

1 IN THE OFFICE OF ADMINISTRATIVE HEARINGS

2
3 In the Matter of the Hearing Regarding the
4 Peace Officer Certification of:

No. 14A-055-POST

5 Dustin Dionne,
6
7 Respondent

ADMINISTRATIVE LAW JUDGE
DECISION

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11 **HEARING:** December 7-9, 2016 and January 31, 2017.

12 **APPEARANCES:** Eric Wilson, Esq. appeared on behalf of Officer Dustin R.
13 Dionne. Assistant Attorney General Seth Hargraves appeared on behalf of the Arizona
14 Peace Officers Standards and Training Board.

15 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

16
17 **FINDINGS OF FACT**

18 **PROCEDURE**

- 19 1. Officer Dustin R. Dionne, (hereinafter "Officer Dionne"), has been employed
20 by the Phoenix Police Department, (hereinafter "PPD"), since May of 2006.
- 21 2. Officer Dionne has been certified by the Arizona Peace Officer Standards and
22 Training Board, (hereinafter "POST"), since 2006.
- 23 3. On or about April 23, 2014, POST received a Peace Officer Termination
24 Report from the PPD, informing POST that Officer Dionne's employment had been
25 terminated on April 8, 2014 and that Officer Dionne may have violated POST's
26 administrative regulations.
- 27 4. The matter was assigned to POST Compliance Specialist Steve Jacobs for
28 investigation. Mr. Jacobs obtained documents regarding the Phoenix Professional
29 Standards Bureau, (hereinafter "PSB"), investigation into the alleged incidents that led
30 Officer Dionne's termination.
5. On September 16, 2015, Mr. Jacobs presented a case overview to POST.

1 6. After Officer Dionne's case was presented to POST, it determined cause
2 existed to penalize his peace officer certification. POST subsequently received Officer
3 Dionne's request for an administrative hearing.

4 7. On August 1, 2016, POST issued a Notice of Hearing advising Officer Dionne
5 that POST would present evidence before an Administrative Law Judge and seek
6 written Findings of Fact and Conclusions of Law upon which POST will base its decision
7 as to whether to suspend, revoke or cancel Officer Dionne's Peace Officer Certification.
8 The matter was sent to the Office of Administrative Hearings, an independent state
9 agency, for hearing.

10 8. The August 1, 2016 Notice of Hearing charged that Officer Dionne had
11 violated A.A.C. R13-4-109(A)(7), (8), and (9), which rules were quoted in their entirety,
12 by committing the following specific alleged misconduct:

13 (1) On March 28, 2013, Officer Dustin R. Dionne, while off-duty,
14 recklessly displayed a firearm during a traffic altercation;

15 (2) On March 28, 2013, Officer Dustin R. Dionne provided false
16 information when he informed a Phoenix Police Sergeant that he had
17 been followed off the freeway by an aggressive driver, Mr. MJ, when
18 in fact, it was Officer Dionne who followed Mr. MJ;

19 (3) On March 28, 2013, Officer Dustin R. Dionne provided false
20 information when he informed a Phoenix Police Sergeant that he had
21 been followed into a business parking lot by an aggressive driver,
22 Mr. MJ, when in fact, it was Officer Dionne who followed Mr. MJ;

23 (4) On March 28, 2013, Officer Dustin R. Dionne provided false
24 information when he informed a Scottsdale Police Officer that he had
25 been followed off the freeway by an aggressive driver, Mr. MJ, when
26 in fact, it was Officer Dionne who followed Mr. MJ¹; and,

27 (5) On March 28, 2013, Officer Dustin R. Dionne provided false
28 information when he informed a Scottsdale Police Officer that he had
29 been followed into a business parking lot by an aggressive driver,
30 Mr. MJ, when in fact, it was Officer Dionne who followed Mr. MJ.

9. The hearing was held on December 7, 2016, December 8, 2016, December 9,
2016 and January 31, 2017.

¹ POST withdrew Allegation 4 at the outset of the hearing which began on December 7, 2016.

1 10. POST presented Mr. Jacob's testimony and the testimony of two witnesses
2 who appeared pursuant to subpoenas: (1) Sergeant Tadd Cline and (2) Officer Eric
3 Schwartz.

4 11. POST also submitted 13 exhibits.

5 12. Officer Dionne testified on his own behalf and presented the testimony of six
6 witnesses who appeared pursuant to subpoenas: (1) Sergeant Greg Westover, (2) Lon
7 Bartel, (3) Officer Brian Walsh, (4) Sergeant Marco Vasquez, (5) Officer Lance Diedrich
8 and (6) Robert Kavanaugh.

9 13. Officer Dionne also submitted 37 exhibits.

10 HEARING EVIDENCE

11 Background

12 14. On March 28, 2013, Officer Dionne was traveling North on the 101 Freeway
13 in Scottsdale.

14 15. Officer Dionne was driving a blue Ford Sedan.

15 16. Officer Dionne exited the 101 Freeway at Cactus Road. Officer Dionne's
16 vehicle was behind Mr. Jawad's vehicle on the Cactus Road exit ramp.

17 17. Mahi Jawad, (hereinafter, "Mr. Jawad"), was driving a silver colored Infiniti
18 Standard Utility Vehicle, (hereinafter "SUV").

19 18. Officer Dionne testified Mr. Jawad repeatedly jumped in front of him on the
20 freeway and slammed on his breaks, forcing him to exit at Cactus Road.

21 19. Officer Dionne's vehicle was located behind Mr. Jawad's vehicle on the
22 Cactus Road exit ramp.

23 20. Officer Dionne and Mr. Jawad exited the 101 freeway at Cactus Road.

24 21. When Officer Dionne exited Cactus Road, he turned left heading west on
25 Cactus Road. Officer Dionne merged left to the inside line.

26 22. Officer Dionne testified that Mr. Jawad changed lanes to get in front of him
27 and braked checked him again on Cactus Road, just before the intersection with
28 Hayden Road.

29 23. Officer Dionne testified that as the two vehicles approached the intersection
30 at Cactus Road and Hayden Road, Mr. Jawad abruptly swerved and cut across three
lanes of traffic, turning right and drove northbound on Hayden Road.

1 24. Officer Dionne testified that after Mr. Jawad cut across three lanes of traffic,
2 he believed it was necessary to get Mr. Jawad's license plate number and report him to
3 authorities.

4 25. Officer Dionne testified that he followed Mr. Jawad drove north on Hayden
5 Road with the intent of obtaining Mr. Jawad's license plate number.

6 26. Officer Dionne testified that Mr. Jawad turned westbound onto East Redfield
7 Road.

8 27. Officer Dionne testified that he followed Mr. Jawad into a business complex
9 located at 7950 E. Redfield Road to obtain Mr. Jawad's license plate number.

10 28. Officer Dionne testified that Mr. Jawad pulled into a parking spot.

11 29. Officer Dionne testified that Mr. Jawad exited his vehicle and surprised
12 Officer Dionne causing him to stop his car.

13 30. Officer Dionne testified that he could not recall whether there were any cars,
14 blocking him from driving out of the parking lot.

15 31. Officer Dionne said that Mr. Jawad rapidly exited his vehicle and slammed
16 the door. Officer Dionne testified that Mr. Jawad threw his hands up and screamed
17 "What the fuck?" Officer Dionne testified that Mr. Jawad had a 1,000 mile stare. Officer
18 Dionne testified that a 1,000 mile stare is which a person has an intense stare and is not
19 really looking you. Officer Dionne testified that Mr. Jawad began rapidly approaching
20 him with an intent to get to him in his vehicle. Officer Dionne testified that he perceived
21 Mr. Jawad to have ill will. Officer Dionne testified that if Mr. Jawad made his way to his
22 vehicle, he would assault him or impose ill will. Officer Dionne testified that Mr. Jawad
23 appeared to be angry.

24 32. Mr. Jawad did not have anything in his hands.

25 33. Officer Dionne testified that he retrieved his gun and held it so that Mr.
26 Jawad could see it while telling him to get back.

27 34. Officer Dionne testified that he drove out of the parking lot and called 911
28 after looking at Mr. Jawad's license plate to call it in.

29 35. While Officer Dionne was driving down Redfield Road (which becomes
30 Thunderbird Road), he noticed that Mr. Jawad was following him. Officer Dionne was
talking to 911 at the time.

1 36. Officer Dionne testified that at approximately 54th street, he noticed that Mr.
2 Jawad was not following him anymore.

3 37. Officer Dionne testified that he saw a parking lot on the corner of Tatum and
4 Thunderbird and pulled in to determine whether Mr. Jawad was still following him.
5 Officer Dionne ended the call with 911 after he confirmed that Mr. Jawad was no longer
6 following him and Officer Dionne did not desire any further contact.

7 38. Officer Dionne testified that several minutes after ending the 911 call, more
8 than 3 but less than 8, he received a call from Phoenix Sergeant Nielsen, during which
9 Scottsdale Officer Vernon buzzed in on call waiting. Officer Dionne testified that it all
10 occurred in the second parking lot. Officer Dionne testified that while speaking with
11 Sergeant Nielsen, he began traveling north on Tatum as directed by his GPS to what
12 was ultimately Greenway where he offered to meet Officer Vernon.

13 39. Officer Dionne testified that he did not provide an accurate and thorough
14 description of the events as he understood them to be when he spoke to Sergeant
15 Nielsen.

16 40. Officer Dionne testified that after realizing that he misspoke or gave an
17 inaccurate account, he needed to do the right thing and correct those actions.

18 41. Officer Dionne testified that he made the corrections in his PSB interview
19 and in the Robert Kavanagh letter.

Dionne's 911 Calls

20 42. On March 28, 2013, Officer Dionne called Scottsdale 911 to report that a car
21 was following him at approximately the same time that Mr. Jawad called Scottsdale 911.

22 43. Officer Dionne called Scottsdale 911 and said, "I've got a guy following me,
23 I'm on Redfield just west of Hayden, he was in front of me on the freeway and kept cutting
24 me off. I get off the freeway and now he's following me around, I don't know what his
25 problem is".

26 44. Officer Dionne provided Mr. Jawad's license plate to the 911 operator and
27 described Mr. Jawad's car.

28 45. The 911 operator asked Officer Dionne whether the other driver pointed a gun
29 at him and Officer Dionne responded, "No." Officer Dionne told the operator that was an
30 armed police officer.

1 46. The Scottsdale 911 operator transferred the call to the PPD because Officer
2 Dionne told the operator that he was leaving Scottsdale and entering Phoenix.

3 47. Officer Dionne told the Phoenix 911 operator, "there was an aggressive driver
4 on the freeway kept cutting me off. I got off the freeway and now he's just following me,
5 I don't know what he's doing he's just following me".

6 48. After passing the intersection of 56th Street and Thunderbird Road, Officer
7 Dionne told the 911 operator that the vehicle was no longer behind him, and he didn't see
8 the other vehicle anymore.

9 49. When asked if he wanted police contact, Officer Dionne stated, "No, I'm good
10 now, I just didn't want him to do something stupid." See POST Exhibit 13, (Phoenix 911
11 audio).

12 **Officer Dionne's Alleged False Statements to Sergeant Nielsen**

13 50. On March 28, 2013, at approximately 10:27 a.m., Phoenix Sergeant Jeffrey
14 Nielsen received an emergency 911 call for service in connection with a fight or a subject
15 following. Sergeant Nielsen discovered the call was placed by a Phoenix police officer.
16 Shortly thereafter, the Phoenix police officer, Officer Dionne, advised that he was no
17 longer being followed and no longer desired assistance. Because the caller was a police
18 officer, Sergeant Nielsen called Officer Dionne.

19 51. Sergeant Nielsen asked Officer Dionne what happened. Officer Dionne
20 described a road rage incident which took place on the 101 north freeway. Officer Dionne
21 told Officer Nielsen that he was off duty and not in uniform. Officer Dionne told Sergeant
22 Nielsen that a motorist continually pulled in front of him and did a break check. Officer
23 Dionne told Sergeant Nielsen that the other motorist followed him off of the freeway when
24 he exited Cactus Road.

25 52. Sergeant Nielsen called Officer Dionne by phone to ascertain that Officer
26 Dionne was safe and to gather a basic story of what occurred. The conversation was
27 brief and lasted approximately five minutes. During their conversation, Officer Dionne told
28 Sergeant Nielsen that the driving altercation started as he drove north on the 101
29 Freeway. Officer Dionne was off-duty, not in uniform, and was on his way home. He
30 was positioned in the HOV lane when another motorist Mr. Jawad passed him, got in front
of him and then unexpectedly did a brake check (slammed on his brakes). Wanting to

1 avoid an altercation, Officer Dionne decided to exit the freeway at the Cactus Road exit
2 with the intentions of driving west on East Cactus Road to the State Route 51 Highway.

3 53. Officer Dionne told Sergeant Nielsen that he exited Cactus Road to go to the
4 51 freeway and go north and get back to the 101 freeway. Officer Dionne told Sergeant
5 Nielsen that he decided to pull over into a business complex and did not know exactly
6 where he was. Officer Dionne told Sergeant Nielsen that he decided to pull over to see
7 if the driver was still following him.

8 54. Officer Dionne told Sergeant Nielsen that other driver drove around the driver's
9 side of his vehicle and entered a parking space in front of him. According to Officer
10 Dionne, the other driver got out of his vehicle, and started approaching Officer Dionne's
11 car. In response, to make the other driver get away from him and his car, Officer. Dionne
12 said he displayed his gun, but did not point it at the other driver. After seeing the gun, the
13 other driver retreated and got back into his vehicle. Officer Dionne then drove out of the
14 parking lot, but the driver again began to follow him. As a result, Officer Dionne said he
15 called 911. Sergeant Nielsen stated that when Officer Dionne described Mr. Jawad's
16 approaching his vehicle, Officer Dionne did not use any descriptive words such as
17 "aggressively approaching" or "raging".

18 55. Shortly after speaking to Officer Dionne, Sergeant Nielsen said he received a
19 phone call from a Scottsdale patrol supervisor regarding the incident. Due to Officer
20 Dionne being listed as a suspect in a criminal report, Sergeant Jeffrey Nielsen contacted
21 investigators from the Phoenix Police Department Professional Standards Bureau (PSB)
22 who initiated an administrative investigation into Officer Dionne.

23 **The March 28, 2013 interview of Officer Dionne**

24 56. On March March 28, 2013, several hours after the incident occurred,
25 Officer Schwartz of the Scottsdale Police Department called Officer Dionne regarding
26 the incident.

27 57. Officer Dionne did not pick up the phone and Officer Schwartz left Dionne a
28 message asking him to return his phone call.

29 58. On March 28, 2013, at approximately 2:30 p.m., Officer Dionne called Officer
30 Schwartz. Officer Schwartz introduced himself.

1 59. Officer Dionne asked Officer Schwartz whether the other driver had already
2 given his account of the incident and Officer Schwartz answered in the affirmative.

3 60. Officer Dionne told Officer Schwartz that the indent started as he was traveling
4 north on the 101 freeway. Officer Dionne told Officer Schwartz that the other driver
5 repeatedly cut him off and break checked him on the freeway. Officer Dionne stated that
6 he was forced to exit the freeway at Cactus Road.

7 61. Officer Dionne told Officer Schwartz that the other driver was behind him
8 following him on Cactus Road.

9 62. Officer Dionne told Officer Schwartz that he noticed that the other driver was
10 following him so he turned into a business just to see if the other driver was following him.

11 63. Officer Dionne told Officer Schwartz that the other driver drove past him and
12 parked in a business complex. Officer Dionne stated that he did not identify himself as a
13 police officer because he didn't have a chance. Officer Dionne stated that the other driver
14 hopped right out of his car and both his hands were up, but Officer Dionne could only see
15 his right hand. Officer Dionne stated that is when he pulled his gun up and told the other
16 driver that he needed to "fucking back off." Officer Dionne told Officer Schwartz that he
17 just wanted the other driver to see that he had a gun because he did not know if the other
18 driver had a gun or what he was doing. Officer Dionne stated that he did not point the
19 gun at the driver but he pointed the gun at the instrument cluster.

20 64. Officer Dionne told Officer Schwartz that after displaying his gun, he believed
21 that the other driver came close enough to the car to see it and after he saw the gun, he
22 turned away and got into his car.

23 65. Officer Dionne told Ofr. Schwartz that he exited the parking lot and while he
24 was on Thunderbird (Redfield Road turns into Thunderbird), he noticed that the other
25 driver was following him.

26 66. Officer Dionne told Officer Schwartz that he did not know if the other driver had
27 a gun and he would rather call and have the police department take care of the matter.
28 Officer Dionne stated that he called the police department and switch boarded to Phoenix.

29 67. Officer Schwartz told Officer Dionne that the business lot that he pulled into
30 was where Mr. Jawad worked. Office Schwartz said to Officer Dionne:

 "Schwartz: So that's, so you, you basically pull into the business, you're

1 saying that you, he follows you just coincidentally into the place where he
2 works.

3 Dionne: If that's where he works?

4 Schwartz: Yeah.

5 Dionne: Okay.

6 Schwartz: And again you, you never had a chance to even say that I'm
7 police, back up, never gave a _____
8

9 Dionne: No, _____

10 Schwartz: A standard police challenge, police, back up, or anything like
11 that.

12 Dionne: I, I mean if, if you have an issue we can, I can have my union
13 call you with the way that I was handling the situation, man, I'm not trying.

14 Schwartz: Do you know, do you know.

15 Dionne: I'm not trying to be a dick.

16 Schwartz: I, I understand, I'm just trying to make sure that we have all the
17 facts correct because, you know, I, I would want to make sure that all of the
18 facts were correct if it was me. Right?
19

20 Dionne: Uh, uh, well that's what I'm saying, I didn't not have a chance to
21 even say, I just told him back the fuck up, get away from car cause he got
22 out of his car, put his hands in the air and starts approaching my vehicle."
23

24 See POST Exhibit 7, Pages 8-9.

25 68. After Officer Schwartz told Officer Dionne that the lot he was describing was
26 actually the other drivers' workplace, and that Officer Dionne was going to be listed as
27 the offender in an aggravated assault report, Officer Dionne ended the call.
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The April 5, 2013 Letter from Dionne's attorney Robert Kavanaugh

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69. On April 5, 2013, eight days after the traffic altercation between Officer Dionne and Mr. Jawad, Attorney Robert Kavanaugh prepared a written statement on behalf of his client, Officer Dionne that was sent to Scottsdale Police Detective Mark Cristiani.

70. Mr. Kavanaugh requested the written statement be included with the criminal investigation prior to it being submitted to the Maricopa County Attorney's Office for review.

71. Mr. Kavanaugh said the information contained in the written statement was Officer Dionne's perspective of the incident that occurred on March 28, 2013, and would have been conveyed to Scottsdale police had they met with Officer Dionne after the incident occurred.

72. According to the written statement, the incident began while Officer Dionne traveled on the 101 Freeway and the other driver, Mr. Jawad began brake checking him and forced Officer Dionne to change his travel route and exit at East Cactus Road. According to the statement, as Officer Dionne drove west on East Cactus Road approaching Hayden Road, the other driver continued to brake check Officer Dionne. According to the letter, at this point Officer Dionne "now believed more than ever that he needed to call the police and report the Infinity's conduct". According to the statement, as the vehicles approached the intersection at Hayden Road, the Infinity abruptly swerved, cut across multiple lanes of traffic, and drove northbound on Hayden Road.

73. The written statement said Officer Dionne followed the SUV into a parking lot (7950 East Redfield Road) where the Infinity abruptly pulled into a parking spot. Officer Dionne stopped his vehicle approximately 25 to 30 feet away from the SUV with his seat belt fastened, when the driver of the SUV Mr. Jawad quickly exited his vehicle and began to rapidly approach Officer Dionne "almost running" with his arms up, stretched apart and yelling expletives. Additionally, the letter described Mr. Jawad as being "very angry", "tense" with his "facial expression and overall body language indicated that he was going to assault" Officer Dionne. In response, Officer Dionne said he removed his firearm from its holster in the "go-bag" and pointed it at a low ready position, and told Mr. Jawad to

1 get away as Mr. Jawad came to within two to three feet of his driver's window. After the
2 subject saw the gun, he turned and walked back to his vehicle.

3 74. The description of the incident in the letter was different than what Officer
4 Dionne had told Sergeant Nielsen and Officer Schwartz.

5 **The April 9, 2013 Professional Standards Bureau Interview of Dionne**

6 75. On April 9, 2013, PSB served Officer Dionne a Notice of Investigation ("NOI"),
7 which alleged: "On March 28, 2013, at approximately 10:26 a.m. it is alleged that Officer
8 Dionne #8554 was involved in a driving altercation with another motorist in Scottsdale,
9 Arizona from the northbound 101 freeway near the Cactus Road exit and ended at 7950
10 East Redfield Road, where Officer Dionne produced a handgun and pointed it at the other
11 motorist."

12 76. On April 9, 2013, investigators, including Sergeant Tadd Cline, from PSB
13 conducted an interview with Officer Dionne. Officer Dionne told PSB investigators that on
14 the morning of March 28, 2013, he was northbound on the 101 Freeway headed to the
15 northwest valley from Gilbert to meet his grandfather for a round of golf. He said he was
16 positioned in the #1 inside lane and was approximately one mile south of the Cactus Road
17 exit when he came upon a slower moving tan car that was driving in his lane. Before he
18 could change lanes, Officer Dionne said he had to wait for a silver color Infiniti SUV to
19 pass him in the HOV lane.

20 77. After the SUV passed, Officer Dionne said he moved into the HOV lane and
21 the SUV unexpectedly applied its brakes and brake checked him, which caused Officer
22 Dionne to act accordingly to avoid a collision. The SUV continued to "brake check" him
23 as he switched lanes, mirroring everything that Officer Dionne did, and Officer Dionne
24 believed his safest course of action would be to exit the freeway. Officer Dionne said the
25 SUV exited the freeway at Cactus Road and he followed. Officer Dionne said he was
26 upset with the driver of the SUV, but did not honk nor use any hand gestures that would
27 have provoked the other driver.

28 78. Officer Dionne told PSB that after exiting the 101, both vehicles approached
29 the intersection at the end of the exit ramp and East Cactus Road, and waited for the
30 light. Officer Dionne said he was behind the SUV and they were positioned in the #2
outside lane. Officer Dionne told PSB that he did not call 911 at this time because the

1 aggressive, dangerous driving exhibited on the freeway by the SUV had ended, he was
2 no longer upset, and he had somewhere he needed to be. Officer Dionne stated his
3 intention was to drive west on East Cactus Road to the SR51, drive north, get back onto
4 the 101 Freeway and meet his grandfather, who was visiting from out of town, at a golf
5 course in the area of North 101 Avenue and West Bell Road.

6 79. Officer Dionne said he turned west onto East Cactus Road and eventually
7 moved over into the #1 inside lane. After moving over, Officer Dionne stated the SUV
8 mirrored his movement, changed into his lane and again brake checked him. He said this
9 occurred just east of the intersection at North Hayden Road, which is one mile west of the
10 freeway. Officer Dionne said this was the only time the SUV applied its brakes in between
11 the off-ramp and North Hayden Road. According to Officer Dionne, at this point he was
12 pretty much determined that he needed to call the other driver in to police. Officer Dionne
13 “now believed more than ever that he needed to call the police and report the Infinity’s
14 conduct”. As the vehicles approached the intersection at Hayden Road, the Infinity made
15 a turn across multiple lanes of traffic, and drove northbound on Hayden Road.

16 80. After the SUV went north on North Hayden Road, Officer Dionne said he
17 decided to follow it to obtain the license plate and call the police regarding the
18 aggressive driving. Officer Dionne said the SUV was not only a danger to him, but its
19 aggressive driving was now endangering other motorists and he needed to report it.

20 81. Officer Dionne doesn’t tell either Scottsdale or Phoenix 911 about brake
21 checking, either on the freeway or on Cactus Road, nor does he tell either 911 dispatcher
22 about Mr. Jawad’s illegal lane change.

23 82. Officer Dionne told PSB investigators that he followed the SUV into the
24 business complex, located at 7950 East Redfield Road. Officer Dionne said he followed
25 the SUV into the business complex for the sole reason of obtaining the license plate to
26 the SUV and to report it to the police. Officer Dionne told PSB that Mr. Jawad pulled into
27 a parking space, and as he (Officer Dionne) was rolling past, Mr. Jawad threw his door
28 open, got out and said something to the effect of “what the fuck”, or “who the fuck”.
29 According to Officer Dionne, as Mr. Jawad was throwing the door open his hands were in
30 the air, he had a tense appearance on his face, and he started aggressively approaching

1 Officer Dionne's vehicle. Officer Dionne described Mr. Jawad as not running, and not
2 jogging, but taking quick steps.

3 83. Officer Dionne indicated that his first reaction was to go to his "go bag" where
4 he keeps his weapon. Officer Dionne pulled his gun up to the steering wheel cluster or
5 the front-end cluster/steering wheel of the vehicle "holding it somewhat at low ready
6 pointing towards the steering wheel". He put his left hand out and told Mr. Jawad to "get
7 the fuck back, get away from my car". Mr. Jawad continued to approach Officer Dionne's
8 vehicle, until he was about two to three feet away, at which point he noticed that Officer
9 Dionne was holding a gun. Officer Dionne did not identify himself as a police officer.

10 84. Officer Dionne said he did not write down the license plate for the SUV, but
11 memorized it. Officer Dionne dialed 911 as he travelled out the western side of the
12 parking lot, and started giving the information to the 911 Dispatch of the Scottsdale Police
13 Department that he was being followed by an SUV. As Officer Dionne crossed the border
14 into Phoenix, he was switched over to the Phoenix Police Department, at which point he
15 gave them his location where he's going, the direction of travel and the fact that he's being
16 followed by the suspect. Once Officer Dionne realized he was no longer being followed,
17 he advised the Phoenix Dispatch that he was no longer being followed and ended the
18 contact.

19 85. Officer Dionne then told PSB that, about five to seven minutes after ending
20 the 911 call, while continuing to drive, Officer Dionne was contacted by Sergeant Nielsen.
21 Officer Dionne pulled over into a parking lot at Tatum & Greenway to take the call. Officer
22 Dionne told PSB that while speaking to Sergeant Nielsen he wasn't multitasking (talking
23 and driving), and that while speaking to Sergeant Nielsen, he switched over to a call
24 waiting call from Scottsdale Officer Vernon. Officer Dionne declined Officer Vernon's
25 request to return to Scottsdale to discuss the incident, and told Officer Vernon that he
26 could come out to Tatum and Greenway where Officer Dionne was. Officer Dionne stated
27 that the only reason he could tell Officer Vernon where he was to meet up was because
28 he was stopped on the corner and could look up at the sign and say, this is where I am.
29 After ending the call with Officer Vernon, Officer Dionne switched back to and completed
30 the call with Sergeant Nielsen.

1 86. Officer Dionne indicated that when he told Sergeant Nielsen that Mr. Jawad
2 had followed him off the freeway, that he was shaken by the incident. When questioned
3 about having told Sergeant Nielsen and Officer Schwartz that Mr. Jawad had followed
4 him into the parking lot, Officer Dionne acknowledged that he told Officer Schwartz that
5 Mr. Jawad had followed him, and that he had misspoken and confused the sequence of
6 events when he made the statements to Nielsen and Schwartz. The PSB investigation
7 sustained the allegations that:

8 - On March 28, 2013, at approximately 10:26 a.m., Officer Dustin Dionne
9 #8554, while off-duty, committed the elements of a felony when he
10 recklessly displayed a firearm during a traffic altercation while at 7950 East
11 Redfield Road in Scottsdale, Arizona.

12 - On March 28, 2013, Officer Dustin Dionne #8554 provided a false verbal
13 report to Sergeant Jeffrey Nielsen #5020 regarding his involvement in a
14 traffic altercation that incepted on the Loop 101 Freeway.

15 - On March 28, 2013, Officer Dustin Dionne #8554 provided false and
16 misleading statements to an officer from the Scottsdale Police Department
17 regarding a criminal investigation.
18

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20 87. The PSB investigation concluded that Officer Dionne's decision not to drive
21 through the parking lot demonstrated his intentions of making contact with Mr. Jawad.
22 Officer Dionne could have avoided the confrontation at multiple points after exiting the
23 freeway. Investigators found no clear evidence that Mr. Jawad used or attempted to use
24 unlawful physical force against Officer Dionne that would have required Officer Dionne to
25 display his firearm. Furthermore, if verbal provocation occurred as Officer Dionne
26 alleged, the threat or use of physical force under the law was not justified. The
27 investigation also found multiple inconsistencies regarding Officer Dionne's recollection
28 of the incident.
29
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1 88. PSB Sergeant Cline testified that his PSB investigation concluded that Officer
2 Dionne's conduct met the elements of disorderly conduct for the reckless display of a
3 weapon per A.R.S. § 13-2904(A)(6). Sergeant Cline testified that Officer Dionne did not
4 have justification to display his weapon, because Mr. Jawad didn't pose a threat; profanity
5 doesn't justify physical force; there was no indication that Mr. Jawad was going to assault
6 Officer Dionne; Officer Dionne never relayed to PSB that he was fearful that Mr. Jawad
7 was going to kill him, assault him, pull him out of his vehicle and knock him around; and
8 Officer Dionne's vehicle was running and he could have easily driven off.

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11 89. Sergeant Cline also testified that Mr. Jawad's actions in using profanities, and
12 walking back toward Officer Dionne wasn't unreasonable for someone who had just been
13 followed two plus miles off the freeway to his place of business. He further testified that,
14 since Mr. Jawad had nothing in his hands, wasn't pointing or threatening, or using verbal
15 provocation such as threatening physical contact; coupled with the fact that Officer
16 Dionne had the ability to remove himself from that situation, that Officer Dionne was not
17 justified in his action.

18
19 90. As a result of the PSB investigation, Officer Dionne was terminated from the
20 Phoenix Police Department on April 8, 2013.

21 **Mr. Jawad's 911 Call**

22 91. On March 28, 2013, at approximately 10:25:51 a.m., Mr. Jawad called
23 Scottsdale 911 and reported the incident. See POST Exhibit 13, (Scottsdale 911 audio).

24
25 92. Mr. Jawad stated that the other driver was tailgating him on the freeway and
26 followed him to his place of work, the Italian Spoon restaurant, located at 7950 East
27 Redfield Road in Scottsdale.

28 93. Mr. Jawad told the 911 operator that when he got out of his car to ask the
29 driver why he was following him, the driver pointed a black handgun at him. *Id.*
30

1 94. Mr. Jawad told the 911 operator that the driver then drove away and left
2 westbound on East Redfield Road towards Phoenix (East Redfield Road turns into East
3 Thunderbird Road after crossing Scottsdale Road into Phoenix). *Id.*

4 95. Mr. Jawad told the 911 operator that he followed the driver to North 64th
5 Street and East Thunderbird Road in Phoenix to obtain his license plate. The Scottsdale
6 911 operator told him to stop following the driver and return to his restaurant where a
7 Scottsdale officer was waiting to talk to him. *Id.*

8 96. Mr. Jawad told the 911 operators that he was following the other driver to get
9 his license plate, but he didn't want to get too close because he didn't want to get shot.
10 *Id.*

11 97. Officer Dionne called Scottsdale 911 to report that a car was following him at
12 approximately the same time that Mr. Jawad called Scottsdale 911. *Id.*

13 98. Officer Dionne called Scottsdale 911 and said, "I've got a guy following me,
14 I'm on Redfield just west of Hayden, he was in front of me on the freeway and kept cutting
15 me off. I get off the freeway and now he's following me around, I don't know what his
16 problem is". *Id.*

17 99. Officer Dionne provided Mr. Jawad's license plate to the 911 operator and
18 described Mr. Jawad's car. *Id.*

19 100. The 911 operator asked Officer Dionne whether the other driver pointed a
20 gun at him and Officer Dionne responded, "No." Officer Dionne told the operator that was
21 an armed police officer. *Id.*

22 101. Officer Dionne told the operator that he was leaving Scottsdale and entering
23 Phoenix so the Scottsdale 911 operator transferred the call to the Phoenix Department
24 *Id.*

1 102. Officer Dionne provided the same report to the Phoenix 911 operator that
2 he provided to the Scottsdale 911 operator.

3 103. Officer Dionne told the Phoenix 911 operator, "there was an aggressive
4 driver on the freeway kept cutting me off. I got off the freeway and now he's just following
5 me, I don't know what he's doing he's just following me". After passing the intersection of
6 56th Street and Thunderbird Road, Officer Dionne told the 911 operator that the vehicle
7 was no longer behind him, and he didn't see the other vehicle anymore. When asked if
8 he wanted police contact, Officer Dionne stated, "No, I'm good now, I just didn't want him
9 to do something stupid." See POST Exhibit 13, (Phoenix 911 audio).
10

11 104. When Mr. Jawad returned to the Italian Spoon, he was met by Scottsdale
12 Police Officer Eric Schwartz, who interviewed Mr. Jawad and later authored an
13 aggravated assault report that listed Officer Dionne as the offender/suspect.
14

15 **Additional Evidence**

16 105. At hearing, Sergeant Marco Vasquez testified that if someone had followed
17 him off the freeway to his workplace, that he would feel threatened. He also testified
18 that the person doing the following is the aggressor.
19

20 106. Sergeant Greg Westover testified that if someone had tailgated him on the
21 freeway and followed him home, he would feel threatened and would be justified in
22 defending himself. Sergeant Westover went on to state that "if anyone angrily followed
23 him *anywhere*, I would feel threatened and justified in defending myself".
24

25 107. Officer Lance Diedrick testified and described an incident where he felt
26 threatened when an unknown vehicle approached him.

27 108. The officers who were called as witnesses by Officer Dionne testified that
28 Officer Dionne responds well to high stress situations, including incidents where gunfire
29 is exchanged.
30

1 109. Attorney Robert Kavanaugh testified that if Officer Dionne or anyone else
2 provokes someone to use unlawful physical force, then they don't get the protection of
3 the justification statute.
4

5 110. Lon Bartel, testified that if Officer Dionne intentionally followed someone off
6 the freeway, for no other reason than he wanted to, followed them to their work, where
7 the person felt in fear, and reacted by getting out of the car and asking Officer Dionne
8 what his problem was, then Officer Dionne would not be justified in threatening force.
9

10 111. On March 31, 2013, Officer Dionne sent a text message to a friend stating
11 "Hey you think after I get fired I can be a firefighter". Two days later, on April 2, 2013,
12 Officer Dionne sent a text message to another friend in which he stated "I talked to my
13 attorney today about the incident and everything is going to be fine". See POST Exhibit
14 12, pgs. 26-27.
15

16 112. On August 10 & 11, 2014, a civil service hearing was held on Officer Dionne's
17 appeal of his termination. During the hearing, Officer Dionne testified that he decided to
18 call 911 after Mr. Jawad had made the illegal turn from Cactus to Hayden Road. Officer
19 Dionne also testified that at the termination of the call with Phoenix 911, he pulled into
20 another business complex at Tatum and Thunderbird to see if he was being followed. He
21 further testified that several events happened in this business complex, including the start
22 of his conversation with Sergeant Nielsen. While talking to Nielsen, Officer Dionne
23 reassessed his GPS and began travelling north on Tatum, at which time he received a
24 call waiting call from Officer Vernon. As he approached the intersection of Tatum Road
25 and Greenway Road, he pulled into a grocery store parking lot and told Officer Vernon to
26 meet him there. He then ended the call with Sergeant Nielsen and waited about 5 to 10
27 minutes for a return call from Officer Vernon before proceeding on his way.
28

29 113. Officer Dionne's testimony about the parking lot on Tatum and Thunderbird
30

1 contradicted what Officer Dionne had told PSB. This information was not presented in the
2 civil service board hearing.

3 114. On September 5, 2014, the hearing officer in Officer Dionne's civil service
4 hearing concluded that Officer Dionne's display of the firearm was reckless and not
5 justified. She also found that there was no evidence of any attempted use of physical
6 force by Mr. Jawad. She further found that Officer Dionne exhibited bad judgment by not
7 simply calling 911, and by not simply driving away when he had the opportunity to do so
8 prior to displaying his weapon. See Dionne's Exhibit 16, at 16-17.

9 115. On September 16, 2015, POST reviewed Officer Dionne's case and voted to
10 initiate proceedings on Officer Dionne.

11 1116. On October 9, 2014, following his appeal before CSB, Officer Dionne was
12 reinstated as a Phoenix Police Officer, where he is currently employed. See Dionne's
13 Exhibit 18 at (Dionne000521).

14 **CONCLUSIONS OF LAW**

15 1. POST bears the burden of proof and must establish cause to penalize a
16 peace officer's certification by a preponderance of the evidence.² Officer Dionne bears
17 the burden of proof to establish affirmative defenses by the same evidentiary standard.³

18 2. "A preponderance of the evidence is such proof as convinces the trier of
19 fact that the contention is more probably true than not."⁴ A preponderance of the
20 evidence is "[t]he greater weight of the evidence, not necessarily established by the
21 greater number of witnesses testifying to a fact but by evidence that has the most
22 convincing force; superior evidentiary weight that, though not sufficient to free the mind
23 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
24 side of the issue rather than the other."⁵

25
26
27
28 ² See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369,
29 372, 249 P.2d 837 (1952).

³ A.A.C. R2-19-119(2).

⁴ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁵ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 3. POST established by a preponderance of the evidence on March
2 28, 2013, Officer Dustin R. Dionne, while off-duty, recklessly displayed a
3 firearm during a traffic altercation.

4 4. The evidence presented at hearing failed to establish that Mr.
5 Jawad posed a physical threat to Officer Dionne. The evidence presented
6 at hearing failed to establish that Officer Dionne was justified in displaying
7 his firearm.

8 5. Although Officer Dionne testified that he followed Mr. Jawad into the
9 business parking lot to obtain Mr. Jawad's driver's license and report his aggressive
10 driving to law enforcement, Officer Dionne failed to report Mr. Jawad's alleged illegal lane
11 change to 911. Officer Dionne did not mention to 911 that Mr. Jawad break checked him
12 on the freeway and on Cactus Road.

13 6. After telling Sergeant Nielsen that Mr. Jawad break checked him on the
14 freeway, followed him off of the freeway and followed him into the parking lot of the Italian
15 Spoon, Officer Dionne told Sergeant Nielsen that Mr. Jawad got out of his car and
16 approached his vehicle in the parking lot of the Italian Spoon.

17 7. Officer Dionne told Officer Schwartz that Mr. Jawad hopped out of his
18 car and put his hands in the air, but that he could not see Mr. Jawad's right hand.

19 8. Officer Dionne did not tell Sergeant Nielsen or Officer Schwartz that Mr.
20 Jawad was "aggressively" approaching him or was "raging."

21 9. Officer Dionne did not report to PSB that he feared that Mr. Jawad would
22 assault him, kill him or pull him out of his vehicle and knock him around.

23 10. After Officer Dionne learned that he was a suspect in a criminal report, he told
24 PSB that Mr. Jawad appeared angry and tense in the parking lot of the Italian Spoon.

25 12. Officer Dionne told his attorney in a letter prepared for a Phoenix
26 Detective that Mr. Jawad approached his car yelling expletives and was angry and tense.
27 Officer Dionne never told Sergeant Nielsen that Mr. Jawad exhibited a 1,000 mile stare.

28 13. POST established by a preponderance of the evidence that on March 28,
29 2013, Officer Dustin R. Dionne provided false information when he informed a Phoenix
30 Sergeant that he had been followed off of the freeway by an aggressive driver, Mr. MJ,
when in fact, it was Officer Dionne who followed Mr. MJ.

1 14. It is undisputed that although Officer Dionne told Sergeant Nielsen that
2 Mr. Jawad followed him off of the freeway, Officer Dionne followed Mr. Jawad off of the
3 freeway.

4 15. Officer Dionne testified that he misspoke when he told Sergeant Nielsen that
5 Mr. Jawad followed him off of the freeway. Officer Dionne testified that he provided
6 Sergeant Nielsen with a brief account of the events that transpired on March 18, 2013
7 and was so shaken up by the event that he misspoke.

8 16. However, Officer Dionne provided substantial testimony from other officers
9 that he responds well to stressful events. Officer Dionne spoke with Sergeant Nielsen
10 while the events were still fresh in his mind. Officer Dionne testified that when he used
11 the term "following" he meant that Mr. Jawad was mirroring his moves. However, there
12 was no "mirroring" or break checking occurring at the time Officer Dionne and Mr. Jawad
13 exited the freeway.

14 17. POST established by a preponderance of the evidence that on March 28,
15 2013, Officer Dustin R. Dionne provided false information when he informed a Phoenix
16 Police Sergeant that he had been followed into a business parking lot by an aggressive
17 driver, Mr. MJ, when in fact, it was Officer Dionne who followed Mr. MJ.

18 18. It is undisputed that Officer Dionne told Sergeant Nielsen that Mr. Jawad
19 followed him into an unknown business parking lot, when in fact, Officer Dionne followed
20 Mr. Jawad into the business parking lot of the Italian Spoon, Mr. Jawad's place of
21 employment.

22 19. Officer Dionne told Sergeant Nielsen that he pulled into the business parking
23 lot because he wanted to see if Mr. Jawad was still following him and to see what the
24 problem was.

25 19. However, at hearing, Officer Dionne testified that he followed Mr. Jawad into
26 the business parking lot to retrieve Mr. Jawad's license plate because he wanted to report
27 his aggressive driving to law enforcement.

28 20. POST established by a preponderance of the evidence that on March 28,
29 2013, Officer Dustin R. Dionne provided false information when he informed a Scottsdale
30 Police Officer that he had been followed into a business parking lot by an aggressive
driver, Mr. MJ, when in fact, it was Officer Dionne who followed Mr. MJ.

1 21. It is undisputed that Officer Dionne's recorded statement to Officer Schwartz
2 was inconsistent with his statement to PSB and his testimony at hearing.

3 22. Officer Dionne admitted that he misspoke to Officer Schwartz
4 when he told him that Mr. Jawad followed him in to the business parking lot.

5 23. Officer Dionne insisted that he did not intend to mislead
6 Officer Schwartz, but that he confused the sequence of events.

7 24. However, Officer Dionne spoke with Officer Schwartz on the
8 same day that the events occurred.

9 26. Officer Dionne told Officer Schwartz he pulled into the parking
10 lot of the Italian Spoon was to see if Mr. Jawad was still "following" him. Not
11 only did Officer Dionne tell Officer Schwartz Mr. Jawad followed him into
12 business parking lot, he told Officer Schwartz that he pulled into the lot to see
13 if Mr. Jawad was still "following" him.

14 27. However, Officer Dionne told PSB that he followed Mr. Jawad
15 into the business lot to obtain Mr. Jawad's license plate and report Mr.
16 Jawad's aggressive driving to law enforcement.

17 28. Officer Dionne testified at hearing that he followed Mr. Jawad into the
18 business parking lot to obtain his license plate and report him to law enforcement.
19 Officer Dionne also testified that he misspoke to Sergeant Nielsen when he told him that
20 Mr. Jawad followed him off the freeway and that Mr. Jawad followed him into the parking
21 lot. Officer Dionne testified that he was doing several tasks at the time that the Sergeant
22 called him and he was shaken up by the event. Officer Dionne testified that he did not
23 intend to mislead Sergeant Nielsen.

24 29. It is unlikely that a trained police officer would be so shaken up by a
25 motorist break checking him and following him that he could not recall or accurately report
26 to another officer, within the same day that the events occurred, whether he was following
27 a subject or whether a subject was following him. When Officer Dionne called 911, he
28 reported that someone was following him and he did not know why. On March 28, 2013,
29 it was significant to Officer Dionne that someone was following him, therefore it is unlikely
30 that he would be so distracted and shaken up that he was unable to accurately report
who was following whom.

1 30. Officer Dionne knowingly lied to Officer Schwartz in his investigation of the
2 road rage incident when he reported that Mr. Jawad followed him into an unknown
3 business parking lot. Officer Dionne knowingly lied to Sergeant Nielsen when he told him
4 that Mr. Jawad followed him off the freeway and that Mr. Jawad followed him into an
5 unknown business parking lot. POST therefore has borne its burden to establish that
6 Officer Dionne's false statements to the Phoenix and Scottsdale Police Departments
7 violated A.R.S. § 13-2907.01 and constitutes cause to revoke or suspend his peace
8 officer's certification under A.A.C. R13-109(A)(7).

9
10 31. POST has met its burden to establish that PPD policy required Officer Dionne
11 to tell the truth in criminal and internal affairs investigations. POST therefore has borne its
12 burden to establish that Officer Dionne's false statements constitute malfeasance in office
13 and cause to revoke or suspend his peace officer's certification under A.A.C. R13-
14 109(A)(8).

15 32. Peace officers are routinely called as witnesses in the cases they investigate.
16 The public in Arizona expects its peace officers to be honest and forthright. POST has
17 also borne its burden to establish that Officer Dionne's false statements constitute
18 conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law
19 enforcement profession and cause to revoke or suspend his peace officer certification
20 under A.A.C. R13-109(A)(9).

21 Done this day, March 13, 2017.

22
23 /s/ Velva Moses-Thompson
24 Administrative Law Judge

25
26 Transmitted electronically to:

27 Jack G. Lane, Executive Director
28 Peace Officers Standards and Training
29
30