



THE STATE  
of **ALASKA**

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March 6, 2020

Chief Ed Mercer  
Juneau Police Department  
6255 Alaway Avenue  
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Re: Use of Deadly Force Review in relation to JPD Incident No. 191229-001,  
Shooting death of Kelly Stephens

Chief Mercer:

The purpose of this letter is to summarize my review of the shooting that occurred on December 29, 2019 involving Juneau Police Department ("JPD") Officer James Esbenshade and that resulted in Kelly Stephens's death. On that day, Mr. Stephens approached a man in the Super Bear Supermarket parking lot, swung what was described as a chain with a "grappling hook" at the end of it, and threatened to kill the man. The man called police. Officer Esbenshade responded and took the man's report. Officers were not able to find Mr. Stephens at that time.

Later that same evening, Officer Esbenshade was dispatched to the area near the Chinook Apartments following a report that the caller had heard yelling and a gunshot. Officer Esbenshade parked on Cinema Drive and got out of his car. Mr. Stephens approached him, swinging a long dog leash over his head with a carabiner and chain attached to the end. Mr. Stephens was yelling that he was going to kill Officer Esbenshade while advancing on him. Officer Esbenshade yelled for the man to drop the weapon while retreating away from him. He then fired his pistol at Mr. Stephens, striking him in the lower torso. Mr. Stephens died a short time later.

Having reviewed the results of JPD's investigation, including video recordings and eye-witness statements, I have concluded that the State of Alaska will not bring criminal charges against Officer Esbenshade because his use of deadly force was

reasonably necessary to defend himself from the imminent threat of death or serious physical injury posed by Mr. Stephens. The reasons and rationale for my decision are further explained in this letter.

I. Factual Summary<sup>1</sup>

*Incident at the Super Bear involving Mr. Stephens on the night of December 28*

On December 28, 2019 at about 10:22 p.m., JPD was called to the Super Bear Supermarket on Mendenhall Loop Road for a report of a man threatening a patron. Kenny Williams told officers that as he was getting out of his car to enter the store he saw a man approaching him. The man, later identified as Mr. Stephens, was wearing a red hoodie with a coat over it and swinging a long chain that had what looked like a "grappling hook" at the end of it. The man was yelling, "Fuck the free world!" Mr. Stephens then said, "I'm gonna kill you! I'm gonna kill you!" Mr. Williams told the man that he would defend himself, and other people in the parking lot told the man to leave. Mr. Williams went into the store, told employees that there was a man in the parking lot attacking patrons, and then called 911. Officers arrived at the Super Bear, but they were unable to find Mr. Stephens. Officer Esbenshade interviewed Mr. Williams about what had happened.

Detectives interviewed Kelly and Nathan Reddekopp the next day. The Reddekopp's said they saw Mr. Stephens in the Super Bear parking lot yelling for someone to "call the cops" because he wanted the cops "to kill him." They thought that he was under the influence of some type of drug due to how aggravated and aggressive he was acting. They said that they saw him threaten a man who was also in the parking lot by swinging a dog leash over his head.

Marianne Jacobs also spoke to detectives. She said that she was leaving the store when she saw that a man had trapped Kenny Williams between two cars. (Ms. Jacobs knows Mr. Williams.) The man was swinging a chain at Mr. Williams and threatening to kill him. Ms. Jacobs got in her car, drove up to the man, and told him to stop. She said to detectives that he responded, "Go ahead and call the police, I want to commit suicide by police." She also said that the chain had a hook attached to the end of it.<sup>2</sup>

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<sup>1</sup> This factual summary is based upon my review of the investigation conducted in the incident number listed above. The investigation materials included, among other materials, body-camera video, written reports, in-car video recordings, audio recordings, photographs of the scene of the incident, videos captured by businesses, and recorded witness interviews.

<sup>2</sup> It is possible that the "grappling hook" or "hook" described by witnesses in the Super Bear parking lot was a carabiner with the gate open.

### *Shooting incident at the Chinook Apartments on the morning on December 29*

Later on the same night that Mr. Stephens had assaulted Mr. Williams, at approximately 12:30 a.m. on December 29, JPD received a 911 call reporting that there had been a shot fired in the area around the Chinook Apartments on Cinema Drive. The caller said that there was yelling and that someone was trying to get into her apartment. Officer Esbenshade drove to the area in his marked police car. He parked on Cinema Drive and got out of his car. The car was stopped in the road on Cinema Drive, near the entrance to the church parking lot closest to the apartment complex.

A body-word camera recorded Officer Esbenshade's actions. The night was dark and there was not enough ambient artificial illumination to see the surrounding area or details for portions of the video.<sup>3</sup> However, the video does contain a clear audio recording. A description of the event, as depicted in the body-worn camera footage, follows.

After parking his car, Officer Esbenshade opened the trunk. The interior of the trunk was illuminated, and he armed himself with his patrol rifle. He can be heard handling the weapon.<sup>4</sup> As he walked out into the roadway and towards the apartments, he said to someone, "What's going on guys?" People yelled in the distance and, due to backlighting from the apartment building, someone can be seen to walk towards Officer Esbenshade from the entrance to the apartments' parking lot. A dog can also be seen walking. Officer Esbenshade again said, "What's going on? Stop right there." A man, later identified as Mr. Stephens, yelled, "Fuck you." Officer Esbenshade again said more forcefully, "Stop right there. Hold it." Mr. Stephens continued to yell, "Fuck you" multiple times. While Mr. Stephens is not visible, enough of the roadway is visible to tell that Officer Esbenshade stopped walking forwards and began to back up. Office Esbenshade said, "Hold it. Right there." He then said, "Stop. Let me see your hands. Let me see your hands." Mr. Stephens then yelled, "Shoot me." Office Esbenshade responded, "What do you got?" Mr. Stephens yelled, "Fucking shoot me!"

While Mr. Stephens was not visible in the video, it was clear from ambient lighting on the pavement that Officer Esbenshade continued to walk backwards away from Mr. Stephens. Footsteps can be heard as Officer Esbenshade backed up and then the sounds of something metal hitting the ground can be heard.<sup>5</sup> Mr. Stephens yelled, "I will kill you!" Officer Esbenshade continued to back up. Mr. Stephens again

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<sup>3</sup> The temperature was in the upper 30s that night, with occasional light rain. It was not raining at the time of the incident.

<sup>4</sup> Based on witness interviews and the condition of the rifle after the incident he was most likely trying to load a magazine into the rifle.

<sup>5</sup> Based on the statement made by Trevoer Williams, who witnessed the shooting, this was most likely the sound of Officer Esbenshade's patrol rifle, which he dropped at the scene after being unable to fully insert the magazine into the rifle.

yelled, "I will kill you!" Officer Esbenshade said, "Step it up. Step it up." (This statement was a request on the police radio for other responding officers to arrive as quickly as possible.) Mr. Stephens yelled again, "I will kill you!" The outline of Officer Esbenshade's pistol can be seen on the video as he held it in his right hand and then raised it to aim at Mr. Stephens. Lights to the side of the street reflecting off the pavement show that Officer Esbenshade was retreating when he raised the firearm. There was a single gunshot, followed by a scream of pain from Mr. Stephens.

Several seconds after the shot was fired Officer Esbenshade radioed, "Shots fired. I got one down." Officer Esbenshade then took a step or two forward and illuminated Mr. Stephens with a flashlight. Mr. Stephens was lying in a fetal position on his left side. He was facing towards Officer Esbenshade, and he was wearing a red hoodie with a gray jacket over it. As Officer Esbenshade approached Mr. Stephens, it appeared from his gait on the video that he took four or five steps to stand close to Mr. Stephens.

Officer Vaughn then arrived. In the video, his light illuminated Mr. Stephens and the ground at Officer Esbenshade's feet. Officer Esbenshade's patrol rifle can be seen on the ground, with its magazine detached from the rifle. Officer Vaughn asked if Mr. Stephens had any weapons. Officer Esbenshade responded, "He had a chain."

In addition to the body-camera, Officer Esbenshade's vehicle was equipped with a dash-mounted camera. The video footage shows Mr. Stephens walking out of the apartment complex parking lot and towards where Officer Esbenshade was. Mr. Stephens was swinging a leash and chain over his head. Mr. Stephens walked out of the area of the camera's view. The in-car video footage does not show Officer Esbenshade or the shooting. Trevoer Williams, who was later interviewed by officers and detectives, can be seen standing on the side of Cinema Drive opposite the apartment complex.

Officer Vaughn reported that when he arrived on Cinema Drive, he saw Officer Esbenshade standing in the road with his pistol held at "low ready." There was a man lying on his side in front of Officer Esbenshade. After parking and getting out of his car, Officer Vaughn saw Officer Esbenshade's rifle on the ground next to a single round of ammunition and the magazine. Officer Vaughn had to ask multiple bystanders to back away from the scene before he could safely attend to Mr. Stephens.

Police Recruit Imhof, who was riding with Officer Vaughn, said that he saw Officer Esbenshade kick the rifle away from where Mr. Stephens was lying.

#### *Investigation at the scene and witness interviews*

Other officers and medical personnel continued to arrive on the scene. Officers set up a tape perimeter to keep bystanders back. Emergency medical personnel also

arrived and provided aid to Mr. Stephens prior to taking him to Bartlett Regional Hospital. Mr. Stephens died of injuries related to being shot once in the lower abdomen shortly after arriving at the hospital.

Sergeant Dallas took Officer Esbenshade's body-worn camera to preserve the footage on it. Other officers documented the scene by taking photographs and using a 3-D scanner. Once a perimeter was established, officers also began to look for and interview witnesses.

Trevoer Williams, who is not related to Kerry Williams from the earlier incident at Super Bear, directly witnessed the shooting. Mr. Williams told Officer Vaughn that prior to Officer Esbenshade's arrival, Mr. Stephens had been threatening him with the chain. Mr. Williams said that he had been leaving the apartment complex when he heard someone screaming by the road. Mr. Williams thought the man might need help, so he walked towards the yelling. Two other people also came out of a nearby building. The people asked Mr. Stephens why he was yelling, and he said that someone had just "killed his girl." Mr. Stephens then pointed at Mr. Williams. Mr. Williams said that Mr. Stephens then began to walk towards him while swinging a chain over his head. Mr. Williams said that Mr. Stephens's actions scared him. At that point, Officer Esbenshade arrived. Mr. Williams said that the officer got out of his car and that then Mr. Stephens shifted his attention to the officer. Mr. Williams said that the officer had his rifle out and was telling Mr. Stephens to stop. Mr. Stephens then started swinging his chain again, while advancing on the officer. Mr. Williams said that the officer was trying to load his rifle, but the magazine fell out. As the officer bent down to pick it up, Mr. Stephens started to swing the chain and took three quick steps towards the officer. Mr. Williams estimated that Mr. Stephens was about 20 feet from the officer. Mr. Williams said that the officer then drew his sidearm. He said that the officer told the man to stop, but that the man went to take another step. To Mr. Williams, it "looked like he was going to attack at that point." After that, the officer shot Mr. Stephens. When asked what he thought Mr. Stephens was trying to do, Mr. Williams said that Mr. Stephens was trying to attack the officer or anybody that was around him.<sup>6</sup>

Trina Hostetler made the initial call to 911 reporting that she had heard a shot fired. She and her daughter told Officer Vaughn that they had heard a man outside yelling and banging. Something had then hit the window that sounded like a shot. The sound was followed by more banging and what sounded like someone trying to get into the house. Because they were scared, they decided to call 911.

Officers found a dog leash in the drainage ditch by the street near where Mr. Stephens had been lying. The leash had a metal carabiner linking it to a metal chain.

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<sup>6</sup> Mr. Williams was interviewed a second time by Detective Taylor a few hours later at JPD. Mr. Williams gave essentially the same information.

The chain appears to be from a motorcycle or mountain bike and was approximately 10 inches in diameter. The total length of the leash, carabiner, and metal chain was approximately 69 inches.

Through his attorney, Officer Esbenshade declined to be interviewed about the shooting.

## II. Analysis

Under Alaska law, 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.<sup>7</sup> 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.<sup>8</sup> Additionally, an officer acting within the scope and authority of her employment does not have a duty to safely leave the area in order to avoid the necessity of using deadly force.<sup>9</sup> 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.

Applying the law discussed above, Officer Esbenshade's use of deadly force was reasonably necessary to defend himself from the threat of serious physical injury posed by Mr. Stephens. Officer Esbenshade was aware from his conversation with Kenny Williams just a few hours before the shooting that Mr. Stephens had been acting aggressively and making threats while armed with a chain and "grappling hook." He was also responding to what he believed to be a dangerous situation based on the 911 report of gunshots. Upon arriving and exiting his car, Mr. Stephens immediately confronted him. Mr. Stephens made repeated threats that he was going to kill Officer Esbenshade while advancing on him and swinging the leash and chain over his head. The chain and carabiner, when wielded in the manner described by witnesses and seen on the in-car video, were capable of causing serious physical injury to anyone struck.<sup>10</sup> Based on the above, Officer Esbenshade could have subjectively believed that Mr. Stephens was going to assault him with the chain. And, based on Trevoer Williams's

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<sup>7</sup> AS 11.81.335 and AS 11.81.340.

<sup>8</sup> *Id.*

<sup>9</sup> AS 11.81.335(b)(2).

<sup>10</sup> Under AS 11.81.900(b)(59)(B), "serious physical injury" means "physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy." The chain and carabiner, when swung at the end of a 5-foot-long leash, would have sufficient weight and speed to cause injuries that could lead to protracted disfigurement or impairment of health. For example, the chain or metal carabiner hitting a person in the face could cause serious lacerations and potentially the loss of one or both eyes.

statement, that belief was also objectively reasonable. Officer Esbenshade had also repeatedly told Mr. Stephens to stop coming at him and had physically backed up to try to create space between them. Mr. Stephens did not stop. Officer Esbenshade could therefore reasonably conclude that deadly force was necessary to protect himself from the imminent<sup>11</sup> threat of serious physical injury posed by Mr. Stephens.

Based upon these circumstances and the foregoing analysis, I conclude that Officer Esbenshade was legally justified in his use of deadly force in order to defend himself from the threat of serious physical injury posed by Mr. Stephens.

### III. Conclusion

The State of Alaska will not bring criminal charges against Officer Esbenshade in relation to his use of deadly force on December 29, 2019. The purpose of my review was limited to deciding whether criminal charges were supported by the circumstances as determined by the investigation into this matter. I cannot express any opinion as to whether the officer's actions comported with any relevant JPD 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](mailto:jack.mckenna@alaska.gov).

Sincerely,

KEVIN G. CLARKSON  
ATTORNEY GENERAL



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

Cc:

Julie Willoughby (attorney for Officer Esbenshade)  
Sent electronically via email

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<sup>11</sup> At the time of the shooting, Trevoer Williams estimated that Mr. Stephens was about 20 feet from Officer Esbenshade. This approximate distance is also supported by the location of various items found at the scene, including the rifle and shell casing from Officer Esbenshade's pistol. Additionally, based upon the location of Officer Esbenshade's rifle in the video immediately following the shooting and the amount of ground covered during the confrontation, it appears that Mr. Stephens was close enough to Officer Esbenshade to place him in danger of imminent attack.