



STATE ATTORNEY'S OFFICE  
FOURTH JUDICIAL CIRCUIT OF FLORIDA

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January 16, 2019

*Sent via Hand Delivery and Electronic Mail to Mike.Williams@jaxsheriff.org.*

Sheriff Michael Williams  
Jacksonville Sheriff's Office  
501 E. Bay St.  
Jacksonville, FL 32202

Re: Shooting Investigation of Steven Smith

Dear Sheriff Williams:

Our office has completed its review of the shooting investigation of Steven Smith conducted by the Jacksonville Sheriff's Office. It is our legal opinion that the shooting of Steven Smith was justified under applicable Florida law. Please find enclosed a copy of our report that outlines and explains the reasons for our opinion.

Should you have any questions please do not hesitate to contact me.

Best Regards,

Melissa W. Nelson

Enclosures

cc: Phillip Vogelsang, Esq., Attorney for Sgt. Will (delivered via electronic mail to pvogelsang@fop530.com)

Fraternal Order of Police  
5530 Beach Blvd. Jacksonville, FL 32207  
Sgt. Dan Janson, Jacksonville Sheriff's Office

# The Steven Smith Shooting Investigation



State Attorney's Office  
Fourth Judicial Circuit of Florida  
Duval County

January 14, 2019

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## EXECUTIVE SUMMARY

The non-deadly officer-involved shooting of Steven James Smith took place on Friday, November 3, 2017 at 5:14PM. On that date and time, Sgt. Andrew Will of the Jacksonville Sheriff's Office used his JSO-issued Glock 17 to shoot Steven Smith near the eastbound crest of the Wonderwood Bridge (State Road 116 at the Intercoastal Waterway). Steven Smith suffered two non-deadly gunshot wounds – one to the left side of his abdomen, and the other to his left wrist.

As the patrol sergeant on scene, Sgt. Will stood in a tactically complicated position near the crest of the Wonderwood Bridge as an unresponsive Steven Smith, armed with a firearm, walked towards police, firefighters, and civilians. Knowing his history of mental illness, propensity towards violence, and cognizant of the many people whose lives were in danger, Sgt. Will justifiably shot Steven Smith.

This Office has rendered the legal opinion that Sgt. Will's actions were lawful and justified as defined in applicable Florida law. We reached this opinion after a thorough review of the evidence. This report outlines the basis for that opinion.

### **I. THE STATE ATTORNEY'S ROLE IN POLICE-INVOLVED SHOOTINGS**

Melissa W. Nelson assumed the office of the State Attorney for the Fourth Judicial Circuit (the "Office") on January 3, 2017. Under the Florida Constitution, she is the chief state law enforcement official in the circuit, which covers Duval, Clay, and Nassau counties. The State Attorney has no administrative authority or control over the personnel of the county sheriffs' offices or other policing departments within the jurisdiction. But, the State Attorney is a state official and, therefore, does not answer to the municipal or county governments within the judicial Circuit, including the county sheriffs and other policing departments. The authority and control of our municipal and county policing agencies reside with each municipal or county government, not the State Attorney.

Indeed, the American Bar Association's Criminal Justice Standards specifically note, "The prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim. When investigating or prosecuting a criminal matter, the prosecutor does not represent law enforcement personnel who have worked on the matter and such law enforcement personnel are not the prosecutor's clients." Am. Bar Association Criminal Justice Standards for the Prosecution Function, Std. 3-1.1 (4<sup>th</sup> Ed. 2017).

This Office strives to maintain that independence.



In fulfilling her mandate, the State Attorney employs investigators who are sworn law enforcement officers. The investigative capacity of the State Attorney's Office, though, is limited. The primary function of the office is the prosecution of criminal offenses within the circuit, and investigative resources within the Office primarily support that function. The Office has no current ability to process crime scenes, conduct forensic analysis on evidence, and rarely, if ever, conducts primary investigations in homicide cases. For officer-involved shooting cases, most law enforcement agencies within the Circuit use the Florida Department of Law Enforcement ("FDLE") to investigate cases that result in death or serious bodily injury from the use of force by their officers. The largest law enforcement agency within the circuit, the Jacksonville Sheriff's Office ("JSO"), does not. Instead, JSO assigns these cases to the JSO Cold Case Squad, a highly trained, independent, and experienced group of death investigators who also handle JSO's unresolved homicide cases as well as all in-custody deaths. While part of JSO, the scope of officer involved shooting investigations conducted by the Cold Case Squad ("OIS Investigators") is broader than what FDLE investigates. Unlike FDLE, JSO investigates all officer-involved shootings ("OIS"), regardless of whether death or great bodily injury results.

By history and custom, law enforcement agencies and departments in this Circuit have called upon the State Attorney's Office to independently review investigations of officer-involved shootings. That review is independent of the actual investigation and is designed to treat officer-involved shootings with the serious, objective, and independent review necessary when any human life is taken, particularly when law enforcement officers are involved.

Historically, a single prosecutor in this Office would review the OIS investigation and present his or her findings to the elected State Attorney, who would then issue a letter or memorandum of disposition to the sheriff or chief of the involved agency. As discussed below, those procedures have now changed under State Attorney Nelson's administration.

## II. THE NATIONAL CONTEXT OF POLICE-INVOLVED SHOOTINGS

Current research shows that between 2014 and 2017, law enforcement officers used force resulting in death about 1,000 times per year.<sup>1</sup> Police shootings have become increasingly visible on a nationwide scale. Improvements and advancements in technology like "smart" phones, inexpensive surveillance equipment, mounted-car cameras, and officer-worn body cameras provide real-time depictions of law-enforcement officers using force when apprehending and interacting with suspects. With the echoing effects of social media, images of

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<sup>1</sup> John Sullivan, *Number of Fatal Shootings by Police is Nearly Identical to Last Year*, Wash. Post, July 1, 2017, [http://www.washingtonpost.com/investigations/number-of-fatal-shootings-by-police-is-nearly-identical-to-last-year/2017/07/01/98726cc6-5b5f-11e7-9fc6-c7ef4bc58d13\\_story.html?utm\\_term=.c5050ed48e85](http://www.washingtonpost.com/investigations/number-of-fatal-shootings-by-police-is-nearly-identical-to-last-year/2017/07/01/98726cc6-5b5f-11e7-9fc6-c7ef4bc58d13_story.html?utm_term=.c5050ed48e85)



these events have become all too prevalent, affecting the full spectrum of our nation's communities, from big, urban cities to small, rural towns. Uses of deadly force in places like Ferguson, MO, North Charleston, SC, Cincinnati, OH, and elsewhere have quickly become national media events, have fostered heightened civil unrest, and have garnered significant civil protest and debate.

Against this backdrop, while police work has become increasingly public, police work also has become increasingly more dangerous. The number of law enforcement officers injured or killed in the line of duty continues to increase. According to the FBI's National Press Office, 41 law enforcement officers died from injuries incurred in the line of duty during felonious incidents in 2015. In 2016, 66 officers were slain in the line of duty by criminal suspects in 2016, a 61 percent increase over 2015.<sup>2</sup>

Florida is one of the five most deadly states in the country for law enforcement officers. Jacksonville officers have not been immune from this violence. The Jacksonville Sheriff's Office reported that, in the history of its agency, over 60 officers have died in the line of duty, with 32 of them killed by gunfire. In recent years, a Clay County Sheriff's Deputy was killed while executing a search warrant, and a Nassau County Sheriff's Deputy lost his life trying to apprehend an alien who entered the country illegally.

Policing work is dangerous. Our courts have long recognized this reality and are extremely reluctant to substitute hindsight for on-the-spot, split-second decisions made by officers in the line of duty. "[The Constitution] does not require a police officer to wait until a suspect shoots to confirm that a serious threat of harm exists... And no court can expect any human being to remain passive in the face of an active threat on his or her life" *Elliott v. Leavitt*, 99 F.3d 640, 643 (4th Cir. 1996). Put differently, "[t]he Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm." *Id.* at 641. The United States Supreme Court has similarly counseled 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 v. Connor*, 490 U.S. 386, 396 (1989).

### III. THE PROCESS NOW EMPLOYED BY THE STATE ATTORNEY'S OFFICE

Local prosecutors' offices around the country have employed a number of localized responses to investigate and review officer-involved death cases. Following much study and review of how other offices around the country respond to these matters, as well as review of

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<sup>2</sup> 2017 Midyear Officer Fatalities Report, National Law Enforcement Officers Memorial Fund, <http://www.nleomf.org/assets/pdfs/reports/fatality-reports/2017/2017-Mid-Year-Officer-Fatalities-Report-FINAL.pdf>



current best practices,<sup>3</sup> the State Attorney has established a team of experienced prosecutors and investigators to respond to, review, and evaluate every officer-involved death in this Circuit (the "OIS Review Team" or "Team"). The OIS Review Team captures the best talent and insights of many of the most experienced prosecutors and investigators in the Office and the Jacksonville area. In addition to the significant homicide experience each team member possesses, a number of Team members have unique experiences investigating officer-involved shootings and participating in the investigation and prosecution of federal civil rights offenses. Additionally, the Division Chief of the Office's Human Rights Division is an integral part of the Team.

In terms of day-to-day functioning, the prosecutors and investigators on the Team take part in a rotating schedule and are available to respond to any officer-involved death in the circuit. Minimally, when an officer-involved death takes place, a prosecutor on the team is contacted by the investigating law enforcement agency (either FDLE or JSO). That prosecutor becomes the primary prosecutor in charge of ensuring the integrity of the investigation and is charged with making initial contact with investigators on the scene, reviewing the scene, ensuring all appropriate evidence is collected and processed, and conducting whatever interviews and taking whatever witness statements are necessary. That prosecutor can request additional investigative assistance from one or more investigators on the team, if needed.

Although the State Attorney's investigative resources do not permit the State Attorney to conduct full-blown scene investigations, Florida law provides the State Attorney with extremely broad investigative subpoena powers. Section 27.04, Florida Statutes, grants the State Attorney all of the mandatory process of the Courts of this circuit to command persons throughout the state to appear and provide testimony in these matters. Florida courts "have repeatedly held that the state attorney acts as a one-person grand jury in carrying out investigations into noncapital criminal conduct, and the state attorney must be granted reasonable latitude in that role." *See, e.g., State v. Investigation*, 802 So.2d 1141, 1144 (Fla. 2d DCA 2001); *see also Doe v. State*, 634 So.2d 613, 615 (Fla.1994); *Imparato v. Spicola*, 238 So.2d 503, 506 (Fla. 2d DCA 1970); *State v. Nat'l Research Sys., Inc.*, 459 So.2d 1134, 1135 (Fla. 3d DCA 1984); Op. Att'y Gen. Fla. 94-86 (1994).

Thus, while the function of the State Attorney is not to conduct the primary investigation into officer-involved shootings, the State Attorney is an independent Constitutional officer who functions separate and apart from law enforcement agencies conducting these investigations. Unlike the law enforcement agencies, the State Attorney has

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<sup>3</sup> See Ass'n of Prosecuting Attorneys, *21st Century Principles of Prosecution: Peace Officer Use of Force Project*, APAINC.ORG, (Mar. 9, 2017) <http://APAINC.org/peace-officer-use-of-force/>.



subpoena powers and can subpoena testimony and records that the investigating agencies cannot.

Once the investigating agency completes its investigation, the assigned prosecutor and investigator receive final reports from the investigating agency and then present the case to the entire OIS Review Team for review. The Team-review serves as one additional check and balance to ensure that the investigation is thorough, and the conclusions reached are sound in light of the facts and the applicable law. The entire OIS Review Team then makes a non-binding recommendation to the State Attorney, who has ultimate authority to issue our Office's opinion on the matter.

Once a report like this is issued, the investigating agency has reviewed the matter, an experienced prosecutor and investigator have reviewed the matter, a full team of experienced prosecutors and investigators have reviewed the matter, and the elected State Attorney has reviewed the matter. These multiple levels of review highlight the importance this Office attaches to making sure the opinions we render in these cases are thorough, correct, sound, and reliable.

This Office also seeks to ensure that its conclusions and reasoning related to OIS reviews are transparent. To this end, the Office has already undertaken a review of all public records to redact them according to the law. Additionally, the Office is releasing all public records related to this review concurrently with this report.

#### **IV. OUR ETHICAL OBLIGATIONS AS LAWYERS AND PROSECUTORS**

Prosecutors in the State Attorney's Office are members of the Florida Bar. As such, we are governed by the Rules of Professional Conduct of the Florida Bar. Rule 4-3.8 applies exclusively to prosecutors and provides, in part, that a prosecutor shall "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." Simply put, a Florida prosecutor cannot institute charges that the prosecutor knows are not supported by probable cause.

Probable cause is the minimal standard that ensures our decisions are ethical. We also strive to follow additional guidance from the National District Attorneys' Association, the Association of Prosecuting Attorneys, and the American Bar Association. The National District Attorneys' Association's National Prosecution Standards require "a reasonable belief that charges can be substantiated by admissible evidence at trial." Nat'l District Attorney's Ass'n, Nat'l Prosecution Stds., Std. 4-2.2. The American Bar Association's Criminal Justice Standards for the Prosecution Function in Standard 3-3.9 provides similar guidance. That standard notes,



"A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction."

In conclusion, our Office does not institute or maintain criminal charges against a person because a person or group wants us to do so. We only institute and maintain criminal charges when competent, admissible evidence provides us with a concrete belief that a reasonable probability of conviction after trial exists. We apply this same standard to any matter we investigate. The subject-matter of the investigation makes no difference to how we handle matters. Put simply, the subject-matter of the offense plays no role in our independent assessment of the facts of the case and the applicable law.

## V. POTENTIAL OPINIONS

This report is a summary of the legal framework for our decision, the findings of our independent review, and the factual and legal basis for our opinion. Our legal opinion is just that—an opinion based upon our collective legal knowledge, education, training, and experience, taking into account all the facts that we currently know.

Our opinion necessarily is limited to the application of Florida criminal laws to the facts. We offer no opinion on matters such as internal administration, officer staffing, officer tactics, officer training, policing procedures, compliance with sheriff's or chief's directives and office policies, or similar issues. Those matters are beyond our expertise and the scope of this review.

When rendering an opinion on matters like this, our opinion will take one of three forms. First, our opinion may be that a particular shooting by an officer was justified. When we render this opinion, we believe that the known facts and circumstances of the case leave little or no doubt that the officer's actions, taken in light of all the available evidence, and when considering the totality of the circumstances known to the officer at the time, were "justified" within the meaning of Florida law.

Second, our opinion may be that no reasonable probability of conviction exists. When we render this opinion, we are unable to affirmatively say whether, in our opinion, the officer's actions were justified or not justified, but the evidence, lack of evidence, or conflicts in the evidence establish reasonable doubt about whether the shooting was justified or not. When reasonable doubt exists about whether a shooting was justified or not, a reasonable probability of conviction necessarily does not exist. When we render this opinion, we believe that the likely outcome of any criminal trial would be an acquittal.

Finally, our opinion may be that a particular shooting was not justified, and we can prove the shooting was not justified beyond a reasonable doubt. When this happens, we will



present the facts of the case to a grand jury and seek an indictment for the appropriate criminal violation.

## VI. FLORIDA USE OF FORCE LAW

A number of Florida statutes address the use of force generally and by law enforcement officers acting in the course and scope of their official duties specifically. Some of these are not relevant to the investigation into this matter. Accordingly, these will not be discussed in any detail. However, this office has prepared a white paper titled *Authorized Use of Force by Law Enforcement Officers in Florida* that more fully outlines Florida's Use of Force laws. That paper is available upon request.

### A. Justification Generally

While the use of force to defend oneself is often referred to as "self-defense," the appropriate legal term is "justification." Accordingly, the question this Office must answer in any officer involved shooting is whether the use of deadly force was justified under the law.

Section 782.02, Florida Statutes, states, "The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her." Fla. Stat. § 782.02 (2017). Similarly, Section 776.012, Florida Statutes, permits the use of deadly force when a person "reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony."<sup>4</sup>

When considering whether the use of force was justifiable, the law does not require the danger be real, just that the danger appeared so. "Whether [a person] was justified in the use of deadly force, you must consider the circumstances by which he or she was surrounded at the time the force was used. The danger need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, [the person] must have actually believed that the danger was real." Fla. Std. Jury Instrs. in Crim. Cases 3.6(f) (2017).

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<sup>4</sup> Forcible felonies are "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Fla. Stat. § 776.08 (2017). In a recent opinion, *State v. Peraza*, 266 So.3d 937 2017 WL 3730352 (Fla. 4th DCA 2017), Florida's Fourth District Court of Appeal ruled that law enforcement officers enjoy the same benefit of these general justification laws that ordinary Florida citizens do.



These principles of justification apply to any case. Florida law, however, provides additional justification to law enforcement officers.

## **B. Justification for Law Enforcement Officers**

Law enforcement officers are specifically permitted to use force, including deadly force, in two officer-involved situations: making arrests and preventing escapes. Section 776.05, Florida Statutes, governs the use of force by law enforcement officers when making an arrest. A law enforcement officer need not retreat or desist from making an arrest simply because a person resists or threatens to resist the arrest. Namely, a law enforcement officer is justified in using any force:

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- (2) When necessarily committed in retaking felons who have escaped; or
- (3) When necessarily committed in arresting felons fleeing from justice.<sup>5</sup>

Fla. Stat. § 776.05 (2017). Overarching this statutory provision is the principle that, to be justified, force must be reasonably necessary under the particular circumstances of the case.

## **VII. THE FACTS OF STEVEN SMITH'S SHOOTING INVESTIGATION**

### **A. General Overview**

The non-deadly officer-involved shooting of Steven James Smith took place on Friday, November 3, 2017 at 5:14PM. On that date and time, Sgt. Andrew Will of the Jacksonville Sheriff's Office used his JSO-issued Glock 17 to shoot Steven Smith near the eastbound crest of the Wonderwood Bridge (State Road 116 at the Intercoastal Waterway). Steven Smith suffered two gunshot wounds – one to the left side of his abdomen, and the other to his left wrist.

At the time of the shooting, the responding prosecutor from this office was Assistant State Attorney Lara Zaroulis Mattina ("ASA Mattina").

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<sup>5</sup> In *Tennessee v. Garner*, 471 U.S. 1, 11 (1985), the United States Supreme Court addressed the use of deadly force against a fleeing felon. The Court noted that "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force."

Our evaluation has been comprehensive. It has included eyewitness interviews, review of the involved officer's written statement, review of medical findings, review of all available radio traffic and dispatch records that surround the events that lead to the shooting, review of all available police reports surrounding the shooting, and review of all available police reports that surround other, related criminal events. The key facts and circumstances of the shooting and evidence we have reviewed are detailed in this report.

## **B. Steven Smith's Background and History**

Steven James Smith was born on August 28, 1985, and has a long and documented history of mental illness. He served in the United States Marine Corps (USMC) for seven years and carries with him a diagnosis of Post-Traumatic Stress Disorder (PTSD). In the course of this investigation, Steven Smith's wife, Brienna Smith, described her husband as a victim of early childhood trauma in addition to a combat survivor. She told police that Steven Smith suffers daily nightmares from his deployment to Iraq in 2006. Additionally, she described her husband's childhood as colored by abuse and neglect, the death of his father when Steven Smith was eight years of age, and the instability caused by the drug and alcohol abuse of adults in his life. By sixteen years of age, Steven Smith was living independently. Anecdotal information gleaned from Brienna Smith suggests that Steven Smith has had multiple involuntary hospitalizations for mental health evaluations (through the Baker Act), the earliest of which may have occurred when Steven Smith was only eight-years-old.

At this time of this officer-involved shooting, Steven Smith had recently been referred to Veterans' Court after his arrest on two counts of Aggravated Assault on a Law Enforcement Officer and two counts of Battery on a Law Enforcement Officer stemming from a September 18, 2017 criminal episode. On September 18, 2017, Officers M. Meissner and D. Busekrus were dispatched to a call regarding a domestic battery perpetrated by Steven Smith upon his wife. Upon Officers Meissner and Busekrus's arrival to the Smith residence, Mrs. Smith explained that her husband was mentally ill, had battered her after a verbal argument, and had fled their home in his vehicle. Mrs. Smith reported that Steven Smith fled the home after she armed herself with a firearm and fired a warning shot in the house. While the officers were talking with Mrs. Smith at the edge of the driveway near the roadway, Steven Smith drove toward them in his Ford Explorer at a high rate of speed. The officers successfully jumped out of the way of the vehicle, and Steven Smith continued driving his vehicle erratically, parking it in the front yard. Then, Steven Smith got out of the vehicle and began screaming repeatedly at the officers to kill him. Post-arrest, Steven Smith acted out irrationally and violently, kicking and banging his head in the back of the patrol car while screaming at the officers on scene to kill him. While officers attempted to restrain Steven Smith, he battered Officers Busekrus and



Fitzgerald. After being booked in the Duval County Jail, Steven Smith posted bond and was released. Given his documented history of mental illness and his status as a combat veteran, Steven Smith's charges were initially referred to Veterans' Court. (After this shooting, Veterans' Court declined Steven Smith's participation. His September 18, 2017 arrest charges were processed through the court system, and he is currently on probation.)

### **C. Sergeant Andrew Will's Background and History**

Sgt. Will joined the Jacksonville Sheriff's Office on July 28, 2008. At the time of the shooting, Sgt. Will was a nine year veteran of JSO. On November 26, 2016, he became a supervising sergeant. This incident is his only officer involved shooting.

### **D. The Shooting**

The non-deadly officer-involved shooting of Steven James Smith took place on Friday, November 3, 2017 at 5:14PM. On that date and time, Sgt. Andrew Will of the Jacksonville Sheriff's Office used his JSO-issued Glock 17 to shoot Steven Smith near the eastbound crest of the Wonderwood Bridge (State Road 116 at the Intercoastal Waterway). Steven Smith suffered two non-deadly gunshot wounds – one to the left side of his abdomen, and the other to his left wrist.

During the late afternoon hours of November 3, 2017, Steven Smith, who had become non-compliant with his psychotropic medication regimen in recent days, became physically violent with his wife. After barricading herself in her bedroom to protect herself, Mrs. Smith saw her husband leave their residence in his Ford Explorer, armed with a black handgun. Immediately, Steven Smith began driving erratically and dangerously. He hit multiple items of personal property, including a car, a mailbox, a tree, and a lamp. Several hit and run calls describing Steven Smith's vehicle and a call of a mentally ill person were successively called into JSO. Steven Smith proceeded driving erratically onto the Wonderwood Bridge. Drivers on the bridge observed Steven Smith's vehicle hitting the side bridge barriers until it became disabled near the crest of the Wonderwood Bridge.

As officers traveled to respond to the Wonderwood Bridge, several of them connected that the suspect vehicle disabled on the bridge which had been involved in the successive hit and run crashes matched the description of Steven Smith's vehicle that had been involved in the September 18, 2017 criminal episode. Many of the same officers who responded to the September 18, 2017 incident, and who personally came in contact with Steven Smith's violent behavior during an episode of mental instability, reported over police radio that Steven Smith was mentally ill, violent, and known to carry a firearm.



While his vehicle was disabled near the crest of the Wonderwood Bridge, Steven Smith remained in the front seat of his vehicle. Although he was clearly conscious, witnesses report that he appeared dazed, possibly intoxicated, and non-responsive to external stimuli. When officers arrived on the bridge they repeatedly commanded Steven Smith over the PA system to get out of his vehicle. Steven Smith remained non-responsive to these commands for several minutes. Finally, Steven Smith opened the driver's seat of his car armed with his firearm and walked towards the officers who had tactically blocked the eastbound lane of travel on the Wonderwood Bridge (members of JFRD and civilians remained behind this JSO blockade on the bridge). Officer immediately began yelling at Steven Smith to drop his firearm. Despite these commands, Steven Smith continued to walk towards the officers with his firearm pressed against the underside of his chin. As Steven Smith continued to walk in a dazed state, non-responsive to officers' commands to drop his gun, Sgt. Will fired two non-deadly shots at Steven Smith at 5:14PM with his JSO-issued Glock 17. Steven Smith suffered two gunshot wounds – one to the left side of his abdomen, and the other to his left wrist.

#### **E. Scene Investigation and Physical Evidence**

The discreet area of the shooting scene was the eastbound lane near the crest of the Wonderwood Bridge. This area was sequestered consistent with JSO protocol by the use of crime scene tape and uniformed officers. The shooting scene consisted not only of the eastbound roadway of the Wonderwood Bridge but also several marked patrol cars and civilian vehicles within the perimeter. This crime scene area was processed by crime scene detectives with JSO. Steven Smith was immediately transported by JFRD for medical treatment at Memorial Hospital. His gun, however, remained at the scene and was photographed by crime scene detectives and then collected. Steven Smith's vehicle was also photographed at the scene and showed significant signs of damage, consistent with the multiple reports of hit and run traffic crashes that his vehicle was involved in before it became disabled on the Wonderwood Bridge.

Included below are some of the photographs of the scene taken by an assigned crime scene detective:



Photos of damage done by Steven Smith's hit and run traffic crashes:



Photo 1 – Light pole damaged by Steven Smith during hit and run traffic crash



Photo 2 – Property damaged by Steven Smith during hit and run traffic crash





Photo 3 – Tree damaged by Steven Smith during hit and run traffic crash



Photo 4 – Mailbox damaged by Steven Smith during hit and run traffic crash



Photographs of the crime scene on the Wonderwood Bridge:



Photo 5 – Aerial view of the Wonderwood Bridge

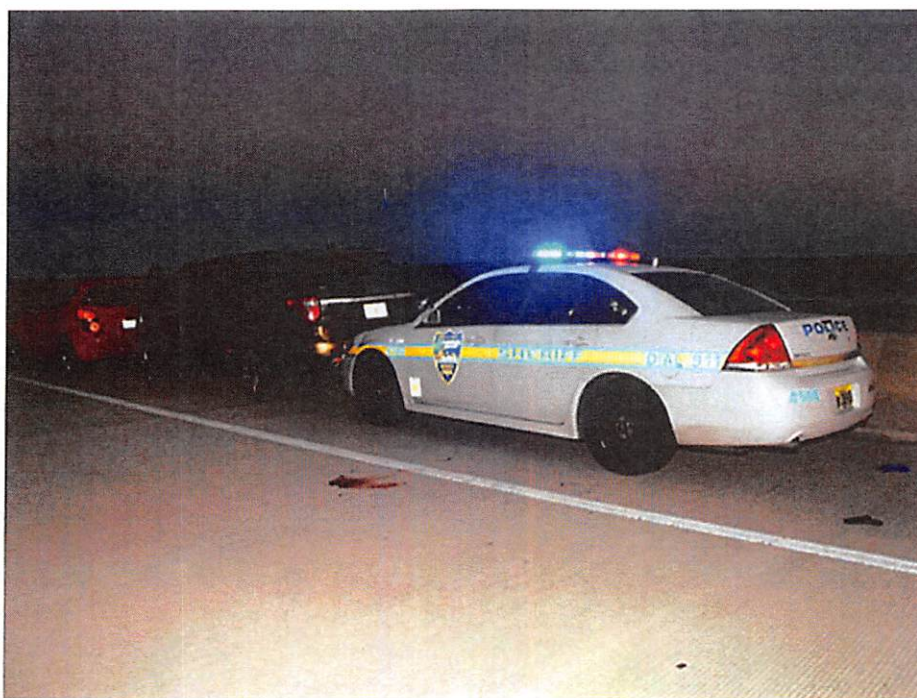


Photo 6 – Steven Smith's disabled vehicle flanked by civilian and marked JSO vehicles





Photo 7 – Steven Smith's disabled vehicle, front view



Photo 8 – Steven Smith's disabled vehicle, front view, close-up





Photo 9 – Steven Smith’s gun as found on scene by investigators

## G. Statements of Key Witnesses

### 1. Sgt. A. C. Will

Sgt. Will provided a written statement through his Fraternal Order of Police representative.<sup>6</sup> In his statement, Sgt. Will explained that on November 3, 2017 around 4:45PM, he was notified over police radio of multiple hit and run crashes involving a mentally ill person. Based on the nature of this calls and their physical locations, Sgt. Will, who responded to Steven Smith’s September 17, 2018 criminal episode, surmised, and later confirmed, that Steven Smith was the driver. Through his prior interaction with Steven Smith and through notifications by other police officers over the police radio, Sgt. Will was aware before he arrived at Wonderwood Bridge that Steven Smith had a history of mental illness, violent interaction with law enforcement, suicidal ideation, and firearm possession.

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<sup>6</sup> A full copy of Sgt. Will’s written statement is included as Exhibit 1 to this report.



Once on scene near the crest of the Wonderwood Bridge, Sgt. Will observed Steven Smith awake but non-responsive in the driver's seat of his disabled, severely damaged Ford Explorer. After several minutes of unheeded commands to get out of the vehicle by law enforcement, Steven Smith opened the driver's side door and exited with his firearm pressed against the underside of his chin. Officers repeatedly yelled to Steven Smith to "drop the gun," but Steven Smith continued to walk in a dazed state towards the officers and the JFRD members and civilians behind them. As Steven Smith continued to walk towards the people on the bridge armed with his firearm, Sgt. Will believed that he, his fellow officers, JFRD members, and civilians were all immediate threat of great bodily harm or death. As such, Sgt. Will fired two shots at Steven Smith, who immediately fell to the ground and was treated by JFRD.

## **2. Sergeant A. C. Ardizzoni**

Sgt. Ardizzoni reported that prior to his arrival at the Wonderwood Bridge multiple hit and run traffic crash calls had been reported in the area, all involving a grey Ford Explorer. Sgt. Ardizzoni had responded to the September 18, 2017 criminal episode in which Steven Smith had been arrested for two counts of Aggravated Assault on a Law Enforcement Officer, two counts of Battery on a Law Enforcement Officer, and one count of Domestic Battery. Based on the geographical area of the hit and run reports, the description of the suspect vehicle, and the description of the hit and runs being reported through dispatch, Sgt. Ardizzoni connected that Steven Smith was likely the driver of the subject Ford Explorer. After verifying through a check of the subject vehicle tag number that Steven Smith was in fact the driver, Sgt. Ardizzoni warned all the responding law enforcement officers over the police radio that Steven Smith had been aggressive with law enforcement in September 2017, such that he had been arrested on two counts of Aggravated Assault on a Law Enforcement Officer and two counts of Battery on a Law Enforcement Officer.

After Sgt. Ardizzoni arrived on scene, he observed Steven Smith's vehicle parked behind a red vehicle. Responding officers had positioned their patrol vehicles to block Steven Smith's vehicle in a stationary position. Sgt. Ardizzoni reported that patrol officer then began giving loud verbal commands over the PA system to Steven Smith to exit his vehicle. Eventually, Steven Smith exited his vehicle pointing a back handgun against and underneath his chin. Officers then repeatedly commanded Steven Smith to drop his weapon, but, per Sgt. Ardizzoni, Steven Smith continued to walk towards the officers and the civilians who were standing behind the officers on the blocked Wonderwood Bridge. At this point, Sgt. Ardizzoni reports that he heard two gunshots, and Steven Smith fell to the ground. JSO secured Steven Smith, and JFRD, who were already on scene, immediately began treating and transporting him.



### 3. Officer T. C. Mitlyng

Officer Mitlyng reported to investigators that he and Officer M. D. Moore were at the gas pumps at Saint Johns Bluff Road when he heard over dispatch two calls concerning hit and run crashes and one call concerning a mentally ill person. These calls all referenced the same geographic area (Blue Eagle Road and Nesting Eagle Road) and described the subject vehicle (a grey SUV). Officer Mitlyng told investigators that he heard another officer relay over the radio that these calls appeared to be related to an earlier incident in which the subject had attempted to "commit suicide by cop." Additionally, per Officer Mitlyng, that officer further stated over the radio that the subject was known to carry a firearm with him.

Officer Mitlyng stated that he and Officer Moore then began driving towards the location detailed in the calls for service. En route, Officer Mitlyng heard a traffic crash with injuries call from the Wonderwood Bridge reported over the radio involving the same grey SUV. Officers Mitlyng and Moore then responded to the Wonderwood Bridge.

Officer Mitlyng told investigators that he and Officer Moore were the first officers on scene. Seconds later, Sgt. Will arrived at the bridge. Officer Mitlyng told investigators that when he arrived the grey SUV appeared immobilized on the south side of the eastbound lane of traffic with its front bumper touching the rear bumper of a red car. Per Officer Mitlyng, he and Sgt. Will walked towards the grey SUV and saw Steven Smith seated in the front driver's seat. Steven Smith's eyes were open, and he was staring forward. Officer Mitlyng reported the he could not see Steven Smith's hands. At this point, both Sgt. Will and Officer Mitlyng backed up and took a tactical position by their vehicles. Officer Mitlyng, Officer Moore, and Sgt. Will all began giving Steven Smith verbal commands over their vehicles' PA systems to come out of his car with his hands up for a well-being check. Per Officer Mitlyng, he and Sgt. Will were about twenty to thirty feet from Steven Smith's vehicle when they commanded that he leave the vehicle.

Officer Mitlyng reported that Sgt. Will was immediately to his right when Steven Smith opened the SUV driver's door holding a black handgun under his chin. Officer Mitlyng told investigators that he immediately yelled "gun" and began making commands to Steven Smith to drop the firearm. Steven Smith, however, began slowly walking towards the officers with the handgun under his chin. Once Steven Smith walked beyond the marked patrol car immediately behind his SUV, Sgt. Will fired two shots, and Steven Smith fell to the ground.



#### **4. Officer M. D. Moore**

In an interview by investigators, Officer Moore stated that she and Officer Mitlyng were at the gas pumps on Saint Johns Bluff Road when they heard police dispatch announce one call for a mentally ill person and two for hit and run traffic crashes. Per Officer Moore, the calls appeared related as they all involved the same vehicle description (a grey SUV) in the same geographic area. Officer Moore told investigators that she heard another officer state over the radio that he had interacted with the subject in the past. That officer relayed that the subject was mentally ill and known to carry a firearm. After Officer Moore arrived on scene at the Wonderwood Bridge, another officer warned her to cautiously approach the subject driver, Steven Smith, because he might be armed. Officer Moore stated that she briefly looked away from the grey SUV when she heard Officer Mitlyng yell, "Gun!" Officer Moore said that she saw Steven Smith walking towards the police and firefighters holding a handgun under his chin. Officers repeatedly yelled at Steven Smith to drop his handgun, but he continued to walk towards the officers with the gun against his chin. Officer Moore heard two gunshots and then heard Steven Smith twice say, "I just want to die."

#### **5. Officer E. Solis**

Officer Solis told investigators that he heard multiple hit and run traffic crash calls followed by a call regarding a mentally ill person come in over the police radio. Then, Officer Solis heard a call detailing that the subject had crashed on the Wonderwood Bridge. After arriving on scene at the bridge, Officer Solis observed two civilians walking towards the grey Explorer. Officer Solis instructed these civilians to get back and not engage with the driver. More police and JFRD arrived on scene, and officers repeatedly commanded Steven Smith over the PA system to exit his vehicle. Officer Solis was behind the JFRD engine when he heard two gunshots.

#### **6. Officer M. J. Meissner**

Officer Meissner told investigators that he heard multiple calls for service over police dispatch concerning hit and run accidents involving a grey Ford Explorer on Nesting Eagles Way. Then, he heard a call about a mentally ill person. Officer Meissner had been part of the JSO presence who investigated the September 2017 incident that led to Steven Smith's arrest. Based on the geographic area and the nature of the calls, Officer Meissner immediately connected that Steven Smith was the likely subject of these calls. After confirming that Steven Smith was the subject of the calls, Officer Meissner said that he relayed to the responding officers over the police radio that Steven Smith was known to have two firearms and to exercise extreme caution. Officer Meissner then responded to the Wonderwood Bridge.



Once Officer Meissner arrived on the bridge he observed a long line of civilian cars behind a JFRD vehicle which was behind the subject grey Ford Explorer. He and other responding officers were then notified that Steven Smith was awake and unresponsive in the front seat of the disabled Explorer. After repeated law enforcement commands over the PA system to exit the vehicle, Steven Smith got out of the vehicle holding his handgun to his own neck. Officers repeatedly commanded Steven Smith to drop his firearm, but, per Officer Meissner, Steven Smith continued to walk towards the officers and civilians on the bridge with the gun in his hand. Officer Meissner reported that he next heard another officer yell to the civilians on the bridge to get down and seek cover. Steven Smith continued walking towards the officers and civilians, despite the officers' command to "stop" and "drop the gun." Officer Meissner then heard two gunshots and saw Steven Smith fall to the ground.

Officer Meissner said that he heard Steven Smith state that he did not want to kill anyone else, only himself. JFRD immediately transported Steven Smith to Memorial Hospital for medical treatment.

Officer Meissner assisted with securing the scene by creating a perimeter with crime scene tape. Officer Meissner also stood with Sgt. Will, but did not question him.

#### **7. Elizabeth Michaels**

Ms. Michaels reported to law enforcement that she was driving her white Honda Fit eastbound on the Wonderwood Bridge when she saw police cars pass her with their emergency lights illuminated. Ms. Michaels continued driving eastbound until she came to the crest of the bridge and was forced to stop because police vehicles had blocked the lane of traffic. Ms. Michael said that she then saw two civilians standing near a stopped grey SUV, but they were quickly pulled back behind the patrol cars by police. Per Ms. Michaels, she saw Steven Smith walking towards the police officers "looking out of it." She said that she then heard two gunshots.

#### **8. Candice Williams**

Ms. Williams told law enforcement that she and her husband, Dustin Williams, were driving together in their vehicle eastbound on the Wonderwood Bridge when they noticed police vehicle with illuminated emergency lights. Then, Ms. Williams noticed two civilians standing near the patrol cars while police officers were hurrying about the area. Ms. Williams reported that she saw the police officers move their vehicles into what she described as a "wedge" formation on the top of the bridge. After that, she heard two or three gunshots.

## **9. Dustin Williams**

Dustin Williams confirmed to law enforcement that he and his wife were driving eastbound on the Wonderwood Bridge when he saw police cars with their emergency lights illuminated passing their vehicle. Once they crested the top of the bridge, Mr. Williams observed police vehicles stopped behind a grey SUV. Mr. Williams saw that several police officers had firearms drawn. He then heard two gunshots.

## **10. Brienna Smith**

Mrs. Smith told investigators that she and Steven Smith had been married for two years. She reported that Steven Smith was medically-separated from the USMC in 2012, and that he was currently receiving care through the Veterans' Administration for PTSD, depression, anxiety, and bi-polar disorder. She relayed that her husband had been involuntarily held for mental health evaluations under the provisions of the Baker Act three times over the course of his life – once when he was eight-years-old, another time later in his childhood, and once in 2014.

Mrs. Smith stated that although Steven Smith was prescribed at least fifteen psychotropic medications he had been non-compliant with his medication regimen for several days. Mrs. Smith reported that earlier in the day her husband was completely incoherent and belligerent. She told investigators that the situation escalated, and Steven Smith became physically violent with her. Mrs. Smith reported that Steven Smith swung at her, she pushed him, he fell, after which he gave her "an extremely strange look." This look alarmed Mrs. Smith to the extent that she ran into and barricaded herself within the master bedroom. While inside the bedroom, Mrs. Smith heard Steven Smith crying and begging, "Come out and do it already," a comment which she interpreted to be Steven Smith's request for someone to kill him. Mrs. Smith called out of the bathroom window for a neighbor's help. After her neighbor brought over a ladder, Mrs. Smith climbed out of the bathroom window. Once outside of the house, Mrs. Smith saw Steven Smith leave their residence in his grey Ford Explorer, armed with a black handgun.

## **11. Nicky Larage**

Ms. Larage reported that she was driving eastbound on the Wonderwood Bridge when she noticed smoke and a burning smell. She quickly realized that the smoke and smell were coming from a Ford Explorer which was also traveling eastbound on the bridge. Ms. Larage pulled up next to Steven Smith's Ford Explorer and noticed that it was driving on the rim of the wheels, veering erratically left and right. Mrs. Larage saw the Ford Explorer hit the wall of the



bridge twice before it came to a stop near the crest of the bridge. She then parked her car in front of the Ford Explorer and walked over to the Explorer to check on the driver. Ms. Larage told law enforcement that she saw Steven Smith sitting in the driver's seat on the Ford Explorer, unresponsive and staring blankly forward. She tried to get Steven Smith's attention by rapping on the car windows, but he remained expressionless and uncommunicative. Ms. Larage also noticed that Steven Smith's fingers were twitching. At this point, Ms. Larage noticed police and JFRD arriving on scene. Ms. Larage said that after police officers and firefighters arrived on scene, JSO officers moved her and other civilians behind them and away from Steven Smith. Mrs. Larage said that while she was behind the JFRD engine she heard two gunshots.

#### **12. Jeff Lundy, JFRD**

Jeff Lundy of Rescue Unit #58, the unit that transported Steven Smith to Memorial Hospital immediately after the officer-involved shooting, relayed to law enforcement statements made by Steven Smith. During transport, Steven Smith repeatedly stated that he did not want to shoot anyone, but rather, that he wanted to shoot himself.

#### **13. Issac McBride, JFRD**

Issac McBride told police that he was seated in the rear car of the JFRD Fire Engine that responded to the Wonderwood Bridge. He reported that when rescue arrived, JSO had closed the eastbound lanes of the bridge and JSO officers were standing in the roadway. Mr. McBride stated he next saw a white male holding what appeared to be a black gun underneath his chin. Mr. McBride stated that he saw this armed individual slowly walking in a staggering pattern, as if he were intoxicated or injured, towards the officers. Mr. McBride then heard two pops, and the armed man fell to the ground. Mr. McBride never heard any statements made by Steven Smith or the JSO officers in the eastbound lane of traffic.

### **VIII. LEGAL ANALYSIS**

No one disputes that Sgt. Will shot Steven Smith. The question, though, is whether the shooting was "justified" as the term is defined and explained above. To answer the question, we must consider "the circumstances by which Sgt. Wills was surrounded at the time the force was used. The danger need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the circumstances would have believed that the danger could be avoided only through the use of that force." Fla. Std. Jury Instrs. in Crim. Cases 3.6(f) (2017).

In *Graham v. Connor*, 490 U.S. 386, 396 (1989), the Supreme Court counseled that 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. Even if subsequent investigation shows that officers were wrong about some fact, the officer’s use of force may nonetheless be justified. The law does not require omniscience or perfection from police officers. Instead, before employing deadly force, police “must have sound reason to believe that the suspect poses a serious threat to their safety or the safety of others. Officers need not be absolutely sure, however, of the nature of the threat or the suspect’s intent to cause them harm—the Constitution does not require that certitude precede the act of self-protection.” *Elliott v. Leavitt*, 99 F.3d at 644.

Here, Sgt. Will justifiably shot Steven Smith to protect himself and others trapped on the crest of the Wonderwood Bridge from a reasonably-perceived threat of death or great bodily harm. On November 3, 2017, Sgt. Will was keenly aware of Steven Smith’s profound mental health issues and suicidality, his access to firearms, and his propensity towards violence due to Sgt. Will’s involvement in and investigation of the September 2017 criminal episode for which Steven Smith was arrested on two counts of Aggravated Assault on a Law Enforcement Officer and two counts of Battery on a Law Enforcement Officer. Through updates over both police dispatch and the police radio, Sgt. Will knew that Steven Smith was likely armed with a firearm as he approached the blocked eastbound lane of the Wonderwood Bridge. (This suspicion was confirmed shortly after police arrival when multiple officers reported that Steven Smith came out of his vehicle armed with a handgun.) Likewise, based on the multiple reports of Steven Smith’s involvement in hit and run traffic crashes immediately before his vehicle became disabled on the Wonderwood Bridge, Steven Smith’s unresponsive and dazed presentation in the driver’s seat of his vehicle on the Wonderwood Bridge, the condition of Steven Smith’s vehicle, and Brienna Smith’s statements to police indicating her husband’s lack of compliance with his psychotropic medication regimen and subsequent mental health collapse, Sgt. Will could reasonably surmise that Steven Smith was suffering an acute mental health crisis. Having witnessed Steven Smith’s physical aggression, lack of compliance with law enforcement, and propensity towards violence to himself and others during his mental health crisis in September 2017, Sgt. Will was primed on November 3, 2017 for the potential danger Steven Smith posed to persons around him.

Additionally, as Steven Smith lumbered towards officers with his firearm pushed underneath his chin, Sgt. Will, the supervising officer on scene, was well aware of the sheer number of people in the immediate vicinity: police officers in front, JFRD fire and rescue workers behind them, and, finally, many civilians who were trapped on the top of the bridge due to the blocked lane of travel. Many of these people were outside their vehicles when Steven Smith exited his car armed with a firearm. The bridge itself likely provided tactical and



practical limitations concerning how Sgt. Will could respond when Steven Smith ignored verbal commands to drop his gun. As he stated in his statement, Sgt. Will fired at Steven Smith until he was on the ground and disarmed when only Sgt. Will assessed that he, his officers, the rescue personnel, and the citizens on the bridge were all at risk of death or great bodily harm. With Steven Smith ignoring orders to drop his gun and continuing to walk westbound on the bridge, Sgt. Will recognized that he had to act before the distance between Steven Smith and he became too small, and, as consequence, Sgt. Will lost the tactical ability to react.

While Steven Smith did not point his firearms at any of the people on the bridge, his lack of responsiveness to lawful commands, dazed presentation, and history of mental illness and violence did create a fundamentally dangerous situation to human life. At any moment, Steven Smith could have lowered his gun and fired at the many people on the Wonderwood Bridge. As such, Sgt. Will's belief that he had to use lethal force to protect himself and others from potentially deadly harm was reasonably based on the totality of the circumstances known to him on November 3, 2017.

Based on a review of the totality of the circumstances known to Sgt. Will on November 3, 2017, his shooting of Steven Smith was a justifiable use of force to protect himself and others.

## **IX. CONCLUSION**

Our role is to evaluate, review, and pursue criminal charges when the taking of life is unjustified. That evaluation requires full consideration of what someone knew or reasonably believed at the time they acted.

On November 3, 2017, Sgt. Will stood in a tactically complicated position near the crest of the Wonderwood Bridge as an unresponsive Steven Smith, armed with a firearm, walked towards police, firefighters, and civilians. Knowing Steven's Smith history of mental illness and propensity towards violence and being cognizant of the many people whose lives were in danger, Sgt. Will justifiably shot Steven Smith until he was on the ground and disarmed.

Based on the available facts we have reviewed and our review of applicable Florida law, it is our legal opinion that the actions of Sgt. Will on November 3, 2017, were justified, as defined by Florida law. We will, therefore, take no further action in this matter.



Exhibit 1: Written Statement of Sgt. Will

On November 3, 2017, around 16:45, I heard HQ advise on the Zone 2 frequency that they were holding two hit and run crashes (CCR 17-750973, 17-750974) and a mentally ill person call (CCR 17-750975) in foxtrot 1 that appeared to be related based upon the proximity of the incidents and the vehicles descriptions given. At this time, I was on duty wearing my issued Class A uniform in my marked patrol vehicle in the capacity of a Patrol Sergeant. I reviewed the listed calls holding on the MDC and was familiar with the area of the calls. Based on the additional information provided in the calls, I believed the suspect to be the same suspect (Steven Smith) from a previous incident in September 2017 on Blue Eagle Way (CCR 17-637483, 17-637780) which I was involved in. In that September incident, Officers M. Meissner #7323 and D. Busekrus #7776 were dispatched to Blue Eagle Way in reference to a domestic battery. Prior to arrival, the suspect had left the scene in a Ford Explorer. The Officers spoke with the suspect's wife who explained that the suspect suffered from PTSD and battered her after an argument. She explained that during the incident the suspect was trying to find his handgun which she had hidden. She then retrieved the handgun for her own protection due to being in fear for her life, and fired a warning shot inside the house. That is when the suspect left the house in his vehicle. While she was telling the Officers this they were standing in her driveway close to the road while the victim was closer to her house. The Officer stated they heard a loud engine and turned around and observed Steven Smith in his vehicle traveling quickly toward them in an apparent attempt to ram them with his vehicle. The Officers were able to move out of the way and the suspect drove through where they were just standing and into the front yard. He then exited the vehicle telling the Officers to kill him. He was then taken into custody without further incident. After the suspect was taken into custody and placed in the back seat of a patrol vehicle, I arrived on scene as a responding Patrol Sergeant. I observed the suspect in the vehicle and he was screaming for Officers to kill him. I advised Officers Busekrus and B. Fitzgerald #76887 who recently arrived on scene to immediately transport the suspect to the PDF. Shortly after they left they called me on the radio from a few blocks away requesting I respond to them. I responded and observed the Officers attempting to place the suspect in the total appendage restraint due to his violent behavior banging his head and kicking the window of the patrol vehicle. Both Officers were battered by the suspect as they attempted to apply the TAR. I then assisted the Officers in placing the suspect in the TAR and they immediately transported him to the PDF after that. Throughout this encounter the suspect was repeatedly requesting that we kill him. During this call, the firearm used by the victim was not seized and was returned to her.

Believing the suspect in the incident on November 3, 2017 was the same suspect in the incident I responded to in September, I called Officer Meissner on the phone. Officer Meissner



agreed and advised HQ that he placed a premise on Steven Smith's house detailing his mental illness, propensity for violence towards police, and access to a firearm. HQ confirmed the premise and advised it over the Zone 2 frequency.

Next, I heard HQ dispatch a traffic crash with injuries on the Wonderwood Bridge (CCR 17-750995) that was possibly related to the previous calls due to the same vehicle description. At that point, I began driving toward the Wonderwood Bridge with my emergency lights and siren activated and advised HQ that I was en route.

Upon arrival on the bridge in the eastbound lanes there were several citizen's vehicles backed up behind the Officer who were already on scene blocking the right hand lane. I pulled my marked patrol vehicle up to the inside lane to block it and approached on foot to the Officers on scene. At this time, I observed Officers E. Solis #61222, M. Moore #69740, and T. Mitlyng #74975 standing behind Officer Solis's vehicle with their guns drawn. Officer Solis's vehicle was just a few feet behind the suspect's vehicle. I observed the suspect's vehicle directly behind a red vehicle and a white jeep farther east of them. I verified with the Officers on scene that all the citizens were out of the red car and white jeep and behind us which they confirmed.

I tactically moved with Officer Mitlyng towards the suspect vehicle in an attempt to identify the driver and ascertain any signs of distress or the need for medical treatment. I observed the driver from the shoulders up and positively identified him as Steven Smith. He was seated in the driver's seat facing forward, and I could see that his left eye was open. He did not look toward us and appeared to be in a daze. The airbags in his vehicle did not appear to be deployed. I observed that the driver's side front tire on the suspect's vehicle was blown out. The suspect vehicle appeared to have bumper-to-bumper contact with the red vehicle in front of it. I did not see any other occupants inside the suspect's vehicle. I then advised Officer Mitlyng to fall back behind Officer Solis's vehicle.

As Officer Mitlyng and I were moving back, Lieutenant R. Knecht #5947 requested on the radio that the suspect's vehicle be blocked in. I requested an Officer to move Officer Solis's vehicle forward to make bumper-to-bumper contact with the suspect vehicle while myself and other Officer provided cover. Once that was completed all the Officers moved back to Officer Mitlyng's vehicle. I advised HQ that we would need assistance shutting down traffic and getting the citizens off the bridge and requested a TAC channel with a dispatcher. I also briefed the other Officers nearby regarding my previous encounter with the suspect and out plan of action which at the time included lethal coverage and voicing to the suspect.

Officer Moore began voicing to the suspect through the PA system in Officer Mitlyng's car.



The suspect was unresponsive, and we could observe his head moving down and up slowly continuing to look straight ahead. I had Officer Mitlyng providing lethal cover with his rifle and Officer Moore with her handgun. I instructed the Officers on scene that I wanted to create more distance between us and the suspect. I then got in Officer Mitlyng's vehicle and moved it back several feet angling it facing northeast in the inside lane placing the engine block between us and the suspect. I gave commands to the suspect cover the PA system to exit the vehicle with his hands up. Soon after I began giving commands, the suspect opened the driver's door.

I dropped the mic to the PA system and retrieved my issued Glock 17 from my holster. I shouted, "Let me see your hands!" Within a few seconds of the suspect opening his driver's door he excited his vehicle with a black handgun in his right hand pointed up at this head directly underneath his chin. The suspect immediately began walking west in the right hand lane towards us. I have the suspect a loud verbal command stating, "Drop the gun!" The suspect refused my command and continued walking westbound in the right hand lane beside Officer Solis's vehicle.

The suspect was walking in the direction of myself, my fellow officers, JFRD, and citizens in the area while still possessing a firearm in his hand.

Based upon my encounter with the suspect in September, the suspect's current actions, including his refusal to drop the gun, and my training and experience, I believed the suspect to be an immediate threat of death or great bodily harm to myself, other Officers with me, JFRD, and the citizens in the area. I fired my issued Glock firearm at the suspect until he dropped his firearm. At the same time he dropped the firearm, he fell backwards onto the ground creating further distance between him and the firearm. I quickly devised a plan of action to take him into custody. I instructed the Officers with me to move up while maintaining lethal cover and instructed Officer Solis to handcuff the suspect. As we approached, the suspect continued to lie on his back with his hands up. I instructed the suspect to not move and observed blood on the suspect's arms and his shirt soaked with blood in the chest area. I advised Officer Solis to put on gloves prior to handcuffing the suspect in order to prevent exposure. I handed Officer Solis a pair of latex gloves I kept in my back pocket.

Officer Mitlyng handcuffed the suspect within a minute of the request and began to render aid. At that point, I ensured the Officers present were alright and advised Sergeant A. Ardizzoni #5828 that I was going to stand by my vehicle. This concluded my involvement on this call.