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January 20, 2023

Sgt. Eric Boynton
Rochester Police Dept.
101 4th St. SE
Rochester, MN 55904

RE: Olmsted County Sheriff's Office-Firearm Discharge
ICR 2022-00056098

Dear Sgt. Boynton:

I have reviewed the relevant law enforcement reports and audio/video/photographic evidence in the above noted incident. The event was investigated by the Rochester Police Department. After a thorough review of the event reports and recordings related to the shooting incident, our office has concluded that the evidence does not support criminal charges against the deputy involved, specifically Sean Michael Cooper of the Olmsted County Sheriff's Office.

In order to bring charges against a police officer for using deadly force, the State must be able to prove beyond a reasonable doubt that the officer's use of deadly force was not justified. Under Minn. Stat. §609.066, subd. 2, police officers in Minnesota are justified in using deadly force in the line of duty when it is necessary to protect the officer or another person from apparent death or great bodily harm. Further, the United States Supreme Court held in *Graham v. Connor* that the use of deadly force by a police officer must be evaluated from the perspective of a reasonable police officer on the scene and in the same circumstances.

OCSO Deputy Cooper is a member of the Sheriff's Office warrant team. Among his duties, he investigates persons with active warrants. On or about December 2022, Deputy Cooper had been investigating Jesse James Johnson who had an active Felony Complaint Warrant for Second Degree Assault, and other charges including Felon in Possession of a Firearm/Ammo. The warrant had been issued on October 31, 2022, in Olmsted County. Information contained in the complaint warrant and other investigative information available to Deputy Cooper suggested that Mr. Johnson was known to carry and/or use firearms.

In the days leading up to December 14, 2022, Deputy Cooper had gathered information that Mr. Johnson was living in Kasson MN as well as Stewartville MN. Deputy Cooper followed up on several leads related to the Kasson and Stewartville information and developed more information about the vehicles Mr. Johnson may be driving as well as cell phone tracking information and social media sites. Deputy Cooper identified a vehicle associated with Mr. Johnson as a silver Pontiac G6 and obtained license plate information.

On December 14, 2022, Deputy Cooper became aware that a social media site associated with Mr. Johnson was active with an IP address listed at the Planet Fitness in SW Rochester. Deputy

Cooper notified the Southeast Violent Crime Enforcement Team (VCET) for assistance. At approximately 1645 hours, Deputy Cooper and the team moved to that location.

Members of VCET approached the area and found the silver G6 parked facing the south side of the Plante Fitness building. The vehicle windows were fogged over on the inside as if someone was inside the vehicle. One member of VCET walked past the vehicle and determined that someone was in the vehicle, the person appeared to be a male with a beard and seated in the driver's seat. Mr. Johnson was known to have a full beard. Based on all the information available, including the information developed by Deputy Cooper leading up to December 14, and the social media location information, deputies believed that Mr. Johnson was in the vehicle.

The decision was made to move in to arrest the suspect. The team determined to use vehicles to box in the G6 to prevent escape. Deputy Cooper was assigned to position his vehicle at the rear passenger corner of the G6, Investigator Waletzki would position his vehicle on the driver's rear corner, Detective Wagner in between the two. Deputy Cooper activated his emergency lights. As they moved in on the vehicle, both Investigator Waletzki and Deputy Cooper exited their cars and were giving commands to the person in the G6. Both Waletzki and Cooper drew their handguns.

As soon as Waletzki and Cooper exited their vehicles, the G6 began to back abruptly towards the LE vehicles. Waletzki's and Wagner's vehicles were both struck by the G6. The G6 then abruptly started to move forward, and Deputy Cooper fired one round from his service weapon at the G6. The G6 continued forward, over concrete parking bumpers, across the sidewalk and exited the parking lot. OCSO personnel began to chase but lost the vehicle as it "darked out," and ran some stop lights in evasive measures traveling into the City of Rochester.

OCSO personnel wear body cameras and some squads have cameras installed as well. Review of the body worn cameras from Cooper, Waletzki and Wagner, show the impact of the G6 ramming Waletzki's and Wagner's vehicles. Waletzki was in the door opening of his vehicle, Wagner had not had time to exit. Cooper was also out of his vehicle, standing approximately 5-6 feet from the suspect vehicle near Wagner's vehicle being rammed. The time elapsed from the OCSO vehicles pulling in behind the G6, to the backward ramming by the G6, shot fired by Cooper and the G6 leaving the parking lot was a mere 10 seconds.

In his statement to investigators, Deputy Cooper described his actions during the attempted arrest of Mr. Johnson. Deputy Cooper believed he and the other deputies were in imminent harm from the ramming vehicle. He was between two vehicles, one ramming the other, and Waletzki in the door frame of his vehicle being pushed back. Deputy Cooper fired one shot as the vehicle quickly began to move forward, over the parking bumpers and along the sidewalk. It should also be noted that the G6 was parked in the closest parking row to the building and the exterior of the building is all concrete type materials, no windows, or doors in the immediate area.

Deputy Cooper submitted to blood analysis which showed no alcohol or other substances present. Deputy Cooper was also very current on use of force training (he had just completed two days prior to this event), firearms training and other mandatory trainings.

Minn. Stat. 609.066 is considered an affirmative defense to criminal charges. In order to review Deputy Cooper's conduct in consideration of this defense it is necessary to contemplate what the possible criminal violations could be. In this case I've considered various levels of assault charges. It should be noted that Mr. Johnson was not apprehended on December 14, 2022, and as of this writing, he remains at large. Investigators have not been able to obtain a statement from Mr. Johnson regarding the incident or even discern if he or his vehicle was impacted by the round fired by Deputy Cooper.

As stated above, in order for a criminal complaint or indictment to be filed in this case, the evidence must show unreasonable conduct by the deputy, viewed from the perspective of a reasonable police officer. The evidence must show that the use of deadly force was not necessary to protect the deputy or another person from a threat of great bodily harm or death. Because the evidence in this case conclusively establishes that Deputy Cooper's use of deadly force was reasonable, our office chooses to decline prosecution in this matter. We will not be filing a criminal complaint and we will not be presenting this case to a grand jury.

Should you have any questions or concerns, please feel free to contact me.

Very truly yours,

Mark A. Ostrem
Olmsted County Attorney

Cc: Kevin Torgerson, Olmsted County Sheriff
James Franklin, Chief Rochester Police Department
Robert Moilanen, Captain Rochester Police Department