

**ATTORNEY GENERAL'S REPORT ON OFFICER INVOLVED SHOOTING IN
LITCHFIELD, N.H. ON JULY 9, 2012**

July 24, 2012

The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to the officer-involved shooting in Litchfield, New Hampshire on July 9, 2012. The findings and conclusions contained in this report are based on information gathered during the investigation, including Jason Lagueux's autopsy, the shooting scene examination, witness interviews, and photographs. Based on that information, and for the reasons detailed below, New Hampshire Attorney General Michael A. Delaney has determined that the deadly force which resulted in the death of Jason Lagueux was a justified use of deadly force by State Police Trooper First Class Thomas Lencki.

FACTUAL BACKGROUND

On July 9, 2012, at approximately 1:00 p.m., officers from the Litchfield Police Department, and the Hillsborough County Sheriff's Department were dispatched to 31 Page Road, Litchfield, New Hampshire, in response to a 911 call. The 911 caller, a neighbor, reported hearing gunshots coming from inside a trailer at 31 Page Road in Litchfield.

31 Page Road is the address of a trailer park in Litchfield that houses approximately 30 residential trailers located in close proximity to each other. The 911 caller reported hearing shots coming from trailer number 23. Trailer number 23 was surrounded by at least three other trailers on three of its four sides. Neighbors reported that the resident of trailer number 23 was Jason Lagueux, a 35 year old man who had lived at the trailer for approximately a decade.

At least one neighbor reported hearing loud noises coming from trailer number 23 beginning in the morning, but believed the noises were fireworks. No call was made to the police until approximately 1:00 pm. Officers arrived shortly thereafter and reported hearing between two and four gunshots coming from inside the trailer after they arrived. So as to secure the area, police officers began to evacuate the residents of the trailers surrounding trailer number 23. Police also surrounded trailer number 23 in an effort to make contact with Lagueux.

After police made initial attempts to contact Lagueux, he exited the trailer on to a porch connected to the trailer. At the time, Litchfield Police Officer Benjamin Sargent was positioned partially behind a shed adjacent to a neighboring trailer approximately 15 yards from Lagueux's position on the porch. Officer Sargent was dressed in a Litchfield Police Department uniform. Though approximately five police officers surrounded the trailer, Officer Sargent was the only officer within Lagueux's direct line of sight.

Officer Sargent observed that Lagueux had a pistol in his right hand which he was swinging while moving his body from side-to-side in an agitated fashion. Initially, the pistol remained below Lagueux's waist. Officer Sargent ordered Lagueux to drop the pistol. Lagueux failed to comply with the order and instead locked eyes with Officer Sargent and began mouthing words Officer Sargent could not hear. Officer Sargent believed that Lagueux was

mouthed the words "Come on," and "Just shoot me," while nodding his head up and down in a taunting fashion.

Officer Sargent repeatedly ordered Lagueux to drop his weapon. The other officers who surrounded the trailer heard Officer Sargent's repeated orders to drop the weapon. While giving his orders, Officer Sargent raised his firearm and pointed it at Lagueux.

Rather than drop his weapon, Lagueux raised the pistol and pointed it at Officer Sargent. Officer Sargent tried to take cover and heard an immediate gunshot. Officer Sargent was initially unaware of where the shot had come from, but believed he had been fired upon. Radio communication among the police officers revealed that Lagueux was struck. Officer Sargent proceeded to the porch where he attempted to administer aid to Lagueux. Lagueux was transported to Southern New Hampshire Regional Medical Center shortly thereafter and was pronounced dead.

An autopsy conducted the next day revealed that Lagueux was killed by a single gunshot that entered his back and perforated his lung. The gunshot entered Lagueux's body in the middle of his back and exited on the right side of his chest, traveling at a left to right angle through his body.

The gunshot was fired by Trooper First Class Thomas Lencki of the New Hampshire State Police, who arrived at the scene shortly after 2:00 p.m. that day. Trooper Lencki, a thirteen-year veteran of the New Hampshire State Police, had substantial training and experience in the area of defensive tactics, including protocols governing the use of deadly force in the course of one's duties as a law enforcement officer. Trooper Lencki provided a statement to investigators regarding the circumstances surrounding the shooting.

Trooper Lencki explained that he was in his cruiser on his way to begin his shift at New Hampshire State Police Troop B Barracks around 2:00 p.m. when he received word from a fellow New Hampshire State Trooper that shots were fired at 31 Page Road. Trooper Lencki responded to 31 Page Road, receiving additional information through dispatch.

Upon arriving, Trooper Lencki parked his cruiser near the base of the driveway to the trailer park, exited his cruiser and went to the trunk where he stored his State Police issued rifle and protective gear. Trooper Lencki is a former member of the United States Marine Corps with substantial training in the use of firearms, including the use and maintenance of rifles. He removed his rifle, dressed himself in protective gear, and walked on foot to a police cruiser parked further up the road at 31 Page Road.

When Trooper Lencki arrived at the cruiser, he met a lieutenant with the Litchfield Police Department and a Hillsborough County Deputy Sheriff. As the lieutenant was briefing Lencki, a

shot was fired to Lencki's right, from the direction of Lagueux's trailer. Based on his substantial experience with firearms, Trooper Lencki concluded that the shot was consistent with the sound of pistol fire.

In the aftermath of hearing the shot, the lieutenant from Litchfield immediately began to try to contact a Litchfield police officer who was on scene in the direction where the shot was fired. After the lieutenant's repeated unsuccessful attempts to contact the officer by radio and cellular telephone, Trooper Lencki became concerned for the officer's life and safety. Of the three police officers in his immediate vicinity, Trooper Lencki was the police officer wearing the most protective gear. Trooper Lencki therefore decided that he would move further into the scene to attempt to make contact with the Litchfield police officer who was not responding to the lieutenant's calls.

In seeking to make contact with the officer, Trooper Lencki took a route which he determined provided the greatest amount of cover from fire. In the end, however, he concluded that no good route existed because, based on his training and experience, pistol fire would pierce the walls of any of the trailers he might use as protection.

After initially taking a position further from the source of the pistol fire, Trooper Lencki ultimately moved to a position behind a wood pile facing Lagueux's trailer which, in his estimation, was about 40 to 50 yards from Lagueux's porch. While he was behind the wood pile, he tried to call out to the Litchfield police officer he feared had been shot.

After receiving no response, he looked in the direction of Lagueux's trailer and saw Lagueux on the porch with a pistol in his hand. Moments later he began to hear the voice of another officer, Officer Sargent, who he thought was standing closer to Lagueux's trailer to the left of Trooper Lencki. The officer was ordering Lagueux to drop his weapon. Trooper Lencki could only hear the officer and could not see him because a trailer obstructed his line of sight to the officer. However, his description of the location of the voice is consistent with Officer Sargent's report of where he was standing in relation to Lagueux.

Trooper Lencki further observed that Lagueux was acting agitated and swinging his arms with the pistol in his hand while Officer Sargent was repeatedly asking him to drop the pistol. At that point, Trooper Lencki reported that he determined that Lagueux was noncompliant and was a present danger to Officer Sargent, but he did not take action because, in his view, Lagueux had not raised the pistol above his waist, and so was not an imminent threat.

Officer Sargent again ordered Lagueux to drop his weapon and Lagueux continued to ignore the order. Trooper Lencki then saw Lagueux raise his pistol and point it in the direction of Officer Sargent's voice. At that point, Trooper Lencki concluded that Lagueux constituted an

imminent threat of death or serious bodily injury to Officer Sargent and fired a single shot from his rifle at Lagueux. Trooper Lencki believed that he hit Lagueux in the torso area of his body, though he could not determine whether he hit Lagueux in the front or the back. He immediately called for medical assistance before giving his rifle to other police officers for the purpose of facilitating their investigation.

Trooper Lencki estimated that he was at the scene for a total of about five minutes from the moment he arrived at 31 Page Road to the moment he fired the shot. Trooper Lencki's statement that he fired a single shot at Lagueux is consistent with the observations of other officers who heard the shot, the results of the autopsy and the evidence from the crime scene, which demonstrated that a single rifle shot was fired from Lencki's location, pierced Lagueux, and then struck a room in the back of the trailer.

Detectives with the State Police Major Crime Unit investigated the shooting. They interviewed the police officers and sheriff's deputies who arrived at the scene of the shooting just prior to or just following the shooting. These officers independently provided statements about the circumstances surrounding the shooting which corroborate Trooper Lencki's account of the layout of the trailer park, the fact and timing of gunfire coming from trailer 23 on the afternoon of the shooting, Officer Sargent's repeated orders to Lagueux to drop his weapon, and the timing of Trooper Lencki's shot in relation to those orders.

Detectives also interviewed Lagueux's family members and friends. These witnesses explained that Lagueux had struggled with mental health issues in the days, weeks and months leading to his death. Friends and family members attributed his mental deterioration to head injuries he received on two separate occasions, the first the result of a 1998 car accident and the second the result of an unsolved 2010 assault that was investigated by the Hudson Police Department. Friends and family members also explained that Lagueux's deterioration was accompanied by significant daily alcohol abuse and some drug abuse. They reported that Lagueux was gainfully employed until ten months ago, when he stopped working.

One close friend and neighbor described going to Lagueux's house the day before his death and finding Lagueux curled up on the ground. In the course of their interaction, Lagueux exhibited paranoid behavior. He claimed that people were watching him and that there were wires coming out of his fingers. Lagueux's father similarly reported that his son had recently suffered from delusions. He described one interaction in which Lagueux stated that he heard voices telling him to "kill, kill, kill," in the months leading up to his death.

When police searched Lagueux's trailer and the surrounding area, they found eight guns inside and documented evidence of 21 separate gunshots fired within the trailer, damaging almost every room in the trailer. Four of the 21 shots exited the trailer on three separate sides of the trailer. One shot broke a window of the trailer facing the street where neighbors passed by

on a regular basis. A witness told police that she was on the street outside the trailer earlier that day when the window was broken by a gunshot. A second shot exited the back side of the trailer and entered the wall of a neighboring trailer. Police found the bullet from that shot lodged in the furniture of that trailer. A third shot was fired out of the opposite side of the trailer in the direction of another residence within yards of Lagueux's home. A fourth shot was fired from the back of the trailer where a child's room was located.

Officers who responded to Lagueux after he had been shot found a pistol at his feet. Police seized and examined the pistol and found it to be loaded.

Police were also able to locate the shell casing fired from Trooper Lencki's rifle. The location of the shell casing was consistent with Trooper Lencki's description of where he was standing when he fired the shot at Lagueux. It confirms that he would have been able to see Lagueux point his gun in Officer Sargent's direction. Based on Officer Sargent's description of where he was standing in relation to Lagueux, the shell casing further confirms that Trooper Lencki would not likely have been facing Lagueux's front when he fired the shot, but would likely have been facing his side or back, consistent with the autopsy findings regarding the location at which the bullet entered Lagueux and the angle the bullet traveled through his body.

LEGAL ANALYSIS

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. Under RSA 627:9, II, "deadly force" means 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. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person constitutes 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).

When analyzing the reasonableness of an actor's use of deadly force, the State must consider that it would bear the burden at trial to disprove a claim of self-defense or defense of another beyond a reasonable doubt. See State v. McMinn, 141 N.H. 636, 645 (1997). The person who used deadly force would have no obligation to show that his conduct was reasonable or met the requirements of the law. Applying the self-defense law and the applicable legal

standards to the facts of this incident, this office concludes that Trooper Lencki was justified in using deadly force against Jason Lagueux when he shot and killed Lagueux on July 9, 2012.

The evidence demonstrates that early on during the incident, Lagueux posed a threat of death or serious bodily injury to neighbors of the trailer park at 31 Page Road before Trooper Lencki arrived at the scene. In the hours leading up to his death, Lagueux fired live ammunition from firearms while in his trailer. Some of those shots penetrated his trailer's walls. He fired those shots in close proximity to other trailers and residents in and outside of the trailers, in a trailer park where the residences are situated close to each other. One of the shots he fired was in the direction of a street where a resident was walking. Another shot pierced the wall of a neighboring trailer.

Lagueux's shooting of firearms under these circumstances and in this manner constituted a reckless disregard for the lives and safety of his neighbors in the area. That risk only increased when police officers arrived on scene and sought to communicate with Lagueux. Rather than demonstrate that he was no harm to anyone, Lagueux exited his trailer with a pistol after police arrived, behaved erratically by swinging it in different directions, and refused to comply with a police officer within his direct line of sight who repeatedly ordered him to drop his weapon.

At the point Trooper Lencki fired his gun, he had observed Lagueux's noncompliant, threatening behavior and heard at least one gunshot fired from the direction of the trailer. Trooper Lencki also feared that another officer had been shot. He nevertheless exercised deadly force only after Lagueux raised his gun and pointed it in the direction of Officer Sargent's voice, thereby constituting an imminent deadly threat to Officer Sargent. It was at this point, while believing another officer's life to be at imminent risk, that Trooper Lencki used deadly force. That belief was corroborated by Officer Sargent's act of taking cover moments before when he thought Lagueux was going to shoot him.

This evidence supports the conclusion that Trooper Lencki reasonably believed deadly force was necessary to defend a third person, Officer Sargent, from what Trooper Lencki reasonably believed was the imminent use of deadly force against Officer Sargent. Accordingly, Trooper Lencki's use of deadly force against Jason Lagueux was justified under RSA 627:5, II(a).