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Ninth Judicial District  
*Serving Garfield, Pitkin, and Rio Blanco Counties*  
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December 13, 2022

Detective Kyle McElroy  
Glenwood Springs Police Department  
9th Judicial Critical Incident Team Leader  
107 8th Street  
Glenwood Springs, Colorado 81601

Chief Debra Funston  
Rifle Police Department  
Rifle, Colorado 81650

Sheriff Lou Vallario  
Garfield County Sheriff  
107 8<sup>th</sup> Street  
Glenwood Springs, Colorado 81601

Re: Officer Involved Shooting Investigation-JACOB NOEL CERDA-Rifle Police Corporal M. Pruitt and Garfield County Sheriff Deputy Sergeant L. Gherardini-Case No. 2022-00017816/Garfield County District Court Case No. 22CR292 [\*Abbreviated Version\*]

Dear Detective McElroy, Chief Funston, and Sheriff Vallario:

The purpose of this correspondence is to memorialize, in writing, my charging decision previously communicated regarding the officer involved shooting and the use of deadly force resulting in the shooting of, and use of deadly force against, Jacob Noel Cerda ("Mr. Cerda"), which occurred on Friday, September 24, 2022 in the city limits of Rifle, Colorado. In short, I decline to file any criminal charges against Corporal M. Pruitt of the Rifle Police Department, Sgt. L. Gherardini of the Garfield County Sheriff's Office, or any other officer involved in the incident. However, I have concluded that Mr. Cerda should be charged with crimes. I conclude that both officers who fired their duty weapons at Mr. Cerda were legally justified in order to defend themselves and others from a reasonably belief that Mr. Cerda was about to imminently use unlawful force and both officers had reasonable grounds to believe that each was in imminent danger of being killed or of receiving great bodily injury.

After careful review of the comprehensive investigation, Detective McElroy, I want to expressly thank you for serving as lead investigator for the 9th Judicial District Critical Incident Team's ("CIT") investigation of this matter. I am also very appreciative of all the other members of

the CIT from various law enforcement agencies within the 9<sup>th</sup> Judicial District (Garfield, Pitkin, and Rio Blanco Counties) who aided and assisted in the investigation. I have thoroughly reviewed the investigation file which includes multiple interviews, body worn camera videos, police reports, photographs, etc. The investigation was thorough, professional, objective, and complete. I have also consulted with other experienced prosecutors and other professionals regarding the facts and circumstances of this incident and the legal conclusions I reached.

I have concluded there is probable cause that Mr. Cerda committed criminal offenses in violation of Title 18, C.R.S. Therefore, I have filed formal criminal charges against Mr. Cerda as set out in an Information which alleges Mr. Cerda committed the crimes of (1) Count One-Assault in the First Degree (Peace Officer), a class three felony; (2) Count Two-Possession of a Weapon by a Previous Offender, a class five felony; and (3) Count Three-Prohibited Use of a Weapon, a class one misdemeanor. Although charges have been filed, Mr. Cerda is presumed innocent of these charges unless and until a jury, after a public trial, finds him guilty beyond a reasonable doubt.

Further, I conclude that both officers who fired their duty weapons at Mr. Cerda were justified in order to defend themselves and others from a reasonable belief that Mr. Cerda was about to imminently use unlawful and deadly force. I conclude that Officer Pruitt and Sergeant Gherardini who fired their duty weapons at, and struck, Mr. Cerda were legally justified in order to defend themselves and others from a reasonable belief that Mr. Cerda was about to imminently use unlawful force, and in particular, unlawful deadly force. I further conclude that Officer Pruitt and Sergeant Gherardini were "peace officers" performing their official duties and at the time each had reasonable grounds to believe that each was in imminent danger of being killed or of receiving great bodily injury.

Colorado's law of self-defense is derived from C.R.S. §18-1-704(1) which states in part,

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate, and:

(a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury;

The important facts and evidence upon which I rely to reach my decision to not file criminal charges against any law enforcement officer bear some highlighting in detail. Consequently, when there is an officer involved shooting, I typically and customarily complete a thorough written explanation articulating in detail the rationale and analysis which justify my conclusion. However, based upon the filing of formal criminal charges against Mr. Cerda in Garfield County District Court Case No. 22CR292, Rules 3.6 and 3.8 of the Colorado Rules of Professional Conduct prohibit me

December 13, 2022 DA Legal Review Letter

Re: Officer Involved Shooting Investigation-JACOB NOEL CERDA-Rifle Police Corporal M. Pruitt and Garfield County Sheriff

Deputy Sergeant L. Gherardini

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from further comment and prohibit me at this time from disseminating or releasing any information derived from the investigation. Rule 3.6 states in part,

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.


Moreover, Rule 3.8, titled "Special Responsibilities of a Prosecutor" states in part,

The prosecutor in a criminal case shall:

- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused unless such comments are permitted under Rule 3.6(b) or 3.6(c), and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

In conclusion, I decline to file any criminal charges against any officer involved in the officer involved shooting incident. Until final disposition of Garfield County District Court Case No. 22CR292, I shall make no further public comments or release any further information regarding this matter. I remain,

Respectfully yours,



Jefferson J. Cheney