



Donald F. Ryan, County Attorney  
Crow Wing County Attorney's Office  
213 Laurel Street, Suite 31  
Brainerd, MN 56401  
attorney.office@crowwing.us  
Phone: 218.824.1025 Fax: 218.824.1026

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Mike Freeman  
Hennepin County Attorney  
300 South 6<sup>th</sup> Street  
Minneapolis, Minnesota 55487

*Re:* Use of Deadly Force Investigation arising out of 6/3/2021 US Marshal Task Force attempt to apprehend Winston Smith.

County Attorney Freeman,

I have accepted review of the above matter on a conflict-of-interest basis. I have reviewed the investigative materials, met with the BCA, and made site visits in the process of completing my review of this matter. Given that the law concerning the use of deadly force by law enforcement officers is currently in flux in Minnesota, I have analyzed this under both the pre (apparent threat of death or great bodily harm) and post (articulated with specificity) March 1, 2021, standards. It is my opinion that the use of deadly force by the US Marshals Task Force on June 3, 2021 was authorized under Minnesota Law using either standard. Therefore, no criminal prosecution should be sought in this matter. I provide the basis for my decision below.

On November 30, 2019, Winston Boogie Smith (Smith) was arrested in Ramsey County on a Hennepin County warrant arising out of an Aggravated Robbery in the 1<sup>st</sup> degree conviction. Smith was driving a vehicle bearing Missouri license plates. Search of the vehicle produced a loaded Taurus 9mm handgun from beneath the driver's seat. Smith was charged with possession of a firearm by an ineligible person in Ramsey County (60-CR-19-9010). On May 19, 2021, Smith failed to appear for sentencing in the Ramsey County case. Smith was facing a 48-month commitment to the Commissioner of Corrections (a downward durational departure by agreement) concurrent with a 48-month commit in the Hennepin County matter. On May 20, 2021, a body only bench warrant was issued for Smith's arrest on the Ramsey County case. As a result of this warrant, the U.S. Marshall's North Star Fugitive Task Force (Task Force) opened an investigation of Smith.

On June 3, 2021 the Task Force developed information that Smith and an unknown female acquaintance (later identified as N.A.) were eating at Stella's Fish House on West Lake Street, in the City of Minneapolis, Hennepin County. The Task Force responded to the area. At approximately 1:30 p.m.

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certain members of the Task Force observed Smith and N.A. at Stella's on the rooftop. At approximately the same time, another member of the Task Force found the vehicle Smith had been driving in videos, on the top level of the parking lot across the street from Stella's. Smith's vehicle was the only vehicle on the top level and clearly visible from Stella's rooftop. The front of the vehicle was up to the cables at the head of the parking stalls. This prevented the vehicle from going forward. The identity of Smith, and the connection to the vehicle, were confirmed with recent social media videos. Some of these videos, and other posts, contained content of Smith pulling a handgun out of his pants; and Smith stating that he possessed guns and drugs for sale.

It was determined that arresting Smith on the top level of the parking lot would be the safest approach in order to mitigate the risk to the general public. Consequently, a plan to do so was formulated. One Task Force Member (TFM) was assigned to maintain surveillance on Stella's and advise when Smith and N.A. left their table. Another TFM took up a position in order to advise when Smith and N.A. left Stella's, crossed the street, and entered into the parking ramp. This individual would also advise if Smith and N.A. used the stairs or the elevator. The remaining TFMs were in their squad vehicles and positioned themselves at various locations in the parking ramp. Two of these TFMs were assigned to stay on the fourth level to cover the stairwells in case Smith got out on foot and ran. The remaining TFMs would participate in boxing in Smith's vehicle once Smith and N.A. were inside. One TFM maintained visual contact of Smith's vehicle and would give the order to the team to move in. Three TFMs had a specific location they were to drive to (driver's door, passenger door, rear of vehicle) in performance of a standard vehicle box technique. Once Smith's vehicle was boxed in, TFMs would form a stack approach of Smith's vehicle, and take him into custody.

At approximately 2:00 p.m. the TFM maintaining surveillance of Stella's radioed Smith and N.A. were leaving their table. The TFM surveilling the street and parking ramp then radioed Smith and N.A. were walking toward the parking ramp. They then entered the elevator on Level 1. Shortly thereafter, Smith and N.A. are observed on Level 5 walking to the vehicle. Once they were inside the vehicle the command to move in and arrest Smith was given. TFM squad emergency lights and sirens were activated, the TFMs fell into their pre-planned positions, and boxed Smith's vehicle in. After about 10 seconds, the sirens were turned off, but the lights remained on. TFMs identified themselves as L.E. both over the P.A. of the squads and by verbally shouting once outside their squad. All TFMs wore tactical vests that clearly identified them as L.E. officers. Smith was told he was under arrest, to put up his hands and exit the vehicle. He did not. Loud verbal commands to show TFMs their hands continued. N.A. complied. Smith did not. For several minutes P.A. commands to show your hands/put your hands on the steering wheel continued. Smith did not comply.

The decision that Smith would have to be physically removed from the vehicle was made. One TFM retrieved and raised a ballistic shield (with US Marshals markings on the front), drew a handgun, and took up a tactically sound position on the rear driver's side passenger area. Other TFMs then stacked behind to form the arrest team. As this was occurring, loud commands for Smith to keep his hands visible continued by the TFM sitting in the squad blocking the driver's door. The lead stack TFM could clearly see Smith's hands through the window. At times the left hand would fall out of view. Once the stack was complete, the squad blocking the driver's door was backed away to allow the door to open. This TFM then exited the squad and joined the stack in the second position while continuing to give loud verbal commands to Smith to keep his hands up. Smith was again ordered to open the driver's door and exit the vehicle. Smith could be seen looking at the TFM giving the commands to open the door.

Smith failed to comply and did not open the door. Smith appeared to be alert and made eye contact with the TFM giving the commands.

After approximately three minutes of non-compliance, the arrest team moved slowly forward to the driver's door with the shield up and gun pointed at Smith. In doing so Smith is observed with his hands down doing something on his phone. N.A. is observed with her hands up. She was crying hysterically and shaking. TFMs saw N.A.'s lips moving, and it appeared she was yelling at Smith. Smith appeared to be talking to N.A. as well. Upon reaching the door, the lead stack TFM moved past the door to the front driver's quarter panel near the A pillar (shield up/gun pointed at Smith) (clearly visible to Smith). This was done so those behind could extract Smith from the car. Smith is observed ignoring TFMs at this point and focused on his phone. One of the TFMs then tried to open the door from the outside, but it was locked. Smith was ordered to unlock the door or the TFMs would break out the window. Smith looked at the TFM and again scanned left to right consistent with someone looking for an escape option. Smith did not unlock the door. A window break tool was then retrieved. The second TFM in the stack then struck the front driver's side window with the break tool. The window did not break. Rather it spider webbed and stayed intact. The TFM struck the window a second time and it still did not break. After several attempts, small holes in the window began to develop with each strike.

While the attempt to break the window was occurring, the lead stack TFM was observing Smith. Smith was looking at the TFMs at his driver's door with a look of annoyance/disgust on his face. Smith dropped his phone, twisted his body, and leaned over to the vehicle's center console (between driver and passenger seat), pushed himself up with his feet/legs and appeared to be reaching for something in the back seat. Smith is told to stop reaching. Smith then recoiled back into the driver's seat. The lead stack TFM who is providing cover is heard yelling, don't do it, then gun, gun, gun, he's reaching for/he's got a gun. This TFM then begins firing his handgun at Smith. This causes the TFM attempting to break the window to drop the break tool, pull his handgun, and fire at Smith as well. Smith is seen slumping but is still moving with his hands out of view. The task force is ordered to fall back. After the TFMs had fallen back, the rear window is busted out by a TFM using the butt of his rifle to get a clear view into the vehicle. At this same time, N.A. exits out the front passenger door of the vehicle, is detained and escorted to a squad vehicle. The task force regroups and goes to the open passenger door and assists Smith out of the vehicle. He is placed on his back on the parking ramp. TFMs then begin life saving measures until paramedics arrive approximately 15 minutes later and take over. Paramedics pronounce Smith dead at the scene.

The Minnesota BCA was called in to investigate. Upon (examination/search) of Smith's vehicle a Smith & Wesson M&P 380 M2.0 Shield EZ .380 caliber handgun was recovered. It was located on the driver side floor between the seat and door area. There was a live cartridge in the chamber with the magazine being empty. The cartridge in the chamber was a Blazer 380 auto. DNA testing of the handgun produced four locations containing Smith's DNA (grips, slide, left side grip, magazine base). Also recovered in the front seat area were six fired Blazer 380 auto cartridge cases (2 driver's seat, 1 driver's floor, 3 center console). Testing of the six fired cartridges determined they were fired from the recovered handgun. A second M&P 380 auto magazine loaded with seven Blazer 380 auto cartridges was recovered from a duffel bag in the back seat. The owner of the vehicle Smith was driving was questioned by the BCA. Said vehicle was on a loan to Smith to use. The owner denied any knowledge of the firearm or ammunition recovered from the vehicle. The vehicle owner further denied it was his.

Six defects were discovered in the driver's door. Each tested positive for lead. Each of these originated from the inside of the vehicle traveling to the exterior of the vehicle. One nearly penetrated the door. All six were traveling in the general direction of TFM's. Four bullet fragments were recovered from the interior of the driver's door. Two of these were suitable for testing. Both were fired from the recovered handgun.

There were twelve defects in the driver's side front door window. Nine of these tested positive for lead. All of these traveled from the exterior to the interior of the vehicle. There was also damage to the lower rear portion of this window consistent with where a break tool would be used. There were two defects in the rear driver's side passenger window which originated outside the vehicle traveling to the interior. These both tested positive for lead. A defect was also described in the top left corner of the glove box which tested positive for lead. Comparison of the injuries noted in the autopsy report to the defects in the windows appear to be consistent with one another.

A citizen who was waiting outside of Walgreens, across the street from the parking ramp, informed the BCA that the citizen heard sirens. The citizen looked thinking it was a traffic stop. The citizen saw a police car in the parking ramp. This individual heard commands of "Put your hands up" or "put your hands on the steering wheel." These commands lasted for more than two minutes. This individual described the individuals giving the commands as being really patient. The commands given made it clear the person/people were being instructed to do something for the police.

An employee of Stella's working on the roof top on 6/3/21 told the BCA the employee heard shots from the direction of the parking ramp. The person looked towards the ramp and observed vehicles clustered on the top level of the ramp. The individual also observed an officer breaking out the back window of a vehicle; as well as a woman taken out of the pinned in vehicle and escorted to another vehicle. Minneapolis Police Department sirens could be heard within 2 minutes of the shooting.

N.A. is observed in body cam footage immediately after the incident. In the body cam footage N.A. is observed explaining that N.A. and Smith were having a lunch date at Stella's. When they were done eating the two proceeded to Smith's vehicle. Once seated inside, the police came to the vehicle. It happened really fast where a bunch of officers came out of nowhere. Saying put your hands up, put your hands up. N.A. put her hands up right away. Smith would not put his hands up. N.A. kept telling/pleading with Smith to put his hands up, to cooperate, to give himself up. Smith would not do so. Smith made comments to N.A. that he did not want to go back to jail; and that, he was going to die. N.A. stated Smith attempted to go live on Facebook and continued to refuse to cooperate. The police started breaking the glass, then shot through the glass. One of the officers then grabbed N.A. and escorted her to another vehicle. She is not sure what happened. N.A. also gave a statement to the BCA, in which she did not remember seeing a gun in Smith's vehicle.

There were two TFM's who fired their handguns. They were the first and second TFM's in the stack. The first was by the A pillar and the second was near the B pillar of Smith's vehicle. The TFM by the A pillar was providing cover and observing Smith while the TFM by the B pillar was attempting to break the window to gain entry. Both provided a written statement.

The TFM by the A pillar witnessed Smith draw his handgun. This TFM states:

Knew the only reason Smith doing so was to kill the TFM trying to break the window or another TFM. Believed Smith was about to shoot a TFM. Yelled gun and discharged weapon.

The TFM by the B pillar did not see the gun. This TFM believed the TFM was reacting to a violent threat based upon:

Own training and experience; past experience with TFM announcing gun and inflection in voice; shots being fired and glass breaking; Smith's non-compliance/history of weapons cases/furtive gestures/scanning movements and announcement of gun.

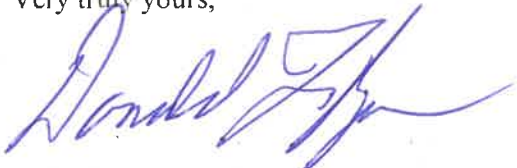
This created belief Smith presented a serious violent threat to self, other TFMs and public. Believed Smith had fired at TFMs or TFMs fired after Smith threatened TFM with a gun. This created fear for safety of everyone in area by Smith's vehicle (TFMs and self).

Based upon the facts and circumstances in this case, I find that the TF was properly exercising its lawful authority to apprehend Smith on the Ramsey County felony warrant. The TF was readily identifiable when informing Smith he was under arrest and ordering him to exit his vehicle (as well as other commands). Smith failed to comply with the lawful orders. As the TF was attempting to gain entrance into his vehicle, Smith initiated a deadly force confrontation with the TF by drawing his handgun and firing at the TF. This resulted in the TF using deadly force in response. Though I am unable to determine who fired first, it is irrelevant in this case. Once an individual initiates a deadly force confrontation, a law enforcement officer does not have to wait to be shot/shot at before reacting. The reaction and reasoning of the two TFMs in this case was reasonable and justified. Their conduct was clearly in response to an apparent threat of death or great bodily harm. They also clearly articulate with specificity a threat of death or great bodily harm that was reasonably likely to occur unless addressed by them without unreasonable delay. Hence both the pre and post March 1, 2021 standards laid out by Minnesota Statute 609.066 are met. As a result, the use of deadly force was authorized under Minnesota Law in this case and no criminal prosecution is warranted.

Having concluded my review, I herewith am providing to you my entire file concerning this matter. The only thing I have maintained is a copy of this letter. All other materials (paper and digital) are being provided to you. I have also deleted everything out of our system on this matter as well. I will forward all requests for data to your attention.

Should you have any questions or concerns, please feel free to give me a call.

Very truly yours,



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