

ATTORNEY GENERAL'S REPORT REGARDING MARCH 22, 2014 OFFICER-INVOLVED SHOOTING INCIDENT IN NASHUA, NH

November 6, 2014

I. Introduction

This final report summarizes the Attorney General's findings and conclusions with regard to this officer-involved shooting in Nashua, New Hampshire. The findings and conclusions contained in this report are based on information gathered during the investigation, including crime scene examination, photographs and diagrams, information provided from investigators, police investigation reports, and the recordings and transcripts of witness interviews. All of the witnesses, including the police officers, were cooperative with the investigation.

The investigation has revealed that Craig Riley's actions and course of conduct on March 22, 2014, created a situation where Officer Stephen Morrill reasonably believed that he was in danger of death or serious bodily injury when Craig Riley grabbed Officer Morrill's baton, raised it above Officer Morrill's head, and turned his body as if to hit Officer Morrill in the head with his baton. Accordingly, based on the investigation's findings and for the reasons detailed below, the Attorney General has determined that Officer Morrill's shooting of Craig Riley was a justified use of deadly force.

II. Factual Background and Investigation

A. Officer Morrill's Account And Other Facts

On March 22, 2014, at approximately 6:30 p.m., the Bedford, New Hampshire Police Department received nearly simultaneous reports of shoplifting from Wal-Mart and Hannaford in Bedford. Both provided similar descriptions of the shoplifter. A Wal-Mart loss prevention officer had confronted the shoplifter, who initially fled on foot and then left the area in a van with New Hampshire registration 2971623. Upon responding to Hannaford, Bedford police found Daniel Chandonnet walking in the parking lot. He matched the description of the shoplifter from both Wal-Mart and Hannaford. He was not with the van he was seen entering after the Wal-Mart shoplifting. He was arrested but denied involvement in the thefts. He also insisted he had been alone that day.

Nashua Officer Stephen Morrill responded to a call to assist Bedford in their investigation of the shoplifting by finding the driver of the van seen leaving Wal-Mart. Bedford contacted Nashua to assist in locating the van, which was registered to two possible addresses in Nashua. Although he normally would not have been called to that area in Nashua, Officer Morrill was dispatched because the officers covering that area were tied up on another call at the time. Officer Morrill has been a full time police officer in Nashua since April 2010. He completed and passed all required training, including Oleoresin Capsicum (pepper spray) ("OC spray") training and instruction, baton training, hand-to-hand defensive tactics, and firearm training. He was qualified with his firearm. Officer Morrill attended additional trainings on

force and patrol tactics including baton training, firearm training and hand-to-hand defensive tactics twice a year through the Nashua Police Department.

On March 22, 2014, Officer Morrill was driving a fully-marked cruiser and was wearing his full regular uniform, including a bullet proof vest and duty belt. On his belt, Officer Morrill had OC spray, a Monadnock expandable metal baton (the “baton”), a Smith & Wesson .40 caliber handgun, spare magazines, a flashlight, handcuffs and a radio.

Dispatch sent Officer Morrill to Perham Street, in Nashua, then to 5 New Haven Drive in search of the van. Elizabeth Riley, the registered owner of the van, lives at 5 New Haven Drive. While en route, Officer Morrill received a message from Detective Archambault that Officer Morrill might be looking for Craig Riley, who was a known burglar and had served a lot of prison time.¹ Officer Morrill used the data terminal in his cruiser to get information about Riley. He discovered that Riley had a long criminal record, including a warrant from 2012 or 2013, burglaries, and what Officer Morrill thought at the time was an assault or resisting or assaulting a police officer. Officer Morrill also saw a picture of Riley.

Officer Morrill pulled into 5 New Haven Drive, an apartment building, and saw the van he was looking for coming toward him. When he arrived on scene, he was initially expecting to contact Riley’s mother, the registered owner of the van, but was not expecting to see the van. The van pulled into a parking spot at the apartment building. Officer Morrill pulled in behind it, turned on his blue lights, and informed dispatch that the van was stopped and it was occupied. When Officer Morrill ended his call to dispatch, a man Officer Morrill recognized as Riley got out of the van and walked away while appearing to make a call on his cellular phone. Officer Morrill stated “Nashua Police stop” twice. Riley looked back at Officer Morrill, and then took off running. Because Riley did not follow further commands to stop, Officer Morrill pursued him on foot. Officer Morrill attempted to tell dispatch that he was in a foot pursuit through his radio, but did not hear anything back from dispatch.

Officer Morrill stated that he was able to catch up to Riley at a set of buildings past 5 New Haven Drive, where it was muddy and icy. Officer Morrill described Riley as about his height, but pretty solid, with some muscle. Officer Morrill grabbed Riley and brought him to the ground despite both of them slipping in the muddy and icy area. Officer Morrill had one arm around the top of Riley’s body and one arm trying to control Riley’s arm to get him flat on the

¹ Riley was convicted of robbery in 1991, and received 1 ½ to 3 years at the New Hampshire State Prison. He violated parole and served 10 months and 15 days for that offense in 1993. He violated parole again in 1994 and served 5 months and 6 days. In 1996, he was found guilty of simple assault and was sentenced to 60 days suspended. In 2002 he was found guilty of simple assault and sentenced to 30 days suspended. He was found guilty of reckless conduct in 2003 and was sentenced to 2-5 years at the New Hampshire State Prison, all suspended. In 2005 Riley was found guilty of simple assault and sentenced to 12 months stand committed. In 2008 he was found guilty of driving while being certified as an habitual offender, and was sentenced to 12 months stand committed, with all but 14 days to be served on administrative home confinement. In 2009 he was found guilty of four counts of burglary and sentenced to 3-6 years stand committed. That same date he was sentenced to 12 months all suspended for one count of theft by unauthorized taking. On October 31, 2013, he was convicted of attempt to falsify physical evidence and theft by unauthorized taking, and received a 12 month sentence, suspended for two years. Riley also has previous out-of-state convictions on his record.

ground. Riley fought back by twisting, rolling, and pulling at Officer Morrill's arms and attempted to get free from Officer Morrill's grip. Officer Morrill gave Riley a couple of strikes to the side of his face to try to get Riley to stop fighting. He was able to hold Riley down a little bit, at which point Officer Morrill looked up to see if any backup was coming. Recognizing that backup was not yet on scene, Officer Morrill continued to hold Riley to wait for backup to arrive. Throughout the pursuit, Officer Morrill did not hear any communication back from dispatch, so he did not know if dispatch had received his notification that he was in pursuit.

Riley wrestled with Officer Morrill again, at which point Officer Morrill sprayed OC at Riley. Officer Morrill also breathed in some of the OC. Officer Morrill did not remember having his OC spray with him after this point, and photographs of the scene show that the OC spray was left in that area. Riley fought harder to pull away from Officer Morrill and to stand. Riley turned such that he was facing Officer Morrill while Officer Morrill had his upper body and arm locked and while both men were on all fours. After another extended period of wrestling, Riley stopped fighting, and Officer Morrill believed Riley was going to stop resisting. At that moment, Officer Morrill realized that Riley's hands were on Officer Morrill's belt line, and Officer Morrill felt Riley's hand come over and touch Officer Morrill's gun. As soon as he felt that, Officer Morrill, as he was taught in training, immediately pinned his gun to make sure Riley could not pull it out. Officer Morrill let go of Riley's head and pushed him away to create distance between them. Riley came back at Officer Morrill and pushed him back with both arms. Once Officer Morrill fell onto his back, Riley was on top of Officer Morrill, which Officer Morrill recognized would be the worst position for him to be in. Riley hit Officer Morrill in the face as he was coming at him, and tried to grab Officer Morrill's head and neck in a chokehold-like manner. Officer Morrill was able to push Riley off of him and stand up.

As Officer Morrill grabbed for his baton, Riley ran past the parking lot on the back side of the two apartment buildings. Officer Morrill ran behind Riley while trying to find his radio to contact dispatch about backup. He found his radio, which had moved to his back, and then saw Riley approach an apartment building and attempt to open the door to the building. Officer Morrill had his baton in his left hand and struck at Riley's arms. Riley turned and pulled the key out of the door to the building and pushed Officer Morrill away. Officer Morrill told Riley to get to the ground and stop, when Riley turned and started running toward the back of 5 New Haven Drive. Officer Morrill kept pace behind Riley because he was trying to contact dispatch to get backup before making physical contact with Riley again.

Officer Morrill told dispatch he was still in pursuit and provided his location. Every time he tried to provide this information to dispatch, however, dispatch responded that they did not understand him. Riley ran to one of the doors at the back of 5 New Haven Drive, which Officer Morrill knew housed Riley's mother's apartment on the ground floor. Officer Morrill knew that the building was a "dead end" and thought it was weird that Riley would try to get back in the building instead of going back to his van. Officer Morrill wondered if Riley had a weapon or more people in the apartment, and if that was his motivation for running to the apartment building.

Riley put a key in the building entrance door and started unlocking and opening it when Officer Morrill gave him commands to stop and get on the ground. Riley did not comply.

Officer Morrill knew at this point he had to make physical contact without waiting for backup to arrive. Officer Morrill struck Riley's arms with his baton, but Riley continued to enter the apartment building through the doorway. Knowing that if Riley closed the doorway Officer Morrill would be locked out of the building, Officer Morrill ran in and grabbed Riley. Riley attempted to pull the door shut, but Officer Morrill was in the doorway and Riley was unable to shut it.

Officer Morrill and Riley wrestled as they moved down the hallway of the apartment building, and Officer Morrill tried to get Riley down on the ground by grabbing Riley's arm and the top of his head. Riley, however, was able to get Officer Morrill on the ground and delivered a strike to Officer Morrill's face and body. Officer Morrill thought that Riley was trying to kill him.

One resident of the apartment building heard yelling in the hallway, and pounding and banging on the walls. She saw the two men fighting, and one man holding a stick. Because the hallway was dark she could not tell which man was holding the stick. As the two were fighting, Officer Morrill told her to call 911, which she did.

While continuing to wrestle, Riley obtained control of Officer Morrill's baton, which Officer Morrill had dropped during the struggle in the hallway. Riley picked up the baton and held it up in the air. Officer Morrill reached for his firearm, and yelled at Riley to drop the baton at least twice. Riley turned and sprinted away from Officer Morrill down the hallway in the direction of his mother's apartment unit. Officer Morrill thought Riley was going to his mother's apartment to get a weapon or other persons, or to just get away. Officer Morrill continued to yell to Riley to drop the baton as he ran after him. Once they were at a full sprint, Riley suddenly stopped and turned around. Riley made eye contact with Officer Morrill, which in retrospect Officer Morrill believed was Riley looking at Officer Morrill's head, where he intended to strike him with the baton.

Riley raised the baton in the air with his left hand, so that it was over his head. Riley started turning the baton, and therefore also his arm and body, toward Officer Morrill with the baton coming toward Officer Morrill's head. They were about five feet away from each other, but close enough that Officer Morrill felt that Riley was going to strike Officer Morrill's head. As Riley came at Officer Morrill with the baton, Officer Morrill had his firearm down at his hip at a low ready, in Riley's direction but aimed more at the ground than at Riley. Officer Morrill thought that if he used his gun in the apartment building's hallway, he would have to shoot down the hallway so the bullets would not go through the apartments. As Riley came around toward Officer Morrill, Officer Morrill fired two shots at Riley. Riley fell down to the ground. Officer Morrill holstered his weapon. He notified dispatch that shots had been fired. He cuffed Riley's hands behind his back and requested an ambulance on scene. A short while later he saw officers coming down the hallway toward him.

At the time of the shooting, Officer Morrill was in fear for his life. He specifically thought that Riley was about to strike him in the head with his baton, either killing him or knocking him out, also possibly obtaining Officer Morrill's firearm which Riley had previously tried to gain control over. Officer Morrill knew from his training in baton use that the baton was

to be used for legs and arms, not the head and torso which could cause serious bodily injury or death. Officer Morrill did not know if dispatch had received his calls for backup, or if backup was on its way. Throughout the pursuit, Officer Morrill's goal was to get Riley in custody.

B. Witness Accounts

Multiple witnesses were interviewed. They consistently stated that they saw a police cruiser with its lights activated, a man being chased by a police officer, hearing the officer tell the other man to drop the weapon at least twice, and then hearing two gunshots from inside the apartment building. One resident noted that a winter shovel, normally on his patio area, had moved off of his patio, but he did not know how it got there.

Elizabeth Riley lived at 5 New Haven Drive, Apartment 102 at the time of the incident. Her son is Craig Riley. According to Elizabeth, Craig would spend some nights at her house, but was living with his girlfriend Julie Duran in Raymond so that Duran could keep him away from people using drugs. Elizabeth believed Craig was using heroin.² On the night of March 21, 2014, Craig asked Elizabeth if he could borrow her van to run errands. He said his friend Dan was going to come to the apartment and drive because Craig was a habitual offender and therefore not permitted to drive. She asked that Craig pick up milk while he was out. Around 4:50 p.m., Elizabeth called Craig. He told her that he was on his way home and would stop and get the milk. After dinner, Craig had still not returned to Elizabeth's apartment. She walked out onto her porch, which faces east in the same direction as the front door to the building. She saw Craig jump over the small fence outside, and right behind him was a Nashua Police Officer. She heard the officer yell "Craig Riley, Stop," twice. She then called Duran to inform her that Craig was being chased by the police. While she was on the phone she heard what sounded like three gunshots in the hallway. Elizabeth went into the hallway and saw Craig lying on the ground. The police told her to go back into her apartment. Elizabeth later consented to a search of her van, in which the police found an unopened gallon of milk on the front passenger seat.

Julie Duran identified herself as Riley's girlfriend. She stated that on March 22, 2014, at approximately 7:10 p.m., she was speaking with Riley on the phone. She spoke with him approximately 13 minutes, after which he stated the police were there and hung up the phone. She assumed he was at his mother's residence at 5 New Haven Drive. Duran knew Riley to have a history of substance abuse and had suspicions he was using again.

A short time later, Duran called Riley's mother who informed Duran that the police were "chasing" Riley. Duran overheard a gunshot during the conversation, at which point Riley's mother stated that the police had shot her son. Later that night, Duran received a telephone call from Riley's telephone number. A female was on the other end of the line and stated that she had found the phone in the area of Knightsbridge Drive and New Haven Drive. Duran responded to the crime scene and took the phone. Duran provided the phone to Nashua police.

² Riley had heroin in his possession when Officer Morrill arrested him.

Multiple officers were interviewed as a part of this investigation. They heard radio transmissions that made them believe Officer Morrill was in serious trouble, and noted that he sounded winded when he reported he was involved in a foot pursuit.

Dianna Oakes, an EMT Intermediate with AMR Ambulance, arrived on scene after the incident. Oakes observed a couple of officers near Riley. He was in handcuffs, and his shirt had been cut. Riley asked for water but said nothing else. He was transported to Southern New Hampshire Medical Center.

C. Craig Riley's Interview

On March 23, 2014, at approximately 10:45 a.m., Craig Riley consented to an interview with the New Hampshire State Police regarding this incident. He was a patient at Southern New Hampshire Medical Center at the time, but was alert and oriented. He stated he did not want to be audio-taped because he was "going to sue the Nashua Police Department," but otherwise agreed to talk about the incident.

He immediately stated, referring to Officer Morrill, "He didn't have to shoot me, I was walking away. It didn't have to go down like that." When asked to go chronologically through the encounter, Riley stated that he was walking away from his van toward his mother's apartment building and talking with his girlfriend, Duran, while carrying a gallon of milk.³ He recounted the foot chase around the back of the apartment building and into the first floor of 5 New Haven Drive, where he admitted that he attempted to get to his mother's apartment. Riley stated that he and Officer Morrill wrestled in the hallway. Riley said that at one point he was "getting the better of the officer," who he described as, "being a little light in the ass." He said Officer Morrill began to hit him with the baton, and was telling him to lie on the ground. Riley said he attempted to lie on the ground, but that Officer Morrill put a knee on his back. He felt that Officer Morrill was going to continue to "beat him," so he claimed he fought back in self-defense. He then stated he grabbed Officer Morrill's baton away from him, and threw it on the floor. He denied ever striking Officer Morrill with the baton, and denied ever punching him.

Riley stated that at some point both he and Officer Morrill were tired from the fight, and he told Officer Morrill that he was all done, and turned to walk away. Riley stated that at this point, Officer Morrill shot him twice in the back. He had bruised hands, which he stated were from when Officer Morrill struck him with the baton. He said he also had a lump on his head from being struck with the baton. Riley then ended the interview, as he was uncomfortable answering more questions without an attorney.

D. Medical Information

Officer Morrill was treated for a scrape under his neck, respiratory distress from inhaling the OC spray, and received a CAT scan to ensure he did not have trauma to his head from Riley's strike. Officer Morrill's face was red where Riley struck him.

³ A gallon of milk was located in Elizabeth Riley's van, not outside the van as Craig Riley's account indicates.

Craig Riley's treating physician, Dr. Edward Flickinger, said that Riley had a through-and-through gunshot wound to the right shoulder. He thought the bullet entered in the back of the shoulder and exited through the front, although he could not be sure of that direction because the bullet did not do a lot of damage. The second gunshot wound was to Riley's back, without an exit wound. The bullet entered just above Riley's hip, traveled to the front, and came to rest by Riley's stomach just under his skin. That bullet did not do a lot of damage either, and could be removed in an out-patient procedure if Riley chose to remove it. American Medical Response EMTs noted that no gunshot residue or powder burns were seen around any of Riley's wounds.

E. Physical Evidence

Officer Morrill's baton and one bullet were found in the apartment hallway at 5 New Haven Drive. Officer Morrill's firearm, two 15-round magazines, and a magazine that had been in his firearm which still contained 13 rounds were retrieved on scene. Officer Morrill's OC spray, a pair of glasses, a shovel, and a shoe were found in the grassy area where Officer Morrill and Riley wrestled in between apartment buildings. Keys were found in the entrance door of 5 New Haven Drive after the incident and provided to police. New Hampshire State Police took photographs of Riley's injuries with his consent, and took hundreds of photographs of the scene and surrounding area.

III. 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 uses deadly force has no obligation to show that his conduct was reasonable or met the requirements of the law, the burden to disprove remains with the State.

IV. Conclusion

The evidence demonstrates that throughout his interaction with Officer Morrill, Craig Riley created a dangerous situation, which escalated after Riley threatened Officer Morrill with deadly force. When Officer Morrill arrived on scene, he was aware of Riley's criminal history and warrants for his arrest, as well as being suspicious of his activities that day. Upon arriving at 5 New Haven Drive, Riley immediately fled the scene, requiring Officer Morrill to chase him by foot. Throughout the foot pursuit, Officer Morrill did not know if dispatch had received his request for backup, or if any other officers were en route.

Riley both verbally and physically resisted Officer Morrill's many requests and commands for Riley to stop and submit. He physically resisted at one point, going so far as to attempt to grab Officer Morrill's firearm. The area where this occurred was documented and marked by evidence including Officer Morrill's OC spray, which was left on the ground with other items during and after the struggle. This matches Officer Morrill's account, in which he could not remember having possession of his OC spray after he wrestled with Riley outside the apartment buildings. Riley then ran into his mother's apartment building after attempting to enter another apartment building. This corresponds with Riley's account of a chase extending from his van to 5 New Haven Drive, where he admitted he was headed toward his mother's apartment.

During the course of the chase, Officer Morrill first used hand-to-hand combat, then OC spray, then his baton, all in an attempt to get Riley to submit to custody without using deadly force. During these encounters Officer Morrill felt his life was in danger as Riley not only went after his firearm, but also tried to choke him, physically assaulted him, and obtained possession of his baton. Only after having utilized each of these non-deadly measures, and losing his OC spray and baton as items of self-defense, did Officer Morrill use his firearm. He did so only when he felt that his life was in danger, making a split second decision that he needed to respond to what he reasonably believed was Riley's imminent use of deadly force as Riley swung at Officer Morrill's head with a baton. Officer Morrill, who had been trained on use of the baton, knew that if Riley struck him in the head, he could be killed. Only after Riley acted to use deadly force did Officer Morrill shoot Riley. He then immediately holstered his firearm and called for assistance. Officer Morrill also fired both the shots directly down the hall, so as to ensure the safety of all other residents of the apartment building.

While Riley contends that he was shot in the back, the bullet trajectories are consistent with the shots being fired at Riley as he was turning toward Officer Morrill while swinging the baton in the direction of Officer Morrill's head.

As for why Riley fled from Officer Morrill and took such extreme measures to avoid capture, part of the explanation lies in the fact that he was found in possession of heroin. That, along with his significant criminal history, which all but ensured a return to prison for Riley, explains his reason for fleeing Officer Morrill. Those facts also explain why Riley fought so hard with Officer Morrill, and why he took such drastic action as to assault a police officer on multiple occasions. Although Riley contends that he did not use the baton against Officer Morrill, that assertion is not credible. Riley's claim that Officer Morrill shot him while he was

simply walking away is wholly inconsistent with Riley's conduct prior to the incident. Further, Riley's assertion that he threw Officer Morrill's baton away from him and onto the floor is also inconsistent with Riley's prior attempts to evade arrest and prior use of force against Officer Morrill, which he at one point explained was his "getting the better of the officer." Although a minor point, it also bears mention for credibility purposes that Riley's contention that he carried a gallon of milk outside of the van is also inconsistent with the gallon of milk found inside the van after the incident.

Based on all the facts and circumstances known to Officer Morrill at the time he fired his weapon, and examining the situation from the standpoint of an objective police officer in his position, it was reasonable for Officer Morrill to conclude that Riley was about to use deadly force against him. Therefore, Officer Morrill was legally justified in using deadly force against Riley.