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September 3, 2014

Sheriff Jerry L. Demings
Orange County Sheriff's Office
2500 West Colonial Drive
Orlando, Florida 32804

RECEIVED

CPT. M. R. B. SEP 03 2014 *by*
OCSO
Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the May 1, 2014, incident wherein Deputy Jovani Santos-Hernandez engaged in a use of force that included the discharge of his agency firearm. This review is undertaken to determine whether or not criminal charges are an appropriate response to the use of force in this instance. This state's highest court has—in at least one instance—affirmed the criminal conviction of a law enforcement officer for what was deemed an unlawful use of force. *See State v. Cobb*, 376 So.2d 230, 232 (Fla. 1979). However, the appellate court directly governing the Ninth Judicial Circuit has questioned whether criminal charges are ever appropriate against a law enforcement officer who exercises his or her judgment in difficult and dangerous circumstances. *See State v. Kadet*, 455 So.2d 389, 390–91 (Fla. 5th DCA 1984). The issue in these instances is whether the law enforcement officer's use of deadly force was justified because he or she reasonably believed that force was necessary to prevent imminent death or great bodily harm to himself or another. Fla. Stat. § 776.012(1)(2012). A comprehensive look at the facts of this incident results in the conclusion that Deputy Jovani Santos-Hernandez' use of force does not warrant the filing of criminal charges.

On May 28, 2014, the State Attorney's Office received a Use of Force Case Investigation Report authored by Detective Corporal Duwana Pelton of the Orange County Sheriff's Office. A thorough review was conducted of this document and all other attachments/supporting documents and recordings forwarded by Detective Corporal Pelton. The following observations were noted during this review:

On May 1, 2014, at approximately 1520 hours, two OCSO deputies, Jovani Santos-Hernandez and Robert Lockman, Jr. were riding together in a white, unmarked OCSO Jeep Grand Cherokee. Deputy Santos-Hernandez was assigned to a tactical unit and Deputy Lockman was assigned to the Uniformed Patrol Division and was job-shadowing with Deputy Santos-Hernandez. According to both deputies, they were in route to East Orange County to assist other tactical units when they observed what they report as being a suspicious vehicle due to it having very dark window tint. Adding to their suspicion, they discovered the suspect vehicle was a registered rental belonging to Hertz. Based on their training and experience, they identified these characteristics as being consistent with potential criminal behavior.

In an effort to determine if the occupants of the suspect vehicle were engaging in criminal activities, the deputies decided to conduct a moving surveillance and followed the suspect vehicle to the Eurotel Inn, located at 830 Lee Road. The deputies observed the suspect vehicle pull up to the main doors and park. The front seat passenger, later identified as Ms. Michel'e Sanders, exited the vehicle and entered the lobby. The driver, later identified as Mr. Nicholas Joy, remained in the suspect vehicle and waited for Ms. Sanders to return. Upon her return, the suspect vehicle drove from the front lobby area and parked near the northeast corner of the hotel.

Once the suspect vehicle was parked, Deputy Santos-Hernandez, who was driving the OCSO vehicle, activated his emergency lighting and pulled behind the suspect vehicle in an effort to conduct a traffic stop. Almost immediately, the suspect vehicle traveled in reverse and struck the front end of the deputies' stop.

vehicle. Deputy Santos-Hernandez testified, "*I can hear Rob [Lockman] say, 'He's gonna back into us! ... If he's gonna knock us down and maybe that car is going to run over us.'*" Based on this event and the fear expressed, Deputy Santos-Hernandez exited the vehicle and fired two shots at the rear of the suspect vehicle. Approximately a second later, Deputy Lockman exited the vehicle, on the passenger side and fired four (4) shots at the suspect vehicle. The following is an excerpt from his testimony: "*I take several sidesteps away from the vehicle 'cause I don't want it to come down the side of the car and run me over... I believe he's, you know, trying to create distance to either ram the car again or try to run myself or um Deputy Santos over and in fear for my life I discharged my firearm 3 to 4 times at the vehicle.*" A majority of the event was captured on surveillance video and was thoroughly examined during the course of this review.

Based on the testimony provided by the deputies, they articulated the actions of Mr. Nicholas Joy placed them in fear of injury or great bodily harm as they perceived the suspect vehicle was attempting to back into them. During a close review of the surveillance video provided, it appears the suspect vehicle was driving away from the deputies at the time they engaged the threat by firing their weapons. Due to the dynamic nature of this event and the close proximately of the suspect vehicle to the deputies, they perceived a threat to their safety to be occurring, determined a response to this threat and responded with gunfire in an attempt to neutralize the threat. This all happened in a window of approximately three (3) to four (4) seconds.

In not pursuing criminal charges here, we leave it to the agency to decide the issue of the use of poor judgment by the deputies in this incident. However, it is instructive here and in all instances to note the words of our appellate court when reviewing law enforcement uses of force:

As an observation, we question whether a law enforcement officer should ever be, in the absence of intentional misconduct or some degree of malice, criminally responsible for using poor judgment. A police officer, under the circumstances here, is ordered into a life threatening situation. The call usually comes without warning. He does not ask for the assignment, but he is bound to protect society against the violent acts of the unlawful or mentally deranged. Now that same society seeks to punish him for using poor judgment. An officer, in such circumstances, should not be burdened with the knowledge that if he overreacts to the real or imagined dangers he may be committing a crime, especially when those who judge his actions do so with the benefit of perfect hindsight and from a position of safety.

Kadet, 455 So.2d at 390–91 (emphasis in original).

There is no evidence in this instance that Deputy Jovani Santos-Hernandez committed intentional misconduct or acted with any degree of malice. Although not completely corroborated by the video evidence, testimony by the deputy suggested he acted in self defense with force he believed reasonably necessary to prevent imminent death or great bodily harm to himself or Deputy Robert Lockman, Jr. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Jovani Santos-Hernandez are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,

Linda Drane Burdick

LDB:ramz

CC: Duwana Pelton, Orange County Sheriff's Office