

**ATTORNEY GENERAL OFFICE’S REPORT REGARDING
OCTOBER 19, 2020 OFFICER-INVOLVED SHOOTING INCIDENT
IN THORNTON, NEW HAMPSHIRE**

I. INTRODUCTION

Deputy Attorney General Jane E. Young announces the completion of the investigation into the officer-involved shooting that occurred in Thornton, New Hampshire on October 19, 2020. The private citizen involved in that incident, Ethan Freeman (age 37), was shot and killed by Police Officer Matthew Yao of the Thornton Police Department. The purpose of this report is to summarize the Attorney General Office’s factual findings and legal conclusions regarding Officer Yao’s use of deadly force against Mr. Freeman. The findings and conclusions in this report are based upon various types of information gathered during the investigation, including photographs and videos of the scene of the incident; recorded interviews of witnesses and radio transmissions made on the evening of the incident; and video recordings, including body camera footage that captured the entirety of the incident.

As provided in RSA 7:6, the Attorney General is the State’s Chief Law Enforcement Officer. The Attorney General’s Office has the responsibility to ensure that whenever law enforcement officers use deadly force, it is done in conformity with the law. The Attorney General’s Office does not investigate or

opine on the particular procedures or tactics used by law enforcement officers. Instead, the Attorney General Office'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 Office'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.

Following a full investigation of this deadly force incident by the Attorney General's Office and the New Hampshire State Police Major Crime Unit, the Attorney General's Office finds that the use of deadly force against Ethan Freeman by Police Officer Matthew Yao on October 19, 2020, was legally justified.

II. SUMMARY OF THE FACTS

On the late afternoon of October 19, 2020, Police Officer Matthew Yao of the Thornton Police Department went to a residence on Four Wheel Drive in Thornton in response to a 911 call seeking police assistance for a man who had injured himself. The caller was the homeowner, who had called about his tenant, Ethan Freeman, who had requested an ambulance because he was bleeding and claiming of chest pain.

Officer Yao arrived at the residence by himself, and walked up to where he believed Mr. Freeman lived. Officer Yao had interacted with Mr. Freeman earlier

in the day, when Mr. Freeman had requested an ambulance while inside the lobby of a local school. During that earlier encounter, Mr. Freeman was cooperative and had brief and nonconfrontational interactions with Officer Yao.

Officer Yao walked up to Mr. Freeman's apartment, and in a conversational tone asked Mr. Freeman in substance what issue he was having. Mr. Freeman replied by yelling various obscenities. When Officer Yao looked into Mr. Freeman's apartment, he saw that Mr. Freeman was completely naked, bleeding, masturbating with one hand, and brandishing a wooden furniture piece in the other hand. Mr. Freeman continued to yell obscenities at the officer, and also repeatedly threatened to kill him.

In response, Officer Yao immediately moved away from the front of the apartment and attempted to talk to Mr. Freeman in order to calm him down. Officer Yao also drew his service pistol and called over his mobile radio that his life had been threatened. At that point, Officer Yao could no longer see into Mr. Freeman's apartment, but could hear noises consistent with objects being broken inside it. Officer Yao tried to talk to Mr. Freeman and calm him down. Mr. Freeman spoke with Officer Yao, and repeatedly threatened to kill him.

About a minute after Officer Yao withdrew from the front of Mr. Freeman's apartment, Mr. Freeman jumped through one of the windows of his apartment. He was still naked and covered in blood. Mr. Freeman also told Officer Yao, "You're dead," and walked directly towards the officer. Officer Yao repeatedly yelled at Mr. Freeman to stay back, while himself walking backwards

in an effort to create distance between himself and Mr. Freeman. Despite the officer repeatedly yelling at Mr. Freeman to stay back, Mr. Freeman continued to walk towards Officer Yao, approaching faster than the officer was able to back up. Because Mr. Freeman was so close to Officer Yao, the officer did not believe that he could safely transition from his drawn pistol to the less-than-lethal alternatives that he carried with him.

When Mr. Freeman was about ten feet away, and still advancing on Officer Yao, the officer fired two shots in quick succession. Mr. Freeman collapsed to the ground, and died from his gunshot wounds. Officer Yao explained that he shot Mr. Freeman because he feared for his life. Specifically, Officer Yao believed that when Mr. Freeman reached him – in a matter of seconds – he would do what he had repeatedly threatened to do – kill him – by taking and using against the officer his own firearm. Officer Yao also believed that if he was able to survive the struggle, Mr. Freeman could maim or otherwise seriously injure him.

During the entirety of Officer Yao's encounter with Mr. Freeman at the Four Wheel Drive residence, he was wearing a department-issued body camera that contemporaneously recorded events. The landlord who had called 911 for Mr. Freeman also saw the shooting. The shooting also was captured on video from a distance by cameras in Officer Yao's parked patrol vehicle.

III. THE INVESTIGATION

Ethan Freeman lived alone at a walk-out basement apartment at a residence on Four Wheel Drive in Thornton. He rented the apartment from the homeowner,

who also lived in a separate area of the same house. Nobody else lived at the residence. The two living areas were connected by a shared interior door that could be, and typically was, locked from both sides. Mr. Freeman began living in the apartment about five years ago, was absent for a period, and had been staying there regularly since about December, 2019.

Officer Yao had encountered Mr. Freeman twice before the fatal shooting on October 19, both in the winter of 2020. Officer Yao characterized both of those previous encounters as nonconfrontational. Neither occasion resulted in Mr. Freeman's arrest. Officer Yao was aware, from discussions with other police officers, that Mr. Freeman had a history of being combative with law enforcement.

For most of Mr. Freeman's adult life, he had suffered from mental illness. According to Mr. Freeman's mother, as well as his landlord, he would have occasions in which he would become delusional and paranoid, the latter focused on his belief that people, and more specifically the police, were spying on him. At times during these episodes of unstable thinking, Mr. Freeman also would become highly agitated and hostile, including acting out physically against people and property.

In the days leading up to Mr. Freeman's shooting, his landlord noticed that he had become increasingly paranoid. On the morning of October 19, the landlord saw that Mr. Freeman was agitated and acting erratically, in particular claiming not to recognize him and menacing him with a pronged roasting fork.

Later that same morning, at about 9:30 a.m., Officer Yao responded to Thornton Central School, for a call in substance reporting a man in need of medical attention. In the school lobby, Officer Yao encountered Mr. Freeman, who was with a school nurse.¹ The entirety of that encounter, which lasted just a few minutes, was captured on Officer Yao's body camera.²

Mr. Freeman was lying on the ground, and claimed that he was having a heart attack and that he had not slept "for days." Mr. Freeman told Officer Yao that he had not used narcotics for several months, but also said that he had not slept "for days," and appeared to the nurse to be on some type of stimulant. The nurse reported to Officer Yao that Mr. Freeman had expressed to her paranoid beliefs someone was trying to kill him. The nurse also told Officer Yao that Mr. Freeman had Hepatitis C.³

Mr. Freeman was never violent, threatening, or confrontational. Mr. Freeman at the school also neither engaged in nor exhibited the aggressive behavior observed by his landlord several hours earlier. Officer Yao talked to Mr. Freeman in a calm and conversational tone, and told him to take deep breaths and that an ambulance was on the way. Mr. Freeman was never handcuffed or otherwise restrained, except for when he later was strapped into a stretcher by

¹ School surveillance video footage shows Mr. Freeman walking into the school lobby, going to the reception area, and collapsing to the floor where Officer Yao later encountered him. Prior to the officer's arrival, Mr. Freeman asked the school receptionist for "painkillers."

² Although the body camera footage referred to above and later in this report has a contemporaneous-running timestamp, it does not accurately reflect the time when events occurred and is several hours off.

³ Hepatitis C is a virus that attacks the liver and that is typically spread by contaminated blood. Hepatitis C has no vaccine, and can lead to chronic illness or death.

medical personnel for the hospital trip. Mr. Freeman gave Officer Yao his pocketknife, and allowed the officer to conduct a quick “pat down” search of his clothes. Mr. Freeman never argued with Officer Yao, and just before he was taken to the ambulance thanked the officer for his help.

Mr. Freeman was fully clothed when Officer Yao encountered him at the school. Mr. Freeman also had with him a large backpack, which Officer Yao checked to make sure that it contained no contraband before being loaded onto the ambulance with Mr. Freeman. Officer Yao found a large kitchen knife inside that backpack. Officer Yao secured the knife, as well as the pocketknife that Mr. Freeman had given him earlier, several lighters, and a “one-hitter” pipe.

Mr. Freeman was never detained or arrested, and was transported by ambulance to Speare Memorial Hospital in Plymouth, as he had requested. Officer Yao accompanied the ambulance to the hospital in his patrol vehicle.⁴ At the hospital, Mr. Freeman walked out of the ambulance and immediately ran towards the building. Officer Yao caught up with Mr. Freeman at the entrance, and told him to “calm down.” Mr. Freeman continued to complain of chest pain and explained that he just wanted to get into the emergency room. Mr. Freeman

⁴ According to medical personnel who treated Mr. Freeman in the ambulance, he said that he had used methamphetamine, which was similar to what the school nurse had told Officer Yao Mr. Freeman had reported to her. Also, en route to the hospital Mr. Freeman became aggressive while seeking to remove his stretcher restraints, necessitating a brief stop in which Officer Yao helped calm him down.

also noted that he was “always good” with Officer Yao, and apologized for running to the hospital.⁵

Officer Yao left the hospital shortly thereafter. Mr. Freeman ultimately declined to be admitted, and took off before he received any medical treatment.

Mr. Freeman returned to his apartment at Four Wheel Drive later that afternoon. Mr. Freeman’s landlord saw him being dropped off in a black car; the landlord did not recognize the vehicle and did not know who had brought Mr. Freeman home.⁶ The landlord saw that Mr. Freeman was limping and had one pant leg rolled up, revealing a severely swollen knee. The landlord had a brief conversation with Mr. Freeman, and asked him what happened. Mr. Freeman answered in substance that it “was nothing,” and went into his apartment.

About an hour later, when the landlord was in his part of the house, he heard numerous loud noises coming from Mr. Freeman’s apartment, as if he were banging on the walls, smashing objects, and breaking glass. The landlord also heard Mr. Freeman yell in substance that he was going to kill himself, that he was rolling in glass and feces, and that he was having a heart attack and was bleeding. Mr. Freeman also yelled for his landlord to call for the police and an ambulance.

The landlord first called Mr. Freeman’s mother. In that call, she could hear her son making loud noises from his apartment. She asked the landlord to confirm

⁵ Officer Yao’s interactions with Mr. Freeman at Speare Memorial Hospital also were recorded on the officer’s body camera.

⁶ Mr. Freeman’s activities between the time when he left the hospital in Plymouth to when he was dropped off at his residence are unknown. Nobody has come forward to account for his activities in that time, and investigation has been unable to determine where or with whom he was.

that Mr. Freeman wanted him to call an ambulance. When Mr. Freeman reiterated that he wanted an ambulance, his mother asked the landlord to call 911, and he did so.

In that 911 call, the landlord provided Mr. Freeman's name and indicated that he lived in a basement apartment at the residence. The landlord said that Mr. Freeman needed medical assistance because he had reported that he had cut himself and was "bleeding to death." The landlord also said that he heard loud banging noises and the sound of breaking glass from Mr. Freeman's apartment. The landlord further relayed that he did not think that Mr. Freeman had any weapons.

Officer Yao, who was at the police station, responded to the call for assistance, and on the way he requested backup from neighboring police departments. Officer Yao arrived at the residence on Four Wheel Drive at about 4:25 p.m. As he had been in his encounter with Mr. Freeman earlier in the day, Officer Yao was dressed in a full police uniform, with his badge and other police markings openly visible. Officer Yao was armed with a service pistol, and also carried on his belt a Taser, O.C. spray, and a baton.

No other police units were at the residence when Officer Yao arrived. He walked up to the back of the house, to where Mr. Freeman's apartment was located. His service pistol was not drawn, and he initially was not holding anything in his hands. The encounter that occurred between Mr. Freeman and Officer Yao spanned about two and one-half minutes in total, from the time when

the police officer first spoke with Mr. Freeman at his apartment to when the officer fired his service pistol. Officer Yao was wearing a body camera that video recorded and audio recorded the entirety of his encounter with Mr. Freeman. Officer Yao's patrol vehicle also was equipped with two cameras, both of which were active and recorded the fatal shooting. Additionally, Mr. Freeman's landlord witnessed the fatal shooting from a window inside his home.

1. Video Footage

Copies of Police Officer Yao's body camera and patrol vehicle footage is available for viewing on the Attorney General's Office's website. The footage contains graphic language. Mr. Freeman was naked during the encounter, and his genitals have been blurred out in the footage provided. No other edits have been made. Photo A attached to this report is an overhead of the residence at Four Wheel Drive. The area circled in yellow shows generally where Officer Yao initially walked from his patrol vehicle to Mr. Freeman's apartment and where the later fatal shooting occurred – a distance of about sixty feet from vehicle to apartment. The area circled in green is Mr. Freeman's walk-out basement apartment, and the red triangle is the approximate location of Officer Yao's patrol vehicle.

As seen and heard in the body camera video footage, Officer Yao walked around the back of the house, to Mr. Freeman's apartment. As Officer Yao neared the apartment he yelled out, "Police department," "Ethan, its Officer Yao, you okay?" and, "Ethan what's going on?" Mr. Freeman, from inside the apartment,

replied that he was suicidal. Mr. Freeman also said, “There’s feces everywhere, I need you to call the cops, the paramedics, and need you to get me a fucking rescue team right now.” Officer Yao then again identified himself by name and that he was a police officer, to which Mr. Freeman responded, “Yes, come in here and get me to the hospital.”

Officer Yao then approached the only exterior door into Mr. Freeman’s apartment. There also were two nearby windows, one of which was broken outward, with glass shards still in the pane. Officer Yao asked, “What’s going on?,” and Mr. Freeman responded from inside, “I have a fucking asshole that’s bleeding out like a chicken and I have a goddamned fucking mouth that’s full of feces and I have a dick that’s hard, that’s not hard.”⁷ Officer Yao asked Mr. Freeman whether he was armed, and Mr. Freeman replied, “Yeah, Let’s go.” When the officer asked, “What do you got?,” Mr. Freeman replied, “My dick in my hand. You got a problem with that, bitch?” Officer Yao continued to attempt to question Mr. Freeman about what was “going on,” and Mr. Freeman in response called the officer a “cunt” and told him to “[s]uck my fucking dick.” Officer Yao replied, “You know me, dude,” and again asked what was “going on.”

The inside of Mr. Freeman’s apartment was dark, and Officer Yao used a flashlight to illuminate the interior. Photo B attached to this report shows Mr. Freeman’s apartment as seen from Officer Yao’s body camera, with the broken-

⁷ When Officer Yao attended to Mr. Freeman after the shooting, he saw and smelled apparent feces in Mr. Freeman’s mouth.

out window on the far left and the only exterior door on the far right. As discussed later, that door was barricaded from the inside. Because of the lighting conditions and the angle of the body camera, it is difficult in video footage to discern Mr. Freeman inside the apartment.

Officer Yao did see Mr. Freeman inside his apartment and later reported what he observed. Specifically, Officer Yao saw Mr. Freeman sitting in a recliner, with his back to the officer. Mr. Freeman then got up from the chair and faced the officer. Mr. Freeman was naked, and his head was visibly bleeding. In one hand he was stroking his penis, and in the other he held a wooden piece of furniture. Mr. Freeman appeared agitated, he was breathing heavy, and his eyes were wide. At one point, Mr. Freeman moved towards the window from which Officer Yao was watching, bared his teeth at the officer, and threatened him:

He raised the chair leg, turned his whole body toward me, [was] staring just locking eyes at me, like full of rage in his eyes. And he is telling me, "You're fucking dead."

Returning to events captured on body camera footage, Officer Yao immediately moved away from the apartment, in the same direction from which he initially had approached, directing Mr. Freeman to "drop that" (a reference to the furniture piece he had brandished). Photo C attached to this report shows where Officer Yao positioned himself upon moving away from Mr. Freeman's apartment, the front of which is circled in red. Officer Yao later explained that he positioned himself off to the side of Mr. Freeman's apartment so as not to lose

sight of him if he left and to be able to speak with him in an attempt to calm him down.

Immediately after Officer Yao's order to "drop it," from inside his apartment Mr. Freeman yelled out to the officer, "Fuck you I'm going to kill you." Mr. Freeman also yelled out, "You're dead. You come back around here you're dead. You're dead." At that point, Officer Yao reported on his portable police radio, "He is naked and threatening my life." Officer Yao then pointed his service pistol towards the front of Mr. Freeman's apartment; that is the first time the weapon is seen on video.⁸ Up until the shooting, Officer Yao's pistol remained unholstered. On numerous occasions he lowered the weapon while calling out to Mr. Freeman, who was still in the apartment.

After Officer Yao radioed the threats on his life, he yelled out, "Ethan, I am the police, you know me. I just saw you this morning, dude." In response, Mr. Freeman yelled, "It doesn't matter, I'm coming out there to kill you." Officer Yao repeated that he was a police officer and wanted to help, and advised Mr. Freeman that paramedics were on the way. Mr. Freeman, still inside his apartment, responded by advising that he was "not okay," and called the officer various derogatory names. The back-and-forth communication between Officer Yao and Mr. Freeman after the officer moved away from the apartment and while Mr. Freeman was inside his apartment lasted for about seventy seconds.

⁸ In his later interview, Officer Yao said that he could not recall if he first unholstered his service pistol while moving away from Mr. Freeman's apartment, or when he repositioned himself by the apartment.

While Officer Yao remained at his position away from Mr. Freeman's apartment, sounds consistent with breaking glass emanated from the apartment. In addition, dark fabric, like a curtain, was pushed outside the smashed window, consistent with Mr. Freeman clearing the window of remaining glass. Officer Yao yelled out, "Ethan stay in there." Despite that command, Mr. Freeman, still naked and bleeding, jumped outside through the broken window and fell to the ground. Photo D attached to this report shows Mr. Freeman just after he jumped through the broken window. Mr. Freeman quickly got up while saying, "You're dead," and immediately began walking towards Officer Yao.⁹

Officer Yao repeated his directive for Mr. Freeman to "stay in there," walked backwards away from Mr. Freeman, and as Mr. Freeman approached yelled out, "Ethan, stay back." Officer Yao continued to move backwards, and three separate times, with his pistol aimed at Mr. Freeman, screamed to "stay back." Instead, Mr. Freeman, despite a visible limp, continued to advance to where Officer Yao stood. At no point did Mr. Freeman pause, slow his pace, or change his direction, which was directly towards Officer Yao. Mr. Freeman's arms were swinging at his sides. According to what Officer Yao later reported, the officer did not believe that Mr. Freeman was holding anything in either hand.

As Mr. Freeman continued to close in on Officer Yao, the officer for a fifth time ordered him to "stay back." Mr. Freeman again continued towards the officer

⁹ In the video, something is seen attached to one of Mr. Freeman's lower legs as he approached Officer Yao. It is a pair of pants and a boot that he is wearing.

unabated. Officer Yao then fired two shots from his raised pistol in quick succession. Only about ten seconds elapsed in the time from when Mr. Freeman jumped out of his apartment from the broken window to when Officer Yao shot him.

Officer Yao later estimated Mr. Freeman's distance from him when he fired at between three to five yards. Mr. Freeman fell to the ground where he was shot, while Officer Yao continued to back up after he fired. Photo E1 attached to this report shows the moment when Officer Yao fired his weapon, and Photo E2 attached to this report shows about two seconds later. Using as a frame of reference in Photo E2 the ladder circled in yellow, which has a known length of about thirteen feet, Mr. Freeman was about ten feet from Officer Yao when the latter discharged his firearm. At that distance, continuing at the pace that he had been going, Mr. Freeman would have reached Officer Yao's position in a matter of a few seconds.¹⁰

Upon being shot, Mr. Freeman fell forward, with his hands landing underneath his body. After the shooting, Officer Yao did not approach Mr. Freeman, and repeatedly yelled at him to "show his hands" so that the officer could help him. Officer Yao immediately radioed for medical assistance, and

¹⁰ To further clarify, while Mr. Freeman's position as seen in the picture with the ladder is about where he was shot, Officer Yao's position is several feet farther away from where he was when he fired. Although Officer Yao was moving backwards while Mr. Freeman was advancing on him, Officer Yao later explained that he did not believe that he could back up much farther. Additionally, the body camera footage shows that Mr. Freeman was advancing on the officer at a far quicker pace than the officer was retreating.

when another police officer was available he asked the officer to retrieve his (Officer Yao's) medical kit from his patrol vehicle. Mr. Freeman remained prone on the ground. When the other officer returned, Officer Yao handcuffed Mr. Freeman and, when his hands were secure, rendered medical aid to him; from video footage it appears that Mr. Freeman had died at that point. Several minutes later, while Officer Yao was back at his patrol car, he explained to another officer that he shot Mr. Freeman because he believed that Mr. Freeman was going to kill him.

The video footage recovered from Officer Yao's patrol vehicle captured Officer Yao repeatedly walking backwards with his firearm drawn, Mr. Freeman approaching, and Officer Yao firing at Mr. Freeman. The camera inside the closed vehicle also recorded Officer Yao's repeated screams to Mr. Freeman to stay back before he fired. Photo F attached to this report are still pictures taken from the two vehicle cameras. The area circled in yellow shows Officer Yao when he fired, and the area circled in red shows Mr. Freeman when he was shot.

2. Eyewitness Accounts

Officer Yao gave a full interview as part of this investigation, as did the sole other eyewitness to the shooting, Mr. Freeman's landlord. Investigators also interviewed the first police officer on-scene after the shooting – who did not see or hear that event – as well as people who were familiar with Mr. Freeman and who

had interacted with him earlier in the day.¹¹ Because nobody other than Officer Yao and the landlord saw or heard any portion of the former's encounter with Mr. Freeman before the fatal shooting, only their accounts are summarized below.

a. Police Officer Yao

Officer Yao was interviewed on October 21, 2020. Officer Yao at the time of the shooting had been a member of the Thornton Police Department since 2017. His typical assignment was patrol, although he conducted some investigative work as well. Officer Yao had been a firearms instructor since about 2018, and also since about 2019 has trained other officers in the proper use of force, including the use of "less than lethal" weapons such as Tasers. Officer Yao is about 5'5" tall and weighs about 175 pounds.

In that interview, Officer Yao detailed his encounters with Mr. Freeman prior to October 19, earlier that day, and at the residence on Four Wheel Drive. As to the latter, Officer Yao's recollection of events were substantively consistent with events as captured on his body camera,¹² and will not be recounted here. The interview did address several matters, pertaining to Officer Yao's beliefs and thought processes as events unfolded, that are not directly depicted on the video

¹¹ Investigators also interviewed neighbors, but nobody reported hearing or seeing the shooting, or any of the events that immediately preceded or followed it.

¹² At the time of the interview, Officer Yao had not seen his body camera footage taken at the Four Wheel Drive residence. He had seen his body camera footage from his earlier encounter with Mr. Freeman at the school, because prior to responding to Four Wheel Drive he had prepared a report of the school encounter and had viewed the footage to assist in his preparation of the report.

footage and that are pertinent to the legal analysis of whether his deadly use of force was legally justified.

First, in the interview Officer Yao explained that he shot Mr. Freeman because he feared that Mr. Freeman was going to kill him. Officer Yao also frankly said that, when he used deadly force, he did not believe that Mr. Freeman was holding anything in his hands as he approached. As to why he fired on Mr. Freeman even though he had no actual or apparent weapons, Officer Yao stated that he believed that Mr. Freeman was going to follow through with his just-expressed threats to kill him:

I went to that position [withdrawing away from Mr. Freeman's apartment] to get some space and I told him. "Don't come through the window." Because in my mind with the fact I was giving these commands and his behavior if he came through that window after violently smashing it and threatening me. That made it pretty clear to me what his intent was once he got out that window.

As to those threats voiced by Mr. Freeman, Officer Yao explained that given his observations of Mr. Freeman's behavior accompanying those threats, he distinguished them from similar remarks that he had received from others in the past that he did not take seriously: "It didn't feel like somebody coming at me to, to just fight. It felt like I was, he was going to kill me."

Officer Yao discussed what he specifically feared from Mr. Freeman, who was unarmed. Officer Yao believed that when Mr. Freeman ultimately reached him, which the officer perceived to be a matter of seconds, Mr. Freeman would attempt to take his gun and shoot him with it. Officer Yao also did not believe that

he would be able to subdue Mr. Freeman in such a life-and-death struggle. In addition to Mr. Freeman's extreme behavior up to that point observed by Officer Yao, the officer saw that Mr. Freeman was covered in blood, which he believed would make Mr. Freeman difficult to restrain in the expected struggle. As recounted by Officer Yao in his interview:

The way [Mr. Freeman] was looking at me, it was, it's just these wide eyes. Just this – like this rage and I, I had a great rapport with Ethan and had been able to calm him and talk to him [earlier in the day]. And, like, I've, I've been in a couple use-of-force incidents or I've had people get really aggressive and act like they were probably about to hit me in the face. And, you know, like this might be when it, when you, when you think to yourself, this might be a fight like we might throw punches and grapple and it might be a fight and I know back-up's coming, so. I, I felt like he, he, he was like, he was like a wild animal I thought he was going to start trying to chew my face off if he had got that close to me. And with all the blood and he was talking about feces and everything like that I just knew if, if he started getting, you know, just the exposure of that. Trying to wrestle with him or anything it was going to be slippery, we're going to be fighting for my gun. And when he kept coming I made a, I made decision I had no other choice.

Another matter discussed by Officer Yao in his interview was his efforts to continue to diffuse the situation with Mr. Freeman by attempting to safely withdraw from the encounter when Mr. Freeman threw himself out of the apartment window. Officer Yao explained that when he saw Mr. Freeman outside, he backed up, "because I realize, 'O.k., he's out here now and I need to get some space.'" Officer Yao also detailed that while attempting to distance himself further from Mr. Freeman, he "start[ed] to lose [his] footing," and realized that he

was “running out of space . . . of anywhere to go,” and that he “wasn’t getting away” from Mr. Freeman, who was approaching quicker than he could retreat.

Officer Yao also discussed why he did not resort to the less-than-lethal weapons available to him when Mr. Freeman approached, namely, the Taser gun, O.C. spray, and baton that he carried on his duty belt. Officer Yao said that he did not believe that he had time to holster his pistol and retrieve any of the less-than-lethal alternatives before Mr. Freeman was on him, which would leave him defenseless from the anticipated attack. As Officer Yao explained:

I didn’t believe I could put my gun away. Every, every bit of training and instinct in my body told me, “Don’t put my gun back, like do not put my gun away.” Because I knew if I did I would probably be dead.

....

I processed his, his watching me and, and moving was that the second I started to move my firearm back to my holster was when he would make a move. And if I didn’t secure it in my holster, if I didn’t have that hand available it could have been a fight for my gun, it could have been a fight to keep his mouth off my throat.

Officer Yao also doubted that any of his less-than-lethal options would effectively incapacitate Mr. Freeman. According to Officer Yao, his interactions with Mr. Freeman earlier that day suggested that Mr. Freeman may be under the influence of drugs, a belief only reinforced by his highly erratic behavior and agitated demeanor. Moreover, Mr. Freeman exhibited an apparent elevated capacity to endure and ignore pain, having just forced himself through a broken

glass window and continued unabated towards the officer despite obvious open wounds.

b. Mr. Freeman's Landlord

Mr. Freeman's landlord was interviewed on October 19, 2020. He observed the encounter between Mr. Freeman and Police Officer Yao from a second-story window that had an unobstructed view of the encounter at the time beginning when Mr. Freeman left his apartment; he also could hear both Mr. Freeman and Officer Yao from his vantage point. Returning to Photo E2 attached to this report, it shows the window from where the landlord saw the shooting (circled in red). Photo G attached to this report shows the vantage point from that window; the ladder referenced earlier in the report for scale is circled in yellow. The landlord had known Mr. Freeman for several years, was aware of Mr. Freeman's mental health issues, and characterized his relationship with Mr. Freeman generally as casual and cordial.

The landlord first heard, but did not see, a verbal exchange between Mr. Freeman and another person. That other person was Officer Yao. The landlord heard Mr. Freeman call the officer derogatory words and otherwise speak aggressively. In contrast, the landlord described the officer as speaking in a "cool-headed" manner, "like he was his [Mr. Freeman's] bud."

From his house window, the landlord next saw a police officer on the lawn below, with his pistol drawn. The landlord then saw Mr. Freeman, who was naked and bloody "all over," walking from the area of his apartment. The landlord heard

Mr. Freeman say several times in substance, “I’m going to kill you.” The landlord also reported that he saw an object in Mr. Freeman’s hand as he approached the police officer; the landlord believed that it was the roasting fork that Mr. Freeman had menaced him with earlier in the day.¹³ Mr. Freeman was advancing directly on the police officer, who was backing up. Although Mr. Freeman was limping, the landlord saw that he was approaching the officer faster than the officer could retreat. The landlord heard the officer repeatedly order Mr. Freeman “back,” but Mr. Freeman continued to advance. The officer then fired on Mr. Freeman, who fell to the ground.

C. Autopsy Results

Deputy Chief Medical Examiner Mitchell Weinberg conducted an autopsy on Ethan Freeman on October 20, 2020. Mr. Freeman was about 5’3” tall and weighed about 123 pounds. That autopsy revealed two gunshot wounds that entered Mr. Freeman’s chest. Mr. Freeman’s manner of death was determined to be a homicide, with the cause of death the two gunshot wounds that he suffered. Mr. Freeman also had over a dozen lacerations to his hands and head, as well as numerous contusions and abrasions to various parts of his body.

Toxicology testing of Mr. Freeman’s blood revealed the presence of caffeine, nicotine, and THC (marijuana); there was no alcohol, narcotic, or

¹³ As discussed in more detail later in this report, the landlord’s report that Mr. Freeman was holding an object in his hand when he approached the police officer and was shot is erroneous. There is nothing to suggest that the landlord’s expressed belief was knowingly false rather than just mistaken.

narcotic metabolites present in his system. Testing also confirmed that Mr. Freeman had Hepatitis C.

D. Physical Evidence

Other police officers who arrived after the shooting entered Mr. Freeman's apartment to make sure that nobody was inside. Police officers had to force their way through the doorway into Mr. Freeman's apartment – the same doorway that Officer Yao had approached – because it had been barricaded from the inside. The apartment was in disarray, with many objects broken, including several pieces of wooden furniture. One of the windows by the entrance door was broken with the glass pushed outward, indicating that it had been broken from the inside of Mr. Freeman's apartment.

Two shell casings were recovered in the yard where Officer Yao discharged his service pistol. The weapon had a fourteen-round capacity, and upon its inspection after the fatal shooting it still contained twelve unfired rounds.

No apparent weapons – such as the pronged roasting fork seen wielded by Mr. Freeman by his landlord or the wooden furniture piece seen wielded by Mr. Freeman by Officer Yao – were found by Mr. Freeman's body or in the area where he walked while approaching Officer Yao.

IV. APPLICABLE LEGAL STANDARDS

New Hampshire's laws regarding self-defense, defense of others, and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer, like a private citizen, is justified in

using deadly force when he/she reasonably believes that such force is necessary to defend himself/herself or a third person from what he/she reasonably believes is the imminent use of deadly force. Under RSA 627:9, II, “deadly force” is defined as:

any assault . . . which the actor commits with the purpose of causing or which [the actor] knows to create a substantial risk of causing death or serious bodily injury.¹⁴

Although the use or attempted use of a weapon such as gun or a knife presents the most obvious example of deadly force, the law’s reference to “any assault” contemplates that deadly force can arise when no weapons are used or even threatened. *Compare, e.g.*, RSA 631:1, I(a) & (b) (setting forth different variants for first-degree assault, one that occurs when an actor “[p]urposely causes serious bodily injury to another” and another that occurs when the actor “[p]urposely or knowingly causes bodily injury to another by means of a deadly weapon.”). *See, e.g., State v. Pepin*, 156 N.H. 269, 272-73, 281-82 (2007) (sustaining first-degree assault conviction where “serious bodily injury” not inflicted by weapon).

As to the requirement that an actor using deadly physical force for lawful defensive purposes must reasonably believe that deadly force by another is imminent, the phrase “reasonably believes” means that the actor “need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real.” *State v. Gorham*, 120 N.H. 162, 163-64 (1980). The term

¹⁴ “‘Serious bodily injury’ means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body.” RSA 625:11, VI.

“reasonable” “is determined by an objective standard.” *State v. Leaf*, 137 N.H. 97, 99 (1993). Further, all the circumstances surrounding the incident should be considered in determining whether there was a reasonable belief that deadly force was necessary to defend oneself or another. *See id.* at 99; *Aldrich v. Wright*, 53 N.H. 398 (1873). The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or a police officer may still be justified in using deadly force if he/she reasonably believed that he/she was in imminent danger from the use of deadly force by another, even if, in fact, they were not, so long as the actor’s belief was objectively reasonable.

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

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

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

Id. at 396-97; *see also Ryburn v. Huff*, 565 U.S. 469, 477 (2010).

The Eleventh Federal Circuit has noted that:

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

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

That is because “the law does not require perfection – it requires objective reasonableness.” *Phillips v. Bradshaw*, No. 11-80002-CIV-MARRA, 2013 U.S. Dist. LEXIS 44646, at *55-56 (S.D. Fla. Mar. 28, 2013). Specifically, the law accounts for the often fast-moving nature of dangerous situations and the necessity of making decisions in less than ideal circumstances. *See Huff*, 565 U.S. at 476-77 (chastising lower circuit court for not “heed[ing] the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation”).

The analysis here begins with Officer Yao’s interview statement that he did not believe that anything was in Mr. Freeman’s hands when he shot him. Nor did Officer Yao ever suggest, let alone claim, that he ever believed that Mr. Freeman

was reaching for a weapon of his own. Thus, Mr. Freeman posed no actual or perceived threat to the officer from any weapon on Mr. Freeman's person.¹⁵

Although that fact certainly is germane to the assessment of the reasonableness of Officer Yao's conduct, it does not by itself answer the question as to whether the officer reasonably believed that deadly force by Mr. Freeman was imminent. As noted previously, deadly force under the justification statute encompasses "any assault . . . which [Mr. Freeman] commit[ted] with the purpose of causing or which [Mr. Freeman knew] to create a substantial risk of causing death or serious bodily injury." RSA 627:9, II.

The review of whether Mr. Freeman posed such a threat to Officer Yao at the moment when the officer fired his weapon requires careful scrutiny of all of the evidence gathered during the investigation to assess not only that threat as articulated by Officer Yao, but also whether the expressed threat was objectively reasonable. In analyzing these two separate matters, it is important to be mindful at the very outset that it is unreasonable for a law enforcement officer – like a private citizen – to use deadly physical force against someone who is unarmed and not dangerous. *See, e.g., Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Here, the former is not claimed, so analysis of Officer Yao's use of deadly physical force must focus on whether Mr. Freeman posed a danger to Officer Yao as set forth by

¹⁵ Although, as discussed later in this report, Officer Yao believed that Mr. Freeman could soon get access to a deadly weapon – the officer's own firearm – this case also does not present a scenario in which a claim is presented that lawful defensive deadly physical force was used against a person because the person had perceived ready access to a weapon independent of that possessed by the actor using deadly force, for example from inside a motor vehicle where the person was located.

law: whether Officer Yao reasonably believed that Mr. Freeman was imminently going to use deadly force against him.

V. ANALYSIS AND CONCLUSION

Based upon all the facts and circumstances of this case, the Attorney General's Office has concluded that Officer Yao was legally justified when he shot Mr. Freeman. That is because, at that moment, the peril posed to Officer Yao as articulated by him constituted the imminent use of deadly force by Mr. Freeman against him. And, upon a review of all of the evidence, that expressed fear was objectively reasonable.

First, Officer Yao explained in detail why he felt that his life was placed in imminent danger by Mr. Freeman. Specifically, Officer Yao recounted how when he encountered Mr. Freeman while outside the latter's apartment, Mr. Freeman was immediately hostile and belligerent. Then, when the officer withdrew a distance from the apartment, Mr. Freeman repeatedly threatened his life, forced his way from his apartment, and advanced on the officer. Officer Yao, gun drawn, repeatedly directed Mr. Freeman to stay away, but he did not. When Mr. Freeman continued to advance, Officer Yao said that he believed at that time that Mr. Freeman very well could gain control of his gun and use it to effectuate the repeatedly voiced threats to kill directed at him. That is why Officer Yao fired. As he stated both minutes after the shooting, and again in his interview, he believed that Mr. Freeman was going to kill him. Additionally, Officer Yao expressed fears that even if he were somehow able to subdue Mr. Freeman, which

he doubted, he still could suffer serious wounds in the expected life-and-death struggle and also faced exposure from Mr. Freeman's own bleeding wounds.

Those expressed beliefs are subjective, and must be closely scrutinized. Here, the contemporaneous recording of events between Officer Yao and Mr. Freeman, the account provided by the sole other eyewitness, and all of the other evidence gathered from the investigation supports the conclusion that Officer Yao faced the imminent use of deadly physical force from Mr. Freeman at the time when the officer fired his pistol.

Reviewing that evidence, to begin there was never any prior hostility directed at, or animus expressed towards, Officer Yao by Mr. Freeman in any of their prior interactions, either earlier that day or before. The recorded encounters from that same day reflect that Officer Yao was always cordial and polite. So too do they indicate that Mr. Freeman was never belligerent, confrontational, or violent. That is entirely consistent with Officer Yao's other past encounters with Mr. Freeman.

These prior interactions are important in several respects. First, they explain why Officer Yao proceeded by himself to Mr. Freeman's apartment, and why he did not have at the ready his available less-than-lethal weapons. The call for aid was consistent with what Officer Yao had encountered at the school – Mr. Freeman in apparent medical distress – and all prior interactions had always been nonhostile, nonviolent, and largely uneventful. There was no reason for Officer

Yao to believe that his encounter with Mr. Freeman at his apartment would be different in kind.

However, the reality facing Officer Yao when he reached Mr. Freeman's apartment was different. First was what he saw. Mr. Freeman was naked and bloody. He was openly masturbating in front of the officer, while at the same time brandishing a piece of wooden furniture. Viewed objectively, this was a startling and jarring sight.

Mr. Freeman's words also gave Officer Yao legitimate cause to elevate his concern. Mr. Freeman from the beginning was openly hostile and combative. He directly threatened Officer Yao's life. From the body camera footage, Mr. Freeman said no less than five times that he was going to kill the officer during a span of only a couple of minutes.

As to the other vitriol voiced by Mr. Freeman towards Officer Yao, harsh language and idle threats do not justify any lawful use of force, let alone the use of deadly physical force. And, the reality is that law enforcement is a profession in which exposure to such verbal unpleasantries may occur in any given callout. But the nonthreatening language used by Mr. Freeman is relevant to the use of force analysis in this case.

First, among the vulgarities hurled were those noting that the target of the language was "Asian," which is Officer Yao's race. This reflects Mr. Freeman's comprehension that he was speaking to Officer Yao. Thus, Mr. Freeman knew

that a police officer was outside his apartment. And yet Mr. Freeman persisted with direct threats to kill the officer.

Second, what Mr. Freeman said underscored that he was in a highly agitated and irrational state of mind. Mr. Freeman asked for assistance while at the same time threatening the person who said that he was there to help. Mr. Freeman also made comments that were patently bizarre and extreme – from his characterization of the nature of his injuries, to his claimed coprophagia, to his references to his genitalia. The nature of Mr. Freeman’s language was, like his appearance, starkly different to what Officer Yao had just encountered hours earlier, and placed in context that the threats voiced by Mr. Freeman were fueled by an irrational train of thought. So too like Mr. Freeman’s appearance did his language highlight the danger that Officer Yao faced.

In response to that danger, Officer Yao immediately attempted to diffuse the situation and calm Mr. Freeman down. He quickly withdrew several yards from Mr. Freeman’s apartment.¹⁶ Although Officer Yao retreated, he stayed close enough to maintain verbal contact with Mr. Freeman. He continued to calmly speak to Mr. Freeman, and assured him that requested medical attention was on the way and that he was only there to try to help.¹⁷

¹⁶ Under New Hampshire law, law enforcement officers have no duty to retreat. RSA 627:5. Accordingly, the analysis as to the reasonableness of Officer Yao’s use of deadly force does not address whether he had a duty to retreat before he fired his weapon.

¹⁷ Officer Yao also did pull out his service pistol. The weapon is first visible on the body camera footage after another direct threat to kill was voiced by Mr. Freeman, and as the officer reported by radio that his life was being threatened. To the extent that Mr. Freeman could have perceived the officer’s defensive action in pulling his gun as aggressive or threatening, Officer Yao drew and aimed his weapon out of Mr. Freeman’s line of sight. It also is conduct that would not permit any lawful use of deadly force by Mr.

Despite Officer Yao's immediate efforts to deescalate the encounter, additional unexpected, out-of-character (to Officer Yao), and extreme conduct by Mr. Freeman quickly and reasonably elevated the officer's sense of immediate peril. Mr. Freeman continued to smash out an already broken window and, while Officer Yao yelled at him to stay inside, hurled himself out of that window. There was no rational reason for him to do so. Mr. Freeman had been told that the medical assistance that he had requested was en route, and had been ordered to stay inside. Whether Mr. Freeman was required to obey that directive or not, the manner in which he chose not to was violent and alarming.

As soon as Mr. Freeman jumped outside, he reiterated his threat to kill Officer Yao – the last words that he voiced before being shot. He also did not stay by his apartment, but instead went immediately and directly to the person who he had again just threatened to kill, Officer Yao. Officer Yao in turn retreated further, and screamed at Mr. Freeman five separate times to stay back. Mr. Freeman did not, and instead rapidly closed the already short distance between he and the officer, although the officer continued to move back. The body camera footage shows that at no point did Mr. Freeman pause, slow down, or otherwise indicate any compliance with the repeated directives to stay away. He instead without reason, other than his previously-voiced intent to kill, continued directly towards Officer Yao.

Freeman. *See* RSA 629:9, IV (“The act of producing or displaying a weapon shall constitute non-deadly force.”).

The fact that a private citizen approaches a police officer, without more, does not justify any physical force, let alone the use of deadly physical force. That is not what happened here. Mr. Freeman approached despite numerous orders to stay back from someone who he knew to be a police officer, and who had his firearm visibly drawn. Just seconds beforehand, Mr. Freeman had jumped through a window, and the first and only words that he said as he did so was yet another point-blank threat to kill Officer Yao. Those repeated threats of deadly violence, viewed in the context of Mr. Freeman's accompanying violent and erratic behavior, reasonably would be taken as neither idle nor exaggerated. They support Officer Yao's expressed distinction from other similar threats that in the past he had not taken as true death threats. Mr. Freeman also appeared agitated, and approached the officer in a visibly extreme state: unclothed and covered in what reasonably could be assumed was his own blood. Mr. Freeman's behavior was openly menacing and unpredictable.

At that moment, and although unarmed, it is objectively reasonable to conclude that Mr. Freeman posed an imminent threat of deadly physical force to Officer Yao. Mr. Freeman was within seconds of physical contact with Officer Yao. Everything that Mr. Freeman had said and done up to that point at his apartment was consistent with the threats that he had voiced to kill Officer Yao. Moreover, Mr. Freeman had both opportunity and ability to carry out his death threats. He could gain control of the officer's gun, and use it against him. Although Mr. Freeman weighed less than Officer Yao, their size discrepancies

were not so pronounced that the officer, who was alone, would have held an advantage in that physical struggle. That is particularly so given that Mr. Freeman was naked, bloody, and unpredictable in his behavior, all of which would have hindered the officer's ability to restrain him. So too did Mr. Freeman exhibit extreme resiliency and determination. He had just thrown himself through broken glass and without hesitation advanced on the officer covered in blood and limping.

Even if Mr. Freeman did not follow through on his repeated voiced threats to kill, any struggle reasonably could constitute his use of deadly physical force against Officer Yao. Again, returning to the legal standard, deadly physical force constitutes "any assault . . . which the actor commits with the purpose of causing or which [the actor] knows to create a substantial risk of causing death *or serious bodily injury*." (Emphasis added). Under the circumstances reasonably believed by Officer Yao, a struggle certainly would have created a substantial risk of serious bodily injury to him. In addition to gunshot wounds inflicted by the officer's own pistol, Mr. Freeman in his agitated and erratic state could have inflicted serious bodily injury even without a weapon.

For these reasons, Officer Yao's expressed belief that Mr. Freeman was going to kill him was objectively reasonable. So too does the evidence support the conclusion that even were the perceived peril of death not imminent – which it was – Mr. Freeman nevertheless posed an imminent and substantial risk of serious bodily injury to Officer Yao. Consequently, from what Officer Yao knew, saw, and heard, at the time when he shot Mr. Freeman be reasonably believed that Mr.

Freeman was about to use deadly force against him. That supports the officer's own, responsive lawful use of protective deadly force.

Accordingly, Police Officer Matthew Yao of the Thornton Police Department was legally justified in using deadly force against Ethan Freeman, and no criminal charges will be filed against him as a result of Mr. Freeman's death.