



Aramis D. Ayala
State Attorney
Ninth Judicial Circuit
Orange and Osceola County, Florida

Deborah Barra
Chief Assistant State Attorney

Kamilah L. Perry
Executive Director/General Counsel

December 11, 2020

Sheriff John Mina
Orange County Sheriff's Office
2500 West Colonial Drive
Orlando, FL 32804

RE: FDLE Case No. OR-27-0367

Dear Sheriff Mina,

This letter details my review of the February 9, 2020 incident wherein Sgt. Scot Rebello and Deputy Tina Woods engaged in a use of force that included the discharge of their agency firearms. 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 the 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 the 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 individual and collective use of force by Sgt. Rebello and Deputy Woods was justified in this instance.

On February 9, 2020, just before 6:00pm, multiple witnesses called 911 to report that a pedestrian, later identified as Erik Andrew Robinson, had deliberately stepped into traffic and was hit by at least two cars on East Colonial Drive near Rouse Lake Road before he ran into a nearby La-Z-Boy furniture store. Shortly thereafter, the manager and an employee of the La-Z-Boy called 911 to report the man was bleeding profusely in their store, and when they tried to help him, he threatened them with a knife and went into the bathroom.

Sgt. Scot Rebello and Deputy Tina Woods arrived and entered the store together. They quickly spotted Robinson, who was shirtless, covered in blood, and carrying a knife, as he emerged from the back of the store. As he approached them, the deputies tried to calm him and told him they were there to help, while giving him commands to drop his knife. He replied by telling them "I don't want to go out like that" and "I ain't dropping it." Sgt. Rebello told Robinson he didn't

want to see him get hurt and asked him what was going on with him today. Robinson continued to advance toward the deputies and ignored their commands to "stay right there" and "drop the knife." Deputy Woods later provided sworn testimony that she felt Robinson "fixated" on her, and as he broke into a sprint toward her with the knife in his right hand, both Sgt. Rebello and Deputy Woods fired multiple rounds at Robinson causing him to fall to the floor but retain possession of the knife. As he attempted to get up and lunge again, both Rebello and Woods fired a second volley of shots. Woods got on her radio to call out "shots fired", and Rebello fired a third time as Robinson continued to act aggressively toward them. The third volley resulted in Robinson dropping the knife, but he quickly picked it up and said to Deputy Woods "You won't take me, bitch!" Sgt. Rebello fired two more times causing Robinson to throw the knife at him. Robinson continued to make comments to Deputy Woods but appeared to be physically incapacitated as other deputies moved in to handcuff him. Orange County Fire Rescue was on scene, and transported him to the hospital, but Robinson did not survive his injuries.

Both Sgt. Rebello and Deputy Woods activated their body worn camera as they were driving to the call and the entire incident is captured by them from different angles. Crime Scene investigators documented fifteen shell casings from the scene, which appears to be consistent with the audio from the BWC. Thirteen projectiles were recovered: three from the scene and ten at autopsy. The autopsy report and consultation with the medical examiner's office reveal Robinson died from blood loss and internal injury as a result of the combination of multiple gunshot wounds, not any one injury in particular.

Each deputy's sworn testimony is consistent with the other and with the sworn testimony of civilian witnesses on the scene, the video evidence, the crime scene photos provided, the forensic evidence collected from the scene following the incident, and the information provided in the autopsy report.

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)

There is no evidence in this instance that Sgt. Rebello or Deputy Woods used poor judgment, committed intentional misconduct or acted with any degree of malice or prejudice. To the contrary, the evidence suggested each deputy acted in self defense with force each believed reasonably necessary to prevent imminent death or great bodily harm to themselves or their

fellow deputy. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Sgt. Scot Rebello and Deputy Tina Woods are not warranted, 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