

ATTORNEY GENERAL'S REPORT REGARDING THE OFFICER-INVOLVED SHOOTING INCIDENT IN HAMPTON, NEW HAMPSHIRE, ON JUNE 13, 2017

I. INTRODUCTION

New Hampshire Attorney General Gordon J. MacDonald announces the completion of the investigation into the officer-involved shooting incident that occurred in Hampton, New Hampshire, on June 13, 2017. That incident resulted in the fatal shooting of Barry J. Jones (age 36). The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to this incident. The findings and conclusions in this report are based on information gathered during the investigation, including photographs, videos, physical evidence, and witness interviews.¹

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. Based on the investigation of this deadly force incident, the Attorney General finds that the use of deadly force by both New Hampshire State Police Trooper Erik Willett and Sergeant Keith Walker on June 13, 2017, was legally justified.

¹ Several items are still in the process of being analyzed and evaluated; including toxicology results from Mr. Jones and his cellular telephone records. While those records may shed some light on Mr. Jones's activity before his death, it would not change the findings and conclusions of this report that the use of deadly force was legally justified.

II. SUMMARY OF THE FACTS

New Hampshire State Trooper Erik Willett and Sergeant Keith Walker were on duty on Tuesday, June 13, 2017. A few minutes after 12:00 p.m.², Trooper Willett heard dispatch report a distressed motorist driving on Interstate 95 south. Trooper Willett started to drive in that direction. State Police dispatch informed him that multiple motorists reported that the vehicle, later confirmed to be driven by Mr. Jones, had pulled into the New Hampshire Liquor and Wine Outlet Store on the southbound side of Interstate 95 in Hampton, New Hampshire (Liquor Store).

At approximately 12:10 p.m., Mr. Jones pulled a Ford Ranger pickup truck into the parking lot of the Liquor Store. The truck he was driving was presumably damaged during an earlier motor vehicle collision and was now completely missing its front driver's side tire. The truck left a telltale mark on the pavement of the exit ramp and Liquor Store parking lot from Mr. Jones having driven the truck on a tire's bare rim. Video surveillance footage from the Liquor Store captured Mr. Jones remaining in the truck for approximately seven minutes until he exited the truck and walked to the front of the building.

Within the previous ten minutes, officers from the Portsmouth Police Department spoke to witnesses and gathered additional information. Portsmouth Police issued a Be-on-the – lookout (BOLO) for the truck Mr. Jones was driving, which was then rebroadcast by other area department dispatchers. The original BOLO broadcast was:

BE ON THE LOOKOUT FOR NH/4151307, A SILVER 2002 FORD RANGER, VEHICLE WAS INVOLVED IN A HIT AND RUN, SUSPECT IS BELIEVED TO BE ARMED WITH A HANDGUN.

LAST SEEN GOING DOWN GRAFTON DRIVE IN PORTSMOUTH WITHIN THE LAST FIFTEEN MINUTES. SUSPECT IS TRYING TO GET TO LAWRENCE. POSSIBLE FRONT END DAMAGE TO THE CAR. SHOULD ALSO HAVE A "TOWNIE" BUMPER STICKER, LARGE AMOUNT OF BUMPER STICKERS ON THE BACK.

² All times indicated in this report are approximate.

SUSPECT IS BARRY JONES, DOB: *****³ DESCRIBED AS 510, 180 LBS, GREEN AND BROWN.

ANY CONTACT, USE CAUTION, STOP AND HOLD FOR PORTSMOUTH.

Trooper Willett responded to the Liquor Store and arrived approximately seven minutes after Mr. Jones's arrival. As he approached the Liquor Store, New Hampshire State Police dispatch told Trooper Willett several pieces of information from the BOLO dispatched over the radio, including: (1) the registration number and further physical description of the truck; (2) Jones's identity and driving on Interstate 95; and (3) that Jones was armed with a handgun. As Trooper Willett was pulling in he observed Mr. Jones's truck parked in the lot. He then confirmed the license plate on the vehicle matched the license plate broadcasted in the BOLO.

The rest stop on southbound Interstate 95 in Hampton provides access for motorists to a single building and a large parking lot. It does not provide any vehicular access to local roads. The single building houses a New Hampshire State Liquor Store, a New Hampshire Made specialty store, public restrooms, and a row of outside portable toilets. The parking lot sits on the north portion of the property with the building south of the parking lot. Public entrances to the two storefronts and restrooms face the parking lot along the north side of the building, while the portable toilets run along the west side of the building.

Dozens of store patrons, employees, and private citizens at the rest area were present at this time and were captured on video surveillance footage walking around the outside of the building. A man wearing a black t-shirt, tan shorts, backpack, and a dark-colored baseball hat was captured on the video surveillance footage walking through the parking lot along the storefront of the building, and stopping near the entrance to New Hampshire Made store. The

³ Jones's date of birth is redacted. As noted, his age was 36.

man was later confirmed to be Mr. Jones. From there, the footage captured Mr. Jones adjusting his front waistband; the area from where he would later retrieve a weapon. About two minutes later, according to surveillance footage, Mr. Jones walked back along the front of the building towards the westerly side of the Liquor Store. At this point, Trooper Willett was not able to identify the driver of the Ford Ranger, and had not observed Mr. Jones's movements as set forth above.

Three minutes after his arrival, Trooper Willett moved his cruiser to the front parking lot near the Ford Ranger, so that he and his cruiser were now facing towards the front of the building. From there, Trooper Willett attempted to identify the driver from among the people moving around the storefront and the parking lot. At one point, Trooper Willett confirmed over his radio that the driver of the Ford Ranger was reported to have been armed with a handgun earlier in the day.

Trooper Willett spoke to a man working on his Chevrolet truck in the parking lot, and asked him whether he saw the Ford Ranger drive in. The gentleman said that he did, and indicated that the driver had walked towards the front of the store. Trooper Willett then saw a man wearing a black hat, black t-shirt, and a dark colored backpack (later confirmed to be Mr. Jones), walking easterly along front of the building. Mr. Jones stopped behind a pillar left of center of the front of the building. Mr. Jones stayed behind the pillar and peeked around towards the direction of the trooper in the parking lot. Trooper Willett noticed that Mr. Jones was concealing himself behind the pillar.

Video surveillance and cell phone information showed that while concealing himself behind the pillar, Mr. Jones used his cell phone to send a text message. At approximately 12:30 p.m., Mr. Jones sent his ex-wife, Tiffany Jones (Tiffany), the following text message:

I'M SORRY I LOVE YOU BUT IT TIME FOR ME TO CHECK
OUT....
I DO REALLY LOVE YOU BYE TIFFANY⁴

After he saw Mr. Jones position himself behind the pillar, Trooper Willett asked the man at the Chevrolet if the driver of the Ford Ranger was wearing a black hat, black t-shirt, and a dark colored backpack. The man confirmed that description of the driver of the Ford Ranger. Trooper Willett then broadcasted this physical description of Mr. Jones over his radio.

Around this time, Sergeant Keith Walker of the New Hampshire State Police arrived in a marked cruiser. He parked alongside the west of the building. He got out of his cruiser, positioned himself behind the northwest corner of the building looking down the northerly edge of the building, and observed Mr. Jones with his back toward him at the other end of the storefront.⁵ At that time, Sergeant Walker knew from police radio transmissions Trooper Willett's physical description of Mr. Jones. He also knew that Mr. Jones: (1) was reported to have stolen a vehicle; (2) may be armed with a handgun; (3) was on his way to Massachusetts to obtain drugs; and (4) was involved in a hit-and-run collision while driving the reportedly stolen Ford Ranger.

From his position and with Mr. Jones's back to him, Sergeant Walker gestured to Trooper Willett to move closer to Sergeant Walker's position. Trooper Willett moved his cruiser to Sergeant Walker's position, parked, exited the cruiser, and positioned himself along the endmost pillar located at the northwest corner of the building. This placed Trooper Willett and Sergeant Walker behind cover, with a direct line of sight of Mr. Jones. Both Troopers withdrew their department-issued pistols from their holsters with Mr. Jones positioned about twenty two yards away at the other end of the storefront.

⁴ This text was confirmed by Tiffany Jones later that day.

⁵ There is an overhang along the storefront. Mr. Jones was positioned under the overhang at the easterly end of the storefront behind a large pillar.

The situation advanced rapidly in the following seconds. Mr. Jones continued to look at his phone as customers were exiting the Liquor Store behind him (the entrance/exit to the Liquor Store was down the westerly end of the storefront near the positioned troopers). The customers were immediately directed by Sergeant Walker to re-enter the Liquor Store. As they did so, Sergeant Walker called out to Mr. Jones, yelling commands, “STATE POLICE. PUT YOUR HANDS UP. STATE POLICE.” Mr. Jones responded by turning his head and making eye contact with the troopers. Both troopers commanded Mr. Jones: “BARRY! DO NOT MOVE.” Instead, still with his back toward the troopers, Mr. Jones looked down, placed his right hand into his waistband for approximately four seconds. Troopers repeated their commands. Mr. Jones then pulled out what appeared to the troopers, and what appears on surveillance footage to be, a black handgun.⁶

Instead of complying with the Troopers commands, Mr. Jones grabbed the weapon by the handgrip, and turned towards the officers. It was at this point that both Trooper Willett and Sergeant Walker observed the weapon and believed that Mr. Jones was readying himself to fire the weapon in their direction. This action on the part of Mr. Jones led both officers to believe that Mr. Jones was placing the lives of both Troopers, nearby private citizens, and other responding officers in imminent threat of deadly force. As Mr. Jones gripped the weapon and turned towards the officers, both Trooper Willett and Sergeant Walker fired their weapons at Mr. Jones.

Trooper Willett fired two shots from his department-issued handgun. Simultaneously, Sergeant Walker also fired two shots from his department-issued handgun. In total, Mr. Jones was struck by three bullets: one struck him in right abdomen and lodged itself in the rear of his

⁶ When the gun was later recovered, it was found to be a black and silver Daisy Powerline 5501 semiautomatic CO₂ (compressed air) powered BB gun, loaded with metal BBs in the magazine. A photograph of Jones’s BB gun is attached.

stomach; one struck and lodged itself in his left shoulder; and one passed through his back, and exited his body.⁷

Video surveillance footage then depicts Mr. Jones turning to his right, collapsing down onto the ground along the building, mostly obstructed behind a nearby trash barrel. The weapon fell to the ground within arm's reach of Mr. Jones. Mr. Jones's position prevented the troopers from seeing Mr. Jones's hands or the front of his body. Both Trooper Willett and Sergeant Walker observed Mr. Jones continue to move, in what Trooper Willett described as an attempt to pull himself up. The troopers continued to shout commands at Mr. Jones, including: "BARRY STAY DOWN" and "DO NOT MOVE." Sergeant Walker told investigators that, at that moment, from his position, he could not see the weapon, and that he believed Mr. Jones still had the handgun, and remained a threat to the Troopers and private citizens. At that time, Mr. Jones's movement led Sergeant Walker to believe that Mr. Jones "still posed a threat," and that Sergeant Walker, and others, remained in imminent threat of deadly force. As Mr. Jones continued to move, Sergeant Walker fired one additional shot at Mr. Jones, approximately seventeen seconds after the Troopers' initial gunfire. Sergeant Walker fired the shot in the direction of the only unobstructed area where he had observed Mr. Jones moving. It does not appear that Mr. Jones was struck by this shot. After that shot, no other shots were fired during this incident.

After Sergeant Walker's last gunshot, Mr. Jones remained mostly obstructed behind a trash barrel. Sergeant Walker attempted to use his portable radio, but could not reach dispatch. He went to his cruiser to radio for an ambulance to be sent, and to inform that shots had been fired. Numerous other law enforcement personnel began arriving at the scene. Troopers and

⁷ The Troopers fired a total of five shots: three shots struck Jones; and the other two struck a trash barrel and the metal door frame of New Hampshire Made. All rounds were recovered from the scene and an inventory of the Troopers' duty weapons revealed that Trooper Willett fired two shots and Sergeant Walker fired three shots.

other officers later observed the weapon within arm's length of Mr. Jones. Multiple Troopers and officers continued to issue commands to Mr. Jones. As he had been throughout the event, Mr. Jones continued to be silent, and did not respond to the officers' commands. Based on Mr. Jones's obstructed position and the proximity to the weapon, as well as being unaware as to whether he had other weapons, the officers were concerned about safely approaching and apprehending Mr. Jones. While developing a plan for a safe approach, officers observed a teenager seated in a vehicle positioned in the parking lot, located essentially in between the officers and Mr. Jones. At that point, officers used a ballistic shield to get the teenager safely out of the vehicle and away from the scene.

By this time, Trooper Gary Ingham and his K-9 (police dog), Grunt, had arrived on scene. The Troopers determined that the safest manner to remove Mr. Jones from his obstructed position would be to deploy the K-9. This would allow officers to see Mr. Jones's hands as he would most likely use his hands to push the dog away, and to approach him safely.

The K-9 slowly approached Mr. Jones, and ultimately, gripped Mr. Jones near his hip and dragged Mr. Jones into the middle of the walkway. Mr. Jones slowly raised both hands making them visible to officers. Once the officers saw Mr. Jones's hands, they approached him, disengaged the K-9, grabbed the weapon away from his reach, and placed him into custody. From the time of the initial shots fired to the time Mr. Jones was placed into custody, approximately twenty-four minutes passed.

EMTs treated Mr. Jones, and transported him to Portsmouth Regional Hospital, where he later died. While being treated, both EMTs and hospital staff reported that Mr. Jones did not say anything other than that he was having trouble breathing, and "I've been shot."

On June 14, 2017, Deputy Chief Medical Examiner Dr. Jennie V. Duval conducted an autopsy and ruled Jones's cause of death was gunshot wounds of the back, abdomen, and left shoulder, and the manner of death was homicide. As used by the Office of the Chief Medical Examiner, homicide is defined as the killing of one person by another. Dr. Duval also noted that while Mr. Jones had deep abrasions (bruising) to his left hip, the same area where the K-9 engaged him, he did not have a bite wound.

No law enforcement officers or private citizens were physically injured during the incident.

III. THE INVESTIGATION

Since the initial police response on June 13, 2017, the Attorney General's Office and the New Hampshire State Police Major Crime Unit have been investigating the circumstances that led to the confrontation and the shooting. That investigation has entailed numerous witness interviews, an examination of physical evidence recovered from the scene, and the review of available digital evidence to include video recordings of the incident captured by the surveillance system at the Liquor Store and New Hampshire Made store, and also cell phone video footage captured by private citizens in close proximity to the incident. All of the police officers involved in the incident have been fully cooperative with the investigation, and agreed to be interviewed.

The following recitation of facts is compiled from information obtained during the investigation.

A. Events Leading up to the Incident

Mr. Jones had a long history of mental health issues as well as drug and alcohol abuse. Although they were no longer married, Mr. Jones and Tiffany had recently returned to New Hampshire and both were staying with Tiffany's father on Rockland Avenue in Portsmouth.

On the morning of the incident, Tiffany was with Mr. Jones throughout the early morning hours. She observed that he was agitated, anxious, and intoxicated. She later told investigators that he had been abusing alcohol and prescription drugs over the course of a few days, to include the late hours of June 12, 2017, into the early hours of June 13, 2017. Around 5:00 a.m., having not slept throughout the night before, Mr. Jones left the apartment. Tiffany did not know where he was going.

Before he left the apartment, Mr. Jones informed Tiffany that he had hidden a pistol in the area of a nearby apartment complex and that he was going to retrieve the pistol. Tiffany had never seen him with a pistol, although she explained that he was known to carry a “high powered BB gun.”⁸ In fact, Tiffany had seen Mr. Jones with a BB gun a few months prior. She described that weapon as black and silver and that it “looked like a real gun.” She also explained that she believed he had stolen that weapon from Walmart when the couple was living in Arizona. In recent days, she had not observed Mr. Jones in possession of a pistol or a BB gun, but she had recently noticed “a bunch of BB” ammunition in his backpack.

Tiffany spoke with Mr. Jones on her telephone around 9:00 a.m. when he told her that he had gone to a local shelter to get a haircut and that he had visited Walmart. In fact, video surveillance footage from approximately 8:41 a.m. at the Walmart Supercenter located on Lafayette Road in Portsmouth shows Mr. Jones walking out of the store pushing a shopping cart containing some items, including a tent and a BB gun. According to store security, Mr. Jones left the store without paying for any of the items. In the video, he is wearing a black t-shirt with the band name “Metallica,” tan shorts, and a dark-colored baseball hat backward. This was the same clothing he was wearing later that day during the incident.

⁸ Jones’s mother informed investigators that he had “a habit” of having and carrying pellet guns and “making them look like real guns.” She explained that she had told her son in the past that having and carrying pellet guns that look like real guns was going to “get him shot.”

Later that morning, Mr. Jones approached an elderly neighbor in his apartment building and asked to borrow the neighbor's truck.⁹ The elderly neighbor told investigators he "reluctantly" agreed to loan Mr. Jones his vehicle, which was a silver 2002 Ford Ranger pickup truck with a cap on the back. The elderly neighbor told investigators that Mr. Jones did not use any threats or violence when asking to borrow the vehicle but that he was "persistent."

Later that morning, Mr. Jones also approached another neighbor, entered his apartment, brandished what he represented as a "fully loaded Sig Sauer 9mm," pointed the weapon towards the neighbor, and demanded that the neighbor travel with him to Lawrence, Massachusetts to "get drugs." When the neighbor asked how Mr. Jones intended to pay for the drugs, Mr. Jones responded something to the effect, "no problem, I have 'Baby,'" at which time Mr. Jones gestured to his weapon. Mr. Jones explained that he intended to rob someone for drugs using the weapon.

During the encounter, Mr. Jones briefly placed the weapon down on a wooden crate within the apartment. The neighbor observed that the weapon was black and gray and appeared to "look exactly like a handgun," and in fact, he believed it was a "pistol." Mr. Jones told the neighbor it was loaded but that the safety was on. Ultimately, the neighbor refused to travel with Mr. Jones, and Mr. Jones left the apartment.

Just after 11:00 a.m., due to Mr. Jones's intoxication and behavior, Tiffany Jones's father informed Mr. Jones that he needed to gather his belongings, which included a black backpack, and leave the apartment or the father would contact the police. Mr. Jones gathered his belongings, threw items in the back of the borrowed truck, sat behind the wheel, and then sped off like a "wild man" out of the parking lot. Mr. Jones's father-in-law called the Portsmouth Police at 11:53 a.m.

⁹ Mr. Jones did not have a valid driver's license.

Around 12:00 p.m., Portsmouth Police dispatch issued a series of broadcasts informing law enforcement of the father-in-law's call that his ex-son-in-law stole a neighbor's vehicle, and was armed with a handgun earlier in the morning. Dispatch also advised that the suspect had pulled the handgun from his waistband and pointed it at a neighbor.

Mr. Jones was travelling down Grafton Road (Route 33) in Portsmouth when he rear-ended a Jeep Wrangler and then fled. New Hampshire State Police Troopers Jordan Kopko and Christopher Houston responded to the reported hit-and-run scene. Also around 12:00 p.m., the driver of the Jeep described the truck that hit him and New Hampshire State Police dispatch broadcast portions of the BOLO for the Ford Ranger to all Troopers in the area, which essentially matched the description of the truck that struck the Jeep and then fled (exact language from BOLO set forth above).

It is believed that during the accident, the truck Mr. Jones was operating suffered damage to the driver's side tire. A few minutes after 12:00 p.m., motorists observed Mr. Jones's truck traveling down Interstate 95 South in New Hampshire. The truck was described as "leaning," "swerving," possibly something "wrong with suspension," "driving erratically," and "shredding a tire." A motorist also described smelling "burning rubber." Another motorist was concerned the truck may hurt or kill someone. Multiple motorists reported the suspect vehicle pulling into the Liquor Store.

B. Interviews with Eyewitnesses to the Shooting Incident

New Hampshire State Police Major Crime Unit detectives interviewed approximately 40 people during the course of this investigation. Detectives and members of the Attorney General's Office interviewed the two troopers that fired their weapons during the incident. Detectives also interviewed additional officers who were on scene during the event, and other

officers that arrived after the shooting but that assisted in the apprehension of Mr. Jones.

Additionally, detectives interviewed dozens of private citizens; some of which heard portions of the incident, observed portions of the incident, or captured portions of the incident on cell phone video. These interviews are summarized below.

1. Trooper Erik Willett¹⁰

New Hampshire State Police Trooper Erik Willett is assigned to the Troop A barracks. He is a five-year veteran of the State Police and also a member of the New Hampshire State Police SWAT team. On the date of the incident, Trooper Willett was assigned to patrol the eastern area of Route 101. He was operating a fully marked State Police cruiser and wearing a full State Police uniform.

Trooper Willett told investigators that he heard a dispatch report of a hit-and-run along Route 33 in Portsmouth. Trooper Willett informed dispatch he would respond to assist the motorist. Moments later, the Trooper heard additional information over dispatch indicating that a truck was losing a tire or had lost a tire heading southbound on Interstate 95, and that the truck had pulled into the Liquor Store parking lot.

Trooper Willett responded to the Liquor Store. As he was about a mile north of the Liquor Store, Trooper Willett heard dispatch relay a BOLO from Portsmouth Police. Trooper Willett remembered the BOLO as alerting officers to look for a stolen silver Ford Ranger pick-up truck, headed southbound on the highway, and that the operator could be in possession of a firearm.

As Trooper Willett pulled into the Liquor Store area, he could see a pick-up truck matching the description parked in the lot. He then confirmed with dispatch that the plate of the

¹⁰ Trooper Willett was interviewed by members of the Office of the Attorney General and investigators from the Major Crime Unit of the New Hampshire State Police Department in the presence of his counsel on June 19, 2017.

truck matched the plate from the BOLO. At that time, Trooper Willett assumed that the call from Portsmouth to assist a motorist with a hit-and-run was affiliated with the BOLO and the truck parked at the Liquor Store.

He then slowly pulled into the parking lot, observed that the truck appeared abandoned, and surveyed the area for a suspect. He initially positioned his cruiser on the westerly side of the building, although he eventually drove his cruiser into a position near the truck, which allowed him to see the entire storefront.

Trooper Willett made contact with a man standing by a red Chevrolet truck. The man confirmed that he observed the silver pick-up truck pull into the store, and that the driver exited the vehicle but the man was not certain where the driver was located. Around this time, Trooper Willett asked dispatch to confirm whether the suspect was armed. Dispatch confirmed that he was likely armed and that Portsmouth had relayed that information from someone who was in contact with the suspect that same morning. He then asked dispatch for a description of the suspect, but dispatch was unable to provide one at that time.

Trooper Willett observed a subject, later confirmed to be Mr. Jones, in a black hat, a black t-shirt with a black backpack walking slowly along the front of the Liquor Store under the overhang. Trooper Willett observed Mr. Jones stop behind a pillar. Based on Trooper Willett's experience and knowledge of that building, he knew that there was not a door or exit behind that pillar, so he concluded that Mr. Jones was concealing himself behind that pillar. Trooper Willett broadcasted over his police radio the position and physical description of Mr. Jones.

The Trooper confirmed from the man near the red Chevrolet truck that the driver of the abandoned truck was wearing a black hat, black t-shirt, and a dark-colored backpack. A moment later, Trooper Willett observed Sergeant Walker arrive on scene, park his cruiser near the

western edge of the building, and motioned for Trooper Willett to “come over.” Trooper Willett got back into his cruiser and drove to Sergeant Walker’s location.

While still in the cruiser, Trooper Willett was able to obtain Mr. Jones’s name from dispatch. Both Troopers were then positioned at the edge of the building looking down the overhang as if it was an “alley” or a “hallway.” Trooper Willett withdrew his department-issued pistol¹¹ after he exited his cruiser, and then positioned himself behind the edge of the overhang. He also observed that Sergeant Walker had his department-issued pistol drawn from his holster.

From his position, Trooper Willett could observe Mr. Jones at the other end of the storefront. Trooper Willett aimed his department-issued pistol at Mr. Jones. Sergeant Walker then immediately began yelling at Mr. Jones, who at that moment had his back to the Troopers. Trooper Willett heard Sergeant Walker yell, “BARRY, DON’T MOVE,” and possibly, “STATE POLICE.” Trooper Willett yelled, “DON’T MOVE” repeatedly.

Mr. Jones turned towards the officers with his chest facing the parking lot. He then moved his right hand towards his waistband, lifted up his shirt, and pulled out an item that Trooper Willett described to investigators was “a black pistol.” Trooper Willett said that Mr. Jones had the pistol in front of him, and was moving his hand. The Trooper explained that as he yelled, “DON’T MOVE. DON’T MOVE. DON’T MOVE,” Mr. Jones’s pistol “kept coming towards” him, and that was when he, Trooper Willett, discharged his firearm.

Just before firing his weapon, Trooper Willett told investigators that he thought to himself, “if he keeps moving that firearm up towards us, he is going to shoot at us.” Trooper

¹¹ Both Trooper Willett and Sergeant Walker explained that they each carry a Smith & Wesson M&P .45 caliber firearm. Both Troopers stated that prior to starting their respective shifts each day, and on June 13, 2017, they inventoried the ammunition in their firearms and confirmed that they were fully loaded, with 10 rounds in the magazine and an additional round loaded in the firearm’s chamber.

Willett explained that in that moment he felt that he “had to do something” or Mr. Jones would shoot one of the Troopers or someone coming out of the Liquor Store.

Trooper Willett told investigators that he fired two shots and said he “heard a bang to his right” after he fired his shots, and believed that Sergeant Walker had fired his gun as well.

Trooper Willett described the shot, that he believed came from Sergeant Walker, to have occurred “almost instantaneously” from the time he fired. Trooper Willett does not remember hearing “another bang” after that from either himself or Sergeant Walker. He did not recall how many rounds Sergeant Walker fired.

He also explained that after he fired his second shot, he observed that his firearm had malfunctioned in what he described as a “double feed.”¹² He cleared the feed by ejecting both the casing and the fed live round, which fell from the weapon having not been fired and landed near the Trooper’s feet.

After firing, Trooper Willett observed Mr. Jones fall on his right side, with his back to the Troopers, his head resting along the wall of the Liquor Store, and his feet towards the officers. Trooper Willett observed Mr. Jones attempting to brace himself on a nearby trash barrel while the weapon was near Mr. Jones’s foot. Trooper Willett and Sergeant Walker then repeatedly yelled, “DON’T MOVE. BARRY, DON’T MOVE.” Trooper Willett’s view of Mr. Jones’s head, front side, and hands was obstructed, with the exception of Mr. Jones’s left hand when he was pushing against the trash barrel. Trooper Willett explained that he believed Mr. Jones was attempting to “get back up,” and possibly “re-engage with us.” The Trooper said there were a number of scenarios running through his head as to what Mr. Jones would do next, but that he remained behind a position of cover and continued to command Mr. Jones not to move.

¹² A double feed is a malfunction in the operation of a semi-automatic pistol where a cartridge has failed to extract and a fresh live round has partially entered the still occupied chamber.

Trooper Willett heard Sergeant Walker communicate over his radio that shots were fired and an ambulance was needed.¹³ Trooper Willett did not know whether Mr. Jones was “hit,” as he did not see any blood, or hear any noises indicating Mr. Jones was injured. Instead, all Trooper Willett noticed was that Mr. Jones appeared to be attempting to “get back up.” Trooper Willett stated that the weapon was “close to” Mr. Jones’s foot, close enough for Mr. Jones reach it, and further, that he was uncertain as to whether Mr. Jones had any other weapons. Soon afterward, a Portsmouth officer armed with a rifle took Trooper Willett’s position, and the Trooper moved behind the officer and holstered his department-issued pistol.

As other officers arrived, Trooper Willett and other officers noticed a teenager located in a nearby vehicle. Trooper Willett along with other officers used a ballistic shield to safely approach the vehicle and remove the teenager from the car and away from any immediate danger. Trooper Willett indicated that after this rescue, one of officers maintained a position by the vehicle, while he returned to the area of his original position. Trooper Willett described Trooper Gary Ingham’s arrival on scene with a police dog, and how the officer located by the teenager’s vehicle was able to see Mr. Jones’s hands after the police dog was deployed. Trooper Willett turned over his firearm to another officer and was removed from the scene.

During the incident, Trooper Willett carried two less-than-lethal weapon systems on his duty-belt: an electronic shock device (Taser) and pepper spray. He explained, however, that he believed he needed to respond to the threat of deadly force with deadly force, and did not utilize either the Taser or pepper spray.

¹³ Trooper Willett told investigators that the portable radio signal in this area during the incident was “very poor.” He specifically recalled that Sergeant Walker, and then other later responding troopers, had difficulty communicating through portable radios.

2. Sergeant Keith Walker¹⁴

New Hampshire State Police Sergeant Keith Walker is assigned to the Troop A barracks. He is a nineteen-year veteran of the State Police and also a former nine-year member of the New Hampshire State Police SWAT team. On the date of the incident, Sergeant Walker was assigned to supervise patrol duties throughout the Troop A patrol area. He was operating a fully marked State Police cruiser and wearing a full State Police uniform.

Sergeant Walker was on patrol when he heard dispatch report that Troopers Jordan Kopko and Christopher Houston were called to the scene of a hit-and-run in Portsmouth. A short time later, Sergeant Walker heard that Trooper Willett was assigned to respond to an erratic vehicle travelling on Interstate 95, which he remembered hearing described as a white Ford Ranger losing its tire¹⁵. He subsequently heard over dispatch that the vehicle had pulled in to the Liquor Store. Before Trooper Willett had indicated that he arrived on scene, dispatch broadcasted a BOLO from Portsmouth. Sergeant Walker recalled that the BOLO indicated that a male subject was driving a stolen silver Ford Ranger with a cap, reported to be headed to Massachusetts to buy drugs, and that he was armed with a firearm.¹⁶ Sergeant Walker explained that dispatch recognized the similarities between the erratic vehicle pulling into the Liquor Store and the vehicle described in the BOLO, and informed Trooper Willett.

Sergeant Walker heard Trooper Willett radio that he observed the vehicle from the BOLO parked at the Liquor Store, and then requested that another unit respond to assist. Sergeant Walker indicated he would respond from Newfields. By the time Sergeant Walker merged onto Interstate 95, about one mile north of the Liquor Store, he believed that Trooper

¹⁴ Sergeant Walker was interviewed by members of the Office of the Attorney General and investigators of the New Hampshire State Police Department in the presence of his counsel on June 19, 2017.

¹⁵ While a 911 caller described the truck as white, the truck's color was in fact silver with a white cap.

¹⁶ Sergeant Walker told investigators it was not until after the incident that he learned additional radio traffic also contained information that the subject may have pulled a handgun on someone earlier in the day.

Willett advised: first, that the truck appeared unoccupied, and therefore Willett was uncertain as to the location of the subject; and second, a description of the subject as a white male wearing shorts and a black baseball hat. As Sergeant Walker travelled to the Liquor Store, Portsmouth Police advised Sergeant Walker that its K-9 unit was available, and Sergeant Walker requested that it also respond to the Liquor Store.

As Sergeant Walker approached the Liquor Store parking lot, he observed Trooper Willett's cruiser parked in the middle of the parking lot. He knew from past experience that there was a neighborhood located near the western side of the rest area. He also observed patrons in the parking lot and moving in and out of the Liquor Store.

Sergeant Walker started to drive across the grass toward Trooper Willett's position. As he did this, Trooper Willett broadcasted that he observed the subject, later confirmed to be Mr. Jones, in front of the Liquor Store "hiding behind one of the pillars under the overhang." Sergeant Walker heard Trooper Willett say Mr. Jones was "trying to avoid being seen." Sergeant Walker then changed direction and drove towards the northwest corner of the building. Sergeant Walker parked his cruiser in a position so he could see Mr. Jones along the storefront behind one of the farthest pillars. Sergeant Walker exited his cruiser and moved towards the side of the building for cover. He motioned for Trooper Willett to drive over to his position. Trooper Willett drove over, exited his cruiser, and positioned himself along a nearby pillar along the edge of the building.

Once in position at the west side of the building, Sergeant Walker drew his duty weapon and aimed it at Mr. Jones. Sergeant Walker then yelled, "STATE POLICE. PUT YOUR HANDS UP. STATE POLICE. PUT YOUR HANDS UP." As he was yelling, he observed customers exiting the Liquor Store in between his position and Mr. Jones. Sergeant Walker

immediately yelled at the customers, "GET BACK INSIDE. GET BACK INSIDE." He specifically recalled making eye contact with a woman pushing a shopping cart. He saw her turn around and go back inside the store in response to his commands.

Sergeant Walker continued to yell to Mr. Jones to put his hands up. Mr. Jones did not respond to the commands. The sergeant then asked Trooper Willett what Mr. Jones's name was, and learned it was Barry. He then started to yell, "BARRY, PUT YOUR HANDS UP. BARRY PUT YOUR HANDS UP." Mr. Jones turned around and looked at the troopers. Sergeant Walker described that he saw Mr. Jones "started to fiddle with his waistband area." Sergeant Walker described that it was "clear he was trying to get something out of his waistband area," and Sergeant Walker could not see either of Mr. Jones's hands. As Mr. Jones turned towards Sergeant Walker, Sergeant Walker "almost immediately" saw a black object in Mr. Jones's right hand that Sergeant Walker recognized "clear as day" to be a black handgun. Sergeant Walker was not certain whether Trooper Willett yelled to Mr. Jones to "DROP THE GUN." Nonetheless, Mr. Jones started to point the weapon toward the Troopers. At that point, Sergeant Walker described that he was in fear for his life and believed Mr. Jones was going to shoot him or Trooper Willett. Sergeant Walker fired his weapon, although he could not remember how many shots he fired with certainty, he believes he fired "two [shots] right on top of each other." He also heard Trooper Willett fire, and believed that Trooper Willett may have fired his weapon just prior to Sergeant Walker's initial shots.

After firing, Sergeant Walker observed Mr. Jones fall to the ground into a low position behind an "industrial sized" trash barrel. Mr. Jones was partially obstructed from his view. Sergeant Walker then positioned himself "closer to the right side of the wall." Both he and Trooper Willett yelled, "BARRY DO NOT MOVE. BARRY DO NOT MOVE." Sergeant

Walker could see a “3-4 inch gap” behind the trash barrel and the wall, and observed that Mr. Jones was still moving. At that moment, Sergeant Walker was unaware if Mr. Jones was still armed and believed that Mr. Jones still posed a threat to the Troopers and “everyone else that was there.” Sergeant Walker said he was “convinced that [Jones] was going to emerge from behind the trash barrel and try and shoot us again [sic].” Sergeant Walker then fired an additional round in the direction of Mr. Jones. During his interview, Sergeant Walker recalled that Mr. Jones stopped moving in the same manner after that shot. He then notified dispatch that shots were fired and requested an ambulance.¹⁷

Sergeant Walker described the sequence of events as “all happened so fast,” although he specifically described Mr. Jones’s movement as not “frantic.” He believed that both he and Trooper Willett perceived the threat at the same time. Sergeant Walker estimated that the time between the initial shots and his last shot was 5–10 seconds.¹⁸ He also told investigators that Mr. Jones “never” responded to any of the Troopers’ commands. In his nineteen years of experience, Sergeant Walker described having to draw his duty weapon during felony stops or other incidents totaling a few times each year. He told investigators that in all of his past incidents, he never fired his duty weapon because the subjects involved were compliant and responsive to the commands.

After the shots were fired, Sergeant Walker described the scenario as a “tactical situation.” He recognized that there were private citizens all around in nearby vehicles and inside the store. He also did not know whether Mr. Jones was injured, whether he was still

¹⁷ Sergeant Walker told investigators that throughout the incident he was having trouble with the portable radio. He said he called for an ambulance multiple times. After shots were fired, he recalled going “back and forth” to his cruiser to use his radio.

¹⁸ Investigators compared video surveillance footage and cell phone video obtained from private citizens and determined the last shot was fired approximately seventeen seconds after the initial gunfire.

armed, or both.¹⁹ At some point, an officer handed Sergeant Walker a monocular in an effort to confirm whether an item near the trash barrel was Mr. Jones's weapon.²⁰ Sergeant Walker responded that he did not need to confirm that because the gun was still well within Mr. Jones's reach, saying "it was so close if it was [the gun], it would take next to no time to grab it again and start shooting."

Sergeant Walker went to his cruiser after additional officers began to arrive, put on a protective vest, and retrieved his patrol rifle. At that time, Trooper Eric Call was on scene. He and Sergeant Walker ran around the back of the store in an effort to take a position closer to Mr. Jones. Before reaching the other side of the building, however, the Troopers decided not to take that position since their portable radios were acting unreliably. This unreliability caused Sergeant Walker concern that they could not let other officers know about their movements, which would have placed the Troopers in an unsafe position due to potential cross-fire. Sergeant Walker then returned to near his original position where arriving law enforcement officers were now gathering. Sergeant Walker next requested an armored vehicle be sent so officers could more safely approach Mr. Jones's position.

At some point, Trooper Gary Ingham arrived with his K-9. Also, Lieutenant Michael Maloney from the Portsmouth Police Department was on scene and mentioned to Sergeant Walker that they needed to make a rescue to retrieve a person from a nearby vehicle (see above). After the person was removed from the car, Trooper Ingham deployed the K-9, Mr. Jones was taken into custody, and another officer retrieved Mr. Jones's weapon and secured it in Sergeant Walker's trunk.

¹⁹ Sergeant Walker explained that Jones did not make any noises or say anything during the incident which would indicate that he had been injured, and it was not until after Jones was apprehended that he observed blood for the first time and for the first time heard Jones moaning in pain.

²⁰ Sergeant Walker explained that he is uncertain as to exactly when in the sequence of events he was handed the monocular.

After the incident, Sergeant Walker turned over his department-issued pistol to State Police Staff Sergeant Charles Winters.

3. Portsmouth Police Officer Steven Blanding²¹

On June 13, 2017, Officer Steven Blanding was on duty in Portsmouth conducting traffic enforcement when the initial radio traffic went out indicating a report of a stolen vehicle and that the suspect may have pointed a handgun at the caller or another person. The handgun was described as a silver and black Sig Sauer pistol. Once he received this information, Officer Blanding travelled down Grafton Road in Portsmouth looking for the reported stolen vehicle. While on Grafton Road, he spotted the driver of a Jeep Wrangler waving him down at the intersection of Grafton Road and Route 33.

Officer Blanding made contact with the driver, who told him that a silver pickup truck with a cap on it had rear-ended the Jeep and left the scene of the accident without stopping. The driver reported: (1) the truck's license plate number; and (2) that the driver of the truck was driving erratically. Officer Blanding relayed the license plate number to dispatch and was advised that the plate matched that of the reported stolen vehicle.

Officer Blanding then drove around the Grafton Road area looking for the truck. Moments later, dispatch informed Officer Blanding that a State Trooper had located the vehicle at the Liquor Store in Hampton. A few minutes later, New Hampshire State Police requested that Officer Blanding respond with his K-9. He drove towards the Liquor Store, and switched his cruiser radio to New Hampshire State Police Troop A's frequency.

²¹ Officer Blanding was interviewed by an investigator from the Major Crime Unit of the New Hampshire State Police Department on the afternoon of June 13, 2017. He has been a police officer for twelve years in both New Castle and Portsmouth, New Hampshire, and has been a member of the regional SWAT team for approximately seven years.

While en route, Officer Blanding heard Trooper Willett request a description of the suspect. Officer Blanding obtained a description of the suspect from other Portsmouth officers and relayed it to Trooper Willett: the suspect was wearing a dark colored t-shirt, tan shorts, and a backwards baseball hat. As Officer Blanding was passing through the Hampton toll plaza just north of the Liquor Store, Trooper Willett radioed that he observed a male subject matching that description standing behind a pillar at the front of the Liquor Store. Officer Blanding told investigators that Trooper Willett also advised that the subject, later confirmed to be Mr. Jones, “appeared to be watching him” and his actions seemed “suspicious.”

Officer Blanding arrived at the Liquor Store just behind Sergeant Walker. As Officer Blanding approached the building, he saw Sergeant Walker’s and Trooper Willett’s cruisers were at the northwest corner of the building. Immediately upon entering the parking lot, Officer Blanding parked his cruiser near the northwest corner of the building. Officer Blanding observed the suspect standing in front of the building, under the overhang, and positioned behind a pillar. He observed the two troopers take cover at the corner of the building, and then issue verbal commands to the suspect, which included calling out to the suspect by his name.

Officer Blanding observed the suspect, later confirmed to be Mr. Jones, “turn slightly then pull a handgun from his waistband area.” As this happened, he heard the Troopers issue “several rounds of commands” to Mr. Jones to drop the gun. Mr. Jones was unresponsive. Instead, Mr. Jones held the weapon in his right hand “slightly elevated.” Officer Blanding stated that he could see the weapon “clear as day” and that it appeared to be a “real gun.” He recalled that someone said “GUN,” and that he also heard, “PUT THE GUN DOWN.” After the troopers issued more verbal commands, “shots rang out,” but Officer Blanding was uncertain as to how many shots were fired, and initially, whether it was the Troopers or Mr. Jones that had fired.

Officer Blanding, who was positioned with his K-9 behind Trooper Willett, asked the Troopers who fired and both confirmed it was them. He also observed that both Troopers had their pistols out at that time. Officer Blanding told investigators that he was surprised the Troopers did not shoot sooner.

Officer Blanding indicated at the time of shooting there were only three law enforcement officers on scene, Trooper Willett, Sergeant Walker, and himself.²² Officer Blanding confirmed that he did not fire a weapon during the incident.

Officer Blanding observed Mr. Jones fall to the ground after the gunshots. He noticed a woman sitting in a nearby vehicle and instructed her to leave. He then secured his police dog in his cruiser, obtained his rifle, and took up a position at the northwest corner of the building. He described Mr. Jones as positioned behind “trash barrels,” partially out of sight with only his legs visible to the officer. He also observed “something” lying on the ground behind Mr. Jones, and at that point, Officer Blanding was uncertain if it was Mr. Jones’s weapon. Officer Blanding observed that Sergeant Walker was having difficulty connecting with dispatch from his portable radio so Officer Blanding also attempted to inform dispatch that shots were fired and the suspect was down.

While the officers waited for other units to arrive, the Troopers continued to give Mr. Jones verbal commands to stop moving. Once other officers arrived on scene, Sergeant Walker requested the Seacoast Emergency Response Team’s (SERT) armored vehicle to be available.²³ Shortly thereafter, officers observed a teenager sitting in a vehicle near the suspect. Officer Blanding assisted two Troopers and another officer from North Hampton in approaching the

²² Unbeknownst to Officer Blanding, Troopers Jordan Kopko and Christopher Houston were arriving on scene just behind Officer Blanding, and possibly a Hampton or North Hampton officer as well.

²³ The SERT armored vehicle is an armored truck capable of protecting officers in a variety of situations. It is also referred to as a BearCat. Jones was in custody before the armored vehicle arrived at scene and therefore it was not utilized.

vehicle and removing the teenager. Officer Blanding remained positioned near the vehicle. From there, he had an unobstructed view of Mr. Jones and the weapon located near his feet. Officer Blanding yelled commands to Mr. Jones to show his hands, but he did not comply. At this point, Trooper Gary Ingham deployed his K-9. The dog gripped Mr. Jones's waist area and pulled him onto his back exposing Jones's hands. Officer Blanding then approached Mr. Jones with other officers once Jones's hands were visible, and secured Mr. Jones's weapon while other officers placed him into custody.

Officer Blanding walked away from Mr. Jones with the weapon he had just recovered, and dropped the magazine. It was at this point that he realized the firearm was "an Airsoft replica." He then secured the weapon in the trunk of Sergeant Walker's cruiser. Officer Blanding informed investigators that there "was no indication to [him] that the handgun was Airsoft until I actually picked it up and looked at the magazine."

4. Trooper Jordan Kopko²⁴

On June 13, 2017, Trooper Kopko was on duty and patrolling the area of the southern Spaulding Turnpike. He was with a trainee, Probationary Trooper Christopher Houston, who was driving their cruiser. The Troopers responded to a hit-and-run incident in Portsmouth around noon. There, the Troopers spoke to the driver of the Jeep Wrangler that was struck by Mr. Jones's truck. The motorist provided the Troopers with information including the license plate number of the truck. Moments later, the Troopers confirmed that the license plate of the vehicle involved in the hit-and-run matched that of a vehicle that Trooper Willett had recently broadcasted as being parked at the Liquor Store.

²⁴ Trooper Kopko was interviewed by investigators from the Major Crime Unit of the New Hampshire State Police Department on the afternoon of June 13, 2017.

After hearing this, the Troopers left the accident scene and travelled south to the Liquor Store to assist Trooper Willett. While travelling, Trooper Kopko heard Trooper Willett over police radio report that the truck appeared unoccupied, and that Trooper Willett intended to wait for another Trooper to arrive.

Troopers Kopko and Houston arrived at the Liquor Store after Sergeant Walker and Trooper Willett were on scene. The Troopers parked near the position of Sergeant Walker and Trooper Willett. Trooper Kopko told investigators that a few seconds after he exited the cruiser, he heard the Sergeant Walker and Trooper Willett issuing repeated commands to Mr. Jones, “DON’T MOVE” and “SHOW YOUR HANDS.” He then heard what he believed were “two rounds go off.” He described the gunshots as “quick, bang, bang,” with no further gunfire. He said it sounded like two shots but “could be more, could be less.” As he heard the gunfire, Trooper Kopko was uncertain whether the Sergeant Walker and Trooper Willett fired or whether Mr. Jones fired. He then observed a “shell,” or spent bullet casing, eject from Trooper Willett’s firearm.

Trooper Kopko told investigators that at some point he took over Sergeant Walker’s position while Sergeant Walker went behind the building to contact dispatch. Trooper Kopko told investigators that from Sergeant Walker’s position he observed a “6-inch” area between the storefront and the trash barrels and could see the back of Mr. Jones while Jones moved “every once in a while.” He asked Trooper Willett if he was okay, and Trooper Willett responded, “yes,” and also said, “[h]e [referring to Mr. Jones] showed a firearm.” Trooper Kopko moved to Trooper Willett’s position and could now see more of Mr. Jones, to include his legs and back. He also said he saw what “looked like a gun” beside Mr. Jones. Trooper Kopko recalled a few officers using monocular/binoculars in an effort to determine if the item was a gun.

After Mr. Jones was placed into custody, Trooper Kopko observed “a lot of blood” and heard Mr. Jones repeatedly saying, “ouch.” Trooper Kopko saw that Mr. Jones was searched, his shirt was cut for medical treatment, he was treated by EMTs, and he was transported to the hospital. Troopers Kopko and Houston were in the ambulance with Mr. Jones during the trip to the hospital. Mr. Jones did not say anything during the ride. The Troopers remained with Mr. Jones while he was treated at Portsmouth Regional Hospital until another Trooper arrived.

5. Trooper Christopher Houston²⁵

On June 13, 2017, Probationary Trooper Christopher Houston was riding with Trooper Kopko. His version of events is substantially similar to that of Trooper Kopko, although with some additional detail noted here. Trooper Houston stated that as he and Trooper Kopko travelled south of Interstate 95 towards the Liquor Store, a Portsmouth Police cruiser was in front of their vehicle also travelling to the Liquor Store.

Trooper Houston explained that upon arriving at the Liquor Store, he parked the cruiser near Sergeant Walker’s and Trooper Willett’s cruisers and observed that both Troopers had their weapons drawn. He explained that Sergeant Walker was positioned behind a trash barrel along the corner of the building and Trooper Willett was standing behind a pillar to Trooper Houston’s left. Trooper Houston exited his cruiser, took about two steps, and heard Sergeant Walker and Trooper Willett issuing commands to the subject, later confirmed to be Mr. Jones. Although he is uncertain as to which Trooper issued which command, he heard, “STOP,” and another command related to Mr. Jones’s hands. He then heard two gun shots. At that time, he observed shell casings and smoke emitting from Trooper Willett’s firearm. Trooper Houston immediately took cover behind a cruiser.

²⁵ Trooper Houston typed and provided a written report of his observations on the same day as the shooting, June 13, 2017.

After the gunfire, Trooper Houston cautiously advanced to another cruiser. While doing so, he observed Mr. Jones “sitting or kneeling” behind a trash barrel alongside the storefront. Around this time, Trooper Kopko took over Sergeant Walker’s position. Trooper Houston heard Sergeant Walker radio dispatch informing them that shots were fired and requesting an ambulance.

After additional units arrived, Trooper Houston returned to his cruiser, put on a protective vest, and retrieved his department-issued rifle. When he returned, he did not have a clear line of sight of Mr. Jones. Instead, he could only see what appeared as Mr. Jones’s back in between the trash barrel and the building.

After the police dog was deployed, Mr. Jones was moved “to the middle of the walkway.” Trooper Houston and other officers moved down the storefront towards Mr. Jones to place him into custody. It was then that he observed “a lot of blood in the area where [Mr. Jones] was lying,” and a bullet in the area of the blood. Mr. Jones’s was checked for injuries, treated by EMTs, and transported to Portsmouth Regional Hospital.

6. Trooper Gary Ingham²⁶

Trooper Gary Ingham arrived at the Liquor Store after shots were fired. He was on duty patrolling in the Kingston area when he the heard over dispatch that there was a vehicle wanted out of Portsmouth. He recalled hearing the BOLO, which included information that the vehicle was possibly stolen and headed to Lawrence to buy drugs. He then heard a call for a K-9 assist, and he immediately picked up his police dog and drove to the Liquor Store.

As he approached the Liquor Store, he informed Sergeant Walker over police radio that he was arriving with his police dog. Sergeant Walker responded that shots had been fired, the

²⁶ Trooper Ingham was interviewed by an investigator from the New Hampshire State Police Major Crime Unit on the afternoon of June 13, 2017.

subject, later confirmed to be Mr. Jones, was armed with a gun, and the gun was now lying within Mr. Jones's reach.

Upon arrival, Trooper Ingham equipped his police dog with a protective vest and a long leash. Around that time, he observed what he described as a teenager in a nearby vehicle using a cellphone camera. He and a few other officers used a shield to rescue the teenager. After that, Trooper Ingham returned to the corner of the building and strategized with Sergeant Walker and other officers about how to safely approach and apprehend Mr. Jones. While at the corner, officers continued to command Mr. Jones to show his hands to no avail. Trooper Ingham, like other responding officers, could not see Mr. Jones's hand at this time, and instead had a partially obstructed view of Mr. Jones, who he described to be as in a "fetal position" facing the building between two trash barrels. Trooper Ingham could only see Mr. Jones's waist and feet.

Trooper Ingham then suggested to Sergeant Walker to utilize the police dog in an effort to apprehend Mr. Jones. He told investigators that at that time he felt the police dog was the best and safest method because private citizens were in the parking lot and inside the Liquor Store, and, further, that Mr. Jones was not barricaded and could become "mobile," meaning he could get up and attempt to flee the scene. Trooper Ingham further explained to investigators his reasoning to deploy the police dog. First, the police dog would be able to pull Mr. Jones into an area where officers could see Mr. Jones's hands. Second, when the police dog made contact with Mr. Jones, it would most likely cause Mr. Jones to use his hands in an effort to push the police dog off of him. That would allow officers to see both of Mr. Jones's hands and assess whether it was safe to approach and apprehend him.

With that in mind, it was agreed to deploy the police dog. Trooper Ingham deployed the dog on a long leash. The dog gripped Mr. Jones and pulled Mr. Jones on his back out from

behind the trash barrel. Mr. Jones eventually placed his hands up in the air, after which officers approached Mr. Jones, took custody of the weapon, and placed him into custody, while Trooper Ingham then removed the dog.

7. North Hampton Officer James Mascioli²⁷

Officer James Mascioli was on duty in North Hampton when he heard Rockingham County dispatch report a stolen silver pickup truck out of Portsmouth headed southbound for Lawrence, Massachusetts. He also heard that the driver was armed with a handgun, and that Trooper Willett was at the Liquor Store after he discovered the truck.

Officer Mascioli was under the impression that the driver of the vehicle may have left on foot away from the Liquor Store, so he proceeded to an area where he thought the driver may have gone on the North Hampton / Hampton border. He then heard the dispatch indicating that an ambulance was called in to stage nearby, and that the subject, later confirmed to be Mr. Jones, was still at the Liquor Store. Communications cut out, and he was not aware that there had been a report of shots fired. Officer Mascioli headed to the Liquor Store only after he heard dispatch asking for any units with additional protective vests to head that way, as he had an extra protective vest in his vehicle's trunk. Upon arrival, he saw officers amassed behind the pillar and adjacent northwest corner of the building, and a K-9 unit already on scene. He did not arrive at the Liquor Store until well after shots had been fired.

Officer Mascioli saw Mr. Jones down on the ground behind a trash barrel at the other end of the front of the building. He could see that Mr. Jones had a backpack on him, and was still moving around despite troopers telling him to stay down and not move. Officer Mascioli saw a teenager in an SUV parked in front of the building who was between the officer's location and

²⁷ Officer Mascioli was interviewed by an investigator from the New Hampshire State Police Major Crime Unit on June 13, 2017.

Mr. Jones. He explained the concern of the officers at that time was if the dog was deployed and Mr. Jones reacted violently, it would put the teenager in harm's way. Using a ballistic shield from the trunk of Officer Mascioli's cruiser, he and other officers helped evacuate the teenager from the car.

After the K-9 gripped Mr. Jones, Officer Mascioli could then see that Jones's hands were empty. At that point, he approached Mr. Jones with other officers, and handcuffed him along with Trooper Eric Call.

8. Trooper Eric Call²⁸

Trooper Eric Call was on duty and leaving the Somersworth Police Department when he heard radio traffic about a stolen truck out of Portsmouth. He also heard about a hit-and-run incident in Portsmouth, and a suspicious disabled vehicle parked at the Liquor Store in Hampton. He then headed south to the area of the Liquor Store. He soon learned from dispatch that Trooper Willett located the driver of the vehicle behind a pillar of the store, and that Sergeant Walker and Troopers Kopko and Houston were on scene. Shortly afterwards, Trooper Call heard the report that shots had been fired. Trooper Call arrived at the Liquor Store approximately 1½ to 2 minutes after that radio transmission.

When he arrived, Trooper Call saw Sergeant Walker and Trooper Willett with their guns drawn taking cover behind the northwest corner of the building and a nearby pillar, respectively. The Troopers informed him about Mr. Jones's location; that Jones was down, but that his hands were obstructed from their view. Trooper Call asked about moving to the opposite side of the building to "flank" Mr. Jones and be able to confine his ability to possibly flee by approaching him from a different direction. Sergeant Walker obtained his protective vest and his patrol rifle,

²⁸ Trooper Call was interviewed by investigators from the New Hampshire State Police the Major Crime Unit on the evening on June 13, 2017.

and the two of them ran around the back of the store in an effort to take a position closer to Mr. Jones. Before reaching the other side of the building, however, Trooper Call was unable to communicate with Troopers still on the west side of the building to alert them to their location. Sergeant Walker decided to discontinue trying to move around the east side of the building as it would place the Troopers in an unsafe position due to potential cross-fire. They then returned to their original position where additional arriving law enforcement officers were gathering. Trooper Call retrieved his patrol rifle from his cruiser, and went to relieve Trooper Kopko. Trooper Call reported that Mr. Jones continued to move, and that the officers' repeatedly said, "DO NOT MOVE."

After Trooper Ingham's K-9 moved Mr. Jones and his hands were in view, Trooper Call and North Hampton Officer James Mascioli approached to handcuff him. Trooper Call knew an ambulance was coming from a nearby staging area, and cut Mr. Jones's shirt open to assist treating him while the EMT's drove in.

9. Portsmouth Police Department Lieutenant Michael Maloney²⁹

Lieutenant Michael Maloney was working as the day shift patrol supervisor when he was made aware of the initial 911 calls reporting that Mr. Jones had taken a truck and was armed with a handgun. Lieutenant Maloney overheard the initial Portsmouth Police Department radio traffic regarding the 911 calls, and later heard Trooper Willett indicate that he saw the vehicle at the Liquor Store. Lieutenant Maloney also heard the request for a K-9 unit to respond to the store, and Officer Blanding's response to the scene. At this point, Lieutenant Maloney began to monitor the New Hampshire State Police dispatch frequency.

²⁹ Lieutenant Maloney was interviewed by an investigator from the Major Crime Unit of the New Hampshire State Police Department on June 28, 2017. Lieutenant Maloney currently serves as a commander on the regional SWAT team.

Lieutenant Maloney headed to the Liquor Store after he heard Sergeant Walker advise that shots had been fired. Lieutenant Maloney believed, based on his knowledge of previous police department calls involving Mr. Jones that he was not going to submit to police authority, in that he would either try to flee the scene or resist arrest. While driving to the Liquor Store, Lieutenant Maloney heard Officer Blanding relay Sergeant Walker's request for an armored vehicle. The Lieutenant authorized the request and ordered an armored vehicle to be driven to the scene.

When he arrived at the Liquor Store, Lieutenant Maloney described the situation as "tactical," in that: (1) Mr. Jones was not in custody; (2) he was moving despite officer's commands to stop; and (3) officers could not see Mr. Jones's hands. Lieutenant Maloney learned of a teenager who was sitting in a parked vehicle in between the officer's position of cover and Mr. Jones. Feeling this was a safety issue for the teenager, Lieutenant Maloney decided that the first priority was to perform a "hasty rescue" to get the teenager out of potential danger before moving to place Mr. Jones in custody. The Lieutenant organized the rescue utilizing a ballistic shield and sent Officer Mascioli, Trooper Eric Call, and Officer Blanding, to rescue the juvenile.

Lieutenant Maloney witnessed Trooper Ingham deploy his K-9 who pulled on Mr. Jones and exposed his hands. The Lieutenant did not converge on Mr. Jones when he was arrested, but stayed back to provide cover for the other officers. He did not go up to Mr. Jones after he was placed in custody.

10. Clarence Reed³⁰

Mr. Reed is an HVAC contractor and during the incident he was located inside the women's bathroom working on the AC unit. The bathroom entrance is located under the overhang along the storefront near where Mr. Jones was positioned behind a pillar. Mr. Reed heard what he described as "at least three gunshots." He eventually moved into a mechanical room off of the bathroom and took cover. He was essentially trapped in the room for approximately 20 minutes. During the incident, he told investigators that he heard muffled sounds of people yelling, "GET DOWN" or "STAY DOWN."

11. Jennifer Allen³¹

Jennifer Allen is the Operations Manager for New Hampshire Made store, a small gift and convenient store attached to the Liquor Store. Around 12:30 p.m., Ms. Allen was preparing to travel to another store location. She was parked outside the front of the store putting some products in the back of her car when she suddenly heard gunshots. Ms. Allen jumped into the driver's side of her car. A moment later, another store employee, Dorothy Guy, opened the door of the New Hampshire Made store after she heard the gunshots. Ms. Allen yelled from her car for Ms. Guy to get back inside and lock the door.

Ms. Allen waited approximately five minutes until an officer waved for her to back out of her parking spot. While she was waiting, Ms. Allen did not see any private citizens at first, but saw what she thought was a backpack laying on the ground curled up in towards a trash barrel. Ms. Allen at first believed it was simply a backpack, and then saw two sneakers.

³⁰ Mr. Reed was interviewed by an investigator from the New Hampshire State Police Major Crime Unit on June 13, 2017.

³¹ Ms. Allen was interviewed by investigators from the New Hampshire State Police Major Crime Unit on the afternoon of June 13, 2017.

Ms. Allen drove away from the storefront to the northerly end of the parking lot. From there, Ms. Allen could see that there were between six to eight marked police cruisers in the lot at that time. She did not see who fired the gunshots, and did not see Mr. Jones until after the ambulance arrived.

Investigation later revealed that Ms. Allen was the closest private citizen to Mr. Jones when the event occurred.

12. Dorothy Vanasse Guy³²

Ms. Vanasse Guy is an employee of New Hampshire Made store. Ms. Guy was in the backroom of the store when she heard a “bang.” She then returned to the front of the store and opened the door. She observed 3–4 uniformed police officers and heard someone yell, “DON’T MOVE.” Ms. Guy then saw Ms. Allen inside her vehicle, and Ms. Allen yelled to go inside and lock the door. She did so.

Later on, Ms. Vanasse Guy was cleaning the store and discovered, what was later identified as deformed discharged bullet on the floor. She turned the item over investigators and marked the floor using a coin to show officers the location where she discovered the item.

13. Liquor Store Employee Christopher Wadleigh³³

Christopher Wadleigh, a clerk at the Liquor Store, was on break outside the building from 12:15 to 12:30 p.m. Prior to, or during, his break, he observed a “sketchy” individual leaning against a pillar in front of the store. He described the individual as a male wearing a long sleeve shirt, shorts, back pack, and a baseball hat. After his break, Mr. Wadleigh turned towards the building and observed Troopers pull into the parking lot. He then heard a Trooper yell, “GET

³² Ms. Vanasse Guy was interviewed by investigators from the New Hampshire State Police Major Crime Unit on June 13, 2017.

³³ Mr. Wadleigh was interviewed by investigators from the New Hampshire State Police Major Crime Unit on June 13, 2017.

OUT OF THE WAY.” He observed people exiting the store and then retreating into the store after the trooper yelled. He observed the “sketchy” individual reach back near his hip for a gun. He then turned to run away from the store. Within “milliseconds” of turning, he heard a “handful” of gunshots, which he estimated were “five or six.” Mr. Wadleigh told investigators he was about “five feet from the guy when it happened.” After the shots, Mr. Wadleigh heard Troopers yell, “DON’T MOVE. DON’T MOVE.”

Mr. Wadleigh captured a portion of the incident on his cell phone. He consented to investigators obtaining a digital copy of the video files. A review of the video evidence demonstrates that Mr. Wadleigh started to record after the initial gunfire, but before Sergeant Walker’s final shot, as this final shot can heard approximately nine seconds into Mr. Wadleigh’s initial recording.

14. Witnesses from a Black Nissan Rogue³⁴

Jannette Hebert, her teenage son, Griffin Hebert, and her brother, Wilfredo Iturrino, were driving home to New York from a vacation in Maine. The group was driving a rental car, a black Nissan Rogue. They stopped at the Liquor Store and parked their vehicle in front of the store.³⁵ Ms. Hebert and her brother went into the store while Mr. Hebert used the bathroom. After using the bathroom, Mr. Hebert returned to the vehicle and sat in the back seat behind the front passenger.

After Ms. Hebert and her brother completed their purchase inside the store, Ms. Hebert pushed a shopping cart through the double doors that led to the parking lot. At that time, she observed a police officer wearing a green shirt and tan pants holding a handgun. The officer instructed her to get back inside the store. Ms. Hebert “dove” back into the store, scraping her

³⁴ The Hebert family and Mr. Iturrino were interviewed by investigators from the New Hampshire State Police Major Crime Unit on June 13, 2017.

³⁵ The vehicle is seen on surveillance footage parked in the easterly most spot directly in front of the store.

leg. Once back in, she heard two gunshots. She was unaware who fired the shots, and further was unaware who the officer was pointing his weapon at. Her brother, Mr. Iturrino, told investigators a substantially similar account although he heard “at least one . . . maybe two,” gunshots, but that he was nervous and did not specifically remember how many shots he heard.

Meanwhile in the vehicle, Mr. Hebert observed a New Hampshire State Trooper arrive on scene, followed by, as he described, “another 5–6 officers.” The officers gathered at the western edge of the building and were “pointing guns,” but Mr. Hebert was not certain as to why the officers had their weapons drawn, and at that time, he had no idea someone was hiding behind the pillar.

Mr. Hebert said that he thought the officer directed him to, “GET DOWN,” at some point prior to hearing four gunshots. After he heard the gunshots, Mr. Hebert looked up and observed officers shouting at someone. Around this time, Mr. Hebert took out his cell phone camera and captured some videos.³⁶ About ten minutes after the shots were fired, a group of officers using a shield removed Mr. Hebert from the vehicle.

C. Video Evidence

There were no police-issued video recording devices that recorded the incident. The New Hampshire State Police do not have body cameras and the officers involved in this incident did not have cruiser cameras. The other officers from the towns that responded to this incident did not have body cameras or cameras in their cruisers.

Both the Liquor Store and New Hampshire Made had video surveillance systems, although neither system makes audio recordings. Investigators recovered the two exterior surveillance videos of the incident from the Liquor Store, and the one interior surveillance video

³⁶ Mr. Hebert told investigators he began filming prior to the gunshots. Mr. Hebert consented to allow investigators to download all of his cell phone video from the incident. After reviewing the video, investigators have concluded that the video does not commence until after the gunshots.

from New Hampshire Made. The exterior footage from the Liquor Store captures the incident from a camera just above Mr. Jones, looking down the overhang with the Troopers in the foreground. This includes Mr. Jones looking at the Troopers, looking down and then removing the weapon from his waistband, the officers reacting to the weapon by taking additional cover, and then Mr. Jones turning towards the Troopers and the shots being fired. The second exterior surveillance footage captures the view from above the double doors of the Liquor Store. The New Hampshire Made interior footage captures one of the bullets fired to enter through a door frame and strike a wind chime inside the store.

Mr. Hebert (inside the vehicle) and Mr. Wadleigh (in the parking lot) both captured cell phone footage from close proximity to the shooting scene.³⁷ Mr. Wadleigh's cell phone footage captures a portion of the incident as described in more detail above. Both cell phones recorded the corresponding audio with each video recordings

Those videos, audio recordings, and still photographs generated from the footage, have been reviewed and are consistent with the officers' accounts of the shooting incident.

D. Physical Evidence

The relevant physical evidence collected at the scene consisted of three discharged bullets, five cartridge casings, and one live round. Additionally, two discharged bullets were recovered from Mr. Jones's body. This is consistent with the inventory of both pistols, which demonstrated that both Trooper Willett and Sergeant Walker were each missing three rounds of ammunition. This accounts for the one live round recovered after Trooper Willett's ejection, and five fired rounds: three shots by Sergeant Walker and two shots by Trooper Willett.

³⁷ Those private citizens allowed the investigators to recover the videos and still images from their phones.

A black and silver Daisy Powerline 5501 semiautomatic CO₂ powered pellet gun, loaded with metal BBs in the magazine was recovered from the scene, a few feet from where Mr. Jones was placed into custody.

Measurements taken at the scene show that Trooper Willett and Sergeant Walker were approximately twenty-two yards away from Mr. Jones when they fired their weapons.

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 ch. 627. 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 is the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as any assault, which the actor commits with the purpose of causing or, which 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.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." State v. Gorham, 120 N.H. 162, 163-64 (1980). The term "reasonable" "is determined by an objective standard." State v. Leaf, 137 N.H. 97, 99 (1993). Further, all the circumstances surrounding the incident should be considered in determining whether 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, which is afforded by one viewing the circumstances after the fact.

The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or a police officer may still be justified in using deadly force if he reasonably believed that he was in imminent danger from the use of deadly force by another even if, in fact, he was not, so long as the actor's belief was objectively reasonable.

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

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

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

The Eleventh Circuit Court of Appeals 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, 2013 U.S. Dist. LEXIS 44646 *55-56 (S.D. Fla. 2013). Specifically, the law accounts for the often fast moving nature of dangerous situations and the necessity of making decisions in less than ideal circumstances. See Ryburn, 565 U.S. at 477 (chastising the lower circuit court for not “heed[ing] the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation”).

These are the legal standards that help guide the review in an officer-involved use of deadly force case.

V. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General has concluded that Barry J. Jones created a dangerous situation, which he escalated and this prompted the officer-involved shooting incident at the Liquor Store in Hampton on June 13, 2017.

Both Troopers responding to the Liquor Store were informed that the suspect was armed with a handgun, reported to have stolen a vehicle, was involved in a hit-and-run, and drove the reported stolen vehicle with a blown out tire from the collision scene on Interstate 95 to the Liquor Store. Once at the Liquor Store, both Troopers observed Mr. Jones hiding behind a pillar. When addressed by the troopers, Mr. Jones ignored their commands, reached for his waistband, grabbed the weapon by the handgrip, and turned towards the officers. It was at this point that both Trooper Willett and Sergeant Walker observed the weapon and believed that Mr. Jones was readying himself to fire the weapon in their direction. This action on the part of Mr. Jones led both officers to believe that Mr. Jones was placing the lives of both Troopers, nearby private citizens, and other responding officers in imminent threat of deadly force. As Mr. Jones gripped the weapon and turned towards the officers, both Trooper Willett and Sergeant Walker fired their weapons at Mr. Jones.

After the initial shots were fired, Mr. Jones was mostly obstructed from Sergeant Walker's view. Specifically, Sergeant Walker could not see the weapon, Mr. Jones's hands, and was unaware whether Mr. Jones had access to any other weapon. Sergeant Walker could, however, see a portion of Mr. Jones's body moving. Troopers shouted, "BARRY, STAY DOWN. DO NOT MOVE," to no effect. Upon seeing Mr. Jones's additional movement, Sergeant Walker fired a single shot, which was approximately seventeen seconds after the initial shots.³⁸

These actions, and the speed at which they occurred as well as the reports of Mr. Jones's prior conduct, led the two Troopers to reasonably believe that they, as well as others in the immediate vicinity, to include unknowing customers in the store and persons in the parking lot, faced an imminent threat of deadly force from Mr. Jones.

Although it later turned out that Mr. Jones had a BB gun, and not a handgun as reported to officers, the officers' belief that he did possess a handgun was objectively reasonable under the circumstances, considering all of Jones's words and actions that day, which strongly suggested that he possessed a working firearm.

Also, the physical appearance of the weapon supported the troopers' reasonable belief that Mr. Jones had a real firearm. The weapon itself is a metal, silver and black, semiautomatic compressed-air powered pellet gun, with an internal magazine loaded with metal BBs. The fact that Trooper Willett and Sergeant Walker believed Mr. Jones's gun was a real firearm was reasonable, based on all the facts and circumstances known to them at the time they decided to use deadly force. Moreover, the manner Mr. Jones used or threatened to use the weapon further supported the Troopers' reasonable belief.

³⁸ As stated above, it appears this last shot did not strike Jones.

Although not known to the Troopers at the time of the shooting, it is also clear from the text message that Mr. Jones sent his ex-wife moments before the shooting, when he said it was time for him to “check out,” that he was potentially suicidal, or at the least, that he expected to die that day. That text message, coupled with all of Mr. Jones’s actions that day, is evidence of his state of mind, that he had no intention of being apprehended and likely intended to prompt the Troopers to shoot him.

Therefore, based on all the facts and circumstances known to Trooper Willett and Sergeant Walker at the time they encountered Mr. Jones, it was reasonable for both Trooper Willett and Sergeant Walker to conclude that Jones’s gun was a real firearm and that Jones was about to use deadly force against either them or private citizens in the immediate vicinity of the busy rest area. Accordingly, Trooper Willett and Sergeant Walker were both legally justified in using deadly force against Mr. Jones.

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