

DANA M.O. VIOLA 6095
Corporation Counsel

WILLIAM R.K. AWONG 8329
JUSTIN M. LUNEY 10848
JASON A.I. BAKER 8994

Deputies Corporation Counsel
City and County of Honolulu
530 S. King Street, Room 110
Honolulu, Hawai'i 96813

Telephone: (808) 768-5111 / (808) 768-5238 / (808) 768-5103

Facsimile: (808) 768-5105

Email: wawong@honolulu.gov / justin.luney@honolulu.gov / jason.baker@honolulu.gov

Electronically Filed
FIRST CIRCUIT
1CCV-21-0000504
15-MAR-2024
03:04 PM
Dkt. 360 MSJ

Attorneys for Defendants
CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, and BRENT K. SYLVESTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

L. LINDSAY MYENI, Widow of LINDANI
SANELE MYENI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, in his individual
capacity as a Honolulu police officer; BRENT
K. SYLVESTER, in his individual capacity as
a Honolulu police officer; DOE OFFICER #3,
in his/her individual capacity as a Honolulu
police officer; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 1CCV-21-0000504 (6th Div)
(Other Non-Vehicle Tort)

**DEFENDANT CITY AND COUNTY OF
HONOLULU, GARRICK OROSCO,
AND BRENT K. SYLVESTER'S
MOTION FOR SUMMARY
JUDGMENT; MEMORANDUM IN
SUPPORT OF MOTION;
DECLARATION OF COUNSEL;
DECLARATION OF MASAHIKO
KOBAYASHI, M.D., PH.D;
DECLARATION OF BRANDON
NAKASATO; EXHIBITS "A"- "K";
NOTICE OF HEARING AND
CERTIFICATE OF SERVICE**

Hearing:

Date: Friday, April 5, 2024

Time: 3:00 p.m.

Judge: Honorable Karin L. Holma

Trial Date: October 14, 2024

Judge: Honorable Karin L. Holma

**DEFENDANT CITY AND COUNTY OF HONOLULU, GARRICK OROSCO,
AND BRENT K. SYLVESTER’S MOTION FOR SUMMARY JUDGMENT**

Defendants City and County of Honolulu (“City”), Garrick Orosco (“Orosco”), and Brent K. Sylvester (“Sylvester”) (collectively “Defendants”), by and through their attorneys Dana M.O. Viola, Corporation Counsel, and William R.K. Awong, Justin M. Luney, and Jason A.I. Baker, Deputies Corporation Counsel, hereby move this Court for summary judgment in their favor on all claims brought forth in Plaintiff L. Lindsay Myeni, Widow of Lindani Sanele Myeni’s (“Plaintiff’s”) First Amended Complaint filed December 28, 2022, Dkt. 213 (“FAC”). Summary judgment is appropriate here for the following reasons:

1. Defendants Orosco and Sylvester are entitled to qualified or conditional privilege;
2. Defendants Orsoco and Sylvester did not breach the standard of care required of police officers in their interactions with the deceased, Lindani Myeni;
3. Defendants Orosco and Sylvester did not commit an intentional tort, such as assault or battery, because they were justified in their use of force when they were attacked by Lindani Myeni; and
4. Because Defendants Orsoco and Sylvester are entitled to qualified immunity and did not commit any tortious act, the City and County of Honolulu cannot be vicariously liable for their conduct.

This Motion is brought pursuant to Rules 7 and 56 of the Hawai‘i Rules of Civil Procedure and Rule 7 of the Rules of the Circuit Courts of Hawai‘i and is based upon the Memorandum in Support of Motion, the Declarations and Exhibits in support of the Motion and the record and files herein.

//

//

DATED: Honolulu, Hawai'i, March 15, 2024.

DANA M.O. VIOLA
Corporation Counsel

By: /s/ Justin M. Luney _____

WILLIAM R.K. AWONG
JUSTIN M. LUNEY
JASON A.I. BAKER
Deputies Corporation Counsel

Attorneys for Defendants
CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, and BRENT K. SYLVESTER

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION.....	1
II. UNDISPUTABLE FACTS.....	2
III. STANDARD OF REVIEW.....	6
IV. ARGUMENT	7
A. Defendants Orosco and Sylvester Are Entitled to Immunity Based on the Doctrine of Conditional Privilege	7
B. Alternatively, Summary Judgment is Warranted on Plaintiff’s Negligence and Intentional Tort Claims against Defendants Orosco and Sylvester	12
1. Defendants Orosco and Sylvester Acted Reasonably in the Totality of Circumstances and Not Negligent.....	12
2. The Plaintiff’s Intentional Tort Claims Fail Because Defendants Orosco and Sylvester Reasonably Used Deadly Force in Self-Defense.....	14
C. As Defendants Orosco and Sylvester are Not Liable, the City cannot be Vicariously Liable for Mr. Myeni’s Death.....	17
D. Plaintiff’s Non-Percipient Experts’ Reports Opinions About Malice, Probable Cause, Reasonableness of Use of Force, and/or Duty Must Be Disregarded and Cannot Create a Genuine Issue of Material Fact	17
V. CONCLUSION	20

TABLE OF AUTHORITIES

<u>Cases</u>	Page
<i>First Ins. Co. of Hawaii v. A&B Props.</i> , 126 Hawai‘i 406, 271 P.3d 1165 (2012)	6
<i>Nuuanu Valley Ass’n v. City & Cnty. of Honolulu</i> , 119 Hawai‘i 90, 194 P.3d 531 (2008)	6
<i>Ralston v. Yim</i> , 129 Hawai‘i 46, 292 P.3d 1276 (2013)	7
<i>French v. Haw. Pizza Hut, Inc.</i> , 105 Hawai‘i 462, 99 P.3d 1046 (2004).....	7
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	7
<i>Pogoso v. Sarae</i> , 138 Hawai‘i 518, 382 P.3d 330 (App. 2016).....	7
<i>Towse v. State</i> , 64 Haw. 624, 648 P.2d 696 (1982)	7-8
<i>Medeiros v. Kondo</i> , 55 Haw. 499, 522 P.2d 1269 (1974)	8
<i>Awakuni v. Awana</i> , 115 Hawai‘i 126, 165 P.3d 1027 (2007).....	8-9
<i>Runnels v. Okamoto</i> , 56 Haw. 1, 525 P.2d 1125 (1974)	9
<i>Wells v. Talton</i> , 695 Fed. Appx. 439 (11th Cir. 2017)	12
<i>Bidar v. Amfac, Inc.</i> , 66 Hawai‘i 547, 669 P.2d 154 (1983)	12, 19
<i>Hao v. Campbell Estate</i> , 76 Hawai‘i 77, 869 P.2d 216 (1994)	12
<i>Pulawa v. GTE Hawaiian Tel.</i> , 112 Hawai‘i 3, 143 P.3d 1205 (2006)	13
<i>Molfino v. Yuen</i> , 134 Hawaii 181, 339 P.3d 679 (2014).....	13

<i>O'Connor v. Kapua-Allison</i> , No. 14-00507 HG-KSC, 2015 U.S. Dist. LEXIS 125359 (D. Haw. Sep. 18, 2015)	14-15
<i>Pourny v. Maui Police Dep't, County of Maui</i> , 127 F. Supp. 2d 1129, 1147 (D. Haw. 2000).....	15
<i>Mukaida v. Hawaii</i> , 159 F. Supp. 2d 1211, 1223 (D. Haw. 2001).....	15
<i>Jeanniton v. City & Cty. of Honolulu</i> , No. 20-00369 ACK-WRP, 2022 U.S. Dist. LEXIS 69749 (D. Haw. Apr. 15, 2022).....	15
<i>Leong Sam v. Keliihoomalu</i> , 24 Haw. 477 (1918)	15
<i>Jeanniton v. City & Cty. of Honolulu</i> , No. 20-00369 ACK-WRP, 2022 U.S. Dist. LEXIS 69749 (D. Haw. Apr. 15, 2022).....	15
<i>Estate of Saucedo v. City of N. Las Vegas</i> , 380 F. Supp. 3d 1068 (D. Nev. 2019).....	15
<i>Begley v. Cty. of Kauai</i> , No. 03-00162 KSC, 2006 U.S. Dist. LEXIS 107279 (D. Haw. Mar. 30, 2006).....	15, 16
<i>United States v. Keiser</i> , 57 F.3d 847 (9th Cir. 1995)	16
<i>Medeiros v. Kondo</i> , 55 Haw. 499, 522 P.2d 1272 (1974)	16
<i>Awakuni v. Awana</i> , 115 Hawai'i 126, 165 P.3d 1027 (2007).....	16
<i>Reed v. City & County of Honolulu</i> , 76 Hawai'i 219, 873 P.2d 98 (1994).....	16
<i>Wong-Leong v. Hawaiian Indep. Refinery</i> , 76 Hawai'i 433, 879 P.2d 538 (1994)	17
<i>Pulawa v. GTE Hawaiian Tel.</i> , 112 Hawai'i 3, 143 P.3d 1205 (2006).....	18
<i>Lahaina Fashions, Inc. v. Bank of Hawaii</i> , 131 Hawai'i 437, 319 P.3d 356 (2014).....	18

<i>Hangarter v. Provident Life and Acc. Ins. Co.</i> , 373 F.3d 998 (9th Cir. 2004)	18
<i>United States v. Diaz</i> , 876 F.3d 1194 (9th Cir. 2017)	18
<i>Valencia v. Davis</i> , 836 F. App'x 292 (5th Cir. 2020)	18
<i>Valenzona v. Carlisle</i> , No. 26999, 2008 Haw. App. LEXIS 55 (App. Feb. 5, 2008)	18
<i>Runnels v. Okamoto</i> , 56 Haw. 1, 525 P.2d 1125 (1974)	18-19
<i>Thomas v. Kidani</i> , 126 Hawai'i 125, 267 P.3d 1230 (2011).....	19
<i>Nomo Agroindustrial Sa De Cv v. Enza Zaden N. Am., Inc.</i> , No. CV 05-351-TUC-FRZ, 2009 U.S. Dist. LEXIS 8657 (D. Ariz. Jan. 29, 2009)	19
<i>Simone v. United States</i> , 642 F. App'x 73 (2d Cir. 2016)	19-20

Rules

Haw. R. Civ. P. 56(c).....	6
----------------------------	---

Other Authorities

Black's Law Dictionary 97 (8th ed. 2004).....	9
Restatement (Second) of Torts § 21 (1965).....	15-16
Restatement (Second) of Torts § 30 (1965).....	16

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

L. LINDSAY MYENI, Widow of LINDANI
SANELE MYENI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, in his individual
capacity as a Honolulu police officer; BRENT
K. SYLVESTER, in his individual capacity as
a Honolulu police officer; DOE OFFICER #3,
in his/her individual capacity as a Honolulu
police officer; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 1CCV-21-0000504 (6th Div)
(Other Non-Vehicle Tort)

**MEMORANDUM IN SUPPORT OF
MOTION**

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This lawsuit arises from the officer-involved shooting of Lindani Sanele Myeni (“Mr. Myeni”) on the evening of April 14, 2021 at 91 Coelho Way, Honolulu, Hawai‘i. (the “Property”). Mr. Myeni’s wife, L. Lindsay Myeni (the “Plaintiff”), alleges that two Honolulu Police Department (“HPD”) officers involved, Defendants Corporal Garrick Orosco (“Orosco”) and Officer Brent K. Sylvester (“Sylvester”) are responsible for the death of Mr. Myeni, and that Defendant City and County of Honolulu (the “City”) is vicarious liable for their actions. The Defendants are entitled to summary judgment on because the Plaintiff will not be able to meet her burden of proof at trial on either her negligence or intentional tort claims.

The undisputed facts show that Defendants Orosco and Sylvester acted within reason in their response to a 9-1-1 call regarding a possible burglary through the eventual use of deadly force against Mr. Myeni, who failed to comply with lawful police commands and attacked the responding officers. Corporal Orosco issued reasonable and lawful instructions when he commanded Mr. Myeni to “get on the ground”. When Mr. Myeni refused to comply with his commands and approached him, Corporal Orosco did not discharge his firearm. Mr. Myeni proceeded to violently attack Corporal Orosco, eventually leading to both Corporal Orosco and Officer Sylvester discharging their firearms in self-defense. Both Corporal Orosco and Officer Sylvester acted reasonably in their interactions with Mr. Myeni.

Just as importantly, the undisputed facts show that Defendants Orosco and Sylvester did not act out of *actual malice*. To maintain a tort claim against a nonjudicial official, the doctrine of conditional privilege requires the Plaintiff to prove by clear and convincing evidence that the official acted out of malice and not for any other proper purpose in committing the allegedly

tortious conduct. The Plaintiff cannot prove by clear and convincing evidence that either officer acted out of malice when they responded to the 911 call at the Property up to the point when they discharged their firearms in self-defense from Mr. Myeni's attacks.

II. UNDISPUTABLE FACTS

On April 14, 2021, after spending a day with his family, Mr. Myeni left his home to go for a drive and "clear his head." Ex. A at 216:15-216:20. Earlier that day, Mr. Myeni told the Plaintiff that he felt like he needed spiritual protection. *Id.* at 207:23-208:05. He also told his wife he saw six or seven red circles around him and believed they were his ancestors. *Id.* at 284:07-285:10. The Plaintiff did not know exactly where Mr. Myeni was going or what he was planning to do. *Id.* at 220:03-220:10. While he did not say when he would return, the Plaintiff thought Mr. Myeni would be gone anywhere from twenty minutes to three hours. *Id.* at 220:11-220:16.

Prior to arriving at the Property, Mr. Myeni interacted with police officers conducting an investigation at Kewalo Basin. At approximately 7:51 p.m., Mr. Myeni approached HPD officers at Kewalo Basin who were responding to a reported unauthorized entry into a motor vehicle ("UEMV"). Ex. I. Mr. Myeni approached Officer Timothy C. Massie's HPD vehicle. *Id.* Officer Massie's HPD vehicle had its blue and white cruise lights activated. *Id.* Mr. Myeni attempted to enter the backseat of the vehicle without reason or instruction. *Id.* When Officer Massie asked Mr. Myeni what he was doing, he said "I was walking this way and I thought I should get in." *Id.* After Officer Massie asked Mr. Myeni to back away from the vehicle, Mr. Myeni walked toward his own vehicle but then turned around and approached Officer Massie. *Id.* Officer Massie told Mr. Myeni to back up to at least six feet and to wear a facemask. *Id.* Mr. Myeni then went toward his own vehicle and again returned and stated he needed help

contacting someone, but he already had the person's phone number and his own phone. *Id.*
Mr. Myeni then made a phone call and left the area in his vehicle. *Id.*

The Plaintiff called Mr. Myeni around 7:52 p.m., in which Mr. Myeni stated he was on his way home. *Id.* at 245:10-246:07. She recalls that Mr. Myeni sounded distracted. *Id.* at 246:23-246:25.

After leaving Kewalo Basin, Mr. Myeni followed a vehicle with Shiyang "Sabine" Wang and Da "Dexter" Ju to the 91 Coelho Way Property. The Plaintiff does not know why Mr. Myeni went to the Property. Ex A at 277:04-277:10. Ms. Wang first noticed Mr. Myeni's vehicle following her and her husband when she turned from Burbank Street to Coelho Way. Ex. B at 17:25-18:05. She noticed that the vehicle was following "very, very closely[.]" *Id.* at 18:10-18:12. Ms. Wang parked her vehicle on the grass on the Property and Mr. Myeni parked behind her vehicle. *Id.* at 20:04-20:06. Ms. Wang believed Mr. Myeni was targeting her because she did not see where he parked the vehicle, thought he was squatting to put on his shoes when she turned around and deliberately tried to hide himself where she could not see him, and said "I have video on you, you know why I'm here" when he entered the residence. *Id.* at 20:18-21:21. Ms. Wang described that Mr. Myeni "came with half of his body inside the house in a very aggressive way[.]" *Id.* at 24:01-24:04. Ms. Wang responded, "What?" and after he repeated what he said again, she said, "I have not done anything illegal. Are you trying to blackmail me or something?" *Id.* at 24:04-24:11. Mr. Myeni also mentioned that he had filmed her for several days. *Id.* at 27:20-28:05. He also was "self-talking" and "mentioned the fact that the cat raised by [Ms. Wang's] landlord for 12 years actually belonged to him; it's his cat. He also said that he lived here." *Id.* at 36:16-36:19 (brackets added). Ms. Wang clarified "[w]hen he was talking to himself, he did not make any eye contact with anybody around. Also, he did not show any facial

expression while he was talking to himself. He was even patting the cat in the house when he was talking to himself.” *Id.* at 100:08-100:16. He also mentioned that he was “hunting” or on “safari.” *Id.* at 91:08-91:23.

Ms. Wang told Mr. Myeni that if he did not leave, she would call 9-1-1. *Id.* at 103:10-103:18. She later came to the realization that if she did not call 9-1-1, he would never leave the house. *Id.* at 104:01-104:06. Ms. Wang asked Mr. Myeni to leave on “numerous occasions” and eventually did call 911. Mr. Myeni asked her to see her phone, and she showed him her cell phone screen to indicate that she was calling 9-1-1. *Id.* at 104:12-104:20.

Three police officers responded to the scene: Corporal Orosco, Officer Sylvester, and Officer Noli Galicha. Dispatch informed the officers there was a potential burglary in progress. Ex. G. A subsequent update notified responding officers that the male suspect was blocking the exit. Ex. G. Because the call was for a potential burglary in progress, Corporal Orosco approached with his police subsidized vehicle’s blue lights off, to ensure that he would not tip off a possible burglar that police were on route. Ex. C at 46:07-47:08. When Corporal Orosco approached the house, Ms. Wang immediately identified Corporal Orosco, who was in full uniform, as a police officer. Ex. G. Corporal Orosco asked where the suspect was located. Ex. G. Ms. Wang, appearing frantic and scared, told Corporal Orosco that Mr. Myeni was still present near one of the cars in the driveway. Corporal Orosco asked where and Ms. Wang screamed “That’s him! That’s him!” and pointed to Mr. Myeni. Ex. G.

Around this same time, Officer Sylvester arrived at the Property. Officer Sylvester, also in full uniform, stood in an area illuminated by a street light from the other side of Coelho Way when Mr. Myeni came toward him. Ex. G. Officer Sylvester asked “What’s going on?” Mr. Myeni replied “I don’t know, you tell me.” Ex. J at 1. Corporal Orosco, seeing Mr. Myeni

and identifying him as the suspect, and without knowledge of Mr. Myeni's intentions or whether he was armed, drew his firearm and instructed Mr. Myeni to get on the ground to control the scene and make the scene safe. Ex. C at 73:02-73:09, 80:04-80:06.

Rather than doing as instructed, Mr. Myeni moved purposefully toward Corporal Orosco. Corporal Orosco backed up, pivoting to keep his firearm away from Mr. Myeni, and did not discharge his firearm. Ex. G. Mr. Myeni then repeatedly struck Corporal Orosco in the head and facial area with both fists. Ex. G; Ex. J at 3. Officer Galicha, who arrived just in time to hear Officer Orosco's commands to "get on the ground," saw Myeni attacking and responded by withdrawing his Taser and saying "Taser, Taser." Ex. H; Ex. K at 2. The Taser probes appeared to hit Mr. Myeni but they were ineffective. Ex. H; Ex. K at 2. After being hit by the Taser, Mr. Myeni then rushed at Officer Galicha, took him to the ground and continued assaulting him. Ex. K at 2. After incapacitating Officer Galicha, Sylvester attempted to take Mr. Myeni to the ground but was unable to do so. Ex. J at 3.

Mr. Myeni then returned his aggression to Officer Orosco. Ex. G; Ex. J at 3. This time, as Mr. Myeni approached, Corporal Orosco discharged his firearm once. Ex. G; Ex. J at 3. Undeterred, Mr. Myeni mounted Corporal Orosco and repeatedly punched his head and face with both fists. Ex. J at 3. Officer Sylvester described Mr. Myeni appeared to have "fighting training and knew what he was doing." Ex. D at 149:12-149:13. Officer Sylvester described that "in between each strike, [Mr. Myeni] would sit up, he would arch his back and . . . he would crunch his core and hit as he's striking down. So he would sit up and bring his hand up high and then come down and strike Corporal Orosco." Ex. D at 154:02-154:08.

Officer Sylvester feared that Corporal Orosco's life was in danger from Mr. Myeni's repeated strikes. Ex. J at 3. Officer Sylvester removed his firearm and fired a three-shot volley.

Ex. G; Ex. J at 3. Mr. Myeni then fell to the ground. Ex. H; Ex. J at 3. HPD officers handcuffed Mr. Myeni and attempted to render aid by administering CPR assisted using an automated electric defibrillator, or AED. Ex. K at 3.

The City's Medical Examiner performed an autopsy and determined the cause of death as multiple gunshot wounds. Ex. E. The Medical Examiner sent Mr. Myeni's brain tissue to the Boston University CTE Center. Ex. E. The autopsy also found amounts of THC in Mr. Myeni's system. Ex. E. Boston University's examination of Mr. Myeni's brain tissue revealed that he suffered from Stage III chronic traumatic encephalopathy, also known as CTE. Ex. F.

III. STANDARD OF REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact that the moving party is entitled to a judgment as a matter of law.” Hawai‘i Rules of Civil Procedure (HRCPP) Rule 56(c). “A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.” *First Ins. Co. of Hawaii v. A&B Props.*, 126 Hawai‘i 406, 414, 271 P.3d 1165, 1173 (2012) (quoting *Nuuanu Valley Ass’n v. City & Cnty. of Honolulu*, 119 Hawai‘i 90, 96, 194 P.3d 531, 537 (2008)). The Hawai‘i Supreme Court has articulated the following burden shifting paradigm applicable where the non-movant bears the burden of proof at trial:

First, the moving party has the burden of producing support for its claim that: (1) no genuine issue of material fact exists with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions; and (2) based on the undisputed facts, it is entitled to summary judgment as a matter of law. Only when the moving party satisfies its initial burden of production does the burden shift to the nonmoving party to respond to the motion for summary judgment and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial.

Second, the moving party bears the ultimate burden of persuasion. This burden always remains with the moving party and requires the moving party to convince the court that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law.

Ralston v. Yim, 129 Hawai‘i 46, 56-57, 292 P.3d 1276, 1286-87 (2013) (quoting *French v. Haw. Pizza Hut, Inc.*, 105 Hawai‘i 462, 470, 99 P.3d 1046, 1054 (2004)).

Thus, where the non-movant bears the burden of proof at trial, a movant may demonstrate that there is no genuine issue of material fact by either (1) presenting evidence negating an element of the non-movant’s claim, or (2) demonstrating that the non-movant will be unable to carry his or her burden of proof at trial.

Id. The U.S. Supreme Court’s opinion in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) is instructive in interpreting the summary judgment standard in Hawai‘i courts. *See id.*

IV. ARGUMENT

A. **Defendants Orosco and Sylvester Are Entitled to Immunity Based on the Doctrine of Conditional Privilege.**

Under the qualified or conditional privilege doctrine, Defendants Orosco and Sylvester are entitled to immunity and shielded from the Plaintiff’s negligence and intentional tort claims.

“The Hawai‘i Supreme Court has recognized and established a qualified immunity for non-judicial government officials, when acting in the performance of their duty, which is referred to as conditional privilege.” *Pogoso v. Sarae*, 138 Hawai‘i 518, 522, 382 P.3d 330, 334 (App. 2016) (internal quotation marks omitted). Conditional privilege is a common law doctrine that applies “unless the injured party can demonstrate by clear and convincing proof that the official had been motivated by malice and not by an otherwise proper purpose.” *Id.* (internal quotation marks omitted) The doctrine is best stated by the Hawai‘i Supreme Court in *Towse v. State*:

[N]on-judicial government officials, when acting in the performance of their duty, enjoy the protection of what has been termed a qualified or conditional privilege. This privilege effectively shields the official from liability, and not from the imposition of the suit itself, to the extent that the privilege is not abused and thereby lost. . . . [I]n order for an action to lie against an official acting under a

claim of privilege, it is essential that the injured party allege and prove, to the requisite degree, that the official had been motivated by malice and not by an otherwise proper purpose.

64 Haw. 624, 631-32, 648 P.2d 696, 702 (1982) (internal footnotes and citations omitted).

The Hawai‘i Supreme Court adopted the conditional privilege doctrine in *Medeiros v. Kondo*, 55 Haw. 499, 522 P.2d 1269 (1974). In adopting the doctrine, the Hawai‘i Supreme Court rejected the federal approach that government officials should be absolutely immune from tort suits and held that such may only be liable if the plaintiff proves by clear and convincing evidence that the officer was motivated by malice and not by an otherwise proper purpose. *Id.* at 504-05, 522 P.2d at 1272. The Hawai‘i Supreme Court’s solution balanced competing interests between allowing plaintiffs their “day in court” and still protecting innocent government officials from liability:

There can be no doubt that the public interest requires adequate protection for the innocent public servant’s pocketbook. We reject the federal rule of absolute immunity as a method of balancing the conflicting interests. What we seek is a compromise which will allow the injured party to be heard yet protect the innocent public servant’s pocketbook.

Id. at 504, 522 P.2d at 1272. The Court therefore held that “the best way to balance the interests of the maliciously injured party against the innocent official is to allow the action to proceed but to limit liability to only the most guilty of officials by holding plaintiff to a higher standard of proof than in a normal tort case.” *Id.* at 504-05, 522 P.2d at 1272.

To move forward with their negligence and intentional tort claims at trial, the Plaintiff must be able to demonstrate that Defendants Orosco and Sylvester acted with “actual malice” to defeat conditional privilege. The Hawai‘i Supreme Court has stated that in non-defamation cases, courts are to define malice “in its ordinary and usual sense[,]” to mean “the intent, without justification or excuse, to commit a wrongful act, reckless disregard of the law or of a person’s legal rights, and ill will; wickedness of heart.” *Awakuni v. Awana*, 115 Hawai‘i 126, 141, 165

P.3d 1027, 1042 (2007) (quoting Black's Law Dictionary 97 (8th ed. 2004)). While “[t]he existence of malice is generally a question for the jury[,] . . . when this issue has been removed from the case by uncontroverted affidavits and depositions, and the moving party is entitled to judgment as a matter of law, summary judgment will be granted.” *Runnels v. Okamoto*, 56 Haw. 1, 5-6, 525 P.2d 1125, 1129 (1974) (brackets added) (internal quotations omitted).

The Plaintiff does not have evidence that could create a genuine issue of material fact as to whether either Defendant Orosco or Defendant Sylvester acted with “actual malice,” and, with the exception of taking depositions of the Defendants’ expert witnesses, discovery is now closed.

Defendant Orosco testified during his deposition that he pointed his firearm toward Mr. Myeni because, while he did not know the full situation, such as whether Mr. Myeni was armed, he was informed by dispatch that there was a burglary in progress.

Q. What was it about the situation where you felt compelled to point a weapon at Mr. Myeni?

A. First off, like what the call was, burglary in progress. I don’t know what happened – what had happened before that; it’s a hostage situation, barricade. I don’t know if he has a weapon on him or –

Q. Dispatch didn’t tell you anything about whether he was armed or not?

A. They don’t know. They – no. No.

Ex. C at 72:25-73:09. Further, Defendant Orosco stated that when he commanded Mr. Myeni to get on the ground, he did so for the purpose of ensuring the scene was safe.

Q. From what I observed on the body camera, you told him get on the ground at least four times that I could hear. Do you recall that?

A. Yes.

Q. What was it about what was happening when you first saw him standing near Officer Sylvester that made you feel compelled to order him to get on the ground?

A. First of all, the caller is pointing him out. And at that moment, I’m just trying to control the scene, to make the scene safe.

Ex. C at 79:21-80:06. Defendant Orosco also testified that he always thought Mr. Myeni was able to identify that he was a police officer.

Q. Okay. So at the time, you didn't perceive that he was asking that. You thought he knew you were a cop?

A. I thought he knew who I was. I had my uniform on. When I got there, the caller identified me as a policeman. So she knew I was a policeman.

Ex. C at 82:08-82:13. Throughout this sequence of events, there is nothing—not objectively or through Defendant Orosco's deposition testimony—that would indicate he acted out of malice. The only reasonable conclusion demonstrated by the facts are that Defendant Orosco acted for the purpose of responding to a 911 call for a potential burglary and attempted to stop the suspect—who was identified by the 911 caller—in order to secure the scene.

Defendant Sylvester testified during his deposition that, in his initial interaction with Mr. Myeni, he did not act in any way that was overbearing or threatening:

Q. Okay. Would you say that the way in which Officer Orosco spoke to Mr. Myeni and commanded him was different than the manner and tone you were using when you spoke to Mr. Myeni?

A. Yes.

Q. When you asked him what's going on here, were you asking in a genuinely curious way like you wanted to know what was happening, right?

A. Yes.

Q. You weren't – you don't feel you were in any way being overbearing?

A. No.

Q. You didn't display any weapon?

A. No.

Q. You didn't threaten him?

A. No.

Q. You didn't make any command on him?

A. No.

Q. Okay. And you believe he could tell you were a police officer?

A. Yes.

Q. So at that point, his encounter with the police was with this nice polite gentleman approaching from the west who asked him what was going on here; is that correct?

A. Yes.

Ex. D at 163:19- 164:14. Defendant Sylvester also testified that he wished he did not have to discharge his firearm at any time in his career:

Q. Why did you shoot three times?

A. As opposed to what?

Q. One or two.

A. I just shot to stop the threat.

Q. Yeah, why wasn't one enough?

A. Well, three was barely enough.

Q. You wish you shot more?

A. No, I wish I didn't shoot at all.

Q. Well, if you start talking about wishing if you look back on that evening, what do you think you wish you had done differently?

A. Nothing. I just wish I didn't have to discharge my firearm any time in my career.

Ex. D at 166:04-166:16. When asked if he was angry, Defendant Sylvester responded that he was "just more confused why is he [Myeni] attacking us." Ex. D at 174:09-174:13.

In the instant case, it is indisputable that Corporal Orosco used lawful police authority in attempting to detain Mr. Myeni, as there was more than enough information to establish reasonable suspicion. Defendant Orosco was informed by HPD dispatch of a possible burglary

in progress and Ms. Wang, the 9-1-1 caller, identified Mr. Myeni as the suspect. The Plaintiff's speculation that Myeni did not know Corporal Orosco, who was in his full uniform and ordering him to get on the ground, was a police officer does not negate the lawfulness of Corporal Orosco's actions and certainly does not constitute evidence of actual malice. Likewise, both Corporal Orosco's and Officer Sylvester's use of force in self-defense was reasonable, given that Mr. Myeni was the initial aggressor, and that Mr. Myeni had inflicted serious bodily injury on Corporal Orosco before either discharged their firearms. The use of deadly force alone does not constitute evidence of actual malice required to defeat conditional privilege. *Wells v. Talton*, 695 Fed. Appx. 439, 447 (11th Cir. 2017) (affirming summary judgment on wrongful death claim because there was no evidence that defendant's use of force was either negligent or made with actual malice). Therefore, Defendants Orosco and Sylvester are entitled to summary judgment pursuant to the qualified or conditional privilege doctrine.

B. Alternatively, Summary Judgment is Warranted on Plaintiff's Negligence and Intentional Tort Claims against Defendants Orosco and Sylvester.

Separate and apart from the qualified or conditional privilege, which alone warrants entry of summary judgment, an alternative reason for entry of summary judgment is that there is no genuine issue of material fact that the actions of the officers were privileged, as defined by Hawai'i law (assault and battery claim) and justified and not negligent (negligence claim).

1. **Defendants Orosco and Sylvester Acted Reasonably in the Totality of Circumstances and Not Negligent.**

“[I]t is fundamental that a negligence action lies only where there is a duty owed by the defendant to the plaintiff.” *Bidar v. Amfac, Inc.*, 66 Hawai'i 547, 551-52, 669 P.2d 154, 159 (1983) (citations omitted). The Supreme Court in *Hao v. Campbell Estate*, 76 Hawai'i 77, 80, 869 P.2d 216, 2109 (1994) stated:

//

The existence of a duty owed by the defendant to the plaintiff, "that is, 'whether . . . such a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of the other--or, more simply, whether the interest of the plaintiff which has suffered invasion was entitled to legal protection at the hands of the defendant,' **is entirely a question of law**...."

Id. (citations omitted and emphasis added). A particular duty on the part of a defendant, if recognized by Hawai'i law, is not "owed to the world at large, but rather to those who might reasonably be foreseen as being subject to injury by the breach of the duty." *Pulawa v. GTE Hawaiian Tel.*, 112 Hawai'i 3, 16, 143 P.3d 1205, 1218 (2006). "[T]he defendant's obligation to refrain from particular conduct . . . is owed only to those who are foreseeably endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct . . . unreasonably dangerous." *Id.* (citations and emphasis omitted). "Moreover, in determining the scope of a defendant's duty, the focus is on the defendant's viewpoint, that is, whether the defendant could reasonably foresee the plaintiff's injury." *Id.* (internal quotation marks and emphasis omitted). "The aforementioned test does not mean foreseeability of any harm whatsoever, and it is not sufficient that injury is merely possible." *Id.* at 17, 143 P.3d at 1219 (internal quotation marks and emphasis omitted). Hawai'i Courts are reluctant to impose new tort duties not previously been recognized. *Molfino v. Yuen*, 134 Hawai'i 181, 184-85, 339 P.3d 679, 682-83 (2014) (Courts are "reluctant to impose a new duty upon members of our society without any logical, sound, and compelling reasons taking into consideration the social and human relationships in our society.").

In the instant case, there are no genuine issues of material fact. Defendants did not breach any duty recognized by Hawai'i law. Again, Defendants are not aware of any authority imposing a duty on officers, who in responding to a potential burglary in progress, to not use

flashlights or refrain from drawing their firearm when issuing a lawful command on a criminal suspect to get on the ground. Similarly, there is no recognized duty for officers to not use their firearms in self-defense when deadly force is being used against them. As foreseeability informs the duty inquiry, Plaintiff undermines the required showing of foreseeability that the initial response to the burglary call would foreseeably result in Plaintiff brutally attacking the officers. The Plaintiff may claim that Mr. Myeni's undisputed entry into someone else's property was "peaceful." Dkt. 213, ¶¶ 11, 17, 19. But regardless of whether Mr. Myeni was allegedly "peaceful" prior to his interactions with the responding officers, based on the information available to the responding officers at the time of the incident, it was not foreseeable that ordering Mr. Myeni on get on the ground would result in Mr. Myeni attacking the responding officers and the officers' subsequent use of force in self-defense. Further, Defendants Orosco's and Sylvester's actions were lawful, reasonable, and proper. In sum, it is Plaintiff's burden to prove breach of a duty recognized by Hawai'i law, and the Plaintiff cannot do so under the facts of this case.

2. The Plaintiff's Intentional Tort Claims Fail Because Defendants' Use of Force in Self-Defense were Reasonable and Privileged.

Claims for assault and battery are intentional torts. The Plaintiff's intentional tort claims fail because Defendants Orosco's and Sylvester's actions were reasonable given the circumstances and privileged. Additionally, the use of force, including any physical altercation up to the discharge of their firearms, was justified self-defense.

"In order to state a cause of action for assault a plaintiff must establish that (1) the defendant intended to cause harmful or offensive contact, or the imminent apprehension of such contact, and (2) that plaintiff was put in imminent apprehension of such contact." *O'Connor v. Kapua-Allison*, No. 14-00507 HG-KSC, 2015 U.S. Dist. LEXIS 125359, at *33 (D. Haw. Sep.

18, 2015) (internal quotation marks omitted) (citing *Pourny v. Maui Police Dep't, County of Maui*, 127 F. Supp. 2d 1129, 1147 (D. Haw. 2000) (citing Restatement (Second) of Torts § 21 (1965)); *Mukaida v. Hawaii*, 159 F. Supp. 2d 1211, 1223 (D. Haw. 2001). “Whether a person’s behavior creates fear of imminent harm must be reasonable and is determined from an objective standpoint.” *Id.* (collecting cases). A defendant “causes battery when he or she intentionally causes bodily contact to the plaintiff in a way not justified by the plaintiff’s apparent wishes or by a privilege, and the contact is in fact harmful or against the plaintiff’s will.” *Jeanniton v. City & Cty. of Honolulu*, No. 20-00369 ACK-WRP, 2022 U.S. Dist. LEXIS 69749, at *59 (D. Haw. Apr. 15, 2022) (citation omitted).

Hawai‘i case law provides that police officers are not liable for injuries in the use of reasonably necessary force. *See Leong Sam v. Keliihoomalu*, 24 Haw. 477, 482 (1918) (“[a] peace officer is not liable for injuries inflicted by him in the use of reasonably necessary force to preserve the peace and maintain order to overcome resistance to his authority; but is liable if unnecessary violence is used to accomplish the purpose, or if he assaults a person without just excuse, he comes a trespasser and is liable as such.”); *Jeanniton*, No. 20-00369 ACK-WRP, 2022 U.S. Dist. LEXIS 69749, at *59-60 (granting summary judgment on assault and battery claims because, in addition to the qualified or conditional privilege, the Court “found that in forcing their entry there was probable cause and that the emergency aid and exigent circumstances exceptions to the warrant requirement apply.”); *see also Estate of Saucedo v. City of N. Las Vegas*, 380 F. Supp. 3d 1068, 1088 (D. Nev. 2019) (granting summary judgment on an assault and battery claim because use of force was determined to be reasonable, and collecting cases for the proposition that like an excessive force claim, assault and battery claims against police officers also require proof of unreasonable force); Restatement (Second) of Torts, § 21 (“As

defined in § 10, the word ‘privilege’ denotes the fact that acts which would ordinarily subject the actor to liability do not do so under particular circumstances and when done for particular purposes, either because the other consented to the invasion which results from the actor’s conduct or because such acts are permitted by law irrespective of the other’s consent.”)

As discussed above, reasonable suspicion existed for Defendant Orosco’s initial actions, which were both privileged and reasonable under Hawai‘i law. It should also be noted that the initial pointing of guns and commands to get to the ground were merely conditional threats for which the officers were privileged to make. *See* Restatement (Second) of Torts, § 30 (if “command is one which the actor is privileged to enforce by the infliction of the threatened contact or by a threat to inflict it” an officer is not liable for a conditional threat); *see also id.*, comment a. (“If the command is one which the actor is privileged to enforce by the infliction of the threatened contact, or by the threat to inflict it, he is not liable by reason of his privilege.”). And, as discussed above, Defendants are not aware of any authority that even suggests it is unreasonable for police officers in full uniform, who have both reasonable suspicion and exigent circumstances, to use flashlights or give commands to get on the ground while pointing a firearm, without first announcing themselves as officers.

The officers’ discharge of their weapons are similarly reasonable, privileged, and not negligent because they shot in self-defense while Corporal Orosco was being brutally beaten, with Myeni pounding his head repeatedly with his fists into the pavement. *See, e.g., Begley v. Cty. of Kauai*, No. 03-00162 KSC, 2006 U.S. Dist. LEXIS 107279, at *16-17 (D. Haw. Mar. 30, 2006) (“When a defendant is acting in self-defense, a privilege arises and the defendant will not be held liable for assault or battery where the defendant reasonably believes that the use of force is necessary for the defense of himself and uses no more force that appears reasonably necessary

under the circumstances.”) (citing *United States v. Keiser*, 57 F.3d 847, 851 (9th Cir. 1995)).

While similar to the self-defense and conditional privilege arguments, the element of intent to cause harmful contact also cannot be met here. *See Begley*, 2006 U.S. Dist. LEXIS 107279, at *16-17 (“Plaintiff has failed to establish by a preponderance of the evidence that Defendant Nawai acted intending to cause a harmful or offensive contact when he struck Plaintiff under the circumstances in this case. Additionally, Defendant Nawai has proven by a preponderance of the evidence that he struck Plaintiff in self-defense only after Plaintiff swung at him twice and hit him once in the shoulder area.”).

C. As Defendants Orosco and Sylvester are Not Liable, the City cannot be Vicariously Liable for Mr. Myeni’s Death.

The City is equally entitled to summary judgment based on the qualified or conditional privilege as it is extended to the City via the doctrine of respondeat superior. *See Medeiros v. Kondo*, 55 Haw. 499, 504, 522 P.2d 1272 (1974) (emphasis added); *Awakuni v. Awana*, 115 Hawai‘i 126, 140-41, 165 P.3d 1027 (2007); *Reed v. City & County of Honolulu*, 76 Hawai‘i 219, 227-228, 873 P.2d 98, 107 (1994). For similar reasons, when Plaintiff’s claims fail against Defendants Orosco and Sylvester, the vicarious liability claim against the City also fails. *See Wong-Leong v. Hawaiian Indep. Refinery*, 76 Hawai‘i 433, 438, 879 P.2d 538, 543 (1994).

D. Plaintiff’s Non-Percipient Experts’ Reports Opinions About Malice, Probable Cause, Reasonableness of Use of Force, and/or Duty Must Be Disregarded and Cannot Create a Genuine Issue of Material Fact

While Defendants reserve the right to address any and all evidence, arguments, etc. presented in the Plaintiff’s memorandum in opposition, they anticipate that expert affidavits or reports may be submitted in opposition in an attempt to create genuine issues of material fact regarding the legal issues of actual malice, probable cause, duty under negligence, and/or “reasonableness” of the use of force, etc. Thus, Defendants will pre-emptively address such

opinions in the instant Motion.

While Plaintiff's non-percipient expert reports contain opinions about the reasonableness of the use of force, duty or duties, probable cause, and/or directly implicate the "actual malice" standard inasmuch as they opine that the officers engaged in reckless conduct, such opinions cannot be considered on summary judgment. First, all such opinions are conclusions of law that are either a matter for this Court to decide, based on the evidence before it, or for the province of the jury, if summary judgment is denied. *See Pulawa v. GTE Hawaiian Tel.*, 112 Hawai'i 3, 15, 143 P.3d 1205, 1217 (2006) ("Generally, the testimony of expert witnesses is confined to matters of fact, as distinguished from matters of law. In other words, an expert or nonexpert opinion that amounts to a conclusion of law cannot be properly received in evidence, since the determination of such questions is exclusively within the province of the court.") (cleaned up); *Lahaina Fashions, Inc. v. Bank of Hawaii*, 131 Hawai'i 437, 454, 319 P.3d 356, 373 (2014) ("Inasmuch as Weir's testimony regarding the existence of a fiduciary duty amounted to a legal conclusion, it could not raise a fact issue to defeat JMOL.") (cleaned up); *Hangarter v. Provident Life and Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004) (experts may not offer legal conclusions); *United States v. Diaz*, 876 F.3d 1194, 1198-99 (9th Cir. 2017) (experts must avoid terms that have a "specialized meaning in law"); *Valencia v. Davis*, 836 F. App'x 292, 299-300 (5th Cir. 2020) (collecting cases for proposition that "reasonableness" of use of force is a legal conclusion and expert opinions are properly excluded on summary judgment); *Valenzona v. Carlisle*, No. 26999, 2008 Haw. App. LEXIS 55, at 18-20 (App. Feb. 5, 2008) ("When the evidence as to the facts necessary to constitute probable cause is clear, the question of probable cause is for the court to determine . . . On this record the evidence is clear that Defendant Deering had probable cause to effectuate the arrest . . .") (citations omitted); *Runnels v. Okamoto*, 56 Haw. 1, 5-6, 525 P.2d

1125, 1129 (1974) (actual malice for qualified or conditional privilege is either a jury question or “when the issue has been removed from the case by uncontroverted affidavits and depositions...the moving party is entitled to judgment as a matter of law[.]”); *Bidar*, 66 Hawai‘i at 551-52, 669 P.2d at 159 (the existence of a duty “is entirely a question of law.”) (citations omitted).

Second, the experts’ opinions contain various speculative and/or ipse dixit assertions, including but not limited to Gilbertson’s assertion that the caller, who was “hysterical” after Myeni entered her own residence, should have somehow been disregarded and thus no probable cause or exigent circumstances existed. Such speculative and/or ipse dixit opinions must be disregarded as a matter of law, and this Court is required to make such determinations solely based on the summary judgment evidence. *See Thomas v. Kidani*, 126 Hawai‘i 125, 132, 267 P.3d 1230, 1237 (2011) (affirming grant of summary judgment and disregarding expert declaration where it was “based on conjecture and speculation, and because it contains improper legal conclusions.”); *Nomo Agroindustrial Sa De Cv v. Enza Zaden N. Am., Inc.*, No. CV 05-351-TUC-FRZ, 2009 U.S. Dist. LEXIS 8657, at 12-13 (D. Ariz. Jan. 29, 2009) (“An expert’s testimony may be excluded where it is based on subjective beliefs or unsupported speculation which is no more than unreliable ipse dixit guesswork.”).

Third, the experts’ assertions improperly assert that the responding officers should not have treated their response as being for a burglary, despite what the officers actually knew at the time of the incident. In other words, the opinions are improper because they are contrary to law to the extent that impute knowledge to officers that the officers did not have. To be clear, while “collective knowledge” can be used to support probable cause, it is not permissible to impute bad faith and/or wrongdoing on the part of officers. *See, e.g., Simone v. United States*, 642 F. App’x

73, 75 (2d Cir. 2016). There is certainly no authority suggesting that reasonableness in the context of civil assault and battery claims can be based on facts unknown to officers. Thus, to the extent that the expert opinions charge the officers with knowledge that they did not have, such opinions are contrary to law and must be disregarded.

V. CONCLUSION

For the foregoing reasons, the City requests the Court grant the City's Motion for Summary Judgment and deny all claims brought forth in Plaintiff's First Amended Complaint, Dkt. 213, with prejudice.

DATED: Honolulu, Hawai'i, March 15, 2024.

DANA M.O. VIOLA
Corporation Counsel

By: /s/ Justin M. Luney

WILLIAM R.K. AWONG
JUSTIN M. LUNEY
JASON A.I. BAKER
Deputies Corporation Counsel

Attorneys for Defendants
CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, and BRENT K. SYLVESTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

L. LINDSAY MYENI, Widow of LINDANI
SANELE MYENI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, in his individual
capacity as a Honolulu police officer; BRENT
K. SYLVESTER, in his individual capacity as
a Honolulu police officer; DOE OFFICER #3,
in his/her individual capacity as a Honolulu
police officer; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 1CCV-21-0000504 (6th Div)
(Other Non-Vehicle Tort)

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, JUSTIN M. LUNEY, hereby declare as follows:

1. I am a Deputy Corporation Counsel in the Department of the Corporation Counsel, City and County of Honolulu, and attorney for Defendants City and County of Honolulu, Garrick Orosco, and Brent K. Sylvester in the above-captioned action. I am licensed to practice law before all courts in the State of Hawai‘i. I am competent to testify as to the matters set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of the transcript from the Deposition of L. Lindsay Myeni, taken on January 5, 2024

3. Attached hereto as Exhibit B is a true and correct copy of the transcript from the Videotaped Remote Deposition of Sabine Shiyang Wang, taken on May 27, 2021.

4. Attached hereto as Exhibit C is a true and correct copy of the transcript from the Videotaped Deposition of Garrick Orosco, taken on December 8, 2023.

5. Attached hereto as Exhibit D is a true and correct copy of the transcript from the Videotaped Deposition of Brent Sylvester, taken on February 9, 2023.

6. The above-referenced deposition transcripts are kept and maintained in the Department of the Corporation Counsel's files and records in the ordinary course of its business.

7. Attached hereto as Exhibit G is an excerpt from video footage retrieved from Corporal Garrick Orosco's assigned body worn camera. The excerpt is from footage produced to the Plaintiff's counsel, bates-stamped as C000017.

8. Attached hereto as Exhibit H is an excerpt from video footage retrieved from Officer Noli Galicha's assigned body worn camera. The excerpt is from footage produced to Plaintiff's counsel, bates-stamped as C000016.

I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, March 15, 2024.

/s/ Justin M. Luney
JUSTIN M. LUNEY

DANA M.O. VIOLA 6095
Corporation Counsel

WILLIAM R.K. AWONG 8329
JUSTIN M. LUNEY 10848
JASON A.I. BAKER 8994

Deputies Corporation Counsel
City and County of Honolulu
530 S. King Street, Room 110
Honolulu, Hawai'i 96813
Telephone: (808) 768-5111 / (808) 768-5238 / (808) 768-5103
Facsimile: (808) 768-5105
Email: wawong@honolulu.gov / justin.luney@honolulu.gov / jason.baker@honolulu.gov

Attorney for Defendants
CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, and BRENT K. SYLVESTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

L. LINDSAY MYENI, Widow of LINDANI
SANELE MYENI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, in his individual
capacity as a Honolulu police officer; BRENT
K. SYLVESTER, in his individual capacity as
a Honolulu police officer; DOE OFFICER #3,
in his/her individual capacity as a Honolulu
police officer; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 1CCV-21-0000504 (6th Div)
(Other Non-Vehicle Tort)

DECLARATION OF MASAHIKO
KOBAYASHI, M.D., PH.D.

DECLARATION OF MASAHIKO KOBAYASHI, M.D., PH.D.

I, MASAHIKO KOBAYASHI, do hereby declare:

1. I am a physician licensed to practice in the State of Hawai'i.

2. I am the Medical Examiner for the City and County of Honolulu, State of Hawai'i ("Medical Examiner").

3. In my capacity as the Medical Examiner I conducted an investigation into the facts and circumstances surrounding the death of Lindani Sanele Myeni.

4. As part of this investigation, I prepared an Autopsy Report ("Report") dated June 2, 2021.

5. I have reviewed the document entitled Exhibit "E" and it is a true and accurate copy of the Report.

6. As part of this investigation, I prepared an Addendum to the Autopsy Report ("Addendum") dated December 20, 2022.

7. I have reviewed the Exhibit "F" and it is a true and accurate copy of the Addendum.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 14, 2024 at Honolulu, Hawai'i.



MASAHIKO KOBAYASHI, M.D., PH.D.

DANA M.O. VIOLA 6095
Corporation Counsel

WILLIAM R.K. AWONG 8329
JUSTIN M. LUNEY 10848
JASON A.I. BAKER 8994

Deputies Corporation Counsel
City and County of Honolulu
530 S. King Street, Room 110
Honolulu, Hawai'i 96813
Telephone: (808) 768-5111 / (808) 768-5238 / (808) 768-5103
Facsimile: (808) 768-5105
Email: wawong@honolulu.gov / justin.luney@honolulu.gov / jason.baker@honolulu.gov

Attorney for Defendants
CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, and BRENT K. SYLVESTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

L. LINDSAY MYENI, Widow of LINDANI
SANELE MYENI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, in his individual
capacity as a Honolulu police officer; BRENT
K. SYLVESTER, in his individual capacity as
a Honolulu police officer; DOE OFFICER #3,
in his/her individual capacity as a Honolulu
police officer; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 1CCV-21-0000504 (6th Div)
(Other Non-Vehicle Tort)

DECLARATION OF BRANDON
NAKASATO

DECLARATION OF BRANDON NAKASATO

I, Brandon Nakasato, do hereby declare:

1. I am competent to testify on the matters set forth in this declaration. This declaration is made under the laws of the State of Hawai'i and the United States, based on my personal knowledge unless otherwise indicated, and made under penalty of perjury.

2. I am the Major for the Professional Standards Office ("PSO") within the Honolulu Police Department ("HPD").

3. In my capacity as the Major for the PSO, I am familiar with how HPD reports are created, compiled and maintained by HPD, including body worn camera footage.

4. In all officer-involved shootings, PSO reviews all reports, including body worn camera footage.

5. HPD reports are made at or near the time of occurrence of the matters set forth in the report by or with information from a person with personal knowledge of those matters. Body worn camera footage is received from the body worn cameras of individual officers near the time of the occurrence of the matters set forth in the video footage. HPD reports and body worn camera footage are maintained in the regular course of HPD's business.

6. In my capacity as the Major for the PSO, I have access to all reports maintained by the HPD, including body worn camera footage.

7. Exhibit "G" is a true and correct copy of an excerpt of video footage retrieved from Officer Garrick Orosco's assigned body worn camera, X81604472, beginning at approximately 8:13:47 p.m. on April 14, 2021. The time stamp of 6:13:47 am on April 15, 2021 is Universal Time Coordinated ("UTC") time and is 10 hours ahead of Hawai'i Standard Time ("HST").

8. Exhibit "H" is a true and correct copy of an excerpt of video footage retrieved from Officer Noli Galicha's assigned body worn camera, X81604257, beginning at

approximately 8:14:32 p.m. on April 14, 2021. The time stamp of 6:14:32 am on April 15, 2021 is UTC time and is 10 hours ahead of HST.

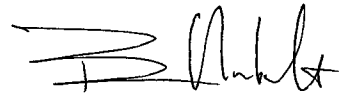
9. Attached hereto as Exhibit "I" is a true and correct copy of the Incident Report submitted by Officer Timothy C. Massie under HPD Report No. 21-162831.

10. Attached hereto as Exhibit "J" is a true and correct copy of the Incident Report submitted by Officer Brent K. Sylvester under HPD Report No. 21-158469.

11. Attached hereto as Exhibit "K" is a true and correct copy of the Incident Report submitted by Officer Noli Galicha Jr. under HPD Report No. 210158469.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, March 15, 2024.



BRANDON NAKASATO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

L. LINDSAY MYENI, Widow of) CIVIL NO. 1CCV-21-0000504
LINDANI SANELE MYENI,) JHA
) (Other Non-Vehicle Tort)
Plaintiff,)
)
vs.)
)
CITY AND COUNTY OF)
HONOLULU, GARRICK OROSCO,)
in his individual capacity)
as a Honolulu police)
officer; BRENT K.)
SYLVESTER, in his)
individual capacity as a)
Honolulu police officer;)
DOE OFFICER #3, in his/her)
individual capacity as a)
Honolulu police officer;)
and DOE DEFENDANTS 1-50,)
)
Defendants.)
-----)

DEPOSITION OF L. LINDSAY MYENI

taken on behalf of the Defendants City and County
of Honolulu, Garrick Orosco, and Brent K. Sylvester at
the Department of Corporation Counsel, 530 South King
Street, Room 110, Honolulu, Hawaii 96813, commencing at
9:10 a.m. on Friday, January 5, 2024, pursuant to
Notice.

BEFORE: Lynn Nishimura, CSR NO. 273

1 APPEARANCES:

2 For the Plaintiff JAMES J. BICKERTON, ESQ.
3 L. Lindsay Myeni: BRIDGET G. MORGAN-BICKERTON, ESQ.
4 Bickerton Law Group
5 Topa Financial Center,
6 Fort Street Tower
7 745 Fort Street, Suite 801
8 Honolulu, Hawaii 96813

6 For the Defendants WILLIAM R.K. AWONG, ESQ.
7 City and County of JASON A. BAKER, ESQ.
8 Honolulu, Garrick Deputies Corporation Counsel
9 Orosco, and Brent K. Department of Corporation Counsel
10 Sylvester: City and County of Honolulu
11 530 South King Street, Room 110
12 Honolulu, Hawaii 96813

11 Also Present: Brent K. Sylvester

13
14
15
16
17
18
19
20
21
22
23 HONOLULU REPORTING SERVICES
24 Certified Shorthand Reporters
25 1000 Bishop Street, Suite 401
Honolulu, Hawaii 96813
Phone (808) 524-6288

1 Q. And what did you do at that wood carving tent?

2 A. We went inside and looked around. I said oh,
3 maybe I should get this hook thing as a closing gift for
4 my broker on that real estate deal we were doing. And
5 then the guy told us the price and I was like ooh.

6 Q. And if I remember correctly, he expressed some
7 interest in the hook?

8 A. Yes, he did.

9 Q. Did he tell you why he was interested?

10 A. He didn't tell me why he was interested, no.
11 But he asked the guy, the Tongan guy who worked there,
12 what does a hook signify? What does it signify? He
13 thought -- I think he thought they were well made and
14 beautiful and something he would like. For himself
15 probably, not even just for my broker. I think he would
16 want one. And I think he did want one cause we spoke
17 about it after. And it was like ooh, again, it's too
18 much money. But the guy said it represents strength and
19 protection.

20 Q. Was that important to him?

21 A. I think so.

22 Q. Why?

23 A. As I stated in some previous interview
24 somewhere, he felt like he needed spiritual protection
25 that day. He told me he felt like he needed spiritual

1 protection that day.

2 Q. When did he tell you that he felt like he needed
3 spiritual protection?

4 A. I don't recall which part of day it was, but it
5 was before the hook.

6 Q. And what did you interpret that to mean, that he
7 needed spiritual protection?

8 A. Maybe that he's overwhelmed with the... Maybe
9 he does, first of all, because who am I to say what
10 someone else is experiencing? And obviously, he did
11 because he passed away. As well as you might be king,
12 you might be getting your Green Card next week. Like,
13 it's a lot happening. I would probably need some
14 spiritual protection after going through that.

15 Q. Prior to April 14, 2021, did he ever talk to you
16 about feeling like he needed spiritual protection?

17 A. No.

18 Q. Did it strike you as unusual that he talked to
19 you about it that day?

20 A. No, cause I feel like he's pretty generally in
21 tune with reality, whatever that is. And so it must be
22 true for him because he doesn't just say stuff out of
23 nowhere. And like I said, as a result, he's not here.
24 So he must have been right in a way.

25 Q. Okay. Like, I think I heard you say it, but you

1 earlier that day. So it made sense that he needed some
2 space not with two kids and me.

3 Q. Was this something he did often? When he was
4 preoccupied or overwhelmed, he would need some time,
5 space to himself?

6 A. Both of us. Yes.

7 Q. How often would he kind of have these -- I mean,
8 for lack of a better word, I'll call it a time-out. If
9 that's inaccurate or uncomfortable, let me know. But
10 did he have these kind of time-outs?

11 A. I don't know how often really. But both him and
12 I with the kids needed our own time not with the kids to
13 think and to get stuff done and to reflect, to make
14 decisions.

15 Q. So this particular time, you said he wanted to
16 go for a drive. Right?

17 A. Yeah.

18 Q. And I believe in previous statements you used
19 the phrase "clear his head". Is that still accurate?

20 A. Something like that.

21 Q. Something like that.

22 When he had these periods to kind of clear his
23 head, would he often go driving?

24 A. I never stopped to think about that. Typically
25 he'd go to maybe a friend's house, someone he could chat

1 he was going to go that route or the other direction
2 towards my broker and chat with him.

3 Q. So is it fair to say when he left that evening,
4 you didn't have a really firm idea of what he was going
5 to do?

6 A. Yes. And that was sometimes an argument in our
7 marriage. Like I'd be, like, why don't you tell me
8 where you're going, what you're doing? And he's, like,
9 even my mom wouldn't ask me that. That's not, like, my
10 style. And it wasn't.

11 Q. Okay. Did he give you any indication of how
12 long he planned to be out?

13 A. No. But we both had an idea I'm sure. I mean,
14 usually we had similar ideas without even speaking it
15 of, like, probably anywhere from 20 minutes to three
16 hours. Beyond that, it's like okay, what's going on?

17 Q. Now, when you were talking to him at this time
18 back at the house, was he responding appropriately to
19 your questions?

20 A. He was talking kind of fast.

21 Q. Was that unusual for him?

22 A. I mean, maybe if he was excited about something.
23 But I think he was overwhelmed, that's why he was
24 talking fast.

25 Q. Is there anything else he was doing that you can

1 Q. But you understand that even if you didn't draft
2 these answers or you're not the person who actually
3 typed them, that when you signed that last page, it
4 means they're true to the best of your knowledge and
5 belief?

6 A. Yes.

7 Q. And you wouldn't have signed that last page
8 unless these were true, correct?

9 A. That would be my intent, yes.

10 Q. On page ten, the answer No. 7. At the bottom of
11 the page it says, "Later, at about 7:52 pm, Plaintiff
12 called Mr. Myeni to check in with him in a very brief
13 call in which he said he was on his way home."

14 Did I read that correctly?

15 A. You read it correctly.

16 Q. Is that statement accurate?

17 A. I don't remember the time because it's not as
18 fresh as it was. But the rest of it sounds correct.

19 Q. Okay. Initially how did you come up with such a
20 specific time?

21 A. Initially I had written it down somewhere.

22 Q. Was it in your phone logs or anything?

23 A. Yes. It was in my old phone.

24 Q. So as we sit here today, do you have any reason
25 to doubt the accuracy of that 7:52 p.m. call time?

1 A. No.

2 Q. And it says "Plaintiff". So that was you.
3 That's you, correct?

4 A. I presume.

5 Q. So you called Mr. Myeni at about 7:52, correct?

6 A. If that's what the statement says, that's
7 probably pretty accurate.

8 Q. Do you recall the details of that conversation?

9 A. Do I remember what he said and how I felt?

10 Q. Yes.

11 A. Yes.

12 Q. What did he say in that conversation?

13 A. I wrote it down at one point. But I don't have
14 it. I don't know where it is now. Let me go back to my
15 memory. Give me a moment.

16 "Hey, just checking on you." Oh, he actually
17 said, "What are you doing?" And I'm like, "I'm at
18 home." Oh, he said, "Where are you?" And I said, "I'm
19 at home where you left me." And I'm like, "Where are
20 you?" And he said, "I'll be back just now." But I
21 could hear the wind and the car door. Like ding, ding,
22 ding, ding, ding sound. That's my memory.

23 Q. Do you recall if he appeared -- or sounded as if
24 he were distracted?

25 A. Yes, he did sound distracted.

1 Q. Okay. And I'm going to rewind it because that's
2 the part I want. But I don't think it -- actually, I'll
3 just ask you because I don't think you've disputed it.

4 Your position today is you don't really know
5 what happened?

6 A. I can only speculate.

7 Q. You can only speculate.

8 And you don't know why he was at the house.

9 Right?

10 A. I can only speculate.

11 Q. Okay. So if you want to just look down for a
12 quick sec.

13 Okay, we should be good now.

14 (Video played.)

15 BY MR. AWONG:

16 Q. Okay. So she's not really recording what's
17 being said, so I want to make sure that it's... The
18 question being posed to you is if you had it your way,
19 what kind of support would you be getting in terms of
20 bringing a resolution to this? Is that similar to what
21 you just heard?

22 Would you like to hear it again?

23 A. That's what I heard.

24 Q. Okay, that's what you heard. Okay.

25 (Video played.)

1 A. Looks like the funeral.

2 Q. So we are going to be at time stamp... We are
3 currently at 1:42. So I'm going to start playing it
4 from here.

5 (Video played.)

6 BY MR. AWONG:

7 Q. So now I just want to confirm what you had just
8 said before stopping. This is just before 1:50. You
9 said, "He was walking down the driveway the day he
10 passed." Correct?

11 A. Yeah, that's what I said.

12 (Video played.)

13 BY MR. AWONG:

14 Q. And you said, "Before he left the house, he was
15 walking down the driveway and he said, 'Lindsay.'"

16 (Video played.)

17 BY MR. AWONG:

18 Q. And he said, "I saw three red circles around
19 me." Correct?

20 A. Correct. That's what I said in the video.

21 (Video played.)

22 BY MR. AWONG:

23 Q. And then you corrected. "No, not three. It was
24 six or seven" --

25 A. Yeah.

1 Q. -- "big red circles."

2 A. Yeah.

3 Q. Is that correct?

4 A. Uh-huh.

5 (Video played.)

6 BY MR. AWONG:

7 Q. And then you related that Mr. Myeni had said,
8 "It's my ancestors and I know they are embracing me."
9 Did I get that correct?

10 A. Correct.

11 (Video played.)

12 BY MR. AWONG:

13 Q. Then you responded to him, "And I said you are
14 scaring me." Correct?

15 A. Yes. Correct.

16 (Video played.)

17 BY MR. AWONG:

18 Q. And then you said, "And I'm like isn't that a
19 bad thing? And he said no."

20 (Video played.)

21 BY MR. AWONG:

22 Q. "It's a good thing. It's good thing." Is that
23 correct?

24 A. That's correct.

25 Q. Now, you just mentioned in this brief statement

HONOLULU REPORTING SERVICES
1000 BISHOP STREET, SUITE 401
HONOLULU, HAWAII 96813
PH: 524-6288

CERTIFICATE

HONOLULU REPORTING SERVICES hereby certifies:

TO: ATTORNEYS: William R. K. Awong/Jason A. Baker,
James J. Bickerton/Bridget G. Morgan-Bickerton

TITLE OF CASE: 1CCV-21-0000504 JHA

DEPOSITION OF: L. Lindsay Myeni

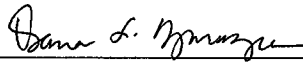
TAKEN ON: Friday, January 5, 2024

That on the 22nd day of January 2024, the witness, L. Lindsay Myeni, was notified that his/her deposition was prepared and ready for review and signature. The witness was informed that signature was required within 30 days pursuant to Court Rules or by scheduled trial date, whichever is earlier.

The subject deponent signed his/her deposition on the 6th day of February 2024.

- NO changes or corrections were made to the deposition by the deponent.
- Changes or corrections are attached.
- Deponent has failed to read his/her deposition within 30 days.
- Date of Trial:
- The original deposition has been returned to:

Dated: February 12, 2024

By: 
Dana L. Zarazua
Administrator

24 FEB 12 P 3:28

RECEIVED
CORPORATION COUNSEL
CAND C OF HONOLULU

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS CERTIFICATE

I, L. LINDSAY MYENI, do hereby certify that I have read the foregoing typewritten pages 1 through 297, inclusive, and corrections, if any, were noted by me and the same is now a true and correct transcript of my testimony.

DATED: 02/06/2024

L. Myeni
L. LINDSAY MYENI

Signed before me this 6th
day of February 2024.

aff

L. Lindsay Myeni, Widow of Lindani Sanele Myeni vs. City and County of Honolulu, Garrick Orosco, Brent K. Sylvester, et al.
Civil No. 1CCV-21-0000504 JHA
January 5, 2024
Lynn Nishimura, CSR No. 273

1 STATE OF HAWAII)
) ss.
 2 CITY AND COUNTY OF HONOLULU)
 3

4 I, LYNN NISHIMURA, CSR NO. 273, Certified Shorthand
 Reporter, in and for the State of Hawaii, do hereby
 5 certify:
 6

7 That on Friday, January 5, 2024, at 9:10 a.m.
 appeared before me L. LINDSAY MYENI, the deponent whose
 testimony is contained herein; that prior to being
 8 examined, the deponent was by me duly sworn or affirmed;
 that the proceedings were taken in machine shorthand by
 9 me and was thereafter reduced to typewriting under my
 supervision; that the foregoing represents, to the best
 10 of my ability, a correct transcript of the proceedings
 had at that time;
 11

12 That pursuant to Rule 30(e) of the Hawaii Rules of
 Civil Procedure, a request for an opportunity to review
 13 and make changes to the transcript:
 14

15 XXX Was made by the deponent or a party (and/or
 their attorney) prior to the completion of the
 deposition.
 16

17 --- Was not made by the deponent or a party (and/or
 their attorney) prior to the completion of the
 deposition.
 18

19 --- Was waived.

20 I further certify that I am not counsel for any of
 the parties hereto, nor in any way interested in the
 21 outcome of the cause named in the caption.
 22

23 Dated: 1/21/2024

24 
 25 LYNN NISHIMURA, CSR NO. 273

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

L. LINDSAY MYENI, Widow) Civil No. 21-0000504
of LINDANI SANELE)
MYENI,)
)
Plaintiff,)
)
vs.)
)
CITY AND COUNTY OF HONOLULU,)
DOE OFFICER #1, in his/her)
individual capacity as a)
Honolulu police officer, DOE)
OFFICER #2, in his/her)
individual capacity as a)
Honolulu police officer; DOE)
OFFICER #3, in his/her)
individual capacity as a)
Honolulu police officer; and)
DOE DEFENDANTS 1-50,)
)
Defendants.)
_____)

VIDEOTAPED REMOTE DEPOSITION of SABINE SHIYANG WANG,
commencing at 1:46 p.m., on Thursday, May 27, 2021,
pursuant to Rule 30 of the Hawaii Rules of Civil
Procedure.

REPORTED BY: DARCY J. BROKAW, Hawaii CSR #371
Registered Professional Reporter
Certified Realtime Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REMOTE APPEARANCES:

For the Deponent:

SCOT STUART BROWER, ESQ.
Law Offices of Scot Stuart Brower
1088 Bishop Street, Suite 803
Honolulu, Hawaii 96813
808.522.0053
sbrower@hawaii.rr.com

For the Plaintiff:

JAMES J. BICKERTON, ESQ.
BRIDGET G. MORGAN-BICKERTON, ESQ.
Bickerton Law Group, LLLP
Topa Financial Center, Fort Street Tower
745 Fort Street, Suite 801
Honolulu, Hawaii 96813
808.599.3811
bickerton@bsds.com
morgan@bsds.com

For the Defendants:

DONOVAN A. ODO, ESQ.
Department of the Corporation Counsel
Honolulu Hale
530 South King Street, Room 110
Honolulu, Hawaii 96813
808.768.5100
donovan.odo@honolulu.gov

Also present: Derek Bryant, Video Specialist
 Certified Legal Video Services

 Xin Liu, Mandarin Chinese interpreter

1 our way back, we noticed that we were being stalked,
2 somebody was stalking us.

3 Q. Can you -- let's talk about how -- where
4 had you been before you came home? Where had you
5 been on the island immediately before you arrived
6 home?

7 A. I went to the Apple Store located in
8 Ala Moana.

9 Q. When you came back along Coelho Way, when
10 you turned into Coelho Way, did you turn in on the
11 Pali end of Coelho Way or on the Burbank Street end
12 of Coelho Way?

13 THE INTERPRETER: What is the name of the
14 street, Counsel? Can you repeat for the
15 interpreter?

16 MR. BICKERTON: There's Pali Highway,
17 which is one end of Coelho Way, and the other is
18 Burbank Street.

19 THE INTERPRETER: Oh, Burbank.

20 (Translation.)

21 THE WITNESS: When I turned from Burbank
22 Street to Coelho Way, I noticed a vehicle was
23 following our Jeep.

24 BY MR. BICKERTON:

25 Q. When was the first -- where were you when

1 you first noticed that there was a vehicle following
2 your Jeep?

3 A. When I turned from Burbank Street to
4 Coelho Way, I noticed a vehicle was following us.
5 Actually at the corner of the Burbank Street.

6 Q. Was there anything unusual about it when
7 you first saw it? Like was it tailgating you or
8 were the lights off or anything that drew your
9 attention to it?

10 A. The vehicle was following me very, very
11 closely; and also, the vehicle stopped behind my
12 car, my vehicle.

13 (In English) Next to my vehicle.

14 Q. Now, were you driving or was your husband
15 driving?

16 A. I was driving.

17 Q. You referred to this as your vehicle. Is
18 it one that you purchased or was it a rented
19 vehicle?

20 A. We leased the vehicle at Avis.

21 (In English) It's not a lease; it's
22 rented.

23 Q. For ease of reference, I'm going to
24 refer -- there are two driveways at 91 Coelho Way,
25 correct? One driveway with two entrances?

1 Burbank driveway. I park on the grass area,
2 heading -- the head of the vehicle was facing the
3 Pali driveway.

4 Q. And did Mr. Myeni pull in next to you?

5 A. No. He parked behind my vehicle. I
6 couldn't even see his vehicle.

7 Q. So have you ever listened to the audio
8 recording of the 911 call that you made?

9 A. Yes, I did.

10 Q. How many times have you listened to it?

11 A. I don't remember. Well, for the complete
12 call -- I don't remember. Who can remember how many
13 times?

14 Q. Well, was it more than two or three? More
15 than two or three?

16 A. Yes. Because I wanted to find out why he
17 was targeting me.

18 Q. You have used the word "targeting" you --
19 "targeting me," you've said that several times.

20 What made you think he was targeting you?

21 A. First of all, he park his vehicle in the
22 place where I could not see it. Because if I saw a
23 vehicle parked behind me, I would immediately become
24 very alert.

25 Not a vehicle behind me. A vehicle I'm

1 not familiar with; I don't recognize.

2 Q. Were you familiar with all the vehicles
3 that were at that property?

4 A. I want to, first of all, answer your first
5 question, why I believe that the suspect was
6 targeting me. I have several points to make.

7 Q. Please finish them.

8 A. When I entered our house, my husband went
9 in first. I turn around to check my vehicle.

10 But later when I look at the camera, I
11 notice that the moment I turn around to check, he
12 actually squatted and pretending that he was, you
13 know, putting on her [sic] shoes or whatever.

14 And so I believe that he deliberately hid
15 himself in the place where I could not see him.

16 Thirdly, when he broke into -- I mean,
17 actually, he entered our house, the first sentence
18 he said is that "I have video on you."

19 (In English) "You know why I'm here."

20 (Through the interpreter) "You know why
21 I'm here." "You know why I am here."

22 Q. Did he say that to you or to you and your
23 husband together?

24 A. My husband at that time was about to go
25 upstairs. So he said this to me and -- about 3 feet

1 BY MR. BICKERTON:

2 Q. You thought he was your landlord or that
3 he was coming to visit your landlord? I'm not
4 clear.

5 A. At that time, I thought he was my
6 landlord.

7 Q. Your landlord was James Hall?

8 A. Correct.

9 Q. Did Mr. Hall while you lived there ever
10 have visitors?

11 A. You mean guests?

12 Q. Yes.

13 A. Yes. But each time, he would intro- --
14 tell us and introduce the guests to us and -- or
15 told us in advance.

16 Q. Where was Mr. Hall at the time that
17 Mr. Myeni arrived at 91 Coelho Way? Do you know?

18 A. I was told by him about his plan in the
19 afternoon. He will go to Waikiki to job. Sometimes
20 he would eat dinner with his friends in Waikiki and
21 then come back.

22 Q. Can you tell me, when Mr. Myeni came in
23 the house behind you, was the thing about the video
24 and "you know why I'm here," those statements, were
25 those his very first words?

1 A. Okay. He came in -- he came with half of
2 his body inside the house in a very aggressive way,
3 and he said this to me. My answer at that time is,
4 "What?"

5 Then he repeated what he had said. Then I
6 said to him --

7 (In English) "Are you trying to blackmail
8 me or something?"

9 (Through the interpreter) -- "I have not
10 done anything illegal. Are you trying to blackmail
11 me or something?"

12 Q. How did he respond to that?

13 A. Then he gave me -- then he gave me a name
14 and also a name of a country. But that is a fake
15 name.

16 Q. What was the name that he gave you?

17 A. Lindan.

18 Q. And you've researched it? You now say
19 this is a fake name?

20 A. On May 4th, this attorney e-mailed us;
21 and in the e-mail, this name was mentioned.

22 This attorney actually I am talking about
23 is Bickerton.

24 Q. So when you say the name "Lindan" was a
25 fake name, do you have any knowledge what the true

1 not?

2 A. No. But he pronounced his name, Lindan,
3 very clearly and accurately to me.

4 Q. How many times did he pronounce his name
5 for you?

6 A. The first time, he told me his name after
7 I asked him whether he intended to blackmail me.

8 And also to avoid a future confusion, when
9 I call 911, the first thing I mentioned is to repeat
10 what he said.

11 Q. This will go a lot -- it's already going
12 slow because we have an interpreter. It will go
13 faster if you listen to my question and just answer
14 my question.

15 My question is, did he tell you his name
16 was Lindan more than once?

17 A. He only told me his name once. Actually,
18 the third sentence he uttered after he went in was
19 this.

20 Oh, sorry, I might make a mistake. It's
21 not the third sentence he uttered. Because before
22 this, he also mentioned something else. He said he
23 has been taking my photos without my knowledge for
24 several days.

25 Q. Did he show you --

1 A. He didn't use the "photo." He said
2 "film."

3 Q. Oh, he didn't use the word "photo;" he
4 used the word -- "I've been filming you"?

5 A. Yes.

6 Q. Did he say -- so he said that before he
7 said, I'm Lindan from South Africa, or after?

8 A. He said about the filming before he said
9 that he -- he mentioned his name.

10 What is the -- what is the name referring
11 to the suspect actually? Somebody who is allegedly
12 committing some crimes.

13 Q. I'm not sure I understand the answer. I'm
14 just going to answer -- ask another question.

15 When you were having this exchange with
16 Mr. Myeni and you said the thing about the black- --
17 asking him about blackmail and then he said his name
18 or a name, where was Dexter at that point?

19 A. He's near the staircase leading to the
20 upstairs. He hasn't got onto the upstairs. He's
21 about 3 meters away from us.

22 Q. Could he hear you talking with Mr. Myeni?

23 A. I'm not Dexter, and you need to ask him.
24 And all I'm doing is to provide the testimony based
25 on what I know.

1 this.

2 Q. Did you hear the answer, or you're just
3 reporting what your husband told you later?

4 A. When I make the phone call, I heard part
5 of their conversation.

6 But, in actuality, he did not answer my
7 husband's questions, because most the time he was
8 self talking. So he only talked -- answered some
9 questions.

10 So my husband eventually called James.

11 Q. Have you heard that there is an ISKCON,
12 I-S-K-C-O-N, temple next-door to 91 Coelho Way, at
13 51 Coelho Way?

14 A. I know there is a temple, but I don't know
15 what type of -- type of temple it is.

16 Also, while he was self talking, he
17 mentioned the fact that the cat raised by my
18 landlord for 12 years actually belonged to him; it's
19 his cat. He also said that he lived here.

20 Q. Can I get an answer to my question? My
21 question is: Did you know that there was a temple
22 next-door at 51 Coelho Way?

23 A. Originally I did not know, but I learn
24 about it later.

25 Q. I understand. Everyone has heard it

1 something, but the things which are deeply rooted in
2 my mind was the threatening words he used during the
3 first period of time.

4 The first period of time is referring to
5 the fact he just came into the house and he told me
6 that he was filming me and I asked whether he was
7 blackmailing me.

8 Q. Right. I haven't asked you any other
9 question other than: Is there any other threatening
10 words that you recall today that you have not
11 mentioned in this deposition? That's all I'm
12 asking.

13 A. Well, he mentioned on several occasions
14 the word "hunting."

15 (In English) Safari.

16 (Through the interpreter) So I don't know
17 whether that would be counted as threatening word.

18 (In English) Safari, s-a-f-a-r-i.

19 BY MR. BICKERTON:

20 Q. Did he use the word "hunting," or did he
21 use the English word "safari"? English word
22 "hunting" or English word "safari"?

23 A. Both.

24 Q. Did Mr. Myeni at any time touch you
25 physically with any -- with his hand or any part of

1 Mr. Myeni told you, "I have video of you, you know
2 why I'm here"? What were you thinking?

3 A. At that time I was thinking -- this is
4 just something -- this is like something which has
5 been reported online. It's a very unsophisticated
6 blackmailing methodology; and the blackmailers
7 didn't even know whether he or she can be
8 successful, but it's like they're going to make a
9 try anyway.

10 Q. So you assumed that Mr. Myeni was trying
11 to blackmail you when he said those words, "I have
12 video of you, you know why I'm here"?

13 A. I already answered the question of my
14 first reaction is "what" when he said this.

15 And he repeat it, and I said that I did
16 not do anything illegal. And he told me he has been
17 filming me for some time already.

18 Q. When he told you he'd been filming you for
19 a long time, was his tone of voice the same?

20 A. I feel that at that time, his tone was not
21 as confident as it was, it had been, and he sounded
22 that he was a little bit impatient, maybe due to the
23 fact that I answered his question two times very --
24 in a very confident way.

25 Q. Besides giving you the name of Lindan, did

1 Mr. Myeni respond to you in any other way to the
2 question about blackmailing?

3 A. He gave me the name Lindan. He told me
4 that he had been filming me for several days. So I
5 responded by saying, "Are you going to blackmail me"
6 or "are you blackmailing me?" And at that point he
7 gave me his fake name.

8 Q. I want to ask you a little bit more about
9 the self talking. What do you mean by "self
10 talking"? He was just speaking randomly? How did
11 it work?

12 A. When he was talking to himself, he did not
13 make any eye contact with anybody around. Also, he
14 did not show any facial expression while he was
15 talking to himself. He was even patting the cat in
16 the house when he was talking to himself.

17 Q. Now I want to ask you about the hunting.
18 What do you remember about Mr. Myeni
19 saying about hunting and the safari?

20 A. I don't recall whether he -- when he talk
21 about the hunting or safari, he took off his hat.

22 (In English) Headband.

23 THE INTERPRETER: Oh, headband. Sorry.
24 His headband.

25 THE WITNESS: (Through the interpreter) He

1 MR. ODO: Sure. Were his eyes darting
2 back and forth.

3 THE INTERPRETER: His eyes starting to --

4 MR. ODO: Eyes, yeah.

5 THE INTERPRETER: -- be back and forth.
6 Okay.

7 (Translation.)

8 THE WITNESS: No, I did not notice that.

9 BY MR. ODO:

10 Q. Ms. Wang, you said that you first
11 threatened to call 911 but really did not. Am I
12 correct on that?

13 A. Correct. For the first time, I did not
14 really get connected with 911.

15 Q. But you told Mr. Myeni, I'm calling 911;
16 is that right?

17 A. Yes. I said to him, if you don't leave,
18 I'm going to call 911. Please leave.

19 Q. And at that point did Mr. Myeni leave?

20 A. He would get out, but he was very close to
21 the house. He went through the glass door; he was
22 observing me, and he was very close to the porch.

23 (In English) In the porch.

24 THE INTERPRETER: In the porch. Okay.

25 ///

1 BY MR. ODO:

2 Q. At some point you actually did call 911,
3 right?

4 A. Correct. Because I came to the
5 realization if I had not called 911, he would have
6 never left the house.

7 Q. Did you make Mr. Myeni aware that you were
8 actually calling 911?

9 A. During the second time, I told him that if
10 you don't leave, I'm going to call 911. And I asked
11 him to leave on numerous occasions.

12 Q. But when you actually did call 911, did
13 you tell Mr. Myeni this, that you were calling?

14 A. Not before he made the request to look at
15 my phone.

16 Q. After he requested to look at your phone,
17 did you let him know you were on the phone with 911?

18 A. I did not say that, but I showed him my
19 cell phone screen indicating that I was connecting
20 with 911.

21 Q. Did Mr. Myeni look at your cell phone
22 screen?

23 A. He looked at it, and I think he was making
24 sure that he saw whom I was talking to.

25 Q. Okay. Ms. Wang, when the first police

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

I, Darcy J. Brokaw, CSR for the State of Hawaii, do hereby certify:

That on May 27, 2021, at 1:46 p.m., appeared before me SABINE SHIYANG WANG, the witness, whose testimony is contained herein; that prior to being examined, the witness was by me duly sworn or affirmed pursuant to Act 110 of the 2010 Session of the Hawaii State Legislature.

That the proceedings were taken down by me in machine shorthand and were thereafter reduced to typewritten form under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

That pursuant to Rule 30(e) of the Hawaii Rules of Civil Procedure, a request for an opportunity to review and make changes to the transcript:


_____ Was made by the deponent or a party (and/or their attorney) prior to the completion of the deposition.

_____ Was not made by the deponent or a party (and/or their attorney) prior to the completion of the deposition.

 X Was waived.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause named in the caption.

DATED this 31st day of May, 2021.



Darcy J. Brokaw, RPR, CRR, CSR #371

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

3
4 L. LINDSAY MYENI, Widow of) CIVIL NO.
5 LINDANI SANELE MYENI,) 1CCV-21-0000504
6 Plaintiff,)

7 vs.)

8 CITY AND COUNTY OF HONOLULU,)

9 GARRICK OROSCO, in his)

10 individual capacity as a)

11 Honolulu police officer;)

12 BRENT K. SYLVESTER, in his)

13 individual capacity as a)

14 Honolulu police officer;)

15 DOE OFFICER #3, in his/her)

16 individual capacity as a)

17 Honolulu police officer;)

18 and DOE DEFENDANTS 1-50,)

19 Defendants.)

20 -----)

21
22 VIDEOTAPED DEPOSITION OF GARRICK OROSCO,

23 Taken on behalf of Plaintiff at 745 Fort Street,

24 Suite 801, Honolulu, Hawaii 96813, commencing at

25 9:34 a.m., on December 8, 2023, pursuant to Notice.

1 BEFORE: SUE M. FLINT, RPR, CSR 274
2 Notary Public, State of Hawaii

3
4 APPEARANCES:

5
6 For Plaintiff L. Lindsay Myeni, Widow of Lindani
7 Sanele Myeni, Personal Representative of the Estate
8 of Lindani Sanele Myeni, and Limited Conservator for
9 M.N.M. and N.L.M., minor children:

10 JAMES J. BICKERTON, ESQ.

11 TYLER D. MINCAVAGE, ESQ.

12 Bickerton Law Group

13 745 Fort Street

14 Suite 801

15 Honolulu, Hawaii 96813

16 bickerton@bsds.com

17 mincavage@bsds.com

18

19

20

21

22

23

24

25

1 Q. Could you tell whether they were speaking?

2 A. No.

3 Q. Was that because it was too dark?

4 A. I -- it wasn't too dark.

5 Q. Did you perceive a physical threat to
6 Officer Sylvester, that he was being threatened
7 physically?

8 MR. AWONG: Objection. Vague and
9 ambiguous as to time.

10 BY MR. BICKERTON:

11 Q. Yeah. When you first saw him and
12 Mr. Myeni down towards the end of the driveway.

13 A. I don't know.

14 Q. Was Mr. Myeni, at the moment you first saw
15 him, was his attention directed to you, or was he
16 looking towards Sylvester? In other words, do you
17 recall where he was looking?

18 A. I don't remember.

19 Q. When you first saw him, did you feel any
20 threat from him, when you first saw him?

21 A. No.

22 Q. You had your weapon unholstered, but in
23 the video that I see you begin to point it at him.

24 A. Correct. Yes.

25 Q. What was it about the situation where you

1 felt compelled to point a weapon at Mr. Myeni?

2 A. First off, like what the call was,
3 burglary in progress. I don't know what happened --
4 what had happened before that; it's a hostage
5 situation, barricade. I don't know if he has a
6 weapon on him or --

7 Q. Dispatch didn't tell you anything about
8 whether he was armed or not?

9 A. They don't know. They -- no. No.

10 Q. Don't they ask the caller, Is he armed?

11 A. I'm not sure. I don't --

12 Q. So it's your testimony that you didn't
13 have any information one way or the other about
14 whether he was armed?

15 A. I don't remember.

16 Q. Looking at him, when you saw him, did you
17 see any weapon in his hands?

18 A. No.

19 Q. Did you see a knife or a gun or a club?

20 A. No.

21 Q. Could you see his hands?

22 A. I don't remember.

23 Q. As an officer investigating a supposed
24 burglary and there's a person that you think is the
25 suspect in that burglary standing 30 feet away from

1 flashlight?

2 A. I mean, the area wasn't -- you still -- I
3 could still see him. I mean, because it was
4 nighttime, so whenever it's nighttime I -- when I
5 respond to a case, I'll use my flashlight.

6 Q. Okay. And in your mind, you didn't think
7 that the flashlight would interfere with his vision
8 at all; is that right?

9 A. Yes.

10 Q. And the reason that you say that is you
11 say you pointed it at the ground; is that right?

12 A. Yes.

13 Q. Not at him?

14 A. Not at him.

15 Q. What about at his mid section; maybe not
16 his face, but did you point it at his mid section?

17 MR. AWONG: Objection. Asked and
18 answered.

19 A. I don't remember.

20 BY MR. BICKERTON:

21 Q. From what I observed on the body camera,
22 you told him get on the ground at least four times
23 that I could hear. Do you recall that?

24 A. Yes.

25 Q. What was it about what was happening when

1 you first saw him standing near Officer Sylvester
2 that made you feel compelled to order him to get on
3 the ground?

4 A. First of all, the caller is pointing him
5 out. And at that moment, I'm just trying to control
6 the scene, to make the scene safe.

7 Q. Who was closer to him, you or Sylvester?

8 A. I'm not sure.

9 Q. Did you hear Sylvester commanding him to
10 get on the ground?

11 A. No.

12 Q. If Sylvester wasn't ordering him on the
13 ground, why did you feel the need to order him on
14 the ground?

15 MR. AWONG: Objection. Calls for
16 speculation.

17 A. I wasn't paying attention to what
18 Sylvester was doing.

19 BY MR. BICKERTON:

20 Q. You were coming towards him from the
21 house, with a lady behind shouting, That's him,
22 pointing a flashlight at him. You didn't feel any
23 need to say, Police?

24 MR. AWONG: Objection. Misstates the
25 evidence. Calls for speculation and it's compound.

1 afterwards. But are you aware of Myeni as he runs
2 into you saying, Who are you, who are you? Are you
3 aware of that?

4 A. Yes. I'm assuming that he knew who I was.

5 Q. And that he's just saying, Who are you,
6 for some --

7 A. I didn't -- I didn't hear that.

8 Q. Okay. So at the time, you didn't perceive
9 that he was asking that. You thought he knew you
10 were a cop?

11 A. I thought he knew who I was. I had my
12 uniform on. When I got there, the caller identified
13 me as a policeman. So she knew I was a policeman.

14 Q. Yeah. As you walked through the --

15 A. She's yelling out --

16 MR. AWONG: Just let him finish.

17 THE WITNESS: Okay.

18 MR. BICKERTON: Well, I kind of
19 interrupted.

20 BY MR. BICKERTON:

21 Q. Okay. She's able to identify you;
22 correct?

23 A. Yes.

24 Q. She knows you're a police officer. As you
25 walk through that porte-cochere by the VW van,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

W I T N E S S C E R T I F I C A T E

I, GARRICK OROSCO, hereby certify that I have read the foregoing typewritten pages 1 through 140, inclusive, and corrections, if any, were noted by me, and the same is now a true and correct transcript of my testimony.

Dated this _____ day of _____, 2023.

GARRICK OROSCO

Signed before me this _____ day of _____, 2023.

Myeni, et al. vs. City and County, et al.

1CCV-21-0000504

Taken on December 8, 2023 by Sue M. Flint, CSR 274

C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on December 8, 2023, at 9:34 a.m., appeared before me Garrick Orosco, the witness whose deposition is contained herein; that prior to being examined he was by me duly sworn;

That the deposition was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

That pursuant to Rule 30(e) of the Hawaii Rules of Civil Procedure, a request for an opportunity to review and make changes to this transcript:

X Was made by the deponent or a party (and/or their attorney) prior to the completion of the deposition.

[__] Was NOT made by the deponent or a party (and/or their attorney) prior to the completion of the deposition.

[__] Was waived.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

This 142-page deposition was subscribed and sworn to before me this 10th day of December, 2023, in Honolulu, Hawaii.

Sue M. Flint (handwritten signature)



SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2027

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

L. LINDSAY MYENI, Widow of)	CIVIL NO. 1CCV-21-0000504
LINDANI SANELE MYENI,)	(Assault & Battery)
)	(Other Non-Vehicle Tort)
Plaintiff,)	
)	
v.)	
)	
CITY AND COUNTY OF HONOLULU,)	
GARRICK OROSCO, in his)	
individual capacity as a)	
Honolulu police officer;)	
BRENT K. SYLVESTER, in his)	
individual capacity as a)	
Honolulu police officer; DOE))	
OFFICER #3, in his/her)	
individual capacity as a)	
Honolulu police officer; and))	
DOE DEFENDANTS 1-50,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF BRENT SYLVESTER

Taken on behalf of the Plaintiff L. LINDSAY MYENI, Widow of LINDANI SANELE MYENI, at the Bickerton Law Group, Topa Financial Center, Fort Street Tower, Suite 801, 745 Fort Street, Honolulu, Hawaii 96813, commencing at 10:01 a.m., on Thursday, February 9, 2023 pursuant to Notice.

BEFORE: MYRLA R. ROMERO, CSR No. 397

Notary Public, State of Hawaii

1 APPEARANCES:

2 For Plaintiff L. LINDSAY MYENI, Widow of LINDANI
3 SANELE MYENI:

4 JAMES J. BICKERTON, ESQ.
5 TYLER D. MINCAVAGE, ESQ.
6 BRIDGET G. MORGAN-BICKERTON, ESQ.
7 Bickerton Law Group
8 Topa Financial Center
9 745 Fort Street, Suite 801
10 Honolulu, Hawaii 96813

11 For Defendants CITY AND COUNTY OF HONOLULU, GARRICK
12 OROSCO and BRENT K. SYLVESTER:

13 WILLIAM R.K. AWONG, ESQ.
14 Deputy Corporation Counsel
15 530 South King Street, Room 110
16 Honolulu, Hawaii 96813

17 Also present: ALAN NEILSEN, Videographer
18
19
20
21
22
23
24
25

1 Q It's your testimony you don't believe that
2 striking him with a metal police baton would have
3 prevented him from doing more harm to Officer Orosco?

4 A Correct.

5 Q So that was your judgment that you made.
6 You decided -- you made a conscious decision I'm not
7 going to use any baton. I'm going to use my gun?

8 A Yes.

9 Q And the reason that you made that decision
10 is because he was -- he looked athletic and very --
11 he seemed to be athletic and strong; is that right?

12 A He seemed to have some type of fighting
13 training and he knew what he was doing.

14 Q Okay. Now, you wrote here, "I was afraid
15 that the male was going to kill Corporal Orosco if he
16 continued to strike him." Is that true?

17 A Yes.

18 Q How did you think he was going to kill him?

19 A By punching him in the face.

20 Q You also said you believed that Officer
21 Galicha was injured or incapacitated?

22 A Yes.

23 Q Why did you think that?

24 A Because I saw the subject punch Officer
25 Galicha and I saw him go down to the ground.

1 does that mean he stopped for a second?

2 A No. So in between each strike, he would
3 sit up, he would arch his back and I don't know the
4 term of it for like UFC fighting, but he would come
5 down and use, like, he would crunch his core and hit
6 as he's striking down. So he would sit up and bring
7 his hand up high and then come down and strike
8 Corporal Orosco.

9 Q Okay. Now, you wrote, "After discharging
10 my service firearm, the male started to come towards
11 me." Did he actually physically stand up from
12 Orosco?

13 A No.

14 Q Well, how could he -- if he's still seated
15 on Orosco, how does he come towards you?

16 A He started to move towards -- towards me.

17 Q Like rolling off?

18 A Like crawling or something, but he didn't
19 stand up and run at me.

20 Q And then he laid down on his stomach in
21 front of you; is that correct?

22 A Yes.

23 Q How many feet away from him were you when
24 you discharged those three shots?

25 A Well, further than me and you, I believe.

1 MR. BICKERTON: Can you move forward
2 where the camera gets obscured?

3 MR. MINCAVAGE: Okay.

4 BY MR. BICKERTON:

5 Q Keep going, keep going, keep going. So
6 something comes over the lens here and stays on for
7 the duration. Right here. What is that?

8 A I think that's the thing my radio was in,
9 the holster for my radio.

10 Q And why did you place it in front of the
11 camera?

12 A I didn't do it on purpose. It must have
13 happened on accident.

14 Q Okay. Would you say that the way in which
15 Officer Orosco spoke to Mr. Myeni and commanded him
16 was different than the manner and tone you were using
17 when you spoke to Mr. Myeni?

18 A Yes.

19 Q When you asked him what's going on here,
20 were you asking in a genuinely curious way like you
21 wanted to know what was happening, right?

22 A Yes.

23 Q You weren't -- you don't feel you were in
24 any way being overbearing?

25 A No.

1 Q You didn't display any weapon?

2 A No.

3 Q You didn't threaten him?

4 A No.

5 Q You didn't make any command on him?

6 A No.

7 Q Okay. And you believe he could tell you
8 were a police officer?

9 A Yes.

10 Q So at that point, his encounter with the
11 police was with this nice polite gentleman
12 approaching from the west who asked him what was
13 going on here; is that correct?

14 A Yes.

15 Q And then coming from the house, there was a
16 gentleman with a gun drawn and a flashlight pointing
17 at him and a lady behind him screaming that's him,
18 that's him, correct?

19 MR. AWONG: Objection. Compound.

20 BY MR. BICKERTON:

21 Q We can break it down.

22 A So yeah, Garrick was yelling commands.

23 Q Right. He was telling him to get on the
24 ground, pointing a gun at him, correct?

25 A Yes.

1 with the lady yelling behind him were not on the same
2 team?

3 A No, it didn't cross my mind.

4 Q Why did you shoot three times?

5 A As opposed to what?

6 Q One or two.

7 A I just shot to stop the threat.

8 Q Yeah, why wasn't one enough?

9 A Well, three was barely enough.

10 Q You wish you shot more?

11 A No, I wish I didn't shoot at all.

12 Q Well, if you start talking about wishing if
13 you look back on that evening, what do you think you
14 wish you had done differently?

15 A Nothing. I just wish I didn't have to
16 discharge my firearm any time in my career.

17 Q Looking back on that evening, do you think
18 there was any way -- any other way you could have
19 handled it so someone didn't end up dead?

20 A No.

21 Q Now, in your report under on page 3 under
22 the heading body-worn camera, you wrote, "The
23 body-worn camera was activated in accordance with
24 policy 2.57." Have you seen that in your report?

25 A Yes.

1 one -- 12:37 or so? Have we had a break? We've been
2 going for two hours, more than two hours? We had a
3 break at 1:00 something, right?

4 THE VIDEOGRAPHER: We've gone 49
5 minutes.

6 MR. BICKERTON: Oh, okay. Thank you,
7 Alan. I know I could count on you.

8 BY MR. BICKERTON:

9 Q At any time during this incident, were
10 you -- up until you pulled the trigger three times,
11 were you angry at Mr. Myeni?

12 A I think I was just more confused why is he
13 attacking us.

14 Q Well, at first he only attacked Officer
15 Orosco, correct? He didn't attack all three of you
16 at once, correct?

17 A But he attacked all three of us.

18 Q Eventually. But I'm saying in the
19 beginning he only attacked Orosco, correct?

20 A Yes.

21 Q Did you receive any treatment for any
22 injuries you received that night?

23 A I had to go to the emergency room and had
24 had a little -- the scratch on my ear looked at.

25 Q Did it require any stitches?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS CERTIFICATE

I, BRENT SYLVESTER, do hereby certify that I have read the foregoing typewritten pages 1 through 183, inclusive, and corrections, if any, were noted by me, and that same is now a true and correct transcript of my testimony.

DATED this _____ day of _____, 2023.

BRENT K. SYLVESTER

Signed before me this _____ day of _____ 2023.

Deposition of BRENT K. SYLVESTER
Case: L. LINDSAY MYENI vs. CITY AND COUNTY OF HONOLULU
Civil No.: 1CCV-21-0000504
Deposition Dated: February 9, 2023
Taken By: Myrla R. Romero

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

I, MYRLA R. ROMERO, do hereby certify:

That on Thursday, February 9, 2023, at 10:01 a.m., appeared before me BRENT K. SYLVESTER, whose 183-page deposition is contained herein; that prior to being examined BRENT SYLVESTER, was by me duly sworn or affirmed pursuant to Act 110 of the 2010 Session of the Hawaii State Legislature; that the deposition was taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter; that pursuant to Rule 30(e) of the Hawaii Rules of Civil Procedure, a request for an opportunity to review and make changes to this transcript were made by the deponent or a party prior to the completion of the deposition.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

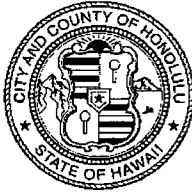
Dated this 23rd day of February, 2023 in Honolulu, Hawaii.


MYRLA R. ROMERO, CSR NO. 397
Notary Public, State of Hawaii

DEPARTMENT OF THE MEDICAL EXAMINER
CITY AND COUNTY OF HONOLULU

835 IWILEI ROAD • HONOLULU, HAWAII 96817
TELEPHONE: (808) 768-3090 • FAX: (808) 768-3099 • INTERNET: www.honolulu.gov

RICK BLANGIARDI
MAYOR



MASAHIKO KOBAYASHI, M.D., Ph.D.
MEDICAL EXAMINER

AUTOPSY REPORT
Case No. 21-0963-MYENI, Lindani

RE: Lindani Sanele MYENI

DATE/TIME OF PRONOUNCEMENT: 04/14/2021, 8:49 PM

**DATE, TIME, AND PLACE OF EXAMINATION: 04/15/2021
9:00 AM
Medical Examiner's Facility**

BRIEF HISTORY:

According to the information presently available, the following are the circumstances surrounding the death of Lindani Sanele MYENI. The decedent was a 29-year-old, South African, Black male. He had no known significant medical history. Reportedly, he sustained multiple gunshot wounds during a police intervention at a private residence in Honolulu, Hawaii, on April 14, 2021. He was transported to Queens Medical Center, where his death was pronounced shortly after arrival.

Because of the circumstances surrounding the death, the decedent was transported to the Department of the Medical Examiner for postmortem examination.

FINDINGS/PATHOLOGIC DIAGNOSIS:

1. Multiple gunshot wounds:
 - A. Penetrating gunshot wound of the torso (**Gunshot Wound #1**):
 - 1) Entrance wound:
 - a) Location: Right medial chest.
 - b) Range: Indeterminate.
 - 2) No exit wound present.

3) Injuries include:

- a) Fracture of the right 3rd rib anteromedially.
- b) Perforation of the right lung.
- c) Fracture of the right 9th rib posteriorly.

4) Associated injuries include right hemothorax.

5) A projectile recovered from subcutaneous tissue of the right infrascapular region.

6) Direction: Front to back, left to right, downward.

B. Penetrating gunshot wound of the torso (**Gunshot Wound #2**):

1) Entrance wound:

- a) Location: Left lateral chest.
- b) Range: Indeterminate.

2) No exit wound present.

3) Injuries include:

- a) Fractures of left 8th and 9th ribs laterally.
- b) Perforation of the diaphragm.
- c) Laceration of the spleen.
- d) Perforation of the left kidney.
- e) Fracture of the left transverse process of the 3rd lumbar vertebra.

4) Associated injuries including:

- a) Left hemothorax.
- b) Hemoperitoneum.

5) A projectile recovered from subcutaneous tissue of the left lumbar vertebral area.

6) Direction: Front to back, left to right, downward.

C. Penetrating gunshot wound of the torso (**Gunshot Wound #3**):

1) Entrance wound:

- a) Location: Top of the right medial shoulder.
- b) Range: Indeterminate.

2) No exit wound present.

3) Injuries include:

- a) Fracture of the right 2nd rib posteriorly.
- b) Laceration of the right lung.
- c) Fractures of the right 9th and 10th ribs posteromedially.

4) Associated injuries include right hemothorax.

5) A projectile recovered from the subcutaneous tissue of the right lumbar area.

6) Direction: Front to back, right to left, steeply downward.

D. Perforating/penetrating gunshot wound of the right lower extremity (**Gunshot Wound #4**):

1) Entrance wound:

- a) Location: Right anterolateral distal thigh.
- b) Range: Indeterminate.

2) Exit wound: Right posterolateral distal thigh.

3) Re-entrance wound: Right posterior proximal lower leg.

4) Injuries limited to soft tissue.

5) A projectile recovered in the deep soft tissue of the right mid lower leg.

6) Direction (Right thigh): Front to back, slightly downward.

2. Minor blunt force injuries of the extremities.

3. Toxicology (femoral blood):

A. Delta-9 tetrahydrocannabinol > 50 ng/mL.

B. Delta-9-carboxy tetrahydrocannabinol = 14 ng/mL.

C. 11-Hydroxy delta-9 tetrahydrocannabinol = 1.5 ng/mL.

4. Recent medical history (4/14/21) includes:

A. EMS:

1) 911 call (20:19).

2) Arrived at the patient (20:26).

3) Unresponsive, pulseless, apneic.

4) HPD performing cardiopulmonary resuscitation (CPR) with automated external defibrillator pads attached to the chest.

5) Electrocardiogram: Pulseless electrical activity.

6) Orotracheal intubation.

7) Arrived at the facility (20:46).

B. Queen's Medical Center:

- 1) CPR in progress. No return of spontaneous circulation.
- 2) Ultrasound: No cardiac activity.
- 3) Death pronounced (20:49).

CONCLUSION:

Based on the autopsy findings and investigative and historical information available to me, in my opinion, Lindani Sanele MYENI, a 29-year-old male, died as a result of multiple gunshot wounds he sustained during a police intervention.

There were four (4) gunshot wounds, including three (3) penetrating gunshot wounds involving the torso and one (1) gunshot wound of the right lower extremity. The right lung, spleen, and left kidney were injured by the gunshot wounds of the torso (**Gunshot Wounds #1, #2, and #3**), and there was associated internal hemorrhage. A projectile was recovered from each gunshot wound. Toxicology testing showed presence of a marijuana component with metabolites.

Available investigative information and medical records were reviewed. The decedent was shot during a police intervention. The manner of death is classified as homicide.

CAUSE OF DEATH:

Multiple gunshot wounds

MANNER OF DEATH: The manner of death is, in my opinion, **Homicide**.



**Masahiko Kobayashi, M.D., Ph.D.,
Medical Examiner**

**June 2, 2021
Date**

POSTMORTEM EXAMINATION
Department of the Medical Examiner
City and County of Honolulu

This autopsy is performed by Masahiko Kobayashi, M.D., Ph.D., Medical Examiner, with the assistance of Mr. James Cullen, Jr., at the Department of the Medical Examiner, Honolulu, Hawaii, on April 15, 2021. The autopsy examination is observed by Honolulu Police Department Homicide Detective Mr. Donn Manzano, and Evidence Specialists, Ms. Bridie Farley and Ms. Nimmi Thomas.

The body is received in a blue body bag sealed with a red plastic tag numbered 4121397. A medical examiner's tag is attached to the body bag. The bag is opened at 9:05 a.m. The body has been completely disrobed. A necklace-like article made of purple leather with brown and white hair surrounds the neck. Another necklace-like article composed of multicolored beads also surrounds the neck.

EVIDENCE OF MEDICAL INTERVENTION:

An endotracheal tube protrudes from the mouth. Electrocardiogram pads are present on the body. An oximeter sensor is affixed to the left second finger. An intraosseous line inserts at the left anterior proximal lower leg. Present on the medial chest is a 4 cm area of multiple, light brown abrasions.

EXTERNAL EXAMINATION:

The body is that of a well-developed, well-nourished, adult male, measuring 71 inches tall, weighing 203 pounds, and appearing the stated age.

Rigor mortis is fully developed in the extremities. There is dorsal, fixed lividity.

The scalp hair is black, curly, and up to 1/16 inch in length. Present on the right medial forehead is a 1 cm subcutaneous nodule. The eyes are slightly open. The irides are brown with clear corneas and pale conjunctivae. The teeth are natural and in fair condition. Short facial stubble is present.

Present on the right wrist is a handcuff, which is removed by Detective Manzano. The skin on the wrists is atraumatic. Present on the right thenar eminence is a 0.6 x 0.3 cm area of dark purple discoloration without cutaneous hemorrhage. Several smaller punctate areas of dark skin are also present on the palms.

Except for the evidence of injury to be described, the remainder of the external examination of the body is unremarkable.

EVIDENCE OF INJURY:

Gunshot Wounds

There are four (4) gunshot wounds. The gunshot wounds are numbered from **Gunshot Wound #1** through **#4**. The numbering does not indicate the sequence of the occurrence.

Paper bags cover the hands. Removing bags reveals no definitive areas of soot deposition or stippling.

Gunshot Wound #1

Present on the right medial chest, 43 cm below the top of the head and 5 cm to the right of the anterior midline, is a gunshot wound of entrance. The entrance wound consists of a 0.9 x 0.6 cm, roughly horizontally-elongated, oval skin defect. There is an abrasion rim ranging from 0.1 to 0.2 cm. No soot deposition or stippling is present.

The projectile fractures the right 3rd rib anteromedially, entering the right thoracic cavity. The projectile subsequently lacerates the right lung middle lobe; perforates the lower lobe; fractures the right 9th rib posteriorly, exiting the right thoracic cavity; and comes to rest in the subcutaneous tissue of the right infrascapular region, 49 cm below the top of the head, and 13 cm to the right of the posterior midline, where a 1.2 cm faint purple ecchymosis is present on the skin surface.

No exit wound is present.

Associated injuries include a right hemothorax with approximately 50 cc of blood at the time of autopsy. (Comments: A large amount of blood drained from the thoracic cavities through the gunshot wounds before the cavities were opened. Based on a postmortem x-ray showing expansion of the right thoracic cavity with deviated mediastinum, it appears that the right thoracic cavity originally contained a large amount of blood.)

A deformed, partially-jacketed bullet is recovered from the subcutaneous tissue.

The wound path is directed front to back, left to right, and downward.

Gunshot Wound #2

Present on the left lateral chest, 54 cm below the top of the head and 18 cm to the left of the anterior midline, is a gunshot wound of entrance. The entrance wound consists of a 1 x 0.9 cm horizontally-elongated skin defect with an area of skin beveling from 9 to 12 o'clock position. There is an abrasion rim along the edges. The abrasion rim measures 0.3 cm at 12 o'clock position and 0.2 cm at 6 o'clock position. There is a

punctate abrasion just below the abrasion rim at the 6 o'clock position. No soot deposition or stippling is present.

The projectile fractures the left 8th and 9th ribs laterally, entering the left thoracic cavity without injuring the left lung; perforates the left hemidiaphragm, entering the peritoneal cavity; lacerates the inferior pole of the spleen; exits the peritoneal cavity; perforates the left kidney; fractures the left transverse process of the 3rd lumbar vertebra; and comes to rest in the subcutaneous tissue of the left lumbar vertebral region, 68 cm below the top of the head and 1 cm to the left of the posterior midline.

No exit wound is present.

Associated injuries include a left hemothorax with approximately 150 cc of blood at the time of autopsy. There is also a hemoperitoneum with a small amount of blood.

A deformed, partially-jacketed bullet is recovered from the subcutaneous tissue.

The wound path is directed front to back, left to right, and downward.

Gunshot Wound #3

Present on the top of the right medial shoulder, 26 cm below the top of the head and 13 cm to the right of the anterior midline, is a gunshot wound of entrance. The entrance wound consists of a 0.9 x 0.7 cm sagittally-elongated oval skin defect with a 0.1 cm abrasion rim. No soot deposition or stippling is present.

The projectile fractures the right 2nd rib posteriorly, entering the right thoracic cavity; lacerates the posterior surface of the right lung upper lobe; fractures the right 9th and 10th ribs posteromedially, exiting the right thoracic cavity; and comes to rest in the subcutaneous tissue of the right lumbar area, 61 cm below the top of the head and 6 cm to the right of the posterior midline.

No exit wound is present.

Associated injuries include a right hemothorax with approximately 50 cc of blood at the time of autopsy. (See comments on **Gunshot Wound #1.**)

A deformed, partially-jacketed bullet is recovered in the subcutaneous tissue.

The wound path is directed front to back, right to left, and steeply downward.

Gunshot Wound #4

Present on the right anterolateral distal thigh, 122 cm below the top of the head, is a gunshot wound of entrance. The entrance wound consists of a 0.9 x 0.5 cm oval

skin defect elongated in 2 o'clock direction. There is a 0.1 cm abrasion on the edge of the skin defect from 3 to 6 o'clock position. No soot deposition or stippling is present.

The projectile perforates the skeletal muscles in the distal thigh and exits the body in the right posterolateral distal thigh, 125 cm below the top of the head. The exit wound consists of a 2 x 1.3 cm slightly irregular skin defect, elongated in 1 o'clock position. An abrasion is present on the edge of the skin defect from 2 to 9 o'clock position. The abrasion measures 0.3 cm in 3 to 4 o'clock position and 0.1 cm in the other areas. There is a 0.7 x 0.6 cm abrasion adjacent to the skin defect at the 7 o'clock position.

The projectile apparently re-enters the right lower leg in the right posterior proximal lower leg, 140 cm below the top of the head. The re-entrance wound consists of a 1.2 x 0.8 cm, slightly irregular skin defect elongated in 2 o'clock position. There is a 0.3 cm abrasion on the edge from 12 to 1 o'clock position. There is a 0.3 cm area of avulsion of the superficial skin exposing red dermis from 2 to 4 o'clock position. There is a 0.6 x 0.3 cm brown abrasion on the edge of the skin defect at 6 o'clock position. Present just below this abrasion, 0.6 cm below the edge of the skin defect, is a 0.7 cm horizontally-oriented, brown linear abrasion.

The projectile proceeds within the deep soft tissue and comes to rest within the skeletal muscles just medial to the right tibia in the right mid lower leg.

The soft tissue injury is associated with mild hemorrhage.

A deformed, partially-jacketed bullet is recovered from the skeletal muscle tissue.

The wound path in the right thigh is directed front to back and slightly downward. (Comments: Based on the wound paths in the right thigh and lower leg, the right knee joint was flexed when the decedent sustained this gunshot wound.)

Clothing

The clothing items are examined at the Honolulu Police Department Headquarter on April 28, 2021. They are a black t-shirt and blue jeans. The t-shirt has defects in the front panel and also in the right shoulder area. The jeans has defects in the front and back of the right thigh area and also back of the right lower leg area. There is also a defect in the left front knee area. No obvious soot or propellant is observed around the defects.

Blunt force injuries

Present on the right 5th finger, over the proximal portion of the proximal finger, is a 0.5 cm orange abrasion. Present on the dorsal surface of the right 5th finger, over the proximal interphalangeal joint, is a 0.7 cm area of loss of superficial skin exposing red dermis.

Present on the posterior surface of the left elbow are two small, dark-brown abrasions measuring up to 0.4 cm.

Present on the anterior surface of the left knee is a 3 x 2 cm area of multiple abrasions, focally exposing orange dermis. There is a 3 x 0.6 cm vertically-elongated brown abrasion on the anterior surface of the left proximal lower leg. There is a 0.7 x 0.3 cm area of focal avulsion of the superficial skin on the dorsal surface over the left first metatarsophalangeal joint area.

INTERNAL EXAMINATION:

Note: Injuries are described above and are not repeated below.

Head: The scalp is retracted and the cranial vault is opened. The scalp, calvaria, basilar skull, and dura are unremarkable. There is no epidural or subdural hemorrhage. The brain weighs 1,400 g. The leptomeninges are transparent, and there is no subarachnoid hemorrhage. The cerebral arteries at the base of the brain are widely patent. The cerebral hemispheres, cerebellum, and brainstem are normally formed and symmetrical. On sectioning, there is no evidence of intraparenchymal hemorrhage, infection, tumor, or trauma.

Body: The body is opened with a Y-shaped incision. The organs occupy their usual positions and relationships. The body cavities have smooth surfaces. The skeletal muscles and axial skeletal system appear unremarkable.

Neck: The tongue is atraumatic. There is no evidence of infection, tumor, or trauma. The airway is patent.

Cardiovascular system: The heart weighs 350 g. The epicardial surface is smooth and glistening. The coronary arteries are normally distributed and show no atherosclerotic changes. The myocardium is uniformly brown with normal thickness. The endocardium is smooth. The valves are pliable and normally formed. Opening of the aorta reveals minimal atherosclerosis.

Respiratory system: The right lung weighs 300 g and the left lung weighs 320 g. The pleural surfaces are smooth and glistening. On sectioning, the parenchyma is soft without significant congestion or edema. There is no evidence of infection or tumor. The airways and pulmonary vessels are unobstructed.

Gastrointestinal system: The esophagus is unremarkable. The stomach contains approximately 2 cc of tan fluid. The gastric mucosa is unremarkable. The serosal surfaces of the small and large bowels are unremarkable. The appendix is present.

Liver and pancreas: The liver weighs 1,220 g. The capsule is smooth. On sectioning, the parenchyma is soft and brown, and there are no focal abnormalities. The

gallbladder is unremarkable. The pancreas is normal in size, and sectioning reveals unremarkable parenchyma.

Genitourinary system: The right kidney weighs 110 g and the left kidney weighs 130 g. The capsules strip with ease revealing smooth cortical surfaces. On sectioning, the cortices are brown and unremarkable. The collecting systems are not dilated. The bladder is unremarkable and contains approximately 100 cc of urine. The prostate gland is unremarkable.

Endocrine system: The thyroid is normal in size with unremarkable parenchyma. The adrenal glands are unremarkable, without obvious cortical atrophy, hyperplasia, or nodules.

Lymphoreticular system: The spleen weighs 60 g with a smooth capsule and unremarkable parenchyma. Lymph nodes are not prominent.

MICROSCOPIC:

Slide #1: Heart.
Slide #2: Lungs.
Slide #3: Liver, kidney.
Slide #4: Brain.
Slide #5: Adrenal glands.
Slide #6: Thyroid.

There is no significant histopathologic changes except for the lung tissue with presence of red blood cells in some alveolar spaces. The sections of adrenal glands show no obvious cortical hyperplasia or atrophy.

RADIOGRAPHS: Postmortem x-rays are obtained.

AUTOPSY PHOTOGRAPHS: Digital photographs are obtained.

TOXICOLOGY:

Femoral blood:

Delta-9 tetrahydrocannabinol > 50 ng/mL.
Delta-9-carboxy tetrahydrocannabinol = 14 ng/mL.
11-Hydroxy delta-9 tetrahydrocannabinol = 1.5 ng/mL.

(Comment: The toxicology panel focuses on a wide range of drugs of abuse including major novel psychoactive substances as well as major prescription and over-the-counter medications that are potentially significant in forensic pathology. Reference: <https://www.nmslabs.com/tests/8054B>, accessed on June 1, 2021.)

See attached reports of Medical Examiner Laboratory and NMS Labs, Inc.

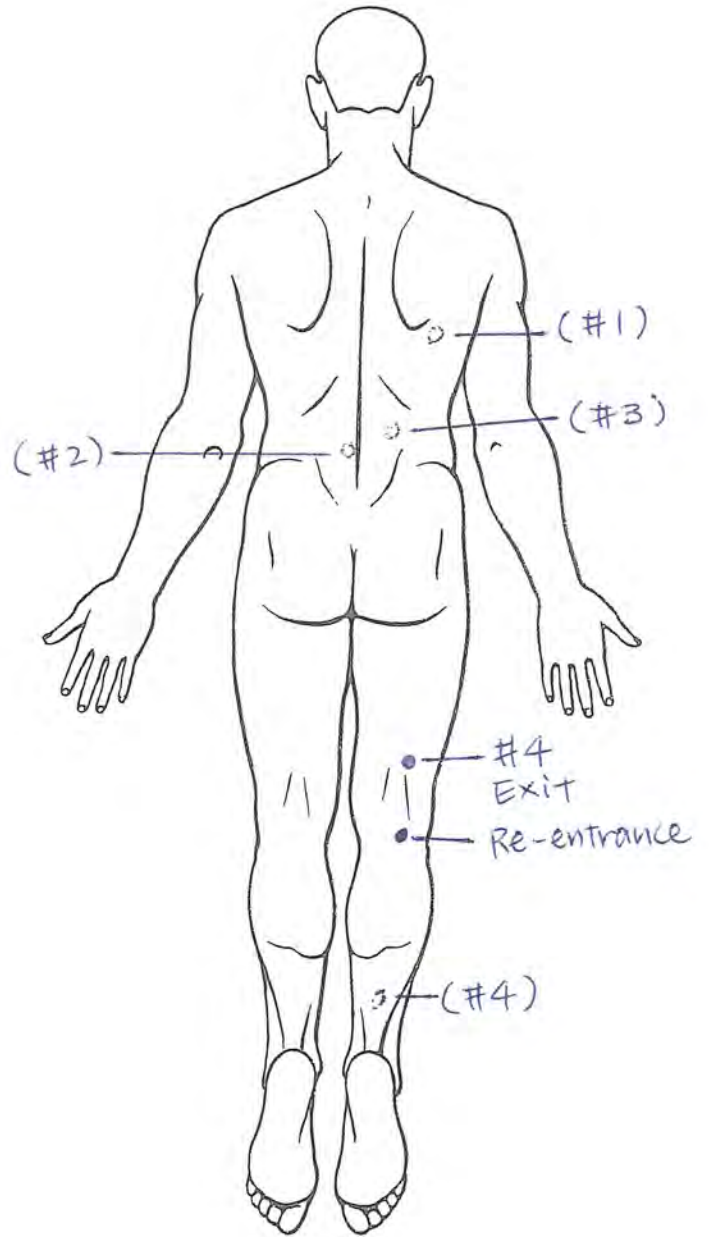
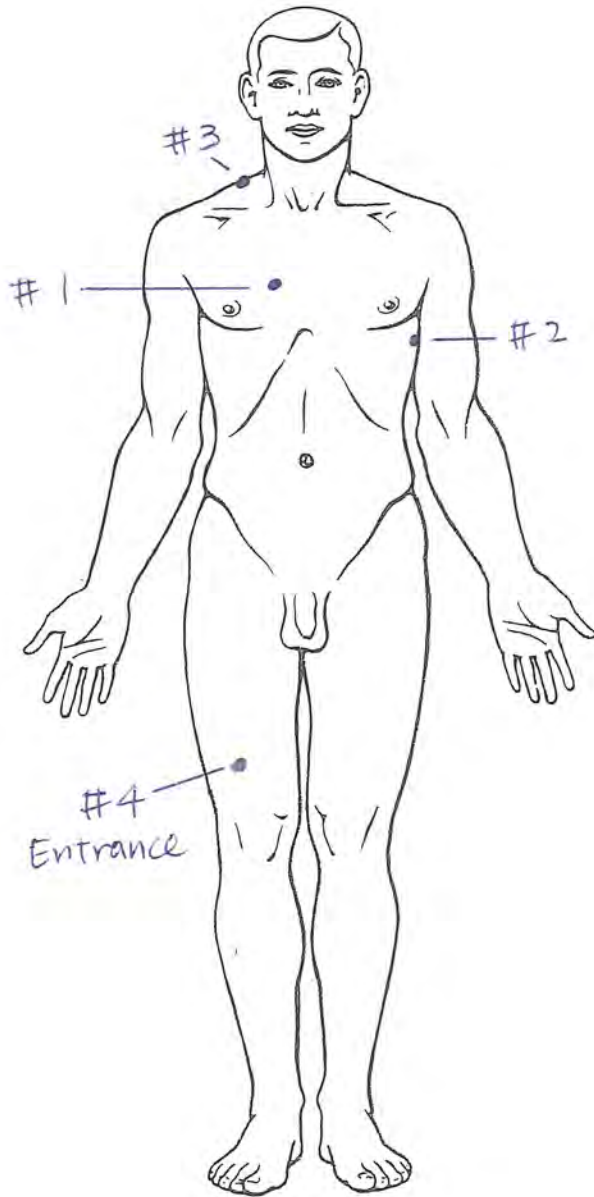
OTHER MISCELLANEOUS:

Evidence is collected by Honolulu Police Department.

The brain tissue has been sent to Boston University Chronic Traumatic Encephalopathy Center for neuropathology consultation. An addendum may be issued upon receipt of the neuropathology report.

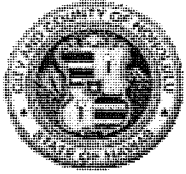
tolc/rw

Case No. 21-0963



(#1) - (#3): Projectile in the subcutaneous tissue.

(#4): Projectile in the muscle tissue.



Department of the Medical Examiner City and County of Honolulu

835 Iwilei Road • Honolulu, Hawaii 96817

TELEPHONE: 808-527-6777 • FAX: 808-524-8797 • INTERNET: www.co.honolulu.hi.us

LABORATORY REPORT

CASE NUMBER: 21-0963-MYENI, Lindani	SUBJECT: MYENI, Lindani Sanele	SUBMITTED BY: Kobayashi, Dr. Masahiko
---	--	---

The following items were received for analysis by the toxicology laboratory.

SPECIMENS RECEIVED

<u>BARCODE #</u>	<u>SAMPLE TYPE</u>	<u>SAMPLE SITE</u>	<u>CONTAINER</u>	<u>AMOUNT</u>
119086	Blood (Femoral)			
119087	Blood (Chest Cavity)			
119088	Bile			
119089	Urine			
119090	Vitreous			
119091	Gastric			
119092	Tissue (Formalin)			
119093	Blood Card			
119099	Blood (Chest Cavity)			
119100	Blood (Heart)			
119108	Tissue (Brain)			

Blood (Femoral) - Barcode # 119086

TOXICOLOGY QUANTITATIVE SENT OUT TO NMS Laboratories ON 4/20/2021

11-HYDROXY-DELTA-9-THC	DETECTED
delta-9-THC	DETECTED
delta-9-THC-COOH	DETECTED

SEE ATTACHED REPORT

Urine - Barcode # 119089

RAPID URINE DRUG SCREEN FOR STREET DRUGS COMPLETED BY MICHELE RUBIO ON 4/15/2021

NONE DETECTED

Blood Card - Barcode # 119093

NO ANALYSIS PERFORMED COMPLETED BY MICHELE RUBIO ON 4/15/2021

NO ANALYSIS DONE

N/A



NMS Labs

CONFIDENTIAL

200 Welsh Road, Horsham, PA 19044-2208
Phone: (215) 657-4900 Fax: (215) 657-2972
e-mail: nms@nmsslabs.com

Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 05/26/2021 08:00

Patient Name MYENI, LINDANI
Patient ID 21-0963
Chain NMSCP109047
Age 29 Y DOB
Gender Male
Workorder 21136117

To: 10442
Department of the Medical Examiner - Honolulu
835 Iwilei Road

Honolulu, HI 96817

Page 1 of 4

Positive Findings:

Table with 4 columns: Compound, Result, Units, Matrix Source. Rows include 11-Hydroxy Delta-9 THC, Delta-9 Carboxy THC, and Delta-9 THC.

See Detailed Findings section for additional information

Testing Requested:

Table with 2 columns: Analysis Code, Description. Rows include 9096B Alcohol Screen, Blood (Forensic) and 8054B Postmortem, Expanded with NPS, Blood (Forensic).

Specimens Received:

Table with 6 columns: ID, Tube/Container, Volume/Mass, Collection Date/Time, Matrix Source, Labeled As. Rows include 001 Gray Top Tube and 002 Gray Top Tube.

All sample volumes/weights are approximations.
Specimens received on 04/22/2021.



Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
11-Hydroxy Delta-9 THC	1.5	ng/mL	1.0	002 - Femoral Blood	LC-MS/MS
Delta-9 Carboxy THC	14	ng/mL	5.0	002 - Femoral Blood	LC-MS/MS
Delta-9 THC	>50	ng/mL	0.50	002 - Femoral Blood	LC-MS/MS

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

- 11-Hydroxy Delta-9 THC (Active Metabolite) - Femoral Blood:
11-Hydroxy Delta-9 THC is an active intermediate metabolite of tetrahydrocannabinol (THC) the active component of marijuana. Usual peak levels: Less than 10% of THC levels after smoking.
- Delta-9 Carboxy THC (Inactive Metabolite) - Femoral Blood:
Delta-9-THC is the principle psychoactive ingredient of marijuana/hashish. Delta-9-carboxy-THC (THCC) is the inactive metabolite of THC. The usual peak concentrations in serum for 1.75% or 3.55% THC marijuana cigarettes are 10 - 101 ng/mL attained 32 to 240 minutes after beginning smoking, with a slow decline thereafter. The ratio of whole blood concentration to plasma concentration is unknown for this analyte. THCC may be detected for up to one day or more in blood. Both delta-9-THC and THCC may be present substantially longer in chronic users. THCC is usually not detectable after passive inhalation.
- Delta-9 THC (Active Ingredient of Marijuana) - Femoral Blood:
Marijuana is a DEA Schedule I hallucinogen. Pharmacologically, it has depressant and reality distorting effects. Collectively, the chemical compounds that comprise marijuana are known as Cannabinoids.

Delta-9-THC is the principle psychoactive ingredient of marijuana/hashish. It rapidly leaves the blood, even during smoking, falling to below detectable levels within several hours. Delta-9-carboxy-THC (THCC) is the inactive metabolite of THC and may be detected for up to one day or more in blood. Both delta-9-THC and THCC may be present substantially longer in chronic users.
THC concentrations in blood are usually about one-half of serum/plasma concentrations. Usual peak levels in serum for 1.75% or 3.55% THC marijuana cigarettes: 50 - 270 ng/mL at 6 to 9 minutes after beginning smoking, decreasing to less than 5 ng/mL by 2 hrs.

Sample Comments:

001 Physician/Pathologist Name: Dr. Kobayashi

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded two (2) years from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

Workorder 21136117 was electronically signed on 05/26/2021 07:59 by:

Daniel T. Anderson, M.S., D-ABFT-FT, ABC-GKE
Forensic Toxicologist



Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 52198B - Cannabinoids Confirmation, Blood - Femoral Blood

-Analysis by High Performance Liquid Chromatography/ Tandem Mass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
11-Hydroxy Delta-9 THC	1.0 ng/mL	Delta-9 THC	0.50 ng/mL
Delta-9 Carboxy THC	5.0 ng/mL		

Acode 8054B - Postmortem, Expanded with NPS, Blood (Forensic) - Heart Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Barbiturates	0.040 mcg/mL	Gabapentin	5.0 mcg/mL
Cannabinoids	10 ng/mL	Salicylates	120 mcg/mL

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry QTRAP (LC-MS/MS QTRAP) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
4-cyano-CUMYL-BINACA	0.10 ng/mL	AMB-FUBINACA	1.0 ng/mL
4-fluoro-MDMB-BINACA	0.10 ng/mL	CUMYL-THPINACA	0.10 ng/mL
5-fluoro-EDMB-PINACA	0.10 ng/mL	MDMB-CHMCZCA	0.10 ng/mL
5-fluoro-MDMB-PICA	0.10 ng/mL	MDMB-CHMICA	0.10 ng/mL
5-fluoro-MDMB-PINACA / 5-fluoro-EMB-PINACA	0.20 ng/mL	MDMB-CHMINAC	0.10 ng/mL
5-fluoro-MMB-PINACA	0.050 ng/mL	MDMB-FUBICA	0.10 ng/mL
5-fluoro-NA-PIC	0.10 ng/mL	MDMB-FUBINACA / EMB-FUBINACA	0.10 ng/mL
5-fluoro-QU-PINAC	0.10 ng/mL	MMB-CHMICA	0.10 ng/mL
ADAMANTYL-FUBINACA	0.20 ng/mL	MMB-CHMINACA	0.20 ng/mL
ADMB-CHMINACA	0.10 ng/mL	MMB-FUBICA	1.0 ng/mL
ADMB-FUBICA	1.0 ng/mL	MMB-FUBINACA	0.10 ng/mL
ADMB-FUBINACA	1.0 ng/mL	NA-FUBIC	1.0 ng/mL
AMB-CHMINACA	1.0 ng/mL	NA-FUBIM	0.20 ng/mL

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of analyte classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified analyte class are included. Some specific analytes outside of these classes are also included. For a detailed list of all analytes and reporting limits included in this screen, please contact NMS Labs. Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnotics, Hypoglycemics, Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents, Opiates and Opioids.

Acode 9096B - Alcohol Screen, Blood (Forensic) - Femoral Blood

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Ethanol	10 mg/dL



CONFIDENTIAL

Workorder 21136117
Chain NMSCP109047
Patient ID 21-0963

Page 4 of 4

Analysis Summary and Reporting Limits:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Isopropanol	5.0 mg/dL	Methanol	5.0 mg/dL

DEPARTMENT OF THE MEDICAL EXAMINER
CITY AND COUNTY OF HONOLULU

650 IWILEI ROAD, SUITE 205 • HONOLULU, HAWAII 96817
TELEPHONE: (808) 768-3090 • FAX: (808) 768-3099 • INTERNET: www.honolulu.gov/med



RICK BLANGIARDI
MAYOR

MASAHIKO KOBAYASHI, M.D., Ph.D.
MEDICAL EXAMINER

**ADDENDUM
AUTOPSY REPORT**
Case No. 21-0963-MYENI, Lindani

RE: Lindani Sanele MYENI

DATE/TIME OF PRONOUNCEMENT: 04/14/2021, 8:49 PM

**DATE, TIME, AND PLACE OF EXAMINATION: 04/15/2021
9:00 AM
Medical Examiner's Facility**

REASON FOR ADDENDUM:

The brain tissue was sent to Boston University Chronic Traumatic Encephalopathy Center for neuropathology consultation. The neuropathology report was received on December 20, 2022.

ADDENDUM:

The final diagnoses listed in the neuropathology report are as follows:

1. Chronic Traumatic Encephalopathy (CTE): Stage III (comment: out of a possible IV, with IV being the most severe)
2. Vascular changes:
 - Arteriolosclerosis, mild
 - Microinfarcts, white matter inferior frontal lobe and cerebellum
3. White matter rarefaction: moderate with astrocytosis

See attached report.

COMMENT:

There is no change in the cause and manner of death.

Clinical and pathological features of CTE, applicability to this particular case, and interpretation of the neuropathology report should be referred to experts.

In an article (McKee A. C. et al. (2013). The spectrum of disease in chronic traumatic encephalopathy: *Brain*, 136, 43-64), the authors evaluated 85 brains from former athletes, military veterans or civilians with a history of repetitive mild traumatic brain injury. Fifteen cases were classified as stage III CTE. They described clinical symptoms of stage III CTE as follows:

Family interview and medical record review were available for 12 subjects with stage III CTE; one individual was asymptomatic. The most common presenting symptoms were memory loss, executive dysfunction, explosivity and difficulty with attention and concentration. Other symptoms frequently found in stage III subjects were depression or mood swings, visuospatial difficulties and aggression. Less common symptoms included impulsivity, apathy, headaches and suicidality. Seventy-five per cent of subjects were considered cognitively impaired. Two subjects developed symptoms of MND (comment: motor neuron disease) after the onset of cognitive or behavioral abnormalities, another developed cognitive changes after the onset of MND.



Digitally signed by
Kobayashi, Masahiko
Date: 2022.12.20
10:26:43 -10'00'

Masahiko Kobayashi, M.D., Ph.D.,
Medical Examiner

Ann C. McKee, MD
William Fairfield Warren Distinguished Professor
of Neurology and Pathology
Boston University School of Medicine
amckee@bu.edu



DEPARTMENT OF VETERANS AFFAIRS
VA Boston Healthcare System



Director, Boston University Alzheimer's Disease
Research Center
Director of the Boston University CTE Center

Director, Brain Banks
ADC, Framingham, UNITE, VA ALS

Director, Neuropathology
VA Boston Healthcare System
150 S. Huntington Avenue
Boston, Massachusetts 02130
T 857-364-5707

Medical Campus
72 East Concord Street Robinson
Complex, Suite B7800
Boston, Massachusetts 02118
Admin: Kelly McLean
oges@bu.edu
Office: 617.358.5991
www.annmckeemd.com
www.bu.edu/cte/

May 05, 2022

BOSTON UNIVERSITY CTE CENTER NEUROPATHOLOGY REPORT

PATIENT'S NAME: Myeni, Lindani
DATE OF DEATH: 04/14/2021
DATE BRAIN RECEIVED: 06/04/2021
FROM: Honolulu, HI
TYPE OF SPECIMEN: Fixed whole brain
Brain weight: 1357g

FINAL DIAGNOSES:

- 1. Chronic Traumatic Encephalopathy (CTE): Stage III (see comment)**
- 2. Vascular changes:**
 - Arteriolosclerosis, mild**
 - Microinfarcts, white matter inferior frontal lobe and cerebellum**
- 3. White matter rarefaction: moderate with astrocytosis**

Comment: The brain weighs 11357 grams. There is no cortical or hippocampal atrophy. The frontal horns of the lateral ventricles are mildly dilated. There is a cavum septum pellucidum, 0.5 x 0.3 x 1.0 cm.

Microscopically, multiple perivascular CTE lesions are present in the Rolandic, inferior parietal, superior frontal, dorsolateral frontal, septal, superior temporal and insular cortices, temporal pole and CA1 hippocampus. There is moderate neurofibrillary degeneration of the amygdala, entorhinal cortex and hippocampus. NFTs are severe in the locus coeruleus, moderate in the substantia innominata, and mild in the olfactory bulbs, median raphe nucleus, thalamus and substantia nigra. These changes conform to Chronic Traumatic Encephalopathy (CTE), Stage III (out of a possible IV, with IV being the most severe).

In addition, there is mild arteriolosclerosis, with moderate white matter rarefaction, astrocytosis and cribriform change in the subcortical white matter. There are 2 white matter microinfarcts: inferior frontal and cerebellum. There is no A β or alpha-synuclein deposition.

References:

C001889

McKee AC, Stein TD, Nowinski CJ, Stern RA, Daneshvar DH, Alvarez VE, Lee H-S, Hall GF, Wojtowicz SM, Baugh CM, David O. Riley DO, Kubilus CA, Cormier KA, Jacobs MA, Martin BR, Abraham CR, Ikezu T, Reichard RR, Wolozin BL, Budson AE, Goldstein LE, Kowall NW, Cantu RC. The Spectrum of Disease in Chronic Traumatic Encephalopathy. *Brain* 2013, Jan; 136(Pt 1): 43-64. doi: 10.1093/brain/aws307.

McKee AC, Cairns NJ, Dickson DW, Folkerth RD, Keene CD, Litvan I, Perl DP, Stein TD, Stewart W, Vonsattel JP, Tripodis Y, Alvarez VE, Bieniek KF, Crary J, Dams-O'Connor K, Gordon W and the TBI/CTE group. The First NINDS/NIBIB Consensus Meeting to Define Neuropathological Criteria for the Diagnosis of Chronic Traumatic Encephalopathy. *Acta Neuropathol.* 2016 Jan; 131(1): 75-86. doi: 10.1007/s00401-015-1515-z.

Mez J, Daneshvar D, Kiernan P, Abdolmohammadi B, Alvarez V, Huber B, Alosco M, Solomon T, Nowinski C, McHale L, Cormier K, Kubilus C, Martin B, Murphy L, Baugh C, Montenigro P, Chaisson C, Tripodis Y, Kowall N, Weuve J, McClean M, Cantu R, Goldstein L, Katz D, Stern R, Stein T, McKee A. Clinicopathological Evaluation of Chronic Traumatic Encephalopathy in Players of American Football. *JAMA.* 2017 Jul 25; 318(4): 360-370. doi: 10.1001/jama.2017.8334. PMID: 28742910

Alosco ML, Cherry JD, Huber BR, Tripodis Y, Baucom Z, Kowall NW, Saltiel N, Goldstein LE, Katz DI, Dwyer B, et al. Characterizing tau deposition in chronic traumatic encephalopathy (CTE): utility of the McKee CTE staging scheme. *Acta Neuropathol* (2020) 140:495–512. doi:10.1007/s00401-020-02197-9

Alosco ML, Stein TD, Tripodis Y, Chua AS, Kowall NW, Huber BR, Goldstein LE, Cantu RC, Katz DI, Palmisano JN, Martin B, Cherry JD, Mahar I, Killiany RJ, McClean MD, Au R, Alvarez V, Stern RA, Mez J, McKee AC. Association of White Matter Rarefaction, Arteriolosclerosis, and Tau With Dementia in Chronic Traumatic Encephalopathy. *JAMA Neurol.* 2019 Aug 5. doi: 10.1001/jamaneurol.2019.2244. PMID:31380975

McKee AC, Daneshvar DH, Alvarez VE, Stein TD. The neuropathology of sport. *Acta Neuropathol.* 2014 Jan;127(1):29-51. doi: 10.1007/s00401-013-1230-6. Epub 2013 Dec 24. PMID: 24366527

Bieniek KF, Cairns NJ, Crary JF, Dickson DW, Folkerth RD, Keene CD, Litvan I, Perl DP, Stein TD, Vonsattel JP, Stewart W, Dams-O'Connor K, Gordon WA, Tripodis Y, Alvarez VE, Mez J, Alosco ML, McKee AC; TBI/CTE Research Group. The Second NINDS/NIBIB Consensus Meeting to Define Neuropathological Criteria for the Diagnosis of Chronic Traumatic Encephalopathy. *J Neuropathol Exp Neurol.* 2021 Feb 22;80(3):210-219.

NEUROPATHOLOGIST:



Ann C. McKee, MD

C001890



Department of the Medical Examiner City and County of Honolulu

835 Iwilei Road • Honolulu, Hawaii 96817

TELEPHONE: 808-527-6777 • FAX: 808-524-8797 • INTERNET: www.co.honolulu.hi.us

LABORATORY REPORT

CASE NUMBER: 21-0963-MYENI, Lindani	SUBJECT: MYENI, Lindani Sanele	SUBMITTED BY: Kobayashi, Dr. Masahiko
---	--	---

The following items were received for analysis by the toxicology laboratory.

SPECIMENS RECEIVED

<u>BARCODE #</u>	<u>SAMPLE TYPE</u>	<u>SAMPLE SITE</u>	<u>CONTAINER</u>	<u>AMOUNT</u>
119086	Blood (Femoral)			
119087	Blood (Chest Cavity)			
119088	Bile			
119089	Urine			
119090	Vitreous			
119091	Gastric			
119092	Tissue (Formalin)			
119093	Blood Card			
119099	Blood (Chest Cavity)			
119100	Blood (Heart)			
119108	Tissue (Brain)			

Blood (Femoral) - Barcode # 119086

TOXICOLOGY QUANTITATIVE SENT OUT TO NMS Laboratories ON 4/20/2021

11-HYDROXY DELTA-9 THC	DETECTED
delta-9-THC	DETECTED
delta-9-THC-COOH	DETECTED

SEE ATTACHED REPORT

Urine - Barcode # 119089

RAPID URINE DRUG SCREEN FOR STREET DRUGS COMPLETED BY MICHELE RUBIO ON 4/15/2021

NONE DETECTED

Blood Card - Barcode # 119093

NO ANALYSIS PERFORMED COMPLETED BY MICHELE RUBIO ON 4/15/2021

NO ANALYSIS DONE N/A



NMS Labs

CONFIDENTIAL

200 Welsh Road, Horsham, PA 19044-2208
Phone: (215) 657-4900 Fax: (215) 657-2972
e-mail: nms@nmslabs.com

Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 05/26/2021 08:00

Patient Name MYENI, LINDANI
Patient ID 21-0963
Chain NMSCP109047
Age 29 Y **DOB** [REDACTED]
Gender Male
Workorder 21136117

To: 10442
Department of the Medical Examiner - Honolulu
835 Iwilei Road

Honolulu, HI 96817

Page 1 of 4

Positive Findings:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
11-Hydroxy Delta-9 THC	1.5	ng/mL	002 - Femoral Blood
Delta-9 Carboxy THC	14	ng/mL	002 - Femoral Blood
Delta-9 THC	>50	ng/mL	002 - Femoral Blood

See Detailed Findings section for additional information

Testing Requested:

<u>Analysis Code</u>	<u>Description</u>
9096B	Alcohol Screen, Blood (Forensic)
8054B	Postmortem, Expanded with NPS, Blood (Forensic)

Specimens Received:

<u>ID</u>	<u>Tube/Container</u>	<u>Volume/ Mass</u>	<u>Collection Date/Time</u>	<u>Matrix Source</u>	<u>Labeled As</u>
001	Gray Top Tube	8 mL	04/15/2021	Heart Blood	21-0963
002	Gray Top Tube	5.25 mL	04/15/2021	Femoral Blood	21-0963

All sample volumes/weights are approximations.

Specimens received on 04/22/2021.



Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
11-Hydroxy Delta-9 THC	1.5	ng/mL	1.0	002 - Femoral Blood	LC-MS/MS
Delta-9 Carboxy THC	14	ng/mL	5.0	002 - Femoral Blood	LC-MS/MS
Delta-9 THC	>50	ng/mL	0.50	002 - Femoral Blood	LC-MS/MS

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

- 11-Hydroxy Delta-9 THC (Active Metabolite) - Femoral Blood:
11-Hydroxy Delta-9 THC is an active intermediate metabolite of tetrahydrocannabinol (THC) the active component of marijuana. Usual peak levels: Less than 10% of THC levels after smoking.
- Delta-9 Carboxy THC (Inactive Metabolite) - Femoral Blood:
Delta-9-THC is the principle psychoactive ingredient of marijuana/hashish. Delta-9-carboxy-THC (THCC) is the inactive metabolite of THC. The usual peak concentrations in serum for 1.75% or 3.55% THC marijuana cigarettes are 10 - 101 ng/mL attained 32 to 240 minutes after beginning smoking, with a slow decline thereafter. The ratio of whole blood concentration to plasma concentration is unknown for this analyte. THCC may be detected for up to one day or more in blood. Both delta-9-THC and THCC may be present substantially longer in chronic users. THCC is usually not detectable after passive inhalation.
- Delta-9 THC (Active Ingredient of Marijuana) - Femoral Blood:
Marijuana is a DEA Schedule I hallucinogen. Pharmacologically, it has depressant and reality distorting effects. Collectively, the chemical compounds that comprise marijuana are known as Cannabinoids.

Delta-9-THC is the principle psychoactive ingredient of marijuana/hashish. It rapidly leaves the blood, even during smoking, falling to below detectable levels within several hours. Delta-9-carboxy-THC (THCC) is the inactive metabolite of THC and may be detected for up to one day or more in blood. Both delta-9-THC and THCC may be present substantially longer in chronic users.
THC concentrations in blood are usually about one-half of serum/plasma concentrations. Usual peak levels in serum for 1.75% or 3.55% THC marijuana cigarettes: 50 - 270 ng/mL at 6 to 9 minutes after beginning smoking, decreasing to less than 5 ng/mL by 2 hrs.

Sample Comments:

001 Physician/Pathologist Name: Dr. Kobayashi

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded two (2) years from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

Workorder 21136117 was electronically signed on 05/26/2021 07:59 by:

Daniel T. Anderson, M.S., D-ABFT-FT, ABC-GKE
Forensic Toxicologist



Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 52198B - Cannabinoids Confirmation, Blood - Femoral Blood

-Analysis by High Performance Liquid Chromatography/ Tandem Mass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
11-Hydroxy Delta-9 THC	1.0 ng/mL	Delta-9 THC	0.50 ng/mL
Delta-9 Carboxy THC	5.0 ng/mL		

Acode 8054B - Postmortem, Expanded with NPS, Blood (Forensic) - Heart Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Barbiturates	0.040 mcg/mL	Gabapentin	5.0 mcg/mL
Cannabinoids	10 ng/mL	Salicylates	120 mcg/mL

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry QTRAP (LC-MS/MS QTRAP) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
4-cyano-CUMYL-BINACA	0.10 ng/mL	AMB-FUBINACA	1.0 ng/mL
4-fluoro-MDMB-BINACA	0.10 ng/mL	CUMYL-THPINACA	0.10 ng/mL
5-fluoro-EDMB-PINACA	0.10 ng/mL	MDMB-CHMCZCA	0.10 ng/mL
5-fluoro-MDMB-PICA	0.10 ng/mL	MDMB-CHMICA	0.10 ng/mL
5-fluoro-MDMB-PINACA / 5-fluoro-EMB-PINACA	0.20 ng/mL	MDMB-CHMINAC	0.10 ng/mL
5-fluoro-MMB-PINACA	0.050 ng/mL	MDMB-FUBICA	0.10 ng/mL
5-fluoro-NA-PIC	0.10 ng/mL	MDMB-FUBINACA / EMB-FUBINACA	0.10 ng/mL
5-fluoro-QU-PINAC	0.10 ng/mL	MMB-CHMICA	0.10 ng/mL
ADAMANTYL-FUBINACA	0.20 ng/mL	MMB-CHMINACA	0.20 ng/mL
ADMB-CHMINACA	0.10 ng/mL	MMB-FUBICA	1.0 ng/mL
ADMB-FUBICA	1.0 ng/mL	MMB-FUBINACA	0.10 ng/mL
ADMB-FUBINACA	1.0 ng/mL	NA-FUBIC	1.0 ng/mL
AMB-CHMINACA	1.0 ng/mL	NA-FUBIM	0.20 ng/mL

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of analyte classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified analyte class are included. Some specific analytes outside of these classes are also included. For a detailed list of all analytes and reporting limits included in this screen, please contact NMS Labs. Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnotosedatives, Hypoglycemics, Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents, Opiates and Opioids.

Acode 9096B - Alcohol Screen, Blood (Forensic) - Femoral Blood

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Ethanol	10 mg/dL



CONFIDENTIAL

Workorder

21136117

Chain

NMSCP109047

Patient ID

21-0963

Page 4 of 4

Analysis Summary and Reporting Limits:

Compound

Isopropanol

Rpt. Limit

5.0 mg/dL

Compound

Methanol

Rpt. Limit

5.0 mg/dL

(Via CD/DVD)
AUDIO/VIDEO EXHIBIT

Exhibit G: C000017.mp4 (excerpt)

The audio/video files are too large, we cannot upload them electronically. It is included in a CD/DVD that will be filed conventionally.

EXHIBIT "G"

(Via CD/DVD)
AUDIO/VIDEO EXHIBIT

Exhibit H: C000016.mp4 (excerpt)

The audio/video files are too large, we cannot upload them electronically. It is included in a CD/DVD that will be filed conventionally.

EXHIBIT "H"

**Honolulu Police Department
Incident Report**

R0003694265



Page 1 of 1
21-162831

REPORT INFORMATION					Dispatched Location			Date / Time Dispatched
					1025 Ala Moana Blvd, Kakaako 96814			04-14-21 / 1951
Report Type	Force Used	Body-Worn Cam.	Pursuit	Latents	Date / Time Arrived			
Initial	No	Activated	No	Not Dusted	04-14-21 / 1951			

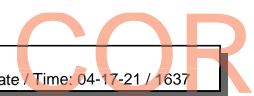
OFFENSE 001		Offense			Class	Section Number	Reclass	Date / Time Occurred From
		Miscellaneous Public			NC		No	04-14-21 / 1951
Offense Disposition	Code	NIBRS	Offense Flags		Beat	Date / Time Occurred To		
Records Only	432		[NONE]		172	04-14-21 / 1951		
Scene of the Offense					Location Type		Date / Time Reported	
1025 Ala Moana Blvd, Kakaako 96814					Park/Playground		04-17-21 / 1524	
Related Persons								
None								

SYNOPSIS ***I believe that the male that attempted to enter my HPD blue and white, may also be the suspect that attacked officers in District 5. Refer to body and BWC. DISPOSITION: Records.

REPORT NARRATIVE

On the above date, time, and location I went to Kewalo Basin to cover off officers for a UEMV. While on scene I was sitting in my HPD blue and White with my cruise light activated. A male approached my HPD blue and white, and attempted to enter the back seat. Upon asking him what he was doing he stated "I was walking this way and I thought I should get in." After asking him to back away from my car he went towards his own vehicle and then turns around and approaches me. The male stopped when about 1-2 foot away. After asking the male to back up to at least 6 feet and then to grab a facemask he went towards his own vehicle. The male then returned and stated he needed help contacting someone but he did have the phone number and his own phone. The male then made a phone call and left the area. I am making this report due to the person's strange behavior and that he may be involved in the D5 critical incident. DISPOSITION: RECORDS.

Submitted By: MASSIE, TIMOTHY C.	Approved By: KEOGH, STEPHEN
ID Number: 105343 Rank: MPO	ID Number: 102320 Rank: MP SERGEANT
Date / Time: 04-17-21 / 1625	Date / Time: 04-17-21 / 1637



**Honolulu Police Department
Incident Report**

R0003689338



Page 1 of 3
21-158469

REPORT INFORMATION		Dispatched Location 91 Coelho Way, Nuuanu 96817				Date / Time Dispatched 04-14-21 / 2014	
Report Type Follow-Up - use of force		Force Used Yes	Body-Worn Cam. Activated	Pursuit No	Latents Not Dusted	Date / Time Arrived 04-14-21 / 2014	

OFFENSE 001		Offense Burglary 1 - Theft Or Felony Within			Class FB	Section Number 708-0810	Reclass No	Date / Time Occurred From 04-14-21 / 2005
Offense Disposition Open		Code 050	NIBRS 220	Offense Flags [NONE]			Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2009	
Related Persons (Complainant) HALL, JAMES (Suspect) Myeni, Lindani (Suspect) MYENI, LINDANI (Witness) WANG, Shiyng (Witness) JU, Da								
Dynamic Questions Burglary MOs : Entry Point Front Door Cargo Theft (NIBRS) : No Offender Suspected of Using (NIBRS) : Not Applicable Burglary Number of Premises Entered [NIBRS] : 1 Burglary Method of Entry [NIBRS] : No Force Hate Crime Related : No Bias								

OFFENSE 002		Offense Attempted Murder 1			Class M1	Section Number 707-0701/705-500	Reclass Yes	Date / Time Occurred From 04-14-21 / 2015
Offense Disposition Open		Code 010	NIBRS 09A	Offense Flags [NONE]			Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2015	
Related Persons (Complainant) HALL, JAMES (Suspect) MYENI, LINDANI								
Dynamic Questions Offender Suspected of Using (NIBRS) : Not Applicable Weapon or Force Involved [NIBRS] : Hands Feet Etc., Handgun Aggravated Assault & Homicide Circumstances(NIBRS) : Assault on Law Enforcement Officer, Other Circumstances Justifiable Homicide Circumstance [NIBRS] : Susp Attack P.O.and That P.O. Killed Susp Hate Crime Related : No Bias Justifiable Homicide Type [NIBRS] : Yes. Criminal Killed By Police Officer								

OFFENSE 003		Offense Assault Against A Law Enforcement Officer 1			Class FC	Section Number 707-0712.5	Reclass No	Date / Time Occurred From 04-14-21 / 2015
Offense Disposition Open		Code 040	NIBRS 13B	Offense Flags [NONE]			Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2015	
Related Persons (Complainant) HALL, JAMES (Suspect) Myeni, Lindani (Suspect) MYENI, LINDANI (Witness) WANG, Shiyng								
Dynamic Questions Offender Suspected of Using (NIBRS) : Not Applicable Weapon or Force Involved [NIBRS] : Hands Feet Etc. Hate Crime Related : Unknown Bias Officer Activity/Circumstance (NIBRS) : Burglaries in Progress or Pursuing Burglary Suspects Officer Assignment Type (NIBRS) : One-Officer [Assisted] Officer ORI [Jurisdiction] (NIBRS) : HPD								

OFFENSE 004		Offense Assault Against A Law Enforcement Officer 1			Class FC	Section Number 707-0712.5	Reclass No	Date / Time Occurred From 04-14-21 / 2000
Offense Disposition Open		Code 040	NIBRS 13B	Offense Flags [NONE]			Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2009	
Related Persons (Complainant) HALL, JAMES (Suspect) Myeni, Lindani (Suspect) MYENI, LINDANI (Witness) WANG, Shiyng								
Dynamic Questions Offender Suspected of Using (NIBRS) : Not Applicable Weapon or Force Involved [NIBRS] : Hands Feet Etc. Hate Crime Related : Unknown Bias Officer Activity/Circumstance (NIBRS) : Burglaries in Progress or Pursuing Burglary Suspects Officer Assignment Type (NIBRS) : One-Officer [Assisted] Officer ORI [Jurisdiction] (NIBRS) : HPD								

Submitted By: SYLVESTER, BRENT K. ID Number: 101541 Rank: MPO M		Date / Time: 04-15-21 / 2042	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT		Date / Time: 04-15-21 / 2046
--	--	------------------------------	--	--	------------------------------

**Honolulu Police Department
Incident Report**

R0003689338



OFFENSE 005		Offense Unattended Death		Class NC	Section Number	Reclass No	Date / Time Occurred From 04-14-21 / 2049
Offense Disposition Records Only		Code 442	NIBRS	Offense Flags [NONE]		Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2049
Related Persons (Suspect) MYENI, LINDANI							

OFFENSE 006		Offense Miscellaneous Public		Class NC	Section Number	Reclass No	Date / Time Occurred From 04-14-21 / 2015
Offense Disposition Records Only		Code 432	NIBRS	Offense Flags [NONE]		Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2015
Related Persons (Complainant) MYENI, Lindani (Suspect) MYENI, LINDANI							

SUSPECT		Name (Last, First Middle) MYENI, LINDANI			DOB [REDACTED]	Gender Male	Age 29	Juv. No	Arrested No
Ethnicity Black	SID	SSN	Special Status	FBI Number	US Cit.	At Address Until			
Employer/School	Occupation	Work Hours	Identified By		BAC Test / Results				
Home Address [REDACTED]				Cell Phone Number [REDACTED]					
Offense of 001-Burglary 1 002-Murder 1 003-Assault On Leo 1 004-Assault On Leo 1 005-Unattended Death 006-Misc Pub									

SYNOPSIS Follow up.

REPORT NARRATIVE

ASSIGNMENT/ARRIVAL:
On 04-14-2021, I was assigned to District Five uniformed patrol as beat 3M573. I was attired in my issued Class A uniform and operating my subsidized patrol vehicle with a blue light fixed to the roof. At about 2012 hours, I was sent to a burglary in progress case, at 91 Coelho Way. I arrived at about 2015 hours.

INFORMATION KNOWN:
Central Dispatch informed responding officers that the caller returned home and there was an unknown male within their residence.

While responding to the residence, Central Dispatch updated responding officers that the caller was still on the line and that the male was refusing to allow them to leave their home. The caller described the male as an African American male, with a black shirt and jeans.

OBSERVATIONS:
Upon my arrival, I noticed that Cpl. G. OROSCO had arrived from the East direction and he was entering the East most driveway to the property on foot. I arrived from Burbank Street side and entered the property on foot through the West most driveway.

While walking into the property, I observed that Cpl. G. OROSCO was walking from the front door of the residence towards my location and his service firearm was drawn. Cpl. G. OROSCO was also shouting orders to someone to get on the ground, but I could not see anyone.

As I passed the wall that was fronting the property, a male fitting the description of the suspect approached me from behind the wall. I asked the male what was going on and he said "I don't know, you tell me". Cpl. G. OROSCO was continuing to yell commands at the male, but he refused to comply. The male then sprinted toward Cpl. G. OROSCO and began to

Submitted By: SYLVESTER, BRENT K. ID Number: 101541 Rank: MPO M		Date / Time: 04-15-21 / 2042	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT		Date / Time: 04-15-21 / 2046
--	--	------------------------------	--	--	------------------------------



repeatedly strike him about the head and facial area with both fists.

At that time Ofc. N. GALICHA arrived and he deployed his taser, but it was ineffective. The male then attacked Ofc. N. GALICHA and attempted to assault him. When the male got Ofc. N. GALICHA on the ground I attempted to take him to the ground, but he was able to evade me and tried to punch me. I am not sure where he struck me, but I sustained a scratch to the right side of my right ear area.

The male then directed his attack back at Cpl. G. OROSCO and Cpl. G. OROSCO discharged his service firearm at the male. I did not know if the male was hit, but the male then took Cpl. G. OROSCO to the ground. The male was able to get on top of Cpl. G. OROSCO and repeatedly punched Cpl. G. OROSCO about his head area with both fists.

USE OF FORCE:

When the male was striking Cpl. G. OROSCO, I removed my service firearm from my holster and pointed it at the male. I yelled at the male repeated commands to stop and get off of the officer.

I was afraid that the male was going to kill Cpl. G. OROSCO if he continued to strike him. I also believed that Ofc. N. GALICHA was injured or incapacitated. I was also concerned the suspect may have gained control of Cpl. G. OROSCO's service firearm since he had un-holstered it and was holding it in his hand when he was attacked by the male.

I gave the male numerous opportunities to comply with my commands, but he continued to repeatedly strike Cpl. G. OROSCO about the head area. While the male continued to strike Cpl. G. OROSCO, he sat up briefly and I discharged my service firearm.

After discharging my service firearm, the male started to come towards me. The male then laid down on his stomach in front of me.

I then updated Central Dispatch that shots were fired and that I needed an ambulance and the Honolulu Fire Department to respond. Sgt. J. KIM arrived and I instructed him to handcuff the male. The male was handcuffed with both hands behind his back. Responding officers then began treating the male.

Refer to Use of Force Form.

OBSERVATIONS:

After the male was handcuffed, other officers began to arrive and rendered aid to him. I immediately checked on Cpl. G. OROSCO. When I approached Cpl. G. OROSCO, I noticed that he was bleeding from his facial area, and that he told me that he was missing his service firearm.

I looked around and located his service firearm on the ground in the grass area. The area was to the South(Makai) side of where Cpl. G. OROSCO was being assaulted. I also noticed that the slide of Cpl. G. OROSCO's firearm was locked in the open position.

INJURIES:

Cpl. G. OROSCO was bleeding from his nose and mouth area and his face appeared to be swelling. Cpl. G. OROSCO also seemed confused, as if he had a severe head injury.

I sustained a scratch near my right ear area and knees.

BODY WORN CAMERA:

The body worn camera was activated in accordance with policy 2.57.

DISPOSITION:

Refer to key report.

Submitted By: SYLVESTER, BRENT K. ID Number: 101541 Rank: MPO M	Date / Time: 04-15-21 / 2042	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2046
--	------------------------------	--	------------------------------



**Honolulu Police Department
Use of Force and Conducted Electrical Weapon Report**

Page 1 of 2
21-158469

Incident Type 002 : MURDER 1		Incident Date / Time 04-14-21 / 2015		Location 91 Coelho Way, Nuuanu 96817		Beat 572
Subject's Name (LAST, First, Middle) MYENI, Lindani				DOB [REDACTED]	Occupation	
Gender Male	Ethnicity Black	Height	Weight	Build	Clothing Description	

NATURE OF INITIAL CONTACT	Initial Contact Sent to Investigate Case	Force Start Date / Time 04-14-21 / 2014
Important Information Known Before or Upon Arrival that the caller had returned home and there was an unknown male within their residence.		

OFFICER IDENTIFICATION	Vehicle Subsidized (blue light)
Uniform Type Uniform	Describe Uniform class A uniform

SUBJECT'S RESPONSE TO OFFICER'S ARRIVAL	Subject's Response Took Aggressive Action
Slang/Title that Subject Used to Officer	

SUBJECT'S ACTIONS (All Resistance Encountered)	
Aggravated Active Aggression suspect attacked all three officers present, Taser was ineffective, Cpl. G. OROSCO was punched repeatedly about the head and facial area which could result in serious bodily injury	

OFFICER'S RESPONSE (All Control Effected)	
VERBAL COMMAND Ordering	Effective No
PHYSICAL CONTACT Touch	Effective No
CHEMICAL AGENT	# of Sprays
Comment	Effective
PHYSICAL CONFRONTATION Physical Strength Technique	
Conducted Electrical Weapon None	Effective No
INTERMEDIATE WEAPON	
Specialty Weapon	Effective
DEADLY FORCE Handgun	
Weapon Use Fired Weapon	Effective Yes

DURATION OF RESISTANCE AND CONDITIONS		Duration Less than 30 Seconds	
Approx. # of Subjects in Area 1	Approx. # of Bystanders 1	Approx. # of Who Resisted/Assaulted Officers 1	Approx. # of Officers Present 3
Conditions Suspected Drug Use, Subject Size, Great Anger, Great Strength, Fighting Skill / Martial Arts, Officer Injury / Exhaustion, Mentally Deranged, Close Proximity to Officer's Weapon, Violent Crime			

RESTRAINTS USED	Restraints Used Handcuffs
Restraints Checked	Restraints Removed

Submitted By: SYLVESTER, BRENT K. ID Number: 101541 Rank: MPO M	Date / Time: 04-15-21 / 2042	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2046
--	------------------------------	--	------------------------------

Honolulu Police Department
Use of Force and Conducted Electrical Weapon Report

Page 2 of 2
21-158469

INJURIES		Injuries to Subject Upon Arrival No Injury Observed; None Reported When Asked	Treatment N/A
Injuries to Subject As a Result of Incident Death			Treatment Admitted to Hospital
Injuries to Officer Bodily Injury			Treatment Treated and Released
Describe Subject's Injuries, Including Cause gun shot wounds to the chest			
Describe Officer's Injuries, Including Cause scratch to the right ear area, scratches to knees			
Photographs of Injuries Yes	Name of Photographer SIS	Disposition of Photographs Attached to This Report	

SUBJECT TRANSPORT		Demeanor	
Position	How Transported Ambulance	Vehicle No.	
Transported By (Name)	Transported By (ID)	Date/Time Transported	
Destination Queens Hospital Punchbowl	Date/Time Arrived		

COMMENTS
 Officer's injury to the ear area were photographed by SIS and Ofc. C. TAVARES

Submitted By: SYLVESTER, BRENT K. ID Number: 101541 Rank: MPO M	Date / Time: 04-15-21 / 2042	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2046
--	------------------------------	--	------------------------------

**Honolulu Police Department
Incident Report**

R0003689441



Page 1 of 3
21-158469

REPORT INFORMATION		Dispatched Location 91 Coelho Way, Nuuanu 96817				Date / Time Dispatched 04-14-21 / 2014
Report Type Follow-Up - Actions/UOF	Force Used Yes	Body-Worn Cam. Activated	Pursuit No	Latents Not Dusted	Date / Time Arrived 04-14-21 / 2014	

OFFENSE 001		Offense Burglary 1 - Theft Or Felony Within		Class FB	Section Number 708-0810	Reclass No	Date / Time Occurred From 04-14-21 / 2005
Offense Disposition Open	Code 050	NIBRS 220	Offense Flags [NONE]	Beat 572	Date / Time Occurred To		
Scene of the Offense 91 Coelho Way, Nuuanu 96817				Location Type Residence/Home		Date / Time Reported 04-14-21 / 2009	
Related Persons (Complainant) HALL, JAMES (Suspect) Myeni, Lindani (Suspect) MYENI, LINDANI (Witness) WANG, Shiyong (Witness) JU, Da							
Dynamic Questions Burglary MOs : Entry Point Front Door Cargo Theft (NIBRS) : No Offender Suspected of Using (NIBRS) : Not Applicable Burglary Number of Premises Entered [NIBRS] : 1 Burglary Method of Entry [NIBRS] : No Force Hate Crime Related : No Bias							

OFFENSE 002		Offense Attempted Murder 1		Class M1	Section Number 707-0701/705-500	Reclass Yes	Date / Time Occurred From 04-14-21 / 2015
Offense Disposition Open	Code 010	NIBRS 09A	Offense Flags [NONE]	Beat 572	Date / Time Occurred To		
Scene of the Offense 91 Coelho Way, Nuuanu 96817				Location Type Residence/Home		Date / Time Reported 04-14-21 / 2015	
Related Persons (Complainant) HALL, JAMES (Suspect) MYENI, LINDANI							
Dynamic Questions Offender Suspected of Using (NIBRS) : Not Applicable Weapon or Force Involved [NIBRS] : Hands Feet Etc., Handgun Aggravated Assault & Homicide Circumstances(NIBRS) : Assault on Law Enforcement Officer, Other Circumstances Justifiable Homicide Circumstance [NIBRS] : Susp Attack P.O.and That P.O. Killed Susp Hate Crime Related : No Bias Justifiable Homicide Type [NIBRS] : Yes. Criminal Killed By Police Officer							

OFFENSE 003		Offense Assault Against A Law Enforcement Officer 1		Class FC	Section Number 707-0712.5	Reclass No	Date / Time Occurred From 04-14-21 / 2015
Offense Disposition Open	Code 040	NIBRS 13B	Offense Flags [NONE]	Beat 572	Date / Time Occurred To		
Scene of the Offense 91 Coelho Way, Nuuanu 96817				Location Type Residence/Home		Date / Time Reported 04-14-21 / 2015	
Related Persons (Complainant) HALL, JAMES (Suspect) Myeni, Lindani (Suspect) MYENI, LINDANI (Witness) WANG, Shiyong							
Dynamic Questions Offender Suspected of Using (NIBRS) : Not Applicable Weapon or Force Involved [NIBRS] : Hands Feet Etc. Hate Crime Related : Unknown Bias Officer Activity/Circumstance (NIBRS) : Burglaries in Progress or Pursuing Burglary Suspects Officer Assignment Type (NIBRS) : One-Officer [Assisted] Officer ORI [Jurisdiction] (NIBRS) : HPD							

OFFENSE 004		Offense Assault Against A Law Enforcement Officer 1		Class FC	Section Number 707-0712.5	Reclass No	Date / Time Occurred From 04-14-21 / 2000
Offense Disposition Open	Code 040	NIBRS 13B	Offense Flags [NONE]	Beat 572	Date / Time Occurred To		
Scene of the Offense 91 Coelho Way, Nuuanu 96817				Location Type Residence/Home		Date / Time Reported 04-14-21 / 2009	
Related Persons (Complainant) HALL, JAMES (Suspect) Myeni, Lindani (Suspect) MYENI, LINDANI (Witness) WANG, Shiyong							
Dynamic Questions Offender Suspected of Using (NIBRS) : Not Applicable Weapon or Force Involved [NIBRS] : Hands Feet Etc. Hate Crime Related : Unknown Bias Officer Activity/Circumstance (NIBRS) : Burglaries in Progress or Pursuing Burglary Suspects Officer Assignment Type (NIBRS) : One-Officer [Assisted] Officer ORI [Jurisdiction] (NIBRS) : HPD							

Submitted By: GALICHA, NOLI F. JR. ID Number: 102928 Rank: MPO M	Date / Time: 04-15-21 / 2047	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2052
---	------------------------------	--	------------------------------

**Honolulu Police Department
Incident Report**

R0003689441



OFFENSE 005		Offense Unattended Death		Class NC	Section Number	Reclass No	Date / Time Occurred From 04-14-21 / 2049
Offense Disposition Records Only		Code 442	NIBRS	Offense Flags [NONE]		Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2049
Related Persons (Suspect) MYENI, LINDANI							

OFFENSE 006		Offense Miscellaneous Public		Class NC	Section Number	Reclass No	Date / Time Occurred From 04-14-21 / 2015
Offense Disposition Records Only		Code 432	NIBRS	Offense Flags [NONE]		Beat 572	Date / Time Occurred To
Scene of the Offense 91 Coelho Way, Nuuanu 96817					Location Type Residence/Home		Date / Time Reported 04-14-21 / 2015
Related Persons (Complainant) MYENI, Lindani (Suspect) MYENI, LINDANI							

SYNOPSIS Refer to initial report for details.

REPORT NARRATIVE

ASSIGNMENT/ARRIVAL

I am currently assigned to District 5, 3rd watch operating as 3M569. On 4-14-21 at about 2013 hours, I responded to an on beat burglary type case in progress. I was in the area at the time and was on scene shortly after.

SCENE/TIME ELEMENT

Refer to initial report for details.

LIGHTING CONDITIONS

The lighting in the area was very limited and there were dark areas where this incident occurred.

SUSPECT INFORMATION GIVEN VIA DISPATCH

While responding, dispatch related that an African American male wearing a dark colored shirt and jeans had entered the property above.

OBSERVATIONS

Upon arrival, I exited my HPD white car and started to approach the residence of 91 Coelho Way. As I got closer towards the driveway area, I heard yelling of "GET DOWN ON THE GROUND NOW" those verbal commands were being repeatedly yelled towards an African American male who later was identified as Lindani Myeni (hereinafter Myeni) who matched the description given by dispatch. Myeni ran towards an Officer in the Ewa direction of the driveway area where it was really dark. Myeni began attacking the Officer vigorously swinging his hands towards him, appearing to strike the Officer in the head and body area.

OFFICER'S ACTIONS/USE OF FORCE

I then announced my presence by saying "Taser, Taser" and pulled out my HPD issued Taser and pointed towards Myeni and deployed one shot which was ineffective. Myeni then charged towards me and attacked punching me repeatedly with closed fists. Myeni then took me to the ground and he continued his assault on me. I was able to recover and get up when I observed Myeni divert his physical attack back on the other Officer's. The area was really dark where the Officers were getting attacked.

Submitted By: GALICHA, NOLI F. JR. ID Number: 102928 Rank: MPO M	Date / Time: 04-15-21 / 2047	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2052
---	------------------------------	--	------------------------------





ADDITIONAL OBSERVATIONS/SUSPECT DETAINED

I later heard a few gun shots then observed Myeni lying on his back on the ground. I then assisted with detaining Myeni by placing handcuffs behind his back and it appeared that Myeni was bleeding from the chest area from possible bullet wounds to the chest area.

CPR/AED ADMINISTERED

It was confirmed that Myeni had been shot in the body area and CPR was administered. Myeni was also hooked up an AED.

OFFICER'S INJURIES

As a result of the assault on me by Myeni, I received multiple injuries to the left side of my body including the left side of my forehead area, pain to the right side of my neck, the left side of my inner bicep area, the left side outer forearm area, and my left knee area.

DISPOSITION

Pending CID

Submitted By: GALICHA, NOLI F, JR. ID Number: 102928 Rank: MPO M	Date / Time: 04-15-21 / 2047	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2052
---	------------------------------	--	------------------------------

COR

Honolulu Police Department

Use of Force and Conducted Electrical Weapon Report

Page 1 of 3
21-158469

Incident Type 002 : MURDER 1		Incident Date / Time 04-14-21 / 2015		Location 91 Coelho Way, Nuuanu 96817		Beat 572	
Subject's Name (LAST, First, Middle) MYENI, Lindani				DOB [REDACTED]		Occupation	
Gender Male	Ethnicity Black	Height	Weight	Build	Clothing Description		

NATURE OF INITIAL CONTACT		Initial Contact Sent to Investigate Case		Force Start Date / Time 04-14-21 / 2104	
Important Information Known Before or Upon Arrival Unknown male entered home and does not belong there.					

OFFICER IDENTIFICATION		Vehicle Police White Car			
Uniform Type Uniform		Describe Uniform Class A			

SUBJECT'S RESPONSE TO OFFICER'S ARRIVAL		Subject's Response Took Aggressive Action	
Slang/Title that Subject Used to Officer			

SUBJECT'S ACTIONS (All Resistance Encountered)	
Aggravated Active Aggression Suspect male randomly attacking Officer's in the area. The area was really dark.	

OFFICER'S RESPONSE (All Control Effected)	
VERBAL COMMAND Ordering	Effective No
PHYSICAL CONTACT	Effective
CHEMICAL AGENT	# of Sprays
Comment	Effective
PHYSICAL CONFRONTATION	
Conducted Electrical Weapon Taser7 - Probes Deployed	Effective
INTERMEDIATE WEAPON	
Specialty Weapon	Effective
DEADLY FORCE	
Weapon Use	Effective

DURATION OF RESISTANCE AND CONDITIONS		Duration Less than 30 Seconds	
Approx. # of Subjects in Area 1	Approx. # of Bystanders 1	Approx. # of Who Resisted/Assaulted Officers 1	Approx. # of Officers Present 3
Conditions Suspected Drug Use, Subject Size, Great Anger, Great Strength, Fighting Skill / Martial Arts, Officer Injury / Exhaustion, Mentally Deranged, Potential Ambush, Close Proximity to Officer's Weapon, Violent Crime			

RESTRAINTS USED		Restrains Used Handcuffs	
Restrains Checked		Restrains Removed	

Submitted By: GALICHA, NOLI F. JR. ID Number: 102928 Rank: MPO M		Date / Time: 04-15-21 / 2047		Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT		Date / Time: 04-15-21 / 2052	
---	--	------------------------------	--	--	--	------------------------------	--

Honolulu Police Department
Use of Force and Conducted Electrical Weapon Report

INJURIES		Injuries to Subject Upon Arrival No Injury Observed; None Reported When Asked	Treatment N/A
Injuries to Subject As a Result of Incident Death			Treatment Admitted to Hospital
Injuries to Officer Substantial Bodily Injury			Treatment Treated and Released
Describe Subject's Injuries, Including Cause Death			
Describe Officer's Injuries, Including Cause I received multiple injuries to the left side of my body including the left side of my forehead area, pain to the right side of my neck, the left side of my inner bicep area, the left side outer forearm area, and my left knee area.			
Photographs of Injuries Yes	Name of Photographer SIS	Disposition of Photographs	

SUBJECT TRANSPORT		Demeanor	
Position	How Transported	Vehicle No.	
Transported By (Name)	Transported By (ID)	Date/Time Transported	
Destination	Date/Time Arrived		

COMMENTS
Refer to report.

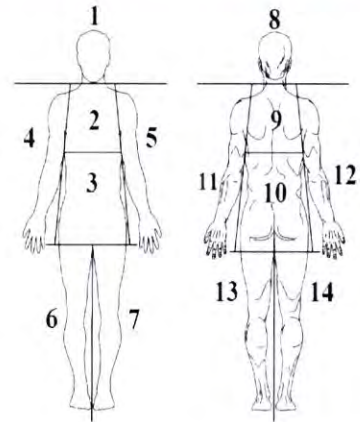
Submitted By: GALICHA, NOLI F. JR. ID Number: 102928 Rank: MPO M	Date / Time: 04-15-21 / 2047	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2052
---	------------------------------	--	------------------------------

CONDUCTED ELECTRICAL WEAPON (CEW)		Conducted Electrical Weapon Serial Number	Air Cartridge Type(s)
NMI	# of Air Cartridges Fired	# of Cycles Applied	Suspect Wearing Heavy/Loose Clothing
Usage	Is This a Dart Probe Contact	Is This a Drive Stun Contact	Probe Follow-up
Approx. Target Distance at the Time of the Probe Deployment feet	Approx. Location Between the Two Probes inches	Need for an Additional Shot	Did Probes Penetrate the Subject's Skin
Probes Removed on Scene	Did the Conducted Electrical Weapon Application Cause Injury	If Yes, Was the Subject Treated for the Injury	
Need for Additional Applications	Did the Device Respond Satisfactorily	If the CEW Deployment was Unsuccessful, was the PROBE FOLLOW-UP Method Used	
Video Recording	CEW Downloaded	Downloaded By Whom	Download Date / Time /
Firing Record(s) Submitted	Video File(s) Submitted		

APPLICATION AREAS

Application Areas # of Probes Hit / Drive Stun Applications

- 1 - FRONT Head
- 2 - FRONT Upper Center Mass
- 3 - FRONT Lower Center Mass
- 4 - FRONT Right Arm
- 5 - FRONT Left Arm
- 6 - FRONT Right Leg
- 7 - FRONT Left Leg
- 8 - BACK Head
- 9 - BACK Upper Center Mass
- 10 - BACK Lower Center Mass
- 11 - BACK Left Arm
- 12 - BACK Right Arm
- 13 - BACK Left Leg
- 14 - BACK Right Leg



Conducted Electrical Weapon Report Comments

Submitted By: GALICHA, NOLI F. JR. ID Number: 102928 Rank: MPO M	Date / Time: 04-15-21 / 2047	Approved By: KESSLER, KEITH ID Number: 426100 Rank: MP SERGEANT	Date / Time: 04-15-21 / 2052
---	------------------------------	--	------------------------------

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

L. LINDSAY MYENI, Widow of LINDANI
SANELE MYENI,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, in his individual
capacity as a Honolulu police officer; BRENT
K. SYLVESTER, in his individual capacity as
a Honolulu police officer; DOE OFFICER #3,
in his/her individual capacity as a Honolulu
police officer; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 1CCV-21-0000504 (6th Div)
(Other Non-Vehicle Tort)

**NOTICE OF HEARING AND
CERTIFICATE OF SERVICE**

NOTICE OF HEARING

TO: JAMES J. BICKERTON, ESQ.
BRIDGET G. MORGAN-BICKERTON, ESQ.
TYLER D. MINCAVAGE, ESQ.
Bickerton Law Group
745 Fort Street, Suite 801
Honolulu, Hawai'i 96813
Attorneys for Plaintiff

NOTICE IS HEREBY GIVEN that the foregoing Motion shall come on for hearing
before the Honorable Karin L. Holma, Judge of the above-entitled Court, in her courtroom at
Ka'ahumanu Hale, 777 Punchbowl Street, 4th Floor, Honolulu, Hawai'i, 96813, on Friday, April
5, 2024 at 3:00 p.m., or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, March 15, 2024.

DANA M.O. VIOLA
Corporation Counsel

By: /s/ Justin M. Luney

WILLIAM R.K. AWONG

JUSTIN M. LUNEY

JASON A.I. BAKER

Deputies Corporation Counsel

Attorneys for Defendants

CITY AND COUNTY OF HONOLULU,

GARRICK OROSCO, and BRENT K. SYLVESTER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date noted below, a true and correct copy of the foregoing was duly served upon the following at their last known address via Judiciary Electronic Filing and Service System (JEFS):

JAMES J. BICKERTON, ESQ.

BRIDGET G. MORGAN-BICKERTON, ESQ.

TYLER D. MINCAVAGE, ESQ.

Bickerton Law Group

745 Fort Street, Suite 801

Honolulu, Hawai'i 96813

Attorneys for Plaintiff

bickerton@bsds.com

morgan@bsds.com

mincavage@bsds.com

DATED: Honolulu, Hawai'i, March 15, 2024.

DANA M.O. VIOLA
Corporation Counsel

By: /s/ Justin M. Luney

WILLIAM R.K. AWONG

JUSTIN M. LUNEY

JASON A.I. BAKER

Deputies Corporation Counsel

Attorneys for Defendants

CITY AND COUNTY OF HONOLULU,

GARRICK OROSCO, and BRENT K. SYLVESTER