



Investigation Number 20210556

October 19, 2021

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Director of Investigations





Investigation Report No. 20210556 October 19, 2021

Investigative Predicate

Florida Highway Patrol (FHP) Major Joseph Franza Jr. alleged FHP Trooper George Smyrnios used excessive force in the process of affecting an arrest. The allegation was forwarded to the Florida Highway Safety and Motor Vehicles (FLHSMV) Office of Inspector General (OIG) for criminal investigation. At the conclusion of the criminal investigation, the OIG opened an administrative investigation on the same allegation. Based on information obtained during the criminal investigation, the OIG alleged Smyrnios falsified records and failed to activate his Mobile Video/Audio Recorder¹ (MVR) during a law enforcement encounter.

Investigative Narrative

An administrative investigation was initiated to determine if the allegations were true, and if so, which Department policies may have been violated. While investigating the allegations, consideration was given to the following FLHSMV and FHP policies:

- FLHSMV Policy 3.06 Disciplinary Process
- FHP Policy 3.03 Code of Conduct: Regulations
- FHP Policy 10.01 Use of Control/Response to Resistance
- FHP Policy 10.05 Conducted Electrical Weapon
- FHP Policy 13.01 Reports, Records, and Department Information
- FHP Policy 17.22 Mobile Video/Audio Recording Devices and Body Worn Cameras

Pertinent Policy Statements

FHP Policy 3.03 – Code of Conduct, states in pertinent part, "Members will submit all necessary reports on time in accordance with established procedures. Reports submitted by members will be truthful and complete, and no member will knowingly make false statements, charges or allegations in connection with any citations, warnings, assistance rendered, crash reports, field reports, investigative reports, computer entries or by any other means which creates an official record of the Department or Division."

FHP Policy 10.01 – Use of Control/Response to Resistance, states in pertinent parts, "Members of the Florida Highway Patrol shall in every instance seek to employ the minimum amount of control required to successfully overcome physical resistance, prevent escapes, and effect arrests. Members' actions must be objectively reasonable in

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¹ Mobile Video/Audio Recording Devices (MVR) is FHP's In-Car video system.





light of the facts and circumstances confronting them, without regard to their underlying intent or motivation...When danger is reasonably perceived or when resistance is encountered, members should initiate action that is reasonable and necessary, but expect to be held accountable if excessive force is utilized."

FHP Policy 10.05 - Conducted Electrical Weapon (CEW), states in pertinent parts. "Members of the Florida Highway Patrol performing official duties shall seek to employ only the force they reasonably believe to be necessary to successfully overcome physical resistance, prevent escapes, and effect arrests. Members' actions must be objectively reasonable in light of the facts and circumstances known to the member at the time they used force, without regard to their underlying intent or motivation. Members must consider the following factors to determine objective reasonableness when deploying a CEW: (a) the severity of the crime at issue; (b) whether the suspect poses an immediate threat to the safety of the member or others; and (c) whether the suspect is actively resisting arrest or attempting to evade arrest by flight...The use of a CEW is authorized and may be an appropriate response in the case of sudden attack, or when "active resistance" or greater is offered by a subject who is about to be taken into custody for any reason. Section 943.1717(1), Florida Statutes requires that a member's decision to deploy the CEW must involve a custodial situation when the subject is actively, physically resisting. Each deployment of a CEW against a subject must be objectively reasonable."

FHP Policy 13.01 – Reports, Records, and Department Information, states in pertinent parts, "To accurately complete the appropriate report forms in accordance with procedures for timely submission through appropriate channels...Members will accurately and legibly complete all required reports and forms and submit them through proper channels in accordance with Division procedures. Reports submitted by members shall be truthful and complete, and no member shall knowingly enter or cause to be entered any inaccurate, false, or improper information...No member will falsify, destroy, alter, or remove any report or record of this Division."

FHP Policy 17.22 – Mobile Video/Audio Recording Devices and Body Worn Cameras, states in pertinent parts, "MVR/BWC equipment installed in vehicles is the responsibility of the member assigned to that vehicle and will be maintained according to manufacturer's recommendations and Division policy...Except as otherwise authorized, MVR/BWC equipment installed in a Division vehicle or worn by a member shall be used on every: (1) Traffic stop (2) Disabled vehicle (3) Emergency response (4) Pursuit, (5) Any other law enforcement encounter, or (6) Transporting prisoners or any other passengers while engaged in routine patrol duties...Members will ensure that their MVR/BWC equipment is activated for all law enforcement encounters whether using the emergency device switch or manually activating the MVR/BWC equipment."

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Complaint Information

A review of the Florida Highway Patrol Complaint Intake and Inquiry Form (Exhibit 1), revealed that on June 16, 2021, Smyrnios deployed his CEW² Taser on a subject who passively resisted.

Investigation Data

FHP Policy 10.05 Conducted Electrical Weapon (Taser)

The OIG reviewed FHP policy 10.05 (Exhibit 2) and noted the following pertinent parts:

- Passive resistance is defined as a subject's verbal and/or physical refusal to comply with a member's lawful direction causing the member to use physical techniques to establish control. Examples include the subject refuses to move at the member's direction; the subject peacefully protests at a political event in a public location; and the subject refuses to take his hands out of his pockets or from behind his back.
- Active resistance is defined as a subject's use of physically evasive movements
 directed toward the member, such as bracing, tensing, pushing or pulling, to
 prevent the member from establishing control over the subject. Examples include
 a subject physically anchors himself to a person or object to prevent himself from
 being removed, the subject braces or pulls away from the member when the
 member grips the subject's arm, or the subject attempts to run when the member
 touches or attempts to grab the subject's arm or shoulder.
- The use of a CEW is authorized and may be an appropriate response in a case of sudden attack, or when "active resistance" or greater is offered by a subject who is about to be taken into custody for any reason.
- Section 943.1717(1), Florida Statutes requires that a member's decision to deploy the CEW must involve a custodial situation when the subject is actively, physically resisting.
- Fleeing from a consensual encounter with a member cannot be the sole reason for deployment of the CEW.
- Members shall not deploy the device in the following situations:
 - 1. Subjects who present only passive resistance.
 - 2. For only verbal defiance or belligerence

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² CONDUCTED ELECTRICAL WEAPON (CEW) — A device designed to disrupt a subject's motor and sensory nervous system by deploying battery-powered electrical energy sufficient to cause Neuro-Muscular Incapacitation (NMI) and override voluntary motor responses. The TASER X-2 System is the Conducted Electrical Weapon authorized for use by the Florida Highway Patrol.





Arrest/Notice to Appear

While reviewing the Arrest/Notice to Appear report, the OIG discovered there were two Arrest/Notice to Appear reports related to the incident. Both reflected the same FHP case number, FHPF210FF029075, and both reports listed the arrest date of June 16, 2021.

The OIG reviewed the first Arrest/Notice to Appear report (**Exhibit 3**) that was created by Smyrnios on June 16, 2021. The report identified the location of arrest as 9341 Chestnut Tree Loop, Fort Myers, Florida 33967³. Jack Ryan Rodeman was listed as the defendant to the charges of public order crimes - fail to obey police or fire department, resisting officer - obstruction without violence, and possession of marijuana - not more than 20 grams. Rodeman was booked in at the Lee County Jail at 2:10 PM.

The probable cause statement in the report contained the following paraphrased information:

On June 16, 2021, at about 12:43 PM, Smyrnios turned onto Indian Laurel Way and observed Rodeman dressed in black pants, black sweater/hoodie, and black tennis shoes standing on the west grass shoulder between the roadway and shrubbery. As Rodeman saw Smyrnios' patrol car, he darted and hid in the thick shrubbery in the backyard of 9337 Chestnut Tree Loop. Smyrnios believed he looked like a burglar about to commit a crime, so he stopped his patrol car and identified himself as a police officer.

Smyrnios asked Rodeman to come over to him, to which Rodeman responded, "no." Rodeman continued walking and Smyrnios entered the backyard and followed him. Smyrnios pulled out his Taser and pointed it at Rodeman. Rodeman turned around and looked at Smyrnios and was told that he would be tased if he failed to comply. Smyrnios told Rodeman to turn around and place his hands behind his back. Instead, Rodeman turned around and started walking away from Smyrnios. Smyrnios deployed the Taser and the probes struck Rodeman. Rodeman fell to the ground and was ordered by Smyrnios to place his hands behind his back. Rodeman failed to comply and Smyrnios deployed his Taser again.

Smyrnios escorted Rodeman back to his patrol car and advised Fort Myers Regional Communication Center (FMRCC) of the incident. Smyrnios called Rodeman's mother, Kristina Rodeman (K. Rodeman), due to him being a juvenile.

During a search of Rodeman, a pill bottle of marijuana was discovered in Rodeman's front left pocket. Rodeman stated he took it from K. Rodeman without her permission.

The document is sworn to and signed by Smyrnios.

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³ The correct location of arrest was 9337 Chestnut Tree Loop. The address listed was the house directly south of 9337, and Rodeman never entered that property.





Second Arrest/Notice to Appear

The OIG reviewed a second Arrest/Notice to Appear report (Exhibit 4) that was dated to have been created by Smyrnios on June 16, 2021, with the same case number listed (FHPF210FF029075). The Lee County Book Sheet (Exhibit 5) indicated Rodeman's second arrest location was the same as the first arrest report location, Indian Laurel Way, Fort Myers, 33867, however, the booking date was June 17, 2021, at 5:35 PM.

The report mirrored the arrest report from June 16, 2021, adding only a new charge of loitering and prowling. Rodeman was arrested again on June 17, 2021, around 4:00 PM by Smyrnios at the Juvenile Assessment Center (JAC) on Ortiz Road and delivered to the Lee County Jail. The probable cause narrative had been updated to reflect the new charge and the following information:

Smyrnios turned onto Indian Laurel Way, an area he knew well and had personal knowledge of and knew this neighborhood had several burglaries. Smyrnios observed Rodeman in black pants, a black sweater/hoodie, and black tennis shoes standing on the west grass shoulder between the roadway and shrubs. Smyrnios added that Rodeman had looked as if he was trying to conceal his position, looked up, saw Smyrnios' patrol car, and immediately hunched over and darted into the thick shrubbery to get away from Smyrnios.

Rodeman entered the back yard of 9329 Chestnut Tree Loop, Fort Myers, an address that Smyrnios personally knew the owners of, and he had never seen Rodeman in the neighborhood.

Smyrnios thought Rodeman's behavior was strange, as he had never seen anyone wearing all black clothing, a sweater/hoodie in the summertime, and the location of where he was standing. Additionally, Rodeman darted into the shrubbery after seeing Smyrnios' patrol car.

Smyrnios included the statute for loitering and prowling, and wrote that Rodeman's appearance, behavior, demeanor and body language appeared to him as someone who was a loiterer, a prowler or even a burglar. It appeared Rodeman had just committed a crime or was about to commit a crime but Smyrnios' presence deterred it.

Smyrnios stopped his patrol vehicle and exited, telling Rodeman to stop, and that he was a police officer. Smyrnios asked Rodeman what he was doing in the bushes, and Rodeman replied, "nothing." Smyrnios told Rodeman he wanted to talk to him and commanded him to "come here." Rodeman responded "no" with a look on his face as if he just got caught doing something illegal.

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Smyrnios entered the bushes as Rodeman was walking away towards another back yard. Smyrnios did not know who lived at that address and ordered Rodeman to stop, but Rodeman continued walking. Smyrnios could not see his hands and was concerned Rodeman may have a weapon, so he pulled out his Taser and pointed it at Rodeman, ordering him to stop.

Rodeman momentarily stopped and turned and looked at Smyrnios, who told him he would be tased if he failed to comply. Smyrnios commanded Rodeman to turn around and place his hands behind his back. Rodeman was clearly trying to evade Smyrnios, again walking away, forcing Smyrnios to deploy his Taser. Rodeman fell to the ground as the Taser deployed a five second shock. Once the shock ended, Smyrnios told Rodeman to place his hands behind his back. Rodeman failed to comply and Smyrnios deployed his Taser again and delivered another five second shock to Rodeman. Smyrnios commanded Rodeman to place his hands behind his back again, to which Rodeman complied.

Smyrnios handcuffed Rodeman and escorted him to his patrol car. Rodeman was not injured.

Smyrnios wrote a paragraph that explained he believed his actions were objectively reasonable based on the facts he knew at the time. Smyrnios only used the force he felt was reasonably necessary to successfully overcome physical resistance, prevent escape, and effect an arrest. Smyrnios considered the severity of the crime at issue, whether Rodeman posed an immediate threat to himself or others, and whether Rodeman was actively resisting arrest or attempting to evade arrest by flight before deploying his Taser. Smyrnios believed all these factors existed. Rodeman's evasive movements prevented Smyrnios from establishing control over him and attempted to flee as Smyrnios approached him in order to apprehend him.

Rodeman later told Smyrnios that he was in the neighborhood visiting his girlfriend. Smyrnios wrote "I do not know where his girlfriend lives."

Smyrnios had his MVR on during his trip from the JAC to the jail. During the trip, Rodeman said "I will be getting out in 21 days and I'M COMMING AFTER YOU." (sic) Smyrnios took that as a personal threat against his family and himself and requested a court ordered restraining order against Rodeman.

The only charge listed in the charge section was loitering or prowling. The document is sworn to and signed by Smyrnios.

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FHP Incident Report FHP01IR027124

The OIG reviewed an FHP Incident Report (Exhibit 6) created by Smyrnios on June 16, 2021, at 5:06 PM. The report listed the incident occurred on June 16, 2021, at 12:43 PM, with no ending time. The location identified was Indian Laurel Way in Fort Myers, Florida. Rodeman was listed as the subject.

Smyrnios listed the charges as resisting officer, obstruction without violence, and possession of marijuana.

The evidence section was completed to list the one expended Taser cartridge with probes that was used on Rodeman.

The FHP Incident Report narrative was the exact narrative used in the probable cause section of the second Arrest/Notice to Appear.

FHP Incident Report Change Log

The OIG reviewed the FHP Incident Report Change Log⁴ (Exhibit 7). The report was created by Smyrnios on June 16, 2021, at 5:06 PM. The report was submitted for approval on June 16, 2021, at 7:02 PM.

The following transactions on the Change Log are pertinent to the investigation:

- June 17, 2021, at 9:43 AM, Report checked out/rejected by FHP Sergeant Dwayne Cooper.
- June 17, 2021, at 9:44 AM, Report checked out by Smyrnios.
- June 17, 2021, at 9:46 AM, Smyrnios deleted the record of failed to obey police from the charge section.
- June 17, 2021, at 9:56 AM, Smyrnios edited the narrative section.
- June 17, 2021, at 2:25 PM, Smyrnios added the charge of Loitering or Prowling.
- June 17, 2021, at 6:29 PM, Smyrnios transmitted the finished report.

Conducted Electrical Weapon (CEW) User Report

The OIG reviewed the FHP CEW User Report (Exhibit 8) completed by Cooper. The report listed case number FHPF21OFF029075. The date of the incident was June 16, 2021, at 12:40 PM, and Rodeman was listed as the subject.

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⁴ The Change Log is a report created on every Incident Report. The log captures all activity with the specific Incident Report.





Smyrnios was the only officer involved and deployed the Taser, having two probes contact the subject. Rodeman was compliant after the Taser was used.

Smyrnios was approximately seven feet from Rodeman when the Taser was deployed, and the Taser gained subject compliance after the need for an additional cycle.

No one was injured as a result of the Taser deployment.

The synopsis explained the incident as follows:

Rodeman began walking away from Smyrnios when directed to stop. Smyrnios unholstered his Taser and pointed it at Rodeman while telling him to stop. Smyrnios told Rodeman to turn around and place his hands behind his back. Rodeman turned around and began walking away from Smyrnios, causing him to deploy the Taser. Rodeman fell to the ground and again Smyrnios told Rodeman to place his hands behind his back. Rodeman failed to comply and Smyrnios administered another cycle from the Taser. Rodeman then complied and was handcuffed.

While at the scene, FHP Lieutenant Jeffrey Van Arsdale took two photographs (Exhibit 9) of the location on Rodeman's back where the probes struck.

Computer Aided Dispatch (CAD)

The OIG reviewed the CAD log (Exhibit 10) created by FMRCC for the incident. The first incident listed in CAD for the event was on June 16, 2021, at 12:45 PM, Smyrnios, (ID# 544), advised FMRCC he had tased and arrested Rodeman. At 1:07 PM, Emergency Medical Services (EMS) were requested due to Rodeman's back hurting. At 1:38 PM, Smyrnios left the scene with Rodeman enroute to the county jail. They arrived at 2:03 PM. The incident was closed at 7:11 PM.

A second CAD log was created on June 17, 2021, at 4:06 PM. The log showed Smyrnios arrested Rodeman at the JAC and transported him to the county jail on additional charges. Smyrnios left the jail at 5:30 PM and went to the Fort Myers FHP station. The incident was closed at 7:02 PM.

Smyrnios' MVR from June 16, 2021

The OIG reviewed FHP MVR videos (Exhibit 11) related to the incident on June 16, 2021. The video started at 12:42 PM, on Indian Laurel Way with Rodeman already in custody. It was activated when Smyrnios and Rodeman returned to Smyrnios' vehicle after the incident had taken place. FHP's MVR has a 30 second recording prior to being activated. During the pre-recording on Smyrnios camera, it recorded Smyrnios

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placing Rodeman in the front right seat of his car. Sasha Herrera, Rodeman's girlfriend, was visible next to the patrol car when the video started.

Smyrnios told Rodeman he was arrested for failing to obey a lawful order and resisting. Rodeman replied that he should have listened but had not done anything wrong. Rodeman told Smyrnios that his girlfriend lived there, and that he was trying to call her, and Smyrnios replied that was not the lawful order.

Smyrnios told Rodeman, "I don't know why you, you think you can do anything you want to do, I'm clearly a police officer" and that Rodeman brought it on himself.

Smyrnios called K. Rodeman on his cellular telephone and told her Rodeman looked suspicious and went into the bushes. Smyrnios told him to stop and he refused, reaching into his pocket for something that turned out to be his cellular telephone. Rodeman continued walking away from Smyrnios, who had to enter the bushes to follow him and ultimately deployed his Taser on him. After Smyrnios summarized the events to K. Rodeman, she asked if he had gone through the bushes behind the houses due to Herrera living there. Smyrnios replied "I know that."

Smyrnios told K. Rodeman that Rodeman failed to comply, turned his back on him, and was reaching for something, later discovered to be a cellular telephone.

After speaking with K. Rodeman on the phone, Smyrnios exited his patrol vehicle and walked over and spoke with Herrera for just over a minute. Smyrnios' body microphone was not on during the conversation and no audio was recorded.

At 12:56 PM, FHP Corporal Timothy Wargo arrived at the scene. Smyrnios told Wargo he needed to go back to the residence and pick up items from the Taser. Wargo asked about Herrera, who was standing beside the patrol vehicle, which Smyrnios said she was not a witness and came out of the house later. While Smyrnios went back to the scene, Wargo spoke to Rodeman. Rodeman told him he was just going to Herrera's house, and she was his girlfriend. Wargo responded that he had just arrived and was not sure the specifics of the event. At 12:59 PM, Wargo left the scene.

As Wargo left, K. Rodeman arrived at the scene. Smyrnios told K. Rodeman that Rodeman went through the bushes and did not stop when given the command to stop. Smyrnios said Rodeman told him that it was his girlfriend's house. Smyrnios explained to K. Rodeman that he was not sure if Rodeman was telling the truth and listed reasons Rodeman could have been untruthful.

Van Arsdale arrived at the scene at the conclusion of Smyrnios' discussion with K. Rodeman.

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Smyrnios provided Van Arsdale a summary of the events and told him he believed Rodeman was a burglar. The two removed Rodeman from Smyrnios' vehicle and removed the Taser probes. After removing the probes, Smyrnios conducted a search of Rodeman.

During the search, Smyrnios discovered a bottle of medical marijuana in Rodeman's pocket. Rodeman admitted taking it from K. Rodeman. K. Rodeman told Smyrnios it was hers and provided him with her medical marijuana card.

At 1:10 PM, K. Rodeman provided her medical marijuana card to Smyrnios. Smyrnios started talking to Herrera, who was standing next to K. Rodeman. Smyrnios questioned Herrera on why she was with someone like Rodeman, and when she responded (inaudibly), Smyrnios told her he wanted to show her exactly what kind of person Rodeman was, and asked if that is what she wanted, someone being arrested and taken to jail. Smyrnios raised his voice and changed his demeanor and told her she needed some guidance because she was only 15 years old, and that Rodeman did too. Herrera started crying and asked that Smyrnios not talk to her anymore. Smyrnios responded that the "curtilage" was his and that if she did not want him there, she needed to leave. Herrera walked several feet away, visibly upset and crying.

At 1:20 PM, Smyrnios, Cooper, and Van Arsdale were discussing the paperwork required for Smyrnios' use of control. Cooper asked who Herrera was and Smyrnios replied that she was Rodeman's girlfriend, and Cooper did not need to talk to her because she was uncooperative. Smyrnios told Cooper that Herrera was not at the scene and came out after the fact. Cooper did not speak with Herrera.

At 1:22 PM, Smyrnios returned to his patrol car with Rodeman. Rodeman asked Smyrnios if he was the trooper who lived across from Herrera. Smyrnios told him he did not know what he was talking about. Rodeman told Smyrnios that he thought he was the trooper who lived there and that is why he did not stop when he saw the patrol car.

At 1:29 PM, while Smyrnios read Rodeman his Miranda Warnings, Herrera left Smyrnios' MVR view, ducking under a branch as she went through the hedge towards her residence. Smyrnios questioned Rodeman on what took place. Rodeman said he knew a trooper lived across from Herrera and assumed that was Smyrnios who was just going to his house. Rodeman attempted to continue speaking, however, Smyrnios interrupted him and told him what he observed. Rodeman admitted he heard Smyrnios call him four times but felt if he could have had Herrera come outside and he could have her explain better why he was there. Smyrnios told Rodeman he made some bad choices today. Rodeman told Smyrnios he did not think he was going to tase him which is why he did not comply. Smyrnios told Rodeman he was wearing all black, and that burglars wear all black. Smyrnios continued to tell Rodeman that he does not get to set the rules out in the world,

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and if he did there would be chaos. That the real world is not like high school or his house where threats are made but not followed through with.

At 1:40 PM, Smyrnios left the scene and made a loop to the front of Herrera's residence before heading to the jail. Smyrnios asked Rodeman to identify Herrera's house and Rodeman identified the house, and then told him the numerical address of 9337. Smyrnios acknowledged that Herrera was Rodeman's girlfriend and that the residence of 9337 Chestnut Tree Loop was Herrera's. Smyrnios pulled into Herrera's driveway to back out and proceeded to the jail.

At 2:02 PM, Smyrnios arrived at the Lee County Jail with Rodeman.

Van Arsdale's MVR from June 16, 2021

The OIG reviewed Van Arsdale's MVR video from June 16, 2021. The video started at 1:00 PM, 30 seconds prior to Van Arsdale arriving at Smyrnios' location. Van Arsdale parked his patrol vehicle directly behind Smyrnios' patrol car.

Van Arsdale approached Smyrnios, who was outside of his vehicle with K. Rodeman. K. Rodeman told Smyrnios that kids cut through the hedge all the time. Immediately, Van Arsdale and Smyrnios separate from K. Rodeman and spoke about proper Taser evidence procedures.

At 1:04 PM, Smyrnios removed the Taser probes from Rodeman's back, outside of the patrol car.

At 1:07 PM, Smyrnios started searching Rodeman and discovered the pill bottle containing medical marijuana.

At 1:10 PM, Van Arsdale told Rodeman that he should have told Smyrnios that he's at Herrera's house and had her come outside to verify it. Rodeman responded that he was trying to do that when he was tased. Van Arsdale replied that is not what happened.

At 1:24 PM, Van Arsdale spoke with Cooper and told him what occurred. He said Smyrnios turned onto the street and saw Rodeman enter the bushes. Smyrnios stopped and told Rodeman to stop, Rodeman refused and turned and ran away, forcing Smyrnios to deploy his Taser. Van Arsdale told Cooper that after the fact Smyrnios found out that Herrera lived at the residence.

At 1:38 PM, Van Arsdale stood next to Smyrnios' vehicle and spoke with Rodeman while Smyrnios used his personal cellular phone to take photographs and videos of the scene for evidence.

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At 1:40 PM, Smyrnios drove away from the scene. Van Arsdale's MVR video was deactivated at 1:41 PM.

Smyrnios' MVR from June 17, 2021

The OIG reviewed Smyrnios' MVR video from June 17, 2021. The video started at 4:06 PM, while Smyrnios, with Rodeman in custody, left the JAC.

As the audio started, Rodeman questioned Smyrnios about the statement Smyrnios made about Rodeman being a career criminal. Smyrnios asked Rodeman, "What question would you like answered?" Rodeman responded and asked why he was tased. Smyrnios did not respond. Rodeman asked again and again, Smyrnios did not respond. After a brief period, Smyrnios told Rodeman that he was willing to talk to someone who was reasonable and logical. Smyrnios said he could ask a question, and Rodeman asked why he was tased. Rodeman continued and said that Smyrnios had told everyone that Rodeman was reaching for something and that was why he was tased. Smyrnios avoided the question and told Rodeman that it was his general philosophy to talk to people who are reasonable and logical. Rodeman pressed again for the answer to his question. For a third time Smyrnios told Rodeman that he would only speak to people who were reasonable and logical.

At 4:08 PM, Rodeman told Smyrnios he had talked to K. Rodeman that morning and she had a video which conflicted with Smyrnios' statements. Rodeman questioned Smyrnios as to how he did not see the camera right above him at Herrera's residence. Smyrnios told Rodeman he needed the video as part of his evidence. Rodeman asked what the additional charge he was being arrested for was and Smyrnios responded he was being charged for loitering and prowling. Rodeman asked Smyrnios again why he was tased. Smyrnios responded that it would be in the report.

Rodeman asked several more times why he was tased, and never received an answer from Smyrnios. At 4:15 PM, Rodeman said he should still be back at the JAC reading a book. Smyrnios responded and told him he would be back there soon enough. Rodeman said even if he had to stay there 21 days, he was still going to come after Smyrnios. Smyrnios responded "you're coming after me?" Rodeman responded, "not like that, but court wise, yeah." The two had an inaudible conversation about the comment, then Smyrnios told Rodeman he could tell that to his attorney.

They did not speak again until they arrived at the Lee County Jail at 4:19 PM. The video ended as soon as Smyrnios parked.

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Taser Evidence Sync

The OIG reviewed Smyrnios' Taser Evidence Sync download (Exhibit 12) generated by FHP Lieutenant Gregory Mitchell. Mitchell generated the report on June 17, 2021. The report indicated Smyrnios' Taser serial number was X29003WCH.

On June 16, 2021, at 12:41:57 PM, Smyrnios' Taser was armed⁵. At 12:42:20 PM, 23 seconds after it was armed, Smyrnios deployed cartridge one from his Taser and it delivered five seconds of electrical energy. At 12:42:29 PM, four seconds after the first delivery had ended, Smyrnios re-energized cartridge one, delivering another five seconds of electrical energy. At 12:43:04 PM, Smyrnios' Taser was turned off.

FMRCC Audio

The OIG reviewed Smyrnios' radio communication (Exhibit 13) between him and FMRCC. On June 16, 2021, at 12:43 PM, Smyrnios contacted FMRCC to advise them of the incident. At 1:36 PM Smyrnios advised FMRCC that he was enroute to the Lee County Jail and advised he arrived at 2:02 PM.

Automatic Vehicle Locator⁶ (AVL)

The OIG reviewed Smyrnios' AVL data (Exhibit 14) from June 16, 2021. The data revealed Smyrnios left his neighborhood at 6:16 AM and arrived at the Fort Myers FHP station at 6:27 AM. Smyrnios left the Fort Myers FHP station and traveled towards his residence at 12:23 PM. At 12:38 PM, Smyrnios' vehicle stopped on Indian Laurel Way and did not move again until 1:42 PM. At 1:43 PM, Smyrnios' AVL showed him at 9337 Chestnut Tree Loop (Herrera's residence) before traveling out of the neighborhood and to the Lee County Jail.

Surveillance Video

The OIG reviewed the surveillance video (Exhibit 15) from Herrera's residence, 9337 Chestnut Tree Loop. The video was provided to the OIG by K. Rodeman and contained three video clips.

The first video clip started with Rodeman standing on the back of Herrera's porch, facing the screened door and windows. Smyrnios was standing in the back yard of Herrera's residence in the grass with his Taser pointed at Rodeman's chest approximately 10 feet from Rodeman. Smyrnios was to the right of Rodeman as Rodeman said "...lives here ands (sic) gonna come outside. I didn't do nothing." Rodeman's hands were visible to

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⁵ Armed-The weapon was powered on and was ready to be fired.

⁶ AVL is part of the SmartMCT computer software program used by FHP and contains GPS data that displays the location of FHP patrol cars.





Smyrnios at that time. Smyrnios replied "I told you to do something. Turn around." Rodeman said, "I need to call her" and started interacting with his phone using both hands.

Smyrnios moved to his left, behind a raised, stone, outdoor patio seating and firepit, that separated him from Rodeman. Smyrnios' movement positioned himself to the rear of Rodeman, where he could no longer see Rodeman's hands. Rodeman did not move while Smyrnios moved behind Rodeman.

The second video started where the first video stopped. Smyrnios moved to the left and told Rodeman to put his hands behind his back. Rodeman, while still interacting with his cellular telephone, stated he did not do anything wrong.

Smyrnios was behind Rodeman and deployed his Taser into Rodeman's back. Rodeman fell backwards striking the stone fire pit with his back and rolled onto the stone porch floor, lying on his back.

While the Taser was cycling, delivering the shock to Rodeman, Smyrnios ordered Rodeman to put his hands behind his back. Rodeman screamed while Smyrnios was giving the commands.

After the Taser completed the five second cycle, Rodeman was still lying on his back with his left arm extended to the left side of his head, holding his phone, and his right arm extended along his side. Rodeman was lying still as Smyrnios continued to give Rodeman verbal commands to put his hands behind his back.

Smyrnios deployed his Taser a second time, causing Rodeman to scream for him to stop, and placed his hands into the air.

Once the second cycle of five seconds had been completed, Rodeman rolled onto his stomach and placed his hands behind his back. Smyrnios handcuffed Rodeman.

Herrera came outside onto the screened porch as Smyrnios was handcuffing Rodeman. Smyrnios told Herrera he did not need her assistance. Herrera stood a couple feet from Rodeman and Smyrnios as Rodeman told her he did not do anything wrong, and Smyrnios had followed him through the bushes.

The third video clip started where the second video clip left off. Herrera was standing next to Smyrnios and Rodeman, who was lying on his stomach handcuffed. Smyrnios told Rodeman, "for some reason you think you can do exactly what you want to do, and you can't."

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Supervisor's Use of Control Report

The OIG reviewed two FHP Supervisor's Use of Control Reports (Exhibit 16) completed by Van Arsdale which was provided to the OIG upon receiving the case. In section one of the unfinished report the following information was listed:

Report case number FHPF21OFF029075, date of occurrence June 16, 2021, at 12:40 PM. The weather conditions were rainy. Van Arsdale took photographs at the scene.

Section two, the subject section of the report, listed Rodeman's information. This section indicated Rodeman offered active physical resistance to Smyrnios.

Section three of the report listed Smyrnios as the primary trooper involved and that he deployed his CEW. There were no backup officers listed.

FMRCC Duty Officer Robbie Liberty was notified via radio of the incident and reported it to Cooper at 12:50 PM.

Lee County EMS Medic #9, Lester Molina and Lorenzo Hagans were notified at 1:07 PM.

Section four listed the following four charges against Rodeman:

- Resisting Officer without violence
- Failed to obey Police Officer
- Marijuana Possession
- Loitering and Prowling

Section five, the witness section, did not contain any witness information and was blank.

Section six of the report listed the Uniform Crime Report and CEW report as being included with the Supervisor's Use of Control Report.

Section seven of the report was a narrative that was summarized as follows:

On Wednesday, June 19, 2021⁷, Smyrnios was traveling through a subdivision when he saw Rodeman in all dark clothing standing next to a line of tall bushes. The bushes separated the roadway from residences. Smyrnios saw Rodeman enter the bushes and then enter the backyards. Rodeman appeared to be attempting to evade Smyrnios. Smyrnios exited the vehicle and gave commands to Rodeman to come to him. Rodeman refused and walked away from Smyrnios, who followed him. Smyrnios told Rodeman he

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⁷ The correct date should have been June 16, 2021.





would be tased if he did not comply. When Rodeman failed to comply, Smyrnios deployed his Taser. Rodeman fell to the ground and when the cycle was complete, Smyrnios gave him a command to place his hands behind his back. Rodeman did not comply and Smyrnios re-energized his Taser for another cycle. After the second cycle, Rodeman complied. Rodeman was taken into custody.

Section eight of the report listed Van Arsdale as the FHP member who investigated the use of force, and the District Shift Commander who reviewed it. Van Arsdale marked the box "Was the amount of force justified?" as "yes," and dated it June 18, 2021.

The District Commander, FHP Captain Joseph Gideons, signed the report and marked the box "Was the amount of force justified?" as "yes," and dated it June 18, 2021.

The Troop Commander was left blank. No additional members signed the report.

A second and final Supervisory Use of Control Report was completed and signed off by Franza, the Regional Commander, Chief Eileen Powell, and the Professional Compliance Director, Captain David Carter.

The completed report mirrored the original report except for the signatures and all members checking the box "Was the amount of force justified?" as "no."

In the narrative section of the report, Van Arsdale added information that the report was updated on June 29, 2021.

In the updated narrative portion, Van Arsdale wrote after the original Supervisory Use of Control report was submitted, a home surveillance video was released to the media. Van Arsdale determined, based on the new evidence, the use of the Taser was not in accordance with FHP policy due to Rodeman only exhibiting passive resistance.

Taser Training

The OIG reviewed Smyrnios' Taser training files **(Exhibit 17)**. Smyrnios' last Taser training was November 12, 2020, for three hours. The training roster listed Mitchell as the lead instructor and was signed by the Troop F Commander, Major John Baumann, on November 23, 2020. Prior to 2020's training, Smyrnios completed four hours of Taser training on September 27, 2019, and three hours of the Taser training on June 26, 2018. Smyrnios completed eight hours of Taser training from the transition from the Taser X26 to the X2 on February 15, 2016.

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Lee County Sheriff's Office Records

The OIG obtained and reviewed incident records (Exhibit 18) from LCSO from June 1, 2020, through July 21, 2021. There were no burglaries, or any other type of incident documented in Smyrnios' neighborhood for that time period.

Smyrnios' Cellular Phone

Based on FHP MVR video of Smyrnios using his personal cellular device, the OIG obtained a search warrant (**Exhibit 19**) to collect evidence from the device. On July 21, 2021, the warrant was signed by the Honorable Judge Tara Pascotto Paluck, of the 20th Judicial Circuit of Florida in Fort Myers.

The cellular phone was seized and submitted into evidence at the Fort Myers FHP station (Exhibit 20) and then sent to the FHP Bureau of Criminal Investigations and Intelligence (BCII) to be forensically analyzed. FHP Sergeant George Seiler conducted the retrieval of data from the cellular device and submitted the extraction into evidence.

The OIG reviewed the evidence obtained from Smyrnios' cellular phone (Exhibit 21). The device had four photographs of the hedge where Rodeman entered Herrera's backyard, two photographs of the front and back of K. Rodeman's medical marijuana card, three photographs of K. Rodeman's medical marijuana prescription bottle and marijuana that was removed from Rodeman's pocket, two photographs of Rodeman post-arrest, and a video where Smyrnios walked the path Rodeman and he had taken to Herrera's back porch with narration of where the incident took place.

The video started with Smyrnios near his patrol vehicle several feet from the hedge. Smyrnios entered the backyard and walked to the stone porch and area where Rodeman was tased. Smyrnios took 20 steps to cover the distance from the hedge to where he deployed his Taser which took 12 seconds.

<u>Discrepancies</u>

The OIG discovered the following discrepancies in Smyrnios' two Arrest/Notice to Appear reports and FHP Incident Report when compared to the evidence reviewed and obtained during the investigation:

- Both of Smyrnios' Taser deployments to Rodeman were inconsistent with FHP's Taser policy due to Rodeman only exhibiting passive resistance.
- · Passive resistance did not justify Taser deployments to affect an arrest.
- Both Arrest/Notice to Appears had the same date and time of arrest, even though the second arrest took place the following day.

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- Smyrnios claimed the incident took place at 9341 Chestnut Tree Loop instead of the actual location, Herrera's residence, 9337 Chestnut Tree Loop.
- Smyrnios wrote Rodeman was fleeing by walking away from him which forced him to deploy his Taser. The surveillance video showed Rodeman standing on a patio not fleeing or walking.
- Smyrnios wrote he could not see Rodeman's hands and did not know if Rodeman had a weapon. The surveillance video showed Rodeman's hands were visible to Smyrnios and were occupied by his phone when Smyrnios moved behind Rodeman to deploy the Taser.
- Herrera exited the residence onto her patio immediately after Rodeman had been tased. Herrera was not questioned about Rodeman having permission to be on the property.
- On the second Arrest/Notice to Appear, created the following day when Smyrnios arrested Rodeman again for the charge of loitering and prowling, Smyrnios included a line in the probable cause for arrest section that said "The defendant later told me, post arrest, that he was in the neighborhood visiting his girlfriend. I do not know where his girlfriend lives." Smyrnios was made aware of Herrera's residence the previous day, prior to the second arrest.
- Prior to being tased, Rodeman told Smyrnios he was at his girlfriend's house and if he called her, she would come outside. Smyrnios had a conversation with Herrera about her relationship with Rodeman at the scene. As they drove by Herrera's residence, Smyrnios asked Rodeman which house was his girlfriend's. Rodeman provided Smyrnios with the numerical address and identified it as they pulled into the driveway. None of that information, including Herrera's information was included in either Arrest/Notice to Appear or FHP Incident Report nor was it provided to FMRCC.
- Smyrnios told Cooper that Herrera was uncooperative and was not a witness. He
 further stated that Cooper did not need to speak with her to complete his FHP
 Supervisory Use of Control Report.
- On the second Arrest/Notice to Appear, Smyrnios wrote that there were burglaries in the neighborhood and that is why he thought Rodeman could have been a burglar. According to the Lee County Sheriff's Office, there had not been any reported burglaries within the past year.
- All criminal charges Smyrnios made against Rodeman were dismissed by the SAO. The charges were dismissed as a result of the SAO reviewing all evidence and determining Smyrnios went beyond the guidelines for consensual encounters and did not meet the requirement for an investigatory stop.
- There was inadequate probable cause for the second arrest of Loitering and Prowling.

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Interview of Witness

Gregory Mitchell, Lieutenant, Florida Highway Patrol

On July 16, 2021, the FLHSMV OIG interviewed Mitchell at the Bradenton FHP station. The following is a synopsis of Mitchell's statement which contains paraphrasing:

Mitchell has been the Troop F Training Lieutenant since 2016 and has worked in Troop F his entire 23-year career.

Mitchell became an instructor in 2012 and has been an Axon Taser instructor since 2015 (Exhibit 22). Mitchell conducts Taser training for Troop F annually. Training consists of a three to four-hour refresher course⁸ to recertify each member in the use of the Taser, however, there is no time requirement for the training. The training utilizes a PowerPoint lecture provided by Axon, and scenario-based training to have users successfully deploy two cartridges.

Each training consisted of the users Taser being collected by the instructor and the internal data downloaded. Afterwards, the Taser PowerPoint and FHP use of force policy for Taser was covered. Once the lecture was over, Mitchell had the class go through scenario-based drills with the Taser.

Mitchell had never instructed or been taught to utilize a Taser on a subject that is only exhibiting passive resistance.

Mitchell is the lead Taser instructor for Troop F and uses FHP Auxiliary Captain Joseph Filice as his co-instructor. Mitchell had instructed Smyrnios in Taser since he became a Taser instructor. Mitchell had never had any issues with Smyrnios successfully completing training.

Based on the surveillance video of Smyrnios deploying his Taser on Rodeman, Smyrnios' actions were not consistent with FHP training.

Joseph Filice, Captain, Florida Highway Patrol Auxiliary

On July 16, 2021, the FLHSMV OIG interviewed Filice at the Bradenton FHP station. The following is a synopsis of Filice's statement which contains paraphrasing:

Filice is the commander of the Bradenton FHP Auxiliary Unit. He has been with the Auxiliary for 12 years. Filice has been a Taser instructor for 8 years (Exhibit 23).

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⁸ FHP policy requires a minimum of four hours and Florida Statute 943.1717 requires a minimum of one hour of training for annual recertification.





Filice assisted in instructing Troop F's annual Taser recertification. Filice instructed Smyrnios in Taser for several years and did not have any issues with him successfully completing training.

During training, Filice typically covered the Axon Taser PowerPoint. Filice made sure he went through every slide so anyone who attended training would be able to say they have seen what Axon required.

Filice had never instructed or been taught to utilize a Taser on a subject that was only exhibiting passive resistance.

There was no reason for Smyrnios to deploy his Taser on Rodeman. His actions were not consistent with FHP training.

Jeffrey Van Arsdale, Lieutenant, Florida Highway Patrol

On July 20, 2021, the FLHSMV OIG interviewed Van Arsdale in Fort Myers, Florida. The following is a synopsis of Van Arsdale's statement which contains paraphrasing:

Van Arsdale is the Fort Myers District Lieutenant. He has been in his current position for 5 years.

On June 16, 2021, Van Arsdale responded to Smyrnios' incident location to assist on scene. Cooper also responded to the scene and arrived after Van Arsdale. Smyrnios told Van Arsdale he deployed his Taser on Rodeman after he warned him three times to stop walking away.

Van Arsdale completed an FHP Supervisor's Use of Control Report documenting what Smyrnios told him since there was not a video or witness to the incident. Van Arsdale took Smyrnios at his word on what occurred between him and Rodeman. He could not remember if he spoke to Herrera to determine if she witnessed the incident.

Van Arsdale reviewed Smyrnios' MVR footage. Smyrnios did not activate his MVR prior to the incident. The MVR was activated after Rodeman had been tased and was brought back to the patrol vehicle.

After Van Arsdale submitted his FHP Supervisor's Use of Control Report, a video of the incident captured on a home surveillance camera appeared on the local news. The video conflicted with what Van Arsdale had documented in the FHP Supervisor's Use of Control Report, so he updated his report to reflect what occurred between Rodeman and Smyrnios. After reviewing the video, Van Arsdale changed his finding from a justifiable use of force, to an unjustified use of force.

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Van Arsdale concluded in his report that Smyrnios' use of the Taser violated FHP policy, as Rodeman only exhibited passive resistance.

While at the scene, Smyrnios used his personal phone to video the path Rodeman took, photographs of Rodeman, and of the marijuana discovered. None of the video and photographic evidence captured by Smyrnios at the scene were submitted into evidence.

On June 17, 2021, Van Arsdale, FHP Captain Joseph Gideons, and Smyrnios met and discussed the correct statutes to use for Smyrnios' arrest report.

Smyrnios was told he needed to contact the State Attorney's Office (SAO) and get their opinion on his charges. Subsequently, Smyrnios went to the Juvenile Assessment Center and arrested Rodeman and transported him to the Lee County Jail. The additional charge of loitering and prowling was added to the arrest affidavit.

Dwayne Cooper, Sergeant, Florida Highway Patrol

On July 20, 2021, the FLHSMV OIG interviewed Cooper in Fort Myers, Florida. The following is a synopsis of Cooper's statement which contains paraphrasing:

Cooper is a sergeant in the Fort Myers District and has been employed with FHP for 28 years. Cooper is not Smyrnios' direct supervisor.

On June 16, 2021, Cooper responded after Smyrnios notified FMRCC that he had deployed his Taser. Upon arriving at the scene, Cooper spoke with Van Arsdale and Smyrnios. Smyrnios told Cooper that he did not activate his MVR until after the incident had occurred.

Cooper completed the CEW User Report by reviewing the FMRCC audio, CAD notes, and by speaking with Smyrnios. Cooper copied Smyrnios' narrative of the arrest report and edited it to contain only the information he needed for the report.

Cooper started the FHP Supervisor's Use of Control and submitted it to Van Arsdale, who completed the report.

After viewing the surveillance video that was released to the media, the phrase Smyrnios used in his reports, "began walking away" was inconsistent with what Cooper wrote in the CEW User Report. Cooper was not sure what Smyrnios meant by "began walking away" as Rodeman was not walking away based on the surveillance video.

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Joseph Gideons, Captain, Florida Highway Patrol

On July 22, 2021, the FLHSMV OIG interviewed Gideons in Fort Myers, Florida. The following is a synopsis of Gideons' statement which contains paraphrasing:

Gideons is the District Commander for the Troop F Fort Myers District. Gideons was not on scene or involved with the incident involving Smyrnios and Rodeman on June 16, 2021.

On June 17, 2021, Smyrnios came into Gideons' office and spoke about adding additional charges to Rodeman. Gideons told Smyrnios not to "load this guy up with charges" especially the next day. Gideons told Smyrnios to contact the SAO before making any additional charges.

Gideons was not aware Rodeman had a right to be at the location he was tased when offering advice on charging Rodeman.

Timothy Wargo, Corporal, Florida Highway Patrol

On August 11, 2021, the FLHSMV OIG interviewed Wargo in Fort Myers, Florida. The following is a synopsis of Wargo's statement which contains paraphrasing:

Wargo is a Traffic Homicide Investigator assigned to the Fort Myers District. He has been in his current position since 2018 and has been employed with FHP since 2014.

On June 16, 2021, Wargo heard Smyrnios' radio traffic and responded to the scene. He did not remember the specific conversation between him and Smyrnios but remembered speaking with Rodeman while Smyrnios went to the area where he deployed his Taser to look for evidence. Rodeman told Wargo that he was just going to his girlfriend's house. Wargo never relayed that information to Smyrnios. Once Smyrnios returned, Wargo left the scene.

Jack Rodeman, Witness

On July 15, 2021, the FLHSMV OIG interviewed Rodeman in Fort Myers, Florida. The following is a synopsis of Rodeman's statement which contains paraphrasing:

On June 16, 2021, Rodeman left his house on Winged Foot Drive and was walking to Herrera's house. Herrera and Rodeman had made these plans the prior night. As Rodeman was walking on the sidewalk, he saw Smyrnios turn onto the road behind him, but did not think anything was suspicious about it since Rodeman knew a state trooper lived a few houses down from the Herreras.

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As Rodeman started to cut through the bushes, Smyrnios stopped his patrol car several feet from Rodeman and told him to come over to his car to talk to him. Rodeman had marijuana on him, so he wanted to be as far away from Smyrnios as he could. Rodeman had not done anything wrong and had permission to be where he was, so he did not think Smyrnios would continue the interaction. Smyrnios told Rodeman he was not being detained, but he needed to talk to him. After going through the bushes, Rodeman was in Herrera's back yard and wanted to show Smyrnios he had permission to be where he was. Smyrnios followed Rodeman through the bushes and continued telling Rodeman to put his hands behind his back. Once Rodeman reached Herrera's back porch, he yelled out to her to come outside. Smyrnios had followed Rodeman to the porch and had his Taser in his hand. Rodeman told Smyrnios that this was his girlfriend's house and that she would come outside after he texted her. After she did not respond to him yelling, he attempted to text her to come outside. As Rodeman was texting Herrera, Smyrnios deployed his Taser on Rodeman.

After being tased, Rodeman was unable to comply with Smyrnios' instructions because he was still being tased and his back was up against the fire pit. After Rodeman was handcuffed, Smyrnios said Rodeman should have obeyed his lawful commands.

Rodeman stole a pill bottle containing 3.5 grams of medical marijuana from K. Rodeman the night before. He had the bottle in his pocket when he was arrested by Smyrnios.

Kristina Rodeman, Witness

On July 15, 2021, the FLHSMV OIG interviewed K. Rodeman in Fort Myers, Florida. The following is a synopsis of K. Rodeman's statement which contains paraphrasing:

- K. Rodeman is Rodeman's mother. On June 16, 2021, Smyrnios called K. Rodeman to let her know he had tased and arrested Rodeman.
- K. Rodeman knew Rodeman was going to Herrera's house, so she drove there. Upon arrival she met with Smyrnios. Smyrnios told her why he had arrested Rodeman.
- K. Rodeman always thought it was odd that kids would cut through the bushes, but she would drop Rodeman off and pick him up at the bushes. She had never seen the front of Herrera's residence.

When Herrera's mother, Sandra (S. Herrera), got home from work, she called K. Rodeman and told her that she had video from her surveillance camera which captured the incident. S. Herrera told K. Rodeman that Rodeman had been profiled. S. Herrera sent K. Rodeman the videos via text message. K. Rodeman provided the FLHSMV the three videos she received. They were the same videos she sent the news media.

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K. Rodeman provided the OIG with three screenshots of text messages between Rodeman and Herrera (Exhibit 24).

The three screen shots showed Rodeman and Herrera communicated while Rodeman walked to Herrera's residence.

Sandra Herrera, Witness

On August 10, 2021, the FLHSMV OIG interviewed S. Herrera in Fort Myers, Florida. The following is a synopsis of S. Herrera's statement which contains paraphrasing:

S. Herrera resides at 9337 Chestnut Tree Loop in Fort Myers, Florida. Her daughter, Herrera, resides with her. Herrera had been dating Rodeman for about six months and the two visited regularly. Rodeman would walk from his residence to her residence and cut through the hedge on the back of their property because it was easier.

On June 16, 2021, S. Herrera received alerts on her phone of her video surveillance system. S. Herrera reviewed the video and found out the incident had occurred. She texted the video to Herrera, who sent them via text to K. Rodeman.

Rodeman had permission to be on Herrera's property. No law enforcement officer spoke with Herrera about the incident or questioned her about Rodeman.

Smyrnios resides a couple houses down from S. Herrera. She had not met him prior to the incident but knew who he was.

Sasha Herrera, Witness

On August 10, 2021, the FLHSMV OIG interviewed Herrera in Fort Myers, Florida. The following is a synopsis of Herrera's statement which contains paraphrasing:

Rodeman is Herrera's girlfriend. On June 16, 2021, Rodeman texted Herrera and told her he was on his way to her house. Several minutes later she heard Rodeman screaming outside and went downstairs and outside to see Rodeman being arrested by Smyrnios. She did not see Smyrnios tase Rodeman.

Smyrnios was rude to her and told her she was going to be nothing in this world dating someone like Rodeman. He did not ask her if Rodeman had permission to be on her property but did ask her if she lived at the residence.

When Rodeman would visit Herrera, he would walk through the hedge behind her house because it was easier than walking all the way around to the front.

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Herrera had never met Smyrnios prior to the incident but knew he lived near her.

No law enforcement officers, to include Smyrnios, asked her for her parents' information or about Rodeman's permission to be on the property.

Interview of Subject

George Smyrnios, Trooper, Florida Highway Patrol

On October 11, 2021, the FLHSMV OIG interviewed Smyrnios in Fort Myers. The following is a synopsis of Smyrnios' statement which contains paraphrasing:

Smyrnios is assigned to Troop F, Fort Myers District as a hit and run investigator and has been employed with FHP for 24 years.

On June 16, 2021, Smyrnios left the station and traveled towards his residence for lunch. As he turned onto Indian Laurel Way, he observed Rodeman.

Smyrnios thought Rodeman was a burglar or prowler because he had never seen Rodeman in the neighborhood, never seen anyone standing in the area Rodeman was standing, Rodeman was wearing all black, and appeared to dart into the shrubbery at the sight of Smyrnios' patrol vehicle.

Smyrnios stopped his patrol vehicle and exited quickly, failing to activate his MVR or retrieve his body microphone from within the vehicle. Smyrnios ordered Rodeman to stop and to come to him, because Rodeman was being detained. Rodeman said "no" and turned around and walked away from Smyrnios. Smyrnios pulled out his Taser and ordered Rodeman to stop. Rodeman continued walking, ending up on a patio approximately 30 paces from where he entered the shrubbery.

Rodeman took two shuffle steps forcing Smyrnios to move to a better location to accurately deploy his Taser on Rodeman, and then fired. Rodeman fell to the ground and did not comply with Smyrnios' orders to place his hands behind his back, so Smyrnios re-energized his Taser for another cycle.

Rodeman exhibited active physical resistance when he failed to comply with Smyrnios' lawful commands by walking away, even after Smyrnios had pointed his Taser at him. After the initial Taser deployment, Rodeman still exhibited active physical resistance by not complying with Smyrnios, which forced Smyrnios to re-energize his Taser and deliver a second cycle.

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The surveillance video was segmented and did not show the fluidity of the situation. Everything took place within 30 seconds and the fact Rodeman was not exhibiting active resistance in the video did not accurately portray the incident.

Smyrnios had been taught to re-energize any subject that had previously been tased if they did not comply with commands, which he did with Rodeman.

Smyrnios created the second arrest report as if it had taken place the first day but indicated in the narrative section that he had arrested Rodeman a day later and transported him back to the jail.

Smyrnios did not interview Herrera because she told him she did not want to speak with him. Smyrnios never attempted to speak with S. Herrera or investigate who the owner of the home was. Smyrnios did not remember Cooper being at the scene, and as such, did not remember telling him not to speak with Herrera and that she was not a witness.

Smyrnios wrote in his arrest report that he did not know where Rodeman was going or if he was at Herrera's residence because he did not know. Smyrnios does not take the word of a criminal as fact and did not believe it was his responsibility to determine if Rodeman had permission to be on the property he alleged Rodeman was prowling on, but it was Rodeman's job to dispel any suspicion.

Smyrnios made an error on the original report listing the wrong address of where the incident took place and made the correction on the second arrest report.

Conclusion

Florida Highway Patrol (FHP) Major Joseph Franza Jr. alleged FHP Trooper George Smyrnios used excessive force in the process of affecting an arrest. The allegation was forwarded to the Florida Highway Safety and Motor Vehicles (FLHSMV) Office of Inspector General (OIG) for criminal investigation. At the conclusion of the criminal investigation, the OIG opened an administrative investigation on the same allegation. Based on information obtained during the criminal investigation, the OIG alleged Smyrnios falsified records and failed to activate his Mobile Video/Audio Recorder (MVR) during a law enforcement encounter.

On June 16, 2021, Smyrnios was traveling through his neighborhood from the Fort Myers FHP station around 12:38 PM. Smyrnios made a left turn onto Indian Laurel Way and observed Jack Rodeman, a 16-year-old, wearing black pants and a black sweat shirt walking through a hedge into the backyard of a residence. Smyrnios stopped his vehicle, got out, and ordered Rodeman to stop and come over to him. Rodeman failed to comply and continued walking through the backyard of 9337 Chestnut Tree Loop, which was his girlfriend's (Sasha Herrera) residence. Smyrnios followed Rodeman, giving him verbal

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commands to stop and put his hands behind his back. Rodeman, standing on Herrera's stone patio, told Smyrnios that this was his girlfriend's house and he would call her, and she would come outside. Smyrnios stood approximately 10 feet from Rodeman with a clear view of his hands and his cellular telephone. Rodeman told Smyrnios he was going to call his girlfriend to come outside and tell Smyrnios he could be there. Smyrnios moved behind Rodeman, who was still looking down at his phone while holding it with both hands, and deployed his Taser, striking Rodeman's back. Rodeman fell backwards, striking a stone fire pit with his back and then fell to the ground. Once on the ground, Rodeman did not move, even when Smyrnios gave Rodeman orders to put his hands behind his back. After four seconds of non-compliance, Smyrnios re-energized his Taser, delivering another cycle of electricity to Rodeman. Eventually, Smyrnios was able to get Rodeman onto his stomach and handcuff him.

As Rodeman was being handcuffed, Herrera came outside onto the porch and stood next to Smyrnios. Smyrnios acknowledged her and told her he did not need her assistance. The incident was captured on the home surveillance system installed at the Herrera's residence. Smyrnios escorted Rodeman back to his patrol vehicle as Herrera followed. Smyrnios returned to his patrol vehicle and activated his MVR.

After Rodeman was placed in Smyrnios' vehicle, Smyrnios called Kristina Rodeman (K. Rodeman), Rodeman's mother, and told her about the incident. She arrived at the scene minutes later.

Smyrnios spoke to Herrera about her relationship with Rodeman. Eventually, Herrera got upset and walked away from Smyrnios.

FHP Lieutenant Jeffrey Van Arsdale and FHP Sergeant Dwayne Cooper arrived at the scene and spoke with Smyrnios. Cooper completed the FHP Supervisor's Use of Control Report. When Cooper asked Smyrnios who Herrera was, he was informed she was not a witness and was uncooperative. Smyrnios left the scene with Rodeman to transport him to the Lee County Jail for booking. Smyrnios completed an Arrest/Notice to Appear on Rodeman, charging him for failing to obey a lawful order, resisting officer without violence and possession of marijuana.

As they pulled away from the scene, Smyrnios turned onto Chestnut Tree Loop and asked Rodeman which house Herrera's was. Rodeman answered by providing the numerical address of 9337, and then identifying it to Smyrnios. Smyrnios pulled into Herrera's driveway, backed out, and traveled to the Lee County jail.

Smyrnios wrote in the probable cause narrative section that Rodeman looked suspicious and darted into the shrubbery and hid from him. Smyrnios walked through the shrubbery and told Rodeman to stop. Rodeman did not stop and continued walking. Smyrnios pulled out his Taser and pointed it at Rodeman as he told him to turn around and place

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his hands behind his back. Rodeman did not comply and continued walking away from Smyrnios forcing him to deploy his Taser. Smyrnios did not mention Herrera in the report.

The Arrest/Notice to Appear was signed by Smyrnios and attested to by a Lee County Sherriff's Deputy.

On June 17, 2021, Smyrnios met with Van Arsdale and FHP Captain Joseph Gideons to discuss adding additional charges on Rodeman. Gideons told Smyrnios to contact the State Attorney's Office before adding additional charges. In communication with the State Attorney's Office, the OIG was unable to determine if Smyrnios had spoken to anyone at their office prior to his second arrest of Rodeman.

At approximately 4:00 PM, Smyrnios arrested Rodeman at the Lee County Juvenile Assessment Center (JAC) for loitering and prowling. Smyrnios activated his MVR at 4:06 PM, as he was leaving the JAC. As the video started, Rodeman asked Smyrnios why he said he was going to be a career criminal. Smyrnios told Rodeman he could ask him questions if they were logical, and Rodeman asked why he was tased. Smyrnios ignored the question even after being asked multiple times while on the way to the jail.

Smyrnios completed a second Arrest/Notice to Appear on Rodeman, charging him with loitering or prowling. The second Arrest/Notice to Appear copied Smyrnios' FHP Offense Incident Report of the incident. This report listed the date and time as June 16, 2021, at 12:46 PM, which was the date of the original arrest.

The probable cause narrative portion described how the second arrest report mirrored the first arrest report, to include the additional charge and the following information: Smyrnios wrote that he knew the area where the incident took place and knew it has had several burglaries. Smyrnios wrote that when he turned onto Indian Laurel Way, he saw Rodeman attempt to conceal his position. Smyrnios knew who lived at the residence where Rodeman entered and knew Rodeman did not live there. Smyrnios wrote that Rodeman's appearance, behavior, demeanor and body language appeared to him as a loiterer, prowler, or even a burglar. Smyrnios stopped his vehicle and ordered Rodeman to stop, and when he did not comply, Smyrnios entered the backyard. Smyrnios wrote that he did not know whose backyard Rodeman was in but was clearly trying to evade him. Smyrnios pulled his Taser and pointed it at Rodeman who momentarily stopped, and looked at him, and then turned around and attempted to walk away. Smyrnios wrote that he could not see Rodeman's hands and was concerned he might have a weapon, which forced him to deploy his Taser. Smyrnios wrote that Rodeman used physically evasive movements that prevented him from establishing control and attempted to flee.

Smyrnios added the line near the end of the probable cause narrative, "The defendant later told me, post arrest, that he was in the neighborhood visiting his girlfriend. I do not know where his girlfriend lives."

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This statement was written a day after Rodeman not only told Smyrnios he was at his girlfriend's residence but provided Smyrnios with the numerical address and showed Smyrnios the front of the house. Smyrnios pulled his patrol vehicle into Herrera's driveway and made a u-turn after acknowledging the residence. Herrera was at the scene the entire time after Rodeman was tased and was never questioned by Smyrnios about Rodeman having permission to be on her property. Smyrnios further avoided having Herrera questioned by telling Cooper that she was not a witness and was uncooperative.

The second Arrest/Notice to Appear was signed by Smyrnios and attested to by a Lee County Sherriff's Deputy.

The OIG obtained records from the Lee County Sheriff's Office showing no incidents reported, to include burglary, in that neighborhood from June 2020 through July 2021.

Sandra Herrera (S. Herrera), Herrera's mother and owner of the house at 9337 Chestnut Tree Loop, knew Rodeman was coming to her residence that day and knew kids cut through the hedge at the back of her property to shorten their walk. S. Herrera had a motion activated surveillance camera system in her backyard that alerted her to the activity. After watching it, she saved the video on her cellular phone, sent it to Herrera, who sent it to K. Rodeman. K. Rodeman sent the video to the news media. The same video was provided to the OIG for review.

The video contradicted both of Smyrnios' Arrest/Notice to Appear reports and his Offense Incident Report. Rodeman was not walking away or fleeing and had told Smyrnios whose patio he was standing on. Rodeman's hands were clearly visible to Smyrnios as Smyrnios was giving Rodeman orders to turn around, and after Rodeman did not comply, Smyrnios moved behind Rodeman and deployed his Taser.

Smyrnios used excessive force when he deployed his Taser on Rodeman while he was standing on the patio refusing to comply with Smyrnios' orders and passively resisting. As a result of being tased, Rodeman became temporarily incapacitated and fell against a short concrete fire pit wall. Rodeman struck his back and shoulder when he fell. Smyrnios continued to utilize excessive force when he re-energized the taser on Rodeman while he was on the ground four seconds after the initial taser deployment.

A Supervisory Use of Control Report was completed by Van Arsdale, who indicated the amount of force Smyrnios used on Rodeman was not justified. Gideons, Franza, FHP Chief Eileen Powell and the Professional Compliance Director Captain David Carter all signed the report and indicated the amount of force used by Smyrnios was not justified.

Smyrnios falsified two Arrest/Notice to Appear reports and an Offense Incident Report, covering up facts that directly contradicted evidence which would have resulted in punitive actions had they been written truthfully, containing all the facts and evidence. Smyrnios

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also caused unlawful harm to another by physically arresting Rodeman two separate times, transporting and booking him to the Lee County Jail for the same incident. Smyrnios knew Rodeman was not loitering and prowling when he made the second physical arrest the following day and falsified the Arrest/Notice to Appear to include information Smyrnios knew was a lie to justify the arrest. Smyrnios attempted to justify his detainment of Rodeman by including he knew there had been several burglaries in his neighborhood. Records obtained from the Lee County Sheriff's Office showed there were no burglaries reported in the neighborhood since at least July 2020.

Smyrnios authored and signed/attested to two Arrest/Notice to Appear reports and completed an Offense Incident Report that he knew contained false statements to strengthen his case against Rodeman and justify his use of the Taser.

Smyrnios told the OIG that Rodeman was exhibiting active resistance prior to Smyrnios deploying his Taser and did not comply with his commands causing Smyrnios to re-energize Rodeman for a second cycle.

Smyrnios told the OIG he made an error in the location of the incident on the first arrest report. He wrote in his second arrest report that he did not know where Herrera lived because he does not take the word of a criminal as fact. He did not believe it was his responsibility to determine if Rodeman had permission to be on the property he alleged Rodeman was prowling on, but it was Rodeman's job to dispel any suspicion. Smyrnios did not attempt to speak with S. Herrera for the same reason.

Smyrnios told the OIG that he did not activate his MVR prior to exiting his patrol vehicle and that he did not have his body microphone on his duty belt at the time of the law enforcement encounter with Rodeman.

Based on all available evidence and sworn statements associated with this investigation:

The allegation that Trooper George Smyrnios used excessive force in the process of affecting an arrest is classified as: **SUSTAINED**

The allegation that Trooper George Smyrnios falsified records is classified as: **SUSTAINED**

The allegation that Trooper George Smyrnios failed to activate his MVR during a law enforcement encounter is classified as: **SUSTAINED**

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Statement of Accordance

This work product was prepared pursuant to Section 20.055, Florida Statutes, in accordance with the applicable Principles and Standards for Offices of Inspectors General as published by the Association of Inspectors General.

This report is intended for the use of the agency to which it was disseminated and may contain information that is exempt from disclosure under applicable law. Do not release without prior coordination with the Office of Inspector General.

I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. <u>112.532</u> and <u>112.533</u>, Florida Statutes.

Approved by:

Mike Stacy, Inspector General