

STEVEN S. ALM
PROSECUTING ATTORNEY

THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY



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

Officer-Involved Shooting Report No. 2022-02

Report Date: August 4, 2022

Independent Investigation of Officer-Involved Shooting of

Brandon Ventura

**Kamake'e Vista, 1065 Kawaiahao Street, Apt. 1503
Honolulu, HI 96814**

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 "SSD Officer 1") for any criminal offense under the Hawai'i Penal Code (hereinafter, "HPC") for causing the death of Brandon Ventura (hereinafter "Ventura") inside Apartment 1503, in the Kamake'e Vista, located at 1065 Kawaiahao Street, Honolulu, Hawaii. In making this assessment, the proof beyond a reasonable doubt standard will be used.

This investigation considered materials and information provided by HPD, the Department of the Medical Examiner (hereinafter "ME"), Department of Emergency Services (hereinafter "EMS") and by the PAT's independent efforts. PAT Investigator [REDACTED] (hereinafter, "PAT Investigator") was the PAT's primary investigator in this case.

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

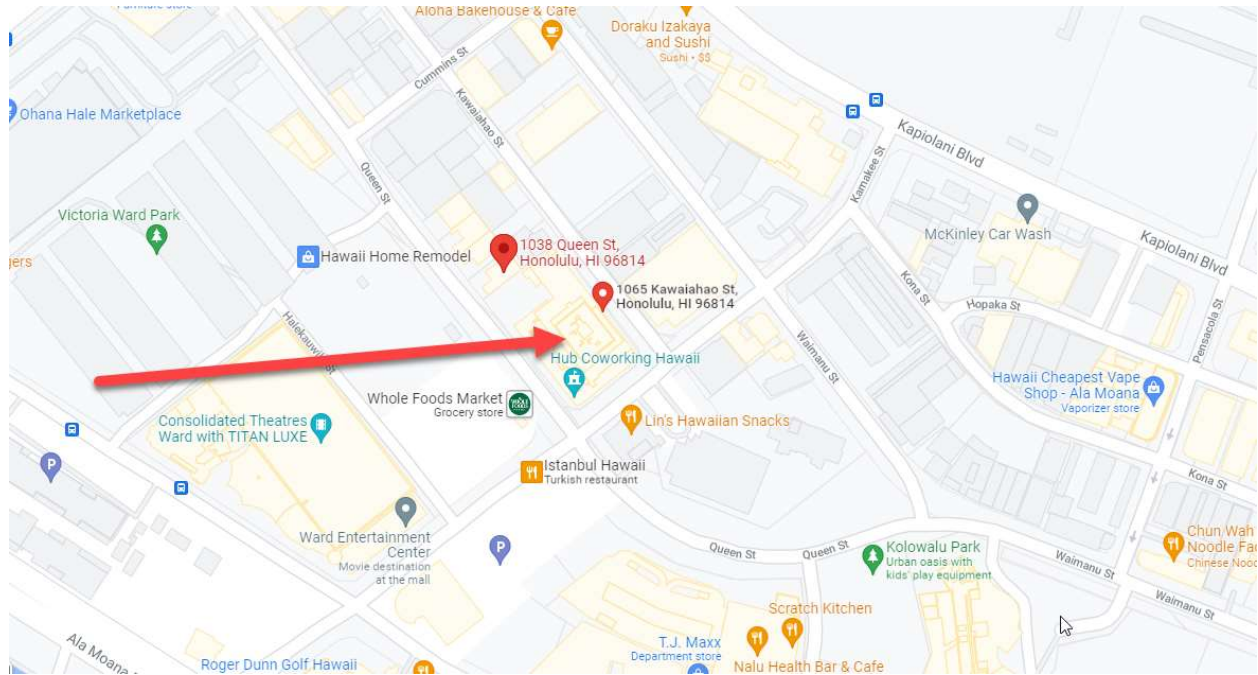
II. FACTS

A. General Background

The incident occurred on Friday, August 27, 2021, beginning at about 1:40 p.m., at the Kamake'e Vista, located at 1065 Kawaiahao Street, Honolulu, Hawaii. The Kamake'e Vista is an affordable housing rental property consisting of 226 one and two bedroom apartments situated on the west side of Kamake'e Street, south of Kawaiahao Street and north of Queen Street. A map and image of Kamake'e Vista are provided below.

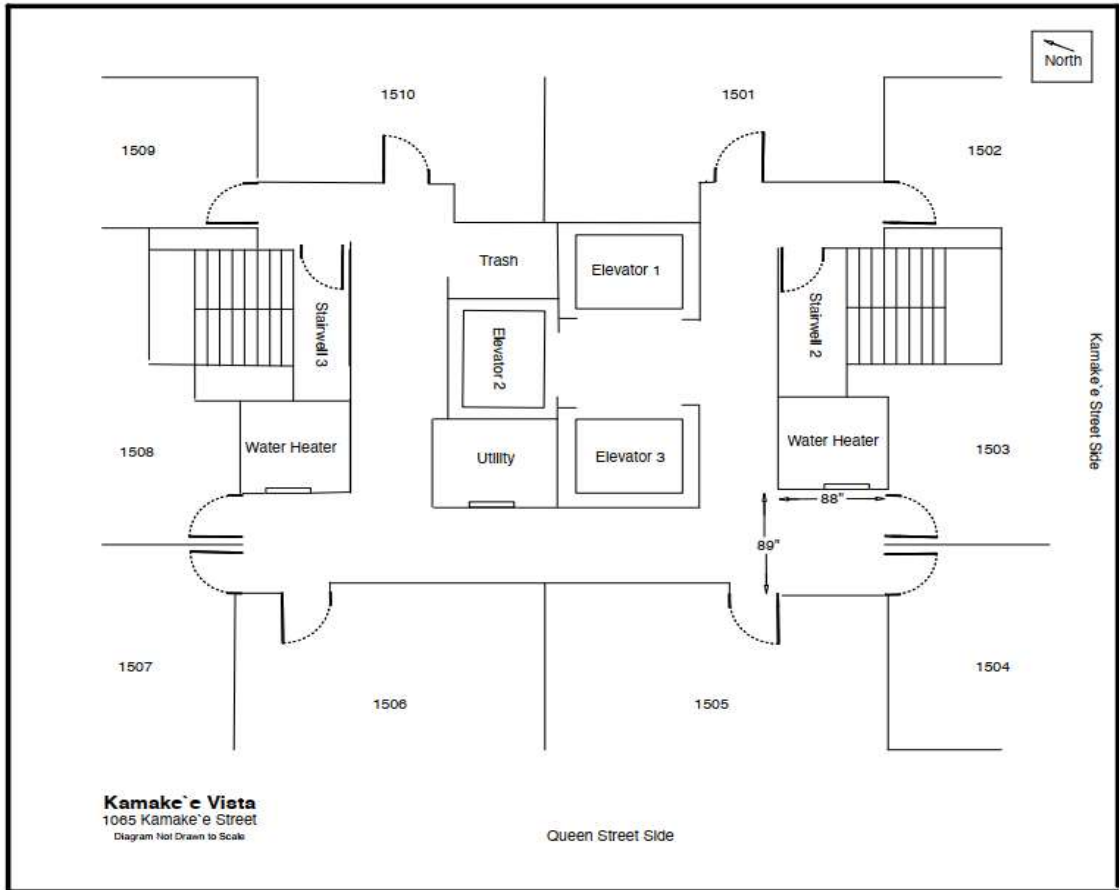
Officer-Involved Shooting Report No. 2022-02

Report Date: August 4, 2022

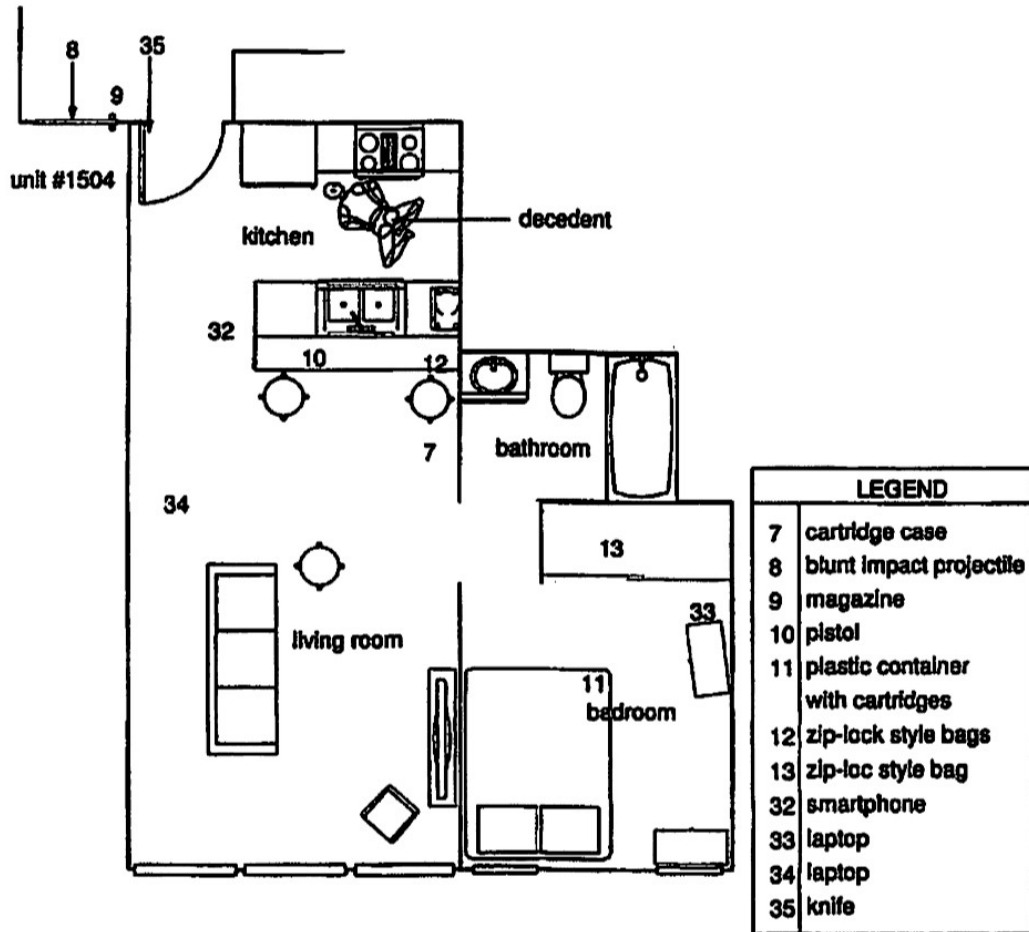


The actual incident occurred within Kamake'e Vista Apartment 1503 (hereinafter "Apartment 1503") and the hallway situated outside. There are ten units on the fifteenth floor of the Kamake'e Vista. Apartment 1503 is a one bedroom apartment located on the east side of the building facing Kamake'e Street. The floor plan for the fifteenth floor and Apartment 1503 and the scene diagram showing the locations of Ventura and various items of evidence are provided below.

Officer-Involved Shooting Report No. 2022-02
Report Date: August 4, 2022



Scene at 1065 Kawaiahao St. #1503



*Diagram Not Drawn To Scale

B. Relevant Participants in the Incident

1. Brandon Ventura¹

On August 27, 2021, Ventura was the legal resident of Apartment 1503 and had sixteen arrests, two of which were for felony offenses, and was on deferral status for Reckless Driving under Case Number 1DTA-21-00440 (Ventura was initially charged with Operating a Vehicle Under the Influence of an Intoxicant (hereinafter "OVUII")). Ventura had convictions for Abuse of a Family and Household Member and Criminal Property Damage in the Fourth Degree under Case Number 1FFC-18-0000443, Assault in the Third Degree under Case Number 1DCW-16-0001687, Driving Without License under Case Number 1DTA-13-02400, Carrying a Deadly Weapon under Case Number 1P211-178, and OVUII and Excessive Speeding under Case Number 1DTA-09-01010. Ventura also had prior incidents in which he expressed suicidal intentions documented under HPD report numbers 18-196850, 19-468541, 19-482449, and 20-649711. Ventura was also involved in a barricade situation in which officers from the HPD Specialized Services Division (hereinafter "SSD") were called out which was documented under HPD report number 18-144520.

2. Witness 1²

██████████ (hereinafter "Witness 1") said that he had known Ventura for about three months on August 27, 2021, and that Ventura was his best friend. Witness 1 met Ventura while working as the general manager of the "Pandora" bar which Ventura would frequent as a customer. On August 27, 2021, Witness 1 had been living with Ventura in Apartment 1503 for about one month while he looked for a place of his own. Witness 1 slept in the living room and Ventura slept in the bedroom. Witness 1 said that Ventura had been abusing cocaine, alcohol, and Xanax since Monday, August 23, 2021, due to breaking up with his girlfriend. Witness 1 indicated that on August 27, 2021, he had gone to Apartment 1503 at about 2:00 a.m. and went to sleep at about 4:00 a.m. Witness 1 woke up at about 7:00 a.m., ate breakfast, and then went back to sleep at about 10:00 a.m. Witness 1 woke up to the sound of police sirens and saw Ventura holding a Chef's knife in his left hand and kneeling on the floor near the windows. Ventura had a cut to his right hand or arm. Witness 1 looked out the window and saw HPD officers going toward the building entrance. Ventura told Witness 1 that the police were coming for him. Witness 1 indicated that police knocked on the front door a short time later and that he told Ventura to turn himself in. Ventura said no, put

¹ The information background regarding Ventura was retrieved from the records of the PAT, Hawaii Criminal Justice Data Center, HPD's Case Report System ("CRS") and the Hawai'i State Judiciary.

² The information in this paragraph is from Witness 1's written and recorded statements by Witness 1 and various HPD officers' reports and Body Worn Camera (hereinafter "BWC") videos.

down the knife, and said that he was going to grab his gun and that either the police would shoot him or he would shoot the police. Witness 1 told Ventura to let him out of the apartment if he was going to follow through with that plan. Ventura let Witness 1 out of the apartment and HPD officers escorted him away from Apartment 1503 and then questioned him. Witness 1 informed HPD officers about Ventura's drug and alcohol abuse and that Ventura had a firearm, but that he hadn't seen it that day.

3. Witness 2³

Ventura's friend [REDACTED] (hereinafter "Witness 2") said that he met Ventura while attending Leeward Community College with Ventura, but then lost touch with him. Witness 2 reconnected with Ventura when he saw Ventura working as a security guard at the McCully Shopping Center. Witness 2 said that he would see Ventura about once a week depending on their schedules. Ventura would also periodically call Witness 2 when he was bored at work. Witness 2 indicated that he would occasionally go drinking with Ventura, but that he was only a social drinker while Ventura could drink a lot. Witness 2 declined to discuss any drug use by Ventura other than Ventura taking prescription drugs and "edibles". Witness 2 said that Ventura called him on August 27, 2021, and told him that he loved him and that he was a really good friend. Witness 2 felt that something was not right so he called Ventura back, but Ventura did not answer his phone. Witness 2 took an Uber to the Kamake'e Vista and saw the police presence at the scene. Witness 2 called Ventura and Ventura asked him to get in touch with his girlfriend. Witness 2 provided background information regarding Ventura to HPD Sergeant [REDACTED] (hereinafter "Sergeant 1"). Witness 2 and HPD Sergeant [REDACTED] (hereinafter "Sergeant 2") spoke with Ventura using Witness 2's phone and Ventura agreed to come out from the apartment, but kept delaying his exit for various reasons. The police escorted Witness 1 and Witness 2 from the building lobby and he heard a gunshot a short time later. Witness 2 indicated that he knew Ventura had killed himself or something bad had happened. Witness 2 remained at the scene, but no one spoke with him so he eventually left. Witness 2 indicated that Ventura had texted an image of a firearm to him prior to and during the incident.

4. SSD Corporal 1⁴

On August 27, 2021, at about 3:49 p.m., HPD SSD Corporal [REDACTED] (hereinafter "SSD Corporal 1") was assigned to relay updates regarding contacts with Ventura to SSD personnel.

Per SSD Corporal 1, the Crisis Negotiation Team (hereinafter "CNT") called Ventura on August 27, 2021, at about 3:52 p.m., but there was no response.

³ The information in this paragraph is from a recorded statement obtained by PAT Investigator on January 11, 2021.

⁴ The information contained in this section is obtained from SSD Corporal 1's report.

On August 27, 2021, at about 3:54 pm., CNT made a second call to Ventura. Ventura answered and spoke with Sergeant 2. SSD Corporal 1 informed the other SSD officers that Ventura was talking about his mother, being on probation, and that he had cut his wrist. Sergeant 2 persuaded Ventura to exit the apartment, but Ventura wanted five minutes to gather his medication. Ventura was instructed to call back before he exited the apartment. The phone call ended at about 4:09 p.m.

On August 27, 2021, at about 4:21 p.m., Ventura had not called back so CNT had Sergeant 2 call Ventura. SSD Corporal 1 listened to their conversation on speaker phone. Ventura indicated that he was coming out, but didn't want to go to jail. Sergeant 2 told Ventura that he wasn't going to go to jail and was going to the hospital for a "MH-1" (hereinafter "MH-1").⁵ SSD Corporal 1 said that Ventura's state of mind was going back and forth from calm to suicidal thoughts. Ventura said that he had a round in the chamber and was going to use it on himself. Sergeant 2 continued to speak with Ventura and his demeanor changed back to calm and he said that he was getting clothes to come out. Ventura asked Sergeant 2 if his dad was proud of him and uttered that he wanted to come out in a body bag. At about 4:34 p.m. Ventura told Sergeant 2 to tell his son that he loved him. SSD Corporal 1 heard what sounded like Ventura at the front door and Ventura speaking with the SSD "React Team" (hereinafter "React Team"). The phone cutoff when he heard on the police radio that shots were fired and the suspect was down.

5. HPD Sergeant 2⁶

Sergeant 2 responded to 1065 Kawaihāo Street at the request of the CNT. Sergeant 2 said that: (1) Ventura's father had been his friend since about 1987; and (2)

⁵ MH-1 is an application by a law enforcement officer for an emergency evaluation pursuant to Hawai'i Revised Statutes (hereinafter "HRS") § 334-59(1) which provides in pertinent part: "If a law enforcement officer has reason to believe that a person is imminently dangerous to self or others, the officer shall call for assistance from the mental health emergency workers designated by the director [of health]. Upon determination by the mental health emergency workers that the person is imminently dangerous to self or others, the person shall be transported by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A law enforcement officer may also take into custody and transport to any facility designated by the director [of health] any person threatening or attempting suicide. The officer shall make application for the examination, observation, and diagnosis of the person in custody. The application shall state or shall be accompanied by a statement of the circumstances under which the person was taken into custody and the reasons therefor which shall be transmitted with the person to a physician, advanced practice registered nurse, or psychologist at the facility[.]

⁶ The information contained in this section is obtained from Sergeant 2's report.

he knew Ventura had a criminal record, a substance abuse problem, and had attempted to commit suicide in past. Sergeant 2 met with CNT negotiator Detective [REDACTED] (hereinafter "Detective 1") and was told to contact Ventura by phone with the objectives of ending the barricade situation, placing Ventura in custody for an emergency evaluation, and obtaining medical treatment for Ventura. Any criminal charges against Ventura would be addressed at a later time.

On August 27, 2021, at about 3:55 p.m., Sergeant 2 spoke with Ventura on the phone. Sergeant 2 indicated that Ventura sounded distraught and emotional. Ventura said that: (1) he broke up with his girlfriend; (2) Child Protective Services had taken his son from him; (3) his mother had died of cancer in November 2020; and (4) there was a handgun in his apartment, but he didn't know who left it there as friends frequently visited his apartment. Sergeant 2 said that they agreed to talk again in about five minutes and that the call ended prior to 4:09 p.m.

Sergeant 2 spoke with Ventura again at about 4:21 p.m. Sergeant 2 indicated that Ventura's mood changed erratically. Ventura said that he didn't want to be arrested for having the handgun as he was on probation. Sergeant 2 asked Ventura if he had any injuries and Ventura said that he had cut his wrist, but the cut had stopped bleeding. Sergeant 2 attempted to persuade Ventura to come out of apartment, stating that medical attention would be provided and an ambulance was waiting. Ventura said that he needed his medication and Sergeant 2 told Ventura to gather it up and come out. Sergeant 2 said that Ventura appeared to be stalling as Ventura mentioned looking for his wallet and other things and that his mood changed when he mentioned being a disappointment to his dad. Ventura told Sergeant 2 to tell his son that he loved him and that he was thinking about ending it. Sergeant 2 became concerned that Ventura may commit suicide. Sergeant 2 heard rustling sounds, called out "Brandon" a few times, heard what sounded like movement, and could hear other voices in the background. There was no further communication with Ventura.

6. HPD Detective 1⁷

On August 27, 2021, Detective 1 said that he received a call from HPD D1 Patrol Sergeant [REDACTED] (hereinafter "Patrol Sergeant 1") at about 2:00 p.m. and that Patrol Sergeant 1 requested assistance with a suicidal male in an apartment at 1065 Kawaiahao Street. Patrol Sergeant 1 provided information regarding the situation and Detective 1 asked Patrol Sergeant 1 to contact SSD. Detective 1 also texted information about the incident to SSD Major [REDACTED] (hereinafter "SSD Major"). Patrol Sergeant 1 called Detective 1 a second time to report that they heard what sounded like someone racking the slide of a gun coming from within the apartment.

⁷ The information contained in this section is obtained from Detective 1's report.

On August 27, 2021, at about 3:10 p.m., Detective 1 arrived at 1065 Kawaiahao Street. Sergeant 1 informed Detective 1 that Ventura had refused to speak with him after Ventura was contacted by Witness 2. Ventura indicated that he would only speak with Sergeant 2. Witness 1 provided information regarding what had occurred earlier in the apartment.

Detective 1 indicated that Sergeant 2 arrived on scene and the first call was made to Ventura at about 3:53 p.m. A second call was made to Ventura a couple of minutes later and resulted in Sergeant 2 speaking to Ventura for about fifteen minutes. Sergeant 2 spoke with Ventura about Ventura breaking up with his girlfriend, Ventura's son, and Ventura's mother's death. Ventura said that he needed to end the call and agreed to call back in about five minutes, but never did.

Another call was made to Ventura, but was cancelled when information was received that Ventura was at the apartment door.

Detective 1 indicated that a call was made to Ventura at about 4:21 p.m. and that the conversation could be heard on speaker phone. The subject of a handgun being in the apartment and Ventura facing criminal charges for the gun or compromising his probation were mentioned. Ventura confirmed that he had a cut on his arm, but said that it was not actively bleeding. Ventura was told that EMS was on scene and to come out of his apartment. Ventura said that he wanted to gather his medication before doing so and was given instructions to follow when he was ready to exit the apartment. Ventura indicated that he wanted to look for his wallet and then a shirt. Witness 1 and Witness 2 who had been listening to the conversation were escorted from the Kamake'e Vista lobby.

Ventura could be heard moving about the apartment as he spoke about looking for some kind of case. Detective 1 indicated that Ventura's search for various items one after another was delaying his exit from the apartment. Ventura then mentioned being a disappointment to his father and asked Sergeant 2 to tell his son that he loved him. Detective 1 said that a short time later he heard sounds of movement and voices repeating the instruction to put the gun down. Detective 1 said that the conversation ended at that point.

7. HPD SSD Officer 1⁸

SSD Officer 1, age 43, has been employed as a HPD officer since October 1, 2009. SSD's Officer 1's assignments have been as follows:

⁸ The information in this paragraph is from personnel records received from HPD, CRS, and SSD Officer 1's report.

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
10/01/2009	02/19/2011	TRP TRNG
02/20/2011	08/06/2011	CRD
08/07/2011	08/11/2018	D1
08/12/2018	PRESENT	SSD

There were three HPD Professional Standards Office (hereinafter "PSO") investigations involving SSD Officer 1 prior to the incident.

<u>REPORT NO.</u>	<u>CLASSIFICATION</u>	<u>CASE DISPOSITION</u>
15-151941	Theft 3	Complaint Withdrawn
17-326469	Assault 3	Case Declined
18-016315	Domestic Argument	Records Only

The Theft in the Third Degree report involved an arrestee's missing duffle bag. The duffle bag had apparently been left in HPD patrol vehicle 1318 following transport of the arrestee and recovered from the HPD patrol vehicle by a HPD vehicle dispatcher. The duffle bag was returned to the arrestee, all of the property in the duffle bag was accounted for, and the complaint was withdrawn.

The Domestic Argument case involved SSD Officer 1 reporting that his wife had damaged the driver side mirror of their jointly owned vehicle.

No information was available for the Assault in the Third Degree allegation. The case is marked as a confidential case in CRS and the report number could not be found in PROSECUTORbyKarpel (PBK).

On August 27, 2021, at about 3:00 p.m., SSD Officer 1 arrived on scene and was informed that: (1) Ventura was sole occupant of Apartment 1503; (2) Ventura was suicidal; (3) Ventura had cut himself; (4) Ventura was armed with a .45 caliber pistol; (5) Ventura had barricaded himself inside Apartment 1503; and (6) Ventura was going to set things on fire. SSD Officer 1 was assigned to the SSD React Team as the "High Cover Officer" and was armed with a M4 rifle. SSD Officer 1 was positioned in the hallway around the corner from Apartment 1503's front door.

From his position in hallway around the corner from Apartment 1503, SSD Officer 1 indicated that he could not see the apartment, but at times could hear what Ventura said. SSD Officer 1 reported that he heard Ventura say that: (1) he did not want help and wanted to die; (2) he had cut himself and was bleeding; (3) he wanted to speak with Sergeant 2 and Sergeant 2 was the only person whom he trusted; and (4) he had gun in the apartment. SSD Officer 1 knew that Ventura had slid a knife blade under the front door and had tossed out an empty magazine into the hallway from the apartment. SSD Officer 1 said that SSD Officer [REDACTED] (hereinafter "SSD Officer 3") repeatedly

pleaded with Ventura to surrender, but that Ventura refused to do so and that he heard the sound of a gun slide being racked in the apartment.

SSD Officer 1 said that Ventura opened the front door again and that the other officers related that Ventura was standing in doorway with a gun pointed to his head. Ventura disregarded repeated pleas to drop the weapon and SSD Officer 1 heard the sound of a gun slide being racked and Ventura requesting that officers tell his family and son goodbye. Ventura then went back inside the apartment and the door closed.

SSD Officer 1 reported that he learned via the police radio that Ventura was speaking with the CNT and that he had agreed to surrender, but was gathering clothes and had said that he was not going to jail and had a bullet loaded in chamber. SSD Officer 1 heard the sound of gun slide being racked inside the apartment and Ventura angrily saying that he was only coming out of the apartment in a body bag. Shortly thereafter, SSD Officer 1 heard the apartment front door open and the other SSD officers relayed that Ventura had gun in his hand. SSD Officer 1 heard SSD Officer 3 pleading with Ventura to put the gun down and then heard the words, "bean bag ready, bean bag ready," which he recognized to mean that the deployment of the "less lethal" option was imminent. SSD Officer 1 heard a loud bang which he knew was the "less lethal" 40 millimeter (hereinafter "mm") launcher being deployed. SSD Officer 1 turned the corner and saw Ventura holding a handgun in his left hand down by his left leg. SSD Officer 1 heard "drop the gun" being announced loudly and clearly and saw SSD Corporal [REDACTED] (hereinafter "SSD Corporal 2") grab Ventura's left wrist with the handgun still in Ventura's left hand. A struggle ensued and SSD Officer 1 heard repeated loud commands for Ventura to drop the gun. SSD Officer 1 followed SSD Officer [REDACTED] (hereinafter "SSD Officer 2") into the apartment and saw SSD Corporal 2 struggling with Ventura over the handgun and that Ventura in complete control of the handgun. SSD Officer 1 indicated that the handgun was going in and out of his view.

SSD Officer 1 reported that the struggle moved into the kitchen area located to the left of the front door. SSD Officer 1 said that SSD Corporal 2 and Ventura were struggling over the gun and that the gun's muzzle was pointing in all directions. SSD Officer 1 pushed past SSD Corporal 2 and saw that: (1) SSD Officer 2 had Ventura partially pinned and bent over the kitchen sink area; (2) Ventura was pulling the handgun away from SSD Corporal 2; and (3) Ventura was bending his elbow down into the sink and beginning to turn his left wrist and the gun barrel toward SSD Corporal 2's head and face. SSD Officer 1 said that fearing for SSD Corporal 2's life, he took his rifle off safe, oriented it toward Ventura's head, and discharged one round as Ventura simultaneously turned his left wrist causing the gun's muzzle to continue to track and line up toward SSD Corporal 2's head and face. SSD Corporal 2 and SSD Officer 3 gained control of the handgun and SSD Officer 1 switched the rifle to safe and oriented his rifle to the "high port" position.

8. SSD Corporal 2⁹

On August 27, 2021, at about 2:40 p.m., SSD Corporal 2 was informed by SSD Command that HPD District 1 was requesting assistance with a barricade situation and that he arrived at the scene a short time later. SSD Corporal 2 indicated that he was informed that Ventura was armed with a .45 caliber pistol and had barricaded himself within Apartment 1503. SSD Corporal 2 was assigned to the SSD React Team as the "Less Lethal Operator" and was equipped with a launcher loaded with 40 mm caliber foam tipped munitions. SSD Corporal 2 was positioned in the hallway about six to eight feet from Apartment 1503's front door.

SSD Corporal 2 said that SSD Officer 3 established communication with Ventura. SSD Corporal 2 heard Ventura say something like, "I don't need help, I just wanna die." SSD Officer 3 continued to speak with Ventura and convinced Ventura to surrender a kitchen knife. Ventura slid the knife blade under the front door. SSD Officer 3 also convinced Ventura to surrender a pistol magazine. SSD Corporal 2 indicated that Ventura slightly opened the front door, tossed out the empty magazine, and then quickly closed the door.

SSD Corporal 2 said that: (1) a few minutes passed and Ventura opened the front door brandishing what appeared to be .45 caliber pistol in his left hand with the pistol pointed at his head and his finger on the trigger; (2) Ventura made comments indicating that he wanted to shoot himself; and (3) Ventura closed the front door.

SSD Corporal 2 reported that he was informed that CNT was communicating with Ventura over the phone and that the police radio advised that Ventura would be surrendering in about five minutes. Several minutes passed and Ventura opened the front door, but kept the left side of his body hidden behind the door. SSD Officer 3 spoke with Ventura and Ventura said that he would get his medication which would take about two minutes and closed door.

SSD Corporal 2 indicated that about fifteen minutes later, he heard Ventura's voice volume increase inside the apartment and was informed that Ventura was saying that he had a round in the chamber and leaving the apartment in a body bag. A few minutes later, Ventura opened the front door with a pistol pointed at his head and said that he wanted to kill himself. SSD Corporal 2 said that Ventura seemed more intense and angry and appeared to be gathering the courage to shoot himself or turn the gun on the police. SSD Corporal 2 indicated that he made eye contact with Ventura and suggested that Ventura remove his finger from trigger and lower the pistol away from his head. Ventura removed his finger from the trigger and slowly began to lower firearm. SSD Corporal 2 then deployed a "less lethal" round from the 40 mm launcher, striking Ventura to his upper left thigh. Ventura appeared stunned from the round and had his finger off the trigger and the gun at his side.

⁹ The information in this section is obtained from SSD Corporal 2's report.

SSD Corporal 2 quickly advanced toward Ventura while yelling for Ventura to drop the gun. SSD Corporal 2 grabbed Ventura's left wrist with his right hand and Ventura began to backpedal and pulled his left hand away from SSD Corporal 2. SSD Corporal 2 committed both hands to Ventura's left hand, placing his left hand on Ventura's left wrist and his right hand over the pistol slide. Ventura backed away and pulled SSD Corporal 2 into the apartment's kitchen area. SSD Officer 2 pinned Ventura to the kitchen counter with the ballistic shield and SSD Corporal 2 repeatedly ordered Ventura to drop the gun. SSD Corporal 2 said that: (1) Ventura did not release the gun and began to use his right hand to pry the gun away from his grip; and (2) the gun's muzzle was pointing indiscriminately at everyone. SSD Corporal 2 indicated that Ventura's refusal to release his grip on the gun and the pulling action made it very likely that a round would be fired, thereby endangering his life and the other officers if the struggle continued.

SSD Corporal 2 said that: (1) he heard a single gunshot and that Ventura's arm went limp; (2) he didn't know what happened and continued to hold the pistol with two hands until SSD Officer 3 removed the pistol from Ventura's and his hands; (3) he realized that Ventura had been shot and turned to assess Ventura's injuries as Ventura lay motionless on the kitchen floor; (4) he saw that Ventura had a head wound and what appeared to be brain matter and blood pooling around Ventura's head; and (5) he checked Ventura for signs of life, but none were observed.

9. SSD Officer 2¹⁰

On August 27, 2021, at about 2:34 p.m., SSD Officer 2 was notified that SSD's assistance by HPD District 1 Patrol was requesting assistance with a barricade situation involving a male armed with a firearm inside his residence. Upon arrival at the scene, SSD Officer 2 was informed that the barricaded male was suicidal and armed with a confirmed firearm. SSD Officer 2 was assigned to the SSD React Team as the "Shield Operator" and was equipped with a ballistic shield and a pistol. SSD Officer 2 was positioned in the hallway about six to eight feet in front of Apartment 1503's front door.

SSD Officer 2 indicated that SSD Officer 3 began to communicate with Ventura. Ventura said that he had cut himself with a knife and had an injury to his right arm. SSD Officer 3 persuaded Ventura to slide the knife blade under the front door and a short time later, throw an empty pistol magazine out of the apartment. SSD Officer 2 heard Ventura indicate that he had a good rapport with Sergeant 2 and that he would surrender to Sergeant 2. Ventura was informed that Sergeant 2 was on his way.

SSD Officer 2 reported hearing Ventura say from inside the apartment that he wanted to kill himself and to just let him die. SSD Officer 2 also heard the sound of a gun slide being racked multiple times. SSD Officer 2 indicated that a short time later,

¹⁰ The information in this paragraph is obtained from SSD Officer 2's report.

the apartment's front door opened and Ventura was standing in the half opened doorway with a pistol in left hand. Ventura's finger was on the trigger and the pistol's muzzle was pointed at his left temple. SSD Officer 2 could not see the butt of the pistol or the magazine well due to the front door. Ventura said, "I just want to die, tell my family that I love them." SSD Officer 2 indicated that Ventura appeared to rack the pistol slide with his right hand. SSD Officer 2 could not see the pistol's hammer, but observed the pistol's front barrel as the slide went back and reset forward. Ventura was instructed to lower the pistol, but he refused and uttered something like, "you guys are not even pointed at my lethal area." Ventura then closed the front door.

SSD Officer 2 indicated that they were informed that Sergeant 2 was communicating with Ventura via the telephone and that Ventura had agreed to surrender in five minutes after he gathered his medication and changed his clothes. After some time passed without word from Ventura, SSD Officer 3 attempted to reestablish contact with Ventura. Ventura partially open the front door and only the right half of his body was visible. Ventura had changed clothes and said that he was going to gather his medication and surrender in two minutes. Ventura closed the front door.

Some time passed without any communication from Ventura and SSD Officer 2 could hear Ventura becoming agitated. The SSD officers were apprised via the police radio that Ventura had related that he was not going to go to jail and that he had one round in the chamber. SSD Officer 2 heard what sounded like a pistol slide being racked and Ventura say that he would only be leaving in a body bag.

Ventura opened the apartment front door and was holding a pistol in his left hand with the muzzle pointed at his left temple. SSD Officer 2 said that Ventura's demeanor appeared to have changed as if he had decided to shoot himself or "attempt suicide by cop." SSD Officer 2 reported that continuous pleas were made for Ventura to drop the gun, but that Ventura refused to do so. SSD Officer 2 saw Ventura place his finger on the trigger while tightly squeezing the pistol grip and said that Ventura's facial expressions continuously changed from a "cringe" to normal as if he was trying to build up the courage to shoot himself. Ventura began to slowly lower the pistol toward his waistline when SSD Officer 2 heard a loud bang which he knew was the "less lethal" launcher being deployed. SSD Officer 2 said that Ventura appeared to be in a stunned state with the pistol down at his left side. SSD Corporal 2 grabbed Ventura's left wrist, the gun was still in Ventura's left hand, and a struggle ensued. SSD Corporal 2 yelled multiple times for Ventura to drop the gun as the struggle moved into the apartment. SSD Officer 2 entered the apartment and saw SSD Corporal 2 and Ventura struggling for the gun over the kitchen sink. SSD Corporal 2 was yelling for Ventura to drop the gun. SSD Officer 2 used the ballistic shield to pin Ventura against kitchen countertop. SSD Corporal 2 and Ventura were still struggling over the gun when SSD Officer 2 heard a loud bang that he recognized to be a gunshot coming directly over his right shoulder. SSD Officer 2 felt Ventura go limp, but continued to pin Ventura against the countertop until it was confirmed that the pistol had been removed from Ventura's

hands. Officer Ventura then lifted the ballistic shield and guided Ventura to the floor in order to assess Ventura's injuries.

10. SSD Officer 3¹¹

On August 27, 2021, at about 2:33 p.m., SSD Officer 3 was notified to respond to a callout for an armed MH-1 male barricaded in an apartment unit at 1065 Kawaiahao Street. SSD Officer 3 was informed that: (1) Patrol had been called to a MH-1 case by EMS involving a male with a loaded firearm to his head; (2) the scene was 1065 Kawaiahao Street Apartment 1503; (3) Ventura was the only known occupant in the apartment; (4) Ventura had multiple prior MH-1s; (5) Ventura texted a friend that he was going to shoot himself with a gun; (6) Ventura told his friend that he had cut his arm with a knife; and (7) Ventura threatened to set fire to things in the building. SSD Officer 3 was assigned to the SSD React Team as the "Contact Officer" to speak with Ventura. SSD Officer 3 was positioned in the hallway about six to eight feet in front of Apartment 1503's front door and behind SSD Officer 2. SSD Officer 3 could see the apartment front door from his position.

SSD Officer 3 was instructed to begin communicating with Ventura and he called out to Ventura, "Brandon, this is [REDACTED] from the Police Department. . . I'm here to get you the help you need. . . Please come to the door and talk with me." Ventura responded that he didn't need help and just wanted to die. SSD Officer 3 advised Ventura that they were not there to hurt him and just wanted to get him help. Ventura responded that he knew that the police didn't want to hurt him, but felt like he wanted to hurt himself. SSD Officer 3 indicated that he continued to speak with Ventura and that Ventura said that he had cut himself on the right arm above his wrist with a kitchen knife not because he wanted to kill himself, but because he was hurting inside. SSD Officer 3 asked Ventura if he needed medical care and Ventura said that the cut wasn't bleeding anymore.

SSD Officer 3 asked Ventura where the knife was and Ventura said that the knife was near him. SSD Officer 3 told Ventura to open the door and throw the knife out. Ventura slid the knife blade under the front door. SSD Officer 3 asked Ventura if he had a gun in the apartment and Ventura said that he did. Ventura indicated that someone had left the gun in his apartment and that he didn't want to get into trouble because of it. SSD Officer 3 asked what kind of gun was it and Ventura said he thought it was a pistol. Ventura also said that he didn't know how to work the gun. SSD Officer 3 asked Ventura to throw the gun into the hallway, but Ventura refused, saying that he didn't want to get charged for anything. SSD Officer 3 assured Ventura that he wouldn't get in trouble for the gun and that the police were there only to get him help. Ventura asked SSD Officer 3 if he knew Sergeant 2 and SSD Officer 3 said that he did. Ventura said that if he were to give up, he would only give up to Sergeant 2. SSD Officer 3 told Ventura that Sergeant 2 was on his way to the scene.

¹¹ The information in this paragraph is obtained from SSD Officer 3's report.

SSD Officer 3 asked Ventura to remove the ammunition magazine from the gun and throw it into hallway. Ventura responded that he didn't really know how to work the gun. The apartment front door cracked opened and a magazine dropped to floor. SSD Officer 3 thanked Ventura, but there was no response. There was a lull in communication during which time SSD Officer 3 heard movement coming from inside the apartment and the sound of a gun slide being racked multiple times.

SSD Officer 3 said that the apartment front door suddenly opened and Ventura appeared in the doorway. Ventura's right hand was to his side and he was holding a black and silver handgun in his left hand. The gun's muzzle was pointed at Ventura's left temple area, his finger was on the trigger, he appeared to be swaying, and his left hand was moving up and down the left side of his face. SSD Officer 3 said that he pleaded with Ventura to put the gun down and told him that he needed to live for his family and son. Ventura said that he wanted to say goodbye to family and that he wanted to kill himself. SSD Officer 3 continued to tell Ventura to put the gun down and to give himself up. Ventura remarked that the officers' guns were not pointed at him in lethal positions and SSD Officer 3 told Ventura that was because they didn't want to hurt him. Ventura lowered the gun, backed up into the apartment, and closed the door.

SSD Officer 3 told Ventura that he would let things settle down for a bit and attempt to restart the conversation after a break. SSD Officer 3 told Ventura that Sergeant 2 was going to call him on his cell phone and heard Ventura speaking with someone. SSD Officer 3 said that he was updated via police radio that Ventura had told the CNT that he had cut his wrists and would surrender in five minutes. Ten minutes passed and SSD Officer 3 called out to Ventura to make sure that he was okay. Ventura opened the apartment front door and SSD Officer 3 could only see the right side of Ventura's body. Ventura said to give him two minutes and that he had to get his medication. SSD Officer 3 told Ventura to take his time and to just call out before he exited so that there were no surprises. Ventura backed up into the apartment and closed the front door.

SSD Officer 3 said that he was informed soon thereafter that CNT had been in contact with Ventura and that Ventura said that he would put on a shirt and be right out. However, a short time later, SSD Officer 3 learned that Ventura had told CNT that he wasn't going to jail and that he had a round in the chamber. SSD Officer 3 then heard the sound of the racking of a gun slide and Ventura say that he wanted to come out in a body bag. SSD Officer 3 said that Ventura's tone sounded more aggressive and agitated.

SSD Officer 3 reported that the apartment front door opened and that Ventura had a pistol in his left hand with the muzzle pointed at his left temple. SSD Officer 3 pleaded with Ventura to put down the gun and to give himself up. Ventura had a cellphone in his right hand and SSD Officer 3 heard a male on speaker phone telling Ventura to listen to SSD Officer 3 and to follow instructions. SSD Officer 3 told Ventura to focus on him and to listen to what he told him.

SSD Officer 3 said that Ventura held the gun to his head for a while with his left index finger wrapped around the trigger and that it appeared that Ventura was tightening his grip on gun. Ventura then removed his finger from the trigger and put it on the slide while still pointing to the gun to the left side of his head. Ventura then placed his left index finger back on the trigger and tightened his grip on the gun. SSD Officer 3 said that each time that Ventura tightened his grip on the gun, it appeared that Ventura was trying to build up the courage to shoot himself.

SSD Officer 3 told Ventura that if he wasn't going to drop the gun, then to toss it behind him and come out of the apartment. Ventura took his finger off of the trigger and slowly dropped his left hand to his side. SSD Officer 3 heard the "less lethal" launcher deploy and Ventura appeared to be dazed by the impact of the munition. Ventura stood in the doorway holding the pistol down to the left side of his waist. SSD Corporal 2, SSD Officer 2, and SSD Officer 1 advanced toward Ventura and he followed them into the apartment. SSD Officer 3 said that he saw SSD Corporal 2 and Ventura in an intense struggle over the gun in Ventura's left hand. The struggle moved into the kitchen where SSD Officer 2 and SSD Officer 1 were trying to assist SSD Corporal 2. SSD Officer 3 ran around the kitchen area and saw SSD Corporal 2 and Ventura bent over the kitchen sink.

SSD Officer 3 heard multiple commands being shouted for Ventura to let go of the gun, but Ventura did not comply and continued to resist and struggle for control of the gun. SSD Officer 3 ran toward the kitchen to assist and heard what sounded like a gunshot. SSD Corporal 2 and Ventura were still holding onto the gun and he removed the gun from Ventura's left hand. After removing the pistol from Ventura's left hand, SSD Officer 3 racked the gun slide and saw one live round eject from the chamber. SSD Officer 3 placed the pistol and the live round on the kitchen countertop and informed the other SSD officers that the gun was cleared and safe.

C. Factual Narrative for August 27, 2021

1. Ventura's 911 call¹²

On Friday, August 27, 2021, at about 1:40 p.m., Ventura called 911 and spoke with the EMS operator (hereinafter "EMS operator"). Ventura provided his address and said, "I have a loaded gun to my head." The EMS operator asked Ventura how old he was and Ventura said that he was 33 years old. The EMS operator asked, "so you feel like you just want to shoot yourself kind of thing?" Ventura responded: "yeah, my girlfriend broke up with me." The EMS operator told Ventura that "we're going to come help you out okay?" The EMS operator confirmed Ventura's age and said that help was on the way. Ventura asked, "Will I be charged with the gun?" The EMS operator answered: "I'm not really sure how that works on the police side, I'm just the paramedic side, so the suicidal feeling and all that, that's us." The EMS operator said that Ventura

¹² The information in this section is obtained from the 911 calls provided by HPD.

needed to get some help and that they would help him out. The EMS operator asked Ventura if he was in his apartment and Ventura said that he was. The EMS operator asked Ventura for his first and last name and Ventura identified himself as "Brandon Ventura". The EMS operator asked if Ventura was calling from his cellphone and Ventura indicated that he was. Ventura said that "maybe I should just go [unintelligible] somewhere else ... I don't want to go to jail." The operator told Ventura: "You're not going to go to jail. We'll take you to the hospital. Then you can maybe get some help over there." The operator told Ventura: "Do you want to talk to crisis line until we get there?" Ventura said: "I didn't take my meds today." The operator asked Ventura if he already had medication and Ventura indicated that he did. The operator told Ventura that help was coming.

The EMS operator called for a co-response with HPD and provided Ventura's name, age, address and apartment number to the HPD operator (hereinafter "HPD operator"). The EMS operator informed the HPD operator that "we have a guy with a loaded gun to his head, he's suicidal ... his girlfriend broke up with him." The operator also said that Ventura was cooperative.

2. HPD Response to Ventura¹³

On August 27, 2021, sometime prior to 1:50 p.m., HPD D1 Patrol officers responded to the Kamake'e Vista in response to Ventura's 911 call. Witness 1 was asleep in Apartment, but woke up because of the sound of police sirens. Upon awakening, Witness 1 saw that Ventura was holding a chef's knife in his left hand and kneeling on the floor near the windows. Ventura had a cut to his right hand or arm. Witness 1 looked out the window and saw HPD officers going toward the building entrance. Ventura told Witness 1 that the cops were coming for him.

On August 27, 2021, at about 1:51 p.m., Patrol Corporal 2, Patrol Officer 4, and Patrol Officer 5 arrived on the fifteenth floor of the Kamake'e Vista. Patrol Officer 1 and

¹³ The information contained in this section is obtained from various officers' reports and/or their BWCs, including Sergeant [REDACTED] (hereinafter "Patrol Sergeant 2"), Officer [REDACTED] (hereinafter "Patrol Officer 1"), Patrol Sergeant 1, Officer [REDACTED] (hereinafter "Patrol Officer 2"), Officer [REDACTED] (hereinafter "Patrol Officer 3"), Officer [REDACTED] (hereinafter "Patrol Officer 4"), Corporal [REDACTED] (hereinafter "Patrol Corporal 1"), Officer [REDACTED] (hereinafter "Patrol Officer 5"), Officer [REDACTED] (hereinafter "Patrol Officer 6"), Officer [REDACTED] (hereinafter "Patrol Officer 7"), Corporal [REDACTED] (hereinafter "Patrol Corporal 2"), Officer [REDACTED] (hereinafter "Patrol Officer 8"), Sergeant [REDACTED] (hereinafter "CRU Sergeant 1"), Officer [REDACTED] (hereinafter "CRU Officer 1"), Officer [REDACTED] (hereinafter "CRU Officer 2"), Corporal [REDACTED] (hereinafter "CRU Corporal 1"), SSD Corporal 1, Sergeant 2, Detective 1, SSD Officer 1, SSD Corporal 2, SSD Officer 2, SSD Officer 3, and Sergeant [REDACTED] (hereinafter "SSD Sergeant 1"), and also Witness 1's written statement.

Patrol Corporal 2 were already present in the hallway around the corner from Apartment 1503. Patrol Corporal 2 learned Ventura's name from HPD dispatch and called, "Brandon, Brandon", from the hallway outside of Apartment 1503's front door. A second officer also called out, "Brandon, it's the police, we just want to make sure you're okay." There was no response. Patrol Corporal 2 called out, "Brandon, are you in there?" There was no response. Patrol Corporal 2 again called out, "Brandon, it's the police, we're just here to talk." There was no response. Patrol Corporal 2 then approached Apartment 1503 and knocked on the front door, calling out, "Brandon, it's the police." There was no response. Patrol Corporal 2 knocked on door again, but there was no response. Patrol Corporal 2 confirmed with police dispatch that the correct unit number was 1503 and knocked on the door again. Patrol Corporal 2 called out, "Brandon, it's the police, are you okay in there?" Patrol Corporal 2 then told another officer that if Ventura "opens that door and he looks hostile, I'm going to kick him, okay?"

Patrol Corporal 2 knocked on door again, stating, "Brandon, Brandon, it's the police, are you okay in there?" An HPD officer asked if the front door was locked. Patrol Corporal 2 checked the door knob and the door was locked. An HPD officer said he didn't see any movement within the apartment and that the interior was dark. Patrol Corporal 2 knocked on door again and called out "Brandon". Another HPD officer knocked on door and said, "Brandon, this is the police, we just want to talk, you're not in trouble or anything like that." Patrol Corporal 2 informed the other officers that he had already requested a firearms check for Ventura and that the check was negative.

Patrol Corporal 2 called out, "Brandon, if you're okay in there can you give us some kind of sign, a knock, a yell." Patrol Corporal 2 apparently heard a knock from the apartment and said, "Oh you are in there. Okay Brandon what's going on?" Another HPD officer told Ventura, "just talk to us, Brandon." Patrol Corporal 2 called out, "Brandon, my name is [REDACTED] so what's going on? Do you feel like talking or do you feel like writing something, you can slide it under the door if you want. We're just kind of concerned here, that's all." HPD Dispatch then reported that Ventura had prior "MH-1s".

Patrol Corporal 2 called out, "Brandon, can you do me a favor and knock on the door again. Brandon do you want to come outside and want to talk to us? Yes or No." A male voice from inside Apartment 1503 responded, "Huh?" Patrol Corporal 2 asked, "Do you want to come outside and talk to us?" The male voice responded, "I don't know." Patrol Corporal 2 asked, "What was that? I cannot hear you through the door," and the male voice responded, "I don't know." Patrol Corporal 2 asked, "Okay, how can we help you?" The male voice asked, "You can help me?" and Patrol Corporal 2 responded, "I'm asking how can we help you?" The male voice answered, "By shooting me." Patrol Corporal 2 said, "I'm sorry?" and the male voice responded, "Fire on me." Patrol Corporal 2 replied, "No Brandon." The male voice said, "Or I'll fire on you." Patrol Corporal 2 and the other officers then retreated around the corner from the front door and Patrol Corporal 2 said, "Nah Brandon, let's not take that route today." Patrol Corporal 2 instructed another officer to call the sergeant, ask for a negotiator, and that

SSD may have to be activated. Patrol Corporal 2 then called out, "Brandon do you have a gun on you?" There was no response.

On August 27, 2021, at about 1:56 p.m., Patrol Officer 7 told the resident of Apartment 1501 to evacuate her unit. Patrol Officer 7 had knocked on the front door of Apartment 1502 earlier, but had received no response.

On August 27, 2021, at about 1:57 p.m., HPD District 1 Crime Reduction Unit (hereinafter "D1 CRU") officers arrived on the fifteenth floor and took the forward position closest to Apartment 1503's front door. CRU Officer 1 was holding a ballistic shield and a pistol and was closest to Apartment 1503's front door. CRU Officer 2 was armed with an AR15 rifle and positioned behind CRU Officer 1.

Witness 1 indicated that after the police knocked on the front door, he told Ventura to turn himself in. Ventura said no, put down the knife, and said that he was going to grab his gun and that either the police would shoot him or he was going to shoot the police. Witness 1 told Ventura to let him out of the apartment if he was going to follow through with that plan. Ventura let Witness 1 out of the apartment.

On August 27, 2021, at about 1:58 p.m., Witness 1 exited from the apartment. CRU Officer 1 indicated that he caught a glimpse of Ventura's face before Ventura closed Apartment 1503's front door and that Ventura appeared to be distraught. Witness 1 told the officers, "I'm just his friend... I don't know what he is doing in there. I'm trying to get out of here."

Witness 1 was escorted away from Apartment 1503 and questioned by officers. Witness 1 reported that: (1) Ventura was the only person in Apartment 1503; (2) he had seen Ventura with a real handgun before, but not today and that he didn't know where Ventura kept it; (3) he was sleeping and when he woke up he saw Ventura holding a knife and that his right hand was bleeding; (4) he believed that Ventura's injury was self-inflicted; and (5) Ventura had been spiraling out of control and abusing alcohol, cocaine, and Xanax since breaking up with his girlfriend.

On August 27, 2021, at about 2:00 p.m., Patrol Sergeant 1 contacted HPD's Criminal Investigation Division (hereinafter "CID") and asked for a Crisis Negotiation Team (hereinafter "CNT") negotiator. Patrol Sergeant 1 was referred to Detective 1. Patrol Sergeant 1 informed Detective 1 of the situation.

On August 27, 2021, at about 2:03 p.m., Patrol Corporal 2 briefed CRU Sergeant 1 that: (1) Ventura was alone in the apartment; (2) Ventura had a knife; and (3) Witness 1 had seen Ventura with a gun before, but hadn't seen it today. Shortly thereafter, the D1 CRU officers indicated that the front door opened. Ventura was instructed to exit from the apartment, but the door then closed and the officers reported that the deadbolt was engaged. CRU Officer 1 indicated that Ventura appeared to be distraught, intoxicated, and angry towards the police.

On August 27, 2021, at about 2:09 p.m., Patrol Sergeant 1 notified SSD Major of the situation. SSD Major apparently requested that a case be initiated and a HPD report number issued in order for SSD to respond. HPD Report Number 21-365811 was issued for the case at about 2:13 p.m. Patrol Sergeant 1 instructed Patrol Corporal 1 to obtain approval to take Ventura into custody for a MH-1 evaluation.

On August 27, 2021, at about 2:13 p.m., one of the D1 CRU officers told Ventura that they “could help him out” and Ventura responded, “You can what?” The officer repeated that they could help him out and Ventura, responded, “Huh?” The D1 CRU officer told Ventura that they could help him and to come out with his hands out. CRU Officer 2 reported that Ventura uttered, “Don’t come in here,” and asked, “are you going to breach?” The D1 CRU officer said no, just come out. Ventura closed the door and CRU Officer 2 reported that Ventura uttered, “I got something to end all this,” while apparently racking the slide of a firearm. Ventura also uttered, “It’s not a good idea to stand directly in front of my door,” which was followed by another racking sound. CRU Officer 1 and CRU Corporal 1 reported hearing Ventura threaten to shoot them with a “.45” if they breached the door simultaneous to the sound of a firearm being racked.

On August 27, 2021, at about 2:17 p.m., Patrol Sergeant 2 instructed D1 Patrol officers to evacuate the residents of the twelfth, thirteenth, fourteenth, sixteenth, and seventeenth floors. Officers were unable to evacuate any residents of the fifteenth floor other than the resident in Apartment 1501 due to the danger posed by the situation.

On August 27, 2021, at about 2:17 p.m., Patrol Sergeant 1 contacted Detective 1 and informed him that it sounded like Ventura was racking a firearm. At about that same time, Patrol Corporal 1 contacted Queen’s Medical Center (hereinafter “QMC”) to obtain approval for the MH-1. Patrol Corporal 1 spoke with an Advanced Practice Registered Nurse (hereinafter “APRN”) and apprised the APRN of Ventura’s situation. The APRN approved the MH-1. At about 2:22 p.m., Patrol Sergeant 1 informed the SSD Major of the MH-1 approval.

On August 27, 2021, at about 2:20 p.m., Witness 2 arrived on the fifteenth floor and spoke with Patrol Officer 1 and Witness 1. Witness 2 told Witness 1 that Ventura had called him and said that he was going to do something so he rushed over. Witness 2 was sent back downstairs by Patrol Officer 1. Witness 1 remained on the fifteenth floor.

On August 27, 2021, at about 2:23 p.m., D1 patrol officers were instructed to shut down traffic on Kamake’e Street and Kawaiahao Street and to set up a command post at 1013 Kawaiahao Street.

On August 27, 2021, at about 2:26 p.m., HPD dispatch reported that Ventura's friend had called and said that he had been "FaceTiming" with Ventura. The friend reported that Ventura had blood dripping down his arm and said that the police were coming for him.

On August 27, 2021, at about 2:27 p.m., Witness 1 was escorted from the fifteenth floor and taken outside Kamake'e Vista. Witness 1 was instructed to complete a written statement.

On August 27, 2021, at about 2:29 p.m., HPD dispatch reported that Ventura's friend "██████" had called a second time. "██████" reported that Ventura had sent him a photo of a firearm and had threatened to kill himself.

On August 27, 2021, at about 2:37 p.m., Patrol Officer 6 was speaking with Witness 1 when Witness 2 approached and said that he had just spoken with Ventura. Witness 2 reported that Ventura said that he had barricaded the door. Witness 2 told Patrol Corporal 2 that he didn't know if Ventura had a gun.

On August 27, 2021, at about 2:41 p.m., Sergeant 1 arrived on scene. Sergeant 1 spoke with Witness 1 and Witness 1 informed Sergeant 1 about Ventura and the circumstances leading up to the situation. Sergeant 1 also spoke with Witness 2. Witness 2 informed Witness 1 that Ventura had called him about 1:46 p.m.

Detective 1 indicated that he arrived on scene at about 3:10 p.m.

On August 27, 2021, at about 3:14 p.m., Witness 2 received a phone call from Ventura. Witness 1 took the phone and told Ventura to put down his weapons, tell the police that he was unarmed, and to surrender to the police. Witness 2 and Witness 1 indicated that Ventura sounded more coherent than earlier. Sergeant 1 asked Witness 2 to call Ventura and tell Ventura that he was not in trouble, the police only wanted to make sure that he was okay, that he would only be taken in for evaluation, and to let the police know when he was ready to come out and then to come out with his hands up. At about 3:22 p.m., Witness 2 called Ventura and relayed the information to Ventura. Sergeant 1 asked Witness 2 if he could speak with Ventura. Ventura told Witness 2 that he only wanted to speak with Sergeant 2. Witness 2 indicated that he had been trying to get in touch with Ventura's girlfriend, but that her phone was off. Detective 1 was present for at least part of the phone conversation and then spoke with Witness 1 and Witness 2. Sergeant 1 indicated that Sergeant 2 was on his way to the scene.

The D1 CRU officers reported being relieved by HPD SSD officers at about 3:30 p.m.

Following their arrival on the fifteenth floor, SSD Officer 1, SSD Corporal 2, SSD Officer 2, and SSD Officer 3 were assigned to the SSD React Team: (1) SSD Officer 1 was assigned as the "High Cover Officer" and armed with a Colt M4 rifle; (2) SSD

Corporal 2 was assigned as the “Less Lethal Operator” and equipped with a launcher loaded with 40 mm foam tipped munitions; (3) SSD Officer 2 was assigned as the “Shield Operator” and was equipped with a ballistic shield and a pistol; and (4) SSD Officer 3 was assigned as the “Contact Officer” to speak with Ventura. SSD Officer 2, SSD Corporal 2, and SSD Officer 3 were positioned in the hallway about six to eight feet from Apartment 1503’s front door. SSD Officer 3 was positioned behind SSD Officer 2. SSD Officer 1 was positioned in the hallway around the corner from Apartment 1503’s front door. SSD Officer 1 indicated that while he could not see the apartment from his position, he could at times hear what Ventura said.¹⁴

SSD Officer 3 began communicating with Ventura and told Ventura that he was there to get him help and asked him to come to the door. Ventura responded that he didn’t need help and that he just wanted to die. Ventura told SSD Officer 3 that he had cut himself with a kitchen knife and that the cut didn’t require medical attention. SSD Officer 3 asked Ventura about the knife’s location and asked Ventura to throw the knife out of the apartment. Ventura slid the knife blade under the front door.

SSD Officer 3 asked Ventura if he had a gun in the apartment. Ventura said that he did and that he didn’t want to get into trouble because of the gun. SSD Officer 3 asked Ventura what kind of gun did he have and Ventura said that he thought it was a pistol. Ventura also said that he didn’t know how to work the gun. SSD Officer 3 asked Ventura to throw the gun into the hallway, but Ventura refused and said that he didn’t want to get charged for anything. SSD Officer 3 assured Ventura that he wouldn’t get in trouble for the gun and that they were there only to get him help. Ventura asked about Sergeant 2 and indicated that he would only surrender to Sergeant 2. SSD Officer 3 told Ventura that Sergeant 2 was on his way to the scene.

SSD Officer 3 asked Ventura to remove the ammunition magazine from the gun and throw it into hallway. Ventura said that he didn’t really know how to work the gun. The apartment front door cracked opened and an empty magazine dropped to floor in the hallway outside of the apartment. SSD Officer 3 thanked Ventura, but there was no response. There was a lull in communication during which time SSD Officer 3 heard movement coming from inside the apartment and the sound of a gun slide being racked multiple times.

The apartment front door suddenly opened and Ventura appeared in the doorway. Ventura’s was holding a handgun in his left hand, the gun’s muzzle was

¹⁴ SSD Officer 1 reported that he heard Ventura say at various times: (1) he did not want help and wanted to die; (2) he had cut himself and was bleeding; (3) he wanted to speak with Sergeant 2 and Sergeant 2 was the only person who he trusted; (4) he had gun in the apartment; and (5) tell his family and son goodbye. SSD Officer 1 also heard SSD Officer 3 repeatedly plead with Ventura to surrender and the sound of a gun slide being racked coming from the apartment.

pointed at Ventura's left temple area, and Ventura's finger was on the trigger, Ventura appeared to be swaying and Ventura's left hand was moving up and down the left side of his face. SSD Officer 3 pleaded with Ventura to put the gun down and told him that he needed to live for his family and son. Ventura said that he wanted to say goodbye to family and that he wanted to kill himself. SSD Officer 3 continued to tell Ventura to put the gun down and to give himself up. Ventura uttered something like, "you guys are not even pointed at my lethal area," backed up into the apartment, and closed the front door.

On August 27, 2021, from about 3:54 p.m. to about 4:09 p.m., Sergeant 2 communicated by phone with Ventura during which time Sergeant 2 persuaded Ventura to exit from the apartment. Ventura indicated that he needed about five minutes. Ventura was instructed to call back before exiting from the apartment. SSD Corporal 1 indicated that he relayed the substance of Sergeant 2's conversation with Ventura to the SSD React Team.

The React Team was updated via police radio that Ventura had said that he would surrender in five minutes. Ten minutes passed and SSD Officer 3 called out to Ventura to make sure that Ventura was okay. Ventura opened the apartment front door and only the right side of his body was visible. Ventura said to give him two minutes and that he had to gather his medication. Ventura was told to take his time and to just call out before he exited so that there were no surprises. Ventura backed up into the apartment and closed the front door.

On August 27, 2021, from about 4:21 p.m. to about 4:34 p.m., Sergeant 2 communicated by phone with Ventura during which time Ventura indicated that he had a round in the gun's chamber, that he was going to shoot himself, and that he was wanted to come out of the apartment in a body bag. At about 4:34 p.m., Ventura told Sergeant 2 to tell his son that he loved him.¹⁵

The apartment front door then opened and Ventura had a pistol in his left hand and a cellphone in his right hand. The muzzle of the gun was pointed at Ventura's left temple. SSD Officer 3 pleaded with Ventura to put down the gun and to give himself up. Ventura held the gun to his head for a while with his left index finger wrapped around the trigger and appeared to be tightening his grip on gun. Ventura removed his finger from the trigger and put it on the slide while still pointing to the gun to the left side of his head. Ventura then placed his left index finger back on the trigger and tightened his grip on the gun. SSD Officer 3 said that each time that Ventura tightened his grip on the gun, it appeared that Ventura was trying to build up the courage to shoot himself.

¹⁵ SSD Officer 1 indicated that he heard sound of gun slide being racked inside the apartment and Ventura angrily saying that he was only coming out of the apartment in a body bag.

SSD Corporal 2 indicated that Ventura seemed to be more intense and angry and appeared to be gathering courage to shoot himself or to turn the gun on the police. SSD Corporal 2 said that he made eye contact with Ventura and suggested that he remove his finger from the trigger and to lower the pistol away from his head. Ventura removed his finger from the trigger and slowly began to lower the pistol. SSD Corporal 2 deployed a “less lethal” round from the 40 mm launcher, striking Ventura to his upper left thigh.¹⁶ Ventura appeared stunned from the round. Ventura’s finger was off the trigger and the gun was at his side.

SSD Officer 1 heard the loud bang from the “less lethal” 40 mm launcher being deployed. SSD Officer 1 turned the corner and saw Ventura holding the handgun in his left hand down by his left leg.

SSD Corporal 2 quickly advanced toward Ventura while yelling for Ventura to drop the gun. SSD Corporal 2 grabbed Ventura’s left wrist with his right hand and Ventura began to backpedal and pulled his left hand away from SSD Corporal 2. SSD Corporal 2 committed both hands to Ventura’s left hand, placing his left hand on Ventura’s left wrist and his right hand over the slide of the pistol.

A struggle ensued over the gun and SSD Officer 1 heard repeated loud commands for Ventura to drop the gun. Ventura backed away and pulled SSD Corporal 2 toward the kitchen area located to the left of the front door. SSD Officer 2 entered the apartment and SSD Officer 1 followed. SSD Officer 1 saw SSD Corporal 2 struggling with Ventura and that Ventura was in complete control of the handgun. SSD Officer 1 indicated that the handgun was going in and out of his view.

The struggle over the gun moved into the kitchen area. SSD Officer 2 partially pinned Ventura against the kitchen sink counter with the ballistic shield and Ventura was bent over the sink. SSD Corporal 2 repeatedly ordered Ventura to drop the gun, but Ventura did not release his grip on the gun. Ventura began to use his right hand to pry the gun away from SSD Corporal 2. SSD Corporal 2 indicated that the gun’s muzzle was pointing indiscriminately at everyone and that he believed that a round

¹⁶ HRS § 703-308(1)(a), Use of force to prevent suicide or the commission of a crime. provides in pertinent part: “The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent the other person from committing suicide, inflicting serious bodily harm upon oneself, committing or consummating the commission of a crime involving or threatening bodily injury, damage to or loss of property, or breach of the peace, except that ... [a]ny limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest, or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used[.]”

would likely be fired thereby endangering his life and the other officers if the struggle continued.

SSD Officer 1 said that he pushed past SSD Corporal 2 and saw that SSD Officer 2 had Ventura partially pinned against kitchen countertop with the ballistic shield. SSD Officer 1 indicated that Ventura was pulling the handgun away from SSD Corporal 2. Ventura was bending his elbow down into the sink and turning his left wrist thereby causing the gun's muzzle to point toward SSD Corporal 2's head and face. Fearing for SSD Corporal 2's life, SSD Officer 1 took his rifle off safe, oriented it toward Ventura's head, and discharged one round as Ventura simultaneously turned his left wrist causing its muzzle to continue to track and line up toward SSD Corporal 2's head and face. Patrol Officer 8's BWC video indicates that the gunshot was fired at about 4:37 p.m.

SSD Corporal 2 heard the gunshot and felt Ventura's arm go limp, but continued to hold onto the gun with both hands. SSD Officer 2 also felt Ventura go limp, but continued to pin Ventura against the countertop. SSD Officer 3 removed the gun from Ventura's and SSD Corporal 2's hands, racked the gun slide, and saw one live round eject from the chamber. SSD Officer 3 picked up the live round and placed the gun and the live round on the kitchen countertop. SSD Officer 3 informed the other SSD officers that the gun was cleared and safe.

Upon hearing that the gun had been removed from Ventura's hands, SSD Officer 2 lifted the ballistic shield and guided Ventura to the kitchen floor. Ventura's vital signs were checked, but none were observed.

On August 27, 2021, at about 4:43 p.m., SSD Sergeant 1 read the HPD "Critical Incident Public Safety Statement" to SSD Officer 1 and asked that he answer the questions to the best of his knowledge. The following are the questions asked by Sergeant Sung and SSD Officer 1's responses:

1. What type of force did you use?

Lethal force/M4.

2. If you know of anyone injured, what is their location?

Male in the kitchen

3. Are any suspects outstanding?

No.

4. Does any evidence need to be protected? Where is it located?

Suspect had a weapon (handgun/black) in the kitchen.

5. From where and in what direction did you fire rounds?

In the kitchen in the koko head direction.

6. From where and in what direction did the suspect(s) fire rounds?

Suspect did not fire rounds.

At about 4:40 p.m., SSD Sergeant 1 recovered SSD Officer 1's issued M4 rifle (serial number A0147590) from him. The rifle was secured within a locker located within the HPD SSD equipment truck.

D. Evidence recovery

1. Evidence Specialist 1¹⁷

HPD Evidence Specialist [REDACTED] (hereinafter "Evidence Specialist 1") recovered the following items for submission into evidence:

Item 1: SSD Officer 1's Colt rifle/magazine from SSD Sergeant 1

Item 2: SSD Corporal 2's 40mm launcher/3 unspent projectiles and one spent projectile from SSD Sergeant 1

Item 7: Cartridge case from Apartment 1503 living room

Item 8: Blunt impact projectile from hallway near front door of Apartment 1504

Item 9: Black magazine recovered from hallway near front door of Apartment 1503

Item 10: Pistol, initially identified as a Ranger brand pistol, subsequently identified to be a Federal Ordnance pistol, with one cartridge (Ventura's handgun)

Item 11: Plastic container with five cartridges, green color ziploc bag containing ten cartridges from Apartment 1503

Item 12: 2 ziploc type bags, clear color, with white powder residue from Apartment 1503 kitchen counter

¹⁷ The information contained in this section is obtained from Evidence Specialist 1's reports.

Item 13: Ziploc type bag, green color, with white powder residue from Apartment 1503 bedroom closet

Item 15: Gunshot Residue (GSR) kit for SSD Officer 1's right and left hands

Item 35: Silver colored knife with black handle, 8.5" blade from floor near Apartment 1503 door

2. Evidence Specialist 2¹⁸

HPD Evidence Specialist [REDACTED] (hereinafter "Evidence Specialist 2") recovered the following item for submission into evidence:

Item 14: Gunshot Residue (GSR) kit for Ventura's right and left hands

3. Evidence Specialist 3¹⁹

HPD Evidence Specialist [REDACTED] (hereinafter "Evidence Specialist 3") recovered the following items from [REDACTED] Medical Examiner [REDACTED] M.D., Ph.D. (hereinafter "Dr. 1") for submission into evidence:

Item 30: Blood card from Ventura for DNA Reference Sample

Item 31: Metal fragments, silver colored.

4. Criminalist 1²⁰

HPD Criminalist [REDACTED] (hereinafter "Criminalist 1") recovered swab samples from the pistol and cartridge submitted into evidence as Item 10 and the magazine submitted into evidence as Item 9 for submission into evidence:

Item 36: Swab sample from trigger of Item 10

Item 37: Swab sample from right side grip/front strap/back strap of Item 10

Item 38: Swab sample from slide of Item 10

Item 39: Swab sample from BLS on the medallion on left side of grip of Item 10

¹⁸ The information contained in this section is obtained from Evidence Specialist 2's reports.

¹⁹ The information contained in this section is obtained from Evidence Specialist 3's reports.

²⁰ The information contained in this section is obtained from Criminalist 1's reports.

Item 40: Swab sample from BLS on the left side of grip of Item 10

Item 41: Swab sample from cartridge (Item 10)

Item 42: Swab sample from the magazine (Item 9)

5. PSO Detective 1²¹

HPD PSO Detective [REDACTED] (hereinafter "PSO Detective 1") recovered the following items of evidence from Ventura's father for submission into evidence:

Item 57: Copper colored bullet fragment

Item 58: Silver colored bullet fragment

E. Scientific/Forensic Evidence

1. Gunshot Residue Collection Kit²²

Gunshot residue (hereinafter, "GSR") kits were used on the hands of Ventura and SSD Officer 1. HPD Criminalist [REDACTED] (hereinafter "Criminalist 2") analyzed the kits. His findings and conclusions are as follows:

Item 14 (Ventura): Ten particles characteristic of GSR confirmed

Item 15 (SSD Officer 1): Ten particles characteristic of GSR confirmed

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.

The absence of GSR on a person's hands can mean the subject did not discharge a firearm. However, a person can discharge a firearm and GSR may not be detected for one or more of the following reasons:

²¹ The information contained in this section is obtained from PSO Detective 1's reports.

²² The information contained in this section is obtained from Criminalist 2's report.

The firearm did not deposit detectable quantities of GSR.
GSR was deposited, but fell off or was washed off the person.
The person wore gloves.
GSR was deposited, but missed by the sampling stubs.
GSR was deposited, but missed in the search and analysis process.

2. Firearms and Tool Marks²³

HPD Criminalist [REDACTED] (hereinafter "Criminalist 3") examined, verified, and identified Item 1 (SSD Officer 1's M4 rifle) as a Colt, model M4 Carbine, caliber 5.56x45mm, semi-automatic and full automatic rifle with a black matte finish, a ported handguard, flashlight, a black nylon sling, camouflage material wrapped around the front sight, a black synthetic pistol grip, an adjustable butt stock, and an EOTech sight. Serial number A0147590. The rifle was test-fired with laboratory ammunition and found to be operable.

Item 7 was examined, verified, and found to be a Federal brand, caliber 223 Remington discharged cartridge case by Criminalist 3. Item 7 was compared to test-fired exemplars from Item 1 and sufficient corresponding individual chamber signatures were observed to conclude that the cartridge case was fired within Item 1.

Item 31 was examined and found to be two (2) metal fragments that had no value for microscopic analysis by Criminalist 3.

Item 57 was examined, verified, and found to be a caliber .22 class, bullet jacket that was fired from a barrel with six (6) lands and grooves inclined to the right by Criminalist 3. Item 57 was compared to test-fired exemplars from Item 1 and sufficient corresponding individual chamber signatures were observed to conclude that the bullet jacket was fired within Item 1.

Item 58 was examined, verified and found to be a metal fragment with no value for microscopic comparison by Criminalist 3.

Criminalist 1 examined, verified, and identified Item 10 (Ventura's pistol) as a Federal Ordnance, unknown model, caliber .40 Smith and Wesson, 1911A1 type semi-automatic pistol, consisting of a silver-colored frame, a blued caliber .45 Auto slide and a black rubber grip. Serial number F8902826. Criminalist 1 attempted to dry-fire the pistol, however, the hammer would not fall when the trigger was pulled and grip safety depressed. Criminalist 1 found the pistol to be inoperable.

²³ The information contained in this section is obtained from Criminalist 1's and Criminalist 3's reports.

Criminalist 1 examined, verified, and found Item 9 to be one (1) detachable box-type magazine capable of holding eight (8) caliber .40 Smith and Wesson cartridges. The magazine was found to be functional with the pistol (Item 10) using caliber .40 Smith and Wesson dummy cartridges.

3. Drugs²⁴

HPD Criminalist [REDACTED] (hereinafter "Criminalist 4") examined the substances found within the ziploc type bags submitted into evidence as Item 12 (two clear plastic bags) and Item 13 (green plastic bag). The two ziploc type bags submitted into evidence as Item 12 were sub-itemized as Item 12 and 12A. Criminalist 4 determined that Item 12 contained an insufficient amount of material to analyze. Criminalist 4 analyzed the substances in Item 12A and 13 and determined:

Item 12A contained cocaine with a net weight of .004 grams

Item 13 contained cocaine with a net weight of .033 grams

4. DNA analysis²⁵

HPD Criminalist [REDACTED] (hereinafter "Criminalist 5") obtained DNA profiles from the swab samples obtained from Item 10 (Federal Ordnance brand pistol) and obtained the following results:

Item 36: Swab sample from trigger. The DNA profile obtained from the sample is consistent with the mixture of two individuals. The major DNA profile obtained from the sample matched Ventura's DNA profile.

Item 37: Swab sample from right side grip/front strap/back strap. The DNA profile obtained from the sample is consistent with the mixture of two individuals. Ventura cannot be excluded as a possible contributor to the partial major DNA profile obtained from the sample. In all populations evaluated (African-American, Asian, Caucasian, Hispanic, Combination), the probability of randomly selecting an unrelated individual with a DNA profile that cannot be excluded as a possible contributor to the partial major DNA profile from this item of evidence is 1 in greater than 8 trillion.

Item 38: Swab sample from slide. The partial DNA profile obtained from the sample is consistent with one individual. Ventura cannot be excluded as a possible contributor to the partial DNA profile. Using the most conservative frequency estimate (African-American) calculated, approximately 38.340 million unrelated individuals would have to

²⁴ The information contained in this section is obtained from Criminalist 4's report.

²⁵ The information contained in this section is obtained from Criminalist 5's report.

be evaluated to find an individual that would have a DNA profile that cannot be excluded as a possible contributor to the partial DNA profile.

Item 39: Swab sample from BLS on the medallion on left side of grip. Human blood is indicated on the sample. The DNA profile obtained from the sample matched the DNA profile of Ventura.

Item 40: Swab sample from BLS on the left side of grip. No blood was detected on the sample. No further testing was performed.

Item 41: Swab sample from cartridge. The partial DNA profile obtained from the sample is consistent with one individual. Due to the limited genetic material available, the partial DNA profile obtained from the sample cannot be used for comparison purposes.

Item 42: Swab sample from magazine. The partial DNA profile obtained from the sample is consistent with one individual. Ventura cannot be excluded as a possible contributor to the partial DNA profile obtained from the sample. In all populations evaluated (African-American, Asian, Caucasian, Hispanic, Combination), the probability of randomly selecting an unrelated individual with a DNA profile that cannot be excluded as a possible contributor to the partial major DNA profile from this item of evidence is 1 in greater than 8 trillion.

F. Autopsy and Toxicology Results²⁶

On August 27, 2021, Dr. 1 performed the autopsy on Ventura's body at the ME's Facility located at 835 Iwilei Road. Ventura was pronounced dead by Dr. [REDACTED] on August 27, 2021, at about 5:13 p.m.

1. Cause of Death

The cause of death was gunshot wound to the head.

2. Gunshot Wound

Dr. 1 documented a perforating gunshot wound of the head. The entrance wound location was the right temple. The range was intermediate with dense stippling. The exit wound was the left ear. The wound track was from right to left, slightly front to back, and slightly downward.

²⁶ The information contained in this section is obtained from Dr. 1's autopsy report and the EMS Death Pronouncement.

Ventura's injuries included: (1) perforation of the skull with extensive fractures of the basilar skull; and (2) laceration of the brain, right temporal lobe. Associated conditions included: (1) skull fractures; (2) subdural and subarachnoid hemorrhages; (3) lacerations of the brain; and (4) blood aspiration. .

3. External Injuries

Dr. 1 documented other minor traumatic injuries as follows: (1) superficial incised wounds of the right forearm and left hand; (2) multiple linear and curvilinear abrasions of the bilateral upper extremities; (3) contusion of the left thigh, consistent with a reported history of an impact of a less-lethal weapon (rubber bullet); and (4) other minor abrasions and contusions of the head and extremities.

4. Evidence Recovery

Dr. 1 recovered two tiny metal fragments from the head. Dr. 1 also recovered a blood card for Ventura.

5. Toxicology

A femoral blood sample was drawn during the autopsy. The toxicology screen reveals the presence of Ethanol, Cocaine, Benzoylcegonine, Cocaethylene, Methamphetamine, Clonazepam, 7-Amino clonazepam, and Caffeine.

III. LEGAL PRINCIPLES

A. Definitions

"Believes" means reasonably believes.²⁷

"Bodily injury" means physical pain, illness, or any impairment of physical condition.²⁸

"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.²⁹

²⁷ HRS § 703-300.

²⁸ HRS § 707-700.

²⁹ HRS § 707-300.

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.³⁰

“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.³¹

“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.³²

“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.³³

B. Potential Defenses

1. 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?³⁴

³⁰ HRS § 707-300.

³¹ HRS § 707-300.

³² HRS § 707-700.

³³ HRS § 707-700.

³⁴ HAWJIC 7.02A.

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.³⁵ 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.³⁶

IV. ANALYSIS

A. HRS Chapter 703 Defense

1. SSD Officer 1's Use of Deadly Force for the Protection of Other Persons

SSD Officer 1 indicated that he shot Ventura because he believed that Ventura was about to shoot SSD Corporal 2 with the pistol submitted into evidence as Item 10. While the pistol was later found to be inoperable, SSD Officer 1 did not know that at the time that he exercised deadly force by shooting Ventura. A reasonable person would be justified in believing that the pistol was operable having heard the sound of the pistol slide being racked and seeing the magazine that Ventura tossed out of the apartment.

The SSD React Team officers' reports indicate that Ventura was standing in the open doorway holding the pistol in his left hand, his finger on the trigger, and the muzzle pointed at his left temple area, and appeared to be gathering the courage to shoot himself. Ventura began to lower the pistol when SSD Corporal 2 fired the "less lethal" projectile at Ventura, striking him to the left leg. Ventura appeared to be stunned and SSD Corporal 2 quickly advanced toward Ventura while yelling for Ventura to drop the gun. SSD Corporal 2 grabbed Ventura's left wrist with his right hand and Ventura began to backpedal and pulled his left hand away from SSD Corporal 2. SSD Corporal 2 committed both hands to Ventura's left hand, placing his left hand on Ventura's left wrist and his right hand over slide of the pistol. Ventura continued to back away and pulled SSD Corporal 2 into the kitchen area. SSD Officer 2 pinned Ventura to the kitchen counter with the ballistic shield and SSD Corporal 2 repeatedly ordered Ventura to drop the gun. However, Ventura did not release his grip on the pistol and began to use his right hand to pry the pistol away from SSD Corporal 2. SSD Corporal 2 indicated that the pistol muzzle was pointing indiscriminately at everyone. SSD Corporal 2 believed that that Ventura's refusal to release his grip on the gun and Ventura's pulling action made it very likely that a round would be fired, thereby endangering his life and the other officers if the struggle continued.

³⁵ HAWJIC 7.02A.

³⁶ HAWJIC 7.02A.

SSD Officer 1 reported that he observed the struggle between SSD Corporal 2 and Ventura over the pistol move into the kitchen and that the pistol's muzzle was pointing in all directions. Upon pushing past SSD Corporal 2, SSD Officer 1 saw that: (1) SSD Officer 2 had Ventura partially pinned and bent over the kitchen sink area; (2) Ventura was pulling the pistol away from SSD Corporal 2; (3) Ventura bent his elbow down into the sink and begin to turn his left wrist; and (4) the pistol's barrel moved toward ██████ head and face. Fearing for SSD Corporal 2's life, SSD Officer 1 took his rifle off safe, oriented it toward Ventura's head, and discharged one round as Ventura simultaneously turned his left wrist causing its muzzle to continue to track and line up toward ██████ head and face. Based upon the foregoing, the justification defense of the use of deadly force for the protection of other persons is applicable.

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?³⁷

As to the first question, SSD Officer 1 used deadly force by shooting Ventura.

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.

The facts stated hereinabove, support the conclusion that SSD Officer 1's use of deadly force was justifiable to protect the life of SSD Corporal 2. Both SSD Corporal 2 and SSD Officer 1 reported that the gun was pointing indiscriminately at everyone. SSD Corporal 2 believed that that Ventura's refusal to release his grip on the gun and Ventura's pulling action made it very likely that a round would be fired, thereby endangering his life and the other officers if the struggle continued. SSD Corporal 2's belief cannot be said to be unreasonable and SSD Corporal 2 would have been justified in using deadly force to protect himself from being shot by Ventura, thereby causing his death or serious bodily injury to him.

SSD Officer 1 indicated that the muzzle of the pistol was moving toward SSD Corporal 2's head when he fired the shot that ultimately caused Ventura's death. This investigation therefore finds that SSD Officer 1's belief that his use of deadly force to

³⁷ HAWJIC 7.02A.

protect SSD Corporal 2 from death or serious bodily injury was immediately necessary and was objectively reasonable.

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.³⁸ The defenses codified in HRS §§ 703-304 and 305 are not

³⁸ 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.
- (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).

affirmative defenses. As such, where these defenses are applicable they must be disproved (or negated) beyond a reasonable doubt.³⁹

The PAT declines to prosecute SSD Officer 1 for any offense under the HPC for his intentional use of deadly force on August 27, 2021. The prosecution is unable to disprove beyond a reasonable doubt that SSD Officer 1's use of deadly force was not justified for the protection of SSD Corporal 2 and the PAT therefore concludes that SSD Officer 1 was justified in his use of deadly force for the protection of others.

VI. MATERIALS CONSIDERED

A. HPD Report Numbers 15-151941, 18-016315, 18-196850, 19-468541, 19-482449, 20-649711, 21-365811, and 21-366090,

1. HPD Reports under HPD Report Numbers 21-365811

Patrol Officers

- Sergeant 2
- Patrol Sergeant 1
- Patrol Sergeant 2
- Patrol Corporal 2
- Patrol Officer 1
- Patrol Officer 2
- Patrol Officer 3
- Patrol Officer 4
- Patrol Officer 5
- Patrol Officer 6
- Patrol Officer 7
- Corporal [REDACTED] (Patrol Corporal 3)
- Officer [REDACTED] (Patrol Officer 8)
- Officer [REDACTED] (Patrol Officer 9)

Crime Reduction Unit Officers

- CRU Sergeant 1
- CRU Officer 1
- CRU Officer 2
- CRU Corporal 1

³⁹ See, e.g., State v. Culkun, 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.").

Specialized Services Division Officers

- SSD Corporal 1
- SSD Officer 1
- SSD Corporal 2
- SSD Officer 2
- SSD Officer 3
- SSD Sergeant 1
- Sergeant [REDACTED] (SSD Sergeant 2)
- Sergeant [REDACTED] (SSD Sergeant 3)
- Corporal [REDACTED] (SSD Corporal 3)
- Corporal [REDACTED] (SSD Corporal 4)
- Sergeant [REDACTED] (SSD Sergeant 2)
- Corporal [REDACTED] (SSD Corporal 5)
- Sergeant [REDACTED] (SSD Sergeant 3)

Major Events Division Officer

- Sergeant [REDACTED] (Sergeant 3)

Criminal Investigation Division Officers

- Detective 1
- Detective [REDACTED] (Detective 2)
- Detective [REDACTED] (Detective 3)

Professional Standards Office

- PSO Detective 1

SCIENTIFIC INVESTIGATION SECTION

- Criminalist 1
- Criminalist 2
- Criminalist 3
- Criminalist 4
- Criminalist 5

EVIDENCE SPECIALISTS

- Evidence Specialist 1
- Evidence Specialist 2
- Evidence Specialist 3

2. Written Witness Statements
 - Witness 1
3. HPD Recorded Statements⁴⁰
 - Witness 1
4. Thirty-Eight (38) HPD Body Worn Camera Videos
 - Patrol Sergeant 1
 - Patrol Sergeant 2
 - Patrol Corporal 2
 - Patrol Corporal 3 (2)
 - Patrol Officer 1 (2)
 - Patrol Officer 2 (2)
 - Patrol Officer 3
 - Patrol Officer 4 (2)
 - Patrol Officer 5
 - Patrol Officer 6
 - Patrol Officer 7
 - Patrol Officer 8
 - Patrol Officer 9 (2)
 - Officer [REDACTED] (Patrol Officer 10)
 - Officer [REDACTED] (2) (Patrol Officer 11)
 - Officer [REDACTED] (2) (Patrol Officer 12)
 - Officer [REDACTED] (Patrol Officer 13)
 - Officer [REDACTED] (Patrol Officer 14)
 - Officer [REDACTED] (2) (Patrol Officer 15)
 - Officer [REDACTED] (2) (Patrol Officer 16)
 - Officer [REDACTED] (2) (Patrol Officer 17)
 - Officer [REDACTED] (Patrol Officer 18)
 - Officer [REDACTED] (Patrol Officer 19)
 - Officer [REDACTED] (3) (Patrol Officer 20)
5. Radio Transmissions
 - 911 calls

⁴⁰ As of this writing, the PAT does not have transcripts of these interviews.

B. Other Materials Received from HPD

- Personnel information for SSD Officer 1
- Use of Force information for SSD Officer 1

C. Materials Received from EMS

- Hawaii EMS Report
- Incident Detail Report
- EMS Dispatch Audio Recording

D. Materials Received from ME

- Autopsy Report (ME Case No. 2021-2207)
- Toxicology Report (ME Case No. 2021-2207)

E. PAT Independent Investigation

- General scene review
- Diagrams
- Photographs
- Recorded Interview of Witness 2