



THE STATE  
of **ALASKA**  
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July 11, 2024

Colonel Maurice Hughes  
Director, Alaska State Troopers  
5700 E. Tudor Road  
Anchorage, Alaska 99507

**RE:** Use of Deadly Force Review—AST Case No. AK 23-114400

Colonel Hughes:

This letter summarizes the Office of Special Prosecutions'<sup>1</sup> review of the incident involving Alaska State Trooper<sup>2</sup> Timothy Rosario's use of deadly force against Timothy Thomas on October 30, 2023 in Tok, Alaska. This analysis is based on my review of the investigative reports related to this incident, along with the accompanying interviews, audio and video recordings, diagrams, photographs, autopsy report from the State Medical Examiner's Office, and other evidence submitted to date.<sup>3</sup> The purpose of the evaluation in this matter is to determine whether Trooper Rosario should face criminal charges for his use of deadly force during this incident.<sup>4</sup> After applying the governing law to the facts and circumstances surrounding this incident, OSP will not file criminal charges against Trooper Rosario.

***Summary of Pertinent Facts***<sup>5</sup>

On October 30, 2023, at approximately 2:30 a.m., a 911 call was placed by Ryan Rock-

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<sup>1</sup> The Office of Special Prosecutions is hereafter referred to as OSP.

<sup>2</sup> The Alaska State Troopers are hereafter referred to as AST.

<sup>3</sup> This review is based on the information provided up to the date this letter was written. Additional information not previously provided to OSP for review could change the analysis in this matter.

<sup>4</sup> The purpose of OSP's review is solely to determine whether criminal charges against the officer are warranted given his use of deadly force. OSP does not review these cases for policy violations or to determine whether an officer's conduct is appropriate under any applicable use-of-force policies. OSP also expresses no opinion as to the general appropriateness of any AST policies, including use-of-force policies.

<sup>5</sup> This factual summary is based upon the investigative materials provided to OSP in the above-referenced case, including written reports, radio traffic records, videos from the incident, recorded interviews, and photographs. This summary is limited to information necessary to explain my decision and the facts contained in this letter are those 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 reviewed.

Albert from the Three Bears Motel in Tok, Alaska. Mr. Rock-Albert reported his cousin, Timothy Thomas, was drunk and aggressively trying to get into his motel room. The Three Bears Motel is off the Glenn Highway, to the east of the highway. The motel consists of a front building with an office and store that faces west, towards the Glenn Highway, and two buildings behind that contain guest rooms.<sup>6</sup> The two buildings with guest rooms have rooms along the north and south sides of each building, so that the rooms along the south side of one building face the rooms along the north side of the other building, separated by a parking lot. The doors to the rooms open directly to the outside of the building, with a covered walkway along the north and south sides of both buildings, in front of the rooms. Approximately 30 yards from the east end of the buildings is a treed area that leads to a residential area. For ease of reference, in this letter, the two parallel buildings containing guestrooms will be referred to as “Building 1” (for the northern building) and “Building 2” (for the southern building).

On October 30, 2023, Mr. Rock-Albert called 911 repeatedly over the course of a half an hour due to Mr. Thomas’ actions. The 911 calls are summarized below:

**Call #1: 2:35 a.m.**

Mr. Rock-Albert reported there was “someone” at the front of his motel room door who was drunk and would not leave. He said the person kept saying he was going to break down the door; Mr. Rock-Albert requested help “ASAP.” When asked by dispatch if he knew who the individual was, Mr. Rock-Albert said he wanted to make the report “anonymously” and then told the dispatcher the person was “Timothy Thomas, Jr.”

Mr. Rock-Albert told the dispatcher that he was staying at the Three Bears Motel, in Room 110. He said Mr. Thomas heard through “the grapevine” that he was staying there, and just showed up and started to bang on the door, threatening to break down the door. Mr. Rock-Albert said Mr. Thomas had been there for about 10 minutes. Mr. Rock-Albert stated that he told Mr. Thomas multiple times to go away. Mr. Rock-Albert said there were three people staying in the room: him, his dad, and his cousin. Mr. Rock-Albert identified his cousin as Anthony Nelson and his father as Roger Albert. Mr. Rock-Albert said he did not want anyone else to get woken up nor did he want to have the motel bill him for any fines for loud noise. Mr. Rock-Albert asked for the Troopers to respond.

**Call #2: 2:48 a.m.**

Mr. Rock-Albert called dispatch again at 2:48 a.m. and said that he called 30 minutes ago and had not heard from a Trooper. He reported Mr. Thomas was now trying to break through the window.

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<sup>6</sup> See Attachment 1, which contains a map of the scene.

**Call #3: 2:52 a.m.**

Mr. Rock-Albert told dispatchers Mr. Thomas was now trying to kick in the door to the room. Mr. Rock-Albert said Mr. Thomas was wearing a grey sweater and that he was about six feet tall. When asked by the dispatcher if Mr. Thomas had any weapons on him, Mr. Rock-Albert said, “not that I know of,” but also told the dispatcher Mr. Thomas carries “at times,” “usually handguns.” Mr. Rock-Albert told dispatchers that Mr. Thomas was actively banging on the door at the time of the call.

**Call #4: 2:59 a.m.**

Mr. Rock-Albert placed a fourth call to dispatch and said Mr. Thomas was now knocking on a stranger’s door, in the room straight across the parking lot from Room 110. Mr. Rock-Albert stated that he did not know the room number, but there was a black truck parked in front of the room. He said Mr. Thomas was going back and forth between the room with the truck and Room 110.

**Response**

At 2:53 a.m., Trooper dispatch notified Trooper Rosario of the calls. Trooper Rosario requested dispatch contact Sgt. Hessler as well so that he would have backup when he responded. Sgt. Hessler was notified of Trooper Rosario’s request for assistance at approximately 2:56 a.m. Dispatch aired an officer safety advisement over the radio that Mr. Thomas “will resist arrest.” Dispatch also aired that Mr. Thomas was on “conditions of release,” i.e., bail conditions, in two cases and said they would email the conditions to the involved officers. Dispatch confirmed over the radio that one of Mr. Thomas’ conditions of release was that he was not to possess or consume alcohol. Mr. Thomas also had bail conditions that barred him from having weapons, and he was required to be with one of two designated third-party custodians at all times.

Trooper Rosario arrived on scene at approximately 3:01 a.m. and advised dispatch he was in the area. He was wearing an AST uniform and driving a fully-marked AST patrol vehicle. Approximately one minute later, Trooper Rosario aired over the radio that “he has a gun” and then, almost immediately after, he reported “shots fired.”

Trooper Rosario’s vehicle was equipped with an in-car video recording system. It was not recording audio at the time of the incident, but it did record video. A review of the video shows Trooper Rosario pull up to the motel from the south. Mr. Thomas is visible on the video as Trooper Rosario pulls up, standing near the door to Room 110, which is the first room on the northwest corner of Building 2, and the room the 911 calls came from. Based on the direction of the patrol car’s travel, the angle of the camera view, and a car that is parked in front of a room, almost immediately after Trooper Rosario arrives on the scene, there is approximately six seconds where Mr. Thomas is not visible on the in car video.

Although the video does not capture Mr. Thomas, from the angle of travel, it appears that Trooper Rosario would have been able to see Mr. Thomas during this time through the car windows. When Mr. Thomas is next visible on the video, he has walked down the covered walkway in front of the north side of Building 2 about halfway down the length of the motel building. Mr. Thomas is then seen continuing to walk east along Building 2, towards where Room 118 is located, at the northeast end of Building 2. From the video, Room 118 appears to be occupied because a red SUV is parked in front of the door. The walkway area is seen to be lit, but the rest of the area past the walkway is dark except for the light from Trooper Rosario's headlights.

The video shows Mr. Thomas holding something that appears to be a rifle in his right hand, by the pistol grip, with the barrel swinging as he walked. Mr. Thomas' left hand is in his pocket and in the video it seems he is manipulating something in his pocket as he walks to the east, toward the end of the building. As Mr. Thomas gets to the east end of the walkway, past the last room, approximately 20 seconds after Trooper Rosario arrived on scene, the video depicts him falling to the ground. Trooper Rosario then aired over the radio that he had fired shots.

Alaska Bureau of Investigations<sup>7</sup> investigators also collected video from the Three Bears Motel. That video, which is taken from a fair distance away, shows Mr. Thomas standing at the door to Room 110. At one point he appears to be pushing or leaning on the door to the room. As Trooper Rosario pulls up, Mr. Thomas is seen immediately walking away from Trooper Rosario's vehicle, heading to the opposite side of the building. It is hard to get a clear visual of Mr. Thomas' actions due to the distance between the camera and Mr. Thomas, but the video appears to show Mr. Thomas move or turn slightly towards the direction of Trooper Rosario's vehicle two times as he is walking down the walkway and as Trooper Rosario's vehicle pulls up parallel to him.

Sgt. Hessler arrived on scene approximately seven minutes after Trooper Rosario arrived. Sgt. Hessler reported he saw Trooper Rosario's vehicle parked in between the two buildings of the motel with its headlights approaching the far end of the parking lot, to the east. Sgt. Hessler said there was a civilian vehicle parked in front of the motel on either side of Trooper Rosario's vehicle, and a third vehicle at the far end of the parking area, in front of the building on the right side as he drove up. Sgt. Hessler said as he approached, he saw a male lying on his front side a short distance off the east end of the walkway. Sgt. Hessler and Trooper Rosario approached Mr. Thomas to render aid but determined he was deceased. After the shooting, AST dispatched additional troopers to respond to the scene.

Trooper Rosario provided a brief summary of what happened to Sgt. Hessler, including that he saw Mr. Thomas immediately when he arrived on scene, that he told Mr.

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<sup>7</sup> The Alaska Bureau of Investigations is hereafter referred to as ABI.

Thomas multiple times to drop the gun, but Mr. Thomas had not responded to the commands. Trooper Rosario told Sgt. Hessler he fired his duty-issued pistol approximately three times. Sgt. Hessler reported that given the information Trooper Rosario relayed to him, particularly that Mr. Thomas was walking towards the far corner of the building armed with the rifle, based on his training and experience, his personal assessment was that if Mr. Thomas had turned the corner of the building, he would clearly have been in a position of advantage over Trooper Rosario, who was in the open in the parking lot.

The first responding officers secured the scene and conducted initial interviews. The responding officers saw a Palmetto State Armory AK-104 semi-automatic rifle, which is an AK-47 style rifle, next to Mr. Thomas' left side; they secured the firearm and provided it to investigators when they arrived on scene. The rifle did not have a magazine seated or a round in the chamber; officers located a magazine that appeared compatible with the rifle by Mr. Thomas' body in between Room 110 and Room 118.

ABI was assigned to investigate the shooting. They responded and documented and photographed the scene, collected FARO images, and documented and collected evidence. They noted Trooper Rosario's patrol vehicle was parked in the middle of the two motel buildings, near Room 110, which was to the right of the vehicle. The investigators observed and documented the magazine found in between Rooms 110 and 118. The responding investigators also observed and photographed Mr. Thomas' body, which was positioned face down, lying on his stomach, at the end of the walkway. They observed three gunshot wounds, one each to Mr. Thomas' upper, middle and lower back. Responding investigators noted the odor of alcohol coming from Mr. Thomas' body. Investigators found three spent 9mm shell casings nearby Trooper Rosario's vehicle. The casings found at the scene were the same brand and caliber as the ammunition observed loaded in Trooper Rosario's magazines. Investigators also inspected Trooper Rosario's duty-issued Glock model 17 pistol. They found that if the magazine had been fully loaded, with one in the chamber (as Trooper Rosario reported was the case), three cartridges were missing.

Trooper Rosario was interviewed by AST Investigator Nicholas Sailer. This interview was recorded. Trooper Rosario reported that he got a call from dispatch at about 2:45 a.m. or 2:50 a.m. reporting that there was a person on the line that had called 911 to report that "Timothy Thomas" was outside of their hotel room trying to get inside.

Trooper Rosario said dispatch reported the complainant had called twice before, and he was back on the phone now. Trooper Rosario told Investigator Sailer that he did not know whether dispatch was fully aware of who Timothy Thomas was, but he told the investigator that he knew who Mr. Thomas was from prior contacts. Trooper Rosario reported that based on his knowledge of Mr. Thomas' prior history and interactions with AST, contacts with Mr. Thomas were a "multiple Trooper call out." Trooper Rosario told

Investigator Sailer he believed he had previously been on three calls involving Mr. Thomas prior to the incident on October 30. Trooper Rosario also explained that AST had previous issues with Mr. Thomas requiring the use of the Troopers' Special Emergency Reaction Team (SERT).

Trooper Rosario specifically noted that sometime in the fall of 2022, AST had arrested Mr. Thomas for shooting into his house and assaulting a family member. Trooper Rosario said he had been dispatched to that scene. He said he was informed that Mr. Thomas had fired a gun into the air and said either he was looking for the Troopers, or that he knew they were out there. Trooper Rosario said other Troopers had been able to detain Mr. Thomas before he arrived on scene to that incident. Trooper Rosario also told the investigator he had previously contacted Mr. Thomas in the summer or fall of 2022 when Mr. Thomas was trying to break into a friend's house. Trooper Rosario said that during that contact, Mr. Thomas lunged at him. Trooper Rosario explained that Mr. Thomas was not armed during that interaction, but he was highly intoxicated and Trooper Rosario had to take him to the ground to arrest him. Trooper Rosario said that Mr. Thomas was combative with the officers during that incident, and made offhanded threats to Trooper Rosario, including a threat made after Mr. Thomas was in custody, that if Mr. Thomas saw Trooper Rosario again, Trooper Rosario would "find out." Trooper Rosario described another prior incident where Mr. Thomas was "very vocal" and had fought against Trooper Rosario when Trooper Rosario was trying to put cuffs on him.

Trooper Rosario told the investigator that based on his personal history with Mr. Thomas and knowledge about him, Mr. Thomas would not listen to or obey AST and had actively fought AST in the past. Trooper Rosario also highlighted that Mr. Thomas was a bigger guy, at about 5'9" or 5'10" and 230-250 pounds. Trooper Rosario noted that based on "the whole history of everything that we've dealt with with [sic] him," he told the dispatcher to call Sgt. Hessler out to the call as well.

Trooper Rosario indicated to Investigator Sailer that his original plan was to get to the general area of the motel but wait for Sgt. Hessler before he made contact. Trooper Rosario said that when he was en route to the scene, he asked dispatch for an update and was told that Mr. Thomas had been trying to kick in the door to the complainant's room, but had now moved to another person's hotel room and was trying to get into their hotel room.

Trooper Rosario said when he first was told of the situation, he believed there had been a possible attempted burglary. He said he did not know at that point whether it was Mr. Thomas' room that Mr. Thomas was trying to get into, because it appeared that the occupants of the room knew him. Trooper Rosario said that initially he believed it could be an attempted burglary but realized it could also be merely a civil dispute. Trooper Rosario said that once he heard that Mr. Thomas was trying to get into a stranger's room, he believed

the situation had become a public safety hazard.

Trooper Rosario informed Investigator Sailer that when he learned Mr. Thomas was trying to get into another room, he decided that he would go straight to the hotel and establish some form of “standoff distance” between himself and Thomas while he waited for Sgt. Hessler to arrive. Trooper Rosario said that based on what he knew at the time, he did not think Mr. Thomas had a firearm on him. He said he did not respond in the way he would have if he had believed Mr. Thomas had a firearm on him. Trooper Rosario said his purpose in responding at that time was to keep distance from Mr. Thomas and ensure that he had “eyes on” Mr. Thomas and that there was AST presence at the motel as a public safety measure until Sgt. Hessler arrived and they could more proactively respond to the call. He said he would “rather” have had Sgt. Hessler with him at the time he arrived, but he thought Sgt. Hessler would likely only be about two minutes behind him. Trooper Rosario said he did not turn his lights and sirens on as he responded because he remembered from prior contacts that the Troopers were concerned about Mr. Thomas ambushing them if he heard them coming. Trooper Rosario told the investigator that in the past, when the Troopers went to Thomas’ house in Northway, they would pre-plan for an ambush and change the way they approached the house due to that concern.

Trooper Rosario said that as he pulled into the motel parking lot, it was very brightly lit because each of the rooms had a light in front of the door, and there were rooms on both sides of the parking lot providing light. Trooper Rosario said that after the rooms stopped at the end of the building, it was almost complete darkness. Trooper Rosario said when he arrived, he saw a male matching the weight and size of Timothy Thomas wearing a gray hoodie. Trooper Rosario stated that this person was towards the front of the hotel, walking down the concrete sidewalk in front of the room doors, heading in the direction of the back of the hotel.

Trooper Rosario said that when he pulled in, Mr. Thomas looked directly at him, and then immediately turned around and continued walking away from Trooper Rosario, towards the back of the motel. Trooper Rosario said that he knew Mr. Thomas knew who he was and that he was AST. He explained that he was in a clearly-marked patrol car in an area that was well-lighted. Trooper Rosario said he believed that Mr. Thomas knew what was going on and was aware that he would be arrested, although Trooper Rosario clarified he did not tell Mr. Thomas that he was under arrest. Trooper Rosario said that he told dispatch that he would be out of his vehicle with the subject, because he intended to issue verbal commands for him to stay there and not move. Trooper Rosario estimated that Mr. Thomas was about 50 to 75 feet away from him at first.

Trooper Rosario stated that he pulled his car between the buildings and stopped in the parking lot about midway down, because Mr. Thomas had already walked about halfway

down the length of the building. He said he was about parallel with Mr. Thomas because Mr. Thomas looked like he was about to start running and he did not want to be too far behind him. Trooper Rosario said that when he stopped his vehicle, he was about 20-25 feet from Mr. Thomas, who was just in front of the motel. As he pulled up, Trooper Rosario saw that Mr. Thomas was holding a firearm. He said he could tell the firearm was a rifle but indicated to Investigator Sailer that he could not tell precisely what kind of rifle it was.

When Trooper Rosario saw Mr. Thomas had a gun, he reported that he quickly jumped out of his vehicle; he said that he did not have time to flip the audio recording on the in-car system on before he jumped out. Trooper Rosario said he aired to dispatch that Mr. Thomas had a gun and immediately started yelling to Mr. Thomas to stop and drop the gun. Trooper Rosario said that "he didn't listen... he stopped and looked at me." Trooper Rosario said that as Mr. Thomas looked at him, something fell out of Mr. Thomas' hands, or pocket, or the gun. Trooper Rosario said it looked like a magazine, but he could not tell for sure because he was too far away. Trooper Rosario said that when the item fell and hit the ground, Mr. Thomas turned and walked away while still holding the gun; Trooper Rosario said he believed Mr. Thomas was then holding the gun with both hands.

Trooper Rosario told the investigator he told Mr. Thomas to drop the gun, and Mr. Thomas responded "No, I'm good," or words to that effect, and kept walking away from the Trooper at an increased speed. Trooper Rosario indicated he thought that Mr. Thomas was going to start running. He told the investigator that at that point he had given at least three loud commands to drop the gun, but he believed he likely gave more than three commands. Trooper Rosario said that based on what he knew, specifically with Mr. Thomas possibly trying to burglarize the first hotel room, the attempted burglary on the second hotel room, and with Mr. Thomas being armed with a rifle and ignoring repeated commands, he believed then that he was going to have to shoot at Mr. Thomas. He explained that because Mr. Thomas had not dropped the gun, he was concerned Mr. Thomas was going to use it to shoot him.

Trooper Rosario said Mr. Thomas continued to walk further down the walkway and mumbled something. Trooper Rosario told the investigator he continued to yell at Mr. Thomas to drop the gun and Mr. Thomas ignored him and kept on walking. Trooper Rosario said that to him, it looked like Mr. Thomas was either holding the gun with both hands or doing something in front of his body that Trooper Rosario could not see because Mr. Thomas' body was blocking the gun. Trooper Rosario said he thought that Mr. Thomas might have been trying to load a magazine into the gun in order to shoot him. Trooper Rosario said he determined he could not shoot at Mr. Thomas at that time because Mr. Thomas was in front of motel rooms and he did not want one of his shots to go into a room. Trooper Rosario said he moved around to the passenger side of his vehicle and yelled at Mr. Thomas one more time to drop the rifle.



Trooper Rosario said that Mr. Thomas did not drop the rifle, and so when Mr. Thomas passed the last pillar of the motel and was no longer in front of any motel rooms, Trooper Rosario fired his pistol at Mr. Thomas. Trooper Rosario said he was probably 25-30 feet away from Mr. Thomas when he fired. Trooper Rosario said he fired at Mr. Thomas one time; he said there was no response to the first shot, and so he fired two more times quickly afterwards. Trooper Rosario said that after the third shot, he saw Mr. Thomas fall. Trooper Rosario said he radioed that he had fired shots and Mr. Thomas was down. He said he also realized that he had not activated his car recording device and switched it on.

Trooper Rosario stated that at the time he fired, he believed that he was about to lose visual of Mr. Thomas as he left the lighted area. He said he was concerned Mr. Thomas was going to run off into the woods, and/or disappear behind the building and wait for Trooper Rosario to go past the building and then shoot Trooper Rosario. Trooper Rosario said he believed that if Mr. Thomas could get behind the building, Mr. Thomas would be in a good position to shoot at him. He said he was also worried that Mr. Thomas would then be able to set up some type of standoff and shoot someone else or get away. Trooper Rosario said he “fully thought he was going to shoot at me.” He also noted that Mr. Thomas had a rifle that he had refused to drop, but Trooper Rosario was only armed with a pistol. Trooper Rosario said he was not wearing a ballistic vest designed to protect against rifle fire. Trooper Rosario said he is familiar with what an AK-47 can do if fired.

Trooper Rosario said he was concerned that Mr. Thomas was trying to manipulate the gun, that he was not listening to commands, and that he was trying to head into the darkness—either to avoid arrest or to obtain a better position to shoot Trooper Rosario. Trooper Rosario expressed that he was worried if Mr. Thomas got away, it would turn into a “public safety hazard, like, for all of Tok if we end up having him disappear into the woods and then creating a standoff” with what looked to Trooper Rosario like an AK-47-style weapon. Trooper Rosario said that the woods behind the motel led to a residential area, and that he believed there were additional motel rooms on the other side of the building as well.

Trooper Rosario said that he realized that if Mr. Thomas started shooting at him while Mr. Thomas was standing in front of the motel rooms, Trooper Rosario would be in trouble because he could not return fire while the motel rooms were behind Mr. Thomas. He said that because of that, he went to the back of his vehicle, while continuing to give commands, to try and put some distance between him and Mr. Thomas. Trooper Rosario said that based on Mr. Thomas’ actions, he would have shot at Mr. Thomas earlier, but he waited because Mr. Thomas was in front of the motel rooms.

Trooper Rosario said that after he fired, he approached slowly to determine where Mr. Thomas was, and whether he still had the gun. He said he gave commands to Mr. Thomas but received no response. When Sgt. Hessler arrived, the two officers approached

him and realized that Mr. Thomas was deceased.

After providing the above statement, Trooper Rosario was permitted to review the video from his car. He said that the vantage point of the video more clearly showed the gun that was on Mr. Thomas' right side, as compared to what he saw. He said that from his vantage point, which was originally on the left side of the car, his view was more of the left side of Mr. Thomas' body and he did not see the right side of Mr. Thomas' body as clearly as the video showed. Trooper Rosario said he was focused on what Mr. Thomas' left hand was doing, which he indicated can be seen on the video rifling through his pocket. Trooper Rosario also noted that the video did not show Mr. Thomas dropping the item, and said that he believed that occurred a few steps before the video captured Mr. Thomas. Trooper Rosario said that at the moment Mr. Thomas dropped the item and Trooper Rosario commanded him to drop the gun and Mr. Thomas said no, Trooper Rosario would have fired on him, but did not because of the motel rooms behind Mr. Thomas. Trooper Rosario said based on his training, when someone has a weapon or firearm and you tell them to drop it and they do not drop it, it becomes a lethal force scenario.

Trooper Rosario clarified to the investigator that context matters, and based on what he knew of the situation, to include the investigation into two attempted burglaries, which had changed into potential armed burglaries based on what Trooper Rosario discovered when he arrived, the fact Mr. Thomas was not listening or following commands, was actively trying to flee, was very impaired, appeared to be manipulating the weapon, and was heading into a dark area while Trooper Rosario was in a well-lit area, Trooper Rosario believed Mr. Thomas was going to shoot him. Trooper Rosario noted that he gave multiple commands to drop the gun, to no effect, and he was concerned that if Mr. Thomas got into the dark, into the woods, or behind the building, it would turn into a standoff situation where potentially many other people would be injured. Trooper Rosario indicated that the video did not clearly capture Mr. Thomas dropping the item and manipulating the gun, as the video picked up right after that happened, but he had observed those actions. Trooper Rosario also clarified that he knows that a gun can still fire if there is no magazine inserted, as long as there is a round in the chamber.

After he fired shots from his duty-issued pistol, Trooper Rosario notified dispatch that shots were fired, and that Mr. Thomas was down on the ground. Trooper Rosario said that he could not see the rifle that Mr. Thomas was previously holding. Trooper Rosario stated that he had his firearm at "guard" and that he got close enough to see that Mr. Thomas was lying down on the ground and there was blood coming from his mouth. Trooper Rosario indicated that Mr. Thomas was not responding to commands at this point. Trooper Rosario told Investigator Sailer that when Sgt. Hessler arrived, he and Sgt. Hessler approached Mr. Thomas, at which point they saw the firearm buried in a little bit of snow, and saw Mr. Thomas could not be treated medically.

Sgt. Hessler reported that based on concerns due to Mr. Thomas' prior actions, he has instructed the Troopers he supervises, to include Trooper Rosario, that they should call for backup Trooper assistance any time they were dispatched to a call involving Mr. Thomas. Sgt. Hessler described that Mr. Thomas had previously been involved in multiple violent incidents and was the subject of several prior officer safety warnings and was known to resist arrest. Sgt. Hessler also noted that Mr. Thomas was on conditions of release (bail conditions set by the court) for two pending cases.<sup>8</sup> These conditions included that Mr. Thomas was not to possess deadly weapons, was not to consume alcohol, and was to be in the sight and sound of designated third-party custodians, who were not present at the incident on October 30. Sgt. Hessler detailed Mr. Thomas' prior contacts with AST, to include multiple incidents where he was in possession of firearms while intoxicated, resisted arrest, and threatened to use firearms against AST, as well as one incident where Mr. Thomas indicated he wanted AST to shoot him and fired a rifle knowing that AST was on scene. Sgt. Hessler said he made sure that all the Troopers in the Tok post were aware of Mr. Thomas' history and the incidents that had previously occurred.

Witnesses were interviewed, to include the original 911 caller, Ryan Rock-Albert, and the other occupants of Room 110, Roger Albert and Anthony Nelson. Mr. Rock-Albert said that they had come to Tok for the Halloween Carnival and dance. Mr. Rock-Albert initially told Troopers that Mr. Thomas had "heard through the grapevine" that they were in town. However, Mr. Albert later said that Mr. Thomas had come into Tok with the men, and that they were all hanging out that day. Mr. Albert told investigators that they had given Mr. Thomas cash for the room, and Mr. Thomas helped them by using his card for the room.

Mr. Albert said he and Mr. Thomas were drinking, and Mr. Thomas got drunk and started getting belligerent. The men said that they wanted to go to sleep and tried to get Mr. Thomas to go to sleep as well, but he was "sloppy drunk" and could barely stand. Mr. Albert said Mr. Thomas took off from the room around midnight or 1:00 a.m. Mr. Albert said that when Mr. Thomas left, they all fell asleep and then Mr. Thomas came back "raging." Mr. Rock-Albert said they were all asleep in the room at about 2:58 a.m. when they were awakened by loud banging on the door to the motel room. Mr. Rock-Albert said he recognized it was his cousin, Mr. Thomas, who was banging and kicking on the door, calling out their names, and yelling through the door that he would break down the door or

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<sup>8</sup> Mr. Thomas was charged in two open cases at the time of this incident, including multiple felony charges of Assault in the Third Degree, and misdemeanor charges of Assault in the Fourth Degree, Violations of Conditions of Release, and Misconduct Involving Weapons (for firing a gun recklessly). Both cases occurred while Mr. Thomas was intoxicated. Trooper Rosario was the arresting officer in one of the cases. During that incident, Trooper Rosario reported that while he was trying to detain Mr. Thomas, Mr. Thomas made multiple threats to him and challenged Trooper Rosario to fight, while actively kicking at Trooper Rosario and fighting against him. According to the reports from that incident, after Trooper Rosario detained Mr. Thomas in this incident, Mr. Thomas told Trooper Rosario he would find him after he was released and Trooper Rosario would "find out."

break a window. Mr. Rock-Albert said Mr. Thomas was obviously intoxicated. Mr. Rock-Albert said that they were not having any issues with Mr. Thomas before this. Mr. Rock-Albert said Mr. Thomas then went across the parking lot, to the room that was directly across from theirs, and banged on that door. (Later investigation identified the room as Room 201.) Mr. Rock-Albert said he did not see anything in Mr. Thomas' hands at that time. He said he saw Mr. Thomas "face plant" on the sidewalk near Room 201. He said Mr. Thomas then came back to Room 110 and began banging on the door again, then he began banging on the window and threatening to break the window. Mr. Rock-Albert and Mr. Albert said that the whole time they were waiting on the Troopers to arrive, Mr. Thomas was banging on their door or other doors.

Mr. Rock-Albert and Mr. Albert both said that as the Trooper arrived, Mr. Thomas said "what the fuck do you want?" Mr. Rock-Albert and Mr. Albert said they did not hear the Trooper say anything in response. Mr. Albert said shortly thereafter he heard gunshots. Mr. Rock-Albert and Mr. Nelson said they heard four gunshots; Mr. Albert said he heard three gunshots. Mr. Albert said they did not know who fired the shots. Mr. Rock-Albert told the Troopers that he did not know his cousin was "pieced up." Both Mr. Rock-Albert and Mr. Albert said that they did not see Mr. Thomas with a gun earlier in the day, and did not believe he had a gun earlier. None of them knew where he would have gotten the gun.

The occupant of Room 201 was also interviewed. He said that at approximately 2:30 a.m., he was asleep and awoke to someone banging on his door. He said the man sounded drunk and was yelling through the door, but the occupant could not make out what the man was yelling. The occupant said he yelled at the man to go away, to which the man responded "yeah, fucking right," but then walked away. The occupant of Room 201 said when the man left, he grabbed his pocketknife and then went to the window to see who had been banging on his window. He said he saw the man walk across the parking lot to Room 110 and bang on that door. He said he did not see a rifle in the man's hands but acknowledged that it was early and he was "half-asleep." He said he saw the man walk toward the back of the building, then saw a Trooper pull into the parking lot. He said when the Trooper pulled up, he saw the Trooper get out of his car and then get behind his vehicle. He said he heard the Trooper yell "Timothy, drop your rifle" a few times. The occupant of Room 201 said that when he heard the Trooper say the man had a rifle, he got away from the window and the door. He said he then heard three gunshots but did not see them. The occupant of 201 said he waited a few seconds after the gunshots, then went and looked outside and heard the Trooper giving multiple commands to get away from the rifle and then to roll over.

The occupant of Room 118, at the east end of Building 2, and the room closest to where Mr. Thomas was when he got shot, was interviewed. She said she was sleeping and woke up to three shots and yelling about "a guy and a rifle" around 3:00 a.m. She said she did not look out of the window or come out of her room.

A family member of Mr. Thomas' was also interviewed and told AST that Mr. Thomas told her and others that he was going to "go out" by "suicide by cop." The family member said that Mr. Thomas told her that he had tried to make AST kill him during the last incident involving him and AST.

An autopsy of Mr. Thomas' body was conducted by Dr. Rolf at the Alaska State Medical Examiner's Office. Dr. Rolf determined that the cause of death was due to gunshot wounds to Mr. Thomas' trunk. Dr. Rolf noted three gunshot wounds, including one that exited from Mr. Thomas' abdomen and noted two bullets that were recovered during the autopsy. Dr. Rolf noted that Mr. Thomas' blood alcohol concentration level at his time of death was .218 g/100mL and that he had cocaine in his system at a level of 100 ng/mL and benzoylecgonine at a level of 1,500 ng/mL and cocaethylene at a level of 320 ng/mL.<sup>9</sup>

### ***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.<sup>10</sup> Alaska law authorizes a police officer to use deadly force against another person to the same extent as any other person; however, an officer, if acting within the scope of authority of his or her employment, is not required to retreat.<sup>11</sup> 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."<sup>12</sup> "Deadly weapon" is defined by Alaska law as "any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife..."<sup>13</sup>

Alaska statutes also create special justifications for peace officers using force while making an arrest or terminating an escape. A law enforcement officer may use deadly force to the extent the officer reasonably believes the use of force is necessary to arrest someone who may otherwise endanger life or inflict serious physical injury unless arrested without delay.<sup>14</sup>

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<sup>9</sup> For reference purposes, a person is deemed too intoxicated to legally drive a car at a blood alcohol concentration level of .08; Mr. Thomas was more than 2.5 times the legal level to drive. In the toxicology reports, the Lab sets forth reporting limits, which are "the lowest concentration of the compound that will be reported as being positive." For both cocaine and cocaethylene, the reporting limit used by the Lab conducting the analysis is 10 ng/mL. For benzoylecgonine, the reporting limit used by the Lab is 50 ng/mL. In other words, Mr. Thomas had cocaine and cocaethylene in his system at a quantity of over ten and 32 times the reporting limit respectively, and had benzoylecgonine in his system at a quantity of 30 times the reporting limit.

<sup>10</sup> AS 11.81.335(a); AS 11.81.340.

<sup>11</sup> AS 11.81.335(b)(2).

<sup>12</sup> 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)).

<sup>13</sup> AS 11.81.900(b)(17).

<sup>14</sup> AS 11.81.370(a)(3).

The potential criminal liability of Trooper Rosario is governed by the above-referenced law. That is, if Trooper Rosario reasonably believed his use of deadly force was necessary to prevent serious physical injury or death to himself or others, he was legally justified in using deadly force. Additionally, Trooper Rosario would also be justified in using deadly force if he reasonably believed that Mr. Thomas would otherwise endanger life or inflict serious physical injury upon Trooper Rosario or others unless he was arrested without delay. Under Alaska law, in order for use of force to be appropriate, it must be reasonable, both based on a subjective standard, i.e., what the specific individual using the force actually believed was necessary and reasonable, and based on an objective standard, i.e., what the average, reasonable person, would have believed in the circumstance. The State must prove that self-defense or another claimed justification does not apply. In other words, in order to disprove a claim that Trooper Rosario was justified in his actions, and secure a conviction against Trooper Rosario, the State would be required to prove *beyond a reasonable doubt* that Trooper Rosario did not reasonably believe that his action in shooting Mr. Thomas was necessary to defend himself or defend another person and that an objective person would not reasonably believe that the actions were necessary, *and* that Trooper Rosario did not reasonably believe his actions were necessary to stop a suspect who would otherwise endanger life or inflict serious physical injury upon another if not arrested without delay, and that an objective person would also not have reasonably believed the same.

When analyzing Trooper Rosario's conduct, the law requires an analysis based on the totality of the events. In this case, the Trooper was responding to a series of 911 calls reporting an ongoing situation where Mr. Thomas, who was believed to be highly intoxicated, was banging and kicking on the door to a motel room, banging on the windows, and threatening to break down both if he was not let in. The situation had escalated since the initial call, as the caller reported that Mr. Thomas had begun banging on the door of a different room, which was occupied by a stranger. Based on prior contacts he had with Mr. Thomas, and other information known to him, Trooper Rosario was concerned about the danger Mr. Thomas posed to responding officers, but was concerned with an escalating situation. When Trooper Rosario arrived at the scene, he found Mr. Thomas unexpectedly armed with a rifle. Despite repeated commands to drop the gun, Mr. Thomas refused and walked toward the end of the building, to an area that was unlit and would not only afford Mr. Thomas a vantage point over Trooper Rosario, but was also immediately next to a wooded area that led to a residential area as well as to the rooms on the other side of the motel.

Trooper Rosario expressed concern that Mr. Thomas, armed with a rifle, posed an imminent risk of shooting Trooper Rosario, and that he would endanger Trooper Rosario, other Troopers, and civilians, if he were not arrested immediately. Trooper Rosario described that despite repeated commands to drop the gun, Mr. Thomas appeared to him, from his vantage point, to be manipulating the firearm while refusing to listen to his commands. Trooper Rosario expressed additional concern about Mr. Thomas' behavior

given his knowledge of Mr. Thomas' prior actions—particularly when intoxicated—and involving firearms. Trooper Rosario explained his knowledge of Mr. Thomas' history, to include: threats against Trooper Rosario specifically and other officers generally, firing a gun while knowing Troopers were in the area, combative actions towards Troopers in the past, particularly when intoxicated, and concerns about Mr. Thomas setting up ambushes of Troopers. Trooper Rosario expressed that based on Mr. Thomas' actions, he believed that Mr. Thomas was going to shoot him, and that if Mr. Thomas was allowed to leave the lit area, he would use the dark and/or corner of the building to gain a position of advantage over the Trooper and shoot him or other Troopers. Trooper Rosario also expressed concern that if he were allowed to get away, Mr. Thomas would pose a threat of engaging in a standoff that would endanger the lives of Troopers and the community of Tok at large.

In reviewing this matter, the prosecuting attorney must consider the circumstances that confronted Trooper Rosario, to include his response to the scene of a possible attempted burglary against two different rooms, that he was in turn faced with an intoxicated man armed with an assault rifle that he refused to drop despite repeated commands, that Mr. Thomas continued to walk towards a dark area that would provide him an advantage in positioning over Trooper Rosario, and that Mr. Thomas was heading towards a wooded area that contained residences as well as provided access to other motel rooms on the opposite side of the building. Moreover, Trooper Rosario's knowledge about Mr. Thomas' prior behaviors and threats are relevant to the review. Trooper Rosario knew that on prior instances, Mr. Thomas had been combative when AST attempted to arrest him and that he had previously fired a weapon during an attempted arrest. Trooper Rosario also knew that Mr. Thomas had made threats against AST, including against him specifically.

On October 30, 2023, Mr. Thomas was armed with a high-powered rifle and was moving in a direction that would allow him to either shoot at Trooper Rosario, target other Troopers, or allow him to escape and potentially use the rifle against civilians in the surrounding areas. Given the totality of the circumstances that presented Trooper Rosario, the State could not prove beyond a reasonable doubt that Trooper Rosario was not reasonable in his belief that his action in shooting Mr. Thomas was necessary to defend himself or that his action was necessary to stop Mr. Thomas from endangering life or inflicting serious physical injury upon another.

Trooper Rosario was therefore legally justified in using deadly force against Mr. Thomas based on his belief that Mr. Thomas posed a threat of imminent serious physical injury and/or death towards him and in pursuit of a dangerous fleeing armed suspect. Criminal charges against Trooper Rosario are not appropriate.

***Conclusion***

The State will not file criminal charges against AST Trooper Rosario relating to the October 30, 2023 use of deadly force against Mr. Timothy Thomas in Tok, Alaska. Should it be necessary, you may advise Trooper Rosario of this decision. Please contact me if you have any questions. I can be reached at 907.269.6250 or [jenna.gruenstein@alaska.gov](mailto:jenna.gruenstein@alaska.gov).

Sincerely,

TREG TAYLOR  
ATTORNEY GENERAL



Jenna L. Gruenstein  
Chief Assistant Attorney General  
Office of Special Prosecutions



CC:

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Figure 1



  Location of Thomas' body

Motel has rooms on both sides of the buildings

30 yards from end of the building to tree line