

**ATTORNEY GENERAL’S REPORT REGARDING THE INVESTIGATION INTO
THE HATE CRIME AND CIVIL RIGHTS VIOLATION ALLEGED TO HAVE
BEEN COMMITTED IN CLAREMONT ON AUGUST 28, 2017**

I. INTRODUCTION

On August 28, 2017, an eight-year-old biracial boy suffered injuries to his neck in the course of an incident in Claremont, New Hampshire, involving several older children. The Attorney General’s Office (AGO) commenced an investigation in this matter to determine whether there was credible evidence that the one or more of the older children involved was substantially motivated to commit a crime against the victim because of hostility toward that child’s race. *See* RSA 651:6, I (f) (the hate-crime sentence enhancement statute). In addition, the Attorney General conducted the investigation to determine whether there was credible evidence to bring an action against one or more of the older children under the New Hampshire Civil Rights Act, RSA 354-B.

As discussed in detail below, the evidence obtained during this extensive investigation does not support either criminal charges under the hate crime statute or a civil rights violation. Accordingly, the Attorney General has not taken and will not take action under those statutes. Because the evidence supported the filing of delinquency petitions,¹ however, the Sullivan County Attorney was authorized to proceed with a prosecution under the Juvenile Delinquency Code (RSA 169-B).

All the primary witnesses involved in the events of August 28, 2017 are children. At the conclusion of the AGO’s investigation, the Sullivan County Attorney charged a 13-year-old, identified in this report as Boy 1, in the 5th Circuit – Family Division – Claremont with three delinquencies which, if committed by an adult, would have constituted the crimes of misdemeanor simple assault, felony second degree assault, and misdemeanor reckless

¹ Delinquency proceedings are not criminal proceedings, and a violation of the New Hampshire Criminal Code committed by a juvenile is referred to as a “delinquency,” not a “crime.” For ease of reference and understanding, however, this report will use the more familiar terminology of the adult criminal justice system when referring to delinquency matters.

conduct.² Given the children’s ages and the strict confidentiality directives of RSA 169-B, at the conclusion of its investigation the AGO sought judicial authorization to publish a public report in this matter. Having obtained that authorization from the Circuit Court – Family Division, the Attorney General now releases the details the AGO’s findings and conclusions with regard to the investigation of this incident.

To protect the identities of all the children in this matter, this report uses generic identifiers such as “the victim,” “the neighbor,” and “Boy 1” in lieu of given names. The witnesses are referred to in this report as follows (the ages noted are as of August 28, 2017):

The Victim’s Family

The victim—8 years old
The victim’s sister—11 years old
The victim’s mother
The victim’s mother’s boyfriend
The victim’s grandmother
The victim’s uncle

Boy 1’s Family

Boy 1—13 years old
Boy 1’s Father
Boy 1’s Mother

Other Juveniles

Boy 2—14 years old
Boy 3—13 years old
Girl 1—14 years old

Other Adults

The neighbor
The babysitter

² On January 31, 2018, Boy 1 pled guilty to committing the misdemeanor crime of simple assault against the victim. He was subject to the Circuit Court—Family Division’s continued jurisdiction as he complied with the court’s dispositional orders and engaged in rehabilitative services.

II. SUMMARY CONCLUSIONS

The credible evidence establishes that on August 28, 2017, the victim and his 11 year-old sister spent several hours around the area of Barnes Park in Claremont with four children who were 13 and 14 years old. The children described two significant events which took place during the day: an incident earlier in the day during which Boy 1 became angry at the victim for telling Boy 1's girlfriend (Girl 1) that Boy 1 was going to end their relationship, and the incident at the end of the day which involved a tree-swing rope. The evidence indicates that during the earlier incident, some of the older children taunted the victim and his sister with racist language, such as, "Are we too white for you?" The evidence also suggests that at some point in the past, Boy 1 may have used "hateful," racist language against the victim's sister and another young girl, and may have called the victim the "N-word."

With regard to the later incident—the primary focus of the investigation—the credible evidence establishes that Boy 1 and Boy 2 tied the tree-swing rope, which was suspended from a tree branch, around their necks, jumped off a picnic table, and landed on the ground uninjured. As the other boys had done to themselves, the victim put the rope around his own neck and stood on the picnic table. The victim was facing away from Boy 1, who was sitting on the picnic table close by. Boy 1 used his hands to push the backs of the victim's legs, causing him to fall off the table. The victim hung by his neck because his feet could not touch the ground. The rope either slid off the victim's neck or he untied it. The rope caused significant abrasions and contusions.

As relevant here, the hate crime and civil rights statutes require proof that the perpetrator's motive in assaulting the victim was the result of racial animus. While the evidence makes clear that Boy 1 did assault the victim, causing the injuries to his neck, the evidence does not establish why he did so. Because Boy 1's motives cannot be established, he cannot be charged either with a hate crime or a violation of the Civil Rights Act.

III. THE DISCLOSURE OF CONFIDENTIAL INFORMATION

The juvenile delinquency chapter of the New Hampshire Code makes it a misdemeanor to disclose court records in delinquency cases. *See* RSA 169-B:35, II; RSA 169-B:36, I. Although these statutes prohibit the dissemination of delinquency *court* records, New Hampshire prosecutors and law enforcement officers exercise great caution with regard to the disclosure of any information obtained in the course of investigations into crimes committed by minors.

The AGO's investigation in this matter focused in part on whether one or more juveniles committed crimes. If so, those charges would be filed as delinquency petitions under RSA 169-B. Mindful of the intense public interest in the case but cognizant of the statutory requirements of confidentiality and the juveniles' privacy interests, the AGO sought authorization from the Circuit Court – Family Division for the public release of the details of its investigation. The AGO first sought judicial authorization on October 30, 2017, but the court rejected that application because charges had yet to be filed in the matter.

On December 14, 2017, the Sullivan County Attorney filed delinquency petitions concerning the events of August 28 in the 5th Circuit – Family Division – Claremont. That day, the AGO filed a second motion seeking to disclose the facts of its investigation.

After a hearing in March, the court on April 30, 2018 granted the AGO's motion, stating that “[i]t has been represented to the Court that the results of the investigation conducted by the Attorney General's Office show that the act committed by the juvenile in this case was not racially motivated and was not a hate crime”; that “[n]othing in the record indicates that the juvenile acted out of any motive related to race”; that “[i]f no information is released to the public, the false narrative that currently exists will continue to be the only information that the public has access to”; and, finally, that “that false narrative continues to haunt the juvenile in this case.” On that basis, the court found that the public release of the AGO's report could assist the juvenile's rehabilitation.

On July 24, after another hearing, the court reaffirmed its previous order, ruling that the AGO's report would serve to rehabilitate the juvenile by relieving him of the burden of incorrect accusations concerning his conduct on August 28, 2017.

On August 9, 2018, the court granted the juvenile’s motion to stay the release of the report, pending appeal, and also granted the AGO’s request to issue a limited statement concerning litigation over the report’s release. The court on August 22 granted the juvenile’s request to vacate the stay. On August 28, the court denied the AGO’s request to disclose the court’s orders. On September 26, the court denied the AGO’s motion to reconsider that ruling, and denied the AGO’s request to release the records of its investigation. The court issued a final order on these matters on October 11, 2018.

IV. THE LAW

The investigation in this matter was necessarily guided by the definition of hate crimes as provided in RSA 651:6, I(f), and of civil rights violations as provided in RSA 354-B:1, I. Because an understanding of those statutory schemes is useful to consideration of the facts, an overview of the statutes is provided here.

A. The Hate Crime Statute—RSA 651:6, I(f)

RSA 651:6, I, defines numerous circumstances any one of which, if proven to a jury beyond a reasonable doubt, subject a convicted person to an extended term of imprisonment. The hate crime statute—RSA 651:6, I(f)—is one of those sentence-enhancement provisions. It allows for enhanced penalties when the convicted person:

[w]as substantially motivated to commit the crime because of hostility towards the victim’s religion, race, creed, sexual orientation as defined in RSA 21:49, national origin or sex[.]

To prove a defendant guilty under the hate crime statute, “the State must prove only that [he or she] was substantially motivated to commit a crime because of his hostility towards the victim’s perceived ‘religion, race, creed, sexual orientation ... , national origin or sex.’” *State v. Costella*, 166 N.H. 705, 713 (2014). The State “need not prove the actual status of the victim.” *Id.* This is because “[t]he significant community harm resulting from a hate crime flows from the defendant’s bias-motivated actions, rather than the victim’s actual status as a member of a protected class.” *Id.* at 711 (citation omitted). “Society is harmed by a bias-motivated crime regardless of whether the victim is, in fact, a member of the protected class that the defendant has targeted.” *Id.*

If the State proves beyond a reasonable doubt that a criminal defendant is guilty both of a crime and the hate-crime enhancement, the defendant may be sentenced to lengthier incarceration than otherwise authorized by law. For example, RSA 651:6, III, permits a sentence of 10-30 years in prison on a felony conviction and 2-5 years in prison on a misdemeanor conviction.

It should be noted that, as a procedural matter, a child charged with a delinquency under RSA 169-B is not subject to incarceration in an adult facility. Thus, the hate crime statute is not applicable to delinquencies, unless the child is charged with an offense which constitutes a felony and the Circuit Court – Family Division certifies that the matter should be transferred to the superior court. *See* RSA 169-B:24. In making this determination, the court must consider several criteria, including “whether the protection of the community requires transfer” and “[t]he aggressive, violent, premeditated, or willful nature of the alleged offense.” *Id.*

B. The Civil Rights Act—RSA 354-B:1

The New Hampshire Civil Rights Act provides as follows:

All persons have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and the laws of the United States and New Hampshire without being subject to actual or threatened physical force or violence against them or any other person or by actual or threatened damage to or trespass on property when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, gender, or disability.

RSA 354-B:1, I (emphasis added).

If the Attorney General determines that there is probable cause to believe that a violation of the Civil Rights Act has occurred, the Attorney General may bring a civil action for injunctive or other equitable relief. RSA 354-B:2, I. Any civil action brought must be proven by clear and convincing evidence. RSA 354-B:2, IV. In addition to injunctive relief, the court may impose a penalty of not more than \$5,000.00 for each violation, and may require restitution be paid to any person damaged by the violation. RSA 354-B:3.

V. OVERVIEW OF THE INVESTIGATION

The Claremont Police Department undertook the initial investigation in this case. That agency conducted multiple witness interviews, photographed the victim's injuries and the location of the incident, and collected medical records and other evidence.

The AGO constituted a team of Criminal Justice Bureau prosecutors and investigators to further investigate the matter. The AGO's investigation was conducted in conjunction with the Claremont Police Department, with assistance from the United States Attorney's Office and the Federal Bureau of Investigation (FBI). In the course of the investigation, the AGO reviewed evidence obtained by the Claremont Police Department. In addition, during the AGO's investigation, interviews were conducted with the victim's sister; Boy 3, another teenager present during the August 28 incident; the victim's mother and grandmother; and several other adults. The AGO also visited the scene of the events at issue, met with school officials, obtained Boy 1's school records, and reviewed statements made by witnesses to various media outlets and in social media.

All the formal interviews conducted by the Claremont Police Department and the AGO were recorded. The second interview of the victim's sister was conducted by Rachel Happel, MS, LPC, an FBI child/adolescent forensic interviewer.

VI. INVESTIGATION DETAILS

A. Police Response to the Incident

On Monday, August 28, 2017, shortly before 5:00 p.m., Claremont Police received a call from the victim's mother, who reported that an older child had tried to hang her son from a tree. The victim, who is biracial, was eight years old at the time. Claremont Officer Michael Puksta responded to Barnes Park, where he encountered the victim, the victim's mother, and Boy 1, amongst others. Boy 1 was 13 years old.

Boy 1 told the officer that he had been playing in a backyard near Barnes Park with his friend, the victim. Boy 1 said that the victim found a tire swing in the yard. The swing rope was tied to a tree. According to Boy 1, after detaching the tire from the rope, the victim tied the rope around his neck and climbed on a table under the tree. Boy 1 said that while the victim was standing there, Boy 1 ran by and scared the victim, causing him to fall off the

table. Boy 1 denied pushing the victim and also denied knowing that when he scared him, the victim had the rope around his neck.

Officer Puksta next spoke to the victim, who said that he placed the rope around his neck because the other children had done so. The victim said that he climbed on the table and that Boy 1 scared him as he ran by, causing the victim to jump back and slip off the table. The victim said that when he slipped, the rope around his neck broke and he fell to the ground. The victim told the officer that what happened was an accident.

The victim's mother told the officer that her understanding was that Boy 1 had pushed her son off the table, but the officer explained that both boys claimed what happened was an accident. The victim's mother declined medical attention for her son at the scene, but drove him to Valley Regional Hospital (VRH). From there, the victim was med-flighted to Dartmouth-Hitchcock Medical Center in Lebanon (DHMC), where he stayed until his discharge the following day.

B. Adult Accounts of Contact with the Children and Police Immediately After the Incident

The Victim's Mother

The victim's mother was interviewed at the Claremont Police Department on September 18, 2017, by members of the police department and the AGO. She said that on the day of the incident, her then 11-year-old daughter ran home to tell her that something had happened to the victim's neck. The victim's mother and her boyfriend went to Barnes Park, where they encountered Boy 1, Boy 2, and a teenaged girl (likely Girl 1).

Boy 2 immediately said that what had happened was an accident. Boy 1 said, "Yes, it was an accident. Like I didn't mean to do it. I tried to scare him, and he fell off." The victim was standing close by, as was Officer Puksta, who asked the victim, "Was this an accident?" The victim responded, "Well, maybe it was just an accident." The victim's mother was confident that her eight-year-old son said this because he was asked in the presence of the older boys. When the officer later met with the victim's mother at the hospital, he told her that "given the fact that everyone says it's an accident, we're just gonna call it an accident."

At the park, Boy 2 was rude to the victim's mother and her boyfriend. He told the victim's mother's boyfriend "to stop acting like he was black, because he was white." Boy 2 said that he himself was "white and proud of it."

The Victim's Mother's Boyfriend

The victim's mother's boyfriend was interviewed at the Claremont Police Department on September 14, 2017, by members of the department and the AGO. He said that on the date of the incident, he accompanied the victim's mother to Barnes Park, where the victim, who was "screaming" and "couldn't talk," ultimately said that "these kids had pushed him off the picnic table, and he had a rope around his neck."

When Boy 2 said that he was going to leave before the police arrived, the boyfriend told Boy 2, "You're not going anywhere until the cops come[.]" In response, Boy 2 said to the boyfriend, "Talk like you're white. You're not from the hood." When Boyfriend replied, "[y]ou're white too," Boy 2 rubbed his bare leg and said, "Yep, and I'm proud of it." As a result of this exchange, when Officer Puksta arrived, the boyfriend told him, "This kid over here is racist as hell." He also told the officer, "I guarantee you it had to [have happened] because [the victim] is [black]."

C. Early Reporting and Social Media

According to news reports, at about 7:00 on the night of August 28, the victim's mother posted a photo of the victim's bloodied neck with a caption that read, in part,

So my son is being flown to Dartmouth [Hospital] after a 14 year old kid decided to hang him from a tree. I don't care if this was a so-called accident or not. My son almost died because of some little [] teenage kids. [My son] is doing okay, just keep him in your prayers.

This post prompted a series of news and social media reports concerning the events which led to the victim's injuries. On Tuesday, September 5, 2017, a local newspaper published an article containing the statements of the victim's grandmother, who said that one of the teenaged boys involved in the incident "pushed [the victim] off the picnic table and hung him." The victim's grandmother also said that the teenagers had previously used racial slurs against her grandson, and that she had heard that the term "lynched" was used during the rope incident.

When interviewed on September 14 in the course of the AGO investigation, the victim's grandmother said she had first heard that the incident was "a racial thing" from her sister, who has dementia and had read it on the victim's mother's Facebook page. The victim's mother, with whom an interview was conducted on September 18, 2017, discredited the grandmother's statements in the article, noting that "the whole lynching thing" was "a load of crap," given that "[l]ynching was never a word used" in the course of the August 28 incident.

After the article ran, local, national, and international media and social media outlets produced reports suggesting that the victim was pushed and hanged because of his race.

D. The Victim's Hospitalization

Officer Puksta, who had spoken with the victim at Barnes Park, also spoke with him at VRH. There, Victim reiterated that Boy 1 had not pushed him and that what had happened was an accident.

The victim was evaluated by a nurse practitioner for "concerns of suspected child maltreatment related to a strangulation injury." Although a DHMC nurse reported that "[t]he injuries seen are consistent with aggressive acts of strangulation with a rope, of the type which could be life-threatening, she also noted that upon arrival at VRH, the victim had not been "in general respiratory distress." A physical examination revealed:

Throat was without erythema, injury, or petechiae.³...Neck was tender to movement. There was a very large area of abrasion across the front and sides of the neck which at its widest was perhaps 1½ inches. There appeared to be some associated swelling and mild pinkness which spread to the underside of the right chin area.

A doctor's note from VRH states, "Although the outcome will likely be good, it was preferred that [the victim] be at Dartmouth for observation in case there is airway compromise." VRH diagnosed the victim's neck injury as a "[c]ontusion." CT scans of the victim's neck and carotid arteries revealed "[n]o apparent damage to carotids and no obvious

³ Erythema is superficial reddening of the skin, usually in patches, as a result of injury or irritation causing dilatation of the blood capillaries. Petechiae appear when capillaries bleed, leaking blood into the skin.

intraparenchymal injury for the sequences which included images of the brain.”⁴ The victim told a nurse that he had felt really scared, but denied having had trouble breathing or swallowing. His mother reported to hospital staff that she did not believe her son had lost consciousness.

The victim’s hospital records also indicated that he had “some scattered small areas of abrasion on the lower legs, which appeared to be healed or healing.” Otherwise, other than the injuries to his throat, an inspection of his skin “revealed no remarkable lesions or rashes.”

Officer Puksta photographed the victim’s neck at VRH on August 28, 2017.

E. The Children’s Statements

The eight-year-old victim and his 11-year-old sister were interviewed at the Child Advocacy Center (CAC) of Grafton and Sullivan Counties in Claremont.⁵ The victim’s sister was interviewed a second time, on October 17, 2017.

The other children present during the August 28, 2017 incident were interviewed by Claremont Police Department detectives, accompanied in some cases by AGO investigators and prosecutors, as detailed below. In addition, as described below, some of the children made statements to others, including to the media.

The children consistently described “hanging out” together without adult supervision for a period of hours during the day of August 28.

The Victim

In addition to speaking with the police on August 28, 2017, the victim made statements to hospital staff, was interviewed at the CAC in Claremont on September 1, and gave a brief account of the incident on an episode of a syndicated television talk show, which aired on October 3, 2017. Other adults, such as the victim’s mother and her boyfriend, also reported that the victim had made statements to them about the events at issue.

⁴ Carotids are the two main arteries that carry blood to the head and neck. “Intraparenchymal injury” in this context appears to refer to trauma to the brain.

⁵ New Hampshire’s Child Advocacy Centers (CAC) are located throughout the state and ensure best practices are adhered to in the investigation of cases involving children. Interviews at the CAC are conducted by trained forensic interviewers.

On August 28, at DHMC, the victim told a nurse that Boy 1 and Boy 2, who were 13 and 14 years old, were present during the rope incident and that his sister was also “there for the whole thing except when she went to get [their] mom.”

The victim reported the following to the nurse:

Um what happened was we were playing around the tire swing and this 14 year old and he jumped on the tire and broke off the rope and then they all started to um like to have, they tied around their necks and they jumped off the picnic table and then they both hit the ground. They went back and then I did it. And then, um, that’s what happened. I didn’t actually tie it around my neck, I did a loop. And then um this boy scared me ... and I jumped back and I thought there was going to be a picnic table behind me and there wasn’t and then I fell down and I didn’t hit the ground for a second and it slid across my throat.

When asked to clarify whether he or someone else put the rope around his neck, the victim repeated, “I did, I put [it] around my neck.” When asked how the rope came off, he repeated that when he “fell on the ground [the rope] just slid off.” The victim told another nurse, though, “I got the knot undone and then I fell down.”

At the September 1, 2017, CAC interview, the victim said that on the morning of the day his neck got hurt, he was at his mother’s boyfriend’s house in Claremont. The victim and his sister left Boyfriend’s house to visit the victim’s friend, Boy 1, who lived a few houses down. The victim went to Boy 1’s father’s house, which was next to a big field. There, they spent a “[c]ouple hours” playing. The victim was with his sister; Boy 1; Boy 2, who was then 14 years old; Boy 3, who had just turned 13; and Girl 1, who was within days of her fifteenth birthday. They played either tackle football or “two-hand touch.”

Earlier in the afternoon, before the rope incident, Boy 1 became angry at the victim because the victim told Boy 1’s girlfriend (Girl 1) that Boy 1 was going to break up with her. Boy 1 started “[p]unching, kicking, and throwing stuff” at the victim’s stomach and face. This happened in the field next to Boy 1’s father’s house. The victim’s mother reported that he had told her that the other children “made comments about white pride.”

Later in the day, the children’s attention turned to a tire swing in the Boy 1’s father’s backyard. Boy 2 jumped on the tire, causing the rope, which “was blue and ... had black and yellow on it,” to snap. The children tossed the tire on a woodpile. It was Boy 2’s idea for the

kids to put the rope around their necks. This “started [as] a joke.” Although at the CAC interview the victim said that Boy 2 “didn’t say anything,” on the syndicated television talk show, the victim said that Boy 2 joked that he was going to hang himself because he was in a juvenile placement residence and didn’t want to live anymore. Boy 2 looped the rope around his neck and then tied it, stood on the picnic table, jumped off, and landed on the ground. Boy 1 went next. He looped the rope around his neck and then tied it, jumped off the picnic table, and “touched the ground.”

The victim went last. He stood on the picnic table and “did it to myself”—that is, put the rope around his own neck. According to the victim’s mother’s boyfriend, the victim also told him that “he did put the rope around his own neck.” On the syndicated television talk show, the victim explained that he put the rope around his neck because it was his turn to do it and he wanted to be cool.

The victim said in his CAC interview that he was standing on the picnic table, facing away from Boy 1, who was sitting on top of the table. He felt Boy 1 “grab” the back of his legs. He “fell back” when Boy 1 pushed him and he “didn’t touch the ground.” The rope “slid.” The victim said, “I took a deep breath real quick and then I had to untie it myself because I tied [the rope] around my neck.” After he got the rope off, the victim lay on the ground on his stomach “choked out.” He “couldn’t breathe for a second” but then he “started calming down and then [he] could breath.” A grownup—Boy 1’s father’s neighbor—picked the victim up, laid him on the table, and helped him calm down.

The victim’s sister “saw the whole thing happen.” She ran to get their mom. Neighbor and Boy 2 stayed with the victim, but Boy 1 ran off to the park. The victim said that Boy 2 told Neighbor that playing with the rope was “a joke” and that after the victim “put” the rope on, Boy 1 pushed him.

The victim’s mother’s boyfriend said the victim told him that he said what happened was an accident because he was scared and knew he would see the boys again. The victim told his mother’s boyfriend that he was sure that what happened was not an accident. He knew that Boy 1 “did it on purpose.”

The Victim's Sister

The victim's sister twice participated in recorded interviews: a CAC interview conducted on September 1, and an interview conducted on October 17, 2017 by Rachel Happel, a child/adolescent forensic interviewer employed by the FBI. Like her brother, the victim's sister provided other statements: to her mother, for example, and on the October 3, 2017 episode of a syndicated television talk show.

During her CAC interview, the victim's sister said that before the rope incident occurred, the victim told Boy 1's girlfriend, Girl 1, that Boy 1 was going to break up with her. Boy 1 "got really mad." He "started shoving [the victim] and throwing things at him and saying, 'Oh, sorry. I didn't see you there.'" Boy 1 threw sticks, a long piece of wood, and metal at the victim. Girl 1 taunted her by asking, "Are [we] getting too white for you?" The victim's sister could not remember whether any of the other children said anything like this to her. She said that Boy 1 had previously been "racist" to an 11-year-old friend of hers. In addition, a few days after the victim was injured, the victim's sister told her mother that "in the weeks prior," Boy 1 had said hateful things to her and called the victim the "N-word."

Later, the victim's sister said, the children found a tire swing. Boy 2 "jumped on it, and the [tire] popped right off." Boy 1 and Boy 2 tied the rope around their necks. They said, "[L]et's just jump off the bench and start hanging ourselves." Boy 2 jumped off the picnic table, but because he was "really tall," jumping with the rope tied around his neck "didn't affect him." Boy 1 did it too, and then sat there and watched as the victim "tie[d] the rope around his neck." The victim's sister thought that her brother put the rope around his neck "to be cool."

Boy 1 and Girl 1 were sitting on the picnic table. The victim was facing away from Boy 1. Although the victim's sister did not report seeing Boy 1 push her brother, her brother later told her that he "felt a push." The victim's sister speculated that Boy 1 did not know "that it would hurt [the victim] bad," but believed that Boy 1 did it on purpose because by hitting and throwing things at the victim earlier in the day, he'd demonstrated that he was angry at the victim.

The victim's sister statements at the October 17, 2017 forensic interview were substantially similar to those she made on September 1. She did not remember why the boys

started tying the rope around their necks. She posited that Boy 2 might have said, “Oh, I don’t think lynchings should be funny,” but she wasn’t sure. She remembered that Boy 2 “just put the rope around his neck and said, ‘I can really hang myself with this,’” and then jumped off the table.

The victim’s sister reiterated that previously, Boy 1 had been “really racist” to her friend, “like calling her the N-word.” She also said that Boy 1 had previously called her and the victim the N-word. She continued to express some confusion about Boy 1’s motives for pushing the victim. She expressed skepticism over whether it was “because of the color of his skin,” since Boy 1 had gotten angry at the victim because of what the victim had said to Girl 1.

The victim’s sister said that they were excited to be flown to California to be on the syndicated television talk show. In California, she, the victim, and their mother met with people from the show to discuss what they were going to say. These people encouraged them to tell the truth, but they also “didn’t want us to forget ... the racism.” According to the victim’s sister it wasn’t until talking with his mother at the hotel before meeting with people from the talk show that the victim said, for the first time, “Well, I think it was because of the color of my skin because [Boy 1] was being racial before.”

Boy 1

Boy 1 was interviewed by Captain Lee on September 6 and 7, 2017. Boy 1’s parents were present during both interviews.

Boy 1 said that while he’d met the victim’s sister the day before the incident, he had not previously known the victim. On the day of the incident, Boy 1 hung out with the victim, Boy 2, and Boy 3 at Boy 1’s father’s yard and at the park. They played football all day. Boy 1 confirmed that his girlfriend was Girl 1, but did not remember the victim saying anything about her that was upsetting. Although he denied having any arguments or problems during the day, he admitted that his “wrestling” with the victim must have “looked bad,” because a woman came over and started yelling. He denied being racist and said that he “d[id]n’t even really know [the victim’s] race.”

Boy 1 said that Boy 2 broke the tire swing. He and Boy 2 “were messing around with the rope,” tying it around their necks. No one was paying attention to the victim. Boy 2 was

climbing a tree. When the victim was standing on the table, Boy 1 decided he would scare the victim by yelling and thrusting his arms out toward the victim. Boy 1 said that he did not tell the police about his outstretched arms during the interview the day before because he “thought it would make it look more like [he] pushed him,” and he did not want to get into trouble. Boy 1 claimed that he stopped short of touching the victim. He agreed that his actions scared the victim, causing him to fall off the picnic table, but claimed that he did not know when he scared the victim that the victim had placed the rope around his neck.

Boy 1’s mother and father were interviewed by a national news magazine, which ran their statements in an online article posted on September 23, 2017. They said that Boy 1 told them he did not notice the rope around the victim’s neck because the victim was wearing a “hoodie.” Boy 1, however, did not say anything about a hoodie in his recorded interview. Boy 1’s parents also said that Boy 1 did not understand what a “racial slur” was.

Boy 2

Boy 2 was interviewed on September 13, 2017, by a Claremont Police detective. Boy 2 said that he was hanging out with his friend Boy 1, Boy 3, the victim (who he called “the little boy”), and the victim’s sister. Boy 2 said that before the rope incident, Boy 1 “flipped his shit” because the victim told Boy 1’s girlfriend, Girl 1, that Boy 1 was going to break up with her. Boy 1, apparently angry, called the victim “a little fuck,” but then walked away. Boy 2 claimed that nobody called anyone any other names that day—except when he told the victim, “Chop, chop, cracker. Let’s go.”

Boy 2 said that he broke the tire swing. Planning to hang a stuffed animal, Boy 2 tried to fashion a noose, but “failed miserably.” After that, he and Boy 1 put the rope up to their necks, leaning into it until they could feel some pressure. They did not wrap the rope around their necks.

According to Boy 2, five to seven minutes later, the victim climbed onto the picnic table. At this point, Boy 2 was climbing a tree, but he and Boy 1 had earlier hatched a plan to scare the victim. Boy 1 scared the victim by yelling and punching the table from underneath; Boy 2 yelled “boo.” Boy 2 claimed that Boy 1 did not push the victim and said he did not know what caused him to fall. Boy 2 claimed that neither he nor Boy 1 realized that the victim had tied the rope around his neck until after he fell off the table.

Boy 3

Boy 3 was interviewed on September 14, 2017, by Captain Lee, accompanied by an AGO investigator and prosecutor. Boy 3 was Boy 1's friend, and had hung out with Boy 1 and the victim during the three days leading up to August 28. He said that on the day of the incident, he started hanging out with Boy 1, Boy 2, Girl 1, the victim, and the victim's sister, at about 9:30 in the morning. They played football in the park and spent time in Boy 1's father's yard.

Boy 3 said that Boy 2 broke the rope swing. Boy 2 and Boy 1 played with the rope, but did not tie it around their necks, though Boy 2 did hold the rope against his neck. Sometime after playing with the rope, Boy 2 started to climb a tree. The victim got up on the table and stood there. Boy 1 was sitting nearby. Boy 1 scared the victim by grabbing and squeezing his legs "real quickly." Boy 3 did not believe that Boy 1 intended to cause the victim to fall. When the victim fell, his neck snapped back and the rope came undone. Although Boy 3 did not see the victim tie the rope around his neck, he assumed it was tied because it left "a pretty bad rope burn."

Boy 3 denied that anyone used racist words that day and did not recall anyone making fun of the victim.

Girl 1

Girl 1 was interviewed on September 7, 2017, by Captain Lee and Claremont Detective Colby Casey. Her mother was present. Girl 1 said that on the day at issue, she was with Boy 1, Boy 2, Boy 3, the victim, and the victim's sister. Girl 1 and Boy 1 were "dating." Before the incident involving the rope, the children were doing "dumb stuff," "wrest[ing], ... mess[ing] around, ...hit[ting] each other with sticks." She also said that although she and Boy 1 hit each other with sticks and wrestled, they only did so "jokingly," and she did not see any of the other children doing these things. The victim, his sister, Boy 2, and Boy 3 told Girl 1 that Boy 1 was going to break up with her. Girl 1 confronted Boy 1.

Later, in the yard, the boys were playing and doing "dumb boy things." Girl 1 confirmed that Boy 2 broke a tire off a tree swing, leaving the rope hanging from the tree. Boy 2 showed everyone how to tie a noose around their necks. Standing on the picnic table, he tied the rope around his neck and jumped, but because he was "too tall, ... it didn't do

anything.” Girl 1 did not see Boy 1 put the rope around his neck, and she said that nobody saw the victim do so either. The victim was standing on the picnic table, facing away from Boy 1, who was sitting. Boy 1, who “jokes around ... and scares the crap out of people,” leaned over, yelled “ragghh,” and motioned toward the victim with his arms, but did not actually touch him. When the victim fell, the rope tightened but came undone.

F. The Adults’ Statements

The Babysitter

The babysitter, then 30 years old, provided a written statement to the Claremont police. She identified herself as a babysitter for Boy 1’s father’s baby. The babysitter witnessed some of what occurred in Boy 1’s father’s backyard on August 28, 2017, prior to the rope incident. She said she saw the victim “scar[e]” Boy 1, then run. Boy 1 chased after the victim, shoving him twice. Boy 1 and the victim exchanged words, and the victim began to cry. The babysitter tried to talk to Boy 1 but he was “very rude,” so she left.

The Neighbor

The 45-year-old neighbor lived in an apartment building next to the building in which Boy 1’s father lived. She was familiar with the victim, his sister, Boy 1, Boy 2, and Boy 3, and believed that the victim and Boy 1 had known each other for at least a month. The neighbor’s impression was that Boy 1 was “an angry kid” who “ha[d] the potential to hurt somebody.” He was also rude: the neighbor had heard him call his father an “asshole” and tell Girl 1 that she was fat. However, she had never heard him say “racist things.”

The neighbor went outside to speak with her mother, who was sitting in her car. While outside, the neighbor saw Boy 2 climbing a tree in the yard. She noticed that the victim was standing on the picnic table, Boy 1 was sitting at the table, Girl 1 was standing on the ground facing Boy 1, and Boy 3 and the victim’s sister were also nearby. After the neighbor turned to speak to her mother, she heard screaming and looked back to see the victim holding his neck. She ran over to the victim and asked him what was wrong. He moved his hands, exposing what looked to Neighbor like a “rug burn” on his neck, which was bleeding slightly.

The Victim's Mother

On August 29, 2017, at DHMC, the victim's mother made statements to a nurse about the rope incident. In addition, as noted above, the victim's mother was interviewed on September 18, 2017. The interview was conducted by Claremont Captain Lee, an AGO investigator, and an AGO prosecutor. Further, the victim's mother made statements about the events to the media, including in a national news video segment posted online on September 28, 2017.

At the September 18 interview, the victim's mother said that on the day in question, the victim and his sister were outside playing from about noon until she took her son to the hospital just after 5:00 p.m. She believed that the two had met Boy 1 a few weeks earlier.

Neither the victim nor his sister told their mother that the other children used racist language during the rope incident. After being injured, the victim did not want to talk much about what happened. His sister did, however; as a result, about "90 percent" of what the victim's mother knew about what the children did that afternoon was information relayed to her by the victim's sister. According to the victim's mother, a few days after the victim was injured, she talked to him about hate crimes, letting him know, in essence, that what had happened was not his fault.

The victim's medical records indicate that the victim's mother told medical staff that "her understanding from [the victim's sister] was that the[] older children had told [the victim] to put a loop of hanging rope around his neck." Similarly, in a national news video segment broadcast online on September 28, 2017, the victim's mother said that the older boys "told [the victim] to tie the rope around his neck." However, neither she nor the victim or his sister told interviewers this, and there is no other evidence that this occurred.

The Victim's Mother's Boyfriend

The victim's mother's boyfriend was interviewed on September 14, 2017, by Captain Lee and an investigator and prosecutor from the AGO. At the time the victim was injured, he and the victim's mother had been dating for about three months.

The boyfriend said that the victim's sister told him that the older children had said things about being "too white for you" earlier in the day. He was "99 percent sure" that she did not tell him that any racial language had been used in conjunction with the rope incident.

According to the boyfriend, the victim's grandmother denied ever telling a reporter that anybody "said anything about lynching."

The Victim's Grandmother

The victim's grandmother was interviewed on September 14, 2017 at the Claremont Police Department by Captain Lee, with an investigator and prosecutor from the AGO in attendance. The grandmother, who said she spent the night at the hospital with the victim when he was transported there, said that the day of the incident was "a blank." Her understanding of what a nurse at the hospital said was that the victim would have had to have swung by his neck three times in order to sustain his injuries. (The medical records do not confirm this.) The grandmother also recalled the victim angrily telling his mother, "He tried to hang me." She at first denied having any knowledge about racial epithets being used during the incident, attributing her statements to the media about racial animus to information provided to her by a sister with dementia who had read them in a Facebook post of the victim's mother's. Later, though, she recalled that the victim's sister had said, "Yes, they were calling us the N-word."

The Victim's Uncle

The victim's uncle was interviewed on September 27, 2017. He provided no pertinent information.

G. Other Information

Community Outreach

As noted above, the victim, his sister, and their mother were flown to California to appear on a syndicated television talk show. According to the victim's sister, the show put the family up at a Los Angeles hotel. During the broadcast, the victim cried and was reassured by one of the show's hosts that although there are people who "have a problem" with people who are "of mixed race," more people were "for" the victim than against him.

A national news organization reported on September 28, 2017, that in the aftermath of the victim's injuries, the victim and his family had been invited to visit the victim's favorite football team. The victim's sister said during her October 17, 2017 interview that her family had been "invited to" places, like a Patriots game and an opportunity to meet basketball player LeBron James.

An online fundraising page was started for the victim and his family on September 11, 2017. Media reports indicated that within days, the site collected nearly \$43,000 of a \$55,000 target. During her October 17, 2017 interview, the victim's sister said that she was aware that there was an online fundraising page to which people could donate money. The victim's sister said that her mother was going to use the money to get a new house, cleaning supplies, clothes, and "things we need, not things we want."

Given these outside influences, after due consideration, the AGO concluded that a second forensic interview of the victim would not advance the objectives of the investigation.

School Interviews

The AGO and Claremont police conducted an interview of a Claremont elementary school principal and Cory Leclair, the SAU 6 assistant superintendent, on September 18, 2017. The primary purpose of the interview was to determine whether school staff had learned information concerning the events of August 28 from either the victim, who attended the elementary school, or anyone else. The AGO was also interested in understanding whether the victim had been the subject of bullying, racial discrimination, or other harassment either before or after August 28. This information was obtained with the victim's mother's consent. The interview did not generate information pertinent to the investigation.

School Records

With Boy 1's mother's consent, the AGO obtained Boy 1's school records. The records did not contain information pertinent to the investigation.

VII. ANALYSIS & CONCLUSIONS

A. Potential Crimes

The hate crime statute is a penalty-enhancement statute, not a substantive crime. This means that a hate crime may only be charged in conjunction with a crime defined by the New Hampshire Criminal Code. The evidence makes clear that the crime which is applicable in this matter is assault. As noted above, a juvenile may only be charged with a hate crime—assuming there is sufficient evidence to sustain it—when the juvenile has been charged with a felony and is certified to the superior court for prosecution as an adult. This determination is subject to stringent criteria, which include “whether the protection of the community requires transfer” and “[t]he aggressive, violent, premeditated, or willful nature of the alleged offense.” RSA 169-B:24.

Earlier Incident—Misdemeanor Simple Assault

The victim alleged that Boy 1 punched him, kicked him, and threw things at him in anger. The evidence does not establish that the victim suffered bodily injury as a result of these assaults. Accordingly, the victim’s allegations with regard to being punched and hit were cognizable under RSA 631:2-a, I(a), which makes it a misdemeanor to “[p]urposely or knowingly cause[] ... unprivileged physical contact to another.”

A misdemeanor charge against a juvenile cannot be subject to an enhanced penalty under the hate crime statute because juveniles charged with misdemeanors are not subject to certification as adults. Nonetheless, the conduct underlying the charge may be considered in conjunction with enforcement under the Civil Rights Act.

Rope Incident—Felony Assault, Misdemeanor Reckless Conduct

The victim alleged that Boy 1 pushed him off the picnic table, causing the injuries to his neck. The credible evidence suggests that while Boy 1 intentionally pushed the victim, he did not purposely or knowingly cause injury to the victim’s neck. Hospital records indicate that the victim was diagnosed with a contusion to the neck, that he “was not in general respiratory distress,” that his neck was tender and swollen, and that his throat “was without erythema, injury, or petechiae.” The victim denied having had trouble breathing or swallowing, and his mother reported to hospital staff that she did not believe he had lost consciousness.

This evidence might be cognizable as first degree assault (RSA 631:1), second degree assault (RSA 631:2), or reckless conduct (RSA 631:3). Both the first and second degree assault statutes are comprised of several variants. As relevant here, first degree assault is defined as follows: “A person is guilty of a class A felony if he ... recklessly causes serious bodily injury to a person under 13 years of age.” RSA 631:1, I(c).

Second degree assault, as relevant here, provides that “[a] person is guilty of a class B felony if he ... recklessly causes serious bodily injury to another.” A person is guilty of reckless conduct “if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.”

B. Motive Evidence

Although motive is not generally an element of a criminal offense and therefore generally need not be proved by the State, both the hate crime statute and the civil rights statute require proof that what motivated the perpetrator to act in the manner proscribed by law was, as relevant here, the victim’s race.

Here, RSA 651:6, I(f) would require the State to prove beyond a reasonable doubt that Boy 1 was substantially motivated to assault the victim because of hostility towards the victim’s race. The Civil Rights Act would require the State to prove by clear and convincing evidence that Boy 1 was motivated by the victim’s race to subject the victim to actual physical force.

The credible evidence establishes the following: The victim said that he tied the tree-swing rope around his neck after watching the other boys do this to themselves. His sister said the same. The other boys jumped off the table, but were tall enough to land on the ground, apparently without causing tension to the rope and thus without injuring themselves. The investigation garnered no reliable evidence that another child placed the rope around the victim’s neck or told him to do so. Instead, the credible evidence indicates that after watching Boys 1 and 2 tie the rope around their necks and jump off a picnic table, the victim stood on the picnic table and tied the rope around his neck.

The victim said he felt Boy 1 “grab” the backs of his legs. Boy 3, who was Boy 1’s friend, said that Boy 1 deliberately grabbed and squeezed the victim’s legs. Boy 1 admitted that he thrust his arms out at the victim, though claimed—implausibly, particularly in light of

Boy 3's statement—that he stopped short of touching the victim. This evidence is sufficient to establish that Boy 1 shoved the victim's legs, causing the victim to fall off the table.

The evidence also indicates that earlier that day, Boy 1 was angry at the victim because the victim told Girl 1 that Boy 1 was going to end their relationship. The victim, his sister, Boy 2, and Girl 1 each made statements corroborating this version of events. The victim and his sister both said that Boy 1 assaulted the victim as a result of the conflict concerning Girl 1; the babysitter, who witnessed Boy 1 shove the victim and make him cry before the rope incident, offered evidence which tends to corroborate these statements. In addition, although Boy 1 denied having any arguments or problems with any other child during the day, he confirmed that he was dating Girl 1 and admitted that he wrestled with the victim, which he said must have “looked bad,” since it prompted an adult—likely the babysitter—to yell.

There is thus substantial evidence that when Boy 1 assaulted the victim earlier in the day on August 28, 2017, he was primarily motivated to do so by his anger over what the victim said to Boy 1's girlfriend, Girl 1. The evidence does not establish what motivated Boy 1's decision to push the victim while he stood on the picnic table. Boy 1 said that he wanted only to scare the victim, though his statements with regard to the assault were not credible. The evidence suggests the possibility that Boy 1 bore a grudge from the incident earlier in the day involving Girl 1, but this evidence is not clear and convincing.

Further, while there is credible evidence that some of the older children used racist terminology during the earlier incident (“white pride”; “Are we getting too white for you?”; “Chop, chop, cracker.”); that Boy 2 used racist language when speaking to the victim's mother's boyfriend (“I'm white and proud of it.”); and that in the past, Boy 1 had used hateful language and racist epithets against the victim and his sister, including calling the victim the N-word “in the weeks prior” to August 28, the investigation did not produce clear and convincing evidence that Boy 1 himself used this language on August 28, 2017. Moreover, there is no reliable evidence that any child used racist terminology in conjunction with the rope incident, and no reasonable inference to be made in that regard. Finally, there is no credible evidence that any of the children used the word “lynched” or “lynching.”

The evidence does not, therefore, establish probable cause to warrant the belief that Boy 1 was motivated to assault the victim because the victim was biracial. In the absence of that quantum of evidence, the State could not sustain either a hate-crime prosecution or civil rights action against Boy 1.