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October 5, 2020

Sheriff John Mina
2500 W Colonial Dr.
Orlando, FL 32804

RECEIVED

OCT 05 2020
P.O. OCSC
PROFESSIONAL STANDARDS DIVISION

Re: FDLE Investigation OR-27-0358

Dear Sheriff Mina,

This letter details my review of the November 1, 2019 incident wherein Deputies Gabriel Ortiz, Alexander Richards and Jovani Santos Hernandez engaged in a use of force that included the discharge of their agency firearms during the execution of a search warrant. This review is limited to determining whether criminal charges should be filed against the deputies involved in the use of force. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any violations of the criminal laws beyond a reasonable doubt to a jury. The prosecution also bears the burden of proving beyond a reasonable doubt that the use of force was **not** justified pursuant to Florida law. This review does not evaluate the appropriateness of the actions of the involved officers, whether sheriff department policies were followed, or whether the policies, practices, or training of the agency involved were sufficient. That evaluation is left to the administrative review mechanism of the agency.

Generally speaking, criminal liability is established when the evidence is sufficient to prove all the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must disprove any statutorily recognized justification or defense beyond a reasonable doubt.

The use of physical force by law enforcement officers is governed by Florida Statute § 776.05 and provides an affirmative defense to criminal liability as follows:

A law enforcement officer...need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- (2) When necessarily committed in retaking felons who have escaped; or
- (3) When necessarily committed in arresting felons fleeing from justice.

However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

- (a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or

(b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

The United States Supreme Court provides the following instruction in assessing the reasonableness of an officer's belief when using physical force:

The "reasonableness" of a particular use of force must be made from the perspective of the law enforcement officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments---in circumstances that are tense, uncertain, and rapidly evolving---about the amount of force that is necessary in a particular situation. *Graham v. Conner*, 490 U.S. 386 (1989).

In addition to the affirmative defense provided by F.S. 776.05, law enforcement officers, like any other person, can invoke the protections of Florida Statute 776.012 and 776.032, commonly referred to as Florida's *Stand Your Ground* law. See *State v. Perez*, 259 So.3d 728 (Fla. 2018).

In charging any individual with a crime, it is important to remember that a defendant does not have to present evidence or prove anything. Instead, at a pre-trial Stand Your Ground hearing, the State of Florida is required to prove by clear and convincing evidence that a person is not entitled to self-defense immunity. If the prosecution is successful at the hearing, the State still must prove, beyond a reasonable doubt to a unanimous jury, that the force was **not** justified.

A comprehensive look at the facts of this incident results in the conclusion that the use of force by Deputies Ortiz, Richards and Santos Hernandez was justified in this instance.

On October 29, 2019, a narcotics agent with the Orange County Sheriff's Office obtained a search warrant for the residence at 10615 Jepson Street, a single family home in the Park Manor subdivision, based upon an affidavit of probable cause submitted to the Honorable Margaret H. Schreiber, a circuit judge of the Ninth Judicial Circuit.

After a briefing on the morning of November 1, 2019, the OCSO SWAT team arrived at the designated location to execute the warrant. No team members or other agency personnel at the scene were equipped with body microphones or body worn cameras.

Deputies Ortiz, Richards and Santos Hernandez were all assigned to the initial entry team and were together at the front door as the designated team member knocked and announced, "police with a search warrant, open the door now" and the front door was breached. As soon as the front door opened, Luis Morales Camacho, the target of the warrant, was observed just inside. Deputy Ortiz gave commands to "stop" and "show me your hands", but Morales Camacho ignored all commands and went to the kitchen where he opened a cabinet above the microwave and reached inside. Fearing that Morales Camacho was reaching for a gun, Deputy Ortiz and Cpl Richards fired their rifles. An instant later, Santos Hernandez fired his rifle as he believed Morales Camacho was firing upon Deputy Ortiz and the entry team. The medical examiner's autopsy report confirmed that Mr. Morales Camacho died of multiple gunshot wounds.

Heidy Ann Claudio-Batista and her small child were the only other individuals present in the residence at the time of the execution of the search warrant. Her statement indicates that she was on

the phone in her bedroom when she heard loud banging on the front door followed by a crashing sound. She heard commands of "halt" or "stop" followed by gunshots. She did not witness the use and force and neither she, nor her child were injured.

Crime Scene personnel called to document the scene located drugs in the kitchen spilled on the stove directly below the cabinet where Morales Camacho was reaching, but no firearm was located.

The sworn testimony of each officer is consistent with the sworn testimony of the other law enforcement officers and the civilian witness on the scene, the crime scene photos provided, and the forensic evidence collected from the scene and the medical examiner following the incident.

It is instructive here 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. *State v. Kadet*, 455 So.2d 389 (Fla. 5th DCA 1984)

Although it was determined that Morales Camacho was not reaching for a firearm or other weapon, based upon his actions and his refusal to follow lawful commands, each deputy reasonably believed it necessary to use deadly force to prevent imminent death or great bodily harm to himself or his fellow officers. There is no evidence in this instance that Deputy Ortiz, Cpl. Richards or Deputy Santos Hernandez committed intentional misconduct or acted with any degree of malice or prejudice. Therefore, a complete review of the investigation leads me to conclude that no criminal charges against Deputy Gabriel Ortiz, Cpl. Alexander Richards and Deputy Jovani Santos Hernandez can be proven beyond a reasonable doubt, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick
Assistant State Attorney

Cc: Lee Massey, Special Agent in Charge,
Florida Department of Law Enforcement,
Orlando Regional Operations Bureau