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ORANGE AND OSCEOLA COUNTY, FLORIDA

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February 4, 2016

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

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OCSO
Professional Standards Division
Office of the Sheriff

Dear Sheriff Demings:

This letter details my review of the August 31, 2015, incident wherein Corporal Stephen Michael Wahl 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, §776.05 and §776.06 (2016). A comprehensive look at the facts of this incident results in the conclusion that Corporal Stephen Michael Wahl's use of force was justified in this instance.

On December 29, 2015, the State Attorney's Office received a Use of Force report authored by Special Agent (SA) David Hubbard of the Florida Department of Law Enforcement (FDLE). State Attorney's Office Chief Investigator Eric Edwards conducted a thorough review of this document and of the attachments forwarded by SA Hubbard. Chief Investigator Edwards also reviewed all related investigative material associated with Orange County Sheriff's Office case number 15-077736 available in the State Attorney's Office Case Management system. The following excerpts are taken from the FDLE investigative report authored by SA Hubbard:

On August 31, 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 OCSO Corporal Stephen Wahl, which resulted in life-threatening injuries to Armando Montalvo. ...

*On August 31, 2015, at approximately 1340 hours, WWE Performance Center General Manager, David Bailey, reported to Sergeant Clay McCullough that a subject, identified as Armando Montalvo, was **armed with a knife and attempting to enter the WWE Performance Center, located at 5055 Forsyth Commerce Road,***

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*Orlando (also referred to as "the center"). At the direction of Sergeant McCullough, Corporal Wahl and Detective David Richardson responded to the WWE Performance Center. Upon arrival, they encountered Montalvo and ordered him several times to get on the ground. **Montalvo refused to comply with the commands and charged at Corporal Wahl in a hostile manner.** Corporal Wahl responded to the threat and fired one round at Montalvo from his agency issued firearm striking Montalvo. The Orange County Fire Rescue Department responded and transported Montalvo to Orlando Regional Medical Center for his injuries. (Emphasis added)*

On August 13, 2015, Corporal Stephen Wahl was acting in his official capacity, as a sworn law enforcement officer, when he was called upon to respond to the aforementioned address. Due to information provided by Mr. David Bailey to Sergeant Edward Clay McCullough, via a cellular telephone call, responding officers were informed Mr. Armando Montalvo was armed with a **hunting knife/switchblade** and that Mr. Montalvo was attempting to **beat in the door** of the business. (Emphasis added)

Note: Many of the responding deputies, to include Corporal Wahl, purportedly had knowledge of Mr. Montalvo's previous aggressive/suspicious behaviors at the same address.

Upon arrival at the scene, Corporal Wahl and Deputy David Richardson made contact with Mr. Montalvo and gave verbal commands to Mr. Montalvo, with which he did not comply. Mr. Montalvo's behavior was captured by several cellular telephone videos, collected from witnesses, as well as by a stationary surveillance camera. The following images were taken from the video evidence collected by the Florida Department of Law Enforcement.



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Corporal Wahl and Deputy David Richardson, while wearing issued tactical equipment making them clearly identifiable as law enforcement officers, positioned themselves in what appears to have been a reasonably safe distance from Mr. Montalvo.



On August 31, 2015, Deputy Richardson provided investigators with a sworn recorded statement. During the interview he reported, *"... That's when he [Mr. Montalvo] walked back, grabbed something. Two handfuls of pine bark and I don't know what else he had in his hands or could have had in in his hands."* While describing concerns caused by Mr. Montalvo's actions, Deputy Richardson stated, *"... I thought for sure that one of us was either gonna get cut or he was gonna try to grab our gun or, or both... I had no idea what he picked up... He [Mr. Montalvo] maintained a clenched fist with both hands when he grabbed the stuff..."*

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On August 9, 2015, Corporal Stephen Wahl provided investigators with a sworn recorded statement. During the course of the interview Corporal Wahl recalled, "... I'm getting updates that he's [Mr. Montalvo] there. He's banging on the door, he has a knife. ... I'm ordering him down ... I remember backing up, because I'm trying to keep distance. ... I got scared, was like when he went to the bushes and he squatted down and he grabbed something." Corporal Wahl explained his recollection as Mr. Montalvo charged towards him by stating, "... I started focusing more on center mass ... I couldn't exactly see what it was ... I keep on thinking, I don't know what the hell that is, but that's gonna hurt ... He's coming at me ... He's moving at me. ... I remember thinking, this is gonna hurt, and he's gonna kill me." Corporal Wahl recalled, "... I'm thinking, well is he gonna stab me, is he gonna hit me ... is he gonna fake and come up and try and grab my gun ... He just got so close ... I fired one shot." Corporal Wahl was asked why he used deadly force and he responded by stating, "Because I thought he was gonna stab me in the head with a rock, or shank or whatever the sharp object was."

On October 13, 2015, Mr. Montalvo provided a sworn statement to investigators. During the statement, Mr. Montalvo stated his intentions were, "... I was just kinda like showing off ... I wanted to be like a wrestler ... keep showing off ... My intentions weren't to like, hurt anybody. I was just putting on a show." Mr. Montalvo explained, "I thought they were gonna tase me ... for show."

Note: Several eye witnesses were interviewed on August 31, 2015. As a result of those interviews, it was established some of the employees inside the business determined Mr. Montalvo was striking the front door with keys and not with a knife. From the evidence provided, it appears that this information was not conveyed to the responding law enforcement officers prior to their arrival on scene.

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An after the fact review of the video surveillance makes it clear that Mr. Montalvo was not armed with a knife or other deadly weapon; however, because of the persistent and aggressive manner in which Mr. Montalvo charged at him, Corporal Wahl could have reasonably believed that Mr. Montalvo had the imminent ability to take his firearm from him should he get in a position to tackle him. It also appears from the video, that Corporal Wahl took evasive action expecting Deputy Richardson to intervene with his Taser. When that did not occur, Corporal Wahl was left with no other option than to resort to the use of his weapon. It is the opinion of this writer that Corporal Wahl's use of deadly force was reasonable, and therefore justified, under the circumstances.

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.

There is no evidence that Corporal Stephen Michael Wahl committed intentional misconduct or acted with any degree of malice. To the contrary, the evidence suggests he acted in self defense with force he believed reasonably necessary to prevent imminent death or great bodily harm to himself. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Corporal Stephen Michael Wahl 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 David Hubbard, Florida Department of Law Enforcement

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