

Officer Involved Shooting

Rescue Eram

April 10, 2021



Hays County Criminal
District Attorney's Report

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SYNOPSIS

Shortly after midnight, April 10, 2021, San Marcos Police Department (SMPD) Officers responded to calls reporting a male subject, walking on Interstate Highway 35 in San Marcos, creating a dangerous situation for himself and motorists on the roadway. Officers Jordan Perkins, Justin Mueller, Franco Stewart, Sgt. Jayson Cormier, and Cpl. John Reeder all responded. They encountered a man later identified as Rescue Eram, a 31-year-old male.

After ignoring officers' requests and demands to remove himself from the roadway, Eram fled from the officers and crossed the traffic lanes to the inside shoulder of southbound IH-35. Ignoring officers' verbal commands to stop, Eram turned and displayed what officers took to be a knife (but which was later determined to be a screwdriver), before continuing to flee.

As officers continued to pursue, Eram crossed the northbound traffic lanes and onto an on-ramp. As officers approached more closely, Eram suddenly turned and charged them with a raised weapon in his hand. Officer Perkins and Sgt. Cormier both fired handguns at Eram, while Officer Mueller attempted to use a Taser to stop Eram's assault.

Officer Perkins shot Eram four times. Eram collapsed at the scene, where he passed away despite officers' and emergency personnel's efforts to preserve his life.

The Texas Rangers conducted an investigation into the matter and concluded that the SMPD officers were justified in their use of force and/or deadly force due to their reasonable perception that such force was immediately necessary to prevent Rescue Eram's use of unlawful deadly force against one or more officers. I, nonetheless, presented the evidence to a Hays County Grand Jury, which declined to indict any of the officers for any possible criminal violations. The Hays County Criminal District Attorney's Office considers this matter closed.

FACT FINDINGS

Rescue Eram's Recent History

Rescue Eram (DOB: 11/22/1989) came to Texas from Guam in 2009 or 2010, and lived with a Texas family, [REDACTED], for some time.

On November 19, 2019, SMPD Officer Joseph Osborne observed Eram driving with an expired registration. When Officer Osborne attempted to make a traffic stop, Eram disregarded Osborne's emergency lights. Officer Osborne activated his siren and then his loudspeaker. Eram did not stop. Eram passed numerous places to stop safely. Eram also ran a stop light before finally pulling over. When Officer Osborne contacted Eram, Eram was trying to eat his marijuana. Although chewing vigorously, Eram still had marijuana in his mouth. He was arrested and then indicted in January 2020, for Tampering with Evidence. He was released on personal recognizance bond on March 19, 2020. The indictment was still pending at the time of Eram's death.

On August 15, 2020, Eram's on-again-off-again girlfriend, [REDACTED], reported that she and Eram had broken up on August 14, 2020. [REDACTED] stated that Eram had stolen pills, clothes and headphones from her residence. Eram came to the police department and denied stealing the pills. He allowed officers to search his car, but no evidence of the stolen property was found other than a pair of running shorts, which Eram agreed to return. When

officers requested that he return [REDACTED] apartment keys, Eram provided two keys, which were later provided to [REDACTED]. Eram was not arrested.

In December of 2020, Eram lost his job at Heldenfels Enterprises, Inc.

Between December 2020 and March 2021, Eram was living with [REDACTED] and her family. [REDACTED] is close to the [REDACTED]. [REDACTED] reported Eram departed her home after failing to follow “house rules.”

Eram again broke up with [REDACTED] at the beginning of February 2021. During this breakup, Eram’s threatening behavior had prompted [REDACTED] to buy a hunting knife and a stun gun. Nevertheless, when Eram went back to [REDACTED], claiming that he was homeless, she allowed him to stay with her.

On March 11, 2021, Eram told [REDACTED] that people were leaving “packages” for him that they needed to go pick up. [REDACTED] went with Eram in her vehicle. But after driving to several locations, she asked him to take her home. Eram accused her of being part of the Cartel, took her phone and her keys, and drove her to a remote location where he told [REDACTED] he was going to drop her off and “his friends would come pick her up later.” [REDACTED] convinced him to take her home instead.

On March 15, 2021, Eram insisted that the two of them go for a drive, despite [REDACTED] protestation that she could not afford the gas. Eram drove to a gas station and demanded that [REDACTED] pay for fuel. When [REDACTED] would not buy gas, Eram “flip[ped] a switch” (in [REDACTED] words). He began to drive recklessly at high speed down IH-35, jerking the wheel right and left, causing [REDACTED] to strike the interior of the car hard enough to bruise her legs. Eram turned off the highway, but he continued to drive while swearing at [REDACTED] and grabbing her hair. For several minutes, Eram twisted [REDACTED] hair hard enough to cause her scalp to bleed, while screaming at her, “Are you going to do what I say?” When [REDACTED] pulled out her phone, Eram grabbed it and threw it out the window. Eram then pulled over and began to try and pull [REDACTED] from the vehicle. [REDACTED] was able to avoid Eram by moving from the front to back seats as Eram moved around the outside of the vehicle.

Eram then “flipped the switch” again and calmed down. He drove back to find [REDACTED] phone, but it had been damaged and was unusable. He then drove [REDACTED] to a convenience store and told her to buy cigarettes. [REDACTED] had a panic attack due to fear that she would purchase the wrong brand and attempted to tell the clerk what had happened. Eram came inside and they left. Police were not called.

Eram returned with [REDACTED] to the apartment. He declared that the whole incident was some sort of “sexual role-play.” [REDACTED] told Eram she needed to do homework, and she logged onto her computer. [REDACTED] messaged a friend, [REDACTED], to ask for help.

[REDACTED] drove from San Antonio to San Marcos to come to [REDACTED] aid. On the way, [REDACTED] called SMPD to report [REDACTED] text messages. Officers responded to [REDACTED] apartment and contacted her. [REDACTED] answered the door, but she appeared dazed, confused, and fearful. Worried that Eram was listening from inside the apartment, [REDACTED] begged the police officers to leave. She would not explain the messages she had sent to [REDACTED], telling the officers it was “a misunderstanding.” [REDACTED] appeared to be very concerned that the police officers might enter the apartment. She pled with officers, “Please don’t chase after him.” While [REDACTED] described the “misunderstanding” as involving some sort of sexual roleplay, she denied that she and Eram had actually had sex or that she had been sexually assaulted. Eram

eventually exited the apartment, but ██████ decided to leave with ██████ without reporting any offense.¹ Eram was not arrested.

On March 16, 2021, ██████ called SMPD and requested a “civil standby” as she returned to the apartment with friends. The apartment had been trashed. ██████ discovered messages throughout the apartment that she described as “Satanic” and threatening (for example, the message “Kill them all” was found on the mirror). One of ██████ stuffed animals had been cut into pieces and scattered in the room. Her knife and stun gun had been stolen.

██████ went to SMPD and reported the March 16, 2021, incident, along with the previously undisclosed details of the day before. ██████ had often observed Eram’s paranoid and threatening behavior. Eram was often concerned about “the Cartel,” and would accuse ██████ of being a part of the Cartel. ██████ discovered that Eram had been researching the Cartel on her computer. He frequently thought someone was after him. He would clean with bleach in order to make sure none of his DNA was left behind. Eram changed the password on ██████ computer without her permission. Eram contacted ██████ pretending to be ██████ father in an attempt to obtain her medical records. ██████ noted that Eram had said that he had used methamphetamine and marijuana at various times, which might explain his delusional and paranoid behavior.²

After leaving ██████ apartment, Eram was able to obtain a room at the Best Budget Inn.³ ██████ contacted Eram after she learned he was living at the Best Budget Inn. She visited him daily for about a week, after which Eram told her he was breaking off their relationship. Eram told ██████ that he “needed to see who he was without her.” He gave no other reason for ending their relationship.

On April 7, 2021, SMPD officers were called to a reported assault involving Eram and another Best Budget Inn resident, Rafael Gonzalez, Jr. Gonzalez claimed that when he had approached Eram’s room to “hang out,” Eram assaulted him for no reason. Gonzales said Eram then took Gonzalez’s cell phone and broke it. Eram told SMPD officers that Gonzalez had barged into his room, so Eram shoved him out, causing Gonzalez to fall and break his cell phone. Eram said he picked up the cell phone after Gonzalez fled and threw it in the dumpster because it was broken. Given the lack of injuries, Gonzalez’s admitted recent meth use, and the fact that Gonzales did not insist on pressing charges, no arrest was made.

On April 8, 2021, Eram had worked with Joe Michael Hernandez, another Best Budget Inn resident, on a painting job in Canyon Lake. Hernandez described Eram as “kind of tripping out,” during the trip to the jobsite. Eram was fidgeting, continuously looking behind them as if he feared being followed and stating that he couldn’t breathe.

On April 9, 2021, Eram again worked with Hernandez. For an unknown reason, Eram placed his phone in a cabinet at the job site and did not retrieve it.⁴

That evening, as Hernandez was returning to the Best Budget Inn around 9 or 10 p.m., he observed Eram soaking wet. Eram claimed he had been in the river.⁵

¹ ██████ later went to SMPD and reported the details of the incident.

² See McKetin R., McLaren J., Lubman D. I., Hides L. The prevalence of psychotic symptoms among methamphetamine users. *Addiction* 2006; 101: 1473–8.

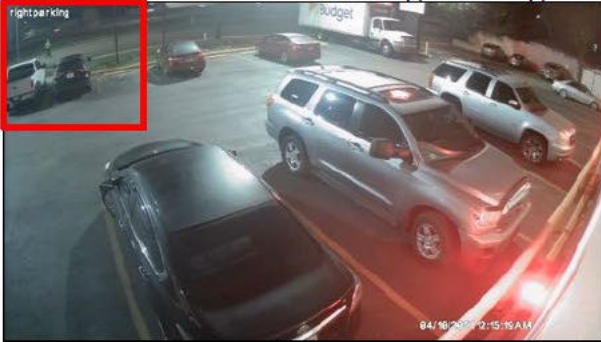
³ At the time, Best Budget Inn was working with a local organization to provide shelter for persons displaced by the pandemic.

⁴ The phone was not discovered until a few days later when Hernandez found it.

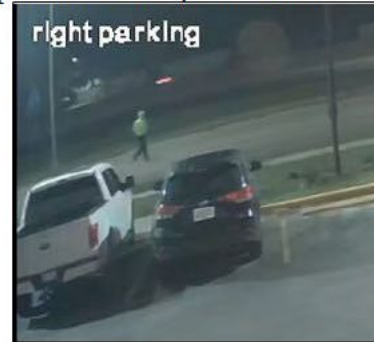
⁵ The San Marcos River is less than a half mile from the Best Budget Inn.

April 10, 2021

Shortly after midnight on April 10, 2021, 911 dispatchers received multiple calls relating to a pedestrian on the interstate. Callers expressed concern that the person was going to be struck, as he was walking on the highway near the guardrail. At 12:15 a.m., surveillance video from the Red Roof Inn, located at 817 IH-35 S., captured a person walking along the highway. The video showed vehicles activating brake lights as they approached the pedestrian.



Red Roof Inn Surveillance – 12:15 a.m.



Inset

Around 12:18 a.m., SMPD Officers Romeo Borrego and Gecorrie Royal were speaking to a witness in an unrelated call at the White Rock Inn, located a short distance south of Red Roof Inn at 801 IH-35 S. The witness pointed out “a guy walking on the highway.” At that time, the person was walking along the concrete divider. Officer Royal contacted dispatch and requested units respond due to his concern for the pedestrian walking in traffic. The officer noticed the subject “casually” walking across the highway. Multiple vehicles were forced to brake as “the subject crossed without care of being struck.” The subject again crossed back to the center of IH 35 near the dividing concrete wall causing multiple vehicles to brake suddenly to avoid hitting him or other vehicles.



Google Image showing relative Best Budget Inn, Red Roof Inn, and White Rock Inn locations in San Marcos, TX

The pedestrian, later identified as Rescue Eram, proceeded to walk along the edge of the interstate, crossing the bridge over the San Marcos River as SMPD officers arrived on the other side of the bridge to intercept him. Officer Stewart’s body camera shows Eram approaching, now apparently carrying the light-colored hoodie in which he had been

previously observed. Eram was walking on the narrow shoulder of the interstate, very close to passing traffic, including large trucks and other fast-moving vehicles.

Officer Stewart waved his flashlight and called out to Eram, “Sir! Let’s get off the highway!” Eram did not respond other than to fling the sweatshirt towards Officer Stewart.



Officer Stewart body camera: Eram approaching across San Marcos bridge over Interstate 35



Officer Stewart then radioed for an additional unit, reporting that the subject was not responding. Officer Stewart asked for help in blocking the southbound highway lanes to reduce the risk Eram’s non-compliance created.

Officer Stewart was joined by Officer Perkins, who also called out to Eram. As Officer Perkins approached Eram at a brisk walk, Eram fled across the highway, continuing southbound along the center concrete barrier separating the north- and southbound lanes. Officer Perkins gave chase.

As Officer Perkins approached Eram, Eram turned to face Officer Perkins momentarily, but then turned again and continued to flee. Having observed an apparent weapon in Eram’s hand, Officer Perkins yelled, “Drop the knife!”⁶ Officer Perkins drew his firearm, but he did not fire, as Eram again fled southbound down the inside shoulder.

Officer Perkins informed other officers that the subject possessed a knife. Canine officer Cpl. Reeder arrived and joined the pursuit in his vehicle.

⁶ Eram was in possession of a screwdriver that appeared under the lighting conditions at the time to have been a knife.

Officer Perkins continued to follow Eram southbound on the inside shoulder of IH-35, as Officer Stewart and Cpl. Reeder followed slowly in their vehicles. Traffic on southbound IH-35 was diverted by the officers' activities into the exit lane.

As Eram passed under the 204A highway exit sign, while still some distance from the officers, he turned and raised both his hands and began to walk towards the officers. Officer Perkins gave several loud orders for Eram to "Drop the knife!" Eram gave no indication of disarming himself. Cpl. Reeder exited his vehicle and deployed his canine, Max, at which time Eram turned and again fled southbound along the inner concrete divider. Concerned that Max could be stabbed or led into traffic, Cpl. Reeder did not release Max.

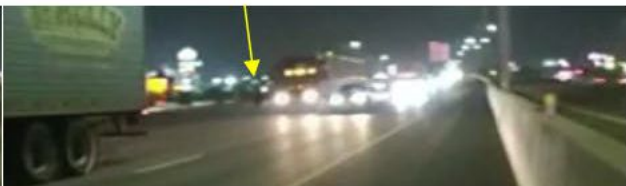
As the pursuit continued, Officer Mueller joined the other officers and approached Eram along the concrete barrier on the IH-35 northbound side. As Mueller, armed with his Taser, attempted to get closer to Eram, Eram crossed the highway on the northbound side, where traffic was undiverted.



Mueller body cam at 00:46:22: Eram (indicated) crossing northbound



Mueller body cam at 00:46:24 - Eram indicated



The northbound traffic included several large trucks traveling at high speeds as Eram crossed in front of them. The trucks were required to brake and swerve in order to avoid Eram (Off. Mueller, in fact, believed that Eram had been hit by a truck until he observed Eram still standing.)

As Officer Mueller crossed the highway to intercept Eram, Eram moved onto the northbound access ramp., with the officers following. Eram yelled, "I said, 'Back off!'" as the officers came closer. The SMPD officers yelled "Stop!" several times as Eram continued to walk away from them.

Just before Officer Mueller could close to within Taser range,⁷ Eram suddenly turned and charged at the officers. As Eram turned, Officer Mueller was closest to him. Officer Perkins approached on Officer Mueller's rear left side and Cpl. Reeder approached from Officer Mueller's right. As the officers had been following Eram, Sgt. Jayson Cormier had driven his patrol vehicle up the northbound access road to intercept Eram and had positioned himself to approach Eram from the east. When Eram charged, Sgt. Cormier was positioned near the

⁷ The Taser device uses cartridges that fire paired probes at a suspect. The probes remain attached to the device by a 25-foot wire, through which current is discharged. The Taser 7 model carried by Officer Mueller had two cartridges, differing in the discharge angle between the prongs. The Close Quarter Cartridges (12-degree) are designed to be effective as close as 4 feet. The Standoff Cartridges (3.5-degree) can be effective at 11.5 feet or longer engagement ranges. The 25-foot wires make the Taser completely ineffective at ranges beyond 25 feet.

bottom of the embankment forming the side of the onramp that Eram was walking down. Officer Stewart had been following some distance behind the other officers.

The involved SMPD officers observed⁸ Eram to have what they believed to be a knife raised in his hand. The SMPD officers observed Eram charge aggressively at one or more of them.

Eram ran several steps before both Officer Perkins and Sgt. Cormier discharged their firearms at him, and Off. Mueller attempted to deploy his Taser. Eram was struck, but he ran several more steps after the officers began shooting before falling to the ground.

Officer Perkins, who fired the shots that fatally injured Eram,⁹ perceived Eram to have been within 20 feet of Officer Mueller when Eram's assault began. Officer Perkins feared for the officers' lives and began firing after Eram had taken several steps towards the officers. Perkins fired 10 rounds.¹⁰ He stopped firing after Eram was on the ground and no longer a threat.

After seeing Eram begin to charge, Sgt. Cormier also fired twice. Cormier did not hit Eram, who was above and moving laterally to Cormier's position.

Still captures from officer body-worn cameras



Mueller BC at 00:47:25

Mueller BC at 00:47:26 □ Eram turns

⁸ Eram's actions were captured on the officers' body cameras as well.

⁹ See Firearms Forensic Testing, on page 18.

¹⁰ Officer Perkins initially believed he had only fired 6 or 7 times. He only realized he had fired 10 times after noting the number of missing rounds in his firearm. These firing underestimates are typical. Officers are trained not to expect a single shot to stop a threatening suspect, but to continue firing until the threat is resolved. The decisions to begin firing and to cease firing have been shown to be delayed by the time necessary to perceive the circumstances and then to react. In laboratory studies, officers averaged one additional trigger pull after activation of a stimulus to stop firing. Researchers note that "if an officer were to take [merely] 0.56 seconds to react to a stop-shooting signal, three to four [extra] rounds could be fired by the officer as an automatic sequence after the signal to stop had already occurred." The slower an officer's reaction time, "the greater number of shots [can] be fired before a conscious stopping can occur." See Lewinski, W. J., Hudson, B., & Dysterheft, J. L. (2014, October). Police officer reaction time to start and stop shooting: The influence of decision-making and pattern recognition. In Law Enforcement Executive Forum (Vol. 14, No. 2, pp. 1-16).



Mueller BC at 00:47:27 Eram being charged



Mueller BC at 00:47:28 Mueller triggers Taser



Perkins BC at 00:47:22 Object visible in right hand



Mueller BC at 00:47:29 Eram continues to run at officers



Mueller BC at 00:47:30 Eram falls



Mueller BC at 00:47:32 Mueller fires 2x Taser cartridges



Perkins BC at 00:47:36 screwdriver in Eram's right hand



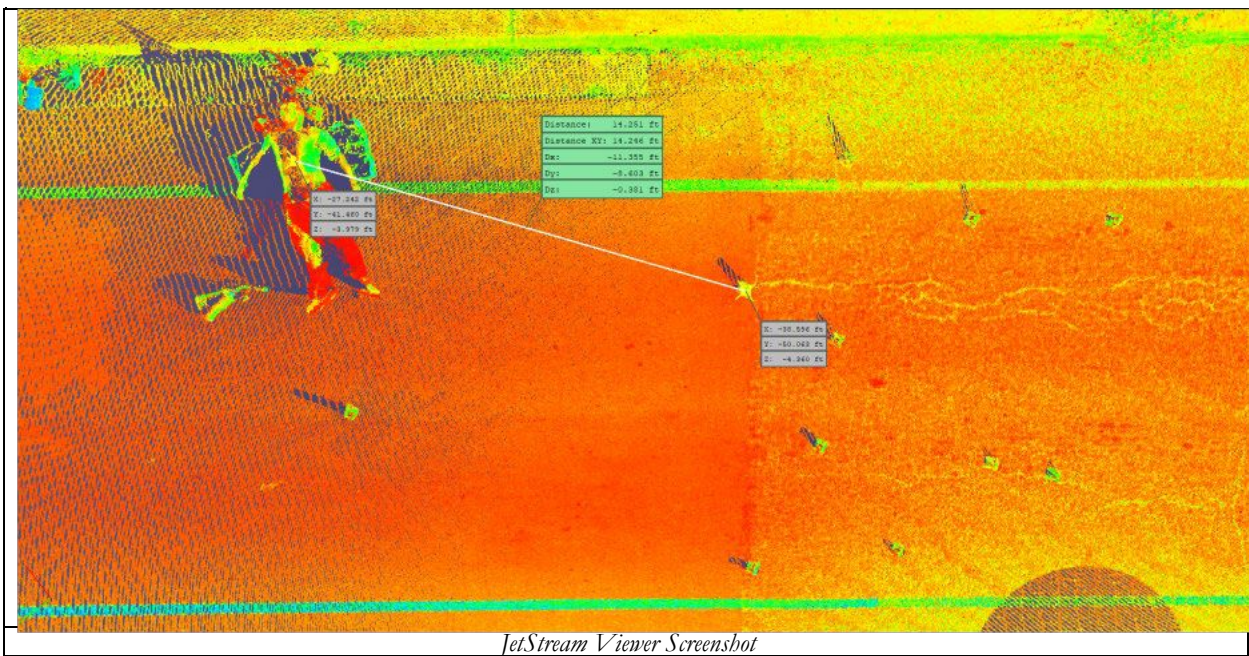
Perkins BC at 00:48:03 screwdriver visible on ground

While one or both of Officer Mueller's Taser strikes impacted Eram,¹¹ Eram did not exhibit signs of the typical muscular incapacitation the Taser is intended to cause, suggesting that the Taser was essentially ineffective.

After following Eram across the northbound highway lanes, Cpl. Reeder was able to observe the shooting, but he did not draw or fire a weapon, as he was handling K9 Max throughout the incident. When Cpl. Reeder had initially been prompted to bring Max out of the truck, he had been unable to retrieve and attach Max's leash before Eram reversed direction and fled. Cpl. Reeder had pursued, controlling Max by Max's harness alone. Reeder observed Eram turn on the other officers and believed Eram intended to stab someone.

For a moment, Eram lay on his left side, then abruptly rolled to his right side, then onto his back. Although Eram maintained his grip on the "knife" in his right hand, the officers did not fire again. Eram then dropped the object, either due to officers' commands because he was no longer capable of maintaining his hold on it. When officers approached, they were able to see for the first time that the "knife" was, in fact, a screwdriver. Officer Stewart kicked the screwdriver out of Eram's reach. Officers then quickly began administering CPR and summoning emergency medical services.

EMS personnel and SMPD officers continued CPR for over 20 minutes coincident with other medical intervention and treatment. Eram eventually succumbed to his injuries at the scene.



Texas Ranger Nick Hill documented the scene using a Leica Geosystems Scan Station P20 (3D laser scanner). This system recorded the relative positions of the evidentiary items noted at the scene, including the distance between Eram's body and the shell casings from the cartridges fired by Officer Perkins. As measured by the Leica system, the nearest casing to Eram's body was just over 14 feet away (*see image above*). The farthest distant casings were

¹¹ The medical examiner located two conductive electrical device injuries, one on the left side of the chest and one on the right side of the back. For the Taser to work as intended, both probes must attach to the subject in order to complete the circuit. It seems unlikely that the two wounds described by the medical examiner were from the same cartridge, as they were essentially on opposite sides of Eram's body.

approximately 25 feet from the body. The casings' locations are consistent with their having been ejected from Perkins' pistol where he was positioned near the eastern side of the northbound onramp.

Medical Examiner findings

Travis County Medical Examiner Dr. Kendall Von Crowns determined Eram's cause of death as multiple gunshot wounds. The Medical Examiner's findings are summarized in his report as follows:

There were multiple gunshot wounds of the head, torso and left leg. The gunshot wound of the head was tangential and fractured the outer surface of the skull. The gunshot wound of the chest perforated the musculature of the chest, right lung, aorta, left lung, and penetrated the musculature of the back where a bullet was recovered. The gunshot wound of the back perforated the musculature of the back, fractured the lumbar spine, and penetrated the left psoas muscle where a bullet was recovered. The gunshot wound of the left leg perforated the musculature of the leg, fractured the left tibia and partially exited the body. Bullet fragments were recovered from the musculature. Associated injuries were subarachnoid hemorrhage (blood along membrane covering brain) of the brain and bilateral hemothoraces (blood in right and left chest cavities). There were puncture wounds of the chest and back consistent with conductive electrical device¹² injuries.

Postmortem toxicology testing demonstrated methamphetamine, amphetamine, tetrahydrocannabinol and 9-Carboxy-THC.

Dr. Crowns also recovered bullets and bullet fragments from Eram's upper back, left side, and left leg associated with the gunshot wounds described above.¹³

The Toxicology Report indicates the presence of drugs and their associated metabolites in Eram's blood in the following concentrations:

Tetrahydrocannabinol: 3.0 ng/mL

9-Carboxy-THC: 10 ng/mL¹⁴

Methamphetamine: 620 ng/mL¹⁵

Amphetamine: 55 ng/mL¹⁶

¹² The reference injuries are consistent with a Taser device.

¹³ See Firearms Forensic Testing, on page 18.

¹⁴ Tetrahydrocannabinol (THC) is the psychoactive component of marijuana. 9-Carboxy-THC is a major metabolite of THC. THC in blood at levels above 1 ng/mL indicates recent cannabis consumption for occasional users. The metabolite carboxy-THC may remain for several days following occasional use, and longer with more frequent use. See Banta-Green CJ, Rowhani-Rahbar A, Ebel BE, Andris L, Qiu Q. Marijuana Impaired Driving: Toxicological Testing in Washington State. Alcohol & Drug Abuse Institute, University of Washington State, July, 2016.

¹⁵ Blood concentrations are typically in the range of 20-50 ng/mL for patients taking prescribed methamphetamine for attention deficit disorder, weight loss or narcolepsy. Abusers can have much higher levels. Blood methamphetamine plasma levels above 300 ng/mL are associated with violent behaviors. See Logan B. K. Methamphetamine and driving impairment. *J Forensic Sci* 1996; 41: 457-64. The half-life for methamphetamine (the time period required for the body to decrease the blood level of methamphetamine by 50%) ranges from 6-20 hours.

¹⁶ Amphetamine is both a metabolite of methamphetamine and a drug of abuse on its own. Ratios of methamphetamine to amphetamine that are >3.0 and <10.0, according to the scientific literature, *Officer Involved Shooting Report - Rescue Eram - April 10, 2021*

Firearms Forensic Testing

The Texas Department of Public Safety's Austin Crime Lab compared the bullet evidence recovered during the autopsy to test fires from Officer Perkins's Glock 17Gen4 and Sgt. Cormier's Glock 17Gen4. The lab determined that the bullets, bullet jacket, and bullet jacket fragment obtained during autopsy were fired from Officer Perkins's pistol.¹⁷

LEGAL STANDARDS

Use of Force in Defense Against Unlawful Force

Any person is justified in using deadly force¹⁸ when the person is acting in self-defense¹⁹ and the person reasonably believes the deadly force is immediately necessary to protect himself against unlawful deadly force or to prevent the imminent commission of certain violent offenses, including murder.²⁰

A person may also use deadly force when the person reasonably believes that such force is immediately necessary to protect a third person and that the unlawful force threatening the third person would justify the use of deadly force in self-defense by the person being threatened.²¹

Use of Force in Arrest Situations

The use of force to resist an arrest is only lawful if, before the person offers any resistance, the peace officer uses or attempts to use greater force than necessary to make the arrest and the person being arrested reasonably believes the force is immediately necessary to protect himself against the peace officer's use or attempted use of greater force than necessary.²² This provision does not justify the use of deadly force¹⁸ against an officer.

A peace officer is justified in using force when the peace officer reasonably believes force is immediately necessary to make an arrest or to prevent escape after arrest, so long as the officer reasonably believes the arrest is lawful and before using force, the officer manifests his purpose to arrest and identifies himself as a peace officer, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.²³ Deadly force is warranted when the officer also reasonably believes that the conduct for which arrest is authorized included the use or attempted use of deadly force; or

strongly suggest only methamphetamine abuse, as amphetamine is a metabolite of methamphetamine but not *vice versa*. The ratio here is 11.27.

¹⁷ Some of the bullet fragments were unsuitable for microscopic comparison, but there is no evidence to suggest that these fragments were not also parts of the bullets fired by Officer Perkins.

¹⁸ "Deadly force" is defined as "force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury." Tex. Pen. Code Ann. § 9.01.

¹⁹ *I.e.*, when the person "reasonably believes the force [used] is immediately necessary to protect the actor against the other's use or attempted use of unlawful force." Tex. Pen. Code Ann. § 9.31.

²⁰ Tex. Pen. Code Ann. § 9.32.

²¹ Tex. Pen. Code Ann. § 9.33.

²² Tex. Pen. Code Ann. § 9.31(c).

²³ Tex. Pen. Code Ann. § 9.51 describes the circumstances under which a peace officer is justified in using force or deadly force to make an arrest or search or the prevent escape following an arrest.

that there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.²⁴

APPLICATION OF STATUTES TO THIS INCIDENT

Eram's walking on the controlled-access interstate highway created a risk of death or serious bodily injury to himself or others to which the officers involved had a duty to respond. Eram ignored the clearly uniformed officers' verbal requests and commands for him to leave the highway. Eram was aware of the officers' presence and attempts to interact with him when he flung his shirt at Officer Stewart and fled across the highway from Officer Perkins. Eram committed the offense of evading detention when he refused to leave the highway when requested, then fled across the southbound roadway after being ordered to stop.²⁵

Prior to Eram's turning towards Officer Perkins and displaying the screwdriver, the officers had not used or attempted to use force or deadly force against Eram. From their attempts to convince him to leave the highway or stop and engage with them, the officers had a reasonable belief that Eram identified them as SMPD peace officers trying to get him away from danger. The officers also reasonably believed that Eram threatened them with a deadly weapon. The officers' belief that the weapon Eram displayed was a knife was reasonable under the circumstances, given the lighting and the manner in which Eram displayed it. Either a knife or a screwdriver is a deadly weapon when in the manner of its use or intended use it is capable of causing death or serious bodily injury.²⁶ The officers, therefore, formed the reasonable belief that Eram had committed a first-degree felony offense, aggravated assault on a public servant.²⁷

When the officers continued to follow Eram, and he then turned and charged at them, with the screwdriver raised in his hand, the officers' belief that he was about to commit violence against one or more of them was reasonable. The pertinent portions of the officers written statements are set out below:

²⁴ Tex. Pen. Code Ann. §9.51.

²⁵ A person commits evading detention "if he intentionally flees from a person he knows is a peace officer " attempting lawfully to arrest or detain him." Tex. Pen. Code Ann. §38.04.

²⁶ "The provision's plain language does not require that the actor actually intend death or serious bodily injury; an object is a deadly weapon if the actor intends a use of the object in which it would be capable of causing death or serious bodily injury." *McCain v. State*, 22 S.W.3d 497, 503 (Tex.Crim.App.2000). "The placement of the word "capable" in the provision enables the statute to cover conduct that threatens deadly force, even if the actor has no intention of actually using deadly force." *Id.*

²⁷ A person commits aggravated assault if the person "commits assault as defined in § 22.01, Penal Code and the person uses or exhibits a deadly weapon during the commission of the assault." Tex. Pen. Code Ann. § 22.02 (a)(2). A person commits "assault as defined in § 22.01 when the person intentionally or knowingly threatens another with imminent bodily injury. Tex. Pen. Code Ann. § 22.01(a)(2). Aggravated assault is a first-degree felony when committed "against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant." Tex. Pen. Code Ann. § 22.02(B)(2)(b).

Excerpt from Officer Perkins's statement:

At this time, the subject stopped in the middle of the on ramp and turned around, facing the direction of myself, Officer Mueller and Officer Reeder. The subject was approximately 20 feet away from Officer Mueller and approximately 25 feet away from myself and Officer Reeder. He raised the knife over his head again, making stabbing motions. I, and other officers, gave continuous commands to drop the knife which he ignored. After repeated failed commands, the subject began to charge in our direction with the weapon raised above his head. Fearing for my life and my fellow officer's lives, I began firing my pistol at the man until he dropped to the ground and no longer appeared to be an immediate threat. When firing at the subject, I was aiming for center mass, but he was a moving target the entire time, as he was charging at us.

Excerpt from Sgt. Cormier's statement:

Because the subject was carrying a large knife and in such close proximity to the pursuing officers, I perceived him to be a serious and potential deadly threat. Upon getting a full visual on the subject, I pointed my pistol at the subject and ordered him to stop in a loud voice. He looked at me and continued to walk southbound. I again yelled for the subject to stop while keeping my pistol pointed at him. This time he stopped, raised the knife above his head in his right hand, while he turned around and charged at the officers that were a close distance behind him. I vividly remember the look on the subject's face as he turned around and charged the officers. It appeared to me that his expression was one of anger, violence and intent to cause harm or death to those in his path. At the time the subject charged at the officers with the knife, I believed his intent was to kill or severely injure one of the officers and I feared for their lives or any civilian motorists that may have still been in the area or stopped within close proximity.

Fearing for the lives of my fellow officers, I fired approximately two or three shots at the subject. I was aiming for center mass, however, the subject was a moving target and I was positioned at an angle below him. I saw the subject fall to the ground approximately 10 feet in front of the officers on 1-35 and I immediately stopped firing.

Excerpt from Officer Mueller's statement:

Just as I reached effective [Taser] range, the male turned directly toward me. I saw what I believed to be a knife in his right hand, and I saw the male raise the knife above his head and begin charging toward me and the other officers behind me. I remember the expression on his face being filled with rage and his eyes wide. I remember him looking directly at me, and at that point I believed that his intent was specifically to stab me.

Fearing for my life and/or serious bodily injury, I immediately deployed my taser but it appeared to be ineffective. I then fired the second cartridge in my taser, and it appeared to be ineffective also.

Based solely on my recollection, I also knew that Sgt Cormier and Officer Perkins both fired their service pistols at the subject around the same time I deployed my taser, but I am unsure if they fired before, after or during my taser deployment. I heard a rapid succession of gunshots and observed the subject drop to the ground approximately 8-10 feet in front of me.

Excerpt from Cpl. Reeder's statement:

Before Officer Mueller could get within taser range the suspect turned and charged towards Officer Mueller. While he was running towards Officers the suspect had his right hand over his head clearly prepared to stab an Officer. I heard multiple gun shots and the suspect started falling to the ground. Once the suspect fell to the ground face down and then rolled over onto his back. I could see that he was still holding the knife in his right hand. The suspect dropped the knife from his hand next to his right side.

Excerpt from Off. Stewart's statement:

I saw Officer Perkins, Officer Mueller and Corporal Reeder approximately 20-30 feet behind the subject following him. I also observed Sergeant Cormier entering the on-ramp from the service road, by walking up the grassy median. At this time, I was still at least 10-20 feet behind the other officers, and I observed the subject swiftly turn around, face the officers and take a few steps forward. I yelled out to "tase him" but then the subject immediately lifted his right hand holding the weapon above his head and began sprinting at the police officers that were within 20 feet of him. Fearing for my life and my fellow officers' lives, I unholstered my firearm but before I could aim and fire at the subject, I heard shots from other officers on scene.

The officer's reported perceptions are compatible with the body camera footage and other evidence observed at the scene. The officers reasonably perceived Eram's actions as demonstrating the imminent unlawful use of deadly force, potentially the murder of a peace officer.²⁸ Eram's refusal to drop the weapon when demanded at gunpoint raised reasonable concerns about his intentions.²⁹ Eram's subsequent sudden charge towards officers with the weapon raised cannot be reasonably interpreted as anything other than a potentially deadly attack.

The officers also reasonably believed that their use of deadly force was immediately necessary to prevent Eram's attack. The officers had very little time in which to react and decide whether to defend themselves and their fellow officers. In such a situation, the officer must determine whether to use force to prevent the potential stabbing not merely before the

²⁸ The officers could not have known the autopsy results at the time, but the methamphetamine levels below those found in Eram's blood have been correlated to violent behavior. *See* footnote 15.

²⁹ We should note that within the last several years, two SMPD officers—Kenneth Copeland and Justin Putnam—were mortally wounded in the line of duty. When Officer Putnam was ambushed and murdered, Officers Stewart and Mueller were also shot but they, fortunately, survived their life-threatening wounds. We cannot know whether or how these recent and tragic line-of-duty shootings of themselves and their colleagues impacted these SMPD officers' reactions to Eram's threatening actions on April 10, 2021. Their subjective perceptions, however, do not alter the objectively reasonable conclusion that Eram was about to attack the officers with a weapon.

stabbing occurs, but in time to be able to accurately fire without endangering the person the officer is trying to protect. A suspect within the range of a taser (25 feet) can close with and physically attack an officer in less than two seconds.³⁰ If Eram had closed to within stabbing range of Officer Mueller, Officer Perkins and the other officers would not have been able to fire without risking injury or death to Officer Mueller as well as Eram. Had Officer Perkins and Sgt. Cormier waited more than a fraction of a second longer to fire, the opportunity to prevent Eram from stabbing Mueller could have been lost.

CONCLUSION

Of the officers involved in this case, only Officer Perkins and Sgt. Cormier engaged in the use of deadly force. Officer Mueller's use of the Taser constitutes a use of force, but not deadly force.

At the time that Officers Perkins and Mueller, and Sgt. Cormier used force and/or deadly force against Eram, they had a reasonable belief that such force was immediately necessary to protect themselves or other officers from Eram's apparent, imminent, and unlawful use of deadly force. Under the standards set out in the Texas Penal Code, these officers' actions were legally justified.³¹

A Hays County Grand Jury declined to indict any officer for any offense. No criminal charges will be filed. The Hays County Criminal District Attorney's Office considers this case closed.



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³⁰ The officers in their statements refer to the so-called "21-foot rule," a commonly accepted understanding that 21 feet is either a) the minimum distance that a suspect can cross and attack an officer with a knife before an officer can draw and fire his or her weapon, or b) a safe distance to deal with potentially dangerous suspects armed with knives. Studies have shown that a suspect can close a 21-foot distance in an average of 1.5 seconds. Tueller, D. (1983, March). How close is too close? *SWAT Magazine*. A more recent examination of distance and reaction time for officers indicate that "for 95% of officers to be able to draw and fire their weapons at a charging suspect successfully, they would need to be 32 feet apart." William L. Sandel, M. Hunter Martaindale & J. Pete Blair (2020): A scientific examination of the 21-foot rule, Police Practice and Research, DOI: 10.1080/15614263.2020.1772785. While the officers in this case had their weapons drawn prior to Eram charging at them, laboratory condition can never fully replicate all the real-work variables affecting officers' reaction time, decision making, and accuracy.

³¹ Whether the officers' actions complied with their agencies' policies and training guidelines is beyond the purview of this report, and this conclusion should not be taken to represent any recommendation to the agencies in that regard.