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

Officer-Involved Shooting Report No. 2023-01

Report Date: May 5, 2023

Independent Investigation of Officer-Involved Shooting of

Dallas Pearce

Parking lot of Aikahi Gardens, Kailua, Hawaii 96734

Report Date: May 5, 2023

I. OBJECTIVE.

The objective of the Department of the Prosecuting Attorney's (hereinafter, "PAT") independent investigation in this matter is to assess the viability of a criminal prosecution of Honolulu Police Department (hereinafter, "HPD") Sergeant [REDACTED] (hereinafter, "Sergeant 1") and HPD Officer [REDACTED] (hereinafter, "Officer 1") for any criminal offense under the Hawai'i Penal Code for their intentional use of deadly force against Dallas Pearce (hereinafter, "Pearce") on January 6, 2020, in the Aikahi Gardens parking lot near the intersection of Molo Street and Oko Street, Kailua, Hawaii 96734. In making this assessment, the PAT will use the proof beyond a reasonable doubt standard.

This investigation considered materials and information provided by HPD.¹ PAT Investigator [REDACTED] also assisted in this investigation and was the PAT's primary investigator.

This investigation offers no opinion whether Sergeant 1 and Officer 1 complied with HPD policy or whether non-compliance with any HPD policy subjects them to administrative discipline.

II. FACTS.

A. General Background (Introduction).²

On April 11, 2012, Pearce was convicted of Burglary in the First Degree in violation of Hawai'i Revised Statutes (hereinafter, "H.R.S.") **Section 708-810(1)(c)** (2007 Repl.). The court sentenced him to five (5) years of probation. Subsequently, on July 30, 2012, the court revoked his probation and re-sentenced Pearce to an indeterminate term of ten (10) years of incarceration. In 2019, Pearce was placed in the Laumaka work furlough program over the objections of the State.

On November 19, 2019, Pearce failed to return to the Laumaka work furlough program and an Escape in the Second Degree report was initiated against Pearce under Sheriff's Department Number 19-12359.³ On November 27, 2019, Sergeant 1 from the HPD District 4 Crime Reduction Unit (hereinafter, "District 4 CRU") generated an Escape in the Second Degree report under HPD Report Number [REDACTED] in order to document Pearce's escape status and generate an Attempt to Locate status in the HPD computer system.⁴

¹ The key report number for the investigation of the shooting is documented under HPD Report Number [REDACTED].

² See, generally, HPD Report Number 10-323425 and Circuit Court of the First Circuit Criminal Number 11-1-1788 (1PC111001788).

³ See, generally, HPD Report Number [REDACTED].

⁴ *Id.*

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On January 6, 2020, District 4 CRU received information that Pearce was dating a female whom they knew as [REDACTED] (hereinafter, "Witness 1").⁵ The information further noted that Witness 1 was living at 167 Oko Street in Aikahi Gardens and was operating a 2006 Chrysler PT Cruiser (hereinafter, "PT Cruiser") bearing State of Hawai'i license plate number [REDACTED].⁶ As a result, officers from the District 4 CRU including Sergeant 1 and Officer 1 began to make checks around the Aikahi Gardens area for Pearce and Witness 1.⁷

On January 6, 2020, at about 3:00 p.m., Officer 1 drove Sergeant 1 in a marked blue and white vehicle to Aikahi Gardens to look for Pearce and Witness 1.⁸ Both Officer 1 and Sergeant 1 were in plain clothes and wore ballistic vests with "Police" markings on the front and back of the said vests.⁹ They also wore their police badges and identification cards.¹⁰

Upon their arrival at the Aikahi Gardens townhouse complex, Officer 1 and Sergeant 1 traveled on Oko Street towards Molo Street.¹¹ While doing so, they noticed the aforementioned Chrysler PT Cruiser belonging to Witness 1 and parked behind it.¹² Office 1 and Sergeant 1 then exited the blue and white HPD vehicle and approached the PT Cruiser where they encountered Pearce who was seated in the driver's seat of the said vehicle.¹³

⁵ Reports by Sergeant 1 and Officer 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

B. The Weather.

A surveillance camera video recording taken from an apartment unit at Aikahi Gardens indicated that the weather was partially cloudy at the date and time of the incident.¹⁴



¹⁴ Screenshot taken from surveillance video recording submitted under HPD Report Number [REDACTED].

C. The Scene.

As previously noted, the scene of the shooting was at the parking lot of the Aikahi Gardens town houses located in Kailua.¹⁵



¹⁵ <https://www.google.com/maps/@21.4271592,-157.7569849,135m/data=!3m1!1e3>

The photo below is the same photo as above but with a close up view of where the incident occurred near the intersection of Molo Street and Oko Street.¹⁶

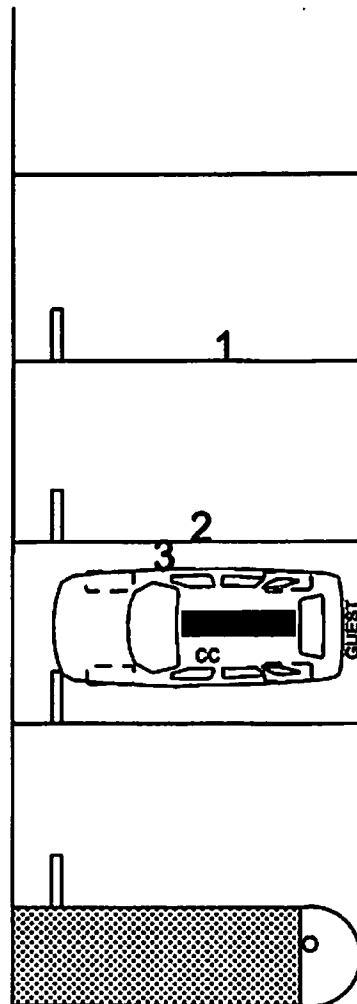


In addition, the diagram below is of the location where the PT Cruiser was parked in relationship to Molo Street and Oko Street:¹⁷

¹⁶ *Id.*

¹⁷ Diagram by HPD Evidence Specialist [REDACTED] (hereinafter, "Evidence Specialist 1").

Oko St. & Molo St.



Oko St.

Molo St.



* Not to Scale
All Measurements Are Approximate

Items Recovered:

Recovered by ES C, COPP
Marker #1 - Shorts, Sweat pants, Shoes, Cell phone
Marker #2 - Shirt, Tool bag
Marker #3 - Hat

Recovered by ES II [REDACTED]
Marker #2 - Bullet
CC - Cartridge case on the driver's seat

Evidence Specialist II
9-12-20 / 0300

D. Participants in the Event

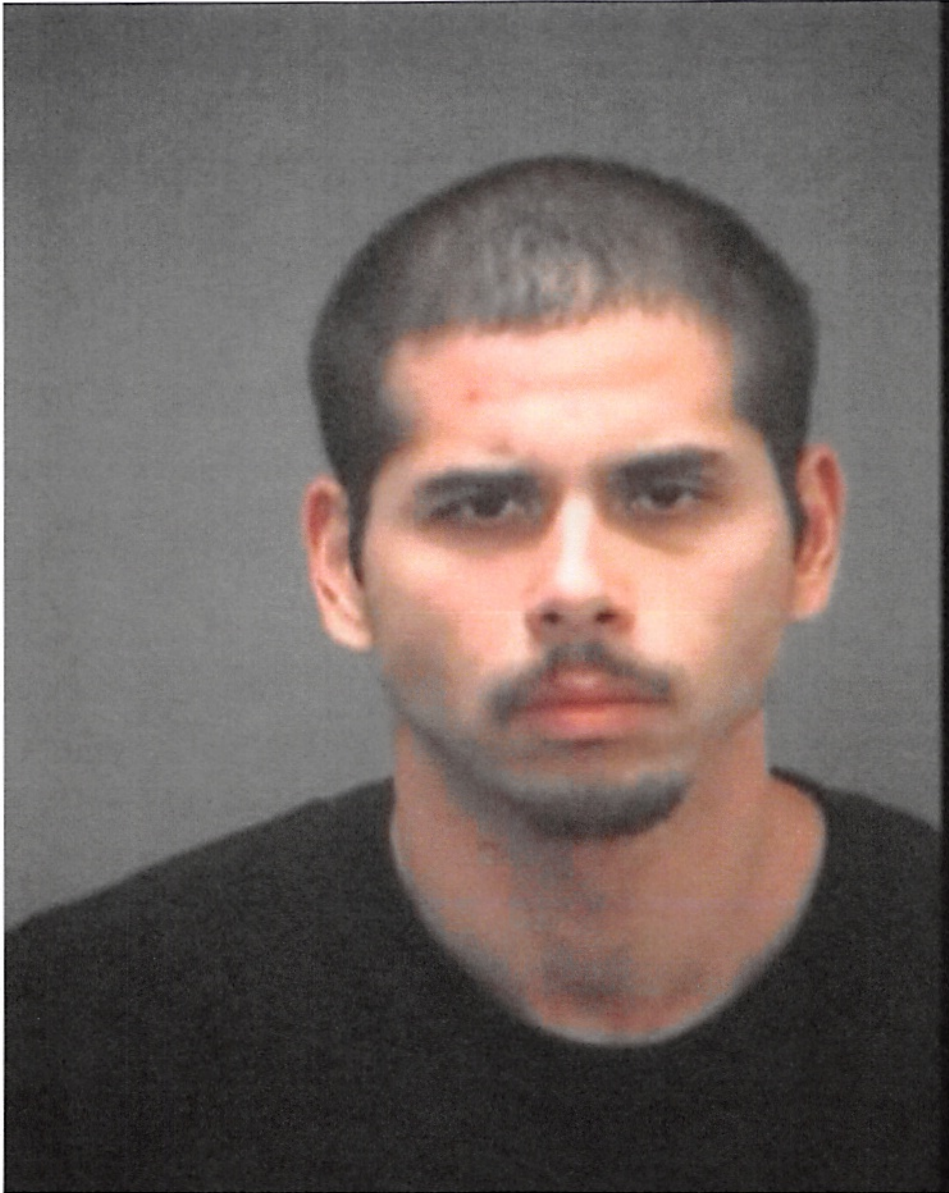
1. Pearce.¹⁸

In addition to the aforementioned noted Burglary in the First Degree conviction, Pearce also had in 2012, prior felony convictions for the offense of Promoting a Dangerous Drug in the Third Degree, in violation of **H.R.S. Section 712-1243** (2007 Repl.), a class C felony and the offense of Prohibited Acts Related to Drug Paraphernalia, in violation of **H.R.S. Section 329-43.5** (2010 Repl.), which at the time, was a Class C felony offense. He was convicted of said offenses on March 23, 2011.¹⁹

Below is a mug photograph taken of Pearce under HPD Report Number 16-102573 which documented his arrest on March 11, 2016 for a Parole Violation and Contempt of Court:

¹⁸ The information background regarding Pearce was retrieved from the PAT's computer data base system and the Hawai'i State Criminal Justice Inquiry System (CJIS).

¹⁹ See, generally, Circuit Court of the First Circuit Criminal Number 10-1-1619 (1PC101001619).



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2. Sergeant 1.²⁰

Sergeant 1 has been employed as an HPD officer since April 24, 1997. At this time of writing, he has over twenty-five (25) years of service. His assignments at HPD have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
April 24, 1997	June 15, 1998	Training
June 16, 1998	December 15, 1998	Central Receiving
December 16, 1998	October 18, 2008	District 1
October 19, 2008	October 3, 2009	District 7
October 4, 2009	December 19, 2015	District 6
December 20, 2015	September 9, 2017	Narcotics/Vice
September 10, 2017	Present	District 4

Based on the use of force records (UOF records) provided by PSO, Sergeant 1 has two (2) sustained use of force or use of deadly force investigations resulting in two (2) suspensions for one (1) day each. The suspensions occurred on October 17, 2008 and September 28, 2010. Sergeant 1 does not have a criminal record.²¹ Lastly, Sergeant 1 is a law enforcement officer as defined by H.R.S. Section 701-118 (2014 Repl.).²²

²⁰ This information, provided by HPD's Professional Standards Office (PSO), is as of November 14, 2022.

²¹ The PAT's computer data base system along with the records obtained from PSO indicate that HPD PSO submitted six (6) criminal cases involving Sergeant 1 under the following HPD Report Numbers: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The cases documented under HPD Report Numbers [REDACTED] and [REDACTED] are related and were submitted under two (2) different report numbers because there were two (2) complainants. With the exception of the case documented under [REDACTED], which the district court dismissed with prejudice on April 14, 2009 (District Court Number [REDACTED]) due to the State being not ready to proceed, the PAT declined to prosecute Sergeant 1 on the said cases based on insufficient evidence to prove case beyond a reasonable doubt.

²² "Law enforcement officer" means any public servant, whether employed by the State or county or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses."

3. Officer 1.²³

Officer 1 has been employed as an HPD officer since October 1, 2009. At this time of writing, he has over thirteen (13) years of service. His assignments at HPD have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
October 1, 2009	February 19, 2011	Training
February 20, 2011	August 6, 2011	Central Receiving Division
August 7, 2011	August 29, 2015	District 6
August 30, 2015	present	District 4

Based on the use of force records (UOF records) provided by PSO, Officer 1 has no prior sustained use of force or use of deadly force investigations. Officer 1 does not have a criminal record. Lastly, Officer 1 is a law enforcement officer as defined by **H.R.S. Section 701-118.**

E. Factual Narrative for January 6, 2020.

1. Statement by Sergeant 1.²⁴

On November 19, 2019, Pearce had not returned to the Laumaka Work Furlough Center and was therefore wanted for Escape in the Second Degree. On November 25, 2019, Sergeant 1 then received information that Pearce was possibly dating Witness 1 who may have been living in Aikahi Gardens. On November 27, 2019, Sergeant 1 generated an Escape in the Second Degree report under HPD Report Number 19-439121 in order to document Pearce's escape status and generate an Attempt to Locate status in the HPD computer system

On January 6, 2020, at about 3:00 p.m., Sergeant 1 was on duty as a part of District 4 CRU and was attired in plain clothes. He was wearing his police issued vest that had "Police" written on its front and back. He also had his HPD badge which was displayed on the right side of his belt. Officer 1 drove a marked HPD vehicle and Sergeant 1 was a passenger in the said vehicle as they made checks for Pearce at Aikahi Gardens.

Entering Aikahi Gardens, Officer 1 travelled on Oko Street. While they were heading towards the Oko Street and Molo Street intersection, Sergeant 1 observed a silver colored PT Cruiser that was parked within a marked Guest parking stall. The vehicle was parked in a manner that it would need to reverse out of the stall. As Officer 1 drove towards the PT Cruiser, Sergeant 1 noted that both the front and back

²³ This information, provided by HPD's Professional Standards Office (PSO), is as of November 14, 2022.

²⁴ The statement below was taken from Sergeant 1's report.

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passenger side windows had very dark tint, so much so that Sergeant 1 could not see into the PT Cruiser and could not tell if there were occupants within the said vehicle. As they approached to within twenty-five feet from the PT Cruiser, Sergeant 1 noticed that the rear passenger window was rolled down about two (2) inches. Officer 1 then stopped his marked police vehicle towards the rear of the PT Cruiser. At that point, Sergeant 1 saw that the rear license plate number was [REDACTED]. Sergeant 1 also observed what appeared to be a head moving around in the front driver's seat of the PT Cruiser.

Sergeant 1 exited the HPD marked vehicle and approached the rear passenger side of the PT Cruiser. As he passed the rear passenger area, Sergeant 1 noticed that the rear passenger area was unoccupied while the front driver's seat was occupied by a male. Sergeant 1 then stopped and looked through the front passenger window which was partially rolled down at about four (4) inches. While doing so, Sergeant 1 saw that the male was wearing a baseball cap on his head with the visor forward facing, a dark colored t-shirt, grey sweat pants and a camouflage type garment under the said sweat pants. Because the visor partially blocked the male's face, Sergeant 1 did not immediately recognize him.

Noticing that the male in the driver's seat was fidgeting with a key in his right hand and trying to stick the key into what appeared to be a damaged ignition of the PT Cruiser, Sergeant 1 said, "Police, what is your name." After the male responded "James", Sergeant 1 asked for his last name. The male, who then said that he was going to call "his girl" was holding a cell phone in his left hand. Sergeant 1 also noticed that the male then placed his right hand by his right thigh, near the pocket area of his sweat pants. Upon seeing so, Sergeant 1 alerted Officer 1, who at this point was on the driver's side of the PT Cruiser, that Pearce was reaching by his side. Sergeant 1 also noted that he then recognized the male in the driver's seat to be Pearce.

Observing Officer 1 open the driver's side door of the PT Cruiser. Sergeant 1 then went to the driver's door by going around the PT Cruiser's trunk area. As he was going around the trunk area, Sergeant 1 observed that Officer 1 was physically engaging with Pearce by trying to pull him out of the PT Cruiser. As Officer 1 was between Pearce and himself, Sergeant 1 could not assist Officer 1. As a result, Sergeant 1 then tried to open the rear driver's side door of the PT Cruiser. Realizing that the rear driver's side door was locked, Sergeant 1 was able to reach to the open driver's side door control panel to unlock the rear driver's side door. Sergeant 1 then opened the rear driver's side door and leaned into the rear seat area where he pulled at Pearce's right arm to gain control of him.

Officer 1 and Sergeant 1 both used verbal commands and physical force in their attempt to arrest Pearce. However, Pearce kept resisting their efforts to do so. While they were struggling with Pearce, Sergeant 1 then observed a female who was later identified as Witness 1 near the front hood of the PT Cruiser. As Witness 1 then began to move towards the front driver's door area of the PT Cruiser, Sergeant 1 exited the rear area of the said vehicle. Witness 1, who appeared to have just gotten out of the shower, stated, "Leave him alone."

As Witness 1 approached the driver's side door of the PT Cruiser, Sergeant 1 pushed her away. Sergeant 1 then went back into the rear driver's seat of the vehicle to assist in Officer 1's attempt to apprehend Pearce. During the struggle, Sergeant 1 then heard Officer 1 state, "He's got a gun." As a result, Sergeant 1 then punched the right side of Pearce's head several times. Officer 1 then stated, "I'm losing him ... shoot him, shoot him." Upon hearing so, Sergeant 1 then drew his firearm out with his right hand. However, Sergeant 1 realized he did not have a clear shot at Pearce because Officer 1 and Pearce were entangled in the driver's seat of the PT Cruiser.

Sergeant 1 then observed Pearce creating space between himself and Officer 1 by moving towards the front passenger seat. Sergeant 1 also saw that Pearce's right hand was next to his right front pocket of the camouflage garment that was underneath his sweat pants. It appeared that Pearce was trying to pull something out from the said pocket. Fearing for his life and Officer 1's life, Sergeant 1 then shot at the back area of Pearce several times. Pearce then leaned back into the driver's seat and his right hand was still moving next to his right thigh area.

Sergeant 1 then noticed the front passenger door of the PT Cruiser opening. He then saw Witness 1 screaming and crying while appearing to pull Pearce out of the vehicle. As a result, Sergeant 1 gave several verbal commands to Witness 1 to get away from the vehicle. He then heard Officer 1 yell out "moving" which Sergeant 1 took to mean that Officer 1 was going to address Witness 1. As such, Sergeant 1 said, "Go" and held cover of Pearce while Officer 1 moved towards Witness 1. After Officer 1 reached Witness 1, Sergeant 1 then announced "moving." While keeping cover of Pearce, Sergeant 1 then moved to the front passenger side of the PT Cruiser to assist Officer 1. Sergeant 1 also notified dispatch of the shooting and informed dispatch to expedite an ambulance to their location.

After Officer 1 secured Witness 1, Sergeant 1 started to search the area where the suspect was reaching. He checked the camouflaged garment's front right pocket and retrieved what appeared to be a black semi-automatic handgun. Attempting to render the apparent handgun safe, Sergeant 1 checked the bottom of where the magazine would have been inserted. While doing so, Sergeant 1 then noticed that there was a hatch where a CO2 cartridge would be inserted and realized that the "handgun" was either a pellet gun or airsoft gun. Sergeant 1 then placed the item on the roof of the PT Cruiser.

Sergeant 1 then pulled Pearce out of the vehicle in order to provide medical treatment for him. After handcuffing Pearce, Sergeant 1 applied chest compressions while Officer 1 went to his police vehicle to retrieve medical equipment. Sergeant 1 then cut Pearce's shirt off so that they could check his wounds and assess what treatment was needed for him. After rolling Pearce on his stomach, Sergeant 1 noticed gunshot wounds to Pearce's back. After Officer 1 then placed gauze on his wounds, Officer 1 and Sergeant 1 rolled Pearce onto his back again. They then gave Pearce chest compressions until other officers arrived to assist.

2. Statement by Officer 1.²⁵

On January 6, 2020, at about 3:00 p.m., Officer 1 was driving Sergeant 1 in the Aikahi Gardens area to look for Pearce. Officer 1 stated that he was driving a marked police vehicle (HPD 1667) and was attired in plain clothes with a ballistic vest having "Police" markings on its front and back and with his HPD badge and identification on a lanyard around his neck. Officer 1 stated that he decided to check the area because he had seen Witness 1's vehicle parked in the guest stalls area in the past but had never seen anyone within or near the PT Cruiser. He also noted that from seeing the vehicle parked there in the past, he noticed that the PT Cruiser had dark tinted windows except for the rear window.

As they got to the area of Oko Street and Molo Street, Officer 1 observed Witness 1's vehicle. Pulling up behind the PT Cruiser, Officer 1 observed a male seated in the driver's seat of the car. Sergeant 1 and Officer 1 then exited their vehicle and approached the PT Cruiser. While Sergeant 1 approached the passenger side of the PT Cruiser, Officer 1 approached the driver's side of the vehicle and noticed that the driver's side door was cracked open.

Sergeant 1 initiated contact with the male in the drivers' seat of the PT Cruiser by asking him for his identity. The male at first refused to answer and then stated that his name was "James". At that point, Officer 1 got to the driver's side door that was ajar. Officer 1 could see that the male was holding a cellular phone in his left hand and was trying to hide something next to his right leg and center console with his right hand. Officer 1 then was able to see the male's face and he then positively identified the male as Pearce.

Upon positively identifying Pearce, Officer 1 pulled open the already ajar driver's side door and stated, "Dallas, it is over, give it up." Officer 1 then observed Pearce digging his right hand into his right pocket vigorously. In addition, Officer 1 also heard Sergeant 1 announce that Pearce was digging into his pocket. Upon making the said observations and based upon his training and experience, Officer 1 believed that Pearce was attempting to create distance between himself and Officer 1 in order to draw and utilize a weapon. As a result, Officer 1 drew his firearm, pointed the same at Pearce and ordered him to show his hands. Pearce refused to comply with the order while saying that he wanted to text his girlfriend and while continuing to pull something out of his pocket with his right hand.

Believing that Pearce posed an immediate threat, Officer 1, who still had his firearm in his right hand, punched Pearce in the face with his left hand in order to disorient him. Again, using his left hand, Officer 1 then grabbed hold of Pearce's right hand which was at that point, deep into his right pocket. While trying to pry his right hand from Officer 1's grip and also trying to get into the front passenger seat, Pearce

²⁵ The statement below was taken from Officer 1's report.

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was pulling Officer 1 into the PT Cruiser. Continuing to control Pearce's right hand, Officer 1 found himself on top of Pearce. Officer 1 then looked down towards Pearce's right pocket of what appeared to be his sweat pants and saw in Pearce's right hand a black back strap, trigger mechanism and magazine of what appeared to be a pistol. Upon making the said observation, Officer 1 yelled, "He has a gun" twice to Sergeant 1.

Pearce began to struggle more for control of his right hand and used his leverage inside the car to break his right hand from Officer 1's grip. As a result, Officer 1 realized that he was at a disadvantage in terms of maintaining control of Pearce's right hand. He also believed that if Pearce were to gain control of what appeared to be a firearm in his right pants pocket, he would be able to shoot Officer 1 in a vital area of his body. Losing his grip of Pearce's right hand, Officer 1 yelled to Sergeant 1 to shoot Pearce.

Officer 1 broke contact with Pearce's right hand as at least one gunshot was fired by Sergeant 1. Pearce looked at Officer 1, yelled, "You fucker" and continued to try and draw what appeared to be a pistol from his right pants pocket. Fearing for his life and Sergeant 1's life, Officer 1 then pushed away from Pearce to exit the PT Cruiser and discharged one shot at Pearce. Officer 1 then saw Pearce slump in the passenger seat as a female who was later identified as Witness 1 opened the front passenger side door and began grabbing Pearce.

Officer 1 ordered Witness 1 to stay away as she continued to grab Pearce who was still believed to be in possession of what appeared to be a pistol. As a result, Officer 1 moved to the passenger side of the vehicle to control Witness 1 who refused to follow Officer 1's instructions. Witness 1 then placed her hands behind her back as Officer 1 tried to control her hands. Officer 1 finally put Witness 1 down to the ground and was able to handcuff her.

Officer 1 further noted that he notified dispatch that shots were fired and requested for an expedited ambulance to go to the scene. Sergeant 1 took possession of what appeared to be a firearm and pulled Pearce out of the car. Sergeant 1 and Officer 1 then began to administer first aid to Pearce.

3. Video Surveillance.²⁶

The photograph below shows Pearce walking to the PT Cruiser.

²⁶ All of the below screenshots were taken from the video surveillance recording recovered under HPD Report Number [REDACTED]. The video surveillance recording does not show the actual shooting incident which would have been hidden from the camera view regardless due to the structure blocking the driver's side of the PT Cruiser. There are also gaps in the camera recording. Per Detective 1, the surveillance video was motion activated by the movement of the palm trees located near the camera was activating the video, and not by the activity near the PT Cruiser.



The next photograph depicts the HPD vehicle operated by Officer 1, stopping behind the PT Cruiser.



The next four photographs show Sergeant 1: 1) exiting the passenger side door of the HPD vehicle to approach the PT Cruiser; 2) standing outside of the front passenger side of the PT Cruiser; 3) running to the back of the PT Cruiser; 4) and running behind the PT Cruiser to get to the driver's side of the PT Cruiser.









The next sequence of photographs depict: 1) Sergeant 1 pulling Pearce out of the vehicle while Officer 1 is at the trunk of the HPD vehicle; 2) Sergeant 1 and Officer 1 rendering aid to Pearce; 3) Sergeant 1 putting something on top of the roof of the PT Cruiser; 4) back-up officers arriving to assist; 5) Honolulu Fire Department personnel running to give first aid to Pearce; and 6) an ambulance arriving at the scene.









4. Statement by Witness 1.²⁷

On January 7, 2020, HPD Detective [REDACTED] (hereinafter, "Detective 1") and HPD Detective [REDACTED] (hereinafter, "Detective 2") conducted a recorded interview with Witness 1. Witness 1 said that Pearce was an on-and-off boyfriend and that she knew that he was an escapee sometime during Thanksgiving (2019) after watching the news. As a result, she confronted Pearce about his status and told him that he could not stay with her. However, she did allow him to take a shower at her house on Oko Street about once a week. Witness 1 further said that Pearce told her that he did not want to turn himself in until after the holidays and his birthday, which was sometime in January.

On January 6, 2020, Pearce called her and said that he was outside of her residence. He wanted to take a shower but he could not since she was already taking a shower. As a result, Witness 1 gave Pearce the keys to her PT Cruiser and told him to wait in her car. After Witness 1 got out of the shower, she received a phone call from Pearce who told her that someone was going to shoot him. As a result, she looked out the window and saw commotion, which she described as being movement within her PT

²⁷ The information below was taken from a recorded statement of Witness 1, taken by Detective 1 and Detective 2.

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Cruiser which was shaking. Witness 1 then ran outside and was yelling stop towards everyone.

After running outside, Witness 1 observed Pearce in the PT Cruiser's driver's side. She also saw two other males, one who was on top of Pearce and one who was in the back of the vehicle. Witness 1 stated that she knew both males were police officers because there was a police car parked behind the PT Cruiser. Witness 1 further said that both males were hitting and beating Pearce who kept struggling with the officers and appeared to be trying to free himself from them. She also said that she could not see Pearce's hands and did not know why he kept struggling with the officers. Stating that the police were not saying anything to Pearce, Witness 1 also said that one of the two officers then told her to back off and pushed her away after she yelled at everyone to "stop."

While standing in a grassy area, Witness 1 then heard three gunshots and ran to the front passenger side of her PT Cruiser. She opened the passenger door, grabbed Pearce and held him. She said that the officers then grabbed her, threw her on the ground and handcuffed her. The officers then put her in the police car.

Witness 1 stated that Pearce did not own a gun but had seen him with a toy BB gun. She said that the BB gun resembled a pistol and had an orange tip to show that it was not a real gun. When shown a photograph of the gun that was recovered from Pearce's pocket, she said that the gun that she had seen on Pearce resembled the gun in the photograph except that in the photograph, the tip was black. She also acknowledged that the gun depicted in the photograph resembled a real gun.

5. Statements by [REDACTED].²⁸

[REDACTED] (hereinafter, "Witness 2") provided written and audio statements to Detective 1. As to his written statement, Witness 2 said that he was outside of his condominium when he heard yelling. He then observed a police officer who was partially in a vehicle and who was wrestling with someone who was in the driver's seat of the said vehicle. Witness 2 said that he then observed a female. The female was yelling at the aforementioned officer to leave the person in the driver's seat alone.

Witness 2 said that he saw another officer who was trying to assist the other officer and who was also trying to keep the female away from the struggle. He said that both officers told the female to stay away and the male in the driver's seat of the car to get out and "stop." The struggle lasted for about thirty (30) seconds and the female then moved to the other side of the car. After the struggle intensified a little, Witness 2 heard the female say, "Don't shoot him." Witness 2 then saw what he assumed to be a

²⁸ The information below was taken from: 1) a 252 statement written and signed by Witness 2; and 2) a recorded statement of Witness 2, taken by Detective 1 and Detective 2.

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taser gun come out. He then heard one (1) to two (2) gunshots. He also saw what appeared to be another gun and heard another one (1) to two (2) shots.

Hearing the female scream, Witness 2 then saw the officer who had been in the vehicle, come out of the vehicle and handcuff her. Both officers then opened the passenger side door of the vehicle and took the male who had been seated in the vehicle out. The officers did a quick search of the said male and treated him.

In his recorded statement, Witness 2 confirmed that on January 6, 2020, at about 3:15 p.m., he was outside of his condominium when he heard a female yelling and saw commotion. Witness 2 then saw a PT Cruiser and an officer within the vehicle who was yelling "stop" and "get out of the car." Witness 1 said he was about twenty-five (25) yards away from the front of the silver PT Cruiser when he made the observations. He also noted that he had seen the PT Cruiser in the past frequently near his condominium. Witness 2 also said that he observed a marked police vehicle parked behind the PT Cruiser.

Witness 2 stated that the female was on the driver's side of the PT Cruiser and within a few feet from the car. She was yelling, "Don't do that" to the officers and appeared to be interfering with them. Meanwhile, Witness 2 observed a police officer in the driver's side of the PT Cruiser. The said officer was wrestling with someone in the PT Cruiser and trying to get that person out of the vehicle while another police officer who was outside of the vehicle was trying to assist. Per Witness 2, the female kept coming back towards the car and the officer who was outside of the vehicle kept trying to get her to move back so that he could focus to what was happening in the PT Cruiser.

Per Witness 2, the female who kept saying, "Leave him alone, don't do that", was interfering with the police officers. The officer outside of the vehicle had to push her back and tell her to stay back twice. Witness 2 could also hear the police officer in the PT Cruiser saying, "Stop, stop" and "Get out of the car."

The commotion within the car started to escalate. The female then went around to the passenger side of the vehicle and at that point, Witness 2 saw both officers in the car wrestling with the person within the PT Cruiser. After hearing the female yell, "Don't shoot him," Witness 2 saw what appeared to be a gun or a taser. Witness 2 then heard about two (2) shots. He then saw another gun and heard approximately two (2) more shots.

After hearing the shots, Witness 2 saw the police officer who was initially in the PT Cruiser, come out of the said vehicle and handcuff the female. The officer then put her into the police vehicle and came back to the PT Cruiser. Both police officers then went to the passenger side of the vehicle. One of the officers pulled out a black pistol from within the PT Cruiser and left the item on top of the vehicle. Both officers then pulled a male out of the PT Cruiser and began to check his wounds and administer first aid.

6. Statement by [REDACTED].²⁹

[REDACTED] (hereinafter, "Witness 3") provided a written statement to the police. Witness 3 wrote that on January 6, 2020, at about 3:00 p.m. to 3:15 p.m., he heard a female scream. Pape saw a female and two (2) police officers outside of a gray colored vehicle. Witness 3 saw that the officers had their guns drawn while the female was screaming "Don't shoot him" a number of times to them.

Witness 3 said that he heard the police officers continue to yell "Get out of the car" and "Keep your hands visible." He then heard "pop, pop and pop." The officers then began to give CPR to a person.

7. Post Shooting Events.

Following the shooting, other officers arrived at the scene and assisted in providing medical attention to Pearce.³⁰ An ambulance then arrived and EMS and Honolulu Fire Department personnel continued to administer first aid to Pearce.³¹ The ambulance then transported Pearce to the Adventist Health Castle Hospital where Dr. [REDACTED] pronounced him dead on January 6, 2020 at about 4:06 p.m.³² Subsequently, on January 6, 2020, at about 8:20 p.m., Memorial Transport of Hawaii transported Pearce's body to the Office of the Medical Examiner, City and County of Honolulu.

F. Pearce's Cause of Death, Recovered Evidence, and Toxicology Results.³³

On January 7, 2020, at about 9:00 a.m., FP performed an autopsy on Pearce. In his examination, FP found that Pearce had: 1) a penetrating gunshot wound to his upper left back (hereinafter, "gunshot wound 1"), located eleven (11) inches below the top of his head and eight and a half (8.5) inches left of his posterior midline; 2) a penetrating gunshot wound to his left arm (hereinafter, "gunshot wound 2"), located twelve and a half (12.5) inches below the top of his head and ten (10) inches left of the posterior midline; 3) a penetrating gunshot wound to his back hereinafter, "gunshot wound 3"), located fifteen and a half (15.5) inches below the top of his head and seven and a half (7.5) inches left of his posterior midline; 4) a penetrating gunshot wound to his back (hereinafter, "gunshot wound 4"), located seventeen (17) inches below the top

²⁹ The information below is taken from a 252 statement written and signed by Witness 3.

³⁰ See, generally, HPD Report Number [REDACTED].

³¹ See, report by HPD Officer [REDACTED].

³² See, report by HPD Officer [REDACTED].

³³ The facts in this section are from Forensic Pathologist Dr. [REDACTED]'s (hereinafter, "FP's") report except when otherwise noted.

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of his head and three and a half (3.5) inches right of the posterior midline; and 5) an incipient gunshot wound to his left lower abdomen (hereinafter, "gunshot wound 5"), located thirty one (31) inches below the top of his head and six and a half (6.5) inches left of the anterior midline abdomen.

As to gunshot wound 1, FP noted that the skin surrounding the entrance wound revealed searing, soot within the wound, and a surrounding muzzle imprint. The examination showed that the wound path was sequentially: penetration of the skin, soft tissue, the 3rd and 4th left ribs before lodging in Pearce's left anterior chest. The wound path trajectory was oriented from back to front, from left to right and slightly downward. The bullet was recovered from Pearce's superior-anterior left chest. HPD Criminalist [REDACTED] (hereinafter, "Evidence Specialist 2") recovered the bullet and submitted the same into evidence under HPD Report Number [REDACTED].³⁴

With respect to gunshot wound 2, FP noted that there was no evidence of close-range firing. He stated that the wound path was sequentially: penetration of the skin, soft tissue and the upper lobe of the left lung and bone before lodging in his inferior left anterior chest. He stated that the wound path trajectory was from back to front, from left to right and slightly downward. The bullet was recovered from Pearce's left anterior chest. Evidence Specialist 2 recovered the bullet and submitted the same into evidence under HPD Report Number [REDACTED].³⁵

In regard to gunshot wound 3, FP stated that examination of the skin revealed gunpowder stippling surrounding the said wound. FP wrote that the wound path was sequentially: penetration of the skin, soft tissue, the right 6th rib, the upper lobe of the right lung and soft tissue before lodging in the right anterior chest. He said that the wound path trajectory was from back to front, from left to right and upward. The bullet was recovered from Pearce's superior-anterior left chest. Evidence Specialist 2 recovered the bullet and submitted the same into evidence under HPD Report Number [REDACTED].³⁶

As to gunshot wound 4, FP stated that examination of the skin surrounding the said wound revealed soot within the wound and gunpowder stippling surrounding the wound. He noted that the wound path was sequentially: penetration of the skin, soft tissue, the right 6th rib, the upper lobe of the right lung and soft tissue before lodging in the right anterior chest. The bullet was recovered from the right side of Pearce's chest. Evidence Specialist 2 recovered the bullet and submitted the same into evidence under HPD Report Number [REDACTED].³⁷

With regard to gunshot wound 5, FP mentioned that the examination of the skin surrounding the wound revealed no evidence of close range firing. He said that the

³⁴ See, report by Evidence Specialist 2.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

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wound path was sequentially: penetration of the skin and soft tissue. FP further stated that the wound path was oriented from front to back and slightly left to right. No projectile was recovered.

Lastly, FP noted that Pearce had abrasions to his head, forehead and elbows and bruises to his bilateral wrists.

FP opined that the cause of death of Pearce was multiple gunshot wounds.

Lastly, a toxicology done on Pearce confirmed the presence of methamphetamine (800 nanograms per milliliter) and amphetamine (90 nanograms per milliliter) in his blood.

G. Recovered Evidence.

Personnel from HPD SIS recovered the following relevant items that were submitted into evidence under HPD Report Number [REDACTED].³⁸

HPD Item Number	Description	Where Recovered
2	One (1) magazine containing seventeen (17) cartridges.	From Officer 1 following the shooting
3	One (1) magazine containing nineteen (19) cartridges.	Same as Item #2
4	One (1) Glock 19X Austria pistol.	From HPD Officer [REDACTED] who received item from Officer 1
5	One (1) cartridge recovered from the chamber of Item #4.	Same as Item #4
6	One (1) magazine containing seventeen (17) cartridges recovered from Item #4.	Same as Items #4
12	One (1) bullet,	On parking lot outside the passenger door of the PT Cruiser
13	One (1) cartridge case	On driver's seat of the PT Cruiser
14	One (1) Glock magazine containing seventeen (17) cartridges	From HPD Officer [REDACTED] who received item from Sergeant 1

³⁸ Evidence reports by Evidence Specialist 1 and Evidence Specialist 2.

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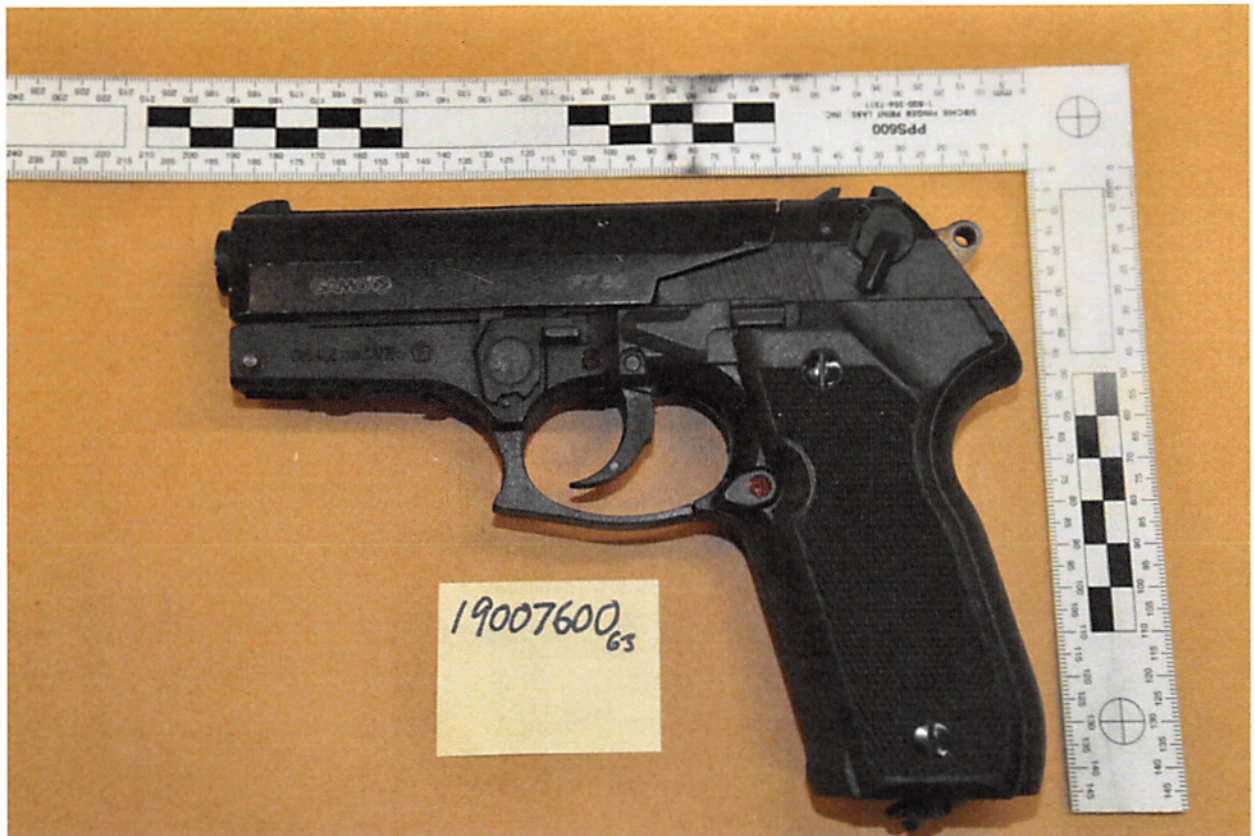
HPD Item Number	Description	Where Recovered
15	One (1) Glock 19 Gen 4 handgun with one (1) 9mm cartridge from receiver and one (1) Glock magazine with thirteen (13) 9mm cartridges.	Same as Item #14
16	One (1) Glock magazine with seventeen (17) 9mm cartridges	Same as Item #14
17	One (1) GAMO PT80 handgun-caliber 4.5 mm (.177)	From HPD Officer [REDACTED]
24	Four (4) slugs/bullets labeled as follows; left inferior chest, left superior chest, right inferior chest, and right superior chest	From Pearce's body during autopsy
25	One (1) cartridge case 9mm	From center of the trunk floor of PT Cruiser
26	One (1) cartridge case 9mm	From trunk floor, right side of PT Cruiser
27	One (1) cartridge case 9mm	From rear seat hitch nook of PT Cruiser
28	One (1) cartridge case 9mm	From floor at the right rear seat area

H. Relevant Photographs of Evidence in this Case.

1. Replica Handgun that Pearce was Carrying in Pocket.³⁹



³⁹ Photographs by Evidence Specialist 1.



2. Shell Casing in Front Driver's Seat.

The photograph immediately below is the shell casing left on the front driver's seat of the PT Cruiser.⁴⁰ The casing was later identified as not being able to be eliminated from Officer 1's firearm, but being eliminated from Sergeant 1's firearm.⁴¹



⁴⁰ *Id.*;

⁴¹ *Id.*; See, report by SIS Criminalist [REDACTED] (hereinafter, "Criminalist 1").

3. Photographs of rear/passenger trunk area of the PT Cruiser.⁴²



⁴² Photographs by Evidence Specialist 1.



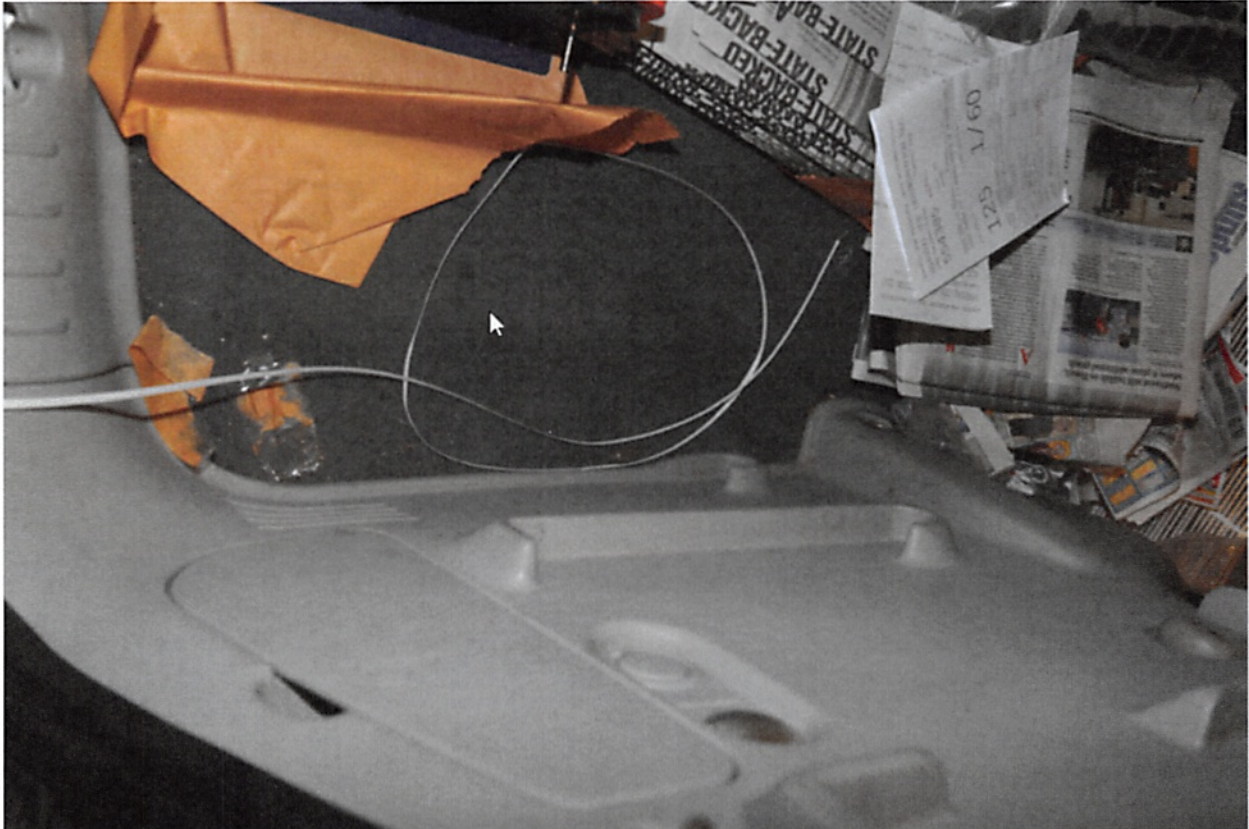
4. Photographs of Shell Casings from Firearm Used by Sergeant 1.⁴³

The four following photographs are the shell casings left on the back passenger/trunk area of the PT Cruiser and the said casings were all determined to have been fired from Sergeant 1's firearm.⁴⁴



⁴³ Photographs by Evidence Specialist 2.

⁴⁴ *Id.*; See, report by Criminalist 1.





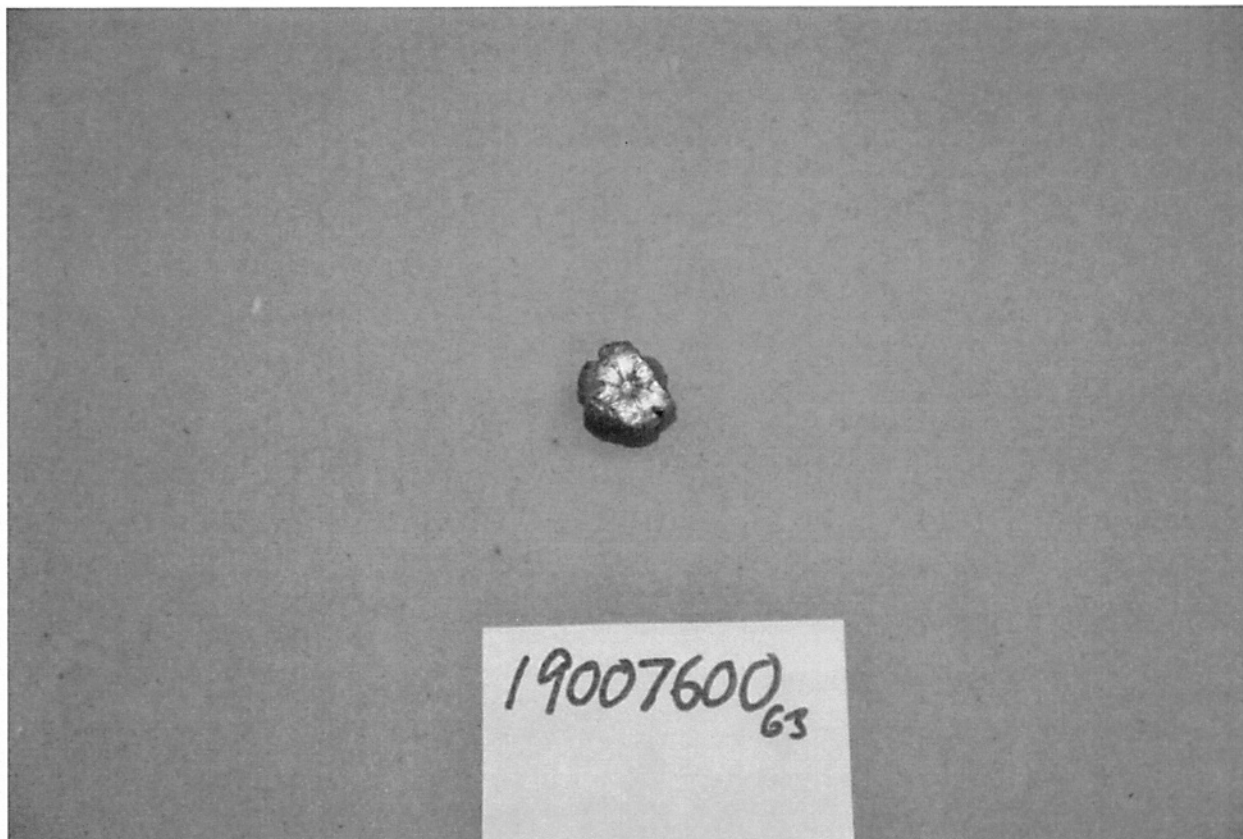


5. Photographs of Bullet/Slug Located Outside of PT Cruiser.⁴⁵

The photographs below are of the bullet located outside of the PT Cruiser and a close up of the bullet.



⁴⁵ Photographs by Evidence Specialist 1.



I. Scientific/Forensic Evidence.

1. Gunshot Residue Collection Kit.⁴⁶

Gunshot residue (GSR) collection kits were used on the hands of Sergeant 1, Officer 1, and Pearce.⁴⁷ Criminalist 2 analyzed the kits. Her findings and conclusions are as follows:

Sergeant 1:	Nine (9) particles characteristic of GSR confirmed and three (3) particles consistent with GSR
Officer 1:	Three (3) particles characteristic of GSR confirmed and one (1) particle consistent with GSR
Pearce:	Ten (10) particles characteristic of GSR detected

The presence of GSR on a person's hands indicates one or more of the following⁴⁸:

- 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.

Criminalist 2 further noted that particles classified as "characteristic of GSR" contain the elements lead-barium-antimony while particles "consistent with GSR" contain only two (2) of those three (3) elements.

2. Firearms and Tool Marks.⁴⁹

Criminalist 1 analyzed the relevant firearms and ammunition submitted into evidence under HPD Report Number [REDACTED] as Item Numbers 4, 12, 13, 15, 18, 24, and 25-28. She concluded that the service firearm belonging to Sergeant 1 (Item Number 4) and to Officer 1 (Item Number 15) were operable.

Criminalist 1 determined that the cartridge casing recovered from the front seat of the PT Cruiser could not be identified or eliminated as having been fired from Officer 1's pistol, but was eliminated as being having been fired from Sergeant 1's firearm. As to the four (4) casings (Item Numbers 25-28) located in the backseat/trunk area of the PT Cruiser, they were identified as having been fired from Sergeant 1's pistol.

⁴⁶ The facts in this section are from HPD SIS Criminalist [REDACTED] (hereinafter, "Criminalist 2") except as otherwise noted.

⁴⁷ See, Reports by Evidence Specialist 1 and Evidence Specialist 2.

⁴⁸ Report by Criminalist 2.

⁴⁹ The facts in this section are from Criminalist 1.

As to the recovered bullet located outside of the PT Cruiser (Item Number 13), Criminalist 1 identified the item as having been fired from Sergeant 1's firearm. With respect to the four bullets recovered from Pearce's body, Criminalist 1 determined the following: a) the bullets recovered from Pearce's left anterior chest (gunshot wound 1), inferior left anterior chest (gunshot wound 2) and right anterior chest (gunshot wound 4) were fired from Sergeant 1's firearm; and b) the bullet recovered from Pearce's superior-anterior left chest (gunshot wound 3) was fired from Officer 1's firearm.

III. LEGAL PRINCIPLES.

A. Definitions.

"Believes" means reasonably believes.⁵⁰

"Bodily injury" means physical pain, illness, or any impairment of physical condition.⁵¹

"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.⁵²

"Force" means any bodily impact, restraint, or confinement, or the threat thereof.⁵³

"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.⁵⁴

"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.⁵⁵

⁵⁰ Hawai'i Revised Statutes (hereinafter, "H.R.S.") Section 703-300 (2014 Repl.).

⁵¹ H.R.S. § 707-700 (2014 Repl.).

⁵² H.R.S. § 707-300.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ H.R.S. § 707-700.

B. Potential defenses in this matter.

Two H.R.S. Chapter 703 (2014 Repl.) justification defenses apply to this case.⁵⁶ Each is referenced below:

1. Use of Force in Self-Protection.

H.R.S. Section 703-304 (2014 Repl.) 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.

.....

- (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:

⁵⁶ H.R.S. Section 703-301(1) (2014 Repl.) states, "In any prosecution for an offense, justification, as defined in [sections 703-302](#) through [703-309](#), is a defense."

- (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? Secondly, was the use of deadly force justified?⁵⁷

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.⁵⁸ 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.⁵⁹

2. Use of Force for the Protection of Other Persons.

H.R.S. Section 703-305 (2014 Repl.) states in relevant part:

- (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:

⁵⁷ HAWJIC 7.01A.

⁵⁸ HAWJIC 7.01A

⁵⁹ HAWJIC 7.01A

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- (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.

The use of deadly force in the defense of others involves the consideration of two issues. First, did the actor use deadly force? Secondly, was the use of deadly force justified?⁶⁰

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.⁶¹ 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.⁶²

IV. Analysis.

A. Use of Deadly Force in Self-Protection.

The first question is whether Sergeant 1 and Officer 1 were legally justified in using deadly force in self-protection as both stated that they shot Pearce to protect themselves from Pearce whom they believed was reaching for a firearm in his right pocket area. This question involves a two-part inquiry: 1) Did Sergeant 1 and Officer 1 use deadly force; and 2) Was their use of deadly force justified?⁶³

As to the first question, both Sergeant 1 and Officer 1 stated they intentionally shot at Pearce. As intentionally shooting at someone constitutes the use of deadly force, it is not disputed that they used deadly force when they shot him.

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

⁶⁰ HAWJIC 7.02A.

⁶¹ HAWJIC 7.02A.

⁶² HAWJIC 7.02A.

⁶³ HAWJIC 7.01A.

First of all, as law enforcement officers who were trying to arrest Pearce for Escape in the Second Degree, Sergeant 1 and Officer 1 were under no duty to retreat.⁶⁴

Secondly, as to Sergeant 1, under the circumstances that existed based on Sergeant 1's belief, it was objectively reasonable that he used deadly force to protect himself from death or serious bodily injury when he discharged his firearm at Pearce. In Sergeant 1's report, he described a scene of chaos as they tried to arrest Pearce. As they approached the PT Cruiser, Sergeant 1 spoke to Pearce to ascertain his identity. Pearce said he wanted to call his "girl" and started to reach for his right pocket. After Sergeant 1 then announced to Officer 1 what Pearce was doing, Officer 1 opened the front driver's seat door and physically engaged with Pearce.

Sergeant 1, then quickly ran around the back of the car and tried to assist Officer 1 who was trying to pull Pearce out of the PT Cruiser. Because Officer 1 was in his way, Sergeant 1 had to unlock the back driver's side door to help pull Pearce out of the vehicle. Pearce, however, kept resisting and both Sergeant 1 and Officer 1 could not control Pearce's right arm. However, Witness 1 then approached the PT Cruiser and yelled "leave him alone." As a result, Sergeant 1 had to get out of the said vehicle and push her away from the vehicle. He then went back into the PT Cruiser and while trying to control Pearce, Officer 1 then alerted to Sergeant 1 that Pearce had a firearm.

As a result, Sergeant 1 punched Pearce several times but then heard Officer 1 state that he was losing grip of Pearce. After Officer 1 then told Sergeant 1 to shoot Pearce, Sergeant 1 pulled out his firearm but could not shoot Pearce because he did not have a clear shot. Noticing that Pearce was then creating distance between himself and Officer 1 and also seeing Pearce's right hand reaching into his pocket and appearing to pull something out, Sergeant 1 then finally discharged his firearm. Sergeant 1 later pulled out what appeared to be a firearm from Pearce's right pocket after the shooting.

As such, based on 1) Pearce's action of reaching into his pocket with his right hand and appearing to try and pull something out from within; 2) Officer 1's announcement to Sergeant 1 that Pearce had a gun; 3) Sergeant 1's and Officer 1's inability to control Pearce's right arm; 4) Pearce's actions of pulling away from Officer 1 in order to create distance between himself and Officer 1; and 5) Sergeant 1's proximity to Pearce as they were both within the PT Cruiser, Sergeant 1 had a very reasonable belief that Pearce was going to shoot him and either kill him or cause serious bodily injury to him.

⁶⁴ HAWJIC 7.01A, as modified, states in relevant part:

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

Thirdly, as to Officer 1 and under the circumstances that existed based on Officer 1's subjective belief, it was objectively reasonable that he used deadly force to protect himself from death or serious bodily injury when he shot Pearce. Here, Officer 1 observed Pearce, who was within the PT Cruiser, trying to pull something out from his right pocket. Upon seeing this, Officer 1 punched Pearce to disorient him and then reached and tried to control Pearce's right hand. As he was on top of Pearce in the PT Cruiser, Officer 1 then saw in Pearce's right hand, the black back strap, trigger mechanism and magazine of what appeared to be based on Officer 1's training and experience, a pistol. Although the "pistol" was later determined to be a replica firearm, as the photographs of the recovered "pistol" showed, the "pistol" significantly resembled a firearm.

Officer 1 then started to lose grip and control of Pearce's right hand. As Officer 1 was in the vehicle along with Pearce and in obvious close contact with him, he had a reasonable belief that if he had lost control of Pearce's right hand and body, he would not have been able to retreat and Pearce would have easily shot him. Because they were in such close proximity to each other, Officer 1 also had a reasonable belief that he would have suffered death or serious bodily injury from being shot. Officer 1 finally discharged his firearm at Pearce after hearing a gunshot and Pearce say "you fucker" while pulling himself out of the PT Cruiser.

As a result, this investigation finds that both Sergeant 1 and Officer 1 were justified in using deadly force in self-protection when they shot Pearce.

B. Sergeant 1's Use of Deadly Force for the Protection of Other Persons.

Here, Sergeant 1 also noted that he shot Pearce to protect Officer 1 who was in the front seat of the PT Cruiser wrestling with Pearce and trying to gain control of him. As such, the defense of others when deadly force is also applicable here to Sergeant 1. The Use of Deadly Force for the Protection of Other Persons defense involves the consideration of two questions: 1) Did the actor use "deadly force;" and 2) Was the use of deadly force justifiable?⁶⁵

As to the first question, as explained hereinabove, it is uncontroverted that Sergeant 1 used deadly force when he intentionally shot Pearce.

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

⁶⁵ HAWJIC 7.02A.

necessary shall be determined from the viewpoint of the reasonable person in the actor's position under circumstances of which the actor was aware or as the actor reasonably believed them to be when the deadly force was used. The actor's belief that the use of deadly force was immediately necessary may be mistaken, but reasonable.

Officer 1, the third person here, was under no duty to retreat as he was employed and on duty as a law enforcement officer as he tried to arrest Pearce for being an escapee.

Next, the facts support the conclusion that Sergeant 1's use of deadly force was justifiable to protect Officer 1. As already noted hereinabove, under the circumstances that Sergeant 1 believed existed at the time, Officer 1, who was losing control of Pearce's right hand as Pearce was reaching for what appeared to be a firearm in his right front pants pocket, would have been justified in using deadly force to protect himself from death or serious bodily injury. In fact, Officer 1, who already said that Pearce had a gun, announced to Sergeant 1 that he was losing control of Pearce and then told Sergeant 1 to shoot Pearce. At that point Sergeant 1 drew his firearm and eventually shot Pearce after Pearce created space between himself and Officer 1 and moved towards the front passenger seat of the PT Cruiser.

As a result, this investigation finds that Sergeant 1's belief that his use of deadly was immediately necessary to protect Officer 1 was objectively reasonable. He and Officer 1 could not gain control of Pearce as Pearce was reaching for what appeared to be a firearm in his right pocket. He objectively believed that Pearce was then going to shoot and kill or cause serious bodily injury to Officer 1 and he therefore was justified in shooting Pearce to protect Officer 1.

V. CONCLUSION

To secure a conviction for an offense under the Hawaii Penal Code, the prosecution must disprove an applicable defense—other than an affirmative defense—beyond a reasonable doubt.⁶⁶ The defenses codified in **H.R.S. Section 703-304**,

⁶⁶ See, **H.R.S. Section 701-114** (2014 Repl.), **H.R.S. Section 701-115** (2014 Repl.) and **H.R.S. Section 702-205** (2014 Repl.).

H.R.S. Section 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

H.R.S. Section 703-305 and **H.R.S. Section 703-307** are not affirmative defenses. As such, where these defenses are applicable they must be disproved (or negated) beyond a reasonable doubt.⁶⁷

Here, the PAT declines prosecution of Sergeant 1 and Officer 1 for any offenses under the Hawaii Penal Code for using deadly force against Pearce because the PAT cannot disprove beyond a reasonable doubt that (1) Officer 1's use of deadly force was not justified for self-protection; and (2) Sergeant 1's use of deadly force was not justified for protection of others. Therefore, the PAT further concludes that Sergeant 1 and Officer 1 were both justified in shooting Pearce and no charges will be filed against either Sergeant 1 or Officer 1 in connection with the shooting of Dallas Pearce on January 6, 2020.

-
- (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.

H.R.S. Section 701-115 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.

H.R.S. Section 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).

⁶⁷ See, e.g., **State v. Culkin**, 97 Hawai'i 206, 215, 35 P.3d 233, 242 (Sup. 2001) (stating that "Self-defense is not an affirmative defense, and the prosecution has the burden of disproving it once evidence of justification has been adduced.").

VI. Materials Considered.

A. HPD Report No. [REDACTED].

- 1. Investigative**
 - HPD Detective [REDACTED] (Homicide)
 - HPD Detective [REDACTED] (Homicide)
 - HPD Detective [REDACTED] (PSO)
 - HPD Detective [REDACTED] (PSO)
- 2. District 4 CRU, Patrol and Support Officers**
 - Sergeant 1
 - Officer 1
 - Officer 2
 - HPD Lieutenant [REDACTED]
 - HPD Sergeant [REDACTED]
 - HPD Sergeant [REDACTED]
 - HPD Corporal [REDACTED]
 - HPD Corporal [REDACTED]
 - HPD Corporal [REDACTED]
 - HPD Corporal [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Officer [REDACTED]
 - HPD Reserve Officer [REDACTED]
- 3. SCIENTIFIC INVESTIGATION SECTION**
 - Criminalist 1
 - Criminalist 2
- 4. EVIDENCE SPECIALISTS**
 - Evidence Specialist 1

- Evidence Specialist 2

B. Written Witness Statements

- Witness 1
- Witness 2
- Witness 3

C. HPD Recorded Statements

- Witness 1
- Witness 2

D. Other Materials Received from HPD and PAT Independent Investigation

- Personnel information for Sergeant 1
- Personnel Information for Officer 1

E. PAT Independent Investigation

- General scene review
- Photographs