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December 7, 2020

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

RE: FDLE Case No.: OR-27-0370

Dear Sheriff Mina:

This letter details my review of the February 28, 2020 incident wherein Deputy Victoria Baker and Deputy Luis Pastrana 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 Deputy Baker and Deputy Pastrana were justified in this instance.

On February 28, 2020 at approximately 7:40am, twenty-year-old Jordan Bufalo ran into the 7-11 at 1755 North Econlockhatchee Trail and reported that her nineteen-year-old boyfriend Bryce Weir had threatened her with a firearm. The store manager called 911. A description of Weir, the incident and his direction of travel on foot were broadcast over the radio to responding deputies. Deputies Victoria Baker and Luis Pastrana, riding in separate marked police vehicles, located Weir walking near 2500 North Econ Trail. After pulling over and exiting their respective vehicles, both deputies gave verbal commands to Weir to stop, get on the ground and show his hands. After an initial indication of compliance by going to his knee(s) and raising his left hand, Weir refused to remove his right hand from the front pocket of his hoodie.

Both deputies provided sworn statements that Weir turned toward Deputy Pastrana with a gun in his right hand and fired a single shot at Pastrana. Fearing for their own or the other's safety, each officer shot at least a dozen rounds at Weir as he took off running. Weir was eventually apprehended with the assistance of the chase helicopter. A firearm with an extended magazine

and a light, as described by victim Bufalo, was located nearby. Weir was shot in the thigh and survived his injuries.

Both deputies wore body cameras which were activated during their contact with Weir. However, due to the distance between each deputy and Weir at the time of the shooting, the cameras do not clearly capture Weir's actions, nor can it be determined that Weir fired a shot from the BWC audio. However, since the use of force took place near a busy roadway during the morning rush hour, several civilians witnesses in vehicles were able to provide relevant information to the Florida Department of Law Enforcement investigators that proved to be consistent with the statements of the deputies involved.

Madyson Gauthier was travelling the opposite direction from the deputies and observed Pastrana outside of his patrol vehicle with his gun drawn before the shooting. She could not see who or what he was aiming at until shots rang out and she saw a male get up from behind a tree and run. Ms. Gauthier was not focused on the hands of the person running and could not say whether he had a gun.

Lisa McNamara and Kelly Reedy were travelling in separate vehicles behind Deputy Baker. Ms. McNamara saw Deputy Baker pull her SUV off the road and exit with her gun drawn. Further down the sidewalk, she saw a subject in a hoodie from behind with his hands in his pockets. He paused and got down on his right knee and put only his left hand in the air. She could not see his right hand. As the subject started to rise, Ms. McNamara saw Deputy Baker get into a shooting stance. The subject took off running as she heard multiple shots. Ms. McNamara never saw Deputy Pastrana shooting. Ms. Reedy was two cars behind Ms. McNamara. She saw Deputy Baker exit her police SUV and saw a male further down the sidewalk who stopped and got on his knees. She could see the subject's left hand was loose and moving around, then observed him look back towards the deputies, get up and start running as shots were fired. Ms. Reedy was unable to see whether the subject had anything in his hands.

Crime scene investigators determined all twenty-six fired cartridge casings on scene belonged to the deputies. The bullet holes in the door frame of Deputy Pastrana's patrol vehicle appear to have been caused by someone shooting from behind the door. This is consistent with Deputy Pastrana's BWC as it shows him move behind the door for cover as he is shooting.

Although the forensic evidence does not confirm Weir fired a shot at Deputy Pastrana, both the deputies and the civilian witnesses observed Weir with his right hand concealed at the time of the incident. The deputies, who believed Weir to be armed from the radio transmissions, gave Weir multiple commands to remove his hand from his pocket. This action, coupled with Weir's movement toward the deputies, and their belief that Weir fired at Deputy Pastrana caused Deputy Baker and Deputy Pastrana to reasonably fear for their safety.

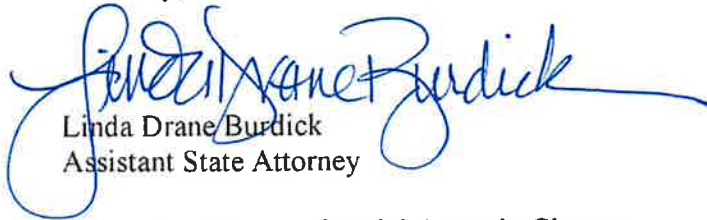
It is instructive here to note the words of our appellate court when reviewing law enforcement uses of force:

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 Deputy Baker or Deputy Pastrana committed intentional misconduct or acted with any degree of malice or prejudice. To the contrary, the evidence suggested they acted in self defense with force each believed reasonably necessary to prevent imminent death or great bodily harm to themselves or their fellow officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Victoria Baker and Deputy Luis Pastrana are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,

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

Linda Drane Burdick
Assistant State Attorney

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