



THE STATE
of ALASKA

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Department of Law

CRIMINAL DIVISION
OFFICE OF SPECIAL PROSECUTIONS

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July 6, 2019

Chief Justin Doll
Anchorage Police Department
4501 Elmore Road
Anchorage, Alaska 99507

Re: APD Case No.: 19-11598
Officer Nathaniel Lewis
Officer Matthew Hall
Officer Brett Eggiman

Chief Doll:

Introduction

This letter summarizes the Office of Special Prosecutions'¹ review of the use of deadly force by Anchorage Police Officers Nathaniel Lewis, Brett Eggiman, and Matthew Hall against Bashir Hassan. On April 1, 2019 the above officers shot and killed Hassan as he drew what appeared to be a weapon from his waistband. Based on this use of deadly force, the purpose of this office's evaluation is to determine whether criminal charges are warranted in this situation.

Given the facts and circumstances surrounding this incident and existing Alaska law, OSP will not be filing criminal charges against any of the officers in this matter. The investigation shows that Officers Lewis, Eggiman, and Hall were acting in defense of themselves and/or others when they fired their weapons. Criminal charges are inappropriate in this case.²

The reasons for this decision and the underlying rationale are set forth below. This analysis is based on OSP's review of your agency's investigative reports regarding this incident, along with the accompanying audios, videos, diagrams, and photographs, as well as the autopsy report from the State Medical Examiner (SME)'s Office.³

¹ The Office of Special Prosecutions is hereafter referred to as OSP.

² This review is independent of any administrative assessment your agency may undertake. Accordingly, no opinion is expressed in that regard.

³ This review was based on the information provided. Any additional information not provided to OSP for consideration could change the State's opinion in this matter.

Summary of Pertinent Facts

On April 1, 2019 at approximately 14:45 hours, the Anchorage Police Department's dispatch center received a report of a male lying on the ground who was non-responsive. Shortly thereafter, the call center received a call stating that the male had gotten up and was pulling a black handgun out of his jacket and pointing it downward. The man was said to be near the area of Walmart at 3101 "A" Street. Another caller called 911 and reported that a black male adult was walking into traffic, waving what was possibly a 9 mm handgun. A fourth caller reported that the male was walking northbound on "A" Street waving a gun on the sidewalk, but not pointing it at anyone. One caller opined that the male may have mental health issues.

Patrol officers responded to the area to make contact with the individual, but were unsuccessful. Dispatch advised the officers in the field that the man had boarded a city bus that was traveling northbound on "A" Street. Officers Hall, Eggiman, Lewis, and Ashbaugh drove northward on "A" Street in their patrol cars to see if they could find the "People Mover" bus. While doing this, the officers observed Bashir Hassan walking towards downtown Anchorage on the west sidewalk of "A" Street. Hassan fit the description of the man brandishing the gun near Walmart.

Officer Hall pulled his patrol SUV upon on the sidewalk, Officer Lewis stopped his patrol car to the southwest of Officer Hall's vehicle. Both officers turned on their overhead emergency lights. Officer Eggiman and his Field Training Officer (FTO), Officer Ashbaugh, parked south of Officer Lewis' police car. The officers began to get out of their cars to contact Hassan.

Officer Hall was the first officer out of his vehicle and he began to speak at Bashir Hassan. Hassan was standing ahead of Officer Hall's SUV facing west at approximately twenty (20) yards. Upon becoming aware of the officers' presence, Hassan began to speaking and walking towards Officer Hall. Officer Hall commanded Hassan to stop multiple times and to quit approaching him. Bashir Hassan did not stop walking towards the officers, but reached into his right pants waistband and began pulling up was appeared to be a handgun. Hassan's motion was completed in one smooth, quick, movement. As Hassan began to extend the gun towards Officer Hall, Officer Hall, Officer Lewis, and Officer Eggiman all fired their weapons at him. Hassan was struck with bullets from the officers' guns causing him to drop and fall to the ground.

Bashir Hassan was still moving after he fell to the ground. After realizing that Bashir Hassan would not, or could not, follow the officers' commands to roll over on his stomach, Officers Ashbaugh, Eggiman, Hall, and Lewis advanced to Hassan's position to secure him and to administer first aid. Hassan ultimately was transported to the hospital where he died of his injuries.

An examination of the Hassan's gun revealed that it was not a firearm but was a real-like replica BB or pellet gun modeled after a 9 mm handgun.

Analysis

Alaska statutes allow a peace officer to use non-deadly force or threaten to use deadly force when and to the extent the officer reasonably believes it is necessary to make an arrest or to terminate an escape or attempted escape.⁴ Additionally, Alaska law permits law enforcement officers to use deadly force when such force is necessary to defend oneself or others against a threat of imminent serious physical injury or death.⁵ Lastly, a peace officer may use deadly force where the officer reasonably believes that a person may otherwise endanger life or inflict serious physical injury unless arrested immediately.⁶

In this case, Officers Hall, Lewis, Eggiman, and Ashbaugh were responding to a report of a man brandishing a gun near a major thoroughfare of Anchorage ("A" Street) and near a very busy retail store. Although it is not illegal for most people to merely possess firearms in a public place in Alaska, it does raise considerable safety concerns when an individual begins to brandish a weapon in public and walk out into traffic.

When Officer Hall initially saw Bashir Hassan walking down the sidewalk, he recognized that Hassan fit the general description of the man brandishing the gun as observed by 911 callers.⁷ While getting out of his vehicle Officer Hall indicated that Hassan turned and started walking towards him.⁸ Officer Hall commanded Hassan to stop,⁹ but Hassan did not stop advancing towards Officer Hall. Officer Hall saw Hassan grab the handle of a black pistol and start to pull it out of his waistband and begin raising it towards the officers.¹⁰ At this point, Officer Hall indicated that he believed that Bashir Hassan was going to shoot him or the other officers.¹¹ As such, he drew his weapon and fired at Hassan.¹²

Officer Lewis reported that when he stopped his patrol vehicle, he parked it on the sidewalk near Officer Hall's SUV.¹³ Officer Lewis saw Bashir Hassan and realized that he was the same person that he had seen earlier at Northern Lights Boulevard and "A"

⁴ AS 11.81.370(a)

⁵ AS 11.81.335(a); AS 11.81.340.

⁶ Id.

⁷ Supp. 21, pp. 4-5 (Officer Hall's initial contact with Bashir Hassan was akin to an investigatory stop to see if in fact Hassan was related or connected to the reported call.)

⁸ Supp. 21, p. 5.

⁹ Id.

¹⁰ Supplement 21, p. 6.

¹¹ Supp. 21, p. 6.

¹² Id.

¹³ Supp. 23, p. 3.

Street.¹⁴ Officer Lewis heard one of the other officers tell Hassan to stop walking towards them.¹⁵ Officer Lewis said that Hassan continued to walk towards the officers and he estimated that Hassan was approximately ten to fifteen (10-15) yards away when he pulled a gun out of his waistband.¹⁶ At the moment that Hassan Bashir was pulling the gun from his pants, Officer Lewis remembers feeling “not safe... [like] he could’ve shot at us.”¹⁷

Officer Eggiman reported that he stopped his car just to the west of Officer Hall’s patrol vehicle.¹⁸ Officer Eggiman stated that he was stepping out of his vehicle when Hassan was pulling a gun from his waistband.¹⁹ Officer Eggiman said that he could see that the gun was a black handgun and that it looked like Hassan was going to shoot Officer Hall.²⁰ Officer Eggiman indicated that he started firing his weapon when Hassan started “pushing out” the handgun that he pulled from his waistband.²¹

When Bashir Hassan failed to stop walking towards Officer Hall and the other officers, and then began to reach for a handgun, it was reasonable for Officer Hall and the others to subjectively conclude that Hassan was about to fire on them which could cause death or serious physical injury. When he failed to follow directions and advanced on Officer Hall while reaching for a gun, a reasonable person in the officers’ situation could come to the same conclusion (i.e. that deadly force was necessary to stop Hassan from shooting at them).

The fact that the gun turned out to be a realistic looking pellet gun and not a firearm does not does not negate the legality of the officers’ use of deadly force in this situation. All of the officers believed that the gun that Bashir Hassan was pulling out of his waistband was a real handgun. All of the officers believed that Hassan was going to shoot at them. All of the officers indicated that the event occurred quickly. Given the manner in which Hassan was pulled the gun from his waistband and their belief that they were in imminent peril, in that instant, there was no reasonable way for the officers to determine that the weapon Hassan was beginning to point at them was a pellet gun and maintain their own safety or the safety of the other officers. In this situation self-defense with lethal force was justified.

Conclusion

Based on the information provided to Officers Hall, Eggiman, and Lewis, their independent observations of Hassan’s conduct, it was reasonable to conclude that

¹⁴ Supp. 23, p. 2.

¹⁵ Supp. 23, p. 3.

¹⁶ Supp. 23, p. 3.

¹⁷ Supp. 23, p.5.

¹⁸ Supp. 18, p. 3.

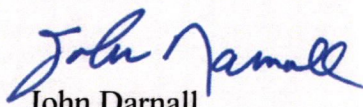
¹⁹ Supp. 18, p. 4.

²⁰ Id.

²¹ Id.

deadly force was necessary to protect themselves or one another from being seriously harmed or killed. Considering the totality of the circumstance in this case, the State will not institute criminal charges against Officers Hall, Lewis, or Eggiman related to the death of Bashir Hassan. Please advise them of this decision. If you, or other members of your department have any questions, please give me a call. I can be reached at 269-6250 or contacted at john.darnall@alaska.gov.

Sincerely,
KEVIN G. CLARKSON
ATTORNEY GENERAL



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