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Ninth Judicial District  
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November 15, 2024

Chief Joseph Deras  
Glenwood Springs Police Department  
101 8<sup>th</sup> Street  
Glenwood Springs, Colorado 81601

Matt Jenness  
Investigator-Garfield County Sheriff Investigations  
9<sup>th</sup> Judicial Critical Incident Team  
107 8<sup>th</sup> Street  
Glenwood Springs, Colorado 81601

Re: District Attorney Legal Review for Officer-Involved Shooting on September 2, 2024  
Resulting in the Death of Richard Joseph Grande (GCSO Case #2024-17284)

Dear Chief Deras and Investigator Jenness:

The purpose of this correspondence is to memorialize my legal review regarding the officer-involved shooting and use of deadly force resulting in the death of Richard Joseph Grande, which occurred on Monday, September 2, 2024 at the Meadows Retail Center inside the city limits of Glenwood Springs, Garfield County, Colorado. After careful review of the entire investigation, I want to expressly thank Garfield County Sheriff Investigator Matt Jenness for serving as the lead investigator for the 9<sup>th</sup> 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 who aided and assisted in the investigation. The investigation was thorough, professional, objective, and complete. In short, I decline to file any criminal charges. A more thorough explanation for my decision is contained herein. The important facts upon which I have relied and the law that I have applied to reach my decision to not file criminal charges bear some highlighting, which I attempt to do herein. However, I should note that I have not summarized or included every single fact or detail related to the incident.

**EXECUTIVE SUMMARY**

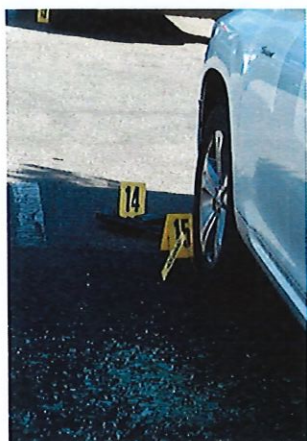
On a hot sunny Labor Day, September 2, 2024 around 1 p.m., Corporal E. Wagstrom (hereinafter "Officer Wagstrom"), a Glenwood Springs Police Department ("GSPD") Officer, was in the parking lot near Natural Grocers which is one of the many retail businesses located in the

Glenwood Meadows Retail Center. Corporal Wagstrom recognized Richard Joseph Grande (sometimes hereinafter referred to as “Mr. Grande”) and suspected Mr. Grande had an outstanding arrest warrant for a felony weapons violation. Corporal Wagstrom observed Mr. Grande exit his vehicle and walk inside the Natural Grocers. Corporal Wagstrom requested another GSPD officer, Officer C. Williams (hereinafter “Officer Williams”), respond to the location to help potentially apprehend and lawfully arrest Mr. Grande pursuant to an arrest warrant. Corporal Wagstrom contacted police dispatch and confirmed the arrest warrant was valid and active. While enroute to the Natural Grocers, Officer Williams was able to observe a photograph of Mr. Grande from official records. Corporal Wagstrom informed Officer Williams that Mr. Grande may possibly have weapons. After Officer Williams arrived, he and Corporal Wagstrom began to devise a course of action to contact Mr. Grande. During the officers’ discussion, Mr. Grande was observed exiting the Natural Grocers with a multi-gallon water jug container in his right hand. Around 1:03 p.m., the officers approached Mr. Grande on foot. Officer Williams communicated to Mr. Grande, “Richard...put the jug down. We have an arrest warrant...” Mr. Grande abruptly placed the jug on the ground and immediately began backpedaling while simultaneously reaching both hands behind his back. Within seconds while moving backwards, Mr. Grande stated, “No! No! No!” and Mr. Grande produced a pistol-style rifle with an extended high-capacity magazine. Having observed Mr. Grande bring the rifle from behind his back and before Mr. Grande could fire it, Corporal Wagstrom and Officer Williams immediately sought protective cover with Corporal Wagstrom running to the south and Officer Williams running to the east. Mr. Grande ran to the west behind vehicles parked in the area. While running for protective cover, Officer Williams drew his duty weapon, a handgun, and fired two rounds at Mr. Grande while observing Mr. Grande running to the west still armed with the rifle. Officer Williams stopped firing when he lost sight of Mr. Grande who disappeared behind nearby vehicles. Unable to observe Mr. Grande’s location, Officer Williams moved to the northeast further away from the location of the original encounter and a short distance from where he had initially fired. Officer Williams was then able to observe Mr. Grande crouching behind a vehicle holding the rifle in a manner ready to fire. Mr. Grande appeared to be looking southward in the area where the officers had initially contacted him. Officer Williams then fired nine times striking Mr. Grande. It appeared to Officer Williams that Mr. Grande dropped down into a prone position out of sight.

As these events were unfolding, officers communicated with each other and communicated updates to dispatch requesting all available law enforcement respond to the area. The All-Hazards Response Team (“AHRT”) was also notified to respond which would have involved the deployment of a team comprised of tactically trained officers from multiple Garfield County law enforcement agencies and an armored vehicle. Officer Williams communicated through dispatch his belief that he had struck Mr. Grande a few times. Multiple law enforcement officers from other Garfield County law enforcement agencies quickly responded. Unsure of Mr. Grande’s physical location, officers began to establish a perimeter around Mr. Grande’s last known location. Additionally, officers attempted to direct innocent citizens away from the area. Officers also requested nearby retail businesses have their customers shelter in place. Taking great care to ensure the area was clear of innocent citizen civilians and minimize crossfire dangers to others, officers were able to observe Mr. Grande’s motionless feet. After minutes of visual observation of Mr. Grande not moving and motivated to provide potential lifesaving measures to Mr. Grande and others who could have been injured but were yet unknown, GSPD Acting Police Chief J. Hassell formed a team of officers in

possession of a handheld armored shield. Led by Acting Police Chief J. Hassell in front, the team of officers moved forward to Mr. Grande's location. At approximately 1:42 p.m., officers located Mr. Grande unresponsive and lying in a prone position with his head facing south. Acting GSPD Police Chief J. Hassell placed him in handcuffs. Underneath Mr. Grande, officers located a KelTec 5.56 caliber AR-15 pistol-style rifle. The rifle's selector switch was off "safe" ready to fire with one round in the chamber and inside the rifle's magazine well was a magazine loaded with an additional fifty-seven 5.56/.223 caliber rifle cartridges. Prior to attempting lifesaving measures on Mr. Grande, for the safety of others, officers immediately removed the rifle some feet away from him. After attempting lifesaving measures, it was determined that Mr. Grande was deceased. Officers notified the Garfield County Coroner to respond. Coroner R. Glassmire pronounced Mr. Grande deceased at 2:33 p.m. The area in the surrounding vicinity was secured, taped off and an investigation led by the 9<sup>th</sup> Judicial District Critical Incident Team ("CIT") immediately commenced.

Below are photographs of the pistol-style rifle which Mr. Grande pulled on Corporal Wagstrom and Officer Williams:



Again, Mr. Grande's rifle was "off safe" and loaded with one live rifle ammunition round in the chamber ready to fire and the rifle was also loaded with a 60-round capacity extended magazine loaded with an additional 57 rifle ammunition rounds. Below is a photograph depicting the extended high-capacity magazine which was inside the rifle's magazine well with the rifle ammunition rounds removed and counted:



Barring a weapons malfunction, Mr. Grande would have been able to fire his rifle 58 times without loading another magazine into the rifle's magazine well. However, inside Mr. Grande's shorts' pockets were three additional extended high-capacity magazines loaded with multiple rifle ammunition rounds. Below are representative photographs of these additional extended magazines:



One high-capacity magazine was in Mr. Grande's back left short's pocket. Another high-capacity magazine was in Mr. Grande's right front shorts' pocket. Finally, the fourth high-capacity magazine Mr. Grande possessed on his person was found in his left front shorts' pocket. Each of the three additional extended magazines possessed by Mr. Grande collected from inside his shorts' pockets were analyzed as evidence which included photographing the magazines and ammunition loaded inside them. Below on the following page are additional photographs of each of these extended high-capacity magazines with the live rifle ammunition rounds removed and counted:



Mr. Grande had a total of 140 rifle rounds of live ammunition on his person.

### FOCUS OF LEGAL REVIEW

It is important to highlight that my legal review is limited to, and focused on, the question of whether any involved officer committed a crime during this incident. Based on my review of all materials, I find the evidence does not support criminal charges against any law enforcement officer. The evidence supports the conclusion that Officer Williams reasonably believed there was an imminent danger of death or serious bodily injury to himself, his fellow officer-Corporal Wagstrom, and innocent citizens in and around the area, which justified the use of deadly force. Further, the evidence supports the conclusion that Officer Williams properly and legally used deadly force to effect a lawful arrest of Mr. Grande who was armed with a deadly weapon and who was wanted for a felony criminal accusation involving a weapon.

### THE STATUTORY FRAMEWORK FOR INVESTIGATIONS OF OFFICER-INVOLVED SHOOTINGS

Paragraph (1) of C.R.S. § 16-2.5-301 governs investigations into peace officer-involved shootings. This statute provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado bureau of investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

The investigation of this shooting incident was conducted by the 9<sup>th</sup> Judicial District CIT, which is a multi-agency team consisting of law enforcement personnel from multiple law enforcement agencies of the 9<sup>th</sup> Judicial District. Given that the incident involved a GSPD officer, the primary agencies involved in the investigation involved the Garfield County Sheriff's Office

("GCSO"), the Colorado Bureau of Investigation ("CBI"), and investigators from the Office of the District Attorney-9<sup>th</sup> Judicial District ("ODA"). GCSO investigator-Matt Jenness was designated as the CIT lead investigator for this incident.

Paragraph (1) of C.R.S. § 20-1-114 provides, in relevant part:

The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

In conformity with the above-quoted statutory provisions, this document constitutes a report of the findings of the District Attorney for the 9<sup>th</sup> Judicial District and includes a written explanation of the basis of my decision not to charge the involved officers with any criminal conduct. A copy of this correspondence shall be posted on the website of the Office of the District Attorney 9<sup>th</sup> Judicial District, Colorado which is accessible to the general public.

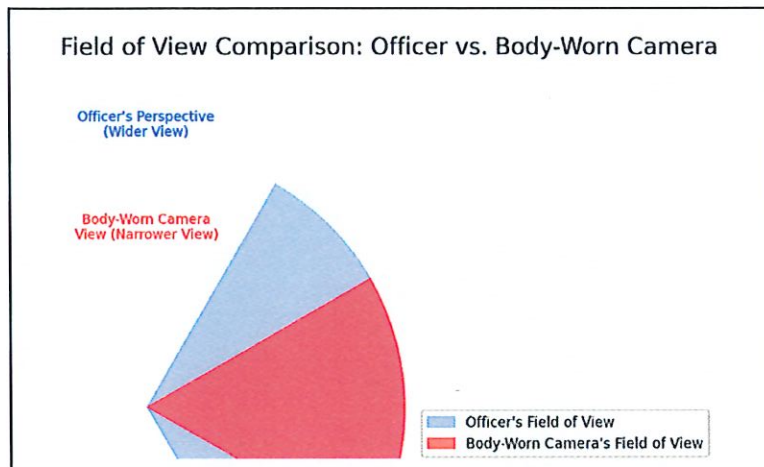
#### MATERIALS REVIEWED AND INFORMATION CONSIDERED

I have been provided a large volume of investigative materials produced by the 9<sup>th</sup> Judicial District CIT, which include reports generated by multiple law enforcement agencies directly relating to the shooting and other potentially relevant reports indirectly related to the incident. The materials I reviewed include:

- All reports completed by members of involved law enforcement agencies and the 9<sup>th</sup> Judicial CIT.
- The autopsy report of Mr. Richard Joseph Grande.
- The coroner's report.
- Body Worn Camera videos of multiple law enforcement officers including Corporal Wagstrom and Officer Williams.
- Photographs of the scene, the involved vehicle, and physical evidence.
- Dispatch Recordings and Dispatch Logs.
- Recordings of witness statements.
- Recorded Interviews of Officers Wagstrom and Williams.
- A 3D Complete Reconstruction of the Crime Scene, accurate to scale, and all located evidence.

Throughout this report there are still photographs captured from video footage derived from involved officers' body-worn-cameras (sometimes referred to as "BWC") and my subjective descriptions of what I perceive from carefully reviewing the BWC footage. BWCs provide valuable

insight into law enforcement encounters with citizens while acting in an official capacity; however, there are inherent limitations that contribute to some misconceptions about their ability to capture “the whole truth.” Some of these limitations may relate to: (1) field of view, (2) perspective limitations, (3) stress and officer movement, (4) audio quality and timing, (5) human interpretation, (6) lighting conditions, and (7) emotional and contextual information. BWC devices are typically mounted in the upper chest area of an officer and do not provide a complete 360-degree view and thus primarily capture what is directly in front of the officer. An officer may be able to observe or perceive things in his/her peripheral vision that would not be captured by the BWC which means important context could be missed. For example, images of actions happening to the side of, or behind, an officer may not be recorded. The camera records some aspects of the officer’s point of view but may not align with the perspectives of other individuals involved in an incident. Below is a graphic representation of fields of view comparison between an officer and the BWC:



In addition to these video limitations related to the field of view, often BWCs have limited audio quality and may not clearly capture everything that is audibly said. Video and audio of the camera device is not always perfectly synced. In highly stressful situations, an officer’s rapid movements or physical activity such as running can cause blurry or obstructed video footage which could distort what viewers perceive and make it difficult to accurately access details. Human interpretation of BWC footage can be influenced by an observer’s biases and preconceived notions. For example, what one viewer sees as threatening, another might interpret it as defensive leading to the potential for footage to be taken out of context when analyzed in isolation from other evidence. This is especially true in chaotic situations such as here, when the officer interacts with an individual suddenly presenting a pistol-style rifle. Lastly, BWCs cannot always capture emotional nuance, tone of voice, or the intentions of individuals involved. BWCs do not record an officer’s internal mental assessment of a situation, such as perceived threats or instincts developed through training and experience.

Considering the differences between the officer’s perception of time, perspective, and the capabilities of the human eye, brain, and body compared to BWC footage that captures a different perspective and can later be reviewed repeatedly at slowed speeds even frame-by-frame, it is important to recognize that the involved officers may not be able to see and process everything that

the BWC device captured; conversely, the BWC may not record everything an involved officer saw and heard. Although BWCs are important tools for accountability and transparency related to appropriateness of law enforcement activities, it is crucial to remember that BWCs are just one piece of evidence among many that should be considered for a comprehensive understanding of an incident. BWCs provide valuable information, but relying solely on BWC video footage could lead to an incomplete or skewed perception of events.

#### **PRIMARY PARTIES INVOLVED**

Officer C. Williams had approximately one year of law enforcement experience and had been an officer with GSPD for approximately one year on the day of the incident. He had no prior law enforcement experience prior to the incident. On the day of the incident, he was certified under the Peace Officer Standards and Training (“POST”) and was qualified on his duty weapon.

Officer E. Wagstrom was a Corporal with GSPD and had approximately eight years of law enforcement experience; the bulk of Corporal Wagstrom’s law enforcement experience was with GSPD. On the day of the incident, he was POST certified and was qualified on his duty weapon.

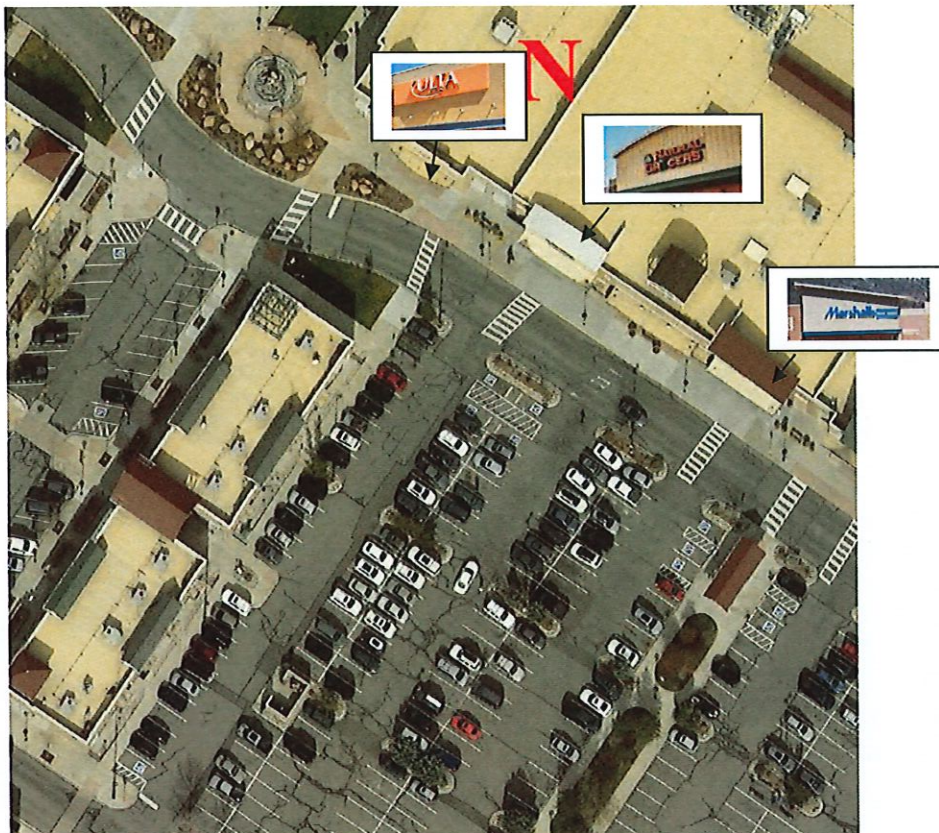
Richard Joseph Grande, born July 24, 1969, is the deceased party. On the date of the incident, he had an active arrest warrant for criminal allegations involving felony menacing with a gun.

#### **ADDITIONAL IMPORTANT FACTS**

It should be noted that I have included facts in this letter that, in my professional opinion, I considered material for my legal review. The investigation materials are voluminous. Although I reviewed the entire investigation, I have not included every single fact or detail of, or related to, the incident.

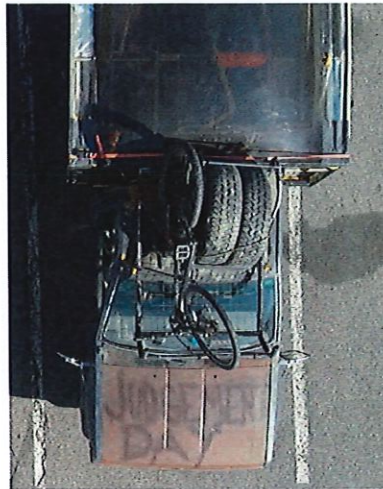
Around 12:55 p.m. on Monday, September 2, 2024, Corporal Wagstrom observed Mr. Grande arrive in his vehicle to the parking lot in front of the Natural Grocers located in the Glenwood Meadows Retail Center inside the city of Glenwood Springs, Garfield County, Colorado. This retail center is comprised of a handful of restaurants and numerous businesses with Target, Ulta Beauty, Marshalls, and PetCo just to name a few. Also, two large apartment complexes, the Lofts and L3 at Green Leaf Lofts, were nearby. It was the Labor Day holiday and the businesses in the area were substantially busier than a typical day. Below on the following page is an overhead photograph depicting the general area:



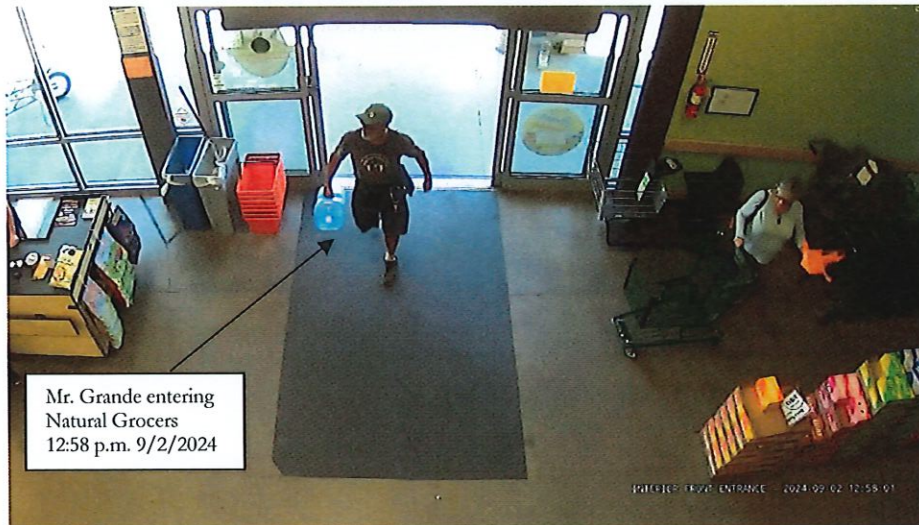


Corporal Wagstrom recognized both Mr. Grande and Mr. Grande's singularly atypical vehicle. Mr. Grande's vehicle was very distinctive in its appearance in that it was an older model Nissan pickup truck with "JUDGEMENT DAY" spraypainted on the side and hood. In addition, the vehicle had a homemade camper in the truck bed whose roof was a bubble-like skylight one might see in a home residence. Below and on the following page are photos captured the day of the incident which depict images of Mr. Grande's vehicle:





Corporal Wagstrom observed Mr. Grande driving this distinct vehicle and watched him park approximately 70 yards from the entrance to the Natural Grocers. Corporal Wagstrom had previously authored an arrest warrant involving Mr. Grande based on allegations arising out of a previous incident on December 9, 2023 near the Walmart in Glenwood Springs for which Mr. Grande was accused of threatening a person with a small .380 caliber handgun. Based on the allegations from the previous incident, formal criminal charges had been filed and Mr. Grande had thereafter failed to appear for a court-ordered hearing. Based on the failure to appear, a court issued an arrest warrant ordering Mr. Grande's arrest; bond was set in the amount of \$5,000 cash. An arrest warrant is an official court order *commanding* law enforcement to arrest the subject. The arrest warrant for Mr. Grande was active on September 2, 2024. Corporal Wagstrom observed Mr. Grande exit his vehicle and walk inside the Natural Grocers. On the following page are still photos taken from video captured by the surveillance camera of Natural Grocers which depicts Mr. Grande carrying what appears to be an empty refillable multi-gallon water jug in his right hand walking toward, and entering into, the store:



Having confirmed the arrest warrant through official dispatch records, Corporal Wagstrom contacted Officer Williams via radio requesting Officer Williams respond to the parking lot near the Natural Grocers for the purpose of complying with the arrest warrant issued by a court which ordered law enforcement to arrest Mr. Grande. Corporal Wagstrom communicated to Officer Williams that the arrest warrant for Mr. Grande was for a “weapons violation” and while enroute, Officer Williams was able to view a photograph of Mr. Grande from official records. Officer Williams arrived within a few minutes at which time he and Corporal Wagstrom again communicated about the arrest warrant. Corporal Wagstrom told Officer Williams that he had seen Mr. Grande exit his vehicle and walk inside the Natural Grocers. The officers decided to contact Mr. Grande before he could return to his vehicle to prevent Mr. Grande from accessing any weapons. Mr. Grande was wearing cargo pants which were cutoff to be worn as shorts; he had a hoodie-style sweatshirt tied around his waist. Unbeknownst to either officer, Mr. Grande had, in fact, a short stock pistol-style rifle hidden behind his back completely covered by the sweatshirt. While the officers communicated about details of how to safely effectuate the arrest of Mr. Grande, Mr.

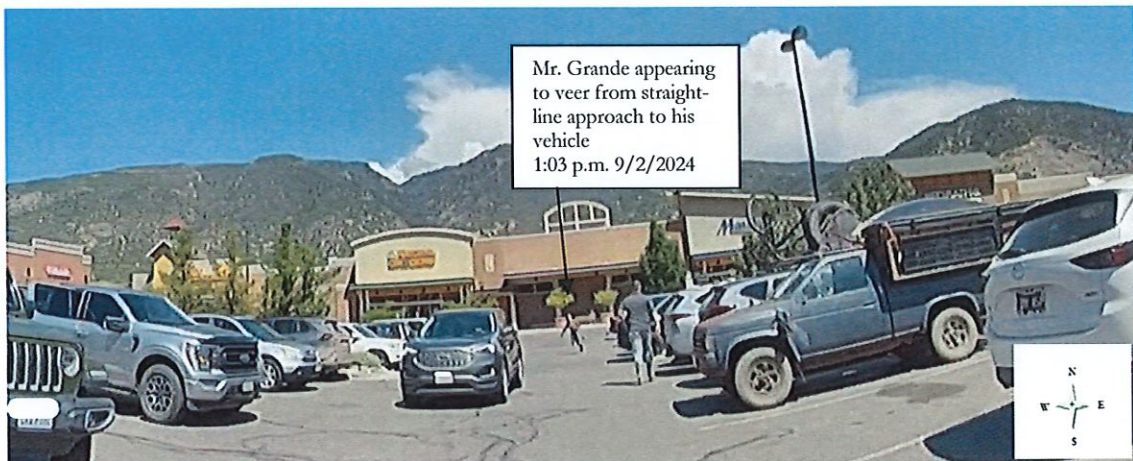
Grande suddenly emerged from the Natural Grocers with the multi-gallon water jug in his left hand walking toward his (Mr. Grande's) vehicle. Below are still photos taken from video captured by the surveillance camera of Natural Grocers which depicts Mr. Grande exiting Natural Grocers and carrying the water jug, this time in his left hand, walking generally in the direction of Mr. Grande's vehicle:



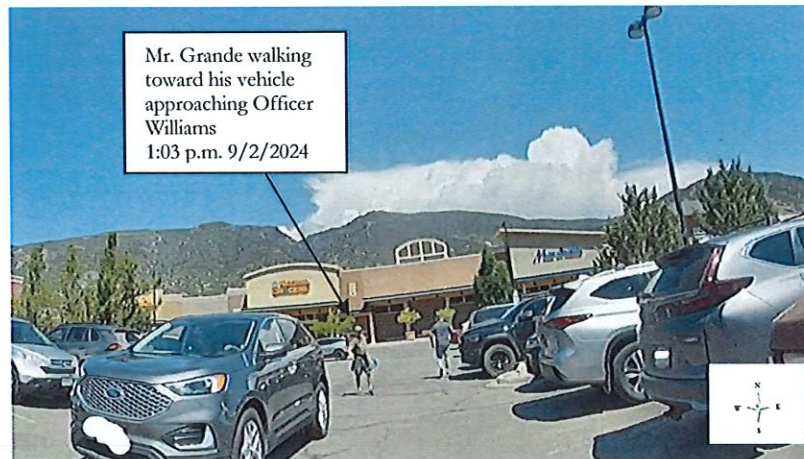
The field of view and the quality of the Natural Grocers' surveillance video diminishes the further the distance is away from Natural Grocers.

Corporal Wagstrom and Officer Williams began walking north toward Mr. Grande as he (Grande) walked generally south towards his (Grande's) vehicle. Both officers were wearing official GSPD uniforms with readily identifiable insignia such as police patches on both shoulder sleeves and a shiny metallic police badge affixed above their upper left chest pocket. Corporal Wagstrom had "Corporal" rank stripes on both shirt sleeves sewn below the police patches. Corporal Wagstrom had a radio microphone clipped slightly above and between the upper chest pockets of his uniform shirt and the microphone was attached to a coiled connector cable draped across his right shoulder connecting to the portable radio affixed to his duty belt. Officer Williams had a police radio attached to his belt. Both officers were adorned with a duty belt containing typical police-issued equipment such as handcuffs, TASER, extra pistol magazine pouches, etc. Both officers had body worn cameras ("BWCs") affixed slightly below and between the upper chest pockets of their

uniform shirts. Both officers had activated their BWC and both devices captured video footage of their approach to, and eventual interaction with, Mr. Grande. The area was bustling with pedestrians and vehicles traveling into and through the parking lot with one vehicle in particular traveling southward toward the officers in the parking lot aisle very near the location of the initial encounter. In viewing BWC footage of Mr. Grande's approach as he gets closer to the officers, it appeared that Mr. Grande observed the officers walking towards him and at one point Mr. Grande veers to his (Grande's) right (westward) temporarily departing from a straight-line southerly approach to his vehicle. Corporal Wagstrom walked to his (Wagstrom's) left (west) appearing to cause Mr. Grande to veer back to his (Grande's) left (east) back on a straight-line southerly path to his (Grande's) vehicle. Below is a still photo captured from Officer Williams' BWC depicting the previously described vehicle and Mr. Grande changing his direction from a straight-line path toward his (Grande's) vehicle:



Below is a still photo captured from Officer Williams BWC which depicts the previously mentioned vehicle and Mr. Grande's changing direction away from Corporal Wagstrom back towards Mr. Grande's vehicle:



As Mr. Grande approached Officer Williams, Officer Williams stated, "Hey Richard." Mr. Grande responded, "Yea." Officer Williams then stated, "Put down the jug for us. We have a warrant for your arrest." Mr. Grande reacted by abruptly putting the water jug on the ground and immediately thereafter moved backwards with both of his hands behind his back but still facing Officer Williams. Mr. Grande yelled, "No! No! No!" Below on the left is a still photo captured from Officer Wagstrom's BWC and on the right is a still photo from Officer Williams' BWC which depict Mr. Grande's actions after abruptly placing the water jug on the ground:

Mr. Grande moving backwards with his hands behind his back  
1:03 p.m. 9/2/2024  
\*Wagstrom's BWC



Mr. Grande moving backwards with his hands behind his back  
1:03 p.m. 9/2/2024  
\*Williams' BWC



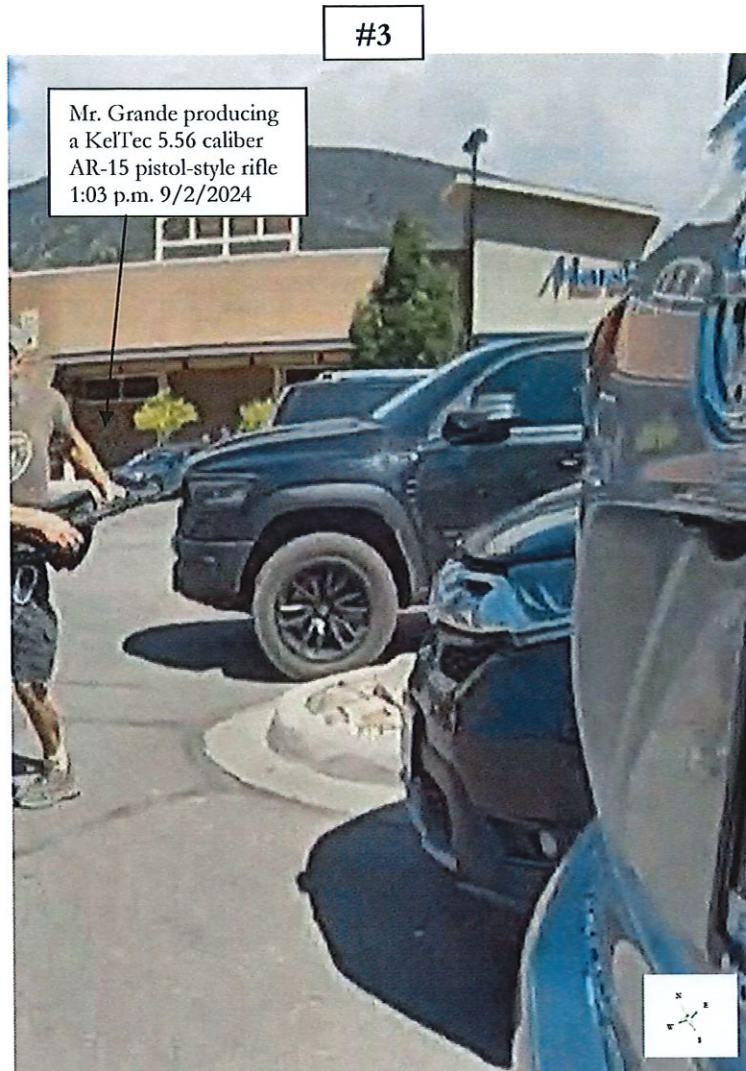
Within seconds, Mr. Grande pulled a KelTec 5.56 caliber AR-15 pistol-style rifle from behind his back. The rifle was off "safe" ready to fire with one round in the chamber and inside the rifle's magazine well was an extended magazine containing an additional fifty-seven 5.56/.223 caliber rifle cartridges. Below and on the following page are still photos labeled "#1" through "#3" (#1 being the earliest in time by fractions of a second) captured from Officer Williams' BWC which progressively depicts Mr. Grande pulling the rifle from behind his back:

#1



#2





In photo #3 above, Mr. Grande has his left hand clasping the foregrip of the rifle in a manner consistent with how an individual would typically grip the weapon to accurately fire it.

Observing the rifle, Officer Williams quickly moves to his (Williams') right seeking protective cover. On the following page are still photos labeled "#1" through "#3" (#1 being the earliest in time in fractions of a second) captured from Officer Wagstrom's BWC which progressively depicts Mr. Grande pulling the rifle from behind his back and also depicts Officer Williams' immediate response:



As depicted in Photo #3 directly above, in less than a few seconds after seeing Mr. Grande present the rifle, Officer Williams moves eastward away from Mr. Grande to find protective cover. Corporal Wagstrom is also moving to find protective cover and therefore his (Wagstrom's) BWC does not subsequently capture Officer Williams or Mr. Grande. Due to Corporal Wagstrom moving away from Mr. Grande in a southwest direction to find protective cover and Mr. Grande moving eastward away from the officers and because the BWC was affixed to Corporal Wagstrom's chest area, the field of view of Mr. Grande becomes limited and obstructed.

After finding protective cover behind vehicles parked in the area, Officer Williams observes Mr. Grande as he (Grande) is running to the west behind vehicles while still armed with the rifle and Officer Williams fires two times at Mr. Grande. After firing two times, Officer Williams moves again further to the east and at some point, Officer Williams observes Mr. Grande crouching down behind a vehicle holding the rifle in a manner ready to fire while scanning for the officers in the area near where he (Mr. Grande) originally encountered the officers. The Natural Grocers' surveillance video



depicts Mr. Grande walking bent at the knees in a fashion one might describe as a “duck walk” attempting to hide behind and between vehicles while continuing to hold the rifle in a manner ready to fire. Officer Williams then fires nine additional times at Mr. Grande striking Mr. Grande. Below is a still photo captured from Officer Williams’ BWC which depicts Mr. Grande circled in red consistent with Mr. Grande crouching with the rifle appearing ready to fire and at approximately the time Officer Williams fires multiple times striking Mr. Grande:



After firing at Mr. Grande and apparently striking him, Officer Williams then moves to a different location while continuing to use vehicles parked in the area as protective cover. Corporal Wagstrom and Officer Williams communicate with each other providing updates regarding the situation while officers from other law enforcement agencies begin to arrive on scene. Working with Corporal Wagstrom and Officer Williams, the other officers formed a protective perimeter around the area in which Mr. Grande was suspected to be, and they attempted to clear the immediate area of citizens who may be endangered by the situation. At some point, the decision was made to form a team of law enforcement officers equipped with handheld protective armored shields in another attempt to arrest Mr. Grande and provide lifesaving emergency medical attention to him and any other persons found to be injured. At approximately 1:41 p.m., officers located Mr. Grande lying

motionless on the ground in between two vehicles. Officers placed Mr. Grande into handcuffs. Underneath Mr. Grande's body, officers located the rifle. The rifle was removed a safe distance away. Emergency medical providers arrived and assessed whether any viable lifesaving efforts were possible. It became evident that Mr. Grande was mortally wounded, and Mr. Grande was formally pronounced "deceased".

Given that the incident involved a GSPD officer discharging a firearm, at GSPD's request, the CIT was activated with GCSO Investigator Matt Jenness ultimately acting as lead investigator. The scene was taped off and entry into and out of the scene was documented and logged. Shortly after responding officers declared the scene safe, the coroner arrived and removed Mr. Grande's body from the scene and later scheduled an autopsy with a forensic pathologist. Over the course of minutes, hours, days and weeks after the incident, investigators carefully processed and collected all material evidence related to the incident and attempted to identify and interview any potential witnesses to the incident, which included dozens and dozens of shoppers patronizing businesses who had sheltered in place in the area. Numerous citizens were traumatized by the incident. Both Corporal Wagstrom and Officer Williams were formally interviewed by CIT Investigators regarding the incident and both officers provided a detailed account of the incident to investigators which was video recorded. Corporal Wagstrom and Officer Williams were interviewed separately. It is important to note that the highlights of both Corporal Wagstrom and Officer Williams' statements from their formal interviews contained herein is not intended to be a verbatim transcript of their statements.

#### CORPORAL WAGSTROM'S INTERVIEW

The following includes facts derived from Corporal Wagstrom's interview:

Corporal Wagstrom stated that on the day of the incident, he was working a normal twelve-hour shift and around lunchtime, he went to the Natural Grocers to buy some things for lunch. When Corporal Wagstrom was getting into his marked police patrol vehicle in the parking area close to the Natural Grocers, he observed Mr. Grande arrive in his pickup truck. Corporal Wagstrom stated that Mr. Grande's vehicle was very distinctive such that he would recognize it immediately. Corporal Wagstrom stated that as Mr. Grande passed him, Mr. Grande waived at him. Corporal Wagstrom recognized Mr. Grande and his vehicle and remembered that he (Wagstrom) had authored an affidavit in support of an arrest warrant related to a previous incident which occurred in late 2023. The allegations from the previous incident involved Mr. Grande pulling a handgun on a citizen near the Glenwood Springs Walmart. Officer Wagstrom investigated the previous incident and subsequently wrote an affidavit in support of an arrest warrant for criminal allegations involving a gun. Corporal Wagstrom stated that at the time of the previous incident, Mr. Grande's gun was seized as evidence although he could not remember whether the handgun was seized from Mr. Grande's person or from his vehicle. After recognizing Mr. Grande in the parking lot close to the Natural Grocers, Corporal Wagstrom confirmed with police dispatch that Mr. Grande had an active arrest warrant for the 2023 felony menacing case.

Rather than attempt to arrest Mr. Grande alone, using his radio, Corporal Wagstrom contacted Officer Williams who was across town and requested Officer Williams come to the parking area near the Natural Grocers to aid and assist in the arrest. Corporal Wagstrom stated that there were two officers on duty which included him and Officer Williams, and he did not want to contact Mr. Grande by himself. Corporal Wagstrom informed Officer Williams over the radio that Mr. Grande had a warrant for felony menacing with a handgun. Corporal Wagstrom watched Mr. Grande inside his vehicle and observed Mr. Grande get out of his vehicle and walk into the Natural Grocers with a water jug. Prior to Mr. Grande going into the store, Corporal Wagstrom was able to observe the front and back of Mr. Grande and it did not appear to Corporal Wagstrom that Mr. Grande had any weapons on his person.

Sometime shortly after Officer Williams arrived, Mr. Grande exited the store. Corporal Wagstrom stated that he and Officer Williams exited their patrol vehicles and began walking toward Mr. Grande. Corporal Wagstrom stated that when he and Officer Williams got about 10-15 yards from Mr. Grande, Officer Williams called out to Mr. Grande by saying, "Hey Richard, why don't you put the jug down for us." Corporal Wagstrom stated that Mr. Grande put the jug down and took a step back putting his hands behind his back. Corporal Wagstrom stated that he was unsure if Mr. Grande was getting ready to run or to turn around and comply. Corporal Wagstrom stated that he (Wagstrom) was getting ready to run because it looked like Mr. Grande was getting ready to pivot and run (flee). Corporal Wagstrom stated that moments after Mr. Grande's hands went behind his back, his left hand started to bring a shortened AR style rifle from behind his back. Corporal Wagstrom stated that he saw the outline of the rifle and the magazine which he was concerned was modified possibly to be an automatic rifle. Because Mr. Grande was already beginning to point the rifle toward the officers, Corporal Wagstrom stated that he was caught off guard and was surprised by Mr. Grande presenting the rifle. Corporal Wagstrom felt that it was too late for him (Wagstrom) to draw his own weapon, and he thought that Mr. Grande was going to be able to get shots off at the officers before either were able to draw their own weapons and respond. Knowing it was a rifle, Corporal Wagstrom believed that Mr. Grande had more higher velocity rounds and firepower than either he or Officer Williams had at that time and their protective vests would less effectively protect against rifle rounds. Corporal Wagstrom's immediate reaction was to get him and Officer Williams clear and distanced from Mr. Grande. Corporal Wagstrom immediately sought protective cover behind some dumpsters nearby so he could draw his own weapon.

While seeking protective cover, Corporal Wagstrom yelled "Gun! Gun! Gun!" and Corporal Wagstrom heard gunshots but did not directly see who fired. Corporal Wagstrom radioed dispatch and notified them of "shots fired" and Corporal Wagstrom initially believed it was an "active shooter" scenario. At some point, Corporal Wagstrom was able to gain visual line of sight with Officer Williams. He and Officer Williams were able to communicate and Corporal Wagstrom stated that Officer Williams communicated to him that he believed he had struck Mr. Grande. Corporal Wagstrom stated that Officer Williams communicated where he (Williams) believed Mr. Grande was and that Mr. Grande was either lying down under, or crouched between, vehicles. Corporal Wagstrom stated that if Officer Williams had not engaged Mr. Grande that the officers could have been in an elongated shootout with Mr. Grande and could have had a possible a mass casualty incident. Corporal Wagstrom emphasized some aspects of the "timing" given that "it was moments" between the time Mr. Grande put his hands behind his back and produced the AR (rifle).

### OFFICER WILLIAMS' INTERVIEW

The following includes facts derived from Officer Williams' interview:

During Officer Williams' interview, Officer Williams confirmed that Corporal Wagstrom radioed to him requesting he respond to the location near Natural Grocers. Officer Williams confirmed that Corporal Wagstrom had recognized Mr. Grande and that he (Wagstrom) communicated to Officer Williams that he had located a subject with an active arrest warrant for weapons charges. While enroute, Corporal Wagstrom told Officer Williams that Mr. Grande "may have weapons in his vehicle" and Officer Williams viewed Mr. Grande's DMV photo. When Officer Williams arrived in the parking lot near Natural Grocers, Corporal Wagstrom pointed out Mr. Grande's vehicle to Officer Williams and told Officer Williams that Mr. Grande had gotten out of his vehicle carrying a large water jug in his hands and had entered the store. While Officer Williams and Corporal Wagstrom were communicating details regarding the arrest of Mr. Grande, Mr. Grande suddenly exited the Natural Grocers. Officer Williams and Corporal Wagstrom then started walking north away from their police vehicles toward Mr. Grande who was walking south away from the Natural Grocers toward his (Grande's) vehicle with a water jug in his left hand. Officer Williams observed Mr. Grande make a "weird" movement appearing to walk west on the other side of a vehicle in what appeared to be an attempt by Mr. Grande to avoid him and Corporal Wagstrom. Corporal Wagstrom then walked on the other side of the nearby vehicle cutting off Mr. Grande who then veered back toward Officer Williams.

Officer Williams stated that when he got approximately 8-10 feet from Mr. Grande, Officer Williams communicated to Mr. Grande a request to put the jug down and Officer Williams attempted to inform Mr. Grande there was a warrant for his arrest. Officer Williams stated that Mr. Grande put the jug down and said "No" and within seconds Mr. Grande produced an AR-style weapon from under his shirt at which point Officer Williams immediately moved eastward for protective cover. Officer Williams was able to observe Mr. Grande trying to flee with the weapon and fired his duty weapon at Mr. Grande. Officer Williams thought he initially fired his duty weapon at Mr. Grande one or two times. Officer Williams stopped firing at Mr. Grande because he (Williams) lost sight of Mr. Grande. Officer Williams then maneuvered northeast and while kneeling between vehicles parked nearby, Officer Williams observed Mr. Grande crouched in a "ready/low ready" position with the rifle looking for someone to shoot. Believing that Mr. Grande's intent was to fire the rifle at the officers, Officer Williams then fired multiple times at Mr. Grande. Officer Williams believed he only hit Mr. Grande two or three times. Officer Williams stated that after one of his (Williams') shots, Mr. Grande's back arched and then Mr. Grande got into a prone position in front of a vehicle. Officer Williams believed that Mr. Grande was wounded at that point and remembered observing at one point Mr. Grande looking in his (Williams') direction. Officer Williams stated that he was only armed with a handgun and Mr. Grande was armed with a rifle and Mr. Grande had the advantage over him and Corporal Wagstrom. Officer Williams stated that the area was heavily populated. Officer Williams stated that there were people in the area who did not realize what was happening. Officer Williams stated that the last place he saw Corporal Wagstrom was the area that Mr. Grande's attention was focused and he (Williams) believed that Mr. Grande was targeting Corporal Wagstrom.

After continuing to maneuver and after observing Mr. Grande focused on the area of Officer Wagstrom's last location, Officer Williams stated that at some point, he observed Mr. Grande turn toward him (Williams) and they may have locked eyes. Officer Williams was concerned that Mr. Grande was looking for him while he was under a vehicle and Officer Williams stated that he was concerned that Mr. Grande would "put rounds on him" (Williams). Officer Williams stated that Mr. Grande had a long rifle and that he (Williams) did not have protection to stop a bullet from a long rifle. Officer Williams believed that he and Corporal Wagstrom were at a tactical disadvantage and additional loud verbal commands to Mr. Grande would have allowed Mr. Grande to locate Officer Williams to fire the rifle at him (Williams) in less than a second. Officer Williams communicated to Corporal Wagstrom where he thought Mr. Grande was laying down and he thought although Mr. Grande was wounded, he (Mr. Grande) was still trying to locate the officers with the intent to shoot them.

Officer Williams stated that he shot Mr. Grande because Mr. Grande "pulled out a weapon" and attempted to flee with the deadly weapon. Officer Williams stated that he thought he was "going to die" when Mr. Grande pulled out the weapon. Officer Williams stated that he stopped firing after the first initial shots because he lost visual observation of Mr. Grande. Officer Williams believed Mr. Grande was looking for a target to shoot and he (Mr. Grande) put every civilian and himself in danger of serious bodily injury or death. Officer Williams stated less than lethal options were not available and that if he had not fired at Mr. Grande, Mr. Grande could have taken a hostage, could have killed Corporal Wagstrom, could have killed a civilian, or the situation could have turned into a mass shooting. Officer Williams stated, "Who expects a rifle is going to be pulled out on them? No one." Officer Williams stated that he thought he (Williams) "was dead" and felt that Corporal Wagstrom "was going to die."

#### AUTOPSY FINDINGS

At the formal request of the Garfield County Coroner, a medical pathologist, Dr. Dean Havlik, MD performed an autopsy on Mr. Grande's body at Community Hospital in Grand Junction. The conclusions reached by Dr. Havlik and memorialized in his autopsy report stated in part,

"Autopsy revealed a total of four gunshot wounds. All four gunshot wounds were consistent with a distant range of fire. Two of the gunshot wounds had entrance wounds on the back with one involving only the soft tissues of the back and the other resulting in perforation of the internal abdominal soft tissues and penetrating the vertebral column. Another gunshot wound had an entrance wound on the lateral left hip and penetrated the internal abdominal soft tissues. The fourth gunshot wound was a graze wound of the right lower leg. There were no other injuries that contributed to death. Toxicological examination performed on femoral blood showed only the presence of caffeine. The urine was negative for drugs of abuse.

The cause of death is multiple gunshot wounds and the manner of death is homicide.”

**LAW RELATED TO OFFICER USE OF DEADLY FORCE & CONCLUSIONS**

Several federal court cases exist which support the proposition that when an officer has probable cause to believe that a suspect poses a threat of serious physical injury, either to the officer or to others, deadly force may be legally authorized. *Tennessee v. Garner*, 471 U.S. 1 (1985). When considering the way in which Mr. Grande reacted to Officer Williams and Corporal Wagstrom walking up to him and informing him that there was an arrest warrant, it is not unreasonable to conclude that Officer Williams had probable cause to believe that Mr. Grande posed a threat of serious physical injury or death to him, his fellow officer-Corporal Wagstrom, and other innocent citizens. Corporal Wagstrom confirmed an active arrest warrant for Mr. Grande for felony menacing and had told Officer Williams about the arrest warrant and that the allegations related to the active arrest warrant for Mr. Grande involved a weapon. Corporal Wagstrom and Officer Williams, both on-duty dressed in full uniform easily identifiable as police officers to anyone, calmly and in a nonaggressive manner approached Mr. Grande on foot approximately 172 feet south of the Natural Grocers. On the following page below is a diagram which depicts Mr. Grande’s (in red), Corporal Wagstrom’s (in yellow), and Officer Williams’ (in blue) path of approach to the location of the initial encounter with the location of the initial encounter circled in white:



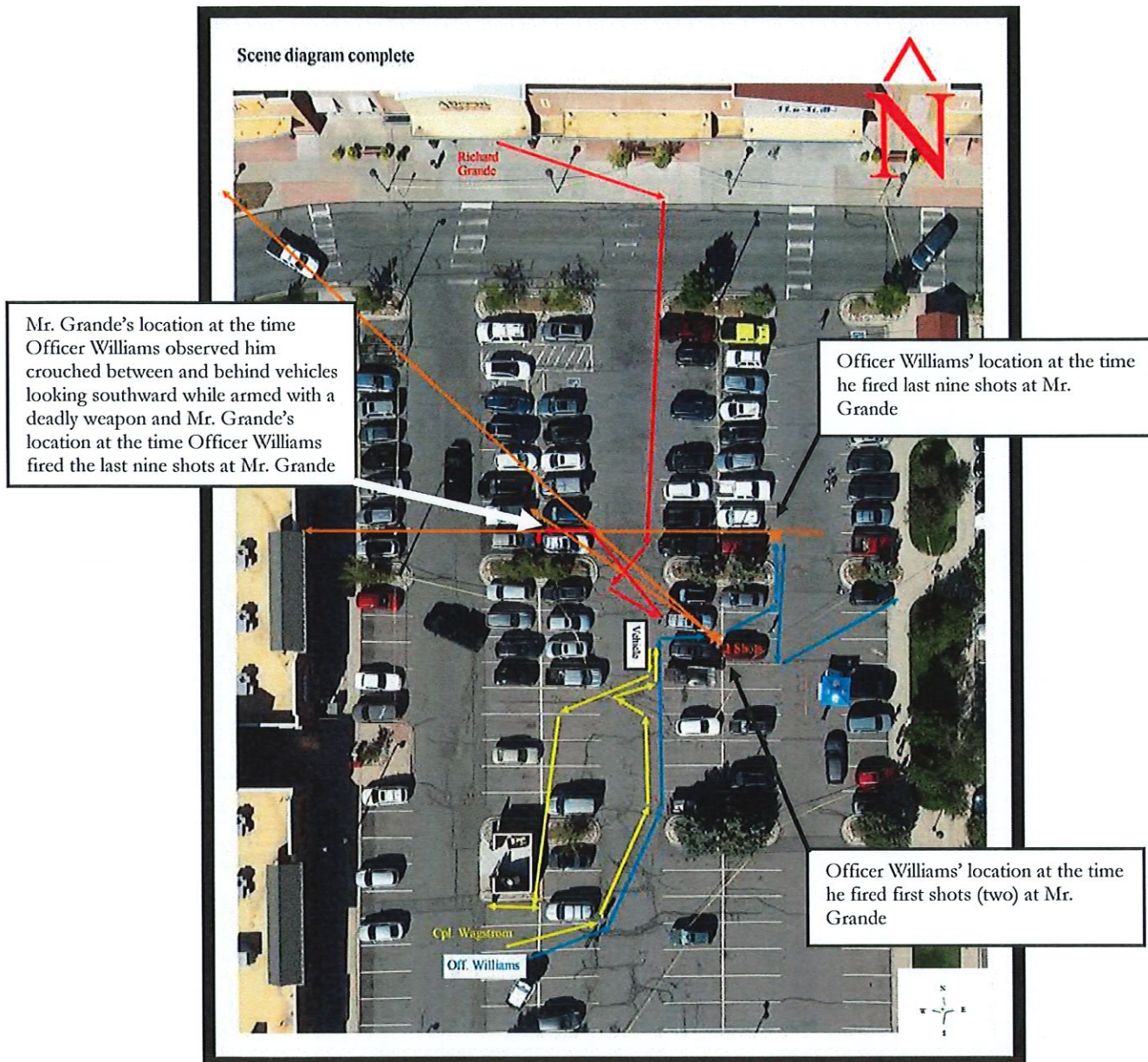
Officer Williams told Mr. Grande about the arrest warrant to which Mr. Grande immediately responded by quickly backpedaling away. At the same time, while facing the officers, Mr. Grande reached both hands behind his back yelling, “No! No! No!” and within a couple of seconds brought around his body a pistol-style AR rifle.

Although Mr. Grande did not fire his rifle, in viewing both Corporal Wagstrom and Officer Williams’ BWC, it is a legally reasonable to conclude that during the initial encounter, Mr. Grande is deploying or drawing the rifle in a manner consistent with his intent to use it. Based on how fast Corporal Wagstrom and Officer Williams reacted to quickly move behind protective cover during the initial encounter, a reasonable inference could be drawn that Mr. Grande did not fire his rifle at the officers because he did not have time. Given that Mr. Grande was able to pull the rifle around his body within less than a couple of seconds, neither Corporal Wagstrom or Officer Williams had the opportunity to engage in further explanatory dialogue regarding the arrest warrant. Neither officer had any time converse with Mr. Grande to understand his intentions when he yelled, “No! No! No!” while pulling a pistol-style rifle from behind his back and beginning to point the rifle at them while at the same time backpedaling. Neither officer had time to give Mr. Grande additional verbal commands or use less than lethal force. Both Corporal Wagstrom and Officer Williams had

reason to believe that Mr. Grande was initially pulling the rifle to fire it at them and Mr. Grande was thereafter running to take cover with the intention to fire the rifle. It was not an unreasonable reaction to the circumstances presented within these few seconds to interpret Mr. Grande's actions as an imminent threat of serious bodily injury or death to themselves and the innocent citizens nearby and to use deadly force in defense. Prevailing law does not require a police officer to wait until an armed and dangerous felon has drawn a bead on the officer or others, much less gamble their and others' life by waiting until they are fired upon, before using deadly force.

When Officer Williams initially fired at Mr. Grande, Officer Williams was able to visually observe Mr. Grande running with the rifle in a manner consistent with the intent to use it. During the subsequent volley of fire, Officer Williams was able to visually observe Mr. Grande crouched behind vehicles still holding the rifle while appearing to be focused on locating the officers in a manner consistent with the intent to fire the rifle. It was reasonable for Officer Williams to interpret Mr. Grande's movements and actions when he was trying to hide behind and in between vehicles as being fixed and focused on finding the officers' location while armed with a deadly weapon. The circumstances support a legally reasonable conclusion that Mr. Grande had no intention to comply with the officers but rather, Mr. Grande either was using the deadly weapon to flee and/or had every intention to use one or more of the 140 rounds of rifle ammunition on his person. On the following page is a diagram which depicts the movements of Mr. Grande (in red), Corporal Wagstrom (in yellow), and Officer Williams (in blue) as well as the approximate location and direction of fire (in orange) when Officer Williams fired at Mr. Grande:





After the initial encounter during which Mr. Grande backpedaled away from the officers while pulling the rifle around from behind his back, although very blurry due to the distance from the Natural Grocers, the store's entrance surveillance video corroborates that Mr. Grande ended up crouched down between and then behind vehicles as he was peering to the south looking in the general direction of the location where he first encountered Officer Williams and Corporal Wagstrom. On the following pages are still photos labeled "#1" through "#3" (#1 being the earliest in time in seconds) taken from screenshots of the Natural Grocers' surveillance video depicting Mr. Grande (circled in red), in the seconds following the initial encounter, duckwalking alongside of a white vehicle eventually crouching down between the white vehicle and another vehicle while armed

with a deadly weapon appearing to look for the location of Corporal Wagstrom and/or Officer Williams (it should be noted that the top of Photos #1-#3 below is generally south):

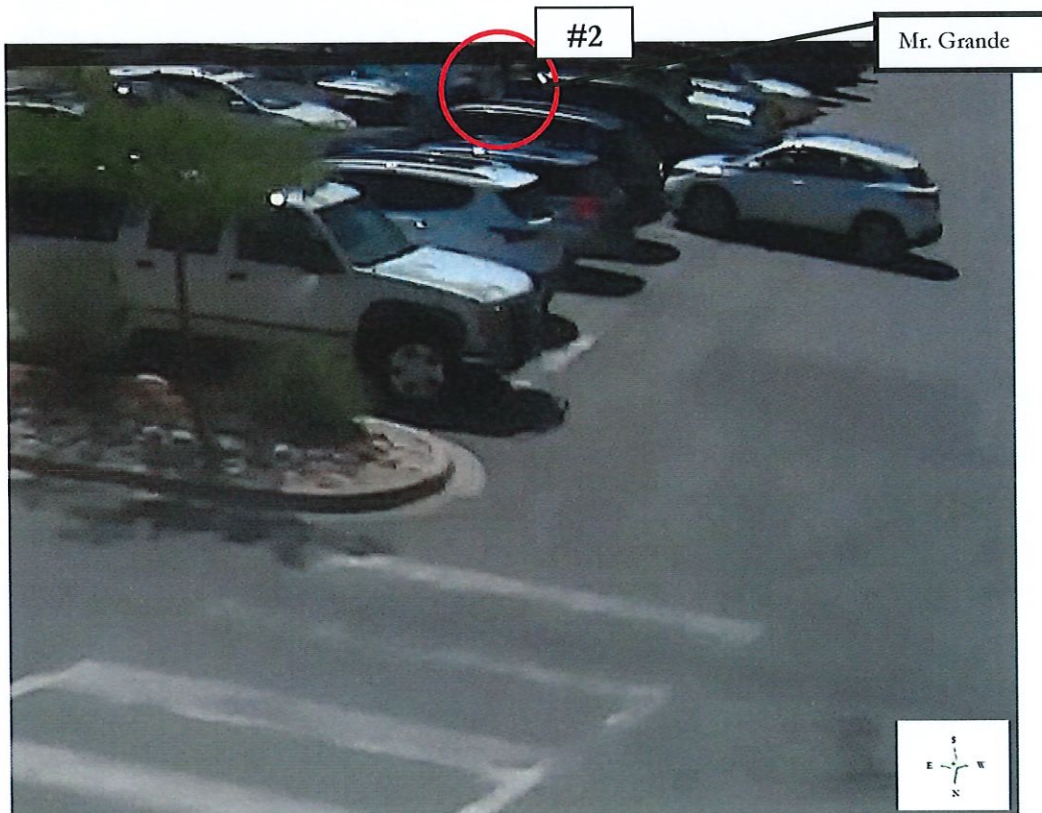




Photo #3 above depicts Mr. Grande after he initially pulled the rifle on Corporal Wagstrom and Officer Williams and ran away from the location of the initial encounter ending up walking crouched down bent at the knees around to the back of the white SUV. Photo #3 is consistent with Officer Williams stating that he observed Mr. Grande crouched down holding the rifle in a manner ready to fire and appearing to look for Officer Williams and Corporal Wagstrom. Photo #3 also depicts the approximate location of Mr. Grande at the time Officer Williams fired nine times at Mr. Grande. Mr. Grande evidently did not calculate that Officer Williams would essentially flank around to the side (east of Mr. Grande) and behind him as Mr. Grande was crouched down behind and between the vehicles focusing south. The autopsy revealed bullet entry wounds in the upper left side and lower left side of Mr. Grande's back consistent with him crouched down facing south when Officer Williams fired the second volley of shots depicted in Photo #3 above.

The fact that there are bullet entry wounds to Mr. Grande's back are not evidence that Officer Williams' use of deadly force was not reasonable and legally justified. This analysis does not go without legally supportive precedent. In a Federal Court of Appeals case for the Eleventh Circuit, *Montoute v. Carr*, 114 F.3d 181 (11th Cir. 1997), officers shot in the back an individual in possession of a shotgun although the person never turned to face the officers or point the gun at them. The federal court in *Montoute* stated,

“We accept for the purposes that, once past Sergeant Carr, Montoute never turned to face him again, and Montoute never actually pointed the saved-off shotgun at anyone. But there was nothing to prevent him from doing either, or both, in a split second. At least where orders to drop the weapon have gone unheeded, an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force.”

*Montoute* at 185.

In another Federal Court of Appeals case for the Eleventh Circuit, *Garczynski v. Bradshaw*, 573 F.3d 1158 (11th Cir. 2009), Palm Beach Florida Sheriff's deputies responded to a man armed with a handgun who was suicidal. Initially, his location was unknown, but through investigation, officers located him in his vehicle in a secluded parking lot. Officers rushed his car with weapons drawn and ordered Garczynski to drop his gun, which he initially pointed at his head. Garczynski refused to drop his gun and instead began to swing it around and the officers fired, killing him. The court in *Garczynski* reiterated the rationale of the *Montoute* case and stated, "Even if we assumed that Garczynski did not point his gun in the officers' direction, the fact that Garczynski did not comply with the officers' repeated commands to drop his gun justified the use of deadly force under these circumstances." *Garczynski* at 1169. Citing the *Montoute* case, the court in *Garczynski* also stated,

"...the officers did not have control over Garczynski and there was nothing preventing him from shooting at the officers in an instant. The officers could reasonably believe that the weapon was loaded, as it actually was, given Garczynski's expressed intent to commit suicide. As in *Montoute*, Garczynski's repeatedly disobeyed the officers' orders, first to show his hands and then to drop his gun. These factors, even assuming that Garczynski never pointed the gun at the officers, provided a sufficient basis for the officers reasonably to believe that Garczynski posed an immediate risk of serious harm to them."

*Garczynski* at 1169.

In another Eleventh Circuit Federal Court of Appeals case in which a person was running away from law enforcement when he was shot and who had not threatened definitely the officers with a gun, the federal court stated, "...the law does not require officers in tense and dangerous situations to wait until the moment the suspect uses a deadly weapon to act to stop the suspect." *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007).

In considering the BWC footage of Corporal Wagstrom and Officer Williams, the Natural Grocer's surveillance video footage, and both officer's statements or account of the circumstances, it is a legally reasonable to conclude that Mr. Grande is deploying or drawing the rifle in a manner consistent with his intent to use it. Given that Mr. Grande was able to pull the rifle around his body within less than a couple of seconds, neither Corporal Wagstrom or Officer Williams had the opportunity to engage in further discussions regarding the arrest warrant. While in the cases cited above where the court found the use of deadly force legally appropriate and pointed out that verbal commands were given, the absence of verbal commands under these unique circumstances is reasonable. Neither officer had any time to further talk with Mr. Grande to try and understand his intentions when he yelled, "No! No! No!" while pulling the rifle from behind his back and beginning to point the rifle at them while at the same time backpedaling away still armed with the rifle. Citizens were in the immediate area and Mr. Grande had gained a tactical advantage over the officers by immediately presenting the rifle prompting them to flee for protective cover while he hid behind vehicles still armed with the rifle. Indeed, from reviewing Officer Williams' BWC, one can see on

the other side of the vehicle that Officer Williams knelt beside when he fired nine times at Mr. Grande, there was a terrified innocent citizen crouched down. Yelling verbal commands at that point so that Mr. Grande could then train his focus on Officer Williams could have put this citizen in danger of being shot by Mr. Grande. Nothing prevented Mr. Grande from firing the rifle in an instant. It is not unreasonable to conclude that neither officer had time to give Mr. Grande additional verbal commands or use less than lethal force.

It has also been recognized by courts that officers may use deadly force to prevent escape of a fleeing, dangerous felon. *Tennessee v. Garner*, 471 U.S. 1 (1985). The United States Supreme Court in *Garner* stated, “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical injury, either to the officers or others, an officer may use deadly force.” In *Garner*, the Court also stated, “. . .if a suspect threatens the officer with a weapon or there is reason to believe that the suspect had committed a crime involving serious physical harm, deadly force may be used if necessary to prevent escape, and, if where feasible, some warning has been given.” *Garner* at 12.

The United States Supreme Court has also stated, “The ‘reasonableness’ of a particular use of force by a police officer must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight. We must allow 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. Connor*, 490 U.S. 386, 396 (1989). When evaluating whether a law enforcement officer has used excessive force in a particular circumstance, the United States Supreme Court has emphasized that there is no precise test or “magical on/off switch” to determine when an officer is justified in using excessive or deadly force. *Scott v. Harris*, 550 U.S. 372, 382 (2007); see also *Graham* at 396. The Court has said, “Nor must every situation satisfy certain preconditions before deadly force can be used.” See *Scott* at 382. “Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.” See *Graham* at 396. The Court has further stated, “[I]n the end we must still sloop our way through the factbound morass of ‘reasonableness’ . . . the only perspective that counts is that of a reasonable officer on the scene at the time the events unfolded.” *Id.* The Court further stated, “Accordingly, the ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Graham* at 397. Those facts and circumstances are often “tense, uncertain and rapidly evolving,” thereby requiring “split-second judgments” as to how much force is necessary. *Id.* “Because an officer’s perspective in the field differs from that of a judge sitting peacefully in chambers, we must resist the temptation to judge an officer’s actions ‘with the 20/20 vision of hindsight.’” *Id.* at 396.

Like the Supreme Court has emphasized in *Graham*, Officer Williams’ perspective on Monday, September 2, 2024 differs from mine sitting peacefully in an office reviewing the evidence. I too must resist the temptation to judge Officer Williams’ split-second actions with the 20/20 vision of hindsight. In considering the principles delineated in multiple federal cases regarding whether an officer has used excessive force in a “civil” context in which the burden of evidentiary proof is significantly less than it would be in a “criminal” prosecution, I cannot reasonably conclude

that Officer Williams' use of deadly force violated any criminal statute. A prosecutor has an ethical duty to only file charges which are supported by probable cause. Moreover, the National Prosecution Standards recommend that a prosecutor only file formal charges when the prosecutor has a reasonable belief that he or she can prove a crime was committed beyond a reasonable doubt, a significantly higher burden of evidentiary proof than in the civil legal context.

In addition to the previously discussed legal principles derived from the federal law, Colorado statutory law must also be considered. Having outlined federal law guidance related to evaluating whether the use of deadly force by Officer Williams which resulted in the death of Mr. Grande, I now turn again to Colorado law relative to the circumstances presented to Corporal Wagstrom and Officer Williams on September 2, 2024 to determine whether these circumstances justified the use of deadly force against Mr. Grande. In C.R.S. § 18-1-707, titled, "Use of Physical Force in Making an Arrest or in Preventing an Escape-definitions", the law states:

(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

(3) Nothing in subsection (2) (b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances that if true would in law constitute an offense. If the believed facts and circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is affecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2)...of this section unless the warrant is invalid and is known by the officer to be invalid.

C.R.S. § 18-3-201 defines “Peace Officer” as one “engaged in the performance of his duties...and one who is engaged or acting in, or who is present for the purpose of engaging or acting in, the performance of any duty, service, or function imposed, authorized, required or permitted by law to be performed by a peace officer...whether or not the peace officer...is within the territorial limits of his jurisdiction, if the peace officer...is in uniform or the person committing an assault upon or offense against or otherwise acting toward the peace officer...knows or reasonably should know that the victim is a peace officer...”

After applying these statutory provisions and the principles delineated by the aforementioned federal courts related to the use of deadly force by a police officer, no criminal prosecution of any kind can or should occur against any officer related to this incident. Corporal Wagstrom and Officer Williams were engaged in the performance of their duties as a “Peace Officer” and indeed, both were performing a duty required by law. A court issued an order to arrest Mr. Grande, and the officers were *legally compelled to act on such an order*. Both Corporal Wagstrom and Officer Williams were on duty, in uniform, in well-marked police vehicles and had verified that a Colorado court of law had issued an arrest warrant for Mr. Grande, and which *commanded* he be arrested. Mr. Grande had a legal obligation to peaceably submit to the arrest; he did not do so. Rather, Mr. Grande presented an AR pistol-style rifle, which was a deadly weapon, in a manner supporting a reasonable belief by either officer that he was going to fire the weapon at them and/or he was using the deadly weapon with the intent to escape.

After Mr. Grande's abrupt production of an AR pistol-style rifle which was equipped and ready to fire up to 58 times without having to reload it with another magazine, both officers had a duty to protect themselves, each other, and innocent citizens from the threats posed by Mr. Grande. Officer Williams' belief that it was necessary to use deadly force to defend himself and others against the use or imminent use of deadly force by Mr. Grande was reasonable under the circumstances. Based on the law, it is not necessary to engage in speculation regarding whether further verbal commands would have been effective or that it may have been feasible to use less-than-lethal options to arrest Mr. Grande. Engaging in the benefit of 20/20 hindsight is not a profitable exercise when evaluating the decision that Officer Williams had to make, within seconds, when he was confronted with Mr. Grande abruptly presenting the rifle and yelling, "No! No! No!" while Officer Williams was attempting to inform him there was a warrant for his arrest. Like the circumstances in the *Montoute* and *Garzynski* case, Officer Williams, Corporal Wagstrom, and innocent members of the public coming and going into and out of retail businesses in, and the parking area around, the Glenwood Meadows Retail Center faced very dangerous, volatile, and unpredictable circumstances. Officer Williams knew that the arrest warrant for Mr. Grande involved allegations of felony menacing with a firearm. Based on C.R.S. § 18-1-707, titled, "Use of Physical Force in Making an Arrest or in Preventing an Escape-definitions", the Colorado statute cited above, when he initially fired two times at Mr. Grande and when he fired the last nine times at Mr. Grande, Officer Williams was legally justified in using deadly force because it was reasonable to believe it was necessary due to either (a) defend himself, Corporal Wagstrom, or other innocent citizens in the immediate area from what he reasonable believed to be the use or imminent use of deadly physical force by Mr. Grande, or (b) to effect the arrest, or to prevent the escape from custody, of Mr. Grande who he believed was attempting to escape by the use of a deadly weapon.

It is not unreasonable to conclude that engaging in a foot pursuit of Mr. Grande in an area surrounded by retail businesses swarming with innocent civilians coming and going in their vehicles and on foot would have been inherently unsafe and extremely dangerous for several reasons. One, use of force studies have revealed a "reactionary gap" that is often present during a foot pursuit of an armed person. Once a person has decided to fire a handgun, it takes .31 of a second to fire the first shot; multiple additional shots can also be fired at quarter-second intervals. Two, with respect to a person armed and fleeing, because often armed persons fleeing may take cover behind an object and gain a tactical advantage over the pursuing officer, Officer Williams could not allow Mr. Grande to flee further away into retail establishments teeming with customers or into the densely populated area near the apartment complexes nearby while still in possession of the pistol-style rifle with an extended magazine. Persons who flee and who are armed often adopt a hide and ambush strategy and consequently fire on pursuing officers at some later time.

As both Corporal Wagstrom and Officer Williams stated in their interviews, Mr. Grande was armed with a rifle. As has been mentioned repeatedly, Mr. Grande had 140 rifle rounds of rifle ammunition on his physical person and had the capability of firing at least 58 times before changing out the rifle's magazine. Both Corporal Wagstrom and Officer Williams stated that each wore ballistic protection that would not effectively protect them from rifle rounds. Considering the totality of circumstances from this incident, the "reactionary gap" concept need not be considered in theory. Rather, in less than a few seconds, Mr. Grande was able to pull a high-powered rifle bearing down on both officers before either had any reasonable opportunity to act in any way other than



move for protective cover. While it is recognized, in theory, that a person armed and fleeing may take cover behind an object and gain the tactical advantage or upper hand over the officers, video evidence derived from both officers' BWC, and the Natural Grocers surveillance video starkly reveals this reality. Pursuing and attempting to physically tackle Mr. Grande was not a viable option. Until Officer Williams circled around and to the back of Mr. Grande, his (Grande's) precise location was unknown. Officer Williams had informed Mr. Grande there was an arrest warrant and once he was informed there was an arrest warrant, he immediately resorted to pulling a rifle on the officers and then ran and hid behind vehicles. Once Officer Williams was able to observe Mr. Grande crouched armed with the rifle and holding the rifle at a ready/low ready, tackling him would not prevent him from firing upon the officers or other innocent persons in the nearby vicinity.

The circumstances also permit a reasonable conclusion that employing a less-than-lethal option like using a TASER (also known as a "Thomas A Swift Electric Rifle") was not a viable option either. A TASER is a less-than-lethal tool which at a short distance delivers a temporary electric shock which may, but is not sure to, temporarily disable a person. An officer needs a clear line of sight to use a TASER. There was no time to even consider using a TASER before Mr. Grande pulled the rifle and tried to flee armed with the rifle. Within seconds of the initial encounter with Corporal Wagstrom and Officer Williams, Mr. Grande abruptly produced the rifle and ran behind vehicles. In addition to being surrounded by vehicles, to the south of Mr. Grande's physical location was a small island of trees and vegetation. Without maneuvering around to the side of and behind Mr. Grande, neither officer could obtain a clear line of sight close enough to fire a TASER at Mr. Grande. The approximate distance between Officer Williams and Mr. Grande when Officer Williams observed Mr. Grande crouching down holding the rifle in a manner indicative of an intent to fire it was 72 feet. A TASER has a maximum effective range of approximately 25 feet and thus its effectiveness was quickly out of range once Mr. Grande fled with the rifle and gained a tactical advantage by hiding in between vehicles. However, even if either officer had a clear line of sight within the maximum effective range of a TASER, using a less-than-lethal tool like a TASER would not have prevented him from firing the pistol-style rifle in an instant multiple times potentially killing the officers and innocent citizens nearby. Numerous citizens were in the nearby vicinity. Deployment of a TASER could have created a situation in which the TASER failed to quickly and effectively disable Mr. Grande. Since Mr. Grande was still in possession of the rifle with dozens and dozens of live rounds of ammunition, he could have directly fired upon the officers or erratically emptied the 58 rounds which the rifle was initially capable of firing, without interruption, striking numerous innocent passersby. Nothing would have prevented Mr. Grande from, in an instant, pointing and firing the gun, taking a hostage, and/or high jacking a vehicle.

Federal and Colorado state law authorizes a police officer to use deadly force upon another person when he or she reasonably believes it is necessary to defend himself/herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force. One of the key questions when evaluating whether the use of deadly force by an officer under the circumstances was lawful is to ask, "Did the facts and circumstances presented to the officer permit a reasonable belief that it was necessary to use deadly force to defend himself or a third person from what he reasonably believed to be the use or imminent use of deadly force?" Considering this question in the context of the facts and circumstances of this case, "When calmly approached by police officers and informed of an arrest warrant, what is a reasonable interpretation of Mr.

Grande's actions?" Given the totality of the circumstances on September 2, 2024 when Mr. Grande immediately presented a rifle within seconds of being informed there was an arrest warrant for him, an objective officer in either Corporal Wagstrom or Officer Williams' situation could have reasonably believed that Mr. Grande posed a significant and imminent threat of serious bodily injury or death to themselves, innocent citizen pedestrians, and/or other innocent citizen motorists passing nearby. Either time he fired at Mr. Grande, Officer Williams' decision to use deadly force was objectively reasonable under the circumstances.

Colorado statute also authorizes a police officer to use reasonable and appropriate force upon another when to the extent the police officer reasonably believes it necessary to "effect an arrest or prevent escape from custody of an arrested person unless he knows that the arrest is unauthorized." While distinguishable, in a Colorado Case, *Martinez v. Harper*, 802 P.2d 1185 (Colo. App. 1990), a court found officers justified in using deadly force during an attempted escape. In *Martinez*, an escaped prisoner took a firearm from a guard, briefly pointed the firearm at officers and was told twice to drop the gun. After these commands, the officers used deadly force. The Colorado Appellate Court found that the officer involved did not unreasonably use deadly force in shooting the escapee, when the officer knew the escapee was armed and dangerous, had pointed the gun at the officer, the officer reasonably feared for his own safety, the officer had given two clear warnings and the escapee was not cornered. *Martinez* at 1187. Here, there was an active arrest warrant for Mr. Grande's arrest and from the outset, neither officer had control over, or custody of, Mr. Grande because he chose to immediately present a rifle within seconds of the initial encounter and then flee while armed and dangerous. Mr. Grande refused to submit to a lawful arrest. Mr. Grande pulled the rifle out in a manner evincing an intent to use it and by fleeing and continuing to conscientiously possess this rifle and not dispossessing himself of it, he effectively used this deadly weapon to escape. The Colorado statute justifies a police officer to use deadly force when a person uses a deadly weapon to escape from a lawful arrest. Had Mr. Grande acted differently, the outcome would have been totally different. The law did not require Officer Williams in this tense and dangerous situation to wait until the moment Mr. Grande took a hostage or used the deadly weapon to seriously injure or kill the officers or innocent citizens in the immediately surrounding area. *See Long v. Slaton*, 508 F.3d 576, 581 (11<sup>th</sup> Cir. 2007).

As Officer Williams explained in his interview, he believed he was "dead" and that "Corporal Wagstrom was going to die." There is substantial and significant evidence based on the totality of circumstances existing at the time Officer Williams' fired at, and eventually resulted in the death of, Mr. Grande, that Officer Williams' belief was reasonable. However, while not specifically known by Officer Williams at the time, additional information may be relevant when assessing the reasonableness of Officer Williams' belief that Mr. Grande posed an imminent threat of serious bodily injury or death when he immediately presented the rifle. Around Mr. Grande's waist was a bungee elastic stretch-type cord with three large carabiners connected to his pant belt loop. The way Mr. Grande quickly reached both hands behind his back while still facing the officers and the way Mr. Grande swung around the rifle bringing it up to aim it at the officers support a reasonable inference that Mr. Grande was carrying the rifle in a manner to easily conceal it and where it was easily accessible so it could be quickly fired. On his person, Mr. Grande was carrying 140 rounds of rifle ammunition loaded into in four high-capacity extended rifle magazines. Mr. Grande had previously seen Corporal Wagstrom who was easily identifiable as a police officer and had waived at

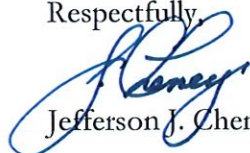
him. It should not be ignored that the arrest warrant for Mr. Grande was for using a firearm to menace another person. According to other witness statements obtained during the investigation, Mr. Grande knew about the arrest warrant. According to a sibling of Mr. Grande, Mr. Grande had previously stated to a family member that he knew he had a warrant that he would not go back to jail. When informed by investigators of Mr. Grande's death and asked whether it was a surprise that Mr. Grande was involved in the situation leading up to his death, this same sibling stated something to the effect of, "No...as horrible as it sounds, I've been waiting for a call because I knew he was getting to that point."

During the investigation, it was revealed that on April 30, 2024, Mr. Grande's aunt requested law enforcement perform a welfare check because she had not heard from Mr. Grande. When the Coroner's Office notified Mr. Grande's aunt of his death, she indicated that she figured Mr. Grande would die like he did.

Even more troubling, on August 20, 2024, less than two weeks from the day he died, Mr. Grande had been in a local convenience store and had stated to a witness that he had a felony in Glenwood and that he had an assault rifle in his truck. According to the witness, Mr. Grande pulled out a rifle magazine and showed the witness he had rifle round inside it. Mr. Grande told the witness that cops had taken his gun from the previous instance where he "pulled a gun on a guy" he thought was following him and told the witness that cops had taken his gun from him. Mr. Grande told the witness that he had went and got a rifle from a gun shop and according to the witness who reported it to law enforcement dispatch, "Mr. Grande said more or less if you guys came after him...this time he was ready for you." The witness stated that he thought this person's name was "Rick" and that he was paranoid-delusional. The investigation also revealed that friends and close family members believed that Mr. Grande was paranoid-delusional and had conspiratorial beliefs that the world was out to get him. A close childhood friend told investigators that he believed Mr. Grande had mental and psychological problems, was paranoid, and held firm beliefs that he had psychic powers and knew things the rest of the world did not know.

In conclusion, no death which occurs during a law enforcement contact involving the use of deadly force should be dismissed without serious consideration of the appropriateness and legal permissibility of law enforcement's actions. I have thoroughly reviewed the circumstances leading up to, and at the time of, Mr. Grande's death and carefully considered the applicable law related to the use of deadly force by a peace officer. Based on the totality of circumstances described herein and the prevailing legal principles related to "use of force" by law enforcement, I decline to charge anyone with a crime for the death of Richard Joseph Grande, which occurred Monday, September 2, 2024.

Respectfully,



Jefferson J. Cheney