

**ATTORNEY GENERAL'S REPORT REGARDING THE NOVEMBER 26, 2014  
OFFICER INVOLVED SHOOTING INCIDENT IN HENNIKER, NEW  
HAMPSHIRE**

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**I. INTRODUCTION**

On November 26, 2014, Henniker Police Officer Stephen Dennis fired one shot from his department issued handgun and wounded robbery suspect Aaron Cadman in the arm. Cadman survived the shooting and was taken into custody.

As is its practice, the New Hampshire Attorney General's Office initiated an investigation into the shooting in conjunction with the New Hampshire State Police Major Crime Unit into whether Officer Dennis's use of force was justified under the law. The results of that investigation are detailed in this report.<sup>1</sup>

The investigation has revealed that Officer Dennis fired his gun based on the totality of the circumstances that led him to believe that Cadman had a weapon and was going to fire it at Officer Dennis, putting Officer Dennis's life and the lives of others who were nearby, at risk. Those circumstances included that: Cadman was a robbery suspect; police dispatch had reported that Cadman should be considered armed and dangerous and that extreme caution should be used; Cadman refused to stop for Officer Dennis and sped away from the officer at a high rate of speed, in a snowstorm, while driving in the opposite lane; Cadman caused two accidents as he fled from Officer Dennis; Cadman refused to obey Officer Dennis's commands to show his hands despite repeated orders from the officer to do so; and

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<sup>1</sup> Aaron Cadman had been indicted and is facing criminal charges in connection with his some of his conduct in this case. Therefore, some facts have been omitted from this report so as not to impair that prosecution.

Cadman was reaching into the stolen truck and acting as if he had a weapon. Based on all of these facts, Officer Dennis stated that he believed that Cadman had a weapon and was going to turn around and fire the weapon at Officer Dennis.

Although it turned out that Cadman had a butter knife in his pocket and not a gun, Officer Dennis's belief that Cadman had a gun was reasonable, at that time based on Cadman's course of conduct and the information known to Officer Dennis at the time he fired his weapon.

The objective reasonableness of Officer Dennis's belief, that Cadman was armed with a gun and going to fire it at him, is further corroborated by an eyewitness at the shooting scene. That witness, who saw the events leading up to the shooting, said that immediately before Officer Dennis fired she believed Cadman was going to turn around and shoot at them. Accordingly, for the reasons set forth in more detail in this report, the Attorney General has determined that Officer Dennis's use of deadly force was legally justified.

## **II. THE TIMING OF THIS REPORT**

The completion of this report was delayed because potentially useful records needed to be obtained from OnStar. OnStar is a subscription-based communications service that provides a variety of services for vehicles equipped with the system and includes security, hands-free calling, navigation, crash notification, and real-time assistance from an OnStar operator. During the investigation, it was learned that the OnStar system in the truck Aaron Cadman stole might have recorded some of the events that occurred during the incident. Therefore, investigators sought to obtain those records. Once those records were subpoenaed, it took OnStar a few weeks to process the subpoena and provide the records.

Issues with the encryption used on the records delayed the process further. Until those records were reviewed, this report could not be finalized.

### **III. FACTS**

#### **A. The robbery in Franklin, New Hampshire**

On November 26, 2014, at approximately 4:11 p.m., a 2013 GMC Sierra pickup truck was reported stolen from the Webster Place Recovery Center in Franklin, New Hampshire. The owner reported that Aaron Cadman (age 19), had stolen the truck. According to the owner, he tried to stop Cadman from stealing his truck by standing in front of the vehicle, but Cadman drove forward and struck him. The owner moved out of the way and Cadman drove off.

#### **B. The BOLO for Aaron Cadman**

The robbery was reported to the police and a BOLO (“be on the lookout”) announcement was put out to law enforcement for the stolen truck and Cadman. The information that was given out included that Cadman lived in Troy, New York and could be headed back there. Dispatch also notified officers that Cadman had committed a “strong armed robbery as [Cadman] stole the truck and hit the owner with it before driving off.”

Dispatch continued to update the BOLO with a description of the truck and its license plate number. The dispatcher also told officers to “use caution” because the person who had stolen the vehicle was “considered to be armed and dangerous, a robbery suspect. Also hit the owner of the vehicle before taking off.” Dispatch further advised officers to “use extreme caution.”

One of the officers who learned of the BOLO was Henniker Police Officer Stephen Dennis. Officer Dennis spotted the stolen truck in Henniker at about 5:16 p.m. and told

dispatch that he was behind the truck on Liberty Hill proceeding westbound. He also told dispatch that “he’s not stopping.”

Dispatch advised all units to stay off the radio and give Officer Dennis priority, as he was following a “strong-armed robbery” suspect. Dispatch checked on Officer Dennis’s status and Dennis radioed in that he was doing 50 miles per hour and that the stolen vehicle was pulling away from him, while passing a line of traffic.

Other officers started driving in Officer Dennis’s direction to assist him. One of those officers radioed for Officer Dennis, but Officer Dennis did not answer.<sup>2</sup> At 5:21 p.m., two other officers reported that they were approaching stopped traffic on Route 202/9. A few seconds later, one of those officers reported to dispatch that it appeared to be an accident scene and then said that shots had been fired by Henniker Police Department, no officer was hurt, and that an ambulance was needed. Dispatch then announced that the vehicle and suspect had been located.

**C. Interviews with eyewitnesses to the shooting**

**1. Keith Audette**

On November 26, 2014, Keith Audette was in his truck heading west on Route 202/9 in Henniker. He was traveling at about 25 to 30 miles per hour when he noticed a truck coming up on his left side, which appeared to be passing him.<sup>3</sup> As the truck drove by, it struck Audette’s truck. Audette began to pull to the right and noticed that Cadman had lost control, causing the truck to travel down the road in a perpendicular fashion. As Cadman’s truck traveled sideways, it was struck by another truck going eastbound. Cadman’s truck

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<sup>2</sup> Officer Dennis did not answer because he was out of his cruiser and the incident was ongoing.

<sup>3</sup> The passing truck was the stolen truck driven by Cadman.

then spun 180 degrees and both Audette's truck and Cadman's truck stopped in the road. Cadman's truck ending up about 15 feet in front of Audette's truck, perpendicular in the road. During the accident, something from Cadman's truck struck Audette's windshield causing significant damage.

After Cadman's truck came to a stop, Audette saw Cadman get out of the driver's side door and stand in between the open door and the inside of the truck. Audette could only see the back of Cadman and from this view it appeared that Cadman was trying to get something out of the truck. As that was happening, Audette rolled down his window and was about to get out of his truck when he heard a voice yell, "Show me your hands!" Audette immediately raised his hands and heard someone he assumed was a police officer shout a second time, "Show me your hands!" Audette heard the officer shout that at least nine times, but Cadman never responded. Then, Audette heard a gunshot and he immediately lay down in his truck. While he was lying down in his truck he heard the officer continue to shout, "Show me your hands."

After about ten seconds of silence, Audette sat up and saw the officer over by Cadman. He heard the officer ask Cadman, "Why didn't you show me your hands?" Cadman responded, "I was looking for my cigarettes," and told the officer that he had been shot in the arm and that his arm hurt. Audette watched as the officer tried to handcuff and search Cadman and attend to Cadman's wound. Other officers arrived shortly after that.

Audette said that he never saw Cadman's hands before the officer shot him. He also never saw Cadman turn around or respond or react to the officer's multiple commands.

## 2. Lori Uhler

On November 26, 2014, Lori Uhler was driving home from work on Route 202/9 toward Hillsborough. She was in a long line of cars driving about 25 miles per hour when a light colored pickup truck drove past her heading westbound.<sup>4</sup> Cadman's truck "fishtailed" in the road and hit a black pickup truck driving ahead of Uhler. Cadman's truck turned perpendicular in the road and struck another pickup truck, forcing that other pickup truck off the road.

After all that happened, Uhler pulled over and so did the black pickup truck ahead of her. Within seconds a police cruiser with its blue lights and siren on, pulled up at the scene and parked alongside Uhler's car. She saw a police officer get out of the cruiser. The officer had his gun drawn. She also saw the driver of the light colored pickup truck (Cadman), get out of that truck and look at the police officer. Uhler heard the police officer say, "Put your hands up in the air, let me see your hands." The police officer said it loud enough that Uhler could hear it even with her window up. At that point, she thought, "this was a chase...that has ended in front of me." Uhler saw Cadman look at the police officer. The police officer moved in front of her car and said to Cadman again, "Put your hands up." At that point, Cadman turned his back to the police officer and put his hands in the truck and "kind of looked over his shoulder." She could not see where Cadman's hands were. Watching this, Uhler said that she thought to herself, "Put your hands up man." Then the police officer again said put your hands up, and Uhler "really thought" Cadman was "gonna turn around and shoot." Uhler believed that Cadman "really had something" and was concerned that he was going to turn around and shoot at them. Uhler slid down in her seat to take cover

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<sup>4</sup> This truck was the stolen truck driven by Cadman.

because she was right behind the police officer. Seconds later, the police officer fired his gun one time.

After the shot was fired, the police officer went over to Cadman. Uhler stayed in her car and about a minute later another police officer arrived. There was a lot of movement after that and then she saw someone get what looked like a first aid kit.

**D. Officer Stephen Dennis's statements**

**1. Statements to other officers after the incident**

**(a) Statement to Henniker Police Chief Ryan Murdough**

Chief Murdough was on duty on the night of November 26, 2014, and had been assisting motorists. At around 5:00 p.m., he heard Henniker Officer Stephen Dennis say something over the radio. The Chief was unable to understand what Officer Dennis said. He next heard some radio communications from Hillsboro officers and words to the effect that a Henniker officer was possibly following a truck wanted out of Franklin. Then the BOLO was broadcast with a description of the truck and dispatch told the Hillsboro officers to go out onto Route 202/9. Based on all that, the Chief surmised that the officers were looking for a vehicle but he did not know that Officer Dennis was behind that vehicle. Next, the Chief heard Officer Dennis say over the radio that he was behind the vehicle and confirmed the license plate as that of the stolen vehicle. Officer Dennis also reported that he was in the area of Liberty Hill Road at that time. The Chief joined a Hillsboro officer and together they shut down the eastbound traffic on Route 202/9. After a few minutes, no more traffic came by and Officer Dennis was not answering his radio. The Chief and the Hillsboro officer (Sgt. Hodgen), both started driving along the highway to try and locate Officer Dennis.

Eventually, the Chief came upon an accident scene and saw a truck sideways in the road. Chief Murdough stopped, got out, and walked up to Officer Dennis. The Chief asked Officer Dennis if he was okay and if he had fired his gun and Officer Dennis said he had fired his gun. Chief Murdough asked Officer Dennis what happened. Officer Dennis told the Chief that the suspect was passing cars and was involved in a crash. Officer Dennis approached [the suspect] and kept telling him, “Show me your hands, show me your hands, show me your hands.” The suspect kept reaching down and Officer Dennis kept telling him to show him his hands. The suspect kept reaching down and then Officer Dennis fired his gun. The Chief asked Officer Dennis if he had seen a gun and Officer Dennis said no.

After speaking with Officer Dennis, the Chief saw the suspect on the ground being given first aid by Sgt. Hodgen. It appeared to the Chief that the suspect’s arm was injured.

**(b) Officer Dennis’s statement to Hillsboro Police Officer Chris McGillicuddy**

Officer McGillicuddy was on patrol on November 26, 2014. He heard dispatch say that a car had been spotted that had been involved in a robbery in Franklin, that it was heading westbound toward New York on Route 202/9, and that the subject was to be treated as armed and dangerous.

Later, Officer McGillicuddy heard Officer Dennis on the radio run the plate on the vehicle and say that he was behind the vehicle, that the vehicle was in the other lane of travel, and it was trying to run from him. Officer McGillicuddy tried to reach Officer Dennis but was unsuccessful. Next, Officer McGillicuddy heard another Hillsboro officer announce over the radio that shots had been fired, the officer was okay, and that the suspect was “down.” He began heading toward Henniker and the scene of the shooting.

When Officer McGillicuddy arrived at the shooting scene, he saw Hillsboro Sergeant Nick Hodgen go over to the suspect and Officer Dennis standing nearby. Officer Dennis seemed a little dazed to Officer McGillicuddy. He asked Officer Dennis if he was all right and Dennis said he was. Officer McGillicuddy then drove Officer Dennis back to the Henniker Police Department. Along the way, Officer Dennis told Officer McGillicuddy that he had caught up to the suspect vehicle, ran the plate, and confirmed that it was the stolen vehicle. As soon as he turned on his blue lights, the suspect vehicle took off and ran from him and crashed. Officer Dennis said that right after the crash he saw the suspect get out of the car and turn around to grab something out of the car. He told Officer McGillicuddy that the suspect was doing something in front of him with his hands and that he told the suspect more than ten times to show him his hands and turn around but that the suspect would not comply. Officer Dennis reiterated that he was screaming at the suspect to put his hands up but the suspect would not listen to him. He also said that he shot the suspect one time and that he aimed for his shoulder. Officer Dennis was very upset and said he did not know why the suspect would not listen to him.

Officer Dennis asked Officer McGillicuddy if he heard the radio broadcast about the suspect being armed and dangerous. Officer McGillicuddy said that he had heard that as well and also heard that the suspect was involved in a robbery out of Franklin with a stolen motor vehicle.

**(c) Officer Dennis's statement to Hillsboro Police Sergeant Nick Hodgen**

Sergeant Hodgen was on duty on November 26, 2014. At one point dispatch told him to head out onto Route 202/9 because there was a reported stolen vehicle headed in his direction. He was given that vehicle's description. He was also told that the vehicle had

been used in a strong-armed robbery out of Franklin and that officers were to use extreme caution. Sergeant Hodgen headed toward where the vehicle was supposed to be. Then he heard Officer Dennis announce that he was behind the stolen vehicle, that it was not stopping for him, and that it was pushing cars off the side of the road.

Sergeant Hodgen drove as quickly as he could toward the area and also shut down some of the access to the road. As Sergeant Hodgen did that, he heard Officer Dennis announce that he was in pursuit of the vehicle. He positioned himself where he thought Officer Dennis would be passing by in a few moments, but no one drove by. Sergeant Hodgen and dispatch called out for Officer Dennis, but he did not answer. Henniker Chief Ryan Murdough joined Sergeant Hodgen, and the two started driving along Route 202/9 looking for Officer Dennis.

A short time later, Sergeant Hodgen arrived at an accident scene and could see a truck sideways in the road that matched the description of the stolen vehicle. He also saw another truck off the road and a long line of traffic backed up in the road. Sergeant Hodgen got out of his cruiser and approached the stolen truck and saw Officer Dennis standing there. He asked Officer Dennis if he was okay and Officer Dennis said that he had shot the person who was lying on the ground. The person was identified as Cadman. Sergeant Hodgen could see Cadman on the ground in handcuffs. Cadman was face down and screaming. Sergeant Hodgen began to render first aid to Cadman and saw that he had been shot in the elbow. The Sergeant asked dispatch to send an ambulance to the scene. He and Officer Dennis also searched Cadman and Officer Dennis found a butter knife in one of Cadman's pockets. Sergeant Hodgen did not ask the injured man or Officer Dennis what had happened.

After the ambulance arrived, a paramedic began to treat Cadman. As part of that process Cadman's jacket was removed and left at the scene.

**2. Officer Dennis's statement to investigators at the November 27, 2014 interview**

On Thursday, November 27, 2014, Officer Dennis attended a voluntary interview at the Henniker Police Department. The interview was conducted by the lead State Police Sergeant assigned to the case and the lead prosecutor from the Attorney General's Office. The interview was recorded.

Before becoming a police, Officer Dennis served in the military as an MP. He continues to serve in the Air Force reserves. Officer Dennis joined the Henniker Police Department in September of 2001. He is currently the Department's firearms instructor and armorer. He has received trainings in the past on the use of deadly force and completed his most recent training in November 2014.

On November 26, 2014, Officer Dennis was driving to Concord for a hearing. Before arriving in Concord, he was told he did not need to attend the hearing and headed back to Henniker for his regular 4:00 p.m. to 2 a.m. duty shift. Once back in Henniker, Officer Dennis responded to a reported three-car accident. At some point, Henniker's regular police dispatch center developed problems and stopped working. That required Henniker officers to use Hillsboro's dispatch or call dispatch by phone, directly.

At around 5:08 p.m., Officer Dennis received a call from dispatch telling him that a truck had been stolen in a strong-armed robbery and was in the immediate area. Officer Dennis began to look for the stolen truck and eventually spotted it heading westbound on

Route 202/9.<sup>5</sup> After he confirmed the license plate on the stolen truck, he turned on his blue lights and siren in an attempt to get the truck to stop.<sup>6</sup> At some point he also heard that officers were to use extreme caution and believed that he was also told that the suspect was armed and dangerous. Officer Dennis asked dispatch to set up units to intercept the stolen truck further down the road.

The truck did not stop for him but instead, accelerated and moved out into the oncoming lane of traffic and continued westbound. The truck pulled away from Officer Dennis as they continued westbound on Route 202/9. Officer Dennis did not go over 50 miles-per-hour due to the snowy weather conditions, which made the roads “slick.” As Officer Dennis followed the truck, the truck passed numerous vehicles while driving in the other lane. As the pursuit continued, Officer Dennis could see the truck’s tail lights. Then, he saw the truck’s headlights up ahead spinning in the road and knew that there had been an accident.

As Officer Dennis got closer, he saw the truck in the road and another vehicle that had been involved in the accident. He also saw the truck’s door swing open and Cadman getting out of the stolen truck. Officer Dennis stopped his cruiser and got out. Cadman had his back to Officer Dennis and was fumbling for something. Officer Dennis began repeatedly “screaming” at Cadman to show his hands. At the time this was all occurring, a lot of other cars were starting to back on the road up due to the accident. Cadman did not look at Officer Dennis or comply with the repeated orders to show his hands. Cadman also said nothing to Officer Dennis in response. Because of his noncompliance, Officer Dennis

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<sup>5</sup> This was the stolen truck driven by Aaron Cadman.

<sup>6</sup> Officer Dennis was driving a fully marked Henniker police cruiser at the time.

became concerned about Cadman and began to look for cover. Officer Dennis positioned himself at least 20 feet away from Cadman off the corner of another pickup truck at the scene.

As Cadman continued to fumble around with his back to the officer, Officer Dennis thought that Cadman had a weapon and was going to turn around and shoot. Officer Dennis continued to scream at Cadman to show him his hands as he walked up to the back of the other truck that was pointed at the suspect's vehicle. Cadman did not respond and did not show his hands as ordered to. At that point, Officer Dennis thought that Cadman would turn around and Officer Dennis would be at the back of the other truck, in an exposed position. Officer Dennis also considered that there were other motorists behind him and if Cadman fired a weapon other people in addition to himself were going to get hurt. Officer Dennis was also concerned as he was wearing a lime green safety jacket with reflector tape, which made him an easy target. At that point, based on his training and his fear that he or someone else was going to get hurt, he fired his department-issued handgun one time at Cadman's shoulder.<sup>7</sup> That decision was based on Cadman's body language and Officer Dennis's training and experience.

After the gunshot, Officer Dennis asked Keith Audette if he was okay and he said that he was. Audette told Officer Dennis that something had gone through his windshield. Officer Dennis approached Cadman and put handcuffs on him. Cadman told Officer Dennis that one of his arms was "screwed up," so Officer Dennis took the cuffs off. Hillsborough Sergeant Hodgen arrived and Officer Dennis went to a police cruiser and got a medical kit so

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<sup>7</sup> Officer Dennis said he was not sure why he aimed at Cadman's shoulder. He only fired one shot because the "threat went down."

they could they assess Cadman's wound and stop the bleeding. Officer Dennis estimated that 45 seconds to a minute passed from the time he approached Cadman outside the stolen truck until the time he fired at Cadman.

Officer Dennis explained how in other situations when he has taken people out at gunpoint from a motor vehicle they might not listen to him but they put their hands up in the air. Officer Dennis reiterated that Cadman would not comply and would not turn around. Cadman never left the area of the driver's side of the truck and was grabbing for stuff in the truck with his back toward Officer Dennis. Officer Dennis kept yelling, "Henniker police, show me your hands, show me your hands!" Cadman never showed Officer Dennis his hands and Cadman never turned around. Officer Dennis never saw Cadman's hands until Cadman was on the ground. Instead, Officer Dennis could see Cadman grabbing and frantically digging for something inside the truck.

Officer Dennis was asked about non-lethal implements he had with him at the time of the shooting. He confirmed that he had pepper spray and a TASER with him. However, Officer Dennis did not think that he would have had an accurate shot from the distance involved. In addition, he stated in colloquial terms that the situation was a deadly force situation, not one calling for non-lethal force.

Officer Dennis explained that based on what he saw Cadman doing with his hands, Officer Dennis believed that he was looking at someone loading something and he "was getting ready to look at a weapon." Cadman's movements looked like somebody putting "rounds in a magazine." As Officer Dennis explained, Cadman's body language was like somebody loading a weapon. Therefore, Officer Dennis believed that when Cadman turned around, Cadman would have a weapon pointed at him. Officer Dennis further explained that

in his mind, Cadman's reactions were not "normal" and it was a "red flag" that Cadman was disregarding his commands. He explained that his decision to shoot was based on the "totality," including the information from dispatch, Cadman fleeing and why he was fleeing, Cadman's failure to obey Officer Dennis's commands, and the fact that Cadman looked like he was loading a weapon. Officer Dennis told the investigators that he believed he had made the right decision based under the circumstances but as a "normal person" felt bad about what happened.

**E. Other witness interviews**

As Aaron Cadman fled from Officer Dennis, Cadman passed other cars in his travel lane and drove into oncoming traffic heading westbound. Cadman encountered a truck with three men in it heading eastbound on Route 202/9 in Keene and collided with that truck. The three men inside that truck were interviewed: Austin Desio; Seth Tourigny; and Trevor Wheeler. Tourigny was driving the truck at the time of the accident.

Since criminal charges are pending in connection with the accident that involved Desio, Tourigny, and Wheeler, their statements about the accident will not be repeated here. However, their statements regarding the shooting incident will be recounted in this report.

**1. Austin Desio** was interviewed on November 27, 2014, in the emergency room at the Concord Hospital. Desio did not recall much from the accident since he blacked out after the crash. Desio awoke outside the truck on the ground. He saw blue lights, heard unintelligible voices, and one gunshot.

**2. Trevor Wheeler** was interviewed on November 26, 2014, in the emergency room at the Concord Hospital. He said that he and his two friends were on their way to Plymouth from Keene when the accident occurred.

After the accident, Wheeler heard the “cops” yelling at the guy who had hit them, “Stop running or stop something like that.” He could not remember the exact words, but did hear verbal commands that sounded like something a police officer would say before he shot someone. Then the police officer shot. Wheeler estimated that the officer who fired the shot was 20 to 30 feet away from the truck the suspect was driving and that the officer was 50-60 feet away from where Wheeler was located. More police officers arrived after the shooting. Wheeler did not actually see the shooting incident itself or the suspect.

**3. Seth Tourigny** was interviewed on November 26, 2014, in the emergency room at the Concord Hospital. After the accident, Tourigny saw a truck and a police officer in the road. Then, Tourigny heard his friend Trevor say, “That cop’s going to shoot that guy.” Tourigny heard the officer yelling, “Get down on the ground or I’m going to shoot you,” and then a gunshot. He did not see the actual shooting itself and estimated that the officer was 20 to 25 feet away from the other man at the time he fired the shot. After that, other police officers showed up. Tourigny saw the man who had been shot, on the ground yelling in pain.

**F. Aaron Cadman’s statements to the police**

Troopers from the New Hampshire State Police Major Crime Unit met with Aaron Cadman at the Concord Hospital on November 26, 2014. Cadman made the following unsolicited statements relevant to the shooting incident:

- I had my hands in my pockets.
- I reached into the truck for my cell phone.
- The cop was saying, “Drop the weapon! Drop the weapon!”
- I didn’t have a weapon and he shot me.

- I only had silverware in the truck.<sup>8</sup>

**G. Aaron Cadman's injuries**

Based on observations made at the scene and the hospital, Cadman suffered a non-fatal, through and through gunshot wound to his elbow.

**H. Physical Evidence**

Members of the State Police Major Unit searched the shooting scene on Route 202/9 for physical evidence. At the scene, they located four vehicles in close proximity; one was the stolen GMC pickup truck Cadman had been driving. That truck had extensive damage. Audette's truck was parked close to the stolen truck and had been damaged. Tourigny's truck was off the road and had sustained extensive damage. The last vehicle was Officer Dennis's Henniker police cruiser.

During a search of the stolen truck Cadman had been driving, a spent bullet and a jacket with an apparent bullet hole in the arm were located. A knife was also located on the driver's side floorboard area of the truck.<sup>9</sup> The owner of the truck confirmed that the jacket and the knife were not his. Another officer confirmed that the knife had been in Cadman's pocket and removed as a safety precaution after he was taken into custody.

Despite a thorough search, no discharged cartridge casing from the shot fired from Officer Dennis's gun was located at the scene.<sup>10</sup>

Officer Dennis's handgun and uniform were collected at the Henniker Police Department and turned over to the State Police Major Crime Unit. The handgun was a SIG

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<sup>8</sup> Since criminal charges are pending against Cadman, only his statements regarding the shooting incident are being detailed in this report.

<sup>9</sup> The knife was described as a butter knife.

<sup>10</sup> This was likely due to the snow and number of vehicles and people moving around the scene before the search could be conducted.

.357 handgun and had twelve live rounds in it, which was consistent with Officer Dennis's account of how it was loaded before the incident and his statement that he had fired one shot during the incident.

**I. OnStar Records**

The stolen truck was equipped with OnStar. As a result, after the theft of the truck was reported the police were able to contact OnStar and obtain their assistance in tracking the truck. OnStar also had the capability to slow the truck down to assist in Cadman's capture. However, before that could be attempted an accident occurred, which stopped the truck anyway.

After the accident, the OnStar system's audio recording capabilities inside the truck were activated. A review of those audio files provided evidence consistent with what the witnesses described to investigators. For example, a loud siren could be heard in the background and although difficult to discern, someone could be heard saying, "Let me see your hands, let me see your hands!" As the audio continued, occasional words and sentences could be heard, including someone believed to be Cadman saying he was in pain and complaining about his arm. Other people could occasionally be heard in the background, including EMS personnel and Sergeant Hodgen. Nothing else of significance could be heard on the recordings and no gunshot was ever heard.

**J. Prior officer-involved incident**

Officer Dennis was involved in a prior incident where he and another officer fired their guns in the line of duty. That incident took place on May 19, 2011. During that incident, several police officers, including Officer Dennis, responded to a home in Hillsboro, New Hampshire. The officers responded because the female resident of the home, Shelly

Narorian, had retrieved a handgun and was threatening to use it on herself. Shelly's husband and stepson were in the home at the time as well. Her husband had taken refuge in a bathroom and her stepson was asleep upstairs.

The officers tried to convince Shelly to come out and talk to them, but she refused. Subsequently, Shelly fired a gun inside the house, and then went upstairs with two loaded guns in an apparent attempt to kill her stepson. The stepson managed to wrestle the guns away from Shelly and then ran outside to the police with those guns.

Hillsborough Sergeant Mark Philibert and Officer Dennis started to enter the home. As they did that, Sgt. Philibert and Officer Dennis saw Shelly pick up another gun near the living room couch. Sgt. Philibert yelled at Shelly several times to show him her hands and to drop the gun. Shelly did not drop the gun and instead, held the gun with both hands, raised it up and pointed it at Sgt. Philibert's chest. Faced with that, Sgt. Philibert fired one shot at Shelly, hitting her and killing her. Officer Dennis also fired one shot at Shelly, but missed her. That incident was subsequently investigated and determined to be a justified use of deadly force by the officers involved.

Officer Dennis was asked if his experience in the prior incident played any role in the current incident and he said it did not, and that the other incident was not in his mind because the two situations were so different from each other.

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

Under the circumstances of this case, the Attorney General must consider whether Officer Dennis's use of deadly force was justified and, if not whether he should be criminally charged.

New Hampshire's laws regarding self defense, defense of others and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer 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. RSA 627:9, II, defines "deadly force" as any assault which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person constitutes deadly force.

RSA 627:5, II (a), requires a law enforcement officer to act "reasonably" under the circumstances. When a person uses force against another, what is "reasonable" under the circumstances "is determined by an objective standard." *State v. Leaf*, 137 N.H. 97, 99 (1993); *see also State v. Cunningham*, 159 N.H. 103, 107 (2009). All the circumstances surrounding the incident should be considered in reaching this decision. *See Leaf*, 137 N.H. at 99. When examining the conduct of a person who has used deadly force, that conduct should be viewed "under 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, the inquiry must focus on the situation from the standpoint of a reasonable law enforcement officer facing the same situation, with the same knowledge as the officer who used the deadly force. That examination is not made with the benefit of hindsight, which is afforded by one viewing the circumstances after the fact. Two cases help illustrate this standard of review.

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*, 132 S. Ct. 987, 992 (2012).

As another Court put it, determining what is "reasonable" in situations faced by police officers requires the following analysis:

[U]nder *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes "reasonable" action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

*Smith v. Freeland*, 954 F.2d 343, 347 (6<sup>th</sup> Cir. 1992).

The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the actual necessity of using deadly force. Under our law, a person "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 (1980). Thus, a person may be justified in using deadly force if he reasonably believed that he or another person was in imminent danger of the use of deadly force, even if, in fact, they were

not. However, for this to be the case, that officer's belief must have been reasonable. Therefore, "[a] belief which is unreasonable, even though honest, will not support the defense." *State v. Vassar*, 154 N.H. 370, 374 (2006).

In analyzing situations involving the use of deadly force, the law does not require police officers to wait until they are actually attacked or threatened with a deadly weapon before they use deadly force. *See Thompson v. Hubbard*, 257 F.3d 896, 899 (8<sup>th</sup> Cir. 2001) ("[a]n officer is not constitutionally required to wait until he sets eyes upon on the weapon before employing deadly force to protect himself"); *Karnes v. Winston*, 27 F.3d 1002, 1007 (4<sup>th</sup> Cir. 1994) ("we do not think it wise to require a police officer, in all instances, to actually detect the presence of an object in a suspect's hands before firing on him.").

Finally, when the State analyzes a person's use of deadly force, the State bears the burden of disproving that person's claim of self defense or defense of another, beyond a reasonable doubt. *See State v. McMinn*, 141 N.H. 636, 645 (1997). The burden is not on the person who used deadly force to prove that their conduct met the requirements of the law or was reasonable.

## **V. ANALYSIS AND CONCLUSION**

The investigation in the present case reveals that when Aaron Cadman committed a robbery and stole a truck in Franklin, he created a dangerous situation that escalated as he fled and tried to avoid capture by the police, putting him and others at risk.

The incident began when Cadman used force to steal a truck and then fled. The police were notified about the robbery and a radio broadcast was put out advising law enforcement to be on the lookout for Cadman. Dispatch told officers that Cadman had committed a "strong armed robbery as suspect stole the truck and hit the owner with it before

driving off.” Dispatch continued to update officers, advising them to “use caution” because the person who had stolen the truck was “considered to be armed and dangerous, a robbery suspect.” The officers were also told that the suspect had “hit the owner of the vehicle before taking off.” This prompted dispatch to tell officers to “use extreme caution.” Officer Dennis was one of the officers who received this information and had that in mind when he spotted the stolen truck Cadman was driving.

Officer Dennis turned on his fully marked police cruiser’s blue lights and siren, in pursuit of Cadman. Cadman refused to stop. Instead, Cadman drove recklessly putting other lives at risk. Cadman’s increasingly dangerous behavior resulted in two motor vehicle accidents. Officer Dennis arrived at the scene of the accidents and saw Cadman standing outside the stolen truck, reaching inside for something. Seeing this, Officer Dennis in a loud voice repeatedly ordered Cadman to show him his hands. Other witnesses heard Officer Dennis yelling at Cadman, giving him similar commands. The commands were so loud that one witness could even hear them with her car’s windows up and the police cruiser’s siren blaring.

Instead of obeying Officer Dennis’s repeated commands, commands that Cadman later admitted he had heard, Cadman continued to grab at something in his truck. All the while with his back toward Officer Dennis. Based on everything Officer Dennis knew at that point, including that: Aaron Cadman was a robbery suspect; police dispatch reported that Cadman should be considered armed and dangerous and extreme caution should be used; Cadman had refused to stop and sped away from Officer Dennis at a high rate of speed in a snowstorm while driving in the opposite lane; Cadman had caused two accidents; Cadman was refusing to obey his repeated command to show him his hands while refusing to turn

around and face him; and that Cadman was reaching into his stolen truck and behaving like he had a weapon, Officer Dennis concluded that Cadman was arming himself and was going to turn around and fire at Officer Dennis putting Dennis and the other motorists around him at risk. Officer Dennis then fired one shot, incapacitating Cadman and allowing him to be taken into custody.

Even though it was later revealed that Cadman did not have a gun, it was reasonable for Officer Dennis to have concluded that Cadman had a gun and was going to use it, based on all of the circumstances as they appeared to a reasonable police officer in Dennis's position at that time. An eyewitness at the shooting scene further corroborates the objective reasonableness of Officer Dennis's belief that Cadman was armed and was going to fire at him. That witness, who saw the events leading up to the shooting, said that based on what she had seen up until right Officer Dennis fired, she had believed Cadman was going to turn around and shoot at them.

Based on all the facts and circumstances in this case, the Attorney General concludes that Cadman's entire course of conduct created a dangerous situation that escalated to the point where it became reasonable for Officer Dennis to believe that he was faced with the imminent use of deadly force by Cadman. Therefore, Officer Dennis's use of deadly force and subsequent wounding of Cadman was legally justified.

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