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December 29, 2020

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

RE: FDLE OR-27-0372

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Office of the Sheriff

Dear Sheriff Mina:

This letter details my review of the March 21, 2020 incident at the Orange County Jail Booking and Release Center wherein Orlando Police Department Officers James Falbo and Sean Murphy and Orange County Sheriff's Deputies Ralph Calatchi, Emiliano Silva and Jaymes Dominguez 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 officers or deputies 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 officers, whether police or 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 use of force by Orlando Police Department Officers James Falbo and Sean Murphy and Orange County Sheriff's Deputies Ralph Calatchi, Emiliano Silva and Jaymes Dominguez was justified and appropriate in this instance.

On March 21, 2020, Orange County Deputy Jeffery James-Potts stopped a silver Mitsubishi SUV for speeding. The driver, Charlie English III, did not have a valid driver's license. Deputies Emiliano Silva and Leonardo Sauri-Lehardy arrived as back-up. Deputy Sauri contacted the front seat passenger, Eric Jefferson Stanley, Jr., who did not have a valid DL either. When Deputy Sauri informed the occupants that there was a strong odor of cannabis coming from the vehicle, English advised that he was smoking cannabis at the time they were stopped. A search of the vehicle revealed four large clear plastic bags of cannabis in a white backpack. English and Stanley were *Mirandized*, each denied knowledge of the cannabis, and both were arrested for Possession of Cannabis over 20 grams, a third-degree felony. The total weight of the cannabis was approximately 3.45 pounds.

Due to his size, Stanley was placed in flex cuffs. After both arrestees were searched, they were placed in D/S Sauri's vehicle, then moved to D/S Silva's patrol car for transport to the Orange County Jail. During transport, the men asked D/S Silva if one person could be released if the

other confessed. After consulting with Deputy James-Potts and a supervisor, it was determined they would both be booked into the jail.

Body worn camera footage and jail surveillance video shows English entered the Booking and Release Center first, followed by Stanley. After a few moments, Stanley escaped his flex cuffs and produced a firearm taking Deputy James-Potts, Orange County Corrections officer James Magwood, Orange County Corrections nurse Hector Jaime, and English hostage.

As responding law enforcement officers approached, they observed CO Magwood face down on the floor and Deputy James-Potts handcuffed with a gun to his head. Stanley verbally threatened to kill James-Potts and responding law enforcement officers. At one point, Stanley was observed pistol-whipping Deputy James-Potts. Several officers present expressed that they believed they were about to witness the deputy's execution. Orlando officers James Falbo and Sean Murphy along with Orange County deputies Ralph Calatchi and Jaymes Dominguez believed they had a clear shot at Stanley and fired at him through the glass. Most of the rounds embedded in the bullet proof glass, but some bullet fragments managed to penetrate, and Stanley was shot in the shoulder. Shortly after this initial volley, Deputy Emiliano Silva, James-Potts' partner, entered the jail's control room to see if he could fire through the glass at Stanley. His rounds failed to penetrate the glass.

Eventually, after an hour-long standoff during which Stanley fired a shot at the glass, he was convinced to surrender, and the SWAT team moved in to take him into custody. Stanley survived his injury.

The sworn testimony of each involved officer is consistent with the sworn testimony of other law enforcement officers and corrections employees on scene, the crime scene photos provided, forensic evidence collected from the scene following the incident and all body worn camera and surveillance video provided.

The evidence gathered in this investigation established that Officers Falbo and Murphy and Deputies Calatchi, Silva and Dominguez used the force each believed reasonably necessary to prevent imminent death or great bodily harm their fellow law enforcement officer and the civilians present. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Orlando Police Department Officers James Falbo and Sean Murphy and Orange County Sheriff's Deputies Ralph Calatchi, Emiliano Silva and Jaymes Dominguez 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