
OFFICE OF STATE ATTORNEY FOR SEVENTEENTH JUDICIAL CIRCUIT

INTEROFFICE MEMO

REQUEST FOR GRAND JURY TIME

TO: MICHAEL J. SATZ, STATE ATTORNEY
FROM: SHARI TATE, ASAIC, Homicide Trial Unit
DATE: APRIL 30, 2018
CC: Jeff Marcus, Chief A.S.A.

MAY 2 2018
Received
Michael J. Satz
State Attorney

RE: IN RE DEATH OF: ANDRE SMITH

B/M DOB: 4/21/95

Suspect in the Shooting Death: MATTHEW BARRY

Presenting Detective: Det. Velazquez, Davie PD

Date Requested: May 3, 2018

SYNOPSIS:

On November 01, 2017, Victim Andre Smith and his friend, Alex Williams, made arrangements via cellular phone to sell their older model I-Phone 7 (cell phone) to a person advertising as a buyer of used I-Phones on Craigslist.com. The Craigslist buyer, identified as Matthew Jay Barry, subsequently agreed to purchase the I-Phone for a cash price of \$280.00. All involved parties agreed to meet at approximately 12:30 PM on this date at the CVS Pharmacy located at 4610 S University Drive within the Municipal Township of Davie, Florida.

Victim Smith and Alex Williams arrived at the CVS in the same vehicle. They backed their vehicle into a parking space on the west side of the business. Matthew Barry arrived alone and also parked his vehicle in the west lot. Matthew Barry exited his vehicle and waited near the entrance to the CVS. He was wearing a black t-shirt, tan knee-length shorts and sandals. Victim Andre Smith subsequently made contact with Matthew Barry and both entered the CVS at 12:29 PM. Victim Smith was wearing a white t-shirt, blue jean pants and white sneakers. Both subjects proceeded towards the interior rear of the

store near the pharmacy counter. At 12:31 PM Victim Smith exited the store and then re-entered the store within a few minutes. At 12:35 PM Victim Smith once again exited the CVS and Matthew Barry exited about one minute later. The transaction involving the sale of the I-Phone 7 was completed in the parking lot of the CVS and involved Andre Smith, Alex Williams and Matthew Barry. At 12:56 PM, Matthew Barry once again entered the CVS, and was closely followed by Victim Andre Smith. In less than a minute after entering the CVS for the final time, an altercation ensued between Matthew Barry and Andre Smith. During this altercation, Matthew Barry, a valid CCW Permit holder from the State of Florida, produced a concealed firearm (9mm Semi-Auto Pistol), and fatally shot Andre Smith. While Matthew Barry remained on scene awaiting the arrival of the Davie Police Department, Alex Williams entered the CVS to check on his friend, Andre Smith.

At approximately 1:01 PM, uniformed patrol officers from Davie PD arrived and detained Matthew Barry and Alex Williams. Davie PD secured the scene and Davie Fire Rescue transported Andre Smith to Memorial Regional Hospital. Andre Smith was pronounced deceased at 1:32 PM on November 01, 2017.

Davie PD Homicide Detectives arrived on scene at 1:10 PM and took over the investigation. Crime scene technicians arrived and initiated their investigatory process. Witnesses from inside the CVS were identified and transported to Davie PD for statements. Matthew Barry and Alex Williams were also transported to Davie PD to be interviewed. Video recordings from the CVS security monitoring system were downloaded and retained as evidence. The 9mm Semi-Auto Pistol used by Matthew Barry to shoot Andre Smith was recovered from inside the CVS.

The postmortem report of Victim Andre Smith, was completed by the Broward County Medical Examiner on November 02, 2017. The Manner of Death was listed as a homicide, due to multiple (three) gunshot wounds. Three projectiles were removed from the body and retained as evidence for processing.

PRIMARY WITNESSES:

MICHAEL MCCARD:

Mr. McCard is employed by CVS and works in the pharmacy section of the business. He provided a sworn statement to Davie PD on November 02, 2017. Mr. McCard stated that while he was in the pharmacy section of the store at approximately 1:00 PM on November 01, 2017, he heard someone shout "call 911" and then heard several shots being fired from inside the store. After the shots ended, he proceeded to the interior front of the store where he observed Victim Smith lying

on the ground. Davie PD entered the business as Mr. McCard was checking on the condition of Victim Smith. Mr. McCard did not witness the shooting or observe the person who did the shooting. He did not recognize the voice of the person who shouted "call 911" just prior to the hearing the gunfire.

GREG STEEN:

Mr. Steen was identified as a customer who entered the CVS immediately after the shooting took place and prior to the arrival of Davie PD. He provided a sworn statement to Davie PD on November 02, 2017. Mr. Steen stated that he entered the CVS at approximately 1:00 PM on November 01, 2017 and came into contact with a white male, later identified as Matthew Barry, holding a handgun. The male was holding a handgun down by his side and stated "we have a situation here". Mr. Steen observed a male on the ground to the left of him. The male with the gun repeated his statement of "having a situation there" as Mr. Steen suggested that someone call 911. The male stated that 911 was already called. Mr. Steen walked out of the store and waited outside until the arrival of Davie PD. As part of the interview / statement that took place on November 02, 2017, Mr. Steen was presented with a photo line-up and made a positive identification of Matthew Barry as the person he observed holding the gun when he entered the CVS. Mr. Steen stated that he did not feel threatened in any way by Matthew Barry during the time that he was inside the store and that Matthew Barry was in possession of a firearm.

PATRICIA BOYNTON:

Patricia Boynton was working as a sales rep at the above-listed CVS on November 01, 2017. She stated that just prior to the shooting, she was working near the cashier / checkout area. She observed Matthew Barry enter the store and that he was closely followed by Andre Smith. She observed Barry turn around and tell Andre Smith to stop following him as he continued into the store. She then heard Barry tell the cashier to "call the police, call 911, this guy is following me" as he continued to try and walk away from Andre Smith. She stated that Barry kept asking Andre Smith to stop following him and to "go away", but Smith would not stop following him. Patricia Boynton stated that at some point a physical altercation ensued between Barry and Smith near the photo department. She ran to the west end of the store. A few seconds later, she heard what appeared to be two gunshots from the front of the store. She remained in the back area of the pharmacy until Davie Police Officers arrived and entered the CVS. Witness Boynton did not witness the actual shooting.

At the conclusion of her statement, the Davie Detective showed Patricia Boynton two different photo-lineups. She was able to make a

positive identification of Andre Smith as being the black male subject that followed Matthew Barry into the CVS and get into the physical altercation with him. She also made positive identification of Matthew Barry as being the white male subject that was being followed by Andre Smith as he entered the store and as the person that requested that the police be called to the store.

is employed by CVS as a cashier. She provided a sworn statement to Davie PD on November 01, 2017. stated that she was walking to the area behind the cash register at the front of the store when she observed Matthew Barry walk into the store, being followed by Andre Smith. She heard Matthew Barry tell her to "call the police, call 911." At first she thought it was a joke, but Barry had a look of concern and seriousness as they walked past her and towards the photo section. She then heard Barry say to Smith to "get up off me. Get up off me" and then, "I'm telling you to stop, back off me." At this time was behind the counter trying to call 911 and she heard fighting type noises coming from the photo section and could still heard Barry yelling "call 911." Almost immediately after hearing the last "call 911" from Barry, she heard the sound one (1) gunshot, followed by the sound of multiple gunshots. She did not observe the altercation that precipitated the shooting, or the shooting itself.

She stated that immediately after the shooting, Barry approached her and asked if she was calling 911. He then asked "you saw it, right? You saw it?" She told Barry that she was the phone with the police. Barry told her to make sure to let the police know that he is the one. stated that she never saw the firearm being fired, but only heard the shots and could smell the smoke. Within a minute of the shooting, stated that another black male, identified as Alexander Williams, entered the CVS and made contact with Barry. She stated that Barry ordered Williams to "get away, and don't come near him."

At the conclusion of her statement, the Davie Detective shows two different sets of photo-lineups. She was unable to a make positive identification of Andre Smith as the black male subject that followed Matthew Barry into the CVS and got into the physical altercation with him. When shown the other photo line-up, she stated that she is 75% sure that the picture of Matthew Barry is the person who was followed into the CVS and the person that told her to call 911.

was the manager of the above-listed CVS on November 01, 2017. She provided a sworn statement to Davie PD on November 01, 2017. Witness stated that just prior to the shooting, she was working in the seasonal aisle which is located towards the front of the store. She was able to overhear two male subjects going back and forth in a loud tone of voice with each other, in verbal disagreement, while they entered the store. As she made her way to the opposite side of the aisle from where she was located, and to the area where the dispute was taking place, she heard someone scream "call 911." Immediately upon hearing this, she ran directly to the space located behind the front cash register and joined a cashier crouching behind the checkout counter. She saw the two subjects, one a black male, and the other a white male, arguing and now moving towards the area of the photo lab. As she dialed her cell phone, while crouching behind the counter, she heard scuffling between the subjects who were just involved in the verbal dispute with each other. About the same time that she heard the scuffling noise, she heard one (1) gunshot fired, and immediately followed by a few more shots being fired. stated that after the shooting, the white male subject that was involved in the dispute with the black male subject came over to the area of the cash register and asked (Witness) if she "seen it, seen what happened?" Just prior to Davie PD arriving, Witness observed that the black male that was involved in the dispute with the white male, was now on the floor. She observed this while she was on the phone with the 911 operator.

It should be noted that Witness was presented with a photo-lineup containing a picture of Matthew Barry. She was unable to make a positive identification of Matthew Barry. The same results were attained when shown a photo-lineup that contained a picture of Victim Andre Smith.

INTERVIEW / STATEMENT of ALEX WILLIAMS:

On November 01, 2017, Davie Detectives Drake and Velazquez conducted an interview and obtained a sworn statement from Alex Williams at the Davie Police Department. The interview was also video recorded. The interview started at 7:22 PM and concluded approximately 8:25 PM.

At the start of interview process, Williams was asked to explain the circumstances that led up to Andre Smith being shot inside the CVS Pharmacy. Williams stated that prior to arriving at the CVS, he and Andre Smith were at a T-Mobile Store and that he (Williams) purchased a new i-Phone 8. After they left the T-Mobile Store, Williams

decided to give his old i-Phone 7 to Andre and let him sell the phone. Williams stated that Andre was always short of money and all that Williams wanted from the sale of the phone was \$25.00 he could apply towards his i-Phone 8. Williams stated that he was the one who contacted the broker on Craigslist to facilitate the sale of his old i-phone 7. He stated that he was using his I-Pad as a telephone to communicate with the broker from Craigslist (subsequently identified as Matthew Barry) to arrange the meeting time, location and the \$280.00 sale price of the i-Phone7. It was agreed that they would meet at the above-listed CVS at 12:30 PM and drove directly to the CVS in Andre's vehicle.

When they arrived at the CVS, Williams remained at the vehicle while Andre met with the broker, Matthew Barry, who was standing in front of the CVS Store. Andre and Matthew Barry entered the CVS. Andre returned to Williams within a few minutes and told him that the "man" (Matthew Barry) was suspicious of him. Williams took the phone from Andre and said that he was going to handle the transaction for him. Williams then went and made contact with Matthew Barry and discussed the reason why Andre acted strange. Williams told Barry that Andre was robbed before, that is why he is acting that way. He said that Barry wanted the phone unlocked, Williams then went back to the car and gave Andre the phone again so that he could unlock it with his password and then conducted the transaction for the sale of the phone. Williams stated that Andre went back into the store and conducted the sale of the phone, but once again returned to the car with the phone. According to Williams, he stated that Barry exited the store and made contact with them. He said that he could tell that Barry had a gun in his pocket by the way he (Barry) kept his hand in his pocket. Williams stated that Barry told him he was also robbed before and that that Andre was acting sketchy the way he moved around and that he must be on drugs or something and that he (Matthew Barry) would shoot him (Andre Smith). Williams stated that he was acting as the moderator between the two and offered to do the transaction with Barry for the sale of the phone. He said that he gave the phone to Barry and Barry gave him (Williams) \$280.00 in cash for the purchase of the phone. At that point Barry walked away and headed back to the CVS and Andre started to follow him because he wanted to get the SIM Card from the phone. He said that he lost sight of Andre after he turned the corner and entered the store. When Andre didn't return to the car, Williams stated that he went into the store because he saw people running out of the store. He then saw Barry holding a pistol and telling him to stay away and Williams could see Andre laying on the ground. He said that he went to help Andre and waited inside the store until the police arrived.

It should be noted that the detectives conducting the interview with Alex Williams were somewhat skeptical of the sequence of events leading up to the shooting, as explained by Williams, and of the validity of the statements that he made while being interviewed. During the course of the interview, Williams kept changing the story or adding to what he had previously stated. Williams kept prefacing most of his statements by stating that "I'm not gonna lie" and then followed that and said that he "had nothing to do with the transaction," that what was going on between Andre and Barry was "none of his (Williams) Business" and that he had given the phone to Andre and that it "was Andre's sale." The interviewing detectives had Williams start over, from the beginning. They asked him to explain the actions and words that transpired between him, Andre and Barry while at the CVS.

Alex Williams, during the course of his statement, changed his story at least three different times. His explanation of the sequence of events that transpired from the time Andre first made contact with Matthew Barry in front of the CVS, to the second meeting inside the CVS between Andre Smith and Matthew Barry, and the final time when Andre followed Matthew Barry back into the CVS and Andre ended up being shot by Matthew Barry. Towards the conclusion of his statement, when pressed to be truthful, Williams admitted that he was not being completely truthful because he didn't want it to seem like he was "snitching" on Andre.

Alex Williams then stated the following:

- Andre was being the aggressor and followed Matthew Barry into the CVS after the transaction was completed. Alex stated that Andre went after Matthew Barry for no other reason than to prove he was a "tough guy" and a "macho man." It wasn't for the purpose of recovering the Sim Card from the phone that was sold to Matthew Barry as Williams previously stated.
- Andre brought this situation upon himself by the way he was acting towards Matthew Barry, by getting into his face and continually taunting him.
- Andre was taunting Matthew Barry as he followed him back into the CVS just prior to being shot and that Alex could hear Matthew Barry telling Andre to "get away from him."
- Other than what he believed was for the purpose of taunting Matthew Barry, Williams does not know what, if anything, Andre wanted when he decided to follow Matthew Barry back into the CVS.

- Williams now stated that Matthew Barry was not being aggressive or threatening in any way towards him or Andre. He stated that Matthew Barry never mentioned that he had a gun, only that he had a Carry Permit. He never saw Matthew Barry with the firearm until he went into the CVS after Andre was shot. It was only at that time that he saw Matthew Barry with a firearm.
- Williams acknowledges that when he spoke with Matthew Barry, that he (Williams) inferred that he was also licensed to carry a firearm with him and that Barry might have the impression that he was also carrying a firearm.

INTERVIEW / STATEMENT of MATTHEW BARRY:

On November 01, 2017, Davie Detectives Drake and Velazquez conducted an interview and obtained a sworn statement from Matthew Barry at the Davie Police Department. The interview was also video recorded. The interview started at approximately 8:47 PM and concluded at approximately 10:04 PM. Prior to the start of the interview, Barry was read his Miranda Rights and agreed to speak to the detectives without an attorney being present. As part of the interview process, Barry was asked to explain everything that happened earlier this date.

Matthew Barry stated that he primarily buys and sells electronics (phones, computers, I-Pads, etc.) over the website identified as Craigslist. On this date (November 01, 2017), he was contacted by a subject that wanted to sell an I-Phone 7. After a phone discussion and viewing pictures of the phone offered for sale, a purchase price of \$280.00 was agreed upon. It was also agreed that they would meet at 12:30 on this date at the CVS Store located at 4610 South University Drive in Davie.

At approximately 12:30 PM, Barry stated that he arrived at the CVS and waited outside the entrance for the I-Phone seller to arrive. While waiting, he placed a return call to the seller to ascertain his location. At the same time, he was approached by a black male subject who was later identified as Andre Smith. He stated that Smith was acting extremely nervous, his hands were shaking and he was exhibiting a somewhat erratic behavior while discussing the sale of the phone. Barry, unsure as to the true intent of Smith, suggested that they go inside the CVS to conduct the transaction. They both entered the store and walked towards the pharmacy section at the back of the store. Smith showed Barry the I-Phone and Barry showed Smith the \$280.00 that he had in his possession to purchase the phone.

Barry stated that Smith continued to act very nervous and said something about needing to remove the i-Cloud from the phone and Smith exited the store with the phone.

After three or four minutes, Andre Smith reentered the CVS and again made contact with Barry. Andre was still acting very nervous and talked about the need to back up his phone. Barry suggested that they could do the transaction at a later date, or go across the street to the Starbucks and use their WiFi for the transfer of the contents from the phone. Andre started to exit the store and Barry sensed that something was not right with Andre. Once Andre exited the store, Barry waited about one minute and then exited the CVS and started to head towards his vehicle, assuming that the transaction was not going to be completed. While he entered his car, Barry was approached by a different black male subject, later identified as Alex Williams, who convinced him to continue with the transaction. Barry agreed, and walked back toward Andre's vehicle. Barry told Alex that Andre was acting very nervous and that he was suspicious of his intent and did not feel comfortable dealing with him. While Alex was talking with Barry outside of the car, Andre was telling Barry that he's gonna "beat his ass" while directing additional verbal threats at him. At some point there was an exchange of \$280.00 from Barry to Alex and Andre for the purchase of the phone. Barry took possession of the phone, but Andre continued to taunt Barry. As Barry started to walk away, Alex and Andre asked for something else from the phone he just purchased. Alex tells Barry that they want the Sim Card out of the phone. Barry removed the Sim Card and handed it to Alex. For reasons unknown, Andre became increasingly more agitated and aggressive towards Barry and he was verbally threatening to do harm to him. Barry stated that he felt his life might be in danger, or they could try and steal the phone back from him, if he doesn't find a way to leave the immediate area. Andre was now telling Barry that he wanted his phone back and that he was going to kick his ass. Barry offered to cancel the transaction and to give them the phone back in exchange for the \$280.00 that he paid, but Andre continued his aggressive behavior towards Barry. It appeared to Barry that Andre and Alex were blocking his direct path back to his vehicle, so he felt that it would be safer to retreat back into the CVS where he knew that there would be other people. He stated that he kept telling Alex and Andre that he wanted to leave. Barry then informed Alex that the transaction was completed and that there was nothing else to be said or done. He started walking back towards the entrance of the CVS and could hear Andre behind him saying that he was going to "fuck him up and kill him." Barry could observe that Andre was following him into the store and felt that Andre was possibly going to try and steal the phone back from him. Barry told

Andre to stop following him and to stay away from him, but he continued to follow him into the CVS.

As Matthew Barry entered the CVS, he told the cashier to the left of him to "call the police, call 911" and again told Andre to get away from him and to stop following him. Barry stated that he was trying to get away from Andre and he (Barry) continued to yell for someone to call 911 and at the same time yelling for Andre get away from him. Barry stated that Andre followed him around an aisle and backed him into a corner at which time Andre made a sudden move and lunged towards him in a threatening manner. Barry stated that he felt that he was in danger and feared for his life. He further stated that he never felt more threatened than he did at this time, not knowing for sure if Andre was carrying a weapon with him. He knew from his earlier conversation with Alex outside of the CVS that Alex had mentioned that he also carries a gun. He said that while Andre was "closing the gap", grabbing at him and backing him into a corner, he was in fear for his life and reacted by pulling his firearm from his pocket and firing multiple times at Andre Smith.

Matthew Barry stated that after he shot Andre Smith, Alex Williams entered the CVS and checked on Andre. Matthew Barry was telling the cashier, who was on the phone with the police, to tell them who he is when they got there. When Matthew Barry became aware that the police were outside of the CVS, he placed his firearm on the ground behind a display. He then exited the CVS with Alex Williams and both were detained by Davie PD.

Listed below are event sequences derived from the statement that Matthew Barry provided to the Davie Police Department on November 01, 2017:

- Matthew Barry, who buys used I-Phones, computers, laptops and I-Pads on Craigslist.com, was contacted (via text message) by Alex Williams and Andre Smith who wanted to sell a used i-Phone 7. A sale / purchase price of \$280.00 was agreed upon all parties agree to meet at 12:30 PM on this date at the CVS Pharmacy located at 4610 South University Drive in Davie.
- Matthew Barry arrived at the CVS and made contact with Andre Smith. Matthew Barry was concerned because it appeared that Andre Smith was acting very nervous and his hands were shaking. They both entered the CVS and at the back near the pharmacy counter, Barry showed Smith the \$280.00 for the purchase. Barry stated that Smith was still acting nervous and Smith told Barry that he needed to do something with the I-Cloud on the phone. Andre Smith exited the CVS.

- Andre Smith returned to the inside of the CVS and made contact with Matthew Barry for a second time. Matthew Barry was expecting the sale to take place, but now Andre Smith, who was still acting suspicious and seemed very nervous according to Barry, told him that he needed to back up the phone. Barry suggested that they can do the transaction another time, or go across the street to the Starbucks and use their WiFi to back up the phone. Smith told Barry that they'll do the transaction another time. Andre Smith then exited the CVS.
- Matthew Barry, feared that something wasn't right and was concerned for his own well-being. He waited inside the CVS for a minute or two in order to allow Andre Smith enough time to leave the store before he exited.
- Matthew Barry exited the CVS believing that the transaction would not take place and returned to his vehicle. At his vehicle, he was approached by Alex Williams who wanted to complete the transaction. Barry explained to Williams that something wasn't right with Andre and that he was acting very nervous over what should be the simple sale of a cell phone. Alex called Andre on the cell phone and the conversation was back and forth between them over the sale of the phone.
- The sale of the I-Phone 7 took place outside of the CVS near their vehicles. Matthew Barry was handed the I-Phone 7 and Matthew Barry gave \$280.00 to Andre Smith.
- After the transaction took place and Matthew Barry was in possession of the phone, Andre Smith told Matthew Barry that he wanted the phone back for a second. Matthew Barry believed that since Andre Smith already had the money for the phone, that he might have intentions of keeping the phone and the \$280.00. Matthew Barry questioned why Andre wanted the phone back. At this point Andre Smith became angrier and was taunting Matthew Barry with verbal abuse and threats of physical harm. Matthew Barry told Andre Smith to back up and keep his distance from him. Alex Williams was requesting that Matthew Barry remove the Sim Card from the phone that they just sold to him.
- Alex Williams acted as a buffer to keep Andre Smith away from Matthew Barry. The Sim Card from the purchased phone was removed and Matthew Barry handed it over to Alex Williams while Andre Smith stood behind Williams. At this point, Matthew Barry told Andre and Alex that there was nothing left for this transaction and that he wants to leave. Both subjects were

blocking the pathway to his vehicle. Andre Smith started acting in such a way that he told Matthew Barry that he was gonna beat his ass and fuck him up. It was at this point that Matthew Barry told Andre and Alex several times that he wanted to leave, but they still blocked his access to his vehicle.

- Matthew Barry decided that the safest option was to head back into the CVS to avoid having to walk between Alex and Andre in order to get back to his vehicle. Matthew Barry walked towards the entrance of the CVS. He didn't have his own phone with him as he left it inside his vehicle at the time when Alex came up to his car and convinced him to continue with the transaction. The phone he just purchased from Andre and Alex would not function without a Sim Card.
- As Matthew Barry walked back to the CVS entrance, Andre Smith followed and taunted him by saying he was going to "fuck him up" and "kill him." Matthew Barry entered the CVS and he immediately told the nearest cashier to "call the police, call 911" and at the same time he told Andre Smith to stop following him. He continued to walk down an aisle yelling for someone to call 911 and yelling for Andre to get away from him.
- Andre Smith continued to follow Matthew Barry down the aisle to a point when Matthew Barry felt that Andre Smith was backing him into a corner. Andre Smith made a sudden move and lunged toward Matthew Barry and grabbed at him in a threatening manner. Matthew Barry, in fear for his life and not knowing if Andre Smith was armed, reacted to this immediate threat and removed his concealed firearm from his pocket and fired multiple shots at Andre Smith until he fell to the ground.
- Matthew Barry remained inside the CVS and confirmed with the cashier that she was on the phone with the police, and told her to let them know that he is still on scene. Alex Williams entered the CVS prior to the arrival of Davie PD. Matthew Barry told him to keep his distance from him as Alex checked on the condition of Andre Smith. Officers from Davie PD arrived on scene. Matthew Barry left his firearm inside the CVS and exited the store with Alex Williams. Both subjects were detained by Davie PD.

**REVIEW OF SECURITY CAMERA DVR FOOTAGE WITH ON SCREEN TIME STAMPINGS
FOR NOVEMBER 01, 2017:**

12:26.50 PM, Camera #1 showed Matthew Barry alone, waiting on the sidewalk outside of the front entrance to the CVS.

12:29.20 PM, Camera #1, #2, #11 and #13 showed Andre Smith and Matthew Barry entering the CVS and walking down the main aisle towards the rear of the store.

12:31.25 PM, Camera #1, #2, #11 and #13 (displaying 12:31.13 PM) showed Andre Smith exiting the CVS alone.

*** It should be noted that between 12:32.00 and 12:33.09 PM, and again, between 12:34.00 and 12:35.00 PM, the video security system failed to record and there is forward movement of the time stamping as noted. It was during this gap in recording that Andre Smith re-entered the CVS and makes contact with Matthew Barry for the second time (see Matthew Barry's statement).

12:35.41 PM, Camera #13 showed Andre Smith walking alone down the main aisle towards the exit.

12:35.43 PM, Camera #13 showed Matthew Barry walking alone down the main aisle. He stops at an aisle to his right and waits at that location.

12:35.51 PM, Camera #1, #2 and #11 showed Andre Smith exiting the CVS alone.

12:36.20 PM, Camera #1, #2 and #11 showed Matthew Barry exiting the CVS.

12:56.13 PM, Camera #1, #2 and #11 showed Matthew Barry entering the CVS with Andre Smith following close behind. Matthew Barry was looking over his right shoulder at Andre Smith and then his left shoulder as he turns in an easterly direction and is now walking towards the aisle in front of the primary cashier section. He has his right hand inside the right front pocket of his shorts and is clutching a phone in his left hand. Andre Smith has both of his hands crossed at the front of his waistband area.

12:56.21 PM, Camera #2 showed Matthew Barry turn momentarily and face Andre Smith as it appeared that Matthew Barry was saying something to him and then it appeared that Matthew Barry was directing his

attention towards Cashier . Andre Smith was maintaining the position of his hands at front of his waistband and closed in on the space between him and Matthew Barry.

12:56.27 PM, Camera #3, #4 and #11 showed Matthew Barry walking somewhat sideways and backwards and faced Andre Smith. Matthew Barry extended his left arm outward in an effort to keep space between himself and Andre Smith and his right hand was still inside his right front pocket of his shorts.

12:56.38 PM, Camera #3 and #4 provided a greater detail of the interaction between Matthew Barry and Andre Smith. Andre Smith was observed to be grabbing the left wrist of Matthew Barry with his left hand and lunged or reached for Matthew Barry or something on his person with his right hand.

12:56.39 PM, Camera #2 showed cashier calling 911 at the request of Matthew Barry.

12:56.40 PM, Camera #3 and #4 showed Matthew Barry momentarily break free from the grasp of Andre Smith as they turned and reverse direction in the area in front of the photo lab counter. Andre Smith once again lunged for Matthew Barry.

12:56.41 PM, Camera #4 showed that Andre Smith had taken hold of the left arm of Matthew Barry and Matthew Barry was keeping the right side of his body turned away from Andre Smith. Matthew Barry still had his right hand in the right front pocket of his shorts.

12:56.43 PM, Camera #3 showed that Andre Smith is now using both hands to hold the left arm of Matthew Barry. Matthew Barry can be seen pulling his pistol from his right front pocket of his shorts as he spins around with Andre Smith still holding onto his left arm.

12:56.44 PM, Camera #3 showed that Matthew Barry apparently fired his first shot at Andre Smith while Andre Smith still clutched the left arm of Matthew Barry. It appeared that Matthew Barry had his pistol in his right hand, at chest level, between himself and Andre Smith before Andre Smith released his grasp of Matthew Barry's arm. Matthew Barry can be observed to step back, clutching his pistol with both hands, as he continued to fire the pistol in the direction of Andre Smith. Andre Smith, while still standing, appeared to be looking down at his chest or stomach area while both of his arms were rising upwards as he started to fall backwards and to the ground. Matthew Barry still had his pistol in hand, and from his stance, it appeared that he continued to fire at Andre Smith after he has fallen to the ground and Matthew Barry now advanced towards Andre Smith. It

should be noted that this CVS Security Camera System recorded video only, audio is not recorded. Therefore, by viewing the surveillance video, there is no way to accurately identify the exact moment, or the total number of shots being fired by Matthew Barry.

12:56.50 PM, Camera #2 showed Manager crouching behind the cashier's counter with cashier

12:57.09 PM, Camera #2 showed that cashier , still on the phone with the police. Matthew Barry was observed pacing in the area in front of the cashier. His firearm was still in his right hand, but at his side, pointed downward.

12:57.15 PM, Camera #2 showed Matthew Barry speaking with cashier Santos.

12:57.23 PM, Camera #1, #2 and #3 showed Alex Williams entering the CVS. It appeared that Matthew Barry was saying something to him while Alex Williams appeared to have his right hand concealed on his side, away from the view of Matthew Barry. Matthew Barry momentarily raised his pistol in the direction of Alex Williams and Alex Williams raised his arms above his head. Matthew Barry then lowered his pistol after a second or two and kept it at his side while Alex Williams lowered his arms and walked over to the area where Andre Smith was in a supine position on the floor.

*** It should be noted that between 12:57.59 and 1:00.04 PM, the video security system failed to capture video for that 125 second time period.

1:00.28 PM, Camera #2 showed Matthew Barry walking to an aisle just west of the entrance and is observed placing his firearm on the ground adjacent to display shelving.

1:00.35 PM, Camera #1 and #11 showed Matthew Barry and Alex Williams exiting the CVS with their hands raised.

REASON FOR GRAND JURY PRESENTMENT:

This case is being presented to the Grand Jury to determine if there is probable cause to charge Matthew Barry with homicide and if so what degree. The Grand Jury will also determine if F.S. 776.012(2) is applicable and Matthew Barry was justified or not in his use of deadly force against Andre Smith.

GJ AGENDA - DATE / TIME:

5/3 (All day)

APPROVED BY:

[Signature]

DATE:

5/2/8