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NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

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April 1, 2015

Orange County Sheriff's Office
Attn: Sheriff Jerry Demings
2500 West Colonial Drive
Orlando, FL 32804

APT. 11/15 APR 10 2015 pg
OCSD Professional Standards Division

Re: FDLE Investigation number: **OR-27-0197**

Dear Sheriff Demings:

This letter details my review of the August 29, 2014 incident wherein Deputies Kristopher Lott and Steven Berens engaged in a use of force that included the discharge of their agency firearms. 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 themselves or another. Fla. Stat. § 776.012(1)(2012). A comprehensive look at the facts of this incident results in the conclusion that Deputies Kristopher Lott and Steven Berens' use of force was justified and appropriate in this instance.

On December 22, 2014, the State Attorney's Office received a Use of Force case investigation report authored by Special Agent Bill Lee of the Florida Department of Law Enforcement (FDLE). A thorough review was conducted of this document and all attachments forwarded by Special Agent Lee. The following observations were noted during this review:

On August 29, 2014, at approximately 0950 hours, members of the Orange County Sheriff's Office Special Weapons and Tactics Team, (SWAT), conducted a narcotics search warrant on a duplex located at 1104 25th Street, Orlando, Florida. The primary subject of the investigation was Jeremy Lewis. Lewis had access to both Unit "A" and "B" of the duplex. Lewis was described as a black male with dreads and his photograph was shown during the briefing. Lewis had a criminal history of violence and possession of weapons. Patrol units had responded to reports of Lewis discharging a firearm while under the influence. He was also reported to have several firearms, including an AK47 rifle. According to case related intelligence, during the search warrant briefing, Deputy Kristopher Lott acknowledged he responded to the target residence in

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July 2014. He informed other SWAT team members he recalled the call for service was regarding shots fired from an assault rifle.

During the execution of the search warrant, Deputy Lott was assigned to the southeast corner of the target residence. Deputy Lott heard another SWAT Team member announce over the public address system twice, *“Police with a search warrant open the door now!”* (Page 5).

The distraction device was deployed on the west side of the duplex and Deputy Lott overheard the command, *“Police hands up!”* (Page 5) indicating that the SWAT Team had made entry and were clearing the residence.

While Deputy Lott was standing behind a vehicle covering the rear of the target residence, he observed a back door facing east suddenly open. He observed a black male, later identified as Jeremy Lewis, emerge from the doorway. Deputy Lott gave verbal commands of, *“Police show me your hands!”* (Page 5). Lewis stood in the doorway in a bladed stance concealing his left hand. After ordering Lewis to show his hands, Deputy Lott stated, *“the subject turned towards me and I could see a long barreled revolver in his left hand.”* (Page 5). Deputy Lott ordered Lewis to show his hands again. Lewis began to step out of the doorway with the revolver raised towards Deputy Lott. At that time, Deputy Lott perceived a deadly threat and discharged his department issued firearm several times striking Lewis. Lewis fell to the floor on his back with his feet at the threshold of the door and his head inside the residence.

Deputy Lott shouted over the radio, *“shots fired, subject down!”* (Page 5). Deputy Lott maintained his position and covered Lewis ordering him to show his hands.

Master Deputy Sheriff Steven Berens was initially positioned on the west side of the target residence until he heard gunshots. Deputy Berens ran to the southeast corner of the residence, and positioned himself behind a parked vehicle in the back yard where he observed Deputy Lott along the passenger side of the vehicle ordering Lewis not to move.

Deputies Berens and Lott were facing the rear of Unit “A”. Deputy Berens observed Lewis lying on his back in the doorway with his feet at the threshold of the door with a handgun, possibly a revolver, between his legs.

Lewis’ hands were extended above his head and he was reaching to an area that was not clearly visible. Deputy Berens thought Lewis was reaching for the AK47 that was mentioned during the initial briefing. Deputy Berens ordered Lewis several times to, *“show me your hands!”* (Page 7), but he refused. Deputy Berens was of the mindset that if Lewis were to retrieve the AK47 his life was going to end. Deputy Berens stated, *“I was in fear that if he got to that AK47, I don’t have body armor that’s going to stop that round and again I didn’t know if Deputy Lott was shot.”* (Page 8) At that time, Deputy Berens perceived a deadly threat and discharged his department issued firearm several times striking Lewis. Lewis repositioned his hands toward the front of his waistband.

Lieutenant Calvin Wacker was the Senior SWAT Team member on scene during this incident. After he heard gunshots, he ran to the rear of the residence and observed Deputies Lott and Berens ordering Lewis to stop moving. Lewis was lying in the doorway with a gun between his

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feet. As Deputy Berens covered Lieutenant Wacker, Lieutenant Wacker approached Lewis and moved the gun placing it on top of the water heater. Lieutenant Wacker asked Deputies Lott and Behrens if they were okay and then ordered them to the front of the residence.

FDLE Special Agent Lee received the autopsy report of Jeremy Lewis, authored by Joshua D. Stephany, MD, Associate Medical Examiner for the Office of the Medical Examiner District Nine. Dr. Stephany's is of the opinion that the death of Jeremy Lewis, who was shot by law enforcement and subsequently transported to the hospital, is the result of gunshot wounds.

Although there is no evidence in this instance indicating the use of poor judgment by an of the officers , 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 any deputy committed intentional misconduct or acted with any degree of malice. To the contrary, the evidence suggested they acted in self-defense with force they believed reasonably necessary to prevent imminent death or great bodily harm to themselves or fellow deputies. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputies Kristopher Lott and Steven Berens are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Jeffrey L. Ashton
State Attorney

Cc: Danny Banks, Special Agent in Charge,
Florida Department of Law Enforcement, Orlando

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