

**ATTORNEY GENERAL OFFICE'S REPORT REGARDING THE  
DECEMBER 23, 2020 OFFICER-INVOLVED SHOOTING  
INCIDENT IN DALTON, NEW HAMPSHIRE**

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**I. INTRODUCTION**

Deputy Attorney General Jane E. Young announces the completion of the investigation into the officer-involved shooting incident that occurred in Dalton, New Hampshire, on December 23, 2020, that resulted in the fatal shooting of Mark R. Clermont (age 45). 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 scene of the incident as well as photographs of the scene, viewing physical evidence from the shooting incident, interviewing witnesses, reviewing video footage, and reviewing court documents and records.

As provided in RSA 7:6 and RSA 21-M:3-b, the Attorney General is the State's Chief Law Enforcement Officer. The Attorney General has the responsibility to ensure that whenever a law enforcement officer uses deadly force, it is done in conformity with the law. The Attorney General does not investigate or opine on the particular procedures or tactics used by law enforcement officers. Instead, the Attorney General's review of officer-involved use of deadly force incidents consists of a criminal investigation, which is limited to determining whether officers complied with the applicable law. Thus, the Attorney General's review focuses on whether, under New Hampshire law, the use of force was justified because the officer reasonably believed that such force was necessary to defend himself or herself or a third party from what the officer reasonably believed was the imminent use of deadly force.

Based on the investigation of this deadly force incident, Deputy Attorney General Jane Young finds that New Hampshire State Police Trooper Matthew Merrill's use of deadly force against Mark R. Clermont on December 23, 2020, was legally justified.

## **II. SUMMARY OF THE FACTS**

Shortly before 9:00 p.m. on December 23, 2020, New Hampshire State Police Trooper Matthew Merrill was on patrol in a fully marked State Police cruiser driving on Route 135 in Dalton. He was wearing a State Police uniform, including a protective ballistic vest. Trooper Merrill was not equipped with a police body camera nor a cruiser camera.<sup>1</sup>

As Trooper Merrill drove eastbound on Route 135, he saw a vehicle headed toward him moving "pretty quick." He activated his radar and clocked the oncoming vehicle at 63 miles per hour in a 40 mile per hour zone. After that vehicle passed Trooper Merrill, he turned around and pursued it. Trooper Merrill could see that the vehicle appeared to be a black colored Lincoln. He could not tell anything about the driver or if there were others in the vehicle. As he pursued the vehicle, Trooper Merrill did not immediately turn on his blue lights because he was concerned that would prompt the driver to turn off at an upcoming road and drive into Vermont. So instead, Trooper Merrill waited to turn on his blue lights until he caught up to the vehicle. Once he did that, the vehicle speeded up. Trooper Merrill notified dispatch that he was trying to stop a vehicle, but it was failing to stop.

Trooper Merrill did not know it at the time, but the vehicle he was pursuing and attempting to stop was being driven by Mark R. Clermont. Mr. Clermont had a prior criminal record consisting of sixteen convictions, including three felonies. Two of those felonies

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<sup>1</sup> The New Hampshire State Police do not currently have police body cameras and most of their vehicles are not equipped with cruiser cameras. The only police body camera footage obtained in this case was from officers who arrived at the scene after the incident concluded.

disqualified Mr. Clermont from owning or possessing firearms. Despite that fact, at the time Trooper Merrill was pursuing him, Mr. Clermont had a .45 caliber pistol and a 7.62 caliber AK-style rifle in the car with him. In addition, Mr. Clermont also had a felony conviction for Habitual Offender and several DUI convictions, and could not legally drive since his license had been revoked indefinitely. The fact that Mr. Clermont was in possession of firearms he could not legally possess and was illegally driving a motor vehicle likely played a role in his decision to flee from Trooper Merrill and engage in the conduct that followed when that pursuit ended.

As Trooper Merrill pursued Mr. Clermont's vehicle, it pulled away from Trooper Merrill, causing him to briefly lose sight of it at times. After a short pursuit and losing sight of the vehicle again, Trooper Merrill arrived at the intersection of Route 135 and Bridge Hill Road in Dalton. Trooper Merrill looked down Bridge Hill Road and could see that the vehicle he had been pursuing had pulled into a driveway at 16 Bridge Hill Road.<sup>2</sup> Trooper Merrill drove down Bridge Hill Road, parked his cruiser behind the vehicle he had been pursuing, turned on his front "take down" lights,<sup>3</sup> and radioed dispatch with his location.

As soon as Trooper Merrill stopped his cruiser, the driver of the vehicle, Mr. Clermont, who was wearing a "puffy winter coat" and a "winter hat," quickly got out of the vehicle without looking at Trooper Merrill and started walking away.<sup>4</sup> That conduct concerned Trooper Merrill because Mr. Clermont moved so quickly and it was a "highly unusual" response to being pulled over. Trooper Merrill believed that Mr. Clermont's conduct was indicative of some "underlying safety issue." That prompted Trooper Merrill to get out of his cruiser with his pistol drawn, and

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<sup>2</sup> Trooper Merrill did not recognize the vehicle.

<sup>3</sup> "Take down" lights are bright LED lights mounted on the State Police cruiser that illuminate the area in front of the vehicle. In addition to these "take down" lights, Trooper Merrill said there was some illumination in the area from outside lights on the buildings in the yard at 16 Bridge Hill Road.

<sup>4</sup> Trooper Merrill did not know the identity of the person he was dealing with at the time. Trooper Merrill also said that he had no prior interactions with Mr. Clermont and did not recall any officer safety bulletins concerning him.

tell Mr. Clermont several times, “Stop! Police!” Mr. Clermont did not obey those commands. Instead, he continued walking away while saying, “What do you want?” Trooper Merrill responded by telling Mr. Clermont again, “Stop! Police!” Mr. Clermont then said, “Leave me alone. I’m going to see my friends.” Mr. Clermont never looked at Trooper Merrill during this time, nor did he comply with Trooper Merrill’s commands to stop.

Mr. Clermont walked around the front of the vehicle he had been driving, toward the front steps of the trailer at 16 Bridge Hill Road. As he did that, Mr. Clermont again said, “Leave me alone. I’m going to see my friends.” Trooper Merrill said that Mr. Clermont “never broke stride,” never stopped, and never turned to look at him. At that point, Trooper Merrill was concerned about letting Mr. Clermont enter the trailer he was walking toward. Trooper Merrill did not know if Mr. Clermont had weapons, if there were more weapons in the trailer, or what Mr. Clermont’s intent was. In addition, Trooper Merrill did not know who was in the trailer and based on his familiarity with the resident at 16 Bridge Hill Road, Trooper Merrill did not want Mr. Clermont entering the trailer.<sup>5</sup>

Trooper Merrill holstered his pistol without firing it and considered using his TASER, since he had told Mr. Clermont multiple times to stop, but he had not stopped. Trooper Merrill decided not to use his TASER because it was unlikely to work due to the bulky winter clothing Mr. Clermont was wearing. Trooper Merrill chose instead to use “empty hand control.” At that point, Mr. Clermont had reached the steps at the front of the trailer. Trooper Merrill walked up behind Mr. Clermont, and as he did he saw Mr. Clermont’s “left shoulder dip.” Based on that action, Trooper Merrill believed that Mr. Clermont might be trying to retrieve something from his “waistline.”

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<sup>5</sup> Trooper Merrill elaborated that there had been a lot of “criminal activity engaged” in and around the area, which was “particularly focused” on that residence.

As Mr. Clermont got to the stairs and onto the first or second step, Trooper Merrill grabbed Mr. Clermont's arms from behind and pulled Mr. Clermont toward him. That caused Trooper Merrill and Mr. Clermont to fall to the ground.<sup>6</sup> Mr. Clermont ended up on his hands and knees on the ground, facing down. Trooper Merrill moved and stood over Mr. Clermont and tried to get his arms behind his back. As that happened, Trooper Merrill felt what he described as being "punched to the back," and heard a muffled "bang." Trooper Merrill said at that moment, he knew that he had been shot. However, he never saw Mr. Clermont with a firearm prior to that or at the time he was shot.<sup>7</sup>

After he was shot, Trooper Merrill ended up on the ground with Mr. Clermont now standing over him. Trooper Merrill drew his pistol and tried to "shoot him off" his back. However, Trooper Merrill did not remember hearing any "bang" from his gun.<sup>8</sup> Trooper Merrill described the effects of the gunshot wound - his trigger felt "gummy," he was "really confused," and he could not see.

Trooper Merrill put his pistol back in his holster and tried to get up. As he did that he felt what he believed was Mr. Clermont's pistol pressed to the back of his head.<sup>9</sup> As that was happening, Trooper Merrill heard a female voice say, "What's happening?" or "What's going on?" The voice seemed to be coming from up near the shed at the top of the driveway.<sup>10</sup>

Trooper Merrill managed to stand up and draw his pistol again, but noticed that his pistol's

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<sup>6</sup> The ground had snow and ice on it at the time, making it slippery.

<sup>7</sup> Trooper Merrill likely did not see Mr. Clermont's pistol because it was located in a holster on the front of his waistband and was obscured by his winter jacket. It appears that allowed Mr. Clermont to draw his pistol and then reach around and shoot Trooper Merrill in the abdomen.

<sup>8</sup> Based on the fact that Mr. Clermont was later found to have a gunshot graze wound to the side of his head and the presence of two of Trooper Merrill's discharged firearm cartridge casings in the area where the two men physically interacted, it is possible that Trooper Merrill fired at least two shots from his pistol during this timeframe.

<sup>9</sup> Trooper Merrill surmised that Mr. Clermont's gun failed to fire, which is why Mr. Clermont did not shoot him in the back of the head.

<sup>10</sup> The voice is believed to have been that of Kristin Sellers. She had been visiting the resident at the property and was leaving as the incident began. Her account of the incident is summarized later in this report.

magazine was missing.<sup>11</sup> Trooper Merrill was confused as to why that happened and put another magazine in his pistol and made it ready to fire. He did not recall whether there was an exchange of gunfire at that time.<sup>12</sup>

Trooper Merrill walked back to his cruiser and as he did so, noticed that it was hard to move his right leg. Once back at his cruiser he reached in and grabbed his cruiser radio's microphone. Trooper Merrill tried to keep his eyes on the driveway for Mr. Clermont as he radioed dispatch that shots had been fired and he was hit. Trooper Merrill was unsure whether dispatch heard his report and call for help. As Trooper Merrill stood by his cruiser, he realized that his hands were numb. Trooper Merrill did not want to stay with the cruiser because Mr. Clermont had already tried to kill him and he felt that he would be vulnerable there. So instead, Trooper Merrill walked to the corner of the house across the street and from there surveyed the situation. As he did so, he saw a car's taillights in the driveway turn on.<sup>13</sup> During this time, Trooper Merrill said he was going numb and was having a hard time breathing.

Around the time Trooper Merrill was across the street, it appears that Mr. Clermont went further up the driveway to the shed and tried to get in. Chris Landry and Eric Landry, who were inside the shed, said that Mr. Clermont showed up at the side door and had an "AK," style/assault style rifle in his hands.<sup>14</sup> Chris Landry said that Mr. Clermont was "messing" with,

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<sup>11</sup> The investigators later found Trooper Merrill's full pistol magazine on the ground in the area where he and Mr. Clermont tussled at the front of the trailer.

<sup>12</sup> Based on the bullet damage at the scene and the presence of Mr. Clermont's discharged firearm cartridge casings, it appears likely that Mr. Clermont was shooting at Trooper Merrill during this timeframe. In addition, Carey Landry, who was one of the three people inside the shed at the top of the driveway, said that when she looked outside at one point she saw Mr. Clermont moving back and forth behind a car, shooting a rifle that was in his hands.

<sup>13</sup> This is believed to have been Kristin Sellers who was in her car and preparing to leave the driveway. Trooper Merrill said he did not know if the car left or not.

<sup>14</sup> The reference to an "AK," is to an AK-47 rifle. Like an AR-15 rifle, an AK-47 rifle has a distinctive look. Chris Landry said that he had seen Mr. Clermont with an "AK" style rifle before, but thought he got rid of it. The term "assault rifle" is often used generically by people to describe rifles that look similar to the AK-47 or AR-15.

“fighting” with the rifle. Eric Landry said that Mr. Clermont also had a black “knapsack” and a pistol in a holster. As Mr. Clermont was trying to get into the shed, he told the Landry’s that they were trying to kill him. At the time, Eric Landry noticed that Mr. Clermont had a small amount of blood “around his ear.”<sup>15</sup> The Landrys did not want Mr. Clermont entering the shed, so Eric Landry picked up a machete and hit Mr. Clermont between the eyes with the handle. Then he kicked Mr. Clermont out the door, slammed it shut, and locked it.

As for Trooper Merrill, he said he knew he could not stay at the house across the street since he did not know if help was responding. He decided to switch to his rifle to gain increased range and accuracy and because he “had the issue” earlier with his pistol where he believed it did not fire. Trooper Merrill used his cruiser key fob’s remote to open the trunk of his cruiser. Then, he crossed the road back to his cruiser, got his rifle out of the trunk, and made his rifle ready to fire, which made a loud audible sound. Trooper Merrill also activated the flashlight mounted at the end of his rifle to scan the area.<sup>16</sup> As he did that, he stepped out to the right side of his cruiser, partially exposing the right side of his body. Trooper Merrill heard a gunshot, saw a “spark,” and realized that Mr. Clermont had shot him in the right foot. Trooper Merrill surmised that Mr. Clermont had fired at Trooper Merrill when he activated the flashlight at the end of his rifle. Trooper Merrill said that made it clear to him that Mr. Clermont was still in the driveway at that time.<sup>17</sup>

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<sup>15</sup> That observed blood is consistent with the graze gunshot wound that was later found on the side of Mr. Clermont’s head during his autopsy.

<sup>16</sup> Trooper Merrill’s rifle was also equipped with a laser for aiming purposes, but he said he did not use it during the incident. However, it is possible that he inadvertently activated it given its proximity to his flashlight and the fact that Kristin Sellers reported seeing a “laser” on Trooper Merrill’s firearm.

<sup>17</sup> Based on the bullet damage to objects and vehicles at the scene, as well the discharged firearm cartridge casings, it appears that Trooper Merrill and Mr. Clermont were shooting at each other periodically during this timeframe and up until Mr. Clermont was fatally wounded.

After being shot a second time, Trooper Merrill knew that Mr. Clermont was still in the area, but was unsure exactly where he was. That quickly changed when Mr. Clermont began yelling “No!” several times. At the time, Trooper Merrill was not saying anything to Mr. Clermont so as not to give away his position. Trooper Merrill said that Mr. Clermont’s yelling “was strange” and “didn’t sound right.” Trooper Merrill described it as if Mr. Clermont “was talking to himself” and was not addressing him.

Mr. Clermont’s repeated yelling allowed Trooper Merrill to discern that Mr. Clermont was moving from the right side of the driveway to the left side. Trooper Merrill used the optical device on his rifle and was able to spot Mr. Clermont about one hundred and fourteen feet away in the driveway. Trooper Merrill could only see the winter hat that Mr. Clermont was wearing, as Mr. Clermont was trying to “hunker down” behind a vehicle in the upper driveway. Trooper Merrill took aim at Mr. Clermont’s hat and fired one shot.<sup>18</sup> There was no change, meaning that Trooper Merrill could still see Mr. Clermont’s hat, so Trooper Merrill fired at him second time. After that second shot, Trooper Merrill could not see Mr. Clermont’s hat anymore and did not hear him yelling anymore. After firing the second shot, Trooper Merrill “wasn’t positive what his [Mr. Clermont’s] status was,” but he knew that Mr. Clermont was no longer yelling and was not shooting at him.

At this time, Trooper Merrill was experiencing significant pain from his bullet wounds and was finding it hard to breathe, so he walked up the road to the house next door to get help. He described being cautious and quiet because he did not “know for certain” Mr. Clermont’s status and did not want Mr. Clermont to “finish him off on the front steps,” or come and “hurt anybody else.” The homeowner at the house next door, Jeffrey Osgood, heard Trooper Merrill

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<sup>18</sup> Trooper Merrill said that the hat he saw was the same one Mr. Clermont had been wearing when the incident began.



knocking and let him in his house. After that, Mr. Osgood called 911 and tried to help Trooper Merrill. Trooper Merrill was eventually taken to the hospital for treatment of gunshot wounds to the abdomen and his right foot. Trooper Merrill was subsequently released from the hospital.

After the incident, the New Hampshire Attorney General's Office and the New Hampshire State Police Major Crime Unit were notified. The investigation into the incident began that night.

### **III. THE INVESTIGATION**

Numerous individuals were interviewed during the course of the investigation, including Trooper Matthew Merrill, people on the property during the incident, neighbors in the vicinity of the shooting scene, and people who knew Mr. Clermont. The scene was examined and physical evidence was collected and reviewed. The information and evidence gathered is summarized below.

#### **A. Interview with the Trooper who discharged his firearm**

New Hampshire State Police Trooper Matthew Merrill was the only law enforcement officer who discharged his firearm during the incident. Trooper Merrill was interviewed in the presence of counsel by members of the Office of the Attorney General on January 20, 2021. Trooper Merrill has been fully cooperative with the investigation. His interview is summarized below.

Trooper Merrill joined the New Hampshire State Police in 2012. In 2015, Trooper Merrill became a member of the State Police SWAT Team. As a member of that team, he has attended several trainings, including medical and sniper courses. Prior to joining the State Police, Trooper Merrill worked at the Grantham Police Department for four years. Trooper

Merrill has also served with the National Guard since 2005, which has included deployments overseas.

Trooper Merrill qualifies with his State Police issued pistol and rifle at least once a year. The last time he qualified with those firearms was in the summer of 2020. Other than qualifying and in training, Trooper Merrill has never discharged his firearm as a law enforcement officer.

Trooper Merrill was working the 5:30 p.m. to 2:00 a.m. on December 23, 2020. His patrol area included Dalton. At around 9:00 p.m., Trooper Merrill was driving eastbound on Route 135 in Dalton in a fully marked State Police cruiser. He was dressed in a State police uniform and was wearing a protective ballistic vest. Trooper Merrill was not equipped with a police body camera nor a cruiser camera.

As Trooper Merrill proceeded eastbound, he saw a vehicle headed toward him “pretty quick.” He activated his radar and clocked the oncoming vehicle at 63 miles per hour in a 40 mile per hour zone. After that vehicle passed Trooper Merrill, he turned around and pursued it. Trooper Merrill could see that the vehicle appeared to be a black colored Lincoln. He could not tell anything about the driver or if there were others in the vehicle. Trooper Merrill did not immediately turn on his blue lights because he was concerned that the vehicle might take a side road into Vermont. So instead, Trooper Merrill waited to turn on his blue lights until he caught up to the vehicle. Once he did that, the vehicle speeded up. Trooper Merrill notified dispatch that he was trying to stop a vehicle, but it was failing to stop.

As Trooper Merrill pursued the vehicle, it pulled away from him, causing him to briefly lose sight of it at times. After a short pursuit and losing sight of the vehicle again, Trooper Merrill saw tire marks in the wet road at the intersection with Bridge Hill Road in Dalton. Trooper Merrill could see that the vehicle had pulled into a driveway at 16 Bridge Hill Road.

Trooper Merrill drove down Bridge Hill Road, parked his cruiser behind the black car he had been pursuing, turned on his front “take down” lights, and radioed his location to dispatch.

As soon as he stopped his cruiser, the driver of the black car, Mark Clermont, quickly got out of the car. Mr. Clermont was wearing a “puffy winter coat” and a “winter hat.” He did not look at Trooper Merrill. That conduct concerned Trooper Merrill because Mr. Clermont moved so quickly and it was a “highly unusual” response to being pulled over. Trooper Merrill believed that Mr. Clermont’s conduct was indicative of some “underlying safety issue.” That prompted Trooper Merrill to get out of his cruiser with his pistol drawn, and tell Mr. Clermont several times, “Stop! Police!” Mr. Clermont started to walk away and said in response, “What do you want?” Trooper Merrill responded by telling Mr. Clermont again, “Stop! Police!” Mr. Clermont then said, “Leave me alone. I’m going to see my friends.” Mr. Clermont never looked at Trooper Merrill during this time.

Mr. Clermont walked across the front of the car he had been driving, toward the front steps of the trailer at 16 Bridge Hill Road. As he did that, he again said, “Leave me alone. I’m going to see my friends.” Trooper Merrill said that Mr. Clermont “never broke stride,” never stopped, and never turned to look at him. At that point, Trooper Merrill was concerned about letting Mr. Clermont enter the trailer he was walking toward. Trooper Merrill did not know if Mr. Clermont had weapons, if there were more weapons in the trailer, or what Mr. Clermont’s intent was. In addition, Trooper Merrill did not know who was in the trailer and based on his familiarity with the resident at 16 Bridge Hill Road, Trooper Merrill did not want Mr. Clermont entering the trailer.

Trooper Merrill holstered his pistol without firing it and considered using his TASER, since he had told Mr. Clermont multiple times to stop, but he had not stopped. Trooper Merrill

decided not to use his TASER because he concluded it was unlikely to work due to the bulky winter clothing Mr. Clermont was wearing. Trooper Merrill decided to use “empty hand control” instead. At that point, Mr. Clermont had reached the steps at the front of the trailer. Trooper Merrill came up behind Mr. Clermont and saw his “left shoulder dip,” which was unusual to Trooper Merrill. In that moment, Trooper Merrill perceived that Mr. Clermont might be trying to retrieve something from his “waistline.” In hindsight, Trooper Merrill believed he “underreacted” to that movement.

As Mr. Clermont got to the stairs and onto the first or second step, Trooper Merrill grabbed his arms from behind and pulled Mr. Clermont toward him from the stairs. That caused Trooper Merrill and Mr. Clermont to fall to the ground. Mr. Clermont ended up on his hands and knees, facing down. Trooper Merrill then stood over Mr. Clermont and tried to get his arms behind his back. As that happened, Trooper Merrill felt what he described as being “punched to the back,” and heard a muffled “bang.” Trooper Merrill said that at that moment, he knew he had been shot. However, he never saw Mr. Clermont with a firearm prior to that or when he was shot.

After he was shot, Trooper Merrill ended up on the ground with Mr. Clermont standing over him. Trooper Merrill drew his pistol and tried to “shoot him off” his back. However, Trooper Merrill did not remember hearing any “bang.” He described feeling the effects of the gunshot wound - his trigger felt “gummy,” he was “really confused,” and he could not see.

Trooper Merrill put his gun back in his holster and tried to get up. As he did that he felt what he believed was Mr. Clermont’s pistol to the back of his head. As that was happening, he heard a female voice say, “What’s happening?” or “What’s going on?” The voice seemed to be coming from up near the shed at the top of the driveway. Trooper Merrill managed to stand up

and draw his pistol again. He was unclear as to whether there was an exchange of gunfire at that time, but noticed that his pistol's magazine was missing. Trooper Merrill was confused as to why that happened and put another magazine in his pistol and made it ready to fire.

Trooper Merrill walked back to his cruiser and noticed it was hard to move his right leg. Once back at his cruiser he reached in and grabbed his cruiser radio's microphone. As he did that, he tried to keep his eyes on the driveway for Mr. Clermont. Trooper Merrill notified dispatch that shots had been fired and he was hit, but was unsure whether dispatch heard his call for help.

Trooper Merrill noticed that his hands went numb, either because of the cold or the gunshot wound. He did not want to stay with the cruiser because Mr. Clermont had already tried to kill him and felt that he would be vulnerable if he was in his cruiser. Trooper Merrill then left his cruiser and walked to the corner of the house across the street. He stayed there a short time to survey the situation. While there, he saw a car's taillights in the driveway turn on. Trooper Merrill did not recall if that car left or not. During that time, Trooper Merrill said he was going numb and was having a hard time breathing. He knew he could not stay there and did not know if help was responding.

Trooper Merrill used his key fob's remote to open the trunk of his cruiser, crossed the road back to his cruiser, got his rifle out of the trunk, and made his rifle ready to fire. That action made a loud audible sound. Trooper Merrill also activated the flashlight mounted at the end of his rifle to scan the area. As he did that, he stepped out to the side of his cruiser, exposing the right side of his body. Trooper Merrill heard a gunshot, saw a "spark," and realized Mr. Clermont had shot him in the right foot. Trooper Merrill surmised that Mr. Clermont had fired at

Trooper Merrill when he activated the flashlight at the end of his rifle. Trooper Merrill also said that it was clear to him that Mr. Clermont was still in the driveway at that time.

Trooper Merrill was unsure exactly where Mr. Clermont was in the driveway, but he could hear him because Mr. Clermont was yelling “No!” several times. Trooper Merrill said that “it was strange” and “didn’t sound right.” At the time, Trooper Merrill was not saying anything to Mr. Clermont so as not to give away his position. He described it as almost like Mr. Clermont “was talking to himself,” and was not addressing him.

Mr. Clermont’s repeated yelling allowed Trooper Merrill to discern that Mr. Clermont was moving from the right side of the driveway to the left side. Trooper Merrill used the optical device on his rifle and was able to spot Mr. Clermont’s hat. It appeared that Mr. Clermont was trying to “hunker down” behind the left-most car in the upper driveway. Trooper Merrill took aim at Mr. Clermont’s hat and fired one shot. There was no change, so Trooper Merrill fired a second time. After that second shot, Trooper Merrill could not see Mr. Clermont’s hat anymore and did not hear him anymore. After firing the second shot, Trooper Merrill “wasn’t positive what his [Mr. Clermont’s] status was,” but he knew that Mr. Clermont was no longer yelling and was not shooting at him.

Trooper Merrill was experiencing significant pain from his bullet wounds and was finding it hard to breathe, so he decided to walk up the road to the house next door to get help. He described being cautious and quiet because he did not “know for certain” Mr. Clermont’s status and did not want Mr. Clermont to “finish him off on the front steps,” or come and “hurt anybody else.” The homeowner, Jeffrey Osgood, heard Mr. Merrill knocking and let him in the house. After that, Mr. Osgood called 911 and tried to help Trooper Merrill. Trooper Merrill was

eventually taken to the hospital for treatment of gunshot wounds to the abdomen and the right foot.<sup>19</sup>

Trooper Merrill said that his memory of all the details of the incident was not perfect and that there were “black spots” where he could not remember. For example, he could not recall how many shots he or Mr. Clermont fired during the incident. He attributed the gaps in his memory to the fact that after he was shot, he “was just trying to stay alive.”

Trooper Merrill said that he used deadly force against Mr. Clermont “because his intent was to kill me.” Trooper Merrill explained that Mr. Clermont’s “intent was not to be taken into custody,” as evidenced by the fact that when Trooper Merrill tried to take Mr. Clermont into custody, Mr. Clermont’s response was to try and kill him. Trooper Merrill explained, “I was certain he was going to execute me in the driveway.”

## **B. Interviews with people present on the property where the incident occurred**

In addition to Trooper Merrill and Mark Clermont, there were four other people on the property for at least part of the incident. Three of those people (Chris Landry, Eric Landry, & Carey Landry) were inside a shed on the property located at the top of the driveway. The fourth person (Kristin Sellers), had left the shed and was in the driveway for part of the incident. The interviews with the Landry’s and Ms. Sellers are summarized below.

### **1. Chris Landry**

Chris Landry lives at 16 Bridge Hill Road in Dalton, New Hampshire. He was interviewed on December 23, 2020.

On December 23, 2020, Chris’s brother Eric Landry and his sister-in-law Carey Landry stopped by in early evening to play some pool in a “man-cave”/shed he built in the back yard.

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<sup>19</sup> The gunshot wound to Trooper Merrill’s abdomen entered just below the bottom of his ballistic vest.

As they were playing pool, Eric mentioned seeing blue lights. Chris looked to see what was happening on his outside camera system.<sup>20</sup> Then they heard gunshots and “hit the deck.” After that, they heard “a bunch of shooting.”

Then, Mark Clermont tried to come into the shed through a side door. Mr. Clermont had an “AK,” which he was “messing” with and “fighting” with.<sup>21</sup> They stopped Mr. Clermont from getting inside and pushed him out. Then they heard more shooting and looked outside and saw Mr. Clermont on the ground on his back. The police arrived after that.

Chris said that he met Mr. Clermont a little less than a year ago through some friends. Chris said that he had seen Mr. Clermont drink alcohol and use methamphetamine in the past. Chris told the investigators that Mr. Clermont had “gone off the deep end,” broken up with his girlfriend, and been “acting weird” lately. Chris explained that Mr. Clermont talked about “aliens,” the government listening in to him through “smart TVs,” and that he was a “timekeeper.” He last saw Mr. Clermont about two or three weeks before the incident and was not expecting him to stop by on December 23, 2020.

## **2. Eric Landry**

Eric Landry was interviewed twice. First on December 23, 2020, and second, on December 26, 2020.<sup>22</sup> He is Chris Landry’s brother. Carey Landry is his wife.

On December 23, 2020, at about 6:00 p.m., Eric said he and his wife went to Chris Landry’s house at 16 Bridge Hill Road in Dalton. The three of them were “shooting pool” in a “shed” next to the trailer where Chris lived. Eric saw three flashes and heard sounds like, “pop, pop, pop.” That is when Eric noticed blue lights.

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<sup>20</sup> This system acts as a monitor and does not record.

<sup>21</sup> Chris said he had seen Mr. Clermont with an “AK” rifle in a bag in the past.

<sup>22</sup> The December 26 interview was brief and took place after Eric found a discharged firearm cartridge casing at the 16 Bridge Hill Road residence and wanted to hand it over to the State Police.



Carey opened the window and said that a State Trooper was there. Then, Eric heard more “pop” sounds. The three took cover in the shed as bullets passed through the walls. Eric grabbed a machete that was nearby to protect himself.

Next, Eric said a “dude” he knew as “Mark” [Mark Clermont], came into the room and said they were trying to kill him.<sup>23</sup> Eric wanted Mr. Clermont out of there, so he hit him between the eyes with the handle of the machete, kicked him out the door, slammed it shut, and locked it. Eric said that at the time, Mr. Clermont had a black “knapsack,” a pistol in a holster, and was carrying an “AR-15” / “assault rifle, in his hands.<sup>24</sup> Eric also noticed that Mr. Clermont had a small amount of blood “around his ear.” After that, Eric heard one more gunshot, which he believed was a rifle shot and saw that Mr. Clermont dropped to the ground. At the time, Eric said that he saw a State Trooper with a rifle moving along the side of the trailer. He believed the Trooper he saw is the one who shot Mr. Clermont.<sup>25</sup>

Eric, Chris, and Carey, then went outside and were met by other police officers. The officers were calling out, trying to locate another officer [Trooper Merrill]. Mr. Clermont was on the ground near the “lumber pile,” with his black knapsack nearby. Trooper Merrill was eventually located at the house next door.

Eric said “it all happened so fast.” He estimated that during the incident, he heard up to fifteen shots in all. The shots sounded like rifle shots to him.

### **3. Carey Landry**

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<sup>23</sup> Eric said that he had met Mr. Clermont on two prior occasions. At that time, Mr. Clermont talked about guns and putting them in the ground. Eric described Mr. Clermont as someone who “was not all there.”

<sup>24</sup> An “AR-15,” is a reference to a Colt AR-15, lightweight semi-automatic rifle. The term “AR-15” or “assault rifle” are terms often used generically to describe rifles that look similar to the Colt rifle.

<sup>25</sup> Based on Eric’s interview and other interviews, it is believed that the Trooper he saw at this time was not Trooper Merrill and was not the person who shot Mr. Clermont. Instead, since Eric described this Trooper as being one of the officers who was looking for Trooper Merrill after the incident. Therefore, this Trooper was a first-responder who arrived to look for and assist Trooper Merrill, and was not Trooper Merrill himself.

Carey Landry was interviewed on December 24, 2020.

Ms. Landry said that she and her husband Eric Landry went to her brother-in-law Chris Landry's house at suppertime on December 23, 2020. While there, they hung out together and played some pool in the shed. Initially, some other people stopped by for a short period of time and then left.

One person who stopped by was a "young woman" who visited her brother-in-law, Chris.<sup>26</sup> Soon after that woman left, Ms. Landry heard some "commotion" outside, which sounded like men arguing/fighting. Chris had cameras outside, so they looked at the camera monitor to see what was going on.<sup>27</sup> The monitor was "fuzzy," so all they could see outside were blue lights.

Chris opened the door to see what was going on. Ms. Landry then heard three shots in rapid succession. That prompted Chris to slam the door and tell everyone to get down on the floor. Chris and Eric said that the "cops" were outside. However, Ms. Landry looked outside and only saw a man in winter jacket and hat, who did not look like a police officer. The man was standing behind her brother-in-law's car moving back and forth, shooting a rifle that was in his hands.

Ms. Landry retreated to the bathroom and took cover there. She said that Chris and Eric looked out the windows periodically. Then, Ms. Landry heard Chris and Eric telling someone to "get out of here." By the time she left the bathroom to see who else was there, the person was gone. Ms. Landry asked her husband who the person was that had just been there, and her husband said it had been "Mark."

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<sup>26</sup> This woman is believed to have been Kristin Sellers.

<sup>27</sup> Ms. Landry said that Chris's camera system does not record.

Ms. Landry said things got quiet outside, so she believed whatever was occurring was over. Then she heard one or two shots and Eric and Chris said the person behind the car “hit the ground.”

After that, police officers arrived and ordered them out of the shed. One of the officers was “screaming,” asking where his partner was. Other officers kicked the backpack and rifle away from Mr. Clermont, who was on the ground.

#### **4. Kristin Sellers**

Kristin Sellers was interviewed on December 30, 2020.

Prior to her interview, Ms. Sellers told the investigators that she had several issues that affected her memory of the incident on December 23, 2020. Ms. Sellers said that she was frazzled by what she experienced during the incident and was hiding during much of it, so she only heard things she believed were happening versus seeing things that actually occurred. In addition, Ms. Sellers said that the lighting was poor at the scene. Therefore, some of what she told the investigators was what she assumed happened versus what she actually saw happen. She also said that she has had substance abuse issues in the past, suffers from mental health issues, did not have the “greatest” memory, did not remember everything that occurred during the incident, and had difficulty at times with recalling the order of events during the incident. Her account of the incident follows.

On December 23, 2020, Ms. Sellers drove by herself to the Chris Landry residence at 16 Bridge Hill Road in Dalton to “wish her buddy a Merry Christmas and see how they were doing.” Ms. Sellers arrived there around 8:30 p.m., and parked in the driveway. Then she went

in to the “shed” on the property to visit with Chris. Ms. Sellers denied that anyone else was there besides Chris.<sup>28</sup>

Ms. Sellers believed that she visited with Chris for about fifteen to twenty minutes. She then left and was about halfway down the driveway when she saw the “officer’s blue lights” and a black car that was running that had not been there when she arrived.<sup>29</sup> Ms. Sellers said that shots were being fired at that point, but then corrected herself and said that she did not hear shots being fired until later. Later, she changed her statement again and said that she had heard a gunshot when she left the shed. Ms. Sellers said she “assumed” the gunshot she heard was from Trooper Merrill firing his gun, but did not see that happen.<sup>30</sup> She said that she saw Trooper Merrill with his gun drawn behind his driver’s door “at Mark” [Clermont]. Ms. Sellers heard Trooper Merrill say, “Stop, stop. I’m pulling you over. Why didn’t you stop?” She also heard Trooper Merrill say, “Why are you behind the wheel? Why are you driving?” Then, Ms. Sellers said that she heard a few gunshots, and believed they were from Trooper Merrill’s gun. She also said she saw “smoke” coming from Trooper Merrill’s gun and the “laser” on his gun.<sup>31</sup>

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<sup>28</sup> Carey Landry contradicted Ms. Seller’s claim that only Chris Landry was in the shed when she arrived. Ms. Landry said that she and Eric Landry were also there at the time.

<sup>29</sup> That black car was the Lincoln that Mr. Clermont was driving that night.

<sup>30</sup> Ms. Sellers also said she did not see Mr. Clermont firing a gun, but assumed he did as well. She said that she heard two different types of gunfire and assumed that one was from Trooper Merrill’s gun and the other from Mr. Clermont’s gun.

<sup>31</sup> Ms. Sellers’ belief that Trooper Merrill fired a gun at this juncture appears erroneous. Besides the fact that Trooper Merrill said he did not fire a gun at this juncture, there is other evidence that supports his claim. First, Ms. Sellers said that the gun she saw Trooper Merrill firing at this time had a “laser” on it. The only firearm that Trooper Merrill used that night that was equipped with a laser was his rifle. That rifle also had a flashlight, which Trooper Merrill said he activated during the incident. Therefore, it is likely that Ms. Sellers saw the flashlight on Trooper Merrill’s rifle and mistook it for a laser. It is also possible that Trooper Merrill inadvertently activated the laser on his rifle and that is what Ms. Sellers saw. Regardless, the light source Ms. Sellers saw emanating from Trooper Merrill’s firearm was likely from his rifle, which he did not use until later during the incident than what Ms. Sellers described. That later usage of a firearm with a “laser” on it is consistent with the fact that Trooper Merrill’s rifle was locked in his cruiser’s trunk and was not readily accessible early in the incident. Consistent with that fact, the neighbor, Jeffrey Osgood, said that he heard a lot of gunfire and then later, looked outside his home and saw Trooper Merrill go to his cruiser, open the trunk, and appear to take out a rifle. That evidence puts Trooper Merrill’s use of the firearm with a “laser” on it later during the incident than what Ms. Sellers described seeing. Therefore, Ms. Sellers appears to have had difficulty recalling the order of events, as she said she might have.

Ms. Sellers said that Mr. Clermont kept walking toward the shed. Mr. Clermont told Trooper Merrill that he had not been in the car, had not been driving, and that he had walked there. Trooper Merrill said, “You need to stop, you need to stop.” Ms. Sellers also heard Trooper Merrill tell Mr. Clermont to take his hands out of his pockets. Mr. Clermont did not stop and said to Trooper Merrill, “You better not come any closer, I’m warning you.” She took that to mean that Mr. Clermont had a gun. After that she said Trooper Merrill “proceeded to jump on Mark’s back.” Ms. Sellers said that this happened when Mr. Clermont was trying to “run into [Chris] Landry’s house,” near the side stairs.

Ms. Sellers said that she ran, crouched by Chris’s truck, and hid in the driveway. She “did not see much after that.” Ms. Sellers said she could hear things that happened and knew that there was a “scuffle.” At one point she heard another gunshot and saw Trooper Merrill and Mr. Clermont “kinda tangling” on the lawn. Ms. Sellers described it as each man trying to get the other on the ground. Ms. Sellers heard another shot and was “pretty sure that’s when Mark [Clermont] had shot the officer.” Ms. Sellers heard Trooper Merrill tell Mr. Clermont that he would stand down and ask Mr. Clermont not to shoot him.<sup>32</sup> Ms. Sellers believed Trooper Merrill had been shot at that point because that is when Trooper Merrill got up and seemed “woozy,” and tried to run away. In the process Trooper Merrill ran into two vehicles, and then stopped as if he was trying to catch his breath. Ms. Sellers said that “from there, there were shots exchanged, many shots.” She did not know who was firing the shots.

Ms. Sellers said that she was yelling during the incident, calling for help. She managed to get to her car and left.<sup>33</sup> As she did that, she saw Trooper Merrill at his cruiser. After she left, she tried to get home and was so “frazzled” she initially went the wrong way. After she turned

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<sup>32</sup> Trooper Merrill told the investigators that he did not recall saying these things to Mr. Clermont.

<sup>33</sup> Ms. Sellers did not call the police during the incident or afterwards to report what had happened.

around, she drove by the scene again and saw Trooper Merrill “in the neighbor’s yard” across the street with his “arm around himself,” as if “he was in some serious pain.”

Ms. Sellers said that she heard a lot of shots being fired during the incident, meaning probably more than ten.

Ms. Sellers said that Mr. Clermont’s girlfriend had previously told her that he was a Habitual Offender. Mr. Clermont had said that to Ms. Sellers as well, and told her that if “he was ever caught driving again that he was never going back to prison.”<sup>34</sup>

### **C. Interviews with people near the scene of the incident**

#### **1. Hollis Walter**

Hollis Walter was interviewed on December 24, 2020. Mr. Walter lives with his wife, Donna Walter, across the street from the scene at 16 Bridge Hill Road in Dalton.

On December 23, 2020, he was in bed and heard “a lot of shooting.” Then, his wife told him that the police were outside “having a shoot-out.” Mr. Walter looked outside and could hear shots being fired. He also saw a “cop” [Trooper Merrill] who was shooting from the end of the driveway at the “Landry house.” Trooper Merrill then walked along the side of Mr. Walter’s house and went back across the street. As that happened, a car backed out of the driveway at 16 Bridge Hill Road and left.<sup>35</sup> Mr. Walter next saw Trooper Merrill walking “up the hill” to the house next door [Jeff Osgood’s house]. A few minutes later, Mr. Walter said other officers arrived.

Mr. Walter did not see anyone else shooting during the incident.

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<sup>34</sup> Mr. Clermont’s statement about “never going back to prison” was likely a reference to his prior criminal record.

<sup>35</sup> This is believed to have been Kristin Sellers leaving.

## **2. Donna Walter**

Donna Walter was interviewed on December 24, 2020. Mrs. Walter lives with her husband, Hollis Walter, across the street from the scene at 16 Bridge Hill Road in Dalton.

On December 23, 2020, Mrs. Walter was asleep and awoken by “quite a few” shots. She looked outside and saw a police officer [Trooper Merrill] and blue lights. Mrs. Walter saw Trooper Merrill “shoot” and then move across the street to their house. She then woke her husband up and they watched what was going on outside. At one point, Mrs. Walter said it looked like the Trooper “emptied his gun” and went back to his cruiser to “refill it.”

Mrs. Walter did not see anyone else shooting during the incident, but did hear male voices “yelling.” She said that she could hear “back and forth” shooting and someone shooting “back” at Trooper Merrill. Mrs. Walter said that Trooper Merrill was shooting toward the Landry’s home. She also saw a car leave the Landry’s driveway during the incident.<sup>36</sup>

After a short time, it got quiet and Trooper Merrill went to the house next door.

## **3. Anya Gage**

Anya Gage lives on Bridge Hill Road in Dalton. Her house is located across the street and down the road from the scene of the incident at 16 Bridge Hill Road.

Ms. Gage was home on December 23, 2020 and at around 8:30 or 9:00 p.m., heard “loud bangs” coming from 16 Bridge Hill Road. At first, Ms. Gage thought the “bangs” were caused by fireworks, which she had heard being set off before at the 16 Bridge Hill Road property. Ms. Gage said that the next thing she noticed was flashing blue lights outside and yelling. She could not tell what was being said. Then, Ms. Gage heard two distinct sounds, which she described

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<sup>36</sup> This is believed to have been Kristin Sellers leaving.

were from two different guns. Ms. Gage did not see who was firing those guns or see anyone outside.

#### **4. Donald O'Neil**

Donald O'Neil lives in Vermont but was visiting friends who lived near the scene of the incident at 16 Bridge Hill Road in Dalton on December 23, 2020.

Mr. O'Neil told the investigators that he went outside to get something from his car and saw blue lights reflecting off the area. He could not see a police cruiser, people, or the property itself at 16 Bridge Hill Road from where he was located. However, he heard what he described were some doors slamming and then gunfire. Mr. O'Neill said he heard what he "interpreted as an Officer yell out, making demands." After that, Mr. O'Neil heard more gunfire, which he described as "return gunfire."

Mr. O'Neil then went back into his friend's house and told them about the gunfire. After that, he saw police officers responding to the area.

#### **5. Jeffrey Osgood**

Jeffrey Osgood lives on Bridge Hill Road in Dalton. His house is located next door to the Landry's home, the scene of the incident.

On December 23, 2020, Mr. Osgood was at home getting his children ready for bed. Mr. Osgood's oldest child said something about gunshots. Mr. Osgood then opened the living room blinds and saw a police cruiser outside with the "lights going." He also heard "a bunch of commotion." Mr. Osgood opened the window and "heard the Trooper firing and other shots coming back." He said that "went on for several seconds."

Mr. Osgood next saw Trooper Merrill run across the road "from the residence he was at, down the side of the house, across the street." Next, Mr. Osgood said that Trooper Merrill ran



back to his cruiser and “fired several other times.” When Mr. Osgood first saw Trooper Merrill, he had a handgun that he was firing. Trooper Merrill then opened the trunk of his cruiser and grabbed what Mr. Osgood believed was a rifle. The cruiser was parked in the driveway of the house next door.

Mr. Osgood said that he saw a car back out of the driveway next to the Trooper’s cruiser, and heard someone yelling, “Leave, leave, leave!” The car then drove down the road toward Vermont.

At that point, Mr. Osgood moved his children to another part of the house. Then, he heard banging on the front door and someone saying something. Mr. Osgood turned on the outside light and could see Trooper Merrill, asking for help. Mr. Osgood told Trooper Merrill that the door he was at was blocked and to go to the other door. Mr. Osgood then put on his shoes and met Trooper Merrill at the other door.

Trooper Merrill came into the house, threw his keys on the floor, put his gun on the table, and then collapsed. Trooper Merrill was conscious and told Mr. Osgood what was wrong and what to do. Mr. Osgood removed Trooper Merrill’s gun belt at his request. Mr. Osgood then ran to the bathroom to get towels to put pressure on the wounds because Trooper Merrill told him that he had been shot. Mr. Osgood pulled up Trooper Merrill’s shirt and got pressure on one wound, and then Trooper Merrill “said something about his ankle.” Mr. Osgood then took a towel and put it on Trooper Merrill’s boot and applied pressure. As this was happening, Mr. Osgood was on the phone with 911. Then, other Troopers arrived and took Trooper Merrill and left.

Mr. Osgood estimated that approximately twenty shots were fired by Trooper Merrill during the incident. Other shots appeared to come from the area up the driveway where Trooper

Merrill's cruiser was located. According to Mr. Osgood, those shots sounded different from Trooper Merrill's shots. He estimated that approximately twenty other shots were coming from up the driveway, maybe more. Those shots were fired very rapidly.

**D. Interviews with people who knew Mark R. Clermont**

The State Police interviewed several people who knew Mr. Clermont. Their interviews are summarized below.

**1. Melody Isham-Pilotte, Donald Pilotte, Ryan Smalley and Martha Guest**

Melody Isham-Pilotte, Donald Pilotte, Ryan Smalley, and Martha Guest were interviewed together on December 24, 2020. Ms. Pilotte conveyed the majority of the information during this interview.

Mr. Clermont lived with the Pilotte's off and on for sixteen years and was like a "family member."

On the morning of December 23, 2020, Ms. Pilotte spent several hours running errands and assisting a friend, Ken Lewis. Mr. Lewis had reached out to law enforcement authorities telling them that the Pilotte's were victims of elder abuse by Mr. Clermont. Ms. Pilotte spoke to the State Police and denied that claim, telling them that they were not afraid of Mr. Clermont.

Ms. Pilotte said that as far as she knew, Mr. Clermont was home on December 23, "doing his own thing" in the basement. She described one incident during the day when Mr. Clermont became upset at a neighbor, but then calmed down. The last time Ms. Pilotte and her husband saw Mr. Clermont was around 8:00 p.m. She said that unknown to them, Mr. Clermont had taken their car keys off the "rack" and left in their black, 2015 Lincoln MKZ car. At the time, Ms. Pilotte said they did not know Mr. Clermont had left the premises, they just thought he was

outside. They did not realize he was gone until they received a call from Ms. Pilotte's niece about a shooting in Dalton.

The investigators were told about some of Mr. Clermont's "problems" in the months before the incident. Ms. Pilotte said that Mr. Clermont had drug problems in the past and had "some kind of breakdown last spring." Mr. Clermont had a job and quit because he thought he was "being set up." Mr. Clermont thought the "Feds" were after him and would drive around looking for spacecraft. He would point at the sky and say "that's like the mother ship" and they were coming. Mr. Clermont also believed he was the "key." Ms. Pilotte mentioned a prior incident where the police came to the house and Mr. Clermont was screaming at them: "I am the clock, I am the key!" Mr. Clermont also believed that he was "some Government secret," was "indestructible," and could "not be shot and killed." Ms. Pilotte said she tried to talk to Mr. Clermont about his strange beliefs, but he would get angry so they did not challenge him.

Ms. Pilotte said that Mr. Clermont was physically abusive toward an ex-girlfriend in the past and a couple of times physically assaulted her husband. Otherwise, Mr. Clermont was only verbally abusive to them at times.

Ms. Pilotte said that they used to have a scanner, but Mr. Clermont thought that conversations could be heard through the scanner. Mr. Clermont would also shut off the hot water in the house at night and do "experiments with water." He would boil their water because he believed that there were drugs in the water and that someone was trying to poison them. In addition, Mr. Clermont believed that their computers had been "hacked" and would remove batteries from things like their cell phones and soak them in water.

Ms. Pilotte told the investigators that Mr. Clermont had a girlfriend “who went through hell with him.” He would “imagine” a lot of stuff and accuse his girlfriend of cheating on him and working with the police against him.

Ms. Pilotte said that she reached out to Mr. Clermont’s family asking for their help because of her concerns about him. Ms. Pilotte said that it was hard to get Mr. Clermont help because he did not think he was “sick,” and believed everything he was saying.

Ms. Pilotte said that they did not know that Mr. Clermont had any real weapons and never saw any “out in the open.” However, she said that he sometimes carried around a big black duffle bag, but did not ask Mr. Clermont what was in it.

## **2. Melody Isham-Pilotte**

On December 26, 2020, Melody Isham-Pilotte was interviewed separately a second time. Ms. Pilotte made it clear she did not know what actually happened during the shooting incident. However, during this interview, Ms. Pilotte said that she had heard that a friend of someone she knew was an eyewitness and would not cooperate.<sup>37</sup> Ms. Pilotte also told the investigators that she spoke to a man who had heard what happened. This man spoke about how “the feds wanted to get rid of Mark [Clermont],” and that it was some “deal.”

Ms. Pilotte described Mr. Clermont as highly intelligent with a “genius IQ.” She said that Mr. Clermont swore that there was “an apocalypse coming.” He also believed in aliens and said that he knew “secrets” that the government did not want anyone “to know and tell.” Ms. Pilotte said that she witnessed “a lot of the same stuff with him [Mr. Clermont], in the sky....” Ms. Pilotte said it was like Mr. Clermont knew something was coming and “they don’t want him to talk.”

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<sup>37</sup> This “eyewitness” was identified as Kristin Sellers, who the investigators interviewed.

Ms. Pilotte said that their neighbors did not like Mr. Clermont. She said that a neighbor claimed that Mr. Clermont had threatened to kill him. Around September or October 2020, the police (a State Trooper and “local cop”) came to her home to investigate, but did not enter her home. Instead, Ms. Pilotte went in and spoke to Mr. Clermont, who said it had been a toy gun and gave her the toy gun. Ms. Pilotte gave that toy gun to the police and they left. Ms. Pilotte said that the police did tell her that she could go to court and file “some kind of a petition” and have Mr. Clermont removed. Ms. Pilotte said she and her husband discussed it but did not want to do that since they did not feel unsafe.

Ms. Pilotte said that Mr. Clermont had a bullet proof vest, but said that she did not know that Mr. Clermont had guns.

Ms. Pilotte said that Mr. Clermont was taking “black market steroids,” and believed he had some sort of “mental breakdown” in the spring. She also said that Mr. Clermont used to have a serious drug problem. Mr. Clermont believed that the town was trying to poison their water and that the pigs on the Pilotte property had been poisoned. Ms. Pilotte said that Mr. Clermont was “doing experiments with the water.” She recounted how one night Mr. Clermont was sitting in their home with three bowls of water laid out and told her that one bowl had heroin in it, one bowl had cocaine in it, and one bowl had meth [amphetamine] in it. Ms. Pilotte said that the bowls just contained tap water that had been boiled. She told the investigators that Mr. Clermont would pick plaster off the ceiling and think it was drugs. He would smoke the plaster and one time she saw him lick it. Ms. Pilotte told the investigators that Mr. Clermont “had some kind of a breakdown, he wasn’t a monster.” She said that she believed his mind “was gone.”

### **3. Joseph Clermont**

Joseph Clermont was interviewed on December 24, and 26, 2020. He lives in Massachusetts and is Mark R. Clermont's brother.

Joseph described his brother Mark as a "smart kid" who graduated with "high honors" from college as a Chemical Engineer. Joseph said that before he was "troubled," everybody would love his brother Mark.

Joseph said he did not see Mark much and would occasionally speak with him. The last time he saw Mark was in the summer, when Mark went to Massachusetts to visit people with his girlfriend Kim.

Joseph believed that Mark started having some kind of "mind problems." He described Mark as "troubled" during the summer visit, and saying things that did not make sense. For instance, Mark believed that he was being followed and was seeing things that were not there. Joseph said it seemed like "something wasn't right with his mind."

#### **4. Thomas Clermont**

Thomas Clermont was interviewed on December 24, and 26, 2020. He lives in Massachusetts and is Mark R. Clermont's brother.

Thomas said Mark was extremely smart, went to college, and was a chemical engineer. Thomas did not have a lot of communication with Mark, but knew that he had "substance problems" and was "all over the place." Mark had been calling and talking about "spaceships coming down to see him," the "mothership," that "they" were watching and recording him, and that he had a "chip implanted in his head." Mark also told his brother that "they're not taking me," in a possible reference to the police.

Thomas did not know if his brother had any firearms, but assumed he did. Thomas also surmised that this incident involving Mark was "a suicide by cop."

## **5. Kim Clough**

Kim Clough was interviewed on December 26, 2020.

Ms. Clough knew Mark R. Clermont for a long time, but only dated him the past two years, off and on. They also lived together off and on, but were not living together when the incident occurred.

Ms. Clough said that Mr. Clermont had a “big heart” and was a “highly intelligent person.” However, at the beginning of 2020, Mr. Clermont “started changing.” She said that coincided with him getting “black market” steroids and sometimes taking fifteen of those in a day. Following that, Mr. Clermont began talking about “UFOs” and said that he was “the key to the universe.” Mr. Clermont said that he had a fleet of forty spaceships that he controlled with his mind. Mr. Clermont would have Ms. Clough drive him around, during which he would point at the sky and say “they were all up there.” He would ask her if she could see the spaceships in the sky, and she would tell him that there was nothing there. Mr. Clermont would also make sounds that he believed could control things in other dimensions.

Ms. Clough described how Mr. Clermont would have drastic mood swings and get very angry. Mr. Clermont would also do “experiments” with water because he was convinced there were drugs in the water. Ms. Clough said everyone knew Mr. Clermont had mental illness, but he refused to seek treatment.

Ms. Clough said she never saw Mr. Clermont with guns or saw any in his room.

### **E. Incidents involving Mark R. Clermont prior to December 23, 2020**

Mr. Clermont’s prior criminal record and interactions with law enforcement were reviewed in order to gain information relevant to his actions, motives, and state of mind at the time of the incident. Those contacts are summarized as follows:

September 19, 2020: The Whitefield Police Department received a call regarding an incident involving a male driver who had threatened to kill another driver while waving a gun. The police used the registration number from the car the driver with the gun was operating and identified him as Mark Clermont.

The police went to speak to Mr. Clermont at the Pilotte residence in Whitefield where he lived. When the police arrived, Mr. Clermont was outside with the car. He started screaming at the police and told the officers that he was going to get into his spaceship and blow up the police cruiser. When the officer asked Mr. Clermont if he had a weapon, Mr. Clermont said, “You wanna find out?” As the officers tried to speak to Mr. Clermont, he continued to yell at them and talked about “the satellites being hacked and people watching him.” During this time, the officers noticed that Mr. Clermont was wearing a ballistic (bullet proof) vest.

Eventually, the homeowner, Melody Isham-Pilotte spoke with Mr. Clermont and retrieved a plastic gun. She gave that gun to the officers, which they later took with them. Ms. Pilotte told the officers that she did not know of any real weapons in the house. She also told the officers that she was concerned about them dealing with Mr. Clermont because she believed someone would die. The officers spoke with Ms. Pilotte about an IEA (Involuntary Emergency Admission) since Mr. Clermont was in an “extreme mental state.”<sup>38</sup>

The officers eventually left the Pilotte residence and notified the Whitefield Police Chief regarding the interaction with Mr. Clermont.

September 23, 2020: The Whitefield Police Department issued an Officer Safety Bulletin regarding Mr. Clermont. Mr. Clermont was reported to have waved a gun out of a car’s window. Mr. Clermont was noted to have been wearing a ballistic vest, but was not known to have weapons, but might have one. Mr. Clermont was also reported as disliking law enforcement officers and having a history of drug, alcohol, and mental health issues. The bulletin stated that Mr. Clermont was “getting more aggressive” and was a Habitual Offender.

October 20, 2020: A neighbor reported to the police that Mr. Clermont was getting intoxicated and going outside screaming in the middle of the night. That neighbor also said that she heard a gunshot.

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<sup>38</sup> An IEA is a request made to temporarily commit an individual to the NH Hospital for mental health treatment when that individual is alleged to be a danger to himself or others.



November 6, 2020: Kenneth Lewis called the Whitefield police with concerns about Mr. Clermont's treatment of the people he lived with at the Pilotte residence. Mr. Lewis reported several concerns, including that Mr. Clermont had been using methamphetamine, had multiple firearms in the house, and had a bullet proof vest. Mr. Lewis also told the police that Mr. Clermont would drive around late at night with a rifle looking for spaceships. Mr. Lewis said he believed that someone would be hurt or killed if nothing was done.

November 10, 2020: Caller reported that Mr. Clermont was outside yelling at his residence in Whitefield.

November 23, 2020: Kenneth Lewis called the Whitefield Police Department to report more concerns about Mr. Clermont and the Pilotte's. Mr. Lewis again expressed he was concerned about Mr. Clermont because he had "multiple weapons" and drives around with "guns in a duffle bag."

December 6, 2020: The Whitefield police received a call about a man who had been in a store and "told the cashier she better pray" that "he doesn't come back." A review of video surveillance revealed that the man was Mr. Clermont.

December 22, 2020: At around 11:52 p.m., Kenneth Lewis called the FBI complaining about Mr. Clermont and threatening to kill Mr. Clermont. This information was passed along to the Whitefield Police Department and the New Hampshire State Police. At around 1:25 a.m. on December 23, 2020, New Hampshire State Police Trooper Matthew Merrill followed up on Mr. Lewis's call and spoke with Mr. Lewis about Lewis' issues with Mr. Clermont.<sup>39</sup> Mr. Lewis told Trooper Merrill that Mr. Clermont wanted to kill Lewis, but could not explain why. Mr. Lewis also said that the people who lived with Mr. Clermont told him that Mr. Clermont drove around even though he was not supposed to be driving, had a gun, and was dangerous. Trooper Merrill said he told Mr. Lewis to call the police if anything happened. Trooper Merrill then spoke with an officer at the Whitefield Police Department about his conversation with Mr. Lewis.

## **F. 911 Calls**

Copies of the 911 calls that were made on December 23, 2020 about this incident were obtained and reviewed. The relevant portions are summarized below.

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<sup>39</sup> Trooper Merrill said that he had dealt with Mr. Lewis before and described him as "eccentric" and having made outlandish claims in the past.

1. At approximately 9:06 p.m., Jeffrey Osgood called to report a “shootout” involving a State Trooper at the house next door in Dalton on Bridge Hill Road.<sup>40</sup> Mr. Osgood told the operator that they needed to get the Trooper “backup,” because the Trooper just “hollered that he was hit.” Mr. Osgood said, “He needs help now.”

When asked where the Trooper was, Mr. Osgood said that after the Trooper said he was hit and “he ran across the road” beside a house.

2. Jeffrey Osgood called 911 again and reported that he was on Bridge Hill Road in Dalton, and had “Officer Merrill” in his house, and that he had “been hit, shot.” Mr. Osgood clarified that Trooper Merrill had been “shot in the abdomen” and needed “help now.”

The operator asked to talk to the Trooper. The Trooper told the operator where he was located. When asked if he was okay, Trooper Merrill responded, “No, no.”

The 911 operator asked Mr. Osgood about Trooper Merrill’s wounds and gave Mr. Osgood directions on how to stop the bleeding. Shortly thereafter, Trooper Merrill reported that it was getting harder for him to breathe. Other officers eventually arrived to assist.

#### **G. Radio transmissions**

Copies of the State Police radio transmissions from the incident were reviewed. The most relevant transmissions are as follows:

<u>Dispatch log time entry</u>	<u>Recording time stamp</u>	<u>Communicator</u>	<u>Substance</u>
(20:59:58)	<b>(00:07)</b>	<b>Trooper Merrill</b>	“Believe I have a black Lincoln, possibly MKX, trying to flee from me on 135 heading toward Littleton.”
	(00:22)	Dispatch	“10-5.” <sup>41</sup>

<sup>40</sup> The Dalton Fire Department Dispatch records show that they received a call at 9:05 p.m. requesting an ambulance to respond to Mr. Osgood’s home for Trooper Merrill.

<sup>41</sup> “10-5” means acknowledged or okay.

	<b>(00:39)</b>	<b>Trooper Merrill</b>	“[undecipherable]...momentarily.”
	(00:41)	Dispatch	“10-5.”
	<b>(00:46)</b>	<b>Trooper Merrill</b>	“We are approaching Bridge Hill Road...[undecipherable].”
	<b>(01:09)</b>	<b>Trooper Merrill</b>	“609, I’ll be out...[undecipherable].”
	(01:11)	Dispatch	“10-5.”
	<b>(02:35)</b>	<b>Trooper Merrill</b>	“[undecipherable].”
	(02:39)	Dispatch	“609?”
	<b>(02:40)</b>	<b>Trooper Merrill</b>	“[undecipherable].”
	(02:44)	Dispatch	“609?”
(2102)	<b>(02:49)</b>	<b>Trooper Merrill</b>	“609, Bridge Hill Road, shots fired, I’m hit!” <sup>42</sup>
	(02:52)	Dispatch	“10-5.”

Dispatch then called for other units to respond and issued a Signal 1000.<sup>43</sup> Another officer called out to Trooper Merrill for his status, but he did not respond. A short time later, a Trooper reported that Trooper Merrill may be inside a house. A Trooper then reported that Trooper Merrill was inside a house on Bridge Hill Road.

## **H. Autopsy Results**

Deputy Chief Medical Examiner Dr. Mitchell Weinberg conducted an autopsy on Mr. Clermont’s remains. He determined that Mr. Clermont’s cause of death was a gunshot wound to the left side of his head, and that his manner of death was homicide. Mr. Clermont also had a separate, graze gunshot wound to the right side of his head. Dr. Weinberg also concluded that

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<sup>42</sup> Approximately one minute and thirty seconds elapsed between the time Trooper Merrill reported to Dispatch that he would be out of his cruiser with Mr. Clermont and Trooper Merrill’s report that shots had been fired.

<sup>43</sup> A Signal 1000 occurs when dispatch calls for only emergency radio traffic during a critical incident.

the fatal gunshot wound was likely caused by a rifle. He could not determine medically whether the graze gunshot wound was from a rifle or a pistol.

As used by the Office of the Chief Medical Examiner, homicide is defined as the killing of one person by another.

Toxicology testing revealed that the only substances of significance present in Mr. Clermont's blood were low levels of the active ingredient of marijuana and alcohol.

### **I. Physical Evidence**

The investigators searched the area where the incident occurred at 16 Bridge Hill Road in Dalton. The property consists of a wooded lot accessed by a long (over 100 feet long) driveway. Next to the driveway is a single-wide trailer with an attached porch at the front. A large shed containing a pool table is located at the top of the driveway. The trailer and shed had bullet damage caused during the exchange of gunfire between Trooper Merrill and Mr. Clermont. An expended bullet was also found in the shed. Investigators also discovered a machete in the shed, which was consistent with Eric Landry's statement to the police that he hit Mr. Clermont with the handle of a machete to keep him from entering the shed.

The car that Mr. Clermont was driving that night was found toward the bottom of the driveway. That car had a small amount of bullet damage that was caused during the exchange of gunfire between Trooper Merrill and Mr. Clermont.

Behind that car was Trooper Merrill's State Police cruiser, which had no bullet damage. There were two other cars in the driveway, one of which, a Dodge Charger, had a significant amount of bullet damage that was caused during the exchange of gunfire between Trooper Merrill and Mr. Clermont.

Based on the observed path of bullets and the location of bullet damage to the trailer, the shed, vehicles, and objects at the scene, the investigators concluded that during the incident shots were fired from the bottom of the driveway where Trooper Merrill's cruiser was located, and that those shots were directed toward the top of the driveway where Mr. Clermont's body was found. Similarly, the investigators concluded that during the incident shots were fired from the area further up the driveway in the vicinity of where Mr. Clermont's body was found, and that those shots were directed toward the bottom of the driveway where Trooper Merrill and his cruiser were located.<sup>44</sup>

Mr. Clermont's body was found lying face up on the ground next to a stack of lumber, located across from the trailer and in front of the shed. His body was approximately one hundred and fourteen feet from the rear of Trooper Merrill's cruiser. Mr. Clermont was fully clothed. Of note, Mr. Clermont was wearing a ballistic vest under a winter jacket. He was wearing an empty nylon pistol holster on a belt around his waist and a winter hat on his head. A .45 caliber Llama Minimax pistol was found underneath his body and contained a live round in the chamber and an empty magazine. That magazine could hold six live rounds.

New Hampshire State Police Trooper Gilliland was one of the first responding officers. He discovered Mr. Clermont lying face up on the ground at the top of the driveway next to a stack of lumber. Mr. Clermont was deceased and holding an AK style rifle in his right hand. Mr. Clermont's finger was still in the trigger guard of the rifle. Trooper Gilliland removed the rifle from Mr. Clermont's hand, cleared it, and removed the magazine.<sup>45</sup> He then threw the rifle, a live bullet from the rifle's chamber, and the rifle's magazine a distance away.

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<sup>44</sup> This is all consistent with Trooper Merrill and other witness's description of the exchange of gunfire during the incident.

<sup>45</sup> By "clearing" the rifle, Trooper Gilliland made it safe by removing the live round from the chamber and removing the magazine.

Mr. Clermont's rifle was later examined and determined that it had originally contained a live round in the chamber and a magazine with thirteen live rounds. Another magazine for Mr. Clermont's rifle was found on the hood of the car closest to where his body was found. That rifle magazine contained twenty-one live rounds. Both of Mr. Clermont's rifle magazines are believed capable of holding a maximum of thirty live rounds.

A black Nike-brand duffle bag was also found several feet from Mr. Clermont's body.<sup>46</sup> That bag is believed to have been Mr. Clermont's and contained several live 12-gauge shotgun shells and a set of brass knuckles.<sup>47</sup>

The firearms used by Trooper Merrill consisted of a Smith & Wesson M&P .45 caliber pistol and a Sig Sauer .223 rifle. The pistol was recovered from the trunk of Trooper Merrill's cruiser. That pistol contained a live round in the chamber and a magazine with six live rounds. A second Smith & Wesson magazine for Trooper Merrill's pistol was collected in the road near Trooper Merrill's cruiser. That magazine was empty. A third Smith & Wesson magazine for Trooper Merrill's pistol was found on the ground in the area near the front of the trailer.<sup>48</sup> That magazine contained ten live rounds. All three of those pistol magazines have a ten round capacity.<sup>49</sup>

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<sup>46</sup> According to Carey Landry, that bag had originally been located near Mr. Clermont when he was on the ground. Then it was kicked away by one of the first responding officers.

<sup>47</sup> The 12-gauge shotgun shells matched the caliber of the shotgun found in Mr. Clermont's room at the Pilotte home where he lived.

<sup>48</sup> Also found near Trooper Merrill's handgun magazine was a pen, uniform button, and black knit winter hat. Troopers routinely carry a pen in their uniform shirt pocket. One of Trooper Merrill's uniform shirt pockets was missing a button, which is believed to have been the one found at the scene. As for the hat, that is believed to have been the one that Trooper Merrill was wearing that night and likely lost during the physical altercation with Mr. Clermont.

<sup>49</sup> Those magazines were all originally loaded with silver colored "Winchester" brand ammunition. Trooper Merrill said his practice was to carry his pistol with one round in the chamber and ten in the magazine.

Trooper Merrill's rifle was originally recovered from the house next door to the incident and contained a live round in the chamber and a magazine with fifteen live rounds in it. The capacity of the rifle magazine is thirty rounds.<sup>50</sup>

During the search of the scene, investigators recovered numerous discharged firearm cartridge casings that were apparently from the firearms used by Trooper Merrill and Mr. Clermont.<sup>51</sup> In addition to conducting a visual search, the investigators also used a metal detector to try and locate all of the discharged firearm cartridge casings at the scene. Those recovered casings were as follows:

Trooper Merrill's discharged firearm cartridge casings

.223 caliber casings	(rifle)	12
.45 caliber casings	(pistol)	6
Total		18

Mr. Clermont's discharged firearm cartridge casings

7.62 caliber casings	(rifle)	9
.45 caliber casings	(pistol)	3
Total		12

A total of thirty discharged firearm cartridge casings were collected at the scene. Eighteen are consistent with the two firearms Trooper Merrill used during the incident and twelve are consistent with the firearms Mr. Clermont used during the incident.

In addition to the discharged firearm cartridge casings, some live ammunition was also found at the scene on the ground. That live ammunition was consistent with Mr. Clermont and

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<sup>50</sup> Trooper Merrill said that his practice was to keep twenty-eight live rounds in the magazine and none in the rifle's chamber.

<sup>51</sup> A firearm cartridge casing holds the gunpowder used to fire the bullet, which is located at the front of the casing. The reference in this report to discharged firearm cartridge casings means that the bullet has been fired out of a gun and the casing left behind.

Trooper Merrill's ammunition, and consisted of: two live .45 caliber pistol rounds, one live 7.62 caliber rifle round, and one live 12-gauge shotgun round (all Mr. Clermont's); and three live .45 caliber pistol rounds (all Trooper Merrill's).

By comparing the number of discharged firearm cartridge casings and live ammunition found at the scene with the firearms' and their magazines' capacities, it appears that not all of the discharged firearm cartridge casings expended by Trooper Merrill and Mr. Clermont's firearms or all of their live ammunition was recovered from the scene. Accordingly, there is the possibility that more than thirty shots were exchanged by Trooper Merrill and Mr. Clermont during the incident.

There are several explanations why, despite a thorough search and the use of a metal detector, the investigators could not locate all of the discharged firearm cartridge casings or live ammunition at the scene. First, discharged firearm cartridge casings and live ammunition are circular in shape and could have bounced or rolled down the road. They could have also been trampled or kicked by the numerous first responders who had walked through the scene looking for Trooper Merrill and been obscured by the snow and dirt. They could also have been moved or obscured when a vehicle left the scene during the incident. There were also strong gusts of wind that night could have blown them into the woods or elsewhere where they were not found.

The State Police Forensic Laboratory examined the expended bullet that was recovered from Trooper Merrill's body (exhibit NS-01), which caused his abdominal wound. It was determined to be a .45 caliber jacketed bullet that was discharged from Mr. Clermont's .45 caliber pistol.

The room that Mr. Clermont stayed in at the Pilotte's home was searched. A 12-gauge shotgun and a handgun magazine containing five live .45 caliber rounds was found during the



search. The shotgun was same caliber as the live shotgun shells found at the scene and in the Nike bag in the vicinity of Mr. Clermont's body. The .45 caliber rounds matched the caliber of the gun Mr. Clermont had at the scene of the shooting incident. Also found during the search of the bedroom was a container with water with cell phone batteries in it. That corroborated Melody Isham-Pilotte's account that Mr. Clermont had been soaking batteries in water.

The investigators also searched the basement area where Ms. Pilotte said Mr. Clermont conducted his "experiments." They found several cell phones, containers with liquids, a mirror with white substance on it, and miscellaneous other items.

#### **IV. APPLICABLE LAW AND LEGAL STANDARDS**

New Hampshire's laws regarding self-defense, defense of others, and the use of physical force by law enforcement are set forth in RSA Chapter 627. Pursuant to RSA 627:5, I, a "law enforcement officer is justified in using non-deadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or detention...."

Under RSA 627:5, II(a), a law enforcement officer, like a private citizen, is justified in using deadly force when he reasonably believes that such force is necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as "any assault . . . which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury." "Purposely firing a weapon capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force." RSA 627:9, II.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." *State v. Gorham*, 120 N.H. 162, 163-64 (1980). The term "reasonable" is "determined by an objective

standard.” *State v. Leaf*, 137 N.H. 97, 99 (1993). Further, all of the circumstances surrounding the incident should be considered in determining whether the actor had a reasonable belief that deadly force was necessary to defend himself or another. When reviewing a deadly force incident, the actor’s conduct should be viewed considering “the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection.” *N.H. Criminal Jury Instructions*, 3.10. In other words, when analyzing the reasonableness of an actor’s use of deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight. The amount of deadly force used by the actor to protect himself or another must be reasonable, and not excessive. *See State v. Etienne*, 163 N.H. 57, 70 (2011).

Federal cases, while largely addressing the civil standards that apply to federal civil rights lawsuits, provide some discussion of the “reasonableness” standard for the use of force by police officers that is useful in analyzing officer-involved use of force cases in this state. In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court stated that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396. The Court continued:

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

*Id.* at 396-97; *see also Ryburn v. Huff*, 565 U.S. 469, 477 (2012).

The Eleventh Federal Circuit has noted that:

The Supreme Court has emphasized that there is no precise test or ‘magical on/off switch’ to determine when an officer is justified in using excessive or deadly force. Nor must every situation satisfy certain preconditions before deadly force

can be used. Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.

*Garczynski v. Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted). That is because “the law does not require perfection – it requires objective reasonableness.” *Phillips v. Bradshaw*, No. 11-80002-CIV, 2013 WL 1296331, at \*17 (S.D. Fl. Mar. 28, 2013). The law must account for the fact that dangerous situations often unfold quickly and law enforcement officers sometimes need to make quick decisions under less-than-ideal circumstances. *See Huff*, 565 U.S. at 477 (finding that appeals court panel “did not heed the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation”).

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

## **V. ANALYSIS AND CONCLUSION**

Based on all the facts and circumstances of this case, the Deputy Attorney General has concluded that Trooper Matthew Merrill was legally justified when he fatally shot Mark R. Clermont. That is because, at that moment, Mr. Clermont had already used deadly force against Trooper Merrill, by shooting and wounding him twice. Therefore, based on a review of all the evidence, it was objectively reasonable for Trooper Merrill to conclude that Mr. Clermont constituted an imminent threat of deadly force when he shot and killed him on December 23, 2020.

The incident began when Trooper Merrill tried to stop Mr. Clermont for speeding on Route 135 in Dalton. Mr. Clermont did not stop for Trooper Merrill and instead, attempted to elude him by speeding up, turning off Route 135, and parking at a residence at 16 Bridge Hill

Road. After Trooper Merrill pulled in behind Mr. Clermont and exited his cruiser, Mr. Clermont got out of his car and started walking away. Despite Trooper Merrill's repeated commands to stop, Mr. Clermont kept walking away from Trooper Merrill and headed toward the entrance of a trailer on the property. That prompted Trooper Merrill to overtake Mr. Clermont and grab his arms, thereby using non-deadly physical force to try and take Mr. Clermont into custody and prevent him potentially accessing weapons inside the trailer or eluding capture. Mr. Clermont reacted to Trooper Merrill grabbing him by using deadly force and shooting Trooper Merrill in the abdomen. A short time later, Trooper Merrill felt what he believed to be was Mr. Clermont's pistol to the back of his head. Mr. Clermont's actions caused Trooper Merrill to reasonably conclude that he faced an imminent threat of deadly force from Mr. Clermont. Thereafter, over the course of the next few minutes, Trooper Merrill and Mr. Clermont exchanged gunfire, resulting in each being wounded and Mr. Clermont ultimately being shot and killed by Trooper Merrill.

The conclusions reached in this report are not solely dependent on Trooper Merrill's account. Instead, there is corroborating evidence that Mr. Clermont posed a threat to others and for much of what Trooper Merrill described occurred during the incident that lends to Trooper Merrill's credibility.

For example, Mr. Clermont's decision to try to avoid being taken into custody by Trooper Merrill and to use violence was consistent with the possibility of him receiving a lengthy prison sentence if caught by the police. Those concerns would have been reasonable since at the time of his encounter with Trooper Merrill, Mr. Clermont was a convicted felon in possession of two firearms, which he was prohibited from owning or possessing. In addition, Mr. Clermont was a Habitual Offender who was prohibited from driving. Finally, Mr. Clermont's use of violence to

avoid being taken into custody was also consistent with the prior statement he made to Kristin Sellers that he was not going back to prison.

It is also possible that Mr. Clermont's mental health issues, including his psychotic behavior and paranoia over the course of 2020, impacted his decisions and behavior during his encounter with Trooper Merrill. For example, Mr. Clermont's paranoia about being watched and his belief that the "Feds" were after him could have made him suspicious and more likely to over react during his encounter with a government official in the form of Trooper Merrill. In addition, the fact that Trooper Merrill heard Mr. Clermont shouting "No!" during the incident, which was seemingly unprompted and to himself, could be indicative of someone who was potentially disconnected from reality at the time. Whatever the source, Trooper Merrill's description of Mr. Clermont's behavior during the incident is consistent with Mr. Clermont's criminal history, expressed desire to avoid going back to prison, and recent mental health issues.

As for the Trooper Merrill's description of the actual events and the timing of those events during the incident, what he said is corroborated by the evidence and witness statements. For example, the dispatch recordings confirmed Trooper Merrill's initial encounter with Mr. Clermont on Route 135, his pursuit of Mr. Clermont into the driveway at 16 Bridge Hill Road, the fact that Trooper Merrill was stopped with Mr. Clermont, and that Trooper Merrill had been shot. The Landry's, who were in the shed at the scene, and neighbors in the area confirmed hearing multiple gunshots being fired during the incident, which is consistent with the large amount of bullet damage and numerous discharged firearm cartridge casings found at the scene. That bullet damage and discharged firearm cartridge casings are also largely consistent with Trooper Merrill's account of where he and Mr. Clermont were located during the incident and the sequence of events. The witness statements from the Landry's confirm that Mr. Clermont

was on their property and was armed with a rifle and pistol. Carey Landry's description of Mr. Clermont moving behind a car and shooting a rifle during the incident corroborates Trooper Merrill's account of Mr. Clermont shooting at him. Kristin Sellers' observations of events in the driveway are likewise generally consistent with the physical evidence and Trooper Merrill's account of the events, despite the fact that her memory of the order of some of the events appears erroneous. That there might be some differences between her account and Trooper Merrill's account are to be expected given her professed memory issues and other issues, as well as the stress of being in the midst of a gun battle. Regardless, much of what she told the investigators is consistent with the other witnesses, the physical evidence, and Trooper Merrill's account.

Finally, Trooper Merrill's gunshot wounds are consistent with his description of Mr. Clermont's actions and the fact that Mr. Clermont shot him twice, thereby presenting an imminent risk of deadly force.

Therefore, based on all the facts and circumstances known to Trooper Matthew Merrill on December 23, 2020, it was reasonable for him to conclude that he faced an imminent threat of deadly force from Mr. Clermont. Accordingly, Trooper Merrill was legally justified in using deadly force against Mr. Clermont, and no criminal charges will be filed against Trooper Merrill for shooting Mr. Clermont.

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