



Office *of the* District Attorney General
Ninth Judicial District

Serving Loudon, Meigs, Morgan and Roane Counties
Russell Johnson, District Attorney General

This is a summary explanation of the review by 9th District Attorney General Russell Johnson of an Officer Involved Shooting on December 24, 2015 involving Rockwood City Police Officer Brandon Smith – Released to media and 9thdag.com website on Friday, February 19, 2016 at 1:00 pm

Policy of the 9th District Attorney General's Office is that TBI handles all Officer Involved Shootings (*TBI has a newly revised Standard Operating Procedure for these investigations*) ---

My policy within the District Attorney General's Office for the 9th Judicial District, as is with most of Tennessee's district attorney generals who serve multi-county judicial districts, is to predicate all investigations of law enforcement officer involved shootings (OIS) or use of deadly force to the Tennessee Bureau of Investigation (TBI). Upon the district attorney general making this request through a 'predication' TBI, *as an independent agency* and in conformity with its standard operating procedure (SOP) for these investigations, then *assume[s] the role as the lead investigative agency, to include processing the scene and conducting interviews*. [See **TBI Standard Operating Procedure: Use of Force and In-custody Death Investigations, Reviewed/Revised: November 5, 2015**, consisting of five pages – *copy attached*]

Basis for the predication of the investigation to TBI ---

I verbally predicated a TBI investigation to the TBI Assistant Special Agent in Charge for this region on the morning of December 24, 2015 after learning from Rockwood Chief of Police Danny Wright of an incident involving Rockwood City Police Officer Brandon Smith's use of deadly force against a subject in a remote area of Roane County. This use of force involved multiple gunshots resulting in serious bodily injury to the subject.

Purpose of the TBI OIS investigation is to determine whether any criminal laws have been violated ---

The purpose of the OIS investigation from TBI's standpoint *is to determine whether any laws have been violated that resulted in death or injury to the law enforcement officer, arrestee, detainee or any individual involved*. This is, likewise, exactly what I as the District Attorney General (DAG) must determine in my review at the conclusion of the TBI investigation.

Extent of investigation by TBI and my review of same ---

The investigation by TBI consisted of an investigation of the scene where the shooting took place, review of in-car camera video from Officer Smith's cruiser of a pursuit of the vehicle driven by the subject, review of audio/video from a body camera worn by Officer Smith in his lengthy foot pursuit of the subject who was driving a vehicle off road and through heavily wooded terrain, review of dispatch logs and records, interviews of Officer Smith and the subject, forensic and ballistic tests, toxicology reports, medical records and an interview with the physician treating the subject, as well as criminal history and court records searches.

Over the course of the investigation I have been regularly informed by the lead TBI agent concerning each step that he and the other TBI agents have taken and the results that their efforts have generated. I have personally reviewed the in-car camera video and body camera audio/video multiple times. I have listened to summary reports and explanations of the investigation and this information has been reviewed and discussed with my investigators and Assistant District Attorneys. Along with my most senior ADA, we arrived at the decision to have the lead TBI Agent and his immediate supervisor present the results of the TBI investigation to the Roane County Grand Jury on the second day of their two day meetings on Wednesday, February 17, 2016. They in fact presented the investigative findings to the Grand Jury on Wednesday as planned taking over an hour to do so.

Conclusion of my review, presentation to the Roane County Grand Jury and their conclusion -

Based on my review of the investigation I concluded that Rockwood Officer Brandon Smith did not violate any criminal law when he used deadly force to shoot at the subject who endangered Officer Smith by attempting to run over Smith. Officer Smith was on foot. The subject was still in his vehicle and they were in an area where Smith had no room to safely retreat to avoid being run over. The subject was in a vehicle, Officer Smith was not. Officer Smith had reason to believe that the subject was also armed. In fact he was, with two loaded weapons - one on his person and one on the driver's seat between the subject's legs.

I did not prepare and present to the Grand Jury an indictment proffering criminal charges against Officer Brandon Smith, but I did present an indictment of the subject for his actions leading up to the actual shooting.

Regardless of whether a district attorney offers an indictment the grand jury has the power to request the district attorney general or his/her office to draft an indictment for a vote on any individual wherein they feel there is probable cause to find a violation of the criminal laws of the State of Tennessee. The Roane Grand Jury did not request for me to prepare an indictment against Officer Smith. The result of the Roane County Grand Jury's review of the OIS is contained in the **Addendum to the Roane County Grand Jury Report** [copy attached]. The

Roane County Grand Jury determined that no further action was required from TBI in the way of either additional investigation or from my office as to the need to prepare an indictment for their consideration as to Officer Smith because, as the Addendum suggests, they likewise determined that no criminal laws had been violated by Officer Smith. The Grand Jury did act on the indictment for the subject and returned a New Bill on three felony counts **for the subject**. [See the **Grand Jury Book, page 440 for *State of Tennessee v. Joshua Scarlett*** – *the actual Grand Jury Report containing New Bills will be available for public release once all new bill defendants are in custody*]

Review of TBI case file confidentiality rules under TBI policy and state statute versus need for public review in the instances of OIS when investigation is concluded, Grand Jury has reviewed and determined no criminal charges against the officer that was involved in the OIS

The investigative case file generated by the TBI in these OIS investigations *shall only be disseminated for review to the District Attorney General* and the SOP refers to Tennessee law which according to the exception to the Tennessee's Public Records Act states in **TCA 10-7-504(2)(A)**:

- *All investigative records of the Tennessee bureau of investigation...shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; provided, however, that such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except to the governor and to those directly involved in the investigation in the specified agencies.*

I, however, feel that there is an overwhelming need to inform the public of the basis for my decision and to provide them as much of the information as legally permissible to help them understand why (especially given the hyper-sensitive mood that has overcome certain cities and regions in our country over the issue of an officer's use of force when encountering subjects who appear to be engaged in criminal or life threatening activity) criminal charges may not be forthcoming. The desire and need to inform the public must be balanced against the rules and statutes governing the TBI investigations, which rules and statutes are designed so that TBI can continue to provide the neutrality and expertise that these sensitive investigations require. Thus, my release of information about my review of the TBI investigation of this OIS must be circumspect.

Additional ethics rules may govern release of information by a district attorney general where there is still a pending criminal case as a result of the investigation ---

Generally speaking a district attorney general may confirm certain aspects of a criminal investigation and he or she may provide specific details or facts to inform the public about a criminal case. However, this dissemination of information is further governed by the legal Rules of Ethics if there is a pending criminal case.

As a result of the TBI investigation of the OIS, as reported hereinabove, there is now a pending criminal case in Roane County Criminal Court on the indictment obtained against the subject of the OIS, Joshua Scarlett. The charges against Scarlett are Aggravated Assault with a deadly weapon, a Class C felony with a sentence range of 3 to 15 years, Felony Reckless Endangerment, a Class E felony with a sentence range 1 to 6 years, and Felony Evading Arrest, a Class E felony with a sentence range of 1 to 6 years. [See copy of **New Bill indictment** attached, which is referenced hereinabove in the Grand Jury Report].

Rule of Ethics 3.6 states that:

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

In light of that Rule, I am providing the following additional, but basic, information:

The officer involved in the shooting of the subject is: Brandon Smith is a white male who is 26 years old. He has been with the Rockwood Police Department for since November 2013 in law enforcement for approximately four years. He is a graduate of the Cleveland State Law Enforcement Training Academy. He is a P.O.S.T. certified officer. He has not been involved in any prior incidents where he used deadly force while serving as a law enforcement officer. He has no prior military service.

The subject involved in the shooting is: Joshua McDaniel Scarlett is a white male with a date of birth of 8/14/1980 and whose address is 321 Barnett Drive, Lot 3, Rockwood, Tennessee. His charges as described hereinabove are, once again, Aggravated Assault with a deadly weapon, a Class C felony with a sentence range of 3 to 15 years, Felony Reckless Endangerment, a Class E felony with a sentence range 1 to 6 years, and Felony Evading Arrest, a Class E felony with a sentence range of 1 to 6 years. His bond is set at a total of \$35,000. Scarlett is not in custody at this point. He had a lengthy hospital stay at UT Regional Hospital as a result of multiple gunshot wounds received during the OIS. I hesitate to give more information about Scarlett's injuries as his medical records, medical history, prognosis, etc. as this information may be protected under **HIPPA**.

For the limited purpose of explaining the OIS incident to the public it will be necessary to include the entire fact pattern of the incident which may necessarily include facts relevant to the pending case against Scarlett:

In addition I am providing the following factual summary of the incident that for the purpose of explaining the circumstances surrounding the OIS and my decision (and that of the Grand Jury's) that the officer did not violate any criminal laws, not for the purpose of creating pre-trial publicity in the pending case involving Scarlett. This information comes mainly from the dispatch audio files and records, as well as the in-car camera video and the body camera audio/video:

Leading up to the early morning hours of Thursday, December 24, 2015, law enforcement officers had received information to 'be on the lookout for' (BOLO) and stop a silver Jeep with TN tag X21-64A reported stolen from Cumberland County. Information was also provided that the Jeep was possibly being driven by a suspect known as Josh Scarlett who was known to law enforcement in Cumberland County and that Scarlett could possibly be armed.

At approximately 9:11 a.m. Rockwood Police Department Officer Brandon Smith (who was on duty in his RPD patrol car and who had the information from dispatch) located the Jeep matching the description on the BOLO within the City of Rockwood. Officer Smith attempted to stop the Jeep. The driver of the Jeep did not stop and instead proceeded up the mountain on Airport Road with Officer Smith following in pursuit with his sirens and flashing blue lights activated. The vehicle continued to flee unabated with Smith in pursuit until the driver of the Jeep turned off onto a gravel and then dirt service road leading into the heavily wooded, remote environs of the Mt. Roosevelt Wildlife Management Area.

Officer Smith exited and locked his car, leaving his cell phone inside, but taking his police radio and his loaded service weapon with him. Smith told the TBI in his statement that he was familiar with the Mt. Roosevelt area and knew that there was a series of switchbacks that the Jeep would have to follow and Smith felt like he could locate the Jeep by traveling straight up the mountain to eventually cut the Jeep and its driver off at some point.

At about 10:32 a.m. Smith located the Jeep inside the Mount Roosevelt Wildlife Management Area and in what the TBI investigation identified as still being inside Roane County. Well before locating the Jeep Officer Smith had turned on his body camera which contains an audio feature. The video reveals what Smith saw and the audio reveals what Smith said.

The Jeep is stopped, but still running with the driver inside. Smith is approaching the vehicle from behind on a somewhat muddy, slick track with heavy woods on both sides of the 'road' with a slight embankment nearest him on his left. As Officer Smith approaches the vehicle he challenges the driver with his weapon still drawn ordering the driver to stop the vehicle as it appears the Jeep is about to move forward. The driver ignores the commands and initially attempts to drive forward in the Jeep but instead almost instantly stops, putting the Jeep in

reverse, and rapidly backs directly towards Smith who is holding his service weapon in the ready position. Officer Smith begins a rapid retreat but manages to fire multiple shots while backpedaling to avoid being run over. The Jeep veers off the service road and stops in the woods.

Smith approaches the driver and discovers that the driver had received at least two gunshot wounds. Smith retrieved two loaded firearms from the driver, later identified as Joshua McDaniel Scarlett. One was in a holster on Scarlett's right hip. The other was located on the driver's seat between Scarlett's legs. Officer Smith then proceeds to reach emergency services through dispatch and the video plays out over a rather lengthy period of time as Smith struggles between rendering first aid to Scarlett and to try and direct rescue personnel and law enforcement to their locations.

Scarlett was incapacitated by his gunshot wounds and was eventually transported by helicopter to the University of Tennessee Medical Center where he was treated and remained for a lengthy period of time. Smith was immediately placed on administrative leave by the Rockwood Police Department.

In addition to this information at a press conference on Friday, February 19, 2016 at 1:00 pm at the District Attorney General's Office, I will play pertinent segments of both videos so that the press can view and record limited portions sufficient to explain to the public the circumstances that led to both the vehicle and foot pursuit, why Officer Smith used potentially deadly force and then the extensive efforts Smith went to in order to save Scarlett's life through first aid and by getting EMS to their position in order to get more extensive care for Scarlett.

The press will not be given copies of the TBI file. The videos, even though they were not generated by TBI and might otherwise be public record, are evidence in the pending case against Scarlett and will be provided to Scarlett's legal counsel as part of discovery. I am hopeful that the media and public will appreciate this unprecedented look at this 'evidence' while at the same time appreciate my obligation to keep the pending case file intact until the case against Scarlett is concluded.

Russell Johnson
9th District Attorney General

cc: Dennis Daniel, TBI Special Agent in Charge
Danny Wright, Chief of the Rockwood Police Department
Charles Snow, Roane County Grand Jury Foreman