

**ATTORNEY GENERAL’S REPORT REGARDING JUNE 26, 2018
OFFICER-INVOLVED SHOOTING INCIDENT IN NASHUA, NEW
HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General Gordon J. MacDonald announces the completion of the investigation into the officer-involved shooting that occurred in Nashua, New Hampshire on June 26, 2018, that resulted in the nonfatal shooting of Justin Contreras (age 29). The purpose of this report is to summarize the Attorney General’s factual findings and legal conclusions regarding the use of deadly force. The findings and conclusions in this report are based upon information gathered during the investigation, including viewing the scene of the incident as well as photographs of the scene; listening to numerous recorded interviews of witnesses and transmissions made on the night of the shooting; and reviewing numerous official reports generated during the course of the investigation.

As provided in RSA 7:6, the Attorney General is the State’s Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever law enforcement officers use deadly force, it is done in conformity with the law. Following a full investigation of this deadly force incident by the Attorney General’s Office and the New Hampshire State Police Major Crime Unit,

the Attorney General finds that Nashua Police Officer James Ciulla's use of deadly force against Justin Contreras on June 26, 2018, was legally justified.¹

II. PROCEDURAL HISTORY

The New Hampshire State Police and the Attorney General's Office began investigating the circumstances surrounding the shooting of Justin Contreras on June 26, 2018. That investigation spanned several months, including time spent reviewing gathered evidence and eyewitness accounts, including interviews with Mr. Contreras and people who interacted with him on the evening when he was shot, the officer who shot him, and the other police officers present when the shooting occurred. On August 24, 2018, the Attorney General's Office issued a news release stating that based upon the investigation conducted, that Officer James Ciulla's shooting of Mr. Contreras was a legally justified use of deadly force. The news release also indicated that the Hillsborough County Attorney's Office brought criminal charges against Mr. Contreras in connection with his encounter with Officer Ciulla on June 26. Lastly, the news release indicated that when the legal proceedings against Mr. Contreras concluded, the Attorney General's Office would issue its full report on the investigation into Officer Ciulla's use of deadly force, with the associated findings and reasoning behind the determination made that his use of deadly force was legally justified.

¹ Although Mr. Contreras did not die from Officer Ciulla's shooting of him, that conduct still constitutes deadly force under the law. RSA 627:9, II ("Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force.").

The charging decision made by the Hillsborough County Attorney's Office was made by that Office's independent review of the case, and no charging recommendation was offered or suggested by the Attorney General's Office, whose sole focus was whether the police use of force was legally justified. Ultimately, Justin Contreras was prosecuted by the Hillsborough County Attorney's Office on a single indicted charge of Criminal Threatening (RSA 631:4), alleging that he "purposely placed Nashua Police Officer James Ciulla in fear of imminent bodily injury by pointing a handgun firearm [sic] at Officer Ciulla."

On May 3, 2019, Justin Contreras pleaded guilty to the charge of Criminal Threatening. Consequently, legal proceedings against Mr. Contreras have concluded and allow for the issuance of this report.

III. SUMMARY OF THE FACTS

At about 10:08 p.m. on June 26, 2018, Nashua Police Officer James Ciulla and two other officers from the Nashua Police Department responded to 106 Ledge Street in order to conduct a welfare check on one of the residents, Justin Contreras. Earlier that evening, Mr. Contreras's mother had called the police and reported in substance that her son was despondent and suicidal, and might have access to firearms at his apartment at 106 Ledge Street.

Upon responding to 106 Ledge Street, Officer Ciulla and the other two officers attempted to contact Mr. Contreras by calling his last known cell phone

number, by yelling up to his second-floor apartment from the street, and by knocking on his apartment door. The three officers were dressed in uniform, and identified themselves as police officers. Nobody responded to the officers' attempts to contact Mr. Contreras. At that point, the three officers were outside the building, at separate locations.

Officer Ciulla then entered the building to try to contact Mr. Contreras again by knocking on his apartment door. While doing so, Officer Ciulla encountered Mr. Contreras in the interior staircase that led to his apartment. The accounts provided by Officer Ciulla and Mr. Contreras diverge in material respects as to what happened in that staircase area. Those differing accounts are detailed later in this report. Both men gave consistent accounts that Mr. Contreras was holding a gun when he encountered Officer Ciulla; that Officer Ciulla shot Mr. Contreras; and that Mr. Contreras was shot while he was on that interior staircase, either on the landing between the first and second floors or just descending that landing.

Mr. Contreras, wounded by Officer Ciulla's gunfire, was hospitalized for his injuries. He was released after a few days, with separate gunshot wounds to his front upper torso and right arm. Evidence establishes that Officer Ciulla fired three shots from his weapon. After the incident, the weapon that Mr. Contreras was holding was examined. It was a revolver that was not loaded, but subsequent forensic examination concluded that the weapon was operable and capable of firing bullets.

IV. THE INVESTIGATION

A. Events Leading up to and Immediately After the Shooting

At about 8:00 p.m. on the evening of June 26, 2018, Justin Contreras met with his girlfriend, with whom he had been having relationship issues. According to the girlfriend, Mr. Contreras was angry, and although he wanted to re-establish his romantic relationship with her she did not want to do so. Soon after Mr. Contreras left his girlfriend, at about 8:30 p.m., he called her and told her in substance that he hated her and that, “I’m going to kill myself because of you.” Soon thereafter, Mr. Contreras destroyed his cell phone.²

That same evening, after Mr. Contreras met with his girlfriend and after his outbursts to her over the phone, he visited his parents – Jose and Pauline Contreras – at their home in Hudson, New Hampshire. According to Mr. Contreras’s parents, he was upset and emotional over his relationship with his girlfriend, and each heard him say, before he left, that he was going to kill himself. The parents believed that Mr. Contreras was returning to his home, at 106 Ledge Street in Nashua.³

² According to a neighbor of Mr. Contreras, that evening he saw a man leave a vehicle parked outside 106 Ledge Street – a vehicle the description of which matched a vehicle registered to Mr. Contreras. The man was talking on a cell phone and appeared to be upset, and at one point threw the phone to the ground and entered the building. The neighbor then heard for several minutes sounds coming from inside 106 Ledge Street that sounded like objects being broken.

³ Officers from the Hudson Police Department responded to the Contreras household and spoke with Mr. Contreras’s parents that evening of June 26, prior to the shooting. Pauline Contreras reported that her son recently had been upset and had been expressing suicidal ideation over a recent breakup with his girlfriend. Pauline Contreras also reported that when he left he said in substance that he was going to kill himself and felt that he should “go through with it” this time. Jose Contreras reported that earlier in the day while his son was at the Hudson residence he took a knife from the kitchen and threatened to kill himself, and also

At about 9:40 p.m., Pauline Contreras called 911 to report the situation that had unfolded with her son. That call was transferred to the Hudson police department. Pauline Contreras reported to the police dispatcher in substance that her son had just left her residence and was heading to his home at 106 Ledge Street. Pauline Contreras claimed that Mr. Contreras had “emotional problems,” and needed to be “put in the hospital.” In response to inquiry from the dispatcher as to whether Mr. Contreras was armed, Pauline Contreras said that he did not have any weapons “on him,” but might have a weapon at his home.

Because it was believed that Mr. Contreras was heading to his home at 106 Ledge Street in Nashua, the Hudson Police Department contacted the Nashua Police Department, and relayed the information provided by Ms. Contreras. In turn, Nashua police dispatch notified Officers James Ciulla and Guido Marchionda in substance that Mr. Contreras was believed to be going to his apartment at that address, that he was suicidal over the breakup with his girlfriend, and that he owned firearms although he did not state that he was going to use one against himself. Officer Ciulla was dispatched to 106 Ledge Street as the primary officer assigned to the call, and Officer Marchionda was sent to the residence to back up Officer Ciulla.

punched a wall. Both of Mr. Contreras’s parents confirmed that Mr. Contreras had a firearm at his residence in Nashua.

When investigators from the State Police later interviewed Mr. Contreras’s parents at the hospital where he was hospitalized, they said that while he was at their house he was sad and upset over the recent breakup with his girlfriend. Jose Contreras recalled that his son said that he was going to kill himself; Pauline Contreras recalled that he gave indications that he might kill himself, but did not remember any specific statements. Mr. Contreras’s parents both told State Police investigators that neither knew whether he had any weapons. They both also explained that Mr. Contreras had anger management problems due to a brain injury that he suffered when he was a child.

At about 10:00 p.m., Officers Ciulla and Marchionda separately arrived at 106 Ledge Street in Nashua in order to conduct a welfare check on Mr. Contreras. 106 Ledge Street is a two-story residence, with one apartment unit located on the first floor and a second apartment unit located on the second floor. Mr. Contreras was believed to reside in the second-floor apartment. One way to gain access to that apartment is by way of a narrow u-shaped interior staircase, which is located in a foyer on one side of the front of the house.⁴

Officer Marchionda responded to 106 Ledge Street first. When Officer Marchionda arrived at the residence, he saw in the driveway a vehicle registered to Mr. Contreras. Officer Marchionda also conducted a search of Mr. Contreras's history with the Nashua Police Department on his patrol car's computer, and learned from a prior report that Mr. Contreras had access to firearms and may be emotionally unstable.⁵ As a result of that additional learned information, Officer Marchionda requested a third officer to assist on the welfare check. Shortly thereafter, Officer Kyle Crosson of the Nashua Police Department arrived. All three police officers drove marked police vehicles – Officer Crosson a motorcycle, the other two patrol cars – although those vehicles were not parked directly outside 106 Ledge Street. All three officers were dressed in full police uniforms.

⁴ Photographs of the front of 106 Ledge Street and the front staircase used to access the second-floor apartment, and where the shooting occurred, are attached to this report. The foyer where the staircase to Mr. Contreras's second-floor apartment led is indicated by the yellow-shaded circle in the first photo. The U-shaped interior staircase is circled in yellow in the second photo. There are several steps that lead to a landing in between the first and second floors, and then additional steps continue from that landing, 180-degrees from the bottom stairs, to the second-story apartment where Mr. Contreras resided.

⁵ Mr. Contreras has several misdemeanor convictions dating back to 2007, one for criminal threatening (2012) and the others for nonviolent offenses.

Soon after all three officers were together at 106 Ledge Street, they attempted to contact Mr. Contreras. Because of the prior police reports involving Mr. Contreras, and because Officer Marchionda knew from a prior callout to the building that the staircase to the second-story apartment, located in the foyer on the side of the house, was confined and dangerous, the officers wanted to meet Mr. Contreras outside the building, which the officers believed would be safer for them.

Initially, attempts were made to contact Mr. Contreras by telephone, using his last known cell phone number. But calls to that number went unanswered, and those efforts stopped when the officers were informed that Mr. Contreras may have destroyed his cell phone earlier that evening. Officer Marchionda also yelled up at and shined a flashlight into Mr. Contreras's apartment, in order to get his attention. While doing so, Officer Marchionda identified himself and the other officers as the police, called out to Mr. Contreras using his first name, and asked in substance whether Mr. Contreras would "come outside and talk." Although lights were on in the apartment and windows were open, nobody responded to those verbal calls. After those efforts failed as well, Officers Ciulla and Crosson walked up the interior staircase to the second-floor apartment and knocked on the door to Mr. Contreras's apartment, but nobody answered.

Officers Ciulla and Crosson then rejoined Officer Marchionda outside the building, and Officer Marchionda repeated his attempts to contact Mr. Contreras by shouting up to the apartment, calling Mr. Contreras by name and identifying

himself as a police officer. Officer Marchionda also shined his flashlight into the apartment. While doing so, Officer Marchionda saw a man briefly appear in a window.⁶ Officer Marchionda reported his observation to Officer Ciulla over their police radios. At that point, Officer Ciulla decided to return up to the second-floor apartment and knock on the door again. Officer Crosson, who had walked to the back of the building, was returning to the front as Officer Ciulla began to walk up the interior staircase to the second floor.

Accounts of Officer Ciulla's encounter with Mr. Contreras and the shooting that followed are detailed below. In summary, although they both recounted that Mr. Contreras was holding a gun, that Officer Ciulla shot Mr. Contreras, and that Mr. Contreras was on the stairs in the area of the landing between the first and second floors when he was shot, their accounts differed in other relevant and significant respects. Specifically, Officer Ciulla recounted that Mr. Contreras said in substance that he wanted to die and pointed his gun at Officer Ciulla before Officer Ciulla fired; Mr. Contreras recounted that he never raised his gun at the Officer and never voiced any suicidal ideation.

Mr. Contreras was shot twice – once in the upper left chest near his collarbone, and once in the right upper forearm. After Officer Ciulla shot Mr. Contreras, police began applying first aid to Mr. Contreras. Officers also secured the revolver that Mr. Contreras had been holding during his encounter with Officer

⁶ Although at the time Officer Marchionda did not know who the man was, when he rendered aid to Mr. Contreras after the shooting he recognized him as the man he had seen.

Ciulla, and Officer Ciulla's pistol was seized as well. Emergency medical personnel responded to 106 Ledge Street and began treating Mr. Contreras. Several overheard Mr. Contreras say words to the effect of, "Why did you shoot me?," and also state that his gun was not loaded and that he did not want to die. The paramedic in charge of Mr. Contreras's treatment en route to the hospital asked him what happened, and he answered in substance that his girlfriend had left him, that his life was falling apart, and that he had wanted to die. Mr. Contreras initially was taken to Southern New Hampshire Medical Center, but that same night he was transferred to Massachusetts General Hospital, where he remained until July 2.

B. Witness Accounts

There were no police-issued video or audio recording devices that recorded any of the incident at 106 Ledge Street. Nashua Police officers do not wear body cameras, and Nashua Police vehicles are not equipped with cameras. There are no known video or audio recordings of the incident taken by private citizens.

Although investigators conducted a canvas of the residences in the immediate vicinity of 106 Ledge Street, nobody reported seeing any of the events leading up to and including the shooting or hearing anything other than gunshots; multiple neighbors reported hearing what sounded like gunshots.

Nobody was home in the first-floor apartment at 106 Ledge Street. Mr. Contreras lived with one roommate, who was home at the time of the encounter

with the police. However, according to a recorded statement given by that roommate on the morning of June 27, the night before he was sleeping and “ha[d] no clue” as to what happened until awoken with “a bunch of guns in [his] face.”⁷ As to that roommate’s interactions with Mr. Contreras before the shooting, the roommate reported that when he went to bed at about 9:30 p.m., he saw Mr. Contreras going to his room and had no conversations with him either at that time or afterwards.

1. Police Officer James Ciulla

Officer Ciulla was interviewed on June 29, 2018. Officer Ciulla has been an officer with the Nashua Police Department since 2011. Prior to his tenure with the Nashua Police Department, Officer Ciulla worked as an officer for the Derry Police Department for about three years. Officer Ciulla has attended various mandatory and voluntary police trainings during his law enforcement tenure; his last use of force training and firearms certification occurred in May, 2018. Officer Ciulla had never discharged his firearm in a nontraining scenario before the shooting on June 26.

As to the events of the evening of June 26, 2018, according to Officer Ciulla, he responded to 106 Ledge Street upon receiving the radio dispatch that Mr. Contreras may be there, was suicidal, and had access to firearms. Soon after

⁷ Nashua police officers first encountered, and briefly detained, the roommate after the shooting, while conducting a safety check of Mr. Contreras’s apartment.

Officer Ciulla arrived at 106 Ledge Street, he met up outside the residence with Officers Marchionda and Crosson. When attempts by Officer Ciulla and the other two officers to contact Mr. Contreras by calling his cell phone and yelling up to his apartment were unsuccessful, he decided to return to the apartment and try to contact him by knocking on the door. As Officer Ciulla began walking up the stairs of the interior staircase located in the foyer on the side of 106 Ledge Street, he heard what sounded like the second-story apartment door opening. In response, Officer Ciulla returned to the bottom of the staircase in the foyer area. While there, Officer Ciulla saw Mr. Contreras on the staircase landing, in between the first and second floors. Mr. Contreras was facing Officer Ciulla, and was holding a handgun in his right hand, his arm extended down and the weapon pointed at the floor of the landing.

At that point, Officer Ciulla unholstered his service pistol, pointed it at Mr. Contreras, and ordered Mr. Contreras to “drop the gun.” Mr. Contreras said words to the effect of “I don’t want to live anymore, my child’s mother left me.” Mr. Contreras then began walking down the rest of the stairs, towards Officer Ciulla, who was standing about fifteen feet away. As Mr. Contreras did so, he raised his arm and pointed his firearm at Officer Ciulla. At that time, Officer Ciulla fired his pistol at Mr. Contreras; Officer Ciulla recalled that he fired two or three shots, and stopped firing when Mr. Contreras dropped his weapon. Officer Ciulla shot Mr. Contreras because he was afraid for his life and thought that Mr. Contreras was going to shoot him.

After Mr. Contreras dropped his weapon, Officer Ciulla saw it fall onto the first-story floor near where he was standing, and kicked it behind him, away from Mr. Contreras. Officer Ciulla ordered Mr. Contreras to hold up his hands. Mr. Contreras responded with words to the effect of, “You shot me,” “You killed me.” Officers Marchionda and Crosson administered medical aid to Mr. Contreras while Officer Ciulla kept watch of his apartment door, for security.⁸ Soon thereafter, other officers arrived, and Officer Ciulla left the building and was taken to the hospital.

2. Police Officers Kyle Crosson, and Guido Marchionda

Neither Officer Crosson nor Officer Marchionda saw the encounter between Officer Ciulla and Mr. Contreras in the foyer of 106 Ledge Street. Prior to arriving at the residence, Officer Marchionda had received the same information from dispatch as had Officer Ciulla – in substance that Mr. Contreras was suicidal and may have access to firearms at his apartment. Officer Crosson, who had been on motorcycle patrol, had not heard the dispatch call, but shortly after his arrival at 106 Ledge Street he was informed by Officer Marchionda that they had responded to the home to check on one of the residents, who was suicidal and may have access to firearms.

⁸ Officer Ciulla was uncertain when during his encounter with Mr. Contreras the other two officers entered the foyer area where the interior staircase was.

According to Officer Crosson, while he was returning to the front of 106 Ledge Street from the rear of the house, he heard one of the other officers report over his police radio words to the effect of, “He’s coming out.” Officer Crosson then heard Officer Ciulla yell in substance, “Drop the gun,” and then heard what he remembered to be two gunshots.

Officer Crosson initially was uncertain who had fired a weapon, and began running back towards the rear of the house. Officer Crosson then heard words to the effect of, “Let’s see your hands,” and went to where he heard the voice – the staircase that led to Mr. Contreras’s second-floor apartment. There, Officer Crosson saw Mr. Contreras standing on the stairs, with a revolver in front of him; Officer Crosson could not recall whether the weapon was on stairs or on the floor. Officers Ciulla and Marchionda were in the staircase foyer, with their pistols unholstered and pointed at Mr. Contreras. Officer Ciulla was directing Mr. Contreras to show his hands, and Mr. Contreras was answering in substance that he had nothing in his hands and had been shot.

The revolver – which Officer Crosson recalled as being below Mr. Contreras, either on the stairs or the first-story floor – was kicked further away from Mr. Contreras, towards the door leading outside. Mr. Contreras was then moved to the floor on the first story, handcuffed, and treated for his gunshot wounds. Mr. Contreras said words to the effect of “I just wanted to get back with my girl” and “I just wanted my life back,” and said that the gun was unloaded.

According to Officer Marchionda, while he was out in front of 106 Ledge Street looking up into the second-floor apartment, he heard Officer Ciulla yell in substance, “Drop the gun,” at least twice, quickly followed by two or three gunshots. Officer Marchionda then ran to the staircase foyer where he had heard the sounds, and there saw Officer Ciulla in the foyer pointing his weapon at Mr. Contreras, who was standing at the staircase landing. Mr. Contreras held a gun, which he dropped onto the stairs and that fell on the floor. Mr. Contreras then sat down, and said words to the effect of, “You shot me.” Officer Marchionda saw that Mr. Contreras was bleeding, and after handcuffing him began rendering medical aid to him. Mr. Contreras apologized several times, reported that his weapon was unloaded, and stated words to the effect of, “I just wanted you guys to kill me.”

3. Justin Contreras

Mr. Contreras was interviewed on July 17, under the parameters of a “proffer letter,” whereby the truthful statements and information that he gave in the interview could not be used against him in his pending criminal case or any other criminal matter.⁹ In that interview, Mr. Contreras reported the following.

⁹ Investigators from the New Hampshire State Police attempted to interview Mr. Contreras several times while he was hospitalized. Initially, hospital staff informed investigators that they could not speak to Mr. Contreras due to his medical condition. In the days that followed Mr. Contreras’s hospitalization, investigators were advised by hospital staff that he did not want to speak with them. Investigators attempted to locate Mr. Contreras after his release from the hospital in order to interview him, but before direct contact could be made he was arrested and charged by the Nashua Police Department with felony-level criminal threatening. Investigators from the State Police attempted to interview Mr. Contreras after his arrest, but he exercised his constitutional right to decline questioning without a lawyer present.

Earlier on June 26, Mr. Contreras met his girlfriend, with whom he had been having relationship issues, at her house in Lowell, Massachusetts. Soon after that visit, Mr. Contreras argued with his girlfriend over the phone, during which he physically broke his cell phone. At that point, Mr. Contreras went to speak with his parents at their home in Hudson, in order to talk about his problems and get their advice. At his parent's house, Mr. Contreras spoke with them about his relationship issues with his girlfriend, as well as his concerns about his unemployment and inability to earn money. Mr. Contreras was not satisfied with the advice his parents gave him – basically, to “keep his head up” – and left their home. When he left, Mr. Contreras was admittedly upset, but could not remember whether he had said whether he wanted to kill himself. Mr. Contreras denied that he was feeling suicidal.

From his parent's home in Hudson, Mr. Contreras drove to his home, the second-story apartment at 106 Ledge Street. Upon returning home to 106 Ledge Street, Mr. Contreras spoke with his roommate and hung out with him for “a little bit.” Mr. Contreras also did some laundry, and later went to his room to watch Netflix. Mr. Contreras also typed the following message on his Facebook page: “to anyone that will miss me when i'm gone i'm so sorry i just can't do it anymore” [sic]. Mr. Contreras said that the posting was a reference to him no longer wanting to reside in Nashua.

Within minutes after posting that Facebook message, Mr. Contreras heard loud “pounding” on the apartment door. In response, Mr. Contreras approached

his roommate, who was awake in his own bedroom watching television, and asked him whether he was expecting anyone. The roommate replied in substance that he was not. While Mr. Contreras was talking to his roommate, he again heard loud banging on the apartment door. Mr. Contreras then went to the living room and looked outside an apartment window, but did not see anything or anyone outside.

As Mr. Contreras walked away from the window, he saw lights appearing on the apartment door, which he believed to be from flashlights, and heard voices repeatedly screaming his name – Justin – from outside. Mr. Contreras feared that it may be a home invasion, and at that point went to his bedroom and armed himself with his revolver, a gun that he had possessed for several years. Mr. Contreras knew that the gun was not operable – the cylinder would fall out when the trigger was pulled – and he checked to ensure that it was unloaded. Mr. Contreras opened his apartment door and said, “Hello?,” but nobody answered.

Mr. Contreras then walked down the staircase, intending to scare off with his revolver the “hoodlums” who he believed had been knocking on the door and calling out his name. Mr. Contreras held the revolver in his right hand and parallel to his body, with the barrel pointed at the stairs.

Mr. Contreras walked to the staircase landing in between the first and second floor, and as he began walking down the lower stairs he saw in the foyer on the first floor three sets of shoes and blue pants, and assumed from what he saw that three police officers were there. Mr. Contreras then raised his left arm to hold

the staircase ceiling¹⁰ in order to bend over and get a clear view of who was on the first floor, and as he was doing so heard words to the effect of, “Drop it.” When Mr. Contreras was leaning down to get a better view of who was in the foyer, he was shot.

After Mr. Contreras was shot, he slid down to the bottom of the staircase, where he saw three police officers pointing their guns at him. Two of the officers began administering first aid to him, while the third went upstairs to his apartment. Mr. Contreras told one of the officers who was treating him words to the effect of, “It’s okay, you’re just doing your job” – a reference to trying to save his life. According to Mr. Contreras, one of the officers who was treating him gave the officer who shot him a “weird look, like, ‘what did you just do?’”

According to Mr. Contreras, at no point when he was home at 106 Ledge Street on the evening of June 26 did he ever hear anyone identify themselves as police officers, and he never said anything on the staircase before he was shot. Also, Mr. Contreras said that he never raised his arm as he held the revolver, and never pointed the weapon at the police.

¹⁰ In the attached photo, that is the area just above the yellow circle and behind the first-floor ceiling. The observation that Mr. Contreras reported – the lower parts of a person’s body – was consistent with what one would see looking from the staircase landing in between the first and second floors to the door in the foyer leading outside. From that same landing, one also can touch the ceiling above the stairs leading from the landing to the ground floor, as recounted by Mr. Contreras.

C. Justin Contreras's Injuries

As noted, Officer Ciulla shot Mr. Contreras twice. One of those shots entered the front of Mr. Contreras's body just below his left collarbone (looking from Mr. Contreras's vantage point), with a path, according to Mr. Contreras, to his mid-upper back. There was no exit wound for that gunshot, and hospital personnel recovered the bullet from Mr. Contreras's body. The other shot entered Mr. Contreras's upper right forearm (looking from Mr. Contreras's vantage point), with some of the bullet exiting the upper right forearm and some of the bullet remaining in his arm; that shot shattered Mr. Contreras's radius. Mr. Contreras believed that he was shot first in the arm, but could not recall the order because the shooting happened so quickly.

Mr. Contreras initially was taken by ambulance to Southern New Hampshire Medical Center. According to Mr. Contreras's records from that hospital, he presented with separate gunshot wounds to the left chest just below the clavicle, and to the right forearm with an exit wound noted on the ulna side of the arm. Although Mr. Contreras received treatment at Southern New Hampshire Medical Center, on June 27 he was moved to Massachusetts General Hospital. Medical personnel inserted a tube into Mr. Contreras's chest in order to ensure his medical stability during the transfer.

X-rays taken of Mr. Contreras at Southern New Hampshire Medical Center showed apparent bullet fragments in his chest, with the largest fragment located near the upper left border of his heart and smaller fragments located in his mid-

chest, upper chest, and near his scapula. X-rays also showed fractures to Mr. Contreras's sixth and seventh ribs. X-rays taken after the chest tube placement reflected movement of the bullet fragments in Mr. Contreras's chest.

D. Physical Evidence

There were several large pools of blood on the interior staircase in the foyer of 106 Ledge Street. Those bloodstains were located on the staircase landing between the first and second floors, and on the bottom half of the staircase, leading to the ground floor. That blood evidence is consistent with the accounts of both Officer Ciulla and Mr. Contreras that Mr. Contreras was shot while he was standing on or near the landing, and that after he was shot he moved to the ground floor.

Among the ballistics evidence collected at the foyer area of 106 Ledge Street were three discharged cartridge casings, of a caliber matching Officer Ciulla's pistol. Those casings were recovered by the front door. Officer Ciulla's gun was inspected immediately after the shooting. It was a semiautomatic pistol with a 16-shot capacity – 15 bullets in the magazine, and one bullet in the chamber – and when inspected was three bullets short of fully-loaded. As previously noted, the bullet that entered near Mr. Contreras's collarbone was recovered from his body, and most of the bullet that entered his arm remained there and has not been removed. As to the third shot fired by Officer Ciulla, investigators found no

apparent bullet holes in the interior surfaces of the foyer, but recovered a deformed bullet from the first step of the staircase.

The revolver that Mr. Contreras held during his encounter with Officer Ciulla was recovered from the first floor of the staircase foyer where the shooting occurred. The revolver was an actual firearm – a Taurus “Judge” model five-shot revolver capable of firing either .45-caliber bullets or .410-gauge shotgun shells – but was unloaded. That firearm was examined and test fired by a criminalist from the New Hampshire State Police Laboratory, and found to be functioning normally.

V. 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/she reasonably believes that such force is necessary to defend himself/herself or a third person from what he/she 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 the actor 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). Further, all the circumstances surrounding the incident should be considered in determining whether there was a reasonable belief that deadly force was necessary to defend oneself or another. *See id.* at 99; *Aldrich v. Wright*, 53 N.H. 398 (1873). The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or a police officer may still be justified in using deadly force if he/she reasonably believed that he/she was in imminent danger from the use of deadly force by another, even if, in fact, they were not, so long as the actor’s belief was objectively reasonable.

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

In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer’s conduct would be judged when excessive force claims were brought against him. The Court confirmed that “[t]he ‘reasonableness’ of a particular use of force must be judged from the

perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* The Court went on to explain how to determine what is reasonable in situations where police officers use force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

Id. at 396-97; *see also Ryburn v. Huff*, 132 S. Ct. 987, 992 (2010).

The Eleventh Federal Circuit has noted that:

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

Garczynski v. Bradshaw, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted).

That is because “the law does not require perfection—it requires objective reasonableness.” *Phillips v. Bradshaw*, No. 11-80002-CIV-MARRA, 2013 U.S. Dist. LEXIS 44646 *55-56 (S.D. Fla. March 28, 2013). Specifically, the law accounts for the often fast moving nature of dangerous situations and the necessity of making decisions in less than ideal circumstances. *See Huff*, 132 S. Ct. at 991-92 (chastising lower circuit court for not “heed[ing] the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation.”).

VI. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General has concluded that Police Officer James Ciulla was faced with a dangerous situation when he encountered Justin Contreras in the staircase area of 106 Ledge Street, and that it was reasonable for Officer Ciulla to conclude that he faced an imminent threat of deadly force from Mr. Contreras, who was holding a revolver, and to use deadly force against him in order to protect his own life.

As the outset, Nashua police officers acted appropriately in responding to 106 Ledge Street. The police had received information, the source of whom was Mr. Contreras's mother, that he was despondent and, she believed, suicidal. Based upon that first-hand reported information, the police had every reason to go to Mr. Contreras's residence in order to check on his well-being. Moreover, given the belief that Mr. Contreras might have weapons in his apartment, as well as Mr. Contreras's reported emotional state, the three officers who responded to 106 Ledge Street made reasonable efforts to make contact with Mr. Contreras outside of his apartment, which would have been a safer environment in which to speak with him. And, although Mr. Contreras has claimed that he did not hear the police identify themselves as such, all three officers were dressed in police uniforms, and Officer Marchionda, who was the officer who attempted to call out to Mr. Contreras from outside, stated that he identified himself and the others as police officers when doing so. The latter representation not only comports with common sense and everyday experience, but also is consistent with all the other efforts the

officers made to ensure their safety while attempting to make contact with Mr. Contreras.¹¹

As to the encounter that followed in the interior staircase of 106 Ledge Street, when Mr. Contreras was shot, at the outset it is not unusual for there to be inconsistencies among eyewitness accounts, as well as mistakes made by otherwise credible and reliable eyewitnesses. This reality is particularly so in an event such as this, which was unexpected, violent, and unfolded rapidly – as to the latter, a matter of seconds. Here, there exist such expected minor inconsistencies.

But that being said, there also are aspects of the account provided by Mr. Contreras that cannot be reconciled with the account provided by Officer Ciulla. In particular, Mr. Contreras's account is that he never raised his arm, that he never held the revolver towards anyone, and that he never said anything reflecting a desire to be killed. By Officer Ciulla's account, on the other hand, Mr. Contreras pointed a gun at him before he fired his own weapon, and also uttered words expressing suicidal intent.

Reviewing all of the evidence, Mr. Contreras's account is not credible. That account is at odds not only with what Officer Ciulla reported, but also what

¹¹ The credibility and reliability of Mr. Contreras's representation that he never heard the people outside his apartment identify themselves as police officers is called into question also by the fact that he also claimed that the police never identified themselves as such when they entered his apartment after the shooting. That claim is contrary to accounts provided by several officers who conducted that safety check, each of whom recalled that prior to and during entry loud and repeated verbal notifications were made that they were police officers, accounts that again comport with common sense and experience.

The fact that none of the neighbors interviewed during the canvas reported hearing any of the police call-outs to Mr. Contreras prior to the shooting does not call into question that they had in fact identified themselves as the police. After all, Mr. Contreras himself corroborates that "people" were yelling up into his apartment, none of which neighbors heard as well.

was seen and heard by the other witnesses to events. According to the separate accounts of Officer Crosson and Officer Marchionda, neither was present when Officer Ciulla fired his weapon, which contradicts Mr. Contreras that three officers were together inside the staircase area of 106 Ledge Street before he was shot. Also according to both Officer Crosson and Officer Marchionda, afterwards, while each was providing medical assistance to Mr. Contreras, he made statements indicating that he had wanted to be killed. And, as to suicidal comments, according to the paramedic who treated Mr. Contreras en route to the hospital when Mr. Contreras was asked in substance what happened he said words to the effect that he had wanted to die because his life was falling apart and his girlfriend had left him. This latter information, coming not from a fellow police officer, supports the accounts that Officers Ciulla, Crosson, and Marchionda provided that Mr. Contreras spoke about wanting to kill himself, and refutes Mr. Contreras's representation that he harbored no such thoughts.

Mr. Contreras's account also is contrary in key respects to that provided by his own roommate, who was present in the apartment when the entire encounter with the police unfolded. That roommate was interviewed just the morning after the shooting, and did not corroborate any of the discussions and interactions detailed by Mr. Contreras as occurring between them. By way of example, Mr. Contreras claimed that just before the shooting occurred he was talking to his roommate, who was awake and watching television, and asked him whether he was expecting anyone, and the roommate answered that he was not. Mr. Contreras

went on to further claim that while speaking to his roommate, he heard loud banging on his apartment door, which presumably the roommate with whom he was talking would have heard as well. But according to that same roommate, he was asleep and did not hear anything until woken up by police in his bedroom, an event that occurred after the shooting. Those accounts simply cannot be reconciled, and reasonably factor into an assessment of the credibility of Mr. Contreras's account.

Next, aspects of Mr. Contreras's account do not make sense. As an example, Mr. Contreras claimed that he believed that the people outside his apartment were "hoodlums" conducting a home invasion. But those same "hoodlums" were knocking on Mr. Contreras's apartment door, were using flashlights to illuminate his apartment from the outside front of the building, and by Mr. Contreras's own concession were calling out to him by his first name. And, the roommate who Mr. Contreras claimed was awake and with whom he was speaking to as the claimed home invasion was unfolding reported no similar belief that such an event was happening.

During Mr. Contreras's interview, he suggested that the trajectory of the bullet that struck him near the collarbone corroborated his account that he was shot while leaning over on the staircase and looking into the foyer. But the trajectory of that shot after entering near Mr. Contreras's collarbone is unknown. There was no corresponding exit wound through which trajectory might be extrapolated. Moreover, although Mr. Contreras was hospitalized, the purpose of

such was medical treatment rather than detailed wound path documentation. To the extent bullet fragment locations identified in medical records and through x-rays could be used to extrapolate trajectory, they demonstrate a slight downward trajectory.¹²

That being said, forming conclusions based upon wound trajectories absent all relevant information can be difficult, given that such trajectories depend on a variety of factors, such as relative locations of the person shot and the shooter, the movement of those parties, and any possible deflection, including while penetrating the body. So too does it depend on the absence of post-wound migration of ballistics evidence within the body, which, in this case, there is documented medical evidence of such internal movement. In any event, the trajectory of Mr. Contreras's gunshot wound to the front of his torso does not either corroborate his account or suggest that it is more credible than the account provided by Officer Ciulla. According to Mr. Contreras, he was leaning his body forward, toward Officer Ciulla, who was standing below him inside the staircase foyer, and thus aiming upward from about four feet below. From these relative positions, the trajectory of a straight gunshot from Officer Ciulla to Mr. Contreras – absent any movement from either party other than Mr. Contreras leaning

¹² Although Mr. Contreras indicated in his interview that the bullet was recovered from his mid-back area, that is the area where a surgeon chose to enter his body in order to retrieve the bullet; that may or may not have correlation to where the bullet was recovered, or even where it actually was when it first entered the body. Relevant as to the latter, medical records indicate that bullet fragments actually moved during placement of a chest tube; further migration could have occurred as a result of transfer between hospitals as well as subsequent treatment prior to retrieval of ballistics evidence.

forward and Officer Ciulla shooting upward – would have been either upward from the point of entry or relatively flat, rather than downward.

Next with respect to Mr. Contreras’s credibility, in his interview he attempted to downplay and dismiss any suicidal thoughts or plans that he had on the night when he was shot. That not only is inconsistent with what multiple people heard him say at the time of the shooting and immediately afterwards, but also with observations made and statements heard by several people close to him, who had interacted with him just hours within the incident. Specifically, Mr. Contreras’s parents and girlfriend each reported that he was upset, observations reinforced by his conduct in physically destroying his cellular telephone. According to those same people, Mr. Contreras said in substance that he was going to kill himself. So too is that more accurate depiction of Mr. Contreras’s mental state reflected in the Facebook message that he sent just minutes before he encountered Officer Ciulla with a revolver in hand: “To anyone [who] will miss me when I’m gone I’m so sorry I just can’t do it anymore.” Although Mr. Contreras claimed that the message referenced his angst over residing in Nashua,¹³ viewed in context of what he said and did both before and after sending that message it more accurately appears to reflect his fragile emotional state just before taking a gun and confronting the police.

¹³ According to Ernest Lefebvre, Jr., a friend of Mr. Contreras who investigators interviewed, Mr. Contreras told him that he pasted the message on Facebook because he was upset and attempting to “get a rise out” of his girlfriend.

As to possible motive to obfuscate what happened in the staircase foyer when Mr. Contreras was shot, at the time when Mr. Contreras spoke with investigators he had pending felony charges against him based upon conduct observed and reported by Officer Ciulla, and also simply may have been concerned with legal consequences and social stigmas associated with an attempt to take his own life, albeit through a police officer as surrogate. As to motive for the police to lie, although Officer Ciulla certainly would not want any criminal, civil, and /or employment consequences associated with an unlawful use of force, there is no known or apparent motive for Officers Marchionda and Crosson to lie.

Lastly, although the Attorney General's Office had previously determined that Officer Ciulla's shooting of Justin Contreras was legally justified, Mr. Contreras's recent guilty plea only validates that determination. Specifically, Mr. Contreras pleaded guilty to a felony, the underlying factual premise of which was that, by his conduct, and while using a deadly weapon, he purposely placed another – Officer Ciulla – in fear of imminent bodily injury. That guilty plea contradicts Mr. Contreras's account of events to investigators, and corroborates the account provided by Officer Ciulla.

Under the credible and reliable information gathered from the investigation into Mr. Contreras's shooting, as Officer Ciulla entered 106 Ledge Street he was confronted with an encounter with an armed man that escalated quickly. Only upon seeing Mr. Contreras holding a gun did the officer unholster his own weapon, and repeatedly ordered Mr. Contreras to drop his gun.

Despite those directives, Mr. Contreras did not disarm himself. And, he spoke words – in substance, “I don’t want to live anymore” – objectively indicating a distressed mental state. Then, Mr. Contreras escalated an already dangerous situation to himself and Officer Ciulla by raising his gun at the Officer. All of these circumstances created an immediate life-threatening situation to Officer Ciulla. It was only then that Officer Ciulla fired his weapon at Mr. Contreras.¹⁴ Based upon all of these facts and circumstances known to Officer Ciulla when he encountered Mr. Contreras, it was reasonable for the officer to believe that Mr. Contreras posed an imminent threat to his life, and also to believe that when he fired his service weapon Mr. Contreras was about to use deadly force against him.

Accordingly, Officer James Ciulla of the Nashua Police Department was legally justified in using deadly force against Justin Contreras, and no criminal charges will be filed against Officer Ciulla for shooting Mr. Contreras.

¹⁴ New Hampshire law defines a “deadly weapon” as “any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, *or threatened to be used*, is known to be capable of producing death or serious bodily injury.” RSA 625:11, V (emphasis added). Here, although the revolver that Mr. Contreras held was ultimately determined to be unloaded, it still was a “deadly weapon” based on the manner in which he used it at the time of his confrontation with Officer Ciulla, who reasonably believed that it was a loaded and fully functional firearm.