



THE STATE
of ALASKA

GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CRIMINAL DIVISION
OFFICE OF SPECIAL PROSECUTIONS

310 K Street, Suite 601
Anchorage, Alaska 99501
Main: 907.269.6250
Fax: 907.269.7939

April 21, 2020

Alaska State Troopers
Attn: Colonel Bryan Barlow
5700 East Tudor Road
Anchorage, AK 99507

Re: AST Case No. AK19020728, Use of Deadly Force Review

Colonel Barlow:

This letter provides to you my review for potential criminal charges of the use of deadly force on March 31, 2019 in Fairbanks by Alaska State Trooper ("AST") Sergeant Aaron Mobley and Trooper Michael Kay. On that day, AST received a report that Kevin McEnulty had pointed a gun at a woman and then fired a shot in the air before fleeing in a car. Mr. McEnulty was located shortly thereafter in a car parked at the McDonald's restaurant on Geist Road. Multiple Troopers as well as officers with the University of Alaska, Fairbanks Police Department ("UAFPD") responded. Mr. McEnulty got out of the car with a pistol pointed at his head and made numerous suicidal statements. Approximately eight minutes after getting out of the car, Mr. McEnulty fired a shot in the air and then lowered the pistol. Sergeant ("Sgt.") Mobley and Trooper ("Trp.") Kay both fired their weapons at Mr. McEnulty, who died of the injuries he sustained.

Based upon the results of the investigation performed by AST in the above-mentioned case number, I have concluded that the State of Alaska will not bring criminal charges against Trp. Mobley or Sgt. Kay. This is because both Troopers' use of deadly force was reasonably necessary under the circumstances to defend their own lives and the lives of others in the area. A more thorough explanation of the investigation and how I reached this conclusion are below.

I. Factual Summary¹

Initial report of a shot being fired

On March 31, 2019, at approximately 10:30 p.m., Richard Sleeman called 911 to report that a man had pointed a gun at his daughter, fired a shot into the air, and then left the area in a green-colored Ford Crown Victoria. As troopers were responding to the residence others began to look for the green Ford.

Troopers Bozman and Hargis went to the apartment on Loftus Road and spoke to Mr. Sleeman and his daughter MacKenzie Sleeman. Ms. Sleeman said that she had been dropped off at the apartment and was in the parking lot when a man, later identified as Kevin McEnulty, approached her. The man, who was wearing a baseball hat, had a handgun which he pointed at her head. Ms. Sleeman thought the man was going to shoot her. He then pointed the gun in the air and fired a single shot. Mr. Sleeman told the Troopers that he was in his third floor apartment at the time of the gunshot. He looked out the window and saw a man brandishing the gun. The man then got into a green Ford Crown Victoria that had two other people in it and the car was then driven away.

Shooting incident in McDonald's parking lot

As Troopers were responding to the Sleemans' report, UAFPD Officer Catron saw the green Crown Victoria pull into the McDonald's parking lot on Geist Road. A dash-mounted camera in Officer Catron's vehicle recorded the events described below. The Crown Victoria parked with its front to the curb facing the roadway. The rear the car was facing the McDonald's restaurant, which was about 60 feet away.² Officer Catron radioed that she had found the car involved in the shooting incident on Loftus Road, and parked about 27 feet behind the car. She used her PA system to tell the people in the car to not get out. Sgt. Mobley arrived and parked his SUV to the right of Officer Catron's and about 28 feet from the Crown Victoria. Trp. Kay and Trooper Recruit Sutton arrived just after Sgt. Mobley and parked behind and to the right of his SUV.

Sgt. Mobley used his PA system to tell the Crown Victoria's driver to get out with his hands held in the air. The man, later identified as Scott Andrews, got out and followed directions to walk backwards towards the Troopers. Trp. Kay handcuffed him and then handed him off to Trp. Cebulski. Sgt. Mobley then directed the passenger in back of the car to get out. The car was a former North Pole Police Department cruiser and the back doors could not be opened from the inside. So the passenger in the back seat, later

¹ This factual summary is based upon my review of the investigation conducted in the case number referenced in the subject line of this letter. The investigation materials included written reports, audio-recorded interviews, video recordings, an autopsy report, and photographs.

² This distance was recorded by the FARO laser scan conducted by AST.

identified as Corinna Moore, climbed over the front seats and got out of the driver's door. She also followed directions by walking slowly to the Troopers and was taken to a safe location.

The man in the passenger seat, Kevin McEnulty, moved over into the driver's seat and leaned out to talk to Officer Catron. He yelled that he wanted her to call Officer Butler and gave a phone number to call.³ Mr. McEnulty then yelled that he had a gun and that he wanted to die. Officer Catron repeatedly asked him to get out of the car and "come over here." Mr. McEnulty refused to get out and kept yelling, "Kill me." Officer Catron convinced Mr. McEnulty to put both of his legs on the ground, but his hands were not visible to her or on the video recording. During this time, Sgt. Mobley repositioned his SUV by turning it slightly to the left. This put more of his engine block between him and Mr. McEnulty. Also, Trp. Kay quickly walked over to the passenger side of Officer Catron's SUV and took up a position near the passenger door. Mr. McEnulty continued to yell that he had a gun, and Officer Catron repeatedly told him, "Don't take the gun, Kevin."

Mr. McEnulty then leaned forward to get out of the car and stood up, holding a gun in his right hand. The gun was a black pistol with an extended magazine. He pointed the pistol at his right temple and yelled, "I'm gonna kill myself." Officer Catron told him not to shoot and repeatedly asked him to put the gun down. Mr. McEnulty yelled for officers to call his wife as well as Officer Butler. Officer Catron asked for their phone numbers and continued to ask him to put the gun down. Sgt. Mobley also yelled for Mr. McEnulty to put the gun down and told him not to kill himself.

Mr. McEnulty then walked away from the car and towards the roadway. Officer Catron described Mr. McEnulty to dispatch as being heavily intoxicated and Mr. McEnulty can be seen to sway in the video. He continued to yell, "You guys are going to have to shoot me." During this time he kept the gun pointed at his temple. He also began to repeat, "I am not going back to jail." Mr. McEnulty walked back to the side of the car and held the gun in his right hand pointing it up into the air. Sgt. Mobley told him to put the gun down on the ground or on the car. Mr. McEnulty then put the gun back to his head and continued to look back and forth between Officer Catron and Sgt. Mobley. Mr. McEnulty raised the gun to point it straight in the air and then lowered it and looked directly down the barrel of his own gun. Mr. McEnulty then began to yell, "I'm sorry." Officer Catron told him, "Don't do it, Kevin. Just drop it."

Approximately eight minutes after getting out of the car, Mr. McEnulty fired the gun into the air while holding it near shoulder height. Five gunshots can then be heard, as both Trp. Kay and Sgt. Mobley fired their weapons at Mr. McEnulty. Mr. McEnulty ducked

³ Officer Butler works for the Fairbanks Police Department, but was not able to be immediately reached due to being off shift.

his head slightly and covered his face, the gun still held in his right hand. Additional shots were then fired by both Trp. Kay and Sgt. Mobley, and Mr. McEnulty fell to the ground by the driver's side of the green Ford.

Troopers approached Mr. McEnulty, who was lying face down. None could see where the gun was, so they approached slowly and pulled Mr. McEnulty away from the car. After the gun was found underneath Mr. McEnulty, he was handcuffed and first aid was administered. Emergency Medical Services arrived and took over treating Mr. McEnulty, who died shortly thereafter.

Investigation by AST

Corinna Moore spoke to investigators at the Trooper Post after the shooting. She said that earlier that day she had received a call from Mr. McEnulty. She said that he was distraught, crying, and saying that he did not want to go back to jail. She agreed to go pick him up, and she got a ride from Scott Andrews. Ms. Moore said that when she got to the spot where she was supposed to pick up Mr. McEnulty she heard a gunshot. She then saw Mr. McEnulty staggering towards them in the roadway. He was drunk and holding a pistol to his head. Ms. Moore said that she pulled the gun away from Mr. McEnulty's head but he would not let her take the gun away from him. She was eventually able to get him into the car and they started to drive. After stopping at a gas station, they continued to drive around Fairbanks. When they saw police cars, Mr. McEnulty said not to stop, but Mr. Andrews said that "would not do that" and drove into the McDonald's parking lot. Ms. Moore said that she got out of the car when asked to do so by the officers. After being taken away from the immediate area by officers, she heard Mr. McEnulty yelling, "Shoot me. Shoot me." She was not able to see what happened when shots were fired.

Scott Andrews also spoke to investigators. He said that he received a call that day from Ms. Moore asking for a ride to go pick up a friend of hers. Mr. Andrews said that when they picked up Mr. McEnulty he looked distressed and seemed very agitated. Mr. Andrews told investigators that Mr. McEnulty was armed and Mr. Andrews was worried that he was going to be shot. Mr. Andrews saw the shooting, and described it consistently with what the video described above depicted.

At the McDonald's, investigators recovered three .223 cartridge casings associated with Sgt. Mobley's AR-15 rifle, six .40 caliber pistol cartridge casings associated with Trp. Kay's Glock 22 pistol, and the Hi Point .40 caliber handgun used by Mr. McEnulty. The round fired by Mr. McEnulty's handgun was not found by AST, but was later found by an unidentified woman who turned it into the Fairbanks Trooper Post.⁴ The

⁴ The woman walked into the Trooper Post's lobby and said that she had found it in the McDonald's parking lot. She left prior to anyone being able to ask her for her name or contact information.

Alaska State Crime Detection Laboratory confirmed that the casing found by the woman had been fired by the handgun possessed by Mr. McEnulty. Additionally, a .40 caliber round was recovered from the parking lot of the apartment building on Loftus Road.

The medical examiner determined that Mr. McEnulty died as a result of gunshot wounds to the head, trunk, and extremities. At the time of his death, Mr. McEnulty had a blood alcohol concentration of .305 g/100ml and his blood also contained methamphetamine.

Interview with Sgt. Mobley

Sgt. Mobley told investigators that on March 31 he was at the Fairbanks Trooper Post when Dispatch received the report of a shot being fired at the apartment on Loftus Street. Sgt. Mobley drove towards the area where the green Ford had been reported to be headed. He then heard that the car had been located in the McDonald's parking lot on Geist Road. When Sgt. Mobley arrived at the McDonald's, he parked his car to the right of Officer Catron's SUV. Due to the report of a shot being fired, he was concerned about where the gun was located. After parking he began to give commands over his PA system to the people in the green Ford, first telling the driver to get out of the car with his hands up. After the driver got out of the car he told the woman in the back seat to get out. She could not open the back door so she climbed over the driver seat and got out the driver's door.

Once both the driver and the female passenger were taken to a safe place, Sgt. Mobley could see that the man still in the car, Mr. McEnulty, had a pistol. Mr. McEnulty got out of the car, holding the pistol to his own head. It was a black semi-automatic handgun with an extended magazine protruding from the handle. He therefore thought that Mr. McEnulty had 15 to 25 rounds of ammunition in the magazine. Sgt. Mobley said that he decided to switch from his pistol to his AR-15. He continued to tell Mr. McEnulty to put down the pistol. Mr. McEnulty was telling the officers to "just shoot me." Sgt. Mobley said that Mr. McEnulty was "amped up" and "agitated."

Sgt. Mobley said that during this time Mr. McEnulty was walking back and forth between the car and the area near Geist Road. This caused Sgt. Mobley to worry about the safety of people on the road and so he asked UAFPD to block traffic. He was also concerned for the safety of employees and patrons in the McDonalds restaurant so he had another Trooper ask the people to move away from the restaurant's windows.

Mr. McEnulty continued to pace around, alternately moving the gun up to his head and then down to his side. Sgt. Mobley described Mr. McEnulty bringing his off-hand up to the base of the gun and raising the gun in the air with his finger on the trigger. He said that Mr. McEnulty quickly looked around as if "suey[ing]" the area and then fired a shot in the air. He then began to bring the gun down. At that point, Sgt. Mobley thought that Mr. McEnulty was going to shoot him or Trp. Kay, who was to Sgt. Mobley's left and near

the passenger side of Officer Catron's SUV. Sgt. Mobley described Mr. McEnulty as "bringing the gun down at me right after the shot." He said, "I thought I was going to be next and take another round." He was also fearful that Mr. McEnulty would "start shooting rounds into the McDonalds." He said that he therefore fired his rifle three or four times at Mr. McEnulty. After firing he could see that Mr. McEnulty was still standing with the gun in his hand. Sgt. Mobley said that he was worried that Mr. McEnulty would turn and start firing at them so he fired a second volley and stopped when Mr. McEnulty fell to the ground.

Sgt. Mobley said that he and the other Troopers approached and found Mr. McEnulty lying face down by the Ford. As they turned him over they found the black handgun under him, kicked it away, and began to give him first aid. EMS then arrived and took over life-saving efforts.

Interview with Trp. Kay

Trp. Kay explained that he was riding in his patrol vehicle when the initial report of a shot being fired at an apartment on Loftus Road was made. Recruit Sutton, who Trp. Kay was training, was driving the car. They learned from dispatch that the person who had fired the shot had fled in a green Ford Crown Victoria. As they were looking for the car, Dispatch radioed that the car had been located in the McDonald's parking lot. When they arrived at the McDonald's, Trp. Kay saw a UAFPD patrol SUV. The recruit parked near Sgt. Mobley's vehicle and Trp. Kay got out, armed himself with his pistol, and positioned himself the rear of Sgt. Mobley.

Trp. Kay said that the driver complied with Sgt. Mobley's commands to get out of the car with his hands up and to walk backwards to the Troopers' position. Trp. Kay took the man into protective custody and handed him off to Trp. Cebulski. After the female passenger also got out of the car, Trp. Kay moved over to a position near Officer Catron's vehicle to provide her some support. Trp. Kay said that he was on the passenger side of Officer Catron's SUV, and because he had been told that the man in the car was armed with a gun he used the engine block for cover. The man in the car, Mr. McEnulty, then got out armed with a gun. Trp. Kay said that Mr. McEnulty was "pointing the gun to his head, pointing it to the ground, pointing it back to his head, kind of moving it around."

Trp. Kay said that he remembered Mr. McEnulty looking at each of the Troopers and officers present. Trp. Kay said that he was "pretty freaked out" when Mr. McEnulty looked at him because his head and face were exposed. He thought that if Mr. McEnulty did shoot at him it would be fatal. Trp. Kay also remembered seeing that the McDonald's restaurant was full of people. This caused him to be concerned for their safety.

Trp. Kay explained that just prior to gunshots being fired he remembered seeing Mr. McEnulty "looking over at Sgt. Mobley, and then [seeing] him transition the gun from his head towards [Sgt. Mobley's] direction, and then I heard gun fire." When asked to

elaborate, Trp. Kay said that he did not know “if Sgt. Mobley was being shot or I—I don’t know if Recruit Sutton or Trooper Cebulski were right there, but I know they were all in that area.” At that point he decided to pull the trigger. After firing what he remembered being two shots he ducked behind the engine compartment of the SUV. Trp. Kay said that he then looked over the vehicle and saw that Mr. McEnulty was still standing with the gun in his hand. He therefore fired what he thought was an additional four shots and saw Mr. McEnulty fall to the ground. Trp. Kay said that once Mr. McEnulty was on the ground he no longer posed an imminent threat to anyone in the area, so Trp. Kay did not fire again.

II. Analysis

An officer may use deadly force to the same extent as any other person in order to defend herself or another person from imminent serious physical injury or death.⁵ In addition to actually believing that the use of force was necessary to prevent serious physical injury or death, the officer’s belief that deadly force was necessary must also have been reasonable under the circumstances.⁶ An officer acting within the scope and authority of the officer’s employment does not have a duty to safely leave the area in order to avoid the necessity of using deadly force.⁷ Finally, in order to overcome a claim of self-defense, the State must prove beyond a reasonable doubt that the person did not act in defense of themselves or another. In this case, both Sgt. Mobley’s and Trp. Kay’s use of deadly force was justified under these circumstances because it was reasonably necessary to protect themselves and others from the threat of death or serious physical injury posed by Mr. McEnulty.

Turning to the facts discussed above, both Trp. Kay and Sgt. Mobley had learned from Dispatch that earlier in the day Mr. McEnulty had pointed a gun at a woman and then fired a shot in the air. In the McDonald’s parking lot, Mr. McEnulty was armed with a pistol that had an extended magazine. Mr. McEnulty was also acting extremely erratically, making repeated statements that he was going to shoot himself. He also appeared to be highly intoxicated and made statements that he was not going to “go back to jail.” A reasonable person could therefore conclude that Mr. McEnulty was very likely to again fire the pistol in the McDonald’s parking lot, just as he had earlier in the day. A person could further conclude that because of the extended magazine, Mr. McEnulty could pose a danger to a large number of people. Moreover, Sgt. Mobley said that he had seen Mr. McEnulty looking at him, Officer Catron and Trp. Kay just prior to when he fired the gun. At that time, Mr. McEnulty had also said to the officers that he was “sorry.” Based on these actions and statements, both Trp. Kay and Sgt. Mobley could reasonably conclude that Mr. McEnulty might fire his pistol at them. Immediately after Mr. McEnulty

⁵ AS 11.81.335 and AS 11.81.340.

⁶ *Id.*

⁷ AS 11.81.335(b)(2).

fired, Sgt. Mobley subjectively perceived him as “bringing the gun down at me right after the shot.” Trp. Kay also described seeing Mr. McEnulty lowering the pistol in Sgt. Mobley’s direction immediately after the shot. Sgt. Mobley could therefore conclude that deadly force was therefore needed to protect himself. Trp. Kay could also reasonably conclude that deadly force was necessary to protect Sgt. Mobley or the other troopers surrounding him.

Additionally, multiple people were in close proximity to Mr. McEnulty at the time and could have been hurt or killed had he fired in their direction. In addition to the multiple law enforcement officers surrounding Mr. McEnulty, the McDonald’s was occupied by both customers and employees. There were also occasional motorists on surrounding roadways. A reasonable person could therefore conclude from the circumstances described above that any of these people in the surrounding area could potentially be injured or killed if Mr. McEnulty again fired a shot. Both Trp. Kay and Sgt. Mobley in their interviews expressed this concern for the safety of their fellow officers and the people in the restaurant. This belief was reasonable in light of Mr. McEnulty’s actions both at the apartment building on Loftus Road and in the McDonald’s parking lot. Thus, both Troopers could conclude that deadly force was needed to protect the people in the surrounding area.

Based upon the totality of the circumstances, both Sgt. Mobley’s and Trp. Kay’s belief that deadly force was necessary to stop an imminent danger to the lives of themselves, their fellow officers, and people in the McDonald’s was reasonable. Sgt. Mobley’s and Trp. Kay’s use of deadly force was therefore legally justified in this situation, and criminal charges against them are not warranted.

III. Conclusion

For the reasons explained above, the State of Alaska will not bring criminal charges against Trooper Kay or Sergeant Mobley related to their use of deadly force on March 31, 2019. The purpose of my review was limited to determining whether criminal charges were appropriate. I cannot express any opinion as to whether their actions comported with any relevant Department of Public Safety policies or procedures.

Please contact me if you have any questions regarding the contents of this letter. I can be reached at 907.269.6250 or jack.mckenna@alaska.gov.

Sincerely,

KEVIN G. CLARKSON
ATTORNEY GENERAL



Jack R. McKenna
Chief Assistant Attorney General
Office of Special Prosecutions

cc:

Kirk Schwalm, counsel for Sgt. Mobley and Trp. Kay
300 Barnette St., Suite 200
Fairbanks, AK 99701