

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA

VSO Case Number
210018884

IN RE: PETITION FOR RISK PROTECTION ORDER
AGAINST {Name of Respondent} [REDACTED]

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF VOLUSIA

I, {full legal name} NICKOLAS SMITH, in my position as {job title} DEPUTY SHERIFF with the {name of law enforcement officer/agency} VOLUSIA SHERIFF'S OFFICE, swear and affirm that the following facts are true and correct.

1. {Name of Respondent} [REDACTED] poses a significant danger of causing personal injury to himself/herself or others by having a firearm or any ammunition in his/her custody or control or by purchasing, possessing or receiving a firearm or any ammunition. The following specific statements, actions, or facts give rise to a reasonable fear of significant dangerous acts by the respondent:

On 10/07/2021, at approximately 1404 hours, deputies responded to the area of [REDACTED] Seville, in reference to a fight. Prior to arrival, the reporting party, [REDACTED] (D2), informed central dispatch that his neighbor, [REDACTED] (D1),

3 Additional pages are attached.

2. {Name of Witness} _____ provided the following information based on his/her personal knowledge:

_____ Additional pages are attached.

AFFIDAVIT CONTINUATION

FROM SECTION 1
PAGE 2 OF 4

pulled a gun on him while they were in a verbal altercation. Upon arrival, contact was made with [REDACTED] who advised the following:

[REDACTED] informed Deputy Darcy he was attacked by his "crazy" neighbor, [REDACTED] after they were in a verbal altercation over grass clippings being blown onto [REDACTED] property by [REDACTED]. After some more yelling, [REDACTED] stated he witnessed [REDACTED] pull his firearm, a small double stack pistol, from his pocket. [REDACTED] states [REDACTED] then swung his arm around, pointed his handgun at his stomach, and pulled the trigger. [REDACTED] advised since the gun "misfired" and did not go off, that [REDACTED] then attempted to stab him with the barrel of the gun. Deputy Darcy observed a laceration across [REDACTED] stomach consistent with being scratched by the sight of a firearm and an additional scratch on his wrist which appeared to be a defensive wound. [REDACTED] stated he was scared for his life and was terrified of what [REDACTED] might do since he had several rifles inside his home.

Deputy Darcy asked [REDACTED] if he required any medical attention for the scratch on his stomach and arm at which time he declined. [REDACTED] completed a sworn written statement advising he would like to pursue charges.

On scene during this time was [REDACTED] mother, [REDACTED] (W1), who advised she observed [REDACTED] attack her son. [REDACTED] however, is elderly and stated she was so shook from the incident that she was unable to recall any details. [REDACTED] added that [REDACTED] and [REDACTED] used to be friends but had a falling out and ever since the two couldn't bear to be around each other.

Sergeant Tucker responded to the scene and made contact with [REDACTED] via telephone at which time he agreed to come outside and speak with law enforcement about the incident. Once contact was made, [REDACTED] was secured without incident pending further investigation.

[REDACTED] was read his constitutional rights from a department issued Miranda warning card at which time he advised he understood and would like to speak with deputies. [REDACTED] then informed Deputy Darcy he had video surveillance of the entire incident, and invited units on scene inside his home to review the footage. Deputy Darcy, with the assistance of [REDACTED] observed the video surveillance which revealed the following:

On 10/07/2021, at approximately 1336 hours, [REDACTED] and [REDACTED] can be seen standing on their respective properties across the street from one another [REDACTED]. [REDACTED] and [REDACTED] enter into a verbal altercation and take turns exchanging words. [REDACTED] then enters into the roadway with his arms open wide while approaching at [REDACTED] then moves towards [REDACTED] with his hands at his side and kicks forward hitting [REDACTED] near his genitals. [REDACTED] throws one punch, turned around,

AFFIDAVIT CONTINUATION

FROM SECTION 7
PAGE 3 OF 4

and walked away back towards his property. [REDACTED] then follows after and punches [REDACTED] in the back of his head with a closed fist. The two proceed to get into a physical fight where [REDACTED] kicks [REDACTED] several times in his groin and knees while [REDACTED] continues towards him. [REDACTED] blocks the kicks and then swings his firearm, which he had in his right hand for the entirety of the incident, and hits [REDACTED]. Afterwards, [REDACTED] kicks [REDACTED] and [REDACTED] swung his gun which struck [REDACTED] in his stomach, causing the previously mentioned laceration. After the last swing by [REDACTED] [REDACTED] walks backwards onto his property and after a few more words are exchanged, the two go their separate ways.

Deputy Darcy asked [REDACTED] why he had his gun in his hand during the altercation at which time he stated he had forgotten it was in his hand. [REDACTED] further explained that he always has his gun with him while he mows his lawn in the event a water snake tries to get near him. [REDACTED] stated when [REDACTED] approached him, he instinctively grabbed his gun so it would not be left unattended on his lawn mower. Deputy Darcy then questioned [REDACTED] why he kicked him and he stated it was because he was hoping that if he kicked [REDACTED] it would make him leave him alone. Lastly, Deputy Darcy asked [REDACTED] why [REDACTED] and himself were no longer friends, and [REDACTED] stated it was because [REDACTED] was continuously and purposely mowing his lawn in a way which ruined [REDACTED] plants. This upset [REDACTED] and [REDACTED] was fired from his job as [REDACTED] landscaper.

Deputy Darcy asked [REDACTED] if he required any medical attention for the punch he received to the back of his head at which time he declined. [REDACTED] stated his knees also hurt from where he was kicked but did not require medical attention for that either. [REDACTED] completed a sworn written statement advising he would like to pursue charges.

As shown by the video surveillance, at no time during the incident does [REDACTED] raise the firearm in [REDACTED] direction. Noted by [REDACTED] who retired from the Army after 21 years as a Major, if he wanted to fire his gun that he would have. Once [REDACTED] initially struck him, [REDACTED] withdrew from the altercation and was walking away, when [REDACTED] decided to attack him unnecessarily. This action showed he was not in fear of [REDACTED] and, from the video, did not appear to be in a defensive position or appear in fear.

Deputy Darcy, while inside [REDACTED] home, observed his small silver firearm (a North American .22 caliber revolver bearing serial number R51059) on [REDACTED] side table. The firearm was subsequently collected as evidence and a Risk Protection Order was completed.

[REDACTED] was read his constitutional rights from a department issued Miranda warning card at which time he advised he understood and would like to speak with deputies. [REDACTED] was confronted about his inconsistencies from his statement to what is shown on the video at which time he stated was unaware [REDACTED] had the firearm at first. Once he was kicked and several punches were thrown, [REDACTED] saw the firearm in [REDACTED] hand which is why he attacked him. [REDACTED] also stated he could not pinpoint a time where he heard the gun "misfire". [REDACTED] stated it was after he saw the firearm that he was in fear for

