



# ALASKA STATE TROOPERS and FAIRBANKS POLICE



## PRESS RELEASE UPDATE

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**DATE:** October 1, 2018

**INCIDENT:** Officer Involved Shooting-Lazelle Road

The State of Alaska Office of Special Prosecution (OSP) has completed its review of the officer-involved shooting of Cody Eyre that occurred on December 24, 2017. We have included the Letter of Declination that gives specific details of the event.

*Please be advised that the Letter of Declination contains graphic information and language.*

OSP's letter describes how Alaska State Troopers and Fairbanks Police Officers (the officers) negotiated with Eyre and repeatedly asked him to stop and put down his gun. As the officers followed him from Farmers Loop and down the Steese Highway, Eyre was close to entering the Shannon Park residential area. The threat to the public and the officers' safety increased as Eyre's behavior became more erratic. Eyre then yelled specific, explicit threats and pointed his gun at the officers. At that time, the officers discharged their weapons at Eyre. Once the threat from Eyre was over, the officers immediately began life-saving measures until EMS arrived.

The determination was made by OSP that Alaska State Troopers Elondre Johnson, Christine Joslin, James Thomas and Fairbanks Police Officers Tyler Larimer and Richard Sweet were legally justified in their use of deadly force against Cody Eyre.

The use of deadly force is a traumatic event and has impacted all of those involved. Law enforcement officers have a duty to protect the public and the right to protect themselves.

We understand the impact of this event and the loss the friends and family of Cody Eyre have experienced. Incidents like this are difficult and we appreciate the public's patience throughout the investigative and review process.

A full media press briefing to include body camera video has been scheduled for Wednesday, October 10, 2018.

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THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Law**

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September 26, 2018

Hans Brinke  
Division Director, Alaska State Troopers  
5700 East Tudor Road  
Anchorage, Alaska 99507

**Re:** Alaska Department of Public Safety Incident AK 17090426

Director Brinke:

I am writing to summarize my review of the use of deadly force by Alaska State Troopers Elondre Johnson, Christine Joslin and James Thomas, as well as Fairbanks Police Officers Tyler Larimer and Richard Sweet, that resulted in the death of Cody Eyre in Fairbanks, Alaska on December 24, 2017. Based on my review of Department of Public Safety Incident AK 17090426, the investigation demonstrates that criminal charges against Troopers Elondre Johnson, Christine Joslin and James Thomas, as well as Fairbanks Police Officers Richard Sweet and Tyler Larimer are unwarranted.

Please note that the purpose of the Office of Special Prosecution's review is to determine whether the troopers and officers were legally justified in using deadly force given the facts surrounding the shooting and whether any criminal charges are appropriate. Although my review has determined that criminal charges are not warranted, I did not review this matter to determine whether any trooper or officer acted within any applicable use-of-force policy, nor do I express an opinion as to the appropriateness of any applicable policy.

The reasons and rationale for my conclusion are set forth below.

*Summary of Pertinent Facts*

The forthcoming factual summary is based on a review of the reports provided, audio contacts from the officers<sup>1</sup> involved, available bodycam footage from the officers

involved, interviews and transcripts of the officers involved, 911 calls, radio traffic from the incident, photographs, the Medical Examiner's report and a ballistics analysis report from the Alaska Scientific Crime Detection Laboratory. This is merely a summary of the most pertinent facts and does not include an exhaustive list of all the relevant facts associated with this incident.

At approximately 6:21 p.m. on December 24, 2017, 911 received a call from a man in Wasilla who informed the operator that one of his Facebook friends, Cody Eyre, was on Facebook Live threatening to commit suicide. The caller indicated that Cody was likely in Fairbanks and that he had what appeared to be a .22 revolver with one bullet loaded in it. The caller stated that Cody said he was going to kill himself and then the live feed from Facebook ended.

At approximately 7:03 p.m., 911 received a call from Cody Eyre's mother, Magdalena Eyre. Ms. Eyre also informed the 911 operator that she was concerned about her son. She stated that Cody had been drinking alcohol and that he was upset because he and his girlfriend had just broken up. Ms. Eyre said that Cody had a gun in a holster with him and that she was concerned about him and wanted the officers to pick Cody up. She informed the operator that she was in her vehicle, with her daughter, trying to follow Cody so the police would know where he was. The 911 call was recorded, and Cody can be heard yelling in the background. The operator asked Ms. Eyre not to get too close to Cody due to safety concerns. Cody was walking down Farmer's Loop Road when Ms. Eyre first called, but by the time the first troopers responded, he was on or near the Steese Highway.

Alaska State Trooper Nathaniel Johnson was the first law enforcement officer to arrive, followed by Trooper James Thomas and Trooper recruit Kelsey Harrison. Shortly thereafter, Troopers Elondre Johnson and Christine Joslin responded, as did Fairbanks Police Department Officers Richard Sweet and Tyler Larimer. Each of officers listed above exited their vehicles and interacted with Cody Eyre except for recruit Kelsey Harrison, who remained with his patrol vehicle and controlled traffic while the officers attempted to defuse the situation.

The troopers audio recorded the entire interaction, and the Fairbanks officers recorded the interaction with their body cameras. From the officers' first arrival, Cody acted in an erratic manner and he can be heard shouting various things in an agitated manner. When officers contacted Cody, he was on or near a main public highway, intoxicated<sup>2</sup>, brandishing a gun, and unresponsive to officers' commands. When Trooper Elondre Johnson initially exited his vehicle and made contact with Cody, he saw that Cody had a gun in his hand, and radioed to the other officers that "he's gestured the gun towards me at least twice." In a later interview, Trooper Elondre Johnson clarified that he was "extremely fearful of injury or death" when Cody pointed the gun towards him because Cody was not responding to the trooper's commands.

The officers made repeated commands for Cody to "drop the gun" and to "put the gun down," but Cody did not drop the gun and continued to walk south along the Steese Highway towards Lazelle Road. While walking and interacting with the officers, Cody

vacillated between pointing the gun at his own head and dropping the gun to his side. When officers got close to Cody, he yelled at them “you better back the [REDACTED] up, right now!” Several minutes into the contact, while officers are imploring him to drop the gun, Cody yelled, “I don’t know who the [REDACTED] you are!” Trooper Elondre Johnson identified himself, and Cody yelled, “I obviously don’t give a [REDACTED]!” The encounter proceeded in this manner for several minutes.

Cody ultimately moved away from the Steese Highway area and began walking down a side road off Lazelle Road that passed by two churches and ultimately led to the back of a residential area. The officers were concerned that the situation would escalate further if Cody entered the residential area. Cody was still very agitated, but he told the officers “I don’t want to hurt any of you,” and one of the troopers responded, “we don’t want to hurt you.” Cody made repeated threats to kill himself and refused to drop his gun. When he began walking down the side road, the three troopers and two Fairbanks officers listed above converged and followed him down the road, keeping their distance from him. When he advanced toward the residential area, they followed; when he stopped, the officers stopped.

At one point, Cody stopped yelling and the officers tried to talk to him. Cody sounded intoxicated when he spoke to the officers. He told the officers, “I’m – I literally I’m not going to [REDACTED] drop this gun.” The officers attempted to talk calmly to him, but he quickly became agitated again and repeatedly yelled, “Shut the [REDACTED] up!” Cody told the officers he joined the military to “try to get help,” and then began growling loudly in a distraught manner. Cody turned and faced the officers and then got down on his knees and said, “You don’t know what the [REDACTED] I’ve been through,” while continuing to growl. Cody pointed the gun to his head and possibly put it in his mouth, while kneeling. The officers told Cody they could get him help and asked him to set the gun down. Cody responded by standing back up and saying, “No, I want somebody to [REDACTED] see. . . I’m going to kill myself!” He then walked closer to the residential area.

Cody stopped about 200 yards from the residential area and told the officers not to come any closer or he would pull the trigger and kill himself. He told the officers to turn off the spot light that was pointed in his direction, but the officers told him they were not going to do that. Cody then turned and walked a little closer to the residential area. He stopped and turned and said

You better back the [REDACTED] up, I’m not kidding. I will watch you guys the whole [REDACTED] way. (Indiscernible) my [REDACTED] ex-girlfriend’s [REDACTED] cousin’s house. I’ll [REDACTED] blow my brains out, no worries. You guys don’t need to kill anybody that [REDACTED] doesn’t need to be on your conscience. I was in the [REDACTED] military; I got out of the [REDACTED] military because I was discharged— because I have [REDACTED] ADHD. Why the [REDACTED] does that matter!

At this point, the audio captured one of the troopers saying, "That's at us," indicating that Cody was now pointing the gun at the officers. On Officer Sweet's bodycam, the officers can clearly be seen reacting to the gun being pointed at them. At the same time, Cody says, "You guys can [REDACTED] die right now, I don't give a [REDACTED]!" The officers then begin to fire their guns.

There were two main volleys of .223 caliber shots fired from Troopers Thomas and Joslin and Fairbanks Officers Larimer and Sweet, followed by two individual shotgun rounds fired by Trooper Elondre Johnson.<sup>3</sup> In total, more than 40 .223 rounds were fired over the two volleys. Ballistic analysis indicated that 28 of the .223 casings recovered from the scene were fired from Officer Larimer's rifle, 7 of the .223 casings recovered from the scene were fired from Officer Sweet's rifle, 5 of the .223 casings recovered from the scene were fired from Trooper Joslin's rifle and, despite his later description of firing four to six .223 rounds, none of the casings recovered from the scene were linked to Trooper Thomas' rifle. Trooper Nathaniel Johnson was present during the shooting, but indicated that he did not fire his rifle because he could not feel his hands due to the extreme cold weather.<sup>4</sup>

After the shots were fired, the officers approached Cody, who was laying on the ground. He still had the .22 revolver near him, and one of the officers kicked it away from him. Later inspection revealed that the .22 revolver was loaded with a single round and that the gun had not been fired. Cody was still alive when the officers approached him, and the officers attempted to render first aid. Cody was declare dead when he arrived at Fairbanks Memorial Hospital.

An autopsy conducted by Dr. Gallagher at the Alaska State Medical Examiner's Office revealed that Cody Eyre had 23 gunshot wounds associated with the shooting incident. The wounds included both entry and exit wounds for some bullets, so the exact number of times Cody was struck by the officers is difficult to establish with certainty. He had several gunshot wounds on his legs, one to his outer right shoulder and one to the left rear of his head. The gunshot wound to his head was determined to be the cause of death. There was not an intact bullet associated with that wound, so it was not possible to determine which of the officer's firearms fired the fatal round.

Each of the troopers and officers involved in the incident were interviewed. All five officers who fired shots described seeing Cody's raised and pointed in their direction prior to firing their firearms during the first volley of shots. Trooper Joslin described seeing the gun still in Cody's hand and pointed in their direction after the first volley. Officer Sweet described still perceiving a threat after the first volley and still believing that Cody's gun was pointed in the officers' direction. Trooper Thomas described still seeing the gun in Cody's hand after the first volley, but he was uncertain whether it was still pointed in their direction. Trooper Elondre Johnson indicated that he still perceived Cody as a threat to the officers after the first volley, but he could not see exactly where Cody's gun was prior to firing the second time. Officer Larimer stated that he still perceived Cody as a threat after the first volley based on how the other officers were reacting, but he could not clearly see Cody or his gun prior to firing the second time.<sup>5</sup>

### *Law and Analysis*

Under Alaska law, a person “may use reasonable and appropriate nondeadly force” to prevent a suicide.<sup>6</sup> Additionally, a person may use deadly force “when and to the extent the person reasonably believes the use of deadly force is necessary for self-defense against death and/or serious physical injury.”<sup>7</sup> These two provisions of law are not mutually exclusive. A law enforcement officer “may use nondeadly force and may threaten to use deadly force when and to the extent the officer reasonably believes it necessary to make an arrest . . . or to make a lawful stop.”<sup>8</sup> A person is entitled to use the same level of force to defend a third person as they would be entitled to use to protect themselves.<sup>9</sup> Finally, once a person has raised some evidence that they were justified in using self-defense under Alaska law, the state must disprove the person’s claim of self-defense beyond a reasonable doubt.<sup>10</sup>

In the shooting incident involving Mr. Eyre, the officers were notified that Cody had been drinking, was emotionally upset and possessed a firearm. Although they were called for assistance, when they arrived to intervene, Cody was walking along a public highway, brandishing a handgun and acting in an extremely erratic manner. Given his level of intoxication, proximity to the highway and brandishing of the gun, Cody was committing the criminal offense of Misconduct Involving a Weapon in the Fourth Degree.<sup>11</sup> He shouted at the officers in an agitated manner and refused to follow any of their commands to drop the gun. At this point, the officers were legally entitled to make a lawful stop and detain Cody. Thus, they were legally entitled to use nondeadly force and threaten to use deadly force to the extent they felt it was reasonably necessary to stop Cody.

Moreover, when the officers first arrived, they were responding to a possible attempted suicide, and because of that, they were legally permitted to use reasonable nondeadly force to prevent Cody from killing himself. The officers attempted to talk to Cody and get him to put the gun down so he would no longer be a danger to himself. The officers used no force in the beginning, only verbal commands. Shortly after Trooper Elondre Johnson arrived, and prior to him retrieving his shotgun from his vehicle, he made verbal contact with Cody, and Cody pointed the gun towards Trooper Elondre Johnson twice.<sup>12</sup> That information was relayed to the other responding officers.

The officers continued to engage Cody despite his hostility towards them and they told him they could get him help. Cody was not responsive and began moving towards a residential area. The officers were concerned about the safety of civilians in the residential area, and they attempted to get Cody to stop moving in that direction. Cody continued to yell angrily at the officers and expressed a strong desire to take his own life. Throughout the majority of the interaction, Cody kept the gun pointed towards himself, and he told the officers more than once that he had no intentions of harming them. Aside from pointing the gun at Trooper Elondre Johnson when the trooper first arrived, Cody did not point the gun at the officers at any other point prior to the shooting incident itself. That changed when Cody pointed the gun at the officers.

Once Cody stopped, turned and faced the officers and pointed the gun at them, the officers were legally entitled to use deadly force to defend themselves and the other officers involved. Trooper Thomas said, "That's at us," and the officers reacted, but they still refrained from firing their firearms. It was not until four seconds later when Cody yelled, "You guys can [REDACTED] die right now, I don't give a [REDACTED]!" that the officers actually fired their firearms. Every one of the officers articulated seeing the gun raised and pointed in their direction and fearing for their lives and their fellow officers' lives prior to discharging their firearms. Also, every officer articulated still perceiving Cody as a threat prior the second volley of shots. Although some of the officers were better able to perceive the continued threat than others, they each articulated that they fired their guns a second time because they thought their lives, and their fellow officers' lives, were still in danger. It wasn't until they were certain that Cody was down and no longer posed a threat that they ceased firing.

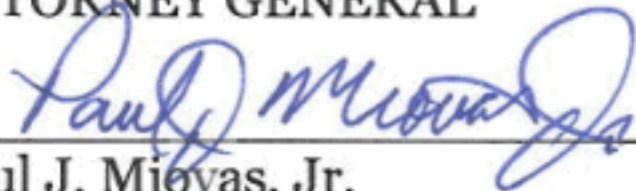
Given that Cody Eyre clearly pointed a gun in the direction of four Alaska State Troopers and Two Fairbanks Police Officers and yelled "You guys can [REDACTED] die right now, I don't give a [REDACTED]!", the officers were legally entitled to use deadly force to protect themselves and their fellow officers. The officers were legally entitled to use that level of force until they no longer reasonably perceived the threat. Therefore, under the circumstances described above, the state would not be able to disprove the officer's claim of self-defense beyond a reasonable doubt.

#### *Conclusion*

In summary, the state will not file criminal charges against Alaska State Troopers Elondre Johnson, Christine Joslin and James Thomas and Fairbanks Police Officers Tyler Larimer and Richard Sweet for the officer involved shooting incident that resulted in the death of Cody Eyre in Fairbanks, Alaska on December 24, 2017. Should it be necessary, you may advise the troopers and police officers involved of my decision. Please contact me if you have any questions. I can be reached at 907.269.6250 or [paul.miovas@alaska.gov](mailto:paul.miovas@alaska.gov).

Sincerely,

JAHNA LINDEMUTH  
ATTORNEY GENERAL



Paul J. Miovas, Jr.  
Chief Assistant Attorney General  
Office of Special Prosecutions

cc: Fairbanks Police Chief Eric Jewkes  
Lt. Kid Chan, Alaska State Troopers

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<sup>1</sup> Although Alaska State Troopers and Fairbanks Police Officers were jointly involved in the incident, when the law enforcement officers are referred to collectively, they will be referred to as "officers."

<sup>2</sup> Toxicology results from Eyre's autopsy showed that his blood alcohol concentration level was .085 g/100mL and that he had THC levels consistent with consuming marijuana on the day of the incident.

<sup>3</sup> A total of three spent shotgun shells were recovered from the scene, which indicates that Trooper Elondre Johnson must have fired one of the rounds during the initial two volleys of shots. Trooper Elondre Johnson later confirmed that he fired one round from his shotgun during the first volley.

<sup>4</sup> Officer Larimer estimated the temperature to be around -5 to -10 degrees during the incident.

<sup>5</sup> Officer Larimer claimed that he believed he only fired 3 to 4 shots during the first volley and then emptied his magazine during his second volley, which he believed to be at least 20 rounds. He indicated that he fired until empty because he thought Cody was still a possible threat and he felt there was a snowbank immediately behind the direction of his fire.

<sup>6</sup> AS 11.81.430(a)(4)

<sup>7</sup> AS 11.81.335(a)(1)-(2)

<sup>8</sup> AS 11.81.370(a)

<sup>9</sup> AS 11.81.340

<sup>10</sup> AS 11.81.900(b)(19); *Brown v. State*, 698 P.2d 671 (Alaska App. 1985)

<sup>11</sup> AS 11.61.210(a)(1), a class A misdemeanor

<sup>12</sup> This act constitutes the crime of Assault in the Second Degree pursuant to AS 11.41.220(a)(1)(A), a class C felony.