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This letter is notification to the 21st Judicial District Critical Incident Response Team (“CIRT”), and the involved Mesa County Sheriff Deputies Phillip Peterson and Michael Hand of the decision not to file criminal charges in the use of force incident that occurred at Central High School on April 24, 2024. As explained below in the findings of fact and conclusions of law, criminal charges against Deputy Peterson and Deputy Hand are not appropriate. Criminal charges are also not appropriate to be filed against the juvenile, M.W., for his actions.

After a use of force incident occurred at Central High School on April 24, 2024, the 21st Judicial District Critical Incident Response Team was activated at the request of the Mesa County Sheriff's Office (“MCSO”) to investigate the use of force incident, which occurred at about 1226 hours, on that date. The following agencies were represented on this CIRT: Grand Junction Police Department (“GJPD”), Fruita Police Department, Palisade Police Department, the Colorado Bureau of Investigation (“CBI”) and the 21st Judicial District Attorney's Office.

On or about May 23, 2024, this CIRT investigation was turned over to the District Attorney's Office for a review. This investigation included examination of various witness statements, law enforcement reports from both Deputy Hand and Deputy Peterson, Body Worn Camera (“BWC”) recordings, and various other video footage of the incident.

On June 11th, 2024, a staffing was held at the District Attorney's Office with myself, five members of the Grand Junction Police Department, including detectives up to senior leadership, all of my Chief Deputy District Attorneys, and other senior level prosecutors in my office. It also included three interns who are neither prosecutors, nor police officers. In this staffing, the investigation of the incident was discussed and reviewed. Additionally, the relevant statutes including laws pertaining to excessive force (C.R.S. 18-8-803) and use of force by a peace officer (C.R.S. 18-1-707) were also discussed and debated. This letter details the information supporting our decision to not file criminal charges against MCSO Deputy Peterson and Deputy Hand, nor to file criminal charges against the juvenile, M.W.

Initial Information

On April 24th, 2024, Deputy Peterson was notified of a large crowd in front of Central High School ("CHS") and that there was possibly a fight occurring. Around this same time, Deputy Hand was notified by an unknown student that there was a large fight going on in the parking lot. Both Deputies are School Resource Officers ("SRO") at CHS. A use of force incident involving Deputy Peterson and a juvenile occurred during the response to the reported incident in the parking lot.

Deputy Peterson and Deputy Hand Reports

The following are written reports completed by Deputy Peterson and Deputy Hand after the incident. Known names of juveniles from these reports have been redacted to reflect a first and last name initial.

Deputy Peterson:

a. *On 04/24/2024 at approximately 1229hrs. I Deputy P. Peterson was working as the School Resource Officer at Central High School, located at 550 Warrior Way, Grand Junction, Mesa County, CO, 81504. While working as the School Resource Officer, I was advised via school radio of a large crowd in the parking lot out front of the school and that they were possibly fighting. I responded to the front parking lot and observed a large crowd of Juvenile Students. A Central High School staff member was already on site and had broken up the crowd and stated it was a verbal altercation only, and that nothing physical had happened.*

b. *School Administrators were also on scene, and knew one of the involved females to cause issues. When staff observed that female student near a vehicle they asked for the SRO's to assist as they expected the female to be confrontational. While walking to the vehicle where the female was, I heard a group of students behind me yelling "hit her Camella, Hit her". I was unsure if the group was attempting to get the female to strike the School Administrator or someone else, but they were actively trying to provoke a violent response. I turned to the group and told them to "knock it off". One of the males stated to me "what, what". I turned around to continue towards the female student, when the male stated "what, nigga". I believed this male to be attempting to provoke violence within the group of students. I approached the male and asked him what he had said. He responded "what", and I asked what he said after that, then then said "nigga". I had established probable cause for Disorderly Conduct at this point and told the male to begin walking towards the front office as my intention was not to charge him, but separate him from the crowd and alleviate the issue.*

c. *I placed my right hand on the males back to direct him towards the front doors of the school. When I placed my hand on his back, the male pulled away and stated "don't fucking touch me". It should be noted that the male kept his hands in his pockets and I did not know if he had a weapon person, but due to the male's uncooperative nature I believed it best to detain him in handcuffs for my safety and his. When he pulled away, I quickly closed the distance between us and grabbed hold of his upper collar with my right hand, and his left wrist with my left hand to gain positive control of him and not allow him to pull away from me again as I was unsure if he would attempt to fight me or try to flee. As soon as I grabbed hold of his left hand he instantly*

pulled his hands from his pocket and began to pull away from me again. I used a balance displacement technique to bring the male off balance and brought him to the ground in an attempt to gain positive control of the male. While on the ground he continued to pull away from me, and I was able to grab hold of his right arm with my right hand. I gave the male several verbal commands to "stop", but he continued to pull away, yelling at me to get off him. At this point Deputy M. Hand arrived to assist me and unholstered his Taser. Deputy Hand gave the male a verbal warning to quit fighting or he would be tased. The male then complied and rolled onto his stomach and placed his hands behind his back to allow me to handcuff him.

d. The male was immediately asked if he was injured and he responded "no". I picked the male up and escorted him to the front Office. I asked the male what his name was and he stated he would not answer any questions until his grandmother arrived. I stepped out of the Office to see if Administration could identify the student so his guardian could be contacted, and Administration identified him as M.W. When I walked back into the Office with M.W., his Grandmother had already called his cellphone. I asked M.W. if I could speak to her and he allowed me to use his phone to speak with his grandmother identified as Linda Southam DOB 06/06/1962. I explained the series of events and how they unfolded to Linda on the phone and she was very understanding. Linda stated M.W. was not raised to be disrespectful or confrontational with Law Enforcement.

e. Linda advised M.W. via phone to drop his attitude and stop being disrespectful. M.W. stated to Linda that he would and she advised she was on her way to the school. After getting off the phone M.W. became more cooperative. I asked M.W. if he would cooperate if I removed the Handcuffs, and he stated he would. I removed the Handcuffs, and M.W. was cooperative. M.W. explained to me that he was angry and frustrated due to seeing some of the male students being disrespectful towards female students. I advised M.W. that I understood his feelings, but advised him that it is unwise to pull away from Law Enforcement. M.W. apologized to me and stated that he just wasn't thinking when he did that.

f. Linda arrived at the school and spoke with me. Linda also apologized to me for M.W.'s actions and again reiterated that M.W. was not raised to act that way. Due to M.W. not having any previous Law Enforcement issues and no other major issues at School. I declined to charge M.W. with Disorderly Conduct.

g. M.W. was suspended from school for the remainder of the day by School Administration, and released to the custody of his grandmother.

Deputy Peterson Supplemental Report:

On 05/08/2024 Deputy Peterson's attorney, Mallory Revel (Foster, Graham & Calisher, LLP), submitted the following supplemental report from Deputy Peterson.

a. I, Phillip Wayne Peterson, am submitting this supplemental statement in reference to the incident that occurred on April 24, 2024 at Central High School. This statement is intended to serve as a supplement to my previously submitted report.

b. When I placed my right arm around the male's shoulder, my purpose was to pull him close to me in order to prevent him from continuing to pull away from me. At no point in time did I place my arm around his neck. Rather, I placed my arm on his shoulder and upper torso with the intent to keep my body weight on top of him as he was still actively pushing against me and trying to get up off the ground. I was very cognizant of the fact that this was a juvenile that I was dealing with, and I was taking precautions to not cause injury or any pain to the male. The male did not follow my command to "stop" and continued to attempt to get up. I kept my arm around his upper torso only to keep balance on top of the male and keep him on the ground. I was also cognizant of the positioning of my arm and tried to readjust my positioning when I felt my arm was getting too close to the male's neck region at one point. I never applied any pressure to the male's neck. I did not under any circumstances try to restrict or impede his breathing in any way.

c. I asked the male several times after the incident if he was injured, as his safety and well-being were of primary concern to me. He stated he was not injured and declined to be seen by EMS. I asked him if he would agree to the school nurse checking on him as a precaution, and he agreed to that. The school nurse came and briefly examined him in my presence, and did not observe any injuries. At no point in time did the male state he could not breathe or that he was in pain.

Deputy Hand:

a. It should be noted that I was wearing my department-issued Axon Body Worn Camera (S/N: X60333921) during this contact. The camera completed an automatic function check upon startup at the beginning of my shift, there were no errors during the function check, and the camera was functioning normally. The following is not verbatim, but my recollection of events and statements during the contact.

b. On April 24, 2024, at approximately 1210 hours, I, Deputy Hand, was working as assigned SRO at Central High School located at 550 Warrior Way in Mesa County, Colorado. I was notified by an unknown student there was a large fight going on in the parking lot of Central High School. I proceeded outside with Deputy Peterson. Interim Assistant Principal Vern McGee (DOB 06/13/64) was also present and walking outside to address the fight.

c. When we arrived outside there was a large group of students at the east end of the school across from the weight room. It appeared that the fight had broken up but there was still some back-and-forth verbal argument going on between two groups of students. Teachers and school administrators also began showing up. I saw Clint Trujillo (DOB 03/10/72), who is the wrestling coach and a Central High Staff member. I went to find out what was going on, Clint informed me it was a verbal altercation between two groups and nothing physical. As staff and administrators were telling students to leave the area and go to class, I could hear the two groups of students continue yelling at each other. I observed a black pickup truck bearing CO PN ASUA28 had pulled past the crowd of students and stopped almost directly in front of the school. I observed a male later identified as juvenile XS jump into this black pickup after standing at the door for a while.

d. I started to head back inside the building as I believed the incident was under control. I heard from an unknown person, "Swing on her swing on her Carmelina." I turned around and

observed Deputy Peterson in a physical struggle with a male student later identified as M.W. Deputy Peterson and M.W. were on the ground, and Deputy Peterson was behind M.W. I ran over to assist Deputy Peterson and I observed Deputy Peterson was continuing to struggle with M.W.. I drew my agency-issued Taser 10 (S/N T19C16678) activated and pointed at the upper chest of M.W.. I also began giving loud verbal commands to M.W. to lay flat on his stomach, I had to repeat these commands at least twice before M.W. complied. M.W. finally rolled over onto his stomach and Deputy Peterson was able to detain him in handcuffs.

e. As Deputy Peterson was attempting to detain M.W. a crowd was surrounding both of us and several students were video recording the incident on their cell phones. I heard Assistant Principal Shauna Hobbs (DOB 06/24/70) telling this group of students to leave the area multiple times. One female student, later identified as juvenile BN was being verbally uncooperative and saying something along the lines of It's my right. I can record according to the law I can be here. I observed BN continued to move into an unsafe distance between me and Deputy Peterson while continuing to stir up the crowd. I yelled at BN, "Unless you want to be charged with obstruction you will get out of my scene right now, get out of my scene all y'all."

f. Students including BN began dispersing away from where myself and Deputy Peterson were. Deputy Peterson finished detaining M.W.. I could hear other students yelling vulgarities and racial slurs toward me and Deputy Peterson. Deputy Peterson began to walk M.W. inside the school and I turned around and saw a male student I recognized as juvenile M.N. who was one of the students yelling vulgarities and racial slurs at us. I turned around and addressed M.N. to come here. M.N. said something along the lines of I am not fucking going anywhere with you. I said come M.N. let's go to the office and call Grandpa. M.N. said yeah let's go call Grandpa then.

Body Worn Camera Review:

Deputy Peterson:

Body camera appeared to not have been active until Deputy Hand drew his taser, there was a 30 second buffer period where there was no audio. The following is a summary of some events on the body worn camera.

At approximately 12:26:37 hours on the body worn camera footage, Deputy Peterson began to direct M.W. toward the front office. M.W. pulled his left shoulder away from Deputy Peterson and Deputy Peterson grabbed M.W.'s left elbow with his left hand. A use of force then occurred. Deputy Peterson's body camera was knocked off the mount and landed on the sidewalk.

When the audio turned on, at approximately 12:26:49 hours, M.W. could be heard saying, "Get the fuck off me now", "Get the fuck off me bitch ass nigga". Deputy Hand could be heard giving M.W. verbal commands to "get down, get down, get down".

At approximately 12:27:15, Deputy Peterson remounts his body camera and M.W. is seen laying face down on the sidewalk and was detained in handcuffs. Deputy Peterson asked M.W. if he had "any scratches" or "anything" from the incident. M.W. replied with, "Hell no, nigga". At

approximately 12:27:40 hours, Deputy Peterson moved M.W.'s right arm and some type of injury was visible to the left forearm. It looked as though a scab had been knocked off causing an older injury to open again. In a later interview with M.W., that was confirmed to be the case.

At approximately 12:27:50, Deputy Peterson helped M.W. to his feet and escorted M.W. into the school.

At approximately 1239 hours the school nurse checked M.W. for injuries. The only injury noted was a previously scabbed over injury to M.W.'s right elbow. M.W. was taken out of handcuffs to wait for Linda to get there.

Deputy Peterson recounted the incident to Deputy Hand (1242-1246 hours on body worn camera). The following is an excerpt from the transcription of Deputy Peterson's body worn camera, see full transcription for additional detail.

Deputy Phillip Peterson: So, yeah, I talked to his grandma on the phone. Super fuckin' ally for us if she's, she was bitchin' him out. Like you said what? You pulled away from a cop when he tried to put his hands on you? You told him to get his fuckin' hands off you? You called him a nigga? You did all this? Do it again see what the fuck happens. Now, I gotta go fuckin' make an excuse with my boss and why I gotta leave. Oh yeah.

*Unknown Speaker: This is from ****.*

Deputy Michael Hand: Ah, thank you.

Deputy Phillip Peterson: Thank you. Yeah, super fuckin' helpful and she under –

Deputy Michael Hand: Sorry, bro, I had turned my back. And I had turned around and that's when I came over it's like okay, we're going, we're going straight.

Deputy Phillip Peterson: Yeah. We'll ultimately what happened was that they kept like things, like swing on her, swing on her, Camilla, swing on her whenever we were walking over to make contact –

Deputy Michael Hand: Mm hmm.

Deputy Phillip Peterson: – there. So I turn around I said, hey, knock it off. What are you doing? What are you doing? And then like, as soon as, and they were just like, and he was just like what. What? What? I was like dude, knock it off. I turned, and I went to turn around and he's like, he's like what, nigga. And I said, I said, what'd you say to me? And he said what, I said what. So I started walkin', so I'm like nah, what'd you say after that? 'Cause you said something after that. He said I said nigga. Come on, let's go to the office. I went to put my hand on him like this. And he said get you're fuckin' hands off me.

Deputy Michael Hand: Mm hmm.

Deputy Phillip Peterson: The moment he did it, grabbed him, let's go. You don't fuckin' pull away from me, bud, sorry.

Deputy Michael Hand: All right.

At approximately 1318 hours, Deputy Peterson met with Linda and M.W. Deputy Peterson explained to Linda what happened (1318-1324 hours on body worn camera). The following is an excerpt from the transcription of Deputy Peterson's body worn camera, see full transcription for additional detail.

Deputy Phillip Peterson: Hi, ma'am.

Linda Southam: I, I just personally want to apologize to you.

Deputy Phillip Peterson: No, absolutely –

Linda Southam: I did not raise him to act like that toward officers. It –

Deputy Phillip Peterson: Yeah, absolutely.

Linda Southam: Cops are always to be treated with respect.

Deputy Phillip Peterson: Well, thank you ma'am, I appreciate that.

Linda Southam: Under any circumstance.

Deputy Phillip Peterson: Yeah, no, I, I absolutely appreciate it.

Linda Southam: I don't care what the circumstance is.

Deputy Phillip Peterson: I, like I said, like I was explaining to him, I get being a young teenager and, and letting tempers flare and, and he expressed that, you know, he, he kind of gets frustrated when he sees women being mistreated, which I totally get.

Linda Southam: Which is good.

Deputy Phillip Peterson: Yep. And I agree with that 100 percent. Everything would have been fine with that. The whole issue would have just been –

Linda Southam: Oh, I've seen the video –

Deputy Phillip Peterson: When, initially, when I told you guys, "Hey, knock it off," had you just knocked it off, –

M.W.: I apologize.

Deputy Phillip Peterson: – you would have been fine, dude.

Linda Southam: Yeah.

Deputy Phillip Peterson: Uh, we wouldn't have had any other issue, but it was the instigating and continuing.

M.W.: Yeah. I understand.

Deputy Phillip Peterson: And then –

Linda Southam: Yeah.

Deputy Phillip Peterson: The, the whole problem, initially, what started was after I initially went to put my hand on you and you pulled away from me and told me to get my fucking hands off you,

–

M.W.: I know.

Deputy Phillip Peterson: – then when I went to grab your arm –

M.W.: I wasn't thinking.

Deputy Phillip Peterson: As soon as I touched your arm, man, you started to pull away. I was like, "Oh, now we have, now we have a bigger problem."

M.W.: Yeah. I wasn't thinking. I was just mad.

Deputy Phillip Peterson: Yeah, no, I get it, dude. I get it.

Additional Video Footage Review:

MCSO NOLA Camera:

1201 hours: M.N.'s Jeep arrived and parked on the east side of the parking lot.

1205 hours: Juvenile E.S. approached the driver side of the Jeep. E.S. remained by the Jeep for the next several minutes and appeared to be doing something on his phone.

1211 hours: M.N., M.W., and another individual walked away from the Jeep and left camera view on the east side of the school.

1212 hours: E.S. walked away from the Jeep and was on the phone with someone.

1213 hours: A group of individuals gathered at the front of M.N.'s Jeep.

1214 hours: M.N., M.W., and B.N. returned to the Jeep.

1219 hours: A black truck arrived and parked in front of the school. It is believed to have been driven by X.S. X.S. and E.S. approached the group that was standing by M.N.'s Jeep. There

appeared to be a verbal altercation between the two groups. A group of three females arrived in the area as well. B.N. took off her backpack and appeared like she got into a verbal argument with one of the females that arrived.

1221 hours: X.S., E.S., and some other individuals started to walk away but then quickly turned around and engaged with the other group again. An even larger group gathered around and it appeared there was some pushing going on amongst various individuals. B.N. was seen shoving E.S. Due to the distance, it was difficult to identify exactly what was going on.

1224 hours: The two groups began to separate again. One group went to the area near the black truck and the other group stayed by the Jeep. Deputy Hand and Deputy Peterson came outside and began speaking with an individual on the sidewalk to the north of where the Jeep was parked.

1225 hours: B.N., M.W., and another female left the area around the Jeep. The three of them contacted a female staff member identified as Shauna Hobbs (Assistant Principal). A female in a white coat, believed to be AT, left that group, and began walking toward the other group by the black truck. Deputy Hand and Deputy Peterson walked past the group on the sidewalk toward the black truck.

1226 hours: Deputy Hand kept walking toward the area of the black truck, but Deputy Peterson turned around to face the group on the sidewalk. Deputy Peterson exchanged words with the group and then turned back around toward the black truck. Deputy Peterson turned back toward the group on the sidewalk and began walking toward them. B.N. can be seen starting to record the incident on her cell phone around this time.

Deputy Peterson approached M.W. and made a motion toward the front of the school. M.W. had both hands in the pockets of his sweatpants. Deputy Peterson reached toward M.W.'s back with his right hand, and the two began walking next to each other. M.W. pulled his left shoulder away from Deputy Peterson, M.W. still had both hands in his pockets.

Deputy Peterson grabbed M.W. and a use of force occurred (review footage from 12:26:34-12:28:12). Deputy Hand returned to the area and drew his taser. M.W. was placed in handcuffs and Deputy Peterson escorted him out of camera view. Deputy Hand contacted M.N. and escorted him out of camera view.

Juvenile BN Video Footage:

This video begins with a male's voice saying something about "don't swing Avery". Deputy Peterson turned around and said, "dude". Deputy Peterson then turned and began walking away. M.W. can be heard saying, "Who? Who? Who cares nigga".

Deputy Peterson turned around and asked M.W. what he said. M.W. said, "who cares". Deputy Peterson asked what he said after that and M.W. said, "nigga". Deputy Peterson told M.W. to walk with him. Deputy Peterson places his right hand on M.W.'s back near his left shoulder blade. M.W. told Deputy Peterson to "not touch" him.

The camera does not show what happened right after that, when M.W. and Deputy

Peterson entered the frame again, a use of force was occurring.

At approximately 26 seconds into the video, Deputy Peterson had M.W. on the ground and was trying to gain compliance. While in this position, M.W. was yelling that he did not do anything and for Deputy Peterson to get off him and “get off me nigga”. M.W. placed his right hand on the ground and appeared to be trying to stand up and/or push back against Deputy Peterson. Deputy Hand arrived with his taser drawn and began giving M.W. commands to get on the ground. M.W. did not get onto his stomach until Deputy Hand arrived with his taser out.

Deputy Peterson grabbed M.W.s right hand, moved it behind M.W.’s back. Deputy Peterson gained control of both M.W.’s hands and placed M.W. in handcuffs. M.W. continued making verbal comments to Deputy Peterson as he was being placed in handcuffs.

M.W. Interview

On 05/07/2024 M.W. was interviewed at his residence; his legal guardian Linda Southam was present. Also present via video chat was the family’s attorney, James Roberts (Palmer, Perlstein Attorneys & Counselors). The following is a summary of M.W. statement.

M.W. returned to the school during lunch with M.N. They were originally going to pick B.N. up and go to McDonald’s. B.N. and a female juvenile had been arguing with each other and were going to fight. From his understanding the issue between them was that the female juvenile was going around telling people that M.N. had asked her for nude photographs.

The female juvenile’s boyfriend, E.S., called his older brother X.S. to come to the school. X.S. came and started pushing B.N. and Kyla. M.N. said when XS initially drove past them in the truck, that X.S. flashed what he believed to be a handgun or something of similar size/shape color to a handgun.

M.W. went over and started arguing with X.S. The cops came outside of the school and he was still arguing with X.S. When M.W. said, “who cares” and then the n-word, he said that was directed toward X.S. not the cop. The cop turned around and asked M.W. what he said and M.W. told the cop what he said.

The cop told M.W. to go to the office, so he started walking toward the office. The following is an excerpt from the transcription where M.W. detailed the events that happened next.

M.W.: And then he came, and then he was pushing B.N. and Kyla, and then I went over there, and we were like arguing back and forth, and then the cops came out, and I was still arguing with X.S., and when I said who cares n-word I was talking to X.S. at the time, but then he turned around and was like what did you say, and I was like I said who, who cares, and he was like what did you say after that, and I was like I said who cares, nigga, and then he goes okay, go to the office, so I was walking to the office, and then he put his hand on my back, and, like, as an instinct I kinda like shrugged it off, and then he put his arm around my neck and tackled me to the ground, and then while we were on the ground, his arm was around my neck, and I couldn't breathe, so I was, like, standing up as you can see in the video trying to, like, move his hand

down, and then, um, the bigger one, Hand or Peterson, do you know what one?

Zach McCullough: Uh, do you know either of their names? Have you had previous interactions –

*M.W.: No, **** –*

Zach McCullough: – with either of them? Okay. So the, the larger of the two –

M.W.: Yeah. The –

Zach McCullough: Okay.

M.W.: – one with the taser, he came, and he came out with the taser. At first I thought it was a gun until he said, um, get on your stomach or I'm gonna tase you, so I got on my stomach, and then they put me in handcuffs. Then walked – I didn't say anything. Like, some people are saying I said don't fuckin' touch me, and I didn't say that.

Zach McCullough: Mm hmm.

M.W.: But, so we walked to the office, and then, like, as we were at the office doors, I'm like you don't have to grab me. I could walk, and then he's like okay, and then we went in the office, and I called my grandma, and then I was talking to her for a minute, and then he came back in, and then he threw, he asked if he could talk, and I was like, yeah, sure you can talk, and then he was like, um, as you've seen in the video, like, I, there was an altercation, and then I put my hand, my arm on his, oh, my hand on his arm, and then he pulled away and started to fight back, but I never fought back.

Zach McCullough: Hmm.

M.W.: And then my grandma was like okay. Well, he deserved to go to the ground off of what she heard, and then she came to the school, and then that's it.

Linda recounted what she was initially told by Deputy Peterson about the incident with M.W. Linda mentioned how Deputy Peterson told M.W. something about how he was lucky it happened on school grounds, because if had been somewhere else, he could have really “put the hurt” on M.W. Deputy Peterson told M.W. he could have used pressure points. They discussed not fighting with law enforcement.

Linda said after she watched video(s) of the incident, you could see the cop grab M.W. from behind and flip M.W. over, in a “chokehold”. Linda said the cop held the “chokehold” for the whole time. Linda said that M.W.’s father was murdered in a chokehold (MCSO 2013-0032659). Law enforcement was not involved in that incident, after reviewing that case it was an incident between M.W.’s father and another citizen.

Linda and M.W. met with school staff the next day, Linda told staff that she watched the videos and informed them that the cop used “excessive force” for no reason. Linda said that was the last she talked about the incident except for with James (lawyer) and right then.

Linda was asked if M.W. got any medical care after the incident and Linda said M.W. did not. Linda said M.W. had a bruise on his leg from the incident and the incident has caused M.W. to experience “nightmares”.

M.W. said in addition to the reported bruise on his left calf, there was some previous “road rash” on his right forearm that opened again due to the incident. M.W. said the bruise on his leg from the incident was gone.

James told M.W. to be sure to talk about all his injuries. M.W. said the day after the incident his neck was sore and he had a spasm in his back.

M.W. advised that BN took pictures of him in the time after the incident. Detective McCullough asked M.W. if those pictures could be sent to him. James told Detective McCullough he would get the pictures from B.N. and send them to him. Detective McCullough contacted James on 05/14/2024 to follow up with getting the pictures. James told Detective McCullough he would send the pictures, as of 06/20/2024. I have not received any pictures of the alleged injury.

Other Witness Interviews

Several other students and school faculty were also interviewed as part of this CIRT investigation regarding the collateral matter that had happened shortly before the incident involving the Deputies. Additionally, some students and faculty were interviewed regarding their observations of the use of force incident. Some students declined an interview.

Deputy Peterson History

On June 19, 2024 I spoke with Sgt. Justin Montover at the MCSO Professional Standards Unit and confirmed that Deputy Peterson had no history of any excessive force, previously. In fact, Sgt. Montover confirmed that Deputy Peterson had no disciplinary history at all.

Summary of Incident

On 04/24/2024, at approximately 1224 hours, Deputy Hand and Deputy Peterson went to the parking lot of Central High School in response to the report of an altercation occurring between students. A review of video footage and witness statements found probable cause that several students committed the crime of disorderly conduct, prior to Deputy Hand and Deputy Peterson arriving outside.

The initial altercation between students occurred on the northeast side of the parking lot. By the time Deputy Peterson and Deputy Hand came outside, the two groups had mostly separated. One of the groups had moved to the area around a black truck that was parked in front of the school, the other group was a little bit to the east of the truck on the sidewalk.

Members of each group were still verbally arguing with each other. Shauna Hobbs (Assistant Principal) was outside and requested Deputy Peterson/Deputy Hand to assist her with

contacting a female who was known to be uncooperative.

Deputy Peterson and Deputy Hand walked past the group on the east side of the sidewalk. As they were walking past the group, Deputy Peterson reported hearing someone in the group yelling something like, “hit her Camella, hit her.” Deputy Peterson felt the group was trying to provoke violence. Deputy Peterson turned to the group and told them to “knock it off”.

Deputy Peterson turned around and started walking west bound on the sidewalk again. A male from the group, M.W., that Deputy Peterson told to knock it off said, “what nigga.” A review of video footage of the incident found the male said, “Who, who, cares nigga”. There were conflicting statements about who the comment was directed toward either law enforcement or another student. Deputy Peterson turned around and confronted M.W. about what was said. M.W. told Deputy Peterson what he said, but notably left out the racial slur until specifically confronted about part he left out.

Deputy Peterson noted in his written report at that time he had developed probable cause to charge M.W. with disorderly conduct.¹ Deputy Peterson told M.W. to come with him to the office to separate M.W. from the crowd. Deputy Peterson touched M.W.’s back and M.W. said, “Don’t touch me.” M.W.’s hands were in his pockets and M.W. pulled his left shoulder away from Deputy Peterson. Deputy Peterson noted concern related to M.W.’s hands being in his pockets and not knowing whether M.W. had a weapon. Deputy Peterson did not know at the time, but it was reported that X.S. had flashed a handgun or something that looked like a handgun during the initial collateral altercation in the parking lot.

Deputy Peterson decided, due to M.W. being uncooperative, M.W. needed to be detained in handcuffs. After M.W. pulled away from Deputy Peterson, the use of force incident at issue occurred. M.W. was taken to the ground and placed in handcuffs. During the use of force, M.W. was yelling that he did not do anything and for Deputy Peterson to get off him and “get off me nigga.” While Deputy Peterson and M.W. were on the ground, M.W. got both feet on the ground and appeared to be trying to stand up. M.W. did not roll onto his stomach until Deputy Hand arrived with his taser drawn and began giving M.W. commands to get down.

The incident from the time M.W. pulled away until he was stood up in handcuffs lasted approximately 01:15 (one minute/fifteen seconds).

M.W. was taken to the school office where he was checked by the school nurse. M.W. did not report any injuries. M.W.’s grandmother (legal guardian), Linda Southam, was contacted. Linda responded to the school and met with Deputy Peterson. Deputy Peterson decided to not charge M.W. with disorderly conduct and M.W. was released to Linda. M.W. was suspended from school for the remainder of the day.

Two weeks later, on 05/07/2024, after obtaining an attorney, M.W. was interviewed.

¹ The members of the group that were staffing the case to discuss the charging decision agreed that probable cause existed to charge M.W. with disorderly conduct, but we all agreed that more important than whether a court would agree with that determination was whether or not Deputy Peterson believed he had probable cause. Because we were debating whether the criminal justice system was an appropriate response to this situation, his good faith subjective belief that he was acting within the law was more significant than whether he was objectively correct.

During that interview, M.W. reported he was choked by Deputy Peterson during the incident and could not breathe. Neither this allegation nor any reports of M.W. being injured were previously reported. M.W. said/demonstrated that while he was being choked, he moved his hands up to grab onto Deputy Peterson's arm.

M.W. reported having a bruise on his left calf from the incident (that was healed), a previous scab on his right forearm that was broken open during the incident (confirmed on body camera video), that his neck was sore the next day and he had a back spasm. M.W. said he did not see a doctor for any of the reported injuries.

During the interview with M.W., Linda advised she had not seen video of the incident prior to meeting with Deputy Peterson and M.W. the day it happened. Linda said after she had a chance to review the video, she went to the school the next day and told school staff that law enforcement used excessive force for no reason. This was not consistent with Linda's original statement to Deputy Peterson of having seen video footage of the incident prior to responding to the school the day of the incident.

Relevant Law

In Colorado, 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. (C.R.S. 18-1-707). A peace officer is prohibited from using a "chokehold" upon another person. A "chokehold" is defined as either:

- 1.) A method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air.
- 2.) A method of applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries. (C.R.S. 18-1-707).

If a peace officer is found to have used excessive force, a peace officer may be subject to the criminal laws of this state to the same degree as any other citizen (C.R.S. 18-8-803).² In Colorado the criminal statutes that prohibit someone from using a chokehold to restrict someone's breathing (See First Degree Assault, C.R.S. 18-3-202(1)(g)³ and Second Degree

² Chokeholds were prohibited as a law enforcement tactic in 2016 through the enactment of HB 16-1264, with limited exception. In 2020, the legislature, through SB 20-217, removed the exceptions and expanded the definition of chokeholds to include the catchall provision, which now exists and is discussed below. However, in Colorado, the prohibition of a chokehold from law enforcement use is not its own crime, but rather is a prohibition that limits the affirmative defense of Use of Force by a Peace Officer, pursuant to C.R.S. 18-1-707. In other words, because the prohibition merely limits the affirmative defense, an officer must still commit a statutorily defined offense in order for the officer to be subject to criminal prosecution.

³ C.R.S. 18-3-202(1)(g). *With the intent to cause serious bodily injury*, he or she applies sufficient pressure to impede or restrict the breathing or circulation of the blood of another person by applying such pressure to the neck or by

Assault, C.R.S. 18-3-203(1)(i)⁴ both require that the offender have the specific intent to cause either serious bodily injury or bodily injury.

Application of Law Pertaining to “chokehold”

It was the consensus of the group that staffed the case that Deputy Peterson was trying to gain compliance of an uncooperative individual from behind, but that the neck was not targeted as “method,” as prohibited in the use of force statute through the definition of “chokehold,” therefore the conduct here was not what the statute sought to prevent. The members of the staffing unanimously concluded after a review of the CIRT investigation that Deputy Peterson did not intend to cause injury, did not intend to use a chokehold as a compliance tactic, and did not intend to restrict the breathing of the victim M.W. Lack of specific intent is the reason that Deputy Peterson is not subject to prosecution for either first or second degree assault, and why the affirmative defense of use of force is still available to him. It was the consensus that any pressure to the neck area was incidental, and not deployed as a specific tactic to gain compliance.

Given that Deputy Peterson indicated he had probable cause to believe M.W. had committed a crime, he had the ability to use physical force to detain him based on a belief that it was necessary for the safety of himself and others and that non-violent means would be unsuccessful. Further, it is clear from the video that at that point M.W. was committing the additional offense of obstructing government operations. Deputy Peterson indicates in his report that he believed it best to detain M.W. in handcuffs for safety reasons based on the uncooperative nature of M.W., the fact that M.W. pulled away from him, and the fact that M.W. kept his hands in his pockets. Deputy Peterson indicates that he was unaware whether M.W. had any weapons in his pockets, but it appears that the possibility of having a weapon also factored into the decision Deputy Peterson made to detain M.W. Given the totality of the circumstances and the subjective belief of Deputy Peterson that it was necessary to detain M.W. for his safety and the safety of others, reasonable doubt exists that Deputy Peterson intended to cause injury or serious bodily injury in this circumstance. Further, no evidence supports that Deputy Peterson intended to illegally use a chokehold or restrict the breathing of M.W.

Third Degree Assault

The potential charge against Deputy Peterson that was thoroughly discussed was Assault in the Third Degree (C.R.S. 18-3-204). In Colorado, a person commits the crime of assault in the third degree if that person knowingly or recklessly causes bodily injury to another person. While the victim M.W. indicated multiple times, shortly after the incident that he did not receive any injuries from this incident, the victim did indicate at a later date that he sustained minor injuries including a bruise on his leg, some “road rash” on his forearm, some neck pain and a spasm to his back. Given the differing statements regarding injury from the victim, reasonable doubt exists as to whether Deputy Peterson caused bodily injury to M.W. Assuming it could be proven that Deputy Peterson caused bodily injury, this sort of thing routinely happens when a person is

blocking the nose or mouth of the other person and thereby causes serious bodily injury.

⁴ C.R.S. 18-3-203(1)(i). *With the intent to cause bodily injury*, he or she applies sufficient pressure to impede or restrict the breathing or circulation of the blood of another person by applying such pressure to the neck or by blocking the nose or mouth of the other person and thereby causes bodily injury.

uncooperative, and force is used to gain compliance. It only becomes criminal, on the part of the officer, if we can prove beyond a reasonable doubt that excessive force was used, and here, we cannot due to the determination that Deputy Peterson had probable cause to arrest M.W. for disorderly conduct, and as discussed below, also probable cause for obstructing government operations. Absent a determination that we could prove excessive force, beyond a reasonable doubt, there also does not appear to be any potential criminal charges as to Deputy Hand for not stopping the conduct.

Potential charges against M.W.

The potential charges against M.W. include Disorderly Conduct (C.R.S. 18-9-106(1)(a)), and Obstructing a Government Operation (C.R.S. 18-8-102). In Colorado, a person commits the crime of disorderly conduct if he or she intentionally, knowingly or recklessly makes a coarse and obviously offensive utterance, gesture, or display in a public place, and the utterance, gesture or display tends to incite an immediate breach of the peace. There was clearly probable cause that M.W. committed this offense, however, M.W. asserts that he intended the statement to be toward other students, whereas Deputy Peterson believed it to be intended to incite others. While there are First Amendment issues associated with this statement, M.W.'s conduct in leaving out the racial slur when answering what he had said, is indicative of his knowledge of the offensiveness of the statement, thus not making it protected speech. Additionally, in Colorado, a person commits obstructing a government operation when a person intentionally obstructs, impairs or hinders the performance of a governmental function by a public servant, by using or threatening to use violence, force, or physical interference or an obstacle. Here, when the deputy attempted to lead M.W. to the office following a determination that there was probable cause for disorderly conduct, M.W. used physical interference and an obstacle to hinder the performance of Deputy Peterson's governmental function. However, we concluded that this situation is best handled by the school, and Deputy Peterson agreed that it was best handled by the school. Thus, sending M.W. to juvenile court, or diversion, for this part seems counterproductive and I am exercising my discretion not to solve this problem through the juvenile justice system.

District Attorney's Office Staffing

As part of the district attorney's office staffing, three important questions were discussed pertaining to our analysis of this situation. Those three questions were:

- 1.) Did Deputy Peterson intend to use a chokehold as a method of compliance, as the legislature sought to prevent, thus making this force excessive and subject to prosecution?
- 2.) If we had appropriate charges to file, what could the criminal justice system offer in filing the charges? And would another remedy be more appropriate in this situation?
- 3.) What would be the reasonable likelihood of conviction with a Mesa County jury, if charges were filed?

1.) Did Deputy Peterson intend to use a chokehold as a method of compliance, as the legislature sought to prevent, thus making this force excessive and subject to prosecution?

As discussed above, the review of this CIRT investigation does not indicate that Deputy Peterson had the intent to use a chokehold as a method or tactic to gain compliance. As indicated in his report and supported by the video evidence, Deputy Peterson believed he had

developed probable cause to initiate an arrest of M.W. for the charge of disorderly conduct. Deputy Peterson indicates that initially his intent was to not charge him but rather separate him from the crowd to alleviate the situation. Shortly after that, M.W. pulled away from Deputy Peterson in an uncooperative manner while also keeping his hands in his pocket. Deputy Peterson described that, at this point, he believed that it was best to detain M.W. in handcuffs for the safety of M.W. and everyone present, including the Deputies, students, and staff. There is no evidence to suggest that Deputy Peterson's intent was to cause injury of any sort, or to use a chokehold on the victim as a method or tactic, and that it was incidental to the physical force used to try to grab him from behind.

The statute, in both versions of the prohibited conduct (C.R.S. 18-1-707(2.5)(b)), talks about "a method" of applying pressure, in order to cause a result. In all respects, like in many criminal statute, this appears to be a specific intent situation, where the officer is applying pressure to the neck with the goal of restricting air flow or blood flow. This statute was enacted after the George Floyd case, and was in response to officers using what is sometimes referred to as a "sleeper hold" in which air flow or blood flow is intentionally hindered as a tactic. In reviewing the video, and going through the statements made at or near the time by Deputy Peterson, it was the unanimous conclusion of those that were in the staffing that this was not done intentionally to restrict air flow or blood flow, and was simply Deputy Peterson trying to grab M.W. from behind, which happened to be in the area of the chest and neck. While the first version contains a catch-all provision of prohibiting "any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air" this still must be deployed as a "method." Further, this does not create its own crime, it merely removes this method from the protections of the affirmative defense of use of force by a peace officer. The officer's conduct must still be defined by another criminal statute, which here is only arguably a third degree assault, with the problems of proof, as discussed above.

2.) If we had appropriate charges to file, what could the criminal justice system offer in filing the charges? And would another remedy be more appropriate in this situation?

These two questions were discussed in great detail by the prosecutors, the police detectives, and supervisors at the staffing. The issues and concerns that this incident has brought forward are matters more appropriately addressed outside the criminal justice system. For instance, employment matters including potential discipline for violation of any agency policies regarding use of force. Additionally, any employment matters calling for additional training to prevent incidents like this from happening in the future are also matters that can be addressed in a forum other than a criminal prosecution. This matter also has civil remedies, and I am aware that there is already a civil action being sought.

If criminal charges were to be brought, our response is limited in what it can offer. There does not appear to be any purpose in probation. Deputy Peterson does not need a probation officer to follow him to make sure he is employed. This does not appear to be associated with a drug or alcohol problem or mental health problem that necessitates supervision, substance counseling or treatment. There is no history of Deputy Peterson using excessive force that would necessitate a punitive response, nor would incarceration be appropriate for a first time offender with his history of stability of employment.

To the extent that the community needs to see a response, when the group was asked at

the staffing what they would expect to happen if we charged a non-police officer who did this sort of thing, at this deputy's age, with no criminal record, no work history of anything like this and a lengthy history of being a productive member of the community, the answer was a diversion or deferred judgment. Thus, whatever the response that we would offer, is not likely to satisfy the community's need for a response, since it would likely involve dismissing the case in favor of a diversion, or dismissing it after successful completion of a deferred judgment.

Similarly, I have concluded that the criminal justice system is not the best place for a response to the M.W.'s improper conduct. While I have probable cause to charge him, the school is a much better forum to address his conduct. He did not appear to be seeking to involve himself in this situation, and while his statements are offensive, in-fact so offensive that even he did not want to repeat them, the school or his grandmother is much more suited than juvenile court to explain to him why it is offensive and should not be something he repeats.

3.) What would be the reasonable likelihood of conviction with a Mesa County jury if charges were filed?

During the June 11th staffing on this matter, several senior level prosecutors with more than a combined 100 plus years of prosecution experience weighed in. Mesa County has traditionally been, and continues to be, a very pro law enforcement community. As such, myself and the senior attorney's in this office unanimously agreed that based on the totality of the facts in this incident, it would be extremely unlikely to obtain any criminal conviction, which would require a standard of beyond a reasonable doubt, and unanimity from the Mesa County jurors. Beyond the general sympathy towards law enforcement in Mesa County, another factor that influenced this conclusion is that M.W. would be somewhat unsympathetic to a jury given that he initially: (1) provoked the incident; (2) indicated he didn't suffer any injuries; (3) apologized to the Deputy shortly after the incident occurred for his own behavior, and (4) appears to now be changing his statements about injury after retaining civil counsel to pursue a lawsuit.

Conclusion

Considering the factors in this case, I believe there is not a clear charge to prosecute Deputy Peterson or Deputy Hand. To the extent third degree assault is available, reasonable doubt exists that any criminal behavior occurred, and I do not believe that I have a reasonable likelihood of conviction at any trial in this matter. Even if there were a reasonable likelihood of conviction at trial, the criminal justice system does not appear to be the best place to handle matters with either the deputies or the juvenile. Therefore, I believe it would be an imprudent use of judicial resources to pursue criminal charges for this incident against either of the deputies, as well as the juvenile.

For all the reasons stated above, the Office of the District Attorney has declined to file charges against Deputy Phillip Peterson for his use of force at Central High School from April 24, 2024, or against Deputy Hand for failing to intervene in that use of force, as well as declining to file charges against M.W. for disorderly conduct and obstructing a peace officer on the same date.

Respectfully,

/s/ Daniel P. Rubinstein

Daniel P. Rubinstein
District Attorney