Jesus made these statements, Gonzalez's father-in-law and girlfriend were outside. His sister-in-law was in the hallway.

Jesus went into the back of his Jeep and grabbed a crowbar.⁴ Gonzalez's father-in-law tried to intervene. Jesus responded by telling him words to the effect of "No fuck that, you want some too?" or "Old man you want some of this too? You can get it." Gonzalez could see that Jesus still wanted to go "full force with the crowbar." At that point, Gonzalez said that he knew Jesus "was not playing. He was coming to hit me." Gonzalez said that he knew he had to protect his father-in-law too because he was "like 70 years old."

As soon as Jesus grabbed the crowbar, raised it up and charged towards Gonzalez, Gonzalez pulled his Glock handgun out of its holster, cocked it, and shot Jesus twice. At the moment Gonzalez shot Jesus, Gonzalez estimated that Jesus was about 5-6 feet away.

³ Gonzalez said that Elizabeth was 9 months pregnant and one week away from her due date.

⁴ Gonzalez also called the item Jesus grabbed a "tire iron."

Gonzalez said that he fired to keep Jesus “away,” and also believed that Jesus was going to attack his father-in-law.

After Gonzalez shot Jesus, Jesus stopped and then ran away. Gonzalez put the gun down and did not fire again because there was no more threat. He went into the apartment and told his girlfriend to call the police. As he waited for the police to arrive, Gonzalez said that more guys were coming. His father-in-law told Gonzalez to go inside because “they’re trying to shoot you.” Gonzalez went inside the apartment and then stepped back outside into the hallway. He saw a man outside with a gun who was pointing it at him. Gonzalez fired one shot at that man and then went back inside the apartment. The police arrived shortly after that.

2. Jose Manuel Sanchez Rodriguez

Jose Rodriguez was interviewed using a translator on May 10, 2015.

Jose lived at the apartment complex with his girlfriend where the shooting occurred. Before the incident, Jose was outside with his daughters and her daughter’s husband.⁵ He said that Jesus wanted to hit his daughter Elizabeth because he said she was a snitch. Jose said that Jesus has been bothering her a long time. Jose believed that Jesus was saying things to Elizabeth because he was interested in her, but she was not interested in him because she had a boyfriend.

Jesus sent his children upstairs and said he was “going to fix this.” Gonzalez started helping Jose Gonzalez to try and get Jesus to leave Elizabeth alone. Jesus yelled at Jose because Jose wanted to defend his daughter.

⁵ By “daughter’s husband,” Jose meant Jose Gonzalez.

Jesus went to the Jeep that was nearby to get something. When he got there, Jesus took out “a big piece of metal.” Jesus held the piece of metal over his head at Jose and wanted to hit Jose and Gonzalez with it. That is when Gonzalez went to defend him and that is when Jose said everything happened. Jesus was about 6 feet away with the piece of metal over his head heading towards them. Jose was afraid of Jesus at that time. Someone held Jesus back and then let him go.⁶ Gonzalez was telling Jesus to leave Jose alone and then Jesus went after Gonzalez.

Jesus said, “Now you’re going to know who the macho is.” “You need to respect me.” Gonzalez had a gun in his waist. He took it out and shot Jesus twice. Jose said he did not see the actual shooting because he was facing in another direction. Instead, he heard the shots and turned back.

After the shooting, another guy who was Jesus’s cousin came with a gun to shoot Gonzalez.⁷ That man shot at them and then Gonzalez shot back and the other man took off running. After that someone called the police.

Jose was afraid of Jesus because he had seen Jesus shoot someone about 7-9 months prior. Jose said that he did not tell the police about that incident because Jesus had threatened him before.

3. Elizabeth Sanchez

Elizabeth Sanchez was interviewed on May 10, 2015.

⁶ He could not say who that person was.

⁷ This other person with the gun is believed to be Angel Rodriguez, Jesus’s cousin. He was arrested after the incident and charged with being a felon in possession of a firearm and falsifying physical evidence. That case is being prosecuted by the Hillsborough County Attorney’s Office.

Before the shooting incident, Elizabeth was outside talking with her sister Carmen, her father Jose Rodriguez, and Jose Gonzalez.

Jesus Rodriguez showed up and started saying that her baby was going to look like him.⁸ Elizabeth told Jesus that he was not the father and that her baby would not look like him. She also started arguing with people on the third floor who had broken her car windows and then Jesus started arguing with her because those people were his friends. Jesus started calling Elizabeth a snitch and said he could tell by her face that she was a snitch. Jesus told two kids who were with him to go upstairs because everything was going to end right there and that today this was all going to end.

Jesus then told her father that he wanted to fight with her. Jesus also called her father a coward and asked if he wanted to fight with him. Then Jesus asked Gonzalez if he wanted to fight with him and called Gonzalez a “motherfucker.” Jesus got something out of his black Jeep, but she could not see what it was. Jesus moved towards her and Gonzalez pushed her to the side and into the building to protect her. After that, Elizabeth heard 3 or 4 shots. She did not see Jesus get shot. She thought there was a break in time between the two sets of shots, possibly 10 minutes.⁹ Elizabeth checked her phone and verified that she called the police after that at 3:31 p.m.

During the argument, Elizabeth said that Jesus called someone who came downstairs with a gun.¹⁰ That person came down afterwards and tried to shoot Gonzalez.

⁸ Elizabeth was pregnant at the time.

⁹ The break in time between the gunshots is likely due to the initial confrontation with Jesus and the later confrontation with Jesus’s cousin, Angel.

¹⁰ That person is believed to be Jesus Rodriguez’s cousin, Angel Rodriguez.

Elizabeth knew Jesus before the incident and said that Jesus had tried to push her down the stairs before.

4. Carmen Sanchez

Carmen Sanchez is Jose Gonzalez's girlfriend. She was interviewed on May 10, 2015.

On the day of the incident, Carmen and Gonzalez went to visit her mother. When they first got to her mother's, they went inside and then she, Gonzalez, her father and her sister went outside.

When they were outside, Carmen said that Jesus Rodriguez was "aggressive." Jesus started arguing with her sister, called her sister a "snitch" and said that her baby would look like him. Carmen said that Jesus called her sister a snitch because Jesus had shot someone before and knew that her sister knew he did it and was trying to scare her and her family into not talking. Gonzalez told Jesus to leave Carmen's sister alone because it was Mother's Day and she was about to have a baby.

Jesus told the kids to go inside – he was very aggressive. Then, Jesus went to his Jeep to get something out of the back. Gonzalez told her to go inside, which she did. After that, she heard 2 shots, but did not see the shooting. After the shooting, she saw another guy coming with a gun.¹¹

Carmen said that her father and sister told her that Jesus tried to hit them with something. Also, Jesus had said to her before that everybody was scared of him and that she should just ask other people.

¹¹ This is believed to have been Angel Rodriguez.

Carmen told the detectives that she saw blood on her sister after the shooting.¹²

5. Maria Rodriguez

Maria Rodriguez was interviewed on May 12, 2015, with her mother, Carmen Saez.¹³ Maria also translated for Carmen, who did not speak English. Maria lived in an apartment in the area where the shooting occurred and witnessed it. She did not know two men involved.

On the day of the incident, Maria was in her second floor apartment. She looked out her window and saw some people outside arguing who were going to fight. She could see that Jesus Rodriguez was arguing. Maria saw her mother Carmen Saez trying to break up the fight and then saw her mother try to leave.

Carmen saw Jesus take a “stick” out of his car and started walking towards Jose Gonzalez. Jesus had the stick down and was trying to get to Gonzalez/was walking towards Gonzalez, when Jesus got shot. Jesus and Gonzalez were very close when Jesus got shot. Maria demonstrated that Jesus and Gonzalez were about 6 feet away when Jesus got shot.

6. Carmen Saez

Carmen Saez was interviewed on May 12, 2015, with her daughter Maria Rodriguez. Maria translated for Carmen during the interview.

Carmen was outside on the day of the incident. She said that Jesus Rodriguez was there with some people who lived there and was playing basketball with some kids. Jose

¹² Initial responders also saw blood on Carmen’s sister, Elizabeth. It is believed that Elizabeth was so close to Jesus when he was shot that some of his blood got on her.

¹³ Maria is not related to anyone involved in the incident.

Gonzalez showed up and Jesus and a pregnant lady started arguing. Jesus was telling the pregnant lady that she was a snitch. The other guy, Gonzalez, wanted to talk to Jesus and then they started arguing. The other people told Gonzalez not to talk to him. Then Jesus said, “You want to fight with me? Oh, you gonna fight with me? Is that what you’re trying to do?” Jesus also said to the old guy Jose Rodriguez, “Oh, you gonna fight with me too?” Jesus grabbed a “stick” and was going to fight with that.

Carmen said she tried to stop the fight. Then, Jesus went and got the stick. When Jesus grabbed the stick, he told her to go upstairs with the kids. Carmen grabbed the kids and started to leave. She took the kids and then heard gunshots. Carmen and the kids were still outside when she heard the gunshots, but they did not see the shooting itself.

7. Juvenile male

Jesus Rodriguez’s 13-year-old brother was interviewed on May 10, 2015.

The brother was outside in the back alley at 144 Lake Avenue when the incident occurred. He said that Jesus and Jose Gonzalez were arguing. He did not know what the argument was about. There were people holding his brother back, but he did not know who those people were. There were also people were holding the other guy back. A physical altercation was about to happen before the shooting, but at no time did he see Jesus or Gonzalez come in contact with each other.

Jesus got a “stick” out of his car. A lot of people stopped Jesus and he dropped the stick. Then Gonzalez pulled out a gun and people scattered.¹⁴ Jesus and Gonzalez

¹⁴ His little nephews were with him and he told them to go inside. He does not believe that his nephews saw the shooting.

were still arguing. Jesus and Gonzalez were “saying stuff.” Jesus said, “Okay, you want to fight?” They “cursed each other out.” Jesus was trying to get at Gonzalez, but then Jesus backed off. Then Gonzalez pulled out a gun, cocked it back, and held the gun for about 5 seconds. Jesus’s brother ran and got a rock in his hand because he was going to try and hit Gonzalez. Before that could happen, Gonzalez fired his gun twice, shooting Jesus. The brother said that Jesus did not have anything in his hands.

The brother said that at the time of the shooting Jesus and Gonzalez were “pretty close,” but then contradicted himself and said they were about 20 feet away. He described what occurred during the incident as “fast.”

D. Autopsy results and physical evidence.

(1) Autopsy results.

An autopsy was conducted on Jesus Rodriguez’s body on May 10, 2015. The autopsy showed that Rodriguez had been shot twice. He had a penetrating gunshot wound to the chest and a penetrating gunshot wound to the neck. He also had a gunshot graze wound to his right wrist.

Toxicological testing revealed that Rodriguez had marijuana, Xanax, and Oxycontin in his blood at the time of death. The cause of death was the gunshot wounds to the chest and neck

(2) Physical evidence.

Police recovered the gun that Jose Gonzalez used during the incident. In addition, two discharged cartridge casings were found outside the apartment building in the area

where the shooting occurred and one was found inside the hallway in the apartment building.¹⁵

Two metal tire irons were also found in between and close to Jesus Rodriguez's Jeep and Jose Gonzalez's car. Also nearby were two discharged cartridge casings, which were consistent with the two shots Jose Gonzalez had fired at Jesus Rodriguez. A third discharged cartridge casing was found further away inside the hallway of the building.

The location of the tire irons and the two discharged cartridge casings, as well as blood found in that area is consistent with witness statements that place Jesus in that area and in close proximity to Jose Gonzalez when Jesus was shot.

First responding officers photographed and noted the blood at the scene. They also observed blood on Jose Rodriguez and Elizabeth Sanchez. Carmen Sanchez told detectives that she saw blood on her sister Elizabeth Sanchez after the incident as well. The blood on Jose Rodriguez and Elizabeth Sanchez is consistent with their close proximity to Jesus Rodriguez when he was shot.

III. THE APPLICABLE LAW AND ANALYSIS

A. The applicable law.

New Hampshire's laws regarding self-defense are contained in RSA Chapter 627.

In this case, RSA 627:4, II(a), is the most applicable section and states that:

A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the actor or a third person.

¹⁵ The number and location of the discharged cartridge casings are consistent with Jose Gonzalez's statement to the police.

“Deadly force” includes any assault which the actor “commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury.” RSA 627:9, II.

Where deadly force is involved, what is “reasonable” under the circumstances “is determined by an objective standard.” State v. Leaf, 137 N.H. 97, 99 (1993); see also State v. Cunningham, 159 N.H. 103, 107 (2009). All the circumstances surrounding the incident should be considered in reaching the decision as to what was reasonable. See Leaf, 137 N.H. at 99. 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. In other words, the inquiry must focus on the situation from the standpoint of a person facing the same situation, with the same knowledge as the person who used the deadly force. That examination cannot be made with the benefit of hindsight, which is afforded by one viewing the circumstances after the fact. That is because “the law does not require perfection – it requires objective reasonableness.” Phillips v. Bradshaw, 2013 U.S. Dist. LEXIS 44646 *55-56 (S.D. Fla. Mar. 28, 2013). 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.” State v. Gorham, 120 N.H. 162, 163-64 (1980).

In some instances, an actor may have a duty to retreat before resorting to deadly force. See RSA 627:4, III. However, an actor who is in a place he has a right to be and is

not the initial aggressor has no duty to retreat. If the actor chooses to use deadly force, then the amount of force used to protect himself or others must also be reasonable, and not excessive. See State v. Etienne, 163 N.H. 57, 70 (2011).

And finally, in any case where a person has used deadly force and later claims self-defense, the State would have the burden to disprove that self-defense claim beyond a reasonable doubt in order to secure a conviction. See State v. McMinn, 141 N.H. 636, 644-45 (1997). There is no burden on the actor to prove that his actions were lawful.

B. Analysis.

On May 10, 2015, Jesus Rodriguez started an argument with Elizabeth Sanchez, who was 9 months pregnant at the time by intimating that he was the father of her child. Elizabeth's father, Jose Rodriguez, and her sister's boyfriend, Jose Gonzalez, verbally intervened on her behalf. Jesus Rodriguez's conduct quickly turned from argumentative to aggressive and threatening.

Jesus made many threatening statements toward Jose Rodriguez and Jose Gonzalez, making it clear that he intended to assault them. In the midst of making those threats, Jesus escalated the situation by going to his Jeep and taking out two metal tire irons. Jesus advanced on Jose Rodriguez and Jose Gonzalez holding at least one of the

tire irons in his hand.¹⁶ As Jesus got close to the two men, approximately 5-6 feet away, Jose Gonzalez drew his handgun and fired two shots at Jesus, stopping his advance and fatally wounding him.

Jose Gonzalez told the police that he fired to stop Jesus and to protect himself and Jose Rodriguez. While Jesus Rodriguez did not have a firearm when he threatened and advanced on the two men, he was armed with at least one metal tire iron, which was an object capable of causing death or serious bodily injury.

Based on all of Jose Rodriguez's conduct, including threatening Jose Gonzalez and Jose Rodriguez, arming himself, and advancing on the two men, a reasonable person in Jose Gonzalez's position could have concluded that Jesus Rodriguez was about to use unlawful, deadly force against him and/or Jose Rodriguez when Gonzalez shot Jesus. The force used by Gonzalez was also reasonable and not excessive under the circumstances; he only fired his gun until Jesus retreated and then stopped firing. Last, Gonzalez had no duty to retreat under the circumstances since he was in a place he had the right to be and was not the initial aggressor.

As for what motivated Jesus Rodriguez to behave in such an aggressive and threatening manner that day, nothing definitive was uncovered. However, witnesses did relay information about Jesus's threatening and violent behavior in the past. Toxicology

¹⁶ Jose Gonzalez and Jose Rodriguez told the detectives that Jesus was holding the tire iron up in the air as he advanced on them. Maria Rodriguez said that she saw Jesus advancing with the tire iron at his side. Jesus's 13-year-old brother told the police that Jesus did grab the tire iron but said that Jesus had nothing in his hands when he was shot. Jesus's brother's version is at odds with the other evidence in the case though. For example, the physical evidence and other witness statements support the conclusion that Jesus had at least one of the tire irons in his hand and was very close to Jose Gonzalez when the shots were fired. Also, Jesus's brother told the police that just before the shots were fired he was trying to find a rock to use to hit Jose Gonzalez. Therefore, it is likely that he did not observe all of the events during the shooting incident.

results also showed a combination of drugs in Jesus's bloodstream, which possibly impacted his judgment and behavior that day as well.

IV. CONCLUSION

Based on the applicable law and all the facts and circumstances of this case, the Attorney General has determined that it was reasonable for Jose Gonzalez to conclude that Jesus Rodriguez was about to use unlawful, deadly force against him and/or Jose Rodriguez on May 10, 2015. Therefore, Jose Gonzalez's subsequent use of deadly force was legally justified pursuant to RSA 627:4, II (a). Accordingly, no criminal charges will be brought against Jose Gonzalez in connection with the shooting death of Jesus Rodriguez.

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