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19TH JUDICIAL DISTRICT ATTORNEY
PARISH OF EAST BATON ROUGE

IN RE: CALVIN SMITH

The final report of the circumstances, the investigation, and the determination of criminal responsibility for the officer involved death of Calvin Smith on February 13, 2016.

ISSUED MAY 9, 2016

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THIS REPORT ONLY IDENTIFIES THE DECEASED AND THOSE OFFICERS WHOSE NAMES HAVE BEEN PREVIOUSLY RELEASED BY THE AGENCY INVOLVED. THIS REPORT EXCLUDES FROM PUBLIC DISCLOSURE ANY MEDIA CONTAINING EXPLICIT IMAGES OF NUDITY, JUVENILES, VICTIMS OF CRIME, OR DEAD PERSONS.

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I. INTRODUCTION

A. Summary

On February 13, 2016, Baton Rouge City Police received reports of property damage and shots fired in the area of Harry Drive and Monet Avenue in Baton Rouge. Officer Theodore Smith was dispatched, made contact with the complainant, and obtained descriptions of the suspect and of the suspect's vehicle. Officer Theodore Smith located the suspect driving his vehicle on Tom Drive at Airline Highway. The suspect fled at high speed with Officer Theodore Smith in pursuit. Officer Sean Garic joined the pursuit. Both officers attempted to stop the suspect on Fairfields Avenue, where the suspect immediately exited his vehicle firing a semi-automatic rifle at both officers. Both officers returned fire with their pistols killing the suspect, Calvin Smith.

B. Role of the District Attorney

Under the Louisiana Constitution, the District Attorney is designated the Chief Prosecuting Officer in charge of every criminal prosecution in his district. He has the power to bring any state criminal charge and the power to dismiss any state criminal charge. He is assisted in his efforts by the Grand Jury which also exercises independent constitutional authority. Louisiana law requires the District Attorney to bring to the Grand Jury all charges whenever the District Attorney determines he needs to seek a life or death sentence. In Louisiana, only the Grand Jury may return an indictment for first or second degree murder in the event of an intentional and unjustified taking of a human life. Before the District Attorney may bring any charge before the Grand Jury, he must legally determine that he has sufficient evidence to warrant a conviction by trial that is beyond any reasonable doubt.

For many years, the District Attorney has worked closely with local law enforcement agencies to address officer involved deaths. Local law enforcement agencies employ protocols that require immediate reporting to the District Attorney of any officer involved death and require the participation of the District Attorney in all stages of an investigation into the criminal responsibility for an officer involved death.

The role of the District Attorney in these investigations and in conducting this review is limited to determining whether a criminal violation of Louisiana law has occurred, whether any living person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The District Attorney does not establish law enforcement agency policy, procedures, and training requirements. The District Attorney does not have any responsibility for determining disciplinary action or pursuing civil litigation in these matters.

C. Death of Calvin Smith

On February 13, 2016, at 5:37 a.m., Citizen L.A. called [911](#) to report that Calvin Smith (DOB 3/1/1993) was in the Monet Drive apartment complex parking lot damaging her 2013 Silver Honda Accord. Approximately two minutes later, a citizen called [911](#) to report shots fired in the area of Harry Drive and Monet Drive.

Moments before Calvin Smith started to damage the vehicle, he had knocked on Citizen L.A.'s door asking to see her daughter, Citizen S.A., who is Calvin Smith's ex-girlfriend. Citizen L.S., Citizen L.A.'s boyfriend, answered the door and told Calvin Smith that Citizen S.A. did not want to see him. After telling Calvin Smith to leave, Citizen L.S. heard loud noises coming from the parking lot. He went outside to investigate and saw Calvin Smith damaging the [Honda Accord](#). The [tires were slashed](#), the [windshield](#) was [shattered](#) and the [hood](#) was dented. Citizen L.S. and Calvin Smith engaged in a verbal altercation during which Calvin Smith threatened Citizen L.S., Citizen L.A., and Citizen S.A. Citizen L.S. then grabbed a pistol and fired two shots in the direction of Calvin Smith. Calvin Smith fled from the scene after the shots were fired, but was back in the area driving a gray Dodge Avenger shortly before the police arrived.

Officer Theodore Smith (Unit 1256), who was working out of the First District precinct, was [dispatched](#) to the area of Harry Drive and Monet Drive in reference to the vehicle damage and shots fired complaints. Upon arrival at the Monet Drive apartments, he contacted Citizen L.S. and learned that the suspect was driving a gray Dodge and had just turned a nearby corner. Officer Theodore Smith located the suspect's vehicle as it turned southbound onto Airline Highway from Tom Drive and began to follow the suspect's vehicle.

After notifying dispatch of the vehicle's license plate number, location and direction of travel, Officer Theodore Smith turned on the lights and sirens of his visibly marked police car and initiated a pursuit. For approximately five minutes, Calvin Smith operated the Dodge Avenger at high rates of speed and disregarded traffic safety lights and stop signs before finally turning westbound onto Fairfields Avenue and stopping the vehicle in front of a house. As Officer Theodore Smith was putting his police car in park, Calvin Smith opened the driver's door of the Dodge Avenger and emerged armed with an [AR-15](#) semi-automatic rifle.¹ Calvin Smith immediately began [firing](#) multiple rounds of PPU .223 caliber ammunition towards Officer Theodore Smith who was still inside his police car.

Officer Theodore Smith returned fire and shot a minimum of sixteen rounds from his department issued weapon, a Glock Model 22 .40 caliber semiautomatic pistol having a fifteen round capacity magazine, plus an additional round in the chamber. Officer Theodore Smith was able to take cover behind a vehicle to reload his pistol. During this exchange of gun fire, Officer Theodore Smith was shot one time in the abdomen. [His vehicle](#) was [struck](#) by three bullets.

Officer Theodore Smith's police car was equipped with a working [dash camera](#) that recorded his continuous communication with dispatch, as well as the chase and subsequent

¹ The AR-15 rifle was later confirmed as reported stolen on March 19, 2007, in a residential burglary.

shooting. Officer Theodore Smith was wearing a [body camera](#) that also recorded what happened before and after he placed his police car in park.

Officer Sean Garic (Unit 1277), also on patrol in First District, heard the original felony dispatch and, through radio transmissions, knew that Officer Theodore Smith was in pursuit behind the suspect's vehicle. Officer Sean Garic travelled to North Foster at Fairfields intending to set out "spike strips" to put an end to the pursuit. Upon hearing that the suspect was circling residential blocks and appeared to be preparing to bail from the vehicle, Officer Sean Garic turned eastbound onto Fairfields Avenue. He observed the suspect's vehicle stop and Officer Theodore Smith stop behind him.

Officer Sean Garic saw Calvin Smith exit the Dodge Avenger armed with the AR-15 semi-automatic rifle and fire multiple shots at Officer Theodore Smith. Officer Sean Garic placed his own vehicle in park and then saw the suspect turn [towards](#) him and continue to [fire](#). Officer Sean Garic was able to exit his vehicle, due to a slight pause in the shooting, and drew his Glock model 17 9mm semiautomatic pistol. The gun had a capacity of seventeen rounds in the magazine, plus one round in the chamber. Officer Sean Garic returned fire eighteen times until the suspect fell to the ground. Officer Sean Garic reloaded his weapon but fired no more shots. Officer Sean Garic was hit in the head by one of the bullets fired from the AR-15 rifle. [His vehicle](#) was [struck](#) by [eight bullets](#).

Officer Sean Garic's vehicle was also equipped with a working [dash camera](#) that captured his participation in the pursuit as well as the shooting. The recording ended abruptly when one of the bullets fired by Calvin Smith entered the windshield of Officer Sean Garic's police car and disabled the camera. Officer Sean Garic was not wearing a body camera.

Officers Theodore Smith and Sean Garic reported to dispatch that shots had been fired, both officers had been hit, and EMS needed to respond "Code 3" (meaning with lights and sirens). Other officers, hearing this dispatch, arrived and secured the scene. Calvin Smith was found on the ground, behind his vehicle still in possession of his AR-15 rifle. Calvin Smith's AR-15 semi-automatic rifle had a thirty round capacity. He fired a minimum of twenty rounds at Officers Theodore Smith and Sean Garic. Officers also observed a [knife](#) in the driver's seat and a [wooden bat](#) in the front passenger's seat of the Dodge Avenger. The Dodge was [struck by several bullets](#).

Uniform patrol officers secured the area and created a crime scene log pursuant to Baton Rouge Police Department standard protocols. Once crime scene investigators and homicide detectives arrived on site, the [scene](#) was turned over to them for investigation and documentation, including the photographing and collection of evidence.

Officers Theodore Smith and Sean Garic were taken to Our Lady of the Lake by fellow officers. Both officers survived their gunshot wounds.

[EMS](#) transported Calvin Smith to the Our Lady of the Lake hospital where he died from his injuries. The forensic pathologist who conducted the autopsy observed multiple gunshot wounds. These included a gunshot entrance wound to the right side of the neck with a corresponding gunshot exit wound on the right side of the upper back, a gunshot entrance wound on the left lower leg, and a gunshot entrance wound to the anterior lateral aspect of the right side of the trunk with a corresponding gunshot apparent exit wound on the right posterior-lateral aspect of the trunk.

East Baton Rouge Parish District Attorney Hillar C. Moore, III, two Assistant District Attorneys, and two District Attorney Investigators responded to the scene and observed every critical step in the investigation, including the subsequent interviews of Officer Theodore Smith, Officer Sean Garic, and other witnesses.

II. OTHER MATTERS CONSIDERED

NOTE: While this information was unknown to the officers at the time of the shooting, it is relevant in understanding the events that occurred on the morning of February 13, 2016.

A. Mental Health Issues

1. Multiple sources stated that Calvin Smith had mental health issues, including severe depression. Calvin Smith was prescribed several medications to help with his symptoms, but individuals close to him stated that he began to have adverse side effects in recent months and had stopped taking his medication.
2. Calvin Smith and Citizen S.A. were in a tumultuous romantic relationship for many years; however, they had recently broken up. According to Calvin Smith's family, the end of this relationship caused Calvin Smith great distress and exacerbated the decline of his mental health. On February 10, 2016, Calvin Smith texted Citizen L.S. and asked for advice. In these [text messages](#), Calvin Smith talked about committing suicide and even considered homicide.

B. History between Calvin Smith and Citizen S.A.

1. Petition for Protection from Abuse and Order of Protection

Citizen S.A. filed a [Petition for Protection from Abuse and Order of Protection](#) against Calvin Smith in January of 2016.

2. Disturbance Complaint on February 12, 2016

Calvin Smith frequently tried to contact Citizen S.A. in the months following their breakup. Calvin Smith attempted to kick in the door of her mother's apartment which resulted in the [police being dispatched](#) one day before the officer involved shooting.

III. STATEMENT OF LAW

A. Murder

Under Louisiana law, the intentional killing of another human being is defined as Second Degree Murder and is punishable by a mandatory sentence of life in prison. When this murder occurs during the perpetration of another crime, such as an armed robbery; against special classes of persons, such as children or the elderly; or involves the killing of more than one person; then the murder is defined as a First Degree Murder that can be punished by a sentence of death. If the District Attorney seeks to prosecute either of these crimes, he is required to bring them before a Grand Jury for indictment. [LA CCRP 437](#)

B. Justification

Louisiana law provides each citizen with the right to defend themselves and to “meet force with force,” including deadly force to meet deadly force. This right to use deadly force, however, is limited only to circumstances in which human life is endangered. Deadly force may not be used to protect things and property. Police officers, just like any other citizen, are entitled to use deadly force when their life or the life of another citizen is threatened. [LA R.S. 14:20](#)

C. Retreat

The laws of Louisiana do not require any citizen to retreat when faced with deadly force. [LA R.S. 14:20](#)

D. Grand Jury

Since the founding of the United States, the Grand Jury has been a vital part of the many checks and balances in our criminal justice system. It is comprised of 12 citizens who sit for approximately six month terms evaluating whether certain cases, particularly murder cases, proceed to trial. They examine all evidence in secret primarily for two reasons: to protect those testifying from others who have not yet been arrested, and to protect the reputations of those against whom criminal charges may not be brought. To serve as a check on all, the Grand Jury is an independent constitutional body that is independent from the courts, law enforcement, and the District Attorney. The District Attorney is designated as only a legal advisor to the Grand Jury, is required to be present at all proceedings before the Grand Jury, but is excluded from the Grand Jury’s deliberations as they decide their verdict. The Grand Jury can return any one of three verdicts: A True Bill of Indictment (authorizing criminal charges), A No True Bill of Indictment (declining criminal charges), and A Pretermitted Matter. [LA CCRP 444](#) A Pretermitted Matter means that the Grand Jury members were unable reach a sufficient consensus (9 out of 12 votes) to render a verdict.

E. District Attorney

The District Attorney presents murder cases to the Grand Jury. In doing so, he is bound legally and ethically by certain standards. First, he must determine the evidence he has to present “if unexplained and uncontradicted, warrants a conviction.” [LA CCRP 443](#) Second, under the Rules of Professional Conduct required of all prosecutors (Rule 3.8), he is

required to “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” [Rule 3.8](#)

IV. DISCUSSION

A. Issues

Whether any person may be held criminally responsible for the death of Calvin Smith?

B. Application of Law

The death of any human being is a tragedy that all persons are legally required to avoid. When laws are broken and a death occurs, law enforcement agencies are called to respond and investigate the circumstances of the death and forward their reports to the District Attorney to determine whether any person is criminally responsible. When law enforcement is responsible for the death, they must immediately report the death to the District Attorney who will join them in all critical stages of the investigation. This is one of the most serious responsibilities of the District Attorney.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. [LA R.S. 14.30.1](#) A second degree murder is legally justified when committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself or another from that danger. [LA R.S. 14:20](#)

For a law enforcement officer, as with any other citizen, the law provides that the use of force must be reasonable. The United States Supreme Court specifically requires that the “reasonableness” of force by an officer be judged from the perspective of an officer at the scene, rather than judged with the benefit of hindsight. [Graham v. Connor](#), 490 U.S. 389 (1989).

C. Analysis

The evidence reviewed by the District Attorney, attached and made part of this report, substantiates that Calvin Smith was killed at the hands of another, specifically Officers Theodore Smith and Sean Garic. This same evidence also demonstrates that their actions were justified. Specifically, that they were both placed in imminent fear of death by the unprovoked action of Calvin Smith in exiting his vehicle and immediately opening fire in their direction with an AR-15 semi-automatic rifle. When faced with deadly force to themselves and others, no reasonable person, including other law enforcement officers, would have acted differently. The death of Calvin Smith was legally justified and no criminal responsibility can be found for Officer Theodore Smith and Officer Sean Garic as both were legally exercising their right of self-defense.

D. Conclusion

In accordance with my oath and duty to uphold the constitution and laws of both the United States and the State of Louisiana, as District Attorney for the 19th Judicial District, Parish of East Baton Rouge, I issue this final report into the circumstances and death of Calvin Smith. Calvin Smith was killed by Officers Theodore Smith and Sean Garic in the course and scope of their employment as law enforcement officers and under circumstances where their use of deadly force was legally justified. It is my determination as District Attorney that there is no probable cause of criminal responsibility to present to a Grand Jury in the matter of the death of Calvin Smith.

Signed: HCM III
Hillar C. Moore, III

Date: May 9, 2016

V. LISTING OF EVIDENCE

A. Dispatch and 911 Calls

1. [911 Call Monet Drive](#)
2. [911 Call Initial Shots](#)
3. [CAD Display Harry Drive](#)
4. [CAD Display Monet Drive](#)
5. [CAD Display Fairfields](#)
6. [Dispatch Recording Monet](#)
7. [Dispatch Recording Pursuit](#)

B. Photos

1. [Streetsigns of Fairfields and Paulson](#)
2. [Streetsigns of Fairfields and Sobers](#)
3. [Crime scene Outside Tape](#)
4. [Crime scene Outside Tape 2](#)
5. [Crime scene Inside Tape](#)
6. [Dodge Left Side](#)
7. [Dodge Right Side](#)
8. [Dodge Driveway](#)
9. [Dodge Left Door](#)
10. [Dodge Bat on Passenger Seat](#)
11. [Dodge Knife on Driver Seat](#)
12. [Crime Scene Inside Tape](#)
13. [Unit 1277 Quarter Rear](#)
14. [Unit 1277 Front Bumper](#)
15. [Unit 1277 Front Windshield](#)
16. [Honda Side Flat Tires](#)
17. [Honda Left Quarter Damaged Windshield](#)
18. [Honda Front Damaged Windshield](#)
19. [Honda Right Flat Tires](#)
20. [Honda Close Up Damaged Windshield](#)
21. [Unit 1256 Left Driver Door](#)
22. [Unit 1256 Left Door Edge Closeup](#)
23. [Unit 1256 Left Door Front Closeup](#)
24. [Crimescene Inside Unit 1256](#)
25. [Crimescene Inside AR-15](#)
26. [Crimescene Closeup AR-15](#)
27. [Crimescene Inside EMS Debris](#)
28. [Crimescene Inside Street Casings](#)
29. [Unit 1277 Front Hood](#)
30. [Unit 1277 Left Quarter Windshield](#)
31. [Unit 1277 Closeup Windshield](#)
32. [Unit 1277 Closeup Windshield 2](#)
33. [Unit 1277 Closeup Windshield 3](#)
34. [Unit 1277 Inside Windshield](#)
35. [Unit 1277 Inside Passenger Seat](#)
36. [Unit 1277 Inside Closeup Seat](#)
37. [Unit 1277 Inside Console](#)
38. [Unit 1277 Inside Rear Passenger Seat](#)

- 39. [Unit 1277 Rear Trunk](#)
- 40. [Unit 1277 Inside Steering Wheel](#)
- 41. [Unit 1277 Front Hood](#)
- 42. [Unit 1277 Closeup Hood](#)
- 43. [Unit 1277 Front Headlight](#)

- C. Police Reports
 - 1. [Reports 0 - 2](#)
 - 2. [Reports 3 - 8](#)
 - 3. [Reports 9 - 13](#)
 - 4. [Reports 14 - 17](#)
 - 5. [Reports 18 - 20](#)
 - 6. [Reports 21 - 23](#)
 - 7. [Reports 24 - 26](#)
 - 8. [Reports 27 - 29](#)
 - 9. [Reports 30 - 33](#)
 - 10. [Reports 34 - 37](#)

- D. [Crime Scene Diagram](#)

- E. [Autopsy and Toxicology Reports](#)

- F. [Ballistics Reports](#)

- G. [DNA Analysis](#)

- H. [Dash Camera Video – Unit 1256](#)

- I. [Dash Camera Video – Unit 1277](#)

- J. [Body Camera Video - Officer Smith](#)

- K. [Text Messages](#)