

**ATTORNEY GENERAL’S REPORT REGARDING THE
SEPTEMBER 30, 2017 OFFICER-INVOLVED SHOOTING
INCIDENT IN BELMONT, NEW HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General Gordon J. MacDonald announces the completion of a report concerning the officer-involved shooting incident that occurred in Belmont, New Hampshire, on September 30, 2017. Although Joseph Mazzitelli (age 46) of Belmont, New Hampshire, was wounded in the chest by police gunfire during the incident, Mr. Mazzitelli died as a result of a self-inflicted gunshot wound to the head. The purpose of this report is to summarize the Attorney General’s findings and conclusions with regard to this officer-involved shooting incident. The findings and conclusions set forth in this report are based on information gathered during the investigation, including photographs, videos, physical evidence, and witness interviews.

As provided by RSA 7:6 and RSA 21-M:3-b, the Attorney General is New Hampshire’s chief law enforcement officer. As such, whenever a law enforcement officer uses deadly force in New Hampshire, the Attorney General is tasked with determining whether the use of such force comports with New Hampshire law. Based on the investigation of this deadly force incident, the Attorney General finds that the use of deadly force by Belmont Police Corporal Evan Boulanger on September 30, 2017, was legally justified.

II. SUMMARY OF THE FACTS

At approximately 2:45 p.m. on September 30, 2017, while on patrol, Corporal Evan Boulanger of the Belmont Police Department went to the Irving Service Station¹ on Plummer Hill Road in Belmont to get a bottle of water. As he was leaving the Irving Station, Corporal Boulanger ran the license plate of a Honda Accord parked adjacent to a gas pump, something Boulanger did routinely during his patrol shifts. The license plate came back to a Ruby Lane, whom Corporal Boulanger knew to be the estranged ex-girlfriend of an individual named Joseph Mazzitelli. Corporal Boulanger believed that Mr. Mazzitelli had an outstanding arrest warrant for harassment that stemmed from a recent incident where Mr. Mazzitelli allegedly fired a gun outside of Ruby Lane's boyfriend's home.

Corporal Boulanger approached Mr. Mazzitelli, who was standing at the rear of the car, and informed him that there was an active warrant for his arrest. Corporal Boulanger said that Mr. Mazzitelli appeared "aggravated." While aggravated, Mr. Mazzitelli complied with Corporal Boulanger's directions and submitted to a pat frisk. Mr. Mazzitelli asked Corporal Boulanger if he could smoke a cigarette and, trying to calm Mr. Mazzitelli, Corporal Boulanger granted his request. With Corporal Boulanger standing close behind him, Mr. Mazzitelli went to the front seat of the car and began reaching toward the glove box with his left hand. Corporal Boulanger became concerned when he saw that Mr. Mazzitelli was doing something with his right hand and that Corporal Boulanger could not see what he was doing. After Mr. Mazzitelli got out of the car, Corporal Boulanger was determined not to allow him back into the car.

¹ The Irving Service Station also contains a Circle K convenience store. The terms "Irving" and "Circle K" are used interchangeably in this report.

Mr. Mazzitelli began smoking a cigarette near the rear portion of the car. According to Corporal Boulanger, Mr. Mazzitelli was “bouncing all around.” Mr. Mazzitelli then walked to the rear driver side door and locked the car by reaching through an open door. As Corporal Boulanger tried to assure Mr. Mazzitelli that the car would be taken care of, Mr. Mazzitelli quickly moved toward the front driver side door of the car. Corporal Boulanger intercepted him and briefly struggled with Mr. Mazzitelli as he opened the door and leaned into the car. Realizing that he could not see Mr. Mazzitelli’s hands and that he was in a vulnerable position, Corporal Boulanger backed away from the car toward his cruiser. Mr. Mazzitelli quickly emerged from the car with a gun pressed to his own head. Corporal Boulanger drew his duty weapon and ordered Mr. Mazzitelli to drop his gun.

With the gun to his head, Mr. Mazzitelli appeared to pull the trigger. However, the gun did not fire. Mr. Mazzitelli quickly brought the gun down to his waist and chambered a round, apparently preparing to fire the gun. Corporal Boulanger believed that Mr. Mazzitelli was either going to shoot at him, or shoot himself. Corporal Boulanger was concerned not just for his own safety, but the safety of private citizens at the crowded gas station. As Mr. Mazzitelli raised the gun a second time, Corporal Boulanger fired two rounds toward Mr. Mazzitelli’s chest area. Mr. Mazzitelli also fired a single shot into the left side of his head. Mr. Mazzitelli was transported to Lakes Region General hospital and was pronounced dead. No one else was physically injured.

III. THE INVESTIGATION

Since the incident on September 30, 2017, the Attorney General’s Office and the New Hampshire State Police Major Crime Unit have been investigating the facts and circumstances that led to Corporal Boulanger’s use of deadly force against Mr. Mazzitelli.

Although the Chief Medical Examiner ultimately determined that Mr. Mazzitelli died of a self-inflicted gunshot wound to the head, the Attorney General still must determine whether the deadly force used by Corporal Boulanger was in conformity with the law. That investigation has entailed witness interviews, the examination of a car and physical evidence found at the scene, reviewing reports, photographs, and diagrams, and reviewing recordings of police dispatch radio transmissions and video surveillance footage of the incident. Corporal Boulanger was fully cooperative with the investigation and agreed to be interviewed by detectives.

A. Interview of Corporal Evan Boulanger

Corporal Evan Boulanger was interviewed on October 4, 2017. Corporal Boulanger is a nine-year veteran of the Belmont Police Department. On September 30, 2017, he was working an overtime shift that began at 9:00 a.m. He was the shift supervisor for two other officers. Corporal Boulanger was dressed in his duty uniform. He spent the first half of his shift at the police department, mostly dealing with administrative matters. He left the police station after lunch in his assigned cruiser, car #5, which was the K-9 unit. Corporal Boulanger is a member of the Belknap Regional SWAT team with his K-9, Vito.

Corporal Boulanger was not assigned to a particular area that afternoon, but was instead conducting a general patrol of Belmont. After stopping a car on Bishop Road, Corporal Boulanger noticed that he was out of water and proceeded to the Irving Service Station on Plummer Hill Road. Corporal Boulanger parked his cruiser on the south side of the Circle K convenience store. He got out of his cruiser and went into the store to buy water. While in the store he noticed a man standing in line. Although Corporal Boulanger could only see the man's backside, he had a vague sense that he recognized the man, but did

not think much of it. Corporal Boulanger then spoke with the store clerks and left the store. Corporal Boulanger got back in his cruiser and began to exit the Irving Station.

As he drove past the gas pumps toward Old Prescott Hill Road, Corporal Boulanger saw a car being filled up at the pumps. As he routinely does during patrol shifts, Corporal Boulanger ran the license plate of the car. The car's registration indicated that it belonged to a woman named Ruby Lane. Corporal Boulanger knew that Ruby Lane was the estranged ex-girlfriend of a man named Joseph Mazzitelli. It was at this point that Corporal Boulanger realized that the man he thought he recognized inside of the Circle K store was, in fact, Mr. Mazzitelli. Corporal Boulanger believed that there was an arrest warrant for Mr. Mazzitelli stemming from a recent incident involving Ms. Lane. During that incident, which took place outside of the home of Ms. Lane's current boyfriend, Mr. Mazzitelli allegedly harassed Ms. Lane and fired one or more rounds from a handgun into the air. According to Corporal Boulanger, because no witnesses actually saw Mr. Mazzitelli fire the gun, the only charge that police were able to bring was a harassment charge.

Corporal Boulanger turned his car away from the exit near Old Prescott Hill Road and looped back into the gas station, parking his cruiser directly behind the car Mr. Mazzitelli was driving. Corporal Boulanger saw that Mr. Mazzitelli was at the back of the car putting what he thought was a case of beer into the trunk. Corporal Boulanger radioed dispatch and asked to have another officer locate a hard copy of the warrant, which he believed was located at the Belmont Police Station. Corporal Boulanger then got out of his cruiser and told Mr. Mazzitelli that there was an active warrant for his arrest. In speaking with Mr. Mazzitelli about the warrant, Corporal Boulanger was hoping to obtain additional information that might support a more serious criminal charge than harassment (one

reflective of the fact that Mr. Mazzitelli had apparently fired a gun into the air). To that end, when Mr. Mazzitelli asked Corporal Boulanger what the warrant was all about, Corporal Boulanger told him that it stemmed from the recent incident with Ms. Lane where Mr. Mazzitelli fired a handgun. It was at this time that dispatch confirmed the existence of the arrest warrant.² Corporal Boulanger relayed this information to Mr. Mazzitelli.

Corporal Boulanger began to pat frisk Mr. Mazzitelli. He removed the contents of Mr. Mazzitelli's pockets and placed them on the trunk of the car Mr. Mazzitelli was driving. Mr. Mazzitelli appeared aggravated, but Corporal Boulanger believed him to be aggravated at the situation generally and not at Corporal Boulanger in particular. It was during this pat frisk that Corporal Boulanger noticed that Mr. Mazzitelli's movements were very "robotic." Corporal Boulanger had previously been a certified drug recognition expert, and Mr. Mazzitelli's movements led him to suspect that Mr. Mazzitelli was high on some type of stimulant, possibly methamphetamine.³ Because he was not able to transport arrestees in his K-9 equipped police cruiser, Corporal Boulanger asked dispatch to send a second unit to the scene in order to transport Mr. Mazzitelli to the Belmont Police Station.

Corporal Boulanger said that in his experience, he has been able to diffuse situations with agitated individuals by showing compassion and trying to de-escalate tense situations. For this reason, when Mr. Mazzitelli asked if he could smoke a cigarette, Corporal Boulanger agreed. Mr. Mazzitelli went to the driver's side door of the car, opened the door, and leaned into the car part way. Corporal Boulanger knew that Mr. Mazzitelli had run from police in the past, so he blocked the door to ensure that Mr. Mazzitelli could not close it. As Mr.

² An arrest warrant for the crime of harassment was signed by a justice of the peace on September 4, 2017.

³ As is discussed below, the autopsy determined that Mr. Mazzitelli had high levels of methamphetamine in his system at the time of his death.

Mazzitelli was reaching over to the glove compartment with his left arm, Corporal Boulanger noticed that Mr. Mazzitelli was doing something with his right hand that Corporal Boulanger could not see. Corporal Boulanger said that this “made the hair on the back of [his] neck stand up.” Although Corporal Boulanger said that this particular interaction was no different from interactions that he had had with other subjects, something about Mr. Mazzitelli’s movements “scared the hell” out of him. Corporal Boulanger told investigators that his “sixth sense” was “going crazy.”

Mr. Mazzitelli grabbed a butane torch lighter from the glove box and got out of the car. Corporal Boulanger thought to himself at this point that he could not let Mr. Mazzitelli back in the car under any circumstance. Mr. Mazzitelli and Corporal Boulanger walked to the trunk of the car. Corporal Boulanger felt more comfortable with Mr. Mazzitelli at this point because, having already conducted a pat frisk Corporal Boulanger knew that Mr. Mazzitelli was not armed.

Mr. Mazzitelli lit his cigarette and took a few drags. Corporal Boulanger described Mr. Mazzitelli as “bouncing all around” at this point. Mr. Mazzitelli moved from the rear of the car to the rear driver side door. He opened the driver side door, reached in, and locked the rear passenger door. Corporal Boulanger told Mr. Mazzitelli not to worry about the car and that they could probably arrange to have someone drive the car from the Irving Station in lieu of it being towed. Mr. Mazzitelli responded, “I’m just locking my fucking car,” and then moved quickly to the front driver side front door. Mr. Mazzitelli opened the door to the car. Corporal Boulanger yelled at him to get back to the rear of the car while at the same time approaching Mr. Mazzitelli. Mr. Mazzitelli responded that he was just putting his lighter in the car. Corporal Boulanger assured him that he would take care of it and again ordered Mr.

Mazzitelli to return to the rear of the car. Ignoring Corporal Boulanger's commands, Mr. Mazzitelli suddenly entered the car such that he was sitting in the driver's seat. Corporal Boulanger reached into the car and grabbed ahold of Mr. Mazzitelli's chest and neck area. Corporal Boulanger quickly realized that he could not see Mr. Mazzitelli's hands. Corporal Boulanger thought that if Mr. Mazzitelli retrieved a gun, he would be dead because he would not be able to effectively draw his weapon from the position that he was in.

Corporal Boulanger disengaged from Mr. Mazzitelli. At first, he attempted to grab his Taser with the intention of subduing Mr. Mazzitelli. Corporal Boulanger said that Mr. Mazzitelli jumped out of the car "faster than anything [he had] ever seen" holding a chrome and black pistol in his left hand. Mr. Mazzitelli raised the gun to his own head. Corporal Boulanger remembered Mr. Mazzitelli shouting at him, but did not remember what was said aside from the word, "fuck." Corporal Boulanger said that, oddly, his first thought was to wonder whether Mr. Mazzitelli was a lefty (Mazzitelli was holding the gun in his left hand). Corporal Boulanger worried that if Mr. Mazzitelli attempted to fire the weapon with his non-dominant hand, he was more likely to misfire and hit one of several private citizens in the immediate area. Corporal Boulanger explained that he could not give up as much ground as he would normally in a suicidal situation because of the number of private citizens in the immediate area. Specifically, Corporal Boulanger was worried that if he retreated to his car, Mr. Mazzitelli could more easily hurt an innocent bystander, or possibly even leave in the car. Corporal Boulanger was concerned that if Mr. Mazzitelli left in the car, he could go to his former girlfriend's house and harm her.

By this point, which was only a matter of seconds, Corporal Boulanger had drawn his gun and pointed it at Mr. Mazzitelli. Corporal Boulanger repeatedly ordered Mr. Mazzitelli

to drop his gun. After a few seconds, he heard a “click” and saw that Mr. Mazzitelli had pulled the trigger, but the gun did not fire. Corporal Boulanger saw that Mr. Mazzitelli “winced” when the gun did not fire. Mr. Mazzitelli immediately pulled the gun down to his waist and chambered a round “faster than half the special forces guys on [Corporal Boulanger’s] team.” At this point, Corporal Boulanger thought he “was a dead man” if Mr. Mazzitelli raised the gun again. Corporal Boulanger believed that it took everything Mr. Mazzitelli had in order to pull the trigger the first time with the gun to his own head, and that he would not be able to do that again. Instead, Corporal Boulanger thought that Mr. Mazzitelli would level the gun on him. Even if Mr. Mazzitelli did not shoot him, Corporal Boulanger was concerned that Mr. Mazzitelli might injure an innocent private citizen in an attempt to commit suicide either via a misfire, or if the bullet passed through Mr. Mazzitelli’s body.

As soon as Mr. Mazzitelli chambered a round and began raising the gun, Corporal Boulanger fired his weapon twice at Mr. Mazzitelli. Corporal Boulanger said that he saw both rounds strike Mr. Mazzitelli in the chest area. Mr. Mazzitelli dropped to the ground immediately. Corporal Boulanger approached Mr. Mazzitelli. He knew immediately that Mr. Mazzitelli was deceased. He did not recall seeing Mr. Mazzitelli point the gun at his head a second time and was unaware that Mr. Mazzitelli had suffered a self-inflicted head wound even after approaching him.

Corporal Boulanger holstered his pistol and de-cocked it. He radioed “shots fired” and requested an ambulance. Corporal Boulanger saw Mr. Mazzitelli’s pistol on the ground near his body, and kicked it under the car Mr. Mazzitelli was driving. Within a matter of minutes, other law enforcement officers arrived on scene. Corporal Boulanger was

transported by ambulance to the hospital to be checked and was released without any physical injuries.

B. Surveillance Footage

The Irving Service Station where the incident occurred was equipped with interior and exterior surveillance cameras, some of which captured the shooting incident. This is the only known video of the shooting incident. Two of the exterior cameras were positioned along the front of the Circle K Convenience Store, and offered slightly different vantage points of the unleaded gas pumps and parking lot area where the incident occurred. A third exterior camera was directed at the diesel gas pumps and did not capture the incident. The ten interior cameras in service at the time of the incident captured footage of both Corporal Boulanger and Mr. Mazzitelli entering the Circle K store in the minutes before the shooting. The surveillance video recovered from the Irving Service Station includes several brief gaps in the video. This is not uncommon for surveillance video systems which typically operate on a motion trigger in order to save recording space. The following is a brief summary of relevant portions of the surveillance footage reviewed during the investigation.⁴

At 2:46:42 p.m.,⁵ a Honda Accord driven by Mr. Mazzitelli enters the Irving Station parking lot from the north and parks adjacent to an unleaded gas pump. He exits the car, and can be seen entering the Circle K store at 2:47:17 p.m. Inside the store, Mr. Mazzitelli enters the walk-in cooler, collects a yellow beverage container, and approaches the cash register at 2:47:45 p.m. Although his cruiser is not visible from any of the exterior surveillance

⁴ Investigators reviewed surveillance footage captured between 2:45 p.m. and 3:45 p.m. on September 30, 2017.

⁵ All time references in this section are derived from the time stamp on the surveillance footage.

cameras, Corporal Boulanger enters the Circle K store at 2:47:55 p.m.⁶ He exits the store at approximately 2:48:40 p.m. After paying for what appears to be a case of alcoholic beverages, Mr. Mazzitelli exits the store at 2:48:54 p.m.

After exiting the store, Mr. Mazzitelli approaches the car he was driving and opens the trunk. At 2:49:26 p.m., Corporal Boulanger's Belmont Police cruiser can be seen driving north in front of the Honda Accord that Mr. Mazzitelli was driving toward the area of Old Prescott Hill Road. As Corporal Boulanger's cruiser drives out of view, Mr. Mazzitelli begins to use the gas pump. At 2:50 p.m., Corporal Boulanger's cruiser re-approaches the car Mr. Mazzitelli was driving. Corporal Boulanger stops his cruiser immediately behind the car and exits his cruiser at 2:50:09 p.m. Several other cars can be seen entering and exiting the parking lot at this time.

Between 2:50:13 p.m. and 2:51:20 p.m., Corporal Boulanger and Mr. Mazzitelli appear to engage in conversation near the rear driver side portion of the car. With the trunk closed and Mr. Mazzitelli's hands on the rear of the car, Corporal Boulanger appears to pat frisk Mr. Mazzitelli between 2:51:30 and 2:52:42 p.m. At 2:52:46 p.m., with Corporal Boulanger standing immediately adjacent to him, Mr. Mazzitelli can be seen opening the front driver side door of the car and leaning inside for several seconds. Mr. Mazzitelli exits the car at 2:53:08 p.m., at which point he and Corporal Boulanger return to the rear of the car. Numerous other cars and pedestrians are visible in the immediate vicinity of Mr. Mazzitelli and Corporal Boulanger at this time.

⁶ Corporal Boulanger told investigators that he parked on the south side of the Irving Station near Plummer Hill Road. There are no cameras positioned or affixed on the south side of the building.

At approximately 2:53:43 p.m., with Corporal Boulanger standing immediately adjacent to him, Mr. Mazzitelli again approaches and opens the front driver side door of the car. At approximately 2:53:46 p.m., Mr. Mazzitelli can be seen to be reaching from the front driver side door toward the lock area on the back driver side door. Mr. Mazzitelli then quickly enters the front driver side door at 2:53:49 p.m., prompting Corporal Boulanger to reach inside of the car. After what appears to be a brief physical altercation with Mr. Mazzitelli, Corporal Boulanger begins to back away from Mr. Mazzitelli toward his cruiser at 2:53:54 p.m. A second or two later, Mr. Mazzitelli emerges from the car. Facing Corporal Boulanger, Mr. Mazzitelli appears to place a gun to left side of his head using his left hand. Corporal Boulanger is seen standing between his cruiser and Mr. Mazzitelli. His arms appear to be extended in front of him as though he is pointing his weapon at Mr. Mazzitelli. Other cars and pedestrians are in their immediate vicinity.

Mr. Mazzitelli lowers his left arm briefly at 2:53:57 p.m., and then raises it again to the left side of his head a second or two later. Immediately thereafter at 2:54 p.m., Mr. Mazzitelli turns slightly to his left and falls to the ground adjacent to the open driver side door of the car.⁷ Corporal Boulanger is standing several feet away with his arms still extended. Corporal Boulanger approaches the area where Mr. Mazzitelli fell at 2:54:17 p.m. Mr. Mazzitelli's body is obscured at this point by the car. Corporal Boulanger continues to linger near the area of the car until 2:56:23, when a second Belmont Police Officer arrives on scene. Throughout this time, other cars and civilians are visible in the immediate area. A third Belmont Police Officer arrives on scene at 2:57:19 p.m. and appears to help secure the

⁷ Approximately four seconds elapsed from the time Mr. Mazzitelli emerged from his car with the handgun until he is seen falling to the ground.

scene. An ambulance and emergency medical technicians arrive on scene at 3:01:17 p.m. They place Mr. Mazzitelli's body on a stretcher at 3:05 p.m. and transport him from the scene several minutes later. By this time, the scene appears to have been quarantined and secured by numerous law enforcement personnel.

The Belmont Police Department does not utilize body cameras on its officers, nor are its cruisers equipped with dash cameras. To date, the investigation has not uncovered any audio or video recordings of the shooting incident from private citizens.

C. Other Witness Interviews

1. Daniel Jacobs

Daniel Jacobs was interviewed by State Police detectives on October 3, 2017.⁸ Mr. Jacobs said that he was parked in his truck in front of the Irving Service Station at approximately 2:45 p.m. His truck was parked such that it faced the gas pumps. Sometime shortly after 2:45 p.m., he observed a Belmont Police Officer interacting with an adult male near one of the gas pumps. Mr. Jacobs said that he had a clear view through his front windshield of the officer, the male subject and the male subject's car.

Mr. Jacobs saw the officer approach the male and pat him down at the rear of the male's car. After approximately one minute, Mr. Jacobs saw the male subject open the front driver side door and lean inside, with the officer standing close by. The male emerged from the car with a cigarette and walked back to the rear of his car. A minute or so later, Mr. Jacobs saw the male subject push past the officer and quickly approach the front driver side door. The officer attempted to grab the male subject, but was unable to prevent him from

⁸ Mr. Jacobs left the Irving Station on September 30th before being interviewed by State Police detectives. He later contacted State Police and offered to give a statement about the incident, which he said he observed.

opening and entering the front driver side door. The officer then quickly backed away from the male subject and drew his weapon. Mr. Jacobs saw the male subject emerge from the car holding a gun in his left hand. Mr. Jacobs heard the officer yell something and then saw the male subject shoot himself in the head. Mr. Jacobs saw the bullet exit from the right side of the male subject's head. Contemporaneously, the officer fired two shots at the male subject. The officer announced "shots fired" on his radio. The officer appeared stunned. According to Mr. Jacobs, the officer had "no choice" but to fire at the male subject.

2. Joshua Caron

Joshua Caron was interviewed by a State Police detective on September 30, 2017. Mr. Caron told the detective that he went to the Circle K Convenience Store to purchase a bottle of chocolate milk. As he left the store, he saw a police officer talking to a man standing next to a dark-colored Honda Accord. He saw the man lean into the front driver side door of the car as though he was looking for something, with the officer standing close by. The man and the officer did not appear to be engaged in a physical or verbal altercation at that time. Mr. Caron continued walking to his truck, which was parked on the north side of the Circle K store. Once he arrived at his car, Mr. Caron could not see the officer or the Honda Accord. Approximately thirty seconds later—Mr. Caron stated that it could have been longer—he heard three loud pops. Out of curiosity, Mr. Caron got out of his truck and walked toward the Honda Accord. He saw a man lying on the ground leaning against the open driver side door. The officer appeared to be saying, "Joe, are you OK?" The officer instructed nearby private citizens to get back into their cars. Mr. Caron was unable to provide any additional information.

3. Andrew Marchand

Andrew Marchand was interviewed by State Police on September 30, 2017. Mr. Marchand stated that he went to the Irving Station in order to put air in his car's tires. While parked near the air compressor, Mr. Marchand saw a Belmont Police cruiser exit the gas station parking lot briefly before turning around and parking several feet behind a dark-colored Honda Accord. Mr. Marchand saw the police officer exit his cruiser and approach an adult male standing next to the Honda. Mr. Marchand looked away at that point. A minute or two later, Mr. Marchand heard someone yelling. Mr. Marchand looked up and saw the adult male holding a silver pistol next to the driver side door of his car, which was open. He heard the officer yell, "Drop your weapon!" Around the same time, the adult male fired his weapon—Mr. Marchand believed the man fired at the officer—prompting the officer to fire back one time from the rear of the Honda. Mr. Marchand believed that the officer struck the male on his left side. After firing his weapon, the officer approached the male subject and asked if he was alright. Overall, Mr. Marchand said that the incident happened "real fast" and that the officer had "no choice" but to discharge his weapon.

4. Robin McLaughlin

Robin McLaughlin was interviewed by a State Police detective on September 30, 2017. Ms. McLaughlin pulled into the Irving Service Station and saw that the gas pump bays were all full. She noticed a police car parked behind a car next to where she had pulled in. As she got out, she began paying to attention to the officer, but tried not to be too obvious. She saw that the officer was asking the man questions and that the man seemed agitated. She saw that the man was emptying his pockets and putting the contents on the trunk of his car. Ms. McLaughlin commented that the man appeared to "be on something," and that he was

not answering questions concisely. Ms. McLaughlin assumed that the officer was talking to the man because he suspected him of driving while intoxicated.

Ms. McLaughlin was not sure if the officer asked for a license or a wallet, but the man went to the front seat of his car like he was going to get something. She saw the man walk back to the rear of the car and put a cigarette in his mouth. Ms. McLaughlin then got into her car and began to drive away. As she was pulling out, she heard what she thought were gunshots. She looked in her mirror and saw the officer was backing out of the stall and that he had his gun drawn. Ms. McLaughlin pulled her car over, turned around, and then parked. Ms. McLaughlin was able to see that the front door of the man's car was open and that the man appeared to be slumped on the ground, half in and half out of the car.

5. Justice Feldman

Justice Feldman was interviewed by a State Police detective on September 30, 2017. Mr. Feldman was walking into the store to pay for gas when he heard a cop say, "put the gun down." Mr. Feldman turned around and saw a man with a gun up to his head. Mr. Feldman saw the man pull the trigger and heard it click, but nothing happened. Mr. Feldman saw the man pull the gun down to chamber another round and at that point gunshots started going off. Although Mr. Feldman saw the man raise the gun a second time, he did not know if the officer shot the man or if the man shot himself. Mr. Feldman then went into the store and told everyone what happened. Mr. Feldman described the man who was shot as a white male who "looked a little off." Mr. Feldman identified the man's gun as a silver pistol and remembered hearing two gunshots.

6. Ruby Lane

Ruby Lane was interviewed by State Police detectives on September 30, 2017. Ms. Lane told detectives that she dated Mr. Mazzitelli for approximately four years, but that they had broken up in March. Ms. Lane said that she had spoken with Mr. Mazzitelli on the previous evening. She had been out for a walk and when she returned, Mr. Mazzitelli was in the vicinity of her house. Ms. Lane said that Mr. Mazzitelli was beside himself, talking about killing himself and getting back together with Ms. Lane. Mr. Mazzitelli said that he was not going to make it to his next court date because he was going to kill himself. Ms. Lane said that Mr. Mazzitelli had talked about killing himself in the past, and in fact, mentioned it frequently enough that she did not take it seriously when he told her that he would kill himself on the evening of September 29, 2017.

Ms. Lane said that while Mr. Mazzitelli would claim that he did not own any weapons, she knew him to own a silver Glock pistol with a slide top that he once accidentally dropped when he was in her presence. Ms. Lane said that after she and Mr. Mazzitelli split up, he “lost his mind a little bit.” Ms. Lane said that she knew Mr. Mazzitelli to abuse methamphetamine, and that he had been violent toward her in the past.

D. Physical Evidence

The New Hampshire State Police Major Crime Unit examined the shooting scene for physical evidence. Corporal Boulanger’s police cruiser was parked behind the Honda Accord that Mr. Mazzitelli was driving, which was parked adjacent to one of the unleaded gas pumps. Several other cars were parked at gas pumps and designated parking spaces in front of the Circle K convenience store. When investigators examined the car, the driver side door was open. There was a large amount of blood on the ground where emergency medical

personnel first encountered Mr. Mazzitelli's body, as well as on the Honda's driver side door. Underneath the car adjacent to the rear driver side tire, detectives found a bloodied black and chrome .40 caliber Smith and Wesson pistol with a fourteen round capacity as well as an empty (or "spent") .40 caliber shell casing. Upon examination, no live rounds were found in the magazine. Testing of the .40 caliber shell casing confirmed that it was fired from the .40 caliber Smith and Wesson pistol recovered from underneath the car. There were no obvious defects consistent with gunfire found on the Honda Accord. A search of the car that Mr. Mazzitelli was driving found an empty holster on the front passenger seat. No ammunition was found in the car. Nothing else of evidentiary value was found in the car. Measurements from the car indicate that the distance between where Mr. Mazzitelli was standing when he was shot and where Officer Boulanger was standing when he fired is approximately nine feet.

On the ground behind Mr. Mazzitelli's car, detectives discovered two 9mm shell casings. Detectives seized and examined Corporal Boulanger's duty weapon, a 9mm Sig Sauer pistol with a twenty round magazine. The magazine contained eighteen live rounds—two less than the magazine's full capacity—and there was a live round in the gun's chamber. This is consistent with Corporal Boulanger having fired two rounds on September 30, 2017.⁹ Testing confirmed that the two 9mm casings were fired from the 9mm duty weapon used by Corporal Boulanger.

The gas pump that would have been to the left of Corporal Boulanger has a defect that appears to be the result of a bullet ricochet. State Police Investigators believe that the bullet

⁹ With a full magazine and one round in the chamber, Corporal Boulanger's gun was capable of holding twenty-one live rounds.

hit the side of the pump, ricocheted, and then hit Mr. Mazzitelli. Because the bullet hit an intermediate object prior to hitting Mr. Mazzitelli, the bullet likely spun nose over tail as it entered Mr. Mazzitelli, rather than in a typical spiral flight that a bullet exits a gun barrel. One bullet was recovered from the scene on the ground in a puddle of blood next to Mr. Mazzitelli. One bullet was recovered from Mr. Mazzitelli's body at autopsy. These bullets were examined by Stephen Ostrowski of the State Police Forensic Laboratory. Testing confirmed that both of these bullets were fired by Corporal Boulanger's duty weapon. The bullet recovered from autopsy had a typical mushroom appearance that occurs when a hollow-point bullet passes through an object. The bullet recovered at the scene did not have the typical mushroom appearance, but was only partially peeled back, which according to Mr. Ostrowski, is typical of a bullet that strikes an object and ricochets. The bullet that Mr. Mazzitelli fired into his head was not recovered from the scene.

Neither Corporal Boulanger's cruiser nor the Circle K convenience store sustained damage consistent with stray gunfire. Nothing else of evidentiary value was found at the scene.

An autopsy conducted by the Chief Medical Examiner determined that Mr. Mazzitelli suffered three gunshot wounds. Two of the gunshot wounds were to the chest area and a third gunshot was to his head. The gunshot wound to the head was determined to be self-inflicted and was the fatal wound that killed Mr. Mazzitelli. As such, Mr. Mazzitelli's death was ruled a suicide. The two chest wounds were dissimilar in size and appearance. One of the wounds was small and circular, indicative of a medium to long range shot. The second wound was larger and irregular. Prior to learning that one of the bullets had passed through the gas pump, the Medical Examiner believed that this larger, irregular wound could be the

result of a close range contact shot. The officer's statement, witness interviews, and the video surveillance do not support a finding that either of the chest wounds were close range or contact injuries.

Nevertheless, the State Police Forensic Laboratory conducted testing on Mr. Mazzitelli's clothing for evidence that would indicate that a gun was fired at close range. The Forensic Lab found no evidence of a contact or close range shot. There was no evidence of singeing or melting of the fibers of Mr. Mazzitelli's clothes, no evidence of partially burnt or unburnt gunpowder, and no vaporous lead or smoke on Mr. Mazzitelli's clothes, all of which would indicate a close range or contact shot. After learning that one of the bullets that struck Mr. Mazzitelli had hit an intermediary target, the Chief Medical Examiner concluded that the range of fire for this wound was indeterminate as the features of the entrance wound were atypical and consistent with a bullet passing through an intermediary target prior to striking Mr. Mazzitelli. Taking all of this evidence together, along with the video evidence, the officer's statement, and the witness statements, it is clear that the two bullets fired by Officer Boulanger were fired from his position at the rear of the car that Mr. Mazzitelli had been driving.

Lab results from testing on Mr. Mazzitelli's blood indicated a high level of methamphetamine and as a result, the Medical Examiner found that Mr. Mazzitelli had acute methamphetamine intoxication at the time of his death.

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 a 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 weapon 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). As such, all of the circumstances surrounding the incident should be considered in determining whether the actor had a reasonable belief that deadly force was necessary to defend himself or another. When reviewing a deadly force incident, the actor’s conduct should be viewed considering “the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection.” N.H. Criminal Jury Instructions, 3.10. In other words, 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. The amount of deadly force used by the actor to protect himself or another must also be reasonable, and not excessive. See State v. Etienne, 163 N.H. 57, 70 (2011).

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 a police officer may still be justified in using deadly force if he

reasonably believed that he was in imminent danger from the use of deadly force by another even if he was not, so long as the actor's belief was objectively reasonable.

In Graham v. Connor, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer's conduct must 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. at 396. 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, 565 U.S. 469, 477 (2012).

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, No. 11-80002-CIV-MARRA, 2013 U.S. Dist. LEXIS 44646 *55-56 (S.D. Fl. 2013). The law accounts for the fact that dangerous situations often unfold quickly and law enforcement officers sometimes need to make quick decisions under less-than-ideal circumstances. See Huff, 565 U.S. at 477 (finding that appeals court panel "did not heed 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.").

These are the legal standards that help guide the Attorney General's review of the use of deadly force by a law enforcement officer in New Hampshire.

V. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General has concluded that Joseph Mazzitelli created a dangerous situation that prompted the officer-involved shooting incident in Belmont on September 30, 2017.

Corporal Boulanger approached Joseph Mazzitelli to arrest him on an open warrant for harassment. Corporal Boulanger pat frisked Mr. Mazzitelli in order to confirm that he had no weapons on his person. Based upon Mr. Mazzitelli's movements and Corporal Boulanger's training and experience as a drug recognition expert, Corporal Boulanger suspected that Mr. Mazzitelli was high on methamphetamine. When Mr. Mazzitelli became agitated, Corporal Boulanger allowed him to smoke a cigarette in the hope of diffusing the situation. It was at this point that circumstances rapidly changed from a routine arrest to a life-threatening confrontation between Mr. Mazzitelli and Corporal Boulanger. Ignoring Corporal Boulanger's clear commands, Mr. Mazzitelli reentered his vehicle, and then during a physical struggle with Corporal Boulanger, he retrieved a firearm. Mr. Mazzitelli quickly exited the vehicle, where he then brandished that firearm and pointed it to his own head. At that time, Mr. Mazzitelli posed an immediate and deadly threat not only to himself, but also to the safety of Corporal Boulanger and others nearby at the crowded gas station. Although Corporal Boulanger pulled out his service weapon and aimed it at Mr. Mazzitelli, he did not discharge his gun at that time. Instead, he repeatedly told Mr. Mazzitelli to drop his weapon.

Again, Mr. Mazzitelli did not comply, but instead pulled the trigger of his weapon. When the gun did not fire, Mr. Mazzitelli was not deterred. Instead, he lowered his gun and prepared to fire the gun by chambering a round. As he raised the gun a second time, it was then that Corporal Boulanger fired his weapon twice at Mr. Mazzitelli. When Mr. Mazzitelli raised the gun for the second time, Corporal Boulanger reasonably concluded that he, as well as others in the immediate vicinity, faced an imminent threat of deadly force from Mr. Mazzitelli. Mr. Mazzitelli had shown a willingness to fire his weapon, and in chambering a round after the misfire, had shown a determination to fire a bullet from his weapon. It was reasonable for Officer Boulanger to conclude that Mr. Mazzitelli intended to shoot the officer, and it was reasonable to conclude that even if Mr. Mazzitelli shot himself, there would be an imminent threat of deadly force to innocent bystanders. In fact, while the Medical Examiner concluded that Mr. Mazzitelli shot himself in the head, investigators were unable to find the projectile that killed Mr. Mazzitelli. Based on the evidence, the bullet appears to have gone through Mr. Mazzitelli's head and traveled some distance such that investigators could not locate the bullet. Therefore, considering all of the circumstances as they were presented to Corporal Boulanger, his decision to use deadly force against Joseph Mazzitelli was objectively reasonable.

Accordingly, Corporal Evan Boulanger was legally justified in using deadly force against Joseph Mazzitelli. Therefore, no criminal charges will be filed against Corporal Evan Boulanger in connection with Mr. Mazzitelli's death.