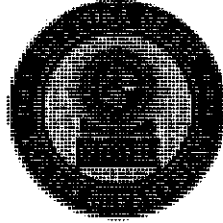


**DAYTONA BEACH POLICE DEPARTMENT
OFFICE OF PROFESSIONAL STANDARDS**



**INTERNAL INVESTIGATIVE REPORT
FD2016-002**

October 17, 2016

Investigator(s)

James Chirco, Sergeant, Office of Professional Standards
Thomas Monaco, Detective, Office of Professional Standards

Employee(s)

Michelle Smith, Officer, Delta Platoon, District One

Complainant(s)

Michael J. Chitwood, Chief of Police

Allegation(s)


- 200.4 Unlawful Conduct
- 200.5 Unlawful Conduct
- 200.13 Professional Conduct and Responsibilities
- 200.29 Department Morale
- 200.42 General Conduct
- 200.109 Employee Actions
- 914.7 Firearm Regulations
- 914.17 Authorized Off Duty Handguns
- 914.23 Authorized Off Duty Handguns
- 914.24 Authorized Off Duty Handguns
- 914.26 Authorized Off Duty Handguns
- 1002.1 Notifications for Officer Involved Shooting/Deadly Force Incident
- 1004.7 Unauthorized Use of Deadly Force

Daytona Beach Police Department

Office of Professional Standards

MEMORANDUM

TO: Michael J. Chitwood, Chief of Police

FROM: James Chirco, Sergeant, Office of Professional Standards 

SUBJECT: **Project No: 102-FD2016-002**

DATE: October 17, 2016

Synopsis

On September 8, 2016, Officer Michelle Smith, off-duty, was involved in a shooting where she advised that she was the victim of an aggravated assault with a firearm and she returned fire. There were no reported or known injuries during this incident. The incident took place at Progress Road and Norma Drive, near Villages at Halifax Apartments. The incident was reported to Officer Brandon Jacobs, on-duty, via telephone from Officer Selina Puentes, who was off duty and notified by Officer Michelle Smith via telephone. Officer Smith did not notify police, via telephone or her department issued police radio that she had been involved in a shooting, even though she was on the radio with VCSO teletype running a tag she reported involved in the incident, after the shooting.

Lieutenant Eisner called me at approximately 0320 hours to advise of the incident that had taken place. He also stated that he believed Officer Smith had been drinking alcoholic beverages. I responded to the scene as an observer and watched as the Criminal Investigation Division conducted their criminal investigation. After Officer Smith was finished speaking with detectives, I collected the firearm she used in the shooting and had Lieutenant Walden secure it in his trunk. I could smell the odor of alcoholic beverages about her breath. Because of the reasonable suspicion that she was intoxicated, I also retrieved her Department issued Glock firearm which was sitting on her kitchen table in a holster, which was also given to Lieutenant Walden and secured in his trunk. I also asked her for her City Vehicle keys to the marked police car in the parking lot of her apartment complex. I asked if she had any other Department issued firearms and she stated she had her SWAT rifle in the trunk of her police vehicle. I checked the trunk of the vehicle and there was a rifle, unsecured, just laying on top of other items. Officer Smith spontaneously stated that she had SWAT

training earlier in the day and did not secure the rifle in the case. I had Lieutenant Walden make arrangements to have her police vehicle picked up and brought back to the police department.

Lieutenant Walden then transported Officer Smith and accompanying Officer Puentes to Florida Hospital, Memorial Medical Center, for a drug analysis of her urine, according to department policy. She was then transported to 129 Valor Boulevard and I placed her on administrative duty, according to protocol. My involvement in the case was then tolled until September 15, 2016, when the criminal investigation was completed and the Criminal Investigation Division determined that no criminal charges would be filed against any parties involved in this incident, to include Officer Michelle Smith. The Criminal Investigation Division concluded that Officer Smith had inconsistencies in her recounting of the incident and believed that she may be untruthful. Based on this information, Chief Chitwood requested a firearm discharge administrative investigation be conducted in addition to the criminal investigation.

Officer Michelle Smith (Initial Criminal Investigation Interview/Unrecorded)

On September 8, 2016 at approximately 0430 hours, Officer Smith was interviewed by Detective James Maher and Detective Angel Chirillo at Villages at Halifax. Officer Smith stated that she observed a newer dark gray Ford Taurus and an older maroon Ford Crown Victoria or Mercury Grand Marquis, both occupied. Officer Smith believed they were conducting a narcotics transaction. Officer Smith was walking her dog and continued past the vehicles into the grassy area north of Villages at Halifax. Officer Smith put her dog in the gazebo and picked up dog droppings. The vehicles began to leave the area and a black female in the Ford Taurus yelled, "I know you're the Feds". The Crown Victoria now approached and three occupants exited and approached Officer Smith in a hostile manner. Officer Smith stated that the group was yelling at her and calling her a "Fed" and asking her what you wanna do?" She interpreted their remarks as aggressive and believed they wanted to fight. Officer Smith called for her dog and her dog began to bark and scared the group from the area. They got into their vehicles and began to leave the area. Officer Smith stated that the tag on the Crown Victoria/Grand Marquis started with a "U" and the last three characters were "V33". The vehicles left the area east towards Fulton Street and as they turned north on Fulton Street, she observed at least two gunshots fired out of the window of the Crown Victoria/Grand Marquis. Officer Smith stated that she was in fear for her life and checked her body to make sure she wasn't shot and she returned fire, shooting one round at the vehicles and believed she hit one of them. Officer Smith also stated that she could identify individuals involved in the incident.

After the shooting, she stated that she was approached by an unknown black male. He and another unidentified white male had observed the incident and wanted to make sure she was uninjured. She provided the black male's phone number to Detective Maher and advised him that he didn't wish to speak with police. (Portions utilized from Detective Maher's interview summary).

Unidentified Black Male (Witness Interviewed by Criminal Investigation Division)

September 8, 2016 at approximately 0430 hours. Officer Smith spoke with the black male and he agreed to speak with Detective Maher briefly. He stated that he didn't see the argument but he could see that the people were "fucking" with Officer Smith. He observed the vehicles pulling up towards Officer Smith but he did not see the shots fired, only heard them. The black male stated that he heard possibly five total gunshots. He refused to identify himself and had nothing else to add to the investigation. (Portions utilized from Detective Maher's interview summary, refer to audio interview for further information).

Officer Michelle Smith (Photographic Line-Up Conducted by Criminal Investigation Division)

On September 8, 2016 at approximately 1247 hours, Detective Maher and Detective Dinardi interviewed Officer Smith at her residence. From one line-up she identified Yancy Gadson as the shooter and driver of the Crown Victoria/Grand Marquis and from another line-up she identified Joanne White as a female in the Crown Victoria/Grand Marquis (Neither subject was at the scene and alibis confirmed by detectives). (Refer to audio recorded interview for further information).

Officer Michelle Smith (Photographic Line-Up and Second Interview Conducted by Criminal Investigation Division)

On September 8, 2016 at approximately 1315 hours, Detective Maher interviewed Officer Smith at 129 Valor Boulevard. Officer Smith was shown another photographic line-up and identified Elizabeth Stevens as being in the Crown Victoria/Grand Marquis (Elizabeth Stevens was the front passenger in a red Camaro at the scene).

Detective Maher had Officer Smith clarify some investigative questions. Officer Smith stated that she left her apartment at approximately 0200 hours to walk her dog. She observed the vehicles in the parking lot involved in what she believed to be a narcotics deal. She did not engage in conversation with either vehicles occupants. The gray Ford approached her first and the Crown Victoria/Grand Marquis occupants were yelling at her across the complex prior to the Ford's arrival to her location. Joanne White, whom she identified in the Crown Victoria/Grand Marquis, was now in the Ford Taurus and began to yell at her. The Crown Victoria/Grand Marquis now arrived and all the occupants of the vehicle approached her, with the exception of the black male driving the Ford Taurus. They accused her of being a "Fed" and wanted to fight. Officer Smith stated that she FaceTimed Officer Puentes (Off-duty) during the argument but hung up prior to any shots being fired (She did FaceTime Officer Puentes but the exact time of the shooting is unknown). Officer Smith called her dog over after the subjects exited their vehicles and confronted her. She then stated that she began reading, out loud, the tag of the Crown Victoria/Grand Marquis and the occupants told her, "yeah, remember that shit yadadada V33". She was confident on the last three characters as "V33" and the first character as "U".

The black female from the Ford Taurus returned to the Crown Victoria/Grand Marquis, which would have left the black male alone in the Ford Taurus. Both vehicles then left the area and continued yelling at her and that is when she heard the shots fired. She then checked herself and her dog to make sure neither was struck by a bullet. It then registered that she was being shot at she then

returned fire one time. She stated she never observed a firearm but observed the muzzle flash. Smith then advised that she ran a tag on teletype after the shooting and it returned with no record found.

Detective Maher then asked Officer Smith how she knew the unidentified black male's phone number if she didn't know him and why she didn't call 911. Officer Smith stated that after the shots were fired she FaceTimed Officer Puentes and didn't call 911 because she wanted to run the tag on teletype and process what happened. She also stated that she ran home while on FaceTime with Officer Puentes and ran the tag on teletype from her apartment. She observed two sets of headlights enter the complex and feared it may be the suspects, so she left her apartment and went to the parking lot. She stated that the vehicles contained the unidentified black and white male witnesses and that is when she received the phone number of the unidentified black male, who advised her he had observed the incident. (Portions utilized from Detective Maher's interview summary. Refer to video recorded interview for further information).

Officer Brandon Jacobs (Witness Officer Interviewed Conducted by Criminal Investigation Division)

On September 8, 2016 at approximately 2228 hours, Officer Jacobs was interviewed by Detective Maher at 129 Valor Boulevard. Officer Jacobs stated that he was on-duty working as a police officer and at Cambridge Street and Woodbine Street at the time of the incident writing a report. He received a phone call from Officer Puentes at 0258 hours, as confirmed by his phone log. He stated Officer Puentes asked him "Hey are you guys busy?" He advised her he was getting caught up on reports. Officer Puentes advised that Officer Smith had been shot at and asked him to go to her location. He advised Detective Maher that he was confused because he didn't hear anything on the radio and asked Officer Puentes where Officer Smith was located. He stated that she advised him that Officer Smith was at Adams Street and International Speedway Boulevard and she was also on her way there. He stated that he told Officer Lima, whom was sitting near him, and Officer Lima advised him to put it out over the radio. Officer Jacobs then called his sergeant and police response began. He initially responded to the area but then began looking for suspect vehicles. He stated that he was confused as to why no one called 911 and called him instead. He was also concerned as to why he felt that Officer Puentes didn't seem to want anyone to respond but him. He tried to address those concerns with Officer Puentes but she was unable to speak because she was busy with Officer Smith. (Portions utilized from Detective Maher's interview summary. Refer to video recorded interview for further information).

Teja Troutman (Victim Interviewed by Criminal Investigation Division)

On September 8, 2016, Detective Maher interviewed Teja Troutman at 129 Valor Boulevard. Troutman was located in the red Camaro in the passenger side rear, the vehicle described as a Crown Victoria/Grand Marquis by Officer Smith. Troutman advised Detective Maher that she was in the vehicle during the shooting. Troutman advised she was driving around with Elizabeth Stevens in Stevens' Camaro when they met John Harris and "K.O." (Later identified as Timothy Taylor). Taylor asked to go to Villages at Halifax because he was there earlier and lost a set of keys at the playground area. On the way there they met "Grandpa" (Darrin Cummings) and "Lil Sis" (Nickia Lyons), driver and passenger respectively, of the gray Hyundai Sonata, vehicle described as a gray Ford Taurus by Officer Smith, at the speedbumps by Bethune Cookman University. Cummings and Lyons were friends of Harris and they followed Harris to the playground. Troutman stated they parked and Harris exited the Camaro and stood near it as Taylor searched for his own keys. She then stated that a female (Officer Michelle Smith) was standing near them with a dog and watching them. Stevens turned down the music to hear what was happening. Harris asked the female if she was neighborhood watch and no response was heard. She advised that Taylor then told the female that they were just looking for keys. The dog was barking loudly and everyone was getting aggravated so they told Taylor to "come on". Taylor and Harris both reentered the Camaro and the Camaro left the parking lot while the Sonata stayed behind near the playground. Harris received a phone call from Lyons and she stated something to Harris about the female and the dog. The Sonata then drove to where the Camaro was stopped, on Progress Road, and Lyons told Harris that the female wanted to fight and she was going to put the dog away. She also stated that the female was still in the area near "the bright lights" and they thought that she put the dog away but the dog was tied up "in the trees" where they could not see. They all drove back over to the female and were talking like adults. The female approached the Camaro and stated "she (Lyons) wants to fight and told me to put up my dog and my dog is aggravating you all". Troutman stated that the group advised "No" and that they didn't want to fight. The female then asked if they even stayed out there, they replied no and they were just looking for some keys. The female then replied that she shouldn't be talking to them in the Camaro and should be talking with her, meaning Lyons in the Sonata. She then stated that the female approached the Sonata and opened the passenger side door, where Lyons was seated and stated, "So what's the problem?" Lyons just sat there but Stevens stepped out of the Camaro and told the female to "Chill out". The female then responded with "No, she wants to fight me, what's up?" Cummings then asked the female her age and she responded "either 28 or 29" and also why he asked her age. Cummings responded that she was acting like a child and again informed the female that they were only looking for keys. The female responded that they "need to be minding their own business". Cummings had only asked the female why she was standing there looking at them. The female then asked, "Do anybody wants to fight?" They responded with "We not trying to fight". The female then pointed at everyone individually and stated, "I'm not scared of you"

and "Well, I feel like fighting". Cummings then responded, "Well if you want to fight you can fight me". The female then reiterated that she wasn't afraid of anyone in the vehicles. She observed the female playing around with her purse and reach into it. She described the purse as a small black purse with, "Like two pockets". Troutman then stated that she asked the female, "To just walk away". The female then replied, "If you live out here then tell me what apartment you stay in". They again replied that they didn't stay out there and the female advised, "Get away from here". Troutman advised the group to leave because she could tell that the female had been "Drinking all night or she's been smoking". The female continued talking and stated she stayed in building 120 and that "I'm from California and I don't stay with anybody, it's just me and my dog and I'm not scared of nobody". Sometime during the argument the female walked to the tree and began letting the dog loose. Everyone had reentered the vehicles and the female "Had the dog jumping at the car". They began driving out and the female spit at the Camaro, on Progress Road, and Taylor threw a drink at her. Lyons then advised "If I had a gun I'd shoot your dog" and the female replied, "Do it". Harris then stated the female was "Trippin" and not to have "That dog jumping at us no more". He then stated, "Just like my sister said, if I had a gun I'd shoot your dog". The female replied, "Do it, do it". Troutman then observed the female pull a gun from her purse and again state "Do it". They then sped off with the Sonata right behind them. Troutman advised she heard one gunshot and described the gun as a "black gun" that was big. Troutman stated that Harris and Taylor said they thought the gun was a "22". When asked if she knew whether it was a revolver or semi-auto gun, Troutman stated that the female removed the gun from her purse and "cocked" it. She then pointed it directly at the Camaro. The female then stated that she was from California and people from California are not afraid to fight. Troutman also stated that she was scared during the incident and wanted to call police but Harris and Taylor stated that they should just leave and chill, so they left and went to Harris' house. (Portions utilized from Detective Maher's interview summary. Refer to video recorded interview for further information).

Elizabeth Stevens (Victim Interviewed by Criminal Investigation Division)

On September 8, 2016, Detective Nate Williams interviewed Elizabeth Stevens at 129 Valor Boulevard. Stevens was located in the red Camaro as the front seat passenger. Stevens stated that they went to Halifax Apartments because Harris' friend lost his keys there. There was this girl standing there with a big dog that wouldn't stop barking and they asked if she was security. The girl in the other car, Lyons in the Sonata, was talking with Taylor through the windows. Stevens stated that Lyons stated like, "That dog needs to shut up....put your dog up", or something similar to that wording. Stevens stated that Lyons was speaking with Taylor but the female thought they were talking to her. The Camaro and occupants drove off while the Sonata stayed behind. They came back to where the Sonata was parked and Lyons advised that the female had the dog jump on

the car. Lyons advised the female to put her dog up so they could fight. The female confronted Stevens and said "What's up" and Stevens advised that it wasn't her that the female needed to worry about and the female advised that the girl in the other car, Lyons, was talking shit. Stevens stated that the female then went over to the Sonata and opened the door where Lyons was sitting, after putting her dog near a tree. She then advised that Troutman basically advised the female you don't need to put your hands in her face (Lyons) and the female pointed at everyone and stated "I can beat you". Stevens believed the female to be drunk or on something. She went back to the car and stated the female kept looking in her purse and she thought "she has pepper spray....she has a knife...she has something in her". The female then asked, "So what you all gonna do?" Cummings then told the female, "Well then move" and they (Harris and Lyons) stated "I'm gonna shoot your dog". The female stated "do it" and pointed the gun at the Camaro. They immediately drove off and then heard gunshots. Stevens doesn't know if the shots were fired up in the air or towards them. Stevens advised that she heard one shot. Stevens also advised that prior to the shooting she gave the female her tag number because she wasn't trying to hide anything. Stevens advised that the female stated, "I'm from Cali....my apartments' 102". Stevens stated that the female stated that she was 27, from "Cali" and lives by herself. Stevens also stated that when the female was near her car she told her dog "Get em". Stevens also confirmed that Yancy Gadson was not at the scene during this incident. She also stated that she was scared because they were shot at. No one at the scene called police because they were scared and didn't know what to do. She also advised that when asked if she was the neighborhood watch, the female advised, "I can be". (Refer to video recorded interview for further information).

John Harris (Victim Interviewed by Criminal Investigation Division)

On September 8, 2016, Detective Dave Dinardi interviewed John Harris at 129 Valor Boulevard. John Harris was driving the red Camaro at the time of the incident and stated that Elizabeth Stevens was the front seat passenger and Timothy Taylor and Teja Troutman were in the back seat. Harris stated that there was a smoke gray Hyundai with them and that Nickia Lyons and George or "Grandpa" (Cummings) occupied that vehicle. They were at the Villages at Halifax when a lady came out of nowhere with a big pit bull and she wanted to fight Lyons and was yelling at everyone. Harris stated he said, "You're not the police out here" and the female replied that she could be. He then asked if she was neighborhood watch and she replied that she could be. Harris then stated that the lady opened the door where Lyons was sitting and pointed at Lyons. She then stated, "I'm not scared of you, you, you, I'm from California". Harris stated that the female then "cocked" her gun and fired at least three or four shots at them as they drove away. Harris thought the gun looked like a "40" or something. The incident occurred at approximately 0200 hours and police weren't called because he just wanted to let it go and no one was hurt. He also advised that he

thought the lady was drunk. Harris stated that the female also said, "That's what wrong with Florida people, you all fucking soft....you all don't wanna shoot, you all don't wanna fight". John Harris stated that police weren't called because he believed the female was management and he didn't want to get in trouble for trespassing, so they just let it go. (Portions utilized from Detective Dinardi's interview summary. Refer to video recorded interview for further information).

Nickia Lyons (Victim Interviewed by Criminal Investigation Division)

On September 9, 2016, Detective Dinardi interviewed Nickia Lyons at 129 Valor Boulevard. Lyons stated that she was the passenger in the gray Hyundai and that "Grandpa" (Cummings) was driving. She stated that there was a Camaro with them and occupied by John Harris, a white female and another guy and girl. They met at Bethune Cookman University and went to the Villages at Halifax to look for a set of keys. Lyons stated that a female with a big pit bull approached them. John Harris asked the female if she was the manager, neighborhood watch, a police officer or if they were doing anything wrong. She also stated that the female was hostile and snapping at her friends. She also said that the female told them to leave and she was "tugging" at her car door as she was trying to open the door. Both vehicles left the parking lot and the female had tied up her dog. The female started to walk towards them as they stopped outside of the apartment complex and yelled, "Whatcha going do?" The two vehicles returned to the complex and the female walked up to the Hyundai and yanked on the door again. Cummings asked the female her age and she replied "27". The female then got Lyons' door open and the female was clutching her purse and told them she was from California. Lyons stated that she and her friends backed away from the female and got back into their vehicles because they were concerned that the female may have a weapon in her purse. Lyons then stated that she and Cummings drove off ahead of the Camaro and something happened that the Camaro passed them. She stated she looked back and observed the female taking aim with what appeared to be a gun. She saw a flash from the female's gun but she is not sure if the female fired one or two shots. Lyons stated that she sent her brother a text message at 0245 hours to say that she was shot at. Lyons stated that she did not notify police because she was shocked as a result of the incident and that it would look bad as the female was by herself and there was a bunch of people with her.

Nickia Lyons provided three short SnapChat videos timestamped 0234, 0235 and 0238 hours. The video from 0235 hours contains one of the males telling the female that they do not want to fight and the female (Officer Smith) stating "I called you back from where you were over there". In another video the female can be heard telling the group to "watch when I wrap you all up", which Lyons took as the female was going to harm the group. Lyons stated that she was scared when she heard the shots fired and she wants to press charges. Lyons stated that the female also stated, "See, this is what's wrong with Florida niggers....this is what's wrong with Florida people, don't nobody wanna fight

don't nobody wanna do nothing". (Portions utilized from Detective Dinardi's interview summary. Refer to video recorded interview for further information).

Darrin Cummings (Victim Interviewed by Criminal Investigation Division)

On September 9, 2016, Detective Dave Dinardi interviewed Darrin Cummings at 129 Valor Boulevard. Cummings was driving the gray Hyundai Sonata. Cummings stated that the group went to Villages at Halifax because Taylor had lost a set of keys there earlier in the day. He stated that the lady showed up with her dog and told them to get out of "my" complex. Cummings also stated that the lady was pulling on Lyons' car door and stating she wanted to fight someone. He asked the female how old she was and she replied "27". He also stated that she stated that she called them back and that she wanted to fight. Cummings stated when he was leaving he heard a gunshot and that is when he looked back and saw the lady's hand coming down. He stated that he believed her to be crazy and she was clutching her purse while they were all arguing. She was trying to get her dog to jump on the vehicles and she kept reaching into her purse. Cummings advised he and Harris tried to diffuse the situation. Cummings also advised Detective Dinardi that the female stated, "That's what's wrong with you all Florida niggas, that's not how we do it in California". He heard two quick gunshots then one more gunshot. Cummings stated that he ducked because he was trying to defend himself. Cummings stated that his group should have just left earlier than they did but they didn't commit any crimes. When asked if he was scared during the incident, Cummings stated he was. (Portions utilized from Detective Dinardi's interview summary. Refer to video recorded interview for further information).

Timothy Taylor (Victim, Unable to Be Interviewed)

Officer Selina Puentes (Off-Duty Witness Officer Interviewed by Criminal Investigation Division)

On September 9, 2016 at approximately 1537 hours, Detective Maher and Detective Dinardi interviewed Officer Selina Puentes at 129 Valor Boulevard. Officer Puentes stated that she received a call phone call from Officer Smith at approximately 0243 hours. Officer Puentes advised that Officer Smith stated, "They're trying to fight me". Officer Puentes stated that she heard no arguing in the background and that she did not know who Smith was talking about. She then asked Officer Smith where she was. Officer Smith told Officer Puentes that she was walking her dog and Officer Puentes assumed she was at her apartment complex. Officer Smith then hung up the phone stating that she needed to call her fiancé. Officer Puentes stated that she attempted to call Officer Smith back at 0251 hours but she did not answer the phone. Officer Puentes then stated that Officer Smith called her back at 0254 and stated, "They shot at me". Officer

Puentes also advised that at 0253 hours, the phone call was transferred into a FaceTime call (Video Call). She advised that while on FaceTime, she observed Officer Smith was in her home and on a police radio running a tag on teletype. Officer Puentes stated that she was advising Officer Smith to switch to the primary channel on the police radio and notify units of the incident. Officer Puentes realized police units had not been notified. She called Officer Brandon Jacobs, working patrol officer, while driving to Officer Smith's residence at approximately 0258 hours in an attempt to have police units respond to Officer Smith. Officer Puentes arrived at Officer Smith's apartment and it was unoccupied. She called Officer Smith on the phone at 0303 hours and learned that Officer Smith had gone to the park/playground in the complex. She then walked over there and observed Officer Smith with other officers. Officer Puentes stated that she was not informed that Officer Smith had returned fire until she had arrived at her apartment. (Portions utilized from Detective Maher's interview summary. Refer to video recorded interview for further information).

Officer Michelle Smith (Subject Officer Administrative Interview)

On October 12, 2016 at approximately 1250 hours, Officer Michelle Smith responded to the Office of Professional Standards for the purposes of a recorded audio interview. Upon arrival, Officer Smith read and signed the internal investigation subject pre-interview notification, stating that she understood. Officer Smith was sworn in prior to any questioning. Officer Smith was also able to review all materials related to the investigation prior to the interview.

Officer Smith stated that she was walking her dog on the morning of September 8, 2016 in her apartment complex, Villages at Halifax, 121 Norma Drive, when she became involved in a verbal altercation with unknown parties. Officer Smith stated that she did not initiate the verbal altercation. Officer Smith stated that the entire incident lasted approximately fifteen (15) minutes. Officer Smith stated that the vehicles that were involved were a grey Ford Taurus, Focus, or Fusion and a red Ford Crown Victoria. Officer Smith stated that she did not purposely provide false information related to the vehicles in hopes that Detectives would not locate said vehicles in a criminal investigation. Officer Smith stated that she did not intentionally provide false vehicle tag numbers. Officer Smith stated that she did not threaten any of the parties with her dog. Officer Smith stated that her dog was barking, jumping at the other parties' vehicle, as well as jumping onto the other parties' vehicle.

Officer Smith stated that earlier in the evening, she was hanging out with friends, consuming alcoholic beverages. Officer Smith stated that she left her friends at approximately 0130-0145 hours. Officer Smith stated that she was consuming alcoholic beverages within an hour of the incident. Officer Smith stated that she was drinking margaritas. Officer Smith stated that she started consuming alcoholic beverages earlier in the evening at La Fiesta Restaurant, where she stated that she had one (1) margarita. After leaving La Fiesta, Officer Smith

stated that she went over to Officer Selina Puentes' residence. Upon arrival, Officer Smith stated that she had two (2) more alcoholic beverages and two (2) shots of alcohol, making a total of five (5) alcoholic beverages.

Officer Smith stated that she was involved in verbal altercations with both vehicles, but the red vehicle was the main one. Officer Smith stated that she attempted to open the passenger side door of the red vehicle at one point due to the fact that the occupant was speaking to her. Officer Smith stated that she never spit at the red vehicle and does not recall anybody throwing anything at her from the vehicle, at any time.

With regards to the snapchat videos, Officer Smith stated that she recalls stating something to the effect of "I called you from over there, I'm here now, I'll wrap you all up." When asked to explain what "I'll wrap you all up" means, Officer Smith stated that it meant that she "would fight all of you." Officer Smith stated that was in fear for her safety but never attempted to walk away from the situation at any time. Upon reviewing the snapchat videos, one of the other parties' stated, "We don't want to fight you." Officer Smith responds, "I am here though and I called you right back from where you were over there, so, what you wanna do?" Officer Smith stated that if the other parties did not want to fight her, they would have entered their vehicles and left the area. When asked how the other parties knew personal information about her such as age and where she was from, Officer Smith stated that they asked her. Officer Smith stated that she never called the other parties anything to effect of "Florida pussies." Officer Smith stated that she did say, "That's what's wrong with Florida people." When asked to explain this, Officer Smith stated they "followed her and as soon as somebody wants to confront them about the situation, they do not want to fight." Officer Smith stated that she did not instigate the situation and was not the primary aggressor.

Officer Smith stated that the other party never threatened her with a firearm and she never saw a firearm at any time. Officer Smith stated that she was in fear for her life when she realized that the vehicles were following her and definitely when she heard shots being fired. After Officer Smith heard shots being fired, she quickly looked down at herself, as well as her dog to see if they had been struck. After doing so, Officer Smith stated that she "returned fire." Officer Smith stated that her firearm was never out of her purse until she fired, but three (3) individuals from the other party described her firearm. Officer Smith stated that there was a round in the chamber of her firearm at the time she fired. Officer Smith stated that she does not know how many rounds her firearm holds and doesn't know how many rounds there were in the firearm when she fired it. Officer Smith stated that "maybe two (2) rounds" were fired at her. Officer Smith stated that she fired one (1) round. When asked if she thought that she would hit her target at that distance with a handgun, Officer Smith stated, "absolutely not." Officer Smith stated that they "shot at me, so I'm going to shoot back at them." Officer Smith stated that she never attempted to fire a second time. Officer Smith stated that she never attempted to locate her spent shell casing. According to

Officer Matthew Smith's AXON video, Sergeant Monde asked Officer Michelle Smith if she picked up the spent shell casing off of the ground and she responded "yeah," which she handed to Officer Matthew Smith, along with her firearm. Officer Smith stated that she does not recall making that statement (According to Officer Matthew Smith's supplement, the empty shell casing was still in the chamber of the firearm). Officer Smith stated that it felt like her firearm may have malfunctioned due to the fact that her "trigger felt like it went way too far back." Upon reviewing Officer Justin Dunne's AXON video, Officer Smith stated, "I don't know where they shot, they did not shoot at me, cuz they were driving away as they shot." When asked to clarify what she was in fear of if the other party was not shooting at her, Officer Smith stated, "at the moment they shot, I knew they were shooting at me and after calming down and realizing what occurred, they were probably shooting to scare me." Officer Smith stated that she did not attempt to take cover, as there was no cover to be taken.

One (1) person that Officer Smith identified out of three (3) was actually on scene at the time of the incident. The other two (2) individuals were never on scene, which was corroborated. All parties were involved in a previous incident in June 2016 with the red Chevrolet Camaro, which Officer Smith was on scene. Officer Smith stated that is not how she identified the individuals and does not remember the call for service in question. Officer Smith stated that that she did not inform the other party that she was a Police Officer at any time during the altercation. Officer Smith stated that the other party asked her if she was the landlord, property manager, and other questions in order to figure out who she was. Officer Smith stated that other parties called her "the feds."

Officer Smith stated that after the shooting, she retrieved her dog and walked towards her apartment. Upon doing so, Officer Smith called Officer Puentes stating that "she was shot at." Officer Smith stated that she never called 911 or instructed Officer Puentes to do so. Upon entering her apartment, Officer Smith retrieved her police radio and ran the other parties vehicle tag via teletype. Officer Smith stated that approximately five (5) minutes had elapsed from the time of the shooting to the time she called Officer Puentes. Officer Smith stated that she either called or FaceTimed Officer Puentes during the initial verbal altercation as well.

During the course of the investigation, Officer Smith provided Detective James Maher with the phone number of a possible witness to at least part of the incident. The number was for an unidentified black male. Officer Smith stated that she did not have any contact with this individual prior to the incident, but has seen him around the apartment complex previously. Officer Smith stated that the male contacted her prior to the shooting and provided her with his phone number, as he witnessed part of the argument. Officer Smith stated that she never asked the male to lie for her or to change any part of the incident to favor her.

Officer Smith stated that she did not call 911 or tell central dispatch of the situation, even while on teletype, because she was “still collecting her thoughts and wanted to get the tag out before she forgot it.”

Officer Smith stated that “she had alcohol in her system at the time of the shooting but did not feel intoxicated.” Officer Smith stated that she “was really shot at” and did not shoot because she was careless and intoxicated. Officer Smith stated that she shot “out of self-defense.”

Officer Smith stated that she was carrying a Glock firearm that evening. Officer Smith stated that she is not certified through the police department to carry that weapon off duty. Officer Smith stated that she was careless and did not register the firearm with the department.

Officer Smith stated that she thought that the whole situation could have been handled better, in retrospect. Officer Smith stated that she could have just walked home in the beginning and avoided the whole situation. Officer Smith does not think that alcohol played a part in the incident. Officer Smith stated that she had her firearm in her purse, on her person throughout the evening while she was consuming alcoholic beverages.

Investigative Summary

Officer Smith was off-duty and involved in a shooting on September 8, 2016 at approximately 0245 hours. The initial argument occurred at Villages at Halifax Apartments, 121 Norma Drive. The shooting occurred at Progress Road and Norma Drive. Officer Smith stated that she was walking her dog in her apartment complex in the early morning of September 8, 2016. She became involved in a verbal altercation with several people that according to her she did not initiate. Officer Smith believed the entire altercation lasted approximately fifteen (15) minutes. According to Officer Smith, two vehicles were involved, a gray Ford Taurus, Focus or Fusion and a red Ford Crown Victoria. According to witnesses at the scene, Officer Smith threatened them with her dog and even had the dog jumping at and on the cars at one point, which Officer Smith confirms during her Administrative Investigation.

Officer Smith stated during her administrative interview that she was hanging out with friends earlier in the evening, consuming alcoholic beverages. She stated that she left at approximately 0130-0145 hours and was consuming alcoholic beverages within an hour of the shooting. She also stated that she was carrying an off duty firearm throughout the night in her purse while consuming alcoholic beverages. Officer Smith stated that she was drinking margaritas and began earlier in the evening at La Fiesta Restaurant, where she had one margarita. She and friends then went to Officer Puente’s residence where she proceeded to have two more alcoholic beverages and two shots of an alcoholic beverage for a total of five alcoholic beverages.

Officer Smith stated that she attempted to open the passenger side door of the red vehicle due to the fact that the occupant was speaking to her, in contrast to other witnesses, including Nickia Lyons, stating that she opened the passenger door of the gray Hyundai. Officer Smith denies spitting at any vehicle and doesn't remember anything being thrown at her.

Nickia Lyons provided three (3) SnapChat videos to Detective Dinardi during the course of the criminal investigation. The three videos are time stamped at 0234, 0235 and 0238 hours. In one of the videos a male can be heard stating "she don't want to fight" and Officer Smith responds, "I'm here though and I called you right back from where you were over there, so, what you wanna do?" This is in contrast to Officer Smith stating she didn't instigate any of this incident.

In another video Officer Smith is asking "where you stay, what number?", as in which apartment the people reside. A male asks, "I gotta tell you?" and Officer Smith replies, "What number, absolutely" and the male replies "She's not neighborhood watch, we ain't got to tell her nothing". Officer Smith replies, "You don't but watch when I wrap you all up, go ahead". Nickia Lyons felt that "wrap you up" meant harm the group and Officer Smith confirmed during her administrative interview that it meant to fight, so she was not attempting to walk away at any time and instead was escalating the situation.

In the third video Officer Smith is observed walking over to the red Camaro and says something which is inaudible. These videos clearly display that Officer Smith was an instigator of the incident.

The red vehicle in the videos is clearly a red Chevy Camaro, the vehicle that Officer Smith describes to officers and detectives on the day of the incident as a maroon Ford Crown Victoria or Grand Marquis. Officer Smith advises Officer Matthew Smith that the red vehicle, the shooter's vehicle, tag was UGB-V33 and the tag she ran on teletype was UVE-V33 then UGB-V33. Officer Dunne was on scene and asked Officer Smith on AXON video if they shot up in the air or shot at her? Officer Smith replied, "I don't know where they shot, they did not shoot at me cuz they were driving away as they shot". She also stated that it was the longer car, the Crown Vic that fired the shots. The gray car did not shoot at all. She also advised Officer Matthew Smith and Officer Dunne that the car was a Crown Vic, "older model, one of ours", meaning it looked like a police vehicle Crown Victoria. Officer Smith stated during her interview that she did not intentionally provide false vehicle information in hopes detectives would not locate the vehicle or occupants. Officer Smith stated that she knows what a Camaro looks like because her fiancé and two of her friends have Camaros, yet she described the shooting vehicle as a Crown Victoria/Grand Marquis and can distinguish between a Crown Victoria and a Camaro. She also admitted that they don't look anything alike.

Officer Smith stated that she said to the group, "That's what's wrong with Florida people" and she meant that "They followed her and as soon as somebody wants

to confront them about the situation, they do not want to fight". But she reiterated that she wasn't the primary aggressor and did not instigate the situation.

Officer Smith stated that she was never threatened with a firearm and never observed a firearm at any time. She stated that she was in fear for her life when she realized that the vehicles were following her and definitely when she heard shots being fired. Officer Smith stated that she checked herself and her dog prior to returning fire and never had her gun out prior to the red vehicle driver shooting at her, despite three occupants of the red vehicle (Camaro) being able to describe her handgun. Officer Smith stated that two rounds were fired at her and she returned fire with one round. Officer Smith stated that she didn't think she'd hit a target from that distance but returned fire anyway because they shot at her. Lyons, Cummings, Stevens and Troutman all stated that they were scared during the incident. Lyons was scared when she heard the gunshots and observed what appeared to be a gun and a flash (muzzle flash). Cummings also stated he was scared during the incident. Stevens and Troutman were both victims of having Officer Smith's firearm pointed at them while in the red Camaro.

Officer Smith stated that she never attempted to locate her shell casing, however on Officer Matthew Smith's AXON video Sergeant Monde is heard asking Officer Smith if she picked up or found her shell casing on the ground and she stated "yeah".

After the shooting, Officer Smith stated that she retrieved her dog and walked towards her apartment. She called Officer Puentes stating "I was shot at". She never called 911 or asked Officer Puentes to call 911 because as an officer she is 911. She also didn't advise teletype when she was running the tag that she was involved in a shooting. She stated that was because she was collecting her thoughts and didn't want to forget the tag.

An unidentified black male called Officer Smith on her cell phone at 0228, as verified by her phone logs as a missed call. Officer Smith stated that was because she gave him her number prior to the shooting and she is adamant that she didn't have his number prior to that morning.

Officer Smith admitted to having alcohol in her system but feels she was not intoxicated. She stated she "was really shot at" and did not shoot because she was careless and intoxicated, she shot "out of self-defense".

Officer Smith stated that she was carrying a Glock firearm and it was inspected by a trained police department armorer but never registered properly. There is no record of her off-duty firearm in training records, as verified by the Training Division supervisor, Sergeant Todd McBride.

As witnessed by her actions on video and victim interviews, Officer Smith's actions precipitated the situation in which deadly force was used, unjustifiably.

A dented shell casing, Sig 380 auto, was located on Fulton Street by Detective Bissa, approximately fifty feet south of Oak St. This is near the location where

Officer Smith stated that the red vehicle's driver shot a couple of rounds at her. Detective Chirillo stated in her supplement that the casing appeared dented or weathered. It is not known at this time whether or not that casing was there on the ground from a previous incident or if it is in fact a casing from a round shot from the red Camaro during this incident.

The Criminal Investigation Division attempted to clarify several inconsistencies in Officer Smith's depiction of events. Officer Smith's attorney, Marty White, stated that she would not be available for any further interviews involving the criminal investigation.

Findings

These are the findings of the Office of Professional Standards regarding the allegations against Officer Michelle Smith:

- 1) 200.4 Unlawful Conduct:** *Employees shall not commit any act or crime which is defined by Florida Statutes as a misdemeanor, or which constitutes a municipal ordinance violation, whether chargeable or not, which brings discredit upon the Daytona Beach Police Department or otherwise impairs the operation and efficiency of the department, and/or which is likely to impair the ability of personnel concerned to perform assigned duties as determined by the Chief of Police.*

Officer Smith admittedly drank alcoholic beverages throughout the evening and morning prior to the shooting. She carried and discharged a firearm under the influence of alcohol intoxicants. She also provided information concerning the red vehicle which was purposely false considering she knows what a Camaro looks like and yet described the vehicle as a Crown Victoria/Grand Marquis. She even described the vehicle as a long four-door vehicle, nothing like a Camaro. She also stated that she didn't instigate the fight when the SnapChat videos clearly show her as an escalator of events. Even though Officer Smith is not being formally charged with criminal acts, she violated Florida State Statutes to include, 790.151, Using firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances, 837.05 False reports to law enforcement authorities and 837.055 False information to law enforcement during investigation. This allegation is therefore;

SUSTAINED

- 2) 200.5 Unlawful Conduct:** *Employees shall not commit any act or crime defined by state or federal law as a felony, whether chargeable or not.*

Officer Smith fired a handgun at an occupied vehicle after stating on video that they were not shooting at her. Officer Smith was intoxicated and careless. Officer Smith violated Florida State Statutes to include, 784.021 Aggravated assault and 790.19, Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft. Buses, railroad cars, streetcars, or other vehicles. Troutman, Lyons, Cummings and Stevens were all scared during

this incident, as confirmed by their recorded interviews. This allegation is therefore;

SUSTAINED

- 3) 200.13 Professional Conduct and Responsibilities:** *Every employee and member shall be required to establish and maintain a working knowledge of the Federal, State and local laws and ordinances that he/she is charged with enforcing. Every member and employee is expected to observe and obey laws and ordinances, and the rules, orders and directives of the Department.*

Officer Smith violated Florida State Statutes and several Department Directives to include not having the proper form filled out and approved by Chief Chitwood authorizing her to carry an off duty firearm, as required by directive 914.18. This allegation is therefore;

SUSTAINED

- 4) 200.29 Department Morale:** *No employee shall engage in conduct on or off duty, which adversely affects the morale or efficiency of the Department.*

Officer Smith's conduct adversely affects the City and Department because she is held to a higher standard as a police officer. She did not rise above and walk away from the situation or attempt to call police. In contrast, she escalated the situation into a deadly force encounter. This allegation is therefore;

SUSTAINED

- 5) 200.42 General Conduct:** *Employees shall answer all questions truthfully. This requirement extends to all official investigations and inquiries, criminal and administrative, conducted by the Department or by any other*

agency. Nothing in the section shall be construed to require an employee to waive any statutory or constitutional rights.

Officer Smith did not provide truthful answers to questions because she purposely gave inaccurate vehicle descriptions. She also stated on video that she picked up her spent round and during her interview she stated she never made that statement. This allegation is therefore;

SUSTAINED

- 6) 200.109 Employee Actions:** *Employees shall not knowingly make a false report or knowingly enter or cause to be entered any false information or misrepresentation in any personal or city records or reports, including accident, insurance, medical records, employment applications, purchase orders, time sheets, or any other reports, records, or applications.*

Officer Smith provided information concerning the red vehicle which was purposely false considering she knows what a Camaro looks like and yet described the vehicle as a Crown Victoria/Grand Marquis. She even described the vehicle as a long four-door vehicle, nothing like a Camaro. She also stated that she didn't instigate the fight when the SnapChat videos clearly show her as an escalator of events. Officer Smith also advised Sergeant Monde on video that she picked up her shell casing but denied saying that when asked during her formal administrative interview. This allegation is therefore;

SUSTAINED

- 7) 914.7 Firearm Regulations:** *All police personnel shall remove and secure ALL weapons prior to securing their vehicle at the end of their shift. The only exception shall be an officer securing their assigned vehicle in enclosed, secure garage.*

Officer Smith's SWAT rifle was located in her marked patrol vehicle, unsecured (not in case) while the vehicle was parked in the parking lot of her apartment complex. The rifle was not brought into her apartment and the vehicle was not garaged. This allegation is therefore;

SUSTAINED

- 8) 914.17 Authorized Off Duty Handguns:** *Those full time sworn personnel who wish to carry a handgun off duty shall only carry the type, model and caliber of handguns approved by the Chief of Police. Handgun calibers will be no less than .32 caliber and no greater than .45 caliber, and the*

weapon must be owned by the officer who is carrying it. The weapon shall be inspected and approved by a qualified weapons instructor or armorer in the Training Unit, prior to carrying the weapon.

Officer Smith was carrying and utilized a Glock 42 handgun, serial number ABMH846. This firearm was not Department approved, inspected or registered, as verified by the Training Division's Sergeant McBride. This allegation is therefore;

SUSTAINED

9) 914.23 Authorized Off Duty Handguns: *Should the situation arise, off duty officers are expected to utilize their firearm in the same manner, which is reasonably expected of an on duty officer in a similar situation.*

Officer Smith utilized her firearm carelessly and recklessly. She stated that she didn't think she could hit anyone at that distance and also stated that they did not shoot at her. This allegation is therefore;

SUSTAINED

10) 914.24 Authorized Off Duty Handguns: *Prior to being granted the authority to carry a firearm while off duty each officer must demonstrate proficiency and familiarity with the safe operation and use of the firearm to be carried.*

Officer Smith did not complete the proper procedures outlined in Department Directive 914 in order to carry a personal off-duty firearm. This allegation is therefore;

SUSTAINED

11) 914.26 Authorized Off Duty Handguns: *Requirements for carrying a firearm while off duty are listed below.*

- *Must be carried in a manner which provides concealment and safety when in civilian clothing;*
- *Firearm may be carried in a purse;*
- *Unless otherwise authorized, firearms shall be concealed when in civilian clothes;*

- *Firearms will not be carried when involved in sports activities, with exception of being engaged in fishing, lawful hunting or marksmanship;*
- *Firearms will not be carried when indulging in alcoholic beverages, or at a bar or similar establishment;*

Officers who elect to carry a firearm while off duty shall carry their badge and department issued I.D. card. This will assist in identifying the member as a police officer in the event the situation arises.

Officer Smith admitted to carrying her firearm in her purse throughout the evening as she was drinking alcoholic beverages. According to three witnesses (Harris, Stevens and Troutman), Officer Smith pointed a firearm at them in the red Camaro without provocation for that level of force. This display of a firearm is not in a concealed or safe manner. This allegation is therefore;

SUSTAINED

12)1002.1 Notifications for Officer Involved Shooting/Deadly Force

Incident: Whenever an officer discharges a firearm and is a principle participant in a firearm discharge, while on or off-duty, for any reason other than training or recreation, he/she shall immediately report the Incident to Central Communications and to the on-duty supervisor.

Officer Smith was involved in an off-duty shooting and did not notify Central Communications or the on-duty supervisor. She instead notified a friend and fellow off-duty officer, Officer Puentes. Officer Smith was on her department issued radio running a tag she stated was involved in the incident and driven by the male whom shot at her. She had plenty of opportunity to notify Central Communications of the incident and she neglected to do so, as verified by radio recordings. She had the ability to call a coworker when she should have been notifying Central Communications or a supervisor. This allegation is therefore;

SUSTAINED

13)1004.7 Unauthorized Use of Deadly Force: Police officers will not discharge their weapons when doing so will unnecessarily endanger innocent people.

- *Police officers shall not discharge their firearms in defense of property;*

- *Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions.*
- **NOTE:** *Retreating or repositioning is not a sign of weakness or cowardice by an Officer; it is often a tactically superior police procedure rather than the immediate use of force.*
- *Police officers shall not discharge their firearms to subdue a fleeing individual who presents NO threat of imminent death or serious physical injury to themselves or another person present, unless exigent circumstances arise during the course of the fleeing.*

Officer Smith's actions precipitated the need to use deadly force. Her behavior was aggressive as witnessed on video when she stated, "I'm here though and I called you right back from where you were over there, so, what you wanna do?" Also, when questioning the group on where they resided in the apartment complex one male stated, "She's not neighborhood watch, we ain't got to tell her nothing". Officer Smith replies, "You don't but watch when I wrap you all up, go ahead". "Wrap up" means to fight, according to Officer Smith and Nickia Lyons took that wording as Officer Smith was going to harm them. Officer Smith also stated that they were not shooting at her, when asked by Officer Dunne on AXON video. Evidence shows Officer Smith created and escalated the entire incident. This allegation is therefore;

SUSTAINED

Interviews

The following individuals were interviewed concerning this investigation:

- Elizabeth Stevens (Victim Interviewed by Criminal Investigation Division)
- Teja Troutman (Victim Interviewed by Criminal Investigation Division)
- John Harris (Victim Interviewed by Criminal Investigation Division)
- Timothy Taylor (Victim Unable to be Interviewed/Uncooperative)
- Nickia Lyons (Victim Interviewed by Criminal Investigation Division)
- Darrin Cummings (Victim Interviewed by Criminal Investigation Division)
- Unidentified Black Male (Witness Interviewed by Criminal Investigation Division)

- Officer Selina Puentes (Witness Officer/Off-Duty, Interviewed by Criminal Investigation Division)
- Officer Brandon Jacobs (Witness Officer Interviewed by Criminal Investigation Division)
- Officer Michelle Smith (Subject Officer, Interviewed by Criminal Investigation Division and Office of Professional Standards)

Exhibits

- Memoranda
- Miscellaneous Investigative Documents
- Audio and Video Recordings
- AXON Videos