



THE STATE
of **ALASKA**
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Re: Use of Deadly Force Review, APD Case No. 24-16833

This letter summarizes the Office of Special Prosecutions' (OSP) review of the incident involving Anchorage Police Department (APD) Officer Jordan Varak and Officer Parker Boydston's use of deadly force against Kaleb Bourdukofsky on 1 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, crime lab reports, medical records, and other evidence submitted to date.¹ The purpose of OSP's evaluation in this matter is to determine whether Officer Varak and/or Officer Boydston should face criminal charges for their use of deadly force during this incident.²

Summary of Pertinent Facts³

On 1 June 2024 at approximately 2:25am multiple APD officers arrived at the area around West 3rd Avenue and H Street for bar break detail.⁴ Officer Varak and Officer Kevin Morris arrived in

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. Because Mr Bourdukofsky is currently facing criminal charges related to this event and because this letter is likely to be disseminated in a public forum, this summary is limited to information necessary to explain my decision. See Alaska Rules of Professional Conduct 3.6 and 3.8.
4. It is standard practice for APD officers to provide an increased patrol presence in downtown Anchorage on weekend nights during "bar break". Bar break is the time when downtown bars stop serving alcohol and patrons are required to leave the bars and head home. Traditionally, bar break has been a time of night when a higher rate of crime occurs downtown, and APD employs a strong visual police presence downtown at this time to deter illegal behavior. The parking lot at the corner of West 3rd Avenue and H Street is used by patrons of many nearby bars, and it has historically been the location of criminal conduct at bar break.

a patrol vehicle at the corner of West 4th Avenue and H Street. As Officer Varak and Officer Morris arrived, they heard multiple rapid gunshots. Officer Varak and Officer Morris observed dozens of patrons on West 4th Avenue, near the Pioneer Bar, run from the area. Officer Varak and Officer Morris parked on H Street, at the entrance to the alley behind 745 West 4th Avenue, exited the vehicle, and headed into the parking lot between 3rd and 4th Avenues. Officer Varak and Officer Morris both heard additional gunshots as they exited their vehicle.

At the same time, Officer Boydston arrived at the corner of Christensen Drive and West 3rd Avenue in his patrol vehicle and parked. He exited his vehicle and heard rapid gunfire. Officer Boydston, armed with a pistol, exited his vehicle and headed towards the West 3rd Avenue and H Street parking lot. The parking lot was full of vehicles and civilians.

Officer Varak, armed with a rifle, and Officer Morris, armed with a pistol, entered the parking lot immediately behind 745 West 4th Avenue. They observed a man, later identified as Kaleb Bourdukofsky, holding a pistol with an extended magazine in his hand. Officer Varak ran towards Bourdukofsky and illuminated him with the flashlight attached to Officer Varak's rifle. Officer Varak commanded Bourdukofsky to stop, but Bourdukofsky crouched down, and ran north. Officer Varak temporarily lost sight of Bourdukofsky behind parked vehicles in the lot.

As Officer Boydston crossed West 3rd Avenue and ran south into the parking lot he briefly spoke with a civilian who stated there was a shooting behind the Pioneer Bar. Officer Boydston ran between the rows of cars and saw Officer Varak chasing Bourdukofsky.

As Officer Varak ran north through the parking lot and Officer Boydston ran northeast towards Bourdukofsky, other civilians identified Bourdukofsky as the shooter. Officer Varak observed Bourdukofsky run alongside a white sedan travelling slowly east on West 3rd Avenue. Officer Varak could see Bourdukofsky carrying the same pistol he observed earlier. The white sedan then accelerated and left the area as Bourdukofsky kept running. As the white sedan drove off Bourdukofsky dropped the pistol on the street. Bourdukofsky stopped running, reached down to the pavement, and picked up the pistol.

Bourdukofsky continued running east on the sidewalk with Officer Varak and Officer Boydston in pursuit. Both officers commanded Bourdukofsky to drop the firearm. Bourdukofsky did not obey the officers' commands; he kept running with the pistol in his right hand. Bourdukofsky's arms were raised above his shoulders as he ran east on West 3rd Avenue past Cajun Corner, which is on the corner of 3rd and G Street. As Bourdukofsky approached G Street, Officer Varak and Officer Boydston both discharged their firearms, striking Bourdukofsky. Bourdukofsky dropped the pistol and fell to the ground. Officer Morris ran up to Officer Varak and Officer Boydston and the three maintained cover on Bourdukofsky until additional officers arrived. Officers then approached, detained, and provided emergency medical care for Bourdukofsky until an ambulance arrived and transported Bourdukofsky to Providence Alaska Medical Center.

As officers dealt with Bourdukofsky, other officers responded to the rear entrance of the Pioneer Bar, which is at the alley to the 3rd and H parking lot, and discovered Diego Joe deceased from multiple gunshot wounds. Additionally, outside the Gaslight Bar on West 4th Avenue, officers contacted Dominic Santillana, who was on the sidewalk with a gunshot wound to his leg. Santillana

was transported to Alaska Native Medical Center for emergency treatment.

Investigation

Two separate but parallel investigations occurred into the murder of Diego Joe and the shooting of Dominic Santillana, and the officers' use of deadly force upon Bourdukofsky.

APD secured video from multiple downtown locations which documented both the homicide and the officers' use of deadly force. Additionally, Officer Varak and Officer Boydston were equipped with body cameras which documented their contact with Bourdukofsky. Officer Morris, a witness to the event, did not have a body camera.

A camera attached to the rear of the Pioneer Bar covers the paved parking area immediately outside the bar's rear entrance⁵. The surveillance footage is 2 minutes and 39 seconds in length and it does not have audio. At 2:25:23am surveillance video shows Diego Joe standing outside the rear entrance of the Pioneer Bar with several other individuals as Bourdukofsky is being escorted out of the bar by another male. As Bourdukofsky crosses the threshold of the doorway, Diego Joe is seen punching him in the face. The male escorting Bourdukofsky releases him and Bourdukofsky turns and punches the other male.

Bourdukofsky and Diego Joe reengage and punch each other. One of the males, later identified as Roberto Brito, puts his arms up and blocks others from interfering with the fight. Bourdukofsky and Diego Joe continue punching each other and both fall to the ground. Several onlookers separate Bourdukofsky and Diego Joe and they both get up. At 2:26:15am Bourdukofsky turns and begins to walk out of the area, putting a vehicle between himself and Diego Joe.

Diego Joe turns and has his back to Bourdukofsky. Bystanders remain in the area behind the Pioneer Bar, some standing between Diego Joe and Bourdukofsky. Bourdukofsky stops, turns, and pulls out a pistol as he walks toward Diego Joe. At 2:26:22am Bourdukofsky opens fire in the direction of Diego Joe. Diego Joe still has his back to Bourdukofsky as he is struck by gunfire. Diego Joe immediately falls to the ground and Bourdukofsky continues advancing towards him, firing repeatedly as Diego Joe remains on the ground motionless. At 2:26:23am it appears Dominic Santillana is shot in his leg by Bourdukofsky as Santillana tries to flee the area. At 2:26:25am Bourdukofsky stands over Diego Joe and continues to fire. Bourdukofsky then walks backwards towards the parking lot, still firing upon Diego Joe as he lays on the ground. At 2:26:33am Bourdukofsky turns his back to the camera, pistol still in his right hand, and walks towards the parking lot. The video abruptly ends at that time and there is no additional footage from the camera.

Multiple cameras are maintained by 49th State Brewing on their business at 717 West 3rd Avenue. This property extends from Christensen Drive on the west to G Street on the east. It is directly across from the West 3rd Avenue and H Street parking lot and 308 G Street.

A camera attached to the west side of the business captures part of Christensen Drive, the West 3rd Avenue and H Street parking lot, and the north side of 745 West 4th Avenue and the north side

5. The information contained with this video description was previously disclosed in public filings in 3AN-24-03245CR. The description is provided here to explain the events immediately preceding the officers' use of deadly force.

of the Pioneer Bar. The surveillance footage is 1 hour long and has audio. The footage shows a full parking lot, multiple cars parked on West 3rd Avenue, and civilians walking through the alley behind the Pioneer and in the parking lot.

At 2:25:30am raised, but unintelligible, voices are heard and there is movement behind the Pioneer Bar. The movement is consistent with the Pioneer Bar camera footage but is not clear enough to identify individuals. Raised voices continue to be heard until the first gunshot occurs at 2:26:19am. At that same time, Officer Boydston's patrol vehicle does a U-turn as it drives northeast on Christensen Drive and it exits the frame. Over the next nine seconds a total of 31 gunshots are heard. Civilians are seen running from the rear of the Pioneer Bar into the parking lot. At 2:26:33am three additional gunshots are heard. Consistent with the parking lot camera, Bourdukofsky is visible walking into the parking lot and pacing in the area behind the Pioneer Bar.

At 2:27:08am Officer Boydston is heard asking "Where he at? Where he at?" The video shows Bourdukofsky remains in the area immediately north of the Pioneer Bar in the parking lot. Officer Varak and Officer Morris are seen entering the parking lot from the H Street side at 2:27:13am. Officer Boydston is visible running south across West 3rd Avenue into the parking lot and Officer Varak is heard yelling "Drop it! Drop the gun!" at 2:27:17am. At that time, Bourdukofsky is between the third row of parked vehicles, where the south end parking payment kiosk is located. Officer Varak and Officer Morris run towards Bourdukofsky from the south side of the parking lot as Officer Boydston runs south through between the first and second rows of parked cars.

At 2:27:24am Officer Varak shouts "Drop the gun!" again at Bourdukofsky, who emerges between the parked cars at the north end parking payment kiosk. Other voices are heard saying "That's him!" and "That's him right there!" Officer Boydston has now turned and is seen running north towards West 3rd Avenue between the second row of parked cars while Officer Morris is visible running north on the west side of the parking lot. A small white sedan, eastbound on West 3rd Avenue, slows as Bourdukofsky runs out of the parking lot and onto the street at 2:27:26am. The white sedan accelerates after Bourdukofsky runs alongside it. Three seconds later, Bourdukofsky runs out of camera view as Officer Varak and Officer Boydston pursue him.

At 2:27:31 Officer Varak commands Bourdukofsky to "Drop the gun!", Officer Boydston commands Bourdukofsky to "Drop the fucking gun!" and Officer Varak orders Bourdukofsky again to "Drop the gun now!" At 2:27:34am, Officer Varak and Officer Boydston are out of camera view while Officer Morris is seen running east on the sidewalk in pursuit. One second later, multiple gunshots are heard. The gunshots end at 2:27:39am, as Officer Morris also exits out of the camera view.

A camera is also attached to the south side of 49th State Brewery, looking west on West 3rd Avenue, the West 3rd Avenue and Christensen Drive intersection, part of the West 3rd Avenue and H Street parking lot, Cajun Corner, and south, down G Street. The surveillance footage is 31 minutes and 40 seconds long, and has no audio. The footage shows a full parking lot, multiple cars parked on West 3rd Avenue and G Street, and civilians walking the area.

At 2:27:16am Officer Boydston is visible running south across West 3rd Avenue into the parking lot. At 2:27:26am Bourdukofsky emerges from between parked cars near the north end parking

payment kiosk and out on the West 3rd Avenue as light from Officer Varak's flashlight is visible behind him. Bourdukofsky runs alongside a white sedan with a pistol in his right hand and he appears to be attempting to open a passenger-side door as the white sedan accelerates east on West 3rd Avenue. At 2:27:32am Bourdukofsky collides with a pedestrian, drops the pistol and another object onto West 4th Avenue. He then stops running, reaches down, picks up the pistol, and continues to run east on the sidewalk.

At 2:27:37am Bourdukofsky runs east on sidewalk with a pistol visible in his right hand. Officer Varak and Officer Boydston are in foot pursuit. Bourdukofsky is seen raising his arms up and continues to run from police towards G Street. Bourdukofsky does not drop the pistol as he runs next to Cajun Corner. He is seen reacting to being shot at 2:27:39am and falls to the ground, dropping the pistol, on the northeast corner of 308 G Street. Officer Varak and Officer Boydston stop running and maintain cover of Bourdukofsky from the northwest corner of 308 G Street. At 2:27:48am Officer Morris arrives at the scene and joins Officer Varak and Officer Boydston.

At 2:27:58am multiple APD patrol vehicles turn east on West 3rd Avenue from H Street and drive up to the West 3rd Avenue and G Street intersection, blocking traffic and securing the scene. At 2:28:29am Officer Varak, Officer Boydston, and Officer Morris walk up to Bourdukofsky with their guns ready, as the pistol remains within Bourdukofsky's reach. At 2:28:35am Officer Morris uses his foot to move the pistol away from Bourdukofsky. Next, Sergeant Adkins rolls Bourdukofsky over and pat searches Bourdukofsky, which is completed by 2:28:58am. An officer runs up with a medic bag to provide medical attention to Bourdukofsky which commences by 2:29:27am as officers roll Bourdukofsky onto his back. The officers medical care of Bourdukofsky continues until Anchorage Fire Department (AFD) medics arrive at 2:33:58am. The ambulance parks and obscures the view of Bourdukofsky and the officers. At 2:37:16am AFD loads Bourdukofsky into the ambulance and at 2:38:11am the ambulance leaves the scene.

Officer Boydston was equipped with an APD-issued body camera. The footage is 18 minutes and 39 seconds long, and the audio recording begins 60 seconds into the footage. At 2:27:10am Officer Boydston asks an unknown person "Behind Pio?" and a voice is heard replying "Behind Pio." Officer Boydston crosses West 3rd Avenue at a brisk walk before running into the parking lot and between the rows of cars along H Street. By 2:27:17am Officer Boydston has his service pistol at the high ready position with its attached flashlight illuminated. Officer Boydston travels east through the parked cars and into the second row of cars. At 2:27:21am Officer Varak is visible on Officer Boydston's camera and he commands Bourdukofsky "Drop the gun!" Officer Boydston turns left and runs north towards Bourdukofsky as Officer Varak turns right and runs northeast towards Bourdukofsky.

At 2:27:31am Officer Boydston commands Bourdukofsky to "Drop the fucking gun now!" immediately after Bourdukofsky is seen picking up the pistol from the street. Officer Boydston approaches the left side of Officer Varak as both run east on the sidewalk. At 2:27:34am Bourdukofsky is running on the sidewalk on the north side of 308 G Street. Officer Boydston and Officer Varak discharge their firearms at 2:27:35am as they approach the northwest corner of 308 G Street. Bourdukofsky is still running and has not complied with either Officer Boydston or Officer Varak's repeated commands to drop the pistol. Officer Boydston and Officer Varak cease

firing at 2:27:38am and pause at the northwest corner of 308 G Street as Bourdukofsky lays prone on the sidewalk with the pistol to his left side.

Officer Boydston broadcasts over the radio “APD shots fired. Officers 10-2. Suspect down. 4th and G. Medics red.” at 2:27:42am. Bourdukofsky moves slightly and Officer Varak states “Do not move or you will be shot again!” At 2:28:14am Sergeant Adkins arrives in his patrol vehicle and exits while Officer Boydston, Officer Varak, and Officer Morris walk slowly towards Bourdukofsky. Bourdukofsky is again commanded not to move. Sergeant Adkins asks who shot and both Officer Boydston and Officer Varak reply in the affirmative at 2:28:40am.

Officer Varak was also equipped with an APD-issued body camera. The video quality is noticeably lower than that of Officer Boydston’s body camera. The footage is 15 minutes and 58 seconds long, and there is no audio as the body camera did not activate when Officer Varak exited the patrol vehicle. At 2:26:53am Officer Varak is seen as he puts his patrol vehicle into park on H Street, directly west of 745 West 4th Avenue. Officer Morris exits the vehicle, and Officer Varak exits the vehicle armed with a rifle. As Officer Varak and Officer Morris walk up to the alley directly behind 745 West 4th Avenue, a woman runs up to the officers. The woman does not point the officers in a specific direction, but Officer Varak immediately runs into the alley with his rifle at the high ready position. At 2:27:16am Bourdukofsky is visible between the second row of parked vehicles.

At 2:27:23am the video shows that Officer Varak has turned north and he is headed east through the second row of parked cars, in the immediate area where Bourdukofsky had just been visible on the video. Officer Varak proceeds through the second row and into the third row of vehicles and, at 2:27:28am runs northeast towards West 3rd Avenue. At 2:27:30am Bourdukofsky is in the street reaching down for an object on the ground. Bourdukofsky picks the object up, raises his arms with the object visible in his right hand, and runs east onto the sidewalk. Officer Varak is seen pursuing Bourdukofsky on the sidewalk. As Bourdukofsky runs east on the sidewalk at 2:27:35am Officer Varak discharges his rifle. Bourdukofsky is struck and falls to the pavement.

Detectives were called out to investigate both the homicide and the officer involved shooting. APD Crime Scene Team responded to the scene and photographed and diagramed the area behind the Pioneer Bar, the West 3rd Avenue parking lot, and the sidewalk directly to the north of Cajun Corner. Thirty-two shell casings were recovered from the area behind the Pioneer Bar. Three 9mm shell casings consistent with Officer Boydston’s Smith & Wesson Model M&P 9mm service pistol were recovered near the northwest corner of 208 G Street. Six .223 shell casings consistent with Officer Varak’s Sionics AR-15 rifle were recovered at the northwest corner of 208 G Street.

Based on the video evidence reviewed, 66 seconds elapsed between the time Bourdukofsky first fired and when Officer Varak and Officer Boydston fired at Bourdukofsky. 44 seconds passed between the time Bourdukofsky stopped firing the pistol to the time Officer Varak first commanded Bourdukofsky to drop the pistol.

In the AFD patient care report for Bourdukofsky, medics documented six gunshot wounds. One wound was to Bourdukofsky’s right bicep, one to his left shoulder, two to his upper back, one directly under his right arm in the midaxillary line, and one to the upper left hamstring/buttocks

area. According to the AFD patient care report, Bourdukofsky arrived at Providence Alaska Medical Center (PAMC) at 2:47am. According to Bourdukofsky's medical records, PAMC drew his blood at 3:05am and tested the blood sample for alcohol. Based on the testing, Bourdukofsky's blood alcohol concentration ranged between .170 mg/dl and .163 mg/dl⁶. Bourdukofsky was treated at PAMC and survived his injuries.

Interview of Officer Boydston

Officer Boydston was interviewed by APD detectives on 4 June 2024. The interview was audio recorded. Officer Boydston was not permitted to review his body camera footage or any other case related items prior to his interview. Once the interview concluded, Officer Boydston was allowed to view his body camera footage.

Officer Boydston said he has been assigned to mid-shift patrol for a year and said based on his experience, the area around the Pioneer Bar and the Gaslight Bar is the most volatile block in the city on weekends. Officer Boydston stated he arrived downtown for bar break and parked at West 3rd Avenue and Christensen Drive. He said the parking lot directly north of the two bars (between 3rd and 4th Avenues and along H Street) is, in his experience, where most of the problems occur.

Officer Boydston explained that while he was in his vehicle he heard a rapid succession of gunfire and he exited his vehicle with his service pistol drawn. Officer Boydston stated he looked south, down H Street, and witnessed people hunched over and sprinting westbound across H Street. Officer Boydston compared what he witnessed to similar scenarios he experienced at active shooter trainings. He observed a woman between cars in the lot who was looking back at the Pioneer Bar with her hand over her mouth, not moving; he said she appeared shocked. Officer Boydston told detectives he assumed someone had been murdered. As he crossed West 3rd Avenue, he asked a male getting into a car "Where he at?" and the male replied "back side of the Pio."

Officer Boydston said as he made his way south through the parking lot, he saw Officer Varak with his rifle shouldered, parallel to the ground. Officer Boydston explained that Officer Varak's stance informed him that Officer Varak had seen something he had not. Officer Boydston stated he picked up his pace and cut through the parked cars until he saw a head visible above the parked vehicles and running northbound towards West 3rd Avenue. Officer Boydston next heard Officer Morris radio "He's got a gun" which Officer Boydston took to mean that the man he saw running was armed. Additionally, Officer Boydston said he heard someone yell out "That's him! Get him!" Next, Officer Boydston saw a white sedan driving eastbound on West 3rd Avenue and said the man headed towards it. Officer Boydston explained that he did not know if the sedan was associated with the man or if he was planning on carjacking the sedan.

Officer Boydston told detectives the man dropped a gun in the street and he noted the gun had an extended magazine. Officer Boydston said the man stopped running and picked up the gun in his right hand and ran back onto the sidewalk. In Officer Boydston's opinion, the man went back for the gun to either preserve evidence he used to commit a crime, or because he intended to use the gun against either police or civilians. Officer Boydston explained that the parking lot was full of people and the man was running in the direction of other civilians. Officer Boydston stated that

6. For reference, the legal limit for legally operating a motor vehicle is .08 mg/dl. AS 28.35.030(a)(2).

both he and Officer Varak continued to give the man commands to stop and drop the gun. and Officer Boydston commanded the man to “Drop the fucking gun!”

Officer Boydston said that the man was running to the corner of West 3rd Avenue and G Street, where he would have cover from the corner of the building and would also be closer to civilians. He said that neither Officer Varak nor Officer Boydston had cover where they were positioned. He said that due to these factors, he fired a couple of shots at the man. Officer Boydston did not know the exact number of shots he fired. Officer Boydston stated the man clearly had further intent to use the gun, despite the fact that he had raised his hands, because he had already retrieved the gun after dropping it and he continued to hold it in his right hand as he ran from police. Officer Boydston explained that the shots he fired at the man were effective, and the man dropped the gun and collapsed to the sidewalk. Officer Boydston said he stopped firing once the man fell to the ground as he was no longer a threat to civilians or law enforcement.

Interview of Officer Varak

Officer Varak was interviewed by APD detectives on 5 June 2024. The interview was audio recorded. Officer Varak was not permitted to review his body camera footage or any other case related items prior to his interview. Once the interview concluded, Officer Varak was allowed to view his body camera footage.

Officer Varak stated he was driving his marked patrol vehicle and Officer Morris was also riding with him. Officer Varak told detectives that officers respond to the downtown area of West 4th Avenue and H Street and the parking lot behind the Pioneer Bar and Gaslight Bar each weekend for bar break and that he typically arrives at 2:30am. Officer Varak explained that his body camera did not activate when he exited the vehicle and that he did not realize it was not active until after the shooting, at which time he manually activated it.

Officer Varak said that as he either arrived at West 4th Avenue and H Street or as he rolled through the intersection, he heard 10 to 15 gunshots in rapid succession. Officer Varak said that as he heard the gunshots he had a line of sight to the south side of the Pioneer Bar, and observed dozens of people screaming and running eastbound on West 4th Avenue. Officer Varak said that he had previously responded to multiple shootings in the area, including five or more in the West 3rd Avenue and H Street parking lot, so he continued north on H Street and stopped his vehicle just south of the alley entrance to the parking lot. He explained that he confirmed with Officer Morris that Officer Morris had also heard gunshots. Officer Varak said as he was either getting out of his vehicle or just putting it into park he heard another volley of gunshots.

Officer Varak observed civilians running northbound on the sidewalk. He said that based on the manner in which the civilians were scattering and the volume of gunfire, given his training, it sounded like an active shooter incident. As a result, Officer Varak retrieved his SWAT rifle, an AR-15, from its locked position in his center console. He told detectives he believed it was tactically advantageous to have the rifle in the situation. Officer Varak explained that when he exited the vehicle it was his intent to stop the active shooter threat, investigate the situation, and protect people. Officer Varak stated he saw a subject wearing all dark clothing standing at the second row of parked vehicles. He saw the man was walking with a pistol in his hand, and as the man raised the pistol over his head, Officer Varak observed that the pistol had an extended

magazine. Officer Varak said he told the man to stop but the man ran between the parked vehicles.

Officer Varak told detectives he lost track of the armed man and ran towards the area he had last been visible. Officer Varak described the parking lot as being full of parked vehicles and civilians. Officer Varak described hearing two people yell “That’s him!” and “Get him!” as he ran north towards West 3rd Avenue, where he saw the man near a slow-moving white sedan. Officer Varak described the man as still armed and holding the pistol in his hand. Officer Varak said it appeared the man was either trying to get into a getaway car or trying to carjack the car. Officer Varak said the white sedan accelerated away from the armed man and the man dropped the pistol but stopped and picked it up.

Officer Varak stated he ordered the man to drop the pistol but the man refused and kept running. Officer Varak said, given what he heard from people yelling in the parking lot, he believed the man had either shot someone or shot at someone. Officer Varak told detectives he believed the man chose to pick the pistol up after dropping it because he either intended to shoot at law enforcement or at members of the public. Officer Varak described that the man had re-armed himself after dropping the weapon, then had run towards other people. Officer Varak expressed that he was afraid of what could happen to him and others if the man continued to run while armed. Officer Varak stated as he ran after the man, Officer Boydston was in pursuit too. Officer Varak described having a clear thought process and clear belief that the man needed to be stopped before he turned the corner at G Street. Officer Varak explained that if he turned the corner, the man would then be behind cover while the officers were not, and he would also have line of sight on civilians on G Street.

Officer Varak told detectives he believed the armed man posed a significant risk of serious bodily injury or death to the officers and the civilians. Officer Varak explained the man had been given clear commands to stop and multiple opportunities to disarm. In order to protect the public, Officer Varak said he had to shoot the man. He said he had a clear line of sight at the man and no one else in his line of sight, so he fired. Officer Varak stated he believed he shot five times as the man was running with the pistol in his hand and his arms up. Officer Varak believed Officer Boydston fired once. Officer Varak said both officers stopped shooting once the man fell to the ground and released the pistol.

Officer Varak explained that while he does carry both pepper spray and a Taser, given the level of threat the armed man presented it was not safe to use less than lethal force. He explained that the man remained in his line of sight but the distance between the two and the speed of the encounter did not lend itself to the use of either the pepper spray or Taser. Officer Varak stated that the man had shot multiple volleys in a heavily populated area, was running towards G Street where Ubers and taxis often wait for riders, had re-armed himself after dropping the pistol, and never verbally responded to any of the officers’ commands. Officer Varak also noted there was no safe cover for the officers and he was concerned for the general public and protecting them from the armed man.

Firearms Analysis

Officer Varak’s Sionic AR-15, Officer Boydston’s Smith & Wesson Model M&P semiautomatic 9mm pistol, the three 9mm cartridge casings and six .223 cartridge casings recovered on West 3rd

Avenue, were sent to the Alaska Scientific Crime Detection Laboratory for testing and analysis.⁷ On 3 July 2024 forensic testing confirmed that the expended cartridges were fired from Officer Varak's AR-15 or Officer Boydston's 9mm pistol.

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 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.¹⁰

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.¹¹ Second, an officer may use deadly force against a person who may otherwise endanger life or inflict serious physical injury unless arrested without delay.¹²

The potential criminal liability of Officer Varak and Officer Boydston in the current analysis is governed by the above-referenced law. If the officer reasonably believed that his 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. Additionally, Officer Varak and Officer Boydston would also be justified in using deadly force if each reasonably believed their use of force was necessary to lawfully stop a person suspected of having committed a felony involving the use of force against a person—or if the officer reasonably believed that Bourdukofsky would otherwise endanger life or inflict serious physical injury upon another unless he was arrested without delay. In other words, in order to disprove a claim of self-defense and secure a conviction against the officer, the State would be required to prove beyond a reasonable doubt that Officer Varak and/or Officer Boydston did not reasonably believe that their action in shooting Bourdukofsky was necessary to defend himself or defend another person, or was necessary to lawfully stop a suspect who had committed a felony against another person, or that the suspect would otherwise endanger life or inflict serious physical injury upon another if not stopped.

When analyzing the officers' conduct, the law requires an analysis based on the totality of the events. In this case, APD officers, including Officer Varak and Officer Boydston, heard multiple rapidly fired gunshots in the West 3rd Avenue and H Street parking lot during bar break. Officer

7. The cartridge casings recovered behind the Pioneer Bar were collected and tested as part of the homicide investigation, but are not relevant for this analysis.

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 11.81.335(b)(2).

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

12. AS 11.81.370(a)(3).

Varak and Officer Boydston both knew the parking lot, at this time of night, was heavily trafficked by the public, and the officers saw many people in the parking lot and surrounding area. Immediately after hearing rapid and multiple gunshots, Officer Varak observed Bourdukofsky carrying a pistol with an extended magazine. The extended magazine was consistent with the large number of gunshots Officer Varak heard, and made it likely that Bourdukofsky was the one who had fired the shots the officers heard.

Although neither Officer Varak nor Officer Boydston knew Bourdukofsky had, less than a minute earlier, murdered Diego Joe, this is irrelevant to the analysis of whether their use of deadly force was lawful. They had just heard rapid gunfire in an exceedingly crowded public space, were pointed to Bourdukofsky by multiple bystanders as being the person who they were looking for, and saw Bourdukofsky, armed with a firearm that had an extended magazine, running from them and ignoring their repeated commands to drop his weapon. Their belief that armed Bourdukofsky, who had ignored multiple commands to both disarm himself and stop, and who then continued to run away from law enforcement and towards multiple citizens, while holding a gun, posed an imminent threat of causing serious physical injury and/or death to each of the officers as well as the nearby civilians was reasonable. As such, Officer Varak and Officer Boydston were justified in using deadly force to stop Bourdukofsky as they reasonably believed Bourdukofsky posed an imminent threat of endangering life or inflicting serious physical injury upon others unless he was stopped or arrested without delay. It was reasonable under these factual circumstances for Officer Varak and Officer Boydston to use deadly force to stop Bourdukofsky.

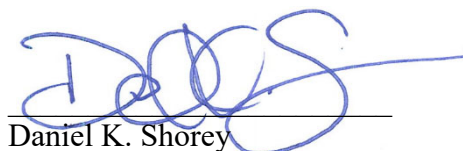
The officers acted in lawful self-defense, defense of others, and in pursuit of a dangerous fleeing armed suspect when they used deadly force against Bourdukofsky. Filing any criminal charges against either Officer Varak or Officer Boydston is not legally supportable.

Conclusion

The State will not file criminal charges against APD Officer Jordan Varak or Officer Parker Boydston relating to the 1 June 2024 shooting of Kaleb Bourdukofsky in Anchorage, Alaska. You may advise both Officer Varak and Officer Boydston of my decision. Please contact me if you have any questions. I can be reached at 907-269-6369 or daniel.shorey@alaska.gov. 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
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