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June 15, 2018

Sheriff Ken Mason  
Kennebec County  
125 State Street  
Augusta, ME 04330

Dear Sheriff Mason:

We have completed our investigation and legal review of the incident on May 19, 2017, involving the use of deadly force by Sgt. Jacob Pierce that resulted in the death of Roger Bubar and serious injury to Scott Bubar. As you know, Sgt. Pierce shot Roger and Scott Bubar during an armed encounter at the Bubar residence in Belgrade.

#### Factual Summary

On Friday, May 19, 2017, between 9:30 and 9:35 PM, several residents of the Oakland Road in Belgrade called 911 to report a disturbance at the residence of Roger Bubar. The callers reported seeing erratic vehicle operation and a man believed to be Roger Bubar's adult son screaming and acting irrationally. At about the same time, residents heard what they described as a gunshot. Several Kennebec County deputy sheriffs, including Sgt. Jacob Pierce, responded to the calls, learning on the way of reports of a dispute between a father and son, later determined to be Roger and Scott Bubar, 65 and 30 respectively, and additional reports of gunfire. The deputies learned that one of the parties, reported by nearby neighbors to be Scott Bubar, crashed a car into the side of the residence, got out of the car, and ran toward the roadway yelling incoherently, waving his fists, and gesturing to the neighbors with his middle finger. Scott Bubar got back into the driver's seat, dislodged the vehicle from the side of the residence, and stopped near the roadway. The same neighbors saw Roger Bubar get out of the passenger's side of the car, holding a beer bottle. Both men then got back into the car, Scott Bubar continuing to operate the car erratically. Scott Bubar then got out of the car again and ran toward the neighbors' residence, "acting crazy and screaming."

At about 10 P.M., Sgt. Pierce and another deputy, Adam Bacon, both in uniform, went to the door of the Bubar residence, a mobile home at 1003 Oakland Road. An outside light and a single interior light provided the only illumination. As they approached the door, Deputy Bacon noted the movement of a curtain in a window, and saw a person looking out at them. Sgt. Pierce knocked and announced, "Sheriff's Office." There was no response. After knocking and announcing a second time, the officers heard two male voices inside the residence; one of the men said, "Get the [expletive] off my property." Both deputies retreated across the road after they heard the men say they were armed and would shoot them, followed by what the deputies believed to be the sound of a shotgun being racked. Deputy Bacon blocked the travel portions of the roadway with his cruiser while Sgt. Pierce took a position in a tree line next to the road. Deputy Bacon walked to a nearby residence and instructed a neighbor standing outside to go inside out of danger.

Sgt. Pierce illuminated the front door of the Bubar residence when he observed a man holding what appeared to be a long gun – shotgun or rifle – "in the doorway." He issued commands for the occupants to come out of the residence with their hands up, but the commands were met with profanities, threats, and demands that officers get off the property. This was followed by what sounded like items being moved to barricade the door. Both Sgt. Pierce and Deputy Bacon then heard glass breaking, followed by a gunshot from inside the residence, and a male voice talking about "going out in a blaze of glory." Sgt. Pierce and Deputy Bacon heard more yelling from what they believed to be two men inside the mobile home, including comments of "what are you going to do?" Sgt. Pierce directed Deputy Bacon to go to the other nearby homes and have the residents either evacuate or shelter in place. In the meantime, other officers arrived.

Minutes later, Sgt. Pierce heard more glass breaking at what he believed to be the front of the mobile home. This was followed by a gunshot and attendant muzzle flash from a window toward his position. Sgt. Pierce fired several rounds at the area of the muzzle flash. He moved 20–30 feet down the tree line. A few minutes later, he heard yelling from inside the residence and more glass breaking, followed by another gunshot and muzzle flash from a different window, again in his direction. Sgt. Pierce saw a person in a green shirt in the window.<sup>1</sup> He also heard what he believed to be a bullet pass over his head through the trees. Sgt. Pierce fired another three to five rounds in the direction of the muzzle flash. He noticed thereafter that an exterior light on the mobile home was turned off.

The State Police Tactical Team was requested and, while responding, a dispatcher spoke with another resident inside the mobile home, Roger Bubar's domestic partner, a 54-year-old woman who was disabled and bedridden. She told the dispatcher that Roger and Scott, both of whom had been drinking, were "messing with the cops outside." She said that both Roger and

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<sup>1</sup> Later investigation determined that the only person in the residence wearing a green shirt was Scott Bubar.

Scott had been shot. She said Roger was unresponsive and Scott was wounded but alive. She said Roger and Scott were arguing earlier, and she had seen Roger with a handgun and Scott with a shotgun. She said that both men were firing from inside the residence at police officers outside the residence and the police shot back, hitting both Roger and Scott. She said Scott told her he could kill all the officers outside the residence.

At about 2 a.m., Scott Bubar yelled for the officers to help him, that he had been shot in the stomach. Members of the State Police Tactical Team entered the mobile home and removed an injured Scott Bubar and the woman. Roger Bubar was found dead of apparent gunshot wounds inside the mobile home.

Later investigation disclosed that Roger Bubar died from three gunshot wounds inflicted by rounds fired by Sgt. Pierce, and that Scott Bubar was hit in the abdomen by a round fired by Sgt. Pierce. At least two rounds were fired from the shotgun and three from a 9mm pistol found inside the residence. At the time of his death, Roger Bubar's blood alcohol level was .163%. In addition, he had multiple drugs in his system, including marijuana and cocaine.

Scott Bubar is awaiting trial on charges of reckless conduct with a dangerous weapon and aggravated attempted murder.

#### Discussion and Legal Analysis

The Attorney General's Office has exclusive responsibility for the direction and control of any criminal investigation of a law enforcement officer, who, while acting in the performance of the officer's duties, uses deadly force.<sup>2</sup> The detectives who conduct the investigation of these incidents are independent of any other law enforcement agency. The purpose of the criminal investigation of the incident in Belgrade on May 19, 2017, was to determine whether Sgt. Pierce was acting in self-defense when he shot and killed Roger Bubar and shot and injured Scott Bubar. The investigation did not include an analysis of whether any personnel action might be warranted, of whether the use of deadly force could have been averted, or of whether there might be civil liability. Indeed, state law provides that the fact that conduct may be justifiable under the Criminal Code does not abolish or impair any other remedy available under the law.

Under Maine law, for any person, including a law enforcement officer, to be justified in using deadly force in self-defense or the defense of others, two requirements must be met. First, the person must reasonably believe that deadly force is imminently threatened against the person or against someone else, and, second, the person must reasonably believe that deadly force is necessary to counter that imminent threat. Further, whether the use of force by a law enforcement

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<sup>2</sup> 5 M.R.S. § 200-A

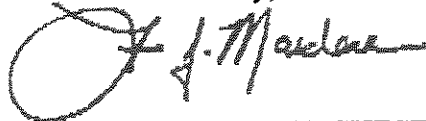
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officer is reasonable is based on the totality of the particular circumstances and judged from the perspective of a reasonable officer on the scene, allowing for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a given situation. The legal analysis requires careful attention to the facts and circumstances of each case, including the severity of the crime threatened or committed and whether the suspect poses an immediate threat to the safety of others.

CONCLUSION

It is our determination that when Sgt. Pierce shot Roger and Scott Bubar, he reasonably believed that unlawful deadly force against him and others was not only imminent but had in fact already been used. It was reasonable for Sgt. Pierce to believe it necessary to use deadly force to protect himself and others from injury or death. These conclusions are based on an extensive investigation. All the facts and circumstances point to the conclusion that Sgt. Pierce acted in self-defense.

Sincerely,

A handwritten signature in black ink, appearing to read "L. J. Marchese". The signature is written in a cursive style with a large, looping initial "L".

LISA J. MARCHESE  
Deputy Attorney General  
Chief, Criminal Division