CIVIL SERVICE COMMISSION

City of Tucson **Minutes**

Alfred Anaya
Appeal of Termination
Tucson Police Department
September 9, 10, 11, 16, 2020

DRAFT

A quorum of the Civil Service Commission of the City of Tucson met at 9:00AM on Wednesday, September 9, Thursday, September 10, Friday, September 11 and Wednesday, September 16, 2020 at City Hall, 255 W. Alameda in Tucson, Arizona, for an Appeal of Termination filed by Alfred Anaya from the Tucson Police Department. Due to the impacts of the COVID-19 pandemic, which have prompted declarations of a public health emergency at the local, state and federal levels, in-person attendance by members of the public was prohibited. However, the hearing was made accessible remotely through technological means as permitted under Arizona law.

Present were Chairperson Thomas Palomares, Commission Members Becky Montaño and Carol West. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator/Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary. Available in whole or in part of the hearing was Johanna Hernandez assisting with the technology.

Michael Storie from the Law Office of Michael W. Storie, P.C., and Steve Erdman, Grievance Chairperson of the Tucson Police Officers Association represented Officer Anaya; Julianne Hughes, Principal Assistant City Attorney and Jennifer Stash, Principal Assistant City Attorney represented the Tucson Police Department. Assistant Chief Kevin Hall was also present.

This appeal was held in Open Session; however, the rule was invoked.

Witnesses sworn during hearing:

1. Christopher Andreacola
2. David Chandler
3. Christopher Dennison
4. Belinda Morales
5. Kevin Hall
6. Chris Magnus
7. Justin Lane
8. Alfred Anaya

Per Exhibit A, the actions and behaviors of Officer Alfred Anaya #52771 are fully documented in the Office of Professional Standards (OPS) file #19-0463, and are incorporated herein providing just cause for termination and are synopsized as follows:

I. Behavior Officer Anaya knew or should have known would result in disciplinary action:

Officer Alfred Anaya has been a member of the Tucson Police Department since July of 2011 and was assigned to the Community Response Team (CRT) in September of 2017. As an officer, he was trained on and is expected to adhere to the City of Tucson and the Tucson Police Department's policies and procedures and rules and regulations. Upon assignment to

CRT, Officer Anaya went to CRT school where he received specialized training in undercover work specifically, plain clothes, work, surveillance tactics, buying stolen items, prostitution and drug/narcotic scenarios.

On July 17, 2019, Community Response Team supervisor, Sergeant Hackett, attended a division crime meeting and discussed the on-going criminal activity of gang members. The gang members were identified as violent individuals involved in weapons misconduct and drug sales. On June 16, 2019, ODS patrol officers were in an officer involved shooting that resulted in the death of a gang member who pointed a gun at a responding officer. Another gang member involved in the same incident assaulted a TPD K-9 officer by placing her in a headlock in his attempt to escape. After the division meeting, Sergeant Hackett directed his squad to focus their efforts on the gang. Squad objectives were to conduct directed patrol in known areas of the gang and locate, but not contact, the gang leader. Known gang locations included 3 or 4 addresses, one in particular was noticeably busy with people constantly coming and going.

The ODS CRT unit met the day before to discuss the escalating situation with the gang. ODS CRT was frequently tasked with surveilling addresses associated with the gang for drug and weapons activity. The gang was known for weapons and drugs social media postings and after ODS CRT arrested the gang leader's girlfriend, he threatened by name one of ODS CRT's members. All of this activity gave ODS CRT members a heightened sense of awareness about the gang.

At approximately 3:30 p.m. on July 17, 2019, ODS CRT began mobile surveillance on a red Chevrolet Malibu leaving a known gang target house. The driver was later identified and his girlfriend as the passenger and the registered owner of the Malibu. Having watched the driver enter a residence and return to his vehicle a short time later, ODG CRT officers decided to initiate mobile surveillance of the Malibu. The driver's observed actions at the gang address was consistent with narcotic sales activity. CRT officers thought the driver knew he was being followed due to his noted erratic driving behavior and frequent stops. ODS CRT continued following for approximately ten minutes when Officer Anaya observed the driver commit a civil traffic infraction, *Arizona Revised Statute 28-856 (1), Emerging from Alley, Driveway or Building.* The driver eventually pulled into the McDonald's parking lot at South Palo Verde Road, the passenger entered the establishment while the driver remained in the car.

In a marked patrol vehicle and wearing a police uniform, Officer Tapia approached the Malibu, Officer Anaya saw the driver rise up from his seat and then sit back down. He saw Officer Tapia talking to the driver and then saw Officer Tapia nod towards Officer Weeks who had approached on the passenger side of the vehicle. At this point Officer Anaya decided to assist, got out of the unmarked van, put on his police tactical vest and as he was

locking the van door heard Office Tapia shout *"Turn the car off. Turn the car off."* He turned and saw both Officer Tapia and Officer Weeks leaning into the car.

As Officer Anaya approached the Malibu, he witnessed Officer Weeks fall to the ground and then watched as the driver sped toward two unmarked CRT units and maneuvered around them. Officer Anaya yelled, *"Shoot him! Shoot him!"* as he ran toward the fleeing vehicle. Officer Anaya then said, *"Ram him! Ram him! He tried to run us over! Ram him!"* on the CRT radio frequency.

Officer Tapia, Officer Weeks, and Officer Anaya chased the driver's vehicle as it sped toward South Palo Verde Road, where it collided with a white van travelling northbound on Palo Verde Road. The impact spun the driver's vehicle around and it landed facing eastbound in the dirt lot in front of Arby's. Thinking the driver might get out and start running, Officer Anaya ran towards the Malibu. Office Tapia ran towards the vehicle and Officer Weeks was close behind. Officer Anaya could see through the driver's window and saw the driver moving around *"like really frantically … like moving his arms like it looked like his hands are still on the steering wheel."* Body Worn Camera (BWC) video shows Officer Anaya moving closer to the driver side and yelling, *"Get on the ground, (expletive)!"* Almost simultaneously, Officer Reilly drove his unmarked surveillance vehicle into the front passenger wheel well of the driver's vehicle, effectively stopping any possible forward movement.

Officer Anaya discharged his firearm, approximately two seconds after he issued his verbal command to get on the ground. He fired a total of six times. Five of his rounds hit the driver side door area and one round hit the ground. Officer Anaya said he pulled out his gun as he observed the driver moving around in the car and shot towards the driver's door, *"where his like center mass of his body would be to stop him from moving anymore, like getting away 'cause uh, I really didn't – I didn't think it was safe for him if he was to get out on the roadway again that someone else was gonna get hurt or worse."* Officer Anaya saw another officer run over and open the car door and observed blood on the driver's left side near his thigh. Officer Tapia pulled the driver out of the car and yelled, *"Hey! Put your hands up! I'm gonna (expletive) kill you!"* Officer Tapia struck the driver in the back of the head at least three times with his firearm and said, *"We (expletive) told you! We (expletive) told you! We (expletive) told you! Didn't we (expletive) tell you?"*

The driver suffered two gunshot wounds, one to his left knee area and one to his left buttock. The driver also suffered injuries to the left side of his face and the back of his head from Officer Tapia's gun barrel.

As Officer Anaya ran towards the Malibu, he described seeing the driver moving around frantically in a jerky motion, Officer Reilly had rammed the Malibu and it was not moving.

When asked by OPS what lethal threat the driver presented, Officer Anaya responded, *"To me there is no immediate threat. At this moment."* He continued stating, *"…to me, based on his previous, uh actions here … he hasn't shown me anything up to this point that made me believe he wasn't gonna stop until he got away … I believed he was tryin' to get that vehicle back in motion to take off, I – I thought the threat at that point was, you know, he could – he's gonna get away at any cost … I didn't want to see anyone else get hit or hurt or anything like that."*

Officer Anaya described shooting at a silhouette and admitted he was not confronted with a direct and imminent threat at the time he discharged his firearm. He shot from a 15 to 20-foot distance, unable to see anything through the front windshield given his angle of approach. Officer Anaya agreed the vehicle was no longer moving and at the time he was not even sure if it was running. As justification for shooting, Officer Anaya stated *"For me, the – it's the, like, the totality of everything. From him – from where he came from to his actions, he came from – from that, uh, (gang) house, his initial – the initial contact. So he's either – he's definitely associated at a minimum, those people are known to be dealin' drugs, carry weapons, and if he's associated to them, you know, I have some belief that that could – that's a – it could be a possibility with him, too."*

Analysis by the Office of Professional Standards (OPS) and Officer Anaya's Chain of Command established his use of deadly force in response to his limited view of the driver and the absence of an engine revving or wheels turning was disproportionate to the threat posed by the driver. Furthermore, Officer Anaya did not know if the backseat was occupied. Decisions to use deadly force cannot be made based on the potential or possibility of something bad happening. The objective acts in this instance did not support the use of deadly force.

Assistant Chief Hall wrote, *"I reached the same conclusion regarding proportionality as OPS which conflicts with Captain Lane's viewpoint. Put simply, the use of deadly force to stop an individual fleeing from a civil traffic stop, even if driving recklessly, is not proportional under TPD policy. The framing of the circumstances provided by Captain Lane in his narrative is convenient to a specific chain of logic, but not one that is applicable to this case. There is no evidence that the driver tried to run anyone over or intentionally crash the vehicle he was driving into another. In fact, the evidence supports that the driver avoided striking officers and other vehicles in his attempt to flee. The driver was reckless, but no evidence exists to show he was intentionally trying to harm others.*

Lastly, the OPS use of force analysis determined that an objectively reasonable officer would not have found a silhouetted individual in a non-moving, damaged vehicle an imminent threat. At that point, the individual would be considered an unknown thread (and potentially a barricaded subject), and deadly force would not be justified. Several tactical

options were available to the officers without using deadly force which obviously were not explored or considered by Officer Anaya.

Captain Lane's perspective aligns with Officer Anaya's statement to investigators to some degree in that his decision to utilize deadly force was based on all the factors that occurred in the incident, even prior to the first contact with the driver. This broad analysis perspective used by the captain sets a dangerous precedent in that it allows an expansive layer of subjective rationalization that would provide justification for the use of deadly force in an alarmingly wide variety of circumstances. This is not a perspective that is congruent with the expectations of the controlling general order, the training provided by Academy staff over the past several years, or the office the of Chief of Police."

Deputy Chief Kasmar concurred with the findings and the application of discipline recommended by Assistant Chief Hall.

II. Violations of Department Policy and General Orders:

Officer Anaya violated the following *General Orders:*

1. **1330.7 General Standards of Expected Conduct:**
   Members shall not engage in any conduct, whether on or off duty, which is unbecoming or detrimental to their duties, position, or the department. All members shall conduct their private and professional lives in such a manner as to avoid adverse reflection upon the department or themselves as members of the department. Members shall treat each other and all persons with whom they have contact with respect and courtesy.

2. **1330.16 Cruel, Unlawful or Improper Treatment Prohibited**
   Members shall not treat any person or animal cruelly, ***use of excessive physical force,*** *fail or observe the Constitutional rights of any person, neglect to take any necessary humane actions when circumstances require.*

3. **2010 General Policy**
   In accordance with the Law Enforcement Code of Ethics and the Tucson Police Department Mission Statement, it is the sworn duty of every officer to safeguard and protect human life. Members shall treat all persons with respect, professionalism, and courtesy. If the use of force becomes necessary, members shall use force proportional to the threat.

It is neither the policy of the department nor the intent of these General Orders that officers unnecessarily or unreasonably endanger themselves or others. The force model is to be used as a general guide to using force when necessary.

A member who observes another member using inappropriate, unnecessary, or unreasonable force shall intervene to stop the use of force when there is a reasonable opportunity to do so. A member who witnesses inappropriate, unnecessary or unreasonable use of force by another member shall report it as soon as practicable to a supervisor."

4. **2040 Force Model**
...Force situations are dynamic and require an officer to continually assess the subject's actions to ensure an objectively reasonable response. Officers may initiate and transition to levels or types of force, including attempts to de-escalate, in relation to the amount of resistance offered by a subject ...

When it is necessary for an officer to exercise physical control of a violent, assaultive, or resisting individual to make an arrest or protect others from harm, they shall:
- *Recognize that their conduct prior to the use of force, including the display of a weapon, may influence the level of force necessary in a given situation;*
- *Exercise reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force by placing themselves or others in jeopardy, or by not following policy or training; and*
- *Continually assess the situation and changing circumstances and adjust the use of force appropriately.*

5. **2060 Deadly Force**
Deadly force is authorized when an officer reasonably perceives an imminent threat of serious physical injury or death to the officer or another person. Deadly force is a measure to be employed only in the most extreme circumstances when less-lethal means of force have failed or could not reasonably be employed.

III. Prior Discipline:

On May 31, 2017, Office Anaya received restorative supervision for a Preventable/Track 1 policy infraction due to a vehicle collision.

IV. Disciplinary Action

Based on a review of the Tucson Police Department Management, the Chief of Police has determined that Officer Anaya violated the above listed General Orders and the violations

fall into the Red/Severe Misconduct violation type. Officer Anaya knew or should have known his actions would result in serious discipline, up to and including termination. The training provided by TPD and the relevant General Order is clear, deadly force is authorized only "when an officer reasonably perceives an imminent threat of serious physical injury or death." There was no attempt at de-escalation and Officer Anaya's recitation of the situational facts do not support use of deadly force. Officer Anaya's actions and the listed violations constitute just cause for termination.

9:10 – 9 :20 City Exhibits A, B, and flash drive containing OPS 19-0463 which includes the Body Worn Camera (BWC) for Ofc. Anaya and Ofc. Weeks and the Demonstrative Evidence (PDFs). Excerpts are provided in City's Exhibit B herein were entered into evidence.

City's Exhibits Admitted

Exhibit A Tabs 1 – 5

Tab 1 – Personnel Action Request Form
Tab 2 – Notice of Decision (Appealable Action) with Appeal Rights
Tab 3 – Notice of Intent to Discharge
Tab 4 – Attachment A
Tab 5 – Anaya Appeal Letter

Exhibit B Tabs 1 – 19

Tab 1 – OPS 19-0463 Investigative Summary
Tab 2 – Personnel Report of Lt. Jen Pegnato
Tab 3 – Memorandum from Captain Lane dated May 19, 2020
Tab 4 – Memorandum from Assistant Chief Kevin Hall dated May 27, 2020
Tab 5 – Personnel Report Lt. Bob Garza dated June 15, 2020
Tab 6 – Personnel Report Captain Justin Lane June 16, 2020
Tab 7 – Personnel Report Assistant Chief Kevin Hall dated June 17, 2020
Tab 8 – HR Training Transcript
TPD Training History
TPD Training Transcript – Vehicles and Force
TPD Standard Operating Procedure "Operations Division South Community Response Team Unmarked Vehicle Mobile Surveillance"
TPD Traffic Stop Vehicle in Motion/Flagpole
TPD Vehicles and Force Advanced Officer Training PowerPoint
Tab 9 – Alfred Anaya – Transcript of Interview
Tab 10 – Carlos Weeks – Transcript of Interview (excerpts)
Tab 11 – Eduardo Lopez – Transcript of Interview (excerpts)
Tab 12 – Jesus Tapia – Transcript of Interview (excerpts)
Tab 13 – CRT OIS 19-0463 Timeline

Tab 14 – GO 1330.7 General Standards of Expected Conduct; 1330.16 Cruel, Unlawful or Improper Treatment Prohibited;
GO 2010 General Policy; 2040 Force Model; 2060 Deadly Force
Tab 15 – TC Ch.10, 10-3 Just Cause defined
Tab 16 – A.R.S. 28-856 Emerging from alley, driveway or building
Tab 17 – TPD Operations Pamphlet and Discipline Guide
Tab 18 – HR File
Tab 19 – TPD HR File

Exhibit C
Tucson Police Department General Orders 2000 Use of Force Issued May 2001

Exhibit D
Transcript of Officer John Reilly dated July 18

Appellant's Exhibits

Exhibit 1 Tabs A – F
Tab A – Memorandum: Captain Lane May 19, 2020
Tab B – Memorandum: Assistant Chief Hall May 27, 2020
Tab C – Facebook Screen Shots
Tab D – Pima County Attorney's Office "Declination Letter January 24, 2020
Tab E – Personnel Report: Assistant Chief Hall June 17, 2020
Tab F – Personnel Report: Captain Lane June 16, 2020

Exhibit 2
Transcript of Driver

Exhibit 3
Timeline Chart, illustrative purposes only

9:20 – 9:33 City's Opening Statement

9:33 – 9:50 Appellant's Opening Statement

9:50 – 10:05 Break

City called first witness, Christopher Andreacola, Sergeant
10:05 – 10:30 Sgt. Andreacola gave testimony
10:30 – 10:35 Sgt. Andreacola gave testimony on cross examination; Commission asked clarifying questions and witness was excused

City called second witness, David Chandler, Officer
10:37 – 10:45 Ofc. Chandler gave testimony
10:45 – 10:50 Ofc. Chandler gave testimony on cross examination

10:50 – 11:10 Ofc. Chandler gave testimony on redirect; Commission asked clarifying questions and witness was excused

City called third witness, Chris Dennison, Captain
11:20 – 11:45 Cpt. Dennison gave testimony

11:45 – 1:00 Lunch Break

1:05 – 1:10 Cpt. Dennison continued with testimony
1:10 – 1:50 Cpt. Dennison gave testimony on cross examination
1:50 – 1:55 Cpt. Dennison gave testimony on redirect; the Commission as clarifying questions and witness was excused

City called fourth witness, Belinda Morales, Sergeant
2:00 – 3:20 Sgt. Morales gave testimony

3:20 – 3:35 Break

3:35 – 4:05 Sgt. Morales gave testimony on cross examination

4:05 Hearing adjourned for the day to reconvene at 9:00 a.m., Thursday, September 10, 2020 for day two.

September 10 – Day Two

A quorum of the Civil Service Commission of the City of Tucson met at 9:00AM on Thursday, September 10, 2020 at City Hall, 255 W. Alameda in Tucson, Arizona, for day two of the Appeal of Termination filed by Alfred Anaya from the Tucson Police Department. Due to the impacts of the COVID-19 pandemic, which have prompted declarations of a public health emergency at the local, state and federal levels, in-person attendance by members of the public was prohibited. However, the hearing was made accessible remotely through technological means as permitted under Arizona law.

Present were Chairperson Thomas Palomares, Commission Members Becky Montaño and Carol West. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator/Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary.

Michael Storie from the Law Office of Michael W. Storie, P.C., and Steve Erdman, Grievance Chairperson of the Tucson Police Officers Association represented Officer Anaya; Julianne Hughes, Principal Assistant City Attorney and Jennifer Stash, Principal Assistant City Attorney represented the Tucson Police Department. Assistant Chief Kevin Hall was also present.

Testimony from Sgt. Belinda Morales continued.

9:10 – 10:15 Sgt. Morales continued giving testimony on cross examination

10:15 – 10:30 Break

10:30 – 11:20 Sgt. Morales gave testimony on redirect; cross examination; the Commission asked clarifying questions and witness was excused.

11:20 – 11:25 Break

City called fifth witness, Kevin Hall, Assistant Chief

11:27 – 12:15 AC Hall gave testimony

12:20 – 1:25 Lunch Break

1:25 – 2:20 AC Hall gave testimony on cross examination

2:20 – 2:30 Break

2:30 – 2:50 AC Hall continued testimony on cross examination

2:50 – 3:15 AC Hall gave testimony on redirect; the Commission asked clarifying questions and witness was excused.

3:15 – 4:20 Break

City called sixth witness, Chris Magnus, Chief of Police

3:30 – 4:20 Chief Magnus gave testimony

4:20 Hearing adjourned for the day to reconvene at 9:00 a.m., Friday, September 11, 2020 for day three.

<u>September 11 – Day Three</u>

A quorum of the Civil Service Commission of the City of Tucson met at 9:00AM on Friday, September 11, 2020 at City Hall, 255 W. Alameda in Tucson, Arizona, for day three of the Appeal of Termination filed by Alfred Anaya from the Tucson Police Department. Due to the impacts of the COVID-19 pandemic, which have prompted declarations of a public health emergency at the local, state and federal levels, in-person attendance by members of the public was prohibited. However, the hearing was made accessible remotely through technological means as permitted under Arizona law.

Present were Chairperson Thomas Palomares, Commission Members Becky Montaño and Carol West. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator/Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary.

Michael Storie from the Law Office of Michael W. Storie, P.C., and Steve Erdman, Grievance Chairperson of the Tucson Police Officers Association represented Officer Anaya; Julianne Hughes, Principal Assistant City Attorney and Jennifer Stash, Principal Assistant City Attorney represented the Tucson Police Department. Assistant Chief Kevin Hall was also present.

Testimony from Chief Chris Magnus continued.

9:05 – 10:05 Chief Magnus gave testimony on cross examination

10:05 – 10:20 Break

10:20 – 10:40 Chief Magnus gave testimony on redirect; the Commission asked clarifying questions and witness was excused.

City Rests

Appellant called first witness, Justin Lane, Lieutenant
10:45 – 12:15 Lt. Lane gave testimony

12:15 – 1:15 Break

1:15 – 1:29 Lt. Lane continued with testimony

At 1:29 PM a motion made by Commissioner Montaño, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03 (A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 1:40 PM

1:40 – 1:55 Lt. Lane continued with testimony

1:55 – 2:19 Lt. Lane gave testimony on redirect and witness was excused

Appellant called second witness, Alfred Anaya
2:20 – 3:10 Mr. Anaya gave testimony

3:10 – 3:20 Break

3:20 – 3:40 Mr. Anaya gave testimony on cross examination and witness was excused

Appellant Rests

3:40 – 3:59 City Closing Statement

3:59 – 4:10 Appellant Closing Statement

4:10 – 4:16 Rebuttal Statement

At 4:16 PM a motion made by Commissioner Montaño, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03 (A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 4:45 PM

4:50 The Civil Service Commission adjourned the hearing for the day to reconvene at 9:00 a.m., Wednesday, September 16, 2020, day four, for deliberations and vote.

September 16 – Day Four

A quorum of the Civil Service Commission of the City of Tucson met at 9:00AM on Wednesday, September 16, 2020 at City Hall, 255 W. Alameda in Tucson, Arizona, for day four of the Appeal of Termination filed by Alfred Anaya from the Tucson Police Department. Due to the impacts of the COVID-19 pandemic, which have prompted declarations of a public health emergency at the local, state and federal levels, in-person attendance by members of the public was prohibited. However, the hearing was made accessible remotely through technological means as permitted under Arizona law.

Present were Chairperson Thomas Palomares, Commission Members Becky Montaño and Carol West. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator/Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary.

Michael Storie from the Law Office of Michael W. Storie, P.C., and Steve Erdman, Grievance Chairperson of the Tucson Police Officers Association represented Officer Anaya; Julianne Hughes, Principal Assistant City Attorney and Jennifer Stash, Principal Assistant City Attorney represented the Tucson Police Department.

At 9:01 AM a motion made by Commissioner Montaño, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03 (A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 10:38 AM

10:38 – 10:43 Break

10:43 – 11:04 Civil Service Commission Deliberations

In open session, based on the testimony presented and the exhibits admitted into evidence, a motion by Commissioner Palomares, duly seconded, that the appeal of Alfred Anaya be sustained and that he be reinstated to his position of Police Officer with full back pay for the reason that there was not just cause for the disciplinary action imposed was passed by a unanimous vote. The vote was 3-0.

Hearing adjourned at 11:05 AM.

Draft

Thomas Palomares, Chairperson Date
Civil Service Commission