

# ATTORNEY GENERAL'S REPORT REGARDING THE MARCH 14, 2019 SHOOTING DEATH OF KEVIN DENBOW IN MANCHESTER, NEW HAMPSHIRE

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## I. INTRODUCTION

The Office of the Attorney General and the Manchester Police Department have concluded an investigation into the fatal shooting of Kevin Denbow (age 37) in Manchester, New Hampshire, on March 14, 2019. The investigation determined that Adrian Welch (age 29) fatally shot Mr. Denbow one time in the chest during a physical altercation. Mr. Welch has made statements asserting a claim of self-defense.<sup>1</sup> The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to Mr. Denbow's death. The findings and conclusions set forth in this report are based upon information gathered during the investigation, including surveillance videos, audio recordings, physical evidence, and witness interviews.

Pursuant to RSA 626:7, I(a), when evidence is admitted establishing a defense, such as self-defense, the State must disprove such defense beyond a reasonable doubt. Based upon the investigation, New Hampshire Attorney General Gordon J. MacDonald has determined there is insufficient evidence to disprove that Mr. Welch acted in self-defense beyond a reasonable doubt. As such, no homicide charges will be brought against Mr. Welch in connection with the shooting death of Mr. Denbow.

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<sup>1</sup> Because of the facts and circumstances in this matter, the use of the term "self-defense" in this report refers to both defense of oneself and defense of another.

## II. SUMMARY OF THE FACTS

On March 14, 2019, at approximately 3:01 a.m. and 3:03 a.m., 911 received calls regarding a stabbing at 219 Sagamore Street in Manchester, NH.<sup>2</sup> The residence at 219 Sagamore Street is a three-story apartment building with three separate apartments. The driveway to the residence is on the right side of the building.

When Manchester police officers arrived at the scene, they encountered Adrian Welch near the entrance of the driveway. Mr. Welch was out of breath and frantic. An officer frisked Mr. Welch for weapons, and seized a small folding knife from his person.<sup>3</sup> During his initial interaction with police, Mr. Welch said that his friend was further down the driveway and had been stabbed by another male. When asked where the other male was, Mr. Welch pointed down the driveway, and said “over there, we beat him up though.”

As officers proceeded down the driveway, they discovered Kevin Denbow and Kenneth Ferguson. Mr. Denbow appeared unconscious and was not breathing, and officers could not find a pulse. Mr. Denbow also had a linear abrasion between his chin and one of his ears and a small cut underneath his right eye, which appeared to be bleeding. Officers performed CPR. While doing so, they observed a puncture wound on the top right of Mr. Denbow’s chest, which appeared consistent with a bullet wound. When paramedics arrived, they took over medical aid. Attempts to resuscitate Mr. Denbow were unsuccessful, and he was pronounced dead at the scene at 3:30 a.m.

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<sup>2</sup> Adrian Welch and Kenneth Ferguson made these 911 calls, respectively. During Mr. Welch’s call, he also stated that there had been a gunshot fired.

<sup>3</sup> The knife seized from Mr. Welch was in the closed position, had a gold-colored handle, and did not appear to have any blood on it.

When officers discovered Mr. Ferguson, he was yelling that he had been stabbed, and officers observed a laceration about 3-4 cm long on the left side of his back near his diaphragm, which was steadily bleeding. Based upon the amount of blood observed, it appeared that Mr. Ferguson had lost a substantial amount of blood. When asked if he knew anything about a gun or gunshot, Ferguson initially stated “no.” He said “that guy rushed me and stabbed me,” while pointing toward Mr. Denbow. When asked what had happened to Mr. Denbow, Mr. Ferguson replied: “I don’t know, he beat him up.”<sup>4</sup> Ultimately, Mr. Ferguson was transported to Elliot Hospital for medical treatment.

The New Hampshire Attorney General’s Office was notified and joined the Manchester Police Department in its investigation into the circumstances surrounding Mr. Denbow’s death. The investigation included documenting the area where the incident occurred and collecting physical evidence at the scene. Additionally, police interviewed over a dozen people, including Mr. Welch and Mr. Ferguson, and obtained surveillance video from nearby residences and a business.

### **III. THE INVESTIGATION**

Since the incident on March 14, 2019, the Attorney General’s Office and the Manchester Police Department have been investigating the facts and circumstances surrounding the shooting death of Kevin Denbow. That investigation has entailed witness interviews, the examination of the scene, and the review of reports, physical evidence, surveillance videos, and recordings of 911 calls.

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<sup>4</sup> It is unclear whether Mr. Ferguson was stating that Mr. Welch beat up Mr. Denbow or vice versa.

**A. Witness Interviews**

**1. Adrian Welch**

**a. At the scene of the incident**

On March 14, 2019, at the scene, Manchester police officers spoke with Mr. Welch about the incident. According to Mr. Welch, he and Mr. Ferguson had been inside his first-floor apartment when they heard a commotion outside. When they went outside and walked down the driveway, they stumbled over a backpack, which did not belong to either of them. Mr. Welch then heard what sounded like his vehicle, which was parked in the driveway, attempting to start, and saw an unknown male, later identified as Mr. Denbow, inside.

Mr. Welch and Mr. Ferguson yelled at Mr. Denbow to exit the vehicle, and a physical altercation involving the three males began. During the fight, Mr. Ferguson told Mr. Welch to call the police, so Mr. Welch went back inside his apartment to retrieve his cellular phone. When he returned to the driveway, Mr. Welch rejoined Mr. Ferguson in the fight with Mr. Denbow. At some point, Mr. Denbow pulled out a knife and began swinging it at Mr. Ferguson.<sup>5</sup> Mr. Ferguson fell to the ground, and as Mr. Denbow was getting onto Mr. Ferguson's back, Mr. Welch punched Mr. Denbow. As a result, Mr. Denbow fell to the ground, and Mr. Welch continued punching him. At that point, Mr. Welch heard Mr. Ferguson say that he had been stabbed.

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<sup>5</sup> It is unclear whether Mr. Welch stated that Mr. Denbow pulled a knife before or after he rejoined the fight with Mr. Denbow. However, based upon Mr. Welch's subsequent interview, it appears that Mr. Denbow pulled a knife before Mr. Welch rejoined the fight.

When asked when a gun became involved in the altercation, Mr. Welch stated that he had had the gun in his hand as he was punching Mr. Denbow, and that it just went off.<sup>6</sup> He was unable to give any further description about how the gun fired. He explained that, after the incident, he put the gun in a bin located in a common area of the first floor of the residence. Mr. Welch did not know the type of firearm, but knew it was a small caliber handgun, possibly a .22 caliber. Mr. Welch gave officers consent to check his apartment for anyone unaccounted for and to retrieve the firearm.

**b. At Manchester Police Department**

Later that same day, on March 14, 2019, members of the Manchester Police Department further interviewed Mr. Welch at the Manchester Police Department.<sup>7</sup> During the interview, Mr. Welch was very emotional, had trouble breathing, and cried at times.

According to Mr. Welch, prior to the incident, he and Mr. Ferguson had gone to a restaurant/bar in Manchester, and then returned to his apartment to watch television. When Mr. Ferguson was leaving for the evening, they went outside to Mr. Ferguson's vehicle, which was parked in the driveway. As Mr. Welch walked down the driveway, he tripped over a bag, which did not belong to either him or Mr. Ferguson. He also noticed that one of the doors to Mr. Ferguson's vehicle was ajar, and a bicycle was in the driveway. Mr. Welch and Mr. Ferguson then heard what sounded like Mr. Welch's vehicle attempting to start. Mr. Welch tried to open one of the doors to his vehicle, but it was locked.

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<sup>6</sup> Mr. Welch initially, twice denied that a gun was involved in the incident.

<sup>7</sup> Mr. Welch's interview at the police station was recorded.

Mr. Welch stated that he saw an unknown male, later identified as Mr. Denbow, in his vehicle. Mr. Welch reached for his cellular phone, but it was not in his pockets, so he went inside his apartment to retrieve it. When Mr. Welch returned to the driveway, Mr. Ferguson and Mr. Denbow were fighting – Mr. Denbow was trying to run, and Mr. Denbow and Mr. Ferguson were swinging at each other. Ultimately, Mr. Ferguson fell to the ground. During this, Mr. Ferguson was screaming “ah, ah,” and yelling “help, help, AD.”<sup>8</sup> Mr. Welch knew something was wrong with Mr. Ferguson, because, despite being bigger than Mr. Denbow, Mr. Ferguson appeared to be losing the fight.

Mr. Welch pulled Mr. Denbow off of Mr. Ferguson, and then Mr. Welch and Mr. Ferguson began fighting Mr. Denbow – all three were punching and swinging, and Mr. Denbow was trying to get away. During the fight, all three fell to the ground. While they were fighting, the gun fired. Mr. Welch always has the gun on him; but stated that he did not pull the gun out. He said he did not know how it got out and stated it could have been in the scuffle. He also stated that he did not think he shot and that he could never shoot anyone. Mr. Welch further explained that everything happened very fast. After the altercation, Mr. Ferguson told Mr. Welch that he had been stabbed. Mr. Welch called 911.

During the interview, Mr. Welch asked for a lawyer, and the interview ceased. Mr. Welch then remained in the interview room, where he made and received phone calls on his cellular phone.<sup>9</sup> During these calls, Mr. Welch discussed the incident. He explained that a male had broken into his and Mr. Ferguson’s vehicles, that a physical altercation ensued, that the male

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<sup>8</sup> Mr. Ferguson refers to Adrian Welch as “AD.”

<sup>9</sup> Mr. Welch remained at the police station because law enforcement was seeking a warrant to search his body.

stabbed Mr. Ferguson, and that the gun went off during the altercation. He also discussed the defense of self-defense.<sup>10</sup> During the calls, Mr. Welch also detailed his own injuries, including injuries to his shoulder, knee, and knuckle.<sup>11</sup>

## 2. Kenneth Ferguson

Officers with the Manchester Police Department interviewed Mr. Ferguson several times during the investigation – first at the scene on March 14, 2019, then later that same day at the hospital, and finally on April 11, 2019, at the police station.<sup>12</sup>

According to Mr. Ferguson, around 10:30 p.m., on March 13, 2019, he and Mr. Welch went to a restaurant/bar in Manchester. They left the restaurant around 12:00 a.m., and returned to Mr. Welch’s apartment to watch television. When they arrived back, Mr. Ferguson, who had driven, parked his vehicle in the driveway behind Mr. Welch’s vehicle, closest to the street, and left the doors unlocked.<sup>13</sup> It was common for both Mr. Ferguson and Mr. Welch to leave their vehicle doors unlocked at Mr. Welch’s apartment, as they both thought it was a safe neighborhood.

Around 2:30 a.m., on March 14, 2019, Mr. Ferguson was getting ready to leave Mr. Welch’s apartment. Before leaving, Mr. Ferguson wanted to give hair clippers, which were inside his vehicle, to Mr. Welch.<sup>14</sup> Both Mr. Ferguson and Mr. Welch exited Mr. Welch’s

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<sup>10</sup> Mr. Welch also characterized the shooting as an accident, and, on other occasions, he stated that he did not remember or think that he pulled the trigger.

<sup>11</sup> During the calls, Welch also discussed his use/possession of marijuana and the legality of his ownership of the gun.

<sup>12</sup> The April 11, 2019, interview was recorded. Also present during this interview was Mr. Ferguson’s attorney, Robert Johnson, III, Esquire, Senior Assistant Attorney General Geoffrey Ward, and Assistant Attorney General Erin Fitzgerald.

<sup>13</sup> Mr. Ferguson’s vehicle was parked facing outward toward the street, while Mr. Welch’s vehicle was parked facing inward away from the street. Thus, the two vehicles were positioned “bumper-to-bumper” in the driveway.

<sup>14</sup> At the time of the incident, Mr. Ferguson worked as a freelance barber.

apartment from the rear entrance and headed toward Mr. Ferguson's vehicle.<sup>15</sup> As Mr. Ferguson approached his vehicle, he noticed a bag in the driveway by the driver's side of Mr. Welch's vehicle and a bicycle in the driveway leaning against the residence, which had not been there when he and Mr. Welch had returned from the restaurant. Once at his vehicle, he saw that certain items inside it had been moved. He told Mr. Welch that someone had broken into his vehicle, at which point he heard what sounded like someone trying to start Mr. Welch's vehicle. Mr. Ferguson told Mr. Welch to call the police. Mr. Welch then went inside his apartment to call the police.

While Mr. Ferguson was looking inside his vehicle to determine what, if anything, was missing, an unknown male, later identified as Mr. Denbow, got out of the of the passenger side of Mr. Welch's vehicle and yelled "let's go" and began grunting.<sup>16</sup> Mr. Denbow then ran full speed at Mr. Ferguson. Mr. Ferguson grabbed Mr. Denbow by the shoulders to control him, while Mr. Denbow swung at Mr. Ferguson's waistline. Both Mr. Ferguson and Mr. Denbow were punching each other. Mr. Ferguson did not see a weapon, but was concerned that Mr. Denbow may have some item, such as a screwdriver, that Mr. Denbow may have used when attempting to start Mr. Welch's vehicle.<sup>17</sup>

Mr. Ferguson was unable to control Mr. Denbow, and Mr. Denbow flipped Mr. Ferguson. Mr. Ferguson fell onto his knees, landing with his back to Mr. Denbow. Mr. Denbow got on top

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<sup>15</sup> When interviewed at the hospital, Mr. Ferguson stated that Mr. Welch stayed on the rear porch of the residence.

<sup>16</sup> When interviewed at the hospital, Mr. Ferguson stated that when he heard Mr. Welch's vehicle attempting to turn on he saw an unknown male in the passenger seat of Mr. Welch's vehicle and he and Mr. Welch shouted at him as Mr. Ferguson walked toward him.

<sup>17</sup> Mr. Ferguson described the lighting conditions in the driveway as being very dark at the time of the incident. Areas of the driveway were also covered in ice and snow.

of Mr. Ferguson and Mr. Ferguson felt a stab.<sup>18</sup> Mr. Ferguson screamed several times “he stabbed me,” and yelled for Mr. Welch to get Mr. Denbow off him.<sup>19</sup> Mr. Ferguson felt intense pressure and painful burning where he had been stabbed.

Mr. Welch grabbed Mr. Denbow off Mr. Ferguson, and Mr. Welch and Mr. Denbow began to fight.<sup>20</sup> After standing back up, Mr. Ferguson joined Mr. Welch in fighting Mr. Denbow because he was afraid that Mr. Denbow might stab Mr. Welch, as well. According to Mr. Ferguson, during the altercation, Mr. Denbow “poked” Mr. Welch twice in the stomach with the knife. Mr. Ferguson stated that he was scared, and that he and Mr. Welch were “fighting for their lives,” and described the situation as “life or death.”

As the three men fought, Mr. Ferguson heard a gunshot. Mr. Ferguson did not see Mr. Welch with a gun, did not know Mr. Welch owned a gun, and initially did not realize Mr. Denbow had been shot. After the gunshot, the three men continued to fight for about twenty to thirty seconds, at which point Mr. Denbow fell to the ground. Mr. Denbow did not move or say anything thereafter. Mr. Ferguson noticed that he was bleeding from his stab wound and both he and Mr. Welch called the police.

### **3. Collateral Witnesses**

As part of the investigation, Manchester police officers interviewed many residents that lived nearby the scene of the incident. No residents reported seeing the incident. However,

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<sup>18</sup> When interviewed at the hospital, Mr. Ferguson stated that, during the fight, he and Mr. Denbow both fell to the ground and then he felt a sharp pain in his side. He also stated that, during that time, he heard a “pop,” but did not realize it was a gunshot.

<sup>19</sup> When screaming for help, Mr. Ferguson could not see, and did not know, where Mr. Welch was located; however, he believed Mr. Welch was close to him. Additionally, in subsequent conversations, Mr. Welch has explained to Mr. Ferguson that when he heard Mr. Ferguson scream his name he was scared and he realized how serious the situation was.

<sup>20</sup> Mr. Ferguson believes that had Mr. Welch not pulled Mr. Denbow off his back, Mr. Denbow would have stabbed him more times.

several residents reported hearing yelling, a “pop” or bang, a vehicle struggling to turn over, and a male yelling for help and saying he had been stabbed, near the time of the incident.

## **B. 911 Calls**

### **1. Adrian Welch**

At approximately 3:01 a.m., on March 14, 2019, Mr. Welch called 911.<sup>21</sup> During the call, Mr. Welch stated that his friend had been stabbed and was bleeding. He further said: “Somebody broke into our cars, he was in our car, we tried to get him out, he’s trying to come out, we got into a scuffle, there was a gunshot fired, we need help please quick.” When asked what happened to the person who stabbed Mr. Ferguson, Mr. Welch stated: “We beat him up. He was in the car.” Dispatch asked if the altercation occurred because someone was breaking into a vehicle, to which Mr. Welch responded: “Yeah, he broke into our vehicles . . . .” Dispatch then asked: “So then what did he do, pull a knife on your friend?” Mr. Welch responded: “He did not, he jumped out and tried to run . . . after we caught him . . . and then the guy just pulled out a knife (inaudible), the guy just kept on . . . (inaudible) . . . . So I jumped in.” Mr. Welch explained that they had the assailant, at Mr. Welch’s feet, and they were “holding him down.”

### **2. Kenneth Ferguson**

At approximately 3:03 a.m., on March 14, 2019, Mr. Ferguson called 911.<sup>22</sup> During the call, Mr. Ferguson stated that he had discovered a person breaking into his vehicle, and that the person had stabbed him. He repeatedly asked that first responders hurry, stating that he was bleeding a lot, and was in a lot of pain.

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<sup>21</sup> During the call, the 911 operator transferred the call to Manchester Police Department dispatch.

<sup>22</sup> During the call, the 911 operator transferred the call to Manchester Police Department dispatch.

## **C. Surveillance Video**

As part of the investigation, Manchester police officers obtained surveillance video from several residents and a business in the area of the incident. None of the videos captured the incident; however, some appear to capture Mr. Denbow shortly beforehand.

### **1. MS Market at 176 Sagamore Street**

Officers obtained surveillance video from MS Market at 176 Sagamore Street. The video depicts a person riding a bicycle past the market on Sagamore Street at 2:14 a.m. on March 14, 2019. The person's face is not visible. However, the person is wearing a hood and a backpack, both of which are consistent with the clothing and items recovered from the shooting scene.

### **2. 196 Sagamore Street**

Officers obtained surveillance video from the residence at 196 Sagamore Street.<sup>23</sup> The video depicts a male on the porch of the residence from 2:15 a.m. to 2:23 a.m. on March 14, 2019. The male is wearing a plaid hooded zippered sweatshirt under a solid colored, insulated zippered jacket. The male is also wearing a backpack. The male's face is visible in the surveillance video. Based upon the male's clothing, his backpack, and facial comparison, officers were able to identify the male as Mr. Denbow. After Mr. Denbow left the porch, a light that is consistent with a bicycle reflector can be seen moving away from the residence.

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<sup>23</sup> 196 Sagamore Street is located east of 219 Sagamore Street, several residences away, on the opposite side of the street.

## **D. Autopsy Results and Physical Evidence**

### **1. Autopsy Results/Medical Findings**

On March 15, 2019, Chief Medical Examiner Dr. Jennie V. Duval conducted an autopsy on Mr. Denbow's body. The autopsy showed that Mr. Denbow sustained a gunshot wound to the chest. A small caliber lead bullet was recovered during the autopsy. In addition, Mr. Denbow had abrasions on his face, back, right hand/fingers, and left elbow; contusions on his face, knees, and right ankle; and superficial lacerations on his face. Dr. Duval determined that the manner of death was homicide and the cause of death was a gunshot wound to the chest that perforated his right lung, aorta, and heart.

Toxicological testing revealed that at the time of Mr. Denbow's death he had Cocaine and Cocaine metabolites, Oxycodone, and an antidepressant in his blood.<sup>24</sup>

Mr. Ferguson was taken to the hospital for treatment of his wound. Mr. Ferguson had a stab wound to the left side of his back, which was approximately 3 cm in size. The laceration was closed with two dissolvable sutures and three staples and he was discharged that same day.

On March 27, 2019, Mr. Welch sought medical treatment at Southern New Hampshire Medical Center in Nashua. During his visit, Mr. Welch showed the attending nurse two scabbed over marks on his lower mid-section, and asked for a tetanus shot. Mr. Welch told the nurse that someone had tried to steal his vehicle and when he confronted the person he and his friend were stabbed before Mr. Welch shot the suspect. Mr. Welch further stated that the shooting was self-defense.

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<sup>24</sup> Toxicological testing also revealed that Mr. Denbow had caffeine, and nicotine and nicotine metabolites in his blood.

## 2. Physical Evidence

Police recovered the handgun that Mr. Welch used to shoot Mr. Denbow from a bin located in a common area of the first floor of the residence. The handgun was a .22-caliber Ruger 22/45 Lite, and could hold ten rounds of ammunition. Upon inspection, there were eight rounds of .22 caliber ammunition in the magazine.<sup>25</sup> The rear ejection handle was seated in the forward position. When the handle was pulled to the rear to make the gun safe, a spent shell casing ejected from the ejection port on the right side of the gun.<sup>26</sup>

In the driveway, police recovered a red, Gauntlet bicycle leaning against the retaining wall of the residence at 219 Sagamore Street.<sup>27</sup> They also recovered a Reebok backpack from the driveway. The backpack was on the ground by the driver-side door of Mr. Welch's vehicle. The backpack contained miscellaneous toiletries and clothing items, two open bottles of alcohol, an android tablet, and a Loon Mountain ski voucher with a note on it that said, "To: Mike, From Jackie."

Police also recovered a black facemask, a white t-shirt, a gray-white-black plaid hooded zippered sweatshirt, and a black insulated zippered jacket from the driveway.<sup>28</sup> These items were found in close proximity to Mr. Denbow's body, and the sweatshirt and jacket matched those which Mr. Denbow was seen wearing in the surveillance video obtained from 196

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<sup>25</sup> Mr. Welch's gun had 8 rounds in the magazine and one spent casing was found in the chamber, accounting for a total of 9 rounds. While the magazine in Mr. Welch's gun had a 10 round capacity, there is no way to know how many rounds were loaded in Mr. Welch's gun prior to the shooting. However, there is no evidence to suggest Mr. Welch fired more than one round during this shooting incident.

<sup>26</sup> No spent casing was recovered from the driveway. Thus, it is likely that this casing is from the bullet fired during the incident.

<sup>27</sup> The bicycle was processed for fingerprints, but no fingerprints were recovered.

<sup>28</sup> Mr. Denbow's shirts were removed during lifesaving efforts.

Sagamore Street. Additionally, both the sweatshirt and jacket had consistent through-and-through defects on the right side of their collars.

Officers inspected the contents of the pockets of Mr. Denbow's clothing. Among other things,<sup>29</sup> officers recovered a baggie of marijuana and a baggie of five Oxycodone tablets. Additionally, officers recovered three Redbox DVDs from Mr. Denbow's jacket pocket. Upon inquiry, Redbox confirmed that the three DVDs were rented under Mr. Ferguson's Redbox account.

Police further recovered a black folding knife in the open position from the driveway. The knife was found within inches of Mr. Denbow's body, and under his t-shirt, sweatshirt, and jacket. The knife was analyzed for fingerprints and blood. No fingerprints were found. However, there was a positive indication for the presence of blood around the serrated edge of the blade.

Finally, the police documented various areas of blood in the crime scene,<sup>30</sup> and also recovered a key shank from the ignition of Mr. Welch's vehicle,<sup>31</sup> and key fob from the front passenger floor board.<sup>32</sup>

#### **IV. THE APPLICABLE LAW**

New Hampshire's laws regarding physical force in defense of person, premises, and property are contained in RSA Chapter 627. Pursuant to RSA 627:8,

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<sup>29</sup> Coins, pendants, cigarette lighters, jewelry, earphones, a USB port, rolling papers, gloves, sunglasses, a lottery ticket, and an empty green vile.

<sup>30</sup> The blood was not tested, as observations made by law enforcement at the scene confirmed that both Mr. Denbow and Mr. Ferguson bled in the driveway.

<sup>31</sup> The shank of a vehicle key refers to the portion of the key that goes into the ignition.

<sup>32</sup> No fingerprints were found on the key fob. A partial print was found on the key shank, but it lacked sufficient detail for comparison.

A person is justified in using force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4.

RSA 627:4 states, in pertinent part, that: “A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the actor or a third person.” RSA 627:4, II(a).

The New Hampshire Supreme Court has addressed the use of deadly force used in self-defense, finding that:

a person is generally justified in using deadly force upon another only if such force is necessary to protect himself (or another) from the use of unlawful deadly force or an imminent threat to life or basic bodily integrity. Implicit in this rule are the notions: (1) that deadly force should be used only when, and to the extent, “necessary”; and (2) that the force used in response to the threat should not be excessive in relation to the harm threatened.

*State v. Etienne*, 163 N.H. 57, 74-75 (2011) (quotation omitted). When interpreting the self-defense statutes, the Court has looked to the common law for “its balance of the right to defend oneself and the restrictions upon that right based upon the general principle that the law places great weight upon the sanctity of human life in determining the reasonable necessity of killing a human being.” *Id.* at 75 (quotation omitted). The law defines “deadly force” as “any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury.” RSA 627:9, II.

The phrase “reasonably believes” means that the actor need not have been confronted with actual deadly peril or unlawful force “as long as he could reasonably believe the danger to be real.” *State v. Gorham*, 120 N.H. 162, 163 (1980). The term “reasonable” is “determined by

an objective standard.” *State v. Leaf*, 137 N.H. 97, 99 (1993). All the circumstances surrounding the incident should be considered in determining whether the actor had a reasonable belief that deadly force was necessary to defend himself or another. *See id.* When reviewing a deadly force incident, the actor’s conduct should be viewed considering “the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection.” *N.H. Criminal Jury Instructions*, 3.10. In other words, when analyzing the reasonableness of an actor’s use of deadly force, the inquiry must focus on the situation from the standpoint of a person facing the same situation. That examination cannot be made with the benefit of hindsight.

Finally, in any case where a person has used deadly force and claims he acted in self-defense (or defense of another), the State has the burden to disprove that self-defense claim beyond a reasonable doubt in order to secure a conviction. *See RSA 626:7, I(a); see also State v. McMinn*, 141 N.H. 636, 644-45 (1997).

## **V. ANALYSIS**

On March 14, 2019, Mr. Welch shot and killed Mr. Denbow in the driveway of Mr. Welch’s residence in Manchester. The evidence supports the conclusion that a physical altercation between Mr. Ferguson and Mr. Denbow preceded the shooting. During the altercation, Mr. Denbow stabbed Mr. Ferguson. Mr. Welch came to Mr. Ferguson’s aid, and during the continued altercation with Mr. Denbow, Mr. Welch fired his gun once killing Mr. Denbow.

Based upon Mr. Denbow’s conduct, specifically his potentially deadly actions toward Mr. Ferguson, a person in Mr. Welch’s position could have reasonably believed that Mr. Denbow

was using unlawful, deadly force against Mr. Ferguson and potentially Mr. Welch. Moreover, the force used by Mr. Welch in response to Mr. Denbow's armed attack was reasonable and not excessive under the circumstances. Mr. Welch fired his gun once, and only after Mr. Ferguson suffered a stab wound from Mr. Denbow. After the gun was fired, and the altercation concluded, both Mr. Welch and Mr. Ferguson immediately called 911.

Certain of Mr. Welch's statements suggest that Mr. Welch and Mr. Ferguson may have physically assaulted Mr. Denbow after they caught him breaking into their vehicles and/or as he attempted to run away after they caught him breaking into their vehicles. The evidence corroborated both Mr. Welch's and Mr. Ferguson's assertions that Mr. Denbow had broken into their vehicles on March 14, 2019. Items belonging to Mr. Ferguson were found in a pocket of Mr. Denbow's clothing, items inside of Mr. Ferguson's vehicle had been moved, and a key shank was retrieved from the ignition of Mr. Welch's vehicle. As such, if Mr. Welch and Mr. Ferguson did confront Mr. Denbow and tried to stop him from running away, they were lawfully permitted to use reasonable, non-deadly force, to prevent the taking of their property and to retake their property. Further, there is no evidence to support the conclusion that Mr. Welch or Mr. Ferguson, either individually or taken together, used deadly force against Mr. Denbow prior to Mr. Denbow's use of deadly force (a knife) against Mr. Ferguson. Therefore, even if Mr. Welch and Mr. Ferguson confronted Mr. Denbow after he had committed or was committing a theft or tried to flee the scene that did not entitle Mr. Denbow to use deadly force in response. Instead, Mr. Welch and Mr. Ferguson were the only ones who may have been entitled to use deadly force during the incident once Mr. Denbow drew a knife. However, given the

inconsistencies in some of Mr. Welch's and Mr. Ferguson's statements, the evidence is not sufficient to conclude with certainty that Mr. Welch's actions were justified under the law.

**VI. CONCLUSION**

Based upon the applicable law and all the facts and circumstances of this case, the Attorney General has determined that the State would be unable to disprove that Mr. Welch acted in self-defense beyond a reasonable doubt. Because such a claim of self-defense would defeat any charges brought by the State, no homicide charges will be brought against Adrian Welch in connection with the shooting death of Kevin Denbow.