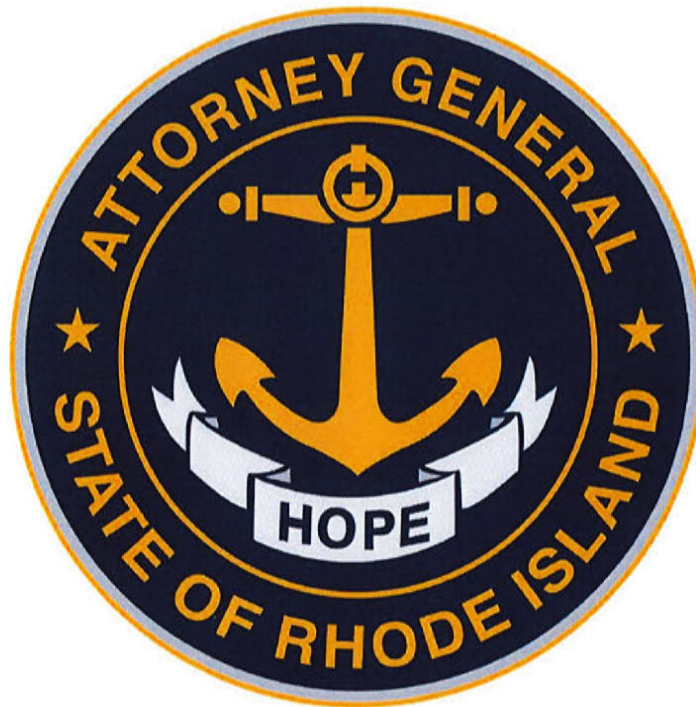


**STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL**

*Peter F. Neronha  
Attorney General*



**INVESTIGATIVE REPORT  
November 28, 2022**

<b>Incident Type:</b>	<b>Officer-Involved-Shooting/Death Resulting</b>
<b>Incident Location:</b>	<b>135 Water Street, Warren, R.I.</b>
<b>Incident Date:</b>	<b>September 2, 2021</b>
<b>Police Department:</b>	<b>Bristol Police Department</b>
<b>Officer Involved:</b>	<b>Major Scott McNally</b>

## SUMMARY OF FINDINGS

The Office of Attorney General has concluded its review of the officer-involved shooting incident involving Major Scott McNally on September 2, 2021. The investigation was conducted pursuant to the Attorney General's Protocol for the Review of Incidents Involving the Use of Deadly Force, Excessive Force, and Custodial Deaths ("the Attorney General Protocol"), together with the Rhode Island State Police and the Bristol and Warren Police Departments. Based on this review, we concluded that Major McNally's use of force was legally justified.

A fulsome account of the investigation may be found in the Rhode Island State Police Report of Investigation and attachments thereto which will be forwarded to you under separate cover. We lay out here only the facts most pertinent to our conclusion that Major McNally's discharge of his service weapon was objectively reasonable and necessary under the circumstances.

## EVIDENCE REVIEWED

1. Four 911 calls, 9/02/2021, at 2:14:56, 2:24:58, 2:15:17, and 2:15:17.
2. Police Radio Transmissions, Warren and Bristol Police Departments 9/2/21
3. ATF Trace Report, Glock GMBH, Model 22, Caliber 40, Serial # CS370US
4. RISP Report of Investigation (51 pages)
5. Transcribed Statements
  - a. Bristol Police Chief Kevin Lynch, 9/2/21 at 5:56 pm (4 pp)
  - b. Bristol Police Chief Kevin Lynch, 9/2/21 at 7:28 pm (9 pp)
  - c. Bristol Police Sergeant Michael Viera, 9/2/21 at 7:36 pm (6 pp)
  - d. Bristol Police Major Scott McNally, 9/2/21 at 5:43 pm (5 pp)
  - e. Bristol Police Major Scott McNally, 9/2/21 at 7:10 pm (9 pp)
  - f. Jason Furtado, 9/22/21 at 9:48 am (15 pp)
  - g. ██████████, 9/2/21 at 7:20 pm (11 pp)
  - h. ██████████, 9/2/21 at 5:41 pm (7 pp)
  - i. ██████████, 9/2/21 at 6:10 pm (8 pp)
  - j. ██████████, 9/2/21 at 5:24 pm (35 pp)
  - k. ██████████, 9/2/21 at 5:59 pm (22 pp)
  - l. ██████████, 9/2/21 at 8 pm (28 pp)
  - m. ██████████, 9/7/21 at 12 pm (9 pp)
  - n. ██████████, 9/3/21 at 12:30 pm (11 pp)
  - o. ██████████, 9/3/21 at 12:02 pm (14 pp)
  - p. ██████████, 9/2/21 at 5:29 pm (27 pp)
  - q. Warren Fire Chief James Sousa, 9/10/21 at 9:12 am (7 pp)
  - r. Bristol Lt. Steven St. Pierre, 9/2/21 at 7:20 pm (7 pp)
  - s. Warren EMS, Story Bernstein, 9/7/21 at 12:28 pm (6 pp)
  - t. Warren EMS, Kate Clancy, 9/7/21 at 12:44 pm (5 pp)
  - u. Warren EMS, Kenneth Winland, 9/7/21 at 12:36 pm (6 pp)



6. RISP Forensic Services Unit Report (9 pp)
7. RISP Forensic Services Unit Supplemental Report (1 pg)
8. Rhode Island Office of State Medical Examiners Autopsy Report, Michael Ouellette, 9/3/21 (5 pp plus 5 pp of attachments)
9. Rhode Island Office of State Medical Examiners Autopsy Report, Brian Remy, 9/3/21 (5 pp plus 2 pp of attachments)
10. Rhode Island Office of State Medical Examiners Manner of Death Report, 9/8/21 (1 pg)
11. Bristol Police Department Use of Force Policy
12. Major McNally Firearms Qualifications Sheet
13. Crime Scene Photographs
14. Warren Police Reports
  - a. Sergeant Marc Ferreira (2 pp)
  - b. Sergeant Joel Morrissette (2 pp)
  - c. Detective Donald Lanoie, Jr. (1 pg)
  - d. Officer Daniel Lagarto (2 pp)
  - e. Officer Kristopher Corre (2 pp)
  - f. Officer Lane Ukura (1 pg)

### **SUMMARY OF THE FACTS**

On Thursday, September 2, 2021, at about 2:56 p.m., members of the Warren Police Department responded to reports of an active shooter at the Italo American Club located at 13 Kelly Street in Warren, Rhode Island. On arrival, police encountered an injured male, Jason Furtado (DOB 1980) in the parking lot outside the club with two gunshot wounds to the waist/upper thigh area. The male reported that an individual, later positively identified as Michael Ouellette (DOB 1984), was shooting inside the Club. Warren police entered the club and encountered a deceased male, later identified as Assistant Warren Fire Chief Brian Remy (DOB 1954). The shooter was not located. Warren Police obtained a physical description of the suspect as a white male wearing a black leather jacket. This description was transmitted over the radio by police dispatch.<sup>1</sup> Warren Police contacted neighboring police departments for assistance as this was still an active situation.

At about 3:15 p.m., Chief Kevin Lynch and Major Scott McNally of the Bristol Police Department responded to Warren to assist with the developing situation. The two towns have a mutual aid agreement in place. Major McNally operated the unmarked cruiser while Chief Lynch was in the front passenger seat. According to Chief Lynch, the cruiser's overhead lights (but not sirens) were activated, and he deployed the air horn as necessary. While traveling north on Water Street in Warren, they heard a loud pop, consistent with a gun shot. Chief Lynch observed a white male coming out of the side

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<sup>1</sup> It was not until about 3:17 p.m. that Warren Dispatch identified Michael Ouellette as the possible suspect over the radio.



gate of a light green house on the corner of Sisson and Water Streets shooting at them. This was a short distance from the Italo-American club where the earlier shooting had taken place. Chief Lynch directed Major McNally to turn the cruiser around. Major McNally completed a three-point turn on Water Steet and stopped the cruiser facing south in front of the Waterdog Kitchen and Bar restaurant. This was a couple of hundred feet north of the suspect's location, across Sisson Street (which is a small side street), but on the same side of Water Street.

As Chief Lynch went to the rear of the cruiser to retrieve body armor, Mr. Ouellette discharged additional shots at the vehicle. At least one struck the front fender of the cruiser, on the passenger side. Major McNally exited the cruiser, crossed over to the sidewalk, and took cover behind the Waterdog restaurant's front landing which had columns and a short flight of concrete stairs. He observed that the shooter wore a black leather jacket matching the description of the suspect from the Italo American club. Major McNally stated he felt pieces of concrete and dirt hit him as the rounds went by him. Major McNally returned fire; he estimated he fired about eight rounds in Mr. Ouellette's direction before Mr. Ouellette retreated behind the wall and stopped firing. As this was happening, Chief Lynch stopped another motorist from driving into the area. Chief Lynch estimated that the subject fired between 12-14 shots at the officers. Chief Lynch did not discharge his weapon.

Major McNally made two radio transmissions as the encounter was unfolding. At 3:15:56 p.m., Major McNally radioed dispatch to "get on the horn with Warren. 119 uh, I think we are on Thames. Somebody just shot at us." It should be noted that Major McNally mistakenly referred to Water Street as Thames Street. At 3:16:46, Major McNally radioed: "Shots fired. Get everyone down here. Sisson and Thames. Shots fired."

Following the brief exchange of gunfire, the subject retreated behind a gate on the south side of 135 Water Street which is a light green, multi-story, multi-family house on the corner of Water Street and Sisson Street. Major McNally, as well as Lieutenant St. Pierre of the Bristol Police Department, who had just responded to the area, heard a single shot. A civilian onlooker called out that the subject was "down" and that they "got him." Chief Lynch, Major McNally and several other responding officers then approached the location where the shooter had retreated to in formation. They located Mr. Ouellette lying on the ground in the side yard of a 135 Water Street. Warren dispatch broadcast that the suspect was down over the radio at about 3:19 pm.

There was a large pool of blood next to Mr. Ouellette and it was evident that he was fatally shot in the head. Upon turning him over, officers located a .40 caliber Glock handgun under his body. Upon searching Ouellette, officers also recovered a loaded magazine from his front jacket pocket. Officers also located a loaded magazine on the sidewalk in front of 135 Water Street.

Three of several civilian witnesses who were interviewed about the incident had a particularly good view of the exchange of gunfire between Mr. Ouellette and Major



McNally. The first witness, [REDACTED], resides across the street from Mr. Ouellette, at [REDACTED] Water Street. She stated that she knew Mr. Ouellette for a few years from the Italo American Club. [REDACTED] stated that she was in her backyard when she hears shots go off. She ran to the front of her house and observed Mr. Ouellette walk towards several officers while firing his gun at them. She also observed the officers returning fire. She stated that she screamed at Ouellette to stop. According to [REDACTED] Mr. Ouellette fired multiple shots at the officers; she stated that he "emptied his gun." [REDACTED] also believes she saw Mr. Ouellette being shot in the hand.

A second witness, [REDACTED], stated that she heard gunshots when inside her apartment on Union Street. She went to her apartment's rear-view window from which she had a clear view of Water Street. [REDACTED] was able to record a portion of what she observed on her cellphone. [REDACTED] stated that she saw a male subject run and shoot at least four times on Water Street at the direction of Sisson Street. She could hear a man and a woman yelling at him to stop what he was doing. She witnessed him drop what looked like a magazine from the pistol he was holding and then reloading. He then walked from the sidewalk through a gate on the side of the building. She then heard a shot and saw his head jerk back. The man then fell to the ground.

The cellphone video taken by [REDACTED] clearly shows Mr. Ouellette entering the side yard of 135 Water Street through a gate. He is then seen shooting himself in the head and falling to the ground.

The third civilian witness interviewed, [REDACTED] also stated that he saw a male subject fire "wildly" at officers down Water Street. He claimed that the man fired at least 10-11 times. [REDACTED] observed one officer (likely Major McNally) return fire. [REDACTED] stated that he then saw the man's head turn into "a pink mist" and saw him fall to the ground. He told the responding officers that they "got him" and the man was down.<sup>2</sup>

The Medical Examiner's report lists Mr. Ouellette's cause of death as a gunshot wound to the head. Manner of death: suicide. Circumstances: shot self. The autopsy report indicated that the bullet entered underneath Mr. Ouellette's chin, traveled upward, front to back, and right to left. The bullet was lodged in the brain. Additionally, the autopsy report noted a gunshot wound to the right hand. The bullet traveled up the arm and was retrieved from the right forearm, near the elbow. The autopsy report also noted that toxicological testing detected a blood alcohol concentration of .277% and low levels of alprazolam, hydrocodone and oxycodone.

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<sup>2</sup> It should be noted that although [REDACTED] perceived Mr. Ouellette to have been shot by the police, the account of [REDACTED] her cellphone video, the medical examiner's report, and the account of the police officer witnesses on the scene lead to the clear conclusion that [REDACTED] was mistaken and Mr. Ouellette died of a self-inflicted gunshot wound.

The State Police Forensic Services Unit processed the scene and seized the following items, proceeding from North to South:

- A. Bristol Police Cruiser, Chevy Impala bearing RI registration 394-968. The cruiser was parked in front of the Waterdog Café, facing south, with both front doors open. The FSU identified two defects on the front bumper. These defects were consistent with a projectile perforating the front driver's side bumper on the driver's side and exiting on the passenger side.
- B. Front entrance of Waterdog Café, 125 Water Street. The State Police FSU seized eight nickel-plated .40 caliber cartridge casings from the sidewalk by the front entrance of the restaurant. This is the area where Major McNally was positioned when he fired his weapon. The FSU located several defects on the sidewalk, tree, foundation and south face of the Waterdog Café which were consistent with the passage of bullets.
- C. Intersection of Water Street and Sisson Street (just south of Waterdog Cafe FSU found two projectiles in the center of the roadway at the intersection of Sisson Street and Water Street. Additionally, a white Toyota parked on Sisson Street facing east had two defects consistent with bullet fragments.
- D. 135 Water Street. The entrance to the light green, multi-family building at 135 Water Street consisted of a two-step cement base, bordered with white circular columns. FSU identified multiple defects on the columns consistent with the passage of bullets.
- E. Area in front of side yard of 135 Water Street: On the south side of the building, there was a fence and a gate leading to a side yard where Mr. Ouellette's body was found. On the sidewalk in front of the gate, FSU identified blood stains, a fully-loaded, .40-caliber, 15-round magazine, one .40 caliber cartridge casing, and two bullet defects on the fence. Four additional .40 caliber cartridge casings were found in the south bound lane of Water Street in front of the gate.
- F. Side yard of 135 Water Street (location of Mr. Ouellette's body): The FSU observed Mr. Ouellette face down in a pool of blood in the side yard of 135 Water Street. The FSU seized Mr. Ouellette's pistol, a Glock 22, .40 caliber pistol, serial number CSS370US, and noted bloodstains on the pistol. The FSU located a single .40 caliber cartridge casing and a .40 caliber cartridge next to Mr. Ouellette's body. The State Police also seized two magazines found near the body of Mr. Ouellette. According to the FSU report, the pistol seized next to Mr. Ouellette's body had been emptied and secured immediately upon being found by responding officers. One of the magazines recovered next to Mr. Ouellette's body was a .40 caliber 15-round capacity magazine. 15



cartridges were inventoried from this magazine. A second 15-round .40 caliber magazine was also recovered. Three cartridges were inventoried from that magazine. The FSU located two bullet defects on the fence to the side yard of 135 Water Street.

- G. Area south of 135 Water Street. The FSU noted damage to a lamppost and the front of the building located at 155 Water Street consistent with the passage of bullets. They seized two projectiles from the building at 155 Water Street and a projectile from the road in front of 165 Water Street.
- H. Major McNally's Firearm. The State Police seized the division-issued firearm assigned to Major McNally. Major McNally used a Glock 27, .40 Caliber pistol, serial number BCEM432 and two magazines. The State Police seized one .40 caliber nickel-plated S&W cartridge from the chamber of the firearm. Eight cartridges were inventoried from the magazine that was secured in the well of the pistol. The second magazine contained two cartridges of the same type. The maximum capacity for Major McNally's department-issued pistol was ten rounds.

## **LEGAL ANALYSIS**

### Applicable Law

When considering a police officer's actions which involve the use of force in his/her capacity as a peace officer a two-part analysis is required. First, it must be determined if the officer's use of force in arresting or detaining the suspect was necessary and reasonable. If an officer's conduct is found to be necessary and reasonable, then the inquiry ends, and no criminal charges will stem from the incident. If, however, it is determined that the use of force was not necessary and not reasonable then an inquiry must be made as to whether the use of force meets the elements of the applicable criminal statute, in this case Felony Assault, R.I. Gen. Laws § 11-5-2. In this case, as we find that Major McNally's conduct was objectively reasonable, we do not engage in the second prong of the analysis.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A "seizure" of a "person," can take the form of "physical force" or a "show of authority" that "in some way restrain[s] the liberty" of the person. Terry v. Ohio, 392 U.S. 1, 19, n. 16, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). An arrest or seizure of a person carries with it the right of police officers to use some degree of force. Graham v. Connor, 490 U.S. 386, 396 (1989). "All claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest ... or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard...." Graham, 490 U.S. at 395; Tennessee v. Garner, 471 U.S. 1 (1985).



The Fourth Amendment instructs that the *degree* of force law enforcement officers are permitted to use must be “objectively reasonable” under the totality of circumstances. Tennessee v. Garner, 471 U.S. 1, 8-9 (1985). Relevant facts include “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting or attempting to evade arrest by flight.” Graham, 490 U.S. at 396. The reasonableness of an officer’s 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.” Graham, 490 U.S. at 396. The Supreme Court has held that the determination of reasonableness must allow “for the fact that police officers are often forced to make split-second judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” Graham, 490 U.S. at 396-97. Critically, the reasonableness inquiry is an objective, not a subjective, one. The “question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” Id. (emphasis added).

The Bristol Department’s Use of Lethal Force policy comports with the constitutional standards governing use of deadly force. The policy provides, in relevant part, that an officer is authorized to use deadly force “when the officer has an objectively reasonable belief that an imminent threat of deaths or serious bodily injury exists to himself/herself, another officer, or another person(s).” Bristol Police Department Use of Force and Shooting Review General Order 390.10. The policy provides that a warning should be provided when appropriate and that, when using lethal force, officers must consider the threat to innocent bystanders.

### Analysis

Based on the extensive investigation conducted by the Rhode Island State Police, a summary of which is recounted above, we conclude the following:

1. When Chief Lynch and Major McNally first encountered Mr. Ouellette, he was firing directly at them. Mr. Ouellette was located outside his residence, 135 Water Street, Warren, R.I. Mr. Ouellette initiated the confrontation with police, as they were driving by, unaware of his presence there or his connection to the incident at the Italo-American Club.
2. After Mr. Ouellette opened fire at the officers, they turned their vehicle around to engage him. They then realized that Mr. Ouellette fit the description of the person who just, a short time earlier, shot multiple people at the nearby Italo-American Club, killing one person and injuring another.
3. There were multiple civilian motorists, pedestrians, and onlookers around as this was the middle of the day, and Water Street is a busy street in downtown Warren.
4. Police appropriately turned around to engage Mr. Ouellette as he presented a clear and imminent danger of serious bodily injury or death to the officers and others.
5. Mr. Ouellette continued to fire multiple rounds (at least five and as many as twelve) at the officers during the confrontation.



6. Chief Lynch took cover behind the cruiser and did not discharge his firearm. Major McNally took cover behind the front landing of the Waterdog restaurant and returned fire at Mr. Ouellette. It appears that Major McNally fired eight times and that one of the projectiles struck Mr. Ouellette's hand.
7. Mr. Ouellette retreated to the side yard of 135 Water Street, where he fired a single shot to his head.
8. As the medical examiner's report makes clear, this self-inflicted gun shot wound was the cause of Mr. Ouellette's death.

Major McNally's use of deadly force was objectively reasonable in light of the fact that he was faced with deadly force from Mr. Ouellette. Mr. Ouellette fired his gun multiple times at the police, having only a short time earlier killed and injured other civilians. This is corroborated by multiple eyewitnesses as well as the police and by the FSU report which identified at least five cartridge casings in the area in front of 135 Water Street where Mr. Ouellette was positioned when he fired his weapon. It is also corroborated by the bullet damage to the Waterdog Café, police cruiser, and surrounding area. As such, Mr. Ouellette presented an imminent risk of death or serious bodily injury to Major McNally, other officers, and nearby civilians. In responding, Major McNally was acting in self-defense and in an effort to neutralize an active shooter. Major McNally's report of firing approximately eight times was also corroborated by the casings located in the vicinity of 125 Water Street and the number of cartridges remaining in his department-issued magazine.

Based on our review of the evidence under the applicable legal standards governing use of deadly force set forth above, there can be no question that Major McNally's actions were justified. What is more, his use of force was not the cause of Mr. Ouellette's death.

### CONCLUSION

September 2, 2021, was a tragic day for the Town of Warren. Mr. Ouellette not only shattered the peace of a long-time social gathering place in town, the Italo American Club, but killed the town's Assistant Fire Chief, Mr. Brian Remy, and injured another resident, Mr. Jason Furtado. Mr. Ouellette then continued his violent outburst on Water Street, only a few blocks away, where he initiated a shoot-out with the police. The confrontation ended when Mr. Ouellette took his own life. Based on the facts of the investigation, and the applicable law, we conclude that Major McNally's use of deadly force was objectively reasonable and necessary. This matter is therefore closed.

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