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

**Officer-Involved Shooting Report No. 2022-01**

**Report Date: March 23, 2022**

**Independent Investigation of Officer-Involved Shooting of**

**Elia Laeli**

**1325 N. School Street**

## I. OBJECTIVE

The objective of the Department of the Prosecuting Attorney's (hereinafter, "PAT") independent investigation is to assess the viability of a criminal prosecution of Honolulu Police Department (hereinafter, "HPD") Officer [REDACTED] (hereinafter, "Officer 1") and Officer [REDACTED] ("Officer 2") for any criminal offense under the Hawai'i Penal Code (hereinafter, "HPC") for their intentional use of deadly force on August 11, 2021, at 1325 North School Street, Honolulu, HI. In making this assessment, the proof beyond a reasonable doubt standard will be used.

This investigation considered materials and information provided by HPD and by the PAT's independent efforts. PAT Investigator [REDACTED] [REDACTED] (hereinafter, "Investigator [REDACTED]") was the PAT's primary investigator in this case.

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<sup>1</sup>

### A. General Background

On Wednesday, August 11, 2021 at approximately 2:31 a.m. HPD was called for a co-response with Emergency Management Services ("EMS") to 1325 N. School St. in Kalihi on a call of a male who had his finger cut off. The person whose finger was cut off was identified as [REDACTED] [REDACTED] (hereinafter "[REDACTED]") a 33 year old male. At the time of that incident, he was with his girlfriend, [REDACTED] (hereinafter "[REDACTED]") a 38 year old female. The general facts surrounding this incident are as follows:

At approximately 2:30 a.m. [REDACTED] and [REDACTED] were at 1325 N. School St. The two were getting a vacuum cleaner from a friend's residence. Upon arriving at the driveway parking lot, an unknown Samoan looking male jumped out from the back of a dumpster and quickly approached them. The unknown male did not say anything. The unknown male used an overhand motion to swing at [REDACTED] [REDACTED] with the machete. [REDACTED] put his left arm up to block the machete and the machete severed his left pinky finger. The male fled the scene in an unknown direction.

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<sup>1</sup> For purposes of this PAT investigation, reports and evidence documented under HPD Report Nos. 21-341325 (Att. Murder 1), 21-341323 (Assault in the First Degree), and 21-341353 (Misc. Pub. – Critical Incident) are relevant and used in this investigation.

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When police were on scene, [REDACTED] observed the unknown male return to the scene. [REDACTED] saw that same unknown male approach the police officers with the machete. [REDACTED] heard police tell the male to drop the knife, but the male continued to advance toward the officers. [REDACTED] saw police shoot the male. [REDACTED] identified the male shot by the police as the same male who previously attacked [REDACTED]

This incident was documented under HPD Report No. 21-341323 and classified as an Assault in the First Degree in violation of Hawaii Revised Statutes (hereinafter "HRS") Section 707-710.

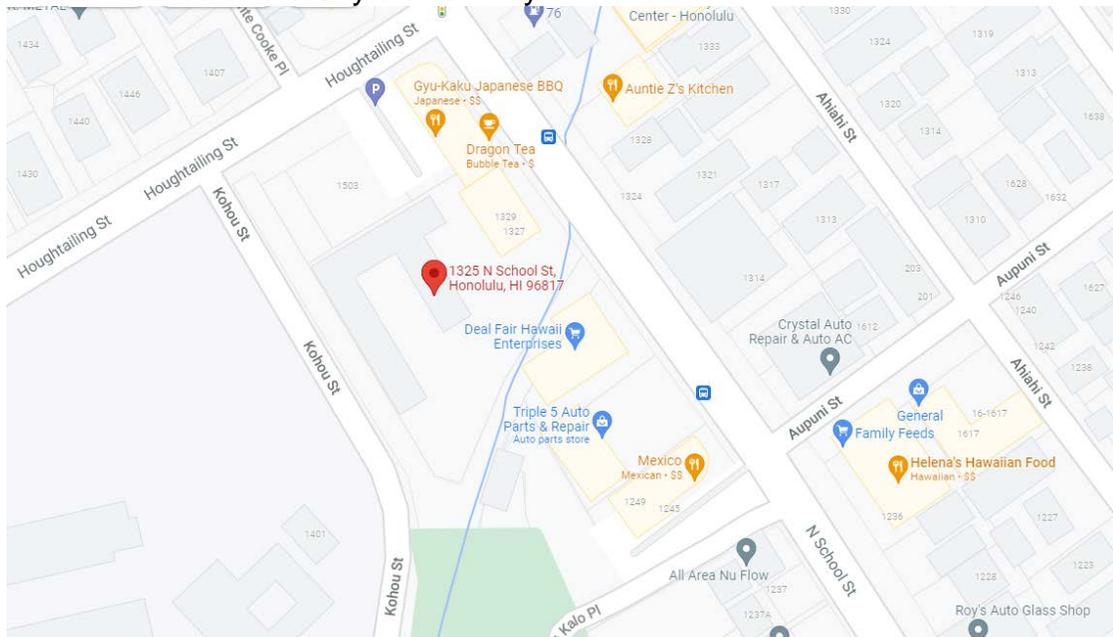
As a result of the initial call regarding [REDACTED] HPD responded to 1325 N. School St. The unknown male suspect involved from the machete incident returned to the scene and approached Officer 1 while wielding the machete.<sup>2</sup> Officer 1 and Officer 2 subsequently shot at that unknown male, later identified as Elia Laeli (hereinafter "Laeli"). Less than eight (8) minutes elapsed between the time Officer 1 arrived on scene and the occurrence of the officer-involved shooting. Laeli was subsequently pronounced dead.

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<sup>2</sup> HPD Report No. 21-341325 documents this incident as an Att. Murder in the First Degree (Law Enforcement Officer).

## B. Location

1325 North School Street is a residential apartment building complex located in the Kalihi-Palama area of the City and County of Honolulu.<sup>3</sup>



<sup>3</sup> Map of 1325 N. School St. taken from Google Maps.  
<https://www.google.com/maps/place/1325+N+School+St,+Honolulu,+HI+96817/@21.3311253,-157.8660605,19z/data=!4m5!3m4!1s0x7c006e87990aca35:0xdf7b8597143d273e!8m2!3d21.3314075!4d-157.8663631>

The driveway to enter 1325 N. School St. is perpendicular to N. School St. and shared by a structure fronting N. School St. that serves as apartment type residences and businesses.<sup>4</sup>



### C. Weather and Lighting Conditions

The recovered surveillance video recordings and body worn camera footage taken from scene patrol officers shortly after the incident showed that the weather was clear. The incident occurred in the early morning hours of August 11, 2021 between approximately 2:30 a.m. and 2:45 a.m. The sky was dark and lighting was available from the surrounding buildings and street lights.

### D. Participants in the Event

#### 1. Elia Laeli

Laeli was identified as the decedent in the officer-involved shooting and the suspect in the Assault in the First Degree case involving the victim, [REDACTED] Laeli

<sup>4</sup> Photo of 1327, 1329, and 1331 N. School St., fronting N. School St. and adjacent to the driveway of 1325 N. School St. Additionally, parking for these addresses are accessible through the driveway of 1325 N. School St. Photo taken from Google Maps. <https://www.google.com/maps/place/1327+N+School+St,+Honolulu,+HI+96817/@21.3317661,-157.8660935,3a,75y,204.57h,83.96t/data=!3m6!1e1!3m4!1s60vmsyXx3jn-ANsc4IM8qQ!2e0!7i16384!8i8192!4m5!3m4!1s0x7c006e87a1d67c21:0xca766b977d0f7031!8m2!3d21.3315628!4d-157.8661435>

was identified by his next of kin in the presence of Medical Examiner Investigator [REDACTED] [REDACTED] Laeli was described as a 41 year old, Samoan male with a muscular build weighing approximately 212 pounds and measuring approximately 6 feet 4 inches. No known address was located for Laeli and he was identified as homeless

Laeli had seven prior arrests, one of which was a felony offense. The last arrest occurring on June 7, 2020.<sup>5</sup> On July 15, 2020, a Felony Information charging Laeli with the offense of Promoting a Dangerous Drug in the Third Degree in violation of Section 712-1243, HRS had been filed in case number 1CPC-20-0000848 in the First Circuit Court of the State of Hawaii.<sup>6</sup> However, Laeli had not been arrested on the warrant of arrest issued in connection with that Felony Information. As of August 11, 2021, that warrant had not been served on Laeli and remained outstanding.<sup>7</sup>

Laeli had one prior conviction for Harassment in violation of Section 711-1106(1)(a) of the H.R.S. That conviction occurred on June 8, 2020.<sup>8</sup> Multiple other cases were located in the State of Hawaii Judiciary eCourt Kokua database for Laeli. A review of the cases revealed traffic crimes and infractions and other misdemeanor and petty misdemeanor offenses including offenses related to park closures, violation of emergency order, and an offense for Promoting a Detrimental Drug in the Third Degree. The cases date from 1998 through 2020.<sup>9</sup>

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<sup>5</sup> Information obtained from Criminal Justice Information Services RAP sheet for Laeli.

<sup>6</sup> The facts of that case are as follows: On May 27, 2020, at approximately 11:10 p.m., Deputy Sheriffs (DS) observed Laeli in a closed park. DS smelled an odor of marijuana coming from the truck in which Laeli was seated. DS identified themselves and told Laeli the park was closed. Laeli replied with "I run this park and I say when it's time to go." DS told Laeli that they smelled marijuana to which Laeli said, "I already smoked it." Instead of providing identification which the DS requested, Laeli stated "My name is God and I am here to test your limits. Do you want one versus one me? Or two versus one me? Call for more backup. I'll take you all on. You can't beat me." Laeli held and used a glass pipe to ingest methamphetamine in front of the DS. Laeli exhaled smoke into the faces of the DS. Laeli refused to get out of the truck. Laeli again inhaled smoke from the pipe. Laeli eventually exited the truck after speaking with an HPD officer who arrived on scene. Laeli was placed under arrest for Promoting a Dangerous Drug in the Third Degree. He was released pending investigation.

<sup>7</sup> Case No. 1CPC-20-0000848 was initiated with the filing of the Felony Information on July 15, 2020. A Warrant of Arrest was subsequently issued on July 16, 2020 based on the facts and circumstances detailed in that Felony Information. The charged offenses of Promoting a Dangerous Drug in the Third Degree was alleged to have occurred on May 27, 2020. This case has since been dismissed by the PAT following confirmation of Laeli's death.

<sup>8</sup> This conviction is documented under case no. 1DCW-20-0001536. Information obtained from the official Hawaii State Judiciary eCourt Kokua system.

<sup>9</sup> A single civil case was identified in the eCourt Kokua system, see case no. 1DRC-21-0005392.

On the date of incident August 11, 2021, a witness<sup>10</sup> was identified who knew Laeli from being a regular at the game room nearby to the scene of the incident. This witness knew Laeli as “E”. Witness indicated that he saw Laeli earlier in the day and Laeli appeared to have been up for a few days and not in his right state of mind.

## 2. The Police Officers<sup>11</sup>

### i. Officer 1

Officer 1, age 31, has been employed as an HPD officer since April 20, 2015. He has 6 years of service as of the date of incident. His assignments have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
04/20/2015	05/28/2016	TRP Training
05/29/2016	Present	D5

HPD Professional Standards Office (hereinafter “PSO”) did not have any use of force records (“UOF records”) or disciplinary records of sustained charges of misconduct resulting in suspension or discharge taken against Officer 1. HPD PSO did not have any records of specific instances of sustained charges of untruthfulness against Officer 1. Officer 1 is a law enforcement officer as defined by HRS §701-118.<sup>12</sup>

### ii. Officer 2

Officer 2, age 48, has been employed as an HPD officer since December 14, 2000. He has 20 years of service as of the date of incident. His assignments have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
12/14/2000	07/15/2002	TRP Training
07/16/2002	05/29/2010	D4
05/30/2010	09/18/2010	D1
09/19/2010	Present	D5

HPD Professional Standards Office (hereinafter “PSO”) did not have any UOF records or disciplinary records of sustained charges of misconduct resulting in suspension or discharge taken against Officer 2. HPD PSO did not have any records of

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<sup>10</sup> Witness was identified as [REDACTED] per HPD Report.

<sup>11</sup> This information, provided by HPD’s Professional Standards Office (PSO), is as of February 3, 2022.

<sup>12</sup> “‘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.”

specific instances of sustained charges of untruthfulness against Officer 2. Officer 2 is a law enforcement officer as defined by HRS §701-118.

### **E. Factual Narrative for August 11, 2021<sup>13</sup>**

The initial call for service was to Emergency Medical Services (hereinafter “EMS”) for an ambulance. EMS, via dispatch, at 2:30 a.m. requested a co-response by HPD to 1325 N. School St. At the time EMS initiated the call for co-response, it was unclear if there was an intentional cutting of the finger. Police were dispatched to 1325 N. School St. at 2:31:39 a.m.<sup>14</sup> Within two (2) minutes of the initial dispatch to HPD, EMS reported that the finger was cut off by an unknown suspect who was not there.

#### **1. Officer 1**

Officer 1 was the first officer to arrive at approximately 2:34 a.m. in his HPD white car.<sup>15</sup> Officer 1 was attired in his HPD class A uniform and his body worn camera (hereinafter “BWC”) was activated at the time he arrived on scene.<sup>16</sup>

Upon arrival on scene, Officer 1 met with [REDACTED] and two other adult females. [REDACTED] had a white cloth around his left hand, appeared to be in pain, and he was fading in and out of consciousness. One of the adult females was in possession of the severed pinky finger. Officer 1 requested EMS to expedite to that location.

An EMS ambulance arrived on scene at approximately 2:37 a.m.<sup>17</sup> As EMS worked on [REDACTED] [REDACTED] can be heard to say “he’s right there” appearing to tell Officer 1 that the male suspect returned.<sup>18</sup> The male [REDACTED] was pointing to was walking across the driveway of 1325 N. School St. Officer 1 described the male suspect as walking aggressively towards the apartment building while holding on to a long and dark colored knife that appeared to be a machete near his waist. Officer 1 said to the suspect, “come over here” and walked toward the suspect down the driveway area. Officer 1 un-holstered his duty issued firearm and shined his department issued flashlight at the suspect’s hands.

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<sup>13</sup> The following information is taken from various sources: Body Worn Camera (BWC) of Officer 1, surveillance video recovered from the scene, CAD Incident Summary, and HPD Reports.

<sup>14</sup> CADS Incident Summary, Incident Number 210811-0173.

<sup>15</sup> Body Worn Camera (BWC) of Officer 1

<sup>16</sup> BWC of Officer 1 starts at 2:34 a.m. on 8/11/21. The entire body worn camera footage is 17 minutes and 6 seconds long. Throughout the duration of the video, visual footage appears to be blocked at various times, possibly from Officer 1 jacket. Audio is available throughout the footage

<sup>17</sup> BWC of Officer 1 at 3:24 minutes

<sup>18</sup> Officer 1’s HPD report



Officer 1 observed what appeared to be a red substance resembling blood on the blade area of the machete when he shined his flashlight on the machete. Officer 1 said “come over here” at least three times. On a fourth time, Officer 1 said “get your ass over here” and “drop the knife.” Suspect walked to a parked, Volkswagen (VW) Bug sedan, opened the front driver side door, and paused. Officer 1 was located at the front of the VW Bug when he continued to give commands to drop the knife.



Suspect then closed the driver's side door and started rushing toward Officer 1.<sup>19</sup> Officer 1 began to retreat toward the driveway, which is located to the back and left of Officer 1. Officer 1 can be heard to say "drop the knife" nine (9) times and "drop it" once in the BWC footage. In the background, another male voice can be heard to say "drop the knife" twice. Officer 1 discharged his duty firearm at the suspect while retreating backwards. 20 seconds elapsed between the time Officer 1 first said to "drop the knife" and the first shot is fired by Officer 1.<sup>20</sup> While retreating, Officer 1 tripped over a parking stop. Suspect was on the ground when Officer 1 got up. Officer 1 kicked the machete away from the suspect and then signaled for medical assistance.

## 2. Officer 2<sup>21</sup>

Officer 2 arrived on scene at about 2:37 a.m. when Officer 1 was tending to [REDACTED]. [REDACTED] Officer 2 arrived on scene in his subsidized vehicle and attired in his class A uniform. Officer 2 had on his person a BWC.<sup>22</sup>

Officer 2 went to the ambulance to gather information when he heard a female say "that's him, that's the guy" and point down the driveway of 1325 N. School St. Officer 2 observed a tall local male wearing shorts without a shirt walking from the canal behind the dumpster to the area of parked vehicles in the parking lot. Officer 2 observed the male holding a shirt and what appeared to be a large knife by his left hip area.

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<sup>19</sup> Report of Officer 1 indicates that Laeli had the machete in his hands raised over his head as he rushed toward Officer 1. Video footage and BWC does not clearly show machete in hand possibly due to camera angle, lighting, and obstructions.

<sup>20</sup> BWC of Officer 1 between 6:59 minutes and 7:19 minutes

<sup>21</sup> Information regarding Officer 2's observations was taken from his HPD report.

<sup>22</sup> BWC of Officer 2 did not appear to be activated upon his arrival on scene. Officer 2's BWC starts at 2:41 a.m. on 8/11/21 and is a total of 11 minutes and 22 seconds long. BWC footage begins with Officer 2 saying "central shots fired."



Officer 2 un-holstered his duty-issued weapon and gave commands to drop the knife. The male ignored the commands as he was rummaging through the driver's side door of a VW Bug. Officer 2 described the male as agitated and aggressive. Officer 2 related that the male was glaring and staring at Officer 1 and 2. Officer 2 observed the male quickly slam the driver's door closed and run toward Officer 1 swinging the large knife. The male had knife over his head in a slashing and aggressive manner.<sup>23</sup> Officer 2 observed Officer 1 retreat backwards and fire shots at male. Officer 2 observed Officer 1 falling backward to the ground and the male still approaching. Officer 2 discharged his firearm at the male. Officer 2 observed the male fall to the ground holding the large knife until disarmed by Officer 1.

### 3. Officer 3<sup>24</sup>

At 2:31 a.m., Officer 3 was dispatched to 1325 N. School St. following the initial call involving [REDACTED]. Officer 3 arrived at approximately 2:43 a.m. dressed in his Class A uniform. Upon arrival, Officer 3 observed [REDACTED] being treated by EMS in the ambulance. Officer 3 observed Officer 2 walking up the driveway of 1325 N. School St. and a male further down the driveway with EMS performing cardio pulmonary resuscitation (CPR) on him. At that time, Officer 2 informed Officer 3 that they shot the

<sup>23</sup> Video footage and BWC does not clearly show machete in hand possibly due to camera angle, lighting, and obstructions.

<sup>24</sup> Officer 3 was read the critical incident statement, his firearm and duty belt were taken, and GSR swabs taken from him hands. Based on the investigation, there is no evidence to suggest Officer 3 was present at the time of the shooting. Therefore, his actions are not being reviewed for possible criminal liability.

male. Officer 3 observed a machete on the ground and stood post at the bottom of the driveway to preserve evidence. Officer 3 took photos of the evidence.<sup>25</sup>

#### 4. Pronouncement of Death

Following the officer-involved shooting, HPD and EMS provided life saving measures to Laeli until a second ambulance arrived for Laeli. Laeli was transported from the scene to Queen's Medical Center at Punchbowl Street. He arrived at the hospital at 3:10 a.m. He was pronounced dead on August 11, 2021 at 3:13 a.m. by Dr. [REDACTED]<sup>26</sup>

#### F. Findings by the Medical Examiner

On August 11, 2021, Dr. [REDACTED] M.D., Medical Examiner with the City and County of Honolulu Department of the Medical Examiner, performed an autopsy at the ME's facility located at 835 Iwilei Road.

The cause of death was multiple gunshot wounds. Dr. [REDACTED] documented nine (9) gunshot wounds to Laeli's body:

1. Penetrating gunshot wound of face
2. Graze gunshot wound of chest
3. Perforating gunshot wound of right arm
4. Penetrating gunshot wound of chest
5. Penetrating gunshot wound of right forearm
6. Graze gunshot wound of left forearm
7. Graze gunshot wound of left lower back
8. Penetrating gunshot wound of left thigh
9. Penetrating gunshot wound of left lateral chest

Dr. [REDACTED] observed patterned red abrasions on the bilateral anterior knees and posterior right elbow. Toxicology analysis of femoral blood sample taken from Laeli at autopsy revealed the presence of Amphetamine, Methamphetamine, Delta-9 Carboxy THC, and Delta-9 THC.<sup>27</sup>

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<sup>25</sup> Officer 3's bodycam was activated at 2:43 a.m. at which time Officer 3 appears to be stationed at the bottom of the driveway watching EMS perform CPR on Laeli. BWC did not capture his observations at the ambulance or the statement from Officer 2, therefore, this paragraph contains information from Officer 3 as provided in his report.

<sup>26</sup> HPD report by Officer [REDACTED] indicate pronouncement made by Dr. [REDACTED]. However, Medical Examiner Investigative Report and Officer [REDACTED] indicate pronouncement made by Dr. [REDACTED].

<sup>27</sup> Delta-9 Carboxy THC (Inactive Metabolite) and Delta-9 THC (active ingredient of Marijuana) is the principle psychoactive ingredient of marijuana/hashish.

**G. Recovered Evidence**

Personnel from HPD Scientific Investigation Section (hereinafter “SIS”) recovered the following relevant items that were submitted into evidence under HPD Report Number 21-341323<sup>28</sup>:

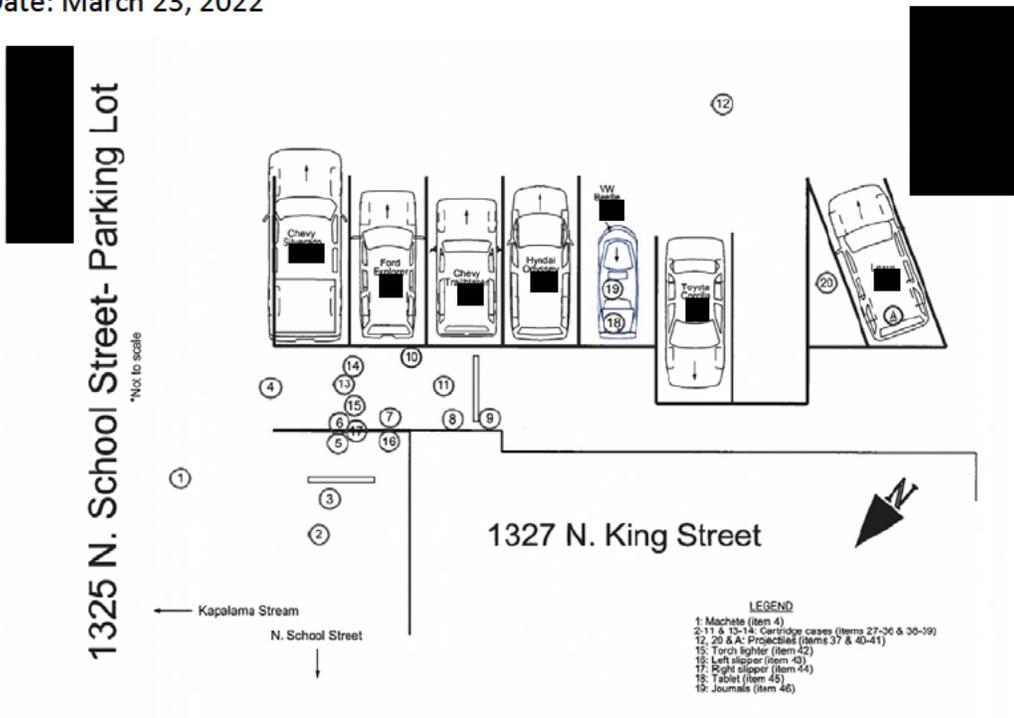
HPD Evidence Number	Description	Where Recovered
8	Glock pistol, serial number [REDACTED]	From Officer 1
9	Magazine with 9 cartridges from handgun	From Officer 1
10	Cartridge from chamber of handgun	From Officer 1
13	Glock pistol, serial number [REDACTED]	From Officer 2
14	Magazine with 13 cartridges from handgun	From Officer 2
15	Cartridge from chamber of handgun	From Officer 2
4	Machete, black with electrical tape wrapped handle, about 24” long and 2” wide blade with blood-like substance present	From Scene driveway/parking lot area
27-36, 38-39	Cartridge case (each item number consists of one cartridge case)	From Scene parking lot area
37, 40-41	Projectile (each item number consists of a single projectile)	From scene parking lot area and vehicle
53-57	Projectile (each item number consists of a single projectile)	From body of decedent
61	Metal fragment	From front grill of VW Bug

As noted above, both officers submitted their firearms with magazine and cartridges to Evidence Specialist [REDACTED] who then submitted the items into evidence.

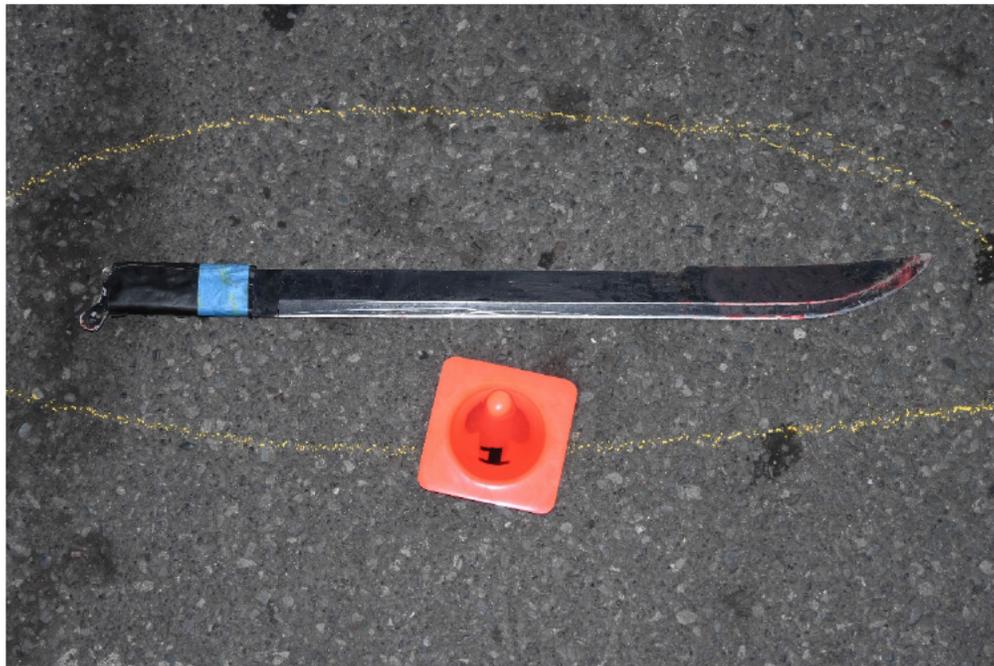
The cartridge casings found on scene (Items 27-36, 38-39) and submitted into evidence in HPD Report Number 21-341323 were recovered from the parking lot area between the parking stop and the driveway of 1325 N. School St. Projectiles were found in the parking lot of 1325 N. School St. and in the hatchback of a vehicle parked in the parking lot. Five (5) projectiles were recovered from Laeli’s body during autopsy.<sup>29</sup>

<sup>28</sup> Evidence reports by HPD Evidence Specialists [REDACTED] (hereinafter [REDACTED]), [REDACTED] (hereinafter ‘[REDACTED]’), [REDACTED] (hereinafter, [REDACTED]), and [REDACTED] (hereinafter, ‘[REDACTED]’).

<sup>29</sup> Projectiles were recovered from Laeli’s scrotum, left lateral chest, left chest cavity, right forearm, and mouth.



The machete with a red blood-like substance was recovered from the driveway area of 1325 N. School St.



## H. Scientific/Forensic Evidence

### 1. Gunshot Residue Collection Kit

Gunshot residue (hereinafter, "GSR") collection kits were used on the hands of Officers 1, 2, and 3.<sup>30</sup> HPD Criminalist [REDACTED] analyzed these kits.<sup>31</sup> His findings and conclusions are as follows<sup>32</sup>:

Officer 1:	Four (4) particles characteristic of GSR confirmed One (1) particle consistent with GSR confirmed
Officer 2:	Two (2) particles characteristic of GSR confirmed Two (2) particles consistent with GSR confirmed
Officer 3:	Five (5) particles characteristic of GSR confirmed

Particles classified as "characteristic of GSR" contain the elements lead-barium-antimony, while particles "consistent with GSR" contain only two of these three elements.

The presence of GSR on a person's hands indicates one or more of the following<sup>33</sup>:

- 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.

### 2. Firearms and Tool Marks

HPD Criminalist [REDACTED] (hereinafter, "Criminalist [REDACTED]") analyzed the relevant firearms and ammunition submitted into evidence under HPD Report Number 21-341323 as Item Numbers 8, 13, 27-39, 40-41, and 53-57.<sup>34</sup> She concluded that the service firearms belonging to Officer 1 (Item Number 8) and Officer 2 (Item Number 13) showed the presence of discharge residue and were found to be operable.

Criminalist [REDACTED] determined that the 11 cartridge casings recovered under HPD Report Number 21-341323 as Item Numbers 27-36 and 38-39 (recovered from the scene) were fired from the service firearm of Officer 1 and Officer 2. More specifically, Criminalist [REDACTED] determined the following:

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<sup>30</sup> Reports by HPD Criminalist [REDACTED] (hereinafter, "Criminalist [REDACTED]")

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Report by Criminalist [REDACTED]

<sup>34</sup> Report by Criminalist [REDACTED] As of 3/16/22, a final report has not been generated by Criminalist [REDACTED] Information provided is based on a preliminary report.

- Four (4) cartridge cases marked as Item Numbers 27, 28, 29, and 31 were identified as being fired with the Glock pistol, serial number [REDACTED] (Item Number 13) belonging to Officer 2.
- Eight (8) cartridge cases marked as Item Numbers 30, 32, 33, 34, 35, 36, 38, and 39 were identified as being fired with the Glock pistol, serial number [REDACTED] (Item Number 8) belonging to Officer 1.
- Item Numbers 37 and 55 are two (2) caliber 9mm/38 class jacketed hollow point bullets identified as being fired from the Glock pistol, serial number [REDACTED] (Item Number 8) belonging to Officer 1
- Item Numbers 53 and 57 are one (1) caliber 9mm/38 class jacketed hollow point bullet and one (1) bullet fragment, both of which were identified as being fired from the Glock pistol, serial number [REDACTED] (Item Number 13) belonging to Officer 2.
- Item Numbers 40, 41, 54, and 56, are four (4) bullet fragments and inconclusive on being fired from either the Glock pistol, serial number [REDACTED] (Item Number 8) belonging to Officer 1 or Glock pistol, serial number [REDACTED] (Item Number 13) belonging to Officer 2.
- Item Number 61 is a caliber 9mm/38 class jacketed bullet and inconclusive on being fired from either the Glock pistol serial number [REDACTED] (Item Number 8) belonging to Officer 1 or Glock pistol, serial number [REDACTED] (Item Number 13) belonging to Officer 2.

### III. LEGAL PRINCIPLES

#### A. Definitions

“Believes” means reasonably believes.<sup>35</sup>

“Bodily injury” means physical pain, illness, or any impairment of physical condition.<sup>36</sup>

“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 the actor’s intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force.<sup>37</sup>

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.<sup>38</sup>

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<sup>35</sup> HRS § 703-300.

<sup>36</sup> HRS § 707-700.

<sup>37</sup> HRS § 707-300.

<sup>38</sup> HRS § 707-300.

“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.<sup>39</sup>

“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.<sup>40</sup>

“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.<sup>41</sup>

## **B. Potential Defenses**

Three (3) HRS chapter 703 justification defenses apply to this case.<sup>42</sup> 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 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.

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<sup>39</sup> HRS § 707-300.

<sup>40</sup> HRS § 707-700.

<sup>41</sup> HRS § 707-700.

<sup>42</sup> HRS § 703-301(1) (“In any prosecution for an offense, justification, as defined in [sections 703-302](#) through [703-309](#), is a defense.”).

...

- (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?<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup>

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<sup>43</sup> HAWJIC 7.01A.

<sup>44</sup> HAWJIC 7.01A

<sup>45</sup> HAWJIC 7.01A

## 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?<sup>46</sup>

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.<sup>47</sup> 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.<sup>48</sup>

## 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<sup>49</sup>, the use of force upon or toward the person of another is justifiable

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<sup>46</sup> HAWJIC 7.02A.

<sup>47</sup> HAWJIC 7.02A.

<sup>48</sup> HAWJIC 7.02A.

<sup>49</sup> **§703-310 Provisions generally applicable to justification.** (1) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under sections 703-303 to 703-309 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the actor's use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(2) When the actor is justified under sections 703-303 to 703-309 in using force upon or toward the person of another but the actor recklessly or negligently injures or

- 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 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. Laeli's Criminal Conduct

██████████ girlfriend of Victim ██████████ was present when Laeli used a machete against ██████████ resulting in the left pinky finger of ██████████ being severed. Laeli was identified as the person who used the machete against ██████████ by ██████████. Her identification was made in two ways. The first was when ██████████ told Officer 1 "he's right there." Based on that statement, Officer 1 began to engage Laeli which ultimately resulted in the officer-involved shooting. And through the Medical Examiner's investigation, the decedent was identified as Laeli. The second way ██████████ made identification of Laeli was through her written statement to HPD at the hospital. ██████████ wrote that "same unknown male that attacked [her] bf is the same male that officers shot at." Based on the statements of ██████████ and the verification of the decedent's identification through his next of kin, Laeli is the suspect in the attack on ██████████

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creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence toward innocent persons. [L 1972, c 9, pt of §1; gen ch 1993]

Laeli's conduct toward [REDACTED] implicate at least two (2) potential felony offenses under the HPC: (1) Attempted Murder in the Second Degree and (2) Assault in the First Degree. The statements of [REDACTED] and [REDACTED] indicate that there was an unprovoked attack on [REDACTED] in which Laeli was wielding a long machete-type knife and raised it over his head. To defend himself, [REDACTED] lifted his arm causing the machete to sever his pinky.

Upon [REDACTED] identification of Laeli on scene as the person who attacked [REDACTED] [REDACTED] Officer 1 engaged Laeli by calling out to him. At this point, Officer 1 was engaged in an active investigation as to the circumstances surrounding the attack on [REDACTED]. Laeli was armed with a machete and failed to follow verbal commands. As such, Officer 1 drew his firearm and gave additional commands to "drop the knife." Laeli then rushed at Officer 1 with machete in the raised position. Laeli's action resulted in Officer 1 discharging his firearm at Laeli.

Laeli's conduct toward Officer 1 implicate at least three (3) potential felony offenses under the HPC: (1) Attempted Murder in the First Degree, (2) Attempted Assault against a Law Enforcement Officer in the First Degree, and (3) Terroristic Threatening in the First Degree.

## **B. HRS Chapter 703 Defenses**

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

The first 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?<sup>50</sup>

As to the first question, it is uncontroverted that Officer 1 used deadly force by discharging his firearm at Laeli. Officer 1 admitted in his report that he intentionally fired at Laeli to protect himself from being attacked by the machete-wielding Laeli.

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 death or 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 Officer 1 used the deadly force.

Here, Officer 1 already had credible information that Laeli was armed with a machete and had used it against another person. Officer 1 had seen [REDACTED] hand with the missing pinky and observed [REDACTED] in pain and nearly passing out

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<sup>50</sup> HAWJIC 7.01A.

from the injury. Further, Officer 1 was aware that [REDACTED] was in possession of the severed pinky. When [REDACTED] motioned to Officer 1 that Laeli had returned, Officer 1 was able to observe a machete in Laeli's possession and upon shining his flashlight observing what appeared to be a red, blood-like substance.

As Officer 1 gave verbal commands to Laeli to "come here" and "drop the knife," Laeli ignored them all. Surveillance video appears to show Laeli stop and look in the direction of the officers. He then continued to walk away. BWC footage then shows Officer 1 at the front of the VW Bug and Laeli at the open driver's door. The approximate distance between the two at that point was approximately 5-10 feet.<sup>51</sup> Laeli then quickly rushed toward Officer 1 closing the distance between the two over the course of approximately 15-20 feet.<sup>52</sup> Officer 1 gave at least 10 verbal commands to drop the knife before discharging his firearm.

Witness statements indicated the actions taken just prior to shots being fired:

- "[O]bserved the male with the knife try swing the knife at the officer and that's when the officer draw the gun."<sup>53</sup>
- "[T]he suspect going towards the cop. But the cop ended up on his back and started shooting the suspect then kept coming towards the second cop and then the second cop had his gun drawn and had multiple commands then the suspect hit the ground."<sup>54</sup>
- "[T]he suspect closed the door and started walking fast towards the officer, who was standing in front of WV. The officer appeared startled when the suspect starting walking towards with the long object down to his left side. The officer was walking backwards, shouting stop a couple times and due to there being a slope in the parking lot driveway. The officer tripped and fell on to his back, while the officer was still on the ground. The suspect approached him closely, about two feet away. When he lifted his left arm, still holding the long object and made a downward striking motion at the officer. At which time the officer drew his gun and shoot about four rounds at the suspect."<sup>55</sup>

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<sup>51</sup> Approximate measurement taken by Investigator [REDACTED] using strolometer between the approximate area of driver's side door and approximate location of Officer 1 based on BWC footage and Surveillance footage.

<sup>52</sup> Approximate measurement taken by Investigator [REDACTED] using strolometer between the approximate locations of Officer 1 at the front of the VW Bug to the parking curb where Officer 1 tripped.

<sup>53</sup> Witness [REDACTED] who was located in a nearby apartment at 1325 N. School St. and called 911.

<sup>54</sup> Witness [REDACTED] who was present in the immediate vicinity of the parking lot and driveway.

<sup>55</sup> Witness [REDACTED] who was located in a nearby apartment at 1325 N. School St.

As such, it is clear that Officer 1 had a reasonable belief that deadly force, *i.e.*, shooting Laeli, was immediately necessary to protect himself from death or serious bodily injury as Laeli appeared to be quickly moving toward him wielding the machete in his hands.

Based on the circumstances, Laeli knew that Officer 1 and Officer 2 were police officers. There is no affirmative statement by Officer 1 identifying himself as police. However, given the totality of the circumstances, a reasonable person would have known that Officer 1 was a police officer. Specifically, Officer 1 arrived in a marked blue and white vehicle with his light illuminated and parked on School St when responding to the initial call regarding Laeli's attack on [REDACTED]. People were gathered near the top of the driveway to 1325 N. School St. where Officer 1 and subsequently, the ambulance and Officer 2 arrived. Officer 2 also arrived on scene with his blue light bar illuminated on his subsidized vehicle. The light from the Officer 1's patrol vehicle is visible in the BWC footage. Additionally, following the attack on [REDACTED] Laeli was believed to have fled. However, a 911 caller,<sup>56</sup> saw Laeli behind the dumpster located near the driveway of 1325 N. School Street:

"The male with the knife that attack the other male was hiding [behind] the dumpsters. I called "911" asking for the police cause I stay see the male with the knife hiding [behind] the [dumpster] and cars."<sup>57</sup>

Below are photographs of the dumpster area at the top of driveway of 1325 N. School St. and the area behind the dumpster.

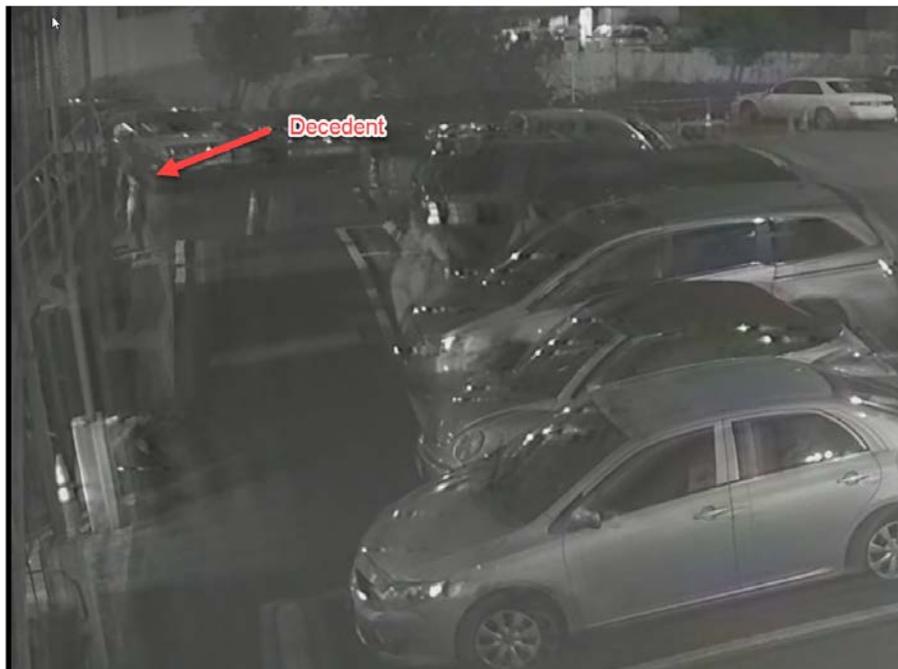


<sup>56</sup> 911 Caller identified as [REDACTED]

<sup>57</sup> HPD-252 of [REDACTED]



In the surveillance video, Laeli appears to be coming from the side of the parking lot closest to the canal moving across the driveway toward the VW Bug.



Therefore, given that Laeli fled following the initial machete attack on [REDACTED] and he was observed by a witness in an area where the lights from the HPD vehicles and

the ambulance were visible, knowledge of HPD presence can be imputed on Laeli. Further, the Officers were attired in the Class A uniforms clearly marked with HPD insignia and police logo. Additionally, Officers got within a 20' distance of Laeli, they had guns drawn and a flashlight shining and were giving verbal commands. Moreover, Laeli has had prior law enforcement contact. Given this available information, it is reasonable to believe that Laeli was aware that Officer 1 and Officer 2 were police officers.

In addition, Officer 1 was not the initial aggressor. He did not provoke Laeli's use of force against him. As a law enforcement officer who was engaged in his official duties, specifically that Officer 1 was investigating the alleged criminal offense involving Laeli and [REDACTED] he was under no duty to retreat.<sup>58</sup>

As such, under the circumstances that existed based on Officer 1's subjective belief, it was objectively reasonable here that he used deadly force to protect himself from death or serious bodily injury.

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

Under the same facts stated above, Officer 2 stated that he shot at Laeli because he believed that Laeli was attacking Officer 1 with the machete. Officer 2 observed Laeli slam the car door and "quickly run towards" Officer 1 "swinging the large knife in an aggressive manner."<sup>59</sup> Officer 2 observed Officer 1 "falling backwards to the ground and the male, within a few feet of [Officer 1] continuing to attack [Officer 1] with the large knife over his head." Given Officer 2's observations and the statements of the on scene witnesses and the surveillance video, Officer 2 believed discharging his firearm was necessary for the protection of Officer 1.

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?<sup>60</sup>

As to the first question, it is uncontroverted that Officer 2 used deadly force by shooting at Laeli.

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<sup>58</sup> 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).

<sup>59</sup> See HPD Report No. 21-341325 of Officer 2

<sup>60</sup> HAWJIC 7.02A.

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 was informed by witnesses of Laeli's return to scene as Officer 1 was investigating a potential crime involving Laeli. Officer 1, *i.e.*, the third person in this particular justification defense, was under no duty to retreat. At the time of the incident, Officer 1 was employed and on duty as a law enforcement officer and was in the process of investigating a crime. Officer 1 was not the initial aggressor nor did he provoke Laeli's use of force against him. The same facts stated hereinabove, support the conclusion that Officer 2's use of deadly force was justifiable to protect the Officer 1.

This investigation therefore finds that Officer 2's belief that his use of deadly force to protect Officer 1 was immediately necessary was objectively reasonable.

### **3. Officers Use of Force in Law Enforcement**

Neither Officer 1 nor Officer 2 had an arrest warrant when they arrived on scene or when they encountered Laeli. Officer 1 was standing near the witnesses to the earlier machete attack when ██████ said "he's right there" in an excited manner. Based on that statement, "he's right there," the surveillance video showing Laeli walking across the parking lot, and the surveillance video showing Officer 1 walking toward that same area of the parking lot down the ramp, it can reasonably be said that Officer 1 was engaging with the person ██████ was identifying as the person who attacked ██████ with the machete, Laeli. Based on the foregoing, Officer 1 was appropriately investigating the matter further and had a basis to detain Laeli for investigation.

As Officer 1 got closer to Laeli and was able to observe the machete in Laeli's hand and that the machete had a blood-like substance on it, Officer 1 could determine that there was probable cause to believe that Laeli was the person who committed the offense of Attempted Murder in the Second Degree (or any included felony offense) against ██████. Further, as Laeli charged at Officer 1 with machete in hand, there was probable cause to believe the offenses of Attempted Murder in the First Degree (or any included felony), Terroristic Threatening in the First Degree, or Attempted Assault against a Law Enforcement Officer in the First Degree was being committed against Officer 1.

The question is whether Officer 1 and Officer 2's intentional discharge of their service firearm 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<sup>61</sup>, 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.”<sup>62</sup> The analysis of HRS §703-307(3) follows:

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<sup>61</sup> **§703-310 Provisions generally applicable to justification.** (1) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under sections 703-303 to 703-309 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the actor's use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(2) When the actor is justified under sections 703-303 to 703-309 in using force upon or toward the person of another but the actor recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence toward innocent persons. [L 1972, c 9, pt of §1; gen ch 1993]

<sup>62</sup> Commentary to HRS §703-307.

First, Officers 1 and 2 were authorized to arrest Laeli without a warrant for the following possible felonies committed against [REDACTED]

- Attempted Murder in the Second Degree
- Assault in the First Degree

Officers 1 and 2 were also authorized to arrest Laeli without a warrant for additional felonies committed against Officer 1:

- Attempted Murder in First Degree
- Attempted Assault on a Law Enforcement Officer in the First Degree
- Terroristic Threatening in the First Degree

HRS §703-307(3)(a).

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

Third, Officers 1 and 2's use of deadly force did not create a substantial risk of injury to innocent persons. HRS §703-307(3)(c). While there were civilians in the surrounding area of the parking lot, the two closest civilians did not appear to be within the line of sight of officers. The two closest civilians were located in between vehicles but moved positions to the rear of full size vehicles before any shooting occurred. The full size vehicles included a Honda Odyssey Van, a Chevy Trailblazer Sport Utility Vehicle (SUV), a Ford Explorer SUV, and a Chevy Silverado full-size pick-up truck. 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 circumstances, Officers 1 and 2 had a reasonable belief that there is a substantial risk that Laeli would have caused death or serious bodily injury if his apprehension was delayed. HRS §703-307(3)(d)(ii). Both Officers were aware that [REDACTED] had his finger severed by the machete-wielding Laeli. As Officers encountered Laeli, he was still in possession of a machete. Laeli was unwillingly to respond to verbal commands to put down the weapon. Laeli charged at Officer with the machete in hand. Officer 1 articulated his objectively reasonable belief:

“The suspect began to aggressively approach me and ran towards me while holding the machete in his hand. Knowing that the suspect has previously used the machete to sever [REDACTED] finger, I believed that the threat was absolutely real and my life was in jeopardy. As he sprinted towards me and closed the distance, I began to backpedal in an attempt to

create more space with duty issued pistol in my right hand and flashlight in my left hand.

The suspect had closed the distance significantly and lunged while now raising the machete above his head about to attack me, I had no other option but to discharge my duty issued pistol to stop this imminent threat...”

Officer 2 statements and the statements of the witnesses also support Officers 1’s assessment of the situation before he discharged his service firearm.<sup>63</sup>

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.<sup>64</sup> The defenses codified in HRS §§ 703-304, -305, and -307 are not

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<sup>63</sup> See Section IV. B. 1 and 2; *supra*.

<sup>64</sup> 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](#).
- (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](#).

affirmative defenses. As such, where these defenses are applicable they must be disproved (or negated) beyond a reasonable doubt.<sup>65</sup>

The PAT declines to prosecute Officer 1 or Officer 2 for any offense under the HPC for their intentional use of deadly force on August 11, 2021.

The PAT 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; (3) the officers' use of deadly force was not a justified use of force in law enforcement.

The PAT therefore concludes that Officer 1 and Officer 2 were justified in their use of deadly force for Self-Protection, the Protection of Others, and for Law Enforcement purposes. No charges will be filed against either officer.

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- (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:

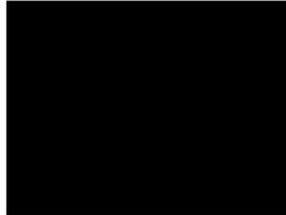
- (a) Are specified by the definition of the offense, and
- (b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

<sup>65</sup> 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.").



## EVIDENCE SPECIALISTS

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### 2. Written Witness Statements

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### 3. 26 HPD Body-Worn Camera Videos

- HPD Officer [REDACTED]
- HPD Officer [REDACTED] (Officer 1)
- HPD Officer [REDACTED] (Officer 2)
- HPD Officer [REDACTED] (Officer 3)
- HPD Officer [REDACTED]

### 4. Surveillance Recording Videos

- Recordings from four (4) cameras located at 1325 N. School St.

5. Communications

- 911 Call from [REDACTED]
- Dispatch radio transmissions
- CADS Incident Summary No. 210811-0173

**B. Other Materials Received from HPD**

- Personnel information for Officers 1 and 2

**C. Medical Examiner Reports from Case No. 2021-2000**

- Medical Investigator Report by [REDACTED]
- Autopsy Report by [REDACTED] M.D.
- Toxicology Report

**D. Honolulu Fire Department Report**

- Incident Report No. 2021-004889-000

**E. Honolulu Emergency Medical Services Report**

- Not received

**F. PAT Independent Investigation**

- General scene review
- Photographs
- General evidence review