

ATTORNEY GENERAL'S REPORT REGARDING THE DECEMBER 10, 2016 HOMICIDE IN DOVER, NEW HAMPSHIRE

I. INTRODUCTION

The Office of the Attorney General and the Dover Police Department have concluded an investigation into a fatal shooting incident that occurred in Dover, New Hampshire on December 10, 2016. As a result of that investigation, New Hampshire Deputy Attorney General Ann M. Rice has determined that the shooting death of Brenton Davis (age 55), by John Davis (age 76), was a justified use of deadly force under the law.

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

II. FACTS

A. Overview of the incident

On December 10, 2016, at approximately 9:11 a.m., Dover police officers responded to 92 Three Rivers Farm Road in Dover for a reported shooting. When officers arrived, they discovered John Davis outside the residence with apparent gunshot wounds. John Davis who had called 911, reported in substance that his son, Brenton Davis, shot him several times inside the home and that he (John Davis) thereafter shot Brenton once. A safe perimeter was established around the residence and after repeated attempts by police to communicate with Brenton

Davis, all of which went unanswered, officers eventually entered the home where they found Brenton dead from an apparent gunshot wound.

Investigators interviewed John Davis several times and each time John Davis gave a consistent account of events. A fair summary of that account is that Brenton Davis shot John Davis several times with a revolver that Brenton took from John's bedroom. John then armed himself with a shotgun and shot Brenton once under the belief that Brenton was going to kill him. Police recovered the revolver that Brenton Davis used to shoot John Davis near Brenton's body and recovered the shotgun that John used from where he left it for the police while calling 911.

The New Hampshire Attorney General's Office was notified about Brenton Davis's death and joined the Dover Police Department in their investigation into the circumstances surrounding his death. The investigation included documenting the area where the shootings occurred and collecting physical evidence at the scene. That physical evidence included both firearms used in the deadly incident, as well as ballistics and serological evidence. Several people were interviewed including the sole eyewitness to the incident, John Davis. Those witness interviews and the recovered physical evidence all support John Davis's consistent account of events.

B. Witness interviews

1. John Davis

Investigators with the Dover Police Department interviewed John Davis several times. John was cooperative during those interviews and agreed to be recorded when asked. According to John, he lived alone at his home at 92 Three Rivers Farm Road, although his son Brenton Davis intermittently would spend time at the house. Brenton was staying overnight at the home on December 9 and John planned to take Brenton on several errands the next day. On the night of December 9, John slept in his bedroom while Brenton slept on a futon in the nearby living room. They were the only two people in the home.

On the morning of December 10 after John Davis used his bathroom, he returned to his bedroom. Brenton Davis was in the living room which was adjacent to both the bathroom and John's bedroom. While John was in his bedroom, he noticed that his .22-caliber revolver had been removed from under his bed. John asked Brenton if he had the handgun and Brenton denied that he did.

While John Davis was getting dressed in his bedroom, Brenton Davis came to the bedroom doorway armed with the revolver that John had noticed was missing. Brenton fired at John several times from just feet away striking him multiple times. John also heard Brenton say words to the effect of "die, you bastard". Brenton then returned to the living room.

While John Davis was in his bedroom and bleeding from the various gunshot wounds that he had suffered, he retrieved a double-barreled shotgun that

was in the room. John then exited his bedroom and from just beyond the threshold of that room, aimed the shotgun at Brenton Davis who was sitting on the futon in the adjacent living room and fired a single shot. John fired at Brenton because he believed that Brenton was going to kill him. After John fired a single shot which he believed had hit Brenton, he grabbed a cordless telephone, fled from his home and called 911.

2. Collateral witness interviews

Because there were no other eyewitnesses to the incident under investigation, investigators instead interviewed a number of collateral witnesses, primarily people who knew Brenton Davis and John Davis and neighbors. The consistent information gathered from these sources is that there was no active hostility between Brenton and John or other motive for one to attack the other. Also, the Davis family has a tragic history of suicidality and Brenton for many years had struggled with mental illness, which included bouts with depression and mood swings. As to the latter, Brenton just a few days prior to the shootings had been discharged from a local hospital's mental health unit.

C. Autopsy results and physical evidence

1. Autopsy results/medical findings

An autopsy was conducted on Brenton Davis's body on December 12, 2016. The autopsy showed that Brenton had been shot once. Specifically, he had a shotgun wound to his face that entered into his neck; that wound was the cause of his death.

Toxicological testing revealed that at the time of Brenton Davis's death he had Isopropanol, Methadone and Methadone metabolites and various antidepressants in his blood.

John Davis was taken to the hospital for treatment of his wounds. John had been shot five times: in the face, wrist, leg, thigh and abdomen. John survived his gunshot wounds.

2. Physical evidence

Police recovered the revolver that Brenton Davis used to shoot John Davis and the double-barreled shotgun that John used to shoot Brenton. The revolver was a .22-caliber and could hold nine rounds of ammunition and the weapon's cylinder contained nine discharged shell casings, which was consistent with Brenton having fired the gun nine times at John. In addition, there were several live .22-caliber cartridges immediately around where Brenton's body was found. The shotgun could hold two rounds of ammunition. It was found, unloaded, in a car where John had left it at police direction upon fleeing his house. Lying near the gun was one spent shotgun shell and one live shotgun shell which was consistent with the one shot that John said he fired at Brenton.

Police documented various apparent blood smears, drops and spatters in the area where John Davis indicated that he had been shot and that he was when wounded by gunshots. All of the recovered apparent blood evidence, as well as a bullet trajectory analysis conducted at the scene, were consistent with the account that John gave of the incident.

Lastly, police found a bag near Brenton Davis's body. The bag contained various medical documents belonging to Brenton, as well as writings and drawings likely created by him. Those writings and drawings reflected suicidal ideation on Brenton's part.

III. THE APPLICABLE LAW AND ANALYSIS

A. The applicable law

New Hampshire's laws regarding self-defense are contained in RSA Chapter 627. In this case, RSA 627:4, II(a) is the most applicable section and states that:

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

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

Where deadly force is involved, what is "reasonable" under the circumstances "is determined by an objective standard." tate v. Leaf, 137 N.H. 97, 99 (1993); see also tate v. Cunningham, 159 N.H. 103, 107 (2009). All the circumstances surrounding the incident should be considered in reaching the decision as to what was reasonable. See Leaf, 137 N.H. at 99. In addition, the actor's conduct should be viewed "under the circumstances as they were presented to him at the time and not necessarily as they appear upon detached reflection." N.H. Criminal Jury Instructions, 3.10. In other words, the inquiry must focus on

the situation from the standpoint of a person facing the same situation with the same knowledge as the person who used the deadly force. That examination cannot be made with the benefit of hindsight which is afforded by one viewing the circumstances after the fact. That is because "the law does not require perfection – it requires objective reasonableness". Phillips v. Bradshaw, 2013 U.S. Dist. LEXIS 44646 *55-56 (S.D. Fla. Mar. 28, 2013). Thus, even a mistaken belief that deadly force was necessary could still be justified under the law if that belief was reasonable since the law does not require the person using deadly force to "have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." State v. Gorham, 120 N.H. 162, 163-64 (1980).

In some instances, an actor may have a duty to retreat before resorting to deadly force. See RSA 627:4, III. However, an actor who is in a place he has a right to be and is not the initial aggressor has no duty to retreat. If the actor chooses to use deadly force, then the amount of force used to protect himself or others must also be reasonable and not excessive. See State v. "tienne, 163 N.H. 57, 70 (2011).

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

B. Analysis

On December 10, 2017, John Davis shot and killed Brenton Davis inside John's home in Dover. Based on all of Brenton Davis's conduct, specifically his potentially deadly actions against John Davis, a reasonable person in John Davis's position could have concluded that Brenton Davis was about to use additional unlawful, deadly force against him. The force used by John Davis in response to Brenton Davis's armed attack was reasonable and not excessive under the circumstances. John Davis fired his gun once and only after suffering numerous gunshot wounds from Brenton Davis. Although John Davis had no duty to retreat under the circumstances since he was in a place where he had the right to be and was not the initial aggressor, after firing a single shot he did leave his residence and immediately called the police.

As for what motivated Brenton Davis to behave in the aggressive and potentially deadly manner that he did, nothing definitive was uncovered. However, witnesses did relay information about Brenton's depression and suicidality which was supported by the recovered writings that reflected suicidal ideation on his part. Toxicology results also showed a combination of substances in Brenton's bloodstream that may have impacted his judgment and behavior as well.

IV. CONCLUSION

Based on the applicable law and all the facts and circumstances of this case, the Attorney General has determined that it was reasonable for John Davis to conclude that Brenton Davis was about to use unlawful, deadly force against him on December 10, 2017. Therefore, John Davis's subsequent use of deadly force was legally justified pursuant to RSA 627:4, II (a). Accordingly, no criminal charges will be brought against John Davis in connection with the shooting death of Brenton Davis.