

OFFICER-INVOLVED INCIDENT REPORT



Employer Agency: Sonoma County Sheriff's Department

Lead Agency: Santa Rosa Police Department

Injured Party: Nathan James Smart
Date of Incident: October 15, 2022

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

Table of Contents

I. INTRODUCTION 3

II. SCOPE OF REVIEW 5

III. STANDARD OF REVIEW 5

IV. SUMMARY OF FACTS 6

A. INJURED PARTY’S BACKGROUND 6

B. SUMMARY OF INFORMATION TO DISPATCH AND DEPUTIES ON OCTOBER 15, 2022..... 6

C. SUMMARY OF LAW ENFORCEMENT STATEMENTS 6

 Summary of Statement of Deputy Justin Clayton 6

 Summary of Statement of Deputy Carson Shilling 8

 Summary of Statement of Deputy Cody McBeth..... 9

 Summary of Statement of Deputy Hector Campos..... 10

 Summary of Statement of Deputy Jim Andrews 11

D. SUMMARY OF CIVILIAN STATEMENTS 12

 Summary of Statement of Jane Doe #3..... 12

 Summary of Statement of John Doe #1 12

 Summary of Statement of John Doe #2 13

 Summary of Statement of John Doe #3 13

 Summary of Statement of John Doe #4 14

 Summary of Statement of John Doe #5 14

 Summary of Statement of Jane Doe #1 14

 Summary of Statement of Jane Doe #2..... 14

 Summary of Statement of John Doe #6 14

E. SUMMARY OF STATEMENT FROM NATHAN SMART 15

F. EXAMINATION OF FIREARM USED BY NATHAN SMART 15

G. SUMMARY OF INJURIES SUSTAINED BY NATHAN SMART 15

H. EXAMINATION OF FIREARMS USED BY DEPUTIES..... 15

V. STATEMENT OF THE LAW..... 16

A. THE RIGHTS AND DUTIES OF A PEACE OFFICER WHEN EFFECTING A DETENTION OR AN ARREST 16

B. DISCUSSION OF THE LAW AND OF THE EVIDENCE..... 18

VI. CONCLUSION 19

I. INTRODUCTION

On Saturday, October 15, 2022, at approximately 18:45, Sonoma County Sheriff's Deputies were dispatched to a residence in Boyes Hot Springs regarding a report of a family disturbance. The reporting party, Jane Doe #1, reported her son, Nathan Smart had been drinking, was under the influence of drugs and had threatened to kill her. Ms. Doe #1 also stated she believed Nathan Smart had been in possession of ghost guns in his bedroom and had made guns in his bedroom.

Deputies from the Sonoma County Sheriff's Department arrived at the residence at 18:53 and located Nathan Smart in the driveway. When law enforcement arrived, Nathan retreated to his residence. Deputies surrounded the home and attempted to convince Smart to exit the residence and surrender, via announcements through a loudspeaker. After a search of the residence Smart was not located and it was believed he fled the area.

After law enforcement cleared the scene and confirmed with Jane Doe #1 that she felt safe, deputies left the scene at 21:44, issued a county-wide "Be on the Lookout" (BOLO) and indicated that probable cause had been established to arrest Nathan Smart for a violation of Penal Code section 422 Criminal Threats, and Penal Code section 368 Elder Abuse.

At approximately 22:06 that same night, Sonoma County Sheriff's Deputies were dispatched to CVS Pharmacy, located at 201 West Napa Street in Sonoma, for multiple reports of glass breaking in the parking lot. One of the reporting parties stated "Nathan Smart" used a large wooden stick to break windows on parked vehicles and storefronts.

When deputies arrived at the scene, they were unable to locate Nathan Smart. At 22:13 deputies were dispatched to 465 West 1st Street, for a report from the bouncer of a nearby bar, who reported a subject had thrown a chair at a limousine. Additionally, the bouncer reported the subject had a black pistol and he fled the area.

When deputies arrived, Nathan Smart was located in the area of 135 West Napa Street. When contacted by deputies, Nathan Smart fired at least one shot from a handgun in their direction. Deputy Clayton returned fire and Nathan ran from the area. Within a few seconds, Nathan emerged from an alley near where Deputy Shilling had taken cover. Nathan pointed his gun at Deputy Shilling. Deputy Shilling fired his service weapon, striking Nathan Smart.

At 22:17 emergency medical services were requested by the deputies on scene. After being briefly treated at the scene, Smart was transported to Queen of the Valley Hospital in Napa, with multiple gunshot wounds. Smart was later transported to UC Davis Medical Center for further medical treatment.

When law enforcement investigated the scene, officers located what appeared to be a homemade firearm, constructed out of threaded piping material. The homemade firearm had a barrel 6-8 inches in length and a handle. The firearm had a functioning spring trigger and what appeared to

be a charging handle. The homemade firearm was disassembled by Sergeant Brandon Matthies. Upon inspection, Sergeant Mathies observed that the rear portion of the firearm could be unscrewed and removed and appeared to be spring loaded. Inside the barrel of the homemade firearm was a spent shell casing. The shell cases appeared to have been drilled out in the rear and altered in a way that suggested the ammunition was homemade.

As part of the investigation, on October 16, 2022, a search warrant was served at Mr. Smart's residence. During the initial protective sweep, law enforcement had to evacuate the residence due to a possible bomb located on a bed. The bomb was later determined to be inactive and was in fact a silencer that attached to a firearm to muzzle the sound of a gunshot. Two more similar devices were located at the scene.

During the search of Smart's bedroom, law enforcement located numerous items believed to be used to assemble firearms. Threaded pipe, like the pipe in the homemade firearm fired by Nathan Smart, was located on a nightstand and dresser. Additionally, several plastic bags with pipes and fittings were located under a bed. Within one of these bags, another fully constructed homemade firearm was located, which was very similar to the firearm Nathan Smart fired at law enforcement.

Additionally, within the bedroom on a dresser, law enforcement located a tray that had material which appeared to have been melted down. The pieces were formed and molded into shapes consistent with projectiles that may have been made to be fired from the firearm used by Smart. Within this same dresser, detectives located a bottle of store-bought gun powder which had been opened, and half its contents were gone. Near the bed, a steel plate, approximately six inches by six inches, was located and had numerous holes and dents, consistent with being shot with projectiles.

In this case members of the Santa Rosa Police Department assumed responsibility for the investigation of the incident. Members of the Sonoma County District Attorney's Office participated in the investigation in a supporting role, in accordance with the protocol.

Under the protocol, the role of the Sonoma County District Attorney's Office is to review the investigation to determine if there exists any criminal liability on the part of involved parties, including the law enforcement employee(s); to provide assistance to the investigating agency regarding legal issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the law.

Once the investigation is complete the District Attorney is required by the protocol to complete a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreperson of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the shooting of Nathan James Smart, a statement of the applicable law, legal analysis and conclusions. This report does not and cannot include all the information contained in the hundreds of pages of reports, video and audio tapes, transcripts, photographs and diagrams reviewed in its preparation. However, every effort has

been made to include in this report a summary of all the relevant, material evidence gathered by the Santa Rosa Police Department over the course of its extensive investigation of this critical incident.

II. SCOPE OF REVIEW

The purpose of the District Attorney's investigation and review of any critical incident is to establish the presence or absence of criminal liability on the part of any involved party, including law enforcement employee(s).

The specific question to be resolved in this case is whether there is any criminal liability on the part of any involved parties, including law enforcement personnel. A summary of the applicable law is included here to assist the reader in understanding this report and its conclusions.

The District Attorney does not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

III. STANDARD OF REVIEW

The District Attorney is the chief law enforcement official of Sonoma County. The District Attorney is responsible for deciding what cases to prosecute and has the responsibility to review and approve the filing of all criminal cases in the county. The District Attorney's discretion in this regard is well defined. *The California Rules of Professional Conduct, Rule 5-110* provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause. Additional restraint on the charging authority is found in the *Uniform Crime Charging Standards*¹ a publication of the California District Attorney's Association. These standards provide the following guidelines:

The prosecutor should consider the probability of conviction by an objective factfinder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective factfinder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

In criminal cases the District Attorney has the burden of proving guilt "beyond a reasonable doubt²," the highest burden of proof found in the law. Before a conviction may be entered, a jury of twelve must vote unanimously for guilt. When determining whether criminal charges are appropriate, the District Attorney must consider all of the evidence, including evidence that supports an affirmative defense, such as a claim of "self-defense" or "defense of others." Criminal charges are warranted only when the District Attorney determines that the evidence of guilt is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective jury fact finder after hearing all the admissible evidence, including

¹ California District Attorneys Association, *Uniform Crime Charging Standards* (1996) p. 12.

² Judicial Council of California Criminal Jury Instructions (2017) (CALCRIM) No. 103.

evidence of such an affirmative defense.

IV. SUMMARY OF FACTS

A. INJURED PARTY'S BACKGROUND

Nathan James Smart was born on December 31, 1979. Mr. Smart was not on probation or parole at the time of this shooting. He lived in Sonoma, in a trailer, which was located on a parcel that had a main residence occupied by his mother, Jane Doe #1 and his grandmother.

B. SUMMARY OF INFORMATION PROVIDED TO DISPATCH

On Saturday, October 15, 2022, at approximately, 18:53 Sonoma County Sheriff's Deputies were dispatched to Ms. Doe #1's residence regarding a family disturbance. Jane Doe #1 had called 911 and reported Nathan Smart threatened to kill her. She believed he was in possession of ghost guns in his bedroom. Ms. Doe #1 added that she believed Mr. Smart had been drinking and was under the influence of drugs.

When deputies arrived at the scene, Mr. Smart was not located. Prior to clearing the scene deputies confirmed with Ms. Doe #1 that she felt safe in her home.

This same night at 22:06 Sonoma County Sheriff Deputies were dispatched to CVS Pharmacy located at 201 W. Napa Street, in Sonoma, after multiple parties reported glass breaking in the parking lot. One of the callers referred to Nathan Smart by name, and that Mr. Smart was using a large wooden stick to break car and business windows.

After this call, deputies were again unable to locate Mr. Smart at the CVS Pharmacy location.

At 22:13, Sonoma County Deputies were dispatched to 465 W. 1st Street in Sonoma for a report by multiple parties that an individual threw a chair at a limousine and had a gun in his hand.

C. SUMMARY OF LAW ENFORCEMENT STATEMENTS

Summary of Statement of Deputy Justin Clayton.

On October 18, 2022, at the Sonoma County Sheriff's Deputy Sheriff's Association (DSA) Hall, Santa Rosa Police Department Detectives Nick Gillotte and Jesus Avina conducted an interview with Deputy Justin Clayton. Prior to the interview, Deputy Clayton was allowed to review his body worn camera video from the critical incident that occurred on October 15, 2022. Throughout the interview Deputy Clayton was accompanied by his attorney, Andrew Ganz, from the Rains, Lucia Stern St. Phalle and Silver Law Firm.

Deputy Clayton had been employed with the Sonoma County Sheriff's Department as a Deputy Sherriff for two years. His assignment was as a patrol deputy out of the Valley substation. Prior to working with the Sonoma County Sheriff's Department, Deputy Clayton worked for six years with the San Francisco Police Department as a police officer.

On October 15, 2022, Deputy Clayton was on duty as a patrol officer and dressed in his full deputy sheriff uniform. He drove a marked patrol vehicle. At approximately 19:00 Deputy Clayton was dispatched to a call where the reporting party, Jane Doe #1, Nathan Smart's mother, reported Nathan had threatened to kill her. Ms. Doe #1 stated Nathan was in possession of ghost guns in his bedroom and that he stated he was going to kill himself. In an attempt to prevent Smart from fleeing the area, deputies surrounded the property. After numerous attempts to contact Nathan by using a public address system and by calling his phone, it was determined Nathan was no longer at the scene. Ultimately, Nathan was not located at this residence. After they confirmed with Ms. Doe #1 that she felt safe and no longer needed assistance from law enforcement, the deputies left this location.

Later that same evening, Deputy Clayton responded to a call on 135 West Napa, regarding a subject vandalizing property near Second Street and West Street, near the location of CVS Pharmacy. When he arrived at this location, Deputy Clayton did not observe anything relevant to the reported call.

Next Deputy Clayton drove to the Whole Foods market and observed pumpkins and watermelons smashed in front of the store. At this location he saw Deputy McBeth speaking to witnesses regarding the damage at Whole Foods and one of the witnesses directed Deputy Clayton in the direction of the Sonoma square as to the person who was responsible for the damage at Whole Foods.

While he drove to the square, Deputy Clayton was flagged down by the driver of a black vehicle who said someone tried to smash up his car. At this moment Deputy Clayton heard dispatch state there was a report of an individual who brandished a firearm at someone at the square, so he responded to this location.

When he arrived at the square, Deputy Clayton was contacted by another individual. This person directed Deputy Clayton back toward the Sonoma square, stating that the person he was looking for just ran in that direction.

Deputy Clayton turned his vehicle to head west on Napa Street and as he approached a location between First Street and Second Street, he observed a subject standing and pointing what appeared to be a firearm at him. This individual, later determined to be Nathan Smart, was standing in a manner consistent with someone who was pointing a firearm in preparation to fire.

Deputy Clayton stopped his vehicle, opened his driver's side door, and took cover behind the door. He drew his firearm from its holster and gave numerous commands to Smart to drop the weapon. At this moment, Deputy Clayton believed Smart had a firearm in his hand. Smart ignored these commands. Deputy Clayton heard what he believed was the sound of a gun and believed Smart was shooting at him. In response, Deputy Clayton fired his firearm approximately four times at Smart.

Deputy Clayton saw Smart run away from his location. Deputy Clayton drove his vehicle a few more feet, then exited the vehicle. He and Deputy Andrews walked in the direction where Nathan had just fled. Deputy Clayton saw Nathan attempt to conceal himself behind a wall and saw Nathan's head poke out. He also saw what appeared to be the barrel of a gun. The barrel was not pointed in the direction of Deputy Clayton at that time.

Deputy Clayton then took cover behind his patrol vehicle and commanded Smart to drop the weapon and surrender. Deputy Clayton heard gunshots coming from his left. He saw Nathan on the ground and Deputy McBeth and Deputy Shilling standing a few feet away from Nathan.

Deputy Clayton ran over to the location where Nathan was down on the sidewalk. Deputy Clayton saw Nathan prone on the ground, then saw him roll over. Deputy Clayton saw that Nathan was bleeding from the chest and observed a firearm fall off to the right side of Nathan and onto the sidewalk.

The firearm was kicked away from Nathan, and Deputies Clayton and McBeth placed handcuffs on Nathan and began life saving measures.

Summary of Statement of Deputy Carson Shilling

On October 18, 2022, at the Sonoma County Sheriff's DSA Hall, Santa Rosa Police Department Detectives Nick Gillotte and Jesus Avina conducted an interview with Deputy Carson Shilling. Prior to the interview, Deputy Shilling was allowed to review his body worn camera video from the critical incident that occurred on October 15, 2022. Throughout the interview Deputy Shilling was accompanied by his attorney, Andrew Ganz, from the Rains, Lucia Stern St. Phalle and Silver Law Firm.

Deputy Shilling had been employed with the Sonoma County Sheriff's Department as a Deputy Sheriff for approximately one year. His assignment was as a patrol deputy out of the Valley substation. Prior to working with the Sonoma County Sheriff's Department, Deputy Shilling worked for two years with the San Francisco Police Department as a police officer.

On October 15, 2022, Deputy Schilling worked as a patrol officer, dressed in his full deputy sheriff uniform and drove a marked patrol vehicle. On that evening, Deputy Shilling responded to a call where it was reported by Jane Doe #1 that her son Nathan Smart had threatened to kill her and kill himself. Deputy Shilling was the first officer to arrive at the residence and located Jane Doe #1 standing in the driveway, near the street. Additionally, Deputy Schilling saw who he believed was Nathan Smart run down the driveway towards the residence. A perimeter was set up around the residence once other law enforcement personnel arrived. Ultimately, Nathan was not located at his residence and the deputies left this location.

Later that evening, while at the substation assisting on a different call, Deputy Shilling heard on the radio that the same suspect they were looking for earlier was now near the Whole Foods

grocery store breaking windows. Based on this information, and his knowledge of the prior call for service involving Nathan Smart, Deputy Shilling responded to assist. While driving to the location of this new call for service, Deputy Shilling received additional information that there was another call for service at Steiner's bar regarding a brandishing of a firearm that involved Nathan Smart.

When Deputy Schilling arrived at First Street and West Napa Street, he observed many bystanders yell, point, and give direction as to the location of the suspect. When Deputy Schilling traveled in the direction where bystanders pointed, he observed two deputies already on scene, exiting their respective patrol vehicles. Deputy Schilling stopped his vehicle and exited. Soon thereafter, he heard what he believed were two gunshots.

Deputy Schilling took cover behind a concrete pillar on West Napa Street. While he stood behind this concrete pillar, he heard a rustling noise, as if something was being moved. Shortly thereafter, Mr. Smart appeared. He stood about six feet away, in front of Deputy Schilling. He was holding what appeared to be a silver firearm, positioned near Mr. Smart's lower chest.

Mr. Smart held the firearm and pointed it in Deputy Shilling's direction. He then jumped and yelled something like, "What up" or "What." Deputy Shilling then fired his firearm. Smart fell to the ground while still in possession of the firearm. The firearm held by Smart was kicked away from him and then handcuffs were placed on Smart. Medical aid was rendered until medical personnel arrived.

Summary of Statement of Deputy Cody McBeth

On October 18, 2022, at the Sonoma County Sheriff's DSA Hall, Santa Rosa Police Department Detectives Nick Gillotte and Jesus Avina conducted an interview with Deputy Cody McBeth. Prior to the interview, Deputy McBeth was allowed to review his body worn camera video from the critical incident that occurred on October 15, 2022. Throughout the interview Deputy McBeth was accompanied by his attorney, Andrew Ganz, from the Rains, Lucia Stern St. Phalle and Silver Law Firm.

Deputy McBeth had been employed with the Sonoma County Sheriff's Department as a Deputy Sherriff, for approximately six and a half years. His assignment was as a patrol deputy out of the Sonoma Valley substation.

On October 15, 2022, Deputy McBeth worked as a patrol officer. He was dressed in his full deputy sheriff uniform. He drove a marked patrol vehicle. At approximately 6:45 p.m., he was dispatched to a residence regarding a call by Jane Doe #1 who reported her son, Nathan Smart, had manufactured firearms in his bedroom and had threatened to kill her and himself. When Deputy McBeth arrived, other deputies were already present. It was believed Nathan Smart ran back into the residence.

Deputy McBeth took over the investigation and obtained a statement from Ms. Doe #1. She stated that Nathan Smart told her he was going to kill her then himself with a firearm Nathan had made in his bedroom. In addition, she stated Nathan had been using methamphetamine and his behavior had been ramping up. After receiving this information, a perimeter was set up around the property and the house was searched for Nathan. Multiple announcements were made over a loudspeaker to encourage Nathan to surrender to law enforcement. After about three hours, and having no contact with Nathan, the scene was cleared, and law enforcement left.

After he returned to the substation, Deputy McBeth heard over the radio that Nathan Smart broke windows of vehicles in the parking lot of the CVS located on West Napa. While he drove to the call, Deputy McBeth heard over the radio about a subject who damaged property and windows in front of Whole Foods Market. After he received information from an individual standing in front of Whole Foods, Deputy McBeth proceeded to West Napa Street and heard on the radio a call for service regarding a subject who had brandished a weapon. He then heard dispatch report that a male subject at Steiners Bar had thrown a chair at a limousine and brandished a firearm at individuals in the area of First Street and West Napa.

When he arrived, Deputy McBeth saw Deputy Clayton stop his patrol vehicle in the middle of the street and exit his vehicle. Deputy McBeth did the same. As he walked towards Deputy Clayton's patrol vehicle, he heard a gunshot which he assumed was coming from the suspect. He then heard Deputy Clayton return fire. He tried to take cover behind a concrete pillar that stuck out from one of the nearby buildings. Deputy Shilling was also behind this same pillar. Deputy McBeth took cover behind Deputy Shilling. At this time Deputy McBeth saw the subject run around a building.

Shortly thereafter, Deputy McBeth heard what sounded like metal against metal, as if a gate was opening or metal was rattling. He then saw Deputy Shilling peek around the corner of the pillar. At that point Shilling fired his firearm. Mr. Smart fell to the ground onto the sidewalk. At that point, Deputies McBeth and Shilling gave multiple commands to the subject. After the subject rolled over, Deputy McBeth saw what he believed to be a firearm underneath the subject. Deputy McBeth kicked the firearm away from the subject, and then he and Deputy Clayton placed handcuffs on the subject. Medical aid was given to the subject until emergency medical services arrived to provide further medical treatment.

Summary of Statement of Deputy Hector Campos

On October 18, 2022, at the Sonoma County Sheriff's DSA Hall, Santa Rosa Police Department Detectives Nick Gillotte and Jesus Avina conducted an interview with Deputy Hector Campos. Prior to the interview, Deputy Campos was allowed to review his body worn camera video from the critical incident that occurred on October 15, 2022. Throughout the interview Deputy Campos was accompanied by his attorney, Andrew Ganz, from the Rains, Lucia Stern St. Phalle and Silver Law Firm.

Deputy Campos had a total of nine years of law enforcement experience. For the last two years he worked with the Sonoma County Sheriff. He had previously worked with the Vallejo Police Department. His assignment was as a patrol officer and canine handler, out of the main office substation.

On October 15, 2022, Deputy Campos worked as a patrol officer with his canine, and was dressed in his deputy sheriff uniform. He drove a marked patrol vehicle. While on a call, he heard over the radio about the incident where a son had threatened to kill his mother and was armed. After he heard this information, Deputy Campos traveled Code Three, from Guerneville Road to Sonoma Valley. When he arrived at the residence, Deputy Campos announced to the suspect that a canine was present and would be used. After no response, Deputy Campos and Deputy McBeth searched the residence at the location to secure the main residence. After it was determined the suspect was no longer at the residence and the reporting party was safe, Deputy Campos left the scene, but remained in Sonoma in case he was needed to assist in apprehending Mr. Smart.

A short time later, dispatch asked if Deputy Campos was still in the area and available to respond to a call about someone breaking windows at Whole Foods. He responded to this call and heard additional information provided over the radio as to the location of Mr. Smart. He then assisted in the search for Mr. Smart. While he traveled on West Napa, Deputy Ramos heard over the radio from Deputy Clayton that shots had been fired.

Deputy Ramos then saw Nathan Smart run and double back, as if he was going to wait for someone to walk around the corner. Deputy Ramos retrieved his rifle, and pointed it at Smart, who then ran out of sight. Within five seconds after he saw Smart run, Deputy Ramos heard gun shots. He ran to the location of the shots and saw Nathan Smart on the ground and a firearm next to him. The firearm was kicked away from Smart by Deputy McBeth. Deputy Ramos then assisted in taking Smart into custody.

Summary of Statement of Deputy Jim Andrews

On October 18, 2022, at the Sonoma County Sheriff's DSA Hall, Santa Rosa Police Department Detectives Nick Gillotte and Jesus Avina conducted an interview with Deputy Jim Andrews. Prior to the interview, Deputy Andrews was allowed to review his body worn camera video from the critical incident that occurred on October 15, 2022. Throughout the interview Deputy Andrews was accompanied by his attorney, Andrew Ganz, from the Rains, Lucia Stern St. Phalle and Silver Law Firm.

Deputy Andrews had been with the Sonoma County Sheriff's Department for three years and had a total of thirteen years of experience as a law enforcement officer. His assignment was as a patrol officer out of the Sonoma Office. Prior to his employment with the Sheriff's Department, he worked as a police officer with the United States Department of Veterans Affairs for four years, and with the San Francisco Police Department for six years.

On October 15, 2022, Deputy Andrews responded to the call at Nathan Smart's residence on Clayton Avenue due to threats he had made to his mother. After being at the scene for about two hours, Deputy Andrews left after it was determined that Mr. Smart was not at the location. A short time later, Deputy Andrews responded to the Sonoma Square due to reports that Nathan Smart broke windows at the Whole Foods parking lot. While traveling to this call, patrons outside a local bar pointed Deputy Andrews to back in the direction that he had come from. He turned his car around, then saw Nathan Smart about fifty feet away in a bladed stance holding what appeared to be a firearm. Smart pointed the gun in the direction of Deputy Andrews and Deputy Clayton, who were still driving in their vehicle. Deputy Andrews then heard three to five gunshots, so he then took cover behind Deputy Clayton's patrol vehicle. He then looked up and saw Smart on the ground suffering from gunshot wounds. Deputy Andrews did not know from what direction the rounds were fired. After Smart was placed in handcuffs by Deputy Clayton and the other deputies present, Deputy Andrews rendered medical aid to Smart.

D. SUMMARY OF CIVILIAN STATEMENTS

Summary of Statement from Jane Doe #3

On October 15, 2022, Jane Doe #3 worked at Sig Champagne Bar located at 120 West Napa Street. Ms. Doe #3 was inside the business at closing time when she heard a police siren and two gunshots outside. She looked outside the front window and saw two deputies exit their vehicles and take cover in front of the Sonoma Index Tribune building. Ms. Doe #3 stated it appeared to her the deputies took cover to avoid gunfire. As the officers took cover, she heard them say, "Drop your weapon, come out with your hands up!" She heard them repeat these and other similar commands approximately five times.

Ms. Doe #3 next saw an individual walk up the alley between the Sonoma Index Tribune and the Compass Building. The individual wore dark clothing and walked towards West Napa Street. Ms. Doe #3 saw this individual hold a small pistol by his side and as this person came into the field of view of the deputies, this individual raised the pistol and pointed it at the deputies. Ms. Doe #3 then saw one of the deputies fire two shots.

Ms. Doe #3 took cover after the shots were fired and called her boyfriend to walk her home.

Summary of Statement by John Doe #1

John Doe #1 was a driver of a limousine damaged on October 15, 2022, by Nathan Smart. On that night between 10:00 p.m. and 10:30 p.m., Mr. Doe #1 was parked in his 2000 Lincoln limousine in front of Steiner's Bar. Mr. Doe #1 stated he was waiting to give a ride to some friends.

While he was in the rear of the limousine adjusting the audio system, he felt his vehicle shake

and heard a loud noise. Mr. Doe #1 exited his vehicle and saw a male stand near the limousine and believed this male had thrown a table at his limousine. Mr. Doe #1 and a Steiner's security guard approached the male and told him he would have to pay for any damage. The male then removed a small object and stated, "I have these rounds. Um, I don't want to use them on you. I'm using them for the cops." Mr. Doe #1 believed the male had a firearm, so he backed away. Initially, Mr. Doe #1 believed the gun was fake, but when the male stated he had rounds, he then believed the gun was real.

The male walked away, and Mr. Doe #1 followed him. The police then arrived, and Mr. Doe #1 yelled at the deputies that the male had a gun. A deputy told Mr. Doe #1 to take cover, which he did. Mr. Doe #1 heard one distant gunshot then two or three more. He heard four or five more shots moments later. Mr. Doe #1 said he heard the deputies yell, "get down on the ground."

Summary of Statement by John Doe #2

John Doe #2 was outside Steiner's Bar on October 15, 2022. He was out that evening with his wife but did not consume alcohol. Mr. Doe #2 saw a male grab a table from Steiner's Bar and throw the table onto the top of a limousine parked outside Steiner's Bar. After the male threw the table, Mr. Doe #2 saw two bouncers approach the male who then "pulled out a gun." Mr. Doe #2 told another bouncer the male had a gun. He then asked a female standing nearby to call 911 because the male had a gun and was "looking for somebody to shoot."

Mr. Doe #2 then saw the male walk toward West Napa Street and the arrival of several police vehicles. Mr. Doe #2 pointed-out the male as the patrol vehicles drove by, and two of the vehicles stopped in the street. He saw the deputies confront the male and yell "drop the gun" at least four times. Mr. Doe #2 saw the male standing on the corner, pointing a gun, at which time he took cover in a doorway along with a deputy. Mr. Doe #2 then heard, "pop, pop, pop," and saw the male run from the scene. The deputy told Mr. Doe #2 to take cover in the restaurant. After he took cover in the restaurant for about a minute, Mr. Doe #2 stepped back outside and saw two deputies across the street in the "ready position." Mr. Doe #2 then saw the male run out of an alley and heard four shots fired. Mr. Doe #2 saw the officers handcuff the male and kick a gun away from him. He saw the deputies give medical aid to the male until paramedics arrived.

Summary of Statement by John Doe #3

John Doe #3 was the General Manager at The Taub Family Outpost, located at 497 1st Street in Sonoma. He was at work for a staff dinner event at the time of the shooting. He heard gunshots and went out the backdoor of his building that faced West Napa Street. He saw a male on the ground and deputies give orders to the man to "show his hands." Mr. Doe #3 saw the deputies approach the man after they saw there was nothing in his hands.

Summary of Statement by John Doe #4

John Doe #4 was in a vehicle near the Sonoma square on October 15, 2022. He was with his friends in his vehicle when he saw a police car with the lights on. He thought he was being pulled over, so he pulled to the side of the road. Mr. Doe #4 then saw “one or two more” patrol vehicles, and heard his friend [John Doe #5] say, “the [suspect] has a gun.” They ducked down and did not see what occurred next. He heard some yelling then approximately four gunshots.

Summary of Statement by John Doe #5

John Doe #5 was with friends in a vehicle near the Plaza on October 15, 2022, when he saw police officers speeding in his direction. He pulled over and he and his friends all put their hands up because they thought they were being pulled over. He then saw a male point a gun towards him and his friends, so they ducked down. A few seconds later Mr. Doe #5 heard gunshots. He looked outside his window and saw a male on the ground with deputies around him.

Summary of Statement by Jane Doe #1

Jane Doe #1 was the mother of Nathan Smart and lived in Boyes Hot Springs. The property was owned by her mother, and her son lived in a trailer on the property. Ms. Doe #1 stated that on October 15, 2022, Nathan “got a little violent” when they were having dinner and said, “I’ll kill you and then I’ll kill myself.” After Nathan made these statements, she called the police. She then saw Nathan run out of the trailer and behind the house.

Ms. Doe #1 stated Nathan made a gun and had shown it to her. She added that Nathan had shot the guns into a piece of cardboard in the past.

Summary of Statement from Jane Doe #2

Jane Doe #2 was Nathan Smart’s ex-girlfriend. On October 15, 2022, after law enforcement was called to his residence, Nathan went to her residence. Nathan told her he thought he would go back to prison for what his mother said to law enforcement. Ms. Doe #2 stated Nathan did not spend much time with her and that she did not see a firearm.

Summary of Statement from John Doe #6

John Doe #6 was Nathan Smart’s brother. He stated that on October 15, 2022, his mother called him to inform him Nathan had smoked something in the bedroom, which Mr. Doe #6 presumed was methamphetamine. He then received a call from Nathan, wherein Nathan stated he loved him and the “cops were going to kill him tonight.”

E. SUMMARY OF STATEMENT FROM NATHAN SMART

Nathan Smart elected not to provide a statement to law enforcement.

F. EXAMINATION OF FIREARM USED BY NATHAN SMART

While at the scene of the critical incident, Sergeant Brandon Mathies inspected the firearm used by Nathan Smart. The firearm appeared to be “homemade” and was similar to a zip gun, or “improvised firearm.” The firearm had a barrel, spring trigger assembly, makeshift charging hammer and pin, and a pistol grip.

On October 15, 2022, prior to booking this item into evidence, Sergeant Mathies disassembled the back portion of the charging handle to access the inside of the weapon. Mathies inspected the item to determine whether it was capable of functioning as a usable firearm. Inside the barrel, he found what appeared to be homemade ammunition. The casing was compressed as if it had recently been fired. It appeared the charging handle had struck the back priming portion of the casing. The front of the casing was also compressed, which indicated it had contacted a projectile in the weapon as if it were fired. The homemade ammunition located in the firearm was consistent with the homemade ammunition located at Nathan Smart’s residence.

On October 18, 2022, Field Evidence Technician Alisha Fix examined the homemade firearm used by Nathan Smart. Ms. Fix measured the barrel of the firearm at five inches in length and noted it was covered with black electrical tape. The barrel was attached to a three-way pipe fitting, which was also covered in black electrical tape. The hand grip was attached to the bottom of the three-way pipe fitting. The hand grip was covered with black electrical tape. The firearm had a spring-loaded bolt that was attached to the end of the pipe with a large brass nut.

G. SUMMARY OF INJURIES SUSTAINED BY NATHAN SMART

After being treated briefly at the scene of the critical incident, Nathan Smart was transported by way of ambulance to Queen of the Valley Hospital in Napa. While at the hospital, Smart was treated for a gunshot wound to his left upper arm, a gunshot wound to his right hand and a gunshot wound to his right thigh. After Smart was medically stable, he was transported by way of helicopter to UC Davis Medical Center in Sacramento for further medical treatment. Subsequent to his stay at UC Davis Medical Center, Smart was transported to Kaiser Hospital in Vacaville for surgery to remove a bullet.

H. EXAMINATION OF FIREARMS USED BY DEPUTIES

On October 16, 2022, Detective Gino Rantissi collected a Glock 17 pistol from Deputy Justin Clayton. Detective Rantissi removed one cartridge from the chamber and removed the magazine. The magazine contained eleven rounds. Detective Rantissi also collected two back-up magazines from Deputy Clayton, one of which had twenty rounds, and the other had eleven rounds. These

items were collected as evidence.

Detective Rantissi also collected a Glock 17 pistol from Deputy Carson Schilling. After the firearm was rendered safe, Detective Rantissi removed a round from the chamber. Next, Detective Rantissi removed the magazine from the pistol and counted fourteen rounds in the magazine. Field Evidence Technician Adorra Pinow collected the pistol, the magazine and the rounds, as well as two magazines Deputy Schilling had as back-up magazines. His back-up magazines each contained seventeen rounds.

V. STATEMENT OF THE LAW

Under the Fourth Amendment of the United States Constitution, persons have the right to be free from the use of excessive force by law enforcement officers. This right attaches even when an officer is engaged in making a lawful arrest.³ As will be discussed below, it is not necessary to determine whether in this case officers were “engaged in making a lawful arrest” of Nathan James Smart at the time he was shot, after he fired a weapon at Sonoma County Sheriff deputies. Instead, the analysis is whether the force used to effectuate the detention and arrest was reasonable based on an evaluation of the totality of the circumstances. The evaluation of the totality of the circumstances is not based on the facts as they became known over time but are analyzed from the standpoint of the deputies and what they knew at the time the detention and arrest were made.

A. THE RIGHTS AND DUTIES OF A PEACE OFFICER WHEN EFFECTING A DETENTION OR AN ARREST

1. Rights And Duties of Officers During a Detention

A police officer has the right to stop and temporarily detain someone for investigation whenever the officer has a “reasonable suspicion” some criminal activity is afoot and that the person was, is, or is about to be involved in that criminal activity.⁴ A detention is allowed so a peace officer may have a reasonable amount of time to investigate a person’s possible involvement in an actual or perceived criminal act, allowing the officer to make an informed decision whether to arrest, or to release, the subject. “An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.”⁵ However, even though a detention is meant to be a short contact to assist in determining if a crime has occurred, an officer is not deprived of his right to defend himself should it become necessary.

³ Graham v. Connor (1989) 490 U. S. 386 “All claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process approach.’” Graham, 490 U.S., at 394.

⁴ Terry v. Ohio (1968 392 U.S ; People v. Walker (2012) Cal App. 4th 1372, 1381.

⁵ In re Antonio B. (2008) 166 Cal.App.4th 435, 440

“(E)ven when a police officer is careful, he is still subject to attack. (P)olice officers (are) entitled to protect themselves during a detention: ‘This is a rule of necessity to which a right even as basic as that of privacy must bow. To rule otherwise would be inhumanely to add another hazard to an already very dangerous occupation. Our zeal to fend off encroachments upon the right of privacy must be tempered by remembrance that ours is a government of laws to preserve which we require law enforcement—live ones. Without becoming a police state, we may still protect the policeman’s status.’”⁶

2. Rights And Duties During an Arrest

A peace officer may arrest a person without a warrant whenever the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer’s presence or that he has committed a felony.⁷ When a peace officer has reasonable cause to believe that a person to be arrested has committed a public offense, he or she may use reasonable force and reasonable restraint to effect the arrest, to prevent escape, or to overcome resistance.⁸ If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.”⁹

“A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance.”¹⁰ The ‘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.’”

The United States Supreme Court has stated, “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”¹¹

This “careful balancing” includes consideration of “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he (she) is actively resisting arrest or attempting to evade arrest by flight.”¹²

The Ninth Circuit Court of Appeals has also noted: “All determinations of ‘unreasonable force

⁶ *In re Richard G.* (2009) 173 Cal. App. 4th 1252, 1255.

⁷ Penal Code section 836 (in pertinent part).

⁸ Penal Code section 835, 835a

⁹ Penal Code section 834a

¹⁰ Pena Code sectin 835a

¹¹ *Graham*, U.S., at 396

¹² *Id*

must embody allowances 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.”¹³ Furthermore, the determination of reasonableness must be judged from the perspective of the reasonable officer on scene, rather than through hindsight.¹⁴

B. DISCUSSION OF THE LAW AND OF THE EVIDENCE

When law enforcement officers are called out to a continuously unfolding event, and during detention or arrest, the subject dies or is injured, the analysis is conducted from the position of what an objectively reasonable officer, knowing and seeing what the particular officer(s) in question knows and sees at the time of the use of force. The use of force must be reasonable in that light. Law enforcement officers have no obligation to use the least amount of force to effectuate a detention or arrest, nor any obligation to retreat or desist in using force in the face of resistance.

On October 15, 2022, when deputies were dispatched to the Sonoma square, they all believed this was a situation where an individual had a gun. Additionally, it was believed this was the same person who had earlier that same evening threatened to kill his mother with a gun. When Smart was at the Sonoma Square many patrons were still out at nearby restaurants and bars. Also, the deputies had information that an individual had just recently broken windows of multiple vehicles and businesses. Thus, the details of the situation they were sent out to encounter was one with an individual who was being destructive, in possession of a firearm and threatened to do harm. When deputies arrived and confronted Nathan Smart the deputies realized they were dealing with a dangerous situation. This situation evolved quickly. Within seconds of Deputy Clayton’s arrival, Smart was seen with a firearm and ignored commands to drop the weapon. Instead, Smart pointed the firearm at Deputy Clayton and fired, then fled on foot.

Seconds later, after deputies took cover, Smart appeared from an alley, pointed his gun at Deputy Shilling, and was shot by Deputy Shilling. Smart appeared quickly and abruptly and was within approximately six feet of Deputy Schilling when Smart pointed the gun at him.

Officers are not required to use the least intrusive methods to make an arrest. The appropriate inquiry is whether the officers acted reasonably.¹⁵ Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment in the heat of battle with lives potentially in the balance. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.¹⁶ The determination of whether the amount of force used was reasonable is not limited to a discussion of the nature and amount of force

¹³ Scett v. Henrich (9th Cir. 1994) 39 F.3d 912.

¹⁴ Graham 49 U.S., at 396-7

¹⁵ See, e.g., Illinois v. Lafayette, 462 U.S. 640, 647, 77 L. Ed. 2d 65, 103 S. Ct. 2605 (1983); United States v. Martinez-Fuerte, 428 U.S. 543, 556-57 n. 12, 49 L. Ed. 2d 1116, 96 S. Ct. 3704 (1976).

¹⁶ Henrich (9th Cir. 1994) at 915

actually used, or whether the force used resulted in death. The “reasonableness” inquiry requires a careful consideration of all the facts and circumstances surrounding the event.

Within seconds of when Mr. Smart was contacted, he displayed a firearm and pointed it at Deputy Clayton. He ignored commands to drop the firearm and created a situation where Deputy Clayton had to consider his own safety as well as the safety of others nearby. Deputy Clayton recognized that this situation had escalated quickly, and everyone’s safety was at stake.

For Deputy Shilling, the situation with which he was confronted required a split-second decision. At the moment just before Deputy Shilling fired his weapon, he knew that shots had already been fired and that Smart had a firearm. All deputies had taken cover for their protection. Once Mr. Smart came into view, he pointed the firearm at Deputy Shilling. Deputy Shilling decided to use deadly force to counteract Mr. Smart’s unlawful actions. In light of the totality of these circumstances, we cannot conclude that his decision was objectively unreasonable.

From the moment Mr. Smart was confronted by Deputy Clayton, Mr. Smart refused to comply with the commands of law enforcement. When first contacted, Mr. Smart quickly pointed and fired at Deputy Clayton. Mr. Smart was given multiple orders to comply, but he ignored them. Deputy Clayton had barely exited his patrol vehicle before Mr. Smart began to fire. Even after Deputy Clayton returned fire, Mr. Smart fled the scene, and continued to refuse to comply with lawful orders.

The use of force by Deputies Clayton and Shilling was reasonably necessary to ensure their safety and the safety of others around. Deputy Clayton’s and Deputy Shilling’s split-second decision to fire their weapons at Mr. Smart was legally justified. Deputy Shilling defended himself against an assault with a firearm, which could likely have resulted in a significant injury or death. When Mr. Smart fired his weapon at Deputy Clayton and then later pointed his gun at Deputy Shilling, he certainly conveyed the message that he was not going to comply with their commands. The force used by Deputy Shilling to stop the threat posed by Mr. Smart did not exceed what was necessary to ensure his safety and the safety of others around. Despite the commands given by Deputy Clayton Mr. Smart never gave any indication he would comply with law enforcement.

These events escalated quickly, and split-second decisions had to be made. Deputy Clayton and Deputy Shilling engaged in reasonable actions and used reasonable force when confronted with the volatile and quickly evolving encounter with Mr. Smart.

VI. CONCLUSION

Based on the totality of the circumstances and based upon the laws of the State of California, Deputy Clayton’s and Deputy Shilling’s use of force against Nathan Smart was objectively reasonable and lawful.