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FOR IMMEDIATE RELEASE

From: Eric M. Hoffman, Prosecuting Attorney
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**Prosecutor Finds June 26, 2020 Delaware County
Sheriff's Department Police Action Shooting Legally Justified**

Muncie Indiana – The Indiana State Police (ISP) has concluded its independent investigation into the events and circumstances surrounding the June 26, 2020 police action shooting involving a Delaware County Sheriff's Department Deputy. The Deputy involved completely cooperated with the investigation as did the entire Delaware County Sheriff's Department and its administration from the Sheriff down. The investigation was submitted to the Delaware County Prosecutor's Office for review. That review is now complete. This review included statements from law enforcement witnesses, the officers involved, police reports, police body camera footage, photos, videos, diagrams, EMS reports, forensic ballistic analysis, and physical evidence. I would like to thank the Indiana State Police for completing a very thorough and professional investigation. The facts demonstrate conclusively and without a doubt that the Deputy who discharged their firearm, ultimately shooting Benjamin Brooks (white male, age 38) did so in self-defense and defense of others. Consequently, the officer's actions are completely and legally justified.

Ordinarily, when no charges are filed in an officer involved shooting, the practice of this Office has been to release a factually detailed report containing photos and diagrams as well as a legal analysis as to why formal charges are not filed. This is done in the interest of transparency in the process. However, in cases such as this, where a person is ultimately charged, the Indiana Rules of Professional Responsibility prohibit a prosecuting attorney from publicly releasing certain information. An arrest and the filing of a formal charge are merely an allegation. The person is presumed to be innocent unless and until the State proves him/her guilty beyond a reasonable doubt.

The officer involved in the shooting is identified as Officer # 1. When criminal charges are not filed against a person, the practice of this Office has been to not publically name the person. Similarly, it is the practice of this Office not to refer to civilian witnesses by name.

FACTUAL FINDINGS

Given the fact that formal charges have been filed against Benjamin Brooks and that those, charges are pending, the Prosecutor is ethically prohibited from commenting on the facts of the case that are not contained in public court filings. Thus, the Factual Findings will be limited to a recitation of the facts that were contained in the Affidavit of Probable Cause For Arrest Without a Warrant.

On June 26, 2020 at approximately 8:49 p.m., Muncie Police Department Officers responded to 3110 Wheeling Ave. in reference to an intoxicated driver. Dispatched advised that the vehicle was a Silver Honda Civic. Officers attempted to make contact with the suspect who was driving the Silver Honda who was later identified as Benjamin P. Brooks. While making contact, Brooks was not compliant and Brooks acted as if he had a weapon on his person, so MPD officers kept a safe distance from Brooks. MPD officers attempted to initiate a traffic stop on Brooks and Brooks fled in his Honda vehicle. Brooks led MPD Officers on a pursuit. MPD officers were in their fully marked police vehicles with their emergency lights and Sirens on attempting to stop Brooks during this incident. Brooks continued to flee from the Police.

Near the area of N. Walnut Street and Riggins Rd, Brooks attempted to run over a Ball State Police Department Officer who was deploying stop sticks during the incident. The Officer had to run and jump out of the way to not be struck by Brooks who was driving recklessly.

Near the area of CR 200 W. CR 800 N. Brooks pointed a handgun and shot at the police through the passenger side window of his vehicle while fleeing from police. Officers were able to observe glass flying from the vehicle when Brooks shot his gun from the Driver's side. Brooks was given numerous loud verbal commands to stop his vehicle but refused and continued fleeing from the police. Stop sticks were utilized and Brooks' front driver's side tire was flat.

Near the area of Union Grove Church (1510 W. CR 900 N.) to the East of that location, Brooks acted as if he was going to exit his vehicle but did not. At that time, Brooks then had his handgun in his hand and exited to retrieve an item but did not fully exit his vehicle and continued fleeing from the Police.

Prior to being taken into custody, Brooks exchanged gun fire with the police and received a gunshot wound during this incident. Brooks was taken into custody at approximately 11:05 p.m. Brooks was transported to Ball Memorial Hospital for Medical Treatment.

LEGAL ANALYSIS

Use of force during arrest

Indiana Code § 35-41-3-3(b) provides in pertinent part that:

a law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest. An officer is justified in using deadly force¹ only if the officer:

- (1) has probable cause to believe that that deadly force is necessary:
 - (A) to prevent the commission of a forcible felony²; or
 - (B) to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury³ to the officer or a third person; and
- (2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

First, the facts of the case clearly indicate that Officer # 1 reasonably believed that the force used was necessary to effect a lawful arrest. Officers had probable cause to arrest Brooks for OWI, resisting law enforcement, reckless driving, criminal recklessness, attempted aggravated battery, and attempted murder, among other offenses. Officers attempted to make a peaceful arrest. However, Brooks chose to physically resist and then flee the scene. As he fled, he attempted to run over a police officer with his vehicle and fired a handgun at police officers. Then, just before his apprehension, Brooks fired a handgun at uniform police officers.

Second, Officer # 1 had probable cause that deadly force was necessary to prevent the commission of a forcible felony. Brooks' actions with his car and the handgun involve the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being. Moreover, Officer # 1 had probable cause to believe that deadly force was necessary to effect Brooks' arrest. Officer # 1 had probable cause to believe that Brooks posed a threat of serious

¹ "Deadly force" means force that creates a substantial risk of serious bodily injury. I.C. § 35-31.5-2-85.

² "Forcible felony" means a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being. I.C § 35-31.5-2-138.

³ "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ, or loss of a fetus. IC § 35-31.5-2-291.

bodily injury to the officer or a third person. Consequently, the force used by Officer # 1 was reasonable, lawful, and justifiable.

Self Defense

Separate and distinct from the right of an officer to use force to effectuate an arrest, Indiana law “recognizes the right of every citizen [in Indiana] to reasonably defend himself against unwarranted attack.” *Banks v. State*, 536, 276 N.E.2d 155, 158 (1971). Indiana Code § 35-41-3-2(c) provides that:

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.

However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury⁴ to the person, or a third person, or the commission of a forcible felony.

No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

Indiana Court of Appeals has recently said:

Self-defense is a legal justification for what would otherwise be a criminal act. A person is justified in using “reasonable force” against another to protect himself from what he reasonably believes to be the imminent use of unlawful force. To prevail on a claim of self-defense, the defendant must present evidence that he: (1) was in a place he had a right to be, (2) did not provoke, instigate, or participate willingly in the violence, and (3) had a reasonable fear of death or great bodily harm.

Tharpe v. State, 955 N.E.2d 836, 844-45 (Ind. Ct. App. 2011). The amount of force which is reasonably necessary to defend oneself is determined from the standpoint of the accused in light of the surrounding circumstances. *Geralds v. State*, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995). The jury looks from a defendant's viewpoint

⁴ Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death or that causes (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus. I.C. § 35-31.5-2-292.

when considering facts relevant to self-defense. *Zachary v. State*, 888 N.E.2d 343, 347 (Ind. Ct. App. 2008); *Williams v. State*, 262 Ind. 382, 384, 316 N.E.2d 354, 355 (1974).

When considering cases of self-defense, Indiana law is clear. Indiana Code § 35-35-41-3-2(c) provides in no uncertain terms that “No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.”

First, Officer # 1 was in a place where he had the right to be. Second, the officer did not provoke, instigate, or participate willingly in the violence. Finally, Officer # 1 had a reasonable fear of death or great bodily harm. This fear was both subjectively and objectively reasonable in light of the totality of the facts and circumstances. Additionally, the amount of force used by the officers was reasonable. The officer opened fire only after Brooks attempted to run over a police officer, shot at other police officers, and then open fire on Officer #1. Consequently, it is clear that Officer # 1 acted in self-defense and the force used by Officer # 1 was reasonable, lawful, and justifiable.

Defense of third parties

Indiana Code § 35-41-3-2(c) provides as follows:

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person, employer, or estate of a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

The facts of the investigation demonstrates that Officer # 1 was justified in using force to terminate what appeared to be an attempted unlawful shooting of a police officer. When confronted by multiple uniformed police officers, Brooks chose to point and aim a black handgun at several police officers, and opened fire. Officer # 1 was protecting the others from serious bodily injury or the commission of a forcible felony. Consequently, it is clear that Officer # 1 acted in the defense of others and the force used was reasonable, lawful, and justifiable.

CONCLUSION

Benjamin Brooks chose to arm himself with a handgun and fire multiple shots at multiple uniformed police officers at multiple times. Police officers face clear and present dangers each and every day. They put their life on the line so that we may live in a civilized society. Law enforcement officers have the absolute right to defend their own lives and go home at the end of their shift. As the Indiana's self-defense so clearly states: "No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary." If a person chooses to point a gun at a police officer, they do so at their own peril. The evidence demonstrates unquestionably and without a doubt that Officer # 1 fired his duty weapon in self-defense. Thus, the shooting was justified under the law and criminal charges are not warranted. The investigation into the shooting of Benjamin Brooks is now officially closed.

Benjamin Brooks has been formally charged by the Prosecutor's Office with the following criminal offenses:

- Count 1: Attempted Murder, a Level 1 Felony.
- Count 2: Unlawful Possession of a Firearm by a Serious Violent Felon, a Level 4 Felony.
- Count 3: Criminal Recklessness, a Level 6 Felony.
- Count 4: Resisting Law Enforcement, a Level 6 Felony.
- Count 5: Carrying a Handgun Without a License, a Class A Misdemeanor.
- Count 6: Reckless Driving, a Class C Misdemeanor.

The charges are currently pending in the Delaware Circuit Court No. 5 under Cause Number 18C05-2008-F1-11. An initial hearing has held on May 27, 2020. A jury trial has been set for April 12, 2021. Brooks has is currently being held in the Delaware County Jail under a \$145,000 bail.

It is important to remember that an arrest and/or the filing of a criminal charge is simply an allegation and is not evidence of guilt. All suspects are presumed innocent unless and until proven guilty beyond a reasonable doubt at trial. The ethical rules for prosecutors in Indiana prohibit further comment on this matter. At this time, there will be no further comment.

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