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August 7, 2019

VIA EMAIL AND FIRST-CLASS MAIL

Mario Zamora, Esq.
Griswold, LaSalle, Cobb Dowd & Gin, LLP
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Re: Report on Confidential Investigation

Dear Mr. Zamora:

In May 2019, I was asked to conduct an impartial, objective investigation regarding a complaint made by Lt. Jerod Boatman of the City of Tulare ("City") Police Department ("Department") against City Councilman Carlton Jones. I agreed to perform the investigation and have recently completed my work on this matter. The purpose of this report is to provide you with my conclusions and factual findings on this matter.

Initially, it must be noted that I was retained as an attorney to conduct an objective, impartial factual investigation and provide a report containing my conclusions regarding the facts. It is my understanding that you will use my report to provide the City with advice regarding the matters that are the subject of this report.

This report does not purport to include and discuss every detail provided by the witnesses or documents obtained or reviewed during the course of the investigation. It does, however, discuss the facts which I found relevant.

The evidence was reviewed, compared and analyzed to determine whether the allegations were with or without merit based on a preponderance of the evidence standard. "Preponderance of the evidence," for purposes of this report, means that the evidence on one side outweighs the evidence on the other side, or is more likely to be true than not true.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 2

The investigation consisted of the personal interviews of Lieutenant Jerod Boatman, Janice Avila, Fire Chief Luis Nevarez, Rob Hunt, Police Chief Wes Hensley and Carlton Jones.

In addition, I was provided with and/or obtained the following documents during the investigation:

- A copy of a Memo dated 4/9/2019 from Lt. Jerod Boatman to Chief Wes Hensley Re: Complaint against Councilman Carlton Jones. A copy of this document is attached as Exhibit 1.
- A copy of a Memo dated 5/14/2019 from Lt. Jerod Boatman to Chief Wes Hensley Re: Carlton Jones. A copy of this document is attached as Exhibit 2.
- A copy of an email dated May 20, 2019, from Carlton Jones to Tony Espinosa and Roxanne Yoder (and others) Re: Officer Jerrod Boatman's false report issue and the Brady implication. This email was forwarded to Daniel Rowley by Rob Hunt. A copy of this document is attached as Exhibit 3.
- A copy of an email chain ending July 9, 2019, from Mr. Jones to Daniel Rowley, Subject: Re: Scheduling interviews; 10755-7. A copy of this document is attached as Exhibit 4.
- Copies of video recorded on April 2, 2019 of the Tulare City Council meeting.
- Copies of video of the Council Chambers and parking lot following the May 7, 2019 Tulare City Council meeting. It should be noted that 3 of the files were corrupted and could not be viewed.

A copy of a photograph from an article in the Visalia Times Delta published on April 17, 2019.¹ A copy of this photograph is attached as Exhibit 5.

¹ See, <https://www.visaliatimesdelta.com/story/news/2019/04/17/tulare-councilmans-16-5-m-claim-against-city-a-game-changer/3478539002/>

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 3

- A handwritten diagram prepared by Mr. Jones of the Council Chambers. This diagram is attached as Exhibit 6
- A copy of photographs from a computer screen showing Lt. Boatman's meal order on May 7, 2019. Copies of these documents are attached as Exhibit 7.
- Copies of photographs I took of Mr. Jones and the bag he claims to have had with him on the evening of May 7, 2019, as he walked through the parking lot to his car. Copies of these photographs are attached as Exhibit 8.
- A copy of a photograph from Google Maps showing the parking lot of the path traveled by Mr. Jones through the parking lot to his vehicle on May 7, 2019. A copy of this map is attached as Exhibit 9.

Mr. Jones requested that I review an investigative report prepared by John McGinness to "help you get background on where Boatman's feelings toward me are coming from" and the underlying "grievances from other officers that were filed against Boatman."² In response to this request, I sought and obtained permission to review the confidential report from Mr. McGinness, including the "grievances" that were the subject of his investigation. However, because it is a confidential document, I did not obtain a copy.

Mr. Jones also reported that Shea Gowin records on video the Tulare City Council meetings and posts them on Facebook. He suggested that her videos may have captured the April 2, 2019, exchange between Mr. Jones and Lt. Boatman. I reviewed the video Ms. Gowin posted on her Facebook account for April 2, 2019.³ However, the video of the Study Session ends before the session is finished and the video of the City Council meeting begins after the meeting has already started. I found no video of the exchange at issue.

² See, Exhibit 4.

³ For example, the following is the link to the April 2, 2019, City Council meeting: <https://www.facebook.com/GowinGreen/videos/10214290357995503/>

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 4

Both Lt. Boatman and Mr. Jones referenced a deposition of former Tulare City Manager Joseph Carlini. In a prior investigation performed for the City, I was provided with a copy of a deposition of Mr. Carlini dated October 10, 2018, in the Hensley v. City of Tulare matter. I reviewed this deposition transcript for the information referenced by Lt. Boatman and Mr. Jones.

I. BACKGROUND

A. Jerod Boatman

Lt. Boatman has been with the Department since November 2001. Over the years, he has worked his way up the ranks of the Department and in 2015 was promoted to Lieutenant. After being with the Department for four months, he was selected to become a member of the SWAT team and, except for a short time after he was promoted to Lieutenant, has been a member of that team ever since. In addition, he has served as its tactical commander for several years.

Lt. Boatman reported that his current assignment is to be the watch commander for the weeknight patrol shift. This shift consists of Lt. Boatman, a sergeant, a corporal and seven patrol officers. Lt. Boatman reported, and Chief Hensley confirmed, that part of the duties of the weeknight watch commander is to be present at the City Council meetings. His duties at the meetings include providing security before, during and after the meetings and remaining in the parking lot until all City staff and Councilmembers have left.

1. Lt. Boatman's Paradigm⁴

According to Lt. Boatman, in September 2017 then City Manager Joseph Carlini suspected that Mr. Jones, who at the time was the Mayor, may have engaged in credit card fraud by using a City issued credit card to pay for three meals, including himself. The only other individual identified on the receipt was Police Officer James Kelly who also had a leadership role in the police officer's union at the time. When Mr. Carlini attempted to obtain the name of the third person from Mr. Jones, he refused to provide it.

⁴ This section is intended to explain Lt. Boatman's paradigm of background information that he believes provides the basis for Mr. Jones' animus toward him. The factual validity of his paradigm is beyond the scope of this investigation.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 5

Mr. Carlini reported the possible fraud to Chief Hensley and the fact that Officer Kelly was present for the dinner. Chief Hensley then discussed the matter with his leadership team⁵, which included Lt. Boatman and Captain Fred Ynclan. As a result of that discussion, it was decided to initiate an investigation. Specifically, Chief Hensley asked Lt. Boatman to obtain the video from Cattleman's restaurant where Mr. Jones and his guests had eaten.

They were successful in obtaining the video. The video revealed that the third person for whom Mr. Jones purchased dinner was a retired City of Tulare Police Officer. It is Lt. Boatman's understanding that the video was shared with Mr. Carlini and they were waiting to hear from him as to how to proceed.

However, a few days later, Chief Hensley was placed on administrative leave. Thereafter, in November 2017 Acting Chief of Police Berry Jones placed Lt. Boatman and Captain Fred Ynclan on leave based on allegations from fellow officers that they were bullying other officers to support Chief Hensley.

It is Lt. Boatman's belief that Mr. Jones, through then City Attorney Heather Phillips and Mr. Carlini, directed that Chief Hensley, Captain Ynclan and himself be placed on leave because they attempted to investigate the dinner at Cattleman's restaurant. In addition, according to Lt. Boatman, Mr. Jones has expressed his disdain for the City of Tulare Police Department and its staff by saying that he is "cleaning up the police department."⁶ According to Lt. Boatman, when this statement was made, Chief Hensley, Captain Ynclan and himself were on leave of absence.

From Lt. Boatman's perspective, all of this equates to Mr. Jones calling Chief Hensley, Captain Ynclan and Lt. Boatman "dirty cops." In addition, Lt. Boatman, reportedly based on Mr. Jones' Facebook posts in the past, believes that Mr. Jones hates the police department (including him) and Chief Hensley. Lt. Boatman also reported that Mr. Jones obtained a copy of the confidential McGinness report and distributed it publicly.⁷

⁵ Lt. Boatman reported that at the time of this meeting, Captain Berry Jones was on vacation and did not participate in the meeting.

⁶ In his interview, Mr. Jones acknowledged that this or a similar statement was impliedly attributed to him by a newspaper reporter, but he denied making the statement.

⁷ Lt. Boatman also reported that Mr. Jones has been arrested and charged with spousal abuse two times but has never been convicted.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 6

Based on the above, Lt. Boatman believes that Mr. Jones has issues with him.

The feeling is not all one-sided. Lt. Boatman does not like or trust Mr. Jones. He reported that although he dislikes Mr. Jones, he has had no contact with Mr. Jones while off-duty and has always conducted himself professionally when on duty.

B. Carlton Jones

Mr. Jones reported that he was first elected to the City Council in 2004, lost reelection in 2008 and was then re-elected in 2012 and 2016. Mr. Jones also reported that he was employed by the City of Fresno as a firefighter and had previously worked in Tulare as a firefighter. In addition, Mr. Jones mentioned that he is the President of the City of Fresno firefighter's union.

It is well known that Mr. Jones has had some controversy during his tenure on the City Council.

Mr. Jones reported that going back to the time when Mr. Carlini was the City Manager, Lt. Boatman has had a practice of staring at him. He referred to the staring as "mean mugging" which he defined as staring at someone in silence. According to Mr. Jones, he does not know what Lt. Boatman's issue is with him but admitted that he has heard that Lt. Boatman does not like him.

During his interview, Mr. Jones repeatedly referenced complaints he has received from City of Tulare police officers regarding Lt. Boatman which he reported he had passed on to Mr. Carlini. These complaints about Lt. Boatman included an accidental discharge of his gun and grabbing another officer by the neck.⁸

Regarding Lt. Boatman's paradigm, Mr. Jones explained that although he was the "Mayor" at that time, it is a ceremonial title and that the City is run by the City Manager. He stated several times that he had nothing to do with placing Lt. Boatman on leave and that he and the other City Council members were not involved in this personnel decision. He commented that if you work for the City, you should know that the City Council is not involved in personnel matters.

⁸ Mr. Jones reported that these complaints were all investigated before Chief Hensley was placed on leave.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 7

Mr. Jones reported that in Mr. Carlini's deposition, he said that he was not pressured by anyone to place anyone on leave.⁹

Regarding the Cattleman's restaurant incident, Mr. Jones reported that when he learned his dinner receipt was an issue, he spoke to Mr. Carlini. The issue was quickly resolved when he explained that the third person was a retired City of Tulare Police Officer and that he (Mr. Jones) had the Shirley Temple.

Mr. Jones also denied making the "clean up the police department comment." He acknowledged that a statement like this was attributed to him in a local newspaper article but claims that he did not make the statement. He also stated that he has addressed this issue with the Tulare Police Officer's union and told them that he never made that statement. He reported that during this meeting, he asked them why the statement bothered them and explained that it should "only bother you if you are dirty."

C. Credibility Assessment

Both Lt. Boatman and Mr. Jones attempted to attack the credibility of each other by referencing negative statements and/or acts allegedly made by the other party. For example, Mr. Jones requested that I review Mr. McGinness' report to educate me about prior grievances against Lt. Boatman and to obtain "background on where Boatman's feelings toward me are coming from."¹⁰ The report was reviewed. However, none of the grievances against Lt. Boatman were sustained by Mr. McGinness. In addition, I did not see anything in the McGinness report that provided any additional background regarding Lt. Boatman's "feelings" toward Mr. Jones than I had already obtained.

Likewise, for example, Lt. Boatman reported that in Mr. Carlini's deposition, Mr. Carlini testified that Mr. Jones pressured him to place Chief Hensley, Captain Ynclan and Lt. Boatman on leave. However, a review of Mr. Carlini's deposition does not support this allegation. Instead, according to the deposition transcript, Mr. Carlini testified that he was not pressured by anyone to place

⁹ In his deposition Mr. Carlini testified that he was not pressured to place anyone on leave.

¹⁰ See, Exhibit 4.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 8

Chief Hensley on leave and Lt. Boatman is not mentioned.¹¹

In addition, as discussed below, the evidence supports the conclusion that both Lt. Boatman and Mr. Jones made allegations/assertions that were incorrect.

Lt. Boatman made some allegations and statements that turned out to be false. Specifically, he asserted that Mr. Jones removed his arm sling while challenging him to settle their dispute “like men.” From the video evidence, it is clear Mr. Jones never removed his arm sling.

Likewise, Mr. Jones falsely asserted that he saw Lt. Boatman approach the dais, turn his body toward Mr. Jones and give him a “mean mugging” stare. The video evidence does not support this assertion by Mr. Jones.

Based on the forgoing, I find that the relative credibility of both parties is about the same. Both were truthful and accurate in some regards and mistaken in others.

II. COMPLAINTS

Lt. Boatman has filed two separate complaints regarding two different incidents involving Mr. Jones.¹² Each of these incidents is discussed below.

A. The April 2, 2019, City Council Meeting

Lt. Boatman reported that as the watch commander for the weekday night shift he is assigned by Chief Hensley to be present at City Council meetings as security and to assist as needed with such things a crowd control.

On April 2, 2019, the City Council had a Study Session beginning at 6:00 p.m. and their regularly scheduled City Council meeting scheduled to begin at 7:00 p.m.¹³ Between the meetings, there was a break. During that break, there was an

¹¹ When Lt. Boatman was informed in a follow up phone call that the deposition did not support this allegation, he reported that he had not read the deposition himself. He stated that he had been told this by someone else.

¹² See, Exhibits 1 and 2.

¹³ See,

<https://www.tulare.ca.gov/Home/Components/Calendar/Event/7489/232?toggle=all&npa=7>

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 9

exchange between Lt. Boatman and Mr. Jones that is the basis for Lt. Boatman's complaint.

The witnesses to this exchange were Lt. Boatman, Mr. Jones, Chief Hensley and Chief Nevarez. The only other evidence was the video recording from two cameras in the City Council chambers that recorded visually, without audio, during the break. The videos do not show Mr. Jones during the exchange, except for part of his arm, shoulder and head when he reaches out to shake hands and receive an envelope from someone in the audience. Likewise, in one video, Lt. Boatman has his back turned to the camera and he is leaning on the counter in front of what was reported to be Chief Hensley. In this video, however, when Lt. Boatman turns his head it can be seen on the video. In the other video, all that can be seen of Lt. Boatman, once he reaches Chief Hensley's desk, is part of the right side of his torso and hip.

The reports from each of the witnesses varied and, in some cases, conflicted with each other and/or the video evidence.

For example, Mr. Jones reported that at one point, Lt. Boatman turned his entire body toward him (Mr. Jones) and stared at him. However, the video shows that Lt. Boatman turned his head in the direction of Mr. Jones several times, but never turned his body.

Likewise, Lt. Boatman reported that the exchange occurred during a break after the City Council had gone into and come out of closed session. The video and other witnesses indicate that the exchange was during the break between the two meetings.

Chief Nevarez reported that he was standing next to Mr. Jones when the exchange occurred, but Lt. Boatman and Chief Hensley reported that they were talking with Chief Nevarez when the exchange occurred. The video appears to support Lt. Boatman and Chief Hensley's observations.

Based on the evidence from the witnesses and the video, the following is my assessment of the factual events and the reasons for my assessment.

During the break between the Study Session and the City Council meeting, Lt. Boatman, who had been in the audience, approached the left side of the City Council's chambers where Chief Hensley, Chief Nevarez, Janice Avila and other City employees sit. Before Lt. Boatman reached Chief Hensley, Ms. Avila and Chief Nevarez had left their seats. When Lt. Boatman arrived, he leaned on the dais in front of Chief

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 10

Hensley and, except when greeted by others, continued to lean on the dais until he left the area at the end of the break.

According to Lt. Boatman, while talking with Chief Hensley, Chief Nevarez became involved in the discussion at some point and he and Chief Hensley turned toward Chief Nevarez to hear what he had to say. As he did so, Lt. Boatman reported that he saw Mr. Jones behind Chief Nevarez gesturing toward him (Lt. Boatman). Specifically, Lt. Boatman reported that Mr. Jones moved his head up, opened his arms apart and was inwardly moving his hands toward his body as if to invite Lt. Boatman to fight him. He also reported that the brow of Mr. Jones' face was furrowed and he looked angry. Lt. Boatman stated that he recognized this as confrontational body language.

Lt. Boatman reported that Mr. Jones mouthed to him, "I am right here." He also recalled that Chief Nevarez told Mr. Jones to "chill out" and Chief Hensley told him (Lt. Boatman) that Mr. Jones was looking for a fight and to ignore him. According to Lt. Boatman, after Chief Nevarez told Mr. Jones to calm down, Mr. Jones picked up his cell phone and left the dais.

Lt. Boatman alleges that Mr. Jones' behavior "led me to believe that he was challenging me to an adversarial confrontation or possibly a physical fight."

Ms. Avila can be seen in the video talking to members of the audience. She returned to the dais at 5:06¹⁴ on the video. This was shortly before the City Council meeting started. As she did so, she entered by way of a walkway between Mr. Jones and Chief Nevarez. Ms. Avila reported that when she returned to the dais, she saw Mr. Jones glaring at Lt. Boatman. She heard Mr. Jones say something, but she did not recall what was said. On the video, as Ms. Avila walked up, she glanced in the direction of Mr. Jones, stopped, quickly turned and looked toward Lt. Boatman and Chief Hensley. She then looked back at Mr. Jones, then turned and looked back in the direction of Chief Hensley as she returned to her seat between Chief Hensley and Chief Nevarez. After she sat down, according to Ms. Avila, Chief Nevarez pointed out that there were photographers all over and commented that "all they needed were cameras in here." He also commented to her that he had told Mr. Jones the same thing.

After his initial departure from the dais, Chief Nevarez cannot be seen until 2:46 into the video when he walks into the audience, turns around, returns to the dais and

¹⁴ The references to time on the video are the running time of the video. The timing of the videos for this incident differ by one second.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 11

then disappears from the video. He returns to his position on the dais and sits down at 4:30 into the video. Chief Nevarez remains at his seat until 6:53 when he stands up and walks in the direction of the City Council dais. Chief Nevarez returns to his seat at 7:46 into the video.

Chief Nevarez and Mr. Jones reported¹⁵ that during the break, they were talking together with Greg Nunley. Mr. Jones reported that subsequent to this meeting, a photo appeared in the newspaper showing Chief Nevarez, Mr. Jones and Mr. Nunley engaged in conversation on the evening in question. Attached as Exhibit 5 is a copy of a photograph from the Visalia Times Delta of these three individuals apparently engaged in a conversation. Mr. Jones has confirmed that this is the photo to which he referred. Thus, it appears that during some of the time Chief Nevarez cannot be seen in the video, he was talking with Mr. Jones and Mr. Hensley.

Chief Nevarez enters the video at 2:46 leaving the dais for the audience, then turning around, returning to the dais and turning in the direction of Chief Hensley. He appears again on the video as he sits down at his place on the dais at 4:30 into the video.

In one of the videos between 1:28 and 1:54, Lt. Boatman can be seen looking to his right and then back at Chief Hensley a few times as if he is talking to Chief Hensley and someone else who is not visible on the video. From then until approximately 4:26 on the video, Lt. Boatman appears to be focused on his conversation with Chief Hensley. At this time, Lt. Boatman begins to look to the right and then back at Chief Hensley several times. From the video, is not possible to determine why Lt. Boatman was turning his head to the right. It is not clear from the video if he is looking at or toward Mr. Jones or engaging in conversation with a third person, possibly Chief Nevarez, who on the other view of the video is to his right during some of this time.

Chief Hensley reported that when he turned his head, he saw Mr. Jones push back the chair in which he was sitting, throw his chest back and his arms out in a very agitated/confrontational posture that he understood to be a challenge. Chief Hensley stated that Mr. Jones said something like, "What is your problem? I am right here." Chief Hensley responded, "What is the deal?" Mr. Jones then stated, "Your guy stared at

¹⁵ Lt. Boatman reported that when the break began, he saw Chief Nevarez talking with Mr. Jones but returned to the area where he and Chief Hensley were talking before the incident with Mr. Jones began.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 12

me. What is his problem?” According to Chief Hensley, he responded by telling Mr. Jones that they were just talking with Chief Nevarez and that he did not want to look at Mr. Jones. At this point, Mr. Jones got up and moved toward the door, leaving the dais. Chief Hensley reported that as Mr. Jones was leaving, he stared at Lt. Boatman and mouthed something he could not make out. At the same time, Mr. Jones lowered his arms, and with the palms of his hands pointed upward while he waved with his fingers, as if he were saying, “Come on.” Chief Hensley opined that this gesture was a challenge from Mr. Jones to Lt. Boatman. Chief Hensley also reported that at some point during this exchange, Chief Nevarez told Mr. Jones to calm down and something about media being present.

Chief Nevarez reported that he was speaking with Mr. Jones while standing near Mr. Jones’ seat on the dais he noticed that Mr. Jones was looking past him and not at him. Chief Nevarez turned his head to see what Mr. Jones was looking at and he saw Lt. Boatman speaking to Chief Hensley while leaning on the counter in front of Chief Hensley. However, Lt. Boatman was looking back at Mr. Jones.

According to Chief Nevarez, he recalled telling Mr. Jones, Chief Hensley and Lt. Boatman to look up because the news photographer was there taking photos. Chief Nevarez claims that he did not hear any words that were said by anyone; all he saw was the staring.

Chief Nevarez reported that after the above had occurred, he went to where Mr. Hunt was sitting on the dais. He told Mr. Hunt what was going on and told him to keep an eye on the situation. He estimated that it took approximately 30 to 60 seconds to get to where Mr. Hunt was seated. Chief Nevarez also commented that he never gets involved with things and gets along well with both parties.

Mr. Hunt reported that during the break, he noticed Lt. Boatman talking with Chief Hensley. According to Mr. Hunt, at some point Chief Nevarez approached him and while turned sideways with his back to where Mr. Jones sits, Chief Nevarez stated that Mr. Jones and Lt. Boatman “are getting into it verbally” and he (Chief Nevarez) told Mr. Jones that there are cameras. After hearing this, Mr. Hunt looked toward the other end of the dais and saw Mr. Jones leaving the dais.

Mr. Jones reported that when the break began, he turned his chair with the back to the audience and engaged in a conversation with Mr. Nunley and Chief

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 13

Nevarez.¹⁶ He noticed Lt. Boatman come to the dais in front of Chief Hensley. According to Mr. Jones, when Lt. Boatman arrived at the dais, Lt. Boatman turned his body toward Mr. Jones and began staring at him while speaking with Chief Hensley. Mr. Jones said that the next time he looked that way, Lt. Boatman was leaning on the counter in front of Chief Hensley and, while still talking with Chief Hensley, his head was turned toward Mr. Jones and he was staring at Mr. Jones. Mr. Jones described the staring as “mean mugging” which he defined as staring at someone in silence.¹⁷

At this point, according to Mr. Jones, he said to Lt. Boatman, “What?” and Lt. Boatman kept staring without saying a word. Mr. Jones claims that he then asked Lt. Boatman why he was staring at him. Mr. Jones reported that at this point, Chief Hensley grabbed Lt. Boatman and told him to leave Mr. Jones alone.¹⁸ Mr. Jones recalled Chief Nevarez saying something but did not recall what it was. According to Mr. Jones, he never stood up and never left the dais.

In the audio recording of the April 2, 2019, Study Session and City Council meeting available through the City’s website, it does not appear that any of this exchange was recorded. However, at the beginning of the City Council meeting, the person conducting the meeting states that Mr. Jones has stepped away from the dais, is not present and that they are going to proceed without him.¹⁹ This evidence supports the reports by Chief Hensley and Lt. Boatman that after the incident, which was near the end

¹⁶ Exhibit 6 is a handwritten diagram of the Council Chambers prepared by Mr. Jones. He drew this diagram when he was explaining what happened between him and Lt. Boatman. In the diagram, he has written his initials (CJ), LN for Chief Nevarez and a circle for where Mr. Nunley was allegedly standing. He has also inserted an arrow pointing toward Chief Nevarez to indicate the direction he was looking.

¹⁷ Mr. Jones reported that after Chief Hensley was placed on leave but before Lt. Boatman was placed on leave, Lt. Boatman would stare at him like this. He also reported that other City police officers have come to him with complaints about Lt. Boatman that he passed on to Mr. Carlini. He also reported that he has heard from others that Lt. Boatman does not like Mr. Jones.

¹⁸ Mr. Jones reported that Mr. Nunley said, “What is that?” However, later when asked if Mr. Nunley was a witness, Mr. Jones said he did not know if Mr. Nunley saw anything.

¹⁹ This recording can be found at: <https://soundcloud.com/cityoftulare/city-council-040219>.

FIKE & BORANIAN

ATTORNEYS AT LAW

An Association of Attorneys

Mario Zamora

August 7, 2019

Page 14

of the break and just before the City Council meeting started, Mr. Jones left the dais. At the same time, this evidence conflicts with Mr. Jones statement that he never left the dais.

While the video recordings are not conclusive, when combined with the information provided by the witnesses and other evidence, the video recordings are very helpful in determining what occurred.

On the video, except for a couple of glances to his right within the first couple of minutes, Lt. Boatman is leaning on the counter in front of Chief Hensley and looking at Chief Hensley. At approximately 4:27, Lt. Boatman, while still leaning, turns his head to the right and then back to Chief Hensley several times including the period of time up to and following Ms. Avila's return to the dais.

From the video it is clear that Chief Nevarez did not spend the entire break talking with Mr. Jones. He left his chair when the break began and then appears at 2:46 leaving the dais for the audience and then turning around and returning to the dais. He appears again on the video as he sits down at his place on the dais at 4:30 into the video. Chief Nevarez remains at his seat until 6:53 when he again leaves and returns at 7:46.

After Chief Nevarez returned to his seat at 4:30, for a few seconds he turns his chair and faces toward Lt. Boatman and Chief Hensley and appears to be conversing with them. At 4:49, Chief Nevarez points in the direction of the news photographer who is in the opposite corner of the room taking photographs. As he does so, he appears to be talking with Lt. Boatman and Chief Hensley. Chief Hensley then turns three times toward Mr. Jones' location on the dais. During the third turn of his head, Chief Hensley appears to be talking to someone at Mr. Jones' location on the dais and while doing so points again to the news photographer. The time of this is 5:00 on the video.

Six seconds later, at 5:06 on the video, Ms. Avila enters the walkway to return to the dais and glances in the direction of Mr. Jones, stops, quickly turns and looks toward Lt. Boatman and Chief Hensley, then looks back at Mr. Jones. She then turns and looks back in the direction of Chief Hensley as she returns to her seat between Chief Hensley and Chief Nevarez.

After Ms. Avila returns to the dais, someone engages Chief Nevarez in a discussion at his seat on the dais for approximately 35 seconds. At 6:52 on the video, after talking with Ms. Avila, Chief Nevarez gets up and leaves his seat walking in the direction of Mr. Hunt's seat on the dais. He returns at 7:46 on the video.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 15

The photograph from the newspaper is also important here. The photographer enters the room at :39 on the video. He does not start taking photos until 1:26 on the video

The triggering event here is Mr. Jones and Lt. Boatman looking at each other. From the evidence described above, I find that this could not have occurred until approximately 4:26 on the video. At this point, Lt. Boatman begins looking to his right which is in the direction of Mr. Jones' seat on the dais and toward Chief Nevarez' location on the dais. According to the video, Lt. Boatman never looks to his right for more than a few seconds before looking back at Chief Hensley.

This evidence does not support Mr. Jones report of prolonged "mean mugging." In addition, Mr. Jones reported that when he first saw Lt. Boatman staring at him, Lt. Boatman had his body turned in the direction where Mr. Jones was sitting. The video does not support this assertion. Nowhere in the video does Lt. Boatman turn his body to his right in the direction of Mr. Jones.

Mr. Jones also reported that he never stood up and never left the dais. However, Mr. Hunt, Chief Hensley, Lt. Boatman and the audio from the City Council meeting all support a finding that he did leave the dais. In my assessment, this also supports the report by Chief Hensley and Lt. Boatman that as he left, Mr. Jones gestured to Lt. Boatman and mouthed something to him.

Mr. Jones admits that he was the first one to speak. He reported that he said, "What?" and when he did not get a response, he asked Lt. Boatman why he was staring at him. According to all of the witnesses who were present, Lt. Boatman never said a word. Chief Hensley, however, did speak to Mr. Jones asking what was wrong and denying that Lt. Boatman was staring at Mr. Jones. I find Chief Hensley's version of the facts to be more credible than the report from Mr. Jones.

Another aspect of Mr. Jones' version of the facts that is questionable is his report that when the break began, he turned his chair with the back to the audience and noticed Lt. Boatman come to the dais in front of Chief Hensley. According to Mr. Jones, when Lt. Boatman arrived at the dais, Lt. Boatman turned his body toward Mr. Jones and began staring at him while speaking with Chief Hensley.

These facts, the video, the newspaper photograph and the diagram in Exhibit 6 drawn by Mr. Jones make these assertions by Mr. Jones questionable. The diagram indicates where Mr. Jones, Mr. Nunley and Chief Nevarez were located when they were talking. This diagram conflicts with the photograph from the newspaper

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ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 16

attached as Exhibit 5. In the photograph, Mr. Jones and Mr. Nunley have turned their seats to face each other and Chief Nevarez is standing between them. According to the photograph, Mr. Jones' back was turned to the area on the dais where Lt. Boatman was talking to Chief Hensley. In this position, Mr. Jones could not have seen Lt. Boatman walk up to the dais or talk with Chief Hensley.

When the break began, a member of the audience approached Mr. Jones, shook his hand and gave Mr. Jones an envelope. They spoke a few seconds and the audience member walked away. This occurred at :39 into the video. Chief Nevarez left his seat at :20 into the video. Lt. Boatman does not start approaching the dais and Chief Hensley until :59 into the video.

In addition to the photograph itself, the actions of the photographer on the video are also significant. The photographer entered the room at :39 on the video. By this time, Chief Nevarez had left his chair and walked in the direction of Mr. Jones' location on the dais. The only time the photographer took photographs was between approximately 1:25 and 1:55 on the video. At 2:46, Chief Nevarez enters the video from the area where Mr. Jones is located on the dais, goes into the audience, turns around, re-enters the dais and goes in the direction of Chief Hensley. Thus, the photograph could only have been taken between 1:26 and 1:55 on the video.²⁰

According to the video, Lt. Boatman did not turn his head to the right toward Mr. Jones between 1:55 and 4:26 on the video. This is consistent with the other evidence which indicates that the incident began at approximately 4:30 on the video.

Based on the forgoing, I find that the weight of the credible evidence supports the allegation by Lt. Boatman that Mr. Jones postured toward him in a confrontational, aggressive manner, motioned with his body language that he was seeking a confrontation with Lt. Boatman and mouthed to him "I'm right here." Therefore, Lt. Boatman's allegations are sustained.

I also find that the evidence does not support Mr. Jones' explanation that Lt. Boatman essentially started the whole thing by staring at Mr. Jones. While Lt. Boatman can be seen in the video looking to his right in the general direction of Mr. Jones, this did not occur until 4:26 in the video and Lt. Boatman never looks in that direction for more than a few seconds at a time. Furthermore, from the video it does appear that when Chief Nevarez sits down at his seat at 4:30 into the video, he is

²⁰ From the angle of the camera seen on one of the videos, it appears that the photo in question would have been taken at approximately 1:55 on the video.

Mario Zamora
August 7, 2019
Page 17

continuing or engaging Lt. Boatman and/or Chief Hensley in a conversation. In short, in my assessment, the video evidence refutes Mr. Jones assertion.

B. The May 7, 2019, Parking Lot Incident

The City Council met on May 7, 2019. Lt. Boatman was present for that meeting. After the public portion of its meeting, the City Council went into closed session. Lt. Boatman reported that Chief Hensley asked him to stay until everyone in closed session had left. According to Lt. Boatman, while he was waiting outside near his patrol car, he was using his cell phone. For example, Lt. Boatman reported that at about 9:30 p.m., he placed an online food order and at 9:35 p.m., he called one of his officers to pick up the food for him.²¹

Lt. Boatman reported that when he saw Mr. Jones exit the building, he decided to keep his head down looking at his cell phone and ignore Mr. Jones. As Mr. Jones walked to his (Mr. Jones) car, he called out to Lt. Boatman, "What's Up?" Lt. Boatman did not respond. Mr. Jones again called out in what Lt. Boatman described as an elevated, angry voice, "I said, what is up?" Again, Lt. Boatman did not respond.

Lt. Boatman originally alleged that at this point it appeared to him that Mr. Jones took off the shoulder sling he was wearing to support his right arm. Lt. Boatman reported that Mr. Jones then said, "If you are that mad, we need to get together and handle this like men." According to Lt. Boatman, this statement and the prior incident on April 2, 2019, convinced him that Mr. Jones was challenging him to a fight.

In response, Lt. Boatman stated to Mr. Jones, "I have lodged a formal complaint against you and I think it's in your best interest to not speak to me." Lt. Boatman reported that while he was making this statement, Mr. Jones repeated his prior statement. Lt. Boatman reports that he responded to this second challenge by telling Mr. Jones, "Thank you for saying that again because you're on camera and being

²¹ See, Exhibit 7. The time stamp on one of these documents says 10:30 a.m.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 18

recorded.” By this time, Mr. Jones was standing by his car. Mr. Jones reportedly responded, “Good!”, put his sling²² in his vehicle, got in and drove away.²³

Mr. Jones points out that at the time of this incident, he was recovering from shoulder surgery and that he would have been an idiot to fight Lt. Boatman in that condition, especially when Lt. Boatman carries a gun.

Mr. Jones reported that as he walked to his car, he saw Lt. Boatman standing by his police vehicle and realized that he had to walk near him to get to his own car.²⁴ He reported that at first Lt. Boatman was leaning against his car and as he approached, Lt. Boatman stopped leaning and stood up.

According to Mr. Jones, as he walked toward his car, he asked Lt. Boatman, “What’s up?” and there was no response. Mr. Jones claims that he believed that Lt. Boatman did not hear him so he said, “Hey, what’s up?” Again, there was no response.

Mr. Jones noticed that Lt. Boatman turned his head and body toward Mr. Jones as he walked to his car.

Mr. Jones reported that he then called out to Lt. Boatman, “If you are that mad, whatever had you that mad, we need to get together and work it out.” Finally, Lt. Boatman responded saying that he was glad that Mr. Jones had said that because he was recording and he had a bunch of complaints against Mr. Jones.

²² This is the sling that Lt. Boatman originally believed Mr. Jones had removed shortly before this. The video does not support the allegation that Mr. Jones ever removed his sling. The video shows that the sling went around Mr. Jones neck and supported his right arm. Over his left shoulder he had some type of bag or backpack. Attached as Exhibit 8 are copies of photographs I took of Mr. Jones with the bag he claims to have worn on the evening of May 7, 2019. While the video clearly indicates that Mr. Jones was carrying some type of bag over his shoulder, it is not clear enough to determine if this is in fact the bag he had that evening.

²³ Exhibit 9 is a Google Map of the parking lot showing the path Mr. Jones traveled and the location of his and Lt. Boatman’s vehicles.

²⁴ From the video, it is clear Mr. Jones could have taken a broader and more direct route to his car. He could have also said nothing to minimize the risk of confrontation.

FIKE & BORANIAN

ATTORNEYS AT LAW
An Association of Attorneys

Mario Zamora
August 7, 2019
Page 19

At this point, according to Mr. Jones, he was close to his car, turned and responded, "Fine," got in his car and called Mr. Hunt, but there was no answer. He then drove away.

The next day, Mr. Jones spoke to Mr. Hunt about the incident and subsequently sent an email to Mr. Hunt and others.²⁵ Among the points that Mr. Jones makes is that Lt. Boatman's allegation regarding the removal of his arm sling was wrong. Mr. Jones refers to this as a lie and points out that Lt. Boatman also lied when he said that he was recording their interaction.

Lt. Boatman says that it must have been the bag or backpack that he saw Mr. Jones remove. He also admits that he lied about recording their exchange to de-escalate the situation.

The video of this incident is consistent with the reports of both parties. The video does not have any audio. Both parties reported that words were exchanged. Those words, except for one statement by Mr. Jones are consistent with each other. There are no third-party witnesses or other evidence to resolve the conflict in the evidence.

As discussed above, the credibility of both witnesses is about the same. Therefore, the factual dispute cannot be resolved based on the credibility of the witnesses.

Based on the foregoing, I find that there is insufficient evidence to support the allegation that as Mr. Jones walked through the parking lot he said to Lt. Boatman something like "If you are that mad, we need to get together and handle this like men." Therefore, this allegation is not sustained.

III. CONCLUSION

I find that the weight of the credible evidence supports the allegation by Lt. Boatman that Mr. Jones postured toward him in a confrontational, aggressive manner, motioned with his body language that he was seeking a confrontation with Lt. Boatman and mouthed to him "I'm right here." Therefore, Lt. Boatman's allegations are sustained.

I also find that the evidence does not support Mr. Jones' explanation that Lt. Boatman essentially started the whole thing by staring at Mr. Jones. While Lt. Boatman can be seen in the video looking to his right in the general direction of

²⁵ See, Exhibit 3.

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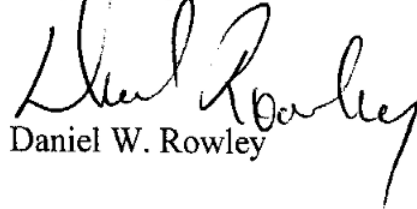
Mario Zamora
August 7, 2019
Page 20

Mr. Jones, this did not occur until 4:26 in the video and Lt. Boatman never looks in that direction for more than a few seconds at a time. Furthermore, from the video, it does appear that when Chief Nevarez sits down at his seat at 4:30 into the video, he is continuing or engaging Lt. Boatman and/or Chief Hensley in a conversation. In short, in my assessment, the video evidence refutes Mr. Jones assertion.

I find that there is insufficient evidence to support the allegation that as Mr. Jones walked through the parking lot on the evening of May 7, 2019, he said to Lt. Boatman something like "If you are that mad, we need to get together and handle this like men." Therefore, this allegation is not sustained.

The opinions and conclusions expressed above are based solely upon my evaluation of the evidence I obtained during my investigation. I hope this report will be of assistance to you. If I can be of any further assistance, or if you have any questions, please let me know.

Respectfully,



Daniel W. Rowley

Attachments