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January 22, 2018

Chief Tom Clemons
Seward Police Department
410 Adams St.
Seward, AK 99664

Re: SPD Case No. 17-2852; AST Incident AK 17070447

Chief Clemons:

This letter summarizes my review of the use of deadly force by Seward Police Department (SPD) Officer Matthew "Eddie" Armstrong against Micah McComas on October 1, 2017. McComas was stopped by Officer Armstrong for a speeding violation. Officer Armstrong discovered that McComas was in possession of narcotics and further believed that McComas was driving under the influence of drugs. McComas was handcuffed, read his Miranda rights, and placed in the back of Officer Armstrong's patrol vehicle. McComas subsequently climbed into the front of Officer Armstrong's patrol vehicle and attempted to steal the vehicle. McComas then used force against Officer Armstrong in an attempt to prevent Officer Armstrong from stopping him. Officer Armstrong responded to McComas' use of force and attempted escape by discharging his weapon five times. McComas was struck multiple times and died from his wounds. Under these circumstances, criminal charges against Officer Armstrong are inappropriate.

The reasons for my decision and the underlying rationale are set forth below. They are based on my review of the Department of Public Safety's (DPS) investigative reports, along with the and accompanying audios, videos, diagrams, and photographs, as well as the autopsy report from the State Medical Examiner's (SME) Office, and the agency-assist materials from the Seward Police Department (SPD).¹

¹ My review is independent of any administrative assessment your agency may undertake. Accordingly, I express no opinion in that regard.

Summary of Pertinent Facts

On October 1, 2017, at approximately 1:30 a.m., Officer Armstrong was traveling northbound on the Seward Highway when he observed a 2002 Kia Sportage speeding southbound. Officer Armstrong initiated a traffic stop and the vehicle pulled into the Safeway parking lot. Officer Armstrong approached the driver's side of the vehicle and made contact with McComas and his passenger Amy Campbell. The contact was video and audio recorded by Officer Armstrong's WatchGuard style body-cam.²

Officer Armstrong learned that McComas was driving with a suspended license, without insurance, and on expired tags. Officer Armstrong observed that McComas was moving his hands a lot and that his pupils seemed larger than normal. In addition, Officer Armstrong noticed an odor of marijuana and observed a green leafy substance on McComas' jacket. Officer Armstrong's training as a drug recognition expert (DRE) led him to believe that McComas might be under the influence of stimulants.

Officer Armstrong asked McComas to step outside of the vehicle in order to evaluate him for operating the vehicle under the influence of narcotics. McComas complied with Officer Armstrong's request and denied possessing any drugs or weapons. Officer Armstrong was concerned about being the only officer on duty in Seward and as a result, he decided to place McComas in the back of his patrol car.³

Officer Armstrong told McComas that he was not under arrest, but that he needed to search him before putting him in his patrol vehicle. Officer Armstrong's pat down search revealed a container attached to a key ring in McComas' pocket. McComas denied knowing what is inside the container and told Officer Armstrong not to open it as his lawyer had explained that officers cannot open closed containers.

Officer Armstrong next checked McComas' wallet due to the fact that it was large enough to possibly hold a knife. Officer Armstrong observes multiple bindles of what appear to be methamphetamine inside the wallet. At this point, Officer Armstrong intended to ask for a warrant to search McComas as well as a warrant for the vehicle if Campbell did not give consent for a search. Officer Armstrong explained to McComas that he was being handcuffed and detained for further investigation. Officer Armstrong's body-cam showed that McComas was handcuffed behind his back, read his Miranda rights, and placed in the back seat of Officer Armstrong's patrol vehicle.

Officer Armstrong continued his investigation by contacting Campbell who gave Officer Armstrong consent to search her vehicle. Campbell exited the vehicle and stood

² The contact was also recorded by a camera inside of Officer Armstrong's patrol vehicle.

³ Officer Armstrong was the only officer on duty in Seward due to the fact that other officers were gone for training. The closest backup for Officer Armstrong was DPS Troopers in Soldotna as no other law enforcement officers were on duty in the Seward area.

near the front of the Kia Sportage. Approximately three minutes later, a horn can be heard honking in two long blasts. Officer Armstrong turned from Campbell's vehicle and shined his flashlight toward his patrol car. The patrol vehicle spotlight was in Officer Armstrong's face, but as he got closer he could see that McComas was going feet first through the partition between the front and back seats and that his feet were hitting the horn. At this point, Officer Armstrong ran to the driver's side of his patrol vehicle.⁴

Officer Armstrong pulled out his gun as he reached the driver's door and can be heard yelling "get out of the car." Officer Armstrong then opened up the driver's door and the body-cam video shows McComas sitting in the driver's seat. Officer Armstrong's gun is in his right hand and he orders McComas to not move. McComas was fully in the driver's seat, his hands were still cuffed, but now in front of him, and he was reaching for the gear shifter. Officer Armstrong attempted to reach the gear shift with his left hand, but the radar unit was blocking his reach.

McComas shifted the vehicle into gear and according to Officer Armstrong, McComas "hits the gas and takes off." The body-cam is knocked off of Officer Armstrong at this point resulting in no video and incomprehensible audio. Officer Armstrong stated that he believed he was inside the door of the car when McComas took off and that he fired after being hit by the vehicle and knocked backwards.⁵

Officer Armstrong suffered a laceration above his left ear and was knocked backwards onto his back. Officer Armstrong can then be heard yelling "don't move, don't move" and calling in shots fired. At this point, Officer Armstrong ran toward his vehicle, opened up the passenger door, and dove into the car to put the vehicle in park. Once the vehicle was successfully stopped, Officer Armstrong removed McComas from the vehicle to begin administering first aid. McComas stated at this point that "I was just trying to get away, I was gonna get away."

McComas died at the hospital as a result of his wounds. The autopsy report indicated that the cause of death was the result of a gunshot wound to the trunk and the multiple gunshot wounds to the extremities were contributing factors. The autopsy report also contained a toxicology report indicating that McComas' blood tested positive for amphetamine (200 ng/mL), methamphetamine (2400 ng/mL), and diazepam (38 ng/mL).⁶

⁴ The camera inside of Officer Armstrong's patrol vehicle recorded the contact up to the point where Officer Armstrong begins running to the driver's door. At this point, the camera appears to be hit by McComas as he is climbing into the driver's seat.

⁵ Officer Armstrong initially thought he fired one shot prior to being hit, but later stated that he believed he fired after being hit by his patrol vehicle. The sequence of the video suggests that Officer Armstrong was hit first due to the body-cam being knocked off of Officer Armstrong before the shots were fired.

⁶ The toxicology report further indicated that blood levels of 200 – 600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior.

The scene investigation conducted by DPS revealed five shell casings on the ground in a linear orientation along with Officer Armstrong's body-cam and baseball hat.⁷ Officer Armstrong's broken glasses were located under the open door of his patrol vehicle with the arm of the glasses at the scene of the shooting. McComas was found in possession of heroin and methamphetamine. Diazepam pills were located inside of Officer Armstrong's vehicle both in the front and back seat.⁸ Marijuana, dime baggies, and a digital scale were located inside of Campbell's vehicle.

Analysis

Alaska law permits the use of deadly force in self-defense upon another person when the person reasonably believes deadly force is necessary for self-defense against robbery in any degree.⁹ Alaska law further permits a peace officer to use deadly force when the officer reasonably believes the use of deadly force is necessary to terminate the escape or attempted escape from custody of a person the officer reasonably believes has committed or attempted to commit a felony involving the use of force against a person.¹⁰

At the time that Officer Armstrong made the decision to fire his weapon, McComas was in the process of committing robbery by taking Officer Armstrong's vehicle by force.¹¹ A person commits the crime of robbery in the second degree if in the course of taking or attempting to take property from the immediate presence or control of another, the person uses force upon another to prevent or overcome resistance to the taking of the property.¹²

McComas was actively attempting to steal Officer Armstrong's vehicle. McComas ignored Officer Armstrong's commands to not move, shifted the vehicle in gear, and accelerated when Officer Armstrong was actively trying to prevent McComas from stealing his vehicle. McComas committed the offense of robbery by using force to overcome Officer Armstrong's resistance to the taking of his patrol vehicle.¹³ McComas'

⁷ When interviewed, Officer Armstrong stated that he thought he fired two or three rounds at McComas, but the evidence indicates he fired a total of five times.

⁸ The diazepam pills presumably fell out of McComas' pockets when crawling from the back to the front seat of the patrol vehicle.

⁹ AS 11.81.335(a)(7).

¹⁰ AS 11.81.370(a)(1).

¹¹ AS 11.41.510(a)(1).

¹² *See id.*; a person commits the crime of robbery in the first degree when using a dangerous instrument in the commission of a robbery. *See* AS 11.41.500(a)(2); AS 11.81.900(b)(15); *see also Gibson v. State*, 346 P.3d 977 (Alaska App. 2015) (noting that a vehicle can qualify as a dangerous instrument when it is used in a manner that creates a real danger of serious physical injury, even if no one suffers serious injury).

¹³ AS 11.41.510(a)(1).

use of the vehicle in this manner was capable of causing death or serious physical injury thus constituting a robbery in the first degree.¹⁴

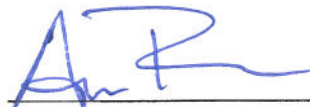
When interviewed, Officer Armstrong stated that at the time he decided to shoot, he knew that McComas was attempting to steal his vehicle with firearms in the trunk and he had just been hit by his vehicle. Officer Armstrong also stated that he was concerned for his safety, the safety of Campbell, and worried about stopping McComas and/or recovering his vehicle due to the fact that he was the only officer on duty in the Seward area. Additionally, McComas was actively committing multiple felony offenses and using force against Officer Armstrong in an attempt to escape from custody.¹⁵

McComas used force against Officer Armstrong in an attempt to steal the patrol vehicle and to escape custody. Under these circumstances, it was reasonable for Officer Armstrong to believe that the use of deadly force was necessary to stop McComas. As a result, criminal charges are inappropriate.

Conclusion

I will not institute criminal charges against Officer Armstrong relating to the death of Micah McComas on October 1, 2017. Please advise Officer Armstrong of my decision. If you, Officer Armstrong, or members of the Seward Police Department have any questions, please contact me. I can be reached at (907) 269-6292 or by email at andrew.peterson@alaska.gov.

Sincerely,
JAHNA LINDEMUTH
ATTORNEY GENERAL



Andrew Peterson
Chief Assistant Attorney General
Office of Special Prosecutions

¹⁴ AS 11.41.500(a)(2).

¹⁵ Officer Armstrong stated that McComas was not under arrest at the time, but McComas was clearly not free to leave at the time he decided to steal Officer Armstrong's patrol vehicle.