



Office of the Attorney General of Guam

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Hon. Leevin Taitano Camacho

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FOR IMMEDIATE RELEASE:

OAG Releases IIT Report on June Officer-involved Shooting

August 27, 2021—Tamuning, Guam. To promote transparency and build confidence in law enforcement and the criminal justice system, the Office of the Attorney General (OAG), the Guam Police Department (GPD), and other law enforcement partners began collaborating earlier this year to establish standard procedures to be used when the use of deadly force by a law enforcement officer resulted in death or serious physical injury or when the incident is in the public interest. Under these procedures, the law enforcement entity would immediately notify the OAG and an Independent Investigative Team (IIT) would be formed to conduct an investigation.

In the case of the June 30, 2021 officer-involved shooting in Tamuning, GPD immediately notified the OAG when an officer's use of deadly force resulted in the death of Mr. Faler Fabian. An IIT was formed to investigate the incident. The Team completed its investigation and provided a report to GPD Chief of Police. The OAG releases this report (attached), which presents a summary of the Team's factual findings and legal conclusions.

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August 26, 2021

To: Stephen Ignacio *[Signature]*
Chief of Police
Guam Police Department

From: J. Basil O'Mallan III *[Signature]*
Chief Prosecutor
Office of the Attorney General of Guam

CC: Leevin T. Camacho
Attorney General
Office of the Attorney General of Guam

RE: Independent Investigative Report
June 30, 2021, Officer-Involved Shooting



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RE: Independent Investigative Report
June 30, 2021, Officer-Involved Shooting

Synopsis: At the request of the Chief of Police the Independent Investigative Team (IIT) was activated on June 30, 2021, following an officer-involved shooting that resulted in the death of an individual later identified to be Faler Fabian.

After an extensive investigation the IIT has determined that the shooting was **JUSTIFIED**.

Per prior agreement, the IIT report, and supporting documents, will be forwarded to the Guam Police Department's Internal Affairs Division, and federal law enforcement officials for their review and disposition.

Independent Investigative Team Report on Officer-Involved Shooting at Hema Apartments, June 30, 2021

Summary

In an effort to promote transparency and build confidence in law enforcement and the criminal justice system, in May 2021 the Office of the Attorney General (OAG) and the Guam Police Department (GPD) established standard procedures to be used when the use of deadly force by a police officer resulted in death or serious physical injury. Under these procedures, GPD will immediately notify the OAG when an officer's use of deadly force resulted in death or serious physical injury and an Independent Investigative Team (IIT) led by the OAG would be formed. On June 30, 2021, an IIT was created to investigate a shooting that resulted in the death of Mr. Faler Fabian.

This report summarizes the factual findings and legal conclusions of the IIT's investigation. As part of its investigation, the IIT conducted interviews of approximately 20 eyewitnesses and interviewed the GPD officer involved. In addition, the IIT reviewed the following evidence in the course of this investigation:

- Surveillance videos and photos
- Ballistics examination findings
- Fingerprint analysis
- Autopsy report
- 911 and police radio recordings

While set forth in more detail below, a review of the evidence establishes that:

- The Officer and 7-year-old daughter met his wife at the CenTam building for an appointment;
- The Officer and his wife were driving separate cars. The Officer's 7-year-old daughter was riding with him;
- At or around 5:50pm, the Officer turned left on Tun Josen Fejeran Street, exiting the CenTam building;
- At 5:50:04pm surveillance cameras capture a man appeared to be armed with two machetes charging the Officer's car and motioning to hit it;
- As the Officer continued down Tun Jose Fejeran Street, a second man threw something at his car;
- Traffic forced the Officer to stop at Route 1;
- The Officer got out of his car and grabbed his gun, which was located in the rear passenger seat;
- At 5:50:29, surveillance cameras capture a man running downhill, toward where the Officer's car is stopped;
- The Officer fired a single shot, striking the man in his lower abdomen;
- The Officer's wife, who was driving ahead of the Officer, called 911 three times;

- The Officer reported the shooting over his GPD radio and requested a medic;
- A witness in the area gave the Officer a towel so he could render aid to the man;
- A knife was found at the scene.

In cases where there is a question of whether a peace officer's actions are justifiable, the burden shifts to the prosecution to prove beyond a reasonable doubt that the killing was not justified. Based on a review of the evidence and the totality of circumstances, the use of force in this case was clearly justifiable and the IIT has concluded that the People would not be able to meet the high standard of criminal liability. Therefore, the OAG declines to prosecute this matter criminally.¹

Factual Background

The initial calls to 911 and GPD radio

On Wednesday, June 30, 2021, at approximately 5:50pm, the 911 Emergency Dispatch Center received a call from a woman identifying herself as the spouse of a Guam Police Department (GPD) Officer.² She was frantic and requested assistance from authorities as she believed her husband was involved in a situation with an individual. The woman provided the location as Route 1, Tamuning across the National Office Supply and that she believed an individual was running out with something and that she believed she heard a gunshot. She indicated that she was in a separate vehicle from her husband.

Almost simultaneously, a call came over the Guam Police Department (GPD) police radio on the Agat Precinct Command channel. The Officer transmitted a request to expedite a medic and units to Hema Apartments, Tamuning explaining "shots fired, one down." He further transmitted that he was okay, that he fired the shot at a man who was hitting his vehicle and that another man with a machete took off toward Sakura.

Moments later, the Officer's wife makes a second call to 911 indicating she was disconnected and that there was screaming coming from the apartment area where her husband was.

Approximately 20 minutes later, she made a third call to 911. No other calls were recorded or made to 911 regarding this incident.

Observations of the responding officers

At approximately 5:58pm, the first GPD police units arrived and noted the scene to be at the intersection of Route 1 and Josen Fejeran Street, Tamuning by the Commercial Hemlani

¹ It is the responsibility of GPD to determine whether any administrative or internal discipline should be imposed due to the violation of any rule, regulation, or order.

² During the course of this investigation, the IIT has been made aware of threats to retaliate against the Officer involved in this incident. Based on these threats and the potential for endangering the life or physical safety of the officer and his family, this report will refer to him throughout as "the Officer."

Apartments and the CenTam (also known as RanCare) Building. They noted a male individual, later identified to be Faler Fabian, lying on the ground on his left side. They observed the Officer (attired in civilian clothes) with his left hand holding a cloth to the abdomen of Mr. Fabian and with his right-hand cradling Mr. Fabian's head telling Mr. Fabian to stay with him. They also observed the Officer, with a pistol in his right hand, yelling "get back" at a large crowd gathered by the entrance of Commercial Hemlani Apartments. A woman wearing a yellow shirt and a floral skirt was also at the scene. Mr. Fabian was situated in the middle of the roadway by the rear driver's side tire of a white Mitsubishi Lancer) that was parked on Josen Fejeran Street facing Route. 1. The responding officers found a single expended shell casing in the vicinity of the white sedan.

Inside the car, the responding officers saw a Glock 23 (.40 caliber) firearm with a magazine loaded in the magazine well on the driver's seat. The firearm had one round chambered and 11 rounds within the 13-round capacity magazine. Later, the officers confirmed the firearm as GPD issued.

At 6:03pm, approximately thirteen minutes after the 911 call, GFD Medic 1 personnel arrived at the scene and tended to Mr. Fabian who was bleeding from his lower abdominal area. As medic personnel turned Mr. Fabian onto his back, the responding officers saw a pocket knife in the open position under Mr. Fabian. At 6:07pm, Medic 1 transported Mr. Fabian to the Guam Memorial Hospital (GMH) for treatment. Detectives conducted a follow-up at GMH where they learned that Mr. Fabian sustained a single gunshot wound to the lower abdomen. Mr. Fabian later succumbed to his injuries and was declared deceased at 6:26pm.

Statements made by witnesses at the scene that evening

At the scene, the Officer told the patrol officers that he was driving the white Lancer following his wife in her Jeep along Tun Josen Fejeran Street. A man armed with a machete tried to strike his wife's Jeep with the machete while another male threw a beer can at his car. The man with the machete also approached the Officer's car and then the second male was banging on his car. The Officer mentioned that his "little girl" was in his car, he feared for their safety and fired his weapon at the second male. The Officer's spouse also spoke with patrol officers and told them that their 7-year-old daughter was in the vehicle with her father when the incident occurred. She told them that the Officer and their daughter met her for a 5:30 p.m. appointment at the CenTam building. After the appointment, the Officer's spouse departed the CenTam parking lot in a separate vehicle. While driving on Tun Josen Fejeran Street by Commercial Hemlani Apartments, she saw a man holding a long object "stare hard" at her and approach her vehicle. As she passed, the male ran in the opposite direction and she kept driving to the intersection of Rt. 1 and Tun Josen Fejeran Street. She entered onto Route 1, but was stopped for a red light, southbound and noticed the front end of her husband's vehicle come to a stop just before entering Rt. 1. She heard a gunshot but did not see what occurred.

Mr. Fabian's daughter A.S., and daughter-in-law, R.R., were interviewed and said that about 15 minutes prior to the shooting, they heard Mr. Fabian yelling outside of their apartment. Upon making a check, they saw him standing on the roadway and they attempted to bring him back in,

but he yelled for them to go inside. A.S. saw her older brother walking further up the roadway heading towards GPO. A.S. and R.R. said they saw Mr. Fabian throw a beer can at a white sedan driving by. The driver stopped at the end of the road, exited his vehicle and retrieved something from the rear passenger area of the vehicle. A.S. and R.R. said that the driver called out to Mr. Fabian "you come here, get over here." Mr. Fabian then ran "full sprint" towards the driver. They heard a single gunshot and then Mr. Fabian fell to the ground. Neither A.A. R.R. provided information about a male individual with a machete who was possibly at the scene. A.A. and R.R. also confirmed that a child or children were amongst the passengers in the white sedan.

F.S., another of Mr. Fabian's daughters, was also interviewed. Her statements were consistent with those given by A.S. and R.R.

Detectives interviewed Mr. Fabian's son, A.S., who told them that he was walking further up the street towards GPO when he heard a gunshot. A.S. stated that he was upset and was walking away from the apartments but did not provide any other details. Detectives noted several scabbed injuries on [REDACTED]'s hands and knuckles.

A.S.

Witnesses confirm argument took place before shooting³

Interviews with other witnesses corroborated that an argument occurred immediately before the shooting. A neighbor (Witness-1) from a nearby apartment heard yelling from the Commercial Hemlani Apartments and observed a male punching the outdoor split-air conditioning unit by the first-floor northwest corner apartment. The same male walked onto Tun Josen Fejeran Street with a machete and swung the machete at a white car. Shortly after, Witness-1 heard a gunshot coming from the Commercial Hemlani Apartments area. Detectives located the damaged outdoor split-air conditioning unit described by the neighbor and took digital photos of the unit.

³ All witness interviews were conducted prior to the public release of surveillance footage in line with the MOU for the IIT, which provides "[a]bsent extraordinary circumstances, video and audio recordings should not be released until all witness statements have been collected[.]"



Another neighbor (Witness-2) from a nearby apartment noted a commotion at the Commercial Hemlani Apartments. Witness-2 observed three (3) females trying to calm down two (2) males at said apartment. The two males were arguing and one of the males began punching an air conditioning unit. Witness-2 heard clinking noises and observed the male who was earlier striking the air conditioning unit now holding two machetes. The man was striking both machetes against each other as he walked up Tun Josen Fejeran Street. Witness-2 saw the man raise the machetes in the air and motion to strike a white sedan that was passing by. The white sedan sped away and Witness-2 tried to call 911 because he was afraid of being attacked by the male with the machetes.

Another witness provided a statement on the moments right before and immediately after the shooting. Witness-3 was a passerby driving in the middle lane of Rt. 1, Tamuning and after passing the CenTam building, began to slow down due to heavy traffic and the traffic light at the intersection up ahead. While stopped for traffic, Witness-4 saw a white sedan come to an abrupt stop at the intersection (Rt. 1 and Tun Josen Fejeran Street). Witness-3 saw the driver of the white sedan quickly exited and hurried to the rear passenger door, opening the door. The driver reached into the rear passenger area and was now holding a gun. Witness-3 then saw the driver point the gun toward a bald male and female at the top of the street who appeared to be running towards the male with the gun. Witness-3 mentioned that everything happened so quickly as the bald male ran toward the male with the gun and then Witness-3 heard a "pop." The bald male dropped to the ground and the male with the gun was still pointing his gun looking around the area.

Surveillance footage corroborates witness statements

Detectives viewed CCTV footage from nearby building and noted the following:

- At 5:49:29 pm, a Jeep enters Tun Josen Fejeran Street and turns towards ROUTE 1;
- At 5:49:57, a white sports sedan is seen exiting the same parking lot and entering the aforementioned roadway;
- At 5:50:01, a man coming from Rt. 1 and the Commercial Hemlani Apartments, clad in beige or white shorts, black T-shirt with white long sleeves, possibly wearing a dark colored bandana or hat, is seen running towards the sports sedan; the man attempts to strike the sports sedan; the sports sedan then accelerates towards Rt. 1; the male continues to walk further away from Commercial Hemlani Apartments; as the male walks away it appeared that the male was holding two(2) machetes, one in each hand. Source: CCTV channel #6
- Video from another camera shows at 5:49:04, a male individual is seen standing in the parking lot of Commercial Hemlani Apartments as the jeep reverses out of the parking stall; at 5:49:55 passes Commercial Hemlani Apartments and approaches stop sign leading onto Rt. 1; at 5:49:58, the male holding the machete is seen running on Tun Josen Fejeran towards sports sedan, which was out of view; at 5:50:04 , the Jeep executes a right turn onto ROUTE 1; at 5:50:08, multiple individuals walking within the parking lot of Commercial Hemlani Apartments; at 5:50:14, sports sedan is seen accelerating towards Rt. 1; at 5:50:28, another male is seen running towards Rt. 1; at 5:50:42, several motorists traveling west towards East Agana began to slow down; at 5:50:48, a separate individual appears to be taking cover behind a vehicle, which was parked at Commercial Hemlani Apartments; at 5:52:49, a shirtless male individual clad in beige or white shorts comes from the Camp Watkin Road area; sports sedan is out of view due to the RAN-CARE'S 'S elevated parking area; Source: CCTV channel #11
- One surveillance camera captured audio.
 - At 5:49:36, a Jeep exits RAN-CARE parking lot; audio then records an individual yell or call out; A sports sedan is seen reversing out of RAN-CARE parking stall;
 - At 5:50:12, the sports sedan moves out of view; audio records the sports sedan immediately accelerates;
 - At 5:50:32, an individual is heard yelling(inaudible);
 - At 5:50:34, a single gunshot is heard;
 - Four seconds later a female is heard yelling/crying out in distress; Source: CCTV channel #2

Witnesses detail what occurred after shooting

Two witnesses gave information on what occurred immediately after the shooting. A neighboring business woman (Witness-4) heard a single gun shot coming from the Commercial Hemlani Apartment area. She noted a GPD Officer standing next to a white vehicle with two males. One of the males was sitting on the ground and appeared injured. The second male

appeared combative towards the Officer as the Officer was motioning and yelling at the second male to step back. The second male took off his shirt and gave it to the injured male, possibly to use for his injury. Witness-4 saw the second male run back to Commercial Hemlani Apartments, appear to drop something, then run back toward the Officer and appear to call him to fight. Witness-4 saw a woman nearby crying and believed the woman was possibly related to the injured man.

A male individual (Witness-5) who earlier was at the same chiropractor's office, was leaving his appointment and heard women yelling and crying and a male voice yelling for someone to come back. Witness-5 walked to the fence line by Commercial Hemlani Apartments and on the roadway noticed a white sedan and recognized the bald male (the Officer) he saw in the chiropractor's office earlier. The Officer was standing over another male who was faced down on the roadway. Witness 5 saw the Officer telling a crowd of people to stay back and also using his handheld radio to call police and medic units. Witness-5 observed that the Officer had a gun tucked behind his right leg while appearing to scan the area as if someone was going after him. The Officer asked Witness-5 for a towel or cloth. Witness-5 went to his car, found a towel and gave it to the Officer who used the towel to apply pressure to the wound of the male laying on the ground. Witness-5 saw a knife on the ground where Mr. Fabian was after the Officer rolled him over to render aid.



Interview of the Officer

On Sunday, July 4, 2021, OAG Investigators interviewed the Officer. He stated that after work that day, he and his daughter met with his wife for a chiropractor appointment at the CenTam Building. He was operating his white Mitsubishi EVO and his wife her Jeep. After the appointment, while preparing to enter his car with his daughter, he noticed a commotion at the

Commercial Hemlani Apartments. Two males were face to face but the Officer did not think too much of it and proceeded into his car.

As he exited the rear parking lot, executing a left turn onto Tun Josen Fejerang Street, he observed a young male by Commercial Hemlani Apartments who was yelling angrily and appeared to be carrying a weapon. The man ran towards the driver's side of his vehicle and swung a machete to strike the car. The Officer sped away.

As he drove forward, the Officer saw a middle-aged male running out of Commercial Hemlani Apartments towards him who also appeared angry and was holding an object in his right hand. This male then threw the object at the Officer's car. The object struck his windshield and liquid splattered throughout.

The Officer continued to drive down Tun Josen Fejeran toward Rt. 1 away from the men, but there was heavy traffic so he was forced to stop at the stop sign.

At this point he was afraid and fearful for himself and his daughter as they could not get away from the area. Concerned that the male who threw the object and the male with the machete may have chased after him, he tried to reach back to the rear seat to grab his gun but was unable to retrieve it. He then exited his car, opened the rear passenger door, and grabbed his gun out of his bag.

The man who threw the object at the Officer's car was standing about fifteen (15) feet away and was yelling and moving towards other people up the roadway by the apartments. The Officer was trying to locate the man armed with the machetes.

The Officer stated he gave several warnings to the man before shooting. The male ignored the Officer's instructions, continued to yell, and then started to move toward the Officer. The Officer pointed his firearm at the male and continued to warn him to stay back. The man continued to run in the Officer's direction. The Officer then fired one shot to the male's abdomen.

The male individual fell face down to the ground at which time the Officer placed his left foot on the male's right shoulder and he scanned the area for the male with the machete. He then used his GPD radio to call Agat Precinct about the incident and to expedite a medic. He did not have time to switch to the Tamuning Precinct channel.

Autopsy confirms that Mr. Fabian died from a single gunshot wound

On July 11, 2021 Dr. Ishikawa performed a Forensic Autopsy. Dr. Ishikawa determined that the cause of death was a single gunshot wound to lower left abdomen, manner of death – homicide. This was consistent with the statements and other evidence indicating that the Officer fired a single shot.

Analysis of Evidence

The IIT confiscated and requested analysis of the following evidence:

- Crushed “Natural Ice” beer can (from roadway on Tun Josen Fejeran Street) - *fingerprint examination, no prints lifted*
- Empty “Natural Ice” beer can (from trash bin outside Unit 102 Commercial Hemlani Apt.) - *fingerprint examination, no prints lifted*
- “Husky” brand folding knife (from roadway on Tun Josen Fejeran Street) - *fingerprint examination, no prints lifted*
- Glock 27 pistol w/magazine (from within white sedan) - *the Officer issued GPD weapon*
- Expended shell casing (near white sedan) - *determined to have been fired from Glock 27 pistol*
- Expended bullet (from autopsy) - *determined to have been fired from Glock 27 pistol*
- Black T-Shirt (near white sedan) – *determined as not belonging to shooting victim*
- Black/Dark Gray T-Shirt (from autopsy) – *gunshot residue (GSR) examination, no GSR detected, small bullet hole on front left lower side noted*

Legal Analysis

Peace officers⁴ are authorized by Guam law to use deadly force under limited circumstances. Specifically, the use of deadly force is not justifiable unless the defendant believes that such force is immediately necessary to effect a lawful arrest and (1) the arrest is for a felony; (2) the person effecting the arrest is authorized to act as a peace officer; (3) the person effecting the arrest believes that the force employed creates no substantial risk of injury to innocent persons; and (4) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force. 9 GCA § 7.92(c). The use of force by a peace officer is also justifiable if the peace officer believes that such force is immediately necessary to prevent another person from committing a crime involving or threatening bodily harm, damage to property. 9 GCA § 7.92(c).

A review of the evidence supports a finding that a man wielding two machetes approached the Officer’s vehicle. Several statements also support that the Officer’s 7-year old daughter was in the car with him. This incident occurred during the evening hours near apartments and a commercial complex. That as a result of traffic on Rt. 1 being stopped at the base of Tun Josen Fejeran street, the Officer could not drive away from the scene. As the Officer stepped out of his vehicle he had no way of knowing where the individual with the two machetes was. The Officer had seconds to react to a male individual running down the driveway in his direction. The Officer fired a single shot at the individual, and continued to scan the area for

⁴ Guam law defines “peace officer” as including all officers of the Guam Police Department. 8 GCA § 5.55(c). Section 5.55 does not distinguish between when a police officer is on or off duty.

other threats. The Officer then radioed for police and medic assistance, while providing aid to the injured individual.

Based on the totality of circumstances the IIT concluded that the Officer's actions were justified. As a result, the Officer of the Attorney General is declining the filing of criminal charges. In incidents involving the use of force, only matters where the undisputed facts indicate that the use of force was clearly justifiable under the law may be concluded without presentation to the grand jury.