

**ATTORNEY GENERAL'S REPORT REGARDING THE
SEPTEMBER 3, 2015, OFFICER INVOLVED SHOOTING IN
MERRIMACK, NEW HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General Joseph A. Foster announces the completion of the investigation into the officer-involved shooting in Merrimack, New Hampshire on September 3, 2015, that resulted in the death of Harrison Lambert (age 23). The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to this officer-involved deadly force incident. The findings and conclusions in this report are based on information gathered during the investigation, including viewing the scene of the incident, photographs and diagrams, reviewing and analyzing documents and physical evidence collected, conducting and reviewing eye-witness interviews, and reviewing other investigative interviews and reports.

As provided in RSA 7:6, the Attorney General is the State's Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever deadly force is used by law enforcement officers, it is done in conformity with the law. Following a full investigation of this deadly force incident, the Attorney General finds that Merrimack Police Lieutenant Matthew Tarleton and Master Patrolman William Gudzinowicz's use of deadly force was legally justified.

Summary of the Facts

On September 3, 2015, Gregory Lambert ("Mr. Lambert") called 911 to report that his son, Harrison Lambert, was armed with a knife and threatening him inside their home. Harrison suffered from mental illness and according to his parents, his mental health had further deteriorated in the days leading up to this incident. This deterioration led to Harrison threatening his father to the point Mr. Lambert decided to call 911 for help. After that call was placed, Mr. Lambert told his son that he had called the police. Harrison responded by saying, "I'm going to show them, I am not going down easy."

The three Merrimack officers that responded to the scene all told investigators that upon learning that Harrison was involved in the incident, they immediately recalled past interactions they each had with Harrison. Those past interactions included foot pursuits, erratic behavior, resisting arrest, assaulting an officer, and a past incident involving a knife. Because of this, they were on "high alert."

Merrimack Police Officers Richard McKenzie, Tartleton and Gudzinowicz responded to the scene. They arrived in two vehicles, one behind the other. The second vehicle contained Lt. Tartleton and Officer Gudzinowicz, who immediately encountered Harrison

wielding a knife at the end of driveway. Officers described Harrison as approximately 45-60 feet from the nearest officer.

Upon observing the knife, all three officers drew their duty weapons. The officers issued verbal commands for Harrison to drop the knife. Harrison disregarded the commands and then charged toward the officers with his knife in his hand, blade facing forward. Officers continued to issue commands for Harrison to stop and to drop the knife. Harrison got within 12-15 feet of Lt. Tartleton and Officer Gudzinowicz when those two officers fired their weapons.¹

The third officer, Officer McKenzie, told investigators he did not fire his duty weapon because he felt it was not safe due to the close proximity to homes and the possibility of striking a fellow officer or vehicular traffic.

In total, eight shots were fired: five from Officer Gudzinowicz and three from Lt. Tartleton. Harrison was struck by five bullets, two to his left shoulder, one to the right side of his neck, one to his abdomen, and one to his right leg. He died from his injuries.

Both Officer Gudzinowicz and Lt. Tartleton stated the incident escalated quickly. Approximately thirty seconds passed from the time they arrived at the scene to the moment they fired their weapons. Both men stated they feared for their lives and the lives of their fellow officers when they fired.

II. THE INVESTIGATION

A. Events Leading up to the Shooting (Interview with Harrison's Parents)

On September 3, 2015, a few hours after the shooting, Detective Sergeant Marc Beaudoin and Detective Kelly Healy of the New Hampshire State Police Major Crime Unit interviewed Harrison Lambert's parents, Gregory Lambert and Sigrid Lambert. Although both parents were interviewed together, because Mrs. Lambert was not present at the home for the events that day, Mr. Lambert answered most of the investigators' questions.

Mr. Lambert explained that Harrison had a history of mental illness. He said that Harrison's mental health had deteriorated in the days before the incident. Mr. Lambert said that during that timeframe, Harrison had been "off medication," had not been sleeping, and had been acting erratically. Mr. Lambert further explained that the previous night, September 2, 2015, at about 8:15 p.m., he and his wife were in their home watching television. Harrison stood in front of the television, stared at his father, exposed a knife on his hip, and began to tap the knife while looking at his father. Mr. and Mrs. Lambert went to

¹ Spent shell casings were found at the scene as close as ten feet from where Harrison fell to the ground. Measurements taken from laser images captured of the scene indicate that Harrison fell within twenty feet of where officers Gudzinowicz and Tartleton were presumed to be standing when they fired their weapons.

their bedroom and locked the door. Throughout the evening, Mr. Lambert could hear his son moving about outside their door.

Around 5:30 a.m. the next morning (September 3, 2015), Harrison knocked on his parents' bedroom door and requested a ride to the store to get a drink. Mr. Lambert drove him to Circle K where Harrison purchased a drink. They returned home and Mr. Lambert went back to bed.

At around 8:00 a.m., Harrison asked Mr. Lambert for a ride to his bank in Nashua. Mr. Lambert drove Harrison to the bank where Harrison withdrew \$200. On the ride back to Merrimack, Harrison asked to go shopping. His father ultimately drove him to Whole Foods Market in Nashua.

After shopping, the two men returned to 8 Joppa Road. At the home, Harrison confronted his father about money that Harrison owed him. For a few minutes, Harrison insisted on paying his father \$150, only to immediately request the money back. Mr. Lambert eventually left the money on a hutch and told Harrison he could take it if he wanted, or he could leave it for him. Mr. Lambert then moved into a sun room within the home. Moments later, Harrison entered the sun room in a "rage" holding a knife. Mr. Lambert was able to pick up a crowbar and what was described as a broom handle to defend himself. Mr. Lambert calmed Harrison down and was able to exit the sunroom and get outside the home without further incident.

About fifteen minutes later, Harrison threatened Mr. Lambert with a knife again. Mr. Lambert eventually made his way into his bedroom and locked the door. For the next hour or more, Harrison threatened his father from outside the bedroom door. He was "daring" Mr. Lambert to come out. At one point, he told Mr. Lambert, "If I come in, I'm going to take care of you." Later, in an attempt to calm Harrison down, Mr. Lambert communicated through the door that his (Harrison's) mother would be returning home shortly from work. Harrison responded, "I will take care of her." Eventually, Mr. Lambert called 911 and requested police assistance. Around this time, Harrison was pushing against the bedroom door. Mr. Lambert notified Harrison that the police were on the way. According to Mr. Lambert, Harrison responded, "I'm going to show them, I am not going down easy."

Soon after calling 911, Mr. Lambert noticed that Harrison was no longer applying pressure against the outside of the bedroom door. He then heard what sounded like Harrison running out of the house. Mr. Lambert was still inside the bedroom and on the phone with dispatchers. Within thirty second, Mr. Lambert heard three "fire cracker" sounds. He ran outside and observed his son injured. A Merrimack police officer immediately made contact with him outside the home and said words to the effect of, "we had to do it. He came at us with a knife."

B. E-911 Call

On September 3, 2015, at about 12:19 p.m., Mr. Lambert, called 911 from his home at 8 Joppa Road in Merrimack. Mr. Lambert told dispatchers he was being “threatened” by his son but had suffered no injuries at the time of the call. Mr. Lambert said that a “knife has been taking [is it “taking” or “taken”] out” and “you’ve got to get here, quick.” During the call, Mr. Lambert said that his son was trying to break into his room.² Mr. Lambert told dispatchers, “You better hurry up, please.” Moments later, a dispatcher informed Mr. Lambert that “there should be officers there.” Mr. Lambert responded, “I don’t know what is happening.” At this time in the call, what appears to be successive gunfire was heard over the call. Mr. Lambert responded, “Oh shit, they just shot.”

C. Dispatch Records

At 12:20 p.m., a call went out over Merrimack police dispatch for officers to respond to 8 Joppa Road for a “domestic disturbance going on.” The 911 dispatch indicated that the caller was in an argument with his son and that “there was a knife.”

At 12:21 p.m., an unidentified voice said over the radio that he was in the back parking lot and asked that dispatch repeat the call, as he only “caught the tail end of that.” Dispatch repeated the details. A minute later, a female voice called out, “is there anyone acknowledged that they are responding?” An officer, later identified as Lt. Matthew Tartleton, immediately responded, “I am headed there now, with 54³.” Additional information was transmitted over the radio indicating that Merrimack Police have had past contact with Gregory Lambert at the address.

At about 12:24 p.m., a call went out over the radio stating, “Shots fired.” Seconds later, an officer called for an ambulance to report to the scene.

D. Interviews with Eye-Witnesses

1. Lt. Matthew Tartleton’s Account

On September 9, 2015, investigators from the NHSP Major Crime Unit and the Attorney General’s Office conducted a formal interview of Lt. Matthew Tartleton of the Merrimack Police Department. Lt. Tartleton was present with his legal counsel and union representation.

Lt. Tartleton, a twenty-year veteran on the Merrimack Police Department and use of force instructor, explained that on the morning of September 3, 2015, he arrived at the Merrimack Police Department around 7:30 a.m. for a use of force and tactical training. He arrived wearing his training uniform, a collared navy blue golf shirt which displayed a

² During the call, what sounds like a male voice yelling can be heard faintly in the background.

³ “54” is the call sign for Officer Gudzinowicz.

Merrimack Police Department badge insignia, his last name, and the department patch on both shoulders. He carried only his service weapon on his belt that day, a Glock Model 23, .40 caliber firearm. Although he was not certain as to whether the weapon was fully loaded, it was his general practice to load his firearm with thirteen rounds in his magazine and one round in the chamber.

Around 12:15 p.m., he and Master Patrolmen William Gudzinowicz got into car #8, a fully marked police cruiser, and headed to a nearby hotel for a 12:30 p.m. training meeting. Upon turning on the cruiser, Lt. Tartleton heard a portion of the radio call to 8 Joppa Road. He heard “domestic between father and son, knife is involved.” Lt. Tartleton got on the radio and asked for clarification. He observed Master Patrolmen Rick McKenzie enter a marked SUV in the parking lot. With Officer Gudzinowicz in the passenger seat, Lt. Tartleton pulled behind Officer McKenzie and followed him to 8 Joppa Road.

During the brief ride, Lt. Tartleton heard additional radio transmissions, which indicated that the Lamberts were involved. Lt. Tartleton explained that upon hearing this he recalled past contact that he and other officers had with Harrison Lambert, which included resisting arrest, a foot pursuit, and a suicide attempt. He said he knew Harrison was “unpredictable.”

Lt. Tartleton followed Officer McKenzie onto Joppa Road and stopped between two houses; he parked behind Officer McKenzie. While doing so, he observed Officer McKenzie exit his vehicle. As soon as Officer McKenzie was outside of his cruiser, Lt. Tartleton heard him issuing verbal commands, “Stop! Don’t run. I need to talk to you.” Lt. Tartleton then exited his cruiser and observed Harrison standing at the end of his driveway, about 40 yards away from him. Harrison appeared “distracted” and “angry.” He observed Officer McKenzie to his right standing in front of his cruiser, about 30 yards from Harrison.

At first, Harrison responded, “fuck off, fuck you,” while standing still, in a bladed position looking in the direction of the officers. Then he started walking diagonally towards Turkey Hill Road. Officer McKenzie issued commands to Harrison to, “drop it, drop the knife.” At this point, Lt. Tartleton looked down and observed for the first time that Harrison was holding a knife in his right hand. Lt. Tartleton then un-holstered his firearm as he and other officers continued to order Harrison to drop the knife. Lt. Tartleton approximated he was 30 yards from Harrison at the time he drew his weapon.

Harrison then started to “run” or “charge” toward him and the other officers “out of nowhere.” Lt. Tartleton observed that Harrison was running “unusual” in a zig-zag fashion towards, what he assumed, was the “center of the group [of officers].” Harrison was running with the knife at his side. Then he changed direction and headed straight at Lt. Tartleton.

At this time, Lt. Tartleton said that he was thinking about the “21–30” foot rule from his training, referring to the distance where the suspect could reach him before he would be able to react and fire his weapon. Lt. Tartleton, a firearms instructor, noticed a nearby mailbox that appeared about 10 yards (30 feet) away. He stated that he knew that if Harrison

got within the mailbox, Harrison would stab him or a fellow officer, and that “he couldn’t let him get any closer than that.” Lt. Tartleton further stated that he was looking at Harrison’s face while he charged at him. Harrison’s face was “determined” and “crazy.” During Harrison’s pursuit, Lt. Tartleton kept yelling “drop it, drop it.”

Lt. Tartleton stated that Harrison was not stopping so he fired. He believed that he fired his weapon first, meaning before any other officer, but he was uncertain as to how many times he fired. He heard additional shots being fired from his immediate right and assumed it came from Officer Gudzinowicz. He described the gunfire as a “barrage of gunfire.” Lt. Tartleton explained that at the time he fired his weapon, Harrison had changed direction and was headed directly towards him. He described the distance between him and Harrison at the time he fired as “no closer than 10 yards away and no farther than 15 yards away.”

Lt. Tartleton remembered that Harrison’s right arm was cocked, holding the knife. He did not recall Harrison screaming or saying anything as he charged at the officers. Lt. Tartleton stated that he was in fear of his life at the time he fired his weapon and, further, that he perceived the threat as a threat to all three officers, not just himself.

After firing his weapon, he observed Harrison wince, take one to two steps, and then collapse to the ground. Once he observed that Harrison was not moving, he re-holstered his weapon and asked the officers to get on the radio and “let them know shots fired.” Officer McKenzie called it in. Then he observed someone, later identified as Gregory Lambert, Harrison’s father, over by a house. He said to Lt. Tartleton, “Oh my God, did you shoot?” Lt. Tartleton responded that “he charged at us with a knife. It was the last thing we wanted to do.”

Officer Gudzinowicz kept his firearm pointed at Harrison until he was no longer moving forward. At that point, Officer Gudzinowicz immediately rendered medical aid to Harrison. He called out to Officer McKenzie for a medical kit. During this time, two civilian vehicles, one from each direction, approached the scene. Lt. Tartleton directed them away. Around this time, other officers arrived on the scene; among them were Chief Mark Doyle and Lt. Denise Roy. Lt. Roy approached Lt. Tartleton and confiscated his firearm. Ultimately, Lt. Tartleton was transported back to the police department, where he was separated from the other involved officers.

At the scene while walking to the vehicle that transported him back to the police department, Lt. Tartleton inadvertently kicked a discharged cartridge casing in the roadway. It was unclear, based on his statement, as to whether that resulted in the casing coming to rest closer or farther away from where Harrison fell to the ground.

During the interview with investigators, Lt. Tartleton described his past contact with Harrison. He specifically recalled that in 2009 he arrived to assist an ambulance in treating Harrison and a friend in what appeared to be a suicide pact. The friend had cut himself badly, but Harrison suffered only superficial cuts. Nonetheless, both Lt. Tartleton and

Harrison's parents wanted to have Harrison transported to the hospital. Harrison resisted. Harrison insisted on going inside his home to use the bathroom. Harrison became confrontational and at one point threw a punch at an officer before four officers were able to tackle him and place him in custody.

2. Master Patrolman William Gudzinowicz's Account

On September 11, 2015, investigators from the NHSP Major Crime Unit and the Attorney General's Office conducted a formal interview with Master Patrolman William Gudzinowicz. Officer Gudzinowicz was present with his legal counsel and union representation.

Officer Gudzinowicz explained that he works in the patrol division at the Merrimack Police Department. He has been a full time officer with Merrimack for over seven years. He is also a use of force trainer, specializing as a pistol, rifle, shotgun, and defensive tactic instructor, among other disciplines.

On September 3, 2015, Officer Gudzinowicz was in a training capacity, scheduled to teach a tactical training at a hotel in Merrimack around 12:30 p.m. He was wearing his training uniform, similar to that described above with Lt. Tartleton. The only difference being that Officer Gudzinowicz also wore a Merrimack Police Department baseball style cap. This was the same uniform worn by Merrimack police officers during police details. He had only his duty weapon, a Glock, Model 23, .40 caliber pistol and radio on his duty belt. When training, he generally did not carry his TASER or a spare magazine. His duty weapon was fully loaded with thirteen rounds in the magazine and one in the chamber.

Around noon, Officer Gudzinowicz, along with Lt. Tartleton was getting paperwork together for the afternoon training. Officer Gudzinowicz recalled driving to the tactical training in a fully marked cruiser operated by Lt. Tartleton when a call came over the radio about an incident. Lt. Tartleton activated his emergency lights and followed Officer Richard McKenzie, who was in a vehicle ahead of their cruiser. When approaching the Joppa Road Extension, Officer Gudzinowicz heard the name "Lambert" over the radio and immediately thought about Harrison Lambert, an individual that he had "dealt with in the past." His vehicle then followed Officer McKenzie onto Joppa Road Extension and parked behind McKenzie's vehicle.

Upon arriving, Officer Gudzinowicz observed Officer McKenzie exit his cruiser "very quickly." Having worked with him for approximately eight years, Officer Gudzinowicz explained that he "could see something was wrong." However, he was unable to see Harrison until he exited his cruiser. Upon exiting, he heard Officer McKenzie yelling and issuing commands, such as "Drop the knife." Officer Gudzinowicz walked to the front of his cruiser, observed a person in the roadway, and immediately identified him as Harrison Lambert.

At this point during the interview, Officer Gudzinowicz noted his past interactions with Harrison. He indicated that the Merrimack Police had a long history with Harrison, dating back to when Harrison was a teenager. Officer Gudzinowicz said was involved in “several arrests” involving Harrison and that Harrison was “dismissive of authority.” He cited instances when officers chased Harrison and when Harrison resisted arrest. He further provided that Harrison was known to carry a knife, and that he and other officers had been to his residence responding to other “domestic situation[s].” He explained that Merrimack police officers had discussed Harrison and that officers told each other to, “keep an eye on him when we deal with him.” For these reasons, Officer Gudzinowicz stated that he was on “high alert” when he saw Harrison in the roadway.

Officer Gudzinowicz immediately noticed that Harrison was holding a knife. He described the knife as “pretty large,” with a 5-6 inch blade, and believed he was holding it in his right hand. Upon observing the knife, Officer Gudzinowicz un-holstered and drew his weapon. Harrison was “mouthing off” toward the officers and not responding to commands from Officers McKenzie and Gudzinowicz. Officer Gudzinowicz described Harrison as about 15-20 yards away from the officers. Officer Gudzinowicz was in the middle of the three officers, with Lt. Tartleton to his immediate left and Officer McKenzie off to his right (although he was unsure of the distance between himself and McKenzie).

Harrison eventually responded, “get the fuck out of here,” or something to that effect. He described Harrison with his head down, but in an “aggressive posture.” He was pacing back and forth and appeared to be “thinking about what he was going to do next.” Then suddenly Harrison turned and started running “straight at [Gudzinowicz] and [Lt.] Tartleton.” He ran with the “knife at his side,” with the blade forward. He closed the gap between the officers “very quickly.” Although he was not running full speed “upright like a sprinter,” he was moving quick, leaning forward while running. Officer Gudzinowicz noted that Harrison had an “awkward gate.”

While running, Harrison changed direction and “made a B line for [Lt. Tartleton].” When Harrison started his charge, Officer Gudzinowicz yelled, “Stop, stop, stop.” He indicated that all three officers were yelling at Harrison to either stop or to put down the knife. He described Harrison as “extremely determined.” Officer Gudzinowicz had his firearm out and was “tracking” Harrison with his pistol as Harrison ran. He perceived Harrison as an “imminent threat.” Officer Gudzinowicz explained that he was focused on the background; he knew that he was in a residential neighborhood with homes in his line of fire and also that Lt. Tartleton was off to his immediate left. He thought at that time that Harrison “will stab [Lt. Tartleton] if I don’t do anything.”

Officer Gudzinowicz stated that Harrison got within 12-15 feet of both him and Lt. Tartleton before he fired his weapon. He explained the “Tueller drill”⁴ came across his

⁴ Lt. John Tueller, a firearms instructor with the Salt Lake City Police Department, developed the so-called “21-foot-rule” back in 1983. During a drill, a “suspect” in “attack mode” armed with a sharp weapon runs toward an officer.

mind, in that a person with a knife within “21 or 30 feet” could close on another person before you are able to engage them.

Officer Gudzinowicz was uncertain as to how many times he fired his weapon but believed it to be 3-4 times. He believed that Lt. Tartleton fired a round first but that he (Officer Gudzinowicz) fired around the exact same time. Because Harrison was square with Lt. Tartleton, Officer Gudzinowicz fired at Harrison from an angle and targeted the left side of Harrison’s upper body mass area. He explained that he “shot until [Harrison] was no longer a threat anymore and was on the ground, or going to the ground.” He recalled that Harrison was still moving forward even after he fired his weapon and that he heard additional gunshots before Harrison ultimately fell to the ground. Harrison was moving forward, crunched down with the knife in his hand at the time Officer Gudzinowicz fired all of his shots. Officer Gudzinowicz told investigators the encounter happened fast, “less than 30 seconds” from the time he exited his cruiser to the time shots were fired.

Upon falling to the ground, the knife remained in Harrison’s hand. Harrison fell “less than 10 feet” from Lt. Tartleton along the roadside. Officer Gudzinowicz kept his weapon trained on Harrison as he was moving slightly on the ground. He heard Harrison’s father behind him and observed one of the other officers speaking with him. While holding his gun on Harrison, he recalled stopping a passing vehicle and redirected it away from the scene. He then determined that Harrison was not getting up. Officer Gudzinowicz reached down and took the knife out of Harrison’s hand and moved it into the roadway. He did this for two reasons: (1) to get the knife away from Harrison in the event Harrison was still a threat; and (2) to render medical aid to Harrison. Officer Gudzinowicz called for an ambulance over the radio. He requested that Officer McKenzie bring him a medical kit. From the medical kit, Officer Gudzinowicz put on a rubber glove over his right hand and placed a gauze pad on Harrison’s neck. He observed blood coming from Harrison’s head and neck. He also took Harrison’s pulse and described it as “withering.” He placed pressure on Harrison’s neck until another officer took over for him.

As other officers arrived on the scene, Officer Gudzinowicz was moved away from the scene and Lt. Daniel Edmonds confiscated his firearm. Officer Gudzinowicz asked Lt. Edmonds to check the neighboring homes to make sure no one else was hit by the gunfire. Lt. Denise Roy escorted him further away from the scene. He was separated from the other officers and was transported back to the station. At the station, he took off his training uniform and handed it over to detectives from the NHSP Major Crime Unit.

Officer Gudzinowicz explained that he had not been involved in a deadly force situation while with the Merrimack Police Department. He had, however, on a few occasions during his eight years of service, drawn his weapon during warrant service or felony stops. During the interview, he also summarized two past contacts he had with Harrison while on duty.

As a result of that drill, it was determined that an assailant who was within 21 feet of an officer could get to that officer and stab him before the officer could draw and accurately fire upon the assailant.

3. Master Patrolman Richard McKenzie's Account

On September 11, 2015, investigators from the NHSP Major Crime Unit and the Attorney General's Office conducted a formal interview with Master Patrolman Richard McKenzie. Officer McKenzie was present with his legal counsel and union representation.

Officer McKenzie has been a full time police officer with Merrimack Police Department for over eight years. He is currently assigned to the uniform patrol division.

On September 3, 2015, Officer McKenzie was on duty, in full patrol uniform. He carried his service weapon, a Glock, Model 23, .40 caliber pistol, a radio, a magazine and a TASER on his duty belt. His service weapon was fully loaded with thirteen rounds in the magazine and one round in the chamber. He carried it on his right hip, while his TASER was on his left hip.

On the morning of September 3, 2015, Officer McKenzie was assigned patrol duty in the north end of town. After 12:00 p.m., he was dispatched to 8 Joppa Road in response to incident involving a man with a knife. This information—the address—was significant to Officer McKenzie because he dealt was a “very similar call” to that home about eighteen months prior, around December of 2013.

In that previous incident, Harrison Lambert had threatened his parents with a knife. During this incident, Officer McKenzie engaged in a foot pursuit with Harrison, tackled him and was ultimately able to take control of a knife in Harrison's hand. During a search of his person incident to the arrest, Harrison spit in another officer's face.

Officer McKenzie also recalled a separate incident when another officer pursued Harrison and ultimately had to wrestle him to the ground. Officer McKenzie stated that these instances were on his mind as he was responding to 8 Joppa Road for this incident.

At the time the call came in, he was at the station working on reports. Officer McKenzie walked out of the station to his vehicle and called over his portable radio that he would be responding to the scene. As he pulled out of the parking lot, he observed Lt. Tartleton and Officer Gudzinowicz behind him in a fully marked cruiser. He knew they were both in a training capacity that day but nonetheless observed that they were also responding to the scene.

As he approached the Lambert home, Officer McKenzie pulled up away from the home to keep a safe distance. As he pulled up, he observed Harrison running away from his home towards the end of his driveway. Upon exiting his vehicle, Harrison was about 15 yards away from Officer McKenzie. He initially could not see the knife and yelled to Harrison, “show me your hands.” Harrison responded, “fuck off.” Officer McKenzie unholstered his firearm because of the manner in which Harrison was moving and he had information from the call referring to Harrison threatening his father with a knife. As

Harrison turned toward Officer McKenzie, he was able to identify a knife in Harrison's hand with the blade sticking out.

At this time, he perceived Harrison as an "immediate threat, armed with a deadly weapon." Officer McKenzie estimated at this point Harrison was about 15 yards away. He screamed at Harrison to, "Drop the knife" and observed Harrison was in an aggressive posture. Lt. Tartleton and Officer Gudzinowicz were behind Officer McKenzie. Officer McKenzie heard commands coming from the other officers but was uncertain, where each officer was specifically positioned.

Harrison then charged in the direction of the officers. Officer McKenzie described the "charge" as a "trot" for the initial few steps, and then into a run, "picking up his pace." He ultimately charged toward Lt. Tartleton, who was standing to Officer McKenzie's far left, beyond Officer Gudzinowicz. Officer McKenzie heard Harrison growl as he charged toward the officers. As Harrison advanced, officers were continuing to issue commands to Harrison to "drop the knife" and "stop." At some point during the charge, Officer McKenzie placed his finger on the trigger. At that moment, he perceived Harrison as a threat to the other officers but not toward himself. However, he did not like the "backdrop" and was concerned about firing near vehicle traffic and nearby homes as well as his fellow officers.

When Harrison was as close as "5 yards or less" to the other officers, Officer McKenzie heard gun shots. He estimated that Harrison was approximately "12 feet" or "three quarters the width of the roadway" from him when the other officers fired. He recalled hearing 5-6 shots in short succession and believed all the shots were fired while Harrison was "upright" and "standing." Officer McKenzie then radioed, "Shots fired." Officer McKenzie did not fire his weapon.

After Harrison fell to the ground, Officer McKenzie observed that one of the officers removed the knife from Harrison's hand and moved it into the roadway. He described the knife as having a "significant" sized blade with a handle.

Almost immediately after the shots were fired, Harrison's father came running toward Officer McKenzie. As he was approaching him, Officer McKenzie re-holstered his weapon. Mr. Lambert was yelling, "Why did you do that?," "I knew I should not have called," and while motioning toward his legs stated, "I am from the military, you are supposed to shoot him in the leg." At this time, Officer Brandon Gagnon arrived. Officer McKenzie retrieved a medical kit from his cruiser and assisted Officer Gudzinowicz in rendering aid to Harrison. Officer McKenzie then spoke with Mr. Lambert about what transpired at the home before Mr. Lambert called 911.

Shortly after speaking with Mr. Lambert, Sergeant Ryan Levesque pulled Officer McKenzie aside and separated him from the other officers. He was transported back to the station, his service weapon was confiscated and he ultimately turned over his uniform and duty belt to detectives with NHSP Major Crime Unit. While at the station, he met with Chief Doyle before going home that afternoon.

Officer McKenzie estimated that from the time he exited his cruiser to the time shots were fired was “very brief,” “less than 30 seconds.”

During the interview, Officer McKenzie also discussed his training surrounding use of the TASER. He indicated that a TASER was not to be used in a deadly force situation. He also explained that he did not have enough time to consider any alternatives because the situation escalated quickly. In any event, he stated the TASER only has a range of 21 feet; Harrison was much farther away when he initially made contact with Harrison as Harrison was holding the knife.

4. O.P. – Juvenile Eyewitness

O.P. was with his mother driving down Joppa Road on September 3, 2015. As his mother’s vehicle approached the intersection of Joppa Road and Baboosic Lake Road, he observed a single police cruiser pull onto Joppa Road Extension. The vehicle pulled over on the westerly side of the road and three officers exited the vehicle. He estimated the officers were 100 yards away from him. He observed that all three officers pulled out weapons upon exited the vehicle.

Around the same time, he observed a man, who appeared to be around “20-22” years old, walk from a yard on the westerly side of Joppa Road Extension onto the street. The man ultimately crossed the street out of O.P.’s view. He was uncertain as to what this man was wearing. He did, however, observe the man gesture toward the officers as to indicate that he acknowledged they were there; he described it as a “wave.” The man was walking fast, not jogging, when he crossed the road behind some trees blocking O.P.’s vantage point. Moments after the man left O.P.’s view, he heard gunshots but was uncertain as to which officers fired.

Before hearing the gunshots, O.P. observed the three officers walk in front of the cruiser. The officers were then standing in the middle of the roadway in a semi-circle arrangement, with the officer on the far left in the middle of the roadway closest to O.P. The other officers were each separated by a few feet but “at different depths,” one closer to O.P. than the other. The officers then drew their weapons. At this moment, O.P. was unable to see the officer positioned on the far right.

O.P. estimated that it was “2.5 to 3 seconds” between the time he lost sight of the man after he crossed the road to the time the gunshots were fired. O.P. was focused on the closest officer to him, the one to the far left, and observed him “recoil” after he fired the shots. He then watched the officer use his radio. He was unable to see what the officers were shooting at.

5. Laura Ploss

On September 3, 2015, Laura Ploss was driving with her teenage son, O.P. As she approached the intersection of Joppa Road and Baboosic Lake Road, she observed two police cruisers quickly pull onto Joppa Road Extension. The vehicles parked in the “middle of the road.” She observed two officers, each exiting one of the vehicles and then she immediately noticed the officers both had their hands on their hips. She saw the officers take a few steps toward the middle of the roadway. The officers both “drew” their weapons and within “six or seven seconds” she heard what appeared to be gunshots. She did not observe a third officer from her vantage point and was also unable to see what the officers had aimed at. She had her windows up with the air conditioning on and was unable to hear anything from the encounter, other than the gunshots. Before pulling away, she observed one of the officers use his radio. She indicated that after the gunshots were fired, she observed all three officers remain standing in the road for about ten seconds.

E. Past Arrests and Incidents Involving Harrison Lambert

The Merrimack Police Department had numerous prior contacts with Harrison Lambert, many of which occurred when he was juvenile, dating back to October 15, 2007. Below is a summary of the reports related to incidents the officers referenced during their statements.

a. May 31, 2015 – Dispute Between Neighbors

On May 31, 2015, Officer Gudzinowicz responded to 6 Halletts Way, the home behind the Lambert’s home. According to Officer Gudzinowicz’s report, Harrison peered over the fence and began yelling obscenities at Monique Lipper, his neighbor. She reported this to her husband, Doug Lipper, who exchanged words with Harrison. Harrison then walked into the Lipper’s front yard and “attempted to punch” Doug Lipper. Mr. Lipper was able to block the punch and pin Harrison on the ground. Merrimack Police responded to the scene. Lambert was uncooperative with Officer Gudzinowicz when he arrived. Ultimately, no charges were filed and Lambert was taken home by his parents.

b. December 9, 2013 – Foot Pursuit

On December 9, 2013, Officer McKenzie, as well as Officer Greg Walters and Sergeant Foley, responded to 8 Joppa Road for a report that Harrison was threatening his mother with a knife. Harrison’s parents drove to the police station to file the report. According to Officer McKenzie’s report, he pulled up and observed Harrison standing in the driveway smoking a cigarette. When Officer McKenzie made contact with Harrison, he noticed that Harrison had a hand in his jacket. Officer McKenzie asked Harrison to show him his hands, but Harrison refused and started to walk away. When Officer McKenzie asked again, Harrison ran toward a nearby house. Officer McKenzie caught up to him and tackled him to the ground. During the struggle, Harrison told Officer McKenzie that he had an open knife in his left hand. Officer McKenzie was able to gain control of the knife.

Officers McKenzie and Walters arrested and handcuffed Harrison. During the arrest Harrison spit in Officer Walters' face. Harrison was charged with criminal threatening, resisting detention, simple assault, and attempted second degree assault.

c. January 24, 2011 – Foot Pursuit

Officer McKenzie received a report of white male, wearing a dark sweatshirt, attempting to get into a vehicle. Officer McKenzie observed a suspect matching this description in the area of the call but allowed another officer to approach as McKenzie was in an unmarked cruiser. Officer Walters made contact with the suspect and identified him as Harrison Lambert. Harrison ran from Officer Walters. Officer Walters eventually caught up to Harrison. Officer McKenzie approached as Officer Walters was commanding Harrison to place his hands behind his back. Harrison refused to comply. The two officers were able to secure Lambert and place him in handcuffs.

d. May 14, 2010 – Drug Arrest

Officer Gudzinowicz and Sergeant Pane conducted a motor vehicle stop for a suspected DWI. During the stop, the officers observed a "roach" and a pipe. Harrison was a passenger in the vehicle. All occupants were ordered out of the vehicle. The operator was arrested and transported to the station for drug possession and transportation of drugs. Harrison had a bag of marijuana in his pocket and was also arrested for drug possession. Back at the station, prior to a search, Harrison informed officers he had Lorazepam in his groin area. Officers then recovered the pills from Harrison. Harrison was charged with possession of a controlled drug and prescription drugs.

F. Harrison's Injuries

After the shooting, Harrison was transported to St. Joseph's Hospital in Nashua. He was treated at St. Joseph's before being transferred to Beth Israel Deaconess Medical Center in Boston, Massachusetts. He died from his injuries and was autopsied on September 5, 2015, in Boston by Dr. Janice Grivetti of the Massachusetts Medical Examiner's Office.

At the autopsy, it was determined that Harrison suffered five gunshot wounds. Two to his left shoulder, one to the right side of his neck, one to the right side of his abdomen and one through his right leg. Ultimately, Harrison's death was ruled a homicide, with the cause of death to be multiple gunshot wounds.

G. Physical Evidence at the Shooting Scene

A search was conducted inside and around the Lamberts' home. From inside the home, investigators collected a leather knife sheath, push broom, and a crow bar, among other items. They also collected Harrison's knife, and eight .40 caliber discharged cartridge

casings within the roadway. Harrison's knife was identifiable as having come from the leather knife sheath located inside the home.

Additionally, detectives from the NHSP Major Crime Unit collected duty weapons, clothing and other items from Lt. Tartleton, Officer McKenzie and Officer Gudzinowicz. These items were submitted to the State Police Forensic Laboratory for inspection. After review, it appears that Lt. Tartleton fired three shots and Officer Gudzinowicz fired five, totaling eight shots fired. Officer McKenzie did not fire any shots.

The NHSP Major Crime Unit also collected digital photographs of the scene through use of its FARO laser scanner. The FARO device collects 3D images and data, which captures distance with accuracy within 2mm.

IV. APPLICABLE LAW AND LEGAL STANDARDS

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, like any private citizen, 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" is defined as 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). Further, all the circumstances surrounding the incident should be considered in determining whether there was a reasonable belief that deadly force was necessary to defend oneself or another. See id. at 99; Aldrich v. Wright, 53 N.H. 398 (1873). The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or police officer may be justified in using deadly force if he reasonably believed that he or another person was in imminent danger of the use of deadly force, even if, in fact, they were not, and his belief is objectively reasonable.

Moreover, when analyzing the reasonableness of an actor's use of deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight, which is afforded by one viewing the circumstances after the fact.

In Graham v. Connor, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer's conduct would be judged when excessive

force claims were brought against him. The Court confirmed that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* The Court went on to explain how to determine what is reasonable in situations where police officers use force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. *Id.* at 396-97; see also *Ryburn v. Huff*, 132 S. Ct. 987, 992 (2010).

The Eleventh Federal Circuit has noted that:

The Supreme Court has emphasized that there is no precise test or ‘magical on/off switch’ to determine when an officer is justified in using excessive or deadly force. ... Nor must every situation satisfy certain preconditions before deadly force can be used ... Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.

Garczynski v. Bradshaw, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted). 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. Dist. Fl. 2013). Specifically, the law accounts for the often fast moving nature of dangerous situations and the necessity of making decisions in less than ideal circumstances. See *Ryburn v. Huff*, 132 S. Ct. 987, 991-92 (2012) (chastising the lower circuit court for not “heed[ing] the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation.”).

V. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General has determined that Harrison Lambert created a dangerous situation that escalated to the point where it became reasonable for Lt. Tartleton and Officer Gudzinowicz to conclude that they faced an imminent threat of deadly force by Harrison.

Harrison Lambert was someone who was known to the Merrimack Police Department. At the time the 911 call came in from the Lambert house on September 3, 2015, all three responding police officers immediately recalled past contact that they or other officers had with Harrison Lambert, which included resisting arrest, a foot pursuit involving a knife, and a suicide attempt. Lt. Tartleton said he knew Harrison was “unpredictable,” while Officer Gudzinowicz stated that he was on “high alert.”

Upon arriving, all of the officers observed Harrison wielding a knife and acting erratically, causing them to draw and aim their service weapons at Harrison. This situation was a “tense, uncertain and rapidly evolving situation,” exactly the type of scenario the *Graham* Court recognized when officers are forced to make split-second decisions on the use of force.

Under these conditions, all three officers issued commands to Harrison to drop the knife as Harrison stood, stationary at the end of the driveway. Then, “out of nowhere” Harrison charged toward the officers. All three officers indicated that, while Harrison charged at them, they all screamed at, and pleaded with Harrison to drop the knife and to stop.

Lt. Tartleton explained that he thought back to his training in the split-seconds he spent determining whether it was appropriate and necessary to use deadly force. He fixated on a mailbox near the roadway, and made the decision that if Harrison came any closer than that mailbox to him and his fellow officers, he would have to fire his weapon to prevent himself or another officer from being stabbed. He specifically cited his training regarding the *Tueller Drill*, and what he described as a 21 or 30 foot buffer. By that, Lt. Tartleton meant that an individual armed with a knife could cross a 30 foot distance and stab a police officer in the time that it would take for that officer to react, draw his or her weapon, aim, and fire. Lt. Tartleton stated that he was in fear of his life at the time he fired his weapon and, further, that he perceived the threat as a threat to all three officers, not just himself. Before firing, he stated that Harrison looked “determined” and “crazy.”⁵

Officer Gudzinowicz told investigators he had his firearm out and was “tracking” Harrison with his pistol as Harrison charged toward the officers. He perceived Harrison as an “imminent threat.” Officer Gudzinowicz explained that Tartleton was off to his immediate left and he thought at that time that Harrison “will stab [Lt. Tartleton] if I don’t do anything.” Officer Gudzinowicz stated that Harrison got within 12–15 feet of both him and Lt. Tartleton before he fired his weapon. Like Lt. Tartleton, Officer Gudzinowicz explained the *Tueller* drill came across his mind, in that a person with a knife within “21 or 30 feet” could close on another person before you were able to engage them.

Based on all the evidence, it is clear that after the officers arrived, they made efforts to convince Harrison to drop his knife. Instead, Harrison charged the officers in an aggressive manner, with his knife in hand and the blade pointed toward the officers. Despite repeated commands, Harrison failed to drop his knife or stop advancing. Thus, when Harrison closed the distance between him and the officers it was reasonable for Lt. Tartleton and Officer Gudzinowicz to conclude that Harrison was about to use deadly force against

⁵ During their respective statements, each officer approximated the distances between themselves and Harrison. Both Officers Gudzinowicz and McKenzie estimated that Harrison was within 15 feet of an officer at the time shots were fired. Lt. Tartleton estimated Harrison was a bit farther away, between 30-45 feet. The physical evidence suggests that Harrison was less than 20 feet of Officer Gudzinowicz and Lt. Tartleton at the time shots were fired.

them. Therefore, Lt. Matthew Tartleton and Master Patrolman William Gudzinowicz were legally justified in using deadly force against Harrison Lambert.

1287287.docx