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January 5, 2016

RECEIVED

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

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OCSO

Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the July 24, 2015, incident wherein Deputy Joseph Ingerham 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 Joseph Ingerham's use of force was legally justified in this instance.

On October 26, 2015, the State Attorney's Office Investigations Unit received a Use of Force report authored by Special Agent Bill Lee of the Florida Department of Law Enforcement (FDLE). State Attorney's Office Investigator Cynthia Mills conducted a thorough review of this document and all attachments forwarded by Special Agent Lee. She also reviewed all related investigative material associated with Orange County Sheriff's Office case number 15-65716 available in the State Attorney's Office Case Management system. State Attorney's Office Chief Investigator Eric Edwards conducted a secondary review. The following facts were noted and excerpted from the report authored by Special Agent Lee:

On July 24, 2015, the Orange County Sheriff's Office (OCSO) requested the Florida Department of Law Enforcement (FDLE) conduct an investigation into the use of deadly force by Deputy Sheriff Joseph Ingerham... The incident occurred at the intersection of Hoffner Avenue and Conway Road... This investigation revealed that Belle Isle Police Department (BIPD) Officer Brandon Cornwell was flagged down by Alberto Cuarezma, a victim of an armed robbery (Emphasis added), who pointed out a Nissan Altima that was being driven by Elvin Andino with Tania Santos as the passenger. Officer Cornwell followed the

Nissan, until OCSO Deputy Dave Scroggins arrived to assist him. Andino attempted to elude law enforcement officers and was pursued by members of the Orange County Sheriff's Office and Belle Isle Police Department.

During the pursuit, Deputy Ingerham positioned his patrol vehicle at the intersection of Hoffner Avenue and Conway Road to stop eastbound traffic on Hoffner Avenue. As the Nissan attempted to turn west onto Hoffner Avenue, from Conway Road, Deputy Ingerham discharged his handgun at Andino and Santos, who were in the vehicle. The Nissan continued to flee west on Hoffner Avenue, ...

On July 30, 2015, Deputy Joseph Ingerham provided a sworn statement to investigators. He explained his involvement with the aforementioned vehicle pursuit and informed, "... **I got to get that intersection shut down before somebody gets killed in the intersection ... My goal at this point is to shut that thing down so nobody gets hit.**" (Emphasis added)

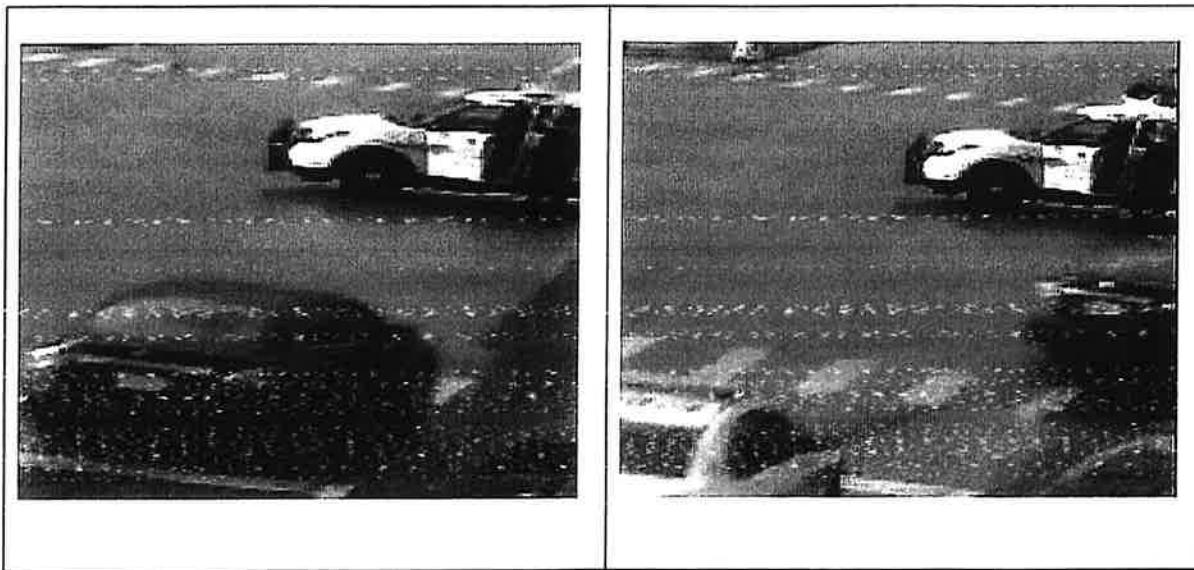
Deputy Ingerham positioned his marked patrol vehicle, with his emergency lights activated, facing east at this intersection. Deputy Ingerham stated, "As I was getting out, and I am doing a quick survey, I'm looking at the car, and it's, it's coming toward me extremely fast, and it is already into the turn lane. ... At the same time that I am coming out, I started pulling my gun because he is like coming right at me." He continued stating, "I was looking at him and the car was closing so fast, I had my gun up and I am like he's gonna to hit me, I can't go left cause I don't know if he's going to turn." Deputy Ingerham estimated the Nissan was traveling about sixty miles per hour. Deputy Ingerham advised "... I was looking right at the driver when I shot..." (Emphasis added)



Deputy Ingram stated, "It all went so fast, it was like done, I shot my first round and I saw, I didn't see where it actually hit, but, I saw what looked like a white flash or a mark on the hood, it looked like it was directly in front of the steering wheel. At that point, the car was almost on me." (Emphasis added)



When asked why he discharged his firearm, Deputy Ingerham stated, *"I thought they were going to hit me, I didn't know. I didn't have any cover to go behind, anything to put between me and that car, at that point. The car was coming right at me when I shot. ... He probably would have hit me, killed me. ... I felt I had to do something, or I am going to be hit."* (Emphasis added)



NOTE: Deputy Ingerham discharged his weapon toward the suspect vehicle five (5) times, striking passenger Tania Santos once in her left shoulder. The investigation determined, *"... Two projectiles entered through the driver side front window ... one projectile entered through the driver side rear window ... one projectile entered the trunk ..."* The path of travel of the fifth (5th) round was undetermined.

Deputy Ingerham was knowingly responding to assist other law enforcement officers engaged in a vehicle pursuit of armed robbery suspects. He assisted by attempting to "shut down" the intersection of Hoffner Avenue and Conway Road. Deputy Ingerham's decision placed him directly in the path of travel of the fleeing suspect vehicle. Upon exiting his fully marked patrol vehicle, Deputy Ingerham discharged his issued firearm, "...looking right at the driver..." and struck the front seat passenger.

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Given the totality of the circumstances and the information gleaned during the investigation, it is clear that *Deputy Ingerham's actions* placed him in a location where he would have reasonably been in fear of death and/or great bodily harm to himself. Though the actions of Deputy Ingerham are not criminal in nature, they should be examined closely during the Orange County Sheriff's Office administrative review process.

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.

There is no evidence in this instance that Deputy Joseph Ingerham committed intentional misconduct or acted with any degree of malice. To the contrary, the evidence suggested he acted in self defense with force he believed reasonably necessary to prevent imminent death or great bodily harm to himself, fellow officers, and nearby civilians. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Officer Joseph Ingerham are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: Special Agent Bill Lee, Florida Department of Law Enforcement

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