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

RE: FDLE OR-27-0369

Dear Sheriff Mina:

This letter details my review of the February 25, 2020 incident wherein Deputy Bridget Erwin engaged in a use of force that included the discharge of her agency firearm. This review is limited to determining whether criminal charges should be filed against the deputy involved in the use of force. The standard of proof for filing a criminal case is whether there is enough 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 officer, whether sheriff's department policies were followed, or whether the policies, practices, or training of the agency involved were enough. That evaluation is left to the administrative review mechanism of the agency.

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. Pereza*, 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 Deputy Erwin's use of force was justified and appropriate in this instance.

On February 25, 2020 at approximately 5:30pm, Deputy Bridget Erwin was off duty inside her residence with her three children, ages 8, 13, and 17, when she heard knocking and then a man's voice at her back door. As she attempted to view a live feed from her security camera on her bedroom television, she heard glass breaking and her children screaming. She grabbed her duty gun, ran down the hallway of her residence yelling "Sheriff's Office" and saw a stranger with an ax inside her house. She fired several shots at the intruder, hitting him twice, once in each thigh. She instructed her daughter to call 911 and her son to handcuff the man who she had pinned face down on the floor of her living room. The man, later identified as Steven Thayer, continued to yell that he was being chased by armed suspects, pointing them out to Deputy Erwin and to responding deputies. No one was observed to be chasing Thayer. He survived his injuries. As Deputy Erwin was off duty, there is no body camera footage of the shooting. Her children were interviewed and confirmed the sequence of events.

Deputy Erwin's sworn testimony is consistent with the sworn testimony of the other witnesses on the scene, the crime scene photos provided, and the forensic evidence collected from the scene following the incident.

There is no evidence in this instance that Deputy Erwin committed intentional misconduct or acted with any degree of malice or prejudice. To the contrary, the evidence suggested she acted in self defense with force she believed reasonably necessary to prevent imminent death or great bodily harm to herself or her children. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Bridget Erwin 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