

**ATTORNEY GENERAL OFFICE'S REPORT REGARDING THE  
JANUARY 1, 2023 OFFICER-INVOLVED SHOOTING  
INCIDENT IN GILFORD, NEW HAMPSHIRE**

---

**I. INTRODUCTION**

Attorney General John M. Formella announces the completion of the investigation into the fatal shooting incident that occurred in Gilford, New Hampshire, on January 1, 2023, that resulted in the death of Merrill Mischa Pataski-Fay (age 17, DOB: 1/18/2005). The purpose of this report is to summarize the Attorney General's factual findings and legal conclusions regarding the use of deadly force that resulted in Mischa Fay's death. 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, viewing physical evidence from the shooting incident, interviewing witnesses, and reviewing video footage.

During this incident, Gilford Police Sergeant Douglass Wall used deadly force against Mr. Fay by shooting at him one time with a firearm. Simultaneously, Officer Nathan Ayotte attempted to use non-deadly force by firing a TASER, an electric shock device designed to deploy less-than-lethal force through two prongs, which discharges an electric shock designed to induce neuromuscular incapacitation and hopefully incapacitate a person's movements by causing their muscles to flex for a moment. As a result of this use of force, Mr. Fay was wounded by Sergeant Wall's gunshot and died. Officer Ayotte's TASER did not fully strike Mr. Fay and he received no electrical shock or subsequent neuromuscular incapacitation.

As provided in RSA 7:6, RSA 21-M:3-b, and RSA 21-M:8, II(a), the Attorney General is the State's Chief Law Enforcement Officer and has the authority to investigate and prosecute major crimes, including instances where a crime punishable by up to life imprisonment is committed. In addition, the Attorney General has the responsibility to ensure that whenever a law enforcement officer uses deadly force, it is done in conformity with the law.

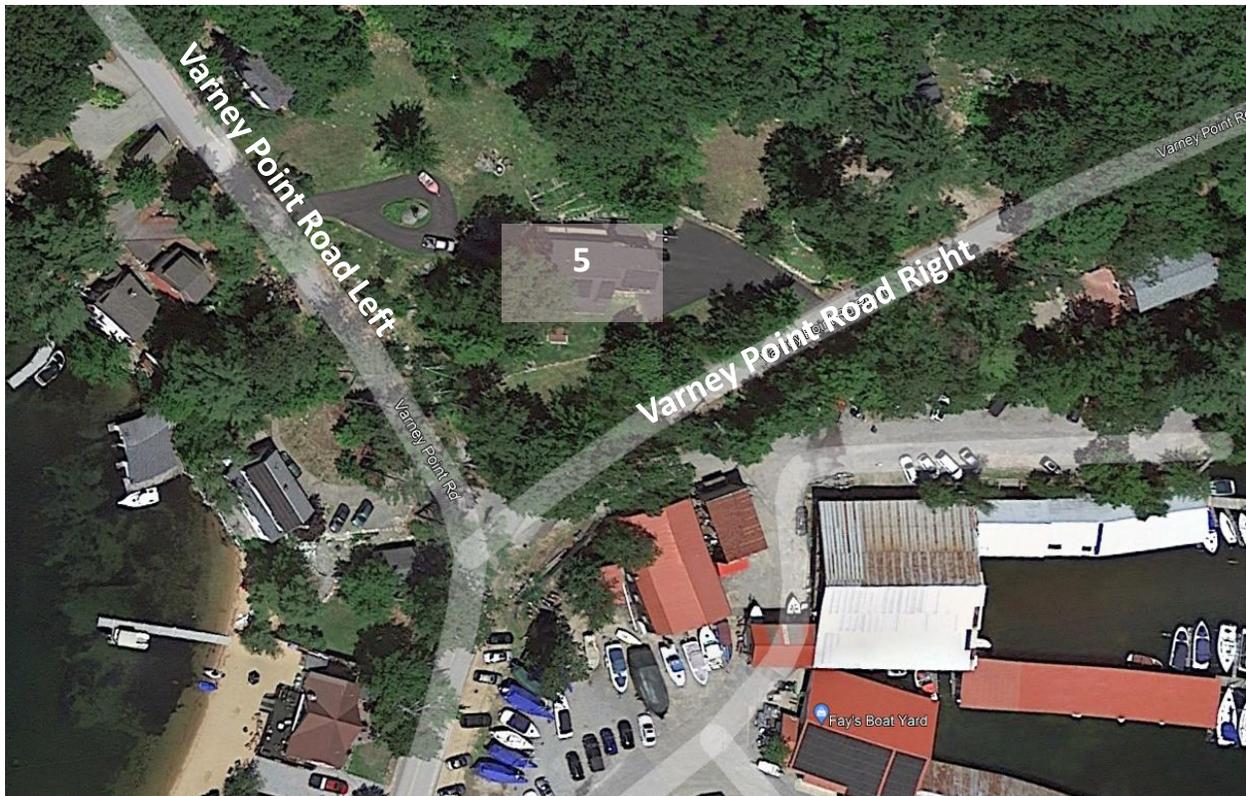
When reviewing the use of deadly force by law enforcement officers, the Attorney General does not investigate or opine on the particular procedures or tactics used by the officers. Instead, the Attorney General's review of officer-involved use of deadly force incidents consists of a criminal investigation, which is limited to determining whether officers complied with the applicable law. Thus, the Attorney General's review focuses on whether, under New Hampshire law, the use of force was justified because the officer reasonably believed that such

force was necessary to defend himself or herself or a third party from what the officer reasonably believed was the imminent use of deadly force.

Based on the investigation of this deadly force incident, Attorney General John M. Formella finds that the use of deadly force against Merrill Mischa Pataski-Fay by Gilford Police Sergeant Douglas Wall on January 1, 2023, was legally justified.

## **II. THE LOCATION**

Merrill Mischa Pataski-Fay (Mischa) lived at 5 Varney Point Road in Gilford with his parents: his mother, Beth Pataski-Fay, and his father Merrill Fay. The home is located at the neck of Varney Point as it extends out into Lake Winnepesaukee. It is a multi-story, single-family home on a hill. The home is situated away from the road, but is accessible through two driveways: a circular driveway with a walkway to the front door of the house on the west side of the home, and a larger parking space leading to a three car garage on the east side of the home. There are 4 bedrooms inside. Three of the bedrooms are on the top floor, one of which was occupied by Mischa, and another which was occupied by his parents.



*Image 1 – Map overview showing the location and approaches to the home at 5 Varney Point Road. Both driveways can be seen here to the west and east sides of the home.*

There are two main entrances the family used to get in the home. The front door entrance is accessible from the circular driveway on the west side of the home. The basement door entrance is accessible from the parking area on the east side of the home. On the night of this incident, Mrs. Pataski-Fay told 911 dispatchers to have officers approach the home from the east driveway, and later escorted them inside through the basement door.



*Image 2 – Photograph showing the west front door entrance to the home.*



*Image 3 – Photograph showing the east basement door to the home. The door officers entered the home from is marked with a blue circle.*

### **III. SUMMARY OF THE FACTS**

On January 1, 2023, at approximately 9:52 P.M., Beth Pataski-Fay (age 60) called 911. She told dispatchers that her son had a knife. She said her husband was locked into the home's office while she had fled the home. She said she was scared to death.

Mrs. Pataski-Fay explained that her son was suffering from what she said was a "breakdown." She said that he was in "a rage," and was in the middle of a process of coming off of medication. She detailed that he had broken things in the kitchen, and that after locking her husband in the office to keep him safe, she grabbed her shoes and ran. She told the dispatchers that the day had gone well, but that night Mischa "just snapped." Telling the dispatcher where she was outside, she directed police to come to the east side of her home.

Gilford Police dispatched two officers to respond to the residence. These included Officer Nathan Ayotte and Sergeant Douglas Wall. Both officers were driving their own assigned marked Gilford Police cruisers, and were equipped with body-worn cameras that were operating properly that day. They arrived at the home together approximately 4 minutes after receiving the call from the dispatcher. Their body-worn camera recorded their drives to the home, their interactions with Mrs. Pataski-Fay outside the home, and the shooting incident itself.

When Sergeant Wall and Officer Ayotte arrived, they drove past Mr. Fay's boat yard onto Varney Point Road Right. At the end of the driveway, both officers saw Mrs. Pataski-Fay as she waved to them and then led them up to the basement door entrance. Mrs. Pataski-Fay told the officers that her husband was in the home office, but she didn't know where Mischa was inside the home.

As all three individuals approached the basement door, Mrs. Pataski-Fay explained that she heard Mischa going into the knife drawer when she was fleeing the home. In her words Mischa had been fine for weeks, but was agitated the day before. She told them how she was very worried for her husband's safety, and wanted to make sure that he was okay.

Mrs. Pataski-Fay opened the basement door for them, and walked inside to turn the lights on. Both officers followed her. Sergeant Wall instructed her to "wait here." Sergeant Wall opened an interior door, and followed by Officer Ayotte, they walked up from the basement into a living room. Rather than remain in the basement, Mrs. Pataski-Fay closely followed them up the stairs.

As Sergeant Wall took his first few steps, Officer Ayotte told Sergeant Wall that he had his TASER out, a less-than-lethal device. Hearing this, Sergeant Wall responded, “I got lethal,” communicating in words that he had drawn his semiautomatic pistol to have lethal force available if necessary. Both officers also held small flashlights as there was low lighting in the house and the rooms they walked up into were predominantly dark.

Walking up the stairs the officers called out “Mischa!”, “Gilford Police Department, Mischa!”, “Where are you at?”, and “Make yourself known.” They heard no response.

The top of the basement stairs end in a living room to the right. This living room is located above the garage. This room has a TV near the stairs, furniture, and a closet. There are no other entrances or exits to or from this room. At the top of the stairs to the left is the only interior access to the dining room and the rest of the home. The dining room, which is open to the kitchen area along the back side of the home, also allows access to a downstairs bathroom, a small spare bedroom, the family room, and the home office space in the southwest corner of the home. This is where Mr. Fay had locked himself in.

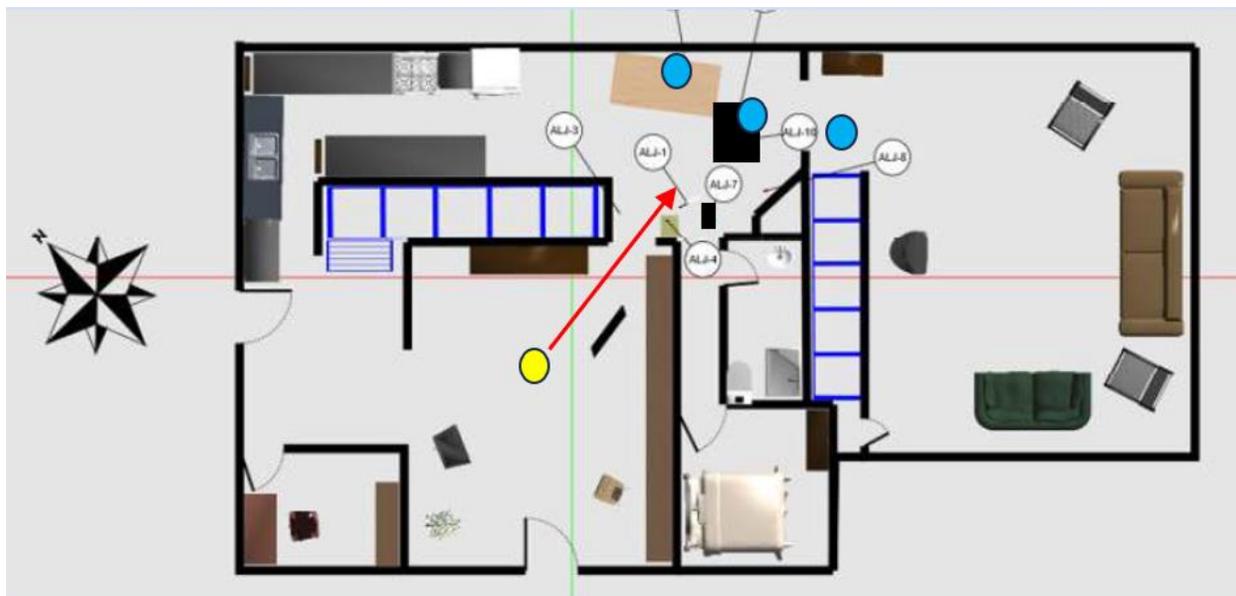


*Image 4 – Diagram of the first floor layout of 5 Varney Point Road in Gilford. The vertically-oriented blue lines indicate the stairs coming up from the basement to the living room on the right side of the image, while the horizontally-oriented blue lines on the left side of the image indicate the open stairwell leading to the second floor of the home. The dining room is located in the center-top portion of the image. The tan rectangle is the recorded position of the dining room table as later recorded by investigators. The home office is located in the bottom left-hand corner of the image.*

Sergeant Wall and Officer Ayotte looked over and through the living room, and did not see anyone. Again, the officers called out “Mischa!” and “Come out now” and “Police Department!” Turning towards the dining room they could see from the doorway that there was

a large table in the room. The rest of the house was poorly lit except for the officer's flashlights. The officers then heard a noise coming from another room somewhere beyond the dining room. Mrs. Pataski-Fay heard the noise as well and based upon it said, "He's upstairs." Officer Ayotte entered the dining room first, going behind the dining room table towards the dining room entrance to the kitchen. Sergeant Wall walked into the room second staying at the corner of the dining room near the doorway. Mrs. Pataski-Fay remained just behind Sergeant Wall in the living room outside the doorway to the dining room.

Approximately six seconds after both officers were in the room, Mischa was seen coming through the family room beyond the dining room doorway. Mischa was wearing a t-shirt and pajama pants. He was seen quickly walking through the room towards the dining room. His left hand was clenched, and in his right hand he held a large, black-handled, kitchen knife with the blade pointed out and downward.



*Image 5 – Yellow circle indicates approximately where camera footage and witnesses say they first saw Merrill Mischa Pataski-Fay as he came through the family room into the dining room. The blue dots indicate the approximate locations of Officer Ayotte, then behind the dining room table, and Sergeant Wall and Mrs. Pataski-Fay near the dining room doorway into the living room. The red arrow indicates Mischa's path of travel towards Sergeant Wall and Mrs. Pataski-Fay's position.*

According to the body-worn camera footage and every eye-witness's account, what happened next occurred quickly. Officers called out "Put your hands up!" and "Put your hands up, now!" Mischa did not put his hands up. Instead, he continued into the room straight towards Sergeant Wall's position at the dining room doorway into the living room. Officer Ayotte aimed his TASER at Mischa as he moved, and again told him to put his hands up. Sergeant Wall

backed up back towards the doorway. Measurements later showed that in approximately 4 seconds, Mischa travelled the approximately 15 feet from the middle of the family room to just before Sergeant Wall's position. With Mischa coming at him clutching the knife and Mrs. Pataski-Fay immediately behind him, Sergeant Wall brought up his handgun and fired his semiautomatic 9mm pistol at Mischa. Near simultaneously, Officer Ayotte fired his TASER stun device at Mischa from Officer Ayotte's position behind the table. Measurements later showed Mischa was within approximately 8 feet of Sergeant Wall when both officers fired. Sergeant Wall fired only one shot.

Officer Ayotte's TASER only made partial contact with Mischa; one prong hit Mischa's right shoulder, but the other did not strike his body and went into the green glass door cabinet behind him. Video footage captured the audible clicking noise of the TASER trying to deliver electric charge to seize Mischa's muscles making it so he couldn't move, but with the second prong located in the cabinet, the electric circuit could not be completed and no shock was given. Sergeant Wall's gunshot struck Mischa in the chest just below his collar. After this, Mischa stopped moving, dropped the knife, went to his knees, and fell onto his side.

Officers immediately called for emergency medical personnel. They put on gloves, and began trying to stop the bleeding and attempt lifesaving measures, including CPR. Mrs. Pataski-Fay, unable to see exactly what happened, came around Sergeant Wall to see Mischa on the ground. She initially thought Mischa had just been tased. She ran around the officers to get to the office, and immediately checked on her husband in the office. It was when she returned from the office with her husband that she realized that Mischa had been shot.

An ambulance and emergency medical technicians (EMT) arrived less than 5 minutes after the radio call from Sergeant Wall for an ambulance. Emergency medical personnel transported him to Concord Hospital at Laconia, formerly known as Lakes Region General Hospital. It was there, approximately 30 minutes after Mrs. Pataski-Fay fled the house and called 911 that Mischa was pronounced deceased at approximately 10:26 P.M.

Officers from the Gilford Police Department and medical personnel later arrived on scene, but no other law enforcement officers or private citizens witnessed the incident. After the incident, the New Hampshire Attorney General's Office and the New Hampshire State Police Major Crime Unit were notified. The investigation into the incident began that night.

#### **IV. THE INVESTIGATION**

The New Hampshire Attorney General's Office with the assistance of the New Hampshire State Police Major Crime Unit conducted this use of force investigation. During the investigation, investigators examined the scene, collected, and reviewed physical evidence and reviewed reports and records. In addition, numerous individuals were interviewed, including Mrs. Pataski-Fay, Mr. Fay, Sergeant Wall, and Officer Ayotte. The information and evidence gathered during the investigation is summarized below.

##### **A. Body-Worn Camera (BWC) Video**

Investigators obtained and reviewed the full video of the incident from both Sergeant Wall and Officer Ayotte's body worn cameras (BWC). Both BWCs were found to be functioning normally and recorded the officers responding to the call from their ordinary patrol duties. They continued to record normally throughout the incident and only ceased recording when the officers were relieved from their duties at the scene and turned off. Since both officers were standing next to one another at the time of the shooting, the relevant content of these videos is described below in the aggregate:

##### **1. BWC Videos**

The officers' BWCs were activated upon the use of their blue lights in their cruisers as they responded to the 911 call. Upon activation, the cameras store the 30 seconds of video from immediately before the activation, but those 30 seconds do not include audio. Both officers wore their BWC devices on their right shoulders. Given the placement of these devices, the camera is periodically blocked by objects being held in the officers' right hands. This includes Officer Ayotte's TASER device, and Sergeant Wall's flashlight.<sup>1</sup> In addition, the microphone of Officer Ayotte's BWC intermittently rubs against a surface making the audio scratchy and difficult to hear when he is moving. A review of the relevant footage is below:

---

<sup>1</sup> Sergeant Wall held his flashlight in his right hand during the incident. Sergeant Wall also had a tactical light mounted underneath the barrel of his semiautomatic pistol, however, video footage showed he did not turn the tactical light on at any time.

Time stamps of minutes into BWCs<sup>2</sup> relative to the recorded action or event:

<u>Officer Ayotte</u>	<u>Sergeant Wall</u>	<u>Observed Action/Event</u>
3:30	3:19	Officer Ayotte pulls onto Varney Point Road and asks for Mischa's whereabouts in the residence. Dispatch relays from Mrs. Pataski-Fay that he was last known to be in the kitchen, and that she wants officers to come up the right side of the house (east) since the front door off the circular driveway is locked.
4:00-:12	3:49	Officer Ayotte's headlights show Mrs. Pataski-Fay on the road at the end of the driveway – Officer Ayotte parks in the driveway and gets out to meet her.
4:20-4:48	4:09	Officer Ayotte speaks with Mrs. Pataski-Fay as they walk to the basement door. When asked where Mischa is now, she states she doesn't know and that her husband is locked into the home office. When asked how big the knife is, she holds up her hands approximately a foot apart.
4:54	4:43	Mrs. Pataski-Fay opens the basement door to lead officers inside.
4:58	4:47	Sergeant Wall tells Mrs. Pataski-Fay "Why don't you wait here for us," as the officers enter the basement. Mrs. Pataski-Fay follows the officers to the stairs.
5:11	5:00	Officer Ayotte tells Sergeant Wall "I have TASER," to which Sergeant Wall replies, "I got lethal." Both officers proceed up the stairs to the living room followed by Mrs. Pataski-Fay. Sergeant Wall is carrying the pistol in his left hand down by his side with the barrel pointed down, while Officer Ayotte is carrying his TASER in his right hand chest high.
5:14-:28	5:03	Officers call out "Mischa", "Gilford Police Department, Mischa", "Where are you at?", and "Make yourself known."

---

<sup>2</sup> Times denoted are approximate.

5:32	5:21	Officers again call out, saying “Mischa”, “Come out right now”, and “Police department.”
5:34-:40	5:23-:29	Mrs. Pataski-Fay says, “He’s upstairs.” Officers Then move into the dining room. Officer Ayotte’s camera shows he is behind the dining room table with the camera facing the doorway to the family room. Sergeant Wall’s camera shows he is just inside the dining room doorway from the living room facing the doorway into the family room.
n/a	5:31	Sergeant Wall’s BWC records Mischa coming through the family room to the dining room doorway.
5:42	5:31	Sergeant Wall sees Mischa coming from the family room and says, “Put your hands up!” Officer Ayotte turns on the flashlight function of his TASER.
5:43	5:32	Officer Ayotte says, “Put your hands up, now!” Mischa continues through the doorway from the family room into the dining room.
5:44	5:33	Mischa advances on Sergeant Wall, now halfway between the two doorways. Officer Ayotte’s camera shows the knife held downwards and out in Micha’s right hand as he advances. His left hand remains down at his side. Again, Sergeant Wall says, “Put your hands up!”



*Image 6 – In this still photo from Officer Ayotte’s BWC, Mischa is seen advancing to Officer Ayotte’s left with Officer Ayotte’s TASER blocking the view of most of Mischa’s torso. The yellow circle shows the kitchen knife clenched in Mischa’s right hand as he advances on Sergeant Wall (not visible to the left of the photo). The three yellow lights to the upper right of the circle are from Officer Ayotte’s TASER device indicating that the battery is fully charged and that the cartridges are full to be able to make two deployments.*



*Image 7 – In this still photo from Sergeant Wall’s BWC, the yellow circle shows the kitchen knife clenched in Mischa’s right hand as he advances on Sergeant Wall as Sergeant Wall backs up.*

5:45	5:34	Sergeant Wall and Officer Ayotte fire near simultaneously. <sup>3</sup> Mischa then goes to his knees and opens his right hand, dropping the knife. A clicking noise can be heard as the TASER tries to connect a circuit to send an electric current.
5:47-:50	5:36-:39	Officer Ayotte moves around the kitchen-end of the dining room table. Sergeant Wall remains just inside the dining room doorway from the living room.
5:51	5:40	Sergeant Wall tells Mischa “Get down onto the ground!”
5:52-6:06	5:41-:5:55	Mischa falls to his left onto the floor. Sergeant Wall radios, “We need medical. We need medical now.” Mrs. Pataski-Fay yells, and goes behind the dining room table through the kitchen calling for her husband. Officer Ayotte radios, “Shots fired.”

The video from the BWCs show Mischa was only visible for approximately 4 seconds before both Sergeant Wall and Officer Ayotte fired. The video also shows that Mischa never stopped moving towards Sergeant Wall and Mrs. Pataski-Fay’s position from the moment he was first seen until after the officers’ fired. Mischa never audibly responds to the officer’s calls or commands throughout the video. In addition, video footage from both appears to show that Sergeant Wall never pointed his pistol at anyone until less than a second before he aims it at Mischa and fires.

After the shooting, both officers’ recordings continued for another 38 minutes continuously until they were relieved by other officers.

## **B. Physical Evidence**

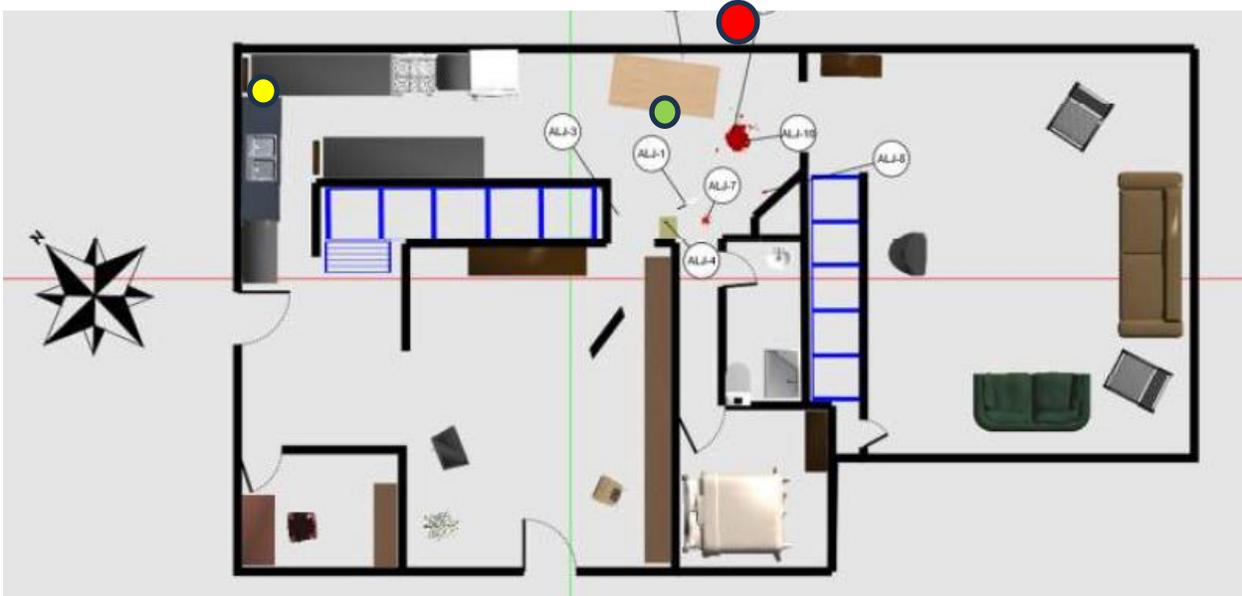
Investigators conducted a search of 5 Varney Point Road, the officers’ equipment, and photographed the officers’ uniforms.

---

<sup>3</sup> Watching the videos with slower-than-normal playback appears to show that Sergeant Wall fired his pistol a fraction of a second before Officer Ayotte fired his TASER.

## 1. Scene

The New Hampshire State Police Major Crimes Unit, under the direction of the Office of the Attorney General, searched, processed, and documented the home, including both the first and second floor living space.



*Image 8 - Diagram showing the location the relevant pieces of evidence inside the home. The blue markers indicate the location of casings, the red circle indicates where Mischa fell over onto the ground. The green circle shows the location of a green glass-door cabinet struck by one of the prongs from Officer Ayotte's TASER. The yellow circle shows the location of broken items on the kitchen counter.*

Mischa was treated by officers and then EMTs where he fell until he was transported by ambulance to the hospital. He suffered a single gunshot wound to the chest. The projectile was recovered on scene after having exited through his back. It was located by investigators caught amidst the folds of Mischa's t-shirt that had been removed to administer emergency medical treatment.

Other physical items recovered in the dining room included a large, black-handled kitchen knife (ALJ-1), the two TASER probes fired by Officer Ayotte (ALJ-3 and 4), an empty 9mm casing<sup>4</sup> for Luger + P Speer ammunition ejected by Sergeant Wall's pistol after firing, and evidence of the medical treatment used by the officers and EMTs in rendering assistance. The two TASER prongs and a single bullet casing were consistent with the two uses of force seen

<sup>4</sup> A firearm cartridge casing holds the gunpowder used to fire the bullet, which is located at the front of the casing. The reference in this report to discharged firearm cartridge casing means that the bullet has been fired out of a gun and the casing left behind.

and heard on BWC video, recounted by witnesses, and known to have been fired from Sergeant Wall's examined pistol and Officer Ayotte's TASER, respectively.

The blade of the kitchen knife was approximately 8 inches long. Mrs. Pataski-Fay later identified the knife as one that was ordinarily kept in the knife drawer.



*Images 9 - Photograph showing the recovered kitchen knife with black handle on the dining room floor in front of the green glass-door cabinet.*

One of the two TASER probes had struck Mischa, and was removed when officers began rendering medical assistance. The other missed and broke through the glass door of a green cabinet near the dining room doorway into the family room.



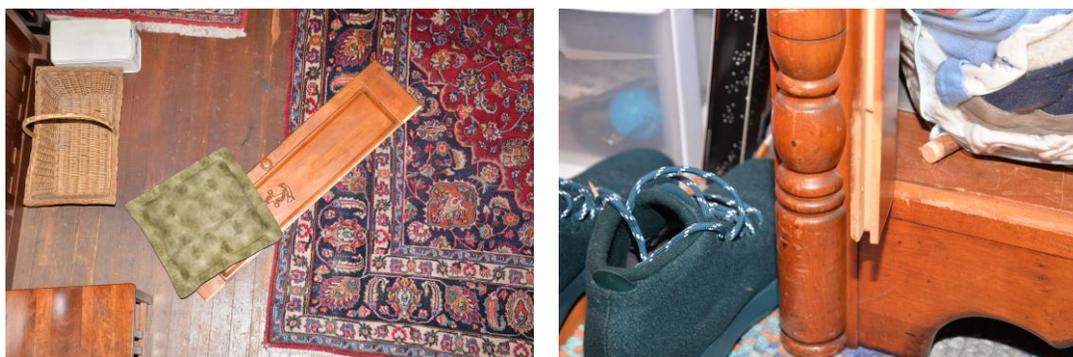
*Images 10 - Photograph showing the wire leading to the door of the glass cabinet with the probe itself and coils of wire through the glass and inside the door.*

On the kitchen counter near the sink was a broken handset to the cordless landline phone, as well as a smashed family photo surrounded by glass from the broken frame.



*Images 11 & 12 - Photographs of the broken cordless handset and family photo.*

On the floor of the family room, a broken cabinet door with an anchor emblem was found. This was below the balcony looking down from the second floor. Upstairs, a wardrobe in Mischa's bedroom with the same nautical theme appeared to have a missing door that was broken off.



*Images 12 & 13 - Photographs of the broken cabinet door and upstairs wardrobe.*

## **2. Weapons**

The firearm used by Sergeant Wall consisted of a department-issued 9mm Glock 45 semiautomatic pistol. The pistol was secured by responding Gilford police officers until crime scene investigators arrived. The pistol contained one 9mm live round in the chamber and a magazine with 16 rounds. The pistol had a capacity of 18 rounds with the chamber able to hold 1 round and another 17 rounds in the magazine. The pistol also had a tactical flashlight mounted

underneath the barrel, which was not used during this incident.<sup>5</sup> Video footage from BWCs showed Sergeant Wall did not turn this flashlight on or use the pistol as a source of illumination.

The TASER used by Officer Ayotte is a department-issued Axon TASER 7. The device was secured by responding Gilford police officers until crime scene investigators arrived. The cartridge in the device carries two possible deployments consisting of two probes per deployment. Officer Ayotte's TASER was found to have been fired one time, propelling two TASER probes forward with an additional two probes in reserve.

### **C. Interviews with Sergeant Wall and Officer Ayotte**

Gilford Police Officers Douglas Wall and Nathan Ayotte both utilized force during this incident. Sergeant Wall discharged his firearm at Mischa during the incident, while Officer Ayotte deployed his TASER. They were each interviewed as part of the investigation, and their interviews are summarized below.

#### **1. Sergeant Douglas Wall**

On January 6, 2023, members of the Office of the Attorney General conducted an interview of Sergeant Douglas Wall. Sergeant Wall has served as a police officer for 22 years before this incident. He began his career with the Brookline Police Department for three years, and then joined the Gilford Police Department in 2000. During his career with Gilford Police Department, Sergeant Wall has been a firearms instructor for 17 years, and a TASER instructor for 11 years. He is also a field training officer. Sergeant Wall told investigators that he did not review his BWC footage before sitting down for the interview.

While on duty, Sergeant Wall is assigned a Glock 45, 9mm semiautomatic pistol equipped with a tactical light. He is trained and qualified on this weapon. On his duty belt, Sergeant Wall carries two additional magazines for his pistol, and his assigned TASER with two cartridges. Sergeant Wall is assigned an Axon BWC which he wears on his right shoulder. On the night of this incident, Sergeant Wall was on uniformed patrol, working the 6:00 P.M. to 6:00 A.M. shift, and was driving a marked patrol vehicle.

---

<sup>5</sup> *Supra* note 1 at 8.



*Image 14 – Photograph showing the uniform Sergeant Wall was wearing.*

Sergeant Wall confirmed being dispatched to the home for a report of a male armed with a knife, with another resident, Mr. Fay, locked inside an office. Sergeant Wall was following Officer Ayotte through town, and parked his cruiser immediately behind Officer Ayotte's on the edge of the property.

Sergeant Wall explained that when they met with Mrs. Pataski-Fay outside, she told them her concerns about her husband and that he was locked into the home office. From this, Sergeant Wall felt they had no choice but to enter the home to confirm and ensure Mr. Fay's safety and Mischa's condition. He explained that if they could confirm there had been no one inside the home, or if they could safely get Mr. Fay out, then there would be no urgency to confront Mischa, and they could give space to hopefully talk Mischa into dropping the reported knife. Sergeant Wall explained how he was unfamiliar with the layout of the home as had never been inside before, but was so concerned for Mr. Fay's safety that he believed they had to enter.

Sergeant Wall confirmed entering the home through the basement door, and telling Mrs. Pataski-Fay to wait while they went into the home. He also confirmed his conversation with Officer Ayotte about Officer Ayotte having his TASER out, while he withdrew his pistol. He explained that the reason he did this was because they had been told Mischa had a knife, they did not know what they were walking into, and he wanted to have options available for different levels of force if they became necessary. He also confirmed that he kept his pistol pointed towards the floor until the moment he raised and fired it.

Sergeant Wall explained that as they went up the stairs, he called out "Gilford police department" and Mischa's name. He used his flashlight to look into the living room, and then turned back to the dining room. He told Mischa to come out. He saw Officer Ayotte enter the dining room, going behind the dining room table towards the kitchen. Sergeant Wall entered the

room but stayed close to the dining room doorway to the living room. He was unsure where Mrs. Pataski-Fay was located behind him at that time.

Sergeant Wall described what happened as a very quick event. He said he saw a person he recognized as Mischa appear in the family room walking quickly at the officers from the family room into the dining room. He saw Mischa was carrying a knife in his right hand. He described Mischa holding the knife with the blade pointed out towards the officers.

Sergeant Wall was taken back by how quickly the situation began. He explained this was due to how quickly they saw Mischa, and saw him when he was coming towards the officers armed with a knife already pointed out and towards them.

Sergeant Wall told investigators that he believed both he and Officer Ayotte told Mischa to drop the knife, but that his focus was on Mischa approaching with the knife. He explained that he believed that Mischa was coming to stab him based on Mischa's speed and how he was holding the knife. He explained that Mischa did not stop despite the officers' commands, did not drop the knife, did not put his hands up, and did not turn around and leave, but kept coming at him.

Sergeant Wall did not recall backing up as Mischa came at him, and did not recall whether he or Officer Ayotte fired first. To him, he believed the discharge of both the pistol and TASER were near simultaneous. Sergeant Wall was in fear of his life and felt that if he did not act, his life and the life of Officer Ayotte were in immediate danger. He believed that Mischa was about to stab him. Sergeant Wall explained that his gunshot was instinctive, in that, he did not use the sights on the gun or try to precisely aim, but brought the gun up and quickly fired one round at Mischa coming towards him. Sergeant Wall believed Mischa was only 6-8 feet away from him when he fired.

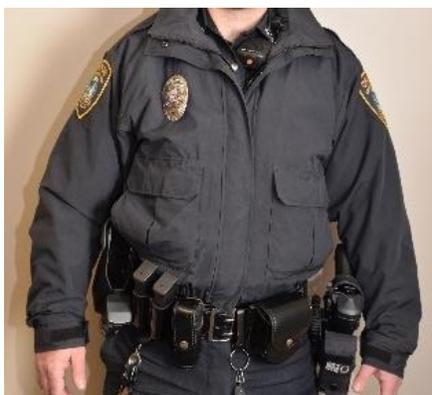
Immediately after firing, Sergeant Wall saw Mischa drop the knife and go to his knees. Initially, he was not sure either his shot or Officer Ayotte's TASER had stuck Mischa. He didn't see Mischa clutch his chest. Mischa didn't say anything. It was only just before Mischa fell over that Sergeant Wall saw blood forming on Mischa's shirt, and he recognized that Mischa had been shot. Sergeant Wall called for medical to get to the house as soon as possible, directed Mrs. Pataski-Fay to get towels to help stem the bleeding, and then began rendering medical assistance right away.

Sergeant Wall stated that he never saw any change in Mischa's demeanor when they were shouting for him to stop. He did not hear Mischa say anything throughout the entirety of the event.

## **2. Officer Nathan Ayotte**

On January 6, 2023, members of the Office of the Attorney General conducted an interview of Officer Nathan Ayotte. Officer Ayotte has served as a police officer for 4 years before this incident. He began his career with the Alton Police Department for three years, and then joined the Gilford Police Department in 2022. Officer Ayotte told investigators that he did not review his BWC footage before sitting down for the interview.

While on duty, Officer Ayotte is assigned a Glock 45, 9mm semiautomatic pistol equipped with a tactical light. He is trained and qualified on this weapon. On his duty belt, Officer Ayotte carries two additional magazines for his pistol, and his assigned TASER with two cartridges. Officer Ayotte is assigned an Axon BWC which he wears on his right shoulder. On the night of this incident, Officer Ayotte was on uniformed patrol, working the 6:00 P.M. to 6:00 A.M. shift, and was driving a marked patrol vehicle.



*Image 15 – Photograph showing the uniform Officer Ayotte was wearing.*

Officer Ayotte confirmed being dispatched to the home for a report of a male armed with a knife, with another resident locked inside an office. Officer Ayotte confirmed that he was the first officer to the residence, and saw Mrs. Pataski-Fay on the street just outside the driveway to the left (east) side of the home. He pulled into the driveway, parked his cruiser, and immediately

began talking with Mrs. Pataski-Fay to determine what happened. He heard Sergeant Wall pull in beside him, and come over to join them as they walked to the basement door together.

Officer Ayotte was familiar with the Fay family and the residence having been one of the responding officers to episodes involving Mischa's health several times before. He was also familiar that Mischa's behavior while dealing with those health issues that had required others to restrain Mischa to stop him from hurting himself or others. Officer Ayotte had previously seen family members with bruises when he responded to these calls.

Officer Ayotte confirmed entering the home together with Sergeant Wall after hearing Mrs. Pataski-Fay's report that her husband was locked in an office and Mischa had a knife. Officer Ayotte knew and had met Mr. Fay before, and was familiar that Mr. Fay may have a limited ability to protect himself or flee quickly if needed. As they started to go up the basement steps to the living room, Officer Ayotte told Sergeant Wall, "TASER." He explained that he did so to inform Sergeant Wall that he was ready with less-than-lethal force if needed. He heard Sergeant Wall say he had "lethal," which he understood to mean Sergeant Wall would provide lethal force if needed.

Officer Ayotte explained that Sergeant Wall turned to the right at the top of the stairs to look for Mischa, while Officer Ayotte kept his focus on the doorway to the dining room and the rest of the house. He told investigators that he called out for Mischa, and then heard a noise he believed to be from deeper into the home. He heard Mrs. Pataski-Fay say, "He's upstairs," and then moved into the dining room behind the table. He explained that from here he could view the other doorways into the dining room; most notably from the kitchen, but also from the family room, downstairs bedroom, and adjacent bathroom. He knew that Sergeant Wall was to his left, closer to the doorway from the living room.

Similar to Sergeant Wall's description, Officer Ayotte described what happened next as very quick. He heard Sergeant Wall call out a command and then looked through the doorway into the family room to see the person he recognized as Mischa walking quickly at the officers. Initially, he believed Mischa was coming at both officers, but when Mischa reached the doorway to the dining room, he saw that Mischa was going straight at Sergeant Wall. Mischa was clutching a knife in his right hand with his knuckles up and the blade pointed down, which he further described as "like an ice pick." He believed he yelled for Mischa to drop the knife, but Mischa did not respond or stop moving.

Officer Ayotte saw Mischa continue towards Sergeant Wall. He felt that Mischa was only one step away from Sergeant Wall and was about to use the knife on him when he decided to fire his TASER to try and incapacitate him. He believed he fired his TASER before he saw and heard Sergeant Wall fire a single gunshot. He explained this was due to how quickly they saw Mischa coming towards Sergeant Wall armed with a knife and the way Mischa held the knife.

Officer Ayotte told investigators that he believed both he and Sergeant Wall told Mischa to “Drop it” or “Drop the knife”, but that his focus was on Mischa approaching with the knife. He explained that he believed that Mischa was coming at Sergeant Wall to stab him based on Mischa’s speed and how he was holding the knife. He did not see Mischa stop despite the officers’ commands, and never saw a change in his demeanor despite being told to drop the knife. Officer Ayotte believed Mischa was determined to do something with the knife based on how he was holding it in an overhand manner, and that this meant Mischa’s only intent would be to stab someone. He explained that in that moment, presented with Mischa moving so quickly with the knife held in that manner, Officer Ayotte felt he was inadequately prepared with just his TASER to meet oncoming deadly force from Mischa onto Sergeant Wall. He also felt there was not enough time to transition from his TASER to his firearm, and his only option was to try and deploy the TASER to stop Sergeant Wall from being stabbed. He believed he had no option but to use the force he had at the ready, the TASER, as Sergeant Wall was about to be stabbed.

Officer Ayotte believed he fired his TASER at Mischa, and afterwards Sergeant Wall fired a single gunshot. He estimated that Mischa was only one more step away from Sergeant Wall when Officer Ayotte deployed the TASER. Immediately afterwards, Officer Ayotte radioed to the dispatcher that shots had been fired. Initially he couldn’t see whether the knife was on the floor under Mischa’s chest. Once he saw the knife was away from Mischa, he moved closer and then went to begin giving Mischa CPR. Officer Ayotte detailed the additional steps both he and Sergeant Wall took to try and stop the bleeding until EMTs arrived.

When he approached Mischa, Officer Ayotte saw that one of his TASER probes missed and struck the cabinet. It was only just before Mischa fell over that Officer Ayotte saw blood on the ground, and he recognized that Mischa had been shot.

After EMTs arrived to take over life-saving measures, Officer Ayotte spoke with Mischa’s father, Merrill Fay. Mr. Fay told him that when he was locked in the office before the

shooting, Mischa was trying to get into the office where Mr. Fay was located. He told Officer Ayotte that he was unsure what Mischa was using to try and manipulate the door lock, whether it was the knife or some other object.

**D. Interviews with Mr. Merrill Fay and Mrs. Beth Pataski-Fay**

Both Merrill Fay and Beth Pataski-Fay agreed to be interviewed the night of the incident a few hours after Mischa was shot. Their interview was conducted by investigators from the New Hampshire State Police Major Crime Unit at the request of the New Hampshire Attorney General's Office and audio recorded. Both Mr. Fay and Mrs. Pataski-Fay were interviewed together. Together, the Fays explained Mischa's medical history, and his behavior over the last year and a half leading up to the event. This timeline told investigators what Mischa was suffering from and his symptoms. It also detailed Mischa's medical condition and struggles he was battling with.

Mischa was attending school normally and an avid hockey player up and until the beginning of 2021. As 2021 began, his parents noticed Mischa started to have appetite changes, behavior changes, change in his gait and how he carried himself, a decline in self-hygiene habits, and an inability to focus. These changes continued through the winter in spring, and Mischa was able to graduate 8<sup>th</sup> grade, but this was the last time he was healthy enough to attend school. The summer of 2021 led to a further decline in function, and rounds of consultations with different doctors and specialists. Throughout the rest of 2021, Mischa underwent multiple rounds of testing both physically and neurologically, as well as several hospitalizations to determine the ailment/illness. Mrs. Pataski-Fay detailed one day at the beginning of January 2022 when his parents could not get him out of bed as he had become catatonic. He was rushed to the hospital and admitted. Mischa then had several different hospitalizations throughout 2022 as doctors tried to diagnose what was happening.

Mr. and Mrs. Fay expressed to investigators their concerns over the medication regiment he was then put on and the efforts they had taken recently to gradually come down from the high doses of serious medications he was prescribed. They received conflicting messages from different doctors from atypical long-term side effects from having asymptomatic COVID to schizophrenia to bipolar disorder to viral infections to encephalitis, and more. Their concerns

only grew as Mischa's health seemed to worsen as doctors at the different hospitals where he was admitted changed Mischa's medications with the differing diagnoses. He was transferred to Hampstead Hospital, for several months, then returned home, but later needed to be admitted a second time only to be released again. Each time they thought Mischa was getting better, an event or episode would occur, and in their words, his behavior and mannerisms would swing farther away from the young man they had raised.

They described Mischa at times as "a walking zombie" with the medications, but other times, he would "snap" and lash out at them. They both detailed several prior incidents where Mischa physically lashed out at one of his parents, or both, and had to be restrained by one of them or a worker from Mr. Fay's boat yard. They also detailed several of these occasions when police were called to the scene, and assisted in getting Mischa checked out medically or transported for medical treatment throughout the end of summer and the fall of 2022. Intermittently, Mischa was near catatonic, and otherwise engaging, swinging through different mannerisms.

In December of 2022, Mischa was 17 years old and home from his most recent hospitalization. He frequently presented to his parents as sedated, confused, and his patterns of behavior continued to fluctuate. The Fays said they were being told by some medical professionals that his medications were too high, and he was overly sedated. At the time of this incident, Mr. and Mrs. Fay were working with doctors to taper off the medication as safely as possible.

Through the week of Christmas 2022, Mischa was quieter and lowkey. He had been sleeping in later in the morning, but the family tried to keep external stimulation to a minimum for his benefit. On Friday, December 30, 2022, Mischa presented as irritable and moody, and "not acting like himself." At one point that day, he reached out and mangled Mrs. Pataski-Fay's glasses, threatening her by saying he ought to kill her. She left the house; he went back to his bedroom for several hours. He came out later crying, hugging her, and apologizing. Mrs. Pataski-Fay observed how his awareness of what he had done upset him, and she believed it was further evidence that his medications and illness left him confused and suffering. The next day, Saturday December 31, 2022, Mrs. Pataski-Fay noted that Mischa was not violent but was moody at times. That night was uneventful.

On the day of his death, Sunday, January 1, 2023, Mischa presented as more typical than the days before. He was quiet, but said goodbye to family members leaving after the holiday. That day the family played board games together, and Mischa asked to go out to get fast food for dinner. He ate well, watched a movie, and said he wanted to go to bed around 9:00 P.M. This was a typical bedtime for him.

Mrs. Pataski-Fay explained to investigators that Mischa's mood changed just after Mischa got ready for bed and went to lie down. After lying down for a moment with his mother nearby, Mischa suddenly got up, walked to the balcony railing overlooking the family room below, and put one leg over the balcony. Mrs. Pataski-Fay feared he was going to hurt himself on purpose by throwing the rest of his body over the balcony to the first floor below. She pleaded with him to come back and go to bed, saying that he would feel better in the morning compared to how he was feeling right then.

Mischa brought his leg back over the railing and returned to bed. He laid down again, and again, Mrs. Pataski-Fay was beside him. She then saw him stand up, look at the ceiling fan in his bedroom, grab one of the fan blades, and begin to pull the fan down from the ceiling. Mrs. Pataski-Fay told investigators that this scared her, and feeling panic at seeing this behavior, she went to get out of the room. She saw Mischa let go of the fan blade, go over to his wardrobe, and rip off the wardrobe's door. Mischa then threw the broken door over the balcony to the family room below. Mrs. Pataski-Fay then saw Mr. Fay come out of the bedroom at the sound of the door hitting the floor.

Mischa went back to his room. Fearful for her husband's safety, Mrs. Pataski-Fay quickly told Mr. Fay to go into the downstairs office and lock the door. She followed him down the stairs, took her sneakers from the downstairs foyer, and ran out of the house through the living room and down the basement stairs with her cellphone to call police. As she went down the stairs into the basement, she heard Mischa opening the door to the knife drawer in the kitchen from the distinctive squeak the drawer caused whenever it was opened/closed. She also heard the sound of Mischa rummaging through the drawer.

Mrs. Pataski-Fay told investigators that she called police because she was scared for Mischa, for her husband, and for herself. She explained part of this was a fear Mischa would get through the office door to her husband, or go around the windows of the porch to get into the office. She was also scared Mischa would hurt himself or cut his own wrists based on his

behavior and stories he told her about meeting other patients at Hampstead Hospital who had harmed themselves. Lastly, she was scared for herself as she felt she would not be safe staying in the house with Mischa when he was acting this way, and she needed to get out of the house in order to call for help. Mrs. Pataski-Fay told investigators that while she wasn't sure, she also thought Mischa might have wanted to kill her when she heard him going into the knife drawer.

Mr. Fay explained to investigators that he had already gone to bed when he heard the noise of the wardrobe door banging onto the family room floor. He hurried out of the bedroom, saw his wife quickly usher him downstairs and into his office, and locked the door as she told him to. Sometime before Mischa was shot, Mr. Fay heard someone trying to open the office door with some sort of tool. He believed this person to be his son. He was unsure if Mischa was trying to do this with the knife, or another large hand tool that had been sitting outside the office.<sup>6</sup> He told police he was worried Mischa was going to come in, and he didn't say anything aloud when Mischa was using the tool so he wouldn't let his son know he was behind the locked office door.

Mrs. Pataski-Fay confirmed her statements to 911 about believing Mischa was armed with a knife, asking officers to respond to the right (east) driveway and entrance to the home, Mischa's behavior in the days before the incident, and Officer Ayotte and Sergeant Wall's approach and conversation outside the home before they went inside. She admitted she did go inside the home with officers and followed them up the stairs. She heard them calling out "Gilford Police Department" and "Police" as they went up the stairs. After the officers went into the dining room, Mrs. Pataski-Fay stayed just inside the living room doorway behind Sergeant Wall's position.

Throughout her interview, Mrs. Pataski-Fay said that Mischa coming into the room and being shot "happened so fast ... it just happened so fast." In that short time, she saw Mischa come into the dining room with what she described as "the big butcher's knife" in his hand. She described Mischa as being approximately 10 feet away from her and Sgt. Wall when she heard a loud bang and Mischa stopped. She initially thought Mischa had only been tased and not shot. She went around the officers and the dining room table closest to the outside wall, through the

---

<sup>6</sup> During their search, investigators discovered a pair of large 2-handed bolt cutters on a piece of furniture just outside the home office door.

kitchen, and called to her husband. She had him unlock to door, and then came back. It was then that she saw the blood and realized Mischa had been shot.

Mr. Fay told investigators that from the office he could hear police officers yell, “Police department!” followed shortly thereafter by what he believed to be a gunshot. He opened the door when his wife called for him, and came out to the area of the dining room to see police giving Mischa medical assistance. He then saw the family’s large chef’s knife on the floor next to Mischa.

At one point during this interview, Mr. Fay told investigators that he believed Mischa may have wanted the officers to shoot him. Mrs. Pataski-Fay asked him why he would say that. Mr. Fay answered, “because of how he [Mischa] had talked in the past.” Mrs. Pataski-Fay confirmed that Mischa had been suicidal at one point in the past as well. She said when Mischa came home in September of 2022 fresh from one of his hospitalizations, he said to her that he just wanted police to come and shoot him.

Both the Fays strongly felt that the medications and levels of medications were strong contributors to Mischa’s behavior patterns in the days, weeks, and months leading up to this event.

#### **E. Autopsy Results**

On January 3, 2023, Chief Medical Examiner Dr. Jennie V. Duval conducted an autopsy on the body of Merrill Mischa Pataski-Fay. Examination of the body found a single, through and through gunshot wound to the upper chest. The projectile travelled through the top of his aorta, trachea, and right lung before exiting his body through his back. Mischa also had an electrothermal injury on his upper right chest consistent with an attempted shock from an electric shock device such as from a TASER. This injury did not contribute to his death. Toxicology testing was conducted and found Diazepam, Gabapentin, and Citalopram in Mischa’s blood stream.

Based on the examination, Dr. Duval concluded that Mischa’s cause of death was a gunshot wound to the chest, and that his manner of death was homicide. As used by the Office of the Chief Medical Examiner, homicide is defined as the killing of one person by another.

**F. Incident between Sergeant Wall and Merrill Mischa Pataski-Fay on September 14, 2022**

As noted above, *supra*, Sergeant Wall had one earlier interaction with Mischa prior to the night of January 1, 2023. On one of the calls for service on September 14, 2022, Sergeant Wall was the first responder who went to the home when 911 was called after Mischa reportedly struck one of his parents. Body worn camera footage of that incident was captured by Sergeant Wall's BWC, and still stored at the Gilford Police Department in January 2023. During the course of the investigation, investigators obtained this footage, as well as other footage of the prior calls for service to the home that were still preserved by the Gilford Police departments retention system. The footage from the September 14, 2022 call for service documented this previous interaction between Mischa and Sergeant Wall, and Sergeant Wall's familiarity with Mischa's past pattern of behavior in how it differed from Mischa's pattern of behavior on January 1, 2023.

On the afternoon of September 14, 2022, Sergeant Wall responded to the 5 Varney Point Road for a report of Mischa being combative with his parents. Dispatchers told Sergeant Wall that Mischa had assaulted his parents, and smashed items inside the house. When Sergeant Wall arrived at the home that afternoon, he parked in the left circular driveway (west). Walking up to the front door, he found Mr. Fay seated on a rock wall to one side of the home, Mrs. Pataski-Fay standing where the walkway met the front door, and Mischa seated on a bench on the opposite side of the walkway. As Sergeant Wall approached the home, Mischa got up from the bench and walked up to Sergeant Wall.

As Mischa approached, Sergeant Wall said "Hi", and asked if everything was ok. Mischa walked up to Sergeant Wall, looked down at his duty belt, and reached out to place his hands on Sergeant Wall's TASER in its holster on his hip. Sergeant Wall stepped back and turned his hip away from Mischa. Sergeant Wall calmly said, "Hold on. You can't touch my stuff. Don't touch my stuff." Mischa responded, "Yes I can." Sergeant Wall asked Mischa who he was, and Mischa responded, "I'm the kid." Sergeant Wall then asked, "Why are you trying to touch my stuff?" Mischa responded, "I'm angry." Sergeant Wall said "Ok", and then asked Mischa to go sit back on the bench for a moment while he talked to his parents. Mischa went back to the bench. Mrs. Pataski Fay then explained to Sergeant Wall that Mischa had been hospitalized for a while, but that afternoon he had been violent towards both of them. The call for service that day

ended with Mischa being seen by emergency medical personnel at the home, and then being transported to a hospital for further evaluation.

In his January 6, 2023 interview, Sergeant Wall told investigators that this is the only time during his 28-years of law enforcement experience anyone ever reached out and placed their hands on his duty belt or equipment before.

#### **IV. 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.

Pursuant to RSA 627:4, II(a), and RSA 627:5, II(a), a private citizen and a law enforcement officer are justified in using deadly force when they reasonably believe that such force is necessary to defend themselves or a third person from what they reasonably believe to be 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 he knows to create a substantial risk of causing death or serious bodily injury." "Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force." RSA 627:9, II.

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 of 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. 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 reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight. The amount of deadly force used by the actor to protect himself or another must be reasonable, and not excessive. *See State v. Etienne*, 163 N.H. 57, 70 (2011).

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 reasonably believed that he was in imminent danger from the use of deadly force by another, even if, in fact, he was not, so long as the actor's belief was objectionably reasonable.

Federal cases, while largely addressing the civil standards that apply to federal civil rights lawsuits, provide some discussion of the "reasonableness" standard for the use of force by police officers that is useful in analyzing officer-involved use of force cases in this state. In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court stated 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.* at 396. The Supreme Court continued:

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*, 565 U.S. 469, 477 (2012) (same).

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, 2013 WL 1296331, at \*17 (S.D. Fl. Mar. 28, 2013).

The law must account for the fact that dangerous situations often unfold quickly, and law enforcement officers sometimes need to make quick decisions under less-than-ideal circumstances. *See Huff*, 565 U.S. at 477 (finding that appeals court panel "did not heed 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").

These are the legal standards that help guide the Attorney General's review of the use of deadly force by a private citizen and a law enforcement officer in New Hampshire.

## V. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General has concluded that Gilford Police Sergeant Douglas Wall was legally justified when he used deadly force against Merrill Mischa Pataski-Fay.

At the time that he was shot, Mischa Fay was armed with a knife.<sup>7</sup> Objectively viewed, both Sergeant Wall and Officer Ayotte reasonably and separately believed that Mischa was about to stab Sergeant Wall and/or his mother, Beth Pataski-Fay.<sup>8</sup> Here the officers accounts are corroborative of one-another and independently corroborated by accounts of the body-worn camera videos, and the account of Mrs. Pataski-Fay. Mischa initially appeared in the family room holding the knife and walking at the officers. At that point, officers had announced that they were from the Gilford Police Department, to make his location known, and after they saw the knife, to put his hands up. Mischa did not stop walking towards the officers. He held a large, 8" long butcher's knife in his right hand at chest-level with the blade pointed down. To Officer Ayotte, Mischa held the knife like it was an ice pick. Mischa said nothing and did not change his gait or demeanor after hearing their commands to put his hands up. Instead, he continued undeterred into the dining room towards Sergeant Wall. Covering a distance of approximately 15 feet in approximately 4 seconds, measurements show he was within approximately 8 to 10 feet away from Sergeant Wall when Sergeant Wall raised his pistol in Mischa's general direction and fired, and near simultaneously, Officer Ayotte fired his TASER. These circumstances, objectively viewed, created an immediate apparent life-threatening situation with the reasonable belief that Mischa was about to stab either Sergeant Wall, or Mrs. Pataski-Fay who was immediately behind Sergeant Wall in the doorway to the living room.

On the night of January 1, 2023, Sergeant Wall and Officer Ayotte were presented with a situation commanding them to enter the home. Mrs. Pataski-Fay had reported her husband was

---

<sup>7</sup> Although, "[t]he act of producing or displaying a weapon shall constitute non-deadly force," RSA 627:9, that does not answer the different, and pertinent, question, as to whether there existed a reasonable belief that Merrill Mischa Pataski-Fay was imminently about to use deadly force when Sergeant Wall fired on him.

<sup>8</sup> Note that Sergeant Wall and Officer Ayotte each indicated during their interviews that they believed that Mischa was about to stab Sergeant Wall, Mrs. Fay, or both.

locked in the home office, and inside was their 17-year old son armed with a knife in the midst of a violent episode. Mrs. Pataski-Fay told them how worried she was for Mr. Fay's safety, as well as the fear that Mischa might harm himself or others. To ensure Mr. Fay's safety, officers had no choice but to enter the home to assess Mr. Fay's physical health, extract him if they could, and assess Mischa's physical health and mental condition. When they entered the home, Mrs. Pataski-Fay entered the home behind them, and was behind Sergeant Wall when Mischa came into the dining room with the knife at Sergeant Wall. Under these circumstances, the law does not require any private citizen or law enforcement officer in the officers' position to retreat before using deadly force to defend themselves or another from the imminent use of deadly force. Even if the law *did* require that someone to attempt retreat in such situations before using deadly force, retreat for these officers was not possible without putting their own lives and Mrs. Pataski-Fay's life in jeopardy. In four seconds, Sergeant Wall and Officer Ayotte were faced with an impossible situation where there could not advance nor retreat; and where they were faced with Mischa's imminent use of deadly force with a raised butcher's knife.

While Officer Ayotte's use of force was not a use of deadly force in this situation as it did not contribute to Mischa's cause or manner of death, it is germane to the reasonableness of Sergeant Wall's conclusion that he fired because of a belief that Mischa was about to stab him or Mrs. Pataski-Fay behind him. Officer Ayotte's conclusion was the same as Sergeant Wall's: that deadly force was necessary and that the use of deadly force on Sergeant Wall was so imminent, that Officer Ayotte did not have sufficient time to transition from his TASER to his pistol, and so he fired the TASER instead. Accordingly, based on a review of all the evidence, it was objectively reasonable for Sergeant Douglas Wall to conclude that Mischa Fay constituted an imminent threat of deadly force on January 1, 2023, when he was shot and killed. Based upon all the facts and circumstances known to Sergeant Wall at that time, it was reasonable for the officers to believe that Mischa Fay posed an imminent deadly threat. Accordingly, Sergeant Douglas Wall was legally justified in using deadly force against Mischa Fay, and no criminal charges will be filed for the use of deadly force against him.