



Tempe Police Department
Organizational Service Division
Professional Standards Bureau



To: Commander M. Horn
From: Sergeant R. Johnson
Date: January 31, 2020

Involved Employees

Officer Joseph Jaen #18337 Tempe Police Department

Involved Citizen

Antonio Arce Jr., DOB [REDACTED] *Deceased*

Background

On January 15, 2019 at approximately 1438 hours, the Tempe Police Department received an anonymous call for service related to a suspicious pick-up truck parked in the alley behind 4502 S. Fair Lane, Tempe. The caller reported the pick-up truck backed up to a backyard, and two unknown subjects were loading up the vehicle; the caller indicated they were concerned about the activity as there have been recent burglaries/thefts in the area.

Officer Joseph Jaen, call sign 2P61, responded to the scene to investigate and activated his body worn camera upon his arrival. Upon arriving on-scene, Ofc. Jaen located the vehicle in the alley with a subject, who was later identified as Antonio Arce, Jr., inside the passenger compartment of the truck rummaging through property. Prior to making contact with Arce, Ofc. Jaen exited his patrol vehicle and moved to a position of concealment behind a large dumpster.

Ofc. Jaen continued to watch Arce inside the truck (which was parked facing northbound in the alley), when he saw an object, which appeared to be a handgun, in Arce's hand. As a result, Ofc. Jaen drew his firearm from his holster and held it at a "low ready" position. Ultimately, Arce saw Ofc. Jaen watching him, and he [Arce] exited the truck through the passenger side of the vehicle. Once outside the vehicle, Arce immediately began to run at a fast pace southbound down the alley and away from Ofc. Jaen. Ofc. Jaen moved from his position of concealment and temporarily gave chase on the driver's side of the truck. However, Jaen stopped running, took a shooting stance, and discharged his firearm twice at Arce who continued to run southbound away from him.

Arce was struck by one of Ofc. Jaen's shots, yet he continued to run southbound and then eastbound down the alley and out of Ofc. Jaen's field of vision. Upon rounding the corner and running a little further to Fair Lane, Arce collapsed; despite life-saving efforts administered on-scene by police officers and paramedics, Arce died from his wound(s).

The scope of this administrative investigation will focus on whether the guidelines set forth within the Tempe Police Department's Use-of-Force Policy and other related departmental and City policies, were followed by Ofc. Jaen.

Notification of Incident/PSB Response to the Scene

On January 15, 2019, I was contacted by Commander M. Pooley and made aware an officer-involved shooting which had occurred in Tempe. Once I learned where the shooting occurred, I responded to the area where a criminal investigations briefing was going to take place.

During the briefing from Field Operations personnel to Investigations Division personnel, a basic summary of information known at the time (such as incident locations, call times, and involved parties) was provided.

Upon conclusion of the briefing, I remained outside of the scene cordoned off by yellow crime scene tape, but visually observed portions of the involved area where the shooting took place; I did so for future context and reference. Further, prior to departing from the scene, I, along with other investigators assigned to the criminal investigation, reviewed the AXON body-worn camera (BWC) footage captured by Ofc. Jaen's camera.

Once I finished reviewing the recorded footage, I concluded my activities at the scene.

Case Assignment

I was assigned as the primary Professional Standards Unit investigator on the day of the incident (January 15, 2019). Initial efforts to gather preliminary facts and documentation to examine the incident from an administrative perspective began immediately. I later learned that on February 20, 2019 the criminal investigation into this matter had concluded and was forwarded to the Maricopa County Attorney's Office (MCAO) for review and a charging determination.

Approximately, the first week of March 2019, a concurrent administrative investigation into this matter was officially launched.

As of the writing of this investigation, the MCAO has not rendered a decision as to whether or not criminal charges are going to be levied against Ofc. Jaen.

Review of the Criminal Investigative Report and File

Approximately, February 20, 2019, I received a copy of the report detailing the criminal investigation into this matter. Upon receipt of the criminal investigative file regarding this incident (documented under report #19-6376), I reviewed the contents of the case file, to include the following documents:

- Fifty-nine different reports, including the original report by Detective M. Jones, as well as supplemental reports from other officers, detectives and forensic services technicians who were assigned to investigate this incident;
- MDT/CAD data from the officer activity on-scene;
- Search warrants and court orders;
- Property/evidence receipts;
- Multiple scene diagrams;
- Medical records/paramedic run reports;
- Forensic reports from the Arizona Department of Public Safety Crime Lab;

- The autopsy report for Antonio Arce, Jr. from the Maricopa County Medical Examiner's Office;
- Transcripts from interviews with Ofc. Jaen; and
- Numerous related document attachments.

I also reviewed multimedia evidence, to include:

- Photographs of the scene taken by personnel from the Forensic Services Unit, to include 464 photos which were uploaded into Evidence.com;
- Photographs of the scene and autopsy taken by Maricopa County Medical Examiner's Office;
- Thirty-three body-worn camera (BWC) files from different investigators that responded to the scene; and
- Audio-recordings of 911 calls, as well as dispatch/radio traffic.
- Grant Fredericks' Independent analysis report of BWC which included enhanced video's and pdf images.

Note- After this incident occurred, Ofc. Jaen was placed on FMLA at the direction of his physician, thus an administrative interview with Ofc. Jaen was not conducted.

Criminal Investigative Review

Upon review of the incident report and all supporting documentation/media, I learned about the details of the event and resulting actions taken during the criminal investigation to include the subsequent discoveries made by investigators. While not all-encompassing, the following details provide a summary of information documented in the investigative report.

- On Tuesday, January 15, 2019 at 1438 hours, a 911 call was placed to the Tempe Police Communications Center from an anonymous caller. The caller reported seeing a suspicious vehicle parked in the alley behind 4502 S. Fair Ln, Tempe. The caller explained that the pick-up truck in question, was backed up to a residential backyard and two unknown subjects appeared to be loading up the vehicle; the caller indicated they were concerned about the activity being witnessed as there have been recent burglaries/thefts in the area.
- Ofc. Jaen acknowledged the call for service and responded to the area. At approximately 1452 hours, Ofc. Jaen arrived on scene. Upon arrival, Ofc. Jaen observed a vehicle parked northbound in the alley. Ofc. Jaen believed he was approximately 200 yards away when he first observed the vehicle.

- Ofc. Jaen entered the alley operating a marked Chevy Tahoe while dressed in a standard Tempe Police uniform. Upon driving into the alley, Ofc. Jaen stopped his vehicle in close proximity to the front of the parked truck.



- Upon exiting his patrol vehicle, Ofc. Jaen observed movement inside the truck's passenger compartment. Ultimately, Ofc. Jaen saw that a person was inside the truck and as such, he moved from around the front of his police vehicle and walked to a nearby City dumpster for concealment.

- From his vantage point, Ofc. Jaen continued to watch the person in the truck. As he continued to watch, he saw that the person inside the vehicle [Antonio Arce] was holding what appeared to be handgun. Ofc. Jaen can then be seen on his BWC drawing his duty issued handgun, a Glock 22, .40 caliber, from his holster - holding his gun at the "low ready" position.



- Ultimately, Arce exited the truck through the passenger side door and immediately began to run at a fast pace southbound down the alley and away from Ofc. Jaen. Arce could be seen running away through the windshield of the grey truck. As Arce is running away, Ofc. Jaen yelled, "Hey," moved from his position behind the dumpster while radioing, "2P61" and temporarily gave chase on the driver's side of the truck. While giving chase Ofc. Jaen also yelled, "Let me see your hands!" whereupon he [Jaen] stopped running, took a shooting stance, and discharged his firearm two times at Arce who continued to run southbound away from him.

- Despite being struck by one of Ofc. Jaen's fired rounds, Arce continued to run southbound, and then eastbound, down the alley and out of Ofc. Jaen's field of vision. Upon rounding the alley corner, Arce ran to the entrance/exit to the alley on Fair Lane and collapsed in the street.



- When responding back-up officers arrived and approached Arce, he was found to be in possession of a black Airsoft replica 1911 handgun. Though life-saving efforts were administered by emergency personnel, both on-scene and at the hospital, Arce ultimately died from his wound(s).
- Further examination of the area where Arce had collapsed, led to the discovery of a clear plastic container of UKARMS orange airsoft 6mm BBs. Similarly, at the hospital where Arce had been transported to, Det. O'Brien retrieved two cell phones from Arce's property. One identified as belonging to [REDACTED] - later determined to be the owner of the grey Chevy truck - and a phone that was determined to belong to Arce.
- An autopsy of Arce revealed that "...it had appeared [to her] the trajectory of the bullet entered from the right rear lower upper scapula area, perforated the right lung, and struck the heart before it entered the inferior vena cava vein and stayed inside the vein as it followed the path of the vein back down to its resting place..." (Dr. Maskovyak, Medical Examiner, Det. M. Jones case agent report).
- A bullet was recovered from the autopsy and was sent to the Arizona Department of Public Safety to be forensically compared to Ofc. Jaen's service weapon.
- Criminal investigators subsequently submitted the case to the Maricopa County Attorney's Office Shooting Review Team for analysis and charging determination.

Body-worn camera evidence

Upon checking the Evidence.com database for uploaded BWC video, I reviewed a series of clips from various police officers to include Ofc. Jaen. Upon reviewing all of the video evidence, along with scene reports and scene diagrams, the following notable events can be seen:

- Ofc. Jaen's video starts with him inside of his marked patrol vehicle traveling southbound in the alleyway west of Fair Lane. At approximately 28 seconds into the video, Ofc. Jaen comes to a stop and places the vehicle into a parked position. As Ofc. Jaen is traveling down the alleyway, due to the placement of the BWC, one

cannot immediately see the grey truck. It is not until Ofc. Jaen exited his patrol vehicle that one is able to view the truck.

- Ofc. Jaen is seen exiting his vehicle and is observed removing a cellphone from his lap with his right hand and placing it into his left hand as he shuts the door to his vehicle.



- Once outside of his vehicle, Ofc. Jaen walks to the front bumper of his patrol vehicle. From the scene report authored by Det. G. Duarte, the distance between the front bumper of Ofc. Jaen's patrol vehicle and the front bumper of the suspicious truck is 26 feet.



- Ofc. Jaen can be seen waiting at the front of his vehicle observing the movement inside of the grey truck for approximately four seconds. After four seconds, Ofc. Jaen moved to a large dumpster that he used for concealment as he continued to monitor the movement of Arce inside the truck.

- After approximately five seconds of monitoring the truck, one can see Arce moving about in the rear passenger compartment area of the truck. Arce is then seen possessing an object in the shape of a handgun which was later determined to have been removed from the rear passenger compartment area of the truck. This behavior by Arce caused Ofc. Jaen to draw his service weapon and hold it at the "low ready" position.



- Seconds after Ofc. Jaen drew his service weapon, the front passenger door opens to the truck. Arce is then seen partially outside of the truck. Ofc. Jaen says, "Hey!" Arce can then be seen through the truck's windshield running southbound. In response, Ofc. Jaen left his position behind the dumpster and radios, "2P61!" as he begins to run after Arce.



- When Ofc. Jaen briefly chased Arce southbound, he yelled "let me see your hands!" Arce can be seen in camera view running full-speed away from Ofc. Jaen.
- Ofc. Jaen is observed raising his service weapon at Arce as he [Arce] continued to run away from Ofc. Jaen southbound through the alley. Ofc. Jaen chased briefly until he reached the end of the truck bed. In reviewing the BWC footage I did not see Arce turn toward Ofc. Jaen. No threat could be observed.
- Ofc. Jaen stopped pursuing Arce at the end of the truck. Ofc. Jaen can then be heard/seen on BWC stopping, taking a shooting stance, and then firing two shots. The distance between Ofc. Jaen and Arce, when Ofc. Jaen took his first shot, was measured to be approximately 114.5 feet (38.16 yards). The first shot was determined by investigators to have missed Arce. The second shot that Ofc. Jaen fired, was determined by investigators to have struck Arce underneath the right scapula. The second shot was fired approximately 1.5 seconds after Ofc. Jaen's first shot. Again, I did not see Arce turn toward Ofc. Jaen. No threat could be observed on camera.





- Following the second shot, Ofc. Jaen resumed running in the alley southbound after Arce. Ofc. Jaen broadcasted on the radio, "2P61! Shots fired! Shots fired! Male subject running southbound through the alley!" As Ofc. Jaen pursued Arce, Arce is not in the view of the camera as he had rounded a corner eastbound in the alley.
- From his video, Ofc. Jaen can be seen continuing to run southbound. As he approached the curve in the alley, Ofc. Jaen is observed slowing down and carefully and tactically clearing the turn of the alley toward the east. As Ofc. Jaen continued eastbound through the alley, he located Arce who was at the end of the alley as it met the roadway Fair Lane.
- As can be seen in Ofc. Jaen's BWC footage, Arce was discovered lying face down on the ground. Ofc. Jaen can be heard on video giving Arce commands such as, "Put your arms out or I will shoot you again!" There was no response from Arce after the commands were given. Ofc. Jaen is heard continuing to yell commands at Arce, while also giving directions over the radio to back-up officers as to how to approach the scene.

- While Ofc. Jaen held his position for a short period of time, Ofc. Cano and Officer-in - Training (OIT) Contos arrived on scene to take over. Ofc. Cano is observed and heard on recording giving Ofc. Jaen instructions to put his gun down and move aside.



- Ofc. Lewis arrived on-scene just after Ofc. Cano and OIT Contos and immediately contacted Ofc. Jaen to make sure he was not injured. This contact occurred in the alleyway entrance/exit. After Ofc. Lewis conducted a verbal and visual check of Ofc. Jaen, Ofc. Lewis left him and assisted other officers on-scene with detaining Arce and providing him [Arce] with emergency medical treatment.
- Additional back-up officers continued to arrive on scene to include: Ofc. Warbington, Ofc. Welling, and Ofc. Koger. They all entered the alleyway from the north off of Vineyard Rd. and walked to the end of the scene where Ofc. Jaen was located. Ofc. Warbington and Ofc. Welling continued past Ofc. Jaen to Arce and assisted with providing him medical treatment. Ofc. Koger stood by with Ofc. Jaen.
- As Ofc. Jaen continued to stand at the entrance/exit of the alley, Det. Ramos responded to the scene and contacted Ofc. Jaen.
- As Det. Ramos approached Ofc. Jaen, Det. Ramos escorted Ofc. Jaen out of the immediate area where Arce was being treated and escorted him back to his patrol vehicle through the alley toward Vineyard Rd. While walking back to the patrol vehicle, both Det. Ramos and Ofc. Jaen had their body cameras muted.

- While Det. Ramos was standing by with Ofc. Jaen, Det. Ramos removed Ofc. Jaen from the scene in his assigned unmarked patrol vehicle. Det. Ramos transported Ofc. Jaen to a shopping center located at 4325 S. 48th St, Tempe. While in the parking lot the following officers had contact with Ofc. Jaen: Lt. D. Sorensen, Sgt. L. Lenzen, Ofc. T. Moriarty, Ofc. C. Phillips, and Ofc. T. Noel.
- Based on examining BWC recordings, it was determined that interviews were not necessary with the above listed officers as the contact they had with Ofc. Jaen was minimal and specifics regarding the shooting were not discussed.
- Additionally, based on examining BWC recordings, it was determined that from the time Ofc. Jaen located Arce shot and radioed for assistance, the following officers had some type of contact with Ofc. Jaen: Ofc. A. Cano, OIT. C. Contos, Ofc. D. Lewis, Ofc. D. Koger, Ofc. J. Welling, Ofc. M. Warbington and Det. A. Ramos. It was determined that with the exception of Det. Ramos, no interviews were needed from the personnel who had contact with Ofc. Jaen immediately after the shooting; their contact during the initial incident response was minimal and accounted for by BWC footage.

Third-Party Independent Review of Ofc. Jaen's BWC footage

As part of the criminal investigation into this matter, the BWC footage from Ofc. Jaen's camera was sent to an outside expert for enhancement and analysis. For purposes of this section, relevant excerpts from the enhanced analysis report have been included below. For full details of the analysis, refer to expert Grant Fredericks' report which has been attached to this investigation.

Grant Fredericks' opinion is as follows;

- The BWC images show that while ARCE was inside the cab of the truck, he was handling an object that appeared consistent with a gun.
- ARCE ran from the vehicle.
- The BWC images do not accurately reproduce the perspective of Officer JAEN. Specifically, JAEN was in a better position to make observations of ARCE as he exited and ran from the truck than was the camera.

In addition:

- The camera was too low to the ground to see over the rear bed of the vehicle.
- The camera did not see into the cab of the vehicle, as JAEN moved by the driver's door.
- The camera did not show where JAEN's eyes or head were moving.

- The camera did not replicate the movement of JAEN's eyes or head.
- The camera, lens, and digital sampling process produced a wide-angle view, often referred to as a 'fish-eye' view. The field of view did not accurately reproduce the perspective from the human eye. The camera produced a wider perspective of the events than the perspective of JAEN. The wider perspective results in objects appearing further away than they were in reality. In other words, the images located on page 19, depicting the position of ARCE in relation to JAEN are not accurate. The images show ARCE further from the officer than he actually was at the time of the events. *(The reference to page 19 refers to Fredericks' report which has been attached to this investigation).*
- After ARCE cleared the rear of the vehicle and became visible to the camera, no images were recorded showing ARCE turning his head, body, or arms toward Officer JAEN.
- The AXON Body 2 camera records video in real time at 33.36 ms intervals. The recording rate (image refresh rate) is considered 'real time'. If ARCE had turned his head, body, or arms toward JAEN as he ran in the lane, the real time video would have reproduced that activity. As a result of these observations, I [Fredericks] have also formed the opinion that ARCE did not turn his head, body, or arms toward JAEN in any of the images after Slide 1 in the Shots Fired.pdf demonstrative. (Slide 1 in the shots fired.pdf refers to Fredericks' report).
- It is not possible to know whether or not ARCE turned his head, body, or arms toward JAEN between the time he exited the vehicle and the time he was depicted in Slide 1.

Analysis of Grant Fredericks' Report

In reviewing Fredericks' report, no overt action by Arce, which would have placed Ofc. Jaen in immediate and/or imminent danger, was observed on BWC footage. Furthermore, discrepancies were solidified and noted with respect to what was seen on the enhanced video and statements Ofc. Jaen made to Lt. Sorensen and statements he made to Det. Jones during the criminal investigation.



- When interviewed, Ofc. Jaen told Det. Jones he thought Arce was going to “engage” him from the rear of the truck. Ofc. Jaen told Det. Jones that he [Jaen] decided to engage Arce, because he was behind a “flimsy” dumpster, so he left his position of concealment. Ofc. Jaen also told Det. Jones that there was nothing obscuring his view inside the rear of the truck bed. Slide 1 – as referenced by Fredricks’ report - clearly shows Arce running away.
- If there was a threat presented toward Ofc. Jaen while he was behind the dumpster and from the time Ofc. Jaen decided to leave concealment, that threat no longer



existed as shown by the BWC footage while Arce is running away which was confirmed by Grant Fredricks' analysis.

Statement Analysis of Ofc. Jaen – Criminal Investigation/BWC Footage

An interview was conducted with Ofc. Jaen following the incident by Det. M. Jones. That interview occurred at the Tempe Police substation in the executive conference room located at 8201 S. Hardy Dr., Tempe. I reviewed the interview in comparison to Ofc. Jaen's BWC. Below is an analysis of that examination. Portions of the interview in this report will address Ofc. Jaen's offered justification for using deadly force against Arce. For Ofc. Jaen's full interview with Det. Jones, refer to the attached criminal investigative report.

For purposes of this section it is important to understand the Tempe Police Department Use of Force policy and definitions.

- General Order 12.101.A. states that *"employees may use that force which is reasonable based upon the facts and circumstances known to, or reasonably believed by the employee to exist at the time of the incident. Employees will not use more force than is reasonably necessary to accomplish their lawful purpose."*
- General Order 12.101.A.3 further states, *"Deadly force will only be used when (a) there is a reasonable belief that it is necessary to defend one's self or another person from what the employee reasonable believes to be serious physical injury or death; or (b) affecting the arrest or preventing the escape from custody of a person who is reasonably believed to have committed a felony involving the use or threatened use of deadly force, and if there is an imminent and great danger that the person will cause death or serious injury if apprehension is delayed."*
- General Order 12.101.B provides the following applicable definitions:
 - *Aggravated Aggressive Resistance: The officer perceives the subject's actions are likely to result in death or serious bodily harm to the officer, themselves or another. These actions may include a firearm, use of blunt or bladed weapon, or extreme physical force.*
 - *Deadly Force: Force used that in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.*
 - *Immediate Danger: Acts or threats by any person directed toward an employee or another person that have the immediate potential for physical injury, serious physical injury, or death and are instantaneous or on going.*
 - *Imminent Danger: Acts or threats by any person directed toward an employee or another person that have the apparent potential for physical injury, serious physical injury, or death absent action by the employee.*
 - *Reasonable Belief: The facts or circumstances the employee knows or should know at the time of the incident are such as to cause the ordinary and prudent officer to act or think in a similar way under similar circumstances.*

- Resistance: Any failure to comply with directions, control or apprehension by the employee.

The first statement Ofc. Jaen provided about the incident was to Lt. D. Sorensen during a Public Safety Statement, which from a legal perspective, is a compelled statement for the purpose of safeguarding the community from any continuing threats to include any outstanding suspects, victims or additional information that responding officers need to know.

- From Det. Jones' report, the portion directly below relates to the public safety statement Ofc. Jaen provided:

"...Ofc. Jaen stated the subject then jumped out of the passenger seat (exiting the vehicle) and he proceeds to move around to the left side to engage the subject when he sees the subject running away southbound with the gun in his hands. Ofc. Jaen stated the subject began to turn back towards him as he was running away and he then shot at him two times in the center mass area of his body..."

- At the start of Ofc. Jaen's interview with Det. Jones, Det. Jones asked Ofc. Jaen to explain the entire incident from the time that the call for service was initiated, to when the responding officers had arrived and contacted him afterwards. At one point during Ofc. Jaen's response in the detective's narrative, Det. Jones noted:

"...Ofc. Jaen described the subject as moving south towards the rear of the truck and he believed the subject was going to engage him with the gun across the rear truck bed so he drew his own duty weapon. Ofc. Jaen stated he then realized that he was kind of pinned in his current location as his cover was a flimsy rubber trash can. Ofc. Jaen stated it was at this point he made the decision to engage the subject and left his cover..."

- Ofc. Jaen's statement and decision to proactively "engage" Arce, in this circumstance is not a tactic taught by the Tempe Police Department's Training Unit.
- During his interview, Ofc. Jaen stated he felt "pinned down" behind the dumpster. In an examination of Ofc. Jaen's BWC footage, it did not appear that Ofc. Jaen was "pinned down" behind a dumpster and I was unable to ask clarifying questions to determine what he meant. A review of BWC footage showed Ofc. Jaen had an avenue of escape and a clear path to tactically retreat to position of cover near the front of the pick-up truck or his patrol vehicle.
- From Ofc. Jaen's BWC footage, it can be seen that when Arce exited the truck, he immediately began running southbound through the alley and did not stop at the rear of the truck to "engage" Ofc. Jaen. Further, Ofc. Jaen had time to assess and re-assess the actions of Arce, as Arce continued to

flee southbound away from Ofc. Jaen. Ofc. Jaen could see Arce running away and made the decision to leave the cover/concealment of the dumpster and advanced further toward the end of the truck bed.

- From Det. Jones' report:

, "...Ofc. Jaen stated he believed he said to the subject, "Stop Police or Tempe Police." Ofc. Jaen stated as he gave this command to the fleeing subject, he was focused on the subject's hands and observed the subject turn and saw there was a handgun in his right hand. Ofc. Jaen said the subject's right hand was up in the air at this point because he was running. Ofc. Jaen stated it appeared the subject's finger was on the trigger and he then made the decision to fire at the subject and recalled firing two shots..."

- Ofc. Jaen, in his interview with Det. Jones, stated he observed Arce "turn and saw there was a handgun in his right hand," but he does not provide clear articulation of what Arce was doing with the handgun. Ofc. Jaen's above statement to Det. Jones was that Arce had the gun in his right hand and it was high in the air because he was running; and, because Arce had his finger on the trigger, he [Jaen] made the decision to fire.
 - A review of Ofc. Jaen's BWC footage does not show Arce turning towards Ofc. Jaen at any point as he is running southbound away from Ofc. Jaen.
 - Attempts to clarify this statement would have been made during an administrative interview.
- During his interview with Det. Jones, Ofc. Jaen did not describe that he was in immediate/imminent danger by a threat of Arce directing his handgun towards him. Instead, Ofc. Jaen stated that Arce's right hand was high up in the air because he was running, and Arce had his finger on the trigger and he decided to fire.
- As Det. Jones continued with his interview of Ofc. Jaen, Det. Jones asked for further clarification from the point that Ofc. Jaen was at the dumpster. Ofc. Jaen provided the following,

"...Ofc. Jaen stated he thought the subject was going to "roll out of the vehicle" and come up over the rear corner of the truck bed to engage him with the handgun. Ofc. Jaen continued by saying he thought this would have been the "most efficient way" for the subject to engage him while still providing cover for the subject. Ofc. Jaen stated there was nothing inside the rear truck bed which was obscuring his view of the subject running from the rear of the truck..."

- Ofc. Jaen's feeling that he had at that moment behind the dumpster as told to Det. Jones, suggests he needed to rely on his training to aid him in his

decision making to tactically de-escalate the situation. The tactics and decisions observed by Ofc. Jaen are not consistent with the training provided by the Tempe Police Department.

- From Det. Jones' report:

"...Ofc. Jaen stated as the subject ran south from the grey truck, he took several steps away from the garbage can, called out to the subject, and could distinctly see the weapon in the subject's right hand. Ofc. Jaen stated at this point he was focused on the weapon in the subject's hand and based on the fact he was still running with the weapon, it computed in his mind the subject was going to turn and shoot at him. Ofc. Jaen stated he then made the decision he was going to discharge his weapon..."

- The statement implies that Ofc. Jaen discharged his weapon on the anticipation that Arce was going to turn and shoot him, rather than responding to a tangible overt action or a gesture by Arce which would place Ofc. Jaen in immediate/imminent danger.

In sum, Ofc. Jaen offered several statements and explanations to Lt. Sorensen and Det. Jones which were not corroborated by the existing BWC footage and indicates that his decision to fire was based on anticipatory factors outside the requirements of the Tempe Police Department's Use of Force Policy, Tempe Police Department's Training Unit instruction, Tempe Police Department's Firearms Training Unit's instruction, existing case law, and City of Tempe Personnel Rules and Regulations.

Subject Matter Expert (SME) Ofc. K. Schmidt interview

Ofc. K. Schmidt has been employed with the Tempe Police Department for 20 years. During his employment, Ofc. Schmidt has had many assignments to include: Field Operations Division, Metro Division, Criminal Investigation Bureau, Academy Instructor, Patrol Supervisor, Special Weapons & Tactics (SWAT), and his current assignment as a Firearms Training Officer for the past 12 years. He is recognized by AZPOST as a subject matter expert in firearms training and tactics.

As part of Ofc. Schmidt's assignment, Ofc. Schmidt conducts annual video scenario-based judgmental testing on Tempe PD sworn police officers. These video-based scenarios are referred to as "Judgmentals" and are required for police officers to maintain their state certification through the Arizona Peace Officer Standards and Training [AZPOST] Board. In each of the scenarios, officers make use-of-force decisions based on the actions of the actors in the video; officers must demonstrate proficiency in exercising the correct judgment and force option which includes, but is not limited to: verbal de-escalation, movement, less lethal force, and lethal force.

As part of this administrative investigation, Ofc. Schmidt was asked for his independent analysis and was provided with the criminal investigation, Ofc. Jaen's BWC footage, the Fredericks' enhanced BWC footage, and the independent report created by Fredericks.

After reviewing the materials provided, Ofc. Schmidt informed me of his opinion and findings as follows:

- At the time Ofc. Jaen was using the dumpster for concealment, Ofc. Schmidt noted he could see Arce through the front windshield of the grey truck, run southbound.
- A threat toward Ofc. Jaen was not observed at the time Arce was fleeing.
- Ofc. Schmidt noted that Arce was running away when Ofc. Jaen discharged his duty weapon twice.
- Ofc. Schmidt explained that if there was a threat that was presented by Arce toward Ofc. Jaen while Ofc. Jaen was using the dumpster as concealment, it would not seem reasonable for him [Jaen] to leave concealment.
- Ofc. Schmidt also evaluated and discussed the possibility of Ofc. Jaen seeing a threat while he was behind the dumpster. If that possibility existed, Ofc. Schmidt stated Ofc. Jaen had ample amount of time to re-evaluate if that threat existed from the time he left the dumpster, to the time he decided to make the decision to fire.
- Ofc. Schmidt explained that with the materials he reviewed, he did not see a justification for using deadly force against Arce.

Ofc. Jaen's Training and Experience

As part of this investigation, a review of Ofc. Jaen's training and experience was conducted. From available documentation, it was learned that Ofc. Jaen started his employment with the Tempe Police Department in January 2005. Prior to his employment at the Tempe Police Department, Ofc. Jaen was employed as a police officer with the Bullhead City Police Department (AZ) from January 2002 to January 2005. While at the Bullhead City Police Department, Ofc. Jaen became a member of the Bullhead PD SWAT Team. Ofc. Jaen attended an 80-hour in-house SWAT school, participated in five call-outs, and primarily served as an entry operator.

Ofc. Jaen obtained his basic peace officer certification by attending the Central Arizona College Police Academy. Consistent with AZPOST guidelines, Ofc. Jaen's certification has remained in good standing since he obtained it; at least meeting the basic yearly minimums in training and proficiency requirements. As a Tempe Police Officer, Ofc. Jaen has attended numerous internal training courses which surpass the minimum amount of training hours an Arizona Peace officer must complete each year to maintain certification. This training, known at the Tempe Police Department as "Advanced Officer Training (AOT)" is held at a minimum of two times a year and attendance is mandatory.

Whereas the courses and proficiency skills taught and tested during AOT are varied, there are certain training courses and assessments for which Ofc. Jaen attended, demonstrated proficiency, and which, are relevant to this investigation.

The below is a summary/excerpt of relevant training courses and assessments listed in Ofc. Jaen's training record at the Tempe Police Department. For details of Ofc. Jaen's complete training records refer to the attached report.

- **Tactical Risk Management: 2006, 2007, 2008, 2009, 2015**
 - Tactical Risk Management Training is regularly provided to every sworn employee at the Tempe Police Department. The training is designed to

provide officers with tactics, strategies and considerations with how to minimize and manage risk associated with responding to suspicious calls for service, high risk calls for service, when to engage in a foot pursuit that is reasonable, and how to effectively approach and resolve those types of situations while being mindful of how to mitigate the physiological stressors which may accompany situations so as to remain calm and in control to be able to make good decisions.

- Associated with Tactical Risk Management, routine instruction is provided to officers with respect to handling suspicious calls for service and/or high risk calls for service; the Tempe Police Department teaches two methods [and mantras] to assist officers with their decision making and physiological aspects that officers may feel on while on the call:
 - 1st - When you see a threat. Feel a threat. Move. Move to cover – this gets officers to a safe place to be able to assess what is truly taking place and how best to respond from as safe a place as possible.
 - 2nd - Breath. Listen. Think (BLT). – this strategy is designed to get officers to calm/slow down and be able to keep their composure so that they can sense everything that is going on around them in their environment so they can make the best/safest decision(s) possible.

- **Judgmental Training: 2006, 2007, 2008, 2009, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018**

- Judgmental Training consists of video based and/or live scenarios with role players and simunitions designed to judge sworn officer's ability to make effective use of force decisions.
- The video scenarios cover a wide range of situations to include: mentally ill person(s), suspicious person(s), suspicious vehicle(s), high risk vehicle stops, active shooter, suicidal subject(s), multiple threat engagements, disorderly subject(s), aggressive subject(s), crime(s) in progress and foot pursuit(s).
- The scenarios are based on a pass/fail grading scale which have performance measures as qualifiers. Typically, those performance measures assess whether the officer chooses the appropriate level of force, displays effective communication, communicates with dispatch, provides clear commands, demonstrates move or move to cover techniques, and shows breath, listen, think techniques.
- During the training all officers receive proper coaching and advice from Training Unit Officers on appropriate Tempe Police Department procedures.
- Ofc. Jaen passed all scenarios each year he participated in Judgmental training.

- **Tactical Vehicle Approaches: 2005**

- Tactical Vehicle Approach Training teaches officers the best tactics when contacting individuals inside vehicles.

- The tactics are designed to keep officers as safe as possible and to provide guidance when approaching vehicles.
- The training teaches officers how to approach a vehicle as a single officer or as part of a multiple officer team.
- In 2005, Ofc. Jaen took a written test answering correctly that in a single officer approach to a vehicle when possible, officers should not approach the vehicle directly from the front or directly from the rear.
- Approaching vehicles from the front immediately puts the officer at a disadvantage and exposes the officer to danger. The vehicle can be used as a weapon against them. The officer is exposed to danger as he or she are not in the "blind" spot of the vehicle.
- In addition, approaching the vehicle from the front takes away opportunity to react appropriately to suspicious behavior or a threat. In addition, the training discussed how to properly deal with physiological symptoms of stress while on a call for service.
- In 2005 Ofc. Jaen took a written test on tactical vehicle approaches and received a perfect score.

In addition to the courses listed above, Ofc. Jaen participated in numerous handgun qualifications - both duty ammunition qualifications and low light pistol qualifications. According to records, in 2018, Ofc. Jaen achieved a score of 250/250 [perfect score] for pistol qualifications and 245/250 for low light pistol qualifications.

As mentioned above, a further review of available records revealed that prior to becoming a Tempe Police Officer, Ofc. Jaen was a member of the Bullhead City Police Department's SWAT Team. Though an attempt was made to obtain the curriculum/lesson plan taught during Ofc. Jaen's SWAT School by contacting representatives at the Bullhead City Police Department, I learned that the records had been purged as a part of records retention time limits.

Interview with Officer Pina

Based on the information contained in Ofc. Pina's supplemental report, specifically that he had been in the area and seen the grey truck prior to Ofc. Jaen's call for service, it was necessary to interview him further regarding his observations and actions related to this incident; both before, and after, the shooting took place.

On March 11, 2019, I served Ofc. A. Pina with a Notice of Investigation (attached) in regards to this administrative investigation. Prior to this time, I had an opportunity to view his BWC footage from the scene, as well as review his supplemental report for the criminal investigation which was drafted on January 15, 2019.

On March 20, 2019 at approximately 1145 hours, I conducted an interview with Ofc. Pina. The interview occurred at Tempe Police Headquarters in which Lt. S. Smith was also present. Prior to interviewing Ofc. Pina, the NOI was read to him and he verbally stated he acknowledged and understood the NOI.

In summary, I was able to learn/confirm the following information:

- Prior to this incident, Ofc. Pina received an email regarding homeless activity and transients sleeping in the alleyway between Vineyard Rd and Fair Ln. The alleyway is behind the residence of 4502 S. Fair Lane, where Ofc. Jaen was dispatched to on January 15, 2019.

- On January 15, 2019 at approximately 1400 hours, Ofc. Pina responded to 48th St. and Vineyard Rd. to conduct an extra patrol of the alley in reference to the above-mentioned email. While in the area, Ofc. Pina observed a grey colored truck that was entering the alley. Ofc. Pina described the truck being full of "garbage" and "stuff." Ofc. Pina described the truck as having items in the truck bed that extended over the cab due to it being full. When asked if he felt the truck would be considered traveling with an unsafe load he stated, "Yes."
- Ofc. Pina explained he did not go into the alley out of fear of being stuck behind the truck. Ofc. Pina stated he was going to return back to the alley after the truck had left the area. Ofc. Pina described the truck as possibly being a "scraper" looking for items.
- Ofc. Pina explained after seeing the truck, he did not take enforcement action and instead continued northbound on Fair Lane to Vineyard Rd, when he was dispatched to assist an agency with an unrelated warrant service.
- At the time Ofc. Jaen and Ofc. Lowenhagen were dispatched to the suspicious vehicle call at 4502 S. Fair Lane, Ofc. Pina was at 3730 S. Mill Avenue, Tempe, on an agency assist warrant service. Ofc. Pina heard this call for service and did not provide either responding officer or dispatch with his previous observations regarding the truck in the alley.

Based on the totality of Ofc. Pina's actions and inactions, a separate administrative investigation was conducted with Ofc. Pina as the focus. For further information, refer to that investigation.

Interview with Detective Ramos

Since Det. Ramos served as the "standby officer" with Ofc. Jaen and he [Det. Ramos] had spent an extended amount of time with him post-event and at times, in private, it was necessary to interview him to determine if he possessed any further information relevant to this investigation.

On March 11, 2019, I served Det. A. Ramos with a Notice of Investigation (attached) in regards to this administrative investigation. Prior to this time, I had an opportunity to view the BWC footage from the scene, as well as review his supplemental report for the criminal investigation which was drafted on January 15, 2019.

On March 21, 2019 at approximately 1150 hours, I conducted an interview with Det. Ramos. The interview occurred at Tempe Police Headquarters in which Lt. S. Smith was also present. Prior to interviewing Det. Ramos, the NOI was read to him and he verbally stated he acknowledged and understood the NOI.

In summary, I was able to learn/confirm the following information:

- On January 15, 2019 at approximately 1200 hours, Det. Ramos was working at a Tempe Police Department substation located at 10 West Guadalupe Rd, Tempe. At approximately 1454 hours, Det. Ramos heard Ofc. Jaen radio "998."
- Det. Ramos immediately responded to assist Ofc. Jaen by traveling northbound on All American Way to Baseline Road, then westbound on Baseline Road to 48th Street, and

northbound on 48th Street to Vineyard Road. Upon Det. Ramos' arrival, he observed a marked patrol vehicle in the alleyway.

- Det. Ramos exited his unmarked patrol vehicle and proceeded down the alley on foot. When Det. Ramos got closer to the marked patrol vehicle, he noticed there was a second vehicle in the alleyway facing northbound. Det. Ramos described that vehicle as a grey colored Chevy truck.
- Det. Ramos observed Ofc. Pina speaking with a person [REDACTED] on the passenger side of the truck. After learning that the person was not involved, Det. Ramos continued south through the alley. As Det. Ramos proceeded through the alley, he saw Ofc. Jaen standing with Ofc. Koger. Det. Ramos recalled Ofc. Jaen as looking "distracted" – describing that Ofc. Jaen's hands were covering his face.
- When Det. Ramos got closer to Ofc. Jaen, he recalled hearing Ofc. Jaen say, "I didn't know it was a toy gun." Det. Ramos stated he was going to have an officer-to-officer conversation with Ofc. Jaen, so he placed his BWC on mute. Det. Ramos stated they were not in the presence of any suspects or witnesses, so he instructed Ofc. Jaen to place his BWC on mute.
- Det. Ramos guided Ofc. Jaen northbound through the alleyway away from the scene. As Det. Ramos and Ofc. Jaen passed the grey Chevy truck, Ofc. Jaen informed Det. Ramos that the truck was involved. Ofc. Jaen also stated the person Ofc. Pina was speaking with was also involved.
- After exiting the alleyway, Det. Ramos placed Ofc. Jaen in the front passenger seat of his vehicle.
- During the interview, I asked Det. Ramos if Ofc. Jaen specifically spoke about the shooting as they were walking in the alley and he said, "No." As Det. Ramos was in the capacity of a "Standby Officer," Det. Ramos stated he intentionally did not have a conversation with Ofc. Jaen regarding the shooting.
- Det. Ramos explained he quickly moved Ofc. Jaen further away from the scene by driving him across Vineyard Road to a shopping center [Vineyard Center] located at 4325 S. 48th St, Tempe.
- As Det. Ramos was waiting with Ofc. Jaen, I asked Det. Ramos if anyone other than an attorney provided Ofc. Jaen with instructions on what to say to investigators. Det. Ramos responded saying, "No." Det. Ramos explained that the only action directed at Ofc. Jaen was the request to turn over his BWC and city issued cellular phone.
- Det. Ramos explained he remained at the shopping center for approximately 15 minutes before responding to the Tempe PD Hardy Substation located at 8201 S. Hardy Dr, Tempe. During the ride, Ofc. Jaen did not make any specific statements regarding the shooting. When I asked Det. Ramos if he recalled Ofc. Jaen making any phone calls or sent any text messages, Det. Ramos could not remember.
- While at the Hardy Substation, Det. Ramos and Ofc. Jaen remained in the patrol conference room and continued to have general conversations. No conversation occurred regarding the shooting.

- While in the patrol conference room, Ofc. T. Noel came into the room in the capacity of a Critical Incident Stress Management (CISM) representative. Ofc. T. Johnson also came into the room and briefly spoke with Ofc. Jaen, but did not stay. Det. Ramos stated the conversation Ofc. Jaen had with Ofc. Johnson did not involve details of the shooting.
- I asked Det. Ramos if during his contact with Ofc. Jaen if he appeared to be under the influence of intoxicating beverage or narcotics, Det. Ramos stated, "No." I asked Det. Ramos if Ofc. Jaen had taken any medication while in his presence, he stated, "No."
- Det. Ramos explained that he was with Ofc. Jaen and Ofc. Noel for approximately one hour before leaving. Det. Ramos stated he left when he believed an attorney arrived.

This interview with Det. Ramos lasted approximately 49 minutes and was digitally recorded and transcribed by a third-party transcription service. Refer to the digital recording and transcription for further details regarding the interview.

Service of a Notice of Investigation to Ofc. Jaen

Upon learning that the criminal investigation into this matter had been completed and submitted to the Maricopa County Attorney's Office for review, a Notice of Investigation (NOI) for Ofc. Jaen was drafted.

On Tuesday, March 12, 2019, Sgt. M. Pooley and I met with Ofc. Jaen at Tempe Police Hawk Substation located at 10 W. Guadalupe Rd, Tempe. At approximately 1032 hours, I served Ofc. Jaen a NOI related to this matter. He was provided a copy of the NOI and I verbally read it to him as well. Ofc. Jaen verbally acknowledged understanding of his rights and responsibilities and signed the NOI. Ofc. Jaen received a copy of the NOI. See attached NOI for further details.

An administrative interview with Ofc. Jaen was scheduled for Friday, March 29, 2019. Upon my return to work on Thursday, March 28, 2019, I learned that Ofc. Jaen was on FMLA with a start date of March 26, 2019 through July 16, 2019 at the direction of a medical professional. As a result, Ofc. Jaen is unable to engage in/participate in any workplace activities until cleared by his physician.

Charging Decision-Maricopa County Attorney's Office:

The charging decision from the Maricopa County Attorney's Office stated, "It is the opinion of the County Attorney that the evidence presented in this investigation does not support criminal prosecution and, therefore, there is no reasonable likelihood of conviction."

Preponderance of Evidence & Review of Applicable Policy:

Per Tempe Police General Orders 03.201, *preponderance of the evidence* is the burden of proof by which the findings of this administrative review shall be regarded. Per the order, *preponderance of the evidence* is defined as "evidence which is of greater weight or more convincing than the evidence that is offered in opposition to it (i.e., evidence that as a whole shows that the fact sought to be proven is more probable than not.)"

The following excerpts from the Tempe Police Department Use-of-Force Policy (policy date 12/14/18) are applicable to the administrative review of Ofc. Jaen's involvement in this incident:

- General Order 12.101.A. states that *"employees may use that force which is reasonable based upon the facts and circumstances known to, or reasonably believed by the employee to exist at the time of the incident. Employees will not use more force than is reasonably necessary to accomplish their lawful purpose."*
- General Order 12.101.A.3 further states, *"Deadly force will only be used when (a) there is a reasonable belief that it is necessary to defend one's self or another person from what the employee reasonably believes to be serious physical injury or death; or (b) affecting the arrest or preventing the escape from custody of a person who is reasonably believed to have committed a felony involving the use or threatened use of deadly force, and if there is an imminent and great danger that the person will cause death or serious injury if apprehension is delayed."*
- General Order 12.101.B provides the following applicable definitions:
 - *Aggravated Aggressive Resistance: The officer perceives the subject's actions are likely to result in death or serious bodily harm to the officer, themselves or another. These actions may include a firearm, use of blunt or bladed weapon, or extreme physical force.*
 - *Deadly Force: Force used that in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.*
 - *Immediate Danger: Acts or threats by any person directed toward an employee or another person that have the immediate potential for physical injury, serious physical injury, or death and are instantaneous or on going.*
 - *Imminent Danger: Acts or threats by any person directed toward an employee or another person that have the apparent potential for physical injury, serious physical injury, or death absent action by the employee.*
 - *Reasonable Belief: The facts or circumstances the employee knows or should know at the time of the incident are such as to cause the ordinary and prudent officer to act or think in a similar way under similar circumstances.*
 - *Resistance: Any failure to comply with directions, control or apprehension by the employee.*
- The law (specifically, *Graham vs. Connor* and *Scott vs. Harris*) instruct that officers should consider the totality of the circumstances, when deciding whether or not to use force (as written in General Order 12.101.C.2). Those circumstances include:
 - *Severity of the crime at issue; Whether the suspect poses an immediate threat to officers or others; Whether they are actively resisting arrest or attempting to evade arrest by flight; Any other circumstances that cause the officer concern sufficient to justify the use of force.*

- The order further states: "*No unnecessary or unreasonable force shall be used in making an arrest, and the person arrested shall not be subjected to any greater restraint than necessary for their detention (ARS 13-3881.b).*"

In addition, City of Tempe Personnel Rules (revised February 8, 2018) states:

- Section 406.C.1 Grounds for Disciplinary Action states that "*The employee has acted negligently, recklessly, or carelessly in performing his/her duties during a specific incident or incidents.*"

Conclusion:

Per Tempe Police General Orders 03.201, *preponderance of the evidence* is the burden of proof by which the findings of this administrative review shall be regarded. Per the order, *preponderance of the evidence* is defined as "evidence which is of greater weight or more convincing than the evidence that is offered in opposition to it (i.e., evidence that as a whole shows that the fact sought to be proven is more probable than not.)"

This investigator has several dispositions that can be assigned for an investigation into whether a violation of departmental policy occurred. Those dispositions, based upon a preponderance of the evidence, include:

- Unfounded: The allegation is false or without merit;
- Not Sustained: There is insufficient evidence to either prove or disprove the allegation;
- Sustained: The allegation is supported by sufficient evidence to justify a reasonable conclusion of guilt;
- Exonerated: The incident occurred by it was lawful and proper;
- Policy Failure: The employee's actions were proper conduct, according to established policy and procedure, but a change in that policy and procedure is warranted.

Based upon a preponderance of the evidence, in regard to General Order, 03.201.D.1.a.12, which states: *The employee failed to comply with the Departments Use of Force departmental guidelines* (a Range 2 violation), the allegation is **SUSTAINED**.

- Ofc. Jaen did not specifically articulate that he was in immediate/imminent danger of a threat, nor did he articulate that he felt his life was in danger.
- Ofc. Jaen's BWC footage, enhanced BWC footage, Ofc. Jaen's own statements, Ofc. Schmidt's examination, and corroboration by Grant Fredericks enhanced BWC report, a deadly threat of any kind toward Ofc. Jaen did not exist.
- Ofc. Jaen's actions were unreasonable and did not meet the necessary requirements to be able to utilize deadly force against another person.

Based upon a preponderance of the evidence available at this time, in regard to General Order 03.201.D.1.a.9, which states: *An alleged act or failure to act, by personnel that is contrary to verbal and/or written rules, regulations, procedures, directives, or orders of the Department and/or supervisor* (a Range 1 violation) the allegation is **SUSTAINED**.

- From a review of Ofc. Jaen's training records to include Advanced Officer Training, Judgmental training, Tactical Risk Management training, Active Shooter training, Intercept training, and Use of Force training, Ofc. Jaen's tactics and actions deviated from training and instruction provided by the Tempe Police Department.
- Ofc. Jaen's improper use of deadly force was corroborated by his statements to investigators, BWC footage, enhanced BWC footage, Grant Fredericks report, SME Ofc. K. Schmidt's analysis, and Training Record.

Based upon a preponderance of the evidence available at this time, in regard to City of Tempe Personnel Rules Section 406.C.1 Grounds for Disciplinary Action states that "*The employee has acted negligently, recklessly, or carelessly in performing his/her duties during a specific incident or incidents*" is **SUSTAINED**.

- From the time Ofc. Jaen noticed the vehicle in the alley until the scene was stabilized, Ofc. Jaen engaged in poor decision making, poor tactics, and failed to adhere to his training; his actions and conduct were unreasonable, negligent and reckless, resulting in the tragic loss of life.

Review of Professional Standards File

A standard review of the Internal Affairs/Professional Standards file for Ofc. Jaen reveals no disciplinary history within the last three years.

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