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**Department of the Prosecuting Attorney
City and County of Honolulu**

Officer-Involved Shooting Report No. 2021-02

Report Date: June 30, 2021

Independent Investigation of Officer-Involved Shooting of

Lindani Sanele Myeni

91 Coelho Way, Honolulu, Hawai'i, April 14, 2021

I. OBJECTIVE

The objective of the Department of the Prosecuting Attorney's (PAT) independent investigation is to assess the viability of a criminal prosecution of Honolulu Police Department (HPD) officers [REDACTED] and [REDACTED] (Officers 1 and 2, respectively) for any criminal offense under the Hawai'i Penal Code (HPC) for their intentional use of deadly force on April 14, 2021 at 91 Coelho Way. In making this assessment, the proof beyond a reasonable doubt standard will be used.

This investigation considered materials and information provided by HPD and accumulated by the PAT's independent efforts. PAT Investigator [REDACTED] (Investigator [REDACTED]) was this office's primary investigator.

This investigation offers no opinion whether the officers complied with HPD policy or whether non-compliance with any HPD policy subjects them to administrative discipline.

II. FACTS

A. General Background

The incident occurred on Wednesday, April 14, 2021, between approximately 8:07 – 8:15 p.m. at 91 Coelho Way, in Nu'uano.¹ This is a large property. The home measures 7,430 square feet and features four bedrooms, five full bathrooms, and two half bathrooms.² A short rock wall faces the street. A wrought iron fence is affixed to the top of the wall. A semi-circular driveway leads to a porte cochere outside the front door. There are two entrances to the driveway along Coelho Way: one on the west and one on the east.

As of April 14, 2021, [REDACTED] owned and lived in the residence. At the time of the incident the following were [REDACTED]'s tenants: [REDACTED] and his girlfriend [REDACTED] and [REDACTED]. [REDACTED] (Witness 1) and her husband [REDACTED] (Witness 2) rented space in the residence from March 17, 2021.³

¹

<https://www.google.com/maps/place/91+Coelho+Way,+Honolulu,+HI+96817/@21.3306599,-157.8488745,17z/data=!3m1!4b1!4m5!3m4!1s0x7c006c2da1741795:0xe9131d5849c7e374!8m2!3d21.3306549!4d-157.8466858>. The start time for this period is based on the time stamp on Ring video (55560042_6951262220498915227_stamp.mp4). The three-round volley signifies the end event. Ring video (55560042_6951264144644263835_stamp (1).mp4). The time stamp is 8:15:24 HST.

²

<https://qpublic.schneidercorp.com/Application.aspx?AppID=1045&LayerID=23342&PageTypeID=4&PageID=9746&Q=184222392&KeyValue=180060780000>

³ Witness 1 and Witness 2 interviews.

ISKCON Hawaii, Inc., a Hare Krishna temple (the temple), is located nearby at 51 Coelho Way.⁴

B. Sunset and Weather

Sunset was at 6:50:56 p.m.⁵ There was a light drizzle at the time of the incident.⁶

C. Participants in the Event

1. The Civilians

Witness 1 is a freelance website applications designer. Witness 2 is a Facebook software engineer. Based on their recorded interviews, Body Worn Camera (BWC) video, and Ring video, English is not the first language for either; however both speak English proficiently.

■■■■, ■■■■, and ■■■■ were not at the residence at the time of the incident and have no personal knowledge of the relevant events.

2. Lindani Sanele Myeni

i. Entry into the United States

Lindani Sanele Myeni (Myeni) (DOB: ■■■■)⁷ entered the United States on January 9, 2020, via JFK airport in New York State. He was on a tourist visa at the time of entry. This visa expired on July 8, 2020, but Myeni had an application in process for a work visa.

ii. In Hawai'i

Myeni, his wife ■■■■, and their children moved to ■■■■, Honolulu, in or around February 2021. The landlord, ■■■■, confirmed that the family moved out at the end of April 2021.⁸ ■■■■ is approximately 0.8 miles from 91 Coelho Way.

⁴

<https://www.google.com/maps/place/51+Coelho+Way,+Honolulu,+HI+96817/@21.3301569,-157.8490608,17z/data=!3m1!4b1!4m5!3m4!1s0x7c006c2d09640a8b:0x617a09be557d8f9a!8m2!3d21.3301519!4d-157.8468721>

⁵ <https://sunrise-sunset.org/us/honolulu-hi/2021/4>

⁶ Witness 1 interview; BWC video.

⁷ Medical Examiner (ME) Investigation of Death at 1.

⁸ Statement of ■■■■ to Investigator ■■■■.

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While living at [REDACTED], Myeni drove a 2015 four-door Mazda 3 sedan (the Mazda) with Texas license plates [REDACTED].

[REDACTED], a neighbor who lives at [REDACTED], told Investigator [REDACTED] that he frequently saw Myeni. [REDACTED]'s flag lot gave him a direct view of [REDACTED]. On most afternoons at approximately 3:30 p.m., Myeni would go to his second floor lanai and smoke marijuana. [REDACTED] described Myeni as a strange person who would, at times, stand in the backyard at sunset for over an hour while chewing on a sugar cane stalk and staring up at the sky. [REDACTED] did not hear any arguments from the Myenis; they were generally quiet.

While on O'ahu, Myeni expressed interest in kickboxing. [REDACTED] is a professional fighter and martial arts instructor at [REDACTED] in Kailua. At the time of his April 21, 2021 interview with HPD, [REDACTED] had known Myeni for 3 ½ to 4 months. They met in Waikiki, where [REDACTED] often surfed. Myeni expressed interest in training and attended [REDACTED]'s Monday night, one-hour kickboxing class. These classes were intended for sport, not self-defense. Myeni, a beginner, attended five sessions. [REDACTED] last saw Myeni on Monday, April 12, 2021. Myeni came with his son. Myeni said that he wanted to speak with [REDACTED] in person. According to [REDACTED], Myeni said he was going through some emotional and something along the lines of "crazy African spiritual stuff."

3. The Police Officers⁹

i. Officer 1

Officer 1, age 49, has been employed as an HPD officer since February 19, 1998. He has 23 years of service. His assignments have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
2/19/98	3/16/99	TRP Training
3/16/99	9/17/00	Central Receiving Division
9/17/00	10/10/04	District 2
10/10/04	6/19/05	District 4
6/19/05	9/1/17	District 8
9/10/17	Present	District 5

Based on the use of force records (UOF records) provided by PSO, Officer 1 has no prior history of use of deadly force.¹⁰

⁹ This information, provided by HPD's Professional Standards Office (PSO), is as of April 14, 2021.

¹⁰ The earliest documented UOF entry in the provided records for Officer 1 is June 12, 2017.

ii. Officer 2

Officer 2, age 46, has been employed as an HPD officer since February 27, 2003. He has 18 years of service. His assignments have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
2/27/03	10/1/04	TRP Training
10/1/04	8/26/07	District 5
8/26/07	5/29/16	Traffic Division, Solo Bike
5/29/16	11/18/18	District 5, S/A Records Division
11/18/18	3/10/19	District 1
3/10/19	9/20/20	District 2
9/20/20	Present	District 5

Based on the UOF records provided by PSO, Officer 2 has no prior history of use of deadly force.¹¹

iii. [REDACTED] (Officer 3)

Officer 3, age 40, has been employed as an HPD officer since February 1, 2011. He has ten years of service. His assignments have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
2/1/11	6/24/12	TRP Training
6/24/12	5/26/13	CRD
5/26/13	3/21/21	District 6
3/21/21	Present	District 5

Based on the UOF records provided by PSO, Officer 3 has no prior history of use of deadly force.¹²

Officer 1, Officer 2, and Officer 3 qualify as law enforcement officers as defined by HRS § 701-118.¹³

¹¹ The earliest documented UOF entry in the provided records for Officer 2 is April 12, 2019.

¹² The earliest documented UOF entry in the provided records for Officer 3 is January 1, 2017.

¹³ “‘Law enforcement officer’ means any public servant, whether employed by the State or county or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.”

D. Factual Narrative for April 14, 2021

1. Left the House

On April 14, 2021, Myeni resided at [REDACTED]. According to his wife, [REDACTED], he left that residence at approximately 7:15 – 7:30 p.m. to “clear his head.”¹⁴

2. HPD Report No. 21-158432 (UEMV 1 Investigation)

Patrol officers [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (Officers A, B, C, and D, respectively) were among several officers who responded to Kewalo Basin to investigate an unauthorized entry into motor vehicle in the first degree (UEMV) complaint made by complainant [REDACTED]. These officers had BWC.

At 7:42 p.m., Officer C was sent via dispatch to 1125 Ala Moana Boulevard on the UEMV complaint.¹⁵ He arrived shortly thereafter.¹⁶ Upon arrival at the scene, Officer C took [REDACTED]'s statement and scene photographs.¹⁷ [REDACTED] reported that earlier in the day, someone had entered his white 2006 Subaru Legacy wagon (Subaru) without permission, while it was parked near the intersection of Ekela Avenue and Date Street, and took his money and identification and bank cards.¹⁸

The incident was reported away from the scene.¹⁹ Accordingly, no diagram was made.²⁰ No fingerprints were recovered because (1) the incident was reported away from the scene and (2) [REDACTED] had gone through, touched, and organized the contents of his vehicle.²¹

As Officer B spoke with [REDACTED], Myeni walked up to the police and said, “Hi. How you guys doing?”²² In response, Officer B said that the police were investigating a case.²³ Myeni asked, “Is everything okay? What’s wrong?”²⁴ Officer B explained that [REDACTED]'s car had been broken into.²⁵ Myeni asked, “What was stolen?”²⁶ Turning

14 Statement of [REDACTED] to ME Investigator [REDACTED].
15 Officer C's report.
16 Officer C's report.
17 Officer C's report.
18 Officer C's report.
19 Officer C's report.
20 Officer C's report.
21 Officer C's report.
22 Officer B BWC.
23 Officer B BWC.
24 Officer B BWC.
25 Officer B BWC.
26 Officer B BWC.

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his attention to [REDACTED], Myeni asked, "Did you lose anything, sir?"²⁷ Officer B informed Myeni that the police would handle it.²⁸ Myeni approached [REDACTED].²⁹ [REDACTED] said, "Howzit, brah. I don't even know you, bro. What are you doing? Get away from me, man."³⁰ Thereafter, Myeni walked away.³¹ Myeni came back and asked [REDACTED] for five dollars.³² [REDACTED] said that he did not have money.³³ Myeni apologized and touched [REDACTED].³⁴

After Officer C had obtained [REDACTED]'s initial information, he returned to his patrol car for follow-up investigation.³⁵ Myeni stood on the driver's side of Officer C's patrol car and the two engaged in a brief conversation.³⁶ As Officer C sat in his car, Myeni approached him and asked him for five dollars for food; he wanted a meal.³⁷ Officer C said he did not have cash.³⁸

Later during the UEMV investigation, Officer C's BWC records Myeni driving the Mazda past the rear of the Subaru. Myeni tooted his horn.³⁹ Officer C commented about the request for money for a bento.⁴⁰ One officer commented that Myeni tried to get into his patrol car.⁴¹ Another commented that the Mazda's lights were not on. Someone speculated that Myeni "was on something."⁴²

Officer D was present during the aforementioned UEMV investigation. In a miscellaneous public report submitted under HPD report no. 21-162831, Officer D reported that while he was at the scene seated in his marked HPD vehicle, a male approached and attempted to get in the back seat. Officer D asked what he was doing and the male responded, "I was walking this way and I thought I should get in." Officer D instructed the male to back away. He did so and walked towards his own vehicle. The male turned around, approached Officer D, and stopped 1-2 feet away. Officer D instructed the male to back up at least six feet and to get a facemask. The male walked towards his own vehicle. The male returned again and stated that he needed help contacting someone but then stated he did have the phone number and his own phone.

27 Officer B BWC.

28 Officer B BWC.

29 Officer B BWC.

30 Officer B BWC.

31 Officer B BWC.

32 Officer B BWC.

33 Officer B BWC.

34 Officer B BWC.

35 Officer C BWC.

36 Officer C BWC.

37 Officer C BWC.

38 Officer C BWC.

39 This occurred at 7:53:31 p.m. Officer C's BWC.

40 Officer C BWC.

41 Officer C BWC.

42 Officer C BWC.

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He made a phone call and left the area. Officer D made the report to document the male's strange behavior and his (Officer D's) belief that the male may have been involved in the officer-involved shooting.

GPS data obtained from Myeni's phone confirms his presence at Kewalo Basin.⁴³ This data also maps Myeni's route from the basin to 91 Coelho Way. His route was as follows: (1) he exited the basin via Ward Avenue; (2) he headed mauka on Ward Avenue and made a left turn onto Kapi'olani Boulevard; (3) he traveled west along Kapi'olani Boulevard and made a right turn onto Alapai Street; (4) he traveled mauka along Alapai Street and made a left turn onto Beretania Street; (5) he traveled west along Beretania Street until he made a right turn onto Punchbowl Street; (6) he traveled mauka along Punchbowl Street until Lunalilo Freeway; (7) he got off Lunalilo Freeway and onto Pali Highway; (8) he traveled north along Pali Highway and got off at the Wyllie Street off-ramp; (9) he traveled along Wyllie Street; (10) he made a right turn at Burbank Street; (11) he then made a right turn onto Coelho Way; and (12) he arrived at 91 Coelho Way.

3. HPD Report No. 21-158469 (Officer-Involved Shooting at 91 Coelho Way)

a. The Patrol Officers

On April 14, 2021, Officers 1, 2, and 3 were assigned to District 5, third watch patrol.⁴⁴ The stated mission for their shift that day was "UEMV and burglary prevention."⁴⁵

Officer 1 was assigned to patrol beat 3M572.⁴⁶ He wore his class A uniform.⁴⁷ He wore a short-sleeve uniform shirt.⁴⁸ He drove a subsidized vehicle, a 2015 Toyota MPVH, with Hawai'i license plate [REDACTED].⁴⁹ Officer 1 carried a Glock, model 17 (Gen4) semiautomatic pistol with serial number WST 437.

⁴³ See Section II.G., *infra*

⁴⁴ District 5 3rd Watch Duty Roster for April 14, 2021.

⁴⁵ District 5 3rd Watch Duty Roster for April 14, 2021.

⁴⁶ See attached District 5 patrol map and District 5 3rd Watch Duty Roster for April 14, 2021.

⁴⁷ BWC video.

⁴⁸ [REDACTED], [REDACTED], and [REDACTED] BWC video.

⁴⁹ Officer 1 did not prepare a report. Accordingly, there is no averment in his own hand that he had a blue light bar on his subsidized vehicle on April 14, 2021. Regardless, for purposes of this investigation, the PAT will assume that he did have a blue light bar.

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Officer 2 was assigned to patrol beat 3M573.⁵⁰ He drove a subsidized police vehicle, a 2015 four-door Dodge, with Hawai'i license plate [REDACTED], with a blue light affixed to the roof.⁵¹ He wore his class A uniform.⁵² Officer 2 carried a Glock, model 17 (Gen4) semiautomatic pistol with serial number WST 431.

Officer 3 was assigned to patrol beat 3M569.⁵³ He drove a marked police vehicle, HPD 1562.⁵⁴ He wore his class A uniform.⁵⁵ He wore a long-sleeved top with police insignia.⁵⁶ Officer 3 carried a Glock, model 17 (Gen4) semiautomatic pistol with serial number WST 697. He also had a Taser.

b. The Officer-Involved Shooting

Witness 1 and Witness 2 went to the Apple Store at the Ala Moana Shopping Center to return a drone.⁵⁷ Witness 1 drove a gray Jeep, an Avis rental. Their return route home was as follows: north along Pali Highway; Wyllie Street; right on Burbank Street; and right again on Coelho Way.⁵⁸

Witness 1 noticed that a car followed them.⁵⁹ Due to the close proximity of the car behind her Jeep, she thought it was [REDACTED].⁶⁰ She entered the driveway through the west entrance and parked on the grass.⁶¹ The car that followed her parked immediately behind the Jeep.⁶² This car was the Mazda.⁶³ Myeni was the driver.⁶⁴ There were

⁵⁰ Officer 2 report. See attached District 5 patrol map and District 5 3rd Watch Duty Roster for April 14, 2021.

⁵¹ Officer 2 report.

⁵² Officer 2 report. See photographs taken by Evidence Specialist [REDACTED].

⁵³ Officer 3 report. See attached District 5 patrol map and District 5 3rd Watch Duty Roster for April 14, 2021.

⁵⁴ Officer 3 report. See also HPD report no. 21-161113.

⁵⁵ Photographs taken by Evidence Specialist [REDACTED]; BWC video.

⁵⁶ Photographs taken by Evidence Specialist [REDACTED].

⁵⁷ Witness 1 interview.

⁵⁸ Witness 1 interview; Ring video (55560042_6951262220498915227_stamp.mp4). The route described by Witness 1 is the same that Myeni took. See Section II.D.2., supra.

⁵⁹ Witness 1 interview and HPD 252.

⁶⁰ Witness 1 interview and HPD 252.

⁶¹ Ring video (55560042_6951262220498915227_stamp.mp4). The Ring video time stamp is 20:07:50 HST.

⁶² Ring video (55560042_6951262220498915227_stamp.mp4). The Ring video time stamp is 807:56 HST.

⁶³ Scene photographs; [REDACTED] interview (asserting that he did not recognize the car with the Texas plates).

⁶⁴ As stated previously, Myeni took the same route as Witness 1 and Witness 2 to 91 Coelho Way. It is unknown at what precise point Myeni began following them.

several cars parked in the front yard of the property. A VW bus was parked in the porte cochere facing east, immediately outside the front door.

Both Witness 1 and Witness 2 made their way to the front door—Witness 2 first, and then followed by his wife.⁶⁵ Myeni followed closely behind.⁶⁶ He wore a black polo shirt, blue jeans, socks, shoes, and a feathered headband.⁶⁷ He removed his shoes near a column and entered the residence.⁶⁸ Witness 1 said she had left the front door ajar on the belief that [REDACTED] was behind her.⁶⁹ Myeni entered the front door.⁷⁰

Witness 1 was in the residence foyer when Myeni entered. She confronted him: “Who are you? Why are you here?”⁷¹ Myeni identified himself by name⁷² and responded with bizarre statements. First he said, “I have videos of you. You know why I’m here.”⁷³ Puzzled and frightened, Witness 1 replied, “I don’t know. I have nothing. You should leave.”⁷⁴ Witness 1 thought Myeni was attempting to extort her. “Are you blackmailing me?” she asked.⁷⁵

Myeni proceeded to make bizarre statements that frightened Witness 1 and Witness 1. Myeni sat in a chair in the foyer and said he lived there.⁷⁶ “Are you a friend of [REDACTED]?” she asked.⁷⁷ A house cat approached Myeni. He pet the cat and claimed ownership of the feline: “This is my cat.”⁷⁸ He also said that he lived in the neighborhood.⁷⁹

⁶⁵ Witness 1 and Witness 2 interviews; Ring video (55560042_6951262220498915227_stamp.mp4). The Ring video time stamp is 20:08:35 HST.

⁶⁶ Ring video (55560042_6951262220498915227_stamp.mp4). The Ring video time stamp is 20:08:39 HST.

⁶⁷ Witness 1 interview; Officer 1 and Officer 3 BWC video; Ring video (55560042_6951262220498915227_stamp.mp4); photographs of recovered clothing.

⁶⁸ Ring videos (55560042_6951262220498915227_stamp.mp4) (55560042_6951262486786887579_stamp.mp4).

⁶⁹ Witness 1 HPD 252.

⁷⁰ Ring video (55560042_6951262486786887579_stamp.mp4). The Ring video time stamp is 20:08:48 HST.

⁷¹ Witness 1 interview.

⁷² Witness 1 HPD 252.

⁷³ Witness 1 interview and HPD 252. See also Witness 2 HPD 252 (“I heard him talking to my wife about ‘film or video’ and my wife was panic because we don’t know him and I heard my wife said ‘I don’t know who you are and I’ll call 911.’”)

⁷⁴ Witness 1 interview and HPD 252.

⁷⁵ Witness 1 interview.

⁷⁶ Witness 1 interview; Witness 2 HPD 252.

⁷⁷ Witness 1 interview.

⁷⁸ Witness 1 interview and HPD 252; Witness 2 HPD 252.

⁷⁹ Witness 1 interview and HPD 252.

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Witness 2, meanwhile, called homeowner [REDACTED], who was in Waikiki, and explained what was happening.⁸⁰ [REDACTED] denied knowing Myeni.⁸¹ Myeni walked down the hallway.⁸²

Witness 1 asked him to leave several times, threatening to call 911 if he didn't.⁸³ She produced her phone and showed it to him.⁸⁴ Myeni stated, "Tell them I'm from South Africa. I'm on a hunt. I'm on a safari."⁸⁵ Myeni lowered his feathered headband and said, "We're hunting. There's no time."⁸⁶ These bizarre statements further alarmed Witness 1. She interpreted this as a threat, i.e., she and her husband were the hunted prey and he was the hunter.⁸⁷ Myeni commented that he was not afraid of the police and that he would sleep outside.⁸⁸

Witness 2 heard Myeni say that he had nowhere to go and his people were suffering.⁸⁹

At 8:09:43 p.m., Witness 1 called 911 and remained on the line for 13 minutes and 40 seconds.⁹⁰

Based on information provided by Witness 1, HPD dispatch made the following relevant radio calls to patrol officers in the area:

20:11:03

The dispatcher asked 972 (Officer 1) if he could investigate a reported burglary at 91 Coelho Way. The caller, who was still on the line, reported that she found a male in her house. The dispatcher asked 973 (Officer 2) if he could help 972 (Officer 1).

20:12:23

The dispatcher described the suspect as an African American male wearing straight black jeans. The caller was on the line and there was a language barrier. The dispatcher addressed 972 (Officer 1), 973 (Officer 2), and 69 (Officer 3).

⁸⁰ Witness 2 and [REDACTED] interviews; Witness 2 HPD 252.

⁸¹ [REDACTED] interview.

⁸² Witness 1 HPD 252.

⁸³ Witness 1 interview and HPD 252.

⁸⁴ Witness 1 interview and HPD 252.

⁸⁵ Witness 1 interview.

⁸⁶ Witness 1 interview.

⁸⁷ Witness 1 interview.

⁸⁸ Witness 1 interview.

⁸⁹ Witness 2 HPD 252.

⁹⁰ As of this writing the PAT does not have a transcript of this call.

20:13:30

The dispatcher addressed 72, 73, and 69 and stated that the call taker was crying and not answering questions. The male was blocking the door and she could not get inside.

Ring video, BWC video, Witness 1's 911 call, and witness statements, taken together, illustrate the events that followed.

As Myeni exited the residence, he turned back and asked, "What's wrong?"⁹¹ Witness 1 (who is not visible in the Ring video) retorts, "Who are you?"⁹² Myeni, who is standing in or near the threshold, while facing into the residence, asks, "Can I see your phone?"⁹³

Myeni eventually exited the residence, put on his shoes, gestured towards the front door, and walked around the front of the VW bus.⁹⁴ While looking back at the residence, Myeni said, "Sorry."⁹⁵ Based on the soft-spoken tone and volume of this statement, coupled with Witness 1's excited condition, it is unlikely either Witness 1 or Witness 2, both of whom were inside the residence, heard what Myeni said.

Witness 1 exited the residence with her phone pressed to her right ear.⁹⁶ She looked towards Coelho Way in the direction where the Mazda was parked.⁹⁷ The Mazda's dome light was on; this allowed Witness 1 to see Myeni seated in the car.⁹⁸ Witness 1 told the dispatcher, "I'm so afraid to go outside."⁹⁹

Officers 1, 2, and 3 responded. Of these three, Officer 1 was the first officer to arrive at the scene. Officer 1 approached from the east and parked near the east

⁹¹ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:12:56 HST.

⁹² Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:12:59 HST.

⁹³ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:13:07 HST.

⁹⁴ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:13:28-42 HST.

⁹⁵ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:13:40 HST.

⁹⁶ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:13:52 HST.

⁹⁷ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:13:52 HST.

⁹⁸ Witness 1 interview.

⁹⁹ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:13:55 HST.

entrance along Coelho Way.¹⁰⁰ He did not engage his siren and his blue lights were not flashing.¹⁰¹ Officer 1 heard the following dispatch addressed to beats 72 (Officer 1), 73 (Officer 2), and 69 (Officer 3): "For the caller, she was crying and wasn't answering any questions. Male is blocking the door. Saying she cannot go inside."¹⁰² Officer 1 rolled up his window, got out of his car, and entered the property through the east entrance.¹⁰³

Witness 1 was still on the phone. She acknowledged the arrival of Officer 1's car.¹⁰⁴ Witness 1 reported that "he (Myeni) is still in the community" and referenced "the police officer."¹⁰⁵ Witness 1 was crying and unquestionably upset.¹⁰⁶

Officer 2 heard a dispatch that a caller returned home and there was an unknown male in the residence.¹⁰⁷ While en route, Witness 2 heard updated dispatch that the caller was on the line and that the male refused to leave.¹⁰⁸ The caller described the male as African American, who was dressed in a black shirt and jeans.¹⁰⁹

Upon his arrival at the scene, Officer 2 saw Officer 1 enter through the east entrance on foot.¹¹⁰ Officer 2, meanwhile, entered through the west entrance on foot.¹¹¹ Witness 1 saw Officer 2 enter the property.¹¹² Myeni got out of the Mazda.¹¹³

As Officer 2 passed through an opening in the front wall of the property, Myeni approached him from behind.¹¹⁴ Officer 2 asked Myeni what was going on.¹¹⁵ Myeni replied, "I don't know. You tell me."¹¹⁶

¹⁰⁰ Ring video (55560042_6951263564823678875_stamp.mp4). The Ring video time stamp is 20:14:05 HST.

¹⁰¹ Ring video (55560042_6951263564823678875_stamp.mp4). Again, this investigation assumes that Officer 1's subsidized vehicle was equipped with a blue light bar.

¹⁰² Officer 1 BWC video.

¹⁰³ Officer 1 BWC video; Ring video (55560042_6951263835406618523_stamp.mp4).

¹⁰⁴ Ring video (55560042_6951263835406618523_stamp.mp4).

¹⁰⁵ Ring video (55560042_6951263835406618523_stamp.mp4).

¹⁰⁶ Ring video (55560042_6951263835406618523_stamp.mp4).

¹⁰⁷ Officer 2 report.

¹⁰⁸ Officer 2 report.

¹⁰⁹ Officer 2 report.

¹¹⁰ Officer 2 report.

¹¹¹ Officer 2 report.

¹¹² Witness 1 interview.

¹¹³ Witness 1 interview.

¹¹⁴ Officer 2 report.

¹¹⁵ Officer 2 report.

¹¹⁶ Officer 2 report. See also Officer 2 BWC video.

At 8:13 p.m., Officer 3 responded to the burglary in progress report.¹¹⁷ While en route he heard an updated suspect description of an African American male wearing a dark-colored shirt and jeans who had entered the residence.¹¹⁸ He arrived at 8:14 p.m.¹¹⁹ Officer 3 got out of his car and entered the property on foot through the west entrance.¹²⁰

Officer 1 held a flashlight, which he pointed toward the front entry to the residence.¹²¹ Witness 1 stood outside the front door.¹²² "Where he went?" Officer 1 asked.¹²³ She was excited and distressed. She responded, "That's him."¹²⁴ He again asked, "Where he went?"¹²⁵ She pointed in the direction of Coelho Way and exclaimed, "That's him! He's still in the car."¹²⁶ Officer 1 asked "Where?" as he made his way around the VW bus.¹²⁷ Witness 1 is overheard crying.¹²⁸ "That's him! That's him! That's him!" she cried.¹²⁹ As Officer 1 rounded the turn, now heading towards Coelho Way, he began to ask, "Where ...". He then yelled, "Get on the ground now!" "Get on the ground! Get on the ground now!"¹³⁰ Witness 1 went back inside the house.¹³¹

¹¹⁷ Officer 3 report.

¹¹⁸ Officer 3 report. This is also corroborated by Witness 1's 911 call and the dispatcher's transmission.

¹¹⁹ Officer 3 BWC video.

¹²⁰ Officer 3 BWC video.

¹²¹ Officer 1 BWC video.

¹²² Officer 1 BWC video.

¹²³ Officer 1 BWC video.

¹²⁴ Officer 1 BWC video; Ring video

(55560042_6951263835406618523_stamp.mp4). The Ring video time stamp is 20:14:31 HST.

¹²⁵ Officer 1 BWC video; Ring video

(55560042_6951263835406618523_stamp.mp4). The Ring video time stamp is 20:14:34 HST.

¹²⁶ Officer 1 BWC video; Ring video

(55560042_6951263835406618523_stamp.mp4). The ring video time stamp is 20:14:38 HST.

¹²⁷ Officer 1 BWC video; Ring video

(55560042_6951263835406618523_stamp.mp4). The Ring video time stamp is 20:14:40 HST.

¹²⁸ Officer 1 BWC video; Ring video

(55560042_6951263835406618523_stamp.mp4).

¹²⁹ Officer 1 BWC video; Ring video

(55560042_6951263835406618523_stamp.mp4). The Ring video time stamp is 20:14:44 HST.

¹³⁰ Officer 1 BWC video; Ring video

(55560042_6951263835406618523_stamp.mp4). The Ring video time stamp is 20:14:48 HST.

¹³¹ Ring video (55560042_6951263835406618523_stamp.mp4). The Ring video time stamp is 20:14:51 HST.

Myeni came into Officer 1's view.¹³² He wore a dark shirt, blue pants, and shoes.¹³³ His appearance and clothing matched the description that was broadcast over dispatch.¹³⁴ Officer 1 held his service firearm in his right hand, with his arm extended.¹³⁵ Officer 1 again yelled, "Get on the ground! Get on the ground now!"¹³⁶

Myeni refused to comply.¹³⁷ Without warning, Myeni went directly at Officer 1, who was standing near the bend of the driveway on the west side of the property.¹³⁸ Officer 3 and Officer 2 saw Myeni attack Officer 1, striking Officer 1 to the head and body area.¹³⁹ Myeni said something indiscernible. This assault moved into the front yard, near a Toyota Prius, Hawai'i license plate RPB 340 (the Prius), parked on the grass in front of the residence.¹⁴⁰

Officer 3 yelled, "Taser! Taser! Taser! Taser!"¹⁴¹ He drew his Taser, pointed it at Myeni, and deployed one shot, which was ineffective.¹⁴² Myeni charged at Officer 3 and punched him with closed fists.¹⁴³ Myeni continued to attack Officer 3 while he was on the ground.¹⁴⁴ Officer 2 attempted to take Myeni to the ground but was unsuccessful.¹⁴⁵

¹³² Officer 1 BWC video.

¹³³ Officer 1 BWC video.

¹³⁴ Compare Myeni's appearance as recorded in Officer 1's BWC video with dispatch's suspect description.

¹³⁵ Officer 1 BWC video.

¹³⁶ Officer 1 BWC video.

¹³⁷ Officer 2 report; Officer 1 BWC video.

¹³⁸ Officer 3 and Officer 2 report; Witness 1 interview (she described Myeni as changing his direction and run towards the officer (Officer 1).

¹³⁹ Officer 3 report and BWC video; Officer 2 report.

¹⁴⁰ Officer 3 BWC video.

¹⁴¹ Officer 3 report and BWC video; Officer 2 report. See also Ring video (55560042_6951264144644263835_stamp (1).mp4). The Ring video time stamp is 20:15:10 HST.

¹⁴² Officer 3 report and BWC video; Officer 2 report; Ring video (55560042_6951264144644263835_stamp (1).mp4). Later, one of the Taser probes was found affixed to the Prius' left rear bumper.

¹⁴³ Officer 3 report and BWC video.

¹⁴⁴ Officer 3 report and BWC video.

¹⁴⁵ Officer 2 report.

Myeni redirected his attention to Officer 1.¹⁴⁶ Officer 3 stood up.¹⁴⁷ Myeni resumed his attack on Officer 1.¹⁴⁸ Officer 1 discharged his service firearm once.¹⁴⁹ Myeni took Officer 1 to the ground and repeatedly punched him to the face and head.¹⁵⁰

As Myeni punched Officer 1, Officer 2 removed his service firearm, pointed it at Myeni, and commanded him to stop.¹⁵¹ Officer 2 discharged his service firearm three times.¹⁵² Officer 2 described his thought process as follows:

I was afraid that the male was going to kill [Officer 1] if he continued to strike him. I also believed that [Officer 3] was injured or incapacitated. I was also concerned the suspect may have gained control of [Officer 1's] service firearm since he had un-holstered it and was holding it in his hand when he was attacked by the male.

Approximately five seconds elapsed between the first gunshot and the three-shot volley.¹⁵³ Shortly after the Officer 2's three-shot volley someone shouted, "Police!"¹⁵⁴

Approximately 30 seconds elapsed from Officer 1's first command to "Get on the ground!" to Officer 2's three-round volley.¹⁵⁵

Myeni lay face down on the ground. He was handcuffed and rolled onto his back. Officers attempted first aid on Myeni. They applied the AED and performed CPR compressions.¹⁵⁶ EMS arrived at 8:25 p.m.¹⁵⁷

¹⁴⁶ Officer 3 report.

¹⁴⁷ Officer 3 report.

¹⁴⁸ Officer 1 BWC video.

¹⁴⁹ Officer 2 report; Officer 1 BWC video; Ring video (55560042_6951264144644263835_stamp (1).mp4). The Ring video time stamp is 20:15:18 HST.

¹⁵⁰ Officer 2 report; Officer 3 BWC video.

¹⁵¹ Officer 2 report; Officer 1 BWC video.

¹⁵² Officer 2 report; Ring video (55560042_6951264144644263835_stamp (1).mp4).

¹⁵³ Officer 1 BWC video; Officer 3 BWC video; Ring video (55560042_6951264144644263835_stamp (1).mp4). The Ring video time stamp is 20:15:23 HST.

¹⁵⁴ Ring video (55560042_6951264144644263835_stamp (1).mp4). The Ring video time stamp is 20:15:27 HST.

¹⁵⁵ Officer 1 BWC video.

¹⁵⁶ [REDACTED], [REDACTED], [REDACTED], and [REDACTED] BWC video.

¹⁵⁷ EMS record.

Report Date: June 30, 2021

After Myeni was handcuffed, Officer 2 checked Officer 1.¹⁵⁸ His face was bleeding.¹⁵⁹ Officer 1 said that he was missing his service firearm.¹⁶⁰ Officer 1 said that Myeni pulled his service firearm.¹⁶¹ Officer 2 found Officer 1's service firearm on the grass, near where he had been assaulted.¹⁶² The firearm's slide was locked back in the open position.¹⁶³

EMS left the scene at 8:38 p.m. and arrived at The Queen's Medical Center (QMC) at 8:46 p.m.¹⁶⁴ Dr. [REDACTED] pronounced Myeni dead at 8:49 p.m.¹⁶⁵

Officer 2 intentionally discharged his service firearm.¹⁶⁶ The discharge was not accidental.

As of this writing Officer 1 has not prepared a formal statement. For purposes of this analysis, it will be assumed that he intentionally discharged his service firearm.

There is no evidence that racial animus towards Myeni prompted the officers' use of deadly force.

E. Myeni's Cause of Death, Recovered Evidence, and Toxicology Results

On April 15, 2021, [REDACTED], MD, PhD (Dr. [REDACTED]), Chief Medical Examiner for the Department of the Medical Examiner, City and County of Honolulu, performed the autopsy at the ME's Facility located at 835 Iwilei Road.

1. Cause of Death

The cause of death was multiple gunshot wounds.

2. Gunshot Wounds

Dr. [REDACTED] documented four gunshot wounds (GSW): three to the torso and one to the right lower extremity. Each GSW is summarized below.¹⁶⁷

¹⁵⁸ Officer 2 report.

¹⁵⁹ Officer 2 report.

¹⁶⁰ Officer 2 report and BWC video.

¹⁶¹ Officer 1 BWC video.

¹⁶² Officer 2 report.

¹⁶³ Officer 2 report.

¹⁶⁴ EMS record.

¹⁶⁵ ME Investigation of Death at 1-2.

¹⁶⁶ Officer 2 report.

¹⁶⁷ The ME's numbering system does not imply order of infliction. See attached ME Diagram under ME Case No. 21-0963.

a. GSW #1

GSW #1 was of indeterminate range that entered the right medial chest. The bullet fractured the right 3rd rib, lacerated the right lung, and fractured the 9th rib posteriorly. Blood filled the right chest cavity. The projectile came to rest under the skin on the right back.¹⁶⁸ The right lung was the only structure affected.

The wound track was front to back, left to right, and downward.

At the time of autopsy, only 50 cc of blood remained in the right chest cavity.

b. GSW #2

GSW #2 was of indeterminate range that entered the left lateral chest. The bullet did not injure the left lung but it perforated the diaphragm and entered the peritoneal cavity. The bullet fractured the left 8th and 9th ribs, lacerated the spleen and perforated the left kidney. The bullet caused a fracture in the lumbar spine and came to rest under the skin near the spine.¹⁶⁹

The wound track was front to back, left to right, and downward.

There was approximately 1500 cc of blood in the left chest cavity.

c. GSW #3

GSW #3 was of indeterminate range that entered the right medial shoulder. The bullet fractured the right 2nd rib posteriorly, lacerated the right lung, fractured the 9th and 10th ribs posteromedially, exited the chest cavity, and stopped under the skin under the right lumbar area.¹⁷⁰

The wound track was front to back, right to left, and steeply downward.

Associated injuries include a right hemothorax with approximately 50 cc of blood at the time of autopsy.

d. GSW #4

GSW #4 was of indeterminate range that entered the right anterolateral distal thigh. The bullet caused deep soft tissue injuries but did not cause any bone fractures. GSW #4 exited the back of the thigh and reentered the right posterior proximal leg. The

¹⁶⁸ Item 42 submitted under HPD report no. 21-158469.

¹⁶⁹ Item 44 submitted under HPD report no. 21-158469.

¹⁷⁰ Item 43 submitted under HPD report no. 21-158469.

bullet proceeded into the muscle tissue and stopped in the distal lower leg.¹⁷¹ The bullet did not cause any bone fracture or major vascular injury.

The wound path was front to back and slightly downward. The wound path suggests that the bullet entered the right leg while it was bent at the knee.

3. External Injuries

Dr. [REDACTED] documented minor blunt force injuries as follows: (1) two small abrasions to the right fifth finger; (2) two small abrasions to the back of the left elbow; (3) multiple abrasions within three centimeters on the right front knee; (4) a small abrasion in the front of the left proximal lower leg; and (5) a small abrasion on the dorsal surface of the left first metatarsophalangeal joint area.

4. Evidence Recovery

Dr. [REDACTED] recovered four projectiles from the following locations: (1) right mid-back; (2) right lower back; (3) left lower back; and (4) right lower leg.¹⁷²

A DNA blood card was obtained. HPD received other items of evidence at the morgue: two necklaces, two paper bags, a pair of handcuffs, a tag, swabs from Myeni's hands, and nail clippings from both hands.¹⁷³

5. Toxicology

A femoral blood sample was drawn during the autopsy. The ME sent the sample to NMS Labs. The toxicology screen reveals the presence of a marijuana component with metabolites.

Dr. [REDACTED] offers no opinion concerning the psychological or physiological effect of marijuana on Myeni's state of mind or his behavior.

F. Scientific/Forensic Evidence

1. Gunshot Residue Collection Kit

Gunshot residue (GSR) collection kits were used on the hands of Officer 1, Officer 2, Officer 3, and Myeni.¹⁷⁴ HPD Criminalist [REDACTED] analyzed these kits. Her findings and conclusions are as follows:

Officer 1: Two particles characteristic of GSR

¹⁷¹ Item 45 submitted under HPD report no. 21-158469.

¹⁷² ME Autopsy Report and Chain of Custody document.

¹⁷³ ME Chain of Custody document.

¹⁷⁴ [REDACTED] report.

Officer 3: No GSR

Myeni: Six particles consistent with GSR

Officer 2: Two particles consistent with GSR¹⁷⁵

The presence of GSR on a person's hands indicates one or more of the following:

- The person may have discharged a firearm.
- The person may have been in the vicinity of a firearm when it was discharged.
- The person may have come into contact with an item with GSR on it.¹⁷⁶

2. Firearms and Tool Marks

HPD Criminalist [REDACTED] analyzed the firearms and ammunition evidence. She concluded that the service firearms belonging to Officer 1, Officer 2, and Officer 3 were operable.

Regarding the four bullets recovered during the autopsy, one was fired from Officer 1's service firearm and three were fired from Officer 2's. The chart below summarizes each GSW,¹⁷⁷ a brief description of the GSW, and the officer responsible for the shot.¹⁷⁸

GSW NUMBER	ENTRY	HPD EVIDENCE NUMBER	RESPONSIBLE OFFICER
1	Right medial chest	42	Officer 1
2	Left lateral chest	44	Officer 2
3	Right medial shoulder	43	Officer 2
4	Right anterolateral distal thigh	45	Officer 2

3. DNA and Serology

HPD developed the known DNA profiles for Officer 1, Officer 3, and Myeni. HPD collected swabs as follows; (1) two swabs from Officer 1's face; (2) two swabs from Officer 3's face; (3) nail clippings from Myeni's left and right hands; (4) two swabs from each of Myeni's left and right hands.

HPD Criminalist [REDACTED] developed the DNA profiles from the aforementioned swabs and compared them against the known profiles for Officer 1,

¹⁷⁵ [REDACTED] report.

¹⁷⁶ [REDACTED] report.

¹⁷⁷ The ME's numbering system does not imply order of infliction. However, given the totality of the circumstances, GSW #1 was the first shot fired.

¹⁷⁸ [REDACTED] report, ME Autopsy Report and Diagram.

Officer 3, and Myeni.¹⁷⁹ Her findings and conclusions regarding the two swabs from Officer 1's face are as follows:

Human blood was indicated. The DNA profile was a mixture of two individuals. Assuming that Officer 1 is one of the contributors to the mixture, Myeni cannot be excluded as a possible contributor to the partial foreign DNA profile from the mixture. Using the most conservative frequency estimate calculated, approximately 208.3 million unrelated individuals would have to be evaluated before expecting to find an individual that would have a DNA profile that cannot be excluded as a possible contributor to the partial foreign DNA profile from this item of evidence.¹⁸⁰

G. Search of Myeni's Cell Phone

HPD Evidence Specialist [REDACTED] recovered Myeni's iPhone 11 (the phone) from inside the residence and submitted it into evidence as Item 27 under HPD report no. 21-158469.

One June 4, 2021, the PAT obtained search warrant S.W. 2021-256 to search the phone. HPD executed the warrant and provided the results of the search on two flash drives. Investigator [REDACTED] reviewed the videos on each flash drive and found no images of 91 Coelho Way, Witness 1, Witness 2, [REDACTED], [REDACTED], [REDACTED], or [REDACTED].

GPS data from the phone confirms Myeni's presence at Kewalo Basin and maps his route from the basin to 91 Coelho Way.

H. Other Factors

1. [REDACTED] and His Tenants Did Not Know Myeni

[REDACTED], Witness 1, Witness 2, [REDACTED], and [REDACTED] all denied knowing Myeni or having any prior interaction with him.¹⁸¹ All affirmed that he did not have permission to enter the residence on April 14, 2021.

2. Canvas of the Neighborhood

Investigator [REDACTED] canvassed the neighborhood bordered by Wyllie and Burbank Streets, Coelho Way, and Pali Highway. He did not find any eyewitness to the officer-involved shooting.

¹⁷⁹ [REDACTED] report.

¹⁸⁰ [REDACTED] report.

¹⁸¹ [REDACTED], Witness 1, Witness 2, [REDACTED], and [REDACTED] interviews. See also [REDACTED]'s statement to Investigator [REDACTED].

The canvassing did not produce any relevant home surveillance footage.

Investigator [REDACTED] spoke with [REDACTED], temple president, who said that no resident at the temple saw or heard anything related to the shooting. [REDACTED] gave Investigator [REDACTED] an "Official Statement" dated April 23, 2021, prepared by their attorney. The statement reads in relevant part:

In publicity surrounding the tragic event and a lawsuit brought by Mr. Myeni's widow, there have been some references to our temple being adjacent to the property where Mr. Myeni lost his life in a police shooting after police responded to a 911 call related to his arrival there. There has been some speculation that perhaps Mr. Myeni intended to go to our temple but mistakenly went to the neighboring property instead.

As management for the temple at 51 Coelho Way, we do not know Mr. Myeni and have no information concerning him or the events of April 14. We are not aware that he has ever been to our temple or had any intention to come to our temple on April 14. Had he come to our temple during hours we are open, we would have welcomed him as we do all members of the public interested in the spiritual practices or philosophy we offer our congregation and the public. It should be noted that at the time the event occurred after 8 pm, our temple was closed to the public and we would not have anticipated any visitors at that time. Our temple and congregation also has no affiliation, connection or knowledge concerning the neighboring property or its owner(s).

3. Information Known to the Responding Officers

There is no evidence that the responding officers spoke with Witness 1 or Witness 2 prior to their arrival at the scene. Accordingly, the information of which they were aware prior to arriving at 91 Coelho Way came from the dispatcher.

The relevant transmissions are as follows:

20:11:03

The dispatcher asked 972 (Officer 1) if he could investigate a reported burglary at 91 Coelho Way. The caller, who was still on the line, reported that she found a male in her house. The dispatcher asked 973 (Officer 2) if he could help 972 (Officer 1).

20:12:23

The dispatcher described the suspect as an African American male wearing straight black jeans. The caller was on the line and there was a language barrier. The dispatcher addressed 972 (Officer 1), 973 (Officer 2), and 69 (Officer 3).

Upon his arrival the scene, Officer 1 interacted with Witness 1.¹⁸² She was upset, declared Myeni's presence on the premises, and gestured towards Myeni's direction. It is reasonable for Officer 1 to conclude that Witness 1, who still clutched her cell phone, was the caller referenced by dispatch.

20:13:30

The dispatcher addressed 972, 973, and 69 and stated that the call taker was crying and not answering questions. The male was blocking the door and she could not get inside.

4. Relative Size Difference

At the time of autopsy, Myeni measured 5'11" and weighed 203 pounds.¹⁸³

Officer 1 is 5'8" and weighs 245 pounds.¹⁸⁴

Officer 2 is 5'11" and weighs 190 pounds.¹⁸⁵

Officer 3 is 5'11" and weighs 205 pounds.¹⁸⁶

5. Law Enforcement's Use of Non-Deadly Force

Uniformed police officers attempted to use two techniques to control Myeni before the discharge of their service firearms. First, Officer 1 made repeated verbal commands to obtain Myeni's compliance. Myeni disregarded these commands and assaulted Officer 1.

Second, after witnessing Myeni assault Officer 1, Officer 3 deployed his Taser. It was ineffective. One Taser probe was attached to the Prius' left rear bumper.¹⁸⁷ The other probe struck Myeni's shirt.¹⁸⁸

6. Officer Injuries

Officer 1, Officer 2, and Officer 3 were injured. Their injuries are listed below.

¹⁸² Officer 1 BWC video; Ring video.

¹⁸³ See ME identification tag attached to sealed body bag.

¹⁸⁴ Personnel information provided by PSO.

¹⁸⁵ Personnel information provided by PSO.

¹⁸⁶ Personnel information provided by PSO.

¹⁸⁷ ME Investigation of Death Report at 3. See Item 33 submitted under HPD report no. 21-158469.

¹⁸⁸ ME Investigation of Death Report at 3. See Item 32 submitted under HPD report no. 21-158469.

a. Officer 1

On April 15, 2021, the emergency room physician diagnosed Officer 1 with multiple left face fractures, a left inner cheek cut, a left wrist sprain, and a serious concussion.¹⁸⁹ The physician indicated serious bodily injury on Officer 1's HPD 13.¹⁹⁰

b. Officer 2

On April 15, 2021, the emergency room physician diagnosed Officer 2 with a right face abrasion.¹⁹¹

c. Officer 3

Officer 3 reported injuries to his left forehead area, pain to the right side of his neck, the left side of his inner bicep area, the left side of his outer forearm, and his left knee.¹⁹² There was a hole to the left knee of his uniform pants.¹⁹³

On April 15, 2021, the emergency room physician diagnosed Officer 3 with a left knee strain and abrasion, a left arm bruise, a head hematoma, and a right neck strain.¹⁹⁴

III. LEGAL PRINCIPLES

A. Definitions

"Believes" means reasonably believes.¹⁹⁵

"Bodily injury" means physical pain, illness, or any impairment of physical condition.¹⁹⁶

"Deadly force" means force which the actor uses with the intent of causing or which the actor knows to create a substantial risk of causing death or serious bodily harm. Intentionally firing a firearm in the direction of another person or in the direction which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as

¹⁸⁹ HPD 13 for Officer 1.

¹⁹⁰ HPD 13 for Officer 1.

¹⁹¹ HPD 13 for Officer 2.

¹⁹² Officer 3 report.

¹⁹³ See photographs taken by Evidence Specialist [REDACTED].

¹⁹⁴ HPD 13 for Officer 3.

¹⁹⁵ HRS § 703-300.

¹⁹⁶ HRS § 707-700.

the actor's intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force.¹⁹⁷

"Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a home or place of lodging.¹⁹⁸

"Force" means any bodily impact, restraint, or confinement, or the threat thereof.¹⁹⁹

"Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.²⁰⁰

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.²⁰¹

"Substantial bodily injury" means a major avulsion, major laceration, or major penetration of the skin; a burn of at least second degree severity; a bone fracture; a serious concussion; or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.²⁰²

B. Potential Defenses

Three HRS chapter 703 justification defenses apply to this case.²⁰³ Each is referenced below.

1. Use of Force in Self-Protection (HRS § 703-304; HAWJIC 7.01A)

HRS § 703-304 states in relevant part as follows:

- (1) Subject to the provisions of this section and of section 703-308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the

¹⁹⁷ HRS § 707-300.

¹⁹⁸ HRS § 707-300.

¹⁹⁹ HRS § 707-300.

²⁰⁰ HRS § 707-300.

²⁰¹ HRS § 707-700.

²⁰² HRS § 707-700.

²⁰³ HRS § 703-301(1) ("In any prosecution for an offense, justification, as defined in sections 703-302 through 703-309, is a defense.").

- purpose of protecting himself against the use of unlawful force by the other person on the present occasion.
- (2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.
 - (3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.
- ...
- (5) The use of deadly force is not justifiable under this section if:
 - (a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or
 - (b) The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:
 - (i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and
 - (ii) A public officer justified in using force in the performance of his duties, or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape, is not obliged to desist from efforts to perform his duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.
 - (6) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

The use of deadly force in self-defense involves consideration of two issues. First, did the actor use deadly force? Second, was the use of deadly force justified?²⁰⁴

The use of deadly force upon or toward another person is justified if the actor reasonably believes that deadly force is immediately necessary to protect himself on the present occasion against death or serious bodily injury.²⁰⁵ The reasonableness of the actor's belief that the use of protective deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the actor's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be when the deadly force was used.²⁰⁶

2. Use of Force for the Protection of Other Persons (HRS § 703-305; HAWJIC 7.02A)

HRS § 703-305 states in relevant part as follows:

- (1) Subject to the provisions of this section and of section 703-310, the use of force upon or toward the person of another is justifiable to protect a third person when:
 - (a) Under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and
 - (b) The actor believes that the actor's intervention is necessary for the protection of the other person.

Use of deadly force in the defense of others involves consideration of two issues. First, did the actor use deadly force? Second, was the use of deadly force justified?²⁰⁷

The use of force upon or toward the person of another is justifiable to protect a third person when, under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and the actor believes that the actor's intervention is immediately necessary to protect the third person.²⁰⁸ The reasonableness of the actor's belief that the use of deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the actor's position under the circumstances of which the actor was aware or as the actor reasonably believed them to be when the deadly force was used.²⁰⁹

3. Use of Force in Law Enforcement (HRS § 703-307)

HRS § 703-307 states in relevant part as follows:

- (1) Subject to the provisions of this section and of section 703-310, the use of force upon or toward the person of another is justifiable

²⁰⁵ HAWJIC 7.01A

²⁰⁶ HAWJIC 7.01A

²⁰⁷ HAWJIC 7.02A.

²⁰⁸ HAWJIC 7.02A.

²⁰⁹ HAWJIC 7.02A.

when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

- (2) The use of force is not justifiable under this section unless:
 - (a) The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and
 - (b) When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.
- (3) The use of deadly force is not justifiable under this section unless:
 - (a) The arrest is for a felony;
 - (b) The person effecting the arrest is authorized to act as a law enforcement officer or is assisting a person whom he believes to be authorized to act as a law enforcement officer;
 - (c) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and
 - (d) The actor believes that:
 - (i) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or
 - (ii) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.

IV. ANALYSIS

A. Myeni's Entry into the Residence

The residence at 91 Coelho Way is used for lodging. As such, it qualifies as a "dwelling." On April 14, 2021, Myeni entered the residence. Given the totality of the circumstances, it can be inferred that his entry was intentional.²¹⁰ His entry was also unlawful, inasmuch as he did not have the permission of [REDACTED] or any of the tenants. This conduct and the attendant circumstances implicate at least two offenses under the HPC: (1) burglary in the first degree in violation of HRS § 708-810 and (2) unauthorized entry in a dwelling in the second degree in violation of HRS § 708-812.6.²¹¹

The facts do not support the charge of burglary in the first degree. There is no evidence supporting the contention that, at the time of his unlawful entry, Myeni

²¹⁰ State v. Eastman, 81 Hawai'i 131, 141, 913 P.2d 57, 67 ("Given the difficulty of proving the requisite state of mind by direct evidence in criminal cases, proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient.").

²¹¹ Criminal trespass in the first degree in violation of HRS § 708-813 is an included offense that will not be discussed in this analysis.

intended to commit a crime against person or property.²¹² Given that Myeni's initial entry was unlawful, this analysis will not consider whether he remained unlawfully.²¹³

At the time of his unlawful entry, Witness 1 and Witness 2 were present in the residence. Given the foregoing, Myeni committed the offense of unauthorized entry in a dwelling in the second degree in violation of HRS § 708-812.6.²¹⁴

The affirmative defense codified in HRS § 708-812.6 is inapplicable here. At the time of his unlawful entry, there was no social gathering in progress in the residence. As such, there was no gathering that Myeni could have intended to join.

B. Myeni Was Aware that Police Officers Had Responded to 91 Coelho Way

The argument has been made that Myeni used justifiable force against Officer 1 in self-defense. This argument rests on the contention that Myeni was unaware of Officer 1's identity as a police officer and, as such, Myeni's use of force against the police was an appropriate response to his perception that he was threatened. The following facts refute this argument.

First, earlier that evening Myeni had face-to-face interaction with uniformed police officers at Kewalo Basin. They communicated with each other in English. These officers were dressed in their class A uniforms. They also drove marked police cars. This interaction occurred about 30 minutes before the fatal shooting. Accordingly, Myeni was familiar with HPD's class A uniform before he went to 91 Coelho Way.

²¹² State v. Mahoe, 89 Hawai'i 284, 288, 972 P.2d 287, 291 (1998) (holding that, in order to sustain a burglary conviction, the intent to commit the offense must have existed at the time the unlawful entry was made).

²¹³ Id. at 290, 972 P.2d at 293 (holding that a perpetrator "remains unlawfully" for the purposes of a burglary prosecution only in situations in which the individual makes a lawful entry that subsequently becomes unlawful).

²¹⁴ HRS § 708-812.6 states:

- (1) A person commits the offense of unauthorized entry in a dwelling in the second degree if the person intentionally or knowingly enters unlawfully into a dwelling and another person was lawfully present in the dwelling.
- (2) Unauthorized entry in a dwelling in the second degree is a class C felony.
- (3) It shall be an affirmative defense that reduces this offense to a misdemeanor that, at the time of the unlawful entry:
 - (a) There was a social gathering of invited guests at the dwelling the defendant entered;
 - (b) The defendant intended to join the social gathering; and
 - (c) The defendant had no intent to commit any unlawful act other than the entry.

Second, Witness 1 informed Myeni that she intended to call 911. While there may have been a language barrier, both Witness 1 and Myeni spoke English. According to Witness 1, Myeni said that he was not afraid of the police and that he would sleep outside. This statement conveys Myeni's understanding of Witness 1's intention to call the police. Witness 1 followed through and made the call. Taken together, it can be reasonably concluded that Myeni was aware that the police had been called. A reasonable person would have concluded that, based on the foregoing, the individuals who carried flashlights onto the property were police officers.

Third, Officer 1, Officer 2, and Officer 3 all wore class A uniforms. There is no BWC video that shows that the officers identified themselves as police prior to the discharge of the first gunshot. Regardless, in viewing all the relevant circumstances from an objective standard, a reasonable person would have known that Officer 1, Officer 2, and Officer 3 were, in fact, police officers.

Fourth, Myeni interacted with Officer 2 moments before his initial assault on Officer 1. While dressed in his class A uniform, Officer 2 asked Myeni a question. They were close enough to each other that Myeni heard and responded to the question. This close proximity supports the conclusion that Myeni saw how Officer 2 was dressed. It further supports the conclusion that Myeni knew that police had responded to Witness 1's terrified 911 call.

C. Myeni Committed the Offense of Assault against a Law Enforcement Officer in the First Degree When He Assaulted Officer 1, Officer 2, and Officer 3

The offense of assault against a law enforcement officer in the first degree is codified in HRS § 707-712.5, which states:

- (1) A person commits the offense of assault against a law enforcement officer in the first degree if the person:
 - (a) Intentionally or knowingly causes bodily injury to a law enforcement officer who is engaged in the performance of duty; or
 - (b) Recklessly or negligently causes, with a dangerous instrument, bodily injury to a law enforcement officer who is engaged in the performance of duty.

Officer 1, Officer 2, and Officer 3, all law enforcement officers, were engaged in the performance of their duty when then responded to 91 Coelho Way. Myeni caused bodily injury to all three officers.²¹⁵ Based on the totality of the circumstances Myeni's conduct was intentional or knowing. Furthermore, as stated above,²¹⁶ Myeni was aware that Officer 1, Officer 2, and Officer 3 were police officers. Based on the foregoing,

²¹⁵ As to Officer 1, Myeni caused serious bodily injury.

²¹⁶ See Section IV.B., supra.

Myeni committed the offense of assault against a law enforcement officer in the first degree as to Officer 1, Officer 2, and Officer 3.

D. Myeni's Toxicology Results Are Admissible in a Criminal Prosecution against either Officer 1 or Officer 2

As of this writing, the PAT is unaware of any expert opinion concerning what psychological or physiological effect, if any, the marijuana had on Myeni.²¹⁷ Regardless, this investigation will assume that the toxicology results will be admissible in a criminal prosecution against either Officer 1 or Officer 2.²¹⁸

As of this writing, there is no evidence that Officer 1, Officer 2, or Officer 3 were under the effect of any illicit or mind-altering substance at the time of the April 14, 2021 officer-involved shooting.

E. HRS Chapter 703 Defenses

1. Officer 1's Use of Deadly Force in Self-Protection

The question is whether Officer 1 was legally justified in using deadly force in self-protection. This involves a two-part inquiry. First, did Officer 1 use deadly force? Second, was his use of deadly force justified?²¹⁹

As to the first question, it is uncontroverted that Officer 1 used deadly force. His act of discharging his service firearm at Myeni was intentional. It was not an accident.

As to the second question, Officer 1's use of deadly force was justified if he reasonably believed that deadly force was immediately necessary to protect himself from serious bodily injury. The reasonableness of Officer 1's belief that the use of protective deadly force was immediately necessary is determined from the viewpoint of a reasonable person in Officer 1's position under the circumstances of which Officer 1 was aware or as the Officer 1 reasonably believed them to be when the deadly force was used.

There is no evidence that Officer 1 spoke with Witness 1 or Witness 2 prior to his arrival at the scene. He had no personal knowledge of the contents of the Ring video or Witness 1's 911 call. He had no prior contact with or knowledge of Myeni. Accordingly, the circumstances of which Officer 1 was aware prior to his arrival came from the dispatcher.

²¹⁷ To reiterate, Dr. [REDACTED] expresses no opinion on this matter.

²¹⁸ State v. DeLeon, 131 Hawai'i 463, 319 P.3d 382 (2014) (holding that the trial court erred in excluding defense expert's opinion that victim's ingestion of cocaine had an impact on his behavior because the exclusion violated defendant's due process rights to a complete defense).

²¹⁹ HAWJIC 7.01A.

The relevant transmissions are as follows:

20:11:03

The dispatcher asked 972 (Officer 1) if he could investigate a reported burglary at 91 Coelho Way. The caller, who was still on the line, reported that she found a male in her house. The dispatcher asked 973 (Officer 2) if he could help 972 (Officer 1).

20:12:23

The dispatcher described the suspect as an African American male wearing straight black jeans. The caller was on the line and there was a language barrier. The dispatcher addressed 972 (Officer 1), 973 (Officer 2), and 69 (Officer 3).

20:13:30

The dispatcher addressed 972, 973, and 69 and stated that the call taker was crying and not answering questions. The male was blocking the door and she could not get inside.

Upon his arrival the scene, Officer 1 interacted with Witness 1.²²⁰ She was unquestionably upset, declared Myeni's presence on the premises, and gestured towards Myeni's direction. It is reasonable for Officer 1 to conclude that Witness 1, who still clutched her cell phone, was the caller referenced by dispatch, and that Myeni was the burglary suspect.

Officer 1 was not the initial aggressor. He did not provoke Myeni's use of force against him. As a law enforcement officer who responded to the scene as part of his official duties, he was under no duty to retreat.²²¹

Under the circumstances that existed based on Officer 1's subjective belief, it was objectively reasonable that he used deadly force to protect himself from death or serious bodily injury. A former rugby player, Myeni was physically superior to Officer 1: he was younger, taller, more muscular and athletic, and clearly stronger. Myeni physically assaulted Officer 1—i.e., he used unlawful force—before the police used any physical force against him. Officer 1 only discharged his service firearm after: (1) Myeni

²²⁰ Officer 1 BWC video; Ring video.

²²¹ HAWJIC 7.01A, as modified, states in relevant part:

“When the defendant is a public officer justified in using force in the performance of his duties, the defendant is not obliged to desist from efforts to perform the duty or effect the arrest or prevent the escape, because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.”

Compare HRS § 703-304(5)(b)(ii).

had assaulted him; (2) Officer 2 couldn't control him; (3) Officer 3's Taser shot proved ineffective; and (3) Myeni assaulted Officer 3. Testimonial,²²² video,²²³ and forensic evidence²²⁴ confirm that Myeni assaulted Officer 1. Officer 1 in fact suffered serious bodily injury.²²⁵

2. Officer 2's Use of Deadly Force for the Protection of Other Persons

As was the case with Officer 1, the information of which Officer 2 was aware concerning the situation prior to his arrival could only have come from the dispatcher. Furthermore, Officer 2 gathered additional information at the scene based on his interaction with Myeni and his observations of Myeni's conduct. At the time Officer 2 used deadly force, he was not protecting himself against Myeni's use of unlawful force against him. Rather, he was protecting Officer 1 from Myeni's use of unlawful force. Based on the foregoing, use of force for the protection of other persons applies here.

Defense of others when deadly force is at issue involves consideration of two issues: First, did the actor use "deadly force"? Second was the use of deadly force justifiable?²²⁶

As to the first question, it is uncontroverted that Officer 2 used deadly force. He intentionally fired his service firearm three times. Each shot struck Myeni.

As to the second question, the use of deadly force upon or toward another person is justifiable to protect a third person if, under the circumstances as the actor reasonably believed them to be, the third person would be justified in using deadly force to protect himself against death or serious bodily injury and the actor reasonably believes that his intervention is immediately necessary to protect the third person. The reasonableness of the actor's belief that the use of deadly force was immediately necessary shall be determined from the viewpoint of the reasonable person in the actor's position under circumstances of which the actor was aware or as the actor reasonably believed them to be when the deadly force was used. The actor's belief that the use of deadly force was immediately necessary may be mistaken, but reasonable.

Officer 1, the third person, was under no duty to retreat. At the time of the incident, he was employed and on duty as a law enforcement officer. A 911 call prompted the police dispatch that sent him to 91 Coelho Way. He was not the initial aggressor nor did he provoke Myeni's use of force against him.

²²² Witness 1 and Witness 2 statements; Officer 3 and Officer 2 reports.

²²³ Officer 3 BWC video.

²²⁴ [REDACTED] report.

²²⁵ HPD 13 for Officer 1.

²²⁶ HAWJIC 7.02A.

Similarly, Officer 2 was under no duty to retreat.²²⁷ Any retreat on his part would not, under the circumstances, have secured Officer 1's safety.

The facts support the conclusion that Officer 2's use of deadly force was justifiable to protect Officer 1. Under the circumstances that Officer 2 believed existed at the time, Officer 1, who was repeatedly struck to the face and head, would have been justified in using deadly force to protect himself from death or serious bodily injury. As explained above, Officer 1 suffered serious bodily injury. Under the circumstances, there was no duty for Officer 1 to retreat and he was not the first aggressor.

Officer 2 described his thought process as follows:

I was afraid that the male was going to kill [Officer 1] if he continued to strike him. I also believed that [Officer 3] was injured or incapacitated. I was also concerned the suspect may have gained control of [Officer 1's] service firearm since he had un-holstered it and was holding it in his hand when he was attacked by the male.

This investigation finds that Officer 2's belief that his use of deadly was immediately necessary was objectively reasonable. Three police officers could not control Myeni. Myeni had assaulted Officer 1, assaulted Officer 2, was unaffected by the Taser, assaulted Officer 3, and returned to assault Officer 1. Myeni's second assault of Officer 1 occurred after Officer 1's bullet struck him in the mid-chest. Officer 2 saw Myeni positioned over Officer 1 as he repeatedly struck the fallen officer in the face and head.

3. Use of Force in Law Enforcement

The initial officers did not have an arrest warrant nor did they have probable cause to effectuate a warrantless arrest when they arrived at the scene. The initial officers responded to a burglary dispatch at the residence. Officer 1 entered the east driveway entrance, at which time he saw and heard Witness 1, who stood outside the residence's front entrance. She was clearly upset and excitedly yelled, "That's him," as she gestured in Myeni's direction. Based on the foregoing, Officer 1 appropriately investigated the matter further and, once confronted by Myeni, had a basis to perform an investigative detention.²²⁸

²²⁷ HAWJIC 7.02A, as modified, states in relevant part:

"If the defendant is a public officer justified in using force in the performance of his duties he is not obliged to desist from efforts to perform his duty or effect the arrest or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed."

²²⁸ State v. Barnes, 58 Haw. 333, 337-38, 568 P.2d 1207, 1211 (1977) (articulating the standard for an investigative stop).

The circumstances changed after Myeni assaulted Officer 1, Officer 2, and Officer 3.²²⁹ This conduct established probable cause for Myeni's warrantless arrest for assault against a law enforcement officer in the first degree.²³⁰

The question is whether Officer 1 and Officer 2's intentional discharge of their service firearms is a justified use of force in law enforcement. HRS § 703-307 states in relevant part as follows:

- (1) Subject to the provisions of this section and of section 703-310, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.
- ...
- (3) The use of deadly force is not justifiable under this section unless:
 - (a) The arrest is for a felony;
 - (b) The person effecting the arrest is authorized to act as a law enforcement officer or is assisting a person whom he believes to be authorized to act as a law enforcement officer;
 - (c) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and
 - (d) The actor believes that:
 - (i) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or
 - (ii) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.

"Section 703-307(3) sets forth the very limited circumstances in which deadly force may be used to effect an arrest."²³¹ The analysis of HRS § 703-307(3) follows below.

First, the officers were authorized to arrest Myeni without a warrant for assault against a law enforcement officer in the first degree, a class C felony. HRS § 703-307(3)(a).

²²⁹ See Section IV.C., supra.

²³⁰ Barnes, 58 Haw. at 335, 568 P.2d at 1209-10 ("The arrest in this case was effected by the police without a warrant, and an arrest without a warrant will be upheld only where there was probable cause for the arrest. Probable cause exists when the facts and circumstances known to the officer, or of which he had reasonably trustworthy information, would warrant a man of reasonable caution to believe that the person arrested has committed or is committing an offense.").

²³¹ Commentary to HRS § 703-307.

Second, Officer 1, Officer 2, and Officer 3 were on duty as sworn HPD police officers. As such, they are law enforcement officers who are authorized to make arrests for violations of the HPC. HRS § 703-307(3)(b).

Third, Officer 1 and Officer 2's use of deadly force created no substantial risk of injury to innocent persons. HRS § 703-307(3)(c). There were no non-police persons, other than Myeni, outside the residence, in the immediate area, when Officer 1 and Officer 2 discharged their service firearms. Both officers, therefore, had a reasonable belief that their use of deadly force did not create a substantial risk of injury to innocent persons.

Fourth, under the facts of this case, there was a substantial risk that Myeni would have caused serious bodily injury if his apprehension was delayed. HRS § 703-307(3)(d)(ii). Officer 2 articulated this objectively reasonable belief in his police report. He wrote:

I was afraid that the male was going to kill [Officer 1] if he continued to strike him. I also believed that [Officer 3] was injured or incapacitated. I was also concerned the suspect may have gained control of [Officer 1's] service firearm since he had un-holstered it and was holding it in his hand when he was attacked by the male.

Officer 1's diagnosed injuries, i.e., serious bodily injury, confirm Officer 2's assessment of the situation before he discharged his service firearm.

Based on the foregoing, Officer 1 and Officer 2's use of deadly force was justified under HRS § 703-307.

V. CONCLUSION

To secure a conviction for an offense under the HPC, the prosecution must disprove an applicable defense—other than an affirmative defense—beyond a reasonable doubt.²³² The defenses codified in HRS §§ 703-304, -305, and -307 are not

²³² HRS §§ 701-114, 701-115, and 702-205.

HRS § 701-114 states:

- (1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:
 - (a) Each element of the offense;
 - (b) The state of mind required to establish each element of the offense;
 - (c) Facts establishing jurisdiction;
 - (d) Facts establishing venue; and
 - (e) Facts establishing that the offense was committed within the time period specified in section 701-108.

affirmative defenses. As such, where these defenses are applicable they must be disproved (or negated) beyond a reasonable doubt.²³³

The PAT declines to prosecute either Officer 1 or Officer 2 for any offense under the HPC for their intentional use of deadly force on April 14, 2021.

The prosecution is unable to disprove beyond a reasonable doubt that (1) Officer 1's use of deadly force was not justified for self-protection; (2) Officer 2's use of deadly force was not justified for protection of others; and (3) the officers' use of deadly force was not a justified use of force in law enforcement.

In other words, the PAT concludes that Officer 1 and Officer 2 were justified in their use of deadly force for self-protection and protection of others, respectively.

VI. MATERIALS CONSIDERED

A. HPD Report No. 21-158469

1. Honolulu Police Department Reports

-
- (2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

HRS § 701-114 states:

- (1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:
- (a) Each element of the offense;
 - (b) The state of mind required to establish each element of the offense;
 - (c) Facts establishing jurisdiction;
 - (d) Facts establishing venue; and
 - (e) Facts establishing that the offense was committed within the time period specified in section 701-108.
- (2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

HRS § 702-205 states:

The elements of an offense are such (1) conduct, (2) attendant circumstances, and (3) results of conduct, as:

- (a) Are specified by the definition of the offense, and
- (b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

²³³ See, e.g., State v. Culkin, 97 Hawai'i 206, 215, 35 P.3d 233, 242 (2001) ("Self-defense is not an affirmative defense, and the prosecution has the burden of disproving it once evidence of justification has been adduced.").

Patrol

[REDACTED]

- Officer 3

[REDACTED]

- Officer 2

[REDACTED]

Detectives

[REDACTED]

Scientific Investigation Section

[REDACTED]

2. Written Witness Statements

- Witness 1
- Witness 2

3. HPD Recorded Statements²³⁴

[REDACTED]

- Witness 2

[REDACTED]

- Witness 1

4. Sixteen (16) HPD Body-Worn Camera Videos

[REDACTED]

- Officer 3

[REDACTED]

- Officer 1

[REDACTED]

- Officer 2

[REDACTED]

5. Twenty-eight (28) Ring Videos

- Provided by [REDACTED]
- HPD 503

6. Radio Transmissions

- Witness 1's 911 call²³⁵
- Police radio transmissions²³⁶

²³⁴ As of this writing, the PAT does not have transcripts of these interviews.

²³⁵ As of this writing, the PAT does not have a transcript of this call.

²³⁶ As of this writing, the PAT does not have a transcript of this call.

B. HPD Report No. 21-158432

i. Patrol Reports

- Officer C
- HPD 252 of [REDACTED]

ii. Three (3) Body-Worn Camera Videos

- Officer C
- Officer B
- Officer A

C. Miscellaneous Public Reports

1. HPD Report No. 21-162831 (Officer D)
2. HPD Report No. 21-161113 ([REDACTED])

D. Other Materials Received from HPD

1. District 5 Duty Roster for April 14, 2021
2. Personnel information for Officer 1, Officer 2, and Officer 3
3. Vehicle information for Officer 1, Officer 2, and Officer 3
4. Use of Force information for Officer 1, Officer 2, and Officer 3

E. Department of the Medical Examiner

1. ME Investigation of Death (ME Case No. 21-0963)
2. ME Autopsy Report (ME Case No. 21-0963)
3. Toxicology Report (ME Case No. 21-0963)
4. Chain of custody documents (ME Case No. 21-0963)

F. PAT Independent Investigation

1. Neighborhood canvassing
2. "Official Statement" from ISKCON Hawaii, Inc. dated April 23, 2021
3. Other Witnesses
 - a. [REDACTED]: Owners of [REDACTED]. Told Investigator [REDACTED] that for the last 18 months they have gone to their residence to collect their mail.
 - b. [REDACTED]: The person to whom the police released the Mazda.²³⁷ He confirmed to Investigator [REDACTED] that he picked up the vehicle as a favor for [REDACTED] but claimed that

²³⁷

HPD-83 "HONOLULU POLICE DEPARTMENT PROPERTY RECEIPT."

he was not the owner. He declined to provide any additional information without his attorney.

- c. [REDACTED]: Identified by [REDACTED] as Myeni's good friend. The Office of the Public Defender represents [REDACTED] in Case No. [REDACTED], where he awaits trial for abuse of family or household members that occurred on April 19, 2021. [REDACTED] is the complainant. Investigator [REDACTED] was unable to interview [REDACTED].
- d. [REDACTED]: Resident at [REDACTED] who observed Myeni's conduct while they were neighbors.

4. Search of the Myeni's iPhone

- a. SW 2021- 256 (obtained on 6/4/21 and executed by HPD)
- b. Contents of two flash drives provided by HPD

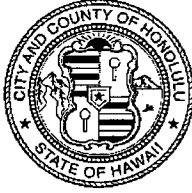
5. Video

- a. Twitter Video (2:13)

DEPARTMENT OF THE MEDICAL EXAMINER
CITY AND COUNTY OF HONOLULU

835 IWILEI ROAD • HONOLULU, HAWAII 96817
TELEPHONE: (808) 768-3090 • FAX: (808) 768-3099 • INTERNET: www.honolulu.gov

RICK BLANGIARDI
MAYOR



██████████ M.D., Ph.D.
MEDICAL EXAMINER

AUTOPSY REPORT
Case No. 21-0963-MYENI, Lindani

RE: Lindani Sanele MYENI

DATE/TIME OF PRONOUNCEMENT: 04/14/2021, 8:49 PM

**DATE, TIME, AND PLACE OF EXAMINATION: 04/15/2021
9:00 AM
Medical Examiner's Facility**

BRIEF HISTORY:

According to the information presently available, the following are the circumstances surrounding the death of Lindani Sanele MYENI. The decedent was a 29-year-old, South African, Black male. He had no known significant medical history. Reportedly, he sustained multiple gunshot wounds during a police intervention at a private residence in Honolulu, Hawaii, on April 14, 2021. He was transported to Queens Medical Center, where his death was pronounced shortly after arrival.

Because of the circumstances surrounding the death, the decedent was transported to the Department of the Medical Examiner for postmortem examination.

FINDINGS/PATHOLOGIC DIAGNOSIS:

1. Multiple gunshot wounds:

A. Penetrating gunshot wound of the torso (Gunshot Wound #1):

1) Entrance wound:

- a) Location: Right medial chest.
- b) Range: Indeterminate.

2) No exit wound present.

3) Injuries include:

- a) Fracture of the right 3rd rib anteromedially.
- b) Perforation of the right lung.
- c) Fracture of the right 9th rib posteriorly.

4) Associated injuries include right hemothorax.

5) A projectile recovered from subcutaneous tissue of the right infrascapular region.

6) Direction: Front to back, left to right, downward.

B. Penetrating gunshot wound of the torso (**Gunshot Wound #2**):

1) Entrance wound:

- a) Location: Left lateral chest.
- b) Range: Indeterminate.

2) No exit wound present.

3) Injuries include:

- a) Fractures of left 8th and 9th ribs laterally.
- b) Perforation of the diaphragm.
- c) Laceration of the spleen.
- d) Perforation of the left kidney.
- e) Fracture of the left transverse process of the 3rd lumbar vertebra.

4) Associated injuries including:

- a) Left hemothorax.
- b) Hemoperitoneum.

5) A projectile recovered from subcutaneous tissue of the left lumbar vertebral area.

6) Direction: Front to back, left to right, downward.

C. Penetrating gunshot wound of the torso (**Gunshot Wound #3**):

1) Entrance wound:

- a) Location: Top of the right medial shoulder.
- b) Range: Indeterminate.

2) No exit wound present.

3) Injuries include:

- a) Fracture of the right 2nd rib posteriorly.
- b) Laceration of the right lung.
- c) Fractures of the right 9th and 10th ribs posteromedially.

4) Associated injuries include right hemothorax.

5) A projectile recovered from the subcutaneous tissue of the right lumbar area.

6) Direction: Front to back, right to left, steeply downward.

D. Perforating/penetrating gunshot wound of the right lower extremity (**Gunshot Wound #4**):

1) Entrance wound:

- a) Location: Right anterolateral distal thigh.
- b) Range: Indeterminate.

2) Exit wound: Right posterolateral distal thigh.

3) Re-entrance wound: Right posterior proximal lower leg.

4) Injuries limited to soft tissue.

5) A projectile recovered in the deep soft tissue of the right mid lower leg.

6) Direction (Right thigh): Front to back, slightly downward.

2. Minor blunt force injuries of the extremities.

3. Toxicology (femoral blood):

A. Delta-9 tetrahydrocannabinol > 50 ng/mL.

B. Delta-9-carboxy tetrahydrocannabinol = 14 ng/mL.

C. 11-Hydroxy delta-9 tetrahydrocannabinol = 1.5 ng/mL.

4. Recent medical history (4/14/21) includes:

A. EMS:

1) 911 call (20:19).

2) Arrived at the patient (20:26).

3) Unresponsive, pulseless, apneic.

4) HPD performing cardiopulmonary resuscitation (CPR) with automated external defibrillator pads attached to the chest.

5) Electrocardiogram: Pulseless electrical activity.

6) Orotracheal intubation.

7) Arrived at the facility (20:46).

B. Queen's Medical Center:

- 1) CPR in progress. No return of spontaneous circulation.
- 2) Ultrasound: No cardiac activity.
- 3) Death pronounced (20:49).

CONCLUSION:

Based on the autopsy findings and investigative and historical information available to me, in my opinion, Lindani Sanele MYENI, a 29-year-old male, died as a result of multiple gunshot wounds he sustained during a police intervention.

There were four (4) gunshot wounds, including three (3) penetrating gunshot wounds involving the torso and one (1) gunshot wound of the right lower extremity. The right lung, spleen, and left kidney were injured by the gunshot wounds of the torso (**Gunshot Wounds #1, #2, and #3**), and there was associated internal hemorrhage. A projectile was recovered from each gunshot wound. Toxicology testing showed presence of a marijuana component with metabolites.

Available investigative information and medical records were reviewed. The decedent was shot during a police intervention. The manner of death is classified as homicide.

CAUSE OF DEATH:

Multiple gunshot wounds

MANNER OF DEATH: The manner of death is, in my opinion, **Homicide**.

[REDACTED]

[REDACTED] M.D., Ph.D.,
Medical Examiner

June 2, 2021
Date

POSTMORTEM EXAMINATION
Department of the Medical Examiner
City and County of Honolulu

This autopsy is performed by [REDACTED], M.D., Ph.D., Medical Examiner, with the assistance of Mr. [REDACTED], at the Department of the Medical Examiner, Honolulu, Hawaii, on April 15, 2021. The autopsy examination is observed by Honolulu Police Department Homicide Detective Mr. [REDACTED], and Evidence Specialists, Ms. [REDACTED] and Ms. [REDACTED].

The body is received in a blue body bag sealed with a red plastic tag numbered 4121397. A medical examiner's tag is attached to the body bag. The bag is opened at 9:05 a.m. The body has been completely disrobed. A necklace-like article made of purple leather with brown and white hair surrounds the neck. Another necklace-like article composed of multicolored beads also surrounds the neck.

EVIDENCE OF MEDICAL INTERVENTION:

An endotracheal tube protrudes from the mouth. Electrocardiogram pads are present on the body. An oximeter sensor is affixed to the left second finger. An intraosseous line inserts at the left anterior proximal lower leg. Present on the medial chest is a 4 cm area of multiple, light brown abrasions.

EXTERNAL EXAMINATION:

The body is that of a well-developed, well-nourished, adult male, measuring 71 inches tall, weighing 203 pounds, and appearing the stated age.

Rigor mortis is fully developed in the extremities. There is dorsal, fixed lividity.

The scalp hair is black, curly, and up to 1/16 inch in length. Present on the right medial forehead is a 1 cm subcutaneous nodule. The eyes are slightly open. The irides are brown with clear corneas and pale conjunctivae. The teeth are natural and in fair condition. Short facial stubble is present.

Present on the right wrist is a handcuff, which is removed by Detective [REDACTED]. The skin on the wrists is atraumatic. Present on the right thenar eminence is a 0.6 x 0.3 cm area of dark purple discoloration without cutaneous hemorrhage. Several smaller punctate areas of dark skin are also present on the palms.

Except for the evidence of injury to be described, the remainder of the external examination of the body is unremarkable.

EVIDENCE OF INJURY:

Gunshot Wounds

There are four (4) gunshot wounds. The gunshot wounds are numbered from **Gunshot Wound #1** through **#4**. The numbering does not indicate the sequence of the occurrence.

Paper bags cover the hands. Removing bags reveals no definitive areas of soot deposition or stippling.

Gunshot Wound #1

Present on the right medial chest, 43 cm below the top of the head and 5 cm to the right of the anterior midline, is a gunshot wound of entrance. The entrance wound consists of a 0.9 x 0.6 cm, roughly horizontally-elongated, oval skin defect. There is an abrasion rim ranging from 0.1 to 0.2 cm. No soot deposition or stippling is present.

The projectile fractures the right 3rd rib anteromedially, entering the right thoracic cavity. The projectile subsequently lacerates the right lung middle lobe; perforates the lower lobe; fractures the right 9th rib posteriorly, exiting the right thoracic cavity; and comes to rest in the subcutaneous tissue of the right infrascapular region, 49 cm below the top of the head, and 13 cm to the right of the posterior midline, where a 1.2 cm faint purple ecchymosis is present on the skin surface.

No exit wound is present.

Associated injuries include a right hemothorax with approximately 50 cc of blood at the time of autopsy. (Comments: A large amount of blood drained from the thoracic cavities through the gunshot wounds before the cavities were opened. Based on a postmortem x-ray showing expansion of the right thoracic cavity with deviated mediastinum, it appears that the right thoracic cavity originally contained a large amount of blood.)

A deformed, partially-jacketed bullet is recovered from the subcutaneous tissue.

The wound path is directed front to back, left to right, and downward.

Gunshot Wound #2

Present on the left lateral chest, 54 cm below the top of the head and 18 cm to the left of the anterior midline, is a gunshot wound of entrance. The entrance wound consists of a 1 x 0.9 cm horizontally-elongated skin defect with an area of skin beveling from 9 to 12 o'clock position. There is an abrasion rim along the edges. The abrasion rim measures 0.3 cm at 12 o'clock position and 0.2 cm at 6 o'clock position. There is a

punctate abrasion just below the abrasion rim at the 6 o'clock position. No soot deposition or stippling is present.

The projectile fractures the left 8th and 9th ribs laterally, entering the left thoracic cavity without injuring the left lung; perforates the left hemidiaphragm, entering the peritoneal cavity; lacerates the inferior pole of the spleen; exits the peritoneal cavity; perforates the left kidney; fractures the left transverse process of the 3rd lumbar vertebra; and comes to rest in the subcutaneous tissue of the left lumbar vertebral region, 68 cm below the top of the head and 1 cm to the left of the posterior midline.

No exit wound is present.

Associated injuries include a left hemothorax with approximately 150 cc of blood at the time of autopsy. There is also a hemoperitoneum with a small amount of blood.

A deformed, partially-jacketed bullet is recovered from the subcutaneous tissue.

The wound path is directed front to back, left to right, and downward.

Gunshot Wound #3

Present on the top of the right medial shoulder, 26 cm below the top of the head and 13 cm to the right of the anterior midline, is a gunshot wound of entrance. The entrance wound consists of a 0.9 x 0.7 cm sagittally-elongated oval skin defect with a 0.1 cm abrasion rim. No soot deposition or stippling is present.

The projectile fractures the right 2nd rib posteriorly, entering the right thoracic cavity; lacerates the posterior surface of the right lung upper lobe; fractures the right 9th and 10th ribs posteromedially, exiting the right thoracic cavity; and comes to rest in the subcutaneous tissue of the right lumbar area, 61 cm below the top of the head and 6 cm to the right of the posterior midline.

No exit wound is present.

Associated injuries include a right hemothorax with approximately 50 cc of blood at the time of autopsy. (See comments on **Gunshot Wound #1**.)

A deformed, partially-jacketed bullet is recovered in the subcutaneous tissue.

The wound path is directed front to back, right to left, and steeply downward.

Gunshot Wound #4

Present on the right anterolateral distal thigh, 122 cm below the top of the head, is a gunshot wound of entrance. The entrance wound consists of a 0.9 x 0.5 cm oval

skin defect elongated in 2 o'clock direction. There is a 0.1 cm abrasion on the edge of the skin defect from 3 to 6 o'clock position. No soot deposition or stippling is present.

The projectile perforates the skeletal muscles in the distal thigh and exits the body in the right posterolateral distal thigh, 125 cm below the top of the head. The exit wound consists of a 2 x 1.3 cm slightly irregular skin defect, elongated in 1 o'clock position. An abrasion is present on the edge of the skin defect from 2 to 9 o'clock position. The abrasion measures 0.3 cm in 3 to 4 o'clock position and 0.1 cm in the other areas. There is a 0.7 x 0.6 cm abrasion adjacent to the skin defect at the 7 o'clock position.

The projectile apparently re-enters the right lower leg in the right posterior proximal lower leg, 140 cm below the top of the head. The re-entrance wound consists of a 1.2 x 0.8 cm, slightly irregular skin defect elongated in 2 o'clock position. There is a 0.3 cm abrasion on the edge from 12 to 1 o'clock position. There is a 0.3 cm area of avulsion of the superficial skin exposing red dermis from 2 to 4 o'clock position. There is a 0.6 x 0.3 cm brown abrasion on the edge of the skin defect at 6 o'clock position. Present just below this abrasion, 0.6 cm below the edge of the skin defect, is a 0.7 cm horizontally-oriented, brown linear abrasion.

The projectile proceeds within the deep soft tissue and comes to rest within the skeletal muscles just medial to the right tibia in the right mid lower leg.

The soft tissue injury is associated with mild hemorrhage.

A deformed, partially-jacketed bullet is recovered from the skeletal muscle tissue.

The wound path in the right thigh is directed front to back and slightly downward. (Comments: Based on the wound paths in the right thigh and lower leg, the right knee joint was flexed when the decedent sustained this gunshot wound.)

Clothing

The clothing items are examined at the Honolulu Police Department Headquarter on April 28, 2021. They are a black t-shirt and blue jeans. The t-shirt has defects in the front panel and also in the right shoulder area. The jeans has defects in the front and back of the right thigh area and also back of the right lower leg area. There is also a defect in the left front knee area. No obvious soot or propellant is observed around the defects.

Blunt force injuries

Present on the right 5th finger, over the proximal portion of the proximal finger, is a 0.5 cm orange abrasion. Present on the dorsal surface of the right 5th finger, over the proximal interphalangeal joint, is a 0.7 cm area of loss of superficial skin exposing red dermis.

Present on the posterior surface of the left elbow are two small, dark-brown abrasions measuring up to 0.4 cm.

Present on the anterior surface of the left knee is a 3 x 2 cm area of multiple abrasions, focally exposing orange dermis. There is a 3 x 0.6 cm vertically-elongated brown abrasion on the anterior surface of the left proximal lower leg. There is a 0.7 x 0.3 cm area of focal avulsion of the superficial skin on the dorsal surface over the left first metatarsophalangeal joint area.

INTERNAL EXAMINATION:

Note: Injuries are described above and are not repeated below.

Head: The scalp is retracted and the cranial vault is opened. The scalp, calvaria, basilar skull, and dura are unremarkable. There is no epidural or subdural hemorrhage. The brain weighs 1,400 g. The leptomeninges are transparent, and there is no subarachnoid hemorrhage. The cerebral arteries at the base of the brain are widely patent. The cerebral hemispheres, cerebellum, and brainstem are normally formed and symmetrical. On sectioning, there is no evidence of intraparenchymal hemorrhage, infection, tumor, or trauma.

Body: The body is opened with a Y-shaped incision. The organs occupy their usual positions and relationships. The body cavities have smooth surfaces. The skeletal muscles and axial skeletal system appear unremarkable.

Neck: The tongue is atraumatic. There is no evidence of infection, tumor, or trauma. The airway is patent.

Cardiovascular system: The heart weighs 350 g. The epicardial surface is smooth and glistening. The coronary arteries are normally distributed and show no atherosclerotic changes. The myocardium is uniformly brown with normal thickness. The endocardium is smooth. The valves are pliable and normally formed. Opening of the aorta reveals minimal atherosclerosis.

Respiratory system: The right lung weighs 300 g and the left lung weighs 320 g. The pleural surfaces are smooth and glistening. On sectioning, the parenchyma is soft without significant congestion or edema. There is no evidence of infection or tumor. The airways and pulmonary vessels are unobstructed.

Gastrointestinal system: The esophagus is unremarkable. The stomach contains approximately 2 cc of tan fluid. The gastric mucosa is unremarkable. The serosal surfaces of the small and large bowels are unremarkable. The appendix is present.

Liver and pancreas: The liver weighs 1,220 g. The capsule is smooth. On sectioning, the parenchyma is soft and brown, and there are no focal abnormalities. The

gallbladder is unremarkable. The pancreas is normal in size, and sectioning reveals unremarkable parenchyma.

Genitourinary system: The right kidney weighs 110 g and the left kidney weighs 130 g. The capsules strip with ease revealing smooth cortical surfaces. On sectioning, the cortices are brown and unremarkable. The collecting systems are not dilated. The bladder is unremarkable and contains approximately 100 cc of urine. The prostate gland is unremarkable.

Endocrine system: The thyroid is normal in size with unremarkable parenchyma. The adrenal glands are unremarkable, without obvious cortical atrophy, hyperplasia, or nodules.

Lymphoreticular system: The spleen weighs 60 g with a smooth capsule and unremarkable parenchyma. Lymph nodes are not prominent.

MICROSCOPIC:

Slide #1: Heart.
Slide #2: Lungs.
Slide #3: Liver, kidney.
Slide #4: Brain.
Slide #5: Adrenal glands.
Slide #6: Thyroid.

There is no significant histopathologic changes except for the lung tissue with presence of red blood cells in some alveolar spaces. The sections of adrenal glands show no obvious cortical hyperplasia or atrophy.

RADIOGRAPHS: Postmortem x-rays are obtained.

AUTOPSY PHOTOGRAPHS: Digital photographs are obtained.

TOXICOLOGY:

Femoral blood:

Delta-9 tetrahydrocannabinol > 50 ng/mL.
Delta-9-carboxy tetrahydrocannabinol = 14 ng/mL.
11-Hydroxy delta-9 tetrahydrocannabinol = 1.5 ng/mL.

(Comment: The toxicology panel focuses on a wide range of drugs of abuse including major novel psychoactive substances as well as major prescription and over-the-counter medications that are potentially significant in forensic pathology. Reference: <https://www.nmslabs.com/tests/8054B>, accessed on June 1, 2021.)

See attached reports of Medical Examiner Laboratory and NMS Labs, Inc.

OTHER MISCELLANEOUS:

Evidence is collected by Honolulu Police Department.

The brain tissue has been sent to Boston University Chronic Traumatic Encephalopathy Center for neuropathology consultation. An addendum may be issued upon receipt of the neuropathology report.



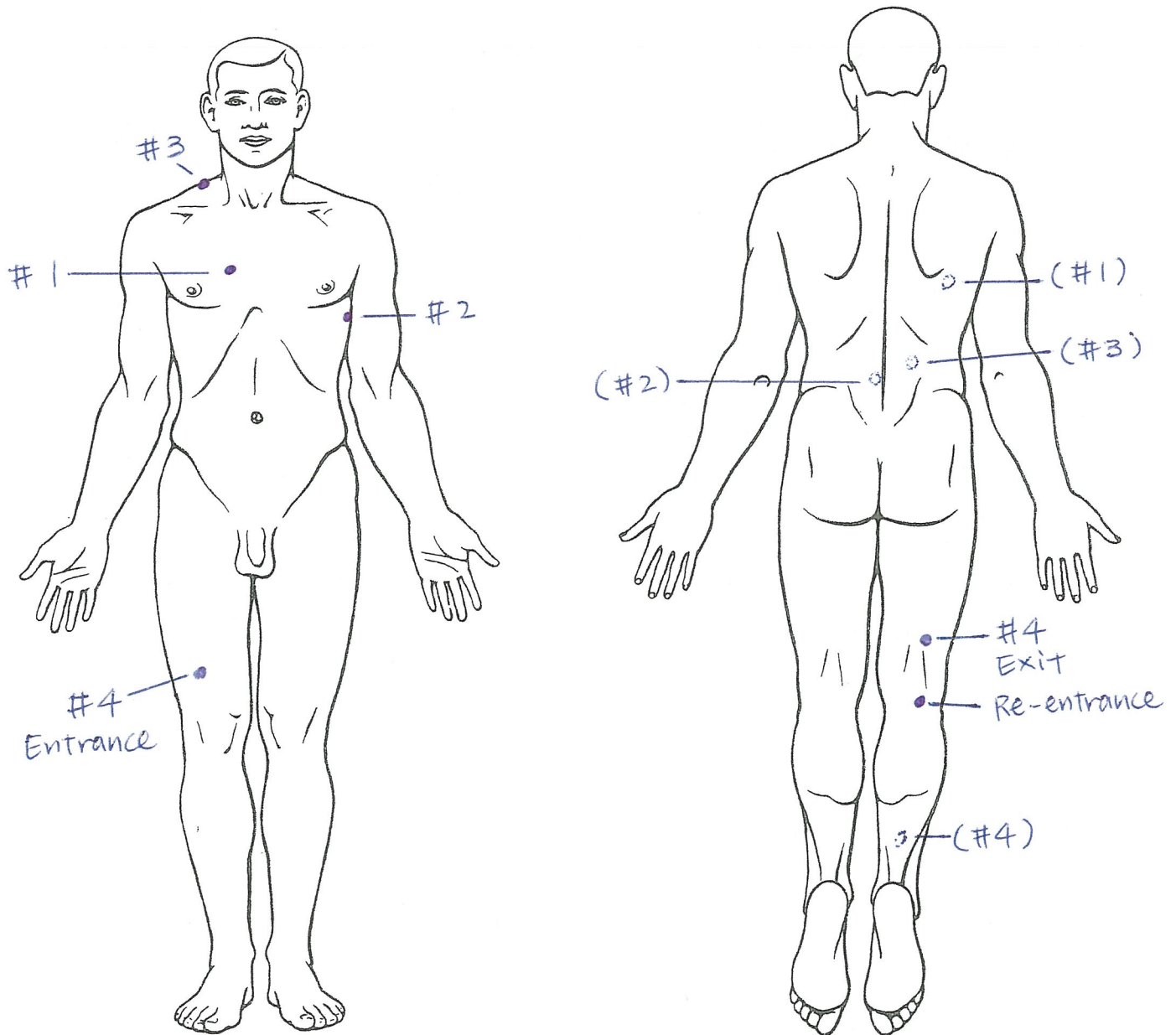
CASE NO. 21-0963

Name: MYENI, Lindani

Age: 29 Sex: M

Dr. Kobayashi Date: 04/15/2021

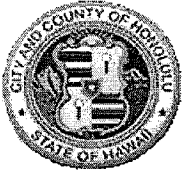
Case No. 21-0963



(#1) - (#3): Projectile in the subcutaneous tissue.

(#4): Projectile in the muscle tissue.

MK



Department of the Medical Examiner City and County of Honolulu

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LABORATORY REPORT

CASE NUMBER: 21-0963-MYENI, Lindani	SUBJECT: MYENI, Lindani Sanele	SUBMITTED BY: [REDACTED]
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The following items were received for analysis by the toxicology laboratory.

SPECIMENS RECEIVED

<u>BARCODE #</u>	<u>SAMPLE TYPE</u>	<u>SAMPLE SITE</u>	<u>CONTAINER</u>	<u>AMOUNT</u>
119086	Blood (Femoral)			
119087	Blood (Chest Cavity)			
119088	Bile			
119089	Urine			
119090	Vitreous			
119091	Gastric			
119092	Tissue (Formalin)			
119093	Blood Card			
119099	Blood (Chest Cavity)			
119100	Blood (Heart)			
119108	Tissue (Brain)			

Blood (Femoral) - Barcode # 119086

TOXICOLOGY QUANTITATIVE SENT OUT TO NMS Laboratories ON 4/20/2021

11-HYDROXY DELTA-9 THC	DETECTED
delta-9-THC	DETECTED
delta-9-THC-COOH	DETECTED
SEE ATTACHED REPORT	

Urine - Barcode # 119089

RAPID URINE DRUG SCREEN FOR STREET DRUGS COMPLETED BY [REDACTED] ON 4/15/2021

NONE DETECTED

Blood Card - Barcode # 119093

NO ANALYSIS PERFORMED COMPLETED BY [REDACTED] ON 4/15/2021

NO ANALYSIS DONE

N/A



NMS Labs

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200 Welsh Road, Horsham, PA 19044-2208
Phone: (215) 657-4900 Fax: (215) 657-2972
e-mail: nms@nmslabs.com

Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 05/26/2021 08:00

To: 10442

Department of the Medical Examiner - Honolulu
835 Iwilei Road

Honolulu, HI 96817

Patient Name MYENI, LINDANI

Patient ID 21-0963

Chain NMSCP109047

Age 29 Y

DOB [REDACTED]

Gender Male

Workorder 21136117

Page 1 of 4

Positive Findings:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
11-Hydroxy Delta-9 THC	1.5	ng/mL	002 - Femoral Blood
Delta-9 Carboxy THC	14	ng/mL	002 - Femoral Blood
Delta-9 THC	>50	ng/mL	002 - Femoral Blood

See Detailed Findings section for additional information

Testing Requested:

<u>Analysis Code</u>	<u>Description</u>
9096B	Alcohol Screen, Blood (Forensic)
8054B	Postmortem, Expanded with NPS, Blood (Forensic)

Specimens Received:

<u>ID</u>	<u>Tube/Container</u>	<u>Volume/ Mass</u>	<u>Collection Date/Time</u>	<u>Matrix Source</u>	<u>Labeled As</u>
001	Gray Top Tube	8 mL	04/15/2021	Heart Blood	21-0963
002	Gray Top Tube	5.25 mL	04/15/2021	Femoral Blood	21-0963

All sample volumes/weights are approximations.

Specimens received on 04/22/2021.



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Workorder 21136117
Chain NMSCP109047
Patient ID 21-0963

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Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
11-Hydroxy Delta-9 THC	1.5	ng/mL	1.0	002 - Femoral Blood	LC-MS/MS
Delta-9 Carboxy THC	14	ng/mL	5.0	002 - Femoral Blood	LC-MS/MS
Delta-9 THC	>50	ng/mL	0.50	002 - Femoral Blood	LC-MS/MS

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. 11-Hydroxy Delta-9 THC (Active Metabolite) - Femoral Blood:

11-Hydroxy Delta-9 THC is an active intermediate metabolite of tetrahydrocannabinol (THC) the active component of marijuana. Usual peak levels: Less than 10% of THC levels after smoking.

2. Delta-9 Carboxy THC (Inactive Metabolite) - Femoral Blood:

Delta-9-THC is the principle psychoactive ingredient of marijuana/hashish. Delta-9-carboxy-THC (THCC) is the inactive metabolite of THC. The usual peak concentrations in serum for 1.75% or 3.55% THC marijuana cigarettes are 10 - 101 ng/mL attained 32 to 240 minutes after beginning smoking, with a slow decline thereafter. The ratio of whole blood concentration to plasma concentration is unknown for this analyte. THCC may be detected for up to one day or more in blood. Both delta-9-THC and THCC may be present substantially longer in chronic users. THCC is usually not detectable after passive inhalation.

3. Delta-9 THC (Active Ingredient of Marijuana) - Femoral Blood:

Marijuana is a DEA Schedule I hallucinogen. Pharmacologically, it has depressant and reality distorting effects. Collectively, the chemical compounds that comprise marijuana are known as Cannabinoids.

Delta-9-THC is the principle psychoactive ingredient of marijuana/hashish. It rapidly leaves the blood, even during smoking, falling to below detectable levels within several hours. Delta-9-carboxy-THC (THCC) is the inactive metabolite of THC and may be detected for up to one day or more in blood. Both delta-9-THC and THCC may be present substantially longer in chronic users.

THC concentrations in blood are usually about one-half of serum/plasma concentrations. Usual peak levels in serum for 1.75% or 3.55% THC marijuana cigarettes: 50 - 270 ng/mL at 6 to 9 minutes after beginning smoking, decreasing to less than 5 ng/mL by 2 hrs.

Sample Comments:

001 Physician/Pathologist Name: [REDACTED]

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded two (2) years from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

Workorder 21136117 was electronically
signed on 05/26/2021 07:59 by:

[REDACTED]

M.S., D-ABFT-FT, ABC-GKE
Forensic Toxicologist

**Analysis Summary and Reporting Limits:**

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 52198B - Cannabinoids Confirmation, Blood - Femoral Blood

-Analysis by High Performance Liquid Chromatography/ Tandem Mass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
11-Hydroxy Delta-9 THC	1.0 ng/mL	Delta-9 THC	0.50 ng/mL
Delta-9 Carboxy THC	5.0 ng/mL		

Acode 8054B - Postmortem, Expanded with NPS, Blood (Forensic) - Heart Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Barbiturates	0.040 mcg/mL	Gabapentin	5.0 mcg/mL
Cannabinoids	10 ng/mL	Salicylates	120 mcg/mL

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry QTRAP (LC-MS/MS QTRAP) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
4-cyano-CUMYL-BINACA	0.10 ng/mL	AMB-FUBINACA	1.0 ng/mL
4-fluoro-MDMB-BINACA	0.10 ng/mL	CUMYL-THPINACA	0.10 ng/mL
5-fluoro-EDMB-PINACA	0.10 ng/mL	MDMB-CHMCZCA	0.10 ng/mL
5-fluoro-MDMB-PICA	0.10 ng/mL	MDMB-CHMICA	0.10 ng/mL
5-fluoro-MDMB-PINACA / 5-fluoro-EMB-PINACA	0.20 ng/mL	MDMB-CHMINAC	0.10 ng/mL
5-fluoro-MMB-PINACA	0.050 ng/mL	MDMB-FUBICA	0.10 ng/mL
5-fluoro-NA-PIC	0.10 ng/mL	MDMB-FUBINACA / EMB-FUBINACA	0.10 ng/mL
5-fluoro-QU-PINAC	0.10 ng/mL	MMB-CHMICA	0.10 ng/mL
ADAMANTYL-FUBINACA	0.20 ng/mL	MMB-CHMINACA	0.20 ng/mL
ADMB-CHMINACA	0.10 ng/mL	MMB-FUBICA	1.0 ng/mL
ADMB-FUBICA	1.0 ng/mL	MMB-FUBINACA	0.10 ng/mL
ADMB-FUBINACA	1.0 ng/mL	NA-FUBIC	1.0 ng/mL
AMB-CHMINACA	1.0 ng/mL	NA-FUBIM	0.20 ng/mL

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of analyte classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified analyte class are included. Some specific analytes outside of these classes are also included. For a detailed list of all analytes and reporting limits included in this screen, please contact NMS Labs. Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnosedatives, Hypoglycemics, Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents, Opiates and Opioids.

Acode 9096B - Alcohol Screen, Blood (Forensic) - Femoral Blood

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Ethanol	10 mg/dL



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Workorder 21136117
Chain NMSCP109047
Patient ID 21-0963

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Analysis Summary and Reporting Limits:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Isopropanol	5.0 mg/dL	Methanol	5.0 mg/dL



DEPARTMENT OF THE MEDICAL EXAMINER
CITY AND COUNTY OF HONOLULU
835 IWILEI ROAD - HONOLULU, HAWAII 96817
TELEPHONE: (808)768-3090 - FAX: (808)768-3099 - INTERNET: WWW.HONOLULU.GOV

INVESTIGATION OF DEATH

Case No: 21-0963-MYENI, Lindani

Name of Deceased: MYENI, Lindani Sanele

Alias:

Address: [REDACTED]

Age: 29 yrs

Sex: Male

Race/Ethnicity: Black

Birthplace: Empangeni, South Africa

Marital Status: Married

Birth Date: [REDACTED]

Approximate Ht: 71" Wt: 203 lbs.

Occupation: Mechanical Fitter

Next of Kin: [REDACTED]

Relationship: [REDACTED]

Address: [REDACTED]

Telephone:

Mobile: [REDACTED]

Work:

Initial Incident: Driveway fronting private residence 91 Coelho Way, Honolulu, HI, 96817

Injury at Work: No

Incident Time: 20:15 Date: 4/14/2021

Visited: Yes

Discovery Time: Date:

Pronounced Dead by: Dr. [REDACTED]

Time: 20:49 Date: 4/14/2021

Place of Death: Queen's Medical Center/ ER 1301 Punchbowl St., Honolulu, HI, 96813

Notified by: [REDACTED], RN

Time: 21:17 Date: 4/14/2021

Scene Arrival Time: 22:09 Date: 4/14/2021

Visual ID: None

Relationship:

Address:

Telephone:

Other Number:

Witnessed by:

ID Time:

Date:

Attendant Notified Time: 00:06 Date: 4/15/2021 Arrival Time: 00:18 Date: 4/15/2021 Removal Time: 00:36 Date: 4/15/2021

Attendants: [REDACTED]

Morgue Arrival Time: 01:41 Date: 4/15/2021

Police Investigators: [REDACTED] HPD

Police Report #: 21-158469

Other Investigators:

Personal Property Taken: No

Residence Secured: Not Applicable

Fingerprints obtained: Yes

Organ Donor: No

Type: Full Set

EDRS Referral No.:

[REDACTED]
Medical Examiner's Investigator

INVESTIGATION OF DEATH

Case No. 21-0963-MYENI, Lindani

Jurisdiction

Page 1 of 5

SUMMARY:

The decedent is a 29 year old Black male who was reported to unlawfully enter a residence, was shot multiple times by police, was transported to the hospital, and was pronounced dead shortly after arrival. The decedent has no significant medical history and did not take any prescription medications. The decedent did not smoke, rarely drank alcohol, and has a history of marijuana use. There is no reported history of depression or suicidal ideations. The Department of the Medical Examiner (MED) assumed jurisdiction due to the circumstances.

On 04/14/21 at approximately 2000 hours the decedent entered a private residence claiming to live there. The couple present at the scene are renting a room in the residence and confirmed with the homeowner that the decedent did not live there. Per HPD, the couple activated 911 at 2009 hours to report the decedent for unlawful entry. Per HPD, upon first officer arrival at 2014 hours the decedent was combative and physical altercations took place between the decedent and police. The decedent struck the first officer multiple times causing facial fractures and a concussion. The second officer arrived on scene at 2015 hours and sustained injuries to the right ear and knees. The third officer arrived on scene after officer 2 at 2015 hours and sustained multiple injuries to the left side of his body including the left side of forehead area, pain to the right side of neck, the left side of inner bicep area, the left side outer forearm area, and left knee area. Per HPD, the decedent appeared agitated and possibly intoxicated. At an unknown time a taser was deployed. Per HPD, the taser deployment was not effective with one prong hitting the decedent's front shirt area and a second prong striking a parked vehicle. Per HPD records, shots were first reported to be fired at 2015 hours. The decedent was shot by police multiple times but remained awake. While the decedent was awake he identified himself to officers and uttered that he was married with two children. Officers handcuffed the decedent with arms behind the back. Officers rendered aid and the decedent was witnessed to go unresponsive by police. CPR was initiated and AED was used. The AED did not advise a shock. CPR was performed until EMS arrival at 2025 hours. The decedent was transported to Queen's Medical Center/Emergency Room at 2046 hours. No hospital specimens were drawn and no COVID-19 swab was taken. The decedent remained hospitalized until death pronouncement was made by Dr. [REDACTED] at 2049 hours.

The decedent's hands were processed for gunshot residue by HPD Evidence Specialist [REDACTED] and were then bagged on 04/15/21 at 0002 hours (right hand) and 0003 hours (left hand). The decedent was secured in a blue body bag with lock #4121397 on 04/15/21 at 0011 hours in the presence of HPD Detective [REDACTED] and Evidence Specialist [REDACTED].

POSITION/DESCRIPTION OF DECEDENT:

The decedent is first observed lying supine on a hospital gurney covered with a white sheet. The body is cold to the touch with rigor present in the extremities. Lividity is not observed. The decedent is wearing a multiple color beaded necklace and a natural fiber necklace. Handcuffs are secured around the right wrist. The decedent's clothes were removed and bagged by hospital staff and released to HPD. A circular abrasion is observed on the chest; likely a result of resuscitation efforts. Circular wounds were observed near the right neck, left chest, right chest, right anterior thigh, right posterior thigh, and right calf. Protruding defects are observed in the lower back beneath the skin, possible bullets or bullet fragments. An abrasion is observed

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on the left knee. Small abrasions are observed on the right hand. Multiple small scars are observed on the bilateral lower legs.

SCENE:

The scene of event is the driveway fronting a private residence located at 91 Coelho Way Honolulu, HI 96817. The place of death is Queen's Medical Center/Emergency Room located at 1301 Punchbowl St. Honolulu, HI 96813; both locations were visited by this Investigator. The incident took place on the brick driveway of the residence. 2 blood pools are observed on the driveway where first responders rendered aid. AED machine used on the decedent is observed. 2 bullet casings are observed in the driveway. A vehicle reportedly used by the decedent is a dark grey Mazda sedan with Texas license plate [REDACTED]. Damage is observed to the white Toyota Prius license plate [REDACTED] where a taser prong is attached. Per EMS report, the decedent's arms were restrained behind his back on arrival. Gunshot residue results are pending HPD analysis. Firearm ammunition remaining in the weapons have not yet been provided by HPD. Firearms belonging to HPD Officers present at the scene were photographed. All of the weapons are 9mm semi-automatic handguns. Firearm bearing serial number VWWF431 is documented in photographs 21-0963 #1-6. Firearm bearing serial number WST437 is documented in photographs 21-0963 #7-10. Firearm bearing serial number WST696 is documented in photographs 21-0963#11-14. No visible blood or tissue was observed on the firearms or inside the barrels. All firearms involved in this incident are issued by HPD and were collected by HPD. The firearms were moved from their original positions prior to MEI arrival.

SCENE OF EVENTS VISITED:

Yes.

INTERVIEWS:

Refer to supplement provided by Investigator [REDACTED]

[REDACTED]

On 04/17/21 at 1345 hours this Investigator spoke to a witness, [REDACTED] telephonically from the Department of the Medical Examiner. [REDACTED] and his wife have been renting a part of a shared residence at 91 Coelho Way for approximately 1 month prior to the incident. [REDACTED] described the residence as a small bed and breakfast. Per [REDACTED], neither he nor his wife have previously met or had any relation to the decedent. Other people rent rooms in the house so it was not unusual that an unknown person was at the residence. [REDACTED] and his wife were the only renters at the residence at the time of the incident. The decedent had no language barrier. Per [REDACTED] their entire encounter lasted approximately 7 minutes.

On the evening of 04/14/21 [REDACTED] and his wife returned to their residence. [REDACTED] estimated the time of arrival to be 2011 hours. At the same time the decedent parked his vehicle in the yard. The [REDACTED]

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entered the secured residence via pin code at which time the decedent followed behind them. The decedent began speaking to [REDACTED] claiming "I have a video of you and you know why I am here", however, neither [REDACTED] knew the decedent. [REDACTED] was scared and felt that the decedent may have had malicious intent to harm them or blackmail them. When [REDACTED] asked the decedent if he lived there and who he was the decedent had no response. The decedent took off his shoes and sat on the couch and reportedly looked very comfortable. Per [REDACTED] the decedent did not respond to their attempts to ask who he was or what he was doing at the residence. [REDACTED] contacted the homeowner to check if he knew the decedent or if the decedent was also living at the residence. The homeowner denied that the decedent was renting space at the residence and advised to call 911. [REDACTED] described the conversation as unusual and described the decedent and his facial expressions as emotionless. Per [REDACTED] the decedent's behavior was strange but he did not detect that the decedent was drunk or otherwise intoxicated. [REDACTED] asked the decedent multiple times to leave but the decedent did not respond. Per [REDACTED] he heard the decedent say "I have nowhere to go, I come from South Africa" and "My people are suffering." [REDACTED] interpreted the same sentence as "my people are safari." [REDACTED] asked if the decedent was a friend of the homeowner to which the decedent responded that he lived at the residence. Decedent also claimed the cat at the residence belonged to him. Per [REDACTED] the homeowner stated the cat has lived at the residence for 12 years. [REDACTED] told the decedent that if he did not leave they would call 911 to which the decedent did not respond. [REDACTED] activated 911 and was on the phone with the operator. The operator requested a description of the decedent. [REDACTED] was on the phone with 911 in view of the decedent but the decedent did not look at all phased. The decedent started to walk out of the residence but then asked to see [REDACTED] phone which was currently connected to the 911 operator. The decedent went to his car and was sat there for approximately 1 minute. While the decedent was in the car, the police arrived. The decedent got out of the car at which point the [REDACTED] identified the decedent to police. While the first officer began to engage with the decedent [REDACTED] witnessed the decedent charge towards police and began kicking the officer. [REDACTED] and his wife went into the residence, locked the door, and went upstairs to hide. While hiding [REDACTED] reported to hear 4 gunshots. They remained inside and on the phone with 911 dispatch until the operator reported that officers had the situation under control.

WEAPONS USED:

(3) 9mm Glock 17gen4 Austria 9x9 (semi-automatic handgun)
Serial Numbers; WWF431, WST437, WST696
Gunshot residue results are pending HPD analysis. Ammunition type is Speer 9mm Luger.
Firearm ammunition remaining in the weapons have not yet been provided by HPD.

INFORMATION FROM LAW ENFORCEMENT PERSONNEL:

Honolulu Police Department (HPD) Sgt. [REDACTED] provided the corresponding HPD report #21-158469. Per HPD, 911 was activated at 2009 hours. The first officer arrived on scene at 2014 hours. The second officer arrived at 2015 hours. The third officer arrived after officer 2 at 2015 hours. The decedent struck the first officer multiple times causing facial fractures and a concussion. The second officer on scene sustained injuries to the right ear and knees. The third officer on scene sustained multiple injuries to the left side of his body including the left side of forehead area, pain to the right side of neck, the left side of inner bicep area, the left side outer forearm area, and left knee area. Taser deployment was not effective. 1 taser prong struck the decedent's front shirt area and the other prong struck a parked vehicle.

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Per [REDACTED], none. Medical records did not list any prescription medications.

PROPERTY RECOVERED:

No.

RECHECK AT MORGUE:

The body arrived secured in a body bag with lock #4121397. The body was placed into refrigeration and secured in crypt #2 at 0147 hours in the presence of MTH.

INJURIES:

Multiple gunshot wounds.

SURGICAL INCISIONS:

None.

OLD SCARS:

Multiple small scars are observed on the bilateral lower legs.

TATTOOS OR OTHER MARKS ON BODY:

None.

CLOTHING:

None.

NOTIFICATION OF NEXT OF KIN:

Date: 04/15/2021

Time: 10:38 AM

Person Notified: [REDACTED]

Relationship to Decedent: [REDACTED]

Contact Method: Phone

Contact Status: Completed

Notified by: HPD

Notification Notes: The [REDACTED] was notified of the death by HPD. Policies and procedures were explained and understood. Funeral arrangements will be made.

ORGAN/TISSUE DONATION:

No.

NOTES:

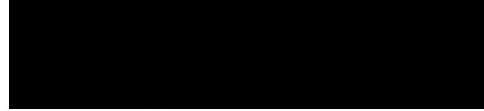
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EMS records were reviewed. Medical records from Queen's Medical Center were reviewed. Digital photographs and fingerprints were taken. Positive identification was made with fingerprint analysis by the FBI. Additional weapons information and gunshot residue results have not been provided at the time of this report.



Medical Examiner's Investigator

Date: 05/14/2021

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[REDACTED]

Medical Examiner's Investigator
Date: 5/10/2021