

**ATTORNEY GENERAL'S REPORT REGARDING HOMICIDE OF  
CHRISTOPHER GAGNON IN MANCHESTER, NEW HAMPSHIRE, ON  
FEBRUARY 2, 2014**

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**I. INTRODUCTION**

New Hampshire Attorney General Gordon J. MacDonald announces the issuance of this final report regarding the investigation into an incident that occurred in Manchester, New Hampshire on February 2, 2014, that resulted in the fatal stabbing of Christopher Gagnon (age at death 22) by Stephen O'Neill (age at the time 22). This particular case involved a claim of self-defense asserted by Mr. O'Neill. In any such case, the Attorney General must determine whether the use of deadly force was justified under the governing law and, if not, whether the person who used deadly force should be charged for the resulting death. With respect to the latter issue, the inquiry is whether the State can sustain its burden of proof in a criminal trial. Specifically, the State is required to prove guilt beyond a reasonable doubt, with the added burden of disproving any justification defense beyond a reasonable doubt. See RSA 626:7, I(a),<sup>1</sup> RSA 627:4.<sup>2</sup>

In this case, Mr. O'Neill stabbed Christopher Gagnon once in the chest with a knife that he (Mr. O'Neill) possessed, during a struggle between the two men. During the course of that struggle and before Mr. O'Neill resorted to the use of deadly force, Mr. O'Neill was stabbed by a knife that Mr. Gagnon had. The struggle between Mr. O'Neill and Mr. Gagnon in which each was stabbed was the culmination of an escalating

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<sup>1</sup> RSA 626:7, I(a) places the burden on the State to disprove any defense raised beyond a reasonable doubt.

<sup>2</sup> RSA 627:4 defines the defense of the use of physical force in defense of a person, and delineates when physical force, including deadly physical force, is justified under the law

confrontation between two groups of young men, one of which Mr. O'Neill was a part and the other of which Mr. Gagnon was a part. The genesis and development of that confrontation is described in detail below. Mr. O'Neill claimed that he stabbed Mr. Gagnon because he believed that Mr. Gagnon was about to use deadly force against him, and thus believed that he acted in self-defense.

The Attorney General's Office investigated Mr. O'Neill's rationale for using deadly force, as it must do under the law in making any possible charging decision for that use of force. Although Mr. O'Neill by his own admission stabbed Mr. Gagnon, conduct that resulted in Mr. Gagnon's death, Mr. O'Neill's actions are not criminally chargeable unless the State can prove beyond a reasonable doubt that it was unreasonable for Mr. O'Neill to believe that his use of deadly force was necessary to defend himself against the imminent use of deadly force. A mistaken belief, if reasonable, is sufficient under the law to justify the use of deadly force, whereas "[a] belief which is unreasonable, even though honest, will not support the defense." State v. Vassar, 154 N.H. 370, 373-74 (2006). In other words, the State must disprove beyond a reasonable doubt the asserted claim of self-defense.

Based upon the investigation conducted, the totality of the evidence establishes that Mr. O'Neill stabbed Mr. Gagnon under circumstances by which the State would be unable to disprove Mr. O'Neill's legal claim of self-defense beyond a reasonable doubt. Thus, Mr. O'Neill cannot be charged with Christopher Gagnon's homicide.

The purpose of this report is to summarize the Attorney General Office's findings and conclusions with regard to the incident that resulted in Christopher Gagnon's death.

Those findings and conclusions are based on information gathered and reviewed during the investigation, including but not limited to recorded eyewitness interviews, police reports, the autopsy report, and forensic testing. Those findings and conclusions also are based on a review of the transcribed trial testimony of eyewitnesses given in a criminal matter prosecuted against Mr. O'Neill and arising from his conduct on the night when he stabbed and killed Mr. Gagnon.

## II. PROCEDURAL HISTORY

The Manchester Police Department and the Attorney General's Office began investigating the circumstances surrounding Christopher Gagnon's death on February 2, 2014. That investigation spanned several months, including time spent reviewing gathered evidence and eyewitness accounts, and also awaiting the results of Mr. Gagnon's autopsy and various forensic examinations. On October 22, 2014, the Attorney General's Office issued a news release stating that based upon the investigation conducted, no homicide charges would be brought in connection with Mr. Gagnon's death. That news release also indicated that Mr. O'Neill and a second man, Tristan Stone, had been indicted on multiple non-homicide felony charges in connection with their conduct on the evening of Mr. Gagnon's death, after the Attorney General's Office had referred its investigative file to the Hillsborough County Attorney's Office for consideration of possible non-homicide charges. Lastly, the news release indicated that when the legal proceedings against Mr. O'Neill and Mr. Stone concluded, the Attorney General's Office would issue its final report on Mr. Gagnon's death, with the associated findings and reasoning behind the decision not to seek homicide charges.

Mr. Stone subsequently pleaded guilty to criminal restraint (RSA 633:2) and felonious use of a firearm (RSA 650-A:1), for his criminal conduct occurring on the night of Mr. Gagnon's death. Mr. O'Neill proceeded to trial, and a jury convicted him of one count each of criminal restraint (RSA 633:2), felonious use of a firearm (RSA 650-A:1), and falsifying physical evidence (RSA 641:6, I), and three counts of felon in possession of a deadly weapon (RSA 159:3, I). Mr. O'Neill appealed his conviction for falsifying physical evidence, and the New Hampshire Supreme Court affirmed that conviction. Consequently, legal proceedings against Mr. O'Neill and Mr. Stone have concluded and allow for the issuance of this report.

### **III. SUMMARY OF THE FACTS<sup>3</sup>**

#### **A. The Initial Encounters Between Mr. Gagnon's Group and Mr. O'Neill's Group**

At approximately 9:00 p.m. on Sunday, February 2, 2014, Stephen O'Neill, Tristan Stone, Nicholas McCormick, and Shayne Mahoney ("Mr. O'Neill's group") drove to a wooded area in Manchester known as Black Acres in order to play "Manhunt" in preparation for an upcoming Airsoft tournament. Manhunt is a live-action game in which participants use Airsoft replica guns – which can look identical to a real firearms, but shoot plastic pellets and are considered non-lethal – to simulate and recreate combat

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<sup>3</sup> The details provided regarding the encounters between Mr. O'Neill's group and Mr. Gagnon's group comes from the eyewitness accounts provided by members of those groups. Those accounts are at times inconsistent, and not every eyewitness recounted seeing and hearing the same things. Such is to be expected of any reporting of unexpected and quickly-unfolding events, and the summary reflects as reliable and credible a narrative of events as best can be constructed based on the multiple reported accounts given.

Although some of the people in Mr. O'Neill's group knew and recognized some of the people in Mr. Gagnon's group, many of the people involved in events were unknown to one another at the time. But to avoid confusion in the narrative that follows, names are used throughout to identify participants.

and military scenarios. All four wore camouflage clothing and military gear, and carried Airsoft rifles. In addition, Mr. O'Neill carried a loaded and operable .40-caliber semiautomatic pistol (the ".40-caliber pistol"), an unloaded AR-15 type semiautomatic assault rifle (the "AR-15"), a loaded magazine for the AR-15, a large fixed-blade knife that he carried in a sheath on his thigh, and several other smaller knives that he carried in pouches on the tactical vest that he wore. Mr. O'Neill and the three others in his group walked through the woods to an area known to them as "suicide hill," to play the Manhunt game. At one point while in the woods, Mr. O'Neill inserted the magazine into the AR-15, thereby loading the weapon.

That same night, Christopher Gagnon, Richard Palmer, Riley Dion, Robert Blow, Jr., Nick Morin, and others ("Mr. Gagnon's group") were at a bonfire at the bottom of "suicide hill." People in the group began gathering at the bonfire several hours before Mr. O'Neill's group arrived, and some in the group had been drinking alcohol throughout the evening. At one point while Mr. O'Neill's group was at the top of the hill, they heard and saw Mr. Gagnon's group gathered at the bonfire below. Mr. Mahoney aimed at Mr. Gagnon's group a laser optic attached to his Airsoft replica. Mr. Mahoney's actions caused a beam of light to shine on members of the group at the bonfire, conduct that alarmed, annoyed, and angered some of the group at the bonfire.

At that time, several people, including Mr. Gagnon, Mr. Palmer, and Mr. Dion, left the bonfire and drove up the hill to investigate the source of the laser beam. Mr. Palmer was armed with a .45-caliber semiautomatic pistol (the ".45-caliber pistol"),

which he carried in his waistband.<sup>4</sup> Mr. O'Neill and the others in his group hid in the woods when people from the bonfire approached, and at one point Mr. O'Neill gave Mr. Stone the .40-caliber pistol. Mr. Gagnon and his group did not see anyone at the top of the hill, and they all initially returned to the bonfire.

Back at the bonfire, Mr. Palmer looked for his cigarettes but could not find them. Mr. Palmer thought that he may have dropped the cigarettes at the top of the hill, so he returned in order to look for them. Mr. Dion accompanied Mr. Palmer, while everyone else in their group remained at the bonfire.

Back up the hill, Mr. Palmer saw footprints on the ground, and followed them. According to all four in Mr. O'Neill's group, Mr. Palmer announced in substance that he was armed as he approached their hiding spots in the woods. As Mr. Palmer neared Mr. O'Neill and Mr. Stone, they approached Mr. Palmer with their own guns drawn. Mr. Mahoney and Mr. McCormick initially remained in the woods. From the bottom of the hill, people by the bonfire heard from the top of the hill words to the effect of "get on the ground."

Mr. Palmer thought that Mr. O'Neill and Mr. Stone were police officers, and dropped to his knees, put his hands over his head, and placed his .45-caliber pistol on the ground. Mr. Dion also thought that Mr. O'Neill and Mr. Stone were the police, and he ran down the hill and alerted the others at the bonfire. The remaining people there

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<sup>4</sup> Mr. Palmer initially denied to police that he carried a firearm that night, but eventually admitted that he had been armed and allowed police to retrieve his pistol from his vehicle, where he had placed it after the incident that resulted in Mr. Gagnon's stabbing. Mr. Palmer stated that he initially lied about being armed because he did not want to get in trouble for having it.

thought that the police were at the top of the hill, and drove off, leaving Mr. Palmer alone with Mr. O'Neill's group.

At the top of the hill, Mr. Stone handcuffed Mr. Palmer, who recognized Mr. Stone from the high school they both had attended. Mr. Stone also took Mr. Palmer's .45-caliber pistol and unloaded it. Mr. O'Neill and Mr. Stone agreed to release Mr. Palmer if he promised not to report their encounter to anyone, but when they attempted to remove the handcuffs they had difficulty doing so. Mr. O'Neill and the others in his group then brought Mr. Palmer to the bonfire. There, Mr. Palmer was freed from his restraints, and his pistol and ammunition were returned.

At about the time Mr. Palmer was released, Mr. Gagnon and others from his group drove back to the bonfire. Upon seeing approaching vehicles, those in Mr. O'Neill's group fled back up the hill. While running, Mr. O'Neill lost his eyeglasses; Mr. O'Neill later told the police that he had very poor vision without his glasses. When Mr. Gagnon and others from his group returned to the bonfire, Mr. Palmer told them that four people were at the top of the hill, that they were armed, and that they had handcuffed him. Mr. Gagnon began yelling about how he was going to confront the men, and went up the hill in order to do so. Mr. Palmer, Mr. Dion, Mr. Blow, Mr. Morin, and Brett Lavigne went with Mr. Gagnon.

At the top of the hill, Mr. Gagnon and the five others in his group encountered Mr. O'Neill and Mr. Stone. Mr. McCormick and Mr. Mahoney stayed in the woods. Mr. O'Neill was still armed with the AR-15 and Mr. Stone was still armed with the .40-caliber pistol. Mr. Palmer also was still armed. Mr. O'Neill and Mr. Stone pointed their

weapons at the advancing group and directed them in substance to stay away. Mr. Gagnon approached Mr. O'Neill and Mr. Stone, and told them in substance that the two could not leave and that they were under arrest. From their hiding place in the woods, Mr. McCormick and Mr. Mahoney could hear the encounter between Mr. Gagnon's group and Mr. O'Neill and Mr. Stone. Mr. McCormick tried to call 911 but the call disconnected because of low cellphone battery power. Mr. Mahoney called his father.

The encounter between Mr. Gagnon's group and Mr. O'Neill and Mr. Stone escalated in tension quickly. Mr. O'Neill and Mr. Stone repeatedly asked to leave, but Mr. Gagnon, who claimed to be a law enforcement officer, told them that they could not do so. Mr. Gagnon also directed Mr. O'Neill and Mr. Stone to unload their weapons, and they initially removed the magazines from their weapons, but as the encounter continued Mr. O'Neill reloaded his AR-15. At one point, a member of Mr. Gagnon's group tackled Mr. O'Neill as he tried to leave, and the AR-15 discharged. Mr. Lavigne fled upon hearing the gunshot. Mr. O'Neill claimed that he had fired the weapon accidentally, and apologized to Mr. Gagnon's group.<sup>5</sup> Mr. Gagnon in substance told Mr. O'Neill that he was not going anywhere and that he was going to get arrested.

Shortly after these events, Mr. Dion used his cellular telephone to record portions of the ensuing encounter between Mr. Gagnon's group and Mr. O'Neill and Mr. Stone.

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<sup>5</sup> People in Mr. Gagnon's group opined that Mr. O'Neill had fired the AR-15 accidentally.



## **B. Mr. Dion's Cellular Telephone Videos**

Mr. Dion captured through the use of his cellular telephone two videos that contemporaneously recorded about nine minutes of the encounter between Mr. Gagnon's group – at this point, him, Mr. Dion, Mr. Palmer, Mr. Blow, and Mr. Morin – and Mr. O'Neill and Mr. Stone. The recorded encounter occurred shortly after Mr. O'Neill fired his AR-15. The first video is just under eight minutes long, and the second video, which is taken almost immediately after the first, is just over 40 seconds long.<sup>6</sup>

The beginning of the first video occurs in the midst of what can fairly be described as a tense argument between Mr. Gagnon and his group, on one side, and Mr. O'Neill and Mr. Stone, on the other. The video first depicts Mr. O'Neill and Mr. Stone standing together, with Mr. O'Neill holding his AR-15 and Mr. Stone holding the .40-caliber pistol. Off-camera, several raised voices repeatedly yell at the pair to unload their weapons, but they express reluctance to do so unless those in Mr. Gagnon's group do as well.

About thirty seconds into the video, a voice off-camera says, "My knife is closed."<sup>7</sup> Mr. Dion later replayed the video with investigators and identified for them Mr. Gagnon as the person who announced that he was closing his knife. At about the same time in the video when Mr. Gagnon announces that his knife is closed, another

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<sup>6</sup> Still photographs taken from the videos and attached to this report depict Mr. Gagnon, Mr. O'Neill, and Mr. Stone. The first photo depicts Mr. Gagnon, dressed in a grey-colored sweatshirt, facing the camera (the other individual in the photo is Mr. O'Neill). The second photo depicts Mr. O'Neill. The third photo depicts Mr. Stone. The complete recovered cellphone videos are available for viewing on the Attorney General Office's website, as attachments to this report.

<sup>7</sup> A folding knife, like that found nearby Mr. Gagnon's body after he was stabbed, has the ability to open and close the blade into the handle.

voice from someone in his group notifies Mr. O'Neill and Mr. Stone that he has a gun too, and that if he wanted to shoot them he could. Mr. Gagnon also tells the two, "We have six guns to your two. If we wanted to shoot you we would have already did [sic]."<sup>8</sup>

In the first video's first several minutes, people from Mr. Gagnon's group repeatedly yell at Mr. O'Neill and Mr. Stone to unload their weapons. The focal points of contention and tension between the two groups are the shot just fired by Mr. O'Neill, and Mr. O'Neill's and Mr. Stone's armed state. As to the latter, Mr. Stone suggests that both sides unload their weapons and disarm, while people in Mr. Gagnon's group, including Mr. Gagnon, insist that Mr. O'Neill and Mr. Stone unload their guns unilaterally. Mr. O'Neill and Mr. Stone also repeatedly ask to leave, but those in Mr. Gagnon's group in substance tell them that they cannot. At one point, Mr. Gagnon represents to Mr. O'Neill and Mr. Stone that he is a Manchester police officer,<sup>9</sup> and that they cannot leave because Mr. O'Neill had fired his weapon. Both Mr. O'Neill and Mr. Stone claim that Mr. O'Neill fired his weapon accidentally. The two groups continue to argue about unloading weapons and in angry raised voices dispute who escalated their encounter.

Just under three minutes in the video, Mr. O'Neill announces that he is leaving and begins to walk away. In response, Mr. Gagnon grabs Mr. O'Neill by the back of his

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<sup>8</sup> In addition to Mr. Palmer, who Mr. O'Neill and Mr. Stone knew was armed with a pistol based on their previous encounter with him that night, Mr. Blow also carried a pistol, although it does not appear that he brandished it at any point in his interactions with the pair. There is no evidence that either Mr. Gagnon or anyone else in his group at that point were armed with guns.

<sup>9</sup> Mr. Gagnon was not a police officer.

tactical vest and repeatedly yells at him to unload his weapon.<sup>10</sup> Mr. O'Neill repeatedly tells Mr. Gagnon to "let go," but Mr. Gagnon does not and tells Mr. O'Neill to unload his weapon and that he would be let go if he complies. Mr. O'Neill then removes the magazine from the AR-15 and again asks to leave; Mr. O'Neill at some point later, not captured by video, reloads the rifle. Soon thereafter, while Mr. O'Neill and Mr. Stone continue to ask to leave the area and Mr. O'Neill asks for people in Mr. Gagnon's group to get him "off of me," people from Mr. Gagnon's group are heard telling Mr. Gagnon to "relax" and to just let Mr. O'Neill and Mr. Stone leave.

At about four minutes into the video, Mr. Gagnon is again holding onto Mr. O'Neill by his tactical vest. Mr. O'Neill repeatedly asks Mr. Gagnon to let him go, and someone from Mr. Gagnon's group responds that he will be let go if he provides the group with identification. Mr. O'Neill and Mr. Stone repeatedly again plead to be released, and Mr. Gagnon is seen and heard angrily yelling at the two about the discharged shot, that the pair is not going anywhere, that he is "not going to let them do that to us," and that they are "coming with us."

About five minutes into the video, the camera loses focus as there appears to be multiple people, including the person holding the cellphone, moving and multiple voices yelling, including a voice yelling, "Get off of him." The video next depicts Mr. Stone lying face-up on the ground, with Mr. Gagnon on top of him and facing him. Mr.

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<sup>10</sup> Although Mr. Gagnon may have reasonably believed that Mr. O'Neill committed a crime or crimes in his presence, he was not a law enforcement officer, and was not legally authorized to use physical force to prevent Mr. O'Neill or Mr. Stone to leave at any point during his encounter with them. Compare RSA627:5, I ("A law enforcement officer is justified in using non-deadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or detention or to prevent the escape from custody of an arrested or detained person . . .").

Gagnon has his knee on Mr. Stone's chest, and first has his hand around Mr. Stone's throat while people from his group ask him to "let [Mr. Stone] go." Mr. Gagnon then grabs onto Mr. Stone's jacket, while still on top and on him. At one point while yelling at Mr. Stone, Mr. Gagnon yells, "Fuck you, this guy is coming with me." The two groups continue to argue, with Mr. Gagnon's group demanding that Mr. O'Neill and Mr. Stone disarm and the pair asking to leave.

At about the six-minute point in the video, Mr. Gagnon gets off of Mr. Stone, who stands back up. The two groups again talk back and forth, in tones that range from tense but conversational to screaming and incoherent. Mr. O'Neill and Mr. Stone again repeatedly ask to leave, and people in Mr. Gagnon's group respond in substance that they cannot do so until they provide proper identification. Throughout, Mr. Gagnon yells at Mr. O'Neill and Mr. Stone to unload their weapons.

In the last minute of the first video, Mr. O'Neill again attempts to walk away. In response, Mr. Gagnon again grabs Mr. O'Neill by his tactical vest and orders him to unload the AR-15. Mr. O'Neill once more complies and removes the magazine from his rifle. Mr. Gagnon yells at Mr. O'Neill, "You fucked with the wrong person. You should have never fucking done [sic] that. This is my fucking neighborhood, bro. This is in my fucking back yard." The least remaining seconds of the first video capture Mr. Gagnon still holding onto Mr. O'Neill by his vest and angrily yelling at him about firing his weapon at a teenager, and twice screaming, "Are you fucking kidding me?" The first video abruptly ends shortly thereafter.

The second video predominantly shows Mr. Stone, who is told by people in Mr. Gagnon's group that he is "stay[ing] right here" and that "the cops are coming." In the background, Mr. Gagnon's raised voice is heard yelling at Mr. O'Neill, "You are coming with me" and that Mr. Stone is "free to go." Mr. Gagnon tells Mr. O'Neill that he "shot a fucking weapon," and Mr. O'Neill yells back that it was an accident. Mr. Gagnon then again notifies Mr. Stone that he is free to go but that Mr. O'Neill is "coming with me." When the camera briefly pans from Mr. Stone, Mr. Gagnon is seen facing Mr. O'Neill, and grabbing onto his vest. Both Mr. O'Neill and Mr. Stone again ask to leave, and Mr. Gagnon repeats that "he's [Mr. O'Neill] coming with me." The second video then also abruptly ends.

### **C. The Fatal Stabbing**

#### **1. Summaries of Mr. O'Neill's Accounts of the Stabbing**

Mr. O'Neill gave statements to investigators in three separate interviews, two of which were recorded. Mr. O'Neill first spoke with the police when they encountered and detained him as he left the woods shortly after the stabbing. At that time, Mr. O'Neill reported that Mr. Gagnon tackled him and his AR-15 was taken away from him. As Mr. O'Neill lay on the ground, with Mr. Gagnon on top of him, he grabbed for the knife he had sheathed on his leg. As Mr. O'Neill rolled over, he felt "something cold" against his lower back, and when he grabbed at the object and pulled it from his back he cut his finger. Mr. O'Neill then thrust his knife up at Mr. Gagnon, stabbing him in the chest, and fled with Mr. Stone.

Investigators next spoke with Mr. O'Neill in a recorded interview on February 3, 2014. At that time, Mr. O'Neill relayed that when Mr. Gagnon tackled him to the ground, he fell on his stomach. While Mr. Gagnon was on top of Mr. O'Neill, he felt "something cold" on his lower back, which he believed to be a gun. Mr. O'Neill reached back to push away the object, and felt something metallic. Mr. O'Neill then pulled out his knife, stabbed Mr. Gagnon, and fled into the woods with Mr. Stone. Later in the woods, Mr. O'Neill realized that his finger was cut, and although his back hurt he thought that it had been injured when Mr. Gagnon tackled him and did not know that he had been stabbed until police officers saw the wounds to his back.

Investigators spoke with Mr. O'Neill a third time on February 4, 2014. During that recorded interview – in which Mr. O'Neill also recreated on video his fatal struggle with Mr. Gagnon – Mr. O'Neill described how he had tried to pull away from Mr. Gagnon, who was holding on to his tactical vest from behind. Mr. O'Neill recounted that he thought that it was then, while he and Mr. Gagnon were struggling while standing, that he felt pressed against his lower back a "cold" object, which he believed was a gun. Mr. O'Neill reached back to pull away the object that Mr. Gagnon pressed into his back, and at that time Mr. Gagnon threw him to the ground. At that point, while Mr. O'Neill was on his back and faced Mr. Gagnon, who was on top of him, a member of Mr. Gagnon's group took the AR-15 away from Mr. O'Neill. As Mr. O'Neill tried to free himself from Mr. Gagnon, he took out his knife. Mr. Gagnon then slammed Mr. O'Neill against the ground again and said words to the effect of "I'm going to fucking kill you." Mr. O'Neill then stabbed Mr. Gagnon, and ran off into the woods with Mr. Stone. While in the

woods, Mr. O'Neill realized that his finger was cut, which he assumed was from when he pulled at the cold object that Mr. Gagnon had pressed against his back. When the police later arrived, Mr. O'Neill realized for the first time that he had been stabbed.

## **2. Summaries of Others' Accounts of the Stabbing**

According to Mr. Blow, he saw Mr. Gagnon tackle Mr. O'Neill when Mr. O'Neill attempted to flee, and then saw Mr. Dion take the AR-15 from Mr. O'Neill. Mr. Blow further reported that he saw Mr. Gagnon and Mr. O'Neill struggling on the ground. Mr. Blow explained that he did not see what occurred between Mr. Gagnon and Mr. O'Neill because his attention at the time was focused on Mr. Dion. Mr. Blow further reported that he saw Mr. O'Neill run after Mr. Dion and demand his gun, and that when he looked over at where Mr. Gagnon had been Mr. Gagnon was lying wounded on the ground. When Mr. O'Neill recaptured his AR-15 from Mr. Dion, he fled into the woods with Mr. Stone.

When Mr. Palmer first spoke with a police officer about the incident that night, he stated that he saw Mr. Gagnon wrestle Mr. O'Neill to the ground, Mr. O'Neill take out a knife and stab Mr. Gagnon, and then Mr. O'Neill and Mr. Stone flee into the woods. In a recorded interview given the next day, Mr. Palmer reported that he saw Mr. Gagnon tackle Mr. O'Neill and attempt to wrestle the AR-15 from him. Mr. Palmer then saw Mr. Dion take the rifle while Mr. Gagnon continued to struggle on the ground with Mr. O'Neill, who was underneath him. When Mr. Palmer thought that Mr. Stone was going to intervene, he grabbed him and held him to the ground. While holding down Mr. Stone, Mr. Palmer heard someone say words to the effect that Mr. Gagnon had been stabbed,

and when he looked over he saw Mr. Gagnon lying injured on the ground. Mr. Palmer reported that he did not see anyone stab anyone else, and that he never saw a weapon held by either Mr. O'Neill or Mr. Gagnon other than the AR-15.

Mr. Dion reported that he saw Mr. Gagnon trip Mr. O'Neill, at which point he took Mr. O'Neill's AR-15. Mr. Dion recounted that Mr. O'Neill then took out a knife, tried to stab Mr. Gagnon, and chased Mr. Dion and yelled for his gun to be returned. At one point, Mr. Gagnon tackled Mr. O'Neill to the ground. Mr. Dion further reported that he did not see the stabbing, but that he saw Mr. O'Neill and Mr. Stone flee into the woods afterwards.

Mr. Morin recounted that he saw Mr. Dion take the AR-15 from Mr. O'Neill, after which Mr. O'Neill took out a large knife and stabbed Mr. Gagnon in the chest as Mr. Gagnon tackled him to the ground. In the same interview, Mr. Morin described that once Mr. Gagnon tackled Mr. O'Neill to the ground, Mr. O'Neill stated that he had a knife, Gagnon got off of Mr. O'Neill, and then Mr. O'Neill drew his knife and stabbed Gagnon while the two were standing and facing one-another. Mr. Morin also claimed that he saw Mr. O'Neill swing the knife at others after he stabbed Mr. Gagnon.

According to Mr. Stone, he saw Mr. Gagnon tackle Mr. O'Neill to the ground and then get on top of him. Mr. Stone reported that he did not see much of the struggle that ensued because he himself was struggling with Palmer, who had tackled him to the ground. Mr. Stone did recall that at one point he saw Mr. O'Neill pull out a knife while Mr. Gagnon was on top of him, and that when he next looked over at the other two Mr. O'Neill was on top of Mr. Gagnon, who was lying on the ground and gasping for breath.



Mr. Palmer, Mr. Dion, and Mr. Stone all testified at Mr. O'Neill's criminal trial. Mr. Palmer recounted that he and the others in his group were scared, upset, and angry after Mr. O'Neill's AR-15 discharged. Mr. Palmer testified that soon afterwards, as he was holding Mr. Stone on the ground, he saw Mr. Gagnon "wrestling" with Mr. O'Neill but did not remember seeing any stabbing. Mr. Dion testified that after Mr. O'Neill discharged his AR-15 Mr. Gagnon became angrier and was arguing with Mr. O'Neill and Mr. Stone, who appeared to be scared. Mr. Dion recalled that shortly after the events captured on his cellphone videos he saw Mr. O'Neill and Mr. Gagnon "going at it," but that he did not see the stabbings. Mr. Stone testified that just before the events videotaped by cellphone he saw Mr. Gagnon holding a knife, and that afterwards, while Mr. Palmer was holding him to the ground, he saw a struggle between Mr. Gagnon and Mr. O'Neill. At one point, Mr. Stone saw Mr. Gagnon on top of Mr. O'Neill, and when he next looked over he saw Mr. O'Neill "getting off the top of Mr. Gagnon," who was stabbed.

**D. Events Following Mr. Gagnon's Stabbing**

Immediately after Mr. O'Neill stabbed Mr. Gagnon, Mr. Gagnon's friends attempted to help him. Mr. Dion went to Mr. Gagnon, saw on the ground next to him a folding knife with blood on it, and used the knife to cut away Mr. Gagnon's clothes in order to render medical assistance to him. In the process, Mr. Dion cut one of his fingers on the knife. Mr. Dion attempted to conduct CPR on Mr. Gagnon, while Mr. Blow flagged down arriving police, who had responded to the area initially as a result of reports of gunshots fired. Mr. Gagnon was rushed to a local hospital, first by his friends and then by an

ambulance. Mr. Gagnon arrived at the hospital shortly after 11:50 p.m., and was pronounced dead minutes after midnight.

After Mr. O'Neill stabbed Mr. Gagnon, he retrieved his AR-15 from Mr. Dion, and fled into the woods with Mr. Stone. At one point, the two met up with Mr. McCormick and Mr. Mahoney. Mr. O'Neill told the others that he had just stabbed someone. While in the woods, Mr. O'Neill discarded the knife that he used to stab Mr. Gagnon and his AR-15. Mr. Stone ultimately admitted that he and Mr. O'Neill attempted to hide the firearm because Mr. O'Neill was not supposed to possess any guns.<sup>11</sup> Police later found those discarded weapons. Police also encountered and detained Mr. O'Neill, Mr. Stone, Mr. Mahoney, and Mr. McCormick as they were leaving the woods. Mr. O'Neill was taken to a hospital, where he was treated for a finger laceration, a stab wound to his left lower back, another stab wound to his right upper buttock, and an apparent minor puncture wound to his middle lower back.

## **E. Forensic Evidence**

### **1. Autopsy Results**

An autopsy on Mr. Gagnon was conducted on February 3, 2014, by then Deputy Medical Examiner Jennie Duval. Dr. Duval concluded that Mr. Gagnon's manner of death was a homicide, and that his cause of death was a single stab wound to the chest that perforated his aorta and pulmonary artery. No other sharp instrument injuries were present on Mr. Gagnon's body, other than injuries consistent with medical intervention

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<sup>11</sup> Mr. O'Neill had a 2010 felony conviction for possession of a controlled substance that would prevent him from legally possessing a firearm. See RSA 159:3.

utilized to attempt to save his life. Toxicology testing revealed that Mr. Gagnon had no alcohol in his system, and that he also had no drugs in his system other than caffeine.

## **2. Evidence Collection and Forensic Examinations**

The Manchester Police Department recovered multiple items of evidence in the case, including various weapons and the clothes worn by Mr. Gagnon and Mr. O'Neill. The police also photographed Mr. O'Neill's apparent knife injuries to his finger, lower back, and upper buttocks, which wounds were consistent with Mr. O'Neill's report of his struggle with Mr. Gagnon immediately before he used deadly force. Those wounds also explain the "cold" sensation that Mr. O'Neill felt in his lower body during the struggle, as well as his wounds there. The shirt and underwear that Mr. O'Neill wore also had puncture marks consistent with knife wounds. So too is the injury to Mr. O'Neill's finger – in the nature of a incised wound rather than a puncture wound – consistent with his account that he used his hand to grab at and push away the object that Mr. Gagnon had pressed to his back.

The New Hampshire State Police Forensic Laboratory tested, among other items, the knife that Mr. O'Neill used to stab Mr. Gagnon and the folding knife found near Mr. Gagnon immediately after the stabbing. Chemical analysis of residue found on the folding knife's blade and handle indicated the presence of blood. Further analysis revealed that the recovered blood contained Mr. Gagnon's DNA. These forensic findings are consistent with Mr. Dion's account that he used the folding knife to cut away Mr. Gagnon's clothing, as blood would likely have been transferred from Mr. Gagnon's bleeding chest wound or bloody clothing onto the knife.

As to the absence of DNA profiles on the folding knife from either Mr. O'Neill – who likely cut his finger on the knife when he reached at it during his struggle with Mr. Gagnon thinking that it was a gun – or Mr. Dion – who cut his hand with the knife while attempting to render aid to Mr. Gagnon, and who saw what appeared to be blood on the knife before he used it to cut away Mr. Gagnon's clothes – such absence is not inconsistent with the accounts provided by Mr. O'Neill and Mr. Dion indicating that that they also had cut themselves on the knife. For one, the nature of the stab injuries sustained by Mr. O'Neill – only three at most, and to areas that did not cut major blood vessels – would be that any blood could be wiped away by movement of the knife through Mr. O'Neill's skin and clothing. In contrast, the wound suffered by Mr. Gagnon, which severed a major artery, would have and did produce immediate and intense bleeding, and his blood could have been present on the folding knife in a far greater concentration than any blood from Mr. O'Neill and/or Mr. Dion. As a consequence, the forensic testing that yielded DNA results could have detected only that major and predominant source of DNA and not detected relatively minor contributors, such as Mr. O'Neill and Mr. Dion, whose lesser DNA profiles would be masked by the predominant source.

Chemical analysis of residue found on the handle of the knife that Mr. O'Neill used to stab Mr. Gagnon indicated the presence of blood.<sup>12</sup> Further analysis revealed that

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<sup>12</sup> Testing done on that knife's blade failed to reveal the presence of blood. The absence of any blood on the blade is not inconsistent with O'Neill's admission that he used that knife to stab Mr. Gagnon. Mr. Gagnon's blood could have been wiped off the blade by movement of the knife through his skin and clothing, by movement of the knife into or out of its sheath, by intentional wiping by Mr. O'Neill, or by any combination of these events.

the recovered blood contained Mr. O'Neill's DNA. These forensic findings are consistent with Mr. O'Neill's account that he was bleeding from a cut to his finger, which wound likely was sustained from his grabbing at the "cold" object he felt on his lower back while Mr. Gagnon was on top of him, before he pulled out his own knife and used it to stab Gagnon.

### **III. LEGAL ANALYSIS AND CONCLUSION**

The deadly force used by Mr. O'Neill in this case consisted of his admitted act of stabbing Mr. Gagnon once in the chest with a knife, causing his death.

#### **A. The Applicable Law Regarding The Use Of Deadly Force**

RSA 627:4 states that any person may be justified in using deadly force to protect himself or herself in certain circumstances. In particular, RSA 627:4, II(a) permits an actor to use deadly force upon another person when that actor "reasonably believes that such other person [i]s about to use unlawful, deadly force against the actor. . . ."

The term "reasonable" is determined by an objective standard. State v. Leaf, 137 N.H. 97, 99 (1993). That means that the focus is not on an actor's subjective beliefs, but rather how a reasonable person would act. In deciding whether a person acted in self-defense under the law, all of the circumstances surrounding the incident should be considered. See id.; Aldrich v. Wright, 53 N.H. 398 (1873). In a case such as this where the actor claims self-defense, the State bears the burden of disproving that claim, and must do so to the level of beyond a reasonable doubt in order to obtain a conviction. See

State v. Dupont, 165 N.H. 698, 703-04 (2013); State v. McMinn, 141 N.H. 636, 644-45 (1997).

**B. Analysis and Conclusion**

In order to determine whether the State can satisfy its burden at trial, which in turn informs whether a prosecution can be sustained against Mr. O'Neill for Mr. Gagnon's homicide in the first instance, it must be determined whether the State can disprove that a reasonable person in Mr. O'Neill's situation would have believed that Mr. Gagnon was about to use unlawful deadly force against him when Mr. O'Neill used his own deadly force. According to Mr. O'Neill, he used his knife to stab Mr. Gagnon after Mr. Gagnon had pressed a "cold" object against his back while the two struggled – an object that Mr. O'Neill said he believed was a firearm – after Mr. Gagnon had tackled him to the ground, while Mr. Gagnon was on top of him, as he was trying to free himself, and after Mr. Gagnon said that he would kill him.

These representations made by Mr. O'Neill cannot be viewed and assessed in isolation. Mr. O'Neill's use of deadly force upon Mr. Gagnon occurred during a rapidly-unfolding and violent struggle that by all accounts was brief. That struggle also must be viewed in the context of the events that immediately preceded it, much of which was objectively captured on video by Mr. Dion's cellular telephone. That video showed an escalating encounter between Mr. Gagnon's group and Mr. O'Neill and Mr. Stone, in which arguments and heated words were exchanged throughout. During that unfolding confrontation, Mr. Gagnon was visibly angry and extremely agitated, and expressed his anger and agitation directly at both Mr. O'Neill and Mr. Stone repeatedly. Mr. Gagnon

also would not allow Mr. O'Neill and Mr. Stone to leave despite repeated requests made not only by the pair, but by members of Mr. Gagnon's group as well. In addition, Mr. Gagnon used physical force against both men, grabbing onto Mr. O'Neill multiple times and refusing to let go, and at one point taking Mr. Stone to the ground and choking him while Mr. O'Neill watched. The video clearly shows that these various actions by Mr. Gagnon, as well as all that others in Mr. Gagnon's group did and said to Mr. O'Neill and Mr. Stone, scared them. That conduct also would have scared any reasonable person confronted with the same circumstances.<sup>13</sup>

Moreover, given Mr. Gagnon's statement at the beginning of the video that he was putting his knife away, it would be reasonable to infer that both Mr. O'Neill and Mr. Stone were aware that Mr. Gagnon was armed with a knife. And, aside from the knife, Mr. Gagnon also represented to Mr. O'Neill only about ten minutes before the fatal struggle that he and everyone else in his group was armed with a handgun as well. Because Mr. O'Neill actually knew that the member of Mr. Gagnon's group who he had encountered before the face-to-face confrontation between that group and he and Mr. Stone – Mr. Palmer – in fact was armed with a loaded handgun, it was not unreasonable for Mr. O'Neill to believe Mr. Gagnon's representation that he too had a firearm.

Next, just before Mr. O'Neill stabbed and killed Mr. Gagnon, he felt a "cold" object pressed against his back while Mr. Gagnon held him from behind. Mr. O'Neill

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<sup>13</sup> That is not to say that those in Mr. Gagnon's group, including Mr. Gagnon, also were not reasonably placed in fear by the actions of Mr. O'Neill and Mr. Stone. Those two held one of Mr. Gagnon's group at gunpoint and restrained him. The two also brandished loaded weapons at Mr. Gagnon's group and, whether accidentally or not, Mr. O'Neill fired off a semiautomatic rifle in the group's presence. But the relevant inquiry for analysis on the self-defense claim is the thoughts and beliefs of the person who asserts self-defense, as would be considered by a reasonable person under the circumstances.

mistakenly thought that the object was a gun. In fact, the object was a knife, which caused several nonlethal injuries to Mr. O'Neill.<sup>14</sup> But that Mr. O'Neill's belief as to the deadly weapon brandished against him was mistaken does not render it unreasonable, in light of all of the events that led to him believing that Mr. Gagnon was holding a gun against him.

All of these additional circumstances were established and not by any self-serving account given by Mr. O'Neill, but instead by the contemporaneous video recording, the corroborated accounts of eyewitnesses, and the physical evidence. These independent, objective, and verified circumstances also corroborate details provided by Mr. O'Neill, and support his expressed belief that he thought that Mr. Gagnon was armed with a gun and that he could and would follow through with his expressed intent to kill Mr. O'Neill. As a result, it cannot be established beyond a reasonable doubt that Mr. O'Neill did not act in self-defense under the law when he stabbed Mr. Gagnon.

Eyewitnesses to events at the time of the fatal stabbing gave conflicting accounts of what transpired between Mr. Gagnon and Mr. O'Neill. Portions of those accounts tend to disprove a self-defense claim. In particular, Mr. Morin described Mr. O'Neill as

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<sup>14</sup> It is unclear, and because of the lack of any eyewitness account will be unresolved, whether Mr. Gagnon knowingly stabbed Mr. O'Neill, or whether the injuries occurred accidentally while the two violently struggled. But whether Mr. Gagnon's own use of deadly physical force against Mr. O'Neill was accidental or intentional does not alter the fact that he did use such force.

Because Mr. O'Neill did not actually realize that he had been stabbed until after his struggle with Mr. Gagnon, the fact that he had been stabbed is not a circumstance that he took into consideration at the time when he used deadly force. But because "reasonableness" is considered not from the actor's personal point of view, but objectively and in consideration of all the relevant facts and circumstances, at a trial a jury would be able to take into account Mr. Gagnon's own use of deadly physical force against Mr. O'Neill, which also leads to the conclusion that the State would be unable to disprove self-defense beyond a reasonable doubt.



facing Mr. Gagnon when he stabbed him, and then using that same knife to menace others in Mr. Gagnon's group. But none of the other eyewitnesses – including those who Mr. Morin recalled being menaced – corroborated Mr. Morin's observations, and in fact all other eyewitness accounts contradicted it. There are other eyewitness inconsistencies as well, as detailed in the summaries provided earlier in this report. But the evidence must be viewed in its entirety, and also with the understanding that the standard is not whether Mr. O'Neill can prove that he acted in self-defense, but whether the State can disprove self-defense beyond a reasonable doubt. And, even when viewing Mr. O'Neill's claim of self-defense with suspicion and in light of inconsistent details provided by eyewitnesses, that claim cannot be overcome by the requisite level of proof.

Based on the evidence gathered from the investigation into the fatal stabbing of Christopher Gagnon, as well as evidence developed at the criminal trial against Stephen O'Neill on nonhomicide charges related to that incident, the State cannot disprove self-defense beyond a reasonable doubt. Accordingly, no homicide charges will be filed against Mr. O'Neill for Mr. Gagnon's death.





