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

**Officer-Involved Shooting Report No. 2022-03**

**Report Date: August 29, 2022**

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

**Michael Kahalehoe**

**577 Farrington Highway  
Kapolei, HI 96707**

## I. OVERVIEW

The Department of the Prosecuting Attorney (PAT) has conducted an independent investigation of the November 12, 2019 officer-involved shooting (OIS) at the Shell gas station, 577 Farrington Highway, Kapolei, to assess whether to proceed with a criminal prosecution against Honolulu Police Department (HPD) officers

[REDACTED] (Officer 1), [REDACTED] (Officer 2), [REDACTED] (Officer 3), and/or [REDACTED] (Officer 4)<sup>1</sup> for any criminal offense under the Hawai'i Penal Code (HPC) for their use of deadly force that resulted in the death of Michael Kahalehoe (Kahalehoe).

[REDACTED] Officer 7 was also involved in this OIS. Officer 7 passed away on January 19, 2020.<sup>2</sup> As such, no further action will be taken regarding his involvement.

The PAT considered HPD Policy Number 1.04 "USE OF FORCE" in its analysis. However, the PAT offers no opinion whether the officers' actions complied with that policy. As such, the PAT does not opine as to whether the officers should be subject to administrative discipline.

PAT Chief Investigator [REDACTED] (Chief Investigator) was assigned to this investigation.

## II. BACKGROUND OF THE OFFICERS

The officers involved in the incident are all experienced. Officer 1 was hired on August 2, 2004; Officer 2 on August 4, 2014; Officer 3 on April 1, 2013; and Officer 4 on March 28, 2022.<sup>3</sup>

On February 26, 2004, Officer 4 received a one-day suspension for an October 3, 2003 offense of "KNOW OF LAWS & REGS, OBED TO LAWS & REGS, PERFORMANCE, TRUTHFULNESS, REPORTS, DIRECTIVES."<sup>4</sup>

The officers do not have a Hawai'i state criminal history.

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<sup>1</sup> This analysis refers to these officers collectively as "the officers."

<sup>2</sup> HPD report no. 20-025032.

<sup>3</sup> This is based on information provided by HPD's Professional Standards Office (PSO).

<sup>4</sup> This information was provided by PSO. PAT did not have access to the underlying file.

### **III. CRIMINAL HISTORY OF KAHALEHOE AND MELVIN SPILLNER**

#### **A. Kahalehoe**

Kahalehoe was prosecuted in the Circuit Court of the First Circuit Court, State of Hawai'i (First Circuit Court), for felony offenses and connected offenses as follows:

##### **1. Case No. 1CPC-18-0001550**

Kahalehoe was convicted of promoting a dangerous drug in the third degree (count 1), unlawful use of drug paraphernalia (count 2), and driving without a license (count 3). On January 23, 2019, Kahalehoe was sentenced to a four-year term of probation in count 1.

On May 28, 2019, the Honorable Edwin Nacino (Judge Nacino) issued a bench warrant. Bail was set at \$20,000.00.

On June 27, 2019, an "Order Pertaining to Bail" was filed.

On August 5, 2019, an "Order Granting Defendant's Release on Own Recognizance as Approved by Probation Officer" was filed.

On October 7, 2019, Judge Nacino issued a bench warrant. Bail was set at \$20,000.00.

##### **2. Case No. 1CPC-18-0000932**

Kahalehoe was convicted of unauthorized entry into motor vehicle in the first degree. On June 23, 2019, Kahalehoe was sentenced to a four-year term of probation.

On May 28, 2019, Judge Nacino issued a bench warrant. Bail was set at \$20,000.00.

On June 27, 2019, an "Order Pertaining to Bail" was filed.

On August 5, 2019, an "Order Granting Defendant's Release on Own Recognizance as Approved by Probation Officer" was filed.

On October 7, 2019, Judge Nacino issued a bench warrant. Bail was set at \$20,000.00.

##### **3. Cr. No. 11-1-0165**

Kahalehoe was convicted of unauthorized control of propelled vehicle, promoting a dangerous drug in the third degree, and place to keep pistol or revolver. On March

19, 2015, Kahalehoe was resentenced to the indeterminate five-year term of imprisonment in each count.

#### **4. Cr. No. 10-1-1087**

Kahalehoe was convicted of attempted unauthorized entry into motor vehicle in the first degree. On March 19, 2015, Kahalehoe was resentenced to the indeterminate five-year term of imprisonment.

#### **B. Melvin Spillner**

A felony information filed on August 15, 2019, in Case No. 1CPC-19-0001107, charged Melvin Spillner (Spillner) with unauthorized control of propelled vehicle (count 1) and accidents involving damage to vehicle or property (count 2).

On October 7, 2019, the Honorable Fa'auuga To'oto'o (Judge To'oto'o) issued a bench warrant for Spillner's arrest for his failure to appear in court that day. Bail was set at \$25,000.00.

On May 27, 2020, Judge To'oto'o sentenced Spillner to the indeterminate five-year term of imprisonment in count 1.

### **IV. BACKGROUND INFORMATION**

A series of crimes preceded the November 12, 2019 OIS. These crimes are summarized below.

#### **A. HPD Report No. 19-426180**

On Sunday, November 10, 2019, at approximately 11:08 a.m., [REDACTED] the owner of a blue 2017 Subaru WRX (the Subaru), sat in his vehicle outside the Parkside Apartments, 1870 Lusitana Street. A white truck traveling north along Lusitana Street stopped next to the Subaru. The driver of the truck got out, brandished a handgun, pointed it at [REDACTED] and ordered him out. The gunman fired a shot in the air and [REDACTED] complied. The truck's passenger got into the Subaru and drove off. Both the Subaru and the truck left northbound on Lusitana Street.

#### **B. HPD Report No. 19-426332**

On November 10, 2019, at approximately 1:55 p.m., three Japanese tourists waiting at a bus terminal at the Kailua Town Center, 573 Kailua Road, were robbed at gunpoint. A white truck stopped at the bus terminal and two men, each with a gun, got out. The men brandished their guns, said nothing, took bags from the tourists, and fled in the truck.

At about 2:15 pm., [REDACTED] noted that three men wearing masks dumped a truck in his driveway located at [REDACTED] and left in "a small blue racing type car."

The truck was a white 2005 Ford F-350 that was reported stolen under HPD report no. 19-421457.

#### **C. HPD Report No. 19-426458**

On November 10, 2019, at approximately 3:55 p.m., [REDACTED] sat in his 2011 Toyota 4Runner, Hawai'i license plate [REDACTED] which was parked at 169 Hawai'i Loa Street. The driver's window was down. A blue vehicle with four masked occupants pulled up alongside the 4Runner. The suspects in the front and rear passenger seat got out of the blue car. Each had a handgun. One suspect went to the open driver's side window; the other went to the front passenger's door. The suspect at the driver's window yelled, "Get out of the car!" and punched [REDACTED] to the face multiple times through the open window. The robbers took [REDACTED]'s wristwatch and gold chain. The two suspects got in the 4Runner and fled. The two other suspects in the blue vehicle followed the stolen 4Runner.

#### **D. HPD Report No. 19-426518**

On November 10, 2019, at approximately 4:55 p.m., [REDACTED] a visitor from Tennessee, was involved in a minor auto vehicle collision along Nimitz Highway. [REDACTED] parked her rental car, a red 2018 Ford Mustang convertible (the Mustang), in the parking lot of 7-Eleven, 306 Kalihi Street, to exchange information with the other person involved in the collision. As [REDACTED] spoke with the other person, a male jumped into the Mustang and drove off. According to Wood, a blue Subaru and silver 4Runner followed the Mustang down Republican Street.

An anonymous witness reported that the Subaru and 4Runner had been parked in the 7-Eleven parking lot. The male who fled in the Mustang came from one of these two cars.

#### **E. HPD Report No. 19-427662**

On November 11, 2019, [REDACTED] reported the theft of her front license plate, [REDACTED]

### **V. NOVEMBER 12, 2019**

#### **A. Police Operational Briefing**

On November 12, 2019, plainclothes officers assigned to various Crime Reduction Units and the Strategic Enforcement Detail met for an operational briefing,

which discussed Spillner and Kahalehoe as suspects in the November 10, 2019 armed robbery of the Subaru. They were also suspected of using the Subaru to commit other robberies. The officers who attended the briefing had reason to believe that Kahalehoe and Spillner were armed and dangerous.<sup>5</sup> These officers were also aware of the outstanding bench warrants for Kahalehoe and Spillner.<sup>6</sup>

There was no written operational plan.

## B. Involved Vehicles and Seating Arrangements

The involved vehicles and respective seating arrangements are listed below. This information is derived from the police reports, the scene diagram prepared by Evidence Specialist [REDACTED], scene photographs, and surveillance video.

VEHICLE <sup>8</sup>	DESCRIPTION (License Plate)	OCCUPANTS
1	Ford Expedition [REDACTED]	[REDACTED] (driver) <sup>9</sup>
2	White Toyota 4Runner [REDACTED]	Officer 4 (driver) <sup>10</sup> [REDACTED] (front seat passenger) <sup>11</sup> Officer 3 (rear passenger) <sup>12</sup>

<sup>5</sup> See, e.g., Officer 7 Incident Report (HPD report no. 19-429620).

<sup>6</sup> See Section III, supra.

<sup>7</sup> Exhibit A.

<sup>8</sup> The vehicle number corresponds with the scene diagram prepared by Evidence Specialist [REDACTED] Exhibit A.

<sup>9</sup> [REDACTED] dent Report (HPD report no. 19-429620) ("As SPILLNER began to flee on foot, I pulled in front of SPILLNER with my undercover vehicle in an attempt to deter him from running. I then exited my vehicle and observed several undercover officers attempt to detain SPILLNER by escorting him to the ground.").

<sup>10</sup> Officer 4 Incident Report (HPD report no. 19-429620) ("On 11-12-2019, I responded in my subsidized vehicle to the Makakilo area to assist with surveillance of a blue Subaru WRX, bearing Hawai'i State License plate SYX 978.").

<sup>11</sup> [REDACTED] dent Report (HPD report no. 19-429610) ("On 11-12-19 around 2236, I was sitting in the front passenger seat of [Officer 4's] vehicle as we entered the Shell gas station, we positioned our vehicle in front of the outstanding stolen vehicle.").

<sup>12</sup> Officer 3 Incident Report (HPD report no. 19-429620) ("At this time I was a rear passenger on the passenger side in [Officer 4's] HPD subsidized vehicle and we were traveling East on Farrington Highway approaching Makakilo Drive.")

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VEHICLE <sup>8</sup>	DESCRIPTION (License Plate)	OCCUPANTS
3	Nissan Rogue [REDACTED]	[REDACTED] (Officer 9) (driver) <sup>13</sup> [REDACTED] <sup>4</sup> Officer 7 (rear passenger seat behind the driver) <sup>15</sup>
4	Subaru WRX [REDACTED]	Kahalehoe
5	Ford Escape [REDACTED]	Officer 2 (driver) <sup>16</sup> [REDACTED] (Officer 6) (passenger) <sup>17</sup> [REDACTED] (Officer 5) (rear passenger seat) <sup>18</sup>
6	Toyota Sienna XLE	[REDACTED] (Officer 8) (driver) <sup>19</sup>

<sup>13</sup> Officer 9 Incident Report (HPD report no. 19-429610) (“Upon my observations of SPILLNER running on foot, I then parked my unmarked Police Vehicle, near to the blue Subaru sedan, next to the front passenger side door/fender, in an angled direction.”).

<sup>14</sup> This is inferred based on the totality of the evidence.

<sup>15</sup> Officer 7 Incident Report (HPD report no. 19-429620) (“At this time, this Officer was a passenger of an unmarked police vehicle. Officer [REDACTED] operated the vehicle. This Officer was sitting in the rear passenger seat directly behind the driver seat.”).

<sup>16</sup> Officer 2 Incident Report (HPD report no. 19-429620) (“During this time I was operating an unmarked Police vehicle and entered the parking lot of the above mentioned Shell gas station. ... Upon verifying that the above suspects and vehicle were a match I traveled further into the property and parked my unmarked Police vehicle near the rear passenger area of the above mentioned Subaru approximately 15' away.”).

<sup>17</sup> Officer 6 Incident Report (HPD report no. 19-429620) (“I was a passenger in an unmarked police vehicle driven by [Officer 2], and we drove southbound on Farrington Highway, I observed a blue Subaru sedan parked at the Shell gas station near the gas pumps.”).

<sup>18</sup> Officer 5 Incident Report (HPD report no. 19-429620) (“For this operation, I was assigned to an unmarked police vehicle with [Officer 2] as the operator of the vehicle and instructed to post on the Mauka West side of Ualehei Street and to relay any vehicular and civilian traffic that was going through the area. I was seated in the rear passenger seat during this assignment.”).

<sup>19</sup> Officer 8 Follow-Up Report (HPD report no. 19-429620) (“At about 0900 hrs. I arrived in the Makakilo area and met with [Officer 1] at an undisclosed location. [Officer 1] then rode with me in an unmarked HPD undercover vehicle (Hereafter referred to as UC car). ... I stopped the UC car behind the Subaru approximately five (5) feet to the rear of the Subaru (So as to not alarm the suspects to our presence) and exited the

VEHICLE <sup>8</sup>	DESCRIPTION (License Plate)	OCCUPANTS
	[REDACTED]	Officer 1 (rear passenger) <sup>20</sup>

### C. Surveillance

The plainclothes officers did not have body-worn cameras. At 12:28 p.m., surveillance noted a black sedan parked near the Subaru in Makakilo.<sup>21</sup> At least one person got out of the sedan and got into the Subaru.<sup>22</sup> Police watched the Subaru as it drove through Makakilo and eventually arrived at the Shell gas station, 577 Farrington Highway (the gas station), at 10:36 p.m.<sup>23</sup>

### D. The Gas Station

As part of its independent investigation, PAT Investigator [REDACTED] prepared a scale diagram of the gas station and its immediate surroundings.<sup>24</sup>

The gas station features two rows of pumping stations, with three stations in each row. There is a pump on each side of each station, for total of 12 pumps. The pumps are numbered. The pumps are covered by a pavilion. The pumping stations are well-lit by overhead lighting.

The “Aloha Island Mart”, a convenience store, is on the property. Pumps 1, 3, and 5 are nearest to the convenience store. A raised concrete sidewalk borders the side of the convenience store facing the pumps.

### E. Police Arrival at the Gas Station

Responding officers learned that the Subaru was at the gas station.

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vehicle. I heard people yelling ‘police!’ and heard someone yell, ‘Mikey’s in the driver ...’").

<sup>20</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620) (“On 11-12-19, at approximately 2236 hours, riding as passenger, our vehicle turned Westbound onto Farrington Highway and did not observe the vehicles. ... Spillner appeared to be looking toward the Officers, who were entering the parking lot as I exited the rear passenger side door of my unmarked vehicle.”).

<sup>21</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620). Based on the recorded interview given by [REDACTED] this dark sedan was her 2004 Honda Accord.

<sup>22</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620).

<sup>23</sup> Officer 2 Incident Report (HPD report no. 19-429620).

<sup>24</sup> Exhibit B.

The Subaru pulled up to pump 3. The driver's side was nearest the pump; the passenger side faced the convenience store. Spillner, who was shirtless, got out of the Subaru and attempted to pump gas from pump 3. A black Honda was parked at pump 4, opposite pump 3. The Honda and the Subaru were pointed in opposite directions.<sup>25</sup> Spillner's fiancé [REDACTED] got out of the Honda and spoke with Spillner and Kahalehoe.<sup>26</sup>

[REDACTED] worked as the convenience store cashier.<sup>27</sup> She was alerted to errors from pumps 3 and 4. The patrons at those pumps made their transactions at the pump and did not enter the store. [REDACTED] also worked at the gas station that night.<sup>28</sup>

The unmarked police vehicles listed above converged at the gas station.

Officer 2 drove the Escape into the gas station and parked in a stall on the western-most edge of the property.<sup>29</sup> From there, he watched the pumps.<sup>30</sup> Once Kahalehoe and Spillner's identification was verified, Officer 2 moved the Escape and parked approximately 15 feet behind the Subaru.<sup>31</sup>

Officer 4 drove his 4Runner into the gas station and pulled in front of the Subaru.<sup>32</sup>

The Sienna approached the Subaru and stopped approximately five feet behind it.<sup>33</sup> Officer 1 informed other officers via radio to enter the parking lot and approach the Subaru.<sup>34</sup>

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<sup>25</sup> See Aloha Gas surveillance video.

<sup>26</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620).

<sup>27</sup> On November 13, 2019, [REDACTED] gave a recorded statement to the police.

<sup>28</sup> On November 13, 2019, [REDACTED] gave a recorded statement to the police.

[REDACTED] did not see or hear anything germane to this analysis.

<sup>29</sup> Officer 2 Incident Report (HPD report no. 19-429620).

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Officer 4 Incident Report (HPD report no. 19-429620).

<sup>33</sup> Officer 8 Follow-Up Report (HPD report no. 19-429620)

<sup>34</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620).

## F. Officers' Actions at the Gas Station

### 1. Officer 4 and Officer 3

Officer 4 watched as Spillner worked the nozzle at the gas pump.<sup>35</sup> Officer 4 parked the 4Runner and got out.<sup>36</sup> Spillner, who had watched the 4Runner approach, ran from the pump in the Koko Head direction.<sup>37</sup> Officer 4 first attempted to chase Spillner.<sup>38</sup> After confirming that other officers had detained Spillner, Officer 4 turned his attention back to the revving Subaru.<sup>39</sup> Officer 4 saw Officer 2 jump out of the way of the Subaru.<sup>40</sup> The Subaru struck the passenger side of the Rogue, causing the Subaru to turn to the right, in the direction of the convenience store.<sup>41</sup> Officer 4, who had unholstered his pistol prior to the Rogue being struck, approached the Subaru on the driver's side and fired 11 times.<sup>42</sup> He stopped firing when the Subaru's engine stopped revving and he saw the driver lean over the center console.<sup>43</sup>

Officer 3 also recognized Spillner as he stood near the Subaru.<sup>44</sup> Officer 3 got out of the 4Runner and first attempted to chase Spillner.<sup>45</sup> After Spillner was apprehended, Officer 3's attention turned back to the Subaru.<sup>46</sup> Officer 3 heard multiple officers announce their office and give commands.<sup>47</sup> Officer 3 saw an officer jump out of the Subaru's path before the Subaru struck the Rogue.<sup>48</sup> Officer 3 shot at the Subaru as he stood behind it, at an approximate distance of five yards on the passenger side.<sup>49</sup>

### 2. Officer 2, Officer 5, and Officer 6

Officer 2, Officer 5, and Officer 6 were in the Escape. Officer 2 got out of the Escape, drew his pistol, and directed his immediate attention to Spillner.<sup>50</sup> According to Officer 2's account, his pursuit of Spillner placed him (Officer 2) directly in front of the

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<sup>35</sup> Officer 4 Incident Report (HPD report no. 19-429620).

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Officer 3 Incident Report (HPD report no. 19-429620).

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Officer 2 Incident Report (HPD report no. 19-429620).

Subaru.<sup>51</sup> Officer 2 identified himself to Kahalehoe and gave him commands.<sup>52</sup> Kahalehoe reached under the steering wheel out of Officer 2's view.<sup>53</sup> The Subaru's engine revved and the car turned toward Officer 2.<sup>54</sup> Officer 2 got out of the Subaru's way before it struck the Rogue.<sup>55</sup> Officer 2 wrote: "The Subaru's engine raced loudly and continued to push the unmarked Police vehicle in what appeared to be a circular path at a high rate of speed towards myself and other Officers on scene."<sup>56</sup> Officer 2 fired into the Subaru, in the direction of Kahalehoe.<sup>57</sup>

Officer 5 and Officer 6 exited the Escape and approached the passenger side of the Subaru. They both identified themselves as "police" and gave orders to Kahalehoe, who was behind the steering wheel. Officer 5 ordered him to get out of the car while Officer 6 ordered him to turn off the Subaru.

Officer 6 "jumped back" from the Subaru as it turned away from the pump.<sup>58</sup> She saw multiple officers in close proximity to the Subaru, which had struck a police vehicle, and she heard gunshots.<sup>59</sup> After the shooting ended, she approached the driver's door with her pistol pointed at Kahalehoe, who was not moving.<sup>60</sup> After other officers pulled Kahalehoe from the Subaru, she assisted in handcuffing him.<sup>61</sup>

Officer 5 wrote: "The Subaru then attempted to drive forward in my direction and I feared that from the angle of the front fires, the vehicle could strike myself and other officers in the area causing serious injury or death."<sup>62</sup> Officer 5 heard multiple shots fired at the Subaru as it drove in his direction.<sup>63</sup> Officer 5 assisted with the detention of Spillner.<sup>64</sup>

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51      Id.

52      Id.

53      Id.

54      Id.

55      Id.

56      Id. Given all the evidence, this assertion is factually inaccurate.

57      Officer 2 Incident Report (HPD report no. 19-429620).

58      Officer 6 Incident Report (HPD report no. 19-429620)

59      Id.

60      Id.

61      Id.

62      Officer 5 Incident Report (HPD report no. 19-429620)

63      Id.

64      Id.

### 3. Officer 8 and Officer 1

Officer 1 saw the Subaru at pump 3.<sup>65</sup> A black Honda, facing in the opposite direction, was directly across from the Subaru at pump 4.<sup>66</sup> Officer 1 identified Spillner and Kahalehoe to responding officers.<sup>67</sup> A woman at pump 4 spoke with Spillner and Kahalehoe.<sup>68</sup> Officer 1 radioed other officers to converge at the gas station.<sup>69</sup>

Officer 1 exited the Sienna from the passenger side door.<sup>70</sup> He held his rifle, announced "Police," and approached Spillner.<sup>71</sup> Spillner ran and Officer 1 focused on Kahalehoe, who was seated in the Subaru.<sup>72</sup> According to Officer 1, the Subaru's engine revved.<sup>73</sup> Officer 1 stepped away and yelled, "Police! Stop the car!" Officer 1 saw an officer in front of the Subaru.<sup>74</sup> This officer had to jump from/push himself away from the Subaru to avoid getting struck.<sup>75</sup>

Officer 1 observed Kahalehoe through the driver's window.<sup>76</sup> In addition to describing Kahalehoe's attempts to drive the Subaru, Officer 1 wrote:

I also observed Kahalehoe attempting to grab items from his waist and seat area. ... In addition, I observed Kahalehoe reaching for his waistband and seated area (commonly known to be areas to retain firearms and other weapons) without complying with my orders to stop. As a result, I aimed at Kahalehoe and discharged several rounds at him with my long gun.<sup>77</sup>

Officer 1 shot his rifle several times. Officer 1's narrative is not clear as to precisely when he discharged his rifle in the context of the relevant events.

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<sup>65</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620).

<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620). Officer 2 is the officer that Officer 1 is referencing.

<sup>75</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620).

<sup>76</sup> Id.

<sup>77</sup> Id.

Officer 8 parked the Sienna approximately five feet behind the Subaru and got out. He heard people yelling “Police” and someone yelled “Mikey’s in the driver ....”<sup>78</sup> Officer 8 got back into the Sienna and attempted to close the distance with the Subaru.<sup>79</sup> The Subaru revved its engine so Officer 8 put the Sienna in park and got out.<sup>80</sup> Officer 8 saw the Subaru strike an unmarked police car (the Rogue) and heard gunshots.<sup>81</sup> Officer 8 heard shots fired from his left and saw the Subaru stop.<sup>82</sup> Officer 8 confirmed that Kahalehoe was in the driver’s seat and he, along with others, pulled Kahalehoe out.<sup>83</sup> He noted that Kahalehoe was bloodied, limp, and unresponsive.<sup>84</sup>

#### **4. Subaru’s Path and Final Resting Place**

The Subaru pulled away from pump 3 and maneuvered between the Rogue and the 4Runner, striking both.<sup>85</sup> The Subaru arced to the right, causing damage to the Rogue’s right rear passenger panel and rear bumper. There was significant damage to the right side of the Subaru. This damage is consistent with striking the Rogue.

The Subaru came to a stop before a concrete curb south of the convenience store. The curb height ranges from 5” to 5 ½”.<sup>86</sup> A five-foot wide sidewalk borders the south side of the convenience store.<sup>87</sup> Between the aforementioned curb and sidewalk is a planter area that features a tree.<sup>88</sup> In December 2021, the tree’s diameter measured 10”.<sup>89</sup>

The Subaru had a manual transmission.<sup>90</sup> The Subaru stopped short of the curb. Given the fact that Kahalehoe was struck by multiple gunshots, it is reasonable to conclude that the Subaru stalled after his feet no longer depressed the clutch and gas pedals.

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<sup>78</sup> Officer 8 Follow-Up Report (HPD report no. 19-429620).

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> Id.

<sup>85</sup> Video evidence does not appear to show the Subaru strike the 4Runner. However, there is evidence of white paint transfer on Subaru’s left front fender, which supports the conclusion that the Subaru struck the 4Runner.

<sup>86</sup> Exhibit B.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> [REDACTED] dent Report (HPD report no. 19-429620).

Based on the scene photographs, it can be reasonably inferred that if the Subaru had managed to climb the curb and continued in its path of travel, it would have struck the tree.

See below:



## 5. Firearm Found on Kahalehoe

Officer 4 assessed Kahalehoe's injuries and attempted first aid.<sup>91</sup> While performing CPR, Officer 4 saw a firearm in Kahalehoe's waistband.<sup>92</sup> Officer 6, Officer 1, and Officer 3 also saw the firearm.<sup>93</sup>

Officer 4 recovered a semiautomatic pistol from Kahalehoe's waistband.<sup>94</sup> There was no ammunition in the chamber but the magazine contained ammunition.<sup>95</sup> The

<sup>91</sup> Officer 4 Incident Report (HPD report no. 19-429620).

<sup>92</sup> Id.

<sup>93</sup> Officer 6 and Officer 3 Incident Reports (HPD report no. 19-429620) and Officer 1 Follow-Up Report (HPD report no. 19-429620).

<sup>94</sup> Officer 4 Incident Report (HPD report no. 19-429620).

<sup>95</sup> Id. and [REDACTED] Official Report (HPD report no. 19-429620).

pistol was submitted into evidence as Item 19.<sup>96</sup> Criminalist [REDACTED] examined the pistol and found that it was caliber .22 semiautomatic Glock-type pistol with a detachable magazine.<sup>97</sup> The magazine contained 10 caliber .22 Long Rifle cartridges.<sup>98</sup>

Witness [REDACTED] was at the gas station, approximately 20 feet from the action.<sup>99</sup> [REDACTED] reported: "The only weapons I saw was handguns and assault rifles the officers had on the scene."<sup>100</sup>

## 6. EMS Treatment

At 10:45 p.m., paramedics [REDACTED] and [REDACTED] arrived at the scene.<sup>101</sup> Kahalehoe was on his back, with his hands cuffed behind his back.<sup>102</sup> The paramedics documented gunshot wounds (GSWs), including one to the right frontal area with exposed brain tissue, and another to the chest.<sup>103</sup> There were no signs of life.<sup>104</sup>

At 11:04 p.m., [REDACTED] MD made the death pronouncement.<sup>105</sup>

## 7. Other Potential Witnesses

The police took written statements from [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. In their respective statements, [REDACTED] and [REDACTED] gave their interpretation of the Subaru's intent.

[REDACTED] wrote: "The guy in the blue Subaru did not want to get out of the car and tried getting away nearly banging officers."<sup>106</sup>

[REDACTED] wrote: "The blue Subaru tried driving off when the police shot the driver and tackled another civilian."<sup>107</sup>

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<sup>96</sup> Evidence Report (HPD report no. 19-429620).

<sup>97</sup> [REDACTED]cial Report (HPD report no. 19-429620).

<sup>98</sup> Id.

<sup>99</sup> [REDACTED]D 252.

<sup>100</sup> Id.

<sup>101</sup> EMS record.

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> Id.

<sup>105</sup> "City and County of Honolulu, Emergency Medical Services, DEATH PRONOUNCEMENT INFORMATION."

<sup>106</sup> [REDACTED]D 252.

<sup>107</sup> [REDACTED]D 252.

## 8. Spillner's Arrest and Statement

On November 12, 2019, Spillner was arrested for criminal contempt of court for the outstanding bench warrant issued by Judge To'oto'o in Case No. 1CPC-19-0001107.<sup>108</sup>

On November 13, 2019, Spillner gave a Mirandized statement to the police. Among other things, Spillner admitted the following: his awareness that a warrant had been issued for his arrest due to his non-appearance at trial call; he and [REDACTED] drove Kahalehoe to the Subaru in Makakilo; he knew that the Subaru was stolen and linked to two robberies; Kahalehoe drove the Subaru while Spillner was the passenger.

Once at the pump, Spillner got out of the Subaru and attempted to pay for the gas with a gift card. He noticed numerous vehicles pull into the gas station. He determined that the police were in these vehicles and he attempted to flee. He heard the revving of an engine and what sounded like a vehicle accelerating. The next thing he heard was gunshots.

Spillner knew that Kahalehoe carried a gun. Kahalehoe was responsible for stealing the Toyota 4Runner documented under HPD report no. 19-426458. Spillner admitted that he drove the Subaru during the robberies that occurred on November 10, 2019.

## VI. AUTOPSY

On November 13, 2019, [REDACTED] performed Kahalehoe's autopsy at the Medical Examiner's Facility located at 835 Iwilei Road.<sup>109</sup> The autopsy is documented under ME Case No. 19-2743.<sup>110</sup> [REDACTED] submitted two amendments to the original report.<sup>111</sup> [REDACTED] documented at least 12 distinct GSWs.<sup>112</sup>

Evidence Specialist [REDACTED] was present during the autopsy. She recovered projectiles and metal fragments that [REDACTED] removed from Kahalehoe. [REDACTED] submitted these items into evidence as Items 142-157.<sup>113</sup>

<sup>108</sup> This arrest is documented under HPD report no. 19-429610.

<sup>109</sup> Exhibit C.

<sup>110</sup> Id.

<sup>111</sup> Id.

<sup>112</sup> Id. The number associated with each GSW is for documentation purposes only. It does not suggest the order of infliction.

<sup>113</sup> [REDACTED] ientific Investigation Section Report and Evidence Report (HPD report no. 19-429620); Evidence Report (HPD report no. 19-429620).

[REDACTED] concluded the cause of death was multiple GSWs.<sup>114</sup>

A toxicology screen performed on Kahalehoe's femoral blood sample revealed the presence of caffeine, amphetamine, and methamphetamine.<sup>115</sup>

## VII. SCIENTIFIC INVESTIGATION SECTION/FORENSIC EVIDENCE

### A. Gunshot Residue

Criminalist [REDACTED] examined the gunshot residue (GSR) kits used on the hands of various involved officers. His results are summarized below:<sup>116</sup>

ITEM	OFFICER	EVIDENCE SPECIALIST	GSR RESULT
5	[REDACTED]	[REDACTED]	8 particles
6	[REDACTED]	[REDACTED]	3 particles
7	Officer 9	[REDACTED]	10 particles
8	[REDACTED]	[REDACTED]	10 particles
9	Officer 5	[REDACTED]	8 particles
10	Officer 8	[REDACTED]	10 particles
11	[REDACTED]	[REDACTED]	1 particle
12	[REDACTED]	[REDACTED]	None
13	Officer 2	[REDACTED]	4 particles
14	Officer 3	[REDACTED]	1 particle
15	Officer 7	[REDACTED]	7 particles
16	Officer 4	[REDACTED]	10 particles
17	Officer 1	[REDACTED]	4 particles

### B. Firearms

The following firearms were recovered, submitted into evidence under HPD report no. 19-429620, and later examined by Criminalist [REDACTED]<sup>117</sup>

ITEM	DESCRIPTION	OWNER	EXAMINATION
21	Glock pistol, model 17 (Gen4), caliber 9mm, semiautomatic, serial number WWF794	Officer 2	Operating condition

<sup>114</sup> Exhibit C.

<sup>115</sup> Id. This analysis assumes that Kahalehoe's toxicology results would be admissible in any prosecution brought against the officers. State v. DeLeon, 131 Hawai'i 463, 319 P.3d 382 (2014) (holding that the trial court erred in excluding defense expert's opinion that victim's ingestion of cocaine had an impact on his behavior because the exclusion violated defendant's due process rights to a complete defense).

<sup>116</sup> Cross-reference with HPD Attachment 2.

<sup>117</sup> HPD Attachment 1.

25	Glock pistol, model 17 (Gen4), caliber 9mm, semiautomatic, serial number VEH944 <sup>118</sup>	Officer 3	Operating condition
28	Glock pistol, model 17 (Gen4), caliber 9mm, semiautomatic, serial number WWF402	Officer 7	Operating condition
36	Sig Sauer pistol, model P226 elite, 9mm, semiautomatic, serial number 47A190295	Officer 4	Operating condition
82	Colt rifle, model AR-15 A3, caliber .233, semiautomatic rifle, serial number LBD005352	Officer 1	Operating condition

### C. Officer Responsible for Each GSW

HPD prepared a chart summarizing the officer responsible for each metal fragment, projectile and/or cartridge case recovered during the investigation.<sup>119</sup> [REDACTED] prepared a diagram in which he documented the 12 distinct GSWs.<sup>120</sup>

Working together, Chief Investigator and [REDACTED] created a chart summarizing each GSW, the location of the entry wound, the exit wound (if any), the injuries caused, the wound path, whether evidence corresponding to each GSW was recovered during autopsy, and the officer likely responsible for each GSW.<sup>121</sup>

### D. Processing the Subaru

The police found license plate [REDACTED]<sup>22</sup> in the Subaru. The Subaru was also photographed.

### E. Motor Vehicle Examination

Officer [REDACTED] performed the vehicle examination of the Subaru, which had a manual transmission.<sup>123</sup> He concluded that it was in good working condition.<sup>124</sup> He opined that at the time of the collision, the Subaru would have performed normally and would have been able to brake and steer correctly to any input given from the driver.<sup>125</sup>

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<sup>118</sup> The Evidence Report (HPD report no. 19-429620) erroneously lists the serial number as VFH944.

<sup>119</sup> HPD Attachment 2.

<sup>120</sup> Exhibit C, "SECOND AMENDMENT AUTOPSY REPORT," page 4 of 4.

<sup>121</sup> Exhibit D.

<sup>122</sup> The theft of this plate was documented under HPD report no. 19-427662. See Section IV.E, supra.

<sup>123</sup> [REDACTED]ident Report (HPD report no. 19-429620).

<sup>124</sup> Id.

<sup>125</sup> Id.

On November 21, 2019, HPD released the Subaru to GEICO. Chief Investigator confirmed that the Subaru was sent to a salvage yard in California and, as of this writing, no longer exists.

## **VIII. THE OFFICERS' STATED JUSTIFICATION FOR THEIR USE OF DEADLY FORCE**

Each officer gave his justification for his use of deadly force. These justifications are summarized below.

### **A. Officer 1**

"As the Subaru continued to 'rev' the engine, the vehicle sped forward toward the driver's side of a white subsidized Toyota and another plain clothes Officer. The Subaru struck the rear passenger side of another unmarked police vehicle (Rogue) with unknown occupants so forcefully that the vehicle moved several feet from its parked position. Kahalehoe used the Subaru to damage property, attempt to strike/injure/kill Officers, refused to stop his actions using the vehicle as a deadly weapon. As a result, I aimed at Kahalehoe and discharged several rounds at him with my long gun."<sup>126</sup>

### **B. Officer 2**

"Due to the fear that myself, other Officers or bystanders on the scene were in imminent danger of suffering serious bodily injury or death, and after the continual refusal to cease the above mentioned dangerous actions being committed by KAHALEHOE, and his refusal to abide by orders being issued by myself and other Officers on scene, I fired two (2) rounds from my departmental issued firearm into the Subaru, in the direction of KAHALEHOE."<sup>127</sup>

### **C. Officer 7**

"This Officer used my police issued Glock 17 handgun, to stop the imminent deadly force as KAHALEHOE had already struck our vehicles, and police officers had to jump out of the way to avoid being struck by the stolen Subaru being driven by KAHALEHOE."<sup>128</sup>

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<sup>126</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620).

<sup>127</sup> Officer 2 Incident Report (HPD report no. 19-429620).

<sup>128</sup> Officer 7 Incident Report (HPD report no. 19-429620).

#### D. Officer 3

"I was able to get behind the blue Subaru WRX from about 5 yards on the passenger side. I could hear the engine revving loudly. At this time, my primary concern was that the vehicle was going to continue its course and injure or possibly kill officers or employees in the Shell gas station convenience store. I drew my HPD issued Glock 17 and pointed it in the direction of the driver and shot multiple times, about (3) to four (4) shots through the rear glass window. Immediately after, the engine began to ease up and the revving stopped."<sup>129</sup>

#### E. Officer 4

"I drew my supplemental pistol and discharged approximately 11 rounds at the driver of the Subaru through the back driver's side window. Because I feared that the driver would smash the Subaru into the gas station where the cashier was located or crush officers that were approaching the vehicle and addressing the driver. I believe KAHALEHOE's actions with the blue SUBARU to be a serious imminent threat and could result in death or serious bodily injury to those in the immediate area."<sup>130</sup>

### IX. ANALYSIS OF THE VIDEO SURVEILLANCE FOOTAGE

The HPD investigation recovered surveillance footage from Aloha Auto Gas, Flag Ship, Healthy Smile Family Dental, Jack-In-The-Box, and Vape Kings.

The PAT contracted with Brown<sup>2</sup> Digital Forensics and Training LLC (Brown<sup>2</sup>) to analyze the recovered video and determine the following:

- If the officer observed in front of the Subaru discharged his weapon while his weapon was in contact with or close to the front windshield of the vehicle.
- If an officer carrying a long gun discharged his weapon, and if he did, when were the shots fired.
- Who was responsible for what appears to be muzzle flashes in the dark upper right area of the Aloha Gas video.
- If any video contradicts any statements made by the officers or witnesses.

The Brown<sup>2</sup> report is attached.<sup>131</sup> The report addresses the extent to which the video evidence supports or contradicts the narratives offered by the officers. Relevant findings follow below:

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<sup>129</sup> Officer 3 Incident Report (HPD report no. 19-429620).

<sup>130</sup> Officer 4 Incident Report (HPD report no. 19-429620).

<sup>131</sup> Exhibit E.

### A. Officer 1

The video supports Officer 1's assertion that "[t]he Subaru struck the rear passenger side of another unmarked vehicle [the Rogue] with unknown occupants so forcefully that the vehicle moved several feet from its parked position."

The video does not definitely reveal whether the Rogue was occupied or not when it was struck; accordingly, Officer 1's stated impression regarding the existence of "unknown occupants" is not demonstrably false.

The video and the location of recovered .223 shell casings<sup>132</sup> support the conclusion that Officer 1 first fired at the Subaru after it struck the Rogue.

### B. Officer 2

Officer 2's narrative creates the impression that he discharged his firearm after the Subaru struck the Rogue.<sup>133</sup> Video evidence demonstrates that Officer 2 first discharged his firearm before it struck the Rogue. Other evidence supports this chronology.<sup>134</sup>

### C. Officer 7

The video neither corroborates nor contradicts Officer 7's narrative. Officer 7 likely discharged his firearm outside the view of available cameras.

### D. Officer 3

The video neither corroborates nor contradicts [REDACTED] narrative. The Subaru is out of camera view when Officer 3 discharged his firearm.

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<sup>132</sup> Exhibit A and HPD Attachment No. 3.

<sup>133</sup> See Officer 2 Incident Report (HPD report no. 19-429620) ("Due to the fear that myself, other Officers or bystanders on scene were in imminent danger of suffering serious bodily injury or death, and after the continual refusal to cease the above mentioned dangerous actions being committed by KAHALEHOE, and his refusal to abide by the orders being issued by myself and other Officers on scene, I fired (2) rounds from my departmental issued firearm into the Subaru, in the direction of Kahalehoe.").

<sup>134</sup> Officer 5 Incident Report (HPD report no. 19-429620) ("As the Subaru was moving forward, I heard multiple shots fired toward the vehicle. The Subaru then collided with an unmarked police vehicle that was parked in the area before coming to a stop in its final resting position.").

## E. Officer 4

The video does show officers moving to the area where the Subaru eventually came to a stop. The Subaru and other officers are out of camera view when the muzzle flashes most likely associated with Officer 4 occur. Taken together, there is inferential support for Officer 4' claim that he feared for the safety of fellow officers when he discharged his firearm.

## X. HPD USE OF POLICY IN EFFECT AT TIME OF SHOOTING

HPD Policy Number 1.04, dated April 24, 2015, was in effect at the time of the shooting. This policy states, in relevant part, the following: "Officers shall take reasonable measures to avoid placing themselves in the path or potential path of a suspect vehicle."<sup>135</sup>

## XI. LEGAL PRINCIPLES

### A. Definitions

"Believes" means reasonably believes.<sup>136</sup>

"Bodily injury" means physical pain, illness, or any impairment of physical condition.<sup>137</sup>

"Deadly force" means force which the actor uses with the intent of causing or which the actor knows to create a substantial risk of causing death or serious bodily harm. Intentionally firing a firearm in the direction of another person or in the direction which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force.<sup>138</sup>

"Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a home or place of lodging.<sup>139</sup>

"Force" means any bodily impact, restraint, or confinement, or the threat thereof.<sup>140</sup>

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<sup>135</sup> See HPD Policy Number 1.04 Section IX.B.3.

<sup>136</sup> HRS § 703-300.

<sup>137</sup> Id.

<sup>138</sup> Id.

<sup>139</sup> Id.

<sup>140</sup> Id.

“Unlawful force” means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.<sup>141</sup>

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.<sup>142</sup>

“Substantial bodily injury” means a major avulsion, major laceration, or major penetration of the skin; a burn of at least second degree severity; a bone fracture; a serious concussion; or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.<sup>143</sup>

## B. Potential Defenses

Three HRS chapter 703 justification defenses apply to this case.<sup>144</sup> Each is referenced below.

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

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

- (1) Subject to the provisions of this section and of [section 703-308](#), the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.
- (2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.
- (3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

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<sup>141</sup> Id.

<sup>142</sup> HRS § 707-700.

<sup>143</sup> Id.

<sup>144</sup> HRS § 703-301(1) (“In any prosecution for an offense, justification, as defined in [sections 703-302](#) through [703-309](#), is a defense.”).

...

- (5) The use of deadly force is not justifiable under this section if:
  - (a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or
  - (b) The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:
    - (i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and
    - (ii) A public officer justified in using force in the performance of his duties, or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape, is not obliged to desist from efforts to perform his duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.
- (6) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

The use of deadly force in self-defense involves consideration of two issues. First, did the actor use deadly force? Second, was the use of deadly force justified?<sup>145</sup>

The use of deadly force upon or toward another person is justified if the actor reasonably believes that deadly force is immediately necessary to protect himself on the present occasion against death or serious bodily injury.<sup>146</sup> The reasonableness of the actor's belief that the use of protective deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the actor's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be when the deadly force was used.<sup>147</sup>

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<sup>145</sup> HAWJIC 7.01A.

<sup>146</sup> Id.

<sup>147</sup> Id.

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

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

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

Use of deadly force in the defense of others involves consideration of two issues. First, did the actor use deadly force? Second, was the use of deadly force justified?<sup>148</sup>

The use of force upon or toward the person of another is justifiable to protect a third person when, under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and the actor believes that the actor's intervention is immediately necessary to protect the third person.<sup>149</sup> The reasonableness of the actor's belief that the use of deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the actor's position under the circumstances of which the actor was aware or as the actor reasonably believed them to be when the deadly force was used.<sup>150</sup>

"A defendant's credibility is at the crux of self-defense and defense of others—the jury must determine whether the defendant did in fact subjectively believe the use of force was necessary."<sup>151</sup>

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

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

- (1) Subject to the provisions of this section and of [section 703-310](#), the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.
- (2) The use of force is not justifiable under this section unless:

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<sup>148</sup> HAWJIC 7.02A.

<sup>149</sup> Id.

<sup>150</sup> Id.

<sup>151</sup> State v. Lealao, 126 Hawai'i 460, 470, 272 P.3d 1227, 1237 (2012).

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

## XII. ANALYSIS

### A. The Independent Evidence

Of the video surveillance footage recovered, only the video from Flag Ship and Aloha Gas are relevant. Flag Ship video from Channel 6 offers a ground level perspective of the relevant events; Channel 1 has audio. The Aloha Gas video Camera 2, which does not have audio, is overhead.

These videos depict the following relevant events: the Subaru at the gas pump; Spillner at the pump; the convergence of undercover vehicles at the pump; Spillner's attempt to flee and prompt apprehension; the Subaru's movement away from the pump and path of travel between the 4Runner and the Rogue.

After maneuvering between the 4Runner and the Rogue, the Subaru arced to the right and, based on scene photography, came to rest near a concrete curb fronting the convenience store. The vast majority of the actual shooting is not captured on video.

Civilian witnesses corroborate that the police gave commands to Kahalehoe.<sup>152</sup>

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<sup>152</sup> █ PD 252 ("All I hear was yelling, gun shots, and get on the ground ....");  
█ HPD 252 ("On Tuesday, November 12, 2019 I witnessed a group of cops surrounding a blue Subaru telling them to get on the ground."); █ HPD 252 ("Not sure how it happened, just was on my phone and looked up and saw a guy run out of a mini[-]van with a gun and heard gunshots and heard 'Get on the ground! Get on the ground[!],' and saw a blue WRX trying to drive away with the cops surrounding &

Based on the reports of officers who did not discharge their firearm, there are no witnesses who could identify which of the officers discharged their firearm.<sup>153</sup>

It appears that Officer 1 and Officer 2 fired at the Subaru as it pulled away from the gas pump.

The Brown<sup>2</sup> report compares the statements made by the officers in their respective reports with the video evidence.

#### **B. The Information of which the Officers Were Aware when Deadly Force Was Used**

Information shared during the briefing referenced the string of November 10, 2019 gunpoint robberies. The police had reason to believe that Kahalehoe was involved in these robberies. This belief may have led the officers to conclude that Kahalehoe was armed at the time of the OIS. Officer 1 described Kahalehoe's movements as follows: "In addition, I observed Kahalehoe reaching for his waistband and seated area (commonly known to be areas to retain firearms and other weapons) without complying with my orders to stop."<sup>154</sup> However, no officer, including Officer 1, claimed to have seen Kahalehoe in possession of a firearm before discharging their weapon.

The police recovered a pistol from Kahalehoe's waistband. However, information that the police learned after the fatal shooting is irrelevant to the officers' state of mind when they discharged their firearms.<sup>155</sup>

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firing their guns and then more gunshots to follow."). See also November 13, 2019 interview of Hiiilani Reinhardt.

<sup>153</sup> See, e.g., Officer 6 Incident Report (HPD report no. 19-429620) ("I then heard multiple gun shots being fired as the Subaru appeared to spin around the unmarked police vehicle, facing the opposite direction. I turned around towards the Subaru and observed multiple Officers in close proximity to the Subaru as I heard the gunshots being fired."); Officer 8 Follow-Up Report (HPD report no. 19-429620) ("Around that time, I heard gunshots, but didn't know who fired them.").

<sup>154</sup> Officer 1 Follow-Up Report (HPD report no. 19-429620).

<sup>155</sup> Compare HPD Policy Number 1.04 Section III "Reasonable Force" ("Information learned after the time of the officer's application of force is irrelevant to assessing the appropriateness of the force used."). This analysis acknowledges the realities of trial practice involving lay jurors. A lay juror is very likely to disregard the import of the legal distinction regarding the timing of the pistol's discovery vis-à-vis the officers' conduct. The lay juror may conclude that Kahalehoe's possession of the pistol justified the officers' use of deadly force, regardless the fact that no officer claimed to have seen Kahalehoe with the pistol before they fired.

### C. Justification Defenses

Following below is an examination of the justification defenses. The Aloha Gas Camera 2 video gives a clear, overhead depiction of the events at pump 3 and the Subaru's departure from the pump. The key is the interpretation of what is depicted. Self-defense and defense of others hinge, in a large part, on the interpretation of how Kahalehoe drove the Subaru from the time it left pump 3 until it came to rest.

The involved officers describe the Subaru as driving in an aggressive manner that endangered others. This characterization suggests that Kahalehoe intended to hurt one or more other people by the manner in which he drove the Subaru.

On the other hand, a case can be made that Kahalehoe was not trying to injure anyone, but rather was trying to evade capture. This argument follows that any damage the Subaru caused to the police vehicles was an unintended consequence of Kahalehoe's attempt to escape capture.

#### 1. Self-Defense

Aside from Officer 2, no other officer claimed that their intentional use of deadly force was immediately necessary to protect themselves from death or serious bodily injury resulting from Kahalehoe's use of deadly force (i.e., the manner in which he operated the Subaru). Officer 2 did not fire at the Subaru as he stood directly in front of it.<sup>156</sup> All officers, including Officer 2, fired as the Subaru moved away from them. The facts do not support a self-defense justification.

The analysis points out that Officer 2 intentionally put himself in front of the Subaru, which he knew was the suspect vehicle. Officer 2 explained that his pursuit of Spillner placed him in front of the Subaru.<sup>157</sup> This conduct is contrary to HPD's "Use of Force Policy" in effect at the time.<sup>158</sup>

#### 2. Defense of Others

Officer 4 cited the potential danger that the Subaru posed to other officers as an explanation for his use of deadly force. As explained above, the video depicts officers moving in the direction of the Subaru's path. Ultimately, the Subaru and these officers are out of the camera's view. As such, there is no video evidence that conclusively refutes Officer 4' claim of officer safety.

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<sup>156</sup> See Section XII.D.1, infra.

<sup>157</sup> Officer 2 Incident Report (HPD Report No. 19-429620).

<sup>158</sup> HPD Policy Number 1.04 Section IX.B.3. ("Officers shall take reasonable measures to avoid placing themselves in the path of a suspect vehicle.").

Officer 4 and Officer 3 both cited the potential danger the Subaru posed to the employees inside the convenience store as an explanation for their use of deadly force. The viability of this explanation turns on the objective reasonableness of their belief that deadly force was immediately necessary to protect [REDACTED]<sup>159</sup>. This analysis acknowledges that the relevant events happened very quickly, thus negating the opportunity for reflective thought on the officers' behalf before firing. Still, based on the totality of the circumstances, the purported explanation of protecting people inside the convenience store is unpersuasive.

In her November 13, 2019 recorded interview to HPD, [REDACTED] recounted that she ducked down behind her cash register and remained there for an indeterminate period. When she finally looked out the window, she saw police administering CPR to Kahalehoe. This timeline suggests that she was behind the cash register, and out of sight, when the majority of the gunshots were fired. If this is true, then the officers could not have seen her when they fired at the Subaru. And if the foregoing is true, it is not objectively reasonable for the officers to believe that their use of deadly force was on behalf of [REDACTED] who was out of their sight when they fired.<sup>160</sup>

Chief Investigator interviewed [REDACTED]. She said that the convenience store's doors were closed; as such, she did not hear what was outside. The "POLICE" vests worn by the plainclothes officers were clear indications to her that they were law enforcement officers. She expressed no fear of being struck by the Subaru. Based on this account, [REDACTED] would not have been justified in using deadly force to protect herself. Thus, under Hawai'i law, no officer would have been justified in using deadly force to protect [REDACTED]<sup>161</sup>.

Given the layout of the parking, including the tree and the raised sidewalk bordering the convenience store, it is factually improbable that the Subaru, in the manner in which it was driven, posed a realistic danger to [REDACTED] or anyone else inside the convenience store.<sup>162</sup> This analysis acknowledges that there is no independent evidence confirming the speed at which the Subaru traveled after it struck the Rogue and before it became to a stop. However, based on the scene photographs, the Subaru did not travel far from its initial collision with the Rogue.<sup>163</sup> Indeed, the right rear panel of

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<sup>159</sup> [REDACTED] is never in any danger. He told police investigators that he took refuge in the convenience store's refrigerator once he heard the gunshots. He emerged from the refrigerator after the gunfire was over. He saw [REDACTED] sheltering behind the cash register.

<sup>160</sup> This analysis recognizes that the events happened quickly and it is possible that the officers saw what they claimed to have seen regarding the occupants of the convenience store.

<sup>161</sup> HAWJIC 7.02A.

<sup>162</sup> See Section V.F.4, *supra*. This analysis stops short of concluding that it was factually impossible for the Subaru to have posed a realistic threat of danger to Ho or anyone else within the convenience store.

<sup>163</sup> Exhibit A.

the Subaru is near the trunk of the Rogue.<sup>164</sup> Logically, the striking of the stationary Rogue would have decreased, rather than increased, the Subaru's speed.

Notwithstanding the foregoing, this analysis does not reject defense of others. There is no independent evidence—either in the form of surveillance video or independent witness accounts—confirming (1) the manner in which the Subaru was operated after it pushed between the 4Runner and the Rogue<sup>165</sup>; (2) Kahalehoe's conduct inside the Subaru once it pulled away from pump 3<sup>166</sup>; or (3) a clear ground-level perspective of the officers at or around the time they discharged their firearms.<sup>167</sup>

### 3. Use of Force in Law Enforcement

The police had valid warrants for the arrest of Kahalehoe and Spillner. These warrants were for felony offenses filed in the First Circuit Court. All officers qualify as "law enforcement officers" and, as such, were authorized to execute these warrants. However, none of the involved officers cited the execution of these warrants as a basis for their use of deadly force. Accordingly, this investigation finds this defense to be inapplicable.

## XIII. RECOMMENDATION

To secure a conviction for an offense under the HPC, the prosecution must disprove an applicable defense—other than an affirmative defense—beyond a

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<sup>164</sup> Id.

<sup>165</sup> See e.g., █ Incident Report (HPD report no. 19-429610) ("While effecting the arrest of SPILLNER, I could hear a vehicle loudly revving its engine in back of me towards the pump 3 station. I could hear Officers yelling "TURN OFF THE VEHICLE, PUT YOUR HANDS UP" and then heard tires screeching followed by a loud crashing sound, as if a vehicle had struck something. I then heard Officers yell again "TURN OFF THE VEHICLE, PUT YOUR HANDS UP", followed by another loud crashing sound. I then heard multiple gun shots fired.").

<sup>166</sup> See, e.g., Officer 9 Incident Report (HPD report no. 19429610) ("While attempting to subdue SPILLNER, I heard multiple Officers yelling 'Police, turn the vehicle off, stop the car, and get out of the vehicle,' which were immediately followed by loud screeching of vehicle tires, loud motor engine revving, and sounds consistent of a motor vehicle collision.").

<sup>167</sup> See, e.g., █ Incident Report (HPD report no. 19-0429610) ("After the loud crash I then heard several gun shots. I did not see where the gun shots came from due to the fact that I was struggling to gain compliance of SPILLNER."); █ Incident Report (HPD report no. 19-429620) ("Due to the number of officers with their weapons draw on the outstanding vehicle, I turned to assist the officers struggling with SPILLNER. As I turned and headed towards SPILLNER'S location I heard a volley gun shots as officers continued to shout at the driver of the outstanding vehicle to stop.").

reasonable doubt.<sup>168</sup> The defenses codified in HRS §§ 703-304, -305, and -307 are not affirmative defenses. As such, where these defenses are applicable they must be disproved (or negated) beyond a reasonable doubt.<sup>169</sup>

The PAT declines to prosecute the officers for any offense under the HPC for their intentional use of deadly force on November 12, 2019. The PAT is unable to prove beyond a reasonable doubt that the officers' use of deadly force was not justified for the

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<sup>168</sup> HRS §§ 701-114, 701-115, and 702-205.

HRS § 701-114 states:

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

HRS § 701-114 states:

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

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<sup>169</sup> [Lealao](#), 126 Hawai'i at 470, 272 P.3d at 1237 (holding that self-defense and defense of others are not affirmative defenses, and, thus, the prosecution has the burden of disproving these defense beyond a reasonable doubt).

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protection of other officers at the scene. The PAT therefore concludes that the officers were justified in their use of deadly force for the defense of others.

## MATERIALS CONSIDERED

Honolulu Police Department Police Reports

**19-426180**

### Police Reports

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

### Scene Photographs

### Written Witness Statements

- [REDACTED]
- [REDACTED]

**19-426332**

### Police Reports

- [REDACTED]
- HPD 503 (Travel Plaza video)
- HPD 503 (Securitas)

### Scene Photographs

### Written Witness Statements

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
  - [REDACTED]

19-426458

# **Police Reports**

- A horizontal bar chart illustrating the percentage of children aged 0-17 years with mental health conditions. The y-axis lists 15 categories, each preceded by a black dot. The x-axis represents the percentage, ranging from approximately 10% to 40%. The bars are solid black.

Category	Percentage (%)
•	~35
•	~25
•	~30
•	~35
•	~38
•	~20
•	~30
•	~35
•	~38
•	~25
•	~35
•	~38
•	~20
•	~35
•	~38

## **Scene photographs**

HPD 503

- Star protection

## **Written Witness Statements**

- A horizontal bar chart consisting of five bars. The first four bars are white with black outlines, and the fifth bar is black with a black outline. To the left of the bars are six small black dots arranged vertically.

19-426518

# **Police Reports**

- | Term       | Percentage |
|------------|------------|
| GMOs       | ~95%       |
| Organic    | ~85%       |
| Natural    | ~80%       |
| Artificial | ~75%       |
| Organic    | ~85%       |
| Natural    | ~80%       |
| Artificial | ~75%       |
| Organic    | ~85%       |
| Natural    | ~80%       |
| Artificial | ~75%       |

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- [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - HPD 503 (7-Eleven)

## **Witness Statements**

- [REDACTED]

19-429610

# Police Reports

- Arrest report
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - Officer 9 [REDACTED]

19-429620

# **Police Reports**

- A horizontal bar chart comparing the number of stops made by four officers. The y-axis lists the officers: Officer 5, Officer 6, Officer 7, and Officer 8. Each officer's name is followed by a black bar representing the count of stops. Officer 5 has the shortest bar, while Officers 6, 7, and 8 have progressively longer bars.

Officer	Number of Stops
Officer 5	~10
Officer 6	~25
Officer 7	~35
Officer 8	~20

- Officer 3 (103178)  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- Officer 4 (101390)  
[REDACTED]  
[REDACTED]
- Officer 9 (103085)  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]

#### **Written Witness Statements**

- [REDACTED]  
[REDACTED]

#### **Recorded Witness Statements**

- [REDACTED] HPD report no. 19-429620) (November 13, 2019)
- [REDACTED] HPD report no. 19-429620) (November 13, 2019)
- [REDACTED] HPD report no. 19-429620) (November 13, 2019)
- Melvin Spillner (HPD report no. 19-429610) (November 13, 2019)

#### **Surveillance Videos**

- Aloha Auto Gas
- Flag Ship
- Healthy Smile Family Dental
- Jack-In-The-Box
- Vape Kings

#### **Honolulu Police Department Policy**

- Policy Number 1.04

## **INDEPENDENT INVESTIGATION CONDUCTED BY PAT**

### **Independent Interviews**

- Chief Investigator re-interviewed [REDACTED]
- Chief Investigator was unable to re-interview [REDACTED] [REDACTED] [REDACTED] or [REDACTED] [REDACTED] relocated to the continental United States. Investigator [REDACTED] located [REDACTED] and [REDACTED] and gave each Chief Investigator's business card. Both said they would call but they have not.

### **Scene Diagram**

- PAT Investigator [REDACTED] prepared a "to scale" scene diagram of 577 Farrington Highway.

### **Collaboration with the Department of the Medical Examiner**

- Chief Investigator met with [REDACTED] to review his report and the evidence recovered in the investigation.
- Together, they created a chart summarizing the GSWs suffered by Kahalehoe and identified the officer likely responsible for each GSW.

### **Independent Analysis of Surveillance Videos**

- The PAT contracted with Brown<sup>2</sup> Digital Forensics LLC to perform an independent analysis of the recovered surveillance video.