

**Officer-Involved Shooting Incident
In Rochester, New Hampshire
August 20, 2018**



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**ATTORNEY GENERAL'S REPORT REGARDING AUGUST 20, 2018
OFFICER-INVOLVED SHOOTING INCIDENT IN ROCHESTER,
NEW HAMPSHIRE**

I. INTRODUCTION

New Hampshire Attorney General Gordon J. MacDonald announces the completion of the investigation into the officer-involved shooting that occurred in Rochester, New Hampshire on August 20, 2018, that resulted in the fatal shooting of Douglas Heath (age 38). The purpose of this report is to summarize the Attorney General's factual findings and legal conclusions regarding the use of deadly force. The findings and conclusions in this report are based upon information gathered during the investigation, including viewing the area of the shooting as well as photographs and videos of the scene of the incident; listening to numerous recorded interviews of witnesses and radio transmissions made on the day of the shooting; watching video recordings that captured portions of the incident; and reviewing numerous official reports generated during the course of the investigation into the incident as well as reports generated before the incident regarding prior police encounters with Mr. Heath.

As provided in RSA 7:6, the Attorney General is the State's Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever law enforcement officers use deadly force, it is done in conformity with

the law. Following a full investigation of this deadly force incident by the Attorney General's Office and the New Hampshire State Police Major Crime Unit, the Attorney General finds that the law enforcement use of deadly force against Douglas Heath on August 20, 2018, was legally justified.¹

II. SUMMARY OF THE FACTS

At about 3:00 p.m. on August 20, 2018, a detective from the Rochester Police Department spotted a man who he recognized to be Douglas Heath driving an SUV similar to one seen driven by Mr. Heath two days earlier in Rochester, when he sped away during an attempted motor vehicle stop and eluded police detention. The detective radioed for backup upon spotting Mr. Heath, and he and fellow Rochester police officers, as well as troopers from the State Police who also responded to the call for assistance, attempted to locate Mr. Heath and his vehicle in the area where they initially were seen.

State Police Trooper Haden Wilber spotted Mr. Heath, and followed him into a motel parking lot located off Route 125 in Rochester. While in the parking lot, Trooper Wilber activated the police lights on his vehicle, attempting to detain Mr. Heath and the SUV that he was driving. In response, Mr. Heath sped off, and drove northbound on Route 125, towards downtown Rochester. Trooper Wilber pursued in his vehicle. During that pursuit, Mr. Heath sped and drove erratically,

¹ As is detailed later in this report, four law enforcement officers fired weapons at Mr. Heath. It is unknown at this time which officer(s) actually struck Mr. Heath. That being said, all four officers used deadly physical force against Mr. Heath, RSA 627:9, II ("Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force."), and thus they are all the subject of this report.

including passing cars in the northbound breakdown lane and also crossing the median and driving into oncoming southbound traffic. Trooper Wilber at times relayed his location over the police radio, and as a result other law enforcement officers from the Rochester Police Department and the New Hampshire State Police drove to those locations in order to assist.

While Mr. Heath sped down Route 125 towards downtown Rochester, he attempted to make a left-hand turn at the intersection of Oak Street. Mr. Heath could not complete the turn, and his SUV crashed and stopped on the northwest corner of the intersection. Within about twenty seconds of that crash, three law enforcement officers arrived at the scene – Troopers Wilber and Nathaniel Goodwin of the New Hampshire State Police, and Officer Michael Lambert of the Rochester Police Department. There also were many private citizens in cars that were stopped at the intersection. Mr. Heath was the only person in the crashed SUV.

Most of the armed encounter between Mr. Heath and law enforcement at the intersection of Oak Street and Route 125 that followed was captured on video recordings, both law enforcement and private citizen. Shortly after the crash, Mr. Heath left the SUV through the front passenger-side door and fell to the ground. He held in his left hand a loaded semiautomatic pistol. Within seconds of Mr. Heath getting out of the crashed SUV, he pulled back on the slide of the pistol, thereby placing a round in the chamber and making the gun capable of firing a shot upon pulling the trigger.

Despite repeated verbal commands given by law enforcement at the scene to drop his weapon, Mr. Heath fired a shot from his pistol. About two seconds after that first shot, Mr. Heath, fired another shot; his pistol was pointed in the direction of where Trooper Goodwin, Officer Lambert, and at least one private citizen were located. About one second later, Mr. Heath, still on the ground next to the crashed SUV, once again pointed the gun that he held towards nearby police and private citizens and fired a third shot. One of Mr. Heath's shots struck the roof of a pickup truck stopped nearby Trooper Goodwin and Officer Lambert, just above the truck's driver, who was still in the vehicle.

Almost instantaneously with the third shot fired by Mr. Heath, Troopers Wilber and Goodwin and Officer Lambert all fired their weapons at Mr. Heath. At this time as well, Detective Geoff Moore from the Rochester Police Department arrived and took up a position behind Trooper Goodwin and Officer Lambert, and saw Mr. Heath point the gun in his direction. Detective Moore then fired at Mr. Heath as well. While officers were firing at Mr. Heath, his pistol discharged a fourth time, and the shot struck him in the face. Mr. Heath was shot numerous times and died during his exchange of gunfire with law enforcement.

The four law enforcement officers who encountered and fired at Mr. Heath discharged a total of thirty shots. As many as fifteen of those shots struck Mr. Heath. The weapon that Mr. Heath held and fired was a stolen semiautomatic pistol, and when it was recovered after the armed encounter it was loaded with five additional and unfired bullets.

III. THE INVESTIGATION

A. Events Leading up to Law Enforcement's Interactions with Douglas Heath on August 20

On August 15, 2018, Rochester Detective Geoff Moore was given information regarding a man identified to him as Douglas Heath. As a result of the information learned by Detective Moore, later on August 15 he wrote an Officer Safety Briefing Form pertaining to Mr. Heath. Safety Briefing Forms are internal Rochester Police Department documents that are prepared in order to notify officers of potentially dangerous individuals and/or situations, and the information set forth in those documents typically is provided to officers before patrol shifts begin. The Safety Briefing Form prepared by Detective Moore notified police officers of the following:

I received credible information that Douglas Heath is staying at 22B Lafayette Street. I was told that Douglas may be in possession of "3 firearms" and that he has no intention of going to jail.

He currently has several warrants to include one from the Federal Court for trafficking narcotics as well as the State of Maine for running from [Maine State Police].

As to the arrest warrants noted by Detective Moore in the Safety Briefing Form, Mr. Heath had a warrant issued out of Strafford County Superior Court in April, 2018, for failing to appear for his arraignment on an open felony case,² and

² The outstanding federal arrest warrant was issued in June 2018, and was the result of the United States Attorney's Office taking over prosecution of the felony drug charges from the Strafford County case. That federal warrant was sealed as of August 20, 2018, and it is highly unlikely that Mr. Heath knew of it.

he also had a separate warrant issued out of Sanford, Maine, in June, 2018, for eluding police officers.³

At about 2:00 p.m. on August 18, 2018, Detective Moore, who was acting on a tip regarding Mr. Heath's whereabouts, saw Mr. Heath get into and drive off in a white Cadillac SUV in Rochester. Upon seeing Mr. Heath, Detective Moore requested backup and followed him by car. When two marked police cars responded to Detective Moore's request for assistance, the officers attempted to initiate a traffic stop of Mr. Heath's vehicle. During that attempted traffic stop, Detective Moore and the backup units all activated their police lights. In response, Mr. Heath sped away, and the police lost sight of the vehicle that he was driving and were unable to locate him.

B. Initial Interactions Between Law Enforcement and Douglas Heath on August 20, 2018

Two days later, on August 20, at shortly before 3:00 p.m. Detective Moore was driving a Rochester police SUV when he passed who he recognized to be Mr. Heath. Detective Moore saw that Mr. Heath was driving a Cadillac SUV. That SUV appeared to be the same vehicle that Detective Moore had seen Mr. Heath driving on August 18, except it was grey instead of white in color, although the

³ As to the Maine arrest warrant, on June 11, 2018, an officer of the Sanford Police Department attempted to stop a car being driven by and registered to Mr. Heath. The car sped off and was pursued by several police cars for several miles, into Lebanon, Maine. During the course of the pursuit, Mr. Heath's car reached speeds in excess of ninety miles-per-hour, passed several cars erratically, and caused several near-collisions. Police ultimately ended the pursuit for safety reasons, and Mr. Heath's car was later found abandoned and was seized by the police.

grey appeared to be spray-painted on.⁴ Detective Moore turned his SUV around in order to follow Mr. Heath's vehicle, but by the time that he did so he lost sight of it.

As a result of Detective Moore's sighting of Mr. Heath, Detective Moore radioed for assistance from both Rochester Police and the New Hampshire State Police. In addition, the following "BOLO" – a "Be On the LookOut" notification sent among law enforcement – was issued:

BOLO for a smoke grey Cadillac SRX operated by Douglas Heath (DOB: [] 1980). The vehicle is believes [sic] to be NH 4414375, which is a white 2005 Cadillac SRX that may have now been spray-painted grey. Douglas Heath has multiple warrants and was just seen operating the vehicle in Rochester within the last half hour. Subj. is a 38 year old white male with blue eyes and dark brown hair, 6'00", 185 lbs. officer safety – use caution: subject may be armed.

Rochester Police Officer Michael Lambert, who was at the Rochester police station, responded to the call initiated by Detective Moore. Officer Lambert was aware of the substance of the Safety Briefing Form that Detective Moore had prepared regarding Mr. Heath.

While Officer Lambert was looking for Mr. Heath at a parking lot near where Mr. Heath had last been spotted by another officer, he encountered New Hampshire State Police Trooper Nathaniel Goodwin, who had responded to the area for the call for backup. Officer Lambert told Trooper Goodwin of the substance of the Safety Briefing Form on Mr. Heath.

⁴ The Cadillac SUV that Mr. Heath was seen driving was registered to another person. Although that Cadillac SUV was not legally owned by or registered to Mr. Heath, for purposes of identification in this report it hereinafter will be referred to as "Mr. Heath's SUV."

New Hampshire State Police Trooper Haden Wilber also responded to Detective Moore's call for backup. At the time, Trooper Wilber was with his canine partner, and driving in an unmarked state police SUV that was equipped with police lights and a siren. Trooper Wilber heard over the radio that Mr. Heath was the wanted suspect, and that he may be armed. Trooper Wilber also heard a partial description of Mr. Heath's SUV.

From Trooper Wilber's assignment with a drug interdiction unit, he was familiar with Mr. Heath's name, and also had reason to believe that Mr. Heath frequented the Riviera Motel, located off of Route 125 in Rochester.⁵ As a result, Trooper Wilber drove to that area, and there saw a vehicle matching the description of Mr. Heath's SUV drive into the Riviera Motel's parking lot. Trooper Wilber also pulled into the parking lot, turning on his vehicle's police lights as he entered.

In the parking lot, Trooper Wilber saw the driver of the SUV look back at him, then change course and speed towards his vehicle in reverse. The SUV passed Trooper Wilber's own SUV and sped northbound down Route 125, towards downtown Rochester. Trooper Wilber radioed that he was pursuing the SUV.

Route 125 is a heavily-travelled thoroughfare going north/south, with lanes of traffic in each direction, as well as turning lanes at locations where the pursuit

⁵ Although referred to throughout this report as "Route 125," at places the thoroughfare is also known as "Calef Road" and "Gonic Road."

occurred. Trooper Wilber estimated that Mr. Heath's speed at times reached in excess of 80 miles-per-hour. Mr. Heath also passed dozens of cars while going northbound on Route 125. He passed moving cars on the road's northbound breakdown lane, and also crossed the "double yellow" median onto oncoming southbound traffic, causing several vehicles in that lane to swerve off the road.⁶ As Trooper Wilber pursued Mr. Heath, he updated their locations. Trooper Goodwin and Officer Lambert heard those incoming and ongoing communications, and drove together, in separate vehicles, to Route 125 in order to assist. Officer Lambert was slightly ahead of Trooper Goodwin.

Trooper Wilber's pursuit of Mr. Heath ended at the intersection of Route 125 and Oak Street/Colby Street in Rochester [hereinafter, "the Oak Street intersection"]. This intersection is about two miles from the Riviera Motel where Trooper Wilber began to pursue Mr. Heath's SUV, and less than a mile from downtown Rochester, in the direction that the car was heading. Fig. 1.

At the Oak Street intersection, Mr. Heath's SUV turned left, crossing onto Oak Street and into oncoming traffic.⁷ The SUV did not make the turn but jumped the curb, and crashed on the northwest corner of the intersection, coming to a stop

⁶ One person interviewed by investigators recounted that as he was driving on Route 125 towards downtown Rochester, a car – which the eyewitness saw crashed at the intersection of Oak Street and Route 125 seconds later – sped past him in the breakdown lane, passed several other vehicles, and then turned back onto the northbound travel lane. That eyewitness recounted that the speeding car shook his car and frightened him as it passed.

⁷ One person interviewed by investigators recounted that he had a green light and was driving onto Oak Street from Colby Street when he saw a car speeding into the intersection from Route 125. The eyewitness braked hard, causing a skid mark in the road, and saw as the oncoming car swerved and crashed at the intersection.

near a building. Fig. 2.⁸ The Event Data Recorder of Mr. Heath's SUV – a device that records and saves a variety of information regarding a motor vehicle's functions just prior to a triggering event such as a crash – was recovered and analyzed. Recovered data indicates that Mr. Heath's SUV was travelling about seventy-one miles-per-hour about five seconds before the crash occurred. The posted speed limit for that area is thirty-five miles-per-hour.

Trooper Wilber parked his patrol car in the Oak Street intersection behind the crashed SUV. Throughout the armed encounter that followed, Trooper Wilber stood by his vehicle, alternating his position between near the driver's door and near the front passenger's door. Fig. 3. Trooper Wilber was the first law enforcement officer on-scene.

Within about ten seconds, Trooper Wilber was joined by Officer Lambert and Trooper Goodwin, who arrived on scene together, in their separate vehicles, from the southbound side of Route 125. Officer Lambert parked his patrol SUV on the southbound side of Route 125 at the front of the intersection, and stood by

⁸ Attached to this report are several photographs. Where present, the following colors are used in those photos and diagrams to identify relevant people, locations, and/or objects:

Douglas Heath – red
Trooper Haden Wilber – blue
Trooper Nathaniel Goodwin – green
Police Officer Michael Lambert – orange
Detective Geoff Moore – yellow
Other referenced people/vehicles/items – white/grey

The aerial photograph of the Oak Street intersection was taken after the armed encounter between Mr. Heath and law enforcement, and the location of the relevant vehicles remained unchanged between when the encounter unfolded and when the photo was taken. There are vehicles pictured that were not present during the encounter, in particular the fire truck in the intersection and the large State Police van at the Oak Street side of the intersection.

the driver's door throughout the armed encounter that followed. Trooper Goodwin parked his patrol car behind Officer Lambert's patrol SUV, and positioned himself to the right behind a stopped grey pickup truck; that vehicle's driver remained in it throughout the armed encounter. Fig. 4.⁹ Detective Moore, the last of the four law enforcement officers involved in the armed encounter with Mr. Heath to arrive at the Oak Street intersection, also approached from southbound Route 125, and parked the vehicle that he was driving behind Officer Lambert's patrol SUV. Fig. 5.¹⁰

A review of law enforcement radio transmissions from the afternoon of August 20 provides the following timeline of events, from the first sighting of Mr. Heath to the beginning of the armed encounter at the Oak Street intersection:

<u>Approximate Time</u>	<u>Event</u>
2:59 p.m.	Detective Moore reports sighting of Mr. Heath/his vehicle
3:01 p.m.	Rochester police officer reports seeing Mr. Heath's vehicle enter parking lot of area gas station
3:01-3:07 p.m.	Law enforcement gathers at location of last sighting of Mr. Heath's vehicle
3:08 p.m.	Law enforcement does not encounter Mr. Heath's vehicle at its last reported location

⁹ The larger green circle indicates where Trooper Goodwin stopped his vehicle, and the smaller green circle indicates his approximate position during the armed encounter with Mr. Heath.
The stopped pickup truck is circled in grey.

¹⁰ The larger yellow circle indicates where Detective Moore stopped his vehicle, and the smaller yellow circle indicates his approximate position during the armed encounter with Mr. Heath.

3:09-3:14 p.m.	Law enforcement searches for Mr. Heath's vehicle
3:15 p.m.	Trooper Wilber reports seeing Mr. Heath's vehicle pull into Riviera Motel
3:17 p.m.	Mr. Heath's vehicle reported going northbound on Route 125
3:17 p.m.	Reported vehicle crash at Oak Street Intersection

C. The Armed Encounter Between Douglas Heath and Law Enforcement at the Oak Street Intersection

The armed encounter that occurred between Douglas Heath and law enforcement officers at the Oak Street intersection following the crash of his SUV spanned about forty-eight seconds, from the time of the crash until the final gunshot. In addition to the four law enforcement officers involved in that armed encounter, several private citizens witnessed the entirety or portions of the encounter. Portions of the armed encounter also were video recorded, from three different vantage points.

1. Video recordings

Several video recordings were obtained during the course of the investigation. Three of those video recordings captured portions of the armed encounter between Douglas Heath and law enforcement at the Oak Street intersection. Two of those recordings were taken from the police vehicles used by Officer Lambert and Detective Moore. Fig. 6. Those vehicles were equipped with cameras mounted so as to show events in front and to the right of the vehicles'

windshields.¹¹ The third recording was a cellphone video taken by Austin McKenzie, a private citizen who was driving a car that was stopped at the southeast corner of the Oak Street intersection. Fig. 6 (circled in white).

All three video recordings have accompanying audio as well as video. Full and unedited copies of the three video recordings taken at the Oak Street intersection are available for viewing on the Attorney General Office's website, as attachments to this report. They contain graphic language and images. Timestamps have been placed on all three video recordings. Those timestamps are synchronized so as to show identical events as they unfold on each recording.

a. Video recording taken from Officer Lambert's vehicle

As Officer Lambert approaches the Oak Street intersection, Mr. Heath's SUV crosses the intersection, going from left to right and facing Officer Lambert's direction. Fig. 7. Trooper Wilber's unmarked SUV follows and pulls up in the middle of the intersection, with its lights activated. Fig. 8. Officer Lambert arrives and stops at the intersection about twenty seconds after Mr. Heath crashes his SUV, and pulls up next to a grey pickup truck, with the crashed SUV in front and to the right; Trooper Wilber is standing to the front passenger side of his unmarked SUV, his pistol drawn and pointed at the crashed SUV. Fig. 9.¹²

¹¹ The vehicles used by Troopers Wilber and Goodwin were not equipped with video cameras. Neither Rochester police officers nor State Police troopers have body cameras.

¹² The smoke emitting from the front area of the crashed SUV in this and the other videos likely is from damage to the vehicle's engine as well as gas discharge from the vehicle's airbag, which deployed.

The events that follow – from Officer Lambert’s arrival at the Oak Street intersection to the last shot fired – unfold in about twenty-nine seconds. Officer Lambert, who is standing by the driver’s door of his patrol SUV to the left of the video camera’s view, is not seen in the video, but his voice is heard.

Officer Lambert yells three times, “Let me see your hands.” Mr. Heath gets out of the car from the front passenger door and falls to the ground, holding a pistol in his left hand. Fig. 10. Officer Lambert then yells, “Drop your gun, drop it.” Officer Lambert repeats his command, “Drop your gun,” three more times as Mr. Heath lies on the ground. Fig. 11. At about the same time, Trooper Wilber holsters his pistol and moves around to the driver’s side of his unmarked SUV. During that time, Mr. Heath moves his right hand to his left hand and makes a motion consistent with sliding back the upper receiver of the pistol held in his left hand, thereby chambering a round and making the weapon capable of firing. Fig. 12.

After Officer Lambert yells multiple commands for Mr. Heath to drop his gun, Mr. Heath fires a gunshot. Fig. 13. At this point, Trooper Wilber, repositioned to the driver’s side of his unmarked SUV, redraws his pistol, and Officer Lambert repeats his command, “Drop your gun.” About two seconds after Mr. Heath first fires his pistol, he fires another shot, as Officer Lambert yells, “Drop it.” For the second shot, Mr. Heath’s pistol is pointed in the direction of where Officer Lambert, Trooper Goodwin, and at least one private citizen – the driver of the grey pickup truck in between those two officers – were located. Fig.

14. Subsequent measuring of locations indicate that Mr. Heath was about fifty feet from the grey pickup truck and Officer Lambert's patrol SUV, and about forty feet from Trooper Wilber's unmarked SUV.

About a second after Mr. Heath fires his pistol a second time, he draws his left arm across his chest, again pointing his gun in the direction of Officer Lambert, Trooper Goodwin, and at least one private citizen, and fires another shot.

Fig. 15. At this time, multiple shots are fired at Mr. Heath as he rolls on the ground; several rounds are seen striking Mr. Heath and the ground around him. At one point as Mr. Heath is rolling on the ground, his gun discharges a fourth time.

Fig. 16. Prior to at least the second shot fired by Mr. Heath, there is no audio or visual evidence of any shots fired other than those fired by him.¹³ After that gunfire directed at Mr. Heath, he lies prone on the ground and never moves, and multiple officers approach his body.

b. Private citizen cellphone video

Austin McKenzie was in his car stopped across the intersection from where Mr. Heath crashed his SUV. While at the intersection, Mr. McKenzie saw a car speed through the intersection, attempt to make a left-hand turn from Route 125, and crash on the corner across from him. Mr. McKenzie took his cellular telephone and was going to take a photograph of the crash, but when he saw a man

¹³ As to the third shot fired by Mr. Heath, it occurs nearly instantaneously with when law enforcement officers begin firing on him.

exit the crashed SUV holding a gun he began to video record events on his cellphone.

The events recorded by Mr. McKenzie with his cellular telephone capture a portion of the armed encounter between Mr. Heath and law enforcement at the Oak Street intersection. That video is fifty-nine seconds in length, and the events recorded in it overlap the same events captured by the video taken from the patrol SUV that Officer Lambert was driving, although from a different vantage point. All of the events recorded in Mr. McKenzie's cellphone video also were recorded by the camera in Officer Lambert's patrol SUV. The cellphone video was not taken from a steady position, and at times loses focus.

The video begins after Mr. Heath has crashed his SUV, and as he falls to the ground next to that vehicle, by the front passenger-side door; Trooper Wilber's unmarked SUV is to the left, with its police lights on. Although voices can be heard in the video, the predominant noise is a continuous siren or alarm – likely the siren from Trooper Wilber's unmarked SUV¹⁴ – which makes discerning what is said difficult.

About five seconds into the video, Mr. Heath is seen making the chambering motion for his pistol, enabling it to fire. Fig. 17. The video also captures the distinctive metallic sound made when the top slide of a gun is released during that chambering process. About eight seconds into the video, a

¹⁴ According to Trooper Wilber, the siren that he had activated in his unmarked SUV emitted a high-pitched and continuous sound, consistent with that heard during the video recording taken by Mr. McKenzie.

gunshot is heard. At that point in time, Mr. Heath is lying on his back next to the crashed SUV and holding an object in his left hand; it appears to be a gun that he fired. Fig. 18.

About ten seconds into the video, Mr. Heath, still lying on his back, brings his left arm across his chest and points it to his right, and another gunshot is heard, with a puff of smoke coming from the object Mr. Heath holds in his left hand.

Fig. 19. The area where Mr. Heath points his gun is where Officer Lambert and Trooper Goodwin are located, as well as the driver in the stopped pickup truck where those two were positioned. About one second later, another gunshot is heard; the cellphone is moving at this point, making it difficult to see the corresponding video recorded events, although it appears to be Mr. Heath firing another shot from his pistol.

For the next approximately seven seconds in the video, multiple gunshots are heard in rapid succession, and several rounds visibly hit Mr. Heath and the ground around him as he rolls on the ground. Also as Mr. Heath is rolling – about twelve to thirteen seconds in the video – the pistol that he is holding discharges a fourth time, and appears to strike him on the left side of the face. Fig. 20. Within seconds from when the gunfire at Mr. Heath begins, he lies prone and does not move. Mr. McKenzie is heard saying in substance that the man who he filmed was dead, “came out fucking shooting,” and “got lit the fuck up.” The cellphone

video ends as a law enforcement officer – identified as Trooper Wilber – approaches Mr. Heath’s motionless body with his gun drawn.¹⁵

c. Video recording taken from car driven by Detective Moore

Detective Moore approaches the Oak Street intersection from Route 125 southbound, and parks his vehicle next to Trooper Goodwin’s parked cruiser and behind Officer Lambert’s parked patrol SUV; there also is a grey pickup truck parked in front of Detective Moore’s vehicle. Fig. 21. Trooper Goodwin is seen standing next to the pickup truck’s right rear taillight, shouldering a rifle aimed at Mr. Heath’s position, and Trooper Wilber is seen beyond the right hood of Officer Lambert’s car; Officer Lambert, standing to the left of his car by the driver’s door, is not visible. Fig. 22. Although Detective Moore’s vehicle was facing in the direction of Mr. Heath’s position, the video camera’s view to Mr. Heath and most of his crashed SUV is blocked by the stopped pickup truck.

At about the same time when Detective Moore stops his vehicle at the Oak Street intersection a gunshot is heard. About two seconds later, a second gunshot is heard, and Detective Moore transmits over his police radio, “Shots fired.” Fig. 23. About a second later, a third gunshot is heard, and an object is observed.

¹⁵ Mr. McKenzie reported that the man who he saw leave the crashed SUV fired at least two shots with the gun that he held, the first into the air and the second “toward the police cruisers” – a location described by Mr. McKenzie consistent with where Officer Lambert and Trooper Goodwin were positioned. Mr. McKenzie further reported that the man’s actions placed him in fear for his safety, and that he believed that the law enforcement officers who fired at the man “did what they had to do.”

Another motorist stopped at the Oak Street intersection provided investigators with a video that she had taken, but that video recorded events following the exchange of gunfire between Mr. Heath and law enforcement, and did not depict any of the parties involved.

striking the driver's side roof of the occupied pickup truck parked between Officer Lambert and Trooper Goodwin. Fig. 24.¹⁶

That third gunshot is followed by numerous additional gunshots. A few seconds later, Detective Moore – dressed in blue jeans, a white shirt, and a blue tactical vest marked “POLICE” – runs to the area between Officer Lambert's car and the parked pickup truck and firing his weapon at Mr. Heath's position. Fig. 25.

2. Eyewitness Accounts

All four of the law enforcement officers who encountered Douglas Heath at the Oak Street intersection and fired at him gave full interviews. Investigators also interviewed several private citizens who witnessed either the pursuit of Mr. Heath's SUV on Route 125 or the ensuing armed encounter at the Oak Street intersection. Below is a summary of those various accounts.

a. Trooper Haden Wilber

Trooper Wilber was interviewed on August 28, 2018. Trooper Wilber has been a member of the New Hampshire State Police for about six years, and prior to joining the New Hampshire State Police was an officer with the Exeter Police Department for about three years. Trooper Wilber was up-to-date on his firearms

¹⁶ Investigators interviewed the pickup truck's driver, Donna DeBow. Ms. DeBow recounted that while travelling southbound on Route 125 she saw police vehicles in her rearview mirror, and pulled the pickup truck that she was driving off to the side of the road. As she did, she saw a car speeding north on Route 125 veer into the intersection and crash.

Ms. DeBow saw a man exit the front passenger side of the crashed SUV, holding a gun in his hand, as well as a police officer with a dog aiming a gun at the man. She saw the man raise the gun that he held “at an angle,” and then heard gunfire.

Ms. DeBow took photos of some of the incident, and provided them to investigators.

qualifications, and had never discharged his firearm in a nontraining/nonwildlife situation before the August 20 incident.

As Trooper Wilber was monitoring police radio traffic in his unmarked state police SUV, he heard part of a dispatch out of Rochester regarding a search for a suspect that stated, in substance, “use caution when approaching, he’s armed.” Trooper Wilber continued to monitor police radio traffic as he headed to Rochester in order to assist in the attempt to locate the suspect, and received a partial description of the suspect’s vehicle – a Cadillac SUV.

While Trooper Wilber headed to Rochester, he also was informed over the radio that the suspect at issue was Douglas Heath. Trooper Wilber was familiar with the name “Douglas Heath” from his work with a drug interdiction unit, and based upon that familiarity knew that Mr. Heath was reported to frequent the Riviera Motel in Rochester. From that knowledge, Trooper Wilber decided to go to the Riviera Motel in order to look for Mr. Heath.

As Trooper Wilber was on Route 125 near the Riviera Motel, he saw a Cadillac SUV pull into the motel’s parking lot. Trooper Wilber followed, activating his unmarked SUV’s police lights and radioing his location as he entered the parking lot. In the parking lot, Trooper Wilber saw the Cadillac SUV reverse towards him at a high rate of speed, and then race out of the parking lot and northbound on Route 125. Trooper Wilber followed, activating his SUV’s police siren and radioing that he was in pursuit of the wanted vehicle on Route 125 northbound.

During Trooper Wilber's pursuit of the Cadillac SUV on Route 125, he saw that vehicle drive in excess of eighty miles-per-hour, and pass dozens of vehicles as it sped down the road. At times, the Cadillac SUV swerved into the northbound breakdown lane and passed cars there, and also drove into oncoming traffic on the southbound lane. Trooper Wilber saw several near-collisions as he pursued.

Trooper Wilber watched as the Cadillac SUV turned left at the Oak Street intersection, and then jump the curb and crash on the northwest corner of the intersection. Trooper Wilber stopped his unmarked SUV in the middle of the intersection, the front of his vehicle facing the rear of the crashed Cadillac SUV. Trooper Wilber saw that several private citizens' cars were stopped on all of the streets at the intersection; in his interview, Trooper Wilber described the traffic condition at the intersection as "congested."

Trooper Wilber left his unmarked SUV upon stopping in the Oak Street intersection, and initially took up position on the vehicle's passenger side, aiming his pistol at the crashed SUV. Although Trooper Wilber's SUV was unmarked, he had its lights and siren activated while in the Oak Street intersection, and was wearing green fatigue-style pants and shirt.

Trooper Wilber could see into the crashed SUV from its back window, and saw a figure move from the driver's seat over to the front passenger seat. Trooper Wilber heard additional police sirens and noticed police lights in his periphery. Trooper Wilber holstered his weapon, removed his canine partner out of the unmarked SUV, and then repositioned himself by the driver's door, drawing his

weapon again and pointing it at the crashed SUV in one hand while securing his canine partner with the other.

From Trooper Wilber's vantage point, he could see under the crashed SUV to the outside area near the vehicle's front passenger side. Trooper Wilber saw movement and heard a gunshot from that area of the crashed SUV. Trooper Wilber then saw a man move away from the crashed vehicle, on the ground on the front passenger side from where he had just heard a gunshot. Trooper Wilber saw that the man was holding a pistol, and saw him fire two rounds towards where Trooper Wilber believed other law enforcement officers were positioned. At that point, fearing for the safety of those officers as well as private citizens who also were likely in the area where the man from the crashed SUV was shooting, Trooper Wilber fired on the shooter, stopping once it appeared that he was dead and no longer posed a threat to others.

b. Trooper Nathaniel Goodwin

Trooper Goodwin was interviewed on August 27, 2018. Trooper Goodwin has been a member of the New Hampshire State Police for about eight years. Trooper Goodwin was up-to-date on his firearms qualifications, and had never discharged his firearm in a nontraining/nonwildlife situation before the August 20 incident.

Trooper Goodwin arrived at the Oak Street intersection after Mr. Heath crashed his SUV. When Trooper Goodwin got to the intersection, he saw a person in the driver's seat of the crashed SUV, and pulled to the side of southbound Route

125 where he had been driving, parking behind a grey pickup truck that was stopped at the intersection. Because of the reports that Trooper Goodwin had heard earlier over the radio that the man in the crashed SUV may possess multiple firearms, Trooper Goodwin decided to take his service rifle. That weapon was a .223-caliber semiautomatic AR-15 equipped with a red dot scope that did not magnify Trooper Goodwin's vision. Trooper Goodwin chambered a bullet in the rifle, and positioned himself behind the stopped pickup truck's rear right wheel well, which provided him with some degree of cover. Trooper Goodwin was wearing a full state police uniform, and the car that he was driving was a fully-marked state police patrol car.

From Trooper Goodwin's vantage point behind the stopped pickup truck, he could see a man in the crashed SUV. Trooper Goodwin did not see other law enforcement officers, but he knew them to be in the immediate vicinity. While Trooper Goodwin was positioned by the pickup truck, he heard a voice to his left – who he believed was a police officer – say in substance, more than once, “Drop the gun.”

From Trooper Goodwin's position, he saw the man “wiggle out” of the crashed SUV from the front passenger door and fall to the ground. The man held a pistol in his left hand. Trooper Goodwin saw the man appear to “rack” a round in the pistol, and then fire a shot into the air. Trooper Goodwin briefly lost sight of the gun, and saw the shooter, who was still on the ground, turn towards the area where Trooper Goodwin believed other law enforcement were positioned. As the

shooter turned, Trooper Goodwin saw the pistol in his hand again, and that he was pointing it towards where Trooper Goodwin believed were other officers as well as private citizens who were stopped in their cars. At that point, fearing the safety of those other people, Trooper Goodwin fired multiple times – he recalled between three and five shots – at the man with the gun. Trooper Goodwin stopped firing his rifle when he saw the gunman stop moving.

c. Police Officer Michael Lambert

Officer Lambert was interviewed on August 23, 2018. Officer Lambert has been an officer with the Rochester Police Department for about sixteen years. Officer Lambert was up-to-date on his firearms qualifications, and had never discharged his firearm in a nontraining/nonwildlife situation before the August 20 incident.

While Officer Lambert was at the Rochester Police Department, he overheard a radio transmission that Douglas Heath had been spotted driving in a vehicle in Rochester. Officer Lambert recognized Mr. Heath's name from the Safety Briefing Form that Detective Moore had issued, and went to assist in the search. Officer Lambert left the police station in a fully marked patrol SUV, wearing a full police uniform.

Officer Lambert initially went to the area where Mr. Heath had been spotted, and when notified by other officers over the police radio that Mr. Heath was no longer there he went to a nearby parking lot in order to look for Mr. Heath. There, Officer Lambert encountered Trooper Goodwin, who also had responded to

the call for assistance and was looking for Mr. Heath. Officer Lambert briefly spoke with Trooper Goodwin, and notified him of the officer safety notice regarding Mr. Heath.

As Officer Lambert was driving out of the parking lot, he heard a police transmission reporting in substance that Mr. Heath was possibly at the Riviera Motel. Officer Lambert activated the police lights and siren of his patrol SUV, and headed towards that location. As Officer Lambert was driving on Route 125 towards the motel, he saw a state police vehicle stopped in the Oak Street intersection with its police lights on – Trooper Wilber’s unmarked SUV – and then saw a crashed SUV stopped on the corner of the intersection. Officer Lambert parked his patrol SUV near a stopped pickup truck on the northwest corner of the intersection, facing the passenger-side area of the crashed SUV. Officer Lambert kept his vehicle’s police lights on but turned off the siren. Officer Lambert stood next to the driver’s door of the patrol SUV, using it as cover, and aimed his pistol towards the crashed vehicle.

Officer Lambert saw a man in the front passenger seat of the crashed SUV, and repeatedly yelled at him, “Show me your hands.” Officer Lambert then saw the man in the crashed SUV open the passenger door and fall to the ground on his back, holding a pistol in his hand. Upon seeing the gun, Officer Lambert repeatedly yelled, “Drop the gun.” Officer Lambert saw the man from the crashed SUV fire his gun into the air. In response, Officer Lambert continued to order him to drop his weapon.

Officer Lambert then saw the man from the crashed SUV, who was still on the ground, move the hand in which he held the pistol across his body, towards Officer Lambert. Officer Lambert believed that he heard another gunshot as the shooter moved the gun that he held across his body. Officer Lambert then saw the end of the gun's barrel as the shooter pointed it in his direction. At that time, fearing for his own life, as well as the safety of private citizens who he believed were nearby, Officer Lambert fired at the gunman. Officer Lambert stopped shooting when he saw blood on the gunman's shirt and believed that the threat that he posed had been neutralized.

d. Detective Geoff Moore

Detective Moore was interviewed on August 23, 2018. Detective Moore has been an officer with the Rochester Police Department for about six years, and prior to his tenure with the Rochester Police Department had been a part-time officer with the Hampton Police Department for about a year. Detective Moore was up-to-date on his firearms qualifications, and had never discharged his firearm in a nontraining/nonwildlife situation before the August 20 incident.

Early in the afternoon on August 20, Detective Moore was driving a "low-profile" patrol SUV – a vehicle with more subdued markings than typical marked Rochester police vehicles, equipped with full police lights and sirens – down Chestnut Street in Rochester. While driving, Detective Moore saw a Cadillac SUV driving down the street in the opposite lane, towards him. The Cadillac SUV was the same make and model that Detective Moore had seen Douglas Heath

driving two days prior, when he eluded an attempted traffic stop. Although the Cadillac SUV was white in color in that previous encounter and was grey when Detective Moore saw it on August 20, the grey appeared like it had been spray-painted on the vehicle. As Detective Moore passed the Cadillac SUV, he saw that Mr. Heath was the driver.

Detective Moore radioed his police dispatcher and called for backup, because he believed, based upon information that he had received, that Mr. Heath was armed. Detective Moore also requested assistance from the New Hampshire State Police, because he believed that Mr. Heath would flee if his car were attempted to be stopped, the Rochester Police Department has a “no pursuit” policy, and state police units could pursue Mr. Heath if he did flee.

As Detective Moore turned around his patrol SUV in order to follow Mr. Heath’s SUV, he lost sight of it. Soon thereafter, though, a patrol officer with the Rochester Police Department notified Detective Moore over the police radio that he believed that he had spotted Mr. Heath’s SUV parked behind a nearby gas station, and they waited for additional backup, because it was believed that Mr. Heath was armed and dangerous. When that backup arrived, police officers converged on the gas station but Mr. Heath’s vehicle was not there.

Detective Moore then began looking for Mr. Heath’s SUV in a nearby parking lot. As Detective Moore was leaving that parking lot, he received a radio transmission that a State Police trooper had spotted Mr. Heath at the Riviera Motel. Detective Moore then drove towards that location. As Detective Moore

was heading to the motel on southbound Route 125, he saw Mr. Heath's SUV crashed at the Oak Street intersection, and police vehicles with their lights activated in the road ahead of him.

Detective Moore parked his car behind those other police vehicles. He began to move towards Trooper Goodwin, who he saw behind a stopped pickup truck aiming a rifle at Mr. Heath's crashed SUV, in order to provide the trooper with cover. As Detective Moore did so, he saw a shell eject from Trooper Goodwin's rifle, and in response moved to the trooper's left – to stay out of his line of fire – and towards Mr. Heath's crashed SUV. Detective Moore then saw Mr. Heath on the ground next to the crashed SUV, holding a pistol that was pointed in Detective Moore's direction. At that time, believing that Mr. Heath was going to fire at him, Detective Moore shot at Mr. Heath. Detective Moore believed that he shot three times, and stopped firing when he saw Mr. Heath, who had been rolling on the ground, stop moving with an apparent gunshot wound to one of his arms.

e. Private citizen eyewitnesses

A number of people were stopped in their motor vehicles during the armed encounter between Douglas Heath and law enforcement officers at the Oak Street intersection. Those eyewitness accounts corroborate key aspects of the incident recorded on video and recounted by the law enforcement officers on the scene, including hearing and seeing Mr. Heath fire his weapon multiple times before law enforcement fired on him. No private citizen witness has claimed that law

enforcement shot at Mr. Heath before Mr. Heath fired his weapon. Many of the private citizen eyewitnesses expressed fear for their safety from Mr. Heath's actions both while speeding on Route 125 and during the ensuing armed encounter at the Oak Street intersection, and also expressed appreciation for the work of the law enforcement officers who were on-scene.

D. Autopsy Results

Chief Medical Examiner Jennie Duval conducted an autopsy on Douglas Heath on August 23, 2018. That autopsy revealed fifteen gunshot wounds, although a single shot may have caused multiple wounds. Seven of those wounds – to Mr. Heath's right chest (three separate wounds), left abdomen, upper buttocks, right arm, and left hand – appeared to have been made by high-velocity bullets, consistent with ammunition from the rifle used by Trooper Goodwin.¹⁷ The remaining eight gunshot wounds were to Mr. Heath's face, top of skull (two separate wounds), upper back, back of neck, chest (graze wound), right thigh, and left thigh (graze wound). The gunshot wounds that Mr. Heath suffered would have caused his death in a matter of seconds to minutes.

¹⁷ As is detailed later in this report, the ballistics evidence indicates that Trooper Goodwin fired five shots from the rifle that he used. As to the seven bullets wounds to Mr. Heath consistent with being inflicted by that weapon, one shot may have caused more than one bullet wounds. In particular, two of those wounds – to Mr. Heath's arm and hand – were through and through wounds, meaning that the bullets that caused them both exited and entered Mr. Heath's body. Upon exiting Mr. Heath's body, they likely reentered and caused additional wounds. This conclusion is buttressed by the facts that Mr. Heath's arms were close to his chest as he rolled along the ground and was fired upon, and thus the trajectory of bullets fired into and through his arms would have continued into his torso, and that the entry wound for one of the high-velocity bullets that entered Mr. Heath's chest had accompanying damage consistent with being caused by debris from a preceding penetrating wound.

The gunshot wound to Mr. Heath's face was not immediately fatal, and was a close-range wound, meaning that the gun that fired the shot that caused that wound was discharged within inches of Mr. Heath's face. The wound entered Mr. Heath's left cheek, and travelled towards the middle of his face. As noted below, recovered ballistics evidence from the Oak Street intersection included four shell casings from nearby Mr. Heath's body, consistent with him firing four shots from his pistol. The video recordings taken from Officer Lambert's patrol SUV and with Mr. McKenzie's cellphone depict Mr. Heath firing his pistol a fourth time as he is rolling along the ground – either an inadvertent firing on his part, or caused by bullet damage sustained to his pistol¹⁸ – and that shot striking him in the face. The wound is consistent with being fired by Mr. Heath with his left hand, which is the hand in which he held the pistol. The video recording taken from Officer Lambert's patrol SUV continued for hours past the end of the armed encounter between Mr. Heath and law enforcement officers, and depicted no gunfire at him other than during the several seconds detailed above, none of which would have caused a close-range gunshot wound.

In addition to the described gunshot wounds, Mr. Heath had a broken right femur, broken right elbow, broken left ribs, and multiple abrasions and contusions.

Those traumatic injuries were consistent with being inflicted during a high-energy

¹⁸ One of the high-velocity rifle wounds entered and exited by Mr. Heath's index finger, which typically is used to pull the trigger on a firearm. That wound could have caused an involuntary spasm of Mr. Heath's finger, resulting in a discharge of the weapon. Alternatively, as is described later in this report, Mr. Heath's pistol also sustained ballistics damage, which may have caused a misfire.

There is nothing that indicates that the gunshot fired into Mr. Heath's face from the pistol that he held was intentionally self-inflicted.

impact, and likely were sustained as a result of Mr. Heath's crash of his SUV at the Oak Street intersection. The Event Data Recorder of Mr. Heath's SUV indicated that he was not wearing a seat belt at the time of the crash.

Mr. Heath's death was determined to be a homicide, with his cause of death multiple gunshot wounds.

Toxicology testing of Mr. Heath's blood revealed the presence of fentanyl, norfentanyl (a metabolite of fentanyl), amphetamine, and methamphetamine. Fentanyl is an opioid, and amphetamine and methamphetamine are stimulants. These are all controlled substances, and although any one of them can be legally prescribed under limited circumstances, the levels of each of these controlled substances in Mr. Heath's blood far exceeded any allowable therapeutic dosage. Mr. Heath also had caffeine and cotinine (a metabolite of nicotine) in his bloodstream.

E. Physical Evidence

The marked patrol SUV driven by Officer Lambert and the grey pickup truck that was stopped by his SUV and behind which Trooper Goodwin was positioned during the encounter with Mr. Heath both sustained apparent bullet damage. That damage was sustained to the front of those two vehicles, both of which faced towards Mr. Heath when he fired gunshots. Fig. 26. As to Officer Lambert's patrol SUV, the floodlight mounted on the driver's door – which the officer had been using for cover – was broken, and there was a small gouge in the metal on the front hood. Fig. 27. Although the location of that damage suggests a

trajectory consistent with a bullet fired from Mr. Heath's gun, it cannot be ruled out that the damage occurred when Officer Lambert fired on Mr. Heath.

As to the grey pickup truck, there was a substantial gouge in the metal on the exterior driver's-side roof, near the windshield and the driver's door. Fig. 28. That damage was consistent with the footage taken from the police vehicle driven by Detective Moore, which captured a projectile striking the area of the pickup truck where the damage occurred at the time when Mr. Heath was firing his pistol. It appears from all of this evidence that this damage was caused by Mr. Heath's gunfire. At the time when that ballistic damage was sustained, a person was sitting in the pickup truck's driver's seat.

Investigators recovered a total of thirty-four shell casings – which are ejected from semiautomatic pistols and rifles after bullets are fired from them – from the Oak Street intersection. Twenty-nine of those shell casings were for .45-caliber rounds, and five of those shell casings were for .223-caliber rounds. During the armed encounter, Trooper Goodwin was armed with and fired a .223-caliber semiautomatic rifle; Mr. Heath, Trooper Wilber, Officer Lambert, and Detective Moore each was armed with and fired a .45-caliber semiautomatic pistol. The location of the shell casings indicate the following shots were fired during the armed encounter between Mr. Heath and law enforcement:

Douglas Heath – 4 shots (.45-caliber pistol; 5 shots remaining)

Trooper Wilber – 11 shots (.45-caliber pistol; no shots remaining)

Trooper Goodwin – 5 shots (.223-caliber rifle; 23 shots remaining)

Officer Lambert – 10 shots (.45-caliber pistol; 4 shots remaining)

Detective Moore – 4 shots (.45-caliber pistol; 7 shots remaining)¹⁹

Fig. 29. As to the law enforcement officers, the number of shots fired as indicated by shell casings in the Oak Street intersection was also consistent with the number of rounds missing from each of their weapons upon inspection after the incident.²⁰

The .45-caliber semiautomatic pistol that Douglas Heath fired at the Oak Street intersection had been reported stolen from a parked car at a residence in Sanford, Maine on June 27, 2018; the gun's owner had reported that it had been loaded with nine rounds when stolen. The semiautomatic pistol had five bullets remaining after Mr. Heath's armed encounter with law enforcement ended. As to the four shell casings found by Mr. Heath's body, they had the same manufacturer stampings as those on remaining five unfired rounds.²¹

¹⁹ The shell casings recovered from the Oak Street intersection also were found in five separate groupings consistent with the number of shots fired from these firearms. For example, four shell casings attributed to Mr. Heath's pistol were found nearby his body.

²⁰ Although the rifle used by Trooper Goodwin had a thirty-one shot capacity – a thirty-round magazine, plus a round loaded in the chamber – Trooper Goodwin explained that the weapon was not stored with a chambered round, and that the magazine was loaded with twenty-eight instead of thirty bullets in order to prevent wear on the magazine.

²¹ After the exchange of gunfire, the magazine for the pistol that Mr. Heath fired was damaged, and a part of it found detached from the gun itself. The pistol's handle had visible apparent ballistics damage – and Mr. Heath suffered a corresponding bullet gunshot wound to his left hand, in which he held the gun during his armed encounter with law enforcement. Thus, the magazine appears to have been damaged and partially dislodged from the pistol as a result of ballistic damage.

IV. APPLICABLE LEGAL STANDARDS

New Hampshire's laws regarding self-defense, defense of others and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer, like a private citizen, is justified in using deadly force when he/she reasonably believes that such force is necessary to defend himself/herself or a third person from what he/she reasonably believes is the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as any assault which the actor commits with the purpose of causing or which the actor knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a weapon capable of causing serious bodily injury or death in the direction of another person constitutes deadly force.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." *State v. Gorham*, 120 N.H. 162, 163-64 (1980). The term "reasonable" "is determined by an objective standard." *State v. Leaf*, 137 N.H. 97, 99 (1993). Further, all the circumstances surrounding the incident should be considered in determining whether there was a reasonable belief that deadly force was necessary to defend oneself or another. *See id.* at 99; *Aldrich v. Wright*, 53 N.H. 398 (1873). The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or a police officer may still be justified in using deadly force if he/she reasonably believed that he/she was in

imminent danger from the use of deadly force by another, even if, in fact, they were not, so long as the actor's belief was objectively reasonable.

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

In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer's conduct would be judged when excessive force claims were brought against him. The Court confirmed that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. The Court went on to explain how to determine what is reasonable in situations where police officers use force:

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

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

The Eleventh Federal Circuit has noted that:

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

whether the force used was justified under the totality of the circumstances.

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

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

V. ANALYSIS AND CONCLUSION

Based upon all the facts and circumstances of this case, the Attorney General has concluded that Douglas Heath created a dangerous and life-threatening situation, in which he placed in direct harm numerous people in his immediate vicinity. Consequently, it was reasonable for the law enforcement officers faced with that ongoing deadly threat – Troopers Haden Wilber and Nathaniel Goodwin of the New Hampshire State Police, and Detective Geoff Moore and Michael Lambert of the Rochester Police Department – to use deadly force against Douglas Heath in order to protect their own lives, as well as the lives of other people in the area.

The armed encounter between Mr. Heath and law enforcement occurred after Mr. Heath actively attempted to evade lawful detention by Trooper Wilber, who had received information from other law enforcement that Mr. Heath – the suspected driver of the Cadillac SUV that Trooper Wilber attempted to stop – was wanted on several outstanding arrest warrants. There in fact were at least three active arrest warrants for Mr. Heath – one out of federal court in New Hampshire, one out of Strafford County Superior Court, and one issued by the police in Sanford, Maine. All of this information provided Trooper Wilber with a lawful basis to attempt to stop Mr. Heath. RSA 594:2 (“A peace officer may stop any person abroad whom he has any reason to suspect is committing, has committed or is about to commit a crime”); RSA 594:9 (“An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest.”).

In response to that lawful action by law enforcement, Mr. Heath attempted to evade apprehension, as he had done at least twice before in the recent past, including just two days earlier in Rochester. And in fleeing from the lawful attempt to detain him, Mr. Heath engaged in extremely dangerous and reckless behavior. Specifically, Mr. Heath drove his SUV erratically on a busy thoroughfare until stopped by a crash that he caused by attempting a turn at an excessive speed – just five seconds before the crash, going about double the posted speed limit of thirty-five miles-per-hour. Moreover, given the levels of fentanyl, amphetamine, and methamphetamine found in Mr. Heath’s blood, he was driving

while impaired by drugs. Mr. Heath's actions while driving on Route 125 and attempting to avoid apprehension caused near-collisions and placed the lives of multiple motorists at risk.

Mr. Heath continued to act erratically, violently, and dangerously after he crashed his SUV at the Oak Street intersection. In that regard, the incident occurred out in the open, and during the day. All of the law enforcement officers involved were dressed in uniform or were wearing clothing clearly identifying themselves as in law enforcement, and were driving vehicles that were either clearly marked, and/or had police lights and sirens activated. Mr. Heath also had been actively attempting to evade capture during a high-speed pursuit prior to the crash. Given all of these circumstances, there is every reason to believe that Mr. Heath knew that law enforcement officers were present on scene. Further, given the dozens of motor vehicles that Mr. Heath passed just before the crash, so too would he have every reason to believe that cars were stopped at the intersection where he crashed, and thus that there were private citizens in his immediate vicinity.

But after that crash, Mr. Heath chose to leave his SUV armed with a loaded semiautomatic pistol.²² It was not holstered or otherwise safely put away; rather, Mr. Heath brandished it in his hand. Moreover, as Mr. Heath held that pistol, he

²² Although there is no way of ascertaining whether Mr. Heath actually heard the directives from Officer Lambert to "show his hands" and to "drop his gun," it is reasonable to infer that he did, given that Officer Lambert yelled them repeatedly from only about fifty feet away. Regardless, even if Mr. Heath did not hear the commands yelled at him by law enforcement, that would not render his own use of unlawful deadly force justifiable or reasonable, or alter the reasonableness or lawfulness of the use of responsive deadly force by law enforcement.

also made a decision to take the effort to “rack” a round into the chamber, thus enabling the weapon to fire. And then Mr. Heath fired the pistol.

When Mr. Heath first fired his pistol, three law enforcement officers – Troopers Wilber and Goodwin, and Officer Lambert – were on-scene, the latter two pointing their weapons at Mr. Heath. None of them fired their weapons at that time, despite seeing and/or hearing the shot fired by Mr. Heath. Instead, Officer Lambert continued to direct Mr. Heath to drop his weapon. Mr. Heath did not do that, in order to diffuse the violent and volatile situation that he created.

Instead, Mr. Heath fired a second time. This second shot was aimed toward where Officer Lambert, Trooper Goodwin, and at least one private citizen – the driver of the pickup truck stopped in between those two men – were positioned. There also were other private citizens stopped in cars in the immediate vicinity. Once again, the officers did not fire. At this point in time, Mr. Heath – and only Mr. Heath – was using deadly physical force. And that deadly physical force was not justified under the law.

After the second shot, Mr. Heath did not drop his weapon. He did not do anything demonstrating that he was not going to use his weapon again, or that he was going to obey the directives to disarm. Nor did Mr. Heath say anything that might have alleviated the officers’ reasonable concern for their safety as well as the safety of the people in the immediate vicinity. Instead, Mr. Heath continued to use unjustified deadly physical force against others.

It was only when Mr. Heath aimed his pistol toward people a second time that law enforcement officers fired on him, almost simultaneously to the third shot that Mr. Heath fired. Based upon all of these facts and circumstances known to the law enforcement officers at the time, it was reasonable to believe that Mr. Heath would continue to use deadly force and would continue to place the lives of the officers and the private citizens in the area in danger.²³ As depicted in the video recordings of the armed encounter between Mr. Heath and law enforcement, events unfolded quickly and dramatically, with less than a half-minute span from when he left the crashed SUV armed and began firing, to when fired on by law enforcement.

In other words, before any law enforcement officer fired on Mr. Heath, he posed to them and others nearby not a perceived or imminent threat of deadly force – which would have justified the defensive use of deadly force, but an actual threat. *See* RSA 627:5, II(a) (“A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary, [t]o defend himself or a third person from what he believes is the *imminent* use of deadly force.”) (emphasis added). Mr. Heath was actively using deadly force despite

²³ As to Detective Moore, unlike the three other law enforcement officers who fired at Mr. Heath, he was not present at the Oak Street intersection to observe Mr. Heath’s conduct in firing his pistol. But when Detective Moore did arrive, he heard at least one gunshot, and saw Mr. Heath holding a pistol in his direction. At that point, and in the context of what Detective Moore knew and reasonably believed at that point – that Mr. Heath had fled from police detention multiple times, that he had outstanding arrest warrants, that he was believed to be armed and that he had stated that he would not willingly go back to jail – Detective Moore’s expressed belief that Mr. Heath would use the firearm that he held against Detective Moore or others nearby was reasonable, and thus justified the detective’s own use of defensive deadly force.

directives and opportunity to stop. Demonstrative evidence of the deadly threat that he posed was the ballistics damage sustained by the pickup truck stopped by Officer Lambert and behind where Trooper Goodwin took cover. The video footage taken of the armed encounter at the Oak Street intersection establishes that Mr. Heath caused that damage when he shot his pistol. And, not only was the sustained damage near where both Officer Lambert and Trooper Goodwin were positioned, it occurred just above the seat occupied by the truck's driver.

The situation created by Mr. Heath and faced by the law enforcement officers who encountered him required immediate response, in order to eliminate that active and ongoing threat to their lives and the lives of the many other people in the area. That is what the officers did – respond to Mr. Heath's actual use of illegal deadly force, by using lawful and appropriate defensive deadly force. That is justified use of deadly force under the law.

The number of shots fired at Mr. Heath, either collectively or by any one or more of the law enforcement officers who discharged his weapon, did not transform the lawful use of force either to unlawful retaliation or an unreasonable application of justifiable force. Each officer explained that he fired until he deemed the deadly threat posed by Mr. Heath to be eliminated. The responsive lawful use of deadly force by law enforcement occurred within the span of seconds, with weapons that can fire a dozen rounds within seconds, and while Mr. Heath was rolling on the ground when still armed with the gun he had just repeatedly fired at others. No officer reloaded and continued to fire. The video

recordings of events show that gunfire ceased at about the time when Mr. Heath stopped moving, and that no further shots were fired thereafter. Under all these circumstances, the use of force applied was reasonable and not excessive.

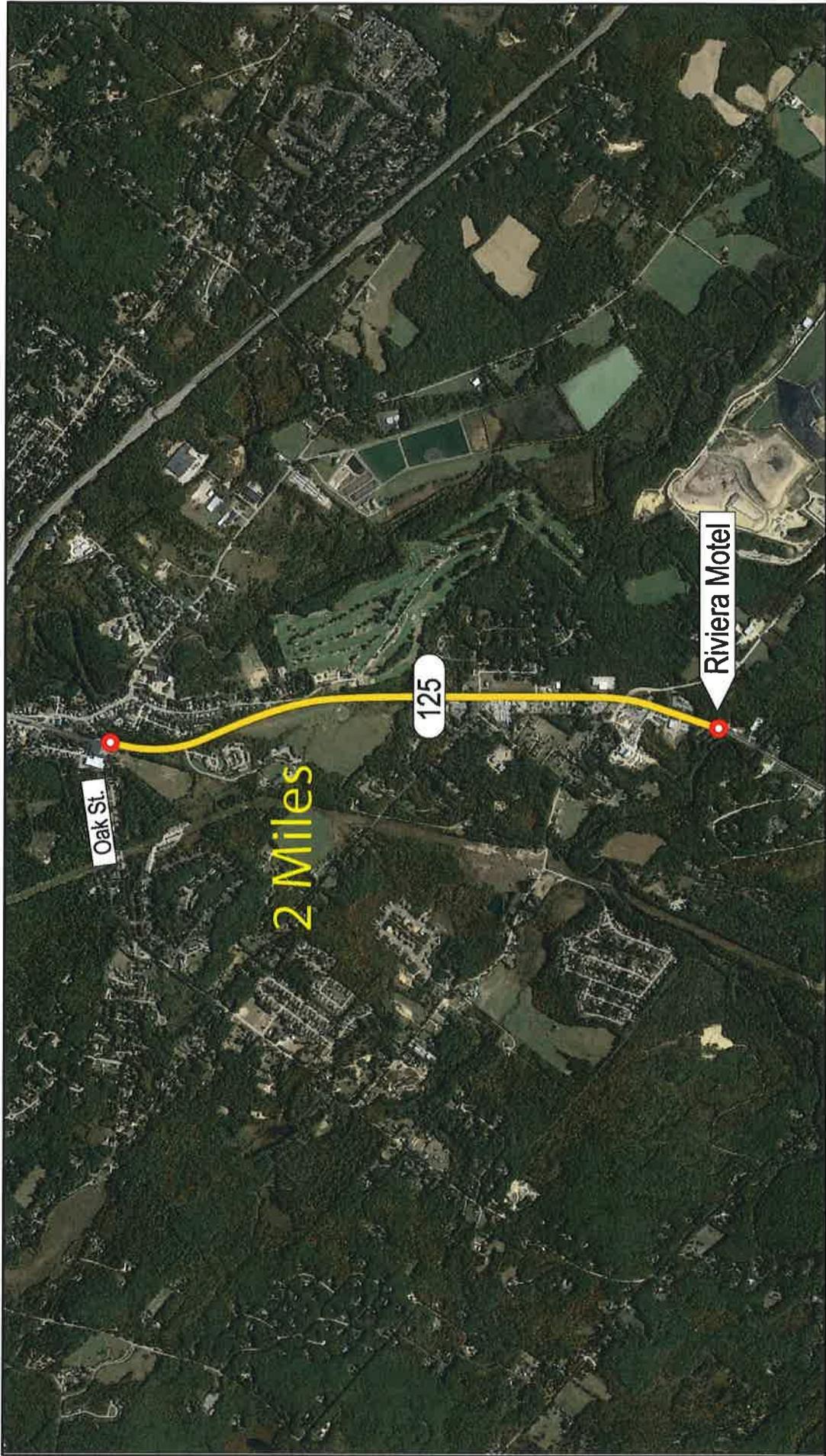
Although the use of deadly force by law enforcement officers was justified under RSA 627:5, II(a), given the precipitating and ongoing deadly force used by Mr. Heath, so too would the officers have been justified under RSA 627:5, II(b), which provides:

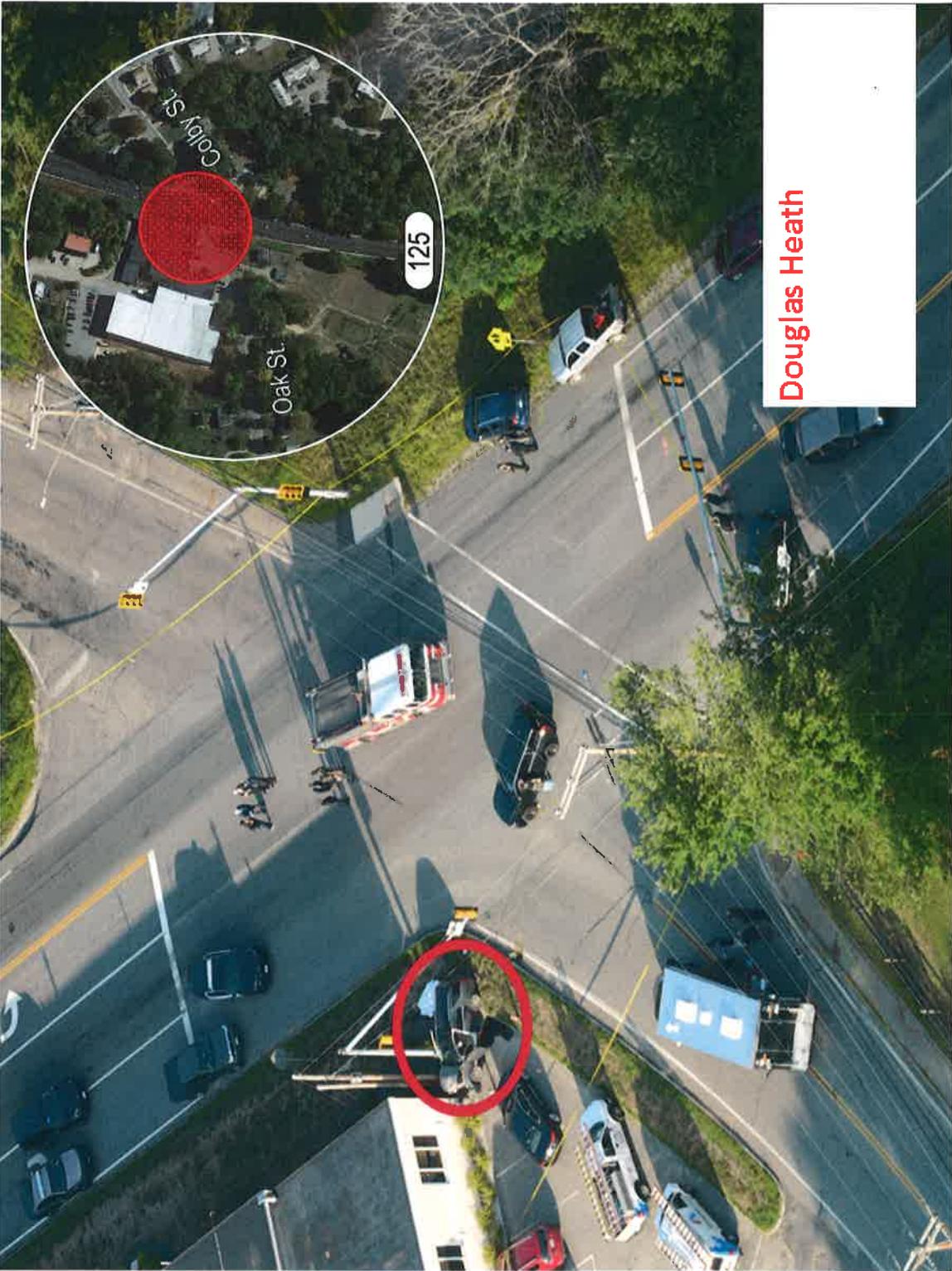
A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary to effect an arrest . . . of a person whom he reasonably believes, [h]as committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and [h]e had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

Here, law enforcement officers were attempting to apprehend Mr. Heath at the Oak Street intersection, and he was at the very least committing in their presence the violent felony of reckless conduct, which was seriously endangering human life. RSA 631:3, I (“A person is guilty of reckless conduct if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.”), II (“Reckless conduct is a class B felony if the person uses a deadly weapon”). Lastly, before firing on Mr. Heath, the law enforcement officers on scene – who clearly were identified by such given their dress and their vehicles

– did attempt to detain him, and also repeatedly directed him to “show his hands” and “drop his weapon.”

Accordingly, Troopers Haden Wilber and Nathaniel Goodwin of the New Hampshire State Police, and Detective Geoff Moore and Officer Michael Lambert of the Rochester Police Department were legally justified in using deadly force against Douglas Heath, and no criminal charges will be filed against any of them as a result of Mr. Heath’s death.

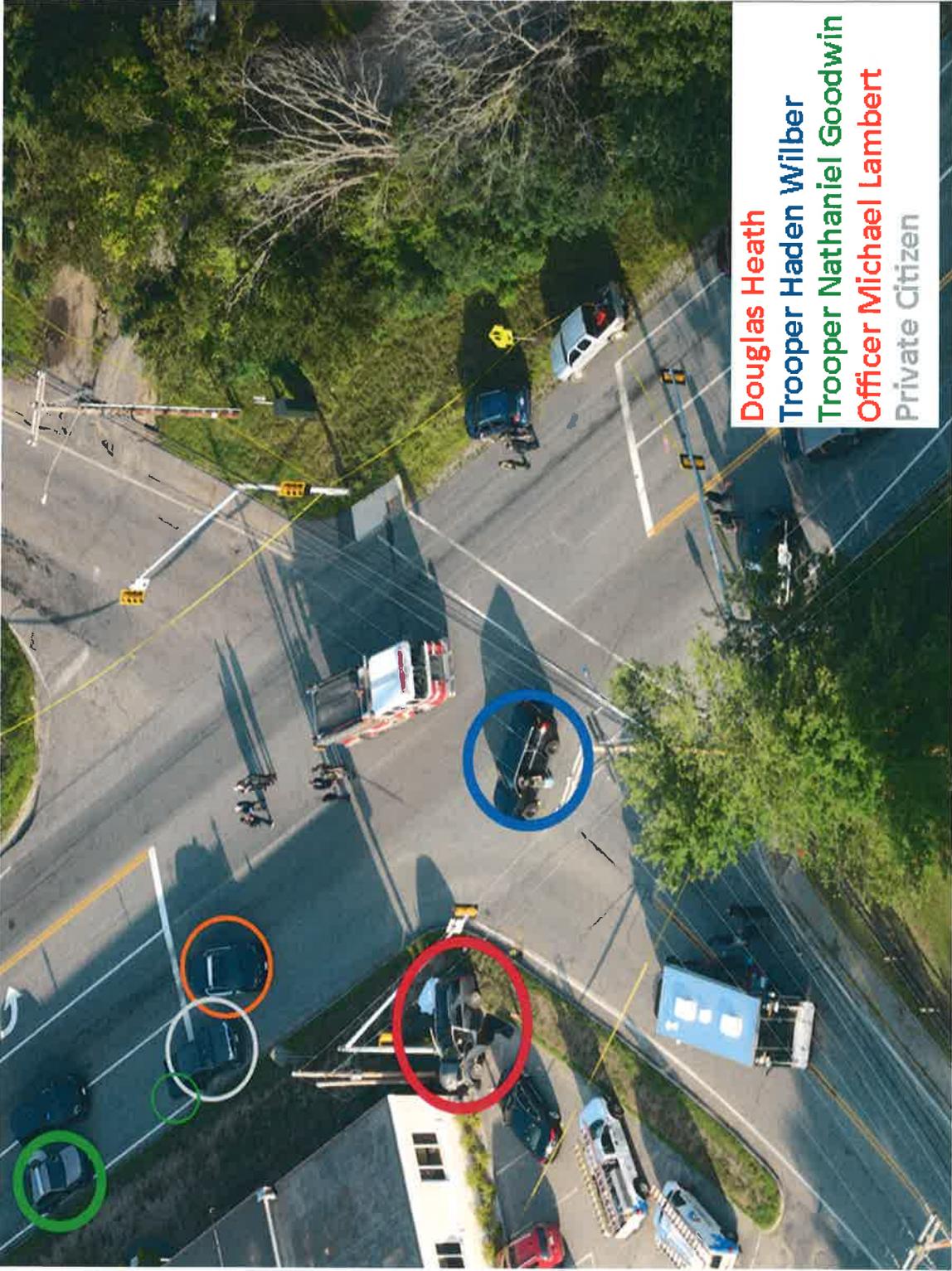




Douglas Heath



Douglas Heath
Trooper Haden Wilber



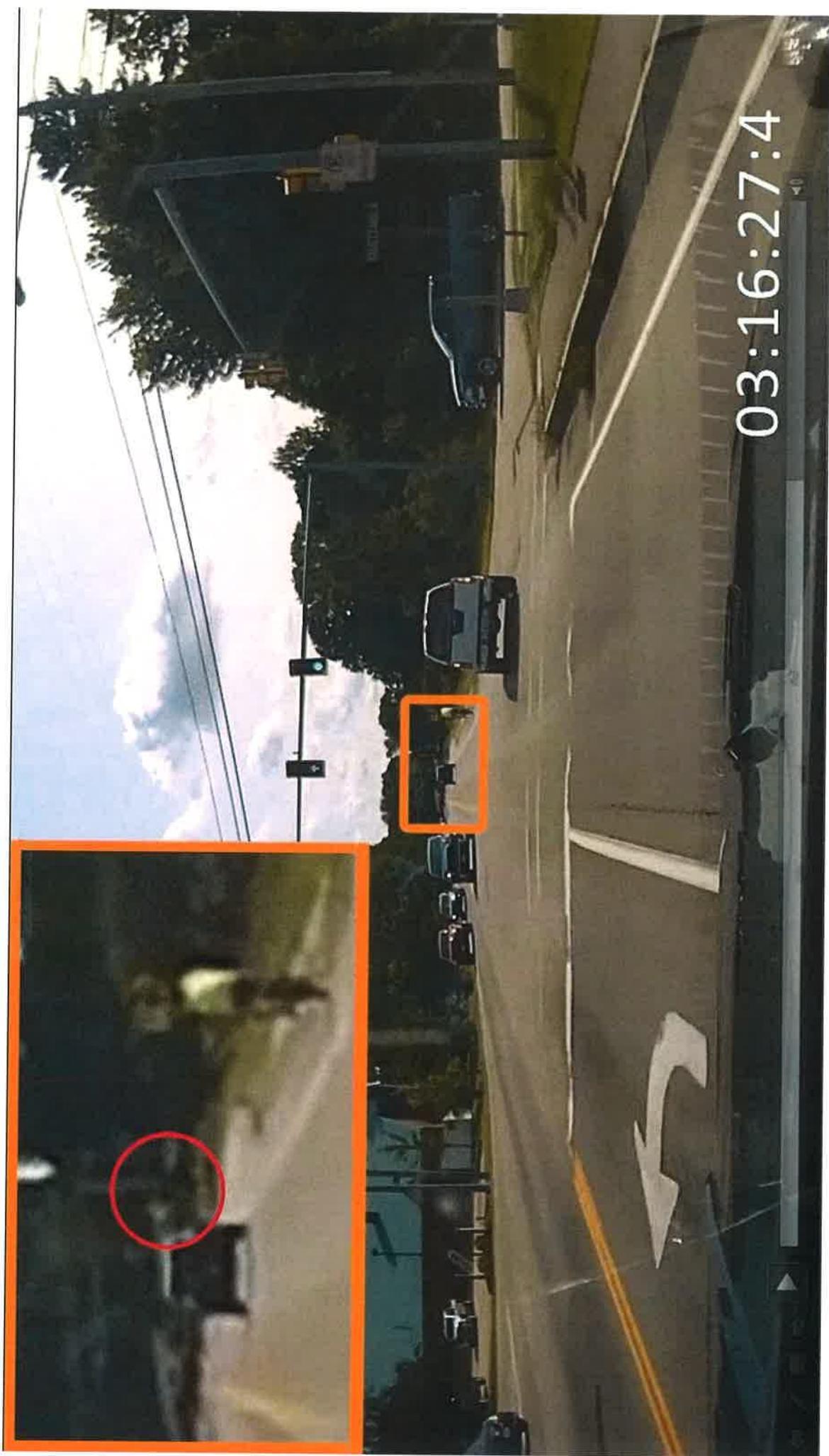
Douglas Heath
Trooper Haden Wilber
Trooper Nathaniel Goodwin
Officer Michael Lambert
Private Citizen

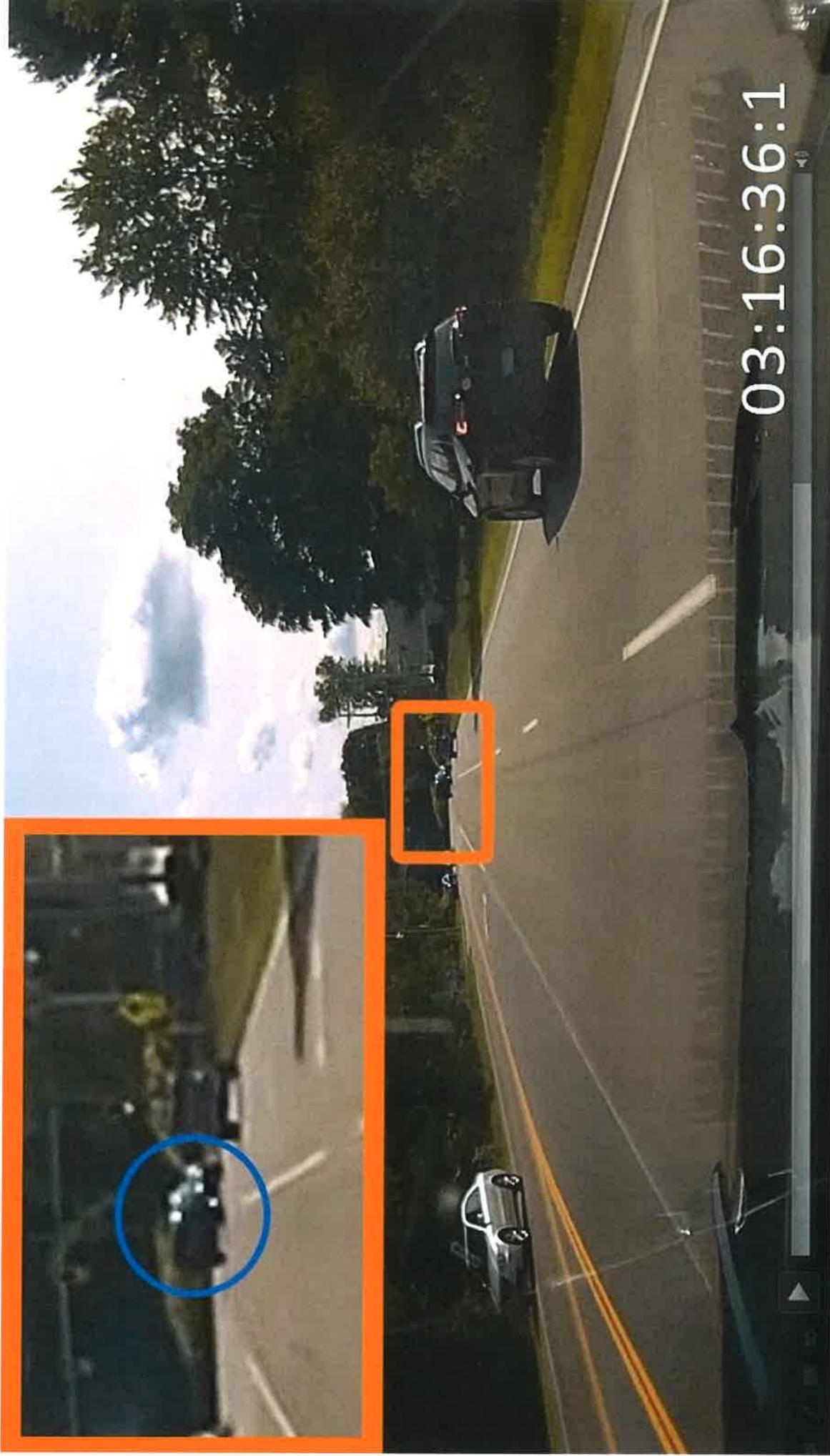


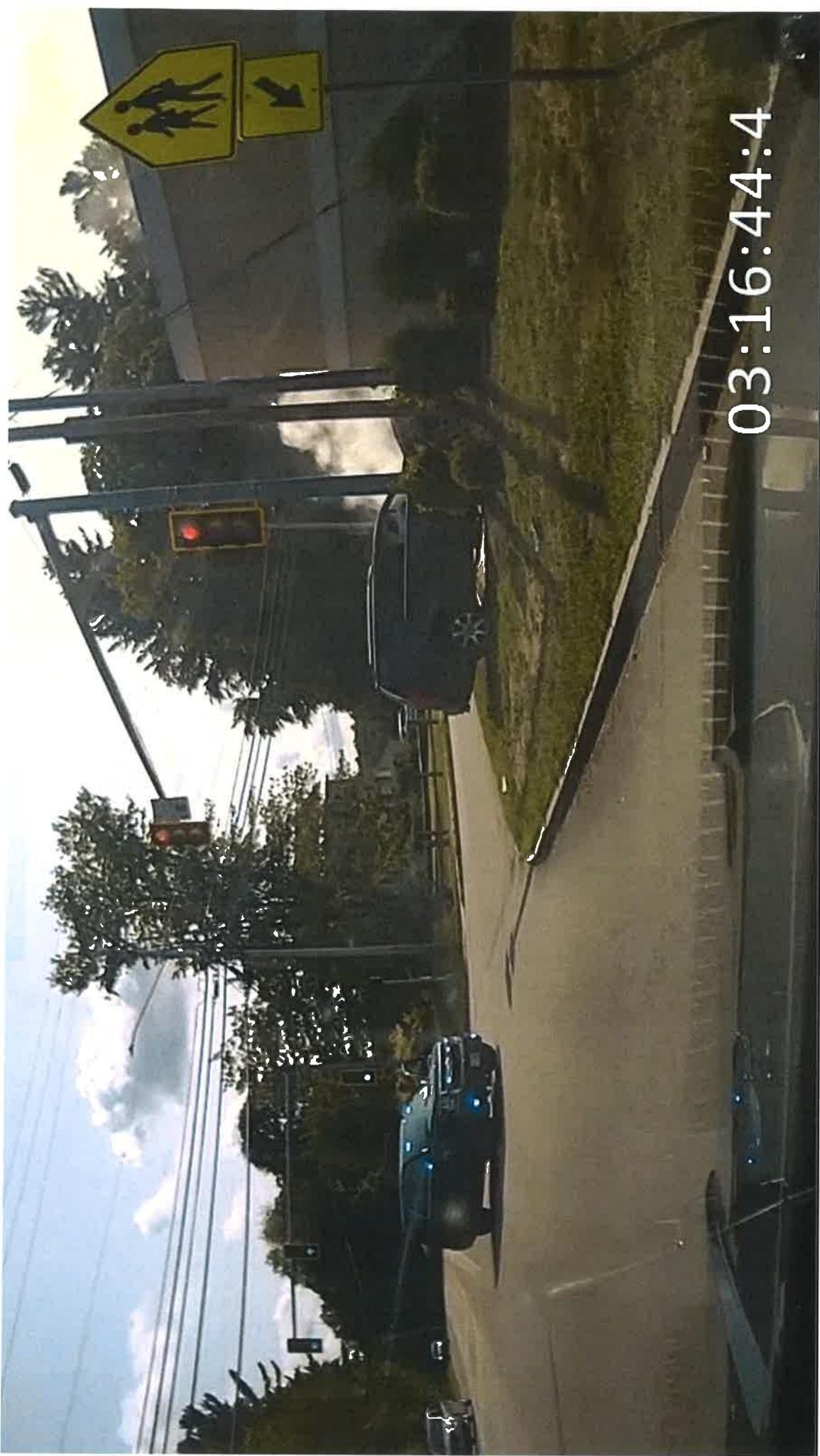
Douglas Heath
Trooper Haden Wilber
Trooper Nathaniel Goodwin
Officer Michael Lambert
Private Citizen
Detective Geoff Moore

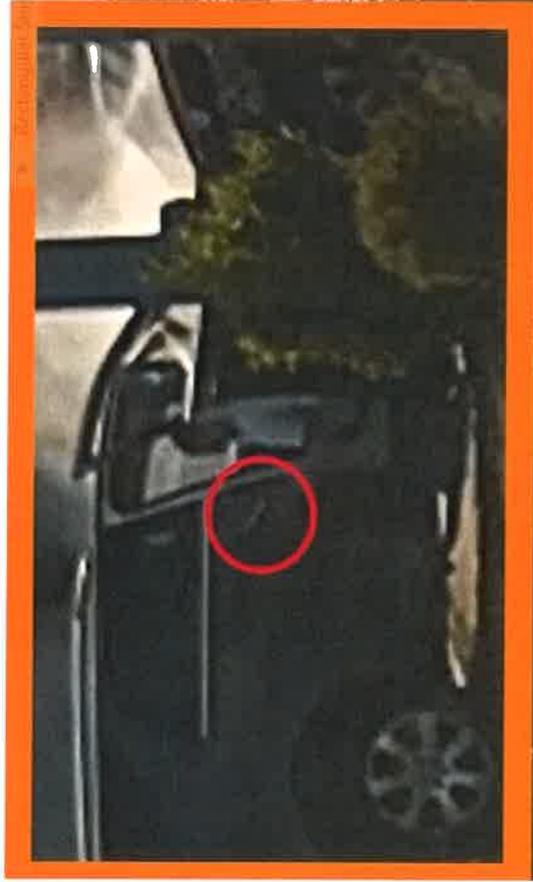
VIDEOS











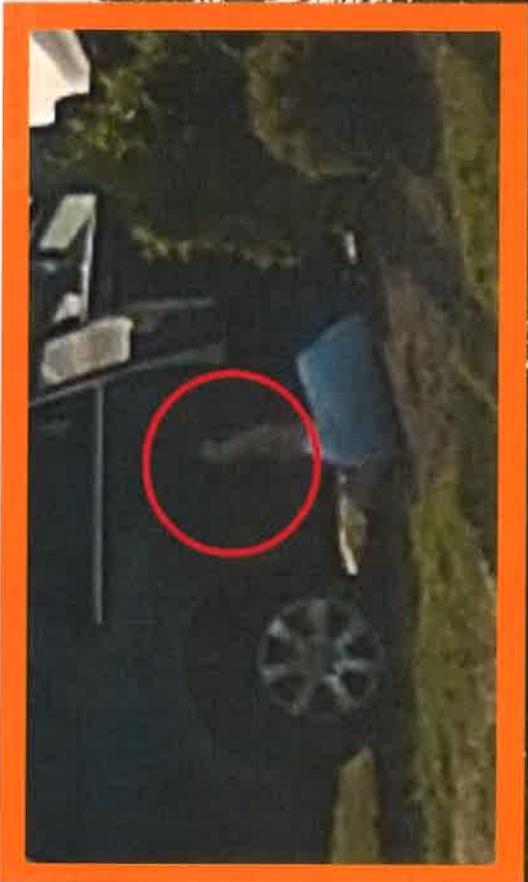
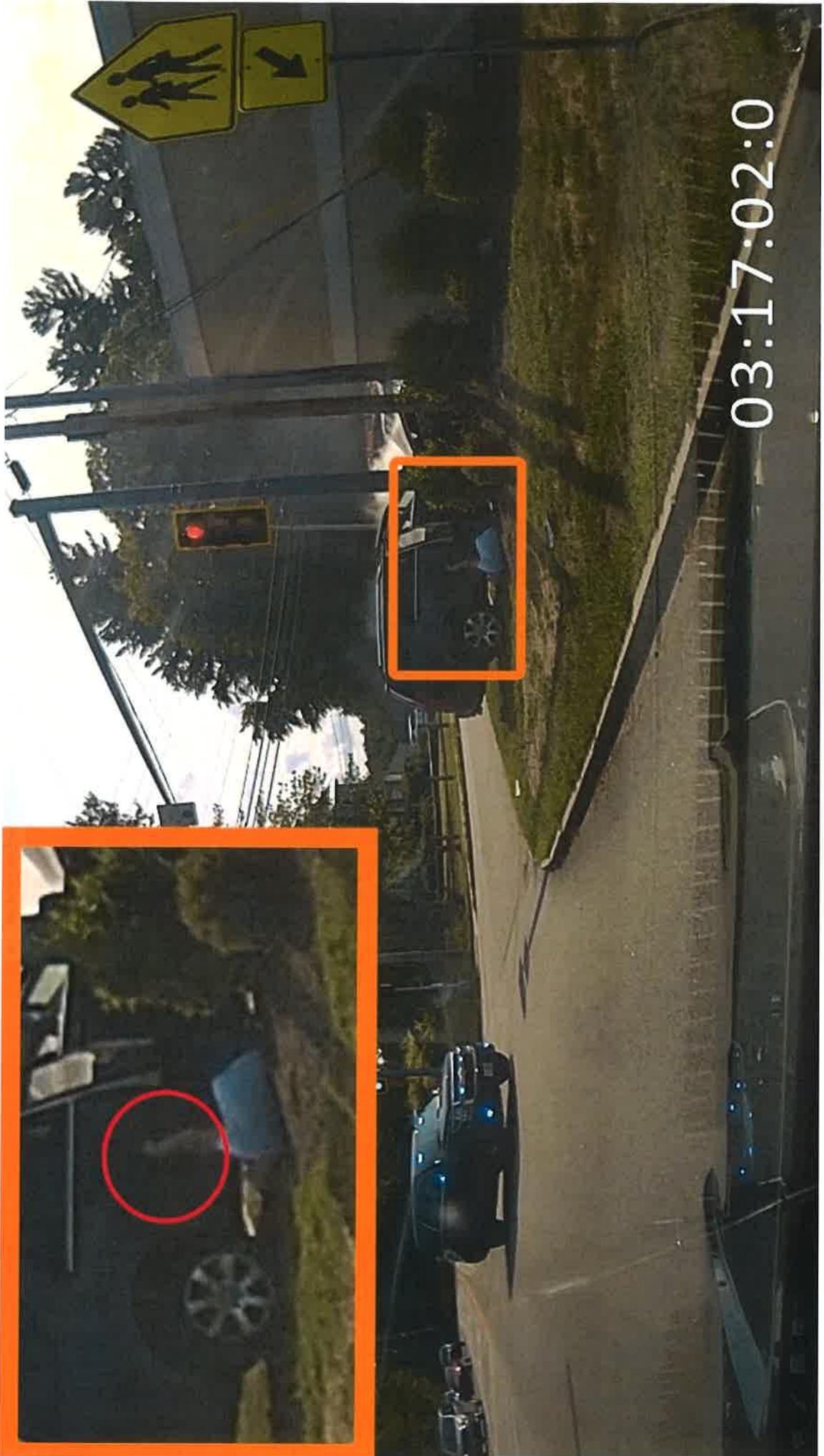
Let me see your hands

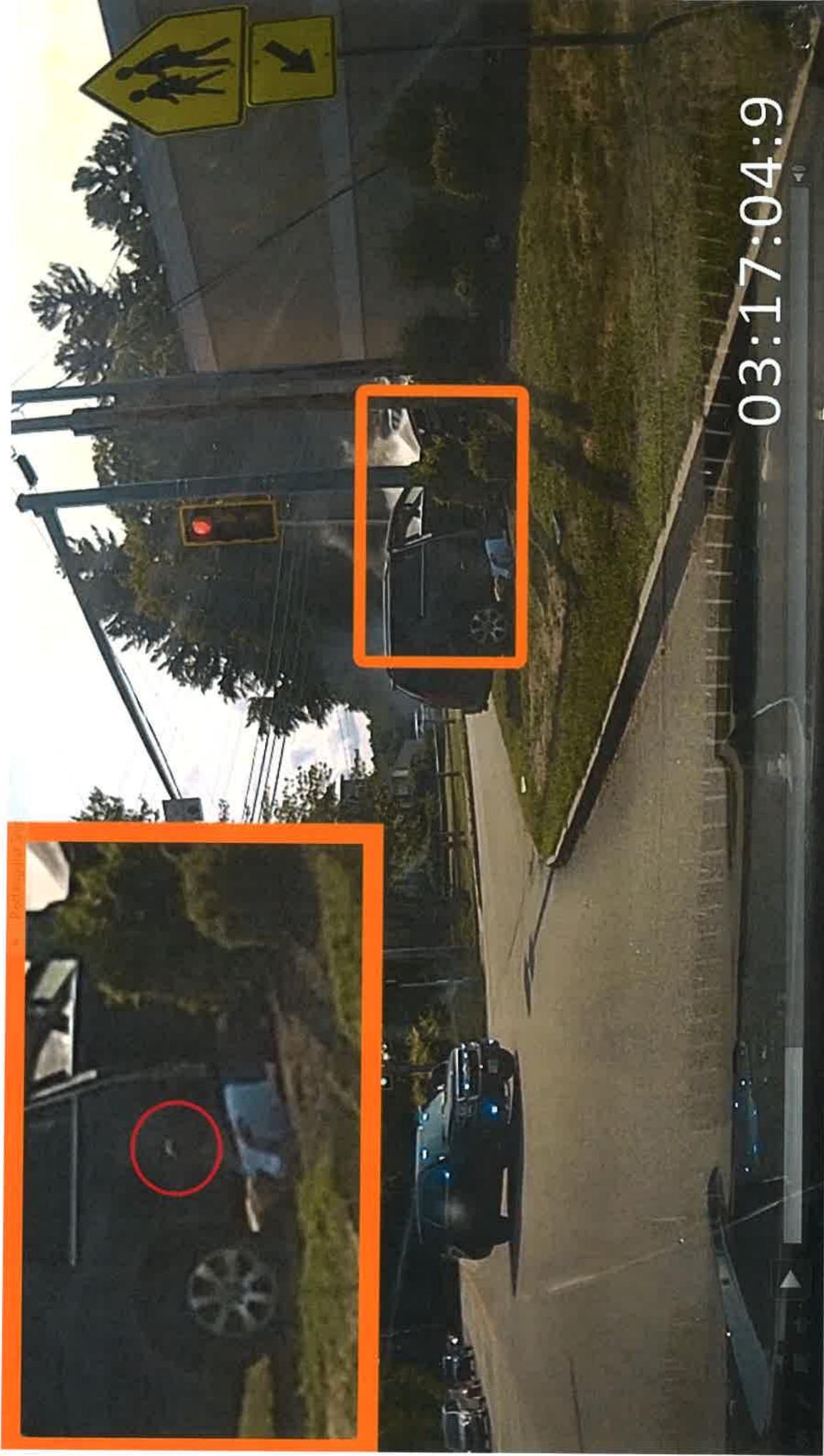
03:16:56:5

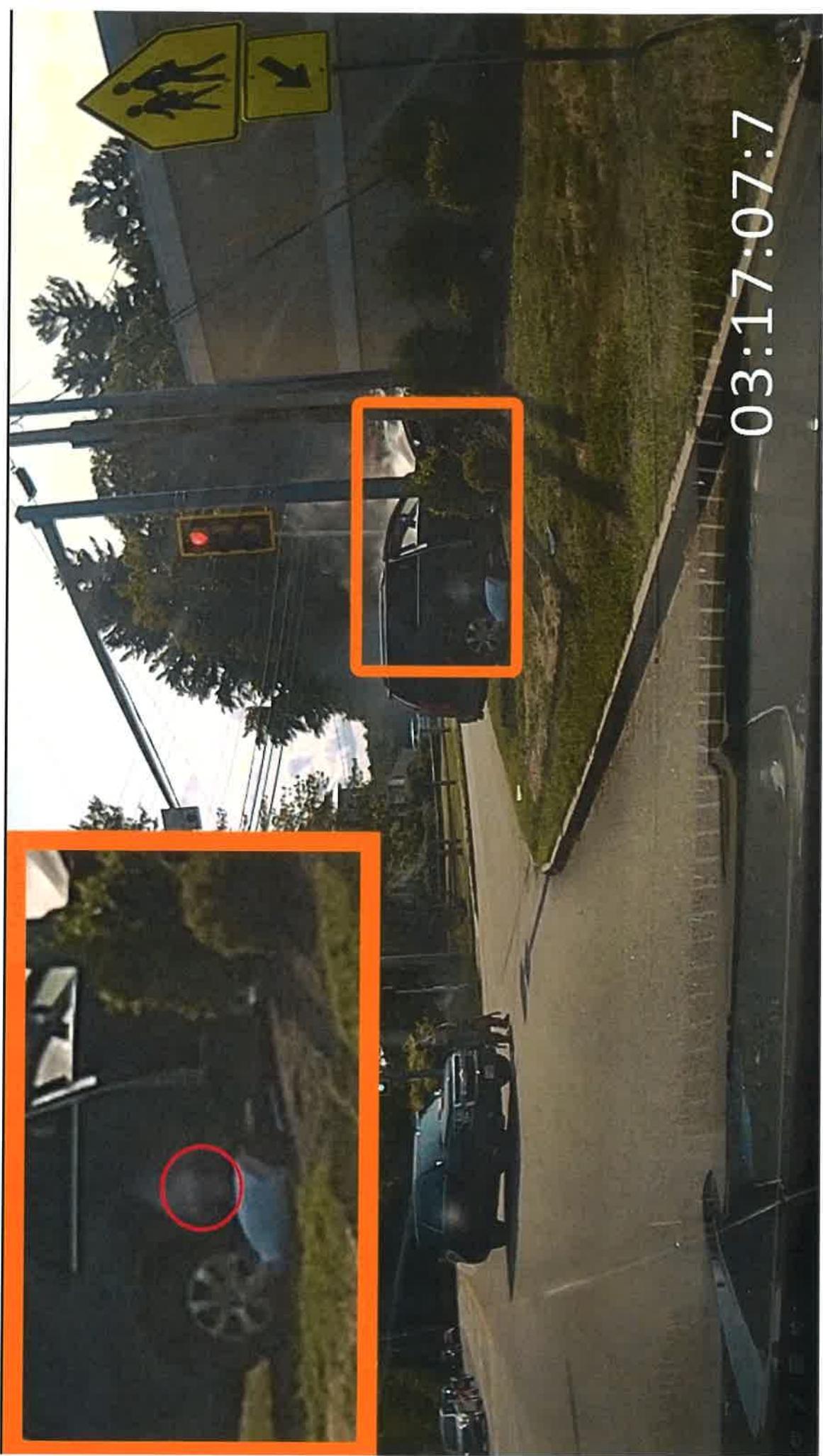


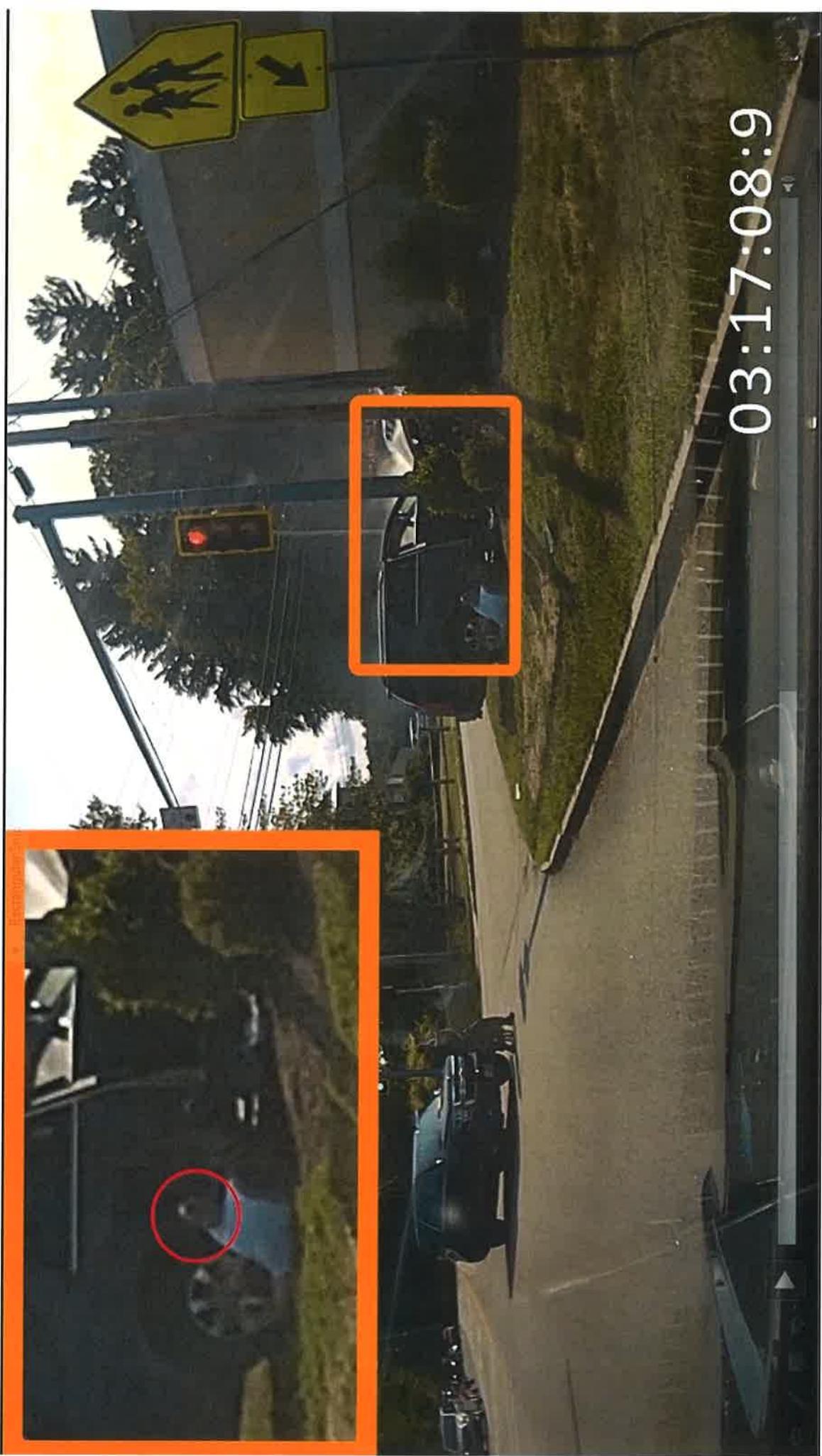
Drop your gun

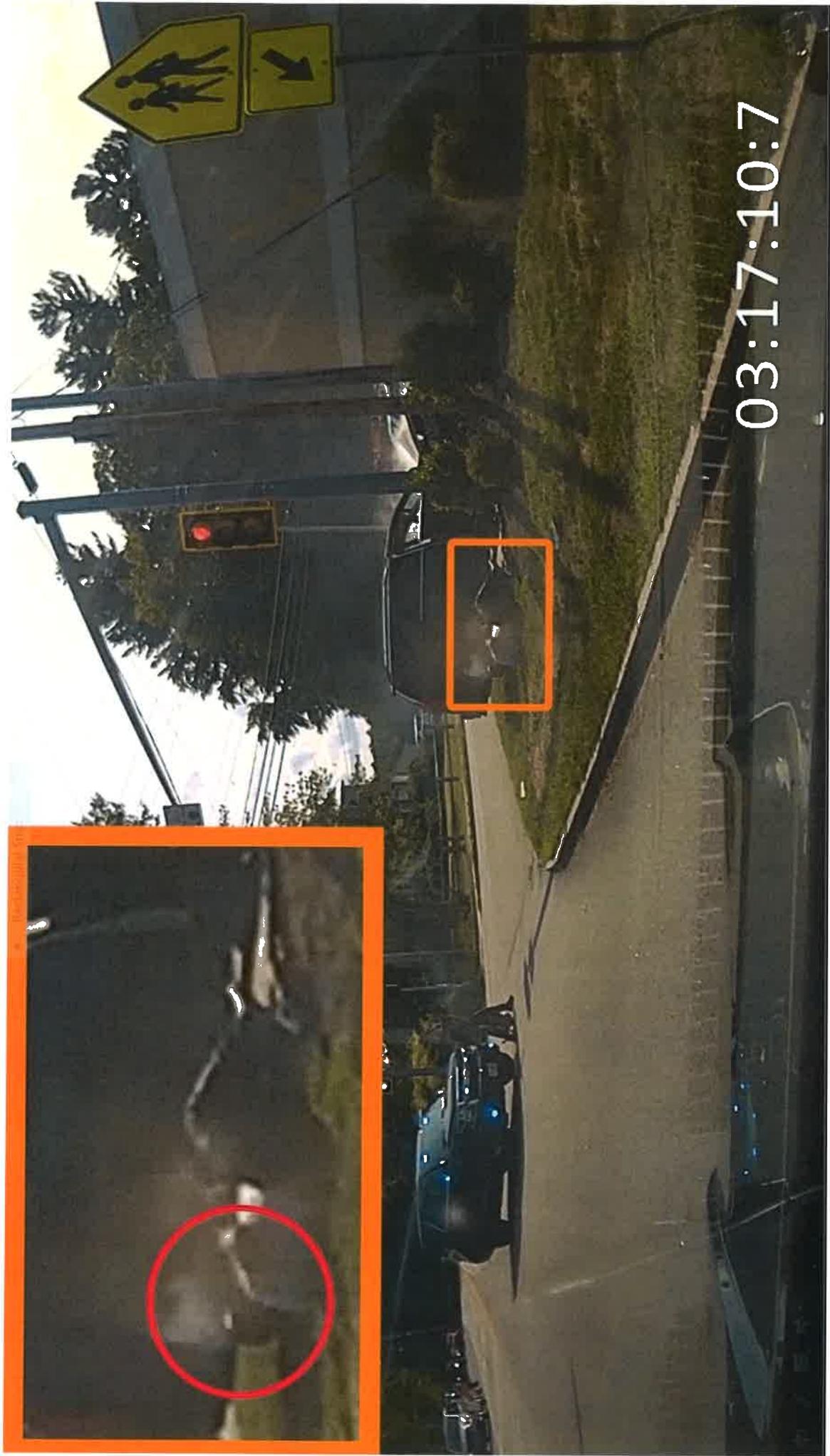
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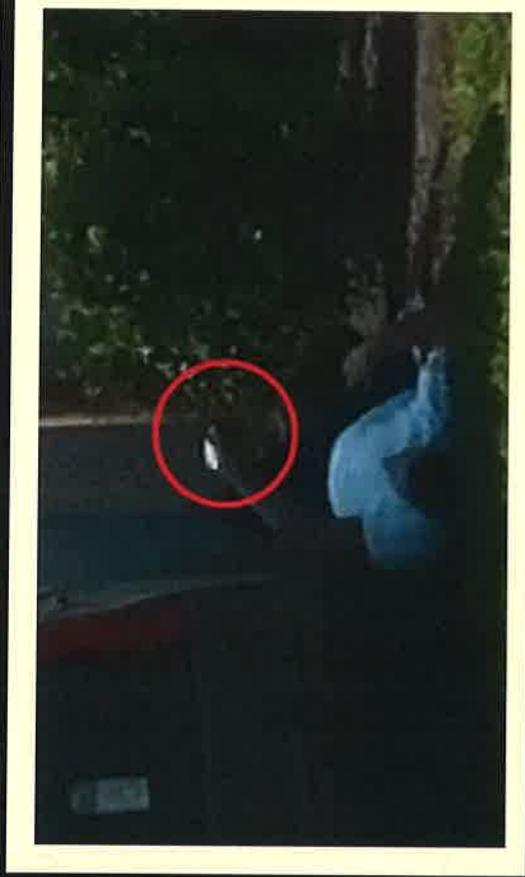




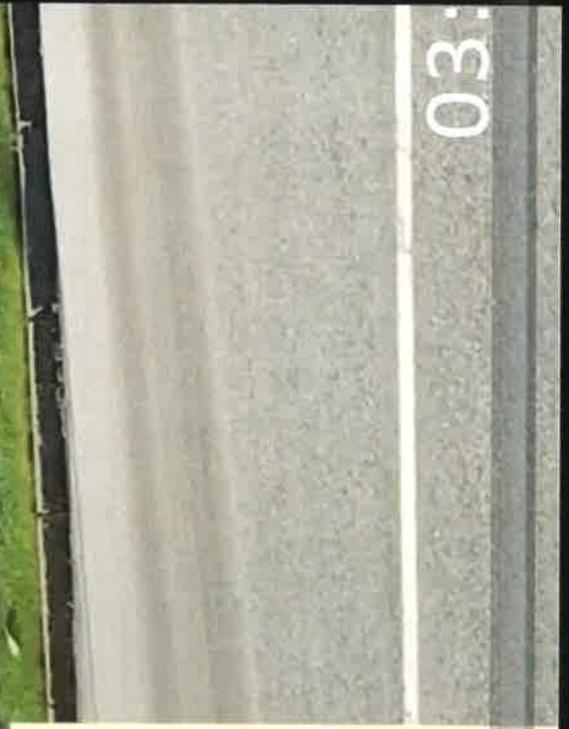
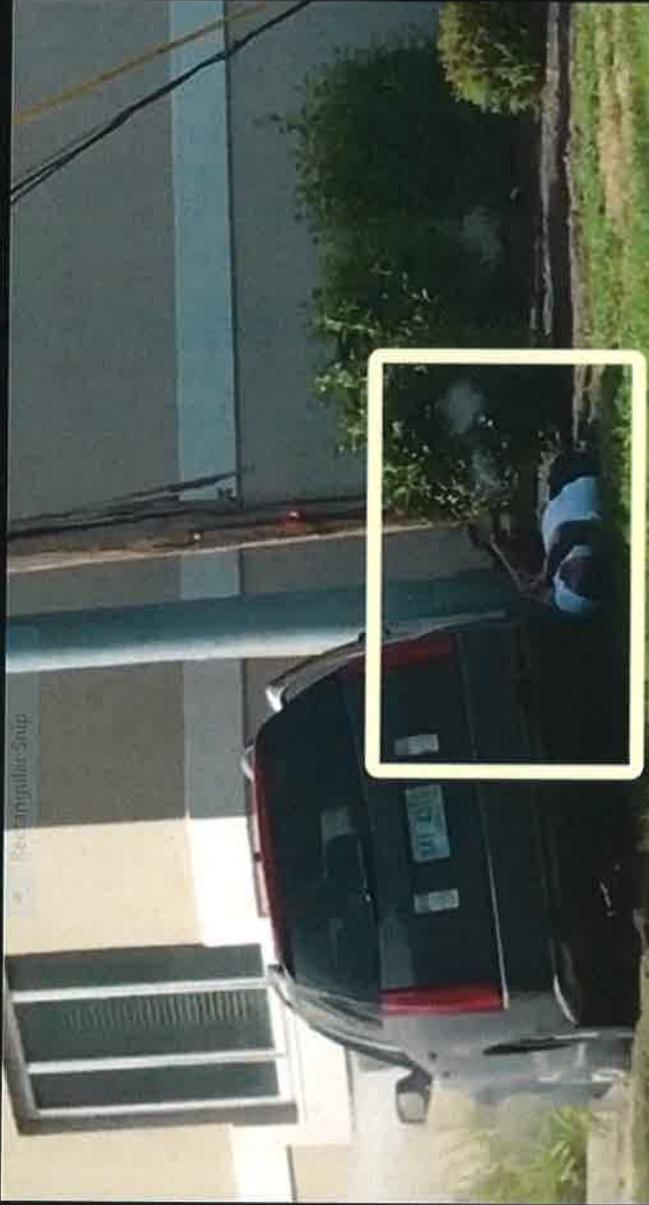
03:17:10:7



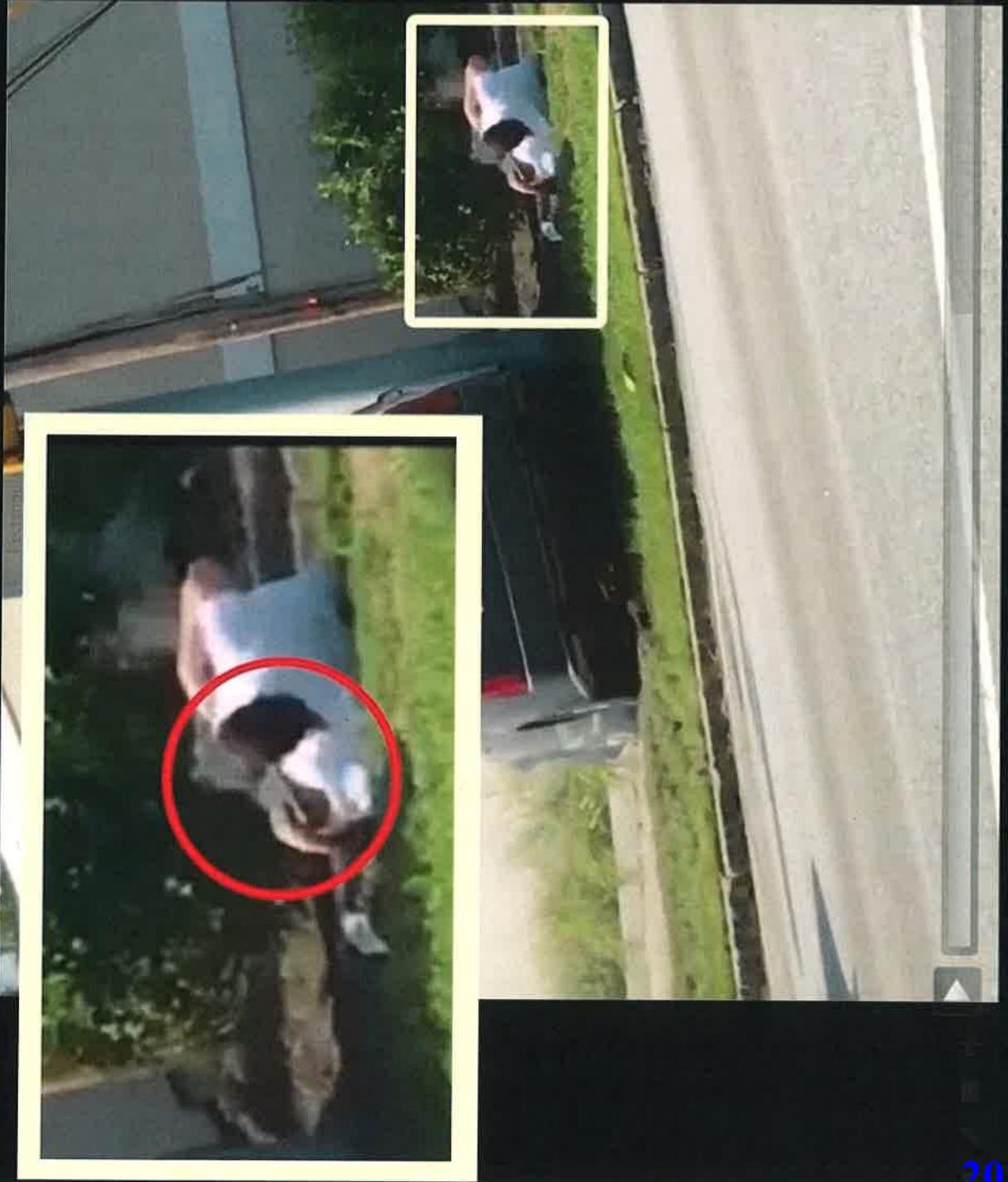
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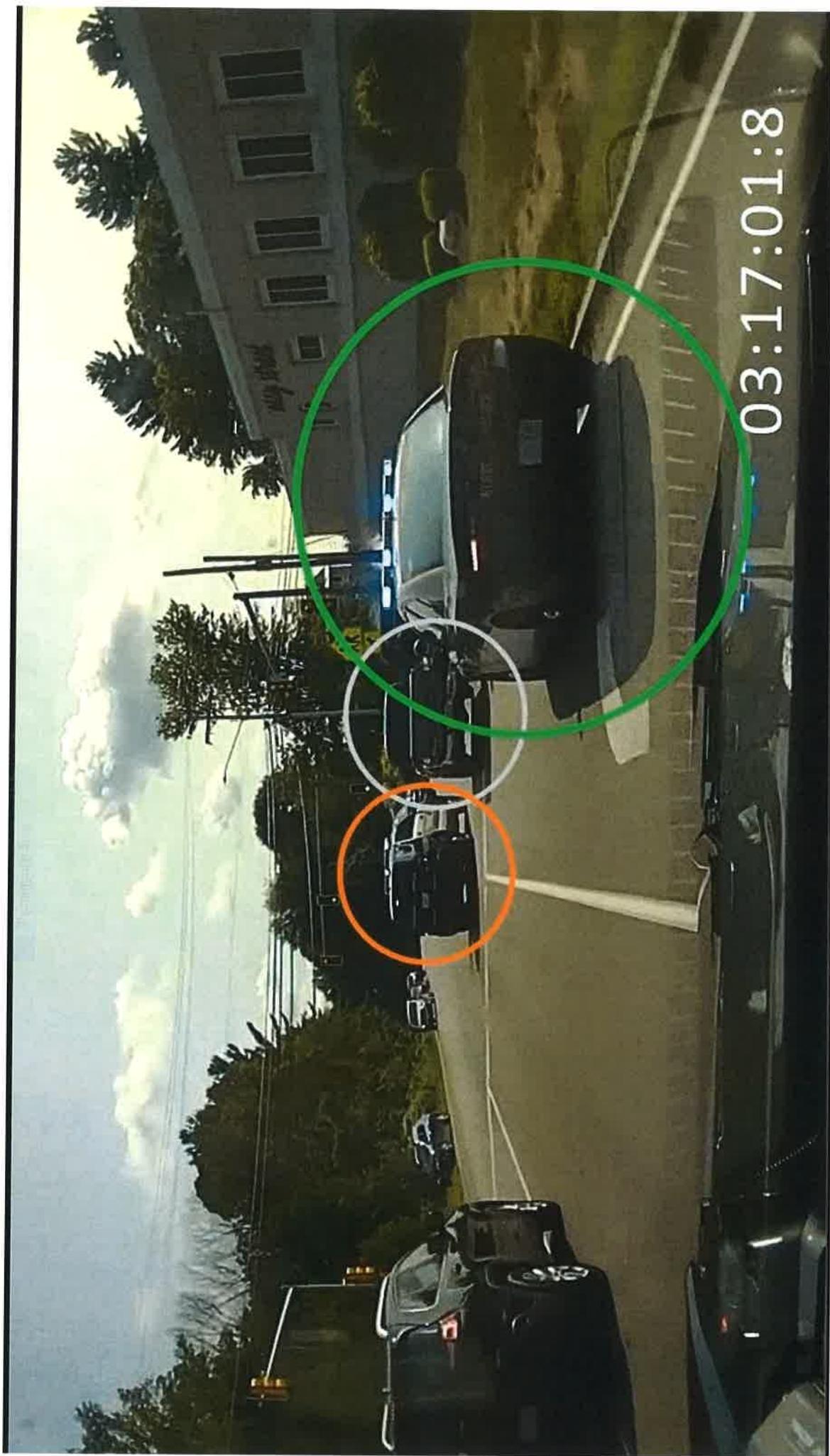
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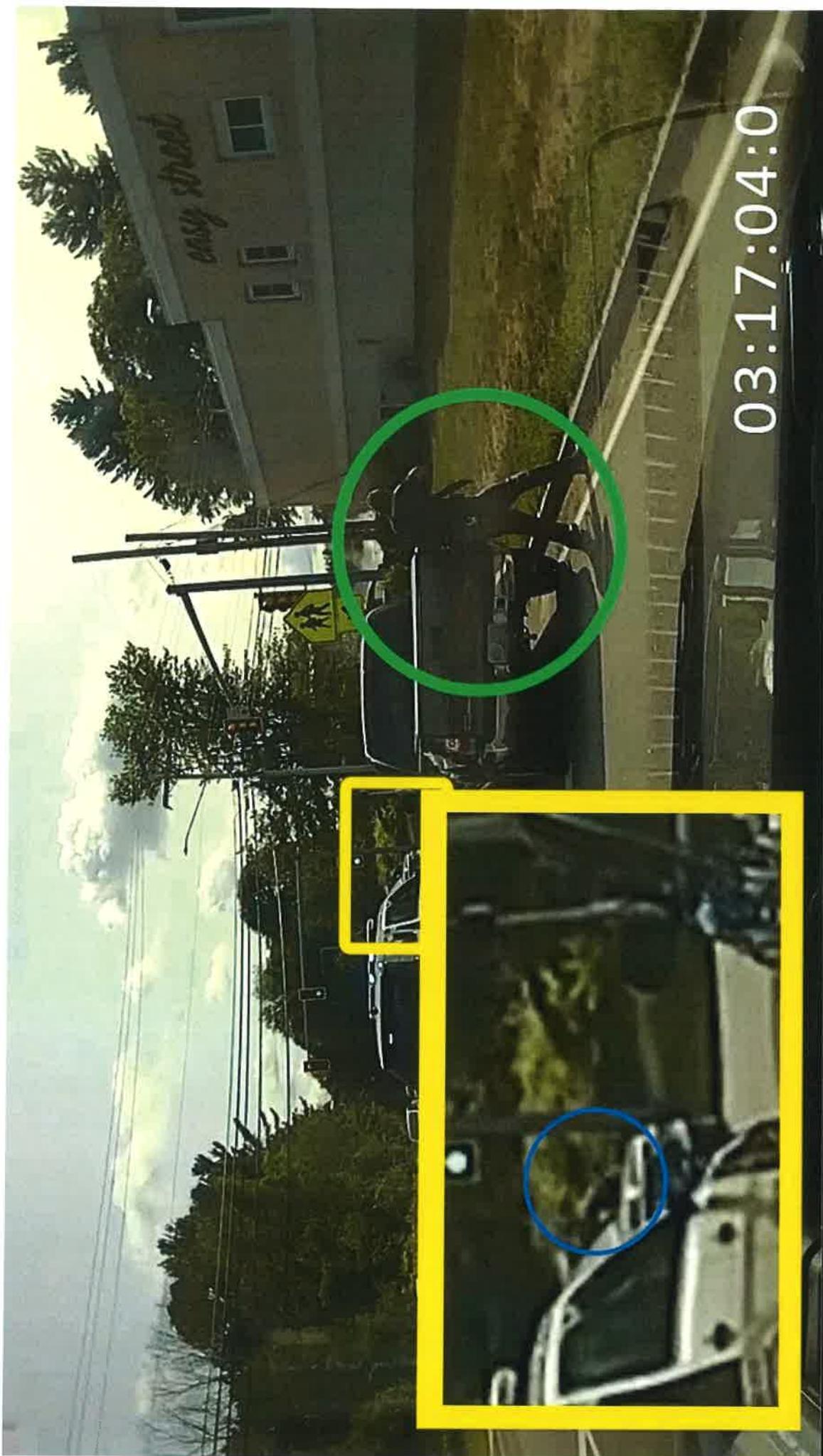


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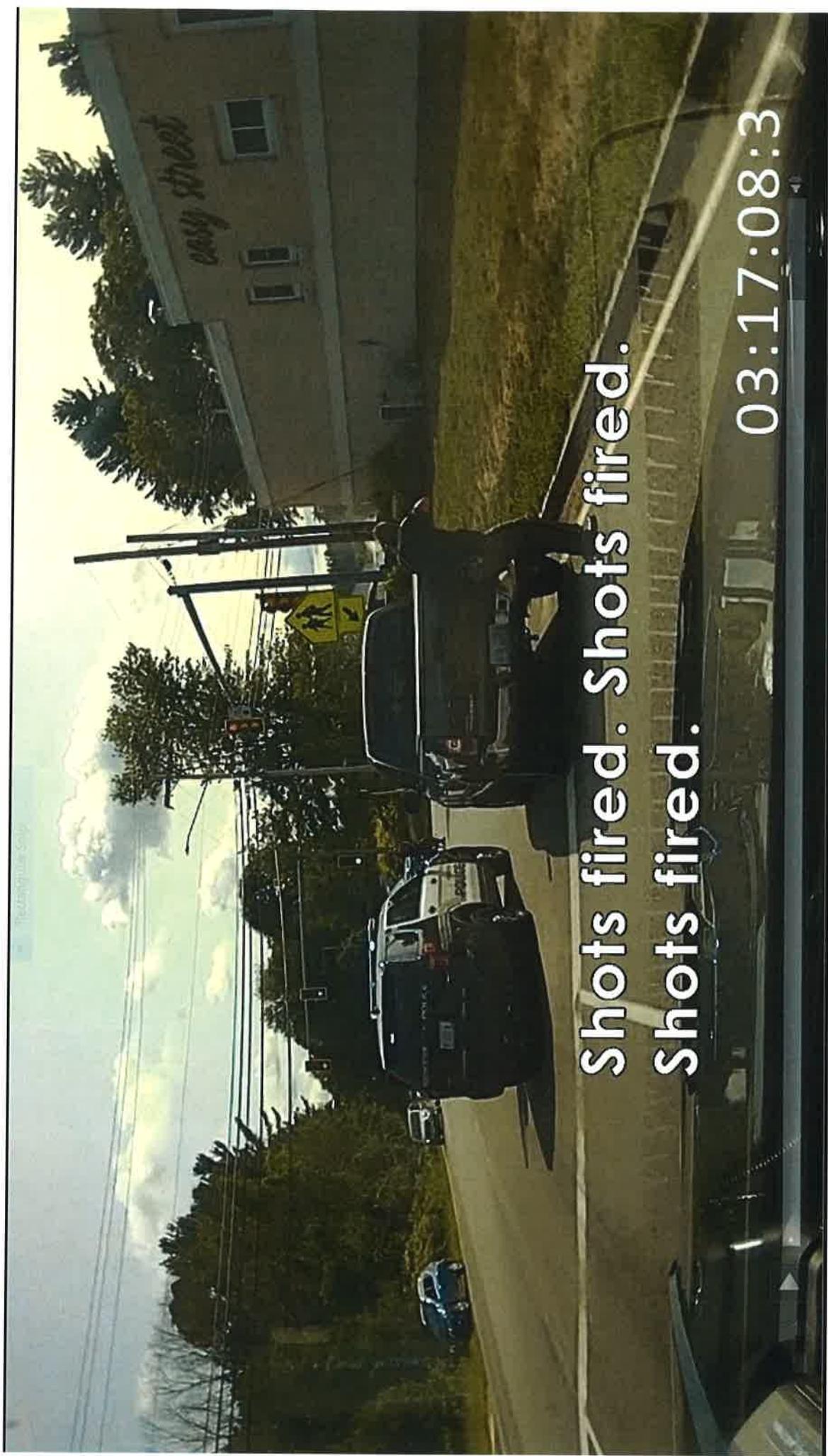


03:17:10:6





03:17:04:0





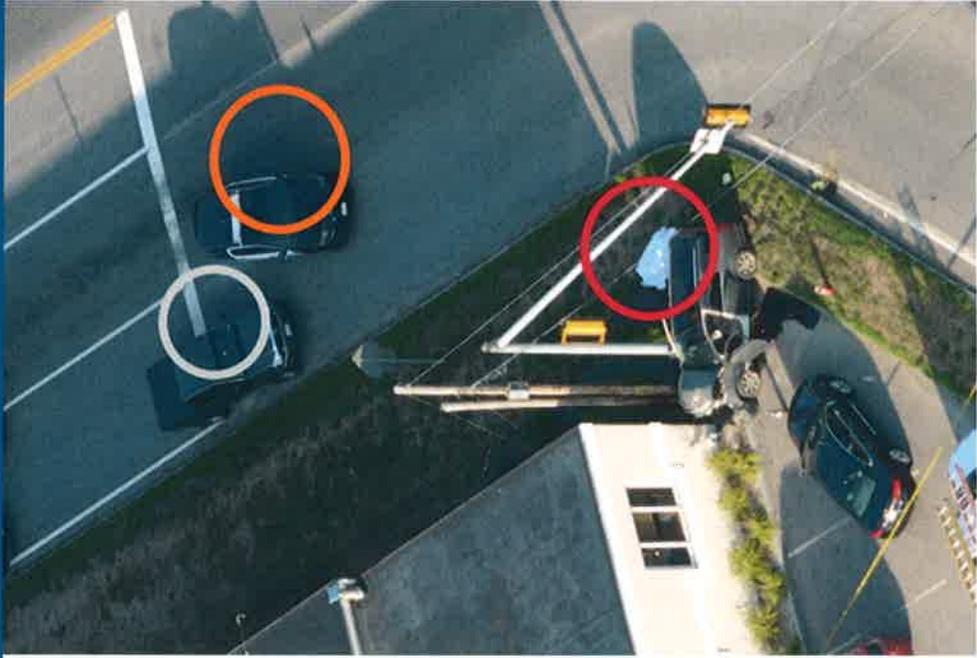
d. Shots fired.
d.

03:17:08:3

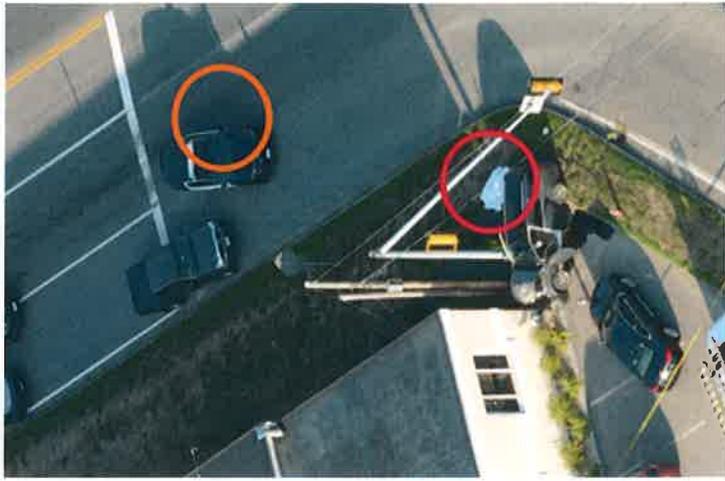


03:17:12:3

BALLISTICS DAMAGE



BALLISTICS DAMAGE - POLICE CAR



BALLISTICS DAMAGE - CIVILIAN VEHICLE



SHOTS FIRED

