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

**Officer-Involved Shooting Report No. 2023-02**

**Report Date: June 22, 2023**

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

**Caillen Gentzler**

**Parking lot of 47-330 Ahuimanu Road  
(Ho'okipa Kahalu'u Housing)**

## 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") Acting Sergeant [REDACTED] (hereinafter, "Acting Sergeant 1")<sup>1</sup> 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 Caillen Gentzler (hereinafter, "Gentzler") on December 28, 2020, at the Ho'okipa Kahalu'u Apartments Public Housing (hereinafter, "Ho'okipa Apartments") parking lot located at 47-330 Ahuimanu Road, Kaneohe, Hawai'i 96744. In making this assessment, the PAT will use the proof beyond a reasonable doubt standard.

This investigation considered materials and information provided by HPD.<sup>2</sup> PAT Investigator [REDACTED] also assisted in this investigation and was the PAT's primary investigator.

This investigation offers no opinion whether Acting 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).<sup>3</sup>

On June 1, 2016, Gentzler was convicted of the following offenses under Criminal Number 16-1-0068: 1) two counts of Ownership or Possession Prohibited, in violation of Hawai'i Revised Statutes (hereinafter, "H.R.S.") **Section 134-7(b)** (2011 Repl.) and **Section 134-7(h)** (2011 Repl.) a class B felony<sup>4</sup>; 2) Place to Keep Pistol or Revolver, in violation of H.R.S. Section 134-25 (2011 Repl.), a class B felony; 3) Unauthorized Control of Propelled Vehicle, in violation of H.R.S. Section 708-836 (2014 Repl.), a class C felony; 4) Promoting a Dangerous Drug in the Third Degree, in violation of H.R.S. Section 712-1243 (2014 Repl.), a class C felony, and 5) Place to Keep Ammunition, in violation of H.R.S. Section 134-27 (2011 Repl.), a misdemeanor. Gentzler was sentenced to four (4) years of probation and eighteen (18) months of

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<sup>1</sup> At the date of the incident, Corporal [REDACTED] was an Acting Sergeant.

<sup>2</sup> The key report number for the investigation of the shooting is documented under HPD Report Number [REDACTED].

<sup>3</sup> Unless otherwise specified, the facts contained below were taken from the PAT's computer data base system and the official website of the Hawai'i State Judiciary, eCourt Kokua.

<sup>4</sup> As applied to Gentzler, this offense is commonly known as Felon in Possession of Firearm or Ammunition as Gentzler, a previously convicted felon, was prohibited from possessing a firearm or ammunition.

incarceration for the felony convictions and one (1) year of probation and one (1) year of incarceration for the misdemeanor conviction, with all sentences to run concurrently.

On April 6, 2017 Gentzler's probation was revoked and he was resentenced to a ten (10) year term of incarceration for the class B felony convictions, a five (5) year term of incarceration for the class C felony convictions, and a one (1) year term of incarceration for the misdemeanor conviction, all to be served concurrently with each other.

Prior to the termination of his sentence of incarceration, Gentzler was released on parole on October 29, 2020 and on December 22, 2020, the State of Hawai'i Paroling Authority issued a warrant of arrest for Gentzler for violating the terms of conditions of his parole.<sup>5</sup>

On December 28, 2020, HPD Officer [REDACTED] (hereinafter, "Officer 2") was doing routine patrol when he observed a suspicious Jeep parked in the parking lot of Ho'okipa Apartments.<sup>6</sup> A check of the vehicle revealed that the said vehicle was involved in a Kidnapping type case that occurred on December 20, 2020 (documented under HPD Report Number 20-693246).<sup>7</sup> Further checks showed that one of the registered owners of the Jeep, Caillen Gentzler, had an active parole retake warrant and was a suspect in the aforementioned Kidnapping case.<sup>8</sup>

Based on the information, police officers from the HPD District 4 Crime Reduction Unit (hereinafter, "D4 CRU") arrived at the aforementioned parking lot, including Acting Sergeant 1 and Officer 1.<sup>9</sup> While waiting for additional backup units, Acting Sergeant 1 observed Gentzler exiting a unit from one of the buildings of Ho'okipa Apartments.<sup>10</sup> A foot pursuit occurred within the Ho'okipa Apartments property and Gentzler ended up jumping into the parked Jeep, starting the said Jeep and reversing the Jeep as Acting Sergeant 1 and Officer 1 attempted to open the doors to the said vehicle to arrest him.<sup>11</sup> The shooting then occurred as Gentzler drove the vehicle towards Acting Sergeant 1 and Officer 1.<sup>12</sup>

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<sup>5</sup> See, HPD Report Number 20-706930.

<sup>6</sup> See, report by Officer 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See, reports by Officer 1, Officer 2 and Sergeant 1.

<sup>10</sup> See, report by Acting Sergeant 1.

<sup>11</sup> See, reports by Acting Sergeant 1 and Officer 1.

<sup>12</sup> *Id.*

## B. The Weather.

Photographs taken by HPD of the scene after the incident showed that the weather was slightly overcast.<sup>13</sup>



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<sup>13</sup> The first two photographs below were taken by HPD Officer [REDACTED] while the third photograph was taken by HPD Scientific Investigative Services (hereinafter, "SIS") Evidence Specialist [REDACTED] (hereinafter, "Evidence Specialist 1").

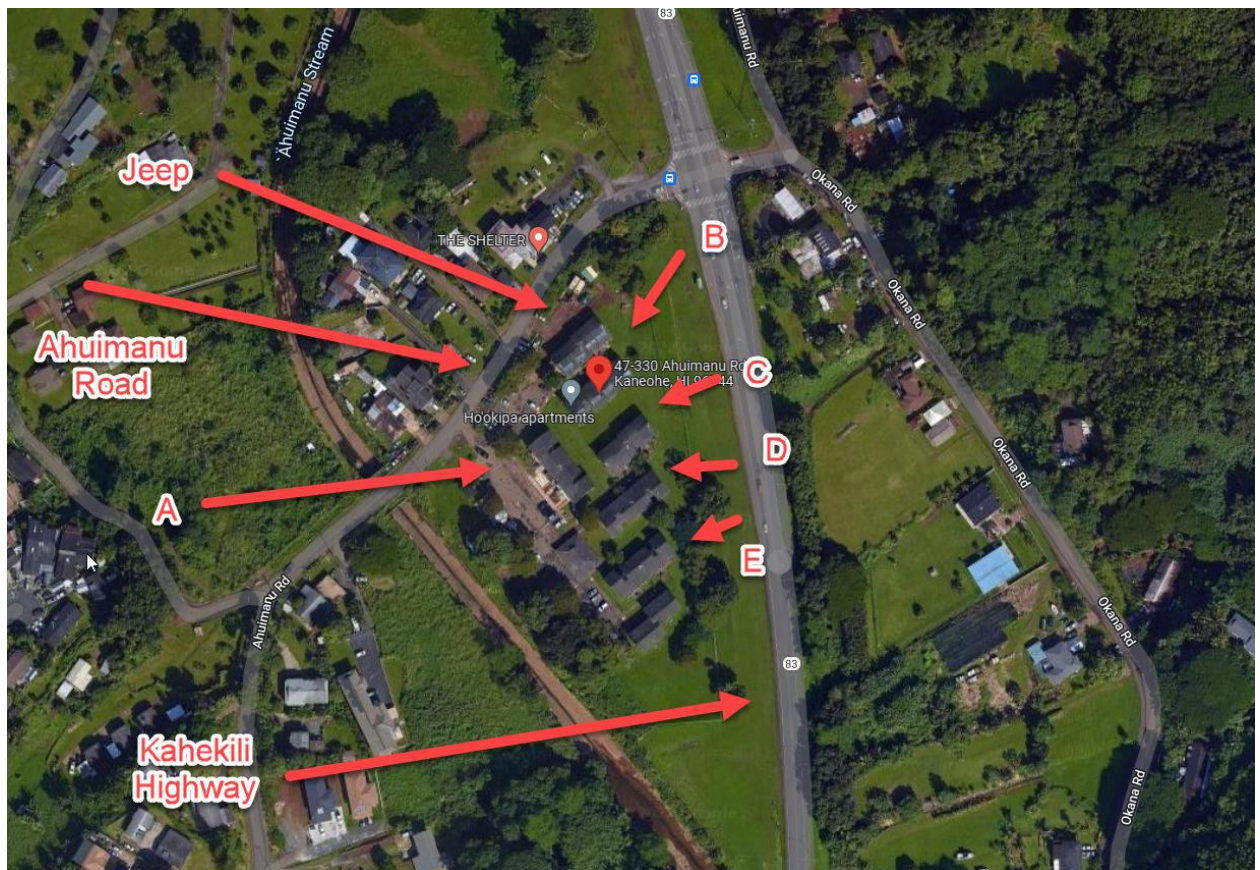






### C. The Scene.

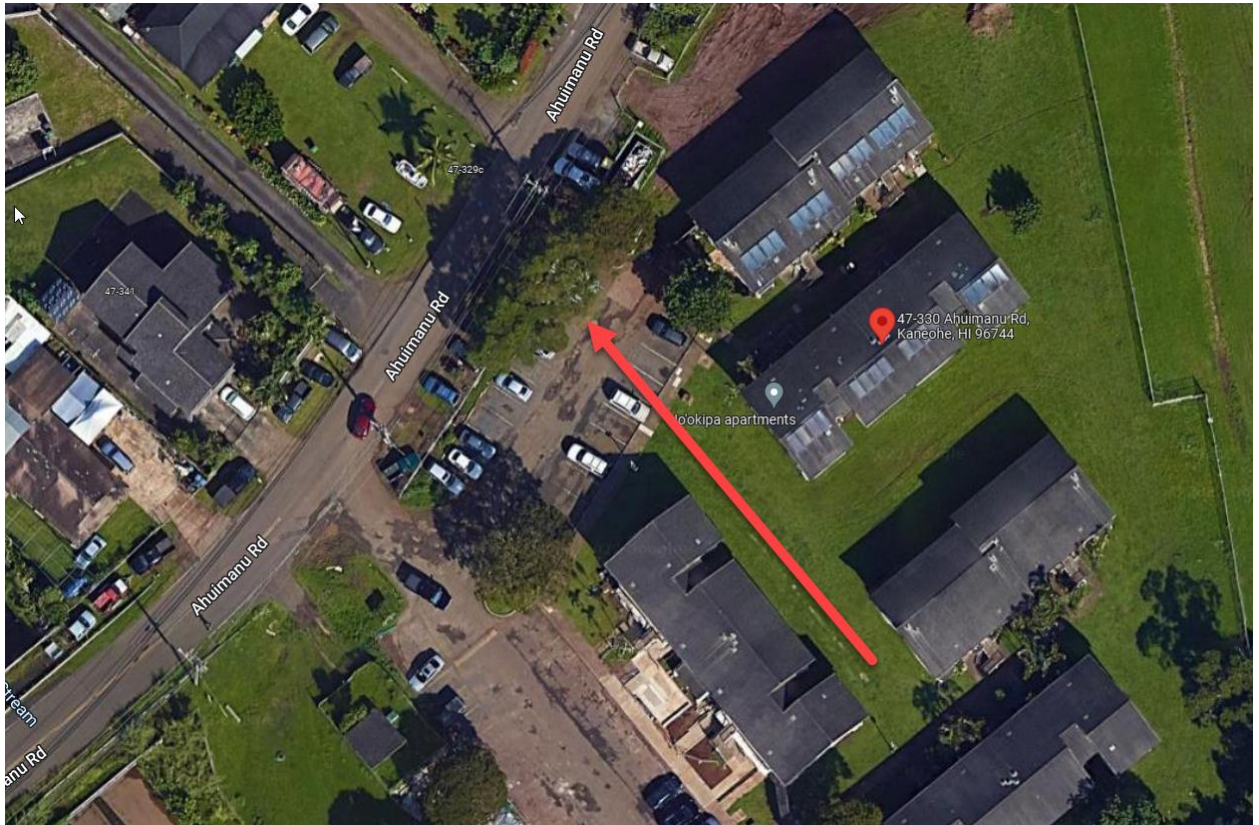
As noted hereinabove, the scene of the shooting was at the parking lot area of Ho'okipa Apartments, located at 47-330 Ahuimanu Road in Kaneohe, O'ahu.<sup>14</sup> As seen in the photograph, Ahuimanu Road is north of Ho'okipa Apartments while Kahekili Highway is just east of Ho'okipa Apartments. Also included are the letter names of the relevant buildings of Ho'okipa Apartments (Building "A", Building "B", Building "C", Building "D" and Building "E") in relation to this investigation. The parking lot where the shooting occurred is the paved area north of Building "A", west of Building "B" and south of Ahuimanu Road.



<sup>14</sup> <https://www.google.com/maps/place/47-330+Ahuimanu+Rd,+Kaneohe,+HI+96744/@21.4484518,-157.8341061,269m/data=!3m1!1e3!4m5!3m4!1s0x7c006a12b607268f:0x1de0b65b57bc0f08!8m2!3d21.4483838!4d-157.8335289>



The photo below is the same photo as above but with a close up view of the aforementioned Ho'okipa Apartments parking lot with the arrow indicating the approximate location where the suspect vehicle was originally parked.<sup>15</sup>



#### D. Participants in the Event

##### 1. Gentzler.<sup>16</sup>

In addition to the aforementioned noted convictions listed hereinabove, Gentzler had felony convictions for three (3) counts of Theft in the Second Degree, a class C felony, in violation of **H.R.S. Section 708-831** (1993 Repl.) under Criminal Number 05-1-0050; Kidnapping, a class B felony, in violation of **H.R.S. Section 707-720** (1993 Repl.) and Robbery in the Second Degree, a class B felony, in violation of **H.R.S. Section 708-841** (1993 Repl.) under Criminal Number 04-1-1479; Unauthorized Control

<sup>15</sup> *Id.*

<sup>16</sup> The information background regarding Gentzler was retrieved from the PAT's computer data base system and the Hawai'i State Criminal Justice Inquiry System (CJIS), the PAT's computer data base system and the official website of the Hawai'i State Judiciary, eCourt Kokua



of Propelled Vehicle, a class C felony, in violation of **H.R.S. Section 708-836** (1993 Repl.) under Criminal Number 03-1-2156; and Theft, Forgery of Credit Card, a class C felony, in violation of **H.R.S. Section 708-8102** (1993 Repl.) under Criminal Number 99-0040 (3<sup>rd</sup> Circuit).

With respect to non-felony convictions, Gentzler had twenty-three (23) non-felony convictions in addition to the aforementioned Place to Keep Ammunition conviction he had in 2016.<sup>17</sup>

## 2. Acting Sergeant 1.<sup>18</sup>

Acting Sergeant 1 has been employed as an HPD officer since January 20, 2000. At this time of writing, he has over twenty-two (22) years of service. His assignments at HPD have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
January 20, 2000	March 15, 2002	Training
March 16, 2002	April 3, 2004	Central Receiving Division
April 4, 2004	May 2, 2009	Records
May 3, 2009	October 3, 2009	District 6
October 4, 2009	June 25, 2022	District 4
June 26, 2022	present	District 6

Based on the use of force records (UOF records) provided by PSO, Acting Sergeant 1 has no prior sustained use of force or use of deadly force investigations. Acting Sergeant 1 does not have a criminal record. Lastly, Acting Sergeant 1 is a law enforcement officer as defined by **H.R.S. Section 701-118** (2014 Repl.).<sup>19</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> This information, provided by HPD's Professional Standards Office (PSO), is as of November 14, 2022.

<sup>19</sup> "‘Law enforcement officer’ means any public servant, whether employed by the State or county or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses."

### 3. Officer 1.<sup>20</sup>

Officer 1 has been employed as an HPD officer since April 16, 2012. At this time of writing, he has over ten (10) years of service. His assignments at HPD have been as follows:

<u>START DATE</u>	<u>END DATE</u>	<u>LOCATION</u>
April 16, 2012	May 25, 2013	Training
May 26, 2013	August 11, 2018	Central Receiving Division
August 12, 2018	March 19, 2022	District 4
March 20, 2022	present	District 8

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

On December 28, 2020, at about 11:00 a.m., Officer 2 was doing routine patrol on his beat which included the area of Ahuimanu Road. While doing so, Officer 2 saw a suspicious vehicle that was parked in the parking lot of Ho'okipa Apartments. The vehicle, a Jeep, had some front end damage and a missing front license plate. Per Officer 2, the said Jeep was also parked in an area where stolen vehicles are sometimes found.

After entering the parking lot in his police vehicle, Officer 2 saw that the Jeep had a rear license plate. There were no other persons in the area at the time. While in his vehicle, Officer 2 then made checks via his police issued laptop on HPD's Case Reporting System (hereinafter, "CRS") and discovered that the Jeep was registered to Gentzler and [REDACTED]. Further checks on CRS revealed that the vehicle was involved in a Kidnapping case that occurred on December 19, 2020 and that was documented under HPD Report Number 20-693246. Upon reviewing the said HPD reports under HPD Report Number 20-693246, Officer 2 learned that Gentzler was a possible suspect in the said Kidnapping case. The other suspect was a female named [REDACTED] (hereinafter, "R.K.").

While still in his vehicle, Officer 2 noticed a female who resembled CRS photographs of R.K. The female walked with a child towards the rear of the Jeep and

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<sup>20</sup> This information, provided by HPD's Professional Standards Office (PSO), is as of February 3, 2022.

<sup>21</sup> The statement below was taken from Officer 2's report.

opened the rear hatch. After appearing to be looking for something within the said vehicle, the female then closed the hatch and walked back towards Apartment C-102 of Ho'okipa Apartments. Because the said female resembled R.K., Officer 2 believed that there was a reasonable possibility that Gentzler may also be in Apartment C-102 or nearby.

As a result, Officer 2 made further checks on Gentzler and noticed that he had a traffic warrant. Further checks with D4 CRU revealed that Gentzler also had an active parole retake warrant for violating the terms of his parole. D4 CRU Officer [REDACTED] (hereinafter, "Officer 3") then informed Officer 2 that D4 CRU would be responding to Officer 2's location.

The first D4 CRU officer to arrive was Acting Sergeant 1. After his arrival at the parking lot of Ho'okipa Apartments, Acting Sergeant 1 related that he observed a male running away from Building "C", towards Kahekili Highway. Due to prior incidents involving suspects running from Ho'okipa Apartments across Kahekili Highway and into the brush of Okana Road or the Kahalu'u Canal, Officer 2 drove his vehicle out of the Ho'okipa Apartments parking lot and onto Kahekili Highway to maintain a possible visual on Gentzler's whereabouts.

While driving along the Ho'okipa Apartments chain link fence line, Officer 2 observed Gentzler running between Buildings "D" and "E" towards the laundromat area. He then observed Gentzler walking slowly as he got to the edge of Building D before running towards Officer 2's direction. Appearing to see Officer 2's vehicle, Gentzler then turned around and ran back towards the laundromat. Knowing that there was an opening in the fence line that leads towards the Kahalu'u canal, Officer 2 then drove towards that direction in order to contain Gentzler from escaping there. As he got to the fence line opening, Officer 2 did not see Gentzler. Officer 2 then heard that there were "shots fired" through the radio.

## **2. Statement by Acting Sergeant 1.<sup>22</sup>**

On December 28, 2020, at about 11:30 a.m., Acting Sergeant 1 was working and on duty for D4 CRU when he heard over police radio that a patrol unit located a vehicle that was involved in a Kidnapping case. Acting Sergeant 1 who was attired in plain clothes, was also wearing a duty issued ballistic vest marked on the front and back with "POLICE" patches. He also had his duty issued HPD badge hung from a lanyard around his neck and displayed on his chest.

Through the police radio, Acting Sergeant 1 learned that a check on the said vehicle revealed that the registered owner was Gentzler, the suspect in the Kidnapping case and a person who also had an outstanding parole retake warrant. Based on the information he received, Acting Sergeant 1 responded to Ho'okipa Apartments in a

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<sup>22</sup> The statement below was taken from Acting Sergeant 1's report.



marked police car in order to locate Gentzler, whom Acting Sergeant 1 personally knew from prior police contacts.

Upon his arrival, Acting Sergeant 1 met and spoke with Officer 2 who was the patrol officer who located the suspect vehicle, a Jeep Cherokee which was parked in the Ho'okipa Apartments parking lot. He and Officer 2 then stood next to their respective marked HPD vehicles and waited for additional HPD units to arrive to assist in locating Gentzler. While seeing Officer 1 and Officer 3 arrive in their vehicles, Acting Sergeant 1 then noticed a male emerge from an apartment in the center of Building "C" of the Ho'okipa Apartments. The male was wearing a blue hoodie with the hood up, dark sunglasses and jogging pants. The said male looked directly at Acting Sergeant 1 who immediately recognized and positively identified the male as Gentzler.

Gentzler started to walk and then run faster away from Acting Sergeant 1 and towards Kahekili Highway. Yelling "Police, stop", Acting Sergeant 1 also announced to the other officers that Gentzler was "running, there were holes in the fence and HPD units needed to get to the highway." Acting Sergeant 1 then started to pursue Gentzler and chased him between Building "C" and Building "D" of the Ho'okipa Apartments. After turning the corner of Building "C", Acting Sergeant 1 lost sight of Gentzler.

Subsequently, Officer 2, who was driving on Kahekili Highway, directed Acting Sergeant 1 and Officer 1, who was also pursuing Gentzler, to the area between Building "D" and Building "E". After doing so, Acting Sergeant 1 and Officer 1 located Gentzler and started to chase him again. They chased him through the area between Building "D" and Building "E" and then behind Building "A", past Building "D", Building "C" and Building "B", and then into the parking lot. After starting to gain ground on Gentzler, Acting Sergeant 1 then displayed his taser and yelled "Stop, police, stop" to Gentzler.

Ignoring Acting Sergeant 1's orders, Gentzler approached the parked Jeep and entered the said vehicle through the driver's side door. Gentzler then closed and locked the doors and Acting Sergeant 1 reholstered the taser to his belt. Acting Sergeant 1 then saw Officer 1 reach the driver's side door of the Jeep and pull on the door handle as Gentzler started the engine. Situated behind Officer 1, Acting Sergeant 1 tried to open the Jeep's driver's side rear door, but the said door was locked. After Officer 1 yelled out, "Stop" and "Don't do it", the Jeep's engine began to rev and the vehicle then dropped into gear. The Jeep then reversed in a sweeping motion towards Officer 1 and Acting Sergeant 1 who both jumped out of the way of the moving Jeep. Acting Sergeant 1 noted that had he not jumped out of the way, the front end of the Jeep would have struck him.

At this point, Acting Sergeant 1 found himself between a large tree, fence, and the Jeep. As a result, Acting Sergeant 1 drew his duty issued firearm as Gentzler abruptly stopped reversing the Jeep such that the front of the said vehicle was now facing directly towards Acting Sergeant 1. The Jeep was only a few feet from Acting Sergeant 1. Noting that there was a large tree and a six (6) foot chain link fence behind him and Officer 2 to his left, Acting Sergeant 1 felt that he was unable to retreat. He

also feared for his life based on the aforementioned circumstances. As a result, Acting Sergeant 1 leveled his pistol towards Gentzler as he heard the Jeep's engine revving again.

The Jeep then dropped into gear and immediately lurched towards Acting Sergeant 1 who was barely able to fire one shot before jumping out of the way of the Jeep which almost struck him. As he fired his shot, Acting Sergeant 1 also heard other shots coming from Officer 1's direction. After going forward, the Jeep then made a wide turn to the left at a high rate of speed and struck two parked vehicles. The collision was so violent that the two parked vehicles were pushed over a six (6) inch tall curb and into a grass area.

After the collision, Acting Sergeant 1 yelled "Stop" and "Get out of the vehicle, show me your hands" at Gentzler. The Jeep then began slowly reversing away from the said two parked vehicles and made a turn, reversing into Building "B" of Ho'okipa Apartments. The Jeep finally came to rest against Building "B".

Officer 1, Officer 3, and Acting Sergeant 1 approached the vehicle and Acting Sergeant 1 noticed through the front windshield that Gentzler was slumped over the center console and into the front passenger seat of the Jeep with his face down. It appeared that Gentzler had labored breathing and he did not respond to commands to show his hands. As such, Acting Sergeant 1 used a window breaking tool and breached the driver's side door of the Jeep. He then unlocked the door utilizing the automatic door lock function. Officer 3 opened the passenger side front door and he and Acting Sergeant 1 pulled Gentzler out of the vehicle. They laid him down and Officer 3 and Officer 1 administered first aid to Gentzler until personnel from the fire department arrived.

### **3. Statement by Officer 1.<sup>23</sup>**

On December 28, 2020, at about 11:30 a.m., Officer 1 was working for D4 CRU under the direct supervision of Acting Sergeant 1. Upon receiving information that Gentzler, who was wanted for a parole retake warrant and for being a suspect in a recent Kidnapping case, Officer 1 and other officers from D4 CRU responded to Ho'okipa Apartments. Officer 1 noted that he was attired in plain clothes while wearing his department issued ballistic vest with the word "POLICE" printed in yellow lettering on the front and back of the said vest. His HPD badge was slung from a lanyard around his neck and was visible to the public.

Upon his arrival at the above scene in a marked blue and white HPD vehicle, Officer 1 observed Acting Sergeant 1 in the Ho'okipa Apartments parking lot. Acting Sergeant 1 was speaking to Officer 2. After parking and exiting his vehicle in the parking lot, Officer 1 observed Acting Sergeant 1 sprinting toward the grassy area located on the Makai side of Building "C". Acting Sergeant 1 was yelling that Gentzler

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<sup>23</sup> The statement below was taken from Officer 1's report.

was fleeing from one of the units of Building "C". Officer 1 also observed Officer 2 driving from the Ho'okipa Apartments parking lot onto Ahuimanu Road towards Kahekili Highway. Officer 1 believed that Officer 2 was driving towards Kahekili Highway to assist in blocking off or locating Gentzler in case Gentzler tried to go over the fence and out of the Ho'okipa Apartment property.

Officer 1 then ran towards the grassy area on the Makai side of Building "C" and began to make checks for Gentzler. While doing so, Officer 1 heard Officer 2 yelling and pointing from his vehicle on Kahekili Highway. Officer 2 was specifically yelling, "He's right there" and pointing at the Kaneohe side of Building "D". As a result, Officer 1 turned the corner from the grassy area near Building "D" and observed Gentzler running away from Acting Sergeant 1 and toward the laundromat area.

Officer 1 then proceeded to chase after Gentzler and yelled, "Police, stop". However, Gentzler ignored Officer 1's commands and continued to flee on foot. Gentzler took a sharp right turn and ran down a grassy area towards Building "C" and Building "B". Continuing to yell at Gentzler to stop, Officer 1 continued chasing Gentzler who continuously ignored Officer 1 while proceeding towards the parking lot of Ho'okipa Apartments and a gray Jeep that was parked with its front end facing the curb.

Gentzler ran straight to the Jeep, opened the driver's side door, entered the said vehicle, and closed the door. Officer 1 then reached the Jeep and tried to open the front driver's side door but discovered that the said door was locked. Meanwhile, Acting Sergeant 1 arrived behind him and attempted to open the driver's side rear door without success. Officer 1 then yelled at Gentzler not to start the Jeep and to stop. However, Officer 1 then heard the Jeep's engine start and rev up.

Upon hearing the engine revving and the switching of gears, Officer 1 knew that Gentzler was not going to stop. Gentzler then reversed the Jeep from the stall at a high rate of speed thereby causing Officer 1 and Acting Sergeant 1 to jump out of the way or otherwise get run over by the vehicle. The Jeep then stopped in the parking lot and Officer 1 now observed that the front end of the vehicle was facing Acting Sergeant 1 and him. Hearing the engine rev loudly and the gears switching, Officer 1 drew his service pistol from his holster. Gentzler then proceeded to drive the Jeep directly at Acting Sergeant 1 and Officer 1. Fearing for his own life and for Acting Sergeant 1's life, Officer 1 then discharged several rounds at Gentzler.

Immediately after discharging his firearm, Officer 1 saw the Jeep make a sharp left turn in the parking lot and collide with two (2) parked vehicles. The collision caused both of the parked vehicles to hop the curb and go forward onto the grass. The Jeep then proceeded to slowly back up in the parking lot until finally coming to a stop by colliding with Building "B".

After the Jeep came to a stop, Officer 1 continued to draw down on the said vehicle while Acting Sergeant 1 and Officer 3 tried to open the driver's side door. Because the said door was locked, Acting Sergeant 1 used a tool to shatter the driver's



side door window to render the vehicle safe and check on Gentzler's condition. Officer 1 then observed Gentzler to be slumped over towards the front passenger seat and unresponsive. After the doors were unlocked, Officer 3 opened the front passenger door to evaluate Gentzler. Officer 3 checked Gentzler and related that Gentzler appeared to have a gunshot wound to his head and was unresponsive. Officer 1 and Officer 3 then pulled Gentzler out of the Jeep, laid him on the grass and began to administer first aid to him until personnel from the fire department arrived.

#### **4. Statement by Officer 3.<sup>24</sup>**

Officer 3 stated that on December 28, 2020, he was working for D4 CRU when he assisted in attempting to locate Gentzler who was wanted for an outstanding parole retake warrant and for being a suspect in a Kidnapping case. Officer 3 confirmed the parole retake warrant with the Department of Public Safety and then arrived at Ho'okipa Apartments. Upon his arrival at the parking lot area, Officer 3 parked directly behind the Jeep which he learned was Gentzler's vehicle. Upon exiting his car, Officer 3 saw Acting Sergeant 1 and Officer 1 run towards Building "C". He also heard them yelling, "Stop, police!" Acting Sergeant 1 also announced that he was running after Gentzler and that Gentzler was heading towards Kahekili Highway.

Upon so hearing, Officer 3 got into his vehicle, drove back onto Ahuimanu Road and onto Kahekili Highway in an attempt to cut Gentzler off. Officer 2, who was also on Kahekili Highway in his vehicle, then updated Officer 3 and other units that he saw Gentzler still running within the Ho'okipa Apartments property towards the laundromat. Based on the said information, Officer 3 drove back to Ho'okipa Apartments and parked next to the laundromat, which was located near Building "E". Officer 3 then exited his vehicle and made checks of the laundromat.

While in the laundromat, Officer 3 heard four (4) to five (5) gunshots. He then immediately exited the laundromat and ran towards the parking lot of Ho'okipa Apartments which was the area from which the gunshot noises came. Officer 3 then observed the Jeep reversing towards Building "B". At the same time, Acting Sergeant 1 and Officer 1 were yelling "Stop the car, get out and show me your hands." The Jeep continued reversing until coming to a rest against Building "B". Officer 3 then approached the vehicle.

As nobody exited the Jeep, Acting Sergeant 1 made entry of the vehicle through the driver's side window. After Acting Sergeant 1 opened the driver's side door, Officer 3 observed that Gentzler was unresponsive and slouched over the front passenger seat. Upon seeing so, Officer 3 immediately pulled Gentzler out of the vehicle through the front passenger door and began to administer CPR to him.

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<sup>24</sup> The statement below was taken from Officer 3's report.

## **5. Statement by [REDACTED].<sup>25</sup>**

[REDACTED] (hereinafter, "Witness 1") provided a written and recorded statement to HPD.<sup>26</sup> Witness 1 said that on December 28, 2020, she was at her unit in Ho'okipa Apartments in Building "D" when she saw two (2) police officers chasing and yelling at a male who was wearing a hoodie to get on the ground. She knew that the two (2) men were police officers because they were wearing police vests.

The officers and the male with the hoodie ran right past her bedroom window. The male with the hoodie then ran to a SUV type vehicle that was parked in the Ho'okipa Apartments parking lot. After the male with the hoodie entered the SUV vehicle through the driver's side door, the two (2) police officers banged on the driver's side window of the vehicle and told the male to get out.

The male with the hoodie then reversed the Jeep as the officers were still banging on the window. The male then "punched" forward fast to get out of the area. As the vehicle was going forward, both of the police officers drew their guns and fired at the vehicle about three (3) times. Witness 1 said that one (1) of the officers was standing close to the front of the vehicle when he shot. The other officer was there too but the vehicle appeared to be driving past him when he started shooting.

Witness 1 said that the vehicle went forward but not straight. The vehicle ended up colliding into two parked cars. Witness 1 went outside and then saw the two (2) officers "shaking" the male with the hoodie outside of the vehicle. When explaining about "shaking", Witness 1 said that it appeared as if the officers were either giving the male CPR or trying to find out if he was alive.

## **6. Post Shooting Events.**

As noted earlier, fire department personnel arrived and took over the administration of first aid to Gentzler from Officer 1 and Officer 3.<sup>27</sup> On December 28, 2020, at about 11:50 a.m., an ambulance arrived and EMS personnel started treatment

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<sup>25</sup> See, written and recorded statement by Witness 1.

<sup>26</sup> [REDACTED] (hereinafter, "Witness 2"), [REDACTED] (hereinafter, "Witness 3") and [REDACTED] (hereinafter, "Witness 4") also gave statements and noted that they were in their apartment during the shooting and did not see the actual shooting. See, statements by Witness 2, Witness 3, and Witness 4.

<sup>27</sup> See, generally, reports by Officer 1 and Officer 3.

on Gentzler.<sup>28</sup> On December 28, 2020, at about 12:13 p.m., the ambulance transported Gentzler to the Queen's Medical Center in critical condition.<sup>29</sup>

On December 28, 2020, at about 1:21 p.m., Dr. [REDACTED] (hereinafter, Dr. MH) pronounced Gentzler dead.<sup>30</sup> On December 28, 2020, Gentzler's body was transported to the City and County of Honolulu Medical Examiner's Office.<sup>31</sup>

On December 28, 2020, Corporal 2 located four (4) ammunition casings at the scene.<sup>32</sup> Evidence Specialist 1 later recovered the casings and submitted them into evidence under HPD Report Number [REDACTED] as Items 5, 6, 7, and 8.<sup>33</sup>

Sergeant [REDACTED] (hereinafter, "Sergeant 1") recovered the firearms used in this shooting incident from Acting Sergeant 1 and Officer 1.<sup>34</sup> Sergeant 1 also recovered their magazines, duty belts and attached equipment.<sup>35</sup> Sergeant 1 then turned over the said items to HPD SIS Evidence Specialist [REDACTED] (hereinafter, "Evidence Specialist 2") who submitted them into evidence under HPD Report Number [REDACTED].<sup>36</sup>

On December 28, 2020, at about 6:10 p.m., HPD towed the Jeep to the HPD main station.<sup>37</sup> The Honorable Judge [REDACTED] approved a search warrant for the Jeep to recover possible bullets or bullet fragments from within the said vehicle.<sup>38</sup> During the execution of the search warrant, HPD SIS Evidence Specialist [REDACTED] (hereinafter, "Evidence Specialist 3") located a stolen rifle in the back driver's seat of the Jeep.<sup>39</sup> Evidence Specialist 3 took photos of the said firearm and submitted the firearm into evidence under HPD Report Number [REDACTED], which was the report documenting the stolen firearm.<sup>40</sup>

#### **F. Gentzler's Cause of Death, Recovered Evidence, and Toxicology Results.<sup>41</sup>**

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<sup>28</sup> See, report by HPD Corporal [REDACTED] (hereinafter, "Corporal 2").

<sup>29</sup> *Id.*

<sup>30</sup> See, report by HPD Officer [REDACTED].

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

<sup>32</sup> See, report by Corporal 2.

<sup>33</sup> See, evidence report by Evidence Specialist 1.

<sup>34</sup> See, reports by Sergeant 1, Acting Sergeant 1 and Officer 1.

<sup>35</sup> *Id.*

<sup>36</sup> See, reports by Sergeant 1 and Evidence Specialist 2.

<sup>37</sup> See, report by HPD Officer [REDACTED].

<sup>38</sup> See, generally, HPD Report Number [REDACTED].

<sup>39</sup> See, report by Evidence Specialist 3.

<sup>40</sup> See, report by Evidence Specialist 3; HPD Report Number [REDACTED].

<sup>41</sup> The facts in this section are from City and County of Honolulu Forensic Pathologist Dr. [REDACTED] (hereinafter, "FP's") report except when otherwise noted.



On December 29, 2020, FP performed an autopsy on Gentzler's body. During the autopsy, FP found that Gentzler had one (1) penetrating gunshot wound to his head. The entry point was present at the right top of Gentzler's head, about four (4) centimeters below the top and eleven (11) centimeters superior and three (3) centimeters anterior to the tragus of his right ear. There was no soot, stippling or muzzle imprint present.

FP noted that the autopsy further showed that the bullet entered the cranial cavity through the right frontoparietal lobes, left frontoparietal lobes and then struck the left frontoparietal bones, where there was a punched-out bone fragment with beveling on the outer surface and associated radiating fractures. FP located and recovered a small bullet fragment under the said punched-out bone fragment. FP said that the autopsy further indicated that the bullet further traveled into the left frontal lobe where he located and recovered a larger, deformed jacketed bullet fragment. He said that the scalp showed extensive subgaleal hemorrhage and that some subdural hematomas were present over the bilateral cerebral hemispheres. FP further noted that there was a diffuse subarachnoid hemorrhage with intraventricular hemorrhage. He lastly found cerebral contusions on the superolateral surfaces of the bilateral frontoparietal lobes as well as intraparenchymal hemorrhages along the wound track.

Evidence Specialist 2 recovered the bullet fragments and submitted the same into evidence under HPD Report Number [REDACTED].<sup>42</sup>

FP opined that the cause of death of Gentzler was a penetrating gunshot wound to his head.

Lastly, a toxicology done on Gentzler confirmed the presence of alcohol (0.024 grams per deciliter), methamphetamine (210 nanograms per milliliter), amphetamine (23 nanograms per milliliter), and alprazolam (33 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].<sup>43</sup>

HPD Item Number	Description	Where Recovered
5	One (1) cartridge case	On parking lot of Ho'okipa Apartments next to evidence marker "A"

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<sup>42</sup> *Id.*

<sup>43</sup> Evidence reports by Evidence Specialist 1 and Evidence Specialist 2.

HPD Item Number	Description	Where Recovered
6	One (1) cartridge case	On parking lot of Ho'okipa Apartments next to evidence marker "B"
7	One (1) cartridge case	On parking lot of Ho'okipa Apartments next to evidence marker "C"
8	One (1) cartridge case	On parking lot of Ho'okipa Apartments next to evidence marker "D"
21	One (1) Glock 17 Gen 4 firearm containing empty magazine	From Sergeant 1 who received item from Officer 1
22	Thirteen (13) Speer 9mm cartridges removed from magazine (Item 21)	Same as Item #21
23	One (1) Speer 9mm cartridge removed from chamber of firearm (Item 21)	Same as Item #21
24	One (1) magazine with seventeen (17) Speer 9mm cartridges	Same as Item #21
25	One (1) magazine with seventeen (17) Speer 9mm cartridges	Same as Item #21
27	One (1) Glock 17 Gen 4 firearm containing empty magazine	From Sergeant 1 who received item from Acting Sergeant 1
28	Sixteen (16) Speer 9mm cartridges removed from magazine (Item 27)	Same as Item #27
29	One (1) Speer 9mm cartridge removed from chamber of firearm (Item 27)	Same as Item #27
30	One (1) magazine with seventeen (17) Speer 9mm cartridges	Same as Item #27
31	One (1) magazine with seventeen (17) Speer 9mm cartridges	Same as Item #27
34	Projectile fragments	From Gentzler's brain during autopsy

## **H. Relevant Photographs of Evidence and Diagrams in this Case.**

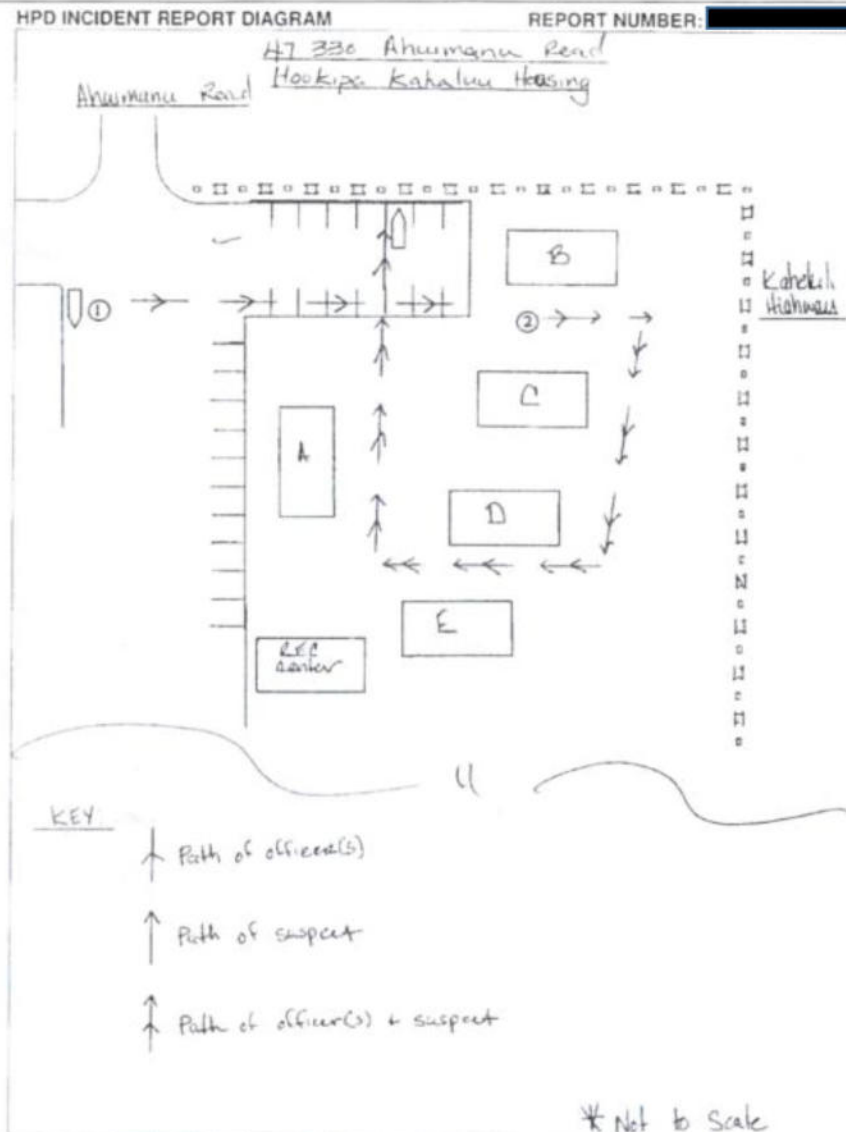
### **1. Acting Sergeant 1's diagram of foot pursuit.<sup>44</sup>**

As a part of his report, Acting Sergeant 1 also submitted a diagram of his foot pursuit of Gentzler. The diagram is included herein below to assist in illustrating his statement as noted above. The diagram shows that the foot pursuit started between Building "B" and Building "C" and ended with Gentzler reaching the driver's side door (prior to entering) of the parked Jeep:

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<sup>44</sup> See, Report by Acting Sergeant 1.

## 47-330 Ahuimanu Road, Hookipa Kahaluu Housing



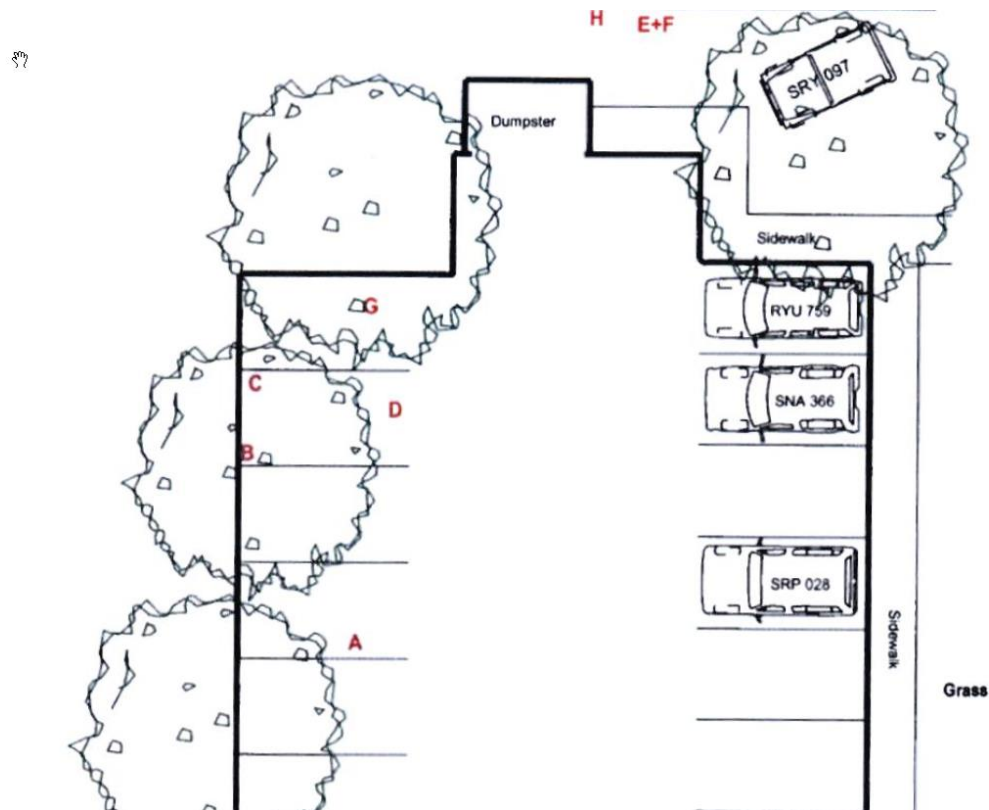
### 2. Evidence Specialist 1's and Corporal 2's diagram of cartridge casings located in parking lot of Ho'okipa Apartments.

Evidence Specialist 1 and Corporal 2 both prepared diagrams of the location of the recovered spent cartridge casings found in the parking lot of Ho'okipa Apartments.<sup>45</sup> As noted in the Recovered Evidence Section, the recovered casings were identified as being recovered near evidence markers "A", "B", "C" and "D".<sup>46</sup> Note that the spent cartridge casing located near evidence marker "A" was identified as being fired from Acting Sergeant 1's firearm while the spent cartridge casings located near evidence

<sup>45</sup> See, report by Evidence Specialist 1.

<sup>46</sup> *Id.*

markers “B”, “C” and “D” were identified as being fired from Officer 1’s firearm.<sup>47</sup> Below is Evidence Specialist 1’s diagram which identifies the location and the evidence markers (A, B, C, and D):<sup>48</sup>



<sup>47</sup> See, report by HPD Criminalist [REDACTED] (hereinafter, “Criminalist 1”). Please note from the recovered evidence table on Page 19, the diagrams here, and the photographs in this investigation report shown below, that there appears to have been five (5) rounds discharged as four (4) cartridges are unaccounted for from the recovered firearm and ammunition from Officer 1 while one (1) cartridge is unaccounted for from the recovered firearm and ammunition from Acting Sergeant 1. There were however, only four (4) spent casings that were located and recovered.

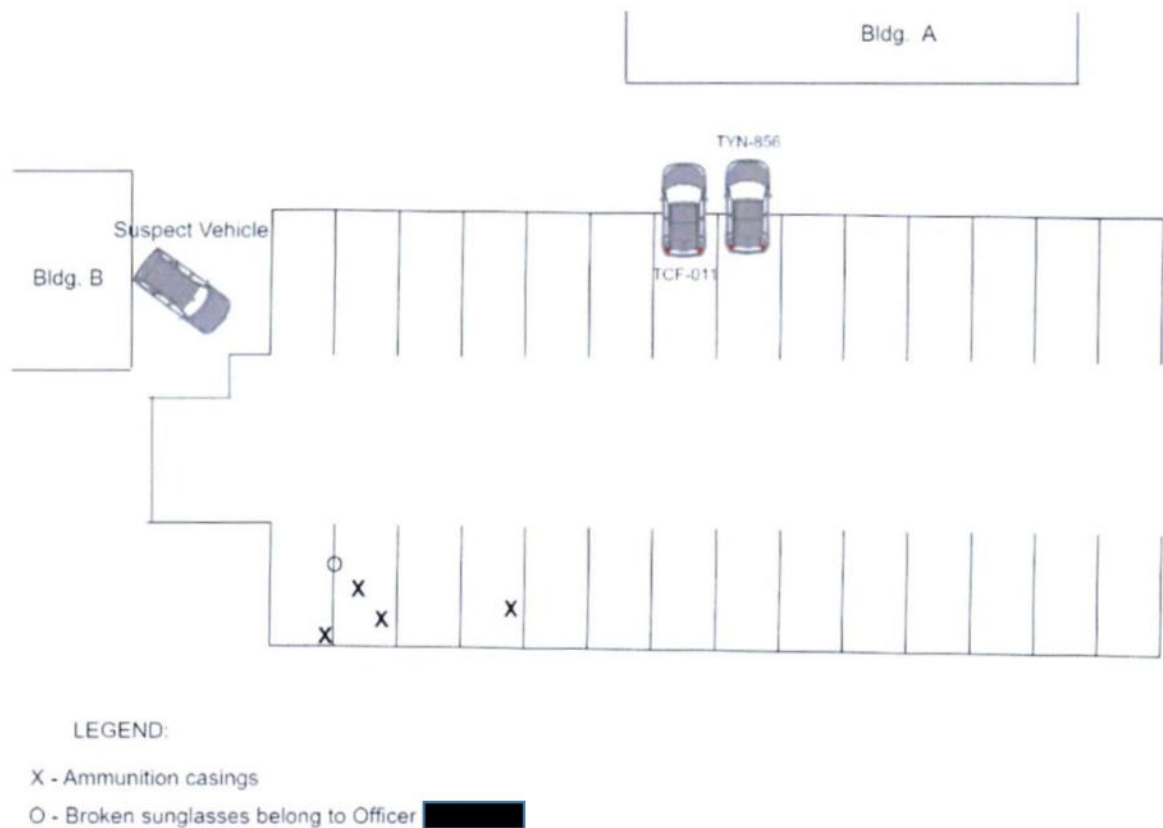
<sup>48</sup> See, report by Evidence Specialist 1.



Below is the diagram prepared by Corporal 2 which also shows the location of the four (4) recovered cartridge casings. The diagram also depicts the location of the two parked vehicles that Gentzler struck after he drove the car at Acting Sergeant 1 and Officer 1 and also the final resting location of the Jeep after it struck the two parked vehicles and rolled back to Building "B":<sup>49</sup>

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<sup>49</sup> See, report by Corporal 2.



**3. Photographs of the area where the Jeep was originally parked and where the officers were positioned when the shooting occurred.<sup>50</sup>**

Below are three (3) photographs showing where the Jeep was originally parked facing forward towards Ahuimanu Street. As noted in the report by Acting Sergeant 1 and alluded to in the report by Officer 1, Gentzler reversed his Jeep in a sweeping motion (not straight back) such that the rear of the Jeep moved towards the dumpster

<sup>50</sup> Photograph by Evidence Specialist 1.

area and Building “B”.<sup>51</sup> By sweeping back while the two officers were trying to get into the driver’s side doors of the Jeep, the front of the said vehicle almost struck Acting Sergeant 1 and Officer 1.<sup>52</sup> After Gentzler completed reversing his Jeep in the sweeping motion and stopped, the front of the Jeep was now facing Acting Sergeant 1 and Officer 1.<sup>53</sup> Note also in the photographs the chain link fence line and tree which Acting Sergeant 1 mentions as obstacles that prevented him from being able to retreat away from the Jeep as the Jeep went into gear and drove directly towards him.<sup>54</sup>



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<sup>51</sup> See, reports by Acting Sergeant 1 and Officer 1.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See, report by Acting Sergeant 1.







#### 4. Photographs of parked vehicles struck by Gentzler.<sup>55</sup>

Below are photographs of the two parked and unoccupied vehicles that Gentzler struck after he drove at the officers and was shot. The collision caused extensive damage to the car to the right and forced both vehicles to get pushed over the curb and onto the grassy area.



<sup>55</sup> Photographs by HPD Officer [REDACTED].

## 5. Photographs of the Jeep at final resting.<sup>56</sup>

Below are photographs of the Jeep at its final resting spot. Note the bullet holes in the Jeep, of which: 1) one is on top of the hood; 2) two (2) are in right front passenger window; 3) one (1) is in the rear passenger door frame and 4) one (1) is in the rear window.<sup>57</sup>

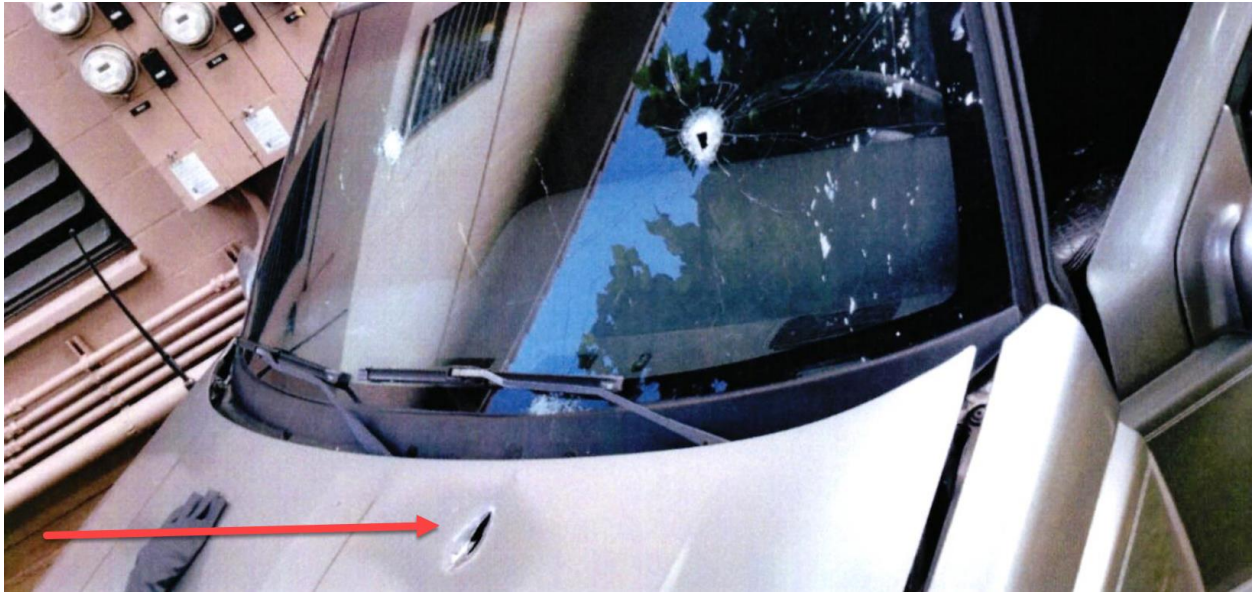


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<sup>56</sup> *Id.*

<sup>57</sup> Per HPD Detective [REDACTED] (hereinafter, "Detective 1") who assisted in the investigation, the said five (5) bullet holes are believed to be entry gunshot holes while the bullet hole and bullet marking in the front windshield of the Jeep are believed to be an exit hole and exit marking from two (2) bullets. Furthermore, based on the position of the two officers as stated in Acting Sergeant 1's report, it is believed that the gunshot entry hole in the hood is from Acting Sergeant 1 and the gunshot entry holes in the front passenger side of the Jeep, rear passenger side door frame and rear windshield are from Officer 1. See, reports by Acting Sergeant 1 and Officer 1.







## **6. Photographs of the stolen firearm recovered from the Jeep.<sup>58</sup>**

As noted earlier, Evidence Specialist 3 assisted in the execution of a search warrant and located and recovered what was later positively identified as a stolen rifle in the Jeep.<sup>59</sup> Below are photographs depicting the location of the rifle and of the rifle, magazine and bullets taken out of the said magazine.



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<sup>58</sup> Photographs by Evidence Specialist 3.

<sup>59</sup> See, report by Evidence Specialist 3; HPD Report Number [REDACTED].





## **I. Scientific/Forensic Evidence.**

### **1. Gunshot Residue Collection Kit.<sup>60</sup>**

Gunshot residue (GSR) collection kits were used on the hands of Acting Sergeant 1 and Officer 1.<sup>61</sup> Criminalist 2 analyzed the kits. Her findings and conclusions were that there were no GSR particles detected in the sampling stubs recovered from the hands of Acting Sergeant 1 and Officer 1.

Criminalist 2 said that the absence of GSR on a person's hands can mean the subject did not discharge a firearm. However, she further noted that a person can discharge a firearm and GSR may not be detected for one or more of the following reasons:

- 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.<sup>62</sup>**

Criminalist 1 analyzed the relevant firearms and ammunition submitted into evidence under HPD Report Number [REDACTED] as Item Numbers 5, 6, 7, 8, 21, 22, 23, 27, 28, 29 and 34. Criminalist 1 concluded that the service firearms belonging to Acting Sergeant 1 (Item #21) and to Officer 1 (Item #27) were operable.

Criminalist 1 also concluded that Item #5, the cartridge casing recovered near evidence marker "A" came from Acting Sergeant 1's firearm while Item #6, Item #7 and Item #8, the cartridge casings recovered near evidence markers "B", "C" and "D" came from Officer 1's firearm. As to the recovered metal fragments recovered from Gentzler's brain, Criminalist 1 identified one of the fragments as a bullet and concluded that the said bullet was fired from Officer 1's firearm. As to the two (2) other fragments, Criminalist 1 stated that they had no value for barrel signature comparison.

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<sup>60</sup> The facts in this section are from HPD Criminalist [REDACTED] (hereinafter, "Criminalist 2").

<sup>61</sup> See, Report by Evidence Specialist 2.

<sup>62</sup> The facts in this section are from Criminalist 1.

### III. LEGAL PRINCIPLES.

#### A. Definitions.

“Believes” means reasonably believes.<sup>63</sup>

“Bodily injury” means physical pain, illness, or any impairment of physical condition.<sup>64</sup>

“Deadly force” means force which the actor uses with the intent of causing or which the actor knows to create a substantial risk of causing death or serious bodily harm. Intentionally firing a firearm in the direction of another person or in the direction which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor’s intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force.<sup>65</sup>

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.<sup>66</sup>

“Unlawful force” means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.<sup>67</sup>

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.<sup>68</sup>

“Substantial bodily injury” means a major avulsion, major laceration, or major penetration of the skin; a burn of at least second degree severity; a bone fracture; a serious concussion; or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.<sup>69</sup>

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<sup>63</sup> Hawai‘i Revised Statutes (hereinafter, “H.R.S.”) **Section 703-300** (2014 Repl.).

<sup>64</sup> H.R.S. § 707-700 (2014 Repl.).

<sup>65</sup> H.R.S. § 707-300.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> H.R.S. § 707-700.

<sup>69</sup> *Id.*



**B. H.R.S. Chapter 703 defenses.**

Three **H.R.S. Chapter 703 (2014 Repl.)** justification defenses apply to this case.<sup>70</sup> 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:
    - (i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is

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<sup>70</sup> **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."

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?<sup>71</sup>

The use of deadly force upon or toward another person is justified if the actor reasonably believes that deadly force is immediately necessary to protect himself on the present occasion against death or serious bodily injury.<sup>72</sup> The reasonableness of the actor's belief that the use of protective deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the actor's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be when the deadly force was used.<sup>73</sup>

## **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:
  - (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

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<sup>71</sup> HAWJIC 7.01A.

<sup>72</sup> HAWJIC 7.01A

<sup>73</sup> HAWJIC 7.01A

- (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?<sup>74</sup>

The use of force upon or toward the person of another is justifiable to protect a third person when, under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and the actor believes that the actor's intervention is immediately necessary to protect the third person.<sup>75</sup> The reasonableness of the actor's belief that the use of deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the actor's position under the circumstances of which the actor was aware or as the actor reasonably believed them to be when the deadly force was used.<sup>76</sup>

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

**H.R.S. Section 703-307** (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 when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.
- (2) The use of force is not justifiable under this section unless:
  - (a) The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and
  - (b) When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.
- (3) The use of deadly force is not justifiable under this section unless:
  - (a) The arrest is for a felony;
  - (b) The person effecting the arrest is authorized to act as a law enforcement officer or is assisting a person whom he believes to be authorized to act as a law enforcement officer;

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<sup>74</sup> HAWJIC 7.02A.

<sup>75</sup> HAWJIC 7.02A.

<sup>76</sup> HAWJIC 7.02A.

- (c) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and
- (d) The actor believes that:
  - (i) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or
  - (ii) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.

#### **IV. Analysis.**

##### **A. Use of Deadly Force in Self-Protection.**

Acting Sergeant 1 and Officer 1 both stated that they shot at Gentzler because they feared that Gentzler was going to run them over with his Jeep as Gentzler drove forward at them. As such, with respect to whether they were legally justified under the Use of Deadly Force in Self-Protection defense, the two questions are: 1) Did Acting Sergeant 1 and Officer 1 use deadly force; and 2) Was their use of deadly force justified?<sup>77</sup>

As to the first question, both Acting Sergeant 1 and Officer 1 stated they intentionally shot at Gentzler. Acting Sergeant 1 stated that he got off one (1) shot before jumping out of the way of the oncoming Jeep and Officer 1 said that he discharged several rounds at the Jeep as the Jeep moved forward towards him and Acting Sergeant 1. Because intentionally shooting at someone constitutes the use of deadly force, it is not disputed that they used deadly force when they shot Gentzler.<sup>78</sup>

As to the second question, Acting 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 Acting 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.

First of all, as law enforcement officers who were trying to arrest Gentzler for a parole retake warrant and for driving the Jeep in a manner that almost struck the both of them, Acting Sergeant 1 and Officer 1 were under no duty to retreat.<sup>79</sup>

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<sup>77</sup> HAWJIC 7.01A.

<sup>78</sup> HAWJIC 7.01A.

<sup>79</sup> HAWJIC 7.01A, as modified, states in relevant part:

Secondly, under the circumstances that existed base on their belief, it was objectively reasonable that both Acting Sergeant 1 and Officer 1 used deadly force to protect themselves from death or serious bodily injury when they shot at Gentzler. While Officer 1 was trying to enter the Jeep through the driver's side door to arrest Gentzler, Acting Sergeant 1 attempted to enter the same vehicle through the rear driver's side door. Both doors were locked and they could not enter the Jeep. Gentzler then revved the engine, put the vehicle in gear and suddenly reversed the Jeep in a sweeping motion (he reversed and pulled the Jeep to the right while reversing in order to head out of the parking lot). By doing so, the front driver's side of the Jeep almost collided into Acting Sergeant 1 and Officer 1. Fortunately, they were able to jump out of the way before getting run over.

After Gentzler reversed to his right and stopped, the Jeep was now facing Officer 1 and Acting Sergeant 1. As the Jeep was within a few feet of Acting Sergeant 1 and Officer 1 and with knowledge that Gentzler had already almost hit them already with the vehicle, both officers had a legitimate belief that Gentzler was going to drive forward and strike them, thereby causing either death or serious bodily injury to them. Gentzler then in fact revved his engine again and suddenly accelerated forward directly towards them. It was at that point that Acting Sergeant 1 shot and jumped out of the way and Officer 1 then shot at Gentzler.

As a result, the following points clearly indicate that Acting Sergeant 1 and Officer 1 were justified in shooting at Gentzler based on the Use of Deadly Force in Self-Protection defense: 1) Gentzler had already almost run both officers over when he suddenly reversed out of the parking stall; 2) Such act indicated that he clearly was not going to surrender and that he was going to do whatever it took to exit the parking lot; 3) After the Jeep reversed, the vehicle was facing Acting Sergeant 1 and Officer 1 within a few feet from them; and 4) Gentzler revved his engine, indicating that he was going to drive at them at high speed; and 5) He then drove directly towards them at high speed.<sup>80</sup>

This investigation therefore finds that both Acting Sergeant 1 and Officer 1 were justified in using deadly force in self-protection when they shot Gentzler.

#### **B. Officer 1's Use of deadly force for the protection of Acting Sergeant 1.**

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"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."

<sup>80</sup> The impact against the two (2) parked vehicles is depicted in the photographs above. The damages to the vehicles as well as how far forward both vehicles were pushed from the collision, are indicative of the high rate of speed at which Gentzler accelerated his car at Acting Sergeant 1 and Officer 1.

Here, Officer 1 also noted that he shot Gentzler to protect Acting Sergeant 1 who was to the right of him after as Gentzler sped towards them. Based on Acting Sergeant 1's already stated reasons for shooting at Gentzler, the defense of others when using deadly force is also applicable here to Officer 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?<sup>81</sup>

As to the first question, there is no question that Officer 1 used deadly force when he intentionally shot Gentzler.

As to the second question, the use of deadly force upon or toward another person is justifiable to protect a third person if, under the circumstances as the actor reasonably believed them to be, the third person would be justified in using deadly force to protect himself against death or serious bodily injury and the actor reasonably believes that his intervention is immediately necessary to protect the third person. The reasonableness of the actor's belief that the use of deadly force was immediately necessary shall be determined from the viewpoint of the reasonable person in the actor's position under circumstances of which the actor was aware or as the actor reasonably believed them to be when the deadly force was used. The actor's belief that the use of deadly force was immediately necessary may be mistaken, but reasonable.

Here, as already noted above, Acting Sergeant 1 was under no duty to retreat.

Next, the facts support the conclusion that Officer 1's use of deadly force was justifiable to protect Acting Sergeant 1. It is clear that under the circumstances that Officer 1 believed existed at the time, Acting Sergeant 1 would have had a legitimate and reasonable belief that he was going to be run over by Gentzler.<sup>82</sup> Acting Sergeant 1 articulated so in his own report and Officer 1 was just to the left of him when Gentzler drove forward towards them.

As a result, this investigation finds that Officer 1's belief that his use of deadly force was immediately necessary to protect Acting Sergeant 1 was objectively reasonable as Officer 1 objectively believed that Gentzler was going to kill or seriously injure Acting Sergeant 1 with the Jeep. Officer 1 was therefore justified in shooting at Gentzler to protect Acting Sergeant 1.

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<sup>81</sup> HAWJIC 7.02A.

<sup>82</sup> See, Use of Deadly Force in Self-Protection analysis above for Acting Sergeant 1.



### C. Use of Force in Law Enforcement.<sup>83</sup>

The next question is whether Acting Sergeant 1's and Officer 1's intentional discharge of their service firearms was justified under **H.R.S. Section 703-307** which states in relevant part that the use of force upon or toward another is justifiable when the actor is making an arrest and the actor believes such force is immediately necessary to effect a lawful arrest.

As to the use of deadly force under this defense, **H.R.S. 703-307(3)** (2014 Repl.) further notes in relevant part:

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

In using the analysis of **H.R.S. Section 703-307(3)**, Acting Sergeant 1 and Officer 1 were justified in using deadly force by shooting at Gentzler in an attempt to arrest Gentzler for intentionally driving in a manner which almost struck the both of them twice.

To begin with, prior to shooting at Gentzler, Acting Sergeant 1 and Officer 1 were both authorized to arrest Gentzler without a warrant for Attempted Murder in the First

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<sup>83</sup> Although both officers did not specifically state that they used deadly force to effect an arrest on Gentzler, the defense nevertheless applies in this situation.

Degree<sup>84</sup> and any other included felony offenses as he deliberately almost hit both officers with the Jeep twice: initially when he reversed out of the parking stall and secondly, when he drove directly at them. Both officers noted that they shot at Gentzler because they both believed that they were going to be killed by Gentzler when he drove forward towards them. See, H.R.S. Section 703-307(3)(a) (2014 Repl.).

Secondly, Acting Sergeant 1 and Officer 1 were on duty as sworn HPD police officers when the shooting occurred. As such, they were law enforcement officers who were authorized to make arrests for violations of the Hawai'i Penal Code. See, H.R.S. Section 703-307(3)(b) (2014 Repl.).

Thirdly, Acting Sergeant 1's and Officer 1's use of deadly force created no substantial risk of injury to innocent persons. See, H.R.S. Section 703-307(3)(c) (2014 Repl.). There were no innocent persons in the parking lot where the shooting occurred. As a result, Acting Sergeant 1 and Officer 1 both had a reasonable belief that their use of deadly force did not create a substantial risk of injury to innocent persons.

Fourthly, under the facts of this case, and as already articulated hereinabove, Attempted Murder in the First Degree, the crime for which the arrest is made involved conduct including the use or threatened use of deadly force as Gentzler tried to run both officers over. See, H.R.S. Section 703-307(3)(d)(i) (2014 Repl.). For the same reason, *i.e.*, Gentzler was trying to run both officers over in order to flee from there, there was also a substantial risk that Gentzler would have caused death or serious bodily injury to the officers if his apprehension was delayed. See, H.R.S. Section 703-307(3)(d)(ii) (2014 Repl.).

Based on the foregoing, the use of deadly force by Acting Sergeant 1 and Officer 1 were also justified in shooting at Gentzler under H.R.S. Section 703-307.

## **V. CONCLUSION**

To secure a conviction for an offense under the Hawai'i Penal Code, the prosecution must disprove an applicable defense—other than an affirmative defense—beyond a reasonable doubt.<sup>85</sup> The defenses codified in H.R.S. Section 703-304,

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<sup>84</sup> Attempted Murder in the First Degree, a felony, occurs when a person intentionally engages in conduct, which under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime of Murder in the First Degree. A person commits the offense of Murder in the First Degree under H.R.S. Section 707-701(1)(b) (2014 Repl.) in relevant part, when the person intentionally or knowingly causes the death of a law enforcement officer arising out of the performance of his or her duties. H.R.S. Section 705-500 (2014 Repl.) and H.R.S. Section 707-701(1)(b).

<sup>85</sup> 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 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.<sup>86</sup>

Here, the PAT declines prosecution of Acting Sergeant 1 and Officer 1 for any offenses under the Hawai'i Penal Code for using deadly force against Gentzler because

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**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
  - (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).

<sup>86</sup> 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.").

the PAT cannot disprove beyond a reasonable doubt that (1) Officer 1's use of deadly force was not justified for self-protection; (2) Acting Sergeant 1's use of deadly force was not justified for protection of others; and (3) Acting Sergeant 1's and Officer 1's use of deadly force was not a justified use of force in law enforcement. Therefore, the PAT further concludes that Acting Sergeant 1 and Officer 1 were both justified in shooting Gentzler.

## VI. Materials Considered.

A. HPD Report No. [REDACTED].

## 1. Investigative

- HPD Detective [REDACTED] (Homicide)
- Detective 1 (PSO)

## 2. District 4 CRU, Patrol and Support Officers

- Sergeant 1
- Acting Sergeant 1
- Corporal 2
- Officer 1
- Officer 2
- Officer 3
- HPD Lieutenant [REDACTED]
- HPD Sergeant [REDACTED]
- HPD Sergeant [REDACTED]
- HPD Acting Sergeant [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]
- [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] ([REDACTED])
- HPD Officer [REDACTED]
- HPD Officer [REDACTED]

### 3. SCIENTIFIC INVESTIGATION SECTION

- Criminalist 1
- Criminalist 2

### 4. EVIDENCE SPECIALISTS

- Evidence Specialist 1
- Evidence Specialist 2
- Evidence Specialist 3
- HPD SIS Evidence Specialist [REDACTED]

#### B. Written Witness Statements

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

#### C. HPD Recorded Statements

- Witness 1

#### D. Other Materials Received from HPD and PAT Independent Investigation

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

#### F. PAT Independent Investigation

- General scene review
- Photographs

