



RE: November 3, 2023, Officer-Involved Shooting at Horsetooth Road and College Avenue, Fort Collins, Colorado. Case numbers: LCSO 23-10865; LPD 23-8959; FCPS 23-15067; GPD 23G017442; CSUPD 23-1643.

Sheriff Feyen,

The District Attorney's Office has been asked to review the shooting of Izabella Hernandez which took place on November 3, 2023, at the northwest corner of Horsetooth Road and College Avenue in Fort Collins. This statutorily mandated review is to determine whether any law enforcement personnel violated any Colorado criminal statutes with respect to the shooting.

I. EXECUTIVE SUMMARY

Applying the law to the facts of this incident, as described in greater detail below, I conclude Sergeant David Plummer was legally justified in his use of physical force to defend himself from the intentional threat posed by Sire Nolasco on November 3, 2023, in which Izabella Hernandez was inadvertently shot. Having concluded that Sergeant Plummer was legally justified in his use of physical force, no criminal charges will be filed against him.

II. LIMITATIONS

As Sire Nolasco has been charged with crimes related to this incident, the information in this letter will be limited where necessary to ensure compliance with the legal requirements of Colorado Rules of Criminal Procedure 3.6 and 3.8, and Colorado Revised Statutes § 20-1-114. The District Attorney's Office is therefore limited in the breadth and depth of this letter, as well as in public comment or answering of community questions, in contrast to cases where no open criminal cases exist.

Sire Nolasco was charged in Larimer County District Court case number 23CR1756 with the following crimes:

- Count 1: Criminal Attempt to Commit Murder in the First Degree, C.R.S. 18-3-102(1)(A), 18-2-101 (F2)
- Count 2: Criminal Attempt to Commit Assault in the First Degree, C.R.S. 18-3-202(1)(A), 18-2-101 (F4)
- Count 3: Vehicular Eluding, C.R.S. 18-9-116.5 (F4)
- Count 4: Reckless Endangerment, C.R.S. 18-3-208 (M2)
- Count 5: Reckless Endangerment, C.R.S. 18-3-208 (M2)

Count 6: Violation of Bail Bond Conditions, C.R.S. 18-8-212(1) (F6)
Count 7: Violation of a Protection Order, C.R.S. 18-6-803.5(1)(A) (M1)
Count 8: Criminal Attempt to Commit Assault in the First Degree, C.R.S. 18-3-202(1)(A),18-2-101 (F4)

**All charges against Sire Nolasco are merely allegations and he is presumed innocent of all charges filed against him unless and until proven guilty beyond a reasonable doubt.*

It should be noted that Sire Nolasco has also been charged with crimes in Weld County, pursuant to Weld County District Court case number 23CR1754 from conduct that occurred in Weld County on November 3, 2023. Limited references to conduct charged in that case will be made herein. Charges against Mr. Nolasco in Weld County are similarly only allegations of which he is presumed innocent unless and until proven guilty beyond a reasonable doubt.

III. THE STATUTORY FRAMEWORK FOR OFFICER INVOLVED SHOOTING INVESTIGATIONS AND REVIEW

C.R.S. § 16-2.5-301 governs investigations into peace officer-involved shooting investigations. It 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 into this shooting incident was conducted by a multi-agency team consisting of personnel from agencies within the 8th Judicial District who are members of the district's Critical Incident Response Team (CIRT). Specifically, this investigation was led by Fort Collins Police Services, with assistance from the Loveland Police Department, the Colorado State University Police Department, the Larimer County Sheriff's Office (in a limited capacity per protocol due to their involvement), and the Greeley Police Department (who is not a member of the 8th Judicial District protocols, but had relevant involvement in the investigation of Mr. Nolasco).

C.R.S. § 20-1-114 provides:

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.

This document constitutes a report of the District Attorney's findings and includes the basis of the decision not to charge the involved peace officer(s) with any criminal conduct.

With respect to the limitations in this letter, our obligations include, but are not limited to:

(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. *C.R.P.C. 3.8.*

IV. MATERIALS REVIEWED

I have been provided materials produced during the CIRT investigation into the shooting of Izabella Hernandez. The information I have considered includes:

- Relevant body worn camera footage of peace officers
- Other video from government and civilian sources
- Reports/summaries of the CIRT investigators
- Reports of other law enforcement involved in multiple facets of the investigation
- Recorded interviews of involved peace officers
- Radio traffic from the incident
- Photographic evidence
- Physical evidence from multiple scenes, including ballistics and Nolasco's vehicle
- Accident reconstruction
- Medical evidence
- Scene visits on the night of the incident to the location of the shooting and the location of Nolasco's crash

V. APPLICABLE LAW

The District Attorney's review of this event is guided by the Colorado statutes pertaining to the use of force by peace officers, including self-defense. Sergeant Plummer and all other persons referred to as "officers," "peace officers," "deputies," "sergeants," or "law enforcement" in this letter are "peace officers" per statute. *See* §16-2.5-101-103, C.R.S.

By using his service weapon and shooting Izabella Hernandez and causing her injury, Sergeant Plummer's conduct implicates Colorado's peace officer use of force and self-defense statutes. As he did not cause death, the deadly physical force provision of the statute does not legally apply to his actions. *See* §18-1-901(3)(d) ("Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death).

§ 18-1-707, C.R.S. (Use of force by peace officers—definitions), states in relevant part:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
 - (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
 - (b) Use only a degree of force consistent with the minimization of injury to others;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
 - (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
 - (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
 - (b) The suspect poses an immediate threat of death or serious bodily injury to the peace officer or another person;
 - (c) The force employed does not create a substantial risk of injury to other persons.
- (4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.
- (4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

§ 18-1-704, C.R.S., Colorado’s general self-defense statute, states in relevant part:

[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.

Under Colorado law, for a person to act legally to defend themselves or others requires the presence of “both reasonable belief and actual belief” on behalf of the actor. *See Sanchez v.*

People, 820 P.2d 1103, 1108 (Colo. 1991). The law requires the fact finder to “weigh all relevant circumstances to determine whether a person asserting the defense of self-defense has acted as a reasonable person would act in similar circumstances.” *Id.*

VI. SUMMARY OF LEGAL STANDARD AS APPLIED TO THIS EVENT

Distilling the legal authority down to an applicable standard to apply to this event, we must determine:

- 1) Whether Sergeant Plummer reasonably believed that the use of physical force – and degree of force employed - was necessary to defend himself or others from what he reasonably believed to be the imminent, or continued, use of physical force by Sire Nolasco, and
- 2) Would “nonviolent means ... [have been] ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person” in this situation?

Additionally, the statute requires us to ask:

- 3) Did Sergeant Plummer identify himself as a peace officer and give a clear verbal warning of his intent to use his firearm, with sufficient time for the warning to be observed, and if not, is he exempted from having given that warning because it would have unduly placed him or his fellow officers at risk of injury or would have created a risk of death or injury to other persons?
- 4) Did Sergeant Plummer or his fellow officers ensure that assistance and medical aid were rendered to all injured or affected persons as soon as was practicable?
- 5) If Izabella Hernandez sustained serious bodily injury, did Sergeant Plummer or fellow officers ensure that Hernandez’s identified relatives or next of kin were notified as soon as practicable?

VII. SUMMARY OF RELEVANT FACTS

Overview of events

On November 3, 2023, at 10:56 PM, the Fort Collins Police Services (FCPS) were contacted to assist the Greeley Police Department (GPD) with an investigation they were conducting into a kidnapping in the City of Greeley. The information, based on a 911 call from a store clerk and surveillance video from inside and outside of a store, was that the alleged kidnapping occurred approximately an hour prior and involved Sire Nolasco and Izabella Hernandez. That surveillance video was reviewed as part of this CIRT investigation and clearly indicated Hernandez was in danger.

GPD learned Nolasco was on bond at the time for a prior Weld County case where charges involved kidnapping and attempted first degree murder from September 25, 2023, listing Hernandez as the victim. That case, Weld County District Court Case number 23CR1526, remains open and therefore those charges are merely allegations and Mr. Nolasco is presumed innocent unless and until proven guilty beyond a reasonable doubt. There was also a protection order against Nolasco with Hernandez listed as the protected person. While those charges are only allegations, their existence (whether they are eventually proven or not) is important to explain the level of concern law enforcement had for Ms. Hernandez's safety.

Once information was gathered, a BOLO (Be On the Look Out) was sent out to all local law enforcement at 11:44 PM, which included, in part, the following:

****OFFICER SAFETY****

[Suspect] IS MOST LIKELY ARMED, AND IS OUT ON CASH BOND FROM WELD FOR 2 COUNTS OF ATTEMPTED MURDER

Both FCPS and LCSO officers involved in the search and eventual pursuit, including Sergeant Plummer, had this information.

GPD was able to obtain a vehicle description of the vehicle Nolasco was driving, a 2004 Cadillac Deville that had Colorado temporary tags on it. GPD also obtained a search warrant, authorized by a Weld County judge, allowing them to "ping" Ms. Hernandez's phone in order to locate her for her safety. Ping locations led GPD to Fort Collins and those locations were relayed to FCPS and the Larimer County Sheriff Office (LCSO).

At 12:44 AM on November 3, 2023, an updated phone ping was provided indicating Ms. Hernandez was in the vicinity of City Park. Law Enforcement from LCSO and GPD responded to that location and located the vehicle. Deputy Brandon Yeager with LCSO attempted to stop the vehicle by initiating a traffic stop and the vehicle failed to yield to his traffic stop. A pursuit of the Cadillac Deville, which was confirmed to be registered to a family member of Sire Nolasco, was initiated.

The vehicle pursuit continued through the City of Fort Collins and was captured through multiple officer's body worn cameras, private and city surveillance cameras, City of Fort Collins traffic cameras and locations of the pursuit were called out on the air by involved officers to dispatch. Evidence showed that Nolasco was pursued by multiple law enforcement vehicles, with red and blue lights activated, and continued to evade officers on a lengthy and winding pursuit through the city. Nolasco drove the wrong direction on multiple streets and drove off the street onto sidewalks and residential yards. While streets were relatively clear at the early morning hour, Nolasco did drive near civilian vehicles at a high rate of speed and drove directly at deputies' vehicles.

FCPS Officer Gus Worden reported the following reference this moment in the pursuit:

"[A]s soon as the suspect saw my vehicle, I saw the vehicle rapidly accelerate and change direction towards me. To avoid being struck head on, I tried to move

to the right. As I moved, the suspect vehicle mirrored the direction I was going. I ended up on the sidewalk and was blocked from going any further by a metal mailbox. I believed the suspect was going to strike my vehicle, so I braced for an impact. Instead, the suspect drove past me, just missing my side mirror by a few inches.”

The vehicle eventually travelled east on Horsetooth Road toward College Avenue. Sergeant David Plummer aired that he had arrived at that location and set up a spike strip at Horsetooth and College in the lanes through which Nolasco was approaching. A spike strip is a law enforcement tool that uses a strip of hollow spikes to rapidly deflate tires and therefore disable a vehicle engaged in dangerous behavior.

The intersection of Horsetooth Road and College Avenue was well illuminated with plenty of light sources near the intersection. Sargeant Plummer had not yet activated his body worn camera. The CIRT was able to obtain traffic camera video from the City of Fort Collins from the intersection that provides an overhead view of the events that occurred. The traffic camera video shows Sergeant Plummer appearing from the south end of College Avenue on the west side of the roadway. He is carrying spike strips and deploys them on Horsetooth Road. The camera shows the vehicle pursuit travelling east on Horsetooth towards College. The video shows the blue Cadillac travelling in the opposing lanes of traffic, going east in the west bound lanes. Law enforcement vehicles follow him, with lights activated, in the correct lanes of travel. Sergeant Plummer moves to the north side of Horsetooth Road onto a sidewalk and then partially into a landscaped area between the sidewalk and a parking lot. The video shows the suspect vehicle turning north, directly towards Deputy Plummer, and travelling off the roadway toward him after avoiding the spike strip. From the camera view and processing of the scene, it appeared to be no more than a few feet between Deputy Plummer and the vehicle as it drove toward him. Sergeant Plummer can be seen backing up into the landscaping away from the oncoming vehicle. While no muzzle flashes can be seen in the video due to flashing vehicle lights, other evidence makes clear Sergeant Plummer then fires toward the driver of the vehicle. Sergeant Plummer airs “shots fired” on the radio at 1:04 AM.

The Cadillac continued west on Horsetooth Road where it stopped on Shields Street and let out two passengers. Izabella Hernandez was contacted on scene and confirmed she was the front seat passenger and was involved in an incident in Greeley with Mr. Nolasco. Ms. Hernandez was injured with her left arm bleeding. It appeared to be a gunshot wound and she was asked what occurred, responding, “Sire was going to run over the cop and the cop started shooting and it got me.” Officers quickly began to render aid to Ms. Hernandez on scene, placing a tourniquet on her arm and using bandages and compression until they were able to transfer medical care to Emergency Medical Services (EMS) a short time later. Ms. Hernandez was transported by EMS to the Medical Center of the Rockies (MCR), where she was treated and released later the same day. Medical evidence showed that her arm was struck by a fragment of a bullet, likely after it fractured and ricocheted going through the vehicle.

The second passenger, who will not be identified in this letter as he is not alleged to be involved in any criminal acts associated with these events, was uninjured. He was taken into custody on outstanding warrants and interviewed by the CIRT.

After letting out the passengers, Nolasco continued north on Shields Street to Rocky Mountain Street, where another set of spikes were set up by LCSO Deputies. This portion of the pursuit was captured on surveillance camera from the Rocky Mountain High School which shows the Cadillac driving at a high rate of speed. A high-risk stop was initiated, and several Law Enforcement Officers arrived at the scene of the stop.

Sire Nolasco was identified as the lone occupant and driver of the vehicle. He was pinned in the vehicle due to the damage it sustained. He had to be extricated from the vehicle by EMS and was then transported to the MCR to be treated for injuries sustained in the crash. Nolasco suffered a fractured pelvis and laceration to his arm. He was not impacted by any gunshots. Nolasco was released from the hospital on November 17, 2023, and was arrested on charges related to this incident and warrants from Weld County.

Crime Scene Processing:

The scene at Horsetooth Road and College Avenue showed signs consistent with what was seen in the surveillance video in the area. This consisted of tire marks and moved landscaping consistent with a vehicle going over the curb and driving over the landscaped area. Seven spent 9mm bullet casings were recovered from the area where Sergeant Plummer fired his weapon.

The Cadillac driven by Sire Nolasco was processed. Overall, four bullet impact points were located on the Cadillac and are described as follows:

- Two through the front windshield
- One ricochet on top of the roof
- One in front driver's side door

All four discernible bullet impact points were situated on the drivers compartment of the vehicle. Three bullet trajectories could not be determined, either because they did not hit the vehicle, or the vehicle was too damaged to find their impact point. FCPS Forensic Services stated the type of hollow point bullet used by Sergeant Plummer would likely break apart upon striking the windshield, making it difficult to recover all the projectiles.

The scene of Nolasco's crash was also processed. It was determined that after losing control, he crashed the Cadillac into a parking lot located at 1030 Davidson Dr., striking several parked and unoccupied vehicles in the parking lot and causing significant damage.

Summary of Pertinent Interviews

Sergeant Plummer

Sergeant Plummer was interviewed by Detective Justin Butler of Fort Collins Police Services. He stated he was aware of the information aired by dispatch related to the GPD investigation and had “brief tactical conversations about him maybe being armed.”

Sergeant Plummer was in the area of Mulberry Street and Interstate 25 when the pursuit began. He travelled toward a position to assist, while also assuming Incident Command of the pursuit given his position as a Sergeant. He remembered hearing several times that the suspect vehicle had been intentionally trying to strike police vehicles.

After hearing the location of the pursuit, Sergeant Plummer arrived in the area where the vehicle was heading. He decided to set up a spike strip in the area of Horsetooth Road and College Avenue to stop the vehicle. He heard radio traffic that the vehicle had been travelling in the opposing lanes of travel and confirmed that when he saw the vehicle approach him. He set up the spike strips and moved off the road to the sidewalk and landscaped area. He believed either the driver would drive through the spike strips or avoid the spike strips by driving around them using the outside lane. Instead, the vehicle stopped before hitting the spike strips. He felt the vehicle was giving up at this point and Sergeant Plummer drew his handgun to begin a high risk stop on the vehicle. When he pulled his gun on the vehicle, he did not have any cover at this point due to his location. He pointed his weapon at the driver of the vehicle.

Sergeant Plummer then saw the front tires of the vehicle turn directly towards him and believed the vehicle was about 15 feet away at that time. He then saw the vehicle accelerate towards him and said he believed the vehicle was trying to hit him and to kill him as there were other routes the vehicle could have taken to flee or avoid the spike strips. He was aware he was in a commercial area with curbs and landscaping, and he did not think he was going to be able to get out of the way of the vehicle. He tried moving sideways inside of the suspects turning radius, but did not think he was going to be able to get out of the way. He described the suspect vehicle being very close to him. He started firing his handgun where the driver would be seated using the laser sight on his firearm and continued to fire until he saw the vehicle pass him on his left. He did not remember how, but he realized he was on the ground and had fallen. He sprained his ankle from the fall and sought medical care for his injury later. Given he was Incident Commander and the pursuit was ongoing, Sergeant Plummer continued to assist with law enforcement efforts until he was formally relieved pursuant to CIRT protocols. Sergeant Plummer had arrived on scene with barely enough time to get in place and deploy the spike strips and consequently did not successfully activate his body worn camera. He stated he believed his camera had been “buffering” when he fired his weapon, and later realized it was not turned on and did at that point begin recording.

Izabella Hernandez

Izabella Hernandez was interviewed by Detective Justin Butler following her release from MCR. She confirmed that there was an incident in Greeley the day prior and described physical actions consistent with the surveillance video as well as psychological pressures which resulted in her leaving with Nolasco against her will. She reported Nolasco driving them to his brother’s residence in Fort Collins where they stopped before leaving again, this time with the second passenger who wanted a ride to another location.

She reported knowing police were attempting to stop them and Nolasco accelerating away from them. She described his driving as reckless, causing her to fear for her safety.

Hernandez reported seeing an officer deploying spike stripes and Nolasco stopping prior to reaching them. She reported Nolasco then turned towards the officer and the officer was right in front of the car when he started to shoot, and she was worried the officer would get hit. She looked down at her arm and saw she had been shot. She was seated in the front passenger seat of the vehicle. Along with the second passenger, she yelled to law enforcement to let her out of the vehicle and was eventually allowed to exit.

Rear Passenger

The second passenger was interviewed by FCPS Detective Matt Dean. He stated he did not know Hernandez or Nolasco well, but saw them that evening with his roommate, Nolasco's brother. He asked for a ride to a gas station and left with them, sitting on the rear driver's side of the vehicle. He reported the driver turned the vehicle towards the deputy and the deputy fired at the vehicle simultaneously. After the shots were fired, Sanger told Nolasco to let him out of the vehicle and he exited at Horsetooth Road and Shields Street.

Deputy Lapham:

Deputy Lapham was interviewed by Loveland Police Detective Clint Schnoor. He reported significant involvement in the pursuit, including viewing Nolasco drive into the opposing lanes of travel several times and "playing chicken" with other vehicles. He felt based on the driver's actions, Nolasco would kill someone if he was not stopped. He said it looked like the suspect was looking for somebody to kill based on how many times he tried to drive directly at other vehicles.

Deputy Lapham saw Nolasco drive directly at another police vehicle at a high rate of speed and described the suspect vehicle as realigning his vehicle to drive directly at the police vehicle coming towards him. He saw the police vehicle had to drive on the shoulder to avoid being struck head on by the suspect vehicle.

As the pursuit neared Horsetooth Road and College Avenue, he heard Sergeant Plummer was setting up spike stripes. He saw the suspect slow down as he approached College and called it a distinct change in his driving behavior. He then saw Nolasco turn directly toward Sergeant Plummer. He remembered seeing shrubs and bushes next to Sergeant Plummer and him being surrounded by obstacles. He saw Sergeant Plummer try and back up to get away from the vehicle and he remembered distinctly seeing the vehicle jerk and accelerate toward Sergeant Plummer to continue and try to hit him as Sergeant Plummer tried to move and change his angle. He described this as a pivot and saw it happen three times, with the Cadillac pivoting towards Sergeant Plummer every time he tried to move away from it. He saw the vehicle move with Sergeant Plummer and accelerate towards him. He did not think there was any way Sergeant Plummer was not going to be hit. He saw muzzle flashes from Sergeant Plummer and heard

gunshots. As he was shooting, Sergeant Plummer was still stepping back and at one point he fell backwards and described Sergeant Plummer's heels go over his head. He said if he had not fallen backwards, Sergeant Plummer would be "dead right now" as the car drove directly where Sergeant Plummer's legs had been prior to falling backwards.

VIII. CONCLUSIONS

This CIRT investigation comported with both the letter and the spirit of §16-2.5-301, C.R.S. The investigation was thorough, objective, well-resourced, and all relevant materials were provided in a timely manner. Finally, the investigation yielded ample evidence from which factual and legal conclusions could be reached.

As a preliminary matter, Colorado law requires officers to activate their body worn cameras during interactions with the public, C.R.S. 24-31-902. Sergeant Plummer did not activate his camera, which would allow an inference of misconduct in non-criminal proceedings. However, here we do have a complete video as city traffic cameras captured the shooting. The overhead view from the traffic camera provides a view of the scene from which we can determine beneficial information about speed, spacing and distance, vehicle movements, Sergeant Plummer's reactions, the lack of reasonable alternatives, and corroboration of Sergeant's Plummer's recitation of events from his interview. This alternate recording allows us to rule out any misconduct in his lack of recording. The traffic camera, combined with a substantial amount of additional evidence collected by the CIRT, provides for a thorough and precise determination of events despite the unfortunate lack of body worn camera video.

As stated above, in applying the law to the facts in this incident we must ask the following questions:

1. Did Sergeant Plummer reasonably believe that firing his weapon was necessary to defend himself or others from what he reasonably believed to be the imminent, or continued, use of physical force by Nolasco?
2. Would nonviolent means have been ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to Sergeant Plummer or another person in this situation?
3. Did Sergeant Plummer identify himself as a peace officer and give a clear verbal warning of his intent to use his firearm, with sufficient time for the warning to be observed, and if not, is he exempted from having given that warning because it would have unduly placed him or his fellow officers at risk of injury or would have created a risk of death or injury to other persons?
4. Did Sergeant Plummer or his fellow officers ensure that assistance and medical aid were rendered to all injured or affected persons as soon as was practicable?
5. Did Sergeant Plummer or fellow officers ensure that any identified relatives or next of kin of all seriously injured persons were notified as soon as practicable?

To avoid redundancy, questions 1 and 2 will be addressed together. Subsequently, questions 3, 4, and 5 will be addressed independently.

(Questions 1 and 2) Conclusion: Sergeant Plummer had both a reasonable belief that shooting was necessary, and that nonviolent means would have been ineffective in stopping Nolasco.

The evidence is clear that Sergeant Plummer was faced with an imminent and deadly threat from Mr. Nolasco. Sergeant Plummer was engaged in reasonable tactical maneuvers, including deploying spike strips, in an effort to end the pursuit and ensure the safety of the community and the safety of Izabella Hernandez. He had positioned himself out of the roadway and in as safe a location as was available at that intersection. Once Nolasco stopped his vehicle short of the spike strips, Sergeant Plummer had only seconds to react to the vehicle's new direction. As the vehicle accelerated toward Sergeant Plummer, he tried to move inside the turning radius of the vehicle to avoid being hit and backed up to the extent possible during rapidly unfolding events. Sergeant Plummer had run out of time, space, and cover when he made the decision to fire his weapon. He had no non-violent means left at his disposal.

Sergeant Plummer's belief that he needed to shoot was reasonable. As captured in the traffic camera video, and as described by Deputy Lapham and Sergeant Plummer, had Sergeant Plummer waited any longer, he would likely have been struck by the vehicle. While hindsight does show Sergeant Plummer wasn't struck, the information about Nolasco's behaviors from dispatch and other officers in the pursuit, the direction and velocity of the vehicle moving toward him, the lack of safe harbor or alternatives, and the rapidly closing distances, resulted in his attempt to disable the driver a reasonable decision. It is also possible that by shooting, he altered Nolasco's course.

While Hernandez, not Nolasco, was the occupant who was eventually injured by gunfire, this does not alter the reasonableness of the decision in this particular case. Sergeant Plummer reports firing directly at the driver's compartment of the vehicle. Ballistics evidence supports that, as all four bullet impacts to the vehicle were to the driver's side. Based on evidence of known trajectories and the type of wound Hernandez suffered, it is likely a bullet fired toward Nolasco fractured upon impacting the windshield and a fragment ricocheted and hit Hernandez. While potential harm to innocent or non-involved parties must be considered in a reasonableness analysis, here evidence shows both that firing was Sergeant Plummer's last recourse and that he properly aimed away from passengers.

(Question 3) Conclusion: Sergeant Plummer was exempted from giving the verbal warning because it would have unduly placed him or his fellow officers at risk of injury or would have created a risk of death or injury to other persons.

Given the timing, only seconds, between realizing he could not get out of the way and commencing firing, Sergeant Plummer had no opportunity to give a warning. This timing is confirmed by video, law enforcement witnesses, and civilian witnesses. Further, as the suspect

was inside a moving vehicle, a warning would have been unlikely to be audible. The circumstances therefore exempted him from providing an official warning.

(Question 4) Conclusion: Sergeant Plummer or his fellow officers ensured that assistance and medical aid were rendered to all parties as soon as was practicable.

Sergeant Plummer was not the primary renderer of aid to any of the three passengers given his role in the incident at that point and the changing locations of the parties. However, other officers did ensure aid was rendered quickly to Ms. Hernandez on scene and ensured prompt transport to MCR. The rear passenger was also attended to promptly and was uninjured. Mr. Nolasco did not receive any injuries related to Sergeant Plummer's use of force, but instead was injured in the subsequent crash. He did receive medical attention as soon as practicable given he was pinned in the vehicle and presented a continuing safety risk.

(Question 5) Conclusion: Investigating peace officers ensured that any identified relatives of seriously injured persons were notified as soon as practicable.

Izabella Hernandez was released from MCR the same night as the incident and was initially brought to the LCSO for a voluntary interview. She was then provided a ride home by law enforcement and returned home early in the morning of November 4, 2023. She remained conscious and alert throughout the night. She was not detained and was free to leave or contact any relatives she chose. It was not practicable for CIRT to notify any relatives sooner than she was able to herself, nor was it necessary to do so in order to comply with the intent of the statute. There is no statutory requirement to notify relatives of Sire Nolasco as he was not injured as a result of Sergeant Plummer's discharge of his firearm. However, Mr. Nolasco's brother showed up on the scene and was informed about what occurred.

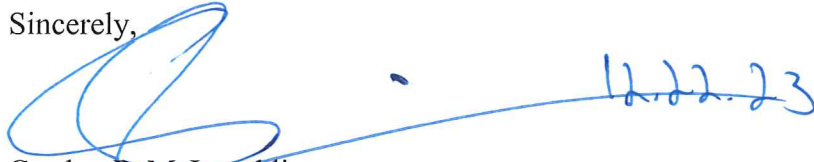
The totality of the evidence presented through the CIRT investigation reveals that the circumstances Sergeant Plummer faced on November 3, 2023, justified his actions in the shooting that ultimately injured Izabella Hernandez. As a result, I find that no charges can, or will, be brought against Sergeant Plummer.

While it is incredibly unfortunate that the person law enforcement was trying to protect was injured by gunfire during the incident, the evidence shows officers acted reasonably and with the intent to protect both Ms. Hernandez and the community at large. While all gunshot injuries are serious, Ms. Hernandez's injury, caused by a bullet fragment, was not life threatening nor expected to cause lasting damage.

Further details of the investigation will not be released at this time due to our ethical obligations pursuant to Colo. R Crim. P. 3.6 and 3.8 to limit publicity on open cases in order to protect an accused's presumption of innocence and right to a fair trial. All charges against Sire Nolasco are merely allegations and he is presumed innocent of all charges filed against him unless and until proven guilty beyond a reasonable doubt.

The District Attorney's Office thanks the Critical Incident Response Team for conducting a thorough and expeditious investigation of this incident.

Sincerely,



Gordon P. McLaughlin
District Attorney
Eighth Judicial District