

**ATTORNEY GENERAL OFFICE'S REPORT REGARDING THE  
MARCH 26, 2023 OFFICER-INVOLVED SHOOTING  
INCIDENT IN MANCHESTER, NEW HAMPSHIRE**

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**I. INTRODUCTION**

Attorney General John M. Formella announces the completion of the investigation into the non-fatal shooting of Waleed Al Thuwayni (age 20, DOB: 08/12/2004) that occurred in Manchester, New Hampshire, on March 26, 2023. The purpose of this report is to summarize the Attorney General's factual findings and legal conclusions regarding the use of deadly force. The findings and conclusions in this report are based upon information gathered during the investigation, including viewing the scene of the incident as well as review of photographs of the scene, viewing physical evidence from the shooting incident, interviewing witnesses, and reviewing video footage.

On March 26, 2023, at approximately 11:56 P.M., Mr. Al Thuwayni pointed a pellet gun designed to replicate the appearance of a Sig Sauer P226, semi-automatic pistol, at Manchester Police Department Sgt. Derek Feather. When Sgt. Feather saw that Mr. Al Thuwayni was pointing a pistol at him, he used deadly force against Mr. Al Thuwayni by shooting him with his duty pistol. As a result of this use of force, Mr. Al Thuwayni was wounded by Sgt. Feather's gunshots, was provided immediate emergency medical assistance, and was transported to a hospital where he was treated for gunshot wounds to his left arm and abdomen.

As provided in RSA 7:6, RSA 21-M:3-b, and RSA 21-M:8, II(a), the Attorney General is the State's Chief Law Enforcement Officer and has the authority to investigate and prosecute major crimes, including instances where a crime punishable by up to life imprisonment is committed. In addition, 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.

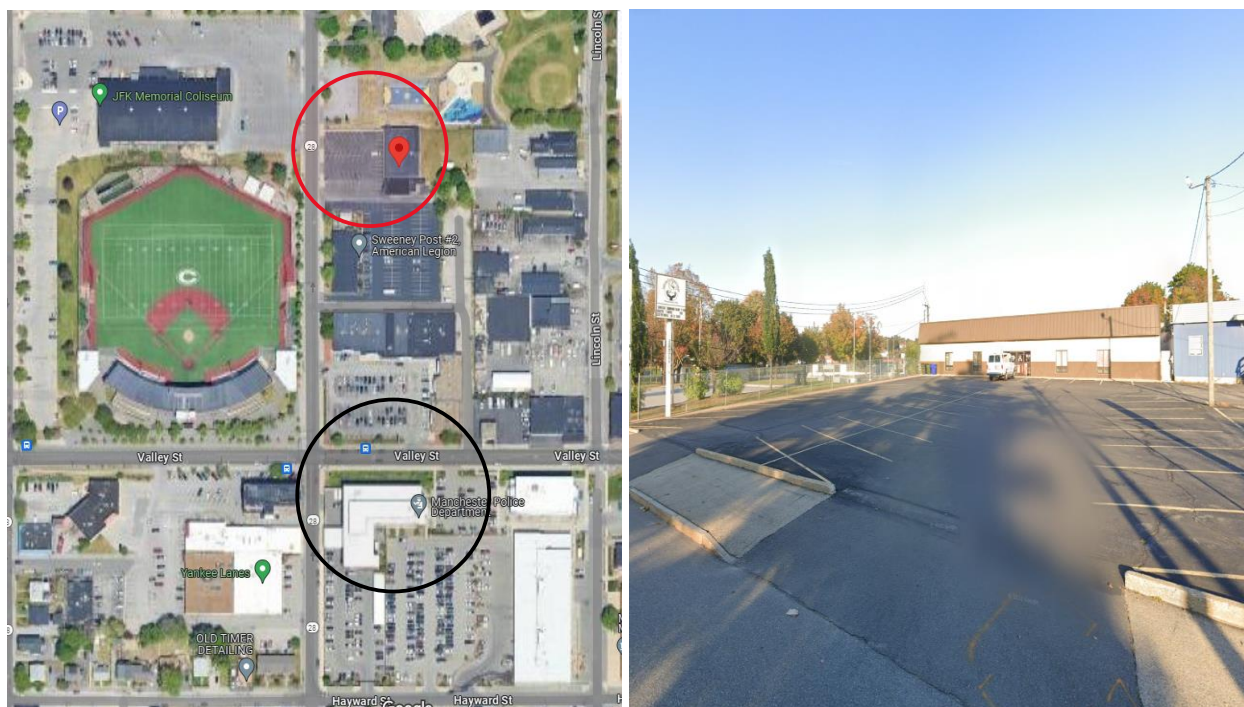
When reviewing the use of deadly force by law enforcement officers, the Attorney General does not investigate or opine on the particular procedures or tactics used by the officers. Instead, the Attorney General's review of officer-involved use of deadly force incidents consists of a criminal investigation, which is limited to determining whether officers complied with the applicable law. Thus, the Attorney General's review focuses on whether, under New Hampshire law, the use of force was justified because the officer reasonably believed that such

force was necessary to defend himself or herself or a third party from what the officer reasonably believed was the imminent use of deadly force.

Based on the investigation of this deadly force incident, Attorney General John M. Formella finds that the use of deadly force against Waleed Al Thuwayni by Sgt. Feather on March 26, 2023, was legally justified.

## **II. THE LOCATION**

On March 26, 2023, at approximately 11:55 P.M., Sgt. Feather located Mr. Al Thuwayni in his black, Nissan 350z convertible, parked in the middle of the otherwise empty Iglesia La Esperanza church parking lot, located at 265 Maple Street, Manchester, NH. Mr. Al Thuwayni had several prior contacts that day with the Manchester Police Department, having received a traffic ticket that evening, thereafter having driven to the police station to complain about the traffic ticket, and most recently having been the subject of dangerous high speed traffic pursuits through Manchester approximately 20 minutes prior to the shooting.<sup>1</sup>



<sup>1</sup> Mr. Al Thuwayni was again speeding and driving recklessly through the City of Manchester and when signaled to pull-over increased his speed and drove through intersections and red-lights while fleeing from police. The police terminated the pursuit due to the extreme danger Mr. Al Thuwayni's driving was creating.

*Images 1 & 2 -A map showing the location of the Iglesia La Esperanza church parking lot at 265 Maple Street (red circle), located less than one block north of the Manchester Police Department (black circle) and a Google maps photograph of the parking lot where the shooting occurred.*

### **III. SUMMARY OF THE FACTS**

As briefly described above, Mr. Al Thuwayni had a series of increasingly confrontational interactions with the Manchester Police Department on March 26, 2023, culminating with Mr. Al Thuwayni pointing a pellet gun designed to replicate the appearance of a Sig Sauer P226, semi-automatic pistol, at Sgt. Derek Feather at approximately 11:56 P.M. When Sgt. Feather saw that Mr. Al Thuwayni was pointing a pistol at him he fired his service pistol at Mr. Al Thuwayni, stopping what he perceived to be an imminent deadly threat.

Approximately three hours earlier, at 9:07 P.M., at 285 Central Street in Manchester, Mr. Al Thuwayni was issued a traffic citation by Officer Dominic Sardo, MPD, for reckless operation and speeding in his black Nissan 350z convertible, license plate number LAMAFIA. Because Mr. Al Thuwayni had several pending traffic citations and held a youth operator's license, he expressed concern that he would lose his driving privileges as a result of receiving another citation.

At approximately 9:37 P.M. Mr. Al Thuwayni arrived at the Manchester Police Station to complain about the citation, stating, among other things, that he believed he was being targeted by the police and that this ticket would cause him to lose his license. Sgt. Harrington activated his body worn camera and spoke with Mr. Al Thuwayni for approximately 20 minutes, until Mr. Al Thuwayni ended the conversation and drove away. Throughout the interaction Mr. Al Thuwayni was animated and aggressive, complaining that he felt that he was being harassed and targeted by the Manchester Police because he was a "kid with a convertible." Despite Sgt. Harrington's best efforts to deescalate the situation, Mr. Al Thuwayni remained angry and repeatedly made statements which, in retrospect, forecasted his next interaction with the police:

*"My life is on the line [every time I get stopped in my car by the police], you can pull your gun, you can shoot me, honestly pull the trigger, I'm tired of it,"*

*"I don't know if next time I get pulled over I'm gonna get shot, just do it,"*

*“I know what’s gonna happen, you’re gonna make a big scene so you can shoot me,”*

*“I need this done, either shoot me, kill me, what are you waiting for,”*

*“They have been targeting me, I’d rather just get shot and die than go through that again, do you understand?”*

*“I’d rather die, I’d rather die right now,”*

*“As a 19-year-old I’d rather just die, I told you, I’d rather just have you guys shoot me and kill me, so I never have to go through it again,”*

*“Tell your officers next time they pull me over make sure they pull the trigger, tell your whole department that, next time they pull me over they pull that trigger, I’d rather have them kill me,”*

*“All I’m saying is next time you guys pull me over, shoot me.”*

Mr. Al Thuwayni ended the conversation and left the police station at approximately 10:05 P.M. Shortly thereafter, at approximately 10:53 P.M., the Manchester Police Department began receiving complaints about a black convertible sports car doing “burn-outs” and operating recklessly through the city.<sup>2</sup> Mr. Al Thuwayni was determined to be the suspect based on the description of the vehicle and license plate (“LAMAFIA”). After multiple citizens called in with consistent complaints about his driving, Mr. Al Thuwayni was located in his black Nissan 350z, speeding through the city. When a traffic stop was attempted Mr. Al Thuwayni fled and led the police on a reckless, high-speed pursuit. Based on the danger that Mr. Al Thuwayni’s driving was posing to himself, the pursuing officers, and the general public, the police cancelled the pursuit. Shortly thereafter, Mr. Al Thuwayni led police on a second pursuit, which was also terminated for public safety, before he was found sitting in a parking lot near the police station.

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<sup>2</sup> One concerned citizen provided investigators with a copy of a social media post by a “Skylar Lee”. The post contained a cell phone video recorded by a pedestrian who witnessed Mr. Al Thuwayni doing “burn-outs” and “donuts” in the middle of a traffic intersection on Elm Street in Manchester. It was clear from the video that the pedestrian didn’t know Mr. Al Thuwayni, but after observing his behavior stated on the recording his belief that Mr. Al Thuwayni was seeking a confrontation: “Yo, there’s a dude on Elm Street right now whipping donuts and asking someone to call the cops on him. He’s been out here a few minutes and this kid is looking for trouble. So, I’m telling you right now, he’s in an older 350z, this cat is looking for trouble, he’s probably either gonna try to shoot it out with them or...I don’t know what he is doing, but...welcome to Manchester baby”.

At 11:55 P.M., approximately twenty minutes after terminating the second pursuit, Sgt. Feather located Mr. Al Thuwayni's car in the middle of a parking lot located less than one block north of the police department. Sgt. Feather observed a single male occupant in a black convertible with the top down, radioed for back up officers to block the car from behind, and positioned his cruiser nose to nose with the vehicle to prevent Mr. Al Thuwayni from fleeing again.



*Image 3 – Photo depicting the positioning of Sgt. Feather's cruiser and Mr. Al Thuwayni's black Nissan 350z convertible in the parking lot at 265 Maple Street.*

At approximately 11:56 P.M. Sgt. Feather approached Mr. Al Thuwayni's car from the driver's side as Officer's Cheries, Morin, and Collins approached from the rear of the car. Sgt. Feather instructed Mr. Al Thuwayni to get out of the car three times, but Mr. Al Thuwayni did not comply.

As Sgt. Feather approached Mr. Al Thuwayni while shining his flashlight into the vehicle compartment, Mr. Al Thuwayni threw the keys onto the ground and raised his arms high above his head. As Sgt. Feather walked closer to Mr. Al Thuwayni he described Mr. Al Thuwayni as having a "determined look on his face" and immediately became concerned for his safety when Mr. Al Thuwayni lowered his arms back into the vehicle compartment. Sgt. Feather immediately instructed Mr. Al Thuwayni to "keep your hands up", but Mr. Al Thuwayni did not

comply. Sgt. Feather again instructed Mr. Al Thuwayni to “keep your hands up” as he unholstered his duty pistol.

After unholstering his duty pistol Sgt. Feather observed Mr. Al Thuwayni look to his right and then duck down lower into the car, turning away from him and toward the center console. Sgt. Feather then observed Mr. Al Thuwayni quickly turn back in his direction pointing a pistol at him with his right hand. Sgt. Feather then fired his service pistol at Mr. Al Thuwayni. Sgt. Feather fired six rounds at Mr. Al Thuwayni, stopping when he could no longer see Mr. Al Thuwayni’s pistol. No other officers fired their weapons.

After Mr. Al Thuwayni was shot he got out of the driver’s side door of his car and laid down on the ground, where he was handcuffed, searched, and began receiving immediate emergency medical attention. As he was being handcuffed, he stated “*thank you for arresting me officer, I am tired, I can finally rest, I can finally rest*”. When he realized that he was being medically treated he stated “*no, don’t save me, you guys wanted to kill me earlier.*”

Mr. Al Thuwayni continued to make spontaneous statements while being treated at the scene by responding police officers, including:

*“That BB gun, it was a BB gun, I knew you guys were going to shoot me, I knew the second I raised my BB gun you guys would shoot me, that’s why I did this, that’s why I let you guys catch me,”*

*“You think I’m stupid, I let you catch me, I just wanted done harassing me, you guys keep harassing me,”*

*“I also got shot in the arm, I’ll die, I’m gonna die, it doesn’t matter,”*

*“Thank you, whoever shot me,”*

*“Just tell my parents I love them and I’m sorry I became a failure, I picked up the BB gun because I knew you guys were gonna shoot me,”*

*“I picked up the BB gun because your protocol is to shoot.”*

Mr. Al Thuwayni was transported to Elliot Hospital where he was successfully treated for a gunshot wound to left arm and abdomen. Mr. Al Thuwayni was later arrested on charges of reckless conduct with a deadly weapon, criminal threatening with a deadly weapon, and disobeying a police officer. On November 9, 2023, Al Thuwayni pled guilty to the reckless

conduct and criminal threatening charges and was sentenced to suspended periods of incarceration of 2-to-4 years and 12-months respectively.

#### **IV. THE INVESTIGATION**

The New Hampshire Attorney General's Office with the assistance of the New Hampshire State Police Major Crime Unit conducted the use of force investigation regarding Sgt. Feather's discharge of his duty pistol at Waleed Al Thuwayni. Investigators examined the scene, collected and reviewed physical and video evidence, and reviewed reports and records. Additionally, numerous individuals were interviewed, including Sgt. Feather, Sgt. Kenneth Brunini, Officer Erica Cheries, Officer Brett Morin, and Officer William Collins. The information and evidence gathered during the investigation is summarized below.

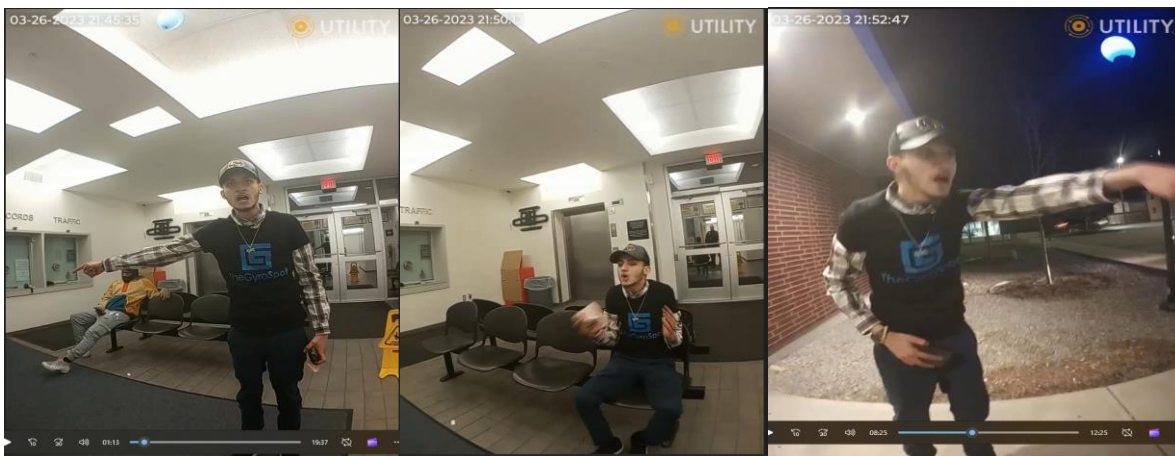
##### **A. Video Evidence**

Investigators obtained and reviewed all available body worn camera video footage (BWC) from the Manchester Police Department members who responded to the scene at 265 Maple Street, privately owned security camera footage, and Sgt. Harrington's body worn camera footage which captured his conversation with Mr. Al Thuwayni at the police station prior to the shooting.

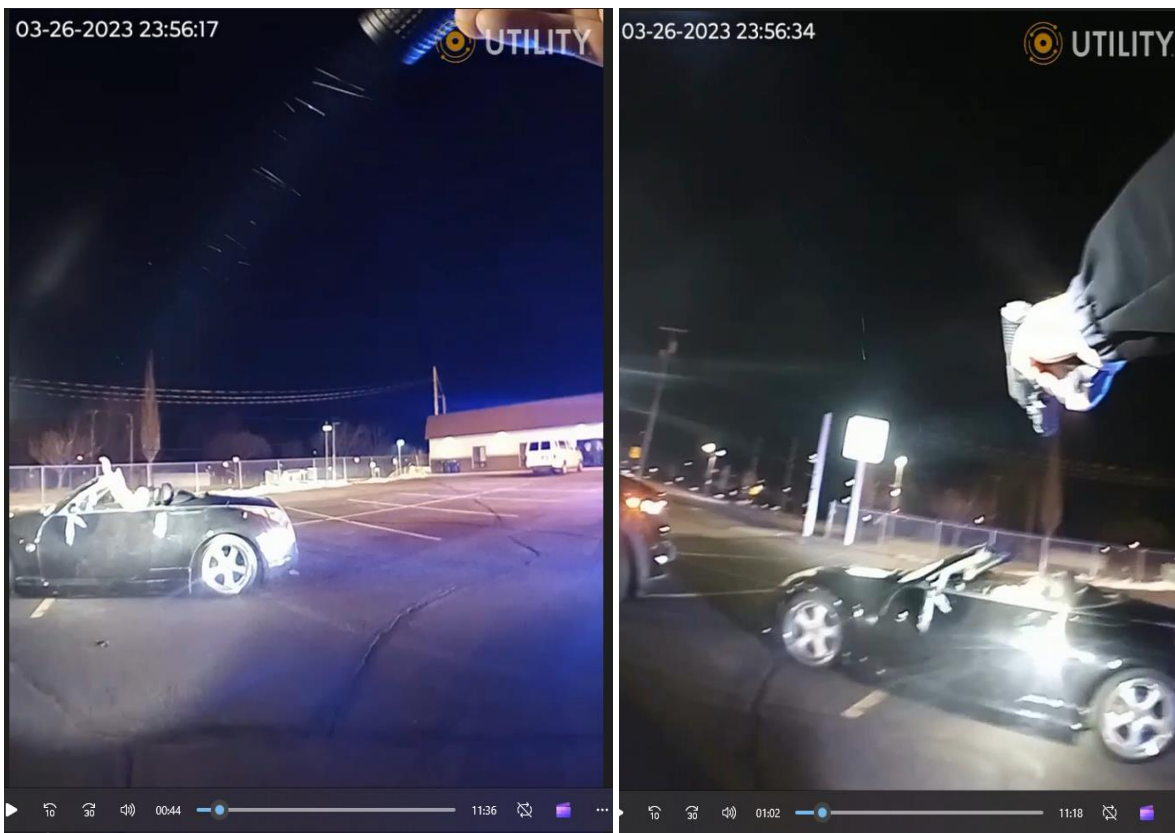
Video of Sgt. Feather discharging his pistol was captured by his own body worn camera, and to varying degrees, by the body worn cameras of Sgt. Brunini, Officer Collins, and Officer Morin, as well as security cameras from the Iglesia La Esperanza church. Officer Morin's body worn camera footage clarity is of poorer quality than the other responding officers and was not suitable for capturing still images, and although Officer Cheries was present, she failed to activate her camera. All video footage reviewed is consistent with the statements provided by each of the responding officers and the physical evidence at the scene. Each of the sources of information was used to compose the Summary of Facts above.



STILL IMAGES FROM VIDEO EVIDENCE:

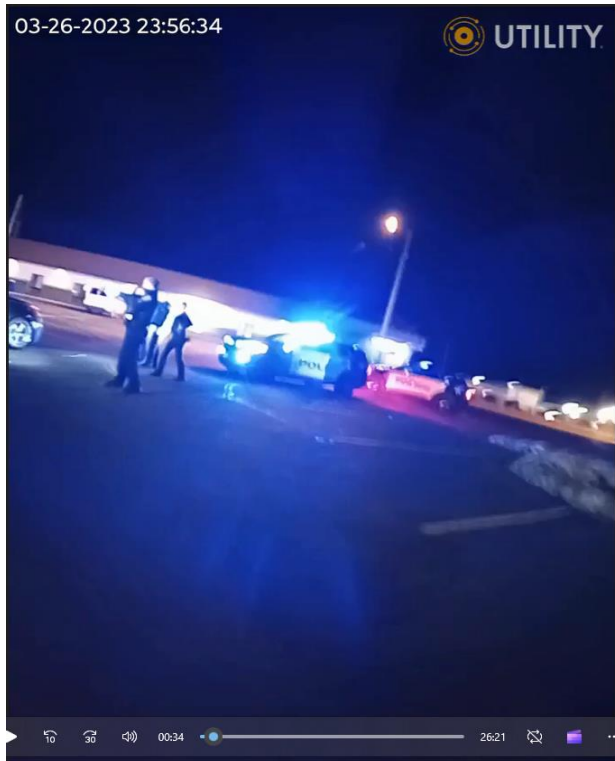


*Images 4, 5 & 6 - Still images from Sgt. Harrington's body worn camera at the Manchester Police Department depicting Mr. Al Thuwayni angrily complaining about the traffic citation he received just before he led the Manchester Police on a series of high-speed chases through the city and then pointed his replica Sig Sauer P226 pellet pistol at Sgt. Feather. Mr. Al Thuwayni can be seen holding the pink traffic citation in his hand during this interaction.*



*Images 7 & 8 - Still images from Sgt. Feather's body worn camera at 11:56:17 P.M. depicting Mr. Al Thuwayni with his hands raised high over the top of the windshield and seconds later at 11:56:34 P.M. depicting Mr. Al Thuwayni turning away from Sgt. Feather, toward the center console as he reached for his replica Sig Sauer P226 pellet pistol.*





Images 9 & 10 – Still images from Sgt. Brunini's BWC and Officer Collins' BWC at 11:56:34 depicting their varying vantage points of Sgt. Feather raising his duty pistol when Mr. Al Thuwayni lowered his hands and ducked down into the car toward the center console to grab his pistol.



Image 11 - Still image from church parking lot camera depicting Sgt. Feather (black circle) approaching the car with his flashlight in his right hand and Mr. Al Thuwayni seated in his car with his arms raised above the driver's side door of his car (red circle).



Image 12 - Still image from church parking lot camera depicting Sgt. Feather approaching Mr. Al Thuwayni as he lowers his hands below the level of the driver's side door. Sgt. Brunini's cruiser can be seen arriving at the scene behind Sgt. Feather's position.

## B. Physical Evidence

After Mr. Al Thuwayni was in custody, the Manchester Police Department secured the scene at 265 Maple Street until the New Hampshire State Police Major Crimes Unit, under the direction of the Office of the Attorney General, arrived, searched, processed, and documented the scene.

The location of evidentiary items was documented by photograph, diagram, and report, including the location of: Mr. Al Thuwayni's car in relation to responding police vehicles, Mr. Al Thuwayni's replica Sig Sauer P226 pellet pistol within the car, his various personal items in the parking lot, the six spent 9mm shell casings ejected from Sgt. Feather's duty pistol, the six bullet hole defects in the door of Mr. Al Thuwayni's car, the trajectory and terminal location of the bullets Sgt. Feather fired, as well as a review of Sgt. Feather's uniform, Sig Sauer P320, 9mm caliber duty pistol, pistol ammunition magazines and the number of rounds of ammunition contained in each magazine.

As described by responding police officers and corroborated by video, Mr. Al Thuwayni's car was documented to be parked diagonally near the center of the parking lot, with Sgt. Feather's cruiser parked nose-to-nose in the front and several additional responding cruisers parked behind it.



*Image 13 – Scene diagram depicting the location of Mr. Al Thuwayni's car, location of Mr. Al Thuwayni's pellet gun pistol inside his car (MAA-18), Manchester Police cruisers, and the six shell casings discharged from Sgt. Feather's pistol (MAA-10 to MAA-15).*

Mr. Al Thuwayni's replica Sig Sauer P226 pellet pistol was recovered on the right-hand side of his seat, leaning against the center console, consistent with Sgt. Feather's account of Mr. Al Thuwayni dropping his hands, turning away from him and toward the center console, and then pointing a pistol at him with his right hand. The pellet pistol was marked and collected as evidence #MAA-18.



*Images 14 & 15 – Photograph depicting the interior of the car showing location of his pellet pistol on the drivers' seat and a close-up photograph of the pellet pistol with evidence placard #MAA-18 behind it.*

The pellet pistol that Mr. Al Thuwayni pointed at Sgt. Feather is a replica training pistol manufactured by the Sig Sauer firearms manufacturing company and was designed to look and function as closely as possible to its 9mm caliber firearm analogue:

“Chambered in .177 pellet, this CO2-powered, next-generation air pistol has been engineered specifically to closely measure up to the most popular SIG original model platforms in weight and handling as well as standards of performance. Features include 16-round 8x2 rotary magazine, built-in Picatinny rail mount, rifled steel barrel, and white dot sights. Perfected for practice with every advantage built-in, these air guns are the economic, authentic answer to training more often, more effectively. The P226 Air Pistol puts seriously comparable handling within reach for more frequent inexpensive training, indoors or out.”

<https://www.sigsauger.com/p226-air-177-cal-12gr-co2-16-rd-blk.html>





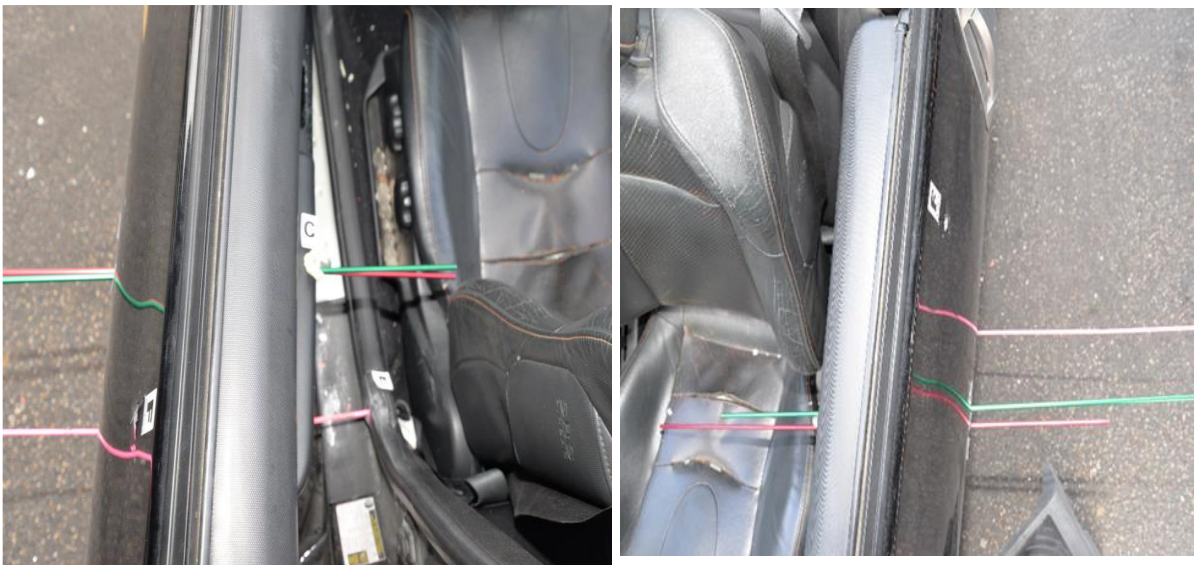
*Images 16 &17 - Stock image from the Sig Sauer website of a standard 9mm caliber, Sig Sauer P226 firearm (left) and Mr. Al Thuwayni's replica Sig Sauer P226 pellet gun, evidence number MAA-18 (right).*

As depicted in the side-by-side images above, Mr. Al Thuwayni's pellet gun is visually indistinguishable from the firearm it is designed to replicate. Any ability to visually distinguish between the two would be greatly compounded by trying to do so at night, in a matter of seconds, while under the stress of being faced with deadly physical force.

Investigators determined and documented the trajectory of the bullets Sgt. Feather fired at Mr. Al Thuwayni as he was seated in his vehicle. Each of the six bullets initially struck the exterior of the driver's side door. Two bullets did not penetrate through the door and remain lodged inside the door. Of the four bullets that travelled through the door and into the passenger compartment of the vehicle, two struck Mr. Al Thuwayni causing physical injuries to his left wrist and abdomen. The bullet that struck Mr. Al Thuwayni in the wrist was located in his clothing which was removed during his medical treatment in the parking lot. The bullet was marked and collected as evidence #MAA-8. The bullet that struck Mr. Al Thuwayni in the abdomen was recovered during his medical treatment at the hospital and was marked and collected as evidence #ALJ-1. The bullets that travelled through the door but did not strike Mr. Al Thuwayni were recovered from the interior of the car were collected and marked as evidence #MAA-19 and #MAA-21.



*Image 18 - Photo of the exterior of driver's side door depicting bullet hole defects A – F.*

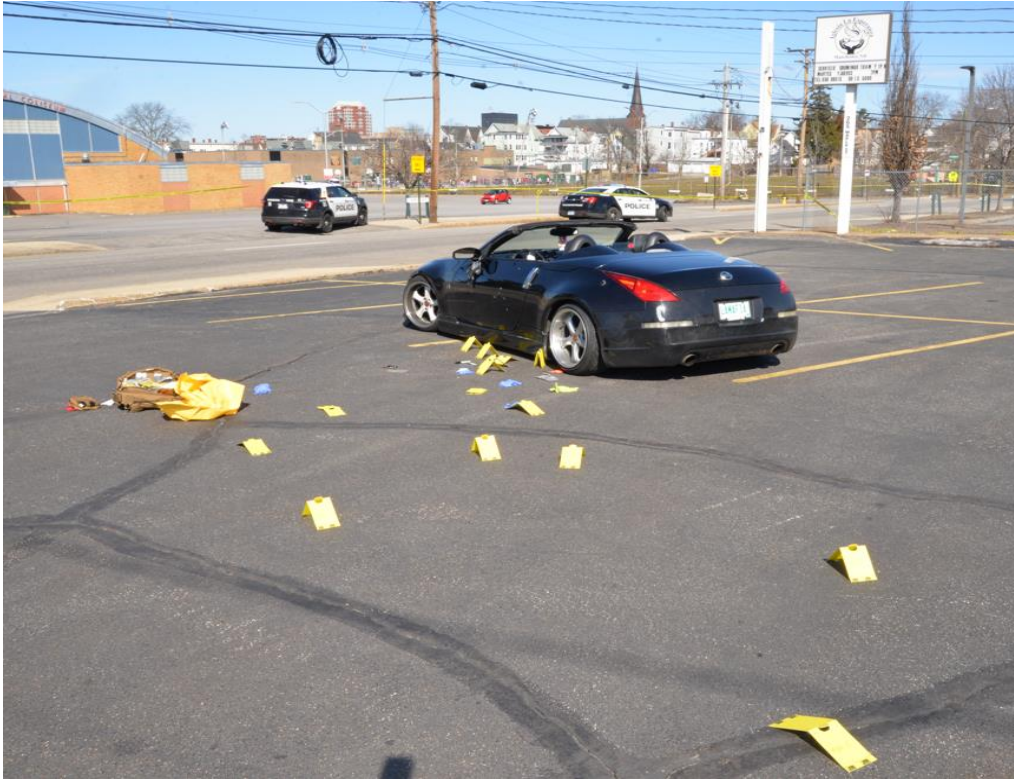


*Images 19 & 20 - Photographs of trajectory rods used to assist in determining bullet trajectory through the driver's side door of Mr. Al Thuwayni's car.*

Investigators documented the location of a number of items in the parking lot using yellow evidence placards, including a number of Mr. Al Thuwayni's personal items<sup>3</sup> which were dropped at the scene when his clothes were cut off during emergency medical treatment and six spent 9mm Speer shell casings ejected from Sgt. Feather's duty pistol.<sup>4</sup>

<sup>3</sup> Wallet, lighter, vape, shirts, hat, NH Youth Operator License.

<sup>4</sup> Evidence #MAA-10 through #MAA-15.

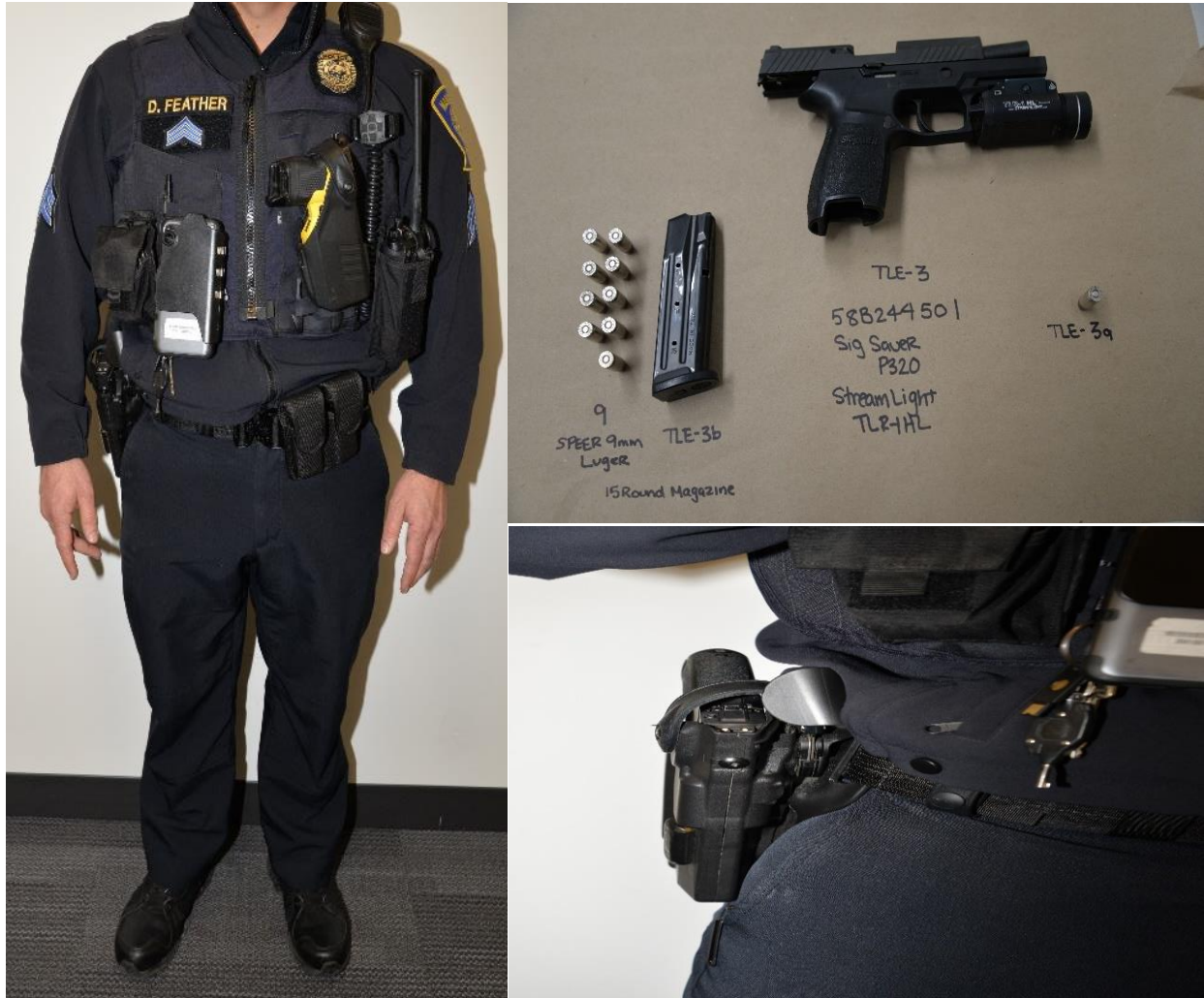


*Image 21 - Photo depicting Mr. Al Thuwayni's car in the parking lot with yellow evidence placards.*

After Mr. Al Thuwayni was sent to the hospital for emergency medical treatment, Sgt. Feather's equipment was collected, inspected, and photographed by investigators from the New Hampshire State Police Major Crimes Unit. Sgt. Feather was wearing a Manchester Police Officer uniform which displayed his name tag and Manchester Police badge emblem on the front as well a Manchester Police patch on his left shoulder. Sgt. Feather's duty belt held his Sig Sauer P320, 9mm caliber, duty pistol on his right hip and two additional pistol magazines to the left of his belt buckle.

Sgt. Feather carries his duty pistol loaded with department issued Speer 9mm Luger rounds. Sgt. Feather carries his pistol with a round in the chamber and a 15-round magazine inserted in the pistol, for a total of sixteen rounds. Upon inspection immediately after the shooting, investigators determined that his pistol had one round in the chamber and nine rounds in the magazine, for a total of ten rounds. The number of rounds documented in his pistol was consistent with having discharged six rounds from a fully loaded 16-round capacity pistol.





*Images 22, 23, & 24 – Photographs depicting Sgt. Feather’s uniform, duty belt, and duty pistol, magazine and remaining ammunition contained in his pistol immediately after the shooting.*

Additionally, investigators reviewed a ShotSpotter report, which is a report generated by a system which detects and records the time, date, interval, and location of gun shots within a particularly defined geographic location (in this case, the City of Manchester). The report corroborated the date, time, interval, location, and number of shots as determined through all other avenues of investigation.



RESPOND ID: 603-5505

## INVESTIGATIVE LEAD SUMMARY

INCIDENT DATE: MAR 26, 2023  
CITY / ZONE: MANCHESTER / MANCHESTERNH  
REPORT DATE: MAR 27, 2023 03:30:54  
REQUESTED BY: TCARTER@MANCHESTERNH.GOV



### INDIVIDUAL SHOTS

The following shot count, times, and locations were automatically calculated by the ShotSpotter system at the time of detection. They are approximate and should be deemed as such. The number of individual shots below may not match the round count reported on page one if an Incident Reviewer adjusted the round count during incident review prior to publication. Some shots may overlap or hide other shots on the map.

SHOT	DATE	TIME	INTERVAL (sec)	LOCATION
# 1	03/26/2023	23:56:35.830	0.000	42.982958, -71.452794
# 2	03/26/2023	23:56:36.312	0.482	42.982959, -71.452791
# 3	03/26/2023	23:56:36.618	0.306	42.982958, -71.452791
# 4	03/26/2023	23:56:36.908	0.290	42.982966, -71.452784
# 5	03/26/2023	23:56:37.185	0.277	42.982966, -71.452784
# 6	03/26/2023	23:56:37.548	0.363	42.982954, -71.452792

Image 25 – ShotSpotter Report

## C. Witness Interviews

Investigators interviewed the witnesses who were present at the scene of the shooting on March 26, 2023, each of whom was factually consistent and corroborated by all other aspects of the investigation. The key interviews are summarized below.

**Sgt. Derek Feather**

On March 31, 2023, Manchester Police Sergeant Derek Feather was interviewed by members of the Attorney General's Office regarding the shooting. Sgt. Feather described his prior law enforcement experience, his appointment to the Manchester Police in November of 2008, and his promotion to sergeant in March of 2021.

Sgt. Feather is currently assigned as a patrol supervisor on the midnight shift (10:30 P.M. to 6:30 A.M.). Sgt. Feather's previous assignments included patrol, field training officer, street crime unit and narcotics investigation, and task force officer assigned to the FBI Safe Streets Gang Task Force, and he has previous training with the Crisis Intervention Team, Plain Clothes Operation and Advanced Patrol Tactics.

Sgt. Feather described his uniform of the day as a Manchester Police uniform with a tactical vest displaying "Manchester Police" on the back, a taser, hand cuffs, and body worn camera on the front, and a duty belt holding a Sig Sauer P320, 9mm pistol, with three 15-round capacity magazines (one magazine in the pistol and two in magazine pouches on his belt). Sgt. Feather advised that he has not been involved in any prior officer-involved-shootings and that he had not reviewed his body worn camera prior to the interview.

Sgt. Feather remembered seeing Sgt. Harrington interacting with a person who he now knows was Mr. Al Thuwayni in the front of the police department as he arrived for his shift. Sgt. Feather did not stop to assist with the interaction but noted that Mr. Al Thuwayni was very animated with his arms as he complained about receiving a traffic citation and his perception that he was the subject of police harassment. Due to the occurrence of two separate "gun calls" within the city which required a supervisor, Sgt. Feather missed role call and upon his return to the station learned that Mr. Al Thuwayni was the subject of a recent motor vehicle pursuit in the city which was terminated based on safety concerns. Shortly thereafter, while on patrol, Sgt. Feather heard radio traffic concerning another motor vehicle pursuit of Mr. Al Thuwayni and personally observed Mr. Al Thuwayni driving at approximately 70-80 mph through the city. Despite the fact that this pursuit was also terminated for public safety, Sgt. Feather was very concerned that Mr. Al Thuwayni was engaging in increasing dangerous driving that could result in his own death, the death of police officers and/or private citizens and he was trying to formulate a plan to safely stop Mr. Al Thuwayni.

At approximately 11:55 P.M., Sgt. Feather radioed for two additional units to come to his location on Maple Street because he saw a car matching Mr. Al Thuwayni's located in a parking lot across the street from the JFK Memorial Coliseum.<sup>5</sup> He activated his lightbar and spotlight, and pulled his cruiser into the parking lot as the responding officers arrived. He thought that Mr. Al Thuwayni may be finally surrendering but felt uneasy because Mr. Al Thuwayni had the convertible top down despite the cold temperature.<sup>6</sup>

When he exited his cruiser he recognized Mr. Al Thuwayni as the person he had seen earlier interacting with Sgt. Harrington at the police department, and he instructed him to exit his car. As he approached, Sgt. Feather observed that Mr. Al Thuwayni had his arms raised high over his head but refused his instructions to get out of the car.

Sgt. Feather described that Mr. Al Thuwayni then lowered his arms inside the vehicle and that he had a determined look on his face. Sgt. Feather told him to "keep your hands up" several times before he unholstered his duty pistol. Disregarding his instructions to put his arms back up, Sgt. Feather observed Mr. Al Thuwayni turn his body away from him and toward the center console "disappearing inside the car." Sgt. Feather described that when Mr. Al Thuwayni turned back toward him, he had a pistol in his right hand with the barrel pointed at him, and, "[w]hen he pops up, it was not slow, it was determined. He came up fast and pointed a gun sideways at my direction."

Sgt. Feather stated that when he saw the gun pointed at him, he was in fear for himself and the other officers that Mr. Al Thuwayni was about to shoot him with a gun, so he reacted based on that fear, and fired his pistol at Mr. Al Thuwayni. He stated that he stopped shooting when he could no longer see Mr. Al Thuwayni's gun in his hand and therefore he was no longer an immediate threat. Sgt. Feather thought he fired four rounds, but later he saw five shell casings and six holes in the car door.

After shooting Mr. Al Thuwayni, and him coming out the driver's door and laying flat on the ground, Sgt. Feather was still concerned because he could not see where the gun was that had just been pointed at him. He recalled stating, "wow, I almost died right there," and then going into "supervisor mode" to secure the scene, as well as seeing Sgt. Brunini assemble a team of officers to take Mr. Al Thuwayni into custody and begin medical treatment. Sgt. Feather then

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<sup>5</sup> The Iglesia La Esperanza church parking lot, 265 Maple Street, Manchester, NH.

<sup>6</sup> The temperature was approximately 40 degrees Fahrenheit.

remembered that he was then driven to the police department where he was photographed and transferred custody of his duty pistol and magazines to the NHSP Major Crime Unit.

### **Officer Erica Cheries**

On April 5, 2023, Officer Erica Cheries was interviewed by Sgt. Stephen McAulay, NHSP MCU, and members of the Attorney General's Office regarding her observations of the officer-involved-shooting on March 26, 2023. Officer Cheries indicated that she thought that she had activated her body worn camera by tapping it as she exited her cruiser at the beginning of her interaction with Mr. Al Thuwayni, but apparently it did not activate to record the event.

Officer Cheries was working an 11:00 P.M. to 7 A.M. shift, remembers receiving information about Mr. Al Thuwayni before she arrived at the parking lot of 265 Maple Street, including that he had been ticketed earlier that evening for reckless driving and had come to the station to complain about the ticket using language referencing being shot by the police. Officer Cheries also remembered that Mr. Al Thuwayni was the subject of one of the first calls of her shift, which involved numerous complaints about his reckless driving and a resulting police pursuit that had to be called off for public safety.

Officer Cheries advised that shortly before midnight she responded to Sgt. Feather's request for back-up, and he instructed her to pull behind Mr. Al Thuwayni's car and activate her light bar and spotlight. She described Al Thuwayni's car as a black Nissan convertible, with the top down and only one person in the car. When she got out of her cruiser she stood by the A pillar of her cruiser, drew her duty pistol, and pointed it at Mr. Al Thuwayni.

Officer Cheries could see inside the vehicle compartment, despite being only 5'2" tall, because the convertible top was down. When she arrived, Mr. Al Thuwayni had his hands up and was talking with Sgt. Feather as he walked toward the car. She described that as Sgt. Feather approached from the driver's side, she began to approach from the rear of the car and saw Mr. Al Thuwayni lower his arms and reach toward the center console despite Sgt. Feather telling him to keep his hands up. The next thing that Officer Cheries remembered seeing was Mr. Al Thuwayni point a black handgun with his right hand at Sgt. Feather and Sgt. Feather respond by firing six rounds at Mr. Al Thuwayni, which caused him to drop the gun. Officer Cheries described that once Mr. Al Thuwayni dropped his pistol the shooting stopped, Mr. Al Thuwayni fell into the seat, opened the door, and fell to the ground. Officer Cheries believed Mr. Al

Thuwayni's pistol to be a 9mm caliber pistol and said its appearance resembled the same pistols that Manchester Police officers are issued.

Officer Cheries advised that once Mr. Al Thuwayni was on the ground outside the car, he was handcuffed and given medical attention while he made statements about wanting the police to kill him.

### **Officer Brett Morin**

On April 5, 2023, Officer Brett Morin was interviewed by Sgt. Stephen McAulay, NHSP MCU, and members of the Attorney General's Office regarding his observations of the shooting. Officer Morin was working an 11:30 P.M. to 7:30 A.M. shift that night.

Officer Morin remembered overhearing information about a vehicle pursuit when he arrived for his shift but did not otherwise have any prior knowledge of or prior contact with Mr. Al Thuwayni before he arrived at the parking lot at 265 Maple Street in response to Sgt. Feather calling for back-up.

Officer Morin saw Sgt. Feather and Officer Cheries were approaching the driver of a convertible when he arrived at the parking lot. The driver had his hands raised, and because he saw that both officers had unholstered their duty weapons, Officer Morin did the same as he got out of his cruiser. As he began to approach the car from the rear, he heard Sgt. Feather command Mr. Al Thuwayni to "keep your hands in the air" and noticed that Officer Collins had arrived and was now behind him. As they approached the car together, he heard Officer Collins announce that he would provide less-lethal cover (referring to covering Mr. Al Thuwayni with a taser rather than his duty pistol) and Officer Morin announced that he would be the "hands-team" to effect an arrest as he holstered his duty pistol and took out his hand-cuffs.

As they continued to approach the car, Officer Morin saw Mr. Al Thuwayni lower his hands and heard Sgt. Feather again instruct him to keep his "hands up." Officer Morin saw Mr. Al Thuwayni lift up his right hand, which now had a firearm in it, and point it directly at Sgt. Feather. From his vantage point, Office Morin could see approximately 3" to 4" of the muzzle of the firearm with the remainder of the firearm obscured behind Mr. Al Thuwayni's face and head.

Officer Morin described that after the shots, Sgt. Brunini approached, he was handcuffed, and then given life-saving medical aid. Officer Morin remembered that Mr. Al Thuwayni was



speaking to the treating officers, but because his attention was focused on keeping Mr. Al Thuwayni alive, he does not remember what he was saying.

### **Officer William Collins**

On April 5, 2023, Officer Collins was interviewed by Sgt. Stephen McAulay, NHSP MCU, and members of the Attorney General's Office regarding his observations. Officer Collins was working a midnight shift, beginning on March 26, and ending on March 27, 2023. Although Officer Collins had no prior contact with Mr. Al Thuwayni, he did remember hearing information about Mr. Al Thuwayni being in the lobby of the police department earlier that evening and making statements implying that he might commit "suicide-by-cop."

Officer Collins described his first interaction with Mr. Al Thuwayni was when he responded to the parking lot across the street from JFK stadium in response to Sgt. Feather calling for back-up, and he parked behind two other cruisers already on scene. Officer Collins saw Mr. Al Thuwayni with his hands up as he unholstered his pistol and began approaching the car. Officer Collins recalled transitioning from his duty pistol to his taser so that he could provide less-lethal coverage for the team of responding officers.

As he approached from the back of the car, he could see the back of Mr. Al Thuwayni's head, part of the back of the seat, part of the steering wheel, and part of the dashboard. Officer Collins recounted seeing Mr. Al Thuwayni raise a gun in his right hand at approximately shoulder level, and pointing it at Sgt. Feather. Because he thought Mr. Al Thuwayni was going to shoot Sgt. Feather, Officer Collins tried to transition back from his taser to his duty weapon but heard four to five shots before he could do so. Officer Collins remembers seeing Mr. Al Thuwayni on the ground while Officer Morin handcuffed him.

Officer Collins described Mr. Al Thuwayni's gun as a black, semi-automatic pistol and remembered Mr. Al Thuwayni making spontaneous statements while receiving emergency medical treatment, saying things like "thank you for shooting me."

### **Sgt. Kenneth Brunini**

On April 5, 2023, Sgt. Kenneth Brunini was interviewed by Sgt. Stephen McAulay, NHSP MCU, and members of the Attorney General's Office regarding his observations of the event.

Sgt. Brunini was working a midnight shift, beginning on March 26 and ending on March 27, 2023, and was aware that Mr. Al Thuwayni was reportedly in the police station earlier that evening complaining that he was being targeted by police because he had a nice car. Sgt. Brunini's first interaction with Mr. Al Thuwayni was upon his arrival at the parking lot across from JFK stadium. Sgt. Brunini estimated that he had been at the scene for approximately 15 to 30 seconds before the shooting occurred.

When Sgt. Brunini arrived, he observed that Sgt. Feather's cruiser was "nosed up" to Mr. Al Thuwayni's car<sup>7</sup>. Sgt. Feather was standing 90 degrees off Mr. Al Thuwayni's car giving him verbal orders. Two additional cruisers were parked behind Mr. Al Thuwayni's car. Officers Morin and Cheries were present on scene. As Sgt. Brunini got out of his cruiser and went toward the officers, he heard Sgt. Feather continuing to give Mr. Al Thuwayni orders, and then heard and saw Sgt. Feather firing shots at Mr. Al Thuwayni with his duty pistol.

Sgt. Brunini advised that after the shooting, while being provided with medical treatment, he heard Mr. Al Thuwayni state that they should have killed him.

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

New Hampshire's laws regarding self-defense, defense of others, and the use of physical force by law enforcement are set forth in RSA Chapter 627.

Pursuant to RSA 627:4, II(a), and RSA 627:5, II(a), a private citizen and a law enforcement officer are justified in using deadly force when they reasonably believe that such force is necessary to defend themselves or a third person from what they reasonably believe to be the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as "any assault . . . which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury." "Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person . . . constitutes deadly force." RSA 627:9, II.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." *State v.*

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<sup>7</sup> Sgt. Brunini described the car as a two door, Nissan 350z, dark colored convertible with the top down and one occupant.

*Gorham*, 120 N.H. 162, 163-64 (1980). The term “reasonable” is “determined by an objective standard.” *State v. Leaf*, 137 N.H. 97, 99 (1993). Further, all of the circumstances surrounding the incident should be considered in determining whether the actor had a reasonable belief that deadly force was necessary to defend himself or another. When reviewing a deadly force incident, the actor’s conduct should be viewed considering “the circumstances as they were presented to him at the time, and not necessarily as they appear upon detached reflection.” *N.H. Criminal Jury Instructions*, 3.10. In other words, when analyzing the reasonableness of an actor’s use of deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight. The amount of deadly force used by the actor to protect himself or another must be reasonable, and not excessive. *See State v. Etienne*, 163 N.H. 57, 70 (2011).

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 objectionably reasonable.

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

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. *Id.* at 396-97; *see also Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (same).

The Eleventh Federal Circuit has noted that:

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

determine whether the force used was justified under the totality of the circumstances. *Garczynski v. Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted).

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

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

## **V. ANALYSIS AND CONCLUSION**

Based on all the facts and circumstances of this case, the Attorney General has concluded that Manchester Police Sgt. Derek Feather was legally justified when he used deadly force against Mr. Al Thuwayni. At the time that he was shot, Mr. Al Thuwayni had recently led police officers on two dangerous high-speed chases, had refused Sgt. Feather’s directives to get out of his car, refused to keep his hands raised, and instead, retrieved and then pointed what reasonably appeared to be a semi-automatic pistol at Sgt. Feather.

Sgt. Feather reasonably concluded that Mr. Al Thuwayni constituted an imminent, deadly threat to him, the police officers currently in close proximity to his car, and all additional police officers who were actively approaching the scene. Here, Sgt. Feather’s account is independently corroborated by the accounts of Officer Cheries, Officer Morin, Officer Collins, Sgt. Brunini, the video evidence, the physical evidence, and the ShotSpotter report.

Knowing that Mr. Al Thuwayni was engaging in repetitive, extremely reckless conduct with his car which was endangering himself, the police, and the citizens of Manchester, Sgt. Feather concluded that he needed to formulate a plan to stop him safely. Upon locating Mr. Al Thuwayni stopped in a parking lot one block away from the police department, Sgt. Feather hoped that Mr. Al Thuwayni had decided to turn himself in but remained apprehensive for a

number of reasons, including that Mr. Al Thuwayni had lowered the convertible top of his car despite the cold weather.

When back-up units arrived, Sgt. Feather implemented a plan to box in Mr. Al Thuwayni's car with police cruisers and order him out of the car. As reviewed in detail above, the evidence shows that instead of following Sgt. Feather's commands, Mr. Al Thuwayni refused to exit the vehicle, refused to keep his hands up, and then pointed an extremely realistic replica 9mm pistol at him. This action on the part of Mr. Al Thuwayni led Sgt. Feather to believe that Mr. Al Thuwayni was placing the lives of both Sgt. Feather and the other officers surrounding the car in imminent threat of deadly force. It was when Mr. Al Thuwayni gripped the pistol and pointed it at Sgt. Feather that the sergeant fired his weapon at Mr. Al Thuwayni. These circumstances, objectively viewed, created an imminent life-threatening situation with the resulting reasonable belief that Mr. Al Thuwayni was about to shoot Sgt. Feather or any of the other police officers at the scene.

Although it was later determined that Mr. Al Thuwayni displayed a pellet gun rather than a 9mm firearm, Sgt. Feather and the surrounding officers' belief that he did possess a 9mm handgun was objectively reasonable under the circumstances, considering all of Mr. Al Thuwayni's words and actions that day. His statements show that he believed his pellet gun would be mistaken for a 9mm firearm, and prompt police into using deadly force against him. When he told officers he knew they would shoot, that he wanted to be shot, and that he did not want medical attention, his statements demonstrated that, on that night, he was potentially suicidal and wanted to be shot by the police. These statements are evidence of his state of mind, demonstrating that he had no intention of being apprehended, and that he intended to force officers to shoot him.

Also, the physical appearance of the weapon supported the officers' reasonable beliefs that Mr. Al Thuwayni had a 9mm firearm. The weapon itself is a metal, black, semiautomatic pellet gun, designed by the manufacturer as a device to look and feel just like a Sig Sauer P226 semiautomatic pistol. The fact that Sgt. Feather believed Mr. Al Thuwayni's gun was a real firearm was reasonable, based on all the facts and circumstances known to him at the time he decided to use deadly force. Moreover, the manner in which Mr. Al Thuwayni used or threatened to use the weapon further supported Sgt. Feather's reasonable belief, and this belief was shared by the other officers on scene.

Based on a review of all the evidence, it was objectively reasonable for Sgt. Feather to conclude that Mr. Al Thuwayni constituted an imminent threat of deadly force on March 26, 2023, when he shot and wounded him. Accordingly, Sgt. Feather was legally justified in using deadly force against Mr. Al Thuwayni and no criminal charges will be filed for the use of deadly force against him.