



THE STATE
of **ALASKA**
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Department of Law

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Re: Use of Deadly Force Review, APD Case No. 24-17124

This letter summarizes the Office of Special Prosecutions' (OSP) review of the incident involving Anchorage Police Department (APD) Sergeant Jesse Frey, Officer Isaac Kimball, and Officer Nicholas Flechsing and their use of deadly force against Tyler Jacob May on 3 June 2024 in Anchorage, Alaska. This analysis is based upon a review of the investigative reports related to this incident, along with the accompanying dispatch log, radio traffic, interviews, audio recordings, photographs, videos, and other evidence submitted to date.¹ The purpose of OSP's evaluation in this matter is to determine whether Sergeant Frey and/or Officer Kimball and/or Officer Flechsing should face criminal charges for their use of deadly force during this incident.²

Summary of Pertinent Facts³

On 3 June 2024 at 9:29:28pm, APD received a 9-1-1 call from a civilian reporting that an "albino kinda but more black" man had just fired a gun and was now walking north on Karluk Street near East 19th Avenue with a taller Samoan male. The civilian told 9-1-1 dispatch that earlier the man pulled a gun on children in the neighborhood and tried to take the children's scooter. The 9-1-1 caller reported the man with the gun had "poufy," curly brown hair, and was wearing brown pants with a gray shirt, black hat and black shoes, and walking with a taller Samoan male who was wearing a black hoodie. During the call the civilian reported the two men were walking on East 19th Avenue towards the senior center's parking lot.

A separate 9-1-1 caller, at 9:31:46pm, reported that there was a man screaming and yelling as he walked down East 19th Avenue towards the senior center with a gun. The caller described the

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1. This review is based on the information provided at the time this letter was written. Information not previously provided to OSP for review may change the analysis in this matter.
 2. The purpose of OSP's review is solely to determine whether criminal charges against either law enforcement are warranted given their use of deadly force. OSP does not review these cases for policy violations or a determination of whether a law enforcement officer's conduct is appropriate under any applicable use-of-force policies. OSP also expresses no opinion as to the general appropriateness of any APD policies, including use-of-force policies.
 3. The facts contained in this letter are those that are relevant and necessary to inform you of the nature and extent of my review but do not represent the entirety of the investigation or the materials I have reviewed.

armed man as wearing brown pants with a blue shirt and said he was walking from Karluk Street to Orca Place. She stated the man kept screaming and yelling as he waved the gun around.

A third 9-1-1 caller, at 9:33:50pm, told the dispatcher that she heard one gunshot from her residence at East 19th Avenue and Karluk Street. She reported she heard the guy with the gun yelling and said he was wearing brown pants with a gray or black top. She further advised that the man was walking with a taller Samoan man towards Orca Place and that she ran back inside her house.

Sergeant Frey reported to dispatch that he was on-scene at East 19th Avenue and Orca Place at 9:32:39pm. Officer Kimball and Officer Flechsing both advised dispatch at 9:35:21pm, that they were on-scene at the senior center. Officer Timothy Dorsey arrived as well and brought his dog, K9 Ray, with him to the north side of the senior center,⁴ where Sergeant Frey, Officer Kimball, and Officer Flechsing were located; each officer was wearing a standard APD uniform. The officers were standing behind a low wall near a dumpster and observed a tall Polynesian male walking on the other side. Officers identified themselves and commanded the Polynesian male, later identified as K.O.⁵, to show his hands.

K.O. raised his hands above his head and he was commanded to sit on the ground. While K.O. was following police commands to sit, another male wearing brown pants and a dark shirt, later identified as Tyler Jacob May, ran behind the low wall into the senior center's north parking lot. Officers observed a pistol in May's right hand. Officers immediately commanded May to drop the gun and get on the ground. May put the pistol in his front waistband, raised his hands above his shoulders, and turned away from the officers.

May refused the officers' commands to get on the ground and, instead, ran east through the parking lot. Officer Dorsey immediately released K9 Ray to apprehend May. K9 Ray caught up to May and bit May in the upper back, which knocked May to the ground. Sergeant Frey, Officer Kimball, and Officer Flechsing, all armed with rifles, moved towards May as Officer Dorsey remained behind them. As the officers approached May, K9 Ray continued to pull at May and May ended up with his back on the ground. At that point, the officers saw May with his right hand inside the front of his pants and saw as May removed the pistol from his waistband. May pulled the pistol out and pointed it in the direction of officers. At that time Sergeant Frey, Officer Kimball, and Officer Flechsing each fired their rifle, striking and killing May.

Body-Worn Camera Footage

Sergeant Frey was equipped with an APD-issued body camera. The footage is 13 minutes and 16 seconds long, the audio begins at 60 seconds, and the timestamp is 9:29:37pm.

Sergeant Frey activates his lights and sirens at 9:30:52pm. As Sergeant Frey drives to the scene, dispatch provides updates over the radio. At 9:33:32pm, as Sergeant Frey is driving slowly on East 19th Avenue, he rolls down his driver's side window and a woman's voice is heard telling him "he

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4. Based on information now known, it is not believed that the senior center was occupied at the time of the incident.
 5. Initials are used for civilian witnesses throughout this OIS Review Letter as none of the civilian witnesses are believed to have committed any criminal offenses and identifying their full names in this publicly-available document is unnecessary. See generally Alaska Constitution, Article I, sec. 22.

went into the senior center.” Sergeant Frey relays that information on his radio.

At 9:34:14pm, Sergeant Frey arrives at the senior center, exits his patrol vehicle armed with his rifle, and confirms with Officer Montgomery (who had just arrived) that they are at the senior center. He walks to the patrol vehicle’s rear passenger door and retrieves his ballistic helmet. Sergeant Frey is parked at the north entrance to the senior center, on East 19th Avenue. At 9:35:12 Sergeant Frey starts walking with Officer Montgomery towards the southeast from his patrol vehicle, in the direction of the northeast side of the senior center. The two officers reach the north side of the senior center at 9:35:48pm. As they walk, they briefly discuss that the suspect may be on the east side of the building; that is, the side of the building they cannot see. At 9:36:29pm, Officer Kimball approaches and asks if the officers have eyes on the suspect. Sergeant Frey states they do not but they can hear “mechanical clicking”. Sergeant Frey’s camera is obscured by his arm at 9:36:36pm and remains obscured, except for a brief moment, until 9:37:29pm. At this time, Sergeant Frey announces he going to clear a corner and he walks east along the north side of the senior center approaching a low brick wall with a green dumpster next to it; he briefly looks around the corner and observes a closed door.

At 9:37:42, Sergeant Frey steps on a wooden bench in an apparent move to look over the brick wall to the pathway behind it. Sergeant Frey steps down from the bench and his camera is obscured from 9:37:49pm until 9:38:19pm. Officer Dorsey announces “Hello, APD. Keep your hands where I can see them.” Immediately after that announcement multiple officer voices are heard yelling “Stop! Drop the gun!”, “Get on the ground!”, and “You will get shot!” but no one is visible in this video footage.

Sergeant Frey, who is to the right of Officer Kimball and Officer Flechsing, walks towards the low brick wall and at 9:38:36pm, K.O. is visible sitting on the ground underneath a tree behind the brick wall as Sergeant Frey tells Officer Montgomery to cover K.O. At 9:38:40pm, Sergeant Frey continues to move towards May who is on the ground with K9 Ray biting him. An officer commands May to “drop the gun!” At 9:38:41pm gunshots begin and end at 9:38:43pm. At 9:38:44pm Sergeant Frey and Officer Kimball move backwards as Officer Dorsey relays on his radio “K4. Shots fired. Shots fired. Suspect down.” Sergeant Frey turns around at 9:38:51 and K.O. remains seated on the ground with both of his arms held above his shoulders. Commands to K.O. are given and he is seen complying and ultimately is handcuffed. Sergeant Frey then confirms with the officers that Officer Kimball and Officer Flechsing fired, and Officer Montgomery and Officer Dorsey did not.

Officer Kimball was equipped with an APD-issued body camera. The footage is 10 minutes and 54 seconds long, the audio begins at 60 seconds, and the timestamp is 9:29:47pm.

Officer Kimball activates his lights and sirens at 9:30:57pm. As Officer Kimball drives to the scene, dispatch provides updates over the radio. Officer Kimball, at 9:31:59pm, puts on his tactical helmet as he drives towards the senior center. At 9:32:22pm, Officer Kimball arms himself with his rifle while he drives. Officer Kimball arrives at the senior center at 9:36:18pm. Officer Kimball parks on the north side of the senior center, to the right rear of Sergeant Frey’s vehicle, exits his vehicle, and runs towards Sergeant Frey and Officer Montgomery. Officer Kimball arrives at the north side of the senior center at 9:36:36pm. The three officers discuss whether the armed suspect

can enter the senior center and they conclude that they are uncertain but believe door is secured.

At 9:37:29pm, Officer Kimball walks east towards a low brick wall, with Sergeant Frey to his right. Officer Kimball moves to the left of Sergeant Frey and Officer Montgomery as Sergeant Frey steps up on a wooden bench. Officer Kimball's rifle obscures most of the camera's view from this time until 9:38:21pm. During this time, Officer Kimball is heard advising Officer Dorsey that they believe the armed suspect is behind the low brick wall. At 9:38:17pm, Officer Dorsey announces "Hello, APD. Keep your hands where I can see them." At 9:38:25pm, May runs into view from behind the brick wall, turns to his right, and it appears his right hand is in his front waistband. Immediately, multiple officer voices are heard yelling "Stop! Drop the gun!", "Get on the ground!", and "You will get shot!" May then briefly raises his arms above his shoulders but turns away from the officers and walks east through the parking lot. May directs his attention towards the police officers, lowers his arms, and K9 Ray is seen in the footage running at May at 9:38:32pm.

Officer Kimball moves towards the parking lot and at 9:38:40pm K9 Ray is seen biting May's right side as May is on the ground. Officer Kimball has now closed the distance between himself and May. May is heard screaming in distress as K9 Ray bites him. May's right hand raises up and he has a pistol in his hand. An officer commands May to "drop the gun!" Nearly simultaneously, at 9:38:41pm, Officer Kimball shoots May and the pistol drops from May's right hand. Officer Kimball stops firing and at 9:38:43pm he slowly walks backwards. At 9:38:51pm, K9 Ray disengages from May. Officer Kimball's rifle obscures most of the camera view until 9:40:08pm, at which time he is standing near K.O. as K.O. is being handcuffed.

Officer Flechsing was equipped with an APD-issued body camera. The footage is 12 minutes and 24 seconds long, the audio begins at 20 seconds, and the timestamp is 9:30:02pm.

Officer Flechsing activates his lights and sirens at 9:30:27pm. As Officer Flechsing drives to the scene, dispatch provides updates over the radio. Officer Flechsing arrives to the senior center, parking behind Officer Kimball, at 9:36:52pm, and exits his patrol vehicle. Officer Flechsing retrieves his rifle and helmet from his vehicle, walks southeast towards the other officers, and, at 9:37:50pm, reaches Sergeant Frey, Officer Kimball, and Officer Montgomery after walking past Officer Dorsey.

At 9:38:17pm Officer Dorsey announces "Hello, APD. Keep your hands where I can see them." While Officer Flechsing's rifle obscures the camera view for 30 seconds, at 9:38:21, Officer Flechsing is seen raising his rifle and K.O. is visible, standing behind a low brick wall with his arms raised above his head. As K.O. follows commands and begins to sit on the ground, at 9:38:25pm, May, wearing brown slacks, a dark shirt, and a dark hat, runs into view from behind the low brick wall. A pistol is visible in May's right hand. Immediately, multiple officers' voices are heard yelling "Stop! Drop the gun!", "Get on the ground!", and "You will get shot!" At 9:38:26pm, May turns around and it appears he is placing the pistol in the front of his waistband.

May briefly raises his arms above his head and looks towards the officers at 9:38:27pm. At 9:38:30pm, May turns his back on the officers, lowers his arms, and begins walking away from the officers into the senior center parking lot. K9 Ray enters the footage and begins his chase of

May at 9:38:32pm, as Officer Flechsing moves towards May with his rifle raised. At 9:38:34pm, Officer Flechsing moves past the low brick wall and K.O. is visible sitting on the ground with his arms raised above his shoulders. Nearly simultaneously, K9 Ray apprehends May and brings him to the parking lot ground. May is heard screaming in distress as K9 Ray bites him. Officer Flechsing closes the distance with May and, at 9:38:39pm, May's hands are seen in his waistband as K9 Ray bites the right side of May's back. May is seen pulling out the pistol from his waistband but Officer Flechsing's rifle obscures the video of May immediately after the pistol is visible at 9:38:40pm. An officer is heard commanding May to "drop the gun!" The camera view is unobscured at 9:38:43pm. Multiple gunshots are heard. At that time, Officer Flechsing is walking backwards from May who is now lying on the ground, unmoving. At 9:38:44pm, Officer Dorsey relays on his radio "K4. Shots fired. Shots fired. Suspect down." At 9:38:51pm K9 Ray disengages from May. Officers walk back towards K.O., who is compliant with officers' commands and is handcuffed. Audio stops at 9:41:24pm and the video ends after Officer Flechsing walks back to his patrol vehicle.

Officer Dorsey was equipped with an APD-issued body camera. The footage is 13 minutes and 55 seconds long, the audio begins at 60 seconds, and the timestamp is 9:36:23pm.

Officer Dorsey arrives at the senior center, parks on East 19th Avenue, and exits his patrol vehicle at 9:36:53pm. Officer Dorsey retrieves gear for the K9 from the rear of the vehicle, places the gear on K9 Ray, and leaves the vehicle with K9 Ray at 9:37:18pm. By 9:38:15pm, Officer Dorsey and K9 Ray have walked up the north side of the senior center and contacted Sergeant Frey, Officer Kimball, Officer Flechsing, and Officer Montgomery. K.O. is visible at 9:38:19pm, walking behind the short brick wall and immediately raises his arms above his shoulders as commanded by Officer Dorsey who announces "Hello, APD. Keep your hands where I can see them."

At 9:38:25pm, May, who appears shorter than K.O., runs out from behind the low brick wall. A pistol is visible in May's right hand. Immediately, multiple officer voices are heard yelling "Stop! Drop the gun!", "Get on the ground!", "You will get shot!", and Officer Dorsey commands "Get on the ground!" At 9:38:26pm, May turns around and it appears he is placing the pistol in the front of his waistband. May briefly raises his arms above his head and looks towards the officers at 9:38:27pm. At 9:38:30pm, May turns his back on the officers, lowers his arms, and begins walking away from the officers into the senior center parking lot. At 9:38:31pm, Officer Dorsey releases K9 Ray, Officer Dorsey then moves to his left and behind the other officers as they slowly move forward. May is heard screaming in distress as K9 Ray bites him. At 9:38:38pm, Officer Dorsey commands the other officers to "Keep lethal on him! Keep lethal on him!" Officer Dorsey continues to move behind the other officers, who obscure the camera's view of May as an officer commands May to "drop the gun!" Multiple gunshots are heard. When May is visible again at 9:38:41pm, he has already been shot and K9 Ray continues to bite May.

At 9:38:42pm, Officer Dorsey obscures the camera as he radios dispatch "K4. Shots fired. Shots fired. Suspect down." Officer Dorsey concludes the radio call, walks behind the other officers, and at 9:38:51pm, he successfully commands K9 Ray to disengage from May. The video continues with officers commanding K.O. to lay down, Officer Dorsey advising K.O. that if he does not comply he will also be bit, and then handcuffing and taking K.O. into custody. Officer Dorsey later photographs K9 Ray, checks K9 Ray for injuries, and the audio ends at 9:44:47pm. Next,

Officer Dorsey places K9 Ray back in the vehicle, and cleans blood from K9 Ray.

Officer Montgomery was equipped with an APD-issued body camera. The footage is 17 minutes and 29 minutes long, the audio begins at 60 seconds, and the timestamp is 9:29:27pm.

Officer Montgomery activates his lights and sirens at 9:30:27pm. Officer Montgomery arrives at the senior center at 9:34:11pm, parking directly behind Sergeant Frey, and exits his patrol vehicle armed with his rifle. Officer Montgomery is the second officer to arrive. At 9:34:55pm, Officer Montgomery retrieves and equips his helmet from his patrol vehicle. As Officer Montgomery retrieves his helmet, a female voice is heard off camera saying "Sir. [unintelligible] He's sitting on the bench." And "[t]here's two of them [unintelligible] between the buildings." Officer Montgomery walks east, towards the northeast side of the senior center, with Sergeant Frey. Officer Montgomery states, at 9:35:38pm, "I just heard a gun rack" and he asks Sergeant Frey if he also heard the slide rack. Sergeant Frey's reply is inaudible. Officer Kimball walks up and Officer Montgomery advises Officer Kimball that he heard something that sounds like racking a pistol. By 9:36:50pm, Officer Kimball is visible in the video footage, joining Officer Montgomery and Sergeant Frey. At 9:37:00pm, Officer Montgomery radios "He is supposed to be kinda in between the buildings on the east side of the senior center on a bench." By 9:37:30pm, the three officers are moving towards the low brick wall and green dumpster. At 9:37:42, Sergeant Frey is visible stepping onto a wooden bench.

At 9:38:17pm, Officer Dorsey announces "Hello, APD. Keep your hands where I can see them." At 9:38:20pm, K.O. is visible behind the brick wall and he immediately follows commands by raising his arms above his shoulders. At 9:38:25pm, K.O. sits down as commanded and is obscured by the brick wall. Simultaneously, May runs out in front of the officers from behind the brick wall, and at 9:38:26pm May comes into view, turns to his right, and it appears his right hand is in his front waistband. Immediately, multiple officer voices are heard yelling "Stop! Drop the gun!", "Get on the ground!", "You will get shot!", and "Get on the ground!" May then briefly raises his arms above his shoulders but turns away from the officers and walks east through the parking lot. May directs his attention towards the police officers, lowers his arms, and K9 Ray enters the footage, running at May, at 9:38:32pm. The officers follow K9 Ray as the dog takes May to the ground while Officer Montgomery follows and walks to K.O., who is seated on the ground with his arms raised.

At 9:38:39pm, as Officer Montgomery covers K.O., K9 Ray has May on the ground as the other officers approach May. May is heard screaming in distress as K9 Ray bites him. Officer Montgomery's hands and rifle obscure the view of the officers' use of deadly force against May as multiple gunshots are heard at 9:38:41pm.

Officer Montgomery continues to face K.O., who remains seated with his arms raised, facing Officer Montgomery. K.O. tells Officer Montgomery "Just so to let you know, I've got one too." which prompts Officer Montgomery to tell K.O. "Okay. If you reach for it you're gonna get shot." Officer Montgomery immediately points his left hand at K.O. and announces "He has a gun too!" at 9:38:56pm. K.O. is commanded to lay down on his stomach and he complies. Other officers back away from May and the parking lot and by 9:39:35pm, K.O. is prone on the ground and has been handcuffed. At 9:40:12pm, Officer Montgomery reaches into K.O.'s waistband and recovers

a pistol. Officer Montgomery unloads the pistol. Officer Montgomery collects K.O.'s cell phone and pistol and walks with K.O. and Officer Reyes towards East 19th Avenue. K.O.'s items are placed in a paper bag as evidence. At 9:46:30pm, Sergeant Drake is observed collecting the involved officers' body cameras. The video continues with audio running until 9:46:53pm, when Officer Montgomery turns off his camera to give to Sergeant Drake.

Officer Flechsing, Officer Kimball, and Officer Montgomery's vehicles were equipped with in-car cameras. A review of the in-car footage does not reveal any additional relevant evidence except May is visible around the low brick wall in both Officer Kimball and Officer Montgomery's footage at 9:28:23pm, which is two seconds earlier than in the bodycam footage, due to the angle of the in-car cameras.

Surveillance Camera Footage

Detectives were called out to investigate the officer involved shooting. Detectives retrieved surveillance video from the senior center which consists of 5 separate cameras. These cameras only record if movement is detected; there is no sound.

The footage labeled Back of Building is a view west towards the exit to the senior center. At 9:32:55pm, May and K.O. are visible walking eastbound in the parking lot. It appears May is holding a pistol in his right hand as he walks past the tree. The two walk out of camera view and the next scene is of Sergeant Frey, Officer Montgomery, Officer Kimball, Officer Flechsing, and Officer Dorsey at 9:34:29pm.

The footage labeled as 101C External is of the east side of the senior center, looking north towards the parking lot. At 9:33:29pm, May and K.O. walk south, past some benches, and the footage ends.

Front Door 2 labeled footage is a view of the circular entrance to the senior center and starts at 9:34:00pm, with Sergeant Frey and Officer Montgomery parking their patrol vehicles. The footage ends but restarts at 9:44:11pm, where multiple APD vehicles are observed. It ends at 9:44:37pm.

Footage labeled as Shop View starts at 9:33:21pm, with May holding a pistol in his hand and placing it in his right pants pocket. May and K.O. are seen walking south on the path and the footage ends. The footage restarts at 9:38:02, with K.O. walking north towards the parking lot, and May following. K.O. keeps walking while May suddenly turns south and moves away from the parking lot and the footage ends at 9:38:19pm.

Footage labeled as Kitchen Door begins at 9:33:04pm, with May and K.O. walking east past the green dumpster and low brick wall. In the background, there is a white van driving eastbound on East 19th Avenue. A pistol is visible in May's right hand. The footage concludes and restarts at 9:37:38pm with APD officers approaching the green dumpster and low brick wall. At 9:38:28pm, the footage starts again with K.O. raising his arms, followed by May, who has his arms up. May then turns away from officers and runs, and K9 Ray is deployed to control May. Sergeant Frey, Officer Kimball, and Officer Flechsing close the distance with May and fire at him. The footage restarts at 9:39:12pm with K.O. being detained. The footage concludes at 9:44:33pm.

Additionally, during interviews of witnesses, detectives learned of an earlier incident involving May that occurred outside 1142 East 19th Avenue. Detectives obtained surveillance footage from Alaska Housing for the area surrounding 1142 East 19th Avenue. There are 8 separate cameras labelled 1122 Front 180, 1122 Rear 180, 1132 Front 180, 1132 Rear, 1142 Front 180, 1142 Rear 01, 1142 Rear 02, and 1142 Rear 03. There is no sound.

On footage labeled as 1122 Front, at about 8:51pm, May is seen arriving at the apartments on a bicycle. At 8:51:37pm, May stopped on East 19th Avenue and appears to pull a dark object from his right pocket with his right hand. May appears to be holding his phone to his ear with his left hand. At 8:52:15, May lifts his jacket and a black object that appears to be a pistol is seen tucked into the right side of his pants.

On footage labeled as 1142 Rear 03 at 8:57:03pm, May rides a bicycle to the rear of #306. May carries the bicycle to the fence and leans the bicycle against it. May sits on the bicycle and puts his head down in his arms. At 8:57:36pm, May walks towards the rear of #306. A woman, later identified by detectives as T.G., walks out to the back area and sits on a red cabinet to the right of the door. May takes off his jacket. At 8:58:11pm, May pulls a pistol from the right side of his pants and appears to sit it down on something. May and T.G. appear to be having a conversation which appears calm at first, but May becomes animated at times. At 9:02:02pm, T.G. stands up in an animated fashion, while she talks. At 9:02:40pm, T.G. throws her phone down on the ground. T.G. eventually walks over and picks it back up. At 9:03:19pm, May gets into T.G.'s face and grabs her by her shirt near her chest. May pulls T.G. a couple of times and then backs off. May appears to be wobbly when he moves.

At 9:04:21pm, T.G. sits back down on the cabinet. May gets up and gets into T.G.'s face again. At 9:05:14pm, May puts both of his hands around T.G.'s neck and her head goes back. T.G. appears to be in distress. May has his hands around T.G.'s neck for about four seconds. T.G. and May continue to talk after that. At 9:06:02pm, T.G. walks into her apartment and May continues looking at his phone. At 9:06:08pm, T.G. walks back outside and sits on the cabinet.

At 9:08:36pm, May picks up the pistol, racks the slide back, and it appears he puts a magazine in the gun. At 9:11:02pm, the conversation appears to get more heated. At 9:12:05pm, T.G. walks back inside of her apartment but quickly comes back and appears to be yelling at May. A short time later, T.G. walks back inside. At 9:12:43pm, May picks up the gun and slams his jacket down on the cabinet. May places the gun down on top of the cabinet. At 9:12:57pm, May picks up the gun again and appears to remove the magazine before sitting it down. He then puts his jacket back on. May starts walking in circles while trying to get his jacket on.

At 9:14:22pm, May picks up the magazine and begins to manipulate it. May then removes his jacket again and hangs it on the stair rail. At 9:14:47pm, May picks up the gun and points it west in a shooting position. May then picks up the magazine and puts it back into the gun. At 9:15:42pm hours, T.G. walks back outside from the apartment and then turns to go back inside. May starts talking on the phone to someone.

At 9:17:48pm, May walks east while still on the phone. On footage labeled as 1142 Rear 02, May can be seen wiping his face with his shirt and appears angry while on the phone. May turns around

and walks back towards the rear door of #306. At 9:18:08pm, May picks up the gun again and walks east. May puts the gun back in his waistline or pocket and is still on the phone as he walks.

At 9:22:08pm, May puts his phone away and pulls the handgun out, racks it while walking by the playground, towards building 1142. May keeps the gun in his right hand and puts it behind his back. A female, later determined to be A.K., May's girlfriend, is seen walking towards May. May continues walking towards building 1142, still on the phone, and A.K. walks with him. May still has the handgun behind his back. On camera 1142 FRONT 180, May is seen putting the gun back in his pants at 9:22:37pm.

K.O. walks out of building 1132 and walks towards May and A.K. who are still walking southbound towards 1142. May seems agitated and the other two are walking behind him. May and A.K. appear to be arguing and A.K. pushes May out of her face at one point. T.G. walks towards May and A.K. and quickly gets between them. K.O. moves to get between May and A.K. and May pushes K.O. back. May raises his shirt halfway and crosses his arms. A.K. and May appear to continue arguing.

At 9:24:50pm, T.G. appears to be yelling in May's face and he pushes her back. A.K. then gets between May and T.G. At 9:25:36pm, May and K.O. start walking northbound, through the parking lot, and May is grabbing onto the gun with his right hand but he does not pull it out from his waistband or pocket. May appears to be yelling and pointing back at A.K. and T.G. At 9:25:54pm, on Camera 1122 Front 180, May appears to raise the gun in his right hand, pointing up to the sky with it. May and K.O. walk out of the parking lot and walk westbound on East 19th Avenue. At 9:26:56pm, May appears to get into a confrontation with some subjects near 1112 E East 19th Avenue.

May and K.O. walk northbound on Karluk, which is consistent with the .40 caliber shell casing found near 1750 Karluk Street. They walk out of view of the camera until 9:30:15pm, when they can be seen walking eastbound on East 19th Avenue. At 9:31:02pm, it appears May is holding the gun in his right hand as he walks past the entrance to the apartment parking lot. At 9:31:26pm, May and K.O. are visible on footage labeled 1122 REAR 180, continuing eastbound on East 19th Avenue. There are thick trees blocking the view down the road on East 19th Avenue, but the two can be partially seen walking towards the senior center. The first APD patrol car is seen arriving E/B on East 19th Avenue is at 9:34:27pm, which is consistent with the APD footage.

Crime Scene Investigation

APD Crime Scene Team responded to the scene and photographed and diagramed the area. Crime Scene Team members noted May is a light-skinned male adult, who was wearing a gray t-shirt, tan pants, a black belt, and black tennis shoes. Nearby May's body was a black baseball hat. The Crime Scene Team located and recovered 16 .223 shell casings from the senior center parking lot. These casings are consistent with the officers' rifles which were all loaded with .223 ammunition.

Detectives seized and logged into evidence the officers' rifles. Sergeant Frey's Colt M4 rifle had a round chambered with 20 additional rounds in the magazine. Officer Kimball's Sig Sauer S16 rifle was loaded with a 30-round magazine; it had a round chambered, and 24 rounds in the

magazine. Officer Flechsing's Sionics SAR-15 rifle was loaded with a 30-round magazine; it had a round chambered, and 24 rounds in the magazine.

The Crime Scene Team documented, photographed, and seized evidence from the senior center parking lot. Under May's right thigh, the Crime Scene Team recovered the lower half of a Glock pistol; specifically the grip, trigger, and lower frame with a flashlight attached. Nearby, they recovered an extended Glock magazine with an apparent bullet defect consistent with being struck by one of the officer's bullets. Approximately one-half foot away from the magazine was a Glock slide that also had an apparent bullet defect. The Glock was a .40 caliber, there was a Federal brand .40 S&W cartridge in the barrel, and 12 additional cartridges in the 22-round .40 caliber Glock magazine.

Further, Crime Scene Team searched on Karluk Street between East 17th Avenue and East 19th Avenue for evidence of May shooting in the area, as reported by 9-1-1 callers. The Crime Scene Team located a .40 caliber Federal shell casing on Karluk near 1750 Karluk Street. That casing was consistent with the rounds in the Glock pistol recovered near May.

K.O.'s pistol was determined to be a Palmetto Dagger 9mm with a full 16 round magazine and a round in the chamber. Shell casings found on Karluk Street and at the senior center are inconsistent with this firearm.

Medical Examiner Report

The State of Alaska Medical Examiner's Officer conducted an autopsy on May; during the autopsy, blood was drawn for analysis. NMS Labs issued a toxicology report on May. The report lists May's blood alcohol concentration at 194 mg/mL⁶ and a Delta-9 THC result of 24 ng/mL.⁷ The final autopsy report is not yet complete. Due to the nature and circumstances of May's death, a finalized autopsy report is not necessary to complete my legal analysis of the officers' use of deadly force.

Witness Interviews

Detectives interviewed several civilian witnesses about the incident and May's behavior before the incident.

J.J. was interviewed by detectives and he said that at approximately 9:30pm, a man wearing brown pants, a gray shirt, and a black hat was "messing with" J.J.'s children outside of his home on East 19th Avenue. J.J. stated the man was telling J.J.'s kids they needed to go inside or he was going to take the children's scooter. J.J. described another man who was walking with the first man, he said he had heard the second man was named K.O. J.J. told detectives he had not seen the other man with K.O. before. J.J. thought the man was intoxicated because he was slurring his words. J.J. said that once he brought his children inside, he went back outside and saw the man pull a black gun from his waistband and then J.J. heard a pop and the man was waving the gun around. At that time, J.J. said he called 9-1-1. He said when he last saw the man, he was walking with K.O. towards the senior center.

6. For reference, the limit for legally operating a motor vehicle is 80 mg/100 mL. AS 28.35.030(a)(2).

7. Delta-9 THC is the principle psychoactive ingredient of marijuana.

J.L. told detectives she lives near East 19th Avenue and Orca Place and she observed two men, one small and the other large, walking down East 19th Avenue. J.L. said the large male seemed to be trying to calm the smaller man down. J.L. described that as she drove her van past the men, the smaller man looked at her and raised a gun in her direction. J.L. said the armed man went to his knees and began screaming and waving the gun around. J.L. said at that point, she had passed the senior center. She said she looked back and saw the armed man stand up. She said because he was still ranting, she called 9-1-1. J.L. said she decided to loop around in case police did not arrive, so she could see where the two men went. She said she saw the men between the senior center buildings, sitting on benches. J.L. saw police and told detectives she talked with one of the officers and told him the men were on the park benches.

D.C. told detectives she was outside on East 19th Avenue and saw a man walking in the street who, to her, appeared to be “tweaking out,” as he was cussing and was very angry. D.C. said she heard the man repeatedly say something about his girlfriend. D.C. stated the man was with another man and they had both walked out from nearby apartments. D.C. said that as the men walked north, she heard a gunshot and she saw that the short man who was wearing brown pants and a black shirt had a gun.

A.C. told police she saw a white male and a Samoan male outside on East 19th Avenue. A.C. described the white male as waving a gun around in front of her apartment window and she heard him saying something about a baby momma or girlfriend. A.C. stated the white male looked mad and was on something. A.C. said the white male shot the gun into the air and described the Samoan male as chasing after the white male.

Detectives spoke with A.K. who they learned was May’s girlfriend and pregnant with May’s child. A.K. said that she and May had an argument earlier in the day and she told May to calm down. A.K. told detectives May was usually calm but he would lose control when he drank and that he had been drinking that day. A.K. said May left the residence on a BMX bicycle. Later, according to A.K., she received a phone call and went to T.G.’s apartment in a borrowed car to get the BMX bicycle. A.K. reported that after she went to T.G.’s apartment, when she was down the street from the senior center she saw May and K.O. walking. She said she left May with K.O. A.K. advised this may have been approximately 20 minutes before the incident with police occurred. When asked by detectives if May carried a firearm, A.K. stated that he might have carried one that day.

C.E. provided an interview to detectives. C.E. is A.K.’s mother and both were living at C.E.’s home at the time of the incident. C.E. stated she last saw May between 6:00pm and 7:00pm on the day of the incident. C.E. said that around 8:00pm, she learned A.K. and May were arguing and that May had been drinking alcohol. C.E. explained that alcohol was not permitted in her home, so it was normal for May to stay away from her home if he was drinking. Later, C.E. explained, she heard gunfire and heard from various people that there had been a police shooting. C.E. said she went to the senior center and recognized May as the deceased person in the parking lot.

Detectives interviewed T.G., who relayed that she lives on East 19th Avenue. T.G. said May was drunk, he showed-up outside her apartment at approximately 8:30pm, and that he was armed with a gun. T.G. described May as completely “trashed” and described him as stumbling around. T.G. told detectives May had already been shooting his gun off before he arrived at her apartment. T.G.

said May grabbed her shirt, her hair, and also wrapped both of his hands around T.G.'s neck and "choked" T.G. Detectives asked T.G. how long she was strangled and she said she could not breathe for one minute and described the pain as a 6 on a scale of 1-10.

T.G. stated that when May drinks, he becomes aggressive. T.G. told detectives that May was talking to her that night about being ready to die and said he loaded and unloaded his gun. T.G. stated she went inside and called someone to get K.O. to come over and take May away. T.G. told detectives K.O. arrived, as did May's girlfriend, A.K. T.G. said that May did not calm down, and instead May got into A.K.'s face. T.G. relayed May wanted to hurt A.K., so T.G. got in between the two. K.O. convinced May to go for a walk and the two left. T.G. told detectives that as he walked away, May said he was going to shoot himself.

Officers transported K.O. to APD headquarters where he provided a statement to detectives. K.O. stated he lived in the same apartment complex as T.G. He explained he was at home playing a game and he got a call asking him to go get May from T.G.'s apartment as May was drunk. K.O. said he was told May was mad and choked T.G. K.O. stated he walked over to T.G.'s apartment and told May to come with him on a walk. K.O. told detectives that when he arrived, A.K., May's pregnant girlfriend, was there. K.O. stated that May was drunk and that May doesn't act like that when he is not drinking. K.O. stated May was still mad as they walked and May fired a round from his pistol into the air as the two walked on East 19th Avenue.

K.O. told detectives the two walked to the senior center because that was K.O.'s "chill" spot. K.O. said the two were going to walk back to K.O.'s apartment when the police arrived. K.O. said he saw the police over the wall and sat down once the police told him to, but May just ran with his gun. K.O. said he did not move and did not see the police shoot May, but he flinched when they fired. K.O. said he never looked back at May because the police ordered him not to move but did see May's body when police walked K.O. to a patrol car.

Interview of Sergeant Frey

Sergeant Frey was interviewed by detectives on 10 June 2024. The interview was audio recorded. Sergeant Frey was not permitted to review his body camera footage or any other case related items prior to his interview. Once the interview concluded, Sergeant Frey was allowed to view his body camera footage.

Sergeant Frey said he joined APD in 2016 after 6 years in the United States Marine Corps and has been a patrol sergeant for one year. Sergeant Frey said he was wearing his standard APD uniform with an external vest carrier with his name on the front. Further, Sergeant Frey told detectives he had never encountered May before the shooting and had not reviewed any materials before the interview.

Sergeant Frey told detectives he typically keeps his rifle loaded with a round chambered. Sergeant Frey stated that immediately prior to the incident involving May he had responded to a different shooting where he had run his rifle's slide because he was unsure if he had a round chambered. Sergeant Frey said he did, in fact, have a round chambered, so when he charged his rifle at the prior call, he ejected the chambered round, so his rifle had one fewer round than normal at the time he responded to this call.

Sergeant Frey said after he was finished with the earlier call, he was en route to APD headquarters when he heard over the radio of the shots fired at East 19th Avenue and Karluk Street. Sergeant Frey stated when he neared the scene on Orca Place, a woman in a white van flagged him down and told him that two guys with a gun were walking towards the senior center. Sergeant Frey told detectives, “guys with guns going into a senior center could be a problem, um, and we don’t know what they’re doing. If they’re already shooting off rounds that’s something to be worried about.” Sergeant Frey said he was the first officer to arrive at the senior center, followed by Officer Montgomery.

Sergeant Frey said he retrieved his rifle and helmet from his patrol vehicle, and the woman drove by again and told him that the men were over near the benches between the senior center buildings. Sergeant Frey stated he and Officer Montgomery approached on foot, walking towards a dumpster with a brick wall around it on the north side of the senior center. Sergeant Frey said “that’s a risk to a bunch of other people, not just us at that point,” if the men entered the senior center. Sergeant Frey told detectives his plan was wait for additional officers to arrive but to be close enough to hear a door opening, a window breaking, or shots fire. Sergeant Frey said he heard a gun rack and then Officer Kimball and Officer Flechsing arrived with Officer Dorsey.

Sergeant Frey told detectives they spotted a Polynesian man on the other side of the brick wall and Officer Dorsey gave the man commands, which the man obeyed. Soon after that, according to Sergeant Frey, another man, later identified as May, ran by the officers. Sergeant Frey stated Officer Kimball was to his right, Officer Flechsing was to his left, and Officer Dorsey was further out, as it is common for a K9 officer to give a suspect commands first. Sergeant Frey said Officer Montgomery went to cover the Polynesian male while the other officers focused on May. Sergeant Frey described the next moments:

[May] runs past suspect one and he’s kinda facing I guess to the north still, um, and he dives into his waistband. He was reported to have a gun. He goes into his waistband. I know – I don’t know if I said anything because we had three guys yelling at him, don’t – don’t do it, leave the gun there, don’t touch it, uh, show us your hands, all that stuff. Um, so after he goes into his waistband, um, I was kind of dealing with the guys instead of him but I was online with them and then he runs this way through the parking lot. Uh, the dog gets deployed when he starts to run and, Ray hits him somewhere. I don’t know exactly where Ray hits him.

The officers, according to Sergeant Frey, moved towards May, providing lethal cover for K9 Ray since May was armed with a gun.

Sergeant Frey continued to describe the events to the detectives:

Um, as we start to approach to get him in custody so we can get the dog off him, uh, he pulls the gun out of his waistband. Um, he gets it clear, like I remember seeing the barrel, and like Dorsey and Flechsing are right there so if he gets that clear he’s gonna shoot and kill them. Like I can’t . . . I can’t let him do that.

Sergeant Frey described that based on what he observed, May was not pulling the gun from his waistband in the direction of K9 Ray. Rather, Sergeant Frey described that from what he saw, May was “trying to shoot Dorsey or Flechsing[.]” When asked “What was going through your mind at that point?” Sergeant Frey became tearful and emotional. Sergeant Frey replied, “That he was gonna kill Dorsey.”

Sergeant Frey explained that he was between six and seven feet from May when he fired and that he did not know the number of times he fired. Sergeant Frey stopped firing once May was no longer a threat.

Next, detectives permitted Sergeant Frey to watch his body camera footage. Sergeant Frey had nothing of substance to add to his interview after watching the footage.

Interview of Officer Kimball

Officer Kimball was interviewed by detectives on 10 June 2024. The interview was audio recorded. Officer Kimball was not permitted to review his body camera footage or any other case related items prior to his interview. Once the interview concluded, Officer Kimball was allowed to view his body camera footage.

Officer Kimball said he joined APD in 2018 after a couple years as police officer in Kodiak. Officer Kimball explained he is a firearms instructor and, for the past two years, has been on the APD Specialized Weapons and Tactics (SWAT) team. Officer Kimball told detectives he had an APD issued Sionics rifle with a round chambered and a full 30 round magazine. Officer Kimball said he was wearing his standard APD uniform with an internal carrier. Officer Kimball told detectives his body worn camera is mounted and centered on his vest carrier under his radio microphone. Further, Officer Kimball told detectives he had never encountered May before the shooting and had not reviewed any materials before the interview.

Officer Kimball told detectives that on 3 June 2024 he was working the Spenard area of town but was also assisting the north sector. He said he heard “a dispatch for shots – uh, shots fired in the area of 19th and Karluk. Um, I remember hearing that there was a Samoan male involved as well as a short, uh, BMA, a black male adult who had, uh, long dreadlocks was the dispatch.” Officer Kimball said he responded and while on his way, dispatch provided additional updates including that “the suspect was alone now and he had run into the, uh, senior center building at 19th and Karluk, uh, and they said that he had a gun in his hand.” Officer Kimball explained that further radio updates included one from Officer Montgomery reporting that he heard “the suspect rack a pistol and he thinks that he’s just around the corner from them or they were super close.”

Officer Kimball described pulling up onto the senior center lawn to park, exiting his vehicle, and moving up to the other officers who were against the building near a trash can. Officer Kimball told detectives he had two concerns with the suspect:

[T]he first biggest concern is the public. Um, the update about him running with a gun into the, uh, assisting living home was super concerning. It came in as a, he’s, uh, firing a gun off, don’t know why, and now he’s – something is driving him to go in and I don’t know what his reasoning is.

Um, to my knowledge nobody in there can really defend themselves. That's why they're in that building.

[...]

And then the second thing I was concerned about was like I said. It was just being ambushed by him. Um, it – officers show up and then they – and they're really close to him or at least the position that we would be in and then he racks the slide. I thought he was gonna try and ambush us once we came around, uh, the corner.

Officer Kimball said that Officer Dorsey and his dog arrived at this point. Soon after, a Samoan male appeared looking “very surprised” and was compliant with the officers’ commands.

Officer Kimball told detectives the Samoan male did not match the description of the person described to have been in possession of a gun. Officer Kimball described then seeing:

[T]his tuft of black hair kinda underneath the edge of the trash can bouncing by, uh, and then he comes out the – the short BMA comes out and it wasn't this far but he's essentially standing there on the other side of the trash can. Uh, when he came out I – I mean he fit the suspect description from the dispatch perfectly. He was, uh, shorter than me, if I had to guess, around maybe five-four or something like that. Um, he had long black dreads and when he came around the, uh, trash can, uh, he had something black in his hand and it took me a second to process, uh, it was a gun, um, and he looked very surprised to see us there. Uh, I think – I think he said, ‘oh shit’ or something to that effect, um – uh, once he came around the corner, and just the expression on his face was – I don't think he was expecting it to be the police. Um, so I'm – I don't remember if I gave commands at all. I do remember hearing multiple give commands at the same time, drop the gun.

Officer Kimball told detectives it was at this time Officer Dorsey gave a canine warning to May and May turned away from officers, holstered the gun in the front of his pants, and ran from officers.

According to Officer Kimball Officer Dorsey then let the dog loose, and the dog apprehended May and brought him to the ground. Officer Kimball noted that “the dog was on the right side and it looked to me like the dog had him under control. His gun hand under control on that side.” Officer Kimball told detectives they had essentially decided to put handcuffs on May and he approached May to do so. But, as Officer Kimball gets closer he said May “rocks back and goes onto his back and I was really surprised to see the dog didn't have his – um, his arm” under control. Officer Kimball described that May “rocks back he removes the pistol, um, remember it being a black pistol very distinctly[.]” May's head is now, according to Officer Kimball, at Officer Kimball's feet, and May was acting with “serious intent.”

“I don’t think the muzzle ever was pointed at me,” Officer Kimball told detectives. “I don’t think he quite made it all that way, not that I can remember, um, but it was with, um, such intent and the way he rocked back I perceived he was trying to shoot me specifically.” Officer Kimball continued, “and my thought was like, um, if he didn’t shoot at me and he gets cranked a round off at one of them, uh, like all of us were so close it – we would’ve taken that round for sure. I mean there was just no – there was no room for error in the sense of, um, one of us being shot.”

As a result of May’s actions, Officer Kimball said “it was just really fast and so I, I aimed at his head. I fired a couple rounds.” Officer Kimball was unable to tell detectives the exact number of rounds he fired but he did know it was two or three. Officer Kimball stated he stopped firing when “I perceived that he was no longer posing a threat to us.” Officer Kimball was uncertain if that was when May dropped the pistol or when May went limp.

Next, detectives permitted Officer Kimball to watch his body camera footage. Officer Kimball advised the detectives he had nothing to add to his statement.

Interview of Officer Flechsing

Officer Flechsing was interviewed by detectives on 10 June 2024. The interview was audio recorded. Officer Flechsing was not permitted to review his body camera footage or any other case related items prior to his interview. Once the interview concluded, Officer Flechsing was allowed to view his body camera footage.

Officer Flechsing stated he joined APD in 2022 after several years with Fairbanks Police Department where he was a member of the Special Emergency Reaction Team (SERT). Officer Flechsing said he was wearing his standard APD uniform with an external vest carrier with POLICE across the back and his name on the front. Officer Flechsing told detectives his body worn camera is mounted on the vest carrier’s right breast pocket. Officer Flechsing said his rifle is kept loaded with a 30-round magazine and a round chambered. Further, Officer Flechsing told detectives he had never encountered May before the shooting and had not reviewed any materials before the interview.

Officer Flechsing said the evening of the shooting he had been en route to another call when the alert tone came from dispatch, he attached to it, and responded code 3 (lights and sirens) to East 19th Avenue and Karluk Street. Officer Flechsing said he learned from dispatch there was a “mixed male and a Samoan male walking down the street and the – the white or black male that had an Afro was shooting round – shot a round off in the air and was waving the gun around as he was walking down the street.”

Officer Flechsing told detectives that prior to his arrival:

There’s talk on the radio about the – the suspects went towards the senior center and went inside the senior center. So as – as I was running code over there, you know, obviously I’m playing the scenarios in my head. Is this like a possible active shooter situation?

Officer Flechsing said he arrived at the senior center after Officer Montgomery, Officer Kimball, and Sergeant Frey, and simultaneously with Officer Dorsey. Officer Flechsing stated he grabbed

his rifle and helmet and walked up to the other officers who were next to the senior center. Officer Flechsing described being behind a cinder block wall near a trash can. Officer Flechsing stated that at his height – 6’5” – he could see over the wall and observed a tall Samoan male. Officer Flechsing said he did not recall giving the Samoan male any commands as others were already doing so.

Officer Flechsing described the look in the Samoan male’s eyes as “shocked” when he saw the officers, and remarked that the Samoan male was “very compliant” with officers’ commands. Officer Flechsing contrasted that behavior with May who he said,

was running and he came out this way past his friend – his – his Samoan friend and as he ran past the – the brick wall right here where the trash receptacle was, um, he did – he did this weird spin. Like he spun around like a three-sixty or like a one-eighty spin.

Officer Flechsing further described:

He had – like with his left hand he like had his shirt up. So his shirt was pulled up and I saw him with his like – it was very brief. It was very quick but I saw the suspect with his right hand on a gun in his waistband, um, while he was doing the spin-around I – the only thing I can assume is that he was trying to brandish the firearm like, hey, I have a gun, kinda mentality.

At that point Officer Flechsing said he might have yelled commands such as “let me see your hands” but other officers were ordering May to “drop the weapon” and “let us see your hands.”

Officer Flechsing stated “I couldn’t see where his hands were. I – all I knew is that he probably more than likely still had his right hand on the firearm so at that moment in time I perceived him as a – as an imminent threat.” Officer Flechsing said that May was an imminent threat to him and the other officers because “he’s known to be in possession of a firearm, I saw the firearm, he’s not being compliant with commands, um, and we know that shots were fired so I have reason to believe – believed at that time that, okay, that firearm is loaded.” Officer Flechsing told detectives that at this time he is pointing his rifle at May and May began running away from the officers.

According to Officer Flechsing, at that time, Officer Dorsey released K9 Ray who caught May as he ran past a tree and into an open area, and K9 Ray took May to the ground.

In my mind I was thinking okay, canine’s biting him, he’s distracted with the canine, this is the opportunity to go hands-on, get positive control of him, and put him in handcuffs before he tries to grab the firearm or anything like that[.]

Officer Flechsing said that he ran up to May as K9 Ray continued to bite May. Officer Flechsing described that in his mind the officers were providing lethal cover so they could “go hands-on as quickly as possible, um, to put him in handcuffs[.]” Officer Flechsing additionally described that:

[I]n the back of my mind I didn’t want the backdrop to be the senior center so if deadly force was used I didn’t – I wanted round accountability and make sure that I’m not

sending rounds out into nowhere and possibly hitting innocent bystanders or anything like that but my initial thought and plan was to go hands-on with the suspect and put him in handcuffs.

Officer Flechsing told detectives May was on his back as K9 Ray bit him, and Officer Flechsing could see the firearm in May's waistband. Officer Flechsing told detectives, "based off of my training and experience, I mean just a dog barking at you, you know, ninety-nine percent of the time people are like 'I'm done.'" Yet, according to Officer Flechsing, he perceived that May was not going down without a fight. Officer Flechsing said May pulled the "gun out and started lifting up and pointing it" in the direction of both Officer Flechsing and Officer Dorsey. Officer Flechsing further described the moment May pulled the pistol from his waistband as:

He was like trying to pull away from the – that's what it looked like to me. He was trying to get out of the dog's, you know, grip from being bit and, um, he was on his side and kinda rolling around for a little bit and that's when – when I ran up on – when I closed the distance between me and the suspect. That's when he rolled on his back and, um, his shirt was up and the gun – you could see the firearm in his waistband and, uh, I remember him just like while he was getting bit by the canine he went and pulled the firearm out of his waistband.

It was at that time, according to Officer Flechsing, that:

I reasonably believe like, he's gonna shoot me. He's either gonna shoot me or he's gonna shoot Dorsey or he's gonna shoot one of – he's gonna shoot one of us. That's what I truly believed at that time. I was like, this guy's gonna shoot us, I'm gonna get shot, um, and I just remember the safety selector being off on my rifle and I had that line in the sand, uh, that if he doesn't drop this gun and he starts pointing it towards – towards me I'm – I'm gonna have to use deadly force and shoot him. And that's when I drew the line in the sand, when I saw him still raising the gun after being – refusing commands to drop the gun. And that's when I fired my rifle[.]

Officer Flechsing estimated he fired his rifle five times at May. Officer Flechsing told detectives he stopped firing once May dropped his gun and was no longer a threat to Officer Flechsing or the other officers.

Next, detectives permitted Officer Flechsing to watch his body camera footage. Officer Flechsing then added that from the footage he was now certain he did tell May to "drop the gun" several times and when May failed to comply, then Officer Flechsing shot May.

Legal Analysis

Under Alaska law, a person may use deadly force against another person when and to the extent the person reasonably believes the use of deadly force is necessary to defend oneself or others

against a threat of imminent serious physical injury or death.⁸ Alaska statutes define deadly force as “force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury.”⁹ Deadly weapon is defined as “any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife[.]”¹⁰ Alaska law authorizes a police officer to use deadly force against another person to the same extent as any other person. An officer, however, if acting within the scope of authority of his or her employment is not required to retreat.¹¹

Alaska statutes also create special justifications for peace officers using force while making an arrest or terminating an escape. First, an officer may use deadly force to the extent the officer reasonably believes the use of force is necessary to lawfully stop a person suspected to have committed a felony involving the use of force against a person.¹² Second, an officer may use deadly force against a person who may otherwise endanger life or inflict serious physical injury unless arrested without delay.¹³

The potential criminal liability of Sergeant Frey, Officer Kimball, and Officer Flechsing in the current analysis is governed by the above-referenced law. If the officers reasonably believed that their use of deadly force was necessary to prevent serious physical injury or death to either himself or another person, he was legally justified in using deadly force. In other words, in order to disprove a claim of self-defense and secure a conviction against any of the officers, the State would be required to prove, at trial, beyond a reasonable doubt, that Sergeant Frey and/or Officer Kimball and/or Officer Flechsing did not reasonably believe that their action in shooting May was necessary to defend himself or defend another person.

When analyzing the officers’ conduct, the law requires an analysis based on the totality of the events. In this case, APD officers responded to a report that shots had been fired in a residential neighborhood. Multiple 9-1-1 calls were made from civilians concerned about a subject – matching May’s description – shooting a gun in the residential neighborhood. One of the callers reported the subject was armed near children and acting in a concerning manner. Upon arrival, a citizen flagged down police and provided an updated location for the subject which was at a nearby senior center. Based on the information known to law enforcement, it was objectively reasonable for law enforcement to be concerned– about an armed subject in a crowded neighborhood who has been firing shots and scaring other residents.

Although none of the officers knew May had recently strangled T.G., that is, that he had committed a violent felony offense against a person, May’s conduct and words towards T.G. are circumstantial evidence of May’s mental state when he was later confronted by the officers.¹⁴

8. AS 11.81.335(a); AS 11.81.340.

9. AS 11.81.900(b)(16). “Force” is further defined (AS 11.81.900(b)(28)) as is “serious physical injury” (AS 11.81.900(b)(59)).

10. AS 11.81.900(b)(17).

11. AS 11.81.335(b)(2).

12. AS 11.81.370(a) and (b).

13. AS 11.81.370(a)(3).

14. See AS 11.81.370(a) (authorizing deadly force when arresting a suspect who recently committed a felony involving the use of force against a person).

Once confronted by law enforcement, May refused to comply with officers' commands to drop the gun. Instead, an intoxicated May turned from the police and ran, while still armed. Officers appropriately deployed a less than lethal tool – K9 Ray – to attempt to effectuate May's arrest. Yet May continued to resist law enforcement and drew a gun from his waistband. As is seen in the video footage and according to the officer's statements, as May drew the gun with his right hand, he pointed it towards the police officers who were attempting to lawfully detain him.

Sergeant Frey described his subjective belief that May was "trying to shoot Dorsey or Flechsing[.]" Officer Kimball's reported he believed that "if [May] didn't shoot at me and he gets cranked a round off at one of them, uh, like all of us were so close it – we would've taken that round for sure." Officer Flechsing's told detectives "I reasonably believe like, he's gonna shoot me. He's either gonna shoot me or he's gonna shoot Dorsey or he's gonna shoot one of – he's gonna shoot one of us." Collectively, the officers' subjectively believed that deadly force was necessary to protect their own lives and the lives of their fellow officers. In light of the circumstances, that subjective belief was objectively reasonable, given the circumstances surrounding this incident. The officers were legally justified in using deadly force in these circumstances to protect themselves and the other officers at the scene.

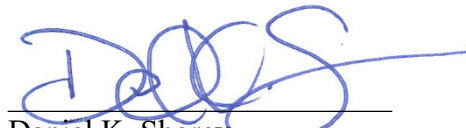
Put another way, the three officers' actions, given the totality of the circumstances, were not objectively unreasonable, which is the quantum of proof that would be required to proceed with criminal charges against the officers. Filing criminal charges against Sergeant Frey, Officer Kimball, and Officer Flechsing is, therefore, inappropriate.

Conclusion

The State will not file criminal charges against APD Sergeant Frey, Officer Kimball, or Officer Flechsing relating to the 3 June 2024 shooting death of Tyler Jacob May in Anchorage, Alaska. You may advise the officers of my decision. Please contact me if you have any questions. I can be reached at 907-269-6250 or daniel.shorey@alaska.gov. As no criminal charges are filed relating to May's conduct the Municipality of Anchorage may release to the public any materials it deems appropriate.¹⁵ The State is closing our file and will take no further action in this matter.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL



Daniel K. Shorey
Assistant Attorney General
Office of Special Prosecutions

Cc:
Lt Denielle Hrovat
Sgt Jade Baker
Det Brendan Lee
Clinton Campion
Mera Matthews

15. See generally Alaska Rule of Professional Conduct 3.6 and 3.8.