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

Officer-Involved Shooting Report No. 2022-04

Report Date: September 20, 2022

Independent Investigation of Officer-Involved Shooting of

Dana Brown

Area of 91-550 Malakole Street, Kapolei, Hawaii 96707

I. OBJECTIVE.

The objective of the Department of the Prosecuting Attorney's (hereinafter, "PAT") independent investigation is to assess the viability of a criminal prosecution of Honolulu Police Department (hereinafter, "HPD") Officer [REDACTED] (hereinafter, "Officer 1") for any criminal offense under the Hawai'i Penal Code for his intentional use of deadly force against Dana Brown (hereinafter, "Brown") on December 17, 2019, in the area of 91-550 Malakole Street, Kapolei, Hawaii. 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] [REDACTED] investigator.

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

II. FACTS.

A. General Background (Introduction).²

On December 17, 2019, at about 12:35 a.m., Officer 1 was assigned to conduct routine patrol in the Kapolei area on O`ahu. While traveling on Lauwiliwili Street, Officer 1 observed two (2) two-wheeled vehicles passing him at a high rate of speed. As a result, Officer 1 made a u-turn and began looking for the said two (2) vehicles. Officer 1 eventually located one (1) of the vehicles, which was later identified as a motor scooter (hereinafter, "scooter").³ The operator of the said stolen scooter was Brown.

Officer 1 then observed Brown weaving into on-coming traffic on Malakole Street. Upon making the said observation, Officer 1 activated his blue lights to stop Brown for the criminal offense of Reckless Driving.⁴ Brown disregarded Officer 1's activation of his blue lights and continued driving on Malakole Street towards the Marisco Limited shipyard located in the Barbers Point Harbor. From Malakole Street, Brown then turned left and entered a private road leading into the Marisco boat harbor and he then

¹ The key report number for the investigation of the shooting is documented under HPD Report Number 19-478382.

² See, generally, HPD Report Number 19-478382.

³ The scooter was registered to [REDACTED] who reported the vehicle to be stolen on December 5, 2019 from the parking stall of his residence. The report is documented under HPD Report Number 19-460856. Photographs taken of the scooter after the shooting incident indicated that the ignition to the scooter was damaged after it was stolen.

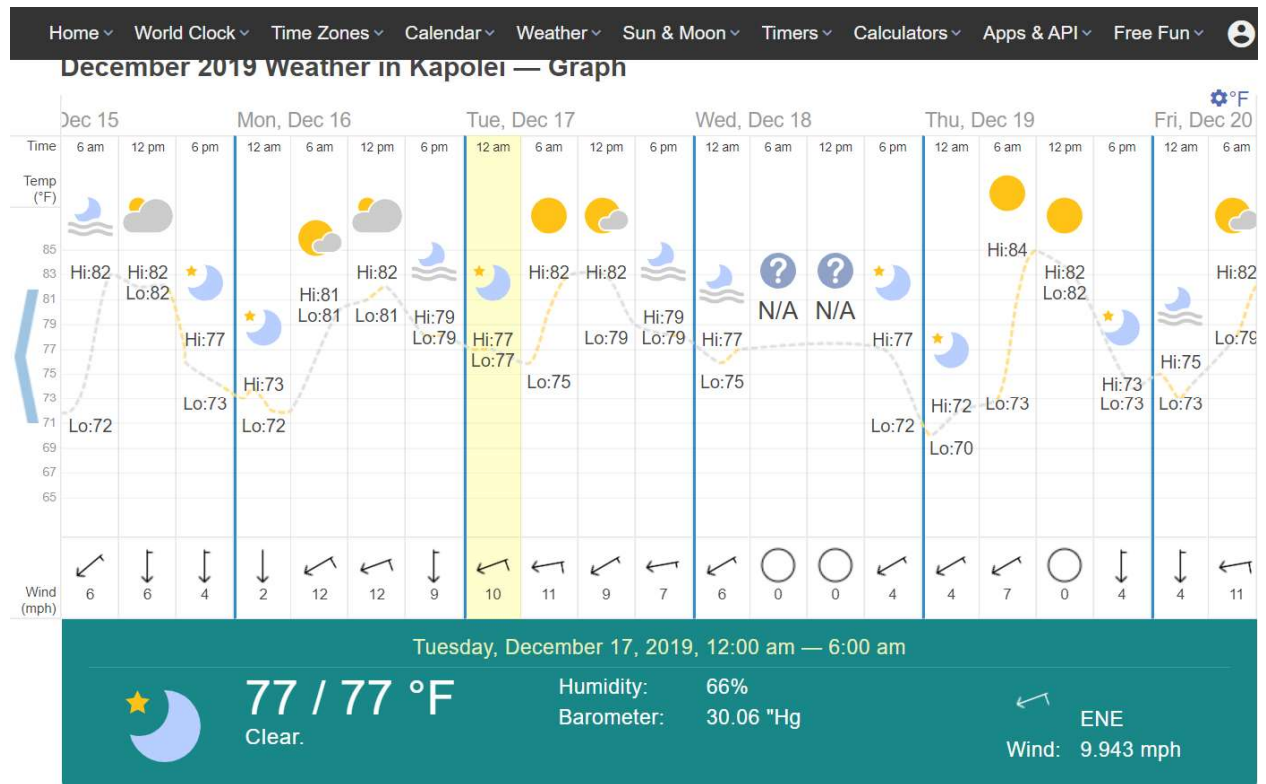
⁴ Reckless Driving is a petty misdemeanor under Hawai'i Revised Statutes (hereinafter, "H.R.S.") **Section 291-2** (2020 Repl.).

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proceeded to drive up a small hill or mound (hereinafter, "mound") located at the edge of the Barbers Point Harbor. The scooter appeared to get stuck on the mound. Meanwhile, Officer 1 parked his vehicle and pursued Brown on the mound on foot. The shooting then occurred on the mound.

B. The Weather.

The body worn camera (hereinafter, "BWC") footage taken from the scene officers, including from Officer 1, showed that the weather was clear. The camera footage further indicated that the area of the shooting appeared to be windy as the audio portion of the BWC recordings picked up the sound of wind gusts blowing. A weather website further indicated that the Kalaeloa Airport, which is approximately five (5) miles away from the 91-550 Malakole Street, posted the following weather conditions:⁵



⁵ <https://www.timeanddate.com/weather/usa/kapolei/historic?month=12&year=2019>.

C. The Scene.

The official scene of the shooting as specified in the HPD reports is 91-550 Malakole Street, Kapolei, Hawaii as the said address is the closest listed address to the area of the shooting. The general area is commonly known as “Barbers Point.” The actual area of the shooting was on the mound area of the Kalaeloa Boat Harbor which is adjacent to Campbell Industrial Park. The said area is southeast of the entrance to Barbers Point Harbor. Below is a satellite photo of the Barbers Point Harbor area.⁶



⁶ <https://www.google.com/maps/place/91-550+Malakole+St,+Kapolei,+HI+96707/@21.3231265,-158.1083076,7244m/data=!3m1!1e3!4m13!1m7!3m6!1s0x7c0062caeb421771:0xbda15091f202fe47!2s91-550+Malakole+St,+Kapolei,+HI+96707!3b1!8m2!3d21.3192464!4d-158.1169373!3m4!1s0x7c0062caeb421771:0xbda15091f202fe47!8m2!3d21.3192464!4d-158.1169373!5m2!1e3!1e4>

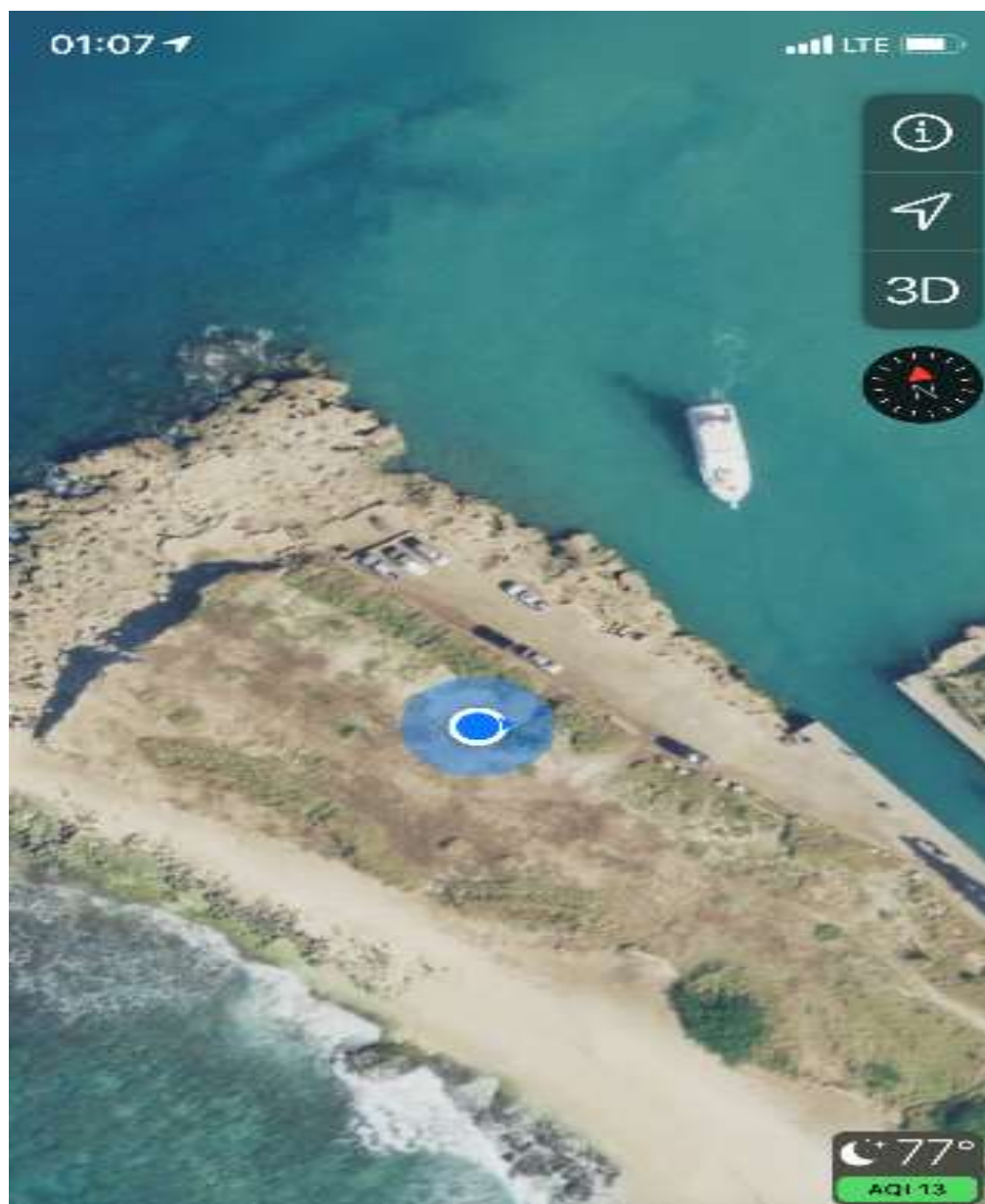
As already noted above, the shooting specifically took place on the southern entrance and point of the said harbor and on the mound.⁷ Marisco Limited, a shipyard, is located right after the southern entrance to the harbor:⁸



⁷ *Id.*

⁸ <https://www.google.com/maps/place/91-550+Malakole+St,+Kapolei,+HI+96707/@21.3231265,-158.1083076,7244m/data=!3m1!1e3!4m13!1m7!3m6!1s0x7c0062caeb421771:0xbda15091f202fe47!2s91-550+Malakole+St,+Kapolei,+HI+96707!3b1!8m2!3d21.3192464!4d-158.1169373!3m4!1s0x7c0062caeb421771:0xbda15091f202fe47!8m2!3d21.3192464!4d-158.1169373!5m2!1e3!1e4>

Below is close-up view of where the shooting occurred:⁹



⁹ The photo was included in HPD Report Number 19-478382.

Malakole Street dead-ends at the roadway entrance to the Marisco Limited shipyard. One gains entrance to the area of the shooting by turning left just prior to the dead-end onto a private road.¹⁰



¹⁰ <https://www.google.com/maps/place/91-550+Malakole+St,+Kapolei,+HI+96707/@21.3231265,-158.1083076,7244m/data=!3m1!1e3!4m13!1m7!3m6!1s0x7c0062caeb421771:0xbda15091f202fe47!2s91-550+Malakole+St,+Kapolei,+HI+96707!3b1!8m2!3d21.3192464!4d-158.1169373!3m4!1s0x7c0062caeb421771:0xbda15091f202fe47!8m2!3d21.3192464!4d-158.1169373!5m2!1e3!1e4>

As noted previously, the actual scene of the shooting occurred at the southern entrance of the Barbers Point Harbor and on the mound. Below are photographs of the said mound taken during the daytime:¹¹



¹¹ Photographs by Investigator [REDACTED]







Below are photographs of the same mound taken by HPD shortly after the incident.¹²



¹² Photographs by HPD Evidence Specialist [REDACTED] (hereinafter, "SIS Specialist 1").



Below are photographs of the specific location on the mound where Officer 1 shot Brown. Notice the memorial marker placed on the grassy area.¹³



¹³ Photographs by Investigator [REDACTED]



The photographs below of the specific area where the shooting occurred were taken by HPD shortly after the incident:¹⁴



¹⁴ Photographs by SIS Specialist 1.



D. Participants in the Event.

1. Brown.¹⁵

Prior to the instant incident, Brown had twenty-four (24) arrests and two (2) convictions. The convictions were in 2019 for Unauthorized Entry into Motor Vehicle in the Second Degree and Theft in the Fourth Degree. In addition, Brown was granted a Deferred Acceptance of a No-Contest Plea in 2011 after pleading to the felony offense of Unauthorized Entry into Motor Vehicle and the said charge was dismissed following the five (5) year deferral period.

2. Officer 1.¹⁶

Officer 1 has been employed as an HPD officer since September 1, 2006. At this time of writing, he has over fifteen (15) years of service. His assignments at HPD have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
September 1, 2006	December 15, 2007	Training
December 16, 2007	August 6, 2011	District 8
August 7, 2011	July 19, 2014	Traffic
July 20, 2014	November 22, 2014	District 8
November 23, 2014	May 6, 2017	Traffic
May 7, 2017	June 26, 2021	District 8
June 27, 2021	present	District 2

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** (2017 Repl.).¹⁷

¹⁵ The information background regarding Brown was retrieved from the PAT's computer data base system and the Hawai'i State Criminal Justice Inquiry System (CJIS).

¹⁶ This information, provided by HPD's Professional Standards Office (PSO), is as of February 3, 2022.

¹⁷ "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."

E. Factual Narrative for December 17, 2019.

1. Statement by Officer 1.¹⁸

In his report, Officer 1 stated that on December 17, 2019, at about 12:35 a.m., he was on duty and doing routine patrol in his marked subsidized vehicle in the area of Barbers Point. While traveling south bound on Lauwilili Street, Officer 1 observed two (2) dark two-wheeled vehicles pass him at a high rate of speed. The two (2) vehicles then headed west bound on Opakapaka Street.

Upon making the said observations, Officer 1 conducted a U-turn and headed in the direction where he last saw the two (2) vehicles. Turning onto Opakapaka Street, Officer 1 noticed one (1) of the two (2) said vehicles approaching Kalaeloa Boulevard. It was later determined that the said vehicle was a stolen scooter that was being operated by Brown.¹⁹

After reaching Kalaeloa Boulevard in his subsidized vehicle, Officer 1 observed the scooter proceed north bound in the south bound lane of travel. Officer 1 then tried to close the distance between himself and the scooter in order to see the scooter's license plate.²⁰ The scooter then conducted a U-turn, headed back in the south bound direction of Kalaeloa Boulevard and approached Malakole Street. At that point, Officer 1 called in his radio to see if there were available cover units in the area.

The scooter proceeded west bound on Malakole Street and began to weave into on-coming traffic. Based on his said observation, Officer 1 illuminated his blue light. The on-coming vehicle pulled to the right shoulder as the scooter passed and continued west bound on Malakole Street.

The scooter then pulled into the Marisco boat harbor and continued through a barricaded area and onto the mound.²¹ Officer 1 observed that the lights of the scooter appeared to be stuck on the side of the mound. As the scooter appeared to have gotten stuck on the mound, Officer 1 exited his subsidized vehicle and started to pursue on foot the operator of the scooter, Brown, who attempted to run from Officer 1, towards the ocean and on the sand. Officer 1 attempted to cut off Brown who upon noticing Officer 1, began to run back towards the scooter.

At this point, Officer 1 drew his firearm and ordered Brown multiple times to get to the ground. However, Brown ignored Officer 1. While telling Brown to get to the

¹⁸ The statement below was taken from Officer 1's report.

¹⁹ See footnote 3. The registered owner of the scooter reported the item stolen on December 5, 2019 (HPD Report Number 19-460856)

²⁰ After the registered owner recovered the scooter following the incident in this case, he reported that the license plates were missing from his said vehicle. (HPD Report Number 19-460856)

²¹ This is the mound depicted in the photographs shown hereinabove.

ground, Officer 1 also noticed that Brown had a knife in his right hand. As a result, Officer 1 also shouted to Brown to drop the knife. Brown again ignored Officer 1's commands.

Officer 1 then unholstered his HPD issued taser. Announcing "taser, taser, taser", Officer 1 deployed one cartridge on Brown. The taser was ineffective and Brown began to walk towards the roadway. As Officer 1 again tried to cut Brown off, Brown then walked back to his scooter. Officer 1 continued to order Brown to stop but Brown ignored him and got back to the scooter. After repeating to Brown to stop, Officer 1 reloaded another cartridge into his taser and deployed the taser on Brown again.

The taser did not stop Brown who was able to start the scooter. As Brown attempted to get on top of the seat of the scooter, Officer 1 kicked the scooter over. Because Brown had revved the engine of the scooter at the same time as it was being kicked, the back wheel of the scooter spun towards Officer 1 and struck Officer 1's leg. As a result, Officer 1 fell to the ground briefly.

Quickly regaining his footing, Officer 1 then observed Brown start to lunge at Officer 1 with what appeared to be the knife in his right hand. Fearing for his life, Officer 1 discharged several rounds from his firearm towards the center mass area of Brown. Following the shooting, Brown appeared to check himself for injuries and eventually related that he could not breathe and laid to the ground.

After Brown laid to the ground, Officer 1 ran back towards the beach area to retrieve his portable radio, which had fallen during his foot pursuit of Brown, to call for medical treatment for Brown. After calling for emergency assistance through his radio, Officer 1 ran back to Brown to render first aid. Other responding units also arrived and assisted in providing first aid to Brown.

2. Relevant Body Worn Camera Recordings of Officer 1.²²

Officer 1 initiated his Body Worn Camera (hereinafter, “BWC”) as Officer 1 was on foot on the mound pursuing Brown. Screenshots of the relevant portions of the recordings taken from Officer 1’s BWC will be shown hereinbelow with an explanation as to what the screenshots represent.²³ Below is a screenshot of the recording that was taken near the beginning of the BWC where Officer 1 appears to be walking quickly or jogging on top of the mound area towards the opening of the harbor:²⁴



²² The screenshots below are taken from Officer 1’s BWC. The screenshots were taken from a “lit up” version of Officer 1’s BWC. By request of this writer to the Professional Standards Office, light was added to the original BWC recordings taken from Officer 1’s BWC. Your writer made this request due to the lack of significant lighting in the original recordings.

²³ The relevant portions of the recordings from the BWC with respect to the foot pursuit and shooting of Brown occur from 2019-12-17 T10:41:17 to 2019-12-17 T10:44:39.

²⁴ 2019-12-17 T10:41:21.

Approximately five (5) seconds later, Officer 1 is seen catching up to Brown who appears to be standing near or on top of what appears to be the scooter.²⁵ Officer 1 can then be seen pointing his firearm at Brown with his right hand. Audio from his BWC picks up Officer 1 yelling “Get on the ground” at Brown several times:²⁶



²⁵ 2019-12-17 T10:41:26

²⁶ *Id.*

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As Officer 1 continues to yell at Brown to get to the ground, Brown can clearly be seen standing up next to the scooter and looking directly at Officer 1. Brown does not comply with Officer 1's instructions and simply looks up towards Officer 1 who appears to be at a higher part of the mound in relationship to Brown:²⁷



²⁷ 2019-12-17 T10:41:32

As Officer 1 closes his distance to Brown and points his firearm at Brown, Brown looks at Officer 1 and begins to back away from the scooter and Officer 1 with his arms to his side.²⁸



²⁸ 2019-12-17 T10:41:34. Several second later, at about 2019-12-17 T10:41:37, Officer 1 instructs Brown to show him his hands but Brown appears to reply "nope."

Officer 1 can be heard saying to Brown, “I going shoot you.” Several second later, Officer 1 can be heard yelling at Brown to “put the knife down” multiple times.²⁹ Subsequently, Brown replies, “nope” and later appears to say, “take a shot” at Officer 1.³⁰ The screenshot of the recording below is slightly blurry and at this point in time, the BWC recording does not capture a knife in Brown’s hand. However, as shown below, Brown’s right hand is slightly raised at a 45 degree angle but is partially blocked from view of the BWC by the scooter’s handlebar.³¹



²⁹ 2019-12-17 T10:41:38

³⁰ 2019-12-17 T10:41:52 and 2019-12-17 T10:41:59

³¹ 2019-12-17 T10:41:41

Next, Brown continues to ignore Officer 1's instructions to put the knife down. Instead, Brown puts his hands on the handlebar of the scooter while Officer 1 has his firearm pointed directly at Brown:³²



³² 2019-12-17 T10:41:43

Brown can then be seen hunched over the scooter in an apparent attempt to start the scooter and flee from Officer 1:³³



³³ 2019-12-17 T10:41:48.

Next, Brown can be seen standing upright. Brown then proceeds to lift open the scooter's storage compartment that is located under the seat of the scooter. Meanwhile, Officer 1 can be heard continuing to yell at Brown to "put the knife down".³⁴



³⁴ 2019-12-17 T10:41:53

As Brown continues to hunch over his scooter, Brown mutters something towards Officer 1, and looks or searches into the storage compartment of the scooter. As Brown is hunched over, what appear to be a knife can clearly be seen in the BWC recording. Brown is holding the knife with his right hand while he fumbles through the storage compartment with his left hand.³⁵



³⁵ 2019-12-17 T10:41:53

Next, Officer 1 continues to yell out “put the knife down” to Brown who can be heard mumbling something. The view of the camera then moves to the right of Brown and Brown therefore moves in and out of view of the camera. As the BWC then picks up Brown again, Brown can be seen still hunching over the scooter with his left hand in the storage compartment of the said vehicle. Brown is also still holding the knife in his right hand.³⁶



³⁶ 2019-12-17 T10:42:01

Officer 1 continues to yell at Brown to put the knife down. However, Brown continues to bend over and search through the scooter's storage compartment.³⁷ After Officer 1 loads his taser and announces "taser, taser, taser", it appears from the audio that Officer 1 then deploys the taser on Brown.³⁸ Following the apparent deployment of the taser, Brown is seen walking away from Officer 1 and the scooter. Brown proceeds to walk down the mound:³⁹



³⁷ 2019-12-17 T10:42:02-22

³⁸ When the audio appears to indicate that the taser is being deployed, a light shines onto the camera possibly from Officer 1 turning his torso and Brown is not visible on the BWC recording. 2019-12-17 T10:42:23-30

³⁹ 2019-12-17 T10:42:34

As Brown walks down the mound towards the roadway, Officer 1 appears to walk down the mound too while also keeping some distance between himself and Brown.⁴⁰ The recording loses sight of Brown for a short time due to the position of the BWC on Officer 1 and then suddenly shows Brown walking back up the mound directly towards the scooter.⁴¹



⁴⁰ 2019-12-17 T10:42:34-40

⁴¹ 2019-12-17 T10:42:42

Brown reaches the scooter and then starts to lean over the vehicle again. Meanwhile, it appears as if Officer 1 starts to approach Brown. In the still shot below, Officer 1's shadow is visible as he approaches Brown and the scooter:⁴²



⁴² 2019-12-17 T10:42:48

Next, as Officer 1 walks closer to Brown and the scooter, Brown is seen reaching into the storage compartment of the scooter once again.⁴³



⁴³ 2019-12-17 T10:42:55

The BWC recording then shows Officer 1 reloading his taser and pointing the same at Brown who is still hunched over the scooter and ignoring Officer 1. The red pointer light from the taser is illuminated on Brown. Meanwhile, Officer 1 can be heard instructing Brown to put the knife down again several times before aiming the taser at Brown's chest and then deploying the taser:⁴⁴



⁴⁴ 2019-12-17 T10:43:03; 2019-12-17 T10:43:05; and 2019-12-17 T10:43:11



The taser appears to have an insignificant effect on Brown who, after momentarily stepping away, goes right back to the scooter and continues to look into the storage compartment:⁴⁵



⁴⁵ 2019-12-17 T10:43:19

Officer 1 can then be seen pointing his firearm towards Brown:⁴⁶



⁴⁶ 2019-12-17 T10:43:20 and 2019-12-17 T10:43:22.

Brown then closes, opens and re-closes the storage compartment of the scooter while also appearing to turn on the lamp of the scooter.⁴⁷ The audio of the BWC then catches the sound of the scooter's ignition starting:⁴⁸



⁴⁷ 2019-12-17 T10:43:31-34.

⁴⁸ 2019-12-17 T10:43:36

Officer 1 can then be seen quickly approaching Brown who is appearing at this point to be trying to flee from Officer 1 on the scooter:⁴⁹



⁴⁹ 2019-12-17 T10:43:37.

As Officer 1 closes in on Brown, the images from the recording become blurry.⁵⁰ What can be heard on the audio portion of the BWC recording is the sound of the motor of the scooter revving.⁵¹ A loud noise can then be heard and Officer 1's firearm can be seen in his hand:⁵²



⁵⁰ 2019-12-17 T10:43:38-46.

⁵¹ 2019-12-17 T10:43:40-46.

⁵² 2019-12-17 T10:43:47

Because of Officer 1's body position, the BWC recording does not capture what then occurs as Brown appears to be to the left of the view of the BWC. However, three clicking noises appearing to be gunshots can be heard on the audio portion of the recording.⁵³ Brown can also be heard saying "ugh" after the second "click."⁵⁴

While Officer 1's arm blocks the view of the BWC camera, the audio portion picks up Officer 1 yelling at Brown to get to the ground. Brown can then be seen next to the scooter and he eventually lays to the ground in obvious pain:⁵⁵



⁵³ 2019-12-17 T10:43:49-51.

⁵⁴ 2019-12-17 T10:43:50.

⁵⁵ 2019-12-17 T10:44:04; 2019-12-17 T10:44:06; 2019-12-17 T10:44:27.



3. Witness Statements.

There were four (4) civilian witnesses located at the scene during the incident: [REDACTED] (hereinafter, "Witness 1"), [REDACTED] (hereinafter, "Witness 2"), [REDACTED] (hereinafter, "Witness 3") and [REDACTED] (hereinafter, "Witness 4").⁵⁶ Witness 1 was in her car that was parked on the ocean side of the mound across from where the shooting occurred while Witness 2, her boyfriend, was fishing on the pier.⁵⁷ Below is a photo of her vehicle that was parked:⁵⁸



⁵⁶ As seen on HPD Officer [REDACTED] (hereinafter, Officer 4's") BWC, Witnesses 3 and 4 were fishing further down the pier towards the opening of the harbor. See, Officer 4's BWC at 2019-12-17 T10:55:39 to 2019-12-17 T10:56:00. Witnesses 3 and 4 both did not see anything as they were below the mound, but they both indicated in Officer 4's BWC that they heard gunshots.

⁵⁷ HPD Detective [REDACTED] (hereinafter, "Detective 1") who responded to the scene and was assigned as the lead detective in this case, noted verbally that [REDACTED] vehicle was not parked directly across from the area of the shooting. He stated that the truck was located closer to the southern point of the harbor and at a thirty to forty (30-40) agree from the area of the shooting. Detective 1 estimated that the vehicle was approximately one hundred (100) feet from the shooting.

⁵⁸ Photograph by SIS Specialist 1.

In her written statement, Witness 1 stated the following:⁵⁹ On December 17, 2019, she was in her parked vehicle when she heard someone yell. As she got out of her car, [REDACTED] observed a police officer, later identified as Officer 1 running towards her car and yelling “get down on the ground.” Witness 1 then looked over her car and saw a person later identified as Brown. Officer 1 started yelling at Brown “to put the knife down.” Witness 1 did not see a knife on Brown. Witness 1 then observed Officer 1 deploy his taser on Brown who “started acting like a crazy person with his hands moving all over the place.” Brown then yanked the taser prongs from his body, started to run away but returned towards Officer 1. As a result, Officer 1 deployed his taser again on Brown. After Officer 1 deployed his taser the second time on Brown, Witness 1 went back into her car and called 911. While talking to dispatch, she heard three (3) shots fired.

Witness 1 also provided a recorded statement to Detective 1 and HPD Detective [REDACTED] (hereinafter, “Detective 2”).⁶⁰ In her recorded statement, Witness 1 confirmed that she was in her car that was parked on top of the mound. While she was in her vehicle, she heard a commotion. As a result, she got out of her car and saw a person later identified as Officer 1 running towards her and yelling “get to the ground.” At first, she had thought the officer was yelling at her but she then realized that Officer 1 was talking to a male who was later identified as Brown. Officer 1 and Brown were about twenty to thirty (20-30) away from her. Refusing to go to the ground, Brown just looked at Officer 1 and “stood there.” Witness 1 then heard Officer 1 yell out “taser, taser, taser” and he then deployed the taser on Brown who yanked out the probes. Brown then appeared to run away but he then came back towards Officer 1 who used the taser on him again. Witness 1 then went back into her car to call 911 and she then heard three gunshots.⁶¹

Witness 1 also noted that she could only see the upper body of Brown as Brown was standing down from the top of the mound. She did not see a knife in his hand because of where Brown was standing, but she could hear Officer 1 tell Brown to drop the knife. Witness 1 also noted in her recorded statement that Officer 1 did “everything by the book.”

In his written statement, Witness 2 noted the following:⁶² On December 17, 2019, he was fishing at the harbor when he saw and heard a person later identified as Brown on what he believed to be a moped. Brown was driving out of control and heading towards Witness 2. Witness 2 then observed a person later identified as Officer 1 in pursuit of Brown. Brown drove up the mound and eventually lost control of the “moped.” Officer 1 caught up to Brown and kept telling Brown to get on the ground. Brown

⁵⁹ 252 statement of Witness 1.

⁶⁰ Recorded statement of Witness 1.

⁶¹ HPD provided the 911 call to our office. In the 911 call, [REDACTED] informed dispatch that a police officer may need back up at the Marisco boat harbor as the officer was chasing someone armed with a knife.

⁶² 252 statement of Witness 2.

refused and said, "You going have to shoot me." Witness 2 then heard Officer 1 tell Brown to drop the weapon. Officer 1 then yelled "taser" three (3) times and deployed the taser. Brown tried to run from Officer 1 and Officer 1 used his taser again on Brown. Brown responded by attacking Officer 1 who was about eight to nine (8-9) feet away by lunging towards him. Witness 2 then heard three gunshots.

Witness 2 also gave a recorded statement to Detectives 1 and 2.⁶³ In his recorded statement, Witness 2 said that he was at the harbor with Witness 1. He was fishing by himself at the pier when he noticed a male later identified as Brown coming towards him erratically on what he believed to be a moped. Brown was driving fast and drove right past Witness 2 who also saw a police officer later identified as Officer 1. At this point, Witness 2 assumed that Officer 1 was chasing Brown. As Officer 1 ran past him, Witness 2 left his fishing spot and went up the hill.

Witness 2 then observed that Brown had lost control of his vehicle. Hearing Officer 1 tell Brown to stop and to get to the ground, Witness 2 also heard Brown reply "no" several times. Meanwhile, Brown tried to start the "moped." Witness 2 said that he saw Brown pull out something from his waist and then heard Officer 1 say "drop the knife." Brown said "no" and told Officer 1 that he would have to shoot him.

As Brown could not get the "moped" to start, Brown then started to walk away from Officer 1. Officer 1 then said "taser, taser, taser" and Witness 2 heard the sound of the taser being deployed. As Witness 2 was behind Witness 1's car, Witness 2 did not see Brown being tased. However, Witness 2 then saw Brown pulling the prongs out from the taser. Brown did not appear to be affected by the taser and he walked down the mound before walking back up. Witness 2 then heard the taser being deployed again. Witness 2 then saw Brown going towards Officer 1. As Brown was coming towards Officer 1, Witness 2 heard Brown say something to effect of "ahhhhh." Witness 2 did not want to look but he then heard the sound of three (3) gunshots.

4. Miscellaneous

BWC footage from Officer 1 showed that following the shooting of Brown, Officer 1 first made sure that Brown complied with orders to lie to the ground and he then went back to look for his radio that he had dropped on the mound.⁶⁴ As he was returning to Brown's location, Officer 1 can be heard notifying dispatch that shots were fired.⁶⁵

The first two back-up officers to arrive were HPD Officer [REDACTED] (hereinafter, "Officer 2") and HPD Officer [REDACTED] (hereinafter, "Officer 3").⁶⁶ Both

⁶³ Recorded statement of Witness 2.

⁶⁴ 2019-12-17 T10:44:37 to 2019-12-17 T10:45:09.

⁶⁵ *Id.*

⁶⁶ See, reports by Officer 2 and Officer 3 and their respective BWC footage.

officers then began to give CPR to Brown.⁶⁷ Other officers began to give aid until EMS and firefighter personnel arrived at the scene.⁶⁸

Brown was then transported to the Queen's Medical Center West where he was pronounced dead by [REDACTED] (hereinafter, [REDACTED] on December 17, 2019, at about 1:46 a.m.⁶⁹

F. Brown's Cause of Death, Recovered Evidence, and Toxicology Results.⁷⁰

On December 17, 2019, at about 9:40 a.m., [REDACTED] performed an autopsy on Brown. In his examination, [REDACTED] found that Brown had: 1) a penetrating gunshot wound of the torso with entrance to the left anterolateral chest and no exit wound; 2) a perforating gunshot wound of the torso with entrance to the left anterolateral chest; and 3) a tangential gunshot wound of the left posterior upper arm.

As to the first shot listed hereinabove, [REDACTED] noted that the resulting injuries of the gunshot included a fracture of the left 8th rib, a perforation of the left hemidiaphragm, a laceration of the liver, left lobe, a perforation of the stomach and left adrenal gland, a transection of the splenic artery and laceration of the left renal artery, and a penetration of the left 2nd lumbar vertebral body. [REDACTED] also noted that the direction of the gunshot wound was from left to right, downward, and front to back. [REDACTED] recovered projectile fragments from the said gunshot and HPD SIS Evidence Specialist [REDACTED] (hereinafter, "SIS Specialist 2") submitted the same into evidence under HPD Report Number 19-478382.⁷¹

With respect to the second shot listed hereinabove, [REDACTED] stated that after the entry, the projectile exited Brown's right lower chest and therefore, no projectile was recovered. He said that the injuries from the second gunshot were limited to the skin and soft tissue.

In regard to the third shot, [REDACTED] noted that the tangential gunshot wound caused injuries that were limited to the skin and subcutaneous soft tissue.

⁶⁷ *Id.*

⁶⁸ See generally, reports by Officer 2, Officer 3, HPD Sergeant [REDACTED] (hereinafter, "Sgt. 1"), HPD Officer [REDACTED] HPD Officer [REDACTED] and their respective BWC footage. See also, HPD Officer [REDACTED] BWC and report by HPD Officer [REDACTED]

⁶⁹ See, report by HPD Officer [REDACTED]

⁷⁰ The facts in this section are from City and County of Honolulu Medical Examiner [REDACTED] (hereinafter, [REDACTED] report except when otherwise noted.

⁷¹ See, report by SIS Specialist 2.

██████████ opined that the cause of death of Brown was a gunshot wound of the torso, with the fatal shot being the first gunshot wound listed above.

Lastly, a toxicology done on Brown confirmed the presence of methamphetamine (2300 ng/mL) and amphetamine (110 ng/mL) in his blood.

G. Recovered Evidence at the Scene.

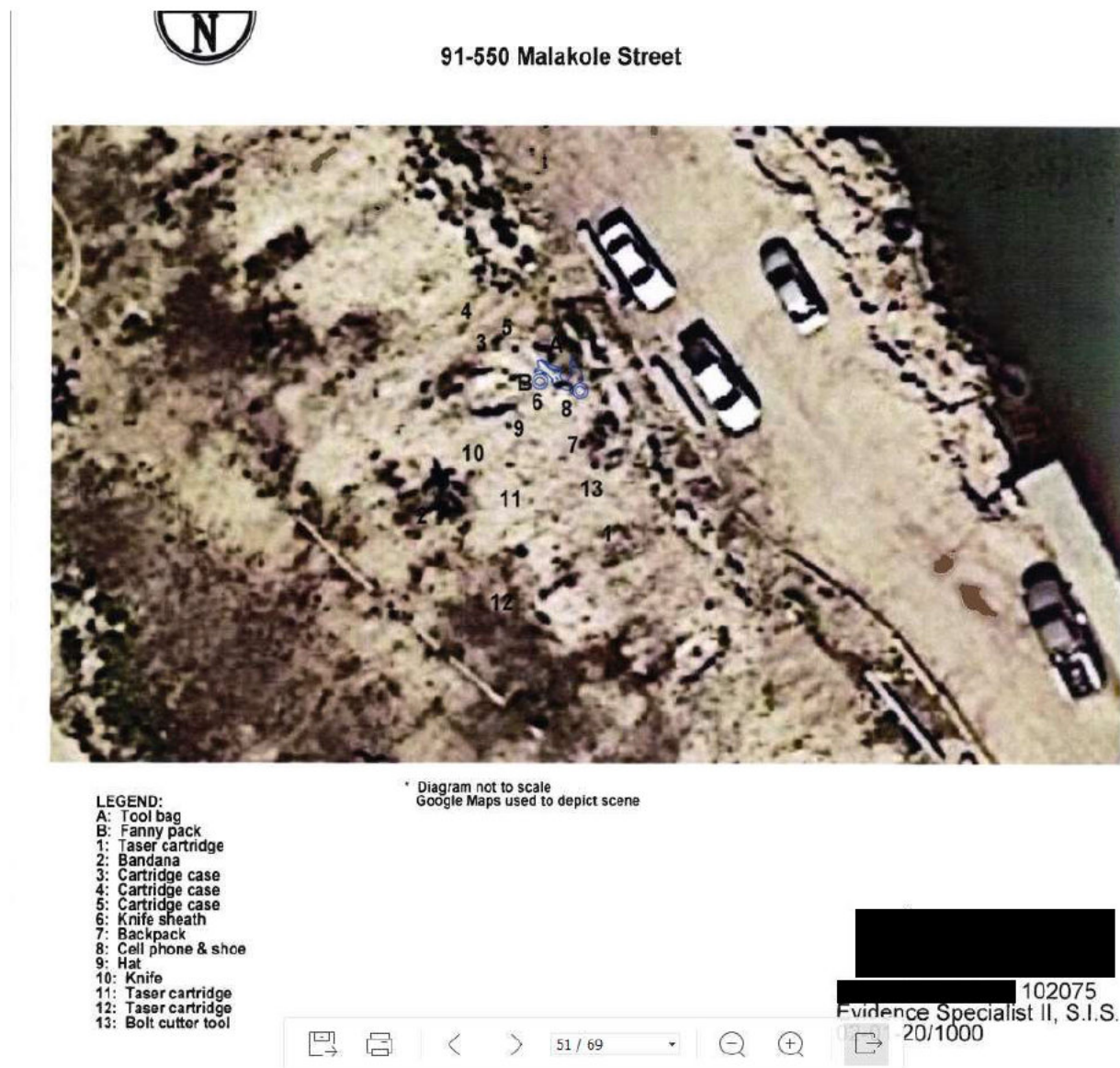
Personnel from HPD SIS recovered the following relevant items that were submitted into evidence under HPD Report Number 19-478382:⁷²

HPD Item Number	Description	Where Recovered
1	Glock pistol, serial number WWF302 containing one (1) empty magazine	From Sgt. 1 who took possession of item from Officer 1 following the shooting
2	One (1) Speer 9mm Luger cartridge, chambered in Item #1	Same as Item #1
3	Fourteen (14) Speer 9mm Luger cartridges contained in magazine in Item #1	Same as Item #1
4	One (1) Glock magazine containing seventeen (17) Speer 9mm Luger cartridges	Same as Item #1
16	One (1) 9mm Speer Luger cartridge case	On grassy area (on mound)
17	One (1) 9mm Speer Luger cartridge case	Same as Item #16
18	One (1) 9mm Speer Luger cartridge case	Same as Item #16
19	One (1) used Taser cartridge	Same as Item #16
20	One (1) used Taser cartridge	Same as Item #16
22	Gerber brand hunting knife	Same as Item #16
33	Fragment	From City and County of Honolulu Medical Examiner ██████████ ██████████
34	Projectile	Same as Item #33

⁷² Evidence reports by SIS Specialist 1, SIS Specialist 2 and HPD Evidence Specialist ██████████ (hereinafter, "SIS Specialist 3").

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Below is a diagram of several relevant items that were recovered in relationship to the scooter.⁷³



⁷³ Diagram by SIS Specialist 1. The scooter is in blue color and near the middle of the diagram.

As noted above in the chart, Sgt. 1 took possession of Officer 1's service firearm, a chambered round and partially loaded magazine from the same firearm and back up fully loaded magazine (Items 1 through 4).⁷⁴ He then turned the same over to SIS Specialist 2 who submitted them into evidence under HPD Report Number 19-478382.⁷⁵ Meanwhile, SIS Specialist 1 recovered the spent cartridge casings (Items 16-18), the used Taser cartridges (Items 19-20) and knife and submitted them into evidence under HPD Report Number 19-478382.⁷⁶

Below are evidence photographs showing the location of the spent casings (Items 16-18) and the knife that Brown brandished in his right hand:⁷⁷

⁷⁴ Report by Sgt. 1.

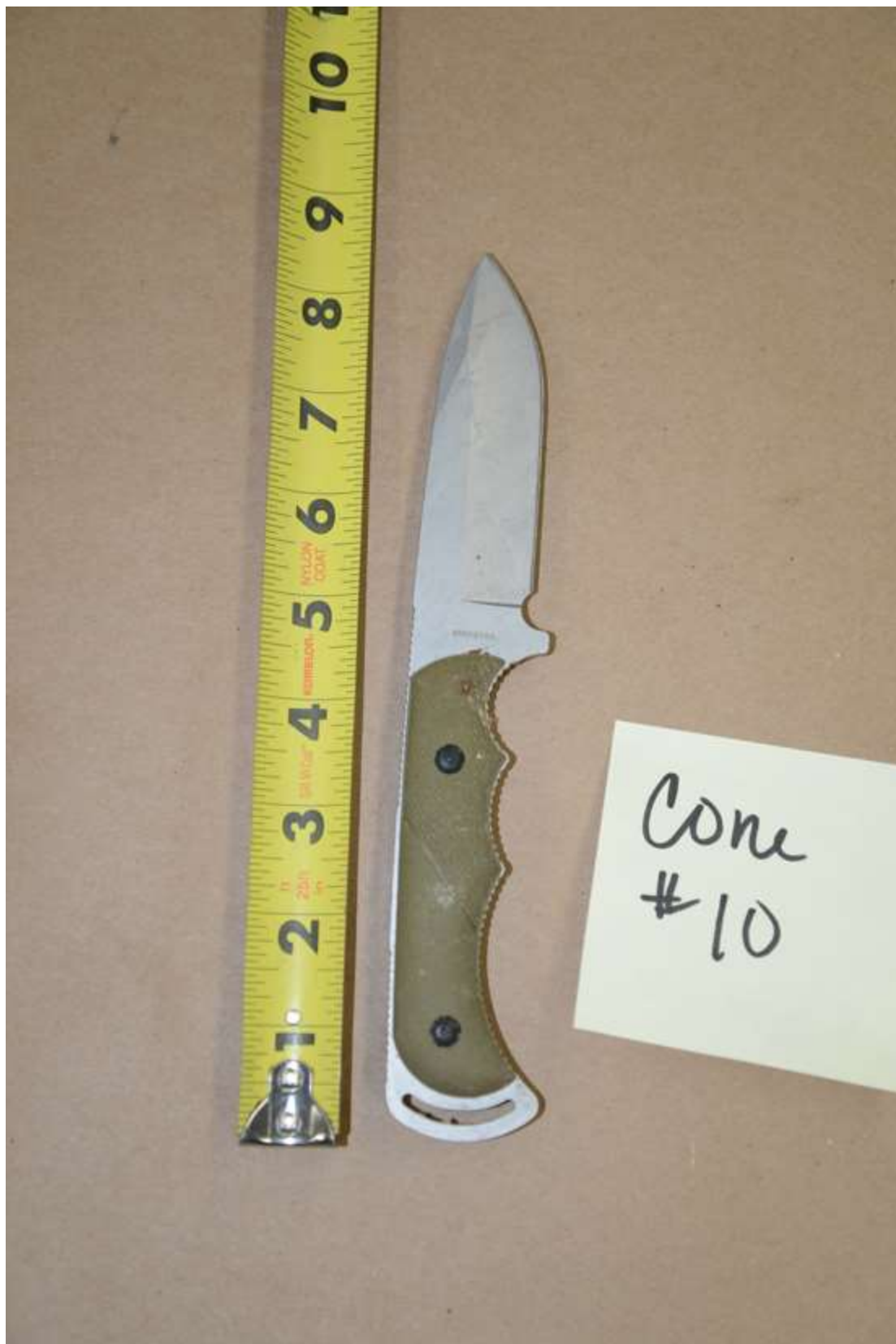
⁷⁵ Report by SIS Specialist 2.

⁷⁶ Report by SIS Specialist 1.

⁷⁷ Photographs by SIS Specialist 1.







H. Scientific/Forensic Evidence.

1. Gunshot Residue Collection Kit.⁷⁸

A gunshot residue (GSR) collection kit was used on the hands of Officer 1.⁷⁹ HPD Criminalist [REDACTED] (hereinafter, "Criminalist 1") analyzed the kit. Criminalist 1 found and concluded that no particles of GSR were detected on the samples recovered from Officer 1's hands. Criminalist 1 noted however that the absence of GSR particles could mean any of the following:

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

2. Firearms and Tool Marks.⁸⁰

Criminalist 2 analyzed the firearms and ammunition evidence. He concluded that the service firearm belonging to Officer 1 was operable.

Regarding the fragment and projectile recovered from Brown's body, that were submitted into evidence as Items 33 and 34 respectively, Criminalist 2 concluded that the fragment had no value for barrel signature comparison and that the projectile came from Officer 1's firearm.

I. Miscellaneous

1. Officer Injuries.

Officer 1 had cuts to his right lower leg, left forearm, left wrist and left forearm as a result of the incident.⁸¹

⁷⁸ The facts in this section are from HPD Criminalist [REDACTED] (hereinafter, "Criminalist 1") except as otherwise noted.

⁷⁹ Report by SIS Specialist 2.

⁸⁰ The facts in this section are from HPD Criminalist [REDACTED] (hereinafter, "Criminalist 2").

⁸¹ Photographs by SIS Specialist 2.

III. LEGAL PRINCIPLES.

A. Definitions.

“Believes” means reasonably believes.⁸²

“Bodily injury” means physical pain, illness, or any impairment of physical condition.⁸³

“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.⁸⁴

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.⁸⁵

“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.⁸⁶

“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.⁸⁷

“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.⁸⁸

⁸² Hawai‘i Revised Statutes (hereinafter, “H.R.S.”) § 703-300 (2014 Repl.).

⁸³ H.R.S. § 707-700 (2014 Repl.)

⁸⁴ H.R.S. § 707-300.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ H.R.S. § 707-700.

⁸⁸ *Id.*

B. Potential Defense.

The below **H.R.S. Chapter 703** justification defense applies to this case and is referenced below.⁸⁹

1. Use of Force in Self-Protection.

H.R.S. § 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:
 - (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

⁸⁹ **H.R.S. § 703-301(1)** (2014 Repl.) (“In any prosecution for an offense, justification, as defined in sections 703-302 through 703-309, is a defense.”).

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?⁹⁰

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.⁹¹ 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.⁹²

IV. ANALYSIS.

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

The first applicable question is whether Officer 1 was legally justified in using deadly force in self-protection when he shot Brown. This involves a two-part inquiry: 1) Did Officer 1 use deadly force; and if so, 2) Was Officer 1's use of deadly force justified?⁹³

As to the first question, it is uncontroverted that Officer 1 used deadly force by discharging his firearm three times at Brown. Officer admitted in his report that he intentionally used his firearm to shoot Brown in order to protect himself from being stabbed by Brown who lunged at him with a knife.

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

⁹⁰ Hawai'i Pattern Jury Instructions (hereinafter, "**HAWJIC**") **7.01A**.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

was aware or as the Officer 1 reasonably believed them to be when Officer 1 used the deadly force.

Here, Officer 1 was attempting to effectuate an arrest on Brown for reckless driving. Brown ignored Officer 1 and tried to flee from him by driving onto the mound. After the stolen scooter that he was using seemingly broke down on the mound, Brown initially tried to run. However, he ran back towards the scooter when Officer 1 approached him on foot.

As confirmed by the BWC footage from Officer 1's BWC, Officer 1 instructed multiple times to Brown to get to the ground. Noticing a knife that was plainly visible in Brown's right hand, Officer 1 then instructed Brown multiple times to drop the knife. Ignoring his commands, Brown bent over and opened the storage compartment under the seat of the scooter and started to rummage through it.

Because Brown was continuing to ignore Officer 1's orders to drop the knife, Officer 1 then deployed his taser on Brown. However, the taser was ineffective and Brown was able to pull the probes out. Brown then walked down the mound towards the harbor but then walked back up the mound and started to go through the storage compartment of the scooter again. Officer 1 again instructed Brown to drop the knife and then deployed his taser on him again. The taser was ineffective and Brown pulled out the probes again.

It was at this point that Brown was able to restart the scooter and then tried to flee from Officer 1. As the scooter started to accelerate, Officer 1 kicked the scooter and the back wheel struck Officer 1's leg. The back wheel caused Officer 1 to lose his balance on the mound and Officer 1 fell to the ground briefly. As Officer 1 regained his footing, Brown lunged at him with the knife that was still in his right hand. Reasonably believing that Brown was going to stab Officer 1, Officer 1 discharged his firearm three times at Brown. Witness 2 also verified that while he could not see a knife on Brown's hand due to his vantage point, he did see Brown lunge towards Officer 1 from a distance of about seven to eight (7-8) feet and yell "ahhhhh" right before Officer 1 discharged his firearm at Brown.

Based on the facts and circumstances in this case, it is clear that Officer 1 had a reasonable belief that deadly force, *i.e.*, shooting Brown, was immediately necessary to protect himself from death or serious bodily injury as Brown lunged at Officer 1 with a knife on his hand and Officer 1 therefore felt that he was about to be stabbed while being off-balance. It is also clear that a knife measuring approximately 8.5 inches could cause death or serious bodily injury. In addition, it is noteworthy that at the time Officer 1 shot Brown, Officer 1 did not have any back up officers as they had not arrived at the scene yet. As such, the likelihood of being killed or seriously injured multiplied given the circumstances in which Officer 1 found himself.

In addition, Officer 1 was not the initial aggressor. He did not provoke Brown's use of force against him as he was simply trying to arrest Brown. As a law enforcement

officer who was engaged in his official duties to arrest Brown, he was under no duty to retreat.⁹⁴

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

B. Conclusion.

To secure a conviction for an offense under the HPC, the prosecution must disprove an applicable defense—other than an affirmative defense—beyond a reasonable doubt.⁹⁵ The defense codified in HRS §§ 703-304 is not an affirmative

⁹⁴ **HAWJIC 7.01A**, as modified, states in relevant part:

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

Compare, **H.R.S. § 703-304(5)(b)(ii)**.

⁹⁵ **H.R.S. §§ 701-114, 701-115, and 702-205** (2014 Repl.).

H.R.S. § 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.

H.R.S. § 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

defense. As such, where these defenses are applicable they must be disproved (or negated) beyond a reasonable doubt.⁹⁶

The PAT declines to prosecute Officer 1 for any offense under the HPC for shooting Brown as the PAT is unable to disprove beyond a reasonable doubt that Officer 1's use of deadly force was not justified for self-protection.

The PAT therefore concludes that Officer 1 was justified in his use of deadly force for self-protection when he shot Brown.⁹⁷

C. Materials Considered.

A. HPD Report No. 19-478382 and HPD Report No. 19-460856

1. Investigative
 - HPD Lieutenant [REDACTED] (Professional Standards Office)
 - Detective 1 (Homicide)
 - HPD Detective [REDACTED] (Professional Standards Office)
2. Patrol and Support Officers
 - Officer 1
 - Officer 2
 - Officer 3
 - HPD Sergeant 1

-
- (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. § 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).

⁹⁶ See, e.g., **State v. Culkin**, 97 Hawai'i 206, 215, 35 P.3d 233, 242 (2001) ("Self-defense is not an affirmative defense, and the prosecution has the burden of disproving it once evidence of justification has been adduced.").

⁹⁷ This writer further notes that **H.R.S. Section § 703-307** (2014 Repl.), Use of Force in Law Enforcement, was not an applicable justification defense in this case as Officer 1 used deadly force to effectuate an arrest for a misdemeanor (reckless driving) and the said defense with respect to the use of deadly force only applies to a felony arrest.

- HPD Sergeant [REDACTED]
- HPD Sergeant [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]

3. SCIENTIFIC INVESTIGATION SECTION

- Criminalist 1
- Criminalist 2

4. EVIDENCE SPECIALISTS

- SIS Specialist 1
- SIS Specialist 2
- SIS Specialist 3

B. Written Witness Statements

- Witness 1
- Witness 2
- Witness 3
- Witness 4
- [REDACTED]

C. HPD Recorded Statements

- Witness 1
- Witness 2

D. Ten (10) HPD Body-Worn Camera Videos

- Officer 1
- Officer 2
- Officer 3
- HPD Sergeant 1
- HPD Officer [REDACTED]

- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]

E. Other Materials Received from HPD and PAT Independent Investigation

- Personnel information for Officer 1

F. PAT Independent Investigation

- General scene review
- Photographs