



JEFFREY L. ASHTON  
STATE ATTORNEY  
NINTH JUDICIAL CIRCUIT  
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK  
CHIEF ASSISTANT STATE ATTORNEY

RICHARD L. WALLSH  
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

December 12, 2016

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

RECEIVED  
DEC 13 2016  
OCSO  
Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the April 27, 2016, incident wherein Deputy John Sanchez 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 Deputy John Sanchez' use of force was legally justified in this instance.

On September 14, 2016, the Office of the State Attorney for the Ninth Judicial Circuit received a Use of Force investigative package, for purpose of review, from the Florida Department of Law Enforcement (FDLE). State Attorney's Office Investigator Patrick Schneider conducted a thorough preliminary review of all applicable reports and attachments provided by FDLE. A thorough review of all case/charging documents submitted by Orange County Sheriff's Office, regarding the criminal complaint filed against Mr. Joseph Heid was also conducted. State Attorney's Office Chief Investigator Eric Edwards conducted a secondary review. The following was noted and excerpted from the FDLE report authored by Special Agent David Hubbard:

*On April 27, 2016, 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 Corporal Mark Rutkoski which resulted in injuries to Joseph Heid. The incident occurred at 9549 Holbrook Drive in Orlando, Florida.*

*This investigation revealed that on April 26, 2016, at approximately 2212 hours, Deputy Kramer and Deputy Sanchez arrived at 9549 Holbrook Drive, Orlando, to investigate a **domestic battery** in which Joseph Heid battered his wife, Michelle Heid and her son, Matthew Cowras. During the investigation Joseph Heid*

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*entered the residence and refused to exit. Corporal Rutkoski, Deputy Best and Deputy Lewis arrived on scene to provide assistance. Corporal Rutkoski and Deputy Best posted at the front of the residence and Deputy Sanchez, Deputy Kramer and Deputy Lewis took a position at the rear of the residence.*

*At approximately 2338 hours, Joseph Heid (hereinafter Heid) exited the rear of the residence with a rifle and exchanged gunfire with Deputy Sanchez, Deputy Kramer and Deputy Lewis. Heid retreated inside the residence and exited the front of the residence where Deputy Rutkoski and Deputy Best fired at Heid. During the incident, Heid sustained multiple gunshot wounds that were not life-threatening and was transported to Orlando Regional Medical Center (ORMC) for medical treatment. (Emphasis added)*

On April 26, 2016, members of the Orange County Sheriff's Office responded to 9549 Holbrook Drive regarding a domestic disturbance related call for service. During the course of their investigation the suspect, Mr. Heid, was observed, by Deputy Sanchez, hiding in the back yard. Mr. Heid reportedly charged towards Deputy Sanchez yelling, "*Shoot me, shoot me!*", "*I'm gonna kill you!*", and "*You better shoot me!*" (Emphasis added) Failing to comply with verbal commands, Mr. Heid walked back into his house.

The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*At that time, Deputy Sanchez observed Deputies Kramer and Lewis entered the Heid's back yard from the opposite side of the house. Deputy Sanchez stated that shortly thereafter, he observed Heid's upper body and the front end of a rifle appear in the back doorway. Deputy Sanchez stated that he immediately yelled "Gun!" Deputy Sanchez stated that he observed Mr. Heid pointing the rifle in the direction of Deputies Kramer and Lewis. Deputy Sanchez stated he was afraid for Deputies Kramer's and Lewis' safety, so he fired approximately four (4) rounds from his issued weapon in the direction of Mr. Heid. Deputy Sanchez stated that he did observe Mr. Heid fire his rifle, but he was unsure if he or Mr. Heid had fired first. Deputy Sanchez stated that he saw Mr. Heid turn the rifle in his direction ... (Emphasis added)*

On May 4, 2016, Deputy Sanchez provided a sworn recorded statement to investigators. Deputy Sanchez explained to the investigators why he fired his weapon, "*It just happened so quick. ... He [Mr. Heid] came out and his rifle was pointed at where I last saw them, and I was afraid for them [Deputy Kramer and Deputy Lewis]. I was afraid for myself ... that's why I did it. Just in fear for their safety and in fear for my safety.*" (Emphasis added)

On May 4, 2016, Deputy Kramer provided a sworn recorded statement to investigators. Deputy Kramer explained he felt Mr. Heid was, "*trying to kill Deputy Sanchez*", therefore he fired multiple rounds at "*the silhouette*" of Mr. Heid. (Emphasis added)

On May 4, 2016, Deputy Lewis provided a sworn recorded statement to investigators. Deputy Lewis explained why he discharged his weapon by stating, "*I believe the shot was directed towards Deputy Sanchez, and I thought he [Mr. Heid] was trying to kill Deputy Sanchez.*" (Emphasis added)

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The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*Deputy Best advised that he then retreated to the front doorway where Corporal Rutkoski joined him. Deputy Best stated that he then heard an exchange of gunfire in the rear of the residence. He stated that it sounded like the shots were coming from two different types of guns. Deputy Best stated that since he knew the deputies were only carrying handguns on this scene, he believed "the suspect was firing at the deputies." He stated that during the initial gunfire, he and Corporal Rutkoski retreated to the back of a patrol vehicle parked in front of the residence for cover. Deputy Best recalled that soon after the initial gunfire ceased, Mr. Heid exited the front door of his residence and appeared to throw an unknown object toward them. Deputy Best stated that Corporal Rutkoski yelled commands at Mr. Heid; however, he did not recall what the actual commands were. Deputy Best stated that Mr. Heid then began moving his hands to his side and then to the center of his waist. ...*

On May 4, 2016, Deputy Best provided a sworn recorded statement to investigators. During the interview Deputy Best reported he initially believed the object thrown by Mr. Heid may have been a grenade. He also stated, *"I was in fear that he was going to brandish and shoot, brandish a weapon and shoot me. I was fear for my safety and Deputy Rutkoski's safety, believing this subject had already fired shots at the deputies in the back yard and I discharged my firearm until he [Mr. Heid] went to the ground."* (Emphasis added)

On May 4, 2016, Corporal Rutkoski provided a sworn recorded statement to investigators. Corporal Rutkoski explained, *"So I started yelling, giving him [Mr. Heid] verbal commands, he is not listening and he appears he is still coming towards us. I thought he still had a firearm, because at that point ... no mention of him dropping a firearm. I know that he has plenty of firearms in there. I was in fear for my life and that is when I started discharging my rounds."* (Emphasis added)

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.

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There is no evidence that Deputy John Sanchez 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 or other officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy John Sanchez are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: David Hubbard, Florida Department of Law Enforcement

0000071



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Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the April 27, 2016, incident wherein Deputy Joseph Kramer 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 Deputy Joseph Kramer's use of force was legally justified in this instance.

On September 14, 2016, the Office of the State Attorney for the Ninth Judicial Circuit received a Use of Force investigative package, for purpose of review, from the Florida Department of Law Enforcement (FDLE). State Attorney's Office Investigator Patrick Schneider conducted a thorough preliminary review of all applicable reports and attachments provided by FDLE. A thorough review of all case/charging documents submitted by Orange County Sheriff's Office, regarding the criminal complaint filed against Mr. Joseph Heid was also conducted. State Attorney's Office Chief Investigator Eric Edwards conducted a secondary review. The following was noted and excerpted from the FDLE report authored by Special Agent David Hubbard:

*On April 27, 2016, 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 Corporal Mark Rutkoski which resulted in injuries to Joseph Heid. The incident occurred at 9549 Holbrook Drive in Orlando, Florida.*

*This investigation revealed that on April 26, 2016, at approximately 2212 hours, Deputy Kramer and Deputy Sanchez arrived at 9549 Holbrook Drive, Orlando, to investigate a domestic battery in which Joseph Heid battered his wife, Michelle Heid and her son, Matthew Cowras. During the investigation Joseph Heid*

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*entered the residence and refused to exit. Corporal Rutkoski, Deputy Best and Deputy Lewis arrived on scene to provide assistance. Corporal Rutkoski and Deputy Best posted at the front of the residence and Deputy Sanchez, Deputy Kramer and Deputy Lewis took a position at the rear of the residence.*

*At approximately 2338 hours, Joseph Heid (hereinafter Heid) exited the rear of the residence with a rifle and exchanged gunfire with Deputy Sanchez, Deputy Kramer and Deputy Lewis. Heid retreated inside the residence and exited the front of the residence where Deputy Rutkoski and Deputy Best fired at Heid. During the incident, Heid sustained multiple gunshot wounds that were not life-threatening and was transported to Orlando Regional Medical Center (ORMC) for medical treatment. (Emphasis added)*

On April 26, 2016, members of the Orange County Sheriff's Office responded to 9549 Holbrook Drive regarding a domestic disturbance related call for service. During the course of their investigation the suspect, Mr. Heid, was observed, by Deputy Sanchez, hiding in the back yard. Mr. Heid reportedly charged towards Deputy Sanchez yelling, "*Shoot me, shoot me!*", "*I'm gonna kill you!*", and "*You better shoot me!*" (Emphasis added) Failing to comply with verbal commands, Mr. Heid walked back into his house.

The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*At that time, Deputy Sanchez observed Deputies Kramer and Lewis entered the Heid's back yard from the opposite side of the house. Deputy Sanchez stated that shortly thereafter, he observed Heid's upper body and the front end of a rifle appear in the back doorway. Deputy Sanchez stated that he immediately yelled "Gun!" Deputy Sanchez stated that he observed Mr. Heid pointing the rifle in the direction of Deputies Kramer and Lewis. Deputy Sanchez stated he was afraid for Deputies Kramer's and Lewis' safety, so he fired approximately four (4) rounds from his issued weapon in the direction of Mr. Heid. Deputy Sanchez stated that he did observe Mr. Heid fire his rifle, but he was unsure if he or Mr. Heid had fired first. Deputy Sanchez stated that he saw Mr. Heid turn the rifle in his direction ... (Emphasis added)*

On May 4, 2016, Deputy Sanchez provided a sworn recorded statement to investigators. Deputy Sanchez explained to the investigators why he fired his weapon, "*It just happened so quick. ... He [Mr. Heid] came out and his rifle was pointed at where I last saw them, and I was afraid for them [Deputy Kramer and Deputy Lewis]. I was afraid for myself ... that's why I did it. Just in fear for their safety and in fear for my safety.*" (Emphasis added)

On May 4, 2016, Deputy Kramer provided a sworn recorded statement to investigators. Deputy Kramer explained he felt Mr. Heid was, "*trying to kill Deputy Sanchez*", therefore he fired multiple rounds at "*the silhouette*" of Mr. Heid. (Emphasis added)

On May 4, 2016, Deputy Lewis provided a sworn recorded statement to investigators. Deputy Lewis explained why he discharged his weapon by stating, "*I believe the shot was directed towards Deputy Sanchez, and I thought he [Mr. Heid] was trying to kill Deputy Sanchez.*" (Emphasis added)

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The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*Deputy Best advised that he then retreated to the front doorway where Corporal Rutkoski joined him. Deputy Best stated that he then heard an exchange of gunfire in the rear of the residence. He stated that it sounded like the shots were coming from two different types of guns. Deputy Best stated that since he knew the deputies were only carrying handguns on this scene, he believed "the suspect was firing at the deputies." He stated that during the initial gunfire, he and Corporal Rutkoski retreated to the back of a patrol vehicle parked in front of the residence for cover. Deputy Best recalled that soon after the initial gunfire ceased, Mr. Heid exited the front door of his residence and appeared to throw an unknown object toward them. Deputy Best stated that Corporal Rutkoski yelled commands at Mr. Heid; however, he did not recall what the actual commands were. Deputy Best stated that Mr. Heid then began moving his hands to his side and then to the center of his waist. ...*

On May 4, 2016, Deputy Best provided a sworn recorded statement to investigators. During the interview Deputy Best reported he initially believed the object thrown by Mr. Heid may have been a grenade. He also stated, *"I was in fear that he was going to brandish and shoot, brandish a weapon and shoot me. I was fear for my safety and Deputy Rutkoski's safety, believing this subject had already fired shots at the deputies in the back yard and I discharged my firearm until he [Mr. Heid] went to the ground."* (Emphasis added)

On May 4, 2016, Corporal Rutkoski provided a sworn recorded statement to investigators. Corporal Rutkoski explained, *"So I started yelling, giving him [Mr. Heid] verbal commands, he is not listening and he appears he is still coming towards us. I thought he still had a firearm, because at that point ... no mention of him dropping a firearm. I know that he has plenty of firearms in there. I was in fear for my life and that is when I started discharging my rounds."* (Emphasis added)

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.

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There is no evidence that Deputy Joseph Kramer 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 or other officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Joseph Kramer are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: David Hubbard, Florida Department of Law Enforcement

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STATE ATTORNEY  
NINTH JUDICIAL CIRCUIT  
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Dear Sheriff Demings:

This letter details my review of the April 27, 2016, incident wherein Deputy Patrick Lewis 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 Deputy Patrick Lewis' use of force was legally justified in this instance.

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*On April 27, 2016, 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 Corporal Mark Rutkoski which resulted in injuries to Joseph Heid. The incident occurred at 9549 Holbrook Drive in Orlando, Florida.*

*This investigation revealed that on April 26, 2016, at approximately 2212 hours, Deputy Kramer and Deputy Sanchez arrived at 9549 Holbrook Drive, Orlando, to investigate a domestic battery in which Joseph Heid battered his wife, Michelle Heid and her son, Matthew Cowras. During the investigation Joseph Heid*

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*entered the residence and refused to exit. Corporal Rutkoski, Deputy Best and Deputy Lewis arrived on scene to provide assistance. Corporal Rutkoski and Deputy Best posted at the front of the residence and Deputy Sanchez, Deputy Kramer and Deputy Lewis took a position at the rear of the residence.*

*At approximately 2338 hours, Joseph Heid (hereinafter Heid) exited the rear of the residence with a rifle and exchanged gunfire with Deputy Sanchez, Deputy Kramer and Deputy Lewis. Heid retreated inside the residence and exited the front of the residence where Deputy Rutkoski and Deputy Best fired at Heid. During the incident, Heid sustained multiple gunshot wounds that were not life-threatening and was transported to Orlando Regional Medical Center (ORMC) for medical treatment. (Emphasis added)*

On April 26, 2016, members of the Orange County Sheriff's Office responded to 9549 Holbrook Drive regarding a domestic disturbance related call for service. During the course of their investigation the suspect, Mr. Heid, was observed, by Deputy Sanchez, hiding in the back yard. Mr. Heid reportedly charged towards Deputy Sanchez yelling, "*Shoot me, shoot me!*", "*I'm gonna kill you!*", and "*You better shoot me!*" (Emphasis added) Failing to comply with verbal commands, Mr. Heid walked back into his house.

The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*At that time, Deputy Sanchez observed Deputies Kramer and Lewis entered the Heid's back yard from the opposite side of the house. Deputy Sanchez stated that shortly thereafter, he observed Heid's upper body and the front end of a rifle appear in the back doorway. Deputy Sanchez stated that he immediately yelled "Gun!" Deputy Sanchez stated that he observed Mr. Heid pointing the rifle in the direction of Deputies Kramer and Lewis. Deputy Sanchez stated he was afraid for Deputies Kramer's and Lewis' safety, so he fired approximately four (4) rounds from his issued weapon in the direction of Mr. Heid. Deputy Sanchez stated that he did observe Mr. Heid fire his rifle, but he was unsure if he or Mr. Heid had fired first. Deputy Sanchez stated that he saw Mr. Heid turn the rifle in his direction ... (Emphasis added)*

On May 4, 2016, Deputy Sanchez provided a sworn recorded statement to investigators. Deputy Sanchez explained to the investigators why he fired his weapon, "*It just happened so quick. ... He [Mr. Heid] came out and his rifle was pointed at where I last saw them, and I was afraid for them [Deputy Kramer and Deputy Lewis]. I was afraid for myself ... that's why I did it. Just in fear for their safety and in fear for my safety.*" (Emphasis added)

On May 4, 2016, Deputy Kramer provided a sworn recorded statement to investigators. Deputy Kramer explained he felt Mr. Heid was, "*trying to kill Deputy Sanchez*", therefore he fired multiple rounds at "*the silhouette*" of Mr. Heid. (Emphasis added)

On May 4, 2016, Deputy Lewis provided a sworn recorded statement to investigators. Deputy Lewis explained why he discharged his weapon by stating, "*I believe the shot was directed towards Deputy Sanchez, and I thought he [Mr. Heid] was trying to kill Deputy Sanchez.*" (Emphasis added)

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The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*Deputy Best advised that he then retreated to the front doorway where Corporal Rutkoski joined him. Deputy Best stated that he then heard an exchange of gunfire in the rear of the residence. He stated that it sounded like the shots were coming from two different types of guns. Deputy Best stated that since he knew the deputies were only carrying handguns on this scene, he believed "the suspect was firing at the deputies." He stated that during the initial gunfire, he and Corporal Rutkoski retreated to the back of a patrol vehicle parked in front of the residence for cover. Deputy Best recalled that soon after the initial gunfire ceased, Mr. Heid exited the front door of his residence and appeared to throw an unknown object toward them. Deputy Best stated that Corporal Rutkoski yelled commands at Mr. Heid; however, he did not recall what the actual commands were. Deputy Best stated that Mr. Heid then began moving his hands to his side and then to the center of his waist. ...*

On May 4, 2016, Deputy Best provided a sworn recorded statement to investigators. During the interview Deputy Best reported he initially believed the object thrown by Mr. Heid may have been a grenade. He also stated, *"I was in fear that he was going to brandish and shoot, brandish a weapon and shoot me. I was fear for my safety and Deputy Rutkoski's safety, believing this subject had already fired shots at the deputies in the back yard and I discharged my firearm until he [Mr. Heid] went to the ground."* (Emphasis added)

On May 4, 2016, Corporal Rutkoski provided a sworn recorded statement to investigators. Corporal Rutkoski explained, *"So I started yelling, giving him [Mr. Heid] verbal commands, he is not listening and he appears he is still coming towards us. I thought he still had a firearm, because at that point ... no mention of him dropping a firearm. I know that he has plenty of firearms in there. I was in fear for my life and that is when I started discharging my rounds."* (Emphasis added)

It is instructive here and in all instances to note the words of our appellate court when reviewing law enforcement uses of force:

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There is no evidence that Deputy Patrick Lewis 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 or other officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Patrick Lewis are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,

A handwritten signature in black ink, reading "Linda Drane Burdick". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

LDB:amz

CC: David Hubbard, Florida Department of Law Enforcement

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JEFFREY L. ASHTON  
STATE ATTORNEY  
NINTH JUDICIAL CIRCUIT  
ORANGE AND OSCEOLA COUNTY, FLORIDA

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*This investigation revealed that on April 26, 2016, at approximately 2212 hours, Deputy Kramer and Deputy Sanchez arrived at 9549 Holbrook Drive, Orlando, to investigate a domestic battery in which Joseph Heid battered his wife, Michelle Heid and her son, Matthew Cowras. During the investigation Joseph Heid*

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*At approximately 2338 hours, Joseph Heid (hereinafter Heid) exited the rear of the residence with a rifle and exchanged gunfire with Deputy Sanchez, Deputy Kramer and Deputy Lewis. Heid retreated inside the residence and exited the front of the residence where Deputy Rutkoski and Deputy Best fired at Heid. During the incident, Heid sustained multiple gunshot wounds that were not life-threatening and was transported to Orlando Regional Medical Center (ORMC) for medical treatment. (Emphasis added)*

On April 26, 2016, members of the Orange County Sheriff's Office responded to 9549 Holbrook Drive regarding a domestic disturbance related call for service. During the course of their investigation the suspect, Mr. Heid, was observed, by Deputy Sanchez, hiding in the back yard. Mr. Heid reportedly charged towards Deputy Sanchez yelling, "*Shoot me, shoot me!*", "*I'm gonna kill you!*", and "*You better shoot me!*" (Emphasis added) Failing to comply with verbal commands, Mr. Heid walked back into his house.

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On May 4, 2016, Deputy Sanchez provided a sworn recorded statement to investigators. Deputy Sanchez explained to the investigators why he fired his weapon, "*It just happened so quick. ... He [Mr. Heid] came out and his rifle was pointed at where I last saw them, and I was afraid for them [Deputy Kramer and Deputy Lewis]. I was afraid for myself ... that's why I did it. Just in fear for their safety and in fear for my safety.*" (Emphasis added)

On May 4, 2016, Deputy Kramer provided a sworn recorded statement to investigators. Deputy Kramer explained he felt Mr. Heid was, "*trying to kill Deputy Sanchez*", therefore he fired multiple rounds at "*the silhouette*" of Mr. Heid. (Emphasis added)

On May 4, 2016, Deputy Lewis provided a sworn recorded statement to investigators. Deputy Lewis explained why he discharged his weapon by stating, "*I believe the shot was directed towards Deputy Sanchez, and I thought he [Mr. Heid] was trying to kill Deputy Sanchez.*" (Emphasis added)

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The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*Deputy Best advised that he then retreated to the front doorway where Corporal Rutkoski joined him. Deputy Best stated that he then heard an exchange of gunfire in the rear of the residence. He stated that it sounded like the shots were coming from two different types of guns. Deputy Best stated that since he knew the deputies were only carrying handguns on this scene, he believed "the suspect was firing at the deputies." He stated that during the initial gunfire, he and Corporal Rutkoski retreated to the back of a patrol vehicle parked in front of the residence for cover. Deputy Best recalled that soon after the initial gunfire ceased, Mr. Heid exited the front door of his residence and appeared to throw an unknown object toward them. Deputy Best stated that Corporal Rutkoski yelled commands at Mr. Heid; however, he did not recall what the actual commands were. Deputy Best stated that Mr. Heid then began moving his hands to his side and then to the center of his waist. ...*

On May 4, 2016, Deputy Best provided a sworn recorded statement to investigators. During the interview Deputy Best reported he initially believed the object thrown by Mr. Heid may have been a grenade. He also stated, *"I was in fear that he was going to brandish and shoot, brandish a weapon and shoot me. I was fear for my safety and Deputy Rutkoski's safety, believing this subject had already fired shots at the deputies in the back yard and I discharged my firearm until he [Mr. Heid] went to the ground."* (Emphasis added)

On May 4, 2016, Corporal Rutkoski provided a sworn recorded statement to investigators. Corporal Rutkoski explained, *"So I started yelling, giving him [Mr. Heid] verbal commands, he is not listening and he appears he is still coming towards us. I thought he still had a firearm, because at that point ... no mention of him dropping a firearm. I know that he has plenty of firearms in there. I was in fear for my life and that is when I started discharging my rounds."* (Emphasis added)

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.

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There is no evidence that Deputy Forrest Best 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 or other officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Forrest Best are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: David Hubbard, Florida Department of Law Enforcement

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JEFFREY L. ASHTON  
STATE ATTORNEY  
NINTH JUDICIAL CIRCUIT  
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK  
CHIEF ASSISTANT STATE ATTORNEY

RICHARD L. WALLSH  
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

December 12, 2016

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

RECEIVED

DB 12/13/2016 SM  
OCSO  
Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the April 27, 2016, incident wherein Corporal Mark Rutkoski 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 Mark Rutkoski's use of force was legally justified in this instance.

On September 14, 2016, the Office of the State Attorney for the Ninth Judicial Circuit received a Use of Force investigative package, for purpose of review, from the Florida Department of Law Enforcement (FDLE). State Attorney's Office Investigator Patrick Schneider conducted a thorough preliminary review of all applicable reports and attachments provided by FDLE. A thorough review of all case/charging documents submitted by Orange County Sheriff's Office, regarding the criminal complaint filed against Mr. Joseph Heid was also conducted. State Attorney's Office Chief Investigator Eric Edwards conducted a secondary review. The following was noted and excerpted from the FDLE report authored by Special Agent David Hubbard:

*On April 27, 2016, 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 Corporal Mark Rutkoski which resulted in injuries to Joseph Heid. The incident occurred at 9549 Holbrook Drive in Orlando, Florida.*

*This investigation revealed that on April 26, 2016, at approximately 2212 hours, Deputy Kramer and Deputy Sanchez arrived at 9549 Holbrook Drive, Orlando, to investigate a domestic battery in which Joseph Heid battered his wife, Michelle Heid and her son, Matthew Cowras. During the investigation Joseph Heid*

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*entered the residence and refused to exit. Corporal Rutkoski, Deputy Best and Deputy Lewis arrived on scene to provide assistance. Corporal Rutkoski and Deputy Best posted at the front of the residence and Deputy Sanchez, Deputy Kramer and Deputy Lewis took a position at the rear of the residence.*

*At approximately 2338 hours, Joseph Heid (hereinafter Heid) exited the rear of the residence with a rifle and exchanged gunfire with Deputy Sanchez, Deputy Kramer and Deputy Lewis. Heid retreated inside the residence and exited the front of the residence where Deputy Rutkoski and Deputy Best fired at Heid. During the incident, Heid sustained multiple gunshot wounds that were not life-threatening and was transported to Orlando Regional Medical Center (ORMC) for medical treatment. (Emphasis added)*

On April 26, 2016, members of the Orange County Sheriff's Office responded to 9549 Holbrook Drive regarding a domestic disturbance related call for service. During the course of their investigation the suspect, Mr. Heid, was observed, by Deputy Sanchez, hiding in the back yard. Mr. Heid reportedly charged towards Deputy Sanchez yelling, "**Shoot me, shoot me!**", "**I'm gonna kill you!**", and "**You better shoot me!**" (Emphasis added) Failing to comply with verbal commands, Mr. Heid walked back into his house.

The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*At that time, Deputy Sanchez observed Deputies Kramer and Lewis entered the Heid's back yard from the opposite side of the house. Deputy Sanchez stated that shortly thereafter, he observed Heid's upper body and the front end of a rifle appear in the back doorway. Deputy Sanchez stated that he immediately yelled "Gun!" Deputy Sanchez stated that he observed Mr. Heid pointing the rifle in the direction of Deputies Kramer and Lewis. Deputy Sanchez stated he was afraid for Deputies Kramer's and Lewis' safety, so he fired approximately four (4) rounds from his issued weapon in the direction of Mr. Heid. Deputy Sanchez stated that he did observe Mr. Heid fire his rifle, but he was unsure if he or Mr. Heid had fired first. Deputy Sanchez stated that he saw Mr. Heid turn the rifle in his direction ... (Emphasis added)*

On May 4, 2016, Deputy Sanchez provided a sworn recorded statement to investigators. Deputy Sanchez explained to the investigators why he fired his weapon, "**It just happened so quick. ... He [Mr. Heid] came out and his rifle was pointed at where I last saw them, and I was afraid for them [Deputy Kramer and Deputy Lewis]. I was afraid for myself ... that's why I did it. Just in fear for their safety and in fear for my safety.**" (Emphasis added)

On May 4, 2016, Deputy Kramer provided a sworn recorded statement to investigators. Deputy Kramer explained he felt Mr. Heid was, "**trying to kill Deputy Sanchez**", therefore he fired multiple rounds at "**the silhouette**" of Mr. Heid. (Emphasis added)

On May 4, 2016, Deputy Lewis provided a sworn recorded statement to investigators. Deputy Lewis explained why he discharged his weapon by stating, "**I believe the shot was directed towards Deputy Sanchez, and I thought he [Mr. Heid] was trying to kill Deputy Sanchez.**" (Emphasis added)

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The following excerpt is taken from the initial review report narration authored by Investigator Schneider:

*Deputy Best advised that he then retreated to the front doorway where Corporal Rutkoski joined him. Deputy Best stated that he then heard an exchange of gunfire in the rear of the residence. He stated that it sounded like the shots were coming from two different types of guns. Deputy Best stated that since he knew the deputies were only carrying handguns on this scene, he believed "the suspect was firing at the deputies." He stated that during the initial gunfire, he and Corporal Rutkoski retreated to the back of a patrol vehicle parked in front of the residence for cover. Deputy Best recalled that soon after the initial gunfire ceased, Mr. Heid exited the front door of his residence and appeared to throw an unknown object toward them. Deputy Best stated that Corporal Rutkoski yelled commands at Mr. Heid; however, he did not recall what the actual commands were. Deputy Best stated that Mr. Heid then began moving his hands to his side and then to the center of his waist. ...*

On May 4, 2016, Deputy Best provided a sworn recorded statement to investigators. During the interview Deputy Best reported he initially believed the object thrown by Mr. Heid may have been a grenade. He also stated, *"I was in fear that he was going to brandish and shoot, brandish a weapon and shoot me. I was fear for my safety and Deputy Rutkoski's safety, believing this subject had already fired shots at the deputies in the back yard and I discharged my firearm until he [Mr. Heid] went to the ground."* (Emphasis added)

On May 4, 2016, Corporal Rutkoski provided a sworn recorded statement to investigators. Corporal Rutkoski explained, *"So I started yelling, giving him [Mr. Heid] verbal commands, he is not listening and he appears he is still coming towards us. I thought he still had a firearm, because at that point ... no mention of him dropping a firearm. I know that he has plenty of firearms in there. I was in fear for my life and that is when I started discharging my rounds."* (Emphasis added)

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.

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There is no evidence that Corporal Mark Rutkoski 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 or other officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Corporal Mark Rutkoski are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: David Hubbard, Florida Department of Law Enforcement

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