MEMORANDUM FOR RECORD: Review of the Officer Involved Shooting (OIS) by San Antonio Police Department (SAPD) Officer Robert Encina #0973, resulting in the death of Marquise Jones, SAPD # 2014/044552; February 28, 2014.

1. Standard of Review: The purpose of the review of an officer-involved shooting by the District Attorney’s Office is to determine whether there is sufficient evidence to prove a criminal offense under state law. To successfully prosecute any case in court, our office has to prove a case beyond a reasonable doubt and overcome any potential defenses beyond a reasonable doubt. A decision, based on standards of state criminal law, does not address or limit administrative action by the SAPD, where tactical or procedural issues may be reviewed. Nor does this decision address or limit other civil actions or federal criminal action, where other laws, rules and/or lower levels of proof may apply.

2. Summary of facts: When quotation marks ("...") are used in this document, the language is taken directly from witness statements or their sworn testimony.

a. Night of the OIS. On Thursday evening February 27, 2014, twenty-three (23) year old Marquise Jones, Whitney Jones (Marquise’s twenty-two-year-old sister) and Dominique Carter (Whitney’s twenty-two-year-old cousin) were all socializing at the Jones’ family home. The three cousins then went to Fast Freddie’s Pool Hall on Perrin Beitel to play pool. While at the pool hall they met Fabian Garza – Dominique’s friend. At approximately 1:00 am, the group left the pool hall in Garza’s green Cadillac Eldorado; Garza was driving, Marquise was in the front passenger seat, Whitney in the rear passenger seat, and Dominique in the rear drivers’ seat. They decided to stop at Chacho’s located at 8614 Perrin Beitel and Industrial Boulevard to order from the drive thru. The key witnesses working at Chacho’s that night were:

(1) Officer Robert Officer Encina, who was “working a side job” that night, and was the only security guard. While he was in full SAPD uniform, he did not have a body worn camera (BWC) video unit.
(2) Anthony Molina, the manager, who was outside collecting cash payments, because the drive thru was busy. He was outside assisting Officer Encina during the officer’s interaction with the occupants of the green Cadillac.

(3) Aurora Deleon, who was working as a cashier for the drive thru. She was inside the restaurant at the window and observed the Cadillac bump a white SUV ahead of it in the drive thru lanes, and saw Officer Encina’s interaction with the occupants of the Cadillac.

(4) Jenny Lerma who was working as a cashier for the drive thru lanes inside the store and had visibility inside the Cadillac during Officer Encina’s interaction with the occupants.

From this point onward several key events happened both sequentially and simultaneously.

(5) As Lerma accepted Garza’s credit card for payment, she noticed open beer bottles in the center console and notified Officer Encina which drew him to the drive thru window to stand by Lerma’s side. Both Lerma and Officer Encina observed the green Cadillac hit a white SUV that was in front of the Cadillac in the drive thru lane. Officer Encina’s statement indicates “…when that car [green Cadillac] came to the window I was standing next to the cashier. The driver could clearly see me standing there.” As the driver of the white SUV angrily confronted Garza about the accident, “it appeared that the driver of the Cadillac… was going to leave the scene of this apparent private property accident.” Officer Encina then left the restaurant to go outside to detain the driver. Molina followed behind him, but his precise vantage point is not clear from his initial statement.

(6) Officer Encina (the red figure) approached the Cadillac, removed Garza and physically detained him against the left rear quarter panel. Officer Encina then attempted to handcuff Garza, who was resistant to being handcuffed. Officer Encina also observed Marquise Jones moving around inside the front passenger seat – admonishing him twice to “get your fu*king hands out of your pockets.”

(7) Whitney Jones observed the black female driver of the white SUV confront Garza and saw Officer Encina come to the driver’s side door to detain Garza. She observed her brother reacting nervously to Officer Encina, perceived he was fearful of getting into trouble with his current probation, and tried to calm him down by telling him “Marquise you’re good, you just reported this morning, we don’t have nothing to worry about!” She meant that he did not have to run because he was in good standing with his probation officer. She saw Marquise open the passenger door, then close it, then open it again, get
out of the car and run to the right front fender of the Cadillac in the direction of Perrin Beitel. As she watched Marquise run, Officer Encina pulled out his gun and started shooting at Marquise... she said there were six or seven shots. She believed the officer was shooting over the roof of the car at Marquise, and that Marquise had moved from the passenger door to the right front fender of the Cadillac before the first shots were fired.

(8) Dominique Carter observed the black female driver of the white SUV confront Garza, heard Garza say “I gotta drive off” and told him not to. She observed Officer Encina attempt to physically restrain Garza, saw Marquise reacting nervously and heard him saying “I have to run” and also heard Whitney telling him “don’t run!” Dominque saw Marquise get out of the car, slam the passenger door, and run towards Perrin Beitel. Dominque’s statement indicates that the officer yelled “hey don’t run! As soon as Marquise ran in front of the Cadillac, she “...heard 4 or 5 shots. I saw Marquis get shot in the back. I saw the officer who grabbed Fabien shooting over the hood of the Cadillac.”

(9) While Aurora Deleon observed Officer Encina struggle with Garza – moving him to the back (trunk area of the green car) -- she could also see “the passenger moving around and messing in his waist band area...as he sat in the front passenger seat he kept looking back at the officer.” She saw the passenger side door open, and then heard the officer yell in reaction to the door opening. She then turned her attention to the officer, who had already drawn his weapon and was pointing it at the passenger. She “saw the front passenger take off running towards the front of the car away from the officer and heard six gunshots ring out.”

(10) Jenny Lerma observed Officer Encina struggle with Garza “while the male passenger reached down in his seat area as if to grab something...he opens the front passenger side door and takes off running towards the exit of the drive thru in the direction of Perrin Beitel Road.” Her statement doesn’t reflect any interaction between Officer Encina and Jones...she did “see the officer pull his weapon from the holster on his waist and he aimed in the direction of where the passenger had taken off running. I believe the officer fired his weapon five or six times, but I am not sure.”

(11) Anthony Molina was positioned at the driver’s side front quarter panel such that he could observe Jones reacting to Officer Encina’s presence and moving around in the passenger seat. As Officer Encina struggled with Garza, Molina saw Jones open the passenger door and step out of the car to run away. Molina’s statement indicates that he was five to ten feet away from Jones and he stated “…the passenger turns around looking back towards Officer Encina. As the passenger looked back, I observe him reach with his right hand into his waist band area. I observe a grip of a gun in the passenger’s hand. It looked like
a handgun. I looked back towards Officer Encina to check if he’s watching what I’m seeing. I see Officer Encina draw his weapon and point it towards the front passenger and I start to hear gun shots fired from Officer Encina. I heard around 5-6 shots fired.”

(12) As Officer Encina continued to struggle with Garza, he was also aware of what Jones was doing; “It seemed to me like the driver was purposefully distracting me while the front passenger continued going into his pockets.” He then saw the Jones open the front passenger door (unclear if it was the first time or the second time), his statement indicates he saw a weapon “I clearly saw a silver or chrome revolver in the passenger’s hand.” Officer Encina’s statement further indicates that he was concerned that Jones and Garza were working in concert to distract him “When I saw the gun in the passenger’s hand I thought the driver was still trying to distract me so the passenger could get out of the car to shoot and kill me.” At that point Officer Encina moved towards the left rear of the Cadillac for cover and drew his weapon. When the passenger got out of the car – Officer Encina’s statement says “he looked back over his shoulder at me… he still had the gun in his hand, … I don’t remember which hand… I fired a few shots at the passenger… I thought I missed him because he took off running. He still had the gun in his hand. I know that the gun being in his hand still presented a danger to me, the passengers in the Cadillac, and the employees who were working at Chacho’s. I fired some more shots at the passenger, and he kept running.”

(13) When Officer Encina lost visibility of Jones, he holstered his weapon, finished handcuffing Garza, and radioed a description of Jones. In his radio call Officer Encina described “a black male with jeans and a gray sweat shirt… armed with a gray revolver.” Officer Encina then gave Molina custody of Garza “The manager named Anthony was there behind me and I asked him to hold on to the driver so I could pursue the passenger.” Officer Encina then advanced towards Perrin Beitel and found Jones’ body at the front end of the parking lot closest to Perrin Beitel, he did request emergency medical services. Reports indicate that 911 was called at 1:20 am, and the first responding units arrived at 1:24 am.

b. SAPD Investigation. Detective Randall Hines was assigned as the lead investigator. Units arrived, all identified available lay witnesses were segregated and taken to the Public Safety Headquarters for statements, the scene was secured and documented by photographs and sketch, and physical evidence – Officer Encina’s issued S&W MP40 handgun, eight .40 shell casings, and the green Cadillac -- were seized. Officer Encina and Molina were the only witnesses to say they had seen a firearm in the care, custody, or control of Jones. A pearl handled .38 S&W Iver Johnson revolver was located approximately 15 feet from Jones’ body. Subsequent inspection of the revolver indicated that it was operable, however; the revolver was loaded with five .380 caliber cartridges which were not the correct caliber for the revolver, and they could not have been fired with it. Gunshot
Residue (GSR)\(^1\) collection from the hands of both Jones and Officer Encina's hands determined that Jones had one (1) microscopic particle containing lead, barium and antimony on his left hand, and none were detected on his right hand. Similarly Officer Encina was found to have two (2) microscopic particles containing lead, barium and antimony and one (1) microscopic particle containing lead and antimony on his right hand and four (4) particles on his left hand. The Trace Evidence Report concludes that, both Jones and Officer Encina may have discharged a firearm, handled a discharged firearm or had been in close proximity to a discharging firearm. The SAPD report was completed on March 13, 2014. Police also identified the driver of the white SUV, who did not provide any additional relevant information. On March 1, 2014 the medical examiner completed the autopsy of Jones and concluded that he died as a result of a single gunshot wound to the torso which entered from the mid left back\(^2\), and that the manner of death was homicide.\(^3\).

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\(^1\) Bexar County Criminal Investigation Laboratory Trace Evidence Report, CIL Case # 14-01277, dated April 29, 2014.

\(^2\) Bexar County Medical Examiner's Office Autopsy Report, Case No. 2014-0474, dated March 1, 2014.

\(^3\) The killing of one person by another, whether lawfully or unlawfully; Black's Law Dictionary, 7th Edition.
c. Bexar County DA Investigation and Reviews.

(1) Former District Attorney Susan Reed Administration. The results of the SAPD investigation were submitted to the District Attorney’s Office in the spring of 2014 which evaluated the evidence; however no conclusive action was taken after the November 2014 general election in deference to the incoming administration.

(2) Former District Attorney Nico LaHood Administration. In January 2015, the LaHood administration re-evaluated the evidence. The case was presented to a grand jury. Ultimately the grand jury declined to indict and returned a “NO BILL” on December 16, 2015.

(3) Information Provided by Jones’ Family/Attorney Darryl Washington. During the spring of 2016, the LaHood administration learned of the existence of two additional witnesses (James Brantley and Lamar English) who were not identified during the initial investigation in February of 2014. Attorney Washington also provided results from the on-going civil litigation which revealed inconsistencies between the deposition testimony of Molina and De Leon and their initial statements from 2014.

(A). James Brantley. Signed an affidavit on April 27, 2016 wherein he stated he was at the drive thru at Chacho’s, and observed the green Cadillac strike the white SUV, the resulting verbal conflict, and Officer Encina engage with the driver; during the altercation he was able to make eye contact with the passenger. He saw the passenger open his door and take off running. He had a clear view of Jones and his hands, and he did not see a gun, nor did he see Jones make any threatening gestures at any time. He saw Officer Encina shoot multiple rounds at Jones as he was running. He further says that after the shooting, Officer Encina approached his vehicle asking him if he had seen what happened and if he had seen a gun. Brantley says he answered “Marquise Jones did not have a gun.” Officer Encina then left his vehicle, he was later instructed by a different SAPD officer to move his vehicle, and he was never asked to give a statement. He only came forward when he learned that Officer Encina would not be charged or indicted. In a subsequent phone interview with district attorney investigators, he further claimed to have pictures of the events of February 28, 2014 and stated that he was willing to testify in court, but he would not offer testimony to the grand jury due to work conflicts. Investigators pursued his testimony for five months, via a grand jury subpoena for October 19, 2016, but ultimately the administration declined to have him arrested by investigators and brought before the grand jury by a writ of attachment. He testified consistent with his affidavit during the federal trial on March 28, 2017.

(B) Lemore English. Signed an affidavit on April 27, 2016. His statement said that he walked out of the restaurant behind Officer Encina, and he “observed Officer Encina talking to the driver of the car that Marques (sic) Jones was a passenger (sic).” He also stated that he observed Jones open the door and “take off running in the opposite direction of Officer Encina. Marquise looked directly at me and Officer Encina prior to running away. He did not say anything nor did
he make any gestures towards us. I had a clear view of Marquise Jones and know without a doubt that he did not have a gun in his hand.” Investigators from the district attorney’s office pursued this lead and interviewed English (who still worked at Chacho’s) in the spring of 2016. English gave a statement to district attorney investigators on October 17, 2016 wherein he stated that “While at the trash dumpster’s I heard the first shot, then after a short delay I heard five more shots. I then ran back inside the restaurant....I don’t know who did the shooting and I never saw anyone with a gun... Earlier this year I was approached by the cousin of the person who got shot. He approached me at the restaurant and said that he heard that I knew what happened to his cousin and that I needed to talk to his attorney....and they took me downtown to give a deposition.” He did not testify during the civil trial.

(C) Aurora DeLeon. She gave a sworn deposition on January 20, 2015; wherein she enhanced her previous statement to reflect that after Jones got out of the car, “he turned to look back at Officer Encina while holding a gun in his right hand.”

(D) Anthony Molina. He gave a sworn deposition on January 20, 2015, he added additional details to his previous statement, that he saw “Jones opening and closing the door, open it again and get out of the car and run toward Perrin Beitel, but he then turns in the direction of Officer Encina and starts to raise the weapon in his right hand.”

3. Legal History AFTER December 2015.

a. Federal Civil Rights Trial. The Jones family filed suit in the United States District Court, for the Western District of Texas, San Antonio Division, against the City of San Antonio, Chacho’s, the San Antonio Police Department, and Officer Robert Encina alleging that Officer Encina used excessive and deadly force in violation of Marquise Jones’ federal constitutional rights on February 28, 2014. The civil trial began March 27, 2017. At the conclusion of the evidence, the trial court asked the jury whether they found by a preponderance of the evidence that Officer Robert Encina used excessive and unnecessary deadly force in violation of Marquise Jones’ federal constitutional rights. On April 6, 2017 the jury returned an answer (verdict) of “No.” The remaining counts were all dismissed.

b. District Attorney Joe D. Gonzales Administration Engagement with the Jones’ Family. In mid-September 2020, the elected District Attorney, the senior staff and the undersigned assistant district attorneys met with the family to begin an additional review of the materials from the case file and the Jones family attorney. During the course of our review we also obtained copies of witness depositions, and the transcripts of the civil trial to factor into our assessment.


a. Texas Authority.

(1) § 19.02 (b) Tex. Penal Code. Murder. A person commits murder if he intentionally or knowingly causes the death of an individual.
(2) § 9.22 Tex. Penal Code. Necessity. Conduct is justified if the actor reasonably believes the conduct is immediately necessary to avoid imminent harm.

(3) § 9.32 (a) (2) Tex. Penal Code justifies the use of deadly force where the actor (in this case Officer Encina) reasonably believes that deadly force is immediately necessary to protect the actor against another person’s (in this case Marquise Jones) use or attempted use of unlawful deadly force. To be even more precise, the Texas Pattern Jury Charge for Apparent Danger instructs jurors.

(A) When a person is attacked with unlawful deadly force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force...

(B) ...and there is created in the mind of such person a reasonable expectation or fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time to protect himself from such attack or attempted attack...

(C) ...it is not necessary that there be an actual attack or attempted attack, as a person has a right to defend his life from apparent danger as fully and to the same extent as he would, had the danger been real, provided he acted upon a reasonable apprehension of danger...

(D) ...as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself against the other person’s use or attempted use of unlawful deadly force.

(E) ...if you (the jury) have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, then you should give the defendant the benefit of that doubt and say by your verdict “not guilty.

(4) Texas Code of Criminal Procedure (CCP) Chapter 2. General Duties of Officers. § 2.13 CCP, Duties and Powers. (a) It is the duty of every peace officer to preserve the peace within the officer's jurisdiction. To effect this purpose, the officer shall use all lawful means. (b) The officer shall: (1) in every case authorized by the provisions of this Code, “interfere without warrant to prevent or suppress crime....”

b. Federal Authority.

(1) Tennessee v. Garner, et al; 471 U.S. 1 (1985); held that the 4th Amendment prohibits the use of deadly force to prevent the escape of a suspected felon unless ...the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others. The decision also establishes that “apprhension using deadly force is a seizure subject to the reasonableness requirement of the 4th Amendments.”
(2) *Graham v. Conner,* 490 U.S. 386 (1989); established the standard that a citizen’s claim that an officer’s use of force was excessive is properly analyzed under the 4th Amendment standard of “objective reasonableness.”

(A) The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

(B) The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.


(1) The evidence in this case establishes that Officer Encina intentionally fired his weapon at or in the direction of Marquise Jones and, in doing so, caused the death of Marquise Jones. However, in order to convict Officer Encina of the murder of Marquise Jones, our office would have to prove that Officer Encina was not acting in self-defense. In other words, a conviction would require our office to prove that Officer Encina did not reasonably believe that deadly force was necessary.

(2) On February 28, 2014, Officer Encina acting as private security, went to resolve the dispute between the green Cadillac and the white SUV and to keep the green Cadillac from fleeing the scene. Officer Encina was in full SAPD uniform when he reacted to the observed crime. While engaging the driver, his attention was drawn to the behavior of the passenger Marquise Jones. Jones’ reaction to the presence of Officer Encina is corroborated by Whitney Jones, Dominque Carter, Anthony Molina, Aurora Deleon, Jenny Lerma, and James Brantley. Officer Encina says in his statement that, during his physical struggle to subdue Garza, he observed a gun on Jones’ person; his statement further indicates that this combination of factors created in his mind an apprehension of deadly force from Jones. The ultimate fact that the gun could not have been fired, would not have been known by Officer Encina when he was struggling with

(3) If Officer Encina did see a gun and perceived that his life was in danger, then his decision to use deadly force would be justified. There is conflicting evidence on whether Jones had a gun. Molina also says that he saw a gun in Jones’ hand once Jones got out of the car. Whitney Jones and Dominque Carter ultimately testified that Marquise Jones did not have a gun. The evidence shows that a gun was found in the vicinity of Marquise Jones’ body, and he had a small amount of gunshot residue on one of his hands, but neither his finger prints nor DNA were found on the gun. Any uncertainty on the issue of the gun impairs our ability to prove a case beyond a reasonable doubt. Ultimately, we cannot prove beyond a reasonable doubt that Marquise Jones did not have a gun. That fact, taken in the context of this case, means that we cannot disprove Officer Encina’s

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4 Gun-shot residue could be transferred onto the hands as the result of handling a firearm, or from being in the vicinity of Officer Encina’s gun while it was being fired.
claim of self-defense beyond a reasonable doubt – which we would have to do so to prove this case in court.

5. In consideration of all available evidence, we believe that additional prosecution is not feasible at this time. Our analysis is independent of any other prior legal decisions regarding this case. However, it is important to note that a prior Bexar County Grand Jury reviewed this case and declined to indict Officer Encina. The facts of this case were also presented to a federal civil jury – at a lower burden of proof – and that jury did not find that Officer Encina used excessive and unnecessary deadly force. It would not be appropriate for this case to be re-presented to a grand jury without sufficient evidence to overcome a self-defense claim, and that evidence does not currently exist.

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