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Office of Accountability and Transparency

Monitoring Report
Incident OAT22-010

On December 4, 2022, a use of force incident involving a uniformed member of the Phoenix Police Department occurred outside of a Circle K in north Phoenix. The incident received television news coverage after cell phone video surfaced showing the officer punching an individual in the face and head multiple times.

This report summarizes OAT's review of the Department's administrative investigations into the December 4th incident and provides recommendations to improve future Department investigations.

February 22, 2024

STATUTORY HISTORY AND AUTHORITY

The City of Phoenix created the Office of Accountability and Transparency (OAT) in 2021 to perform independent civilian oversight of the Phoenix Police Department (Department). OAT monitors Department administrative investigations of critical incidents involving sworn personnel and provides community members a way to freely communicate complaints, commendations, and concerns about officers and the Department without fear of retaliation. Phoenix City Code (P.C.C.) §§ 20-6 and 20-7 give OAT the authority to monitor Department administrative investigations.¹

Specifically, P.C.C. § 20-6, requires OAT to monitor administrative investigations of:

- officer-involved shootings;
- deaths in-custody;
- any duty-related incidents resulting in serious bodily injury;
- incidents in which Department personnel are under investigation for or charged with offenses against persons under Arizona law; and
- incidents in which a Phoenix police officer is under investigation for any misdemeanor or local law violation where use of force or threatened use of force is an element in the crime.²

Phoenix City Code § 20-7, gives OAT discretionary authority to monitor:

- Department administrative investigations of any incidents that result in a Department administrative investigation in which OAT believes it is in the City's best interest for OAT to be involved, and
- Department administrative investigations when requested to do so by the City Manager.³

¹ [P.C.C. Chapter 20 can be found here.](#)

² P.C.C. Sec. 20-6.

³ P.C.C. Sec. 20-7.

EXECUTIVE SUMMARY

On December 4, 2023, the Involved Officer responded to a stolen vehicle call at a north Phoenix Circle K. Upon arrival, the Involved Officer opened the driver's side of his police vehicle while pointing his gun at the Involved Civilian and began issuing orders. The Involved Civilian failed to comply and began walking away from the Involved Officer. The Involved Civilian struck the Involved Officer early in the contact and the Involved Officer later struck the Involved Civilian multiple times in the head and face while the Involved Civilian was on the ground. The Involved Civilian sustained broken bones to his orbital socket and neck.

The Department's Force Evaluation Team (FET) conducted the investigation into this incident; accordingly the Department's Professional Standards Bureau did not conduct a full investigation of this incident. The Involved Officer was issued a "Blue Team" (an internal departmental form of response to misconduct allegations) and the Department found the Involved Officer was within policy.

This incident was captured by a civilian bystander on cell phone video. That video was released to local news stations and OAT received notice of this incident through those news stories in the days following the incident. Exercising its discretionary authority⁴, OAT sent the Police Chief and the City Manager a Notice of Intent to Monitor on December 6, 2022. OAT concluded its review and released this report publicly on February 22, 2024.

After review, OAT concludes that the Department's administrative investigation was not thorough and complete. OAT's recommendations for future investigations follow.

⁴ The Involved Civilian's injury severity rises to the level for this incident to fall under OAT's mandatory authority. However, because OAT learned of the incident through the media and not the Department, OAT did not learn of the injury severity until it had received information from the Department following exercising its discretionary authority.

FACTUAL AND PROCEDURAL HISTORY⁵

- December 4, 2022 – Incident
- December 6, 2022 – OAT noticed Department of intent to monitor
- February 7, 2023 – Department informed the Involved Officer that he was no longer under investigation
- February 20, 2023 – Department case notes state: “The level of force falls within Operations Orders Policy 1.5. No Training Required.”
- February 21, 2023 – Department commander case notes state: “In Policy. Please close as necessary.”
- May 17, 2023 – OAT received initial internal investigative materials
- August 7, 2023 – OAT received additional investigative materials
- August 15-16, 2023 – OAT received additional investigative materials
- August 30, 2023 – OAT received additional incident documents via a public records request
- September 6, 2023 – OAT received a copy of the Force Evaluation Team (FET) single-page pilot model flowchart
- February 16, 2024 – OAT completed Monitoring Report
- February 22, 2024 – OAT released Monitoring Report to the public and the media

I. Incident

On December 4, 2022, at 2:11 p.m., the manager of a Circle K Convenience Store and Gas Station called 911 regarding an individual who she described as being a known transient whom she suspected was in possession of a stolen vehicle. After obtaining the vehicle plate number from the manager, police dispatch confirmed that the vehicle was identified in the system as stolen.

⁵ Table 1 contains a detailed list of the information and materials OAT received from the Department’s Professional Standards Bureau and through the public records request process (see Appendix).

At 2:14 p.m., police dispatch issued a Priority 1 service call. The initial information included a description of the suspect (the Involved Civilian), along with the fact that he was alone, barefoot, and a transient who was known to the reporting party, who was the on-site Circle K manager. Around 2:15 p.m., the Involved Officer informed dispatch that he was enroute to the call and queried information about the stolen vehicle.

Between the time the Involved Officer was enroute to when he arrived at the scene, police dispatch issued the following information to responding units: the stolen vehicle would not start; the Involved Civilian was unsuccessful in getting someone to jumpstart it; the first name of the Involved Civilian; the Involved Civilian had been sitting in the vehicle for the past 20 minutes, but was recently seen outside the vehicle looking inside the truck's open hood and was now back in the driver's seat. There was no report of, or reference to, the Involved Civilian being in possession of any weapons.

In the Department's Incident Report, the Involved Officer noted that police dispatch read the original stolen vehicle report and advised that the owner of the stolen victim had left their keys in the ignition when it was taken by a known person—the Involved Civilian—and that the Involved Officer heard this radio transmission before arriving at the scene. As the Involved Officer approached the area of the Circle K, he called over the radio for a description of the Involved Civilian.

At 2:22 p.m., the Involved Officer arrived on-scene alone. They pulled their marked police vehicle within approximately 15 feet of the stolen vehicle at an angle facing the truck's driver's side. The Involved Officer's driver's side door was on the far side, offering a level of shielding and protection. Immediately upon arrival, the Involved Officer activated the police vehicle's emergency lights and chirped the siren once. The Involved Officer then partially opened the driver's side door of his police vehicle, verbally ordered the Involved Civilian to show his hands, simultaneously pointing his firearm at him. The hood and driver's side door of the stolen vehicle were open.

The Involved Civilian exited the truck, making undecipherable statements and eye contact with the Involved Officer as he exited the truck. The Involved Officer continued to issue commands, but more forcefully. The Involved Civilian did not comply with any of the orders, but his hands were visible shortly after he exited the vehicle. The Involved Civilian did not comply with multiple secondary orders, including instructions to get on the ground and to get on his knees. The Involved Civilian continued to make undecipherable statements in response to the Involved Officer's orders and then motioned in the Involved Officer's direction with an extended left arm. The Involved Civilian's unintelligible verbal responses, body language, and lack of response to the continued orders indicated that the Involved Civilian was non-compliant.

The Involved Officer conveyed over the police radio that he had the Involved Civilian at gunpoint and that the Involved Civilian was uncooperative. While relaying this information, the Involved Officer continued to point his firearm at the Involved Civilian, who turned and walked away from the Involved Officer in the direction of the Circle K.

The Involved Officer responded by following in the Involved Civilian's direction, initially with his firearm still out and pointed at a low angle, possibly in the direction of the Involved Civilian or at the low-ready position, as he walked away from the Involved Officer. The Involved Officer kept his firearm out until after he passed the front part of the truck's cabin.

The Involved Civilian stopped and turned to face the Involved Officer. The Involved Officer ordered the Involved Civilian to get on his knees. The Involved Civilian did not comply and instead extended his left arm in the Involved Officer's direction with keys in his left hand. This part of the encounter took place near the end of the gas pump island.

As the Involved Officer grabbed the Involved Civilian's extended left arm, the Involved Civilian's right arm moved in the direction of the Involved Officer's face/head area striking the Involved Officer in the face/head. The Involved Civilian then immediately attempted to flee. Video footage shows the Involved Civilian pulling away from the Involved Officer, while striking the Involved Officer's head with their closed right fist.

The Involved Officer maintained his hold on the Involved Civilian and attempted to take the Involved Civilian to the ground. The Involved Officer threw at least three punches in the direction of the Involved Civilian's head area as they were both standing. The Involved Civilian resisted the Involved Officer's takedown effort for approximately 10 seconds; the Involved Officer is captured on video being lifted off the ground multiple times as he has a hold of the Involved Civilian from behind.

The Involved Officer managed to take the Involved Civilian to the ground. On the ground, the Involved Civilian maneuvered his body from his back to his side, and then onto his belly. During this movement, the Involved Civilian assumed a "turtle-like" position with his hands visibly covering his head while lying on his side, to his hands clasped behind his head once he was lying on his belly. During this period, the Involved Officer punched the Involved Civilian's head and facial area multiple times and attempted to pull apart the Involved Civilian's hands, albeit unsuccessfully. The Involved Officer's attempt to separate the Involved Civilian's hands results in the Involved Civilian's upper body lifting off the ground—an indication of the strength of the Involved Civilian's clasped hands. The Involved Officer ordered the Involved Civilian to put his hands behind his back. The Involved Officer delivered several more punches to the Involved Civilian's head area before he stopped using force altogether and called over the radio for an update on the estimated arrival time of additional officers.

The Involved Officer remained on top of the Involved Civilian for approximately 20 seconds until a backup officer arrived. Shortly after the backup officer arrived, officers handcuffed the Involved Civilian without further incident.

From the arrival of the Involved Officer to the handcuffing of the Involved Civilian, the incident lasted one minute and 13 seconds.

Fire Department personnel were called to the scene to examine the injuries to the Involved Civilian who was then transported to the hospital. The Involved Officer was not injured. An internal report prepared by the on-scene sergeant indicated that the Involved

Civilian sustained multiple “broken bones.” Based on markings made on a 2D image of a person’s body included in the sergeant’s report, the impacted areas were marked as near the eye and neck.

The Department’s Incident Report, which OAT received on August 30, 2023, indicated that as early as later the same day (December 4, 2022), the hospital informed the on-scene sergeant that the Involved Civilian had sustained “facial fractures to his orbital bones, neck fractures, a scalp hematoma, and had blood on his left sinus.”

Approximately two days after the incident, FOX 10 and ABC 15 published stories featuring cell phone video footage by a witness who, FOX 10 reported, alleged that the Involved Civilian was compliant and not resisting the Involved Officer seen punching him repeatedly. Department representatives responded that the video only recorded part of the incident and “[did] not capture the totality of the circumstances.” They also stated that a determination of whether the actions of the Involved Officer were within policy would be made following completion of a Professional Standards Bureau (PSB) investigation.⁶

II. **The Phoenix Police Department’s Investigation**

The Department’s investigation was primarily conducted by its Force Evaluation Team (FET), though the Involved Officer was interviewed by PSB sergeants. The Department issued a *Within Policy* finding and informed the Involved Officer that he was no longer under investigation on February 7, 2023. The Department investigative materials provided to OAT did not include an investigation report (see Appendix A for full list of materials received from the Department).

⁶ *Phoenix Officer Caught on Camera Beating Suspect at Gas Station*, FOX 10 PHOENIX (Dec. 6, 2022), <https://www.fox10phoenix.com/news/phoenix-officer-caught-on-camera-beating-suspect-at-gas-station>; Elenee Dao, *Phoenix Police Officer Repeatedly Hitting Man in Arrest PD Responds*, ABC 15 PHOENIX (Dec. 7, 2022), <https://www.abc15.com/news/local-news/video-shows-phoenix-police-officer-repeatedly-hitting-man-in-arrest-pd-responds>.

OAT requested information about the steps taken in FET investigations, which included an offer to sit down with Department personnel most familiar with them, to get a better understanding of this process. The only information OAT received was an undated, one-page flowchart titled, “Phoenix Police FET Pilot Model.”

III. Investigative Sufficiency

Under P.C.C. § 20-10, OAT is tasked with reviewing any Department administrative investigation it monitors to ensure that it is thorough and complete.⁷

Based on its review, OAT concludes that the investigation was not thorough and complete for the following reasons:

a. Recommended Steps for Improved Investigations

OAT recommends the Department take the following steps to improve future administrative misconduct investigations:

1. Conduct a Full-Scale Professional Standards Bureau Investigation

According to the Department, this case was primarily handled by its Force Evaluation Team (FET) and not PSB, though PSB investigators interviewed the Involved Officer. While the Department might have a clear understanding about how FET considers and analyzes evidence or allegations of misconduct, OAT was unable to determine that from any of the information contained in the provided materials. Additionally, the Department’s internal policies indicate that this case should have been investigated by PSB.

The Department’s PSB Manual identifies the type of incidents that the Investigations Unit handles. Policy B-1 §§ 4(B)(1) and 4(B)(3) identify serious misconduct allegations and response to resistance incidents resulting in serious

⁷ OAT’s thorough and complete sufficiency determinations include a review and assessment of: allegations made; evidence obtained, reviewed and analyzed; quality and extent of subject and witness interviews; investigative report clarity and objectivity; and the investigative process taken.

injury *or* which have the potential for City liability as matters that are classified for a full-scale PSB investigation.⁸ In this incident, the Involved Officer is presented with an allegation of excessive force—a serious misconduct allegation— during his interview. Further, within hours of the incident, there was clear evidence that the Involved Officer’s use of force resulted in the suspect sustaining multiple broken bones—serious injury *and* the incident has the potential for City liability. All three possible indicators that the incident should have been fully investigated by PSB were present.

In addition, the Department represented to the media, and thus the public, that this matter was being investigated by PSB. Announcing the investigation publicly as a PSB investigation signaled that there would be a level of scrutiny not actually present in this incident’s investigation by FET. Though OAT recognizes that PSB played a role in this investigation by interviewing the Involved Officer, it was notably minor.

Further, a full-scale PSB investigation would have allowed PSB to address and properly explain the impact of the Involved Civilian’s actions upon this incident: (1) his failure to comply; (2) his active resistance to the Involved Officer’s initial effort to put him into handcuffs; (3) his aggravated assault against the Involved Officer; (4) his effort to flee the scene; and (5) his subsequent refusal to put his hands behind his back while on the ground.

An incident of this severity deserves the level of detail and attention that could only come from the Department entity with the primary responsibility to conduct potential misconduct investigations: PSB. A robust and complete PSB investigation would have increased the Involved Officer’s and public’s understanding of this incident, developed information to potentially enhance

⁸ Phoenix Police Dep’t., PROFESSIONAL STANDARDS BUREAU MANUAL, p. 24 (Rev. Feb. 2022).

Department training, been consistent with what the Department publicly communicated would happen in response to this incident, and put the Department in line with its internal policies regarding when a PSB investigation should occur. To address the deficiencies and considering the seriousness of the Involved Civilian's injuries, OAT recommends that in similar incidents, the Department conduct a full-scale PSB investigation.

2. Identify the Source of the Excessive Force Allegation

Nothing in the Department's case file identifies whether there was a specific complaint and, if so, whether it was made by an internal supervisor or employee. As presented, neither the Involved Officer nor the public have any information about how this single-allegation complaint originated. For all investigations, whether by FET or PSB, the Department should identify the source of the complaint, including whether the Department initiated their own review/investigation per policy or whether it came from an outside source.

3. Conduct a Follow-up Interview of the Involved Officer

The Involved Officer's interview would have benefited greatly from additional questions. For example, follow-up questions should have been asked regarding the Involved Officer's decision to approach the suspect alone and whether he did so based on training, Department policy or practice. The Involved Officer should also have been asked additional questions about his recognition that the incident was a "high risk" encounter and how that factored into his decision to approach the suspect alone.

An additional material line of follow-up questioning would be whether and how the Involved Officer engaged in de-escalation efforts, including what his understanding is regarding the presence of more than one officer. To avoid any potential collective bargaining or due process issues with pursuing this line of

questioning without an allegation, the assigned PSB investigator could add one or both of the following allegations: Operations Order 1.2 Failure to Properly Use Discretion and/or Operations Order 1.5 Failure to Properly De-escalate.

Regarding the sole allegation of excessive force, interviewers should have pursued a much deeper line of questioning pertaining to the Involved Officer's decision to strike the Involved Civilian in his head and face and his understanding of the Department's policy guidelines for the use of hard empty hand techniques. Questions focusing on the Involved Officer's decision to continue striking the Involved Civilian in his head and face after the Involved Officer had the Involved Civilian pinned underneath him near the end of this incident are important to ask to obtain a greater understanding of whether this continued use of force was consistent with Department policy and/or training. Operations Order 1.5.4.H states, "[h]ard empty hand techniques may be used when facing the active aggression level of resistance."⁹ Here, it would have been helpful to understand how the Involved Officer viewed the Involved Civilian's level of resistance when the Involved Civilian was face-down on the pavement and shielding his head from the Involved Officer's strikes.

In consideration of the recommended additional lines of questioning and follow-up questioning above, playing key clips of available videos or audio during a follow-up interview would allow an Involved Officer the opportunity to respond to what is displayed in the video and audio evidence, should they decide to do so.¹⁰ Critical for a complete and thorough investigation and sound finding, this would allow the

⁹ Phoenix Police Dep't., OPERATIONS ORDER 1.5.4.H(1) (Rev. Jul. 2022).

¹⁰ According to Ariz. Rev. Stat. § 38-1116(A)(2), a portion of the Arizona Police Officer's Bill of Rights, (a law enforcement officer is read a notice before viewing their recorded body worn video that states, "Video evidence has limitations and may depict events differently than you recall. The video evidence may assist your memory and may assist in explaining your state of mind at the time of the incident. Viewing video evidence may or may not provide additional clarity to what you remember. You should not feel in any way compelled or obligated to explain any difference in what you remember and acted on from what viewing the additional evidence provides you.").

Department to properly assess the Involved Officer's answers when determining if their actions were, in fact, in accordance with law, policy, or training.

4. Conduct a Complete Review of All Available Evidence

In all administrative investigations, Department investigators should review all available body-worn camera (BWC) footage that captures relevant portions of the incident as well as interviews of other officers or witnesses and BWC that captures other officers' interactions with the Involved Civilian.

In this incident, investigators did not review the BWC from the on-scene sergeant who, according to policy, is tasked with viewing and evaluating the injured civilian and completing a response to resistance report.¹¹ Failure to review this footage not only limited knowledge of the sergeant's assessment, but it also limited investigators from determining whether the sergeant identified and interviewed additional witnesses.

Additionally, investigators did not review the BWC footage from the backup officer who helped to take the Involved Civilian into custody. As noted above, doing so would have confirmed whether his video contained information relevant to the overall incident, including any comments or allegations from the Involved Civilian (since the Involved Officer's camera was knocked from his body during this incident) and statements from the Involved Officer after the arrest was made.

Finally, investigators did not review the BWC footage from the officer who read the Involved Civilian his Miranda rights and obtained a confession about the stolen vehicle. This BWC footage may have included additional statements that the Involved Civilian made about his actions during the Involved Officer's effort to place him into handcuffs and the struggle that ensued.

¹¹ Phoenix Police Dep't., OPERATIONS ORDER 1.5.5.B(1) (Rev. July 2022).

In this instance, the Department did not review three different officers' BWC footage, all of which had potential for valuable, relevant evidence for the administrative investigation. For all administrative investigations, investigators must review all available and potentially relevant evidence, including BWC footage to ensure a complete and thorough investigation.

5. Refer Incidents of Similar Severity to the Critical Incident Review Board

Per Operations Order 3.18, Sections 11(B)(1) and 11(B)(4), the Department should have referred this matter to the Critical Incident Review Board (CIRB). The CIRB is empowered to conduct reviews of Class III incidents, which are "response to resistance incidents . . . [when] serious injury is inflicted upon a person by an employee . . . by means other than a firearm."¹² Section 11(B)(4) mandates the referral: "[a]ll Class III incidents will *automatically* be reviewed by the Critical Incident Review Board."¹³

Given the nature of the injuries sustained by the Involved Civilian, this qualifies as a Class III incident, mandating a referral to the CIRB.

CONCLUSION

OAT respectfully submits the above report and recommendations in compliance with P.C.C. §§ 20-6 and 20-7 and requests a response from the Police Chief within 30-days, by March 23, 2024.

¹² Phoenix Police Dep't., OPERATIONS ORDER 3.18.11.B(1) & (4) (Rev. June 2021).

¹³ Phoenix Police Dep't., OPERATIONS ORDER 3.18.11.B(4) (Rev. June 2021).

Appendix
Investigative Materials List

Items	PPD Date	Date to OAT
Body Worn Camera of the Involved Officer	December 4, 2022	May 17, 2023
In-Car Video from the Involved Officer's Vehicle	December 4, 2022	May 17, 2023
Circle K Security Video with Zoom	December 4, 2022	May 17, 2023
Incident Scene Photos	December 4, 2022	May 17, 2023
Body Worn Camera of an Uninvolved Officer <i>Receipt of Circle K video and a statement from the Circle K manager</i>	December 4, 2022	May 17, 2023
Facebook Video	December 5, 2022	May 17, 2023
Department Email Regarding Possession of a Facebook Video	December 5, 2022	August 7, 2023
Department Calls for Service Report	December 6, 2022	August 7, 2023
Notice of Investigation to the Involved Officer	December 19, 2022	August 7, 2023
Material List <i>Items available for the Involved Officer to review prior to his interview</i>	December 19, 2022	August 7, 2023
PSB Interview of the Involved Officer	December 19, 2022	August 7, 2023
Response to Resistance Checklist by the FET Officer	Undated	August 7, 2023
Release from Notice of Investigation Issued to the Involved Officer Department informs the Involved Officer that he is "no longer under investigation for any allegations associated with this investigation."	February 7, 2023	August 7, 2023
AZ Post Determination Email Confirmation that the Involved Officer's record remains in good standing	March 8, 2023	August 15, 2023
Department Blue Team Report about Incident Report started 12/4, 2/20/23 note reads "The level of force falls within Operations Orders Policy 1.5. No Training Required." It also referenced an earlier 1/19/23 meeting, 2/21/23 note from a commander reads: "In Policy. Please close as necessary." There are no descriptive or analytical notes regarding the policy and training decisions.	Multiple Dates	August 16, 2023
Incident Report (The Department informed OAT via email on August 16, 2023, that OAT needed to request this report by making a public records request.)	December 4, 2023	August 30, 2023
Department FET Pilot Model Flowchart	Undated	September 6, 2023
Items Outstanding (Additional Items Requested by OAT)	Department Date	Date to OAT
Body Worn Camera of the Backup Officer	December 4, 2022	Not Yet Provided
Body Worn Camera of the On-Scene Sergeant	December 4, 2022	Not Yet Provided
Body Worn Camera of an Uninvolved Officer (Part 2)	December 4, 2022	Not Yet Provided

MONITORING CASE DETAILS

Monitoring Report Date:	February 22, 2024
OAT Monitoring Case #:	22-010
Classification of Monitoring Case:	Discretionary/Mandatory – OAT originally identified its authority to monitor this matter as falling within its discretionary authority. Later in the process, OAT learned that the Involved Civilian sustained multiple broken bone injuries. As such, the appropriate classification of this monitoring case mandatory.
Police Incident Report #:	22001809105
Incident Date & Time:	December 4, 2022, 2:22 p.m.
Location:	2700 W Deer Valley Road, Phoenix, AZ
OAT Monitoring Notice Sent:	December 6, 2022
Department Administrative Case #:	FET22-0027
Department-Issued Finding:	Within Policy – No Training Required
Date of Administrative Finding:	February 20, 2023
Officer(s) Involved:	(1) Involved Officer
Officer(s) Injury Level(s):	None
Civilian(s) Involved:	(1) Involved Civilian
Civilian(s) Injury Level(s):	Force-related broken bones
Complainant(s):	The Involved Officer was presented with a single allegation of excessive force. No specific complainant was identified by the Department.