Sonoma County Sheriff's Office
Administrative Review
22-AR-0003

Internal Investigation Summary

INCIDENT TYPE:	DATE OF INCIDENT:	DATE REPORTED:	FILE NUMBER:
Critical Incident - Officer Involved Shooting	10/15/22	10/15/22	22-AR-0003

EMPLOYEE (S):	DIVISION OR ASSIGNMENT:	WORK LOCATION:
Justin Clayton Carson Schilling	Patrol Patrol	Sonoma Valley Substation Sonoma PD

COMPLAINANT:	ADDRESS:	
Sonoma County Sheriff's Office	2796 Ventura Avenue	
CITY:	STATE:	ZIP CODE:
Santa Rosa	CA	95403
HOME TELEPHONE:	WORK OR CONTACT TELEPHONE:	
N/A	(707) 565-2650	

SUMMARY OF INCIDENT:

On October 15, 2022, at approximately 1845 hours, Sonoma County Sheriff's Deputies were dispatched to [redacted] in Boyes Hot Springs for a report of a family disturbance. The reporting party, Ana Smart, reported her 43-year old son, Nathan Smart, was intoxicated, under the influence of drugs and threatened to kill her. The reporting party also stated Nathan was known to possess "ghost guns" and he was making guns.

At approximately 1853 hours, Deputies arrived on scene and observed Nathan in front of the residence. Nathan fled onto the property and deputies did not pursue him. Deputies conducted a surround and call out of the residence; however, Nathan did not respond. Deputies contacted Ana who stated Nathan was not inside the residence. After confirming Nathan had in fact fled the area, Deputies issued a County-Wide BOL for Smart's arrest after establishing probable cause existed to arrest him for felony 422 PC – Terrorist Threats and felony 368 PC – Elder Abuse.

At approximately 2206 hours, Deputies were dispatched to CVS pharmacy, located at 201 W. Napa Street in Sonoma, after receiving multiple reports of a subject breaking glass in the parking lot. One of the reporting parties identified the suspect as Nathan Smart. Deputies arrived on scene and were not able to locate Nathan.

At approximately 2213 hours, Deputies were dispatched to Steiner's Tavern, located at 465 1st Street West in Sonoma, after an employee reported that a subject threw a chair at a limousine fronting the bar. The employee stated the subject was armed with a black pistol and fled the area. Deputies arrived on scene and located Nathan in the area of 135 W. Napa Street. Nathan fired one shot in the direction of Deputy Clayton at which time Deputy Clayton returned fire. Nathan then ran

from the area. Deputies began to set up containment at which time Nathan emerged from an alley and pointed the firearm at Deputy Schilling. Deputy Schilling shot Nathan, who fell to the ground, and the firearm landed on the ground nearby. Deputies took Nathan into custody and rendered medical aid. Nathan survived his injuries and was later booked into the Sonoma County Jail for 664/187 PC – Attempted Murder on a Sonoma County Sheriff's Deputy, amongst other charges. The critical incident protocol was invoked, and the Santa Rosa Police Department took over the investigation.

DIVISION ASSIGNED:	DATE ASSIGNED:	DATE COMPLETED:
Internal Affairs Unit	1/31/23	5/30/24
INVESTIGATOR:	SUPERVISOR (S) REVIEW:	
Sergeant Dylan Fong	Lieutenant Sean Jones	

VIOLATION (S): **NONE**

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Involved Party – Subject

Nathan James Smart



DOB: [redacted]
Race: Caucasian
Sex: Male
Address: [redacted], [redacted]
SSN#: [redacted]
CDL: [redacted]

[redacted]

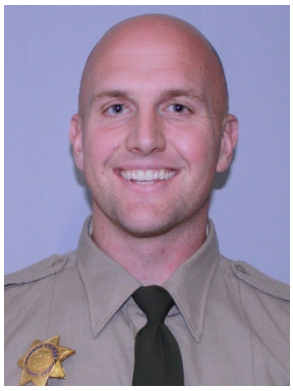
[redacted]

[redacted]

[redacted]

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Involved Party – Employees



Deputy Sheriff Justin Clayton

Date of Hire: 11/17/20

Last Two Evaluations:

3/2/2018 – 8/31/2019: Standard

9/1/2019 – 8/31/20: Standard



Deputy Carson Schilling

Date of Hire: 1/25/22

Last Two Evaluations:

3/10/2017 – 3/1/2019: Exceeds Standard

8/31/2019 – 8/31/2020: Standard

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Complaint / Authorities

The purpose of this Administrative Review investigation was to review the circumstances surrounding the performance of the Sonoma County Sheriff's Office during this incident, which occurred on October 15, 2022.

When this investigation began, there were no specific allegations of policy violations or wrongdoing on the part of any Sheriff's Office personnel. Consequently, there were no obvious Department Regulations or Policies to address in this investigation. However, the overall performance of the Sonoma County Sheriff's Office was examined (based on policies and procedures) to determine if there were any particular areas where the department did or did not perform in a reasonable manner.

The following Department policies were examined:

Sonoma County Sheriff's Office Policies:

300 Use of Force
305 Officer-Involved Shootings and Deaths
324 Media Relations
329 Major Incident Notifications
338 Critical Incident Debriefing/Defusing
400 Patrol Functions
425 Body Worn Cameras and Audio Recorders
435 Medical Aid and Response

Sonoma County Law Enforcement Chief's Association

- 93-1 Law Enforcement Employee- Involved Critical Incident Protocol

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Investigation

On January 31, 2023,[1] Lieutenant Sean Jones of the Professional Standards Bureau assigned me this investigation. He requested I conduct an Administrative Review of a critical incident that occurred on October 15, 2022, in which deputies were involved in an officer involved shooting, where the suspect, Nathan Smart, was injured.

On July 25, 2023, the Sonoma County District Attorney's Office completed their review of SRPD's criminal investigation and found that both Deputy Schilling and Deputy Clayton's use of force was objectively reasonable and lawful.

On July 26, 2023, I received the Santa Rosa Police Department's report (SR220012138) and case file from Lt. Jones, which contained event chronology, dispatch audio, incident reports, supplemental reports, surveillance footage, transcribed interviews and BWC footage. After reviewing this information, I was able to determine the following:[2]

On October 15, 2022, at approximately 1845 hours, Sonoma County Sheriff's Deputies were dispatched to [redacted] in Boyes Hot Springs for a report of a family disturbance.[3] The reporting party, Ana Smart, reported her 43-year-old son, Nathan Smart, was intoxicated, under the influence of drugs and threatened to kill her. Ana also stated Nathan was known to possess "ghost guns" and he was making guns.

At approximately 1853 hours, Deputies arrived on scene and observed Nathan in front of his residence. Nathan fled onto the property and deputies did not pursue him. Deputies conducted a surround and call out of the property; however, Nathan did not respond to Deputies requests to surrender. Deputies contacted Ana who stated Nathan was not inside her residence but was likely in a travel trailer on the property. After spending nearly 3 hours on scene Deputies determined Nathan fled the area. Deputies issued a County-Wide BOL for Smart's arrest after establishing probable cause existed to arrest him for felony 422PC – Terrorist Threats and felony 368 PC – Elder Abuse. After confirming with Ana she felt safe in her home, deputies cleared the scene.

At approximately 2206 hours, Deputies were dispatched to CVS pharmacy, located at 201 W. Napa Street in Sonoma, after receiving multiple reports of a subject using a large wooden stick to break glass in the parking lot.[4] One of the reporting parties identified the suspect as Nathan Smart. Deputies arrived on scene and were not able to locate Nathan.

At approximately 2213 hours, Deputies were dispatched to Steiner's Tavern, located at 465 1st Street West, for a report of a subject that threw a chair at a limousine that was parked outside the bar. An employee of the bar reported the subject was seen fleeing the area holding a black pistol

[1] An underlined date indicates it is part of my investigation – Sergeant Dylan Fong, Internal Affairs
[2] A copy of these items can be found in Exhibits.
[3] CAD chronology for SPD Event SO222880009 can be found in Exhibits.
[4] CAD chronology for SPD Event SO222880010 can be found in Exhibits.

in his hand. Deputies arrived in the area and began looking for the subject. Deputy Clayton was driving his marked patrol vehicle E/B on West Napa Street from 2nd Street West when he was flagged down by a citizen who reported the suspect was near the town square [Deputy Clayton's BWC Timestamp 22:13:54, Clayton BWC (Shooter).mp4].

Upon reviewing surveillance footage from the Sonoma Bungalows boutique hotel, located at 158 W. Napa Street, I observed a subject (later identified as Nathan Smart) walking west on W. Napa Street on the south side of the street.[5] A SCSO patrol vehicle is seen driving east on W. Napa Street in the direction of Smart. As the patrol vehicle passed Smart, Smart is seen quickly turning, pointing an object at the vehicle before turning and running into a nearby parking lot.

Upon reviewing Deputy Clayton's BWC and comparing it to the aforementioned surveillance footage, it is clear the SCSO patrol vehicle was driven by Deputy Clayton. At timestamp 22:14:12 (hh:mm:ss), Smart can be seen walking on the sidewalk as Deputy Clayton drives past him. Deputy Clayton activated his emergency lights and continued driving towards the town square before he is heard talking with a citizen who states the suspect ran around a corner. Deputy Clayton turned around and began driving west on W. Napa Street.

The following is a timeline of events leading up to Deputy Clayton's officer involved shooting:

22:14:48 - Deputy Clayton abruptly stopped his patrol vehicle, pointed his firearm out the driver's side window and yelled, "Hey drop it!" From a seated position, Deputy Clayton opened the driver's side door and pointed his firearm between the open door frame and A-pillar of his patrol vehicle and yelled, "Drop it!.....Drop it! I can't tell what he has! Does he have a gun?"

22:15:04 - A gunshot rings out, at which time Deputy Clayton discharged his firearm four (4) times. Deputy Clayton immediately radioed dispatch saying, "Sheriff One, Frank Six Six, shots fired, I think he has a gun in his hand he just went running."

[5] A copy of this surveillance footage (ch11_20221015220423.mp4) can be found in Exhibits.

Deputy Clayton exited his patrol vehicle and walked to a building, located at 135 W. Napa Street, and met up with Deputy James Andrews. They both made their way to the west corner of the building and peered around the corner towards where Smart was last seen running (see below screenshot from Deputy Clayton's BWC 22:15:21).



Deputy Clayton illuminated the area with his pistol mounted light and observed Smart partially present himself from around another corner of the building. Deputy Clayton yelled, "Close! Close! Close!" and immediately backed away from the corner with Deputy Andrews close behind.



Deputy Clayton and Deputy Andrews both retreated back to Deputy Clayton's patrol vehicle where they took cover. Deputy Clayton told another deputy where he last saw Smart and yelled, "Hey Nathan, come out….drop the fucking weapon and come out with your hands up!" [Deputy Clayton's BWC 22:15:38].

Deputy Schilling and Deputy McBeth were positioned on the south sidewalk of West Napa Street next to the Sonoma Index Tribune building. Deputy Schilling was positioned behind a wall, and appeared to have his firearm at a low ready and was facing west [Deputy Schilling's BWC 22:15:44].

Deputy Schilling raised his firearm and began to peer around the corner at which time Smart suddenly appeared and raised an object, later determined to be a homemade firearm, in the direction of Deputy Schilling and yelled, "What?" Deputy Schilling immediately discharged his firearm three times at Smart who fell to the ground landing on the sidewalk. Deputies began to yell at Smart not to move and for him to show them his hands [Deputy Schilling's BWC 22:16:28, screenshot below].





One deputy can be heard telling other deputies that "the gun is next to him". Deputy Clayton told deputies to "push in and kick the gun" [Deputy Clayton's BWC 22:16:50, screenshot above]. Deputy McBeth ran in and kicked the gun away from Smart, at which time Deputy Clayton assisted in placing handcuffs on Smart.



The remainder of Deputy Clayton's BWC footage consisted of him assisting deputies in assessing Smart's injuries. Sgt. Schemmel determined Deputy Clayton and Deputy Schilling both discharged their firearms at Smart and began the sequestering process by isolating them, telling them to turn off their BWC's and ordering them not to discuss the incident. Deputy Campos was tasked with obtaining a public safety statement from both deputies.[6] Deputies were not heard talking about the incident as they treated Smart for his injuries.

[6] Sgt. Schemmel's BWC 22:20:11

Nathan Smart's Injuries

Smart was transported by ambulance to Queen of the Valley Hospital in Napa where he was treated for a gunshot wound to his right hand, upper left arm, and his right thigh. He was then transported by helicopter to UC Davis Medical Center for further medical treatment. After being treated at UC Davis, Smart was transported to Kaiser Hospital where he had a bullet removed.

Deputy Justin Clayton's Interview

On 10/18/22, at approximately 1100 hours, Deputy Clayton met with VCI Detectives Nick Gillotte and Jesus Avina from the Santa Rosa Police Department, at which time Deputy Clayton provided a voluntary statement related to the criminal investigation.[7] This recorded interview took place at the Sonoma County DSA Hall and Deputy Clayton's legal representation, Attorney Andrew Ganz from RLS Law Firm, was present with him. Below is a summary of that interview, which I have reorganized for clarity.

Before asking Deputy Clayton to provide a narrative statement regarding the incident, Detective Gillotte confirmed the following information:

- Deputy Clayton was being interviewed as a witness and victim,
- Deputy Clayton was free to leave at any time,
- Deputy Clayton was not obligated to answer any questions,
- Deputy Clayton agreed to provide a voluntary statement,
- Deputy Clayton had ample time to gather his thoughts and was prepared to give a statement,
- Deputy Clayton had viewed his BWC footage regarding this incident,
- Deputy Clayton **had not** viewed anyone else's BWC footage regarding this incident,
- Deputy Clayton did not have any friendship or other relationship with either Detective Avina or Detective Gillotte.
- Deputy Clayton was not sick or injured at the time of the interview,
- Deputy Clayton was not sick or injured at the time of the incident,
- Deputy Clayton was not on any medications at the time of the incident,
- Deputy Clayton slept a total of six and a half hours, the night before the incident,
- Deputy Clayton ate biscuits and gravy at approximately 1500 hours before the incident.
- Deputy Clayton had not consumed any alcohol prior to the incident.

Deputy Clayton has been employed with the Sonoma County Sheriff's Office as a Deputy Sheriff for approximately 2 years. Prior to working for the Sheriff's Office, Deputy Clayton worked as a Peace Officer for the San Francisco Police Department for approximately six years. During his time at the San Francisco Police Department, he held the position of a part-time

[7] A copy of Deputy Clayton's statement to SRPD Detectives can be found in the Exhibits module in AIM.

SWAT member. As a part of being on that team, he would train in firearms every month, and qualify twice per year. Deputy Clayton did not have any military experience.

Deputy Clayton was assigned to patrol at the Sonoma County Sheriff's Office Valley Sub-station, cover shift (1300-0100), with days off being Sunday-Tuesday and every other Wednesday.

On the date of this incident, Deputy Clayton began his shift at 1300 hours and was assigned the call sign of Frank-Six-Six (F66). Deputy Clayton stated his duty uniform consisted of a long sleeve tan shirt, green pants, black boots, and a black hat with a sewn-on Sheriff's badge. His outer carrier vest contained his metal SCSO badge, BWC, handcuffs, two magazines, radio, OC spray, flashlight and a pouch for his wallet, notepad, gloves and pen. On his black nylon duty belt, he was outfitted with a Taser on his left side, and his department issued Glock 17 9mm handgun on his right side. He did not carry a back-up firearm.

Regarding the events surrounding the incident, Deputy Clayton remembered responding to Smart's residence at approximately 1900 hours for a report that Smart was threatening to kill his mother. Deputies arrived on scene and Smart fled onto his property and it was unknown where he went. Deputies surrounded the property and gave PA announcements for Smart to surrender. Smart was wanted for 422 PC and 368 PC. Further, Deputies learned Smart had ghost guns in his bedroom and he stated he would kill himself. Deputy Clayton stated they were on scene for approximately 2 hours with no response from Smart. The decision was finally made to clear the scene after believing Smart was not on the property.

Deputy Clayton explained he was dispatched to a shopping center, located at 135 W. Napa St, for a subject vandalizing property near the CVS store. One of the callers identified the subject as Nathan Smart. Deputy Clayton arrived on scene and began looking for Smart. He contacted a witness who told Deputy Clayton that Smart had ran away approximately 2 minutes before he arrived on scene. Another witness told deputies that Smart was last seen running towards the town square.

Deputy Clayton began driving towards the town square looking for Smart. As he was driving eastbound on W. Napa Street, near 2nd St. West, another witness stopped Deputy Clayton and told him a subject running near the square tried to smash something on his car. It was at that time that he heard dispatch report another incident at Steiner's Tavern, where a subject brandished a firearm at another person. As he approached the town square, Deputy Clayton was flagged down by another citizen who told him the subject had ran away behind Deputy Clayton towards the southern sidewalk of First Street West.

Deputy Clayton made a U-turn and drove westbound on W. Napa Street. As he was approximately mid-block between First Street West and Second Street West, he observed a subject, dressed in dark clothing, standing on the southern sidewalk and pointing a firearm in his direction. As Deputy Clayton drove towards him and while still seated in his patrol vehicle, from

a distance of approximately 25-30 yards, Deputy Clayton drew his firearm, pointed it at the subject and gave him commands to drop the gun. Deputy Clayton stated:

> ***"Yeah, so I mean, he was standing in a straight, upright position. Feet were about shoulder width apart. Hands would be, I guess, cupped together with …. what I believed to be a firearm in his hands, uh, and … pointed out directly in front of his face while still cupped together making kind of a triangle between his hands and his chest and his arms and what I would associate…as a shooting position based on my training and experience."***

It was at that point the subject fired one round at Deputy Clayton. Deputy Clayton explained seeing a flash and smoke coming from the gun. Deputy Clayton fired back approximately four times at which time the subject fled into a nearby parling lot. In his interview Deputy Clayton stated:

> ***"…he's standing there with his, his feet square underneath him and his hands pointing out at me, uh, like in the motion of someone holding a firearm…I'm probably 50, 40, or 50 yards from him, so I, I close the distance a little bit to I'd say about 30 yards, open my door, I draw my firearm at him and I, I point it at him and I start giving him commands to stop, uh , I said drop it or some, I say something along the lines of drop it, like drop the weapon or something…I see him in this stance like this and I start to thinking like he's got a gun in his hand. So I…I'm trying to give him the commands to drop it 'cause I really don't wanna shoot him. I…I'd prefer, obviously, not to do that….I'm aiming at him, I see his gun go off and then I hear a pop from his gun and so at that point, I didn't have any other options so, 'cause I thought he was shooting the gun at me."*** [8]

Deputy Clayton was asked "Approximately how much time passed between you noticing that sight of someone standing as if they're holding a gun, later seeing what you believe to be a gun, until you fired, or until he fired his shot." Deputy Clayton estimated the time to be approximately 5-10 seconds before he fired. During that 5-10 seconds, Deputy Clayton stated he was concerned he may be shot; and it wasn't until the subject fired at him that he fired back.

Deputy Clayton drove his vehicle to the corner of the building where he exited and approached the corner of the building and met up with Deputy Andrews. Deputy Clayton began "slicing the pie" and peeked around the corner where he saw "his head pop out" and he believed he saw the barrel of a firearm, which was not pointed at him.[9]

Deputy Clayton told Deputy Andrews to back up and seek cover. They got behind Deputy Clayton's patrol vehicle at which time Deputy Clayton began giving commands. Deputy Clayton

[8] Deputy Clayton's transcribed interview, pg. 7, lines 316-331.

[9] "Slicing the Pie" is a phrase used to explain the tactic of slowly looking into an area, without exposing yourself completely, and clearing the area slice by slice.

explained, "Uh, I believe I say, like, Nathan, like, drop the weapon. Come out here, like, you know, give up."

At this point Deputy Clayton heard Deputy Campos radio that Smart was running back in the parking lot. Shortly thereafter, Deputy Clayton heard gunshots to his left and observed a subject fall to the ground. Just behind where the subject fell he observed Deputies McBeth and Schilling standing on the sidewalk.

Deputy Clayton ran to the immediate area and observed the subject covered in blood and was on his chest at first, then he began rolling over. Deputy Clayton observed a firearm fall off to the subject's right side onto the sidewalk. Deputies moved forward and were able to kick the firearm away from the subject. Deputies then handcuffed the subject and began rendering life-saving measures. Deputy Clayton explained they cut the subject's shirt off, and applied a tourniquet, before medics arrived and took over medical care.

During follow up questioning, Detective Gillotte asked Deputy Clayton what he believed a ghost gun was. Deputy Clayton characterized a ghost gun as a partially self-made, unregistered firearm.

Deputy Clayton was also asked what Sheriff's vehicles were in Smart's field of view when he first pointed a firearm at him. Deputy Clayton stated his patrol vehicle, a marked SCSO Dodge Charger, and Deputy Andrews patrol vehicle, a marked SCSO Ford Explorer, were both in Smart's field of view.

Deputy Clayton was asked at which point he realized the initial call for service at Smart's residence involving the family disturbance, the vandalizing in the CVS/Whole Foods shopping center and the brandishing of a firearm at Steiner's Tavern were all related, and the subject responsible was one person, Nathan Smart. Deputy Clayton explained one of the callers who reported the vandalism at the shopping center specifically identified Smart. Regarding the brandishing in front of Steiners, he thought it was "likely the same person". He added when he first "addressed the subject there" he was not able to identify that it was Smart immediately. However, he used his training, experience, and common sense to conclude it was the same person responsible.

Deputy Carson Schilling's Interview

On 10/18/22, at approximately 1153 hours, Deputy Schilling met with VCI Detectives Nick Gillotte and Jesus Avina from the Santa Rosa Police Department, at which time Deputy Schilling provided a voluntary statement related to the criminal investigation.[10] This recorded interview took place at the Sonoma County DSA Hall and Deputy Schilling's legal representation,

[10] A copy of Deputy Schilling' statement to SRPD Detectives can be found in the Exhibits module in AIM.

Attorney Andrew Ganz from RLS Law Firm, was present with him. Below is a summary of that interview, which I have reorganized for clarity.

Before asking Deputy Schilling to provide a narrative statement regarding the incident, Detective Gillotte confirmed the following information:

- Deputy Schilling was being interviewed as a witness and victim,
- Deputy Schilling was free to leave at any time,
- Deputy Schilling was not obligated to answer any questions,
- Deputy Schilling agreed to provide a voluntary statement,
- Deputy Schilling had ample time to gather his thoughts and was prepared to give a statement,
- Deputy Schilling had viewed his BWC footage regarding this incident,
- Deputy Schilling **had not** viewed anyone else's BWC footage regarding this incident,
- Deputy Schilling did not have any friendship or other relationship with either Detective Gillotte or Detective Avina,
- Deputy Schilling was not sick or injured at the time of the interview,
- Deputy Schilling was not sick or injured at the time of the incident,
- Deputy Schilling was not on any medications at the time of the incident,
- Deputy Schilling slept from approximately 1000 hours to 1600 hours, a total of six hours, that day before the incident,
- Deputy Schilling ate a burrito between 1700 hours and 1800 hours before the incident,
- Deputy Schilling had not consumed any alcohol 24 hours prior to the incident.

Deputy Schilling has been employed with the Sonoma County Sheriff's Office (SCSO) as a Deputy Sheriff for approximately one year. Prior to his employment with the SCSO, Deputy Schilling was previously employed with the San Francisco Police Department for 2 years as a Police Officer.

Deputy Schilling holds no collateral assignments, has never been on a SWAT team, and has no military experience. He was assigned to graveyard patrol, working 2000 to 0700 hours during his long weeks (Wed-Sat), and 1900 to 0700 during his short weeks (Thurs-Sat).

On the date of this incident, Deputy Schilling began his shift at 1730 hours and was assigned the call sign of George-Nine-Eight (G98). He was dressed in full uniform, consisting of an undershirt with either Sonoma PD or SCSO patches, an outer carrier vest, green pants, duty belt and boots. On his outer carrier vest, he was equipped with his BWC camera, radio, extra magazines, handcuffs, and a pouch.

On his duty belt, Deputy Schilling was equipped with his department issued firearm, a Glock 17 .9mm pistol, which was carried on his right hip, and a Taser on his left side. Additionally, he

carried an extra set of handcuffs in a handcuff pouch and a canister of OC spray. He was not carrying a backup firearm.

Regarding the events surrounding the incident, Deputy Schilling recalled being dispatched to Clayton Avenue for a call for service regarding a female stating her son, Nathan Smart, was threatening to kill her and then kill himself afterward. The caller also reported there were ghost guns in the house, and she believed her son would shoot her then shoot himself.

Upon responding to the scene, dispatch advised deputies the caller was standing in the driveway to the residence, and the son was somewhere around her. Deputy Schilling was the first deputy to arrive on scene and observed a female standing in the driveway, at which time he told her to come to him, so she could be in a safe location. At that time, Deputy Schilling observed what he believed to be Smart sprinting down the driveway back towards the residence. Deputy Schilling did not pursue him. Additional deputies arrived on scene and set up a perimeter around the residence.

Deputy Schilling and other deputies remained on scene for hours making call out announcements. It was determined that Smart had fled the property and was not on scene, so all deputies cleared the scene.

Deputy Schilling returned to the Sonoma Valley sub-station where he began handling a call for service involving domestic violence. While he was speaking with the victim in that case, he heard deputies being dispatched to the CVS/Whole Foods shopping center parking lot where a subject was reportingly breaking windows to either business windows or vehicle windows. He then heard over the radio the subject was the same person who they were just looking for, Nathan Smart.

Deputy Schilling told the victim in the domestic violence call for service that he needed to respond to another high-priority call, and asked if he could resume the investigation at a later time. Deputy Schilling stated, "Based on the nature of what was going on and the prior call for service I felt like more, more of us there the better."

While responding to the area, Deputy Schilling heard deputies being dispatched to Steiner's Tavern for a subject who was brandishing a firearm. He believed it was Smart based upon the description given of the subject. Deputy Schilling described how he was driving on West Napa Street behind "a row" of other patrol vehicles when there was "a bunch of bystanders on the north and south side of the sidewalk that were all yelling, pointing behind us, saying he's that way, he's that way being, behind us being west."

Deputy Schilling made a u-turn with two patrol cars in front him. The patrol vehicles stopped, and the deputies got out. Deputy Schilling got out of his patrol vehicle and went to the north sidewalk at which time he heard a gunshot followed by additional gunshots. He heard his partner yelling saying the suspect fired gunshots first. Deputy Schilling believed his partner returned

fire. He wasn't sure exactly where the gunfire was coming from, but believed it was south of where they were located in the direction where his partner was looking.

Deputy Schilling ran to the south sidewalk on West Napa Street to be in a better position. He positioned himself next to a concrete pillar and began looking westbound on West Napa Street. He had Deputy McBeth with him. While he was standing there, he could hear "like a rustling noise, like a, like not fidgeting but like the sound of, like someone moving something almost." Deputy Schilling did not know what was around the pillar he was standing next to, "whether it was an alley or an easement or something." Deputy Schilling stated a subject appeared from around the pillar directly in front of him and was armed with a firearm.

Deputy Schilling described seeing a silver object, which he believed to be a firearm, in the subject's hands. The subject "jumped up and down a few times" and yelled out something similar to "what" or "what's up". As he said this, the subject began raising the firearm in his direction, at which time Deputy Schilling stated he feared he was about to be shot, at which time he discharged his firearm at the subject approximately 2 or 3 times, striking him. Deputy Schilling estimated he was approximately 6 feet away from the subject when he shot. Further, Deputy Schilling stated his partner, as well as a "large crowd of civilians who were standing behind us in the distance", were in danger of being shot by Smart.

During follow-up questioning by Andrew Ganz, Deputy Schilling was asked if he knew the suspect's name for the call for service on Clayton Avenue. Deputy Schilling identified Nathan Smart as the suspect. For the second incident, at the CVS/Whole Foods parking lot, Deputy Schilling stated he knew the suspect was Nathan Smart, as one of the callers identified him. Regarding the call for service at Steiners Tavern, Deputy Schilling stated he didn't have any information as to who the suspect was, but believed dispatch relayed information that the call could be related to Nathan Smart. Deputy Schilling stated he believed Smart was likely the suspect in all three incidents.

Firearms Training Records

On May 13, 2024, I reviewed Deputy Schilling's firearms training records, which were produced by Firearms Instructor Deputy Larry Matelli.[11] Deputy Schilling was hired in January 2022. Deputy Schilling attended a 20-hour new hire firearms training February 7-8, 2022.

For the 1st Quarter of 2022, Deputy Schilling's training records show he was "excused", which was likely a result of him already completing 20 hours of firearms training during that quarter.

For the 2nd Quarter of 2022, Deputy Schilling's training records show he was "absent". There was no explanation indicating why.

[11] Deputy Schilling's training records can be found in the Exhibits module in AIM.

I emailed Firearms Instructor Larry Matelli asking him for any instructor notes that would indicate why Deputy Schilling was excused during the 1st Quarter and absent during the 2nd Quarter. Deputy Matelli emailed me back stating he spoke to Deputy Schilling who told him he attended range when he was on FTO (1st Quarter) with Deputies Holton and Edney; however, it appears it was never documented. Deputy Matelli told me there were no notes attached to the training records for the 2nd Quarter.[12]

I spoke with our training coordinator, Amy Dale, who concluded Deputy Schilling likely completed his required firearms training mandated through POST; therefore, he was "excused" during the 2nd Quarter.

Regarding Deputy Schilling's 2022 3rd Quarter training. Sgt. Kidder told me the 3rd Quarter Firearms training was cancelled due to a staffing crisis. This was directed by Lt. Brandon Cutting who sent an email to Sgt. Kidder, who was assigned as the Firearms Sergeant at that time.[13]

I reviewed Deputy Schilling's daily observation reports for his FTO training program, from 2/15/22 to 4/18/22. On March 23, 2023, during Deputy Schilling's Phase 3 training, FTO Marcus Holton conducted firearms training with Deputy Schilling. According to FTO Holton, Deputy Schilling did not pass the qualification course and needed remedial training.[14] There were no records of Deputy Schilling completing any other firearms training.

On May 13, 2024, I reviewed Deputy Clayton's firearms training records.[15] See the table below regarding Deputy Clayton's firearm's training records for the year leading up to this incident in descending order:

Date Training Attended	Type of Firearms Training Attended	Score or Pass/Fail
See Below	2022 3rd Quarter	---------
See Below	2022 2nd Quarter	Absent
March 18, 2022	2022 1st Quarter – Qualification	81/100 – Pass
December 7, 2021	2021 4th Quarter (FTO)	Pass

Regarding Deputy Clayton showing as "absent" for the 2022 2nd Quarter. I contacted Sgt. Brent Kidder who was the Firearms Sergeant during this time in question. After conducting some research, Sgt. Kidder was able to determine that Deputy Clayton likely attended 2022 2nd Quarter firearms training as he was signed up to attend on 6/17/22. After looking at the sign-up sheet for 6/17/22. Sgt. Kidder and I determined that all of the deputies who were signed up were listed as "absent" in their training records. This was likely as a result of the signup sheet never being turned in for a firearms instructor to input into their records.

[12] A copy of the email can be found in Exhibits.
[13] A copy of the email can be found in Exhibits.
[14] A copy of the Daily Observation Report can be found in Exhibits.
[15] Deputy Clayton's training records can be found in the Exhibits module in AIM.

Regarding Deputy Clayton's 2022 3rd Quarter training. Sgt. Kidder told me the 3rd Quarter Firearms training was cancelled due to a staffing crisis. This was directed by Lt. Brandon Cutting who sent an email to Sgt. Kidder.[16]

District Attorney's Officer Involved Incident Report

On July 25, 2023, the Sonoma County District Attorney's Office released an Officer-Involved Incident Report regarding this incident, which I reviewed. [17]

The purpose of the District Attorney's investigation and review of this critical incident was to determine criminal liability, if any, on the part of any involved party, including law enforcement employee(s).

Under Section "V. – Statement of the Law" and "B. Discussion of the Law and of the Evidence", the District Attorney provided the following opinion(s):

> *"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. 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*

[16] A copy of the email can be found in Exhibits.
[17] A redacted version of the District Attorney's Officer-Involved Fatal Incident report can be found in the Exhibits module in AIM.

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. The determination of whether the amount of force used was reasonable is not limited to a discussion of the nature and amount of force 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."

In Section "VI. Conclusion", the District Attorney stated, "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."

Examination of Smart's Firearm

In Santa Rosa Police Department's press release, they described Smart's firearm as follows:

"Smart was using a homemade firearm when he shot at the Sonoma County Sheriff's Office Deputy. The unlawful firearm is commonly referred to as an "improvised firearm" or "zip gun." A zip gun is a genuinely crude homemade firearm that can be constructed by adopting existing materials. Zip guns can fire bullets and projectiles that can cause great bodily injury or death." They also provided the following photo:



SRPD VCI Detective Sgt. Matthies inspected the firearm at the scene. Sgt. Matthies wrote a supplemental report documenting his inspection and condition of the firearm. He wrote," As we walked through the scene, I prioritized my initial investigation with inspecting the suspect's firearm. I walked over to the firearm at its place of rest and noticed it was a "homemade" firearm similar to a zip gun, or "improvised firearm." Without manipulating the firearm, I was able see the gun had a barrel, spring trigger assembly, makeshift charging hammer and pin, and pistol

grip. Not only did the firearm appear to have all the parts consistent with a homemade firearm, it was made in the shape of an industrial manufactured firearm and covered in black tape."[18]

Conclusions and Findings

The purpose of this Administrative Review was to review the circumstances and performance of the Sonoma County Sheriff's Office personnel who were involved in the shooting of Nathan Smart on October 15, 2022.

While there were no specific violations or allegations of any policy violations on the part of any Sheriff's Office personnel, I considered the overall performance of the Sonoma County Sheriff's Office to determine if there were any particular areas where staff did or did not perform in a reasonable manner based on the Sheriff's Office policies and procedures.

Each of the following policies, procedures, or protocols were reviewed individually:

Sonoma County Sheriff's Office Policies:

300 Use of Force
302 Handcuffing and Restraints
305 Officer-Involved Shootings and Deaths
324 Media Relations
329 Major Incident Notifications
338 Critical Incident Debriefing/Defusing
400 Patrol Functions
425 Body Worn Cameras and Audio Recorders
435 Medical Aid and Response

Sonoma County Law Enforcement Chief's Association

- 93-1 Law Enforcement Employee- Involved Critical Incident Protocol

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Sonoma County Sheriff's Office Policies and Procedures:

Use of Force (Lexipol Policy 300)

Whether Deputy Schilling and Deputy Clayton used reasonable and necessary force while attempting to take Smart into Custody. The following policies were examined:

Policy section 300.1 – "Purpose and Scope", stated:

[18] A copy of this supplemental report can be located in Exhibits.

"This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this office is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

Retaliation prohibitions for reporting suspected violations are addressed in the Anti-Retaliation Policy."

Policy 300.2 "Policy" stated:

"The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. On a daily basis, deputies are involved in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Deputies must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Office recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests. It is the policy of this Office that deputies shall use only that force which is objectively reasonable, given the facts and circumstances known at the time of the event to effectively bring an incident under control.

"Reasonableness" of the use of force will be determined from the perspective of a reasonable deputy on scene at the time of the incident."

Policy 300.3 "Use of Force" stated:

"Deputies shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable deputy on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that deputies are often forced to make split-second decisions about the amount of force that

reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation a deputy might encounter, deputies are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Deputies may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which deputies reasonably believe that it would be impractical or ineffective to use any of the approved or authorized tools, weapons, or methods provided by the Office. Deputies may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires a deputy to retreat or be exposed to possible physical injury before applying reasonable force."

Policy Section 300.3.1 "Legal Authority for Use of Force" stated:

"California Penal Code Section 835: An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his/her arrest and detention.

California Penal Code Section 835a: Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the subject being arrested; nor shall such officer be deemed an aggressor or lose their right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

Title 15, California Code of Regulations Section 3268: (Reasonable Force) The force that an objective, trained and competent employee, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order."

Policy Section 300.3.2 "Factors Used to Determine the Reasonableness of Force" stated:

"*When determining whether to apply force and evaluating whether a deputy has used reasonable force, a number of factors should be taken into consideration, as time and circumstance permit (Government Code § 7286(b)). These factors include but are not limited to:*

(a) The apparent immediacy and severity of the threat to the deputies or others (Penal Code 835a).
(b) The conduct of the individual being confronted, as reasonably perceived by the deputy at the time (Penal Code § 835a).
(c) Deputy/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of deputies available vs. subjects).
(d) The conduct of the involved deputy leading up to the use of force (Penal Code §835a).
(e) The effects of suspected drugs or alcohol.
(f) The individual's apparent mental state or capacity (Penal Code § 835a).
(g) The individual's apparent ability to understand and comply with deputy commands (Penal Code § 835a).
(h) Proximity of weapons or dangerous improvised devices.
(i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
(j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
(k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
(l) Training and experience of the deputy.
(m) Potential for injury to deputies, suspects, bystanders, and others.
(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the deputy.
(o) The risk and reasonably foreseeable consequences of escape.
(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the deputy or others.
(r) Prior contacts with the subject or awareness of any propensity for violence.
(s) Any other exigent circumstances."

Policy section 300.3.6 "Alternative Tactics – De-Escalation" stated:

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, deputies should consider actions that may increase deputy safety and may decrease the need for using force:

(a) Summoning additional resources that are able to respond in a reasonably timely manner.

(b) Formulating a plan with responding deputies before entering an unstable situation that does not reasonably appear to require immediate intervention.
(c) Employing other tactics that do not unreasonably increase deputy jeopardy.

In addition, when reasonable, deputies should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

(a) Attempts to de-escalate a situation.
(b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

Policy Section 300.4 "Deadly Force Applications" stated:

"Where feasible, the deputy shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the deputy has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a).

If an objectively reasonable deputy would consider it safe and feasible to do so under the totality of the circumstances, deputies shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, deputies should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the deputy reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

(a) A deputy may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the deputy or another person.
(b) A deputy may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the deputy reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the deputy shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the deputy has objectively reasonable grounds to believe the person is aware of those facts.

Deputies shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable deputy would believe the person does not pose an

imminent threat of death or serious bodily injury to the deputy or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable deputy in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the deputy or another person. A deputy's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a)."

At the time of this incident, Deputies determined there was probable cause to arrest Smart for 422PC – Terrorist Threats and 368 PC - Elder Abuse. Smart's mother, Ana Smart, told deputies Smart had possessed ghost guns, was manufacturing ghost guns and was under the influence of drugs.

A series of events unfolded after the initial call for service at Smart's residence that furthered deputies' suspicion that Smart was responsible. The second event was the call for service in the CVS/Whole Foods parking lot in which callers reporting a subject breaking out windows with a wooden stick. One of the callers identified Smart as the suspect.

The third event was the call for service at Steiner's Tavern, in which callers reported a subject threw a chair at a parked limousine and brandished a firearm. In their interviews, both Deputy Clayton and Deputy Schilling stated they believed Smart was the suspect involved in all three incidents.

Deputy Clayton was the first deputy to locate Smart. Deputy Clayton stated,

> ***"Yeah, so I mean, he was standing in a straight, upright position. Feet were about shoulder width apart. Hands would be, I guess, cupped together with …. what I believed to be a firearm in his hands, uh, and … pointed out directly in front of his face while still cupped together making kind of a triangle between his hands and his chest and his arms and what I would associate…as a shooting position based on my training and experience.***

From a distance of 25-30 feet between Smart and Deputy Clayton, Deputy Clayton gave Smart numerous commands to drop his weapon. Smart fired his firearm once at Deputy Clayton at which time Deputy Clayton returned fire four times. In his interview, Deputy Clayton stated approximately 5-10 seconds passed between the moment he observed Smart pointing a firearm at him and the moment Smart shot at him. In those 5-10 seconds, Deputy Clayton believed he was at risk of being shot. Deputy Clayton demonstrated an extreme amount of restraint in choosing not to fire at Smart within those 5-10 seconds when Deputy Clayton was in immediate danger of being shot by Smart.

Deputy Schilling arrived on scene and had knowledge Smart was armed with a firearm, had fired upon Deputies and fled on foot on foot. He took a position of cover on the southern sidewalk of W. Napa Street. Approximately one minute later, Deputy Schilling heard a rustling sound and peered around the corner of the building he was using as cover. As he did so, Smart presented himself and pointed a firearm at Deputy Schilling. Deputy Schilling felt in fear of his own life, as well as other deputies and bystanders, and discharged his duty firearm at Smart three times.

The evidence in this case showed the circumstances and facts known to Deputy Clayton just prior to the use of force, which included:

- Smart had committed multiple crimes including felonies,
- Smart was armed with a firearm in a populated area,
- Smart was acting erratically,
- Smart was intoxicated and possibly under the influence of drugs,
- Smart was avoiding and actively fleeing from law enforcement,
- Smart was not responding to numerous commands to drop his firearm,
- Deputy Clayton observed Smart was in a shooting position, pointing a firearm at him and was in fear of his own life.

The evidence in this case showed the circumstances and facts known to Deputy Schilling just prior to the use of force, which included:

- Smart had committed multiple crimes including felonies,
- Smart shot his firearm at Deputy Clayton,
- Smart was armed with a firearm in a populated area,
- Smart was acting erratically,
- Smart was intoxicated and possibly under the influence of drugs,
- Smart was avoiding and actively fleeing from law enforcement,
- Smart was not responding to numerous commands to drop his firearm,
- Deputy Schilling observed Smart pointing a firearm at him and was in fear of his own life.

In examining Sheriff's Office Policy 300.3, which read:

"*Deputies may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).*" This investigation revealed Deputies Schilling and Clayton both reasonably believed Smart was going to shoot them.

From approximately 25-30 yards, Smart pointed and fired his firearm at Deputy Clayton which caused Deputy Clayton to return fire. Smart then ran away out of view. Approximately one minute later, from approximately 6 feet, Smart emerged from an alley, and pointed his firearm at

Deputy Schilling causing Deputy Schilling to return fire. Both Deputy Schilling and Deputy Clayton discharged their department issued Glock 17 firearms at Smart after fearing for their own lives, as well as other deputies and bystanders in the area.

Smart's actions showed his intent on causing great bodily harm or death to a Sheriff's Deputy. Both Deputy Clayton and Deputy Schilling discharged their duty firearms at Smart only when faced with an immediate threat of bodily injury to themselves, other deputies and bystanders. This investigation showed their level of force was proportional to the seriousness of the suspected offenses and to Smart's level of resistance.

In examining Sheriff's Office Policy 300.4, which read:

"*The use of deadly force is only justified when the deputy reasonably believes it is necessary in the following circumstances (Penal Code § 835a):*

> *(a) A deputy may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the deputy or another person.*
> *(b) A deputy may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the deputy reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the deputy shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the deputy has objectively reasonable grounds to believe the person is aware of those facts.*

"An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable deputy in the same situation would believe that a person has the ***present ability, opportunity, and apparent intent*** *to immediately cause death or serious bodily injury to the deputy or another person. A deputy's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a)."*

Deputies Clayton and Schilling faced an imminent threat of death or serious bodily injury based on the totality of the circumstances. Smart had the ***present ability*** to cause serious bodily injury or death due to the fact he was armed with a firearm, pointed it at both of them and even shot at Deputy Clayton. Additionally, the area was heavily populated with innocent bystanders who were at risk of death or serious bodily injury.

Smart had the **op*portunity*** to cause death or seriously bodily injury to deputies or bystanders due to the fact he was armed with a firearm and demonstrated the functionality of the firearm by shooting at Deputy Clayton.

Last, Smart had the ***apparent intent*** to cause death or serious bodily injury to deputies or bystanders. Smart was armed with a firearm, refused to drop his firearm, pointed the firearm at deputies, and shot his firearm at Deputy Clayton. Approximately one minute later, Smart raised his firearm at Deputy Schilling when Deputy Schilling first encountered him.
The Sonoma County District Attorney's Office conducted a review of this incident for potential violations of criminal law. At the conclusion of the District Attorney's Office review, they determined no charges would be filed against any law enforcement personnel involved in his matter. The fact that the District Attorney's Office determined no charges were warranted was evidence that Deputy Clayton and Deputy Schilling acted within state law.

For the reasons stated above, the evidence in this case showed both Deputy Clayton's and Deputy Schilling's use of force against Smart in their attempt to arrest him was reasonable, lawful and within policy.

FINDINGS: No violations.

Sonoma County Sheriff's Office Policies and Procedures:

Officer-Involved Shootings and Deaths (Lexipol Policy 305)

Whether Sheriff's Office personnel invoked and followed the *Sonoma County Chief's Association Policy 93-1: Employee Involved Critical Incident Protocol* (Critical Incident Protocol) as a result of the officer-involved shooting of Smart.

Refer to the section labeled, Sonoma County Law Enforcement Chief's Association - 93-1 Law Enforcement Employee-Involved Critical Incident Protocol, later in this report for further details.

FINDINGS: No violations.

Sonoma County Sheriff's Office Policies and Procedures:

Media Relations (Lexipol Policy 324)

The purpose of this policy is to ensure that we, as an Office, provide a fair and consistent release of information regarding the Office's activity to the community.

Policy section 324.4.1(a) stated in essence, if the Sonoma County Law Enforcement Chiefs' Association's Employee Involved Fatal Incident Protocol is invoked, the media release shall be conducted consistent with that policy.

According to subsection (C.) in section IV – Release of Information to the News Media, specifically regarding the Employer Agency of the Incident Protocol, the following information should be released:

> 1. The employer agency is responsible for providing news media release of information directly relevant to the employer-employee relationship, including the status of any administrative investigation.
> 2. The employer agency may prepare the initial press release involving the incident. The press release will be confined to the following areas:
> a. The initial statement about what occurred.
> b. An employee of the employer agency was involved.
> c. The Sonoma County Law Enforcement Employee-Involved Critical Incident Protocol has been invoked.
> d. The identification of the lead and participating agencies.
> e. The employment status of the involved employee(s).
> 3. The employer agency should coordinate the release of any employer-employee information so that it does not conflict with criminal investigative concerns.
> 4. The employer agency may make statements or issue press releases regarding the criminal investigation when approved by the lead agency as long as it does not conflict with a criminal investigation or concern.

The Sonoma Police Department as well as the Santa Rosa Police Department completed and released an initial press release via Facebook on October 16, 2022.[19] The Santa Rosa Police Department issued an update via Nixle and Facebook on October 19, 2022. [20]

On October 28, 2022, the Sonoma County Sheriff's Office released a critical incident video regarding the deputy-involved shooting.[21]

FINDINGS: No violations.

<u>Sonoma County Sheriff's Office Policies and Procedures</u>:

Major Incident Notifications (Lexipol Policy 329)

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[19] https://www.facebook.com/sonomasheriff/posts/pfbid0kHLGsSnMNSrht87Sn1rLg3FVHpA7BK291aGZL6Tq9yFSb9rySy3WbspRz6yBdwTCl
https://www.facebook.com/SonomaPoliceCA/posts/pfbid0QHCDLWEVJJJ8iu65W2vZXWErf8DccQkL8qdDGZDcb4DSc5iAiJi5KYC8ksM4gdJfl

[20] This update can be located in Exhibits.

[21] https://www.facebook.com/sonomasheriff/videos/524812529040875/

The purpose of this policy is to provide guidance to members of the Patrol Division in determining when and to whom notification of specified emergency situations needs to be made.

Policy Section 329.2 - "Policy" stated:

"The Sonoma County Sheriff's Office recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this Office to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed."

Policy Section 329.4 – "Watch Commander Responsibility" stated:

"The on duty Watch Commander (Lieutenant or Sergeant) is responsible for making the appropriate notifications to their Section Captain as soon as practical. The Watch Commander shall make reasonable attempts to obtain as much information on the incident as possible before notification."

Policy Section 329.4.1 – "Staff Notification" stated:

"In the event an incident occurs described in the Major Incident Notification Policy, the Sheriff shall be notified along with the affected Captain and the Detective Lieutenant."

After my review of this case, the appropriate Sheriff's Office personnel were notified. Sgt. Schemmel was the supervisor on scene. The watch commander, Lt. Greg Piccinini, was on-duty and responded to the scene and in-turn notified Patrol Captain Shawn Murphy and the Investigations Lieutenant.

On 5/30/24, I contacted Sheriff Engram who told me, while he was acting as the Sheriff-elect, he was notified about the officer involved shooting via the chain-of-command. Sheriff Engram could not recall who contacted him.

FINDINGS: No violations.

<u>Sonoma County Sheriff's Office Policies and Procedures</u>:

Critical Incident Debriefing/Defusing (Lexipol Policy 338)

Whether the Sheriff's Office provided an opportunity to provide information and support to the involved members after any critical incident that could involve traumatic injury or death.

Policy Section 338.2 - "Policy" stated:

"Sheriff's Office members, by nature of the job assignment, are routinely exposed to incidents that involve traumatic injury or death. These incidents are recognized as having a potential significant affect on Sheriff's Office members' mental, emotional and physical health. This policy attempts to provide members with opportunities to minimize potential health problems."

Policy Section 338.3.1 "Critical Incident Procedure" stated:

"When a critical incident occurs, the CID Coordinator shall be notified by the on-duty Watch Commander of the affected Division. The CID Coordinator will work with the affected Division to coordinate the defusing/debriefing process."

After this incident, the Sheriff's Office Peer Support team scheduled and subsequently held a confidential Critical Incident Stress Debriefing on October 20, 2022 at 1700 hours.[22] Aside from Peer Support team members, the Sheriff's Office had Dr. Joel Fay attend the debriefing. Dr. Fay facilitated the debriefing, and they spoke about various topics related to dealing with the trauma and stress of an incident such as this. Any Sheriff's Office employee who was involved in this incident, including Deputy Schilling and Deputy Clayton, were offered the opportunity to attend the debriefing.

FINDINGS: No violations.

<u>Sonoma County Sheriff's Office Policies and Procedures</u>:

Medical Aid and Response (Lexipol Policy 435)

Whether Deputy Schilling and Deputy Clayton, and other responding Deputies, provided appropriate medical aid to Smart after he was shot and whether they facilitated a medical response.
Policy Section 435.2 – "Policy" stated:

"It is the policy of the Sonoma County Sheriff's Office that all deputies and other designated members be trained to provide emergency medical aid and to facilitate an emergency medical response."

Policy Section 435.3 – "First Responding Member Responsibilities" stated in part:

[22] A copy of the email invitation from Lt. Cash can be found in Exhibits.

"Whenever practicable, members should take appropriate steps to provide initial medical aid (e.g., first aid, CPR, use of an automated external defibrillator (AED)) in accordance with their training and current certification levels. This should be done for those in need of immediate care and only when the member can safely do so.

Prior to initiating medical aid, the member should contact Dispatch and request response by Emergency Medical Services (EMS) as the member deems appropriate.

Members should follow universal precautions when providing medical aid, such as wearing gloves and avoiding contact with bodily fluids, consistent with the Communicable Diseases Policy. Members should use a barrier or bag device to perform rescue breathing."

Policy Section 435.6 – Medical Attention Related to Use of Force stated:

"Specific guidelines for medical attention for injuries sustained from a use of force may be found in the Use of Force, Handcuffing and Restraints, Control Devices and Techniques, and Conducted Energy Device policies."

According to the CAD chronology, Deputies requested "Code 3 medical to W Napa / 1st St West" at 2217 hours, which was approximately 30 seconds after Smart was shot by Deputy Schilling. At approximately 2219 hours, deputies advised dispatch that medical was clear to enter the scene.

After the shooting occurred, Deputies handcuffed Smart and immediately began assessing Smart's condition. Deputies began administering emergency first aid by cutting Smart's shirt and determining where his injuries were. It was determined Smart was bleeding heavily from his upper left arm. They quickly applied a tourniquet to control the bleeding. Medical personnel quickly arrived on scene and assumed medical care.

Based on the evidence in this case, both Deputy Schilling and Deputy Clayton, as well as other deputies on scene, appropriately administered emergency first aid to Smart, which was consistent with their training; therefore, there was **no violation** of this policy.

FINDINGS: No violations.

Sonoma County Law Enforcement Chief's Association

93-1 Law Enforcement Employee- Involved Critical Incident Protocol

The purpose of this protocol *"was to set forth procedures and guidelines used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents*

involving law enforcement employees. While this Protocol represents the understanding and agreement among Member Agencies about how Law Enforcement Employee-Involved Critical Incidents are to be investigated, this Protocol is neither a statute, an ordinance nor a regulation. Members expect that its provisions will be followed when Protocol incidents occur, but it is anticipated that agencies may make minor modifications, which will not affect the Protocol's basic principles, to meet agency requirements."

This protocol may be invoked at the discretion of the Chief of Police, the Sheriff, or Chief Probation Officer of the member agency for other employee involved incidents, which result in a significant use of force or a significant injury.

In this incident, Deputies were involved in an officer-involved shooting seriously injuring Smart. As a result, the protocol was invoked and the Santa Rosa Police Department was identified as the lead agency, and ultimately assumed overall responsibility for the investigation. Santa Rosa Police VCI Detective Nick Gillotte was the lead detective, and the investigation was documented under SRPD Case# 22-12138.

After reviewing the facts of this case, the evidence showed this incident was appropriately determined to be a Law Enforcement Employee-Involved Critical Incident, and the Law Enforcement Employee-Involved Incident was appropriately invoked.

FINDINGS: No violations.

Recommendation:

During this administrative review it was discovered there wasn't proper documentation for firearms/range attendance records or any explanation for absences. It is recommended the Firearms Program be reminded to keep accurate records.