

TUCSON POLICE DEPARTMENT

CRITICAL INCIDENT REVIEW BOARD

CAMPBELL /
8TH STREET

JULY 28, 2016

FATAL OFFICER INVOLVED
SHOOTING

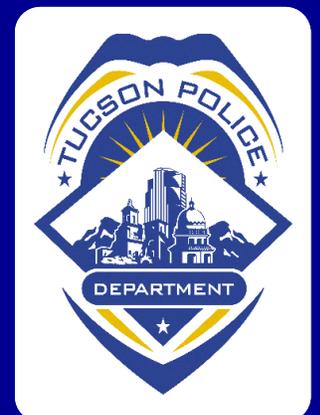


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EXECUTIVE SUMMARY

INVESTIGATIVE CASE INFORMATION

CIRB Number: 16-0406
TPD Case Number: 1607-28-0400
Date of Incident: July 28, 2016
Location of Incident: East 8th Street/North Campbell Avenue

Methodology

The Tucson Police Department (TPD) Critical Incident Review Board (CIRB) convened to review this incident with a focus on department policy, tactics, supervision, equipment, use of force, decision-making, and training. CIRB evaluation included the following modes of inquiry: document and video review; review of interviews conducted by the Central Investigations Division (CID) and the Office of Professional Standards (OPS); and the CIRB questioning of certain involved members as well as subject matter experts. CIRB also reviewed the Marana Police Department's Board of Inquiry report under case # 1607-1087.

The CID and OPS investigations, along with testimony taken during CIRB proceedings, established the facts under review. CIRB elected to take testimony from only specified individuals to elicit clarifying information and obtain further explanation of details developed in the underlying investigation.

Once CIRB testimony and fact gathering was complete, the group's members deliberated with the goal of reaching consensus in their findings and recommendations. Consensus does not necessarily mean complete agreement among members on every issue, but it does mean general agreement. Each member of the CIRB listened thoughtfully to the perspective of other board members, giving fair consideration to differing points of view. Ultimately, this report represents the collective judgment of the board.

Introduction

On July 28, 2016, at 1:46 p.m., TPD Communications received a notification from the Marana Police Department (MPD) that their personnel in marked and unmarked vehicles were following a bank robbery suspect from the previous night in Operations Division South and that they had lost sight of it.

A short time later, MPD found the suspect, Mr. Jesus Rael, and exchanged gunfire with him. During the exchange of gunfire, Rael took an MPD patrol vehicle and fled from the scene. A short time later Rael used the patrol vehicle to stop a white Chevrolet Impala where he pulled the driver

out of the vehicle at gunpoint. The victim fell down during the incident and Rael ran over his legs while fleeing the scene.

A TPD Special Weapons and Tactics (SWAT) Quick Reaction Force (QRF)¹ unmarked vehicle located Rael driving the carjacked vehicle in Operations Division Midtown which is several miles northeast of the original carjacking location. The unmarked vehicle passively followed Rael until a marked patrol vehicle could respond and initiate a high-risk traffic stop on the vehicle. Rael fled from the area at a high rate of speed before the marked patrol vehicles arrived in the area. A pursuit was authorized to stop Rael but patrol vehicles were unable to safely follow or stop him. The fleeing Impala collided with a curb and a road sign which deflated the front driver's side tire at the northeast corner of 8th Street and Campbell Avenue. Rael fled from the vehicle and ran through a nearby residential yard.

Officer Keena arrived at the location of the crashed vehicle and saw Rael moving in the front yard of 1910 East 8th Street. Officer Keena immediately got out of his marked patrol vehicle and began shouting commands at Rael. Rael advanced aggressively towards Officer Keena as Officer Keena got out of his patrol vehicle and shot twice at him with a long gun before Officer Keena could seek cover and return fire. Officer Keena returned gunfire and tactically repositioned while Rael continued to advance towards him. With Officer Keena pinned down by gunfire, Rael stole Officer Keena's patrol vehicle and began driving east on 8th Street. Officer Keena fired at Rael as he attempted to drive away in the patrol vehicle but disengaged when he observed an incoming patrol vehicle.

Officer Merz approached the scene from the east and intentionally collided with the patrol vehicle driven by Rael to disable the vehicle. Officer Wilfert was driving westbound behind Officer Merz and he also collided with Rael who was in the stolen TPD patrol vehicle. The two collisions left the stolen police vehicle inoperable and Rael surrounded. The SWAT QRF with embedded EMT medics removed Rael from the vehicle and rendered aid to him. The Tucson Fire Department (TFD) transported Rael to University Medical Center where he was pronounced deceased.

Issues Identified and Examined by CIRB

CIRB examined the following issues:

- Incident command (IC), proper decision-making, tactics, potential deficiencies in training, policy, and equipment
- The role of the department's Air Support Unit (ASU) in fleeing vehicle scenarios
- The pursuit of the suspect in the carjacked vehicle
- The use of force by the involved personnel
- Radio communications and joint tactical decisions between the multiple agencies and divisions involved in apprehending the suspect

¹ A Quick Reaction Force team consist of four SWAT members who can be quickly assembled to respond to an urgent matter requiring tactical support.

- Patrol officers' level of understanding regarding SWAT tactics and Quick Reaction Force deployment
- Officer Wilfert's handling of his and another officer's department issued firearm

Findings

CIRB reached the following findings:

This incident had proper supervision and incident command.

Sergeant Frie and Sergeant Kidd provided excellent supervisory engagement, decision-making, effective communication, and overall control of this very dynamic incident.

Officer Keena had an improper number of rounds in his magazines which was inconsistent with TPD training principles.

Officer Keena had 15 rounds in his primary magazine, which is inconsistent with department practice. Department firearms training requires TPD personnel to carry only 14 rounds per magazine as a best practice to avoid spring fatigue which can cause bullet feeding malfunctions.

The department's Air Support Unit played an important role in this event although ASU radio transmissions covered² the transmissions of ground units.

The role of the department's Air Support Unit was critical in monitoring Rael's actions. Rael's driving behavior demonstrated a complete disregard for the safety other motorists on the road and his clear intent to elude the police. Police ground units were unable to maintain visual contact with Rael as he drove through the city. ASU was able to clearly call out the direction of travel and the location where Rael crashed his stolen vehicle. This allowed TPD resources to close in on Rael in an attempt to contain and control his actions. Officer Keena was aware of Rael's location due to the ASU transmissions but testified he was unable to transmit on the radio due to being covered by ASU. Sergeant Kidd also testified he was unable to provide direction over the radio because his transmissions were covered by ASU.

Department personnel engaged in an authorized pursuit of Rael.

Sergeant Kidd appropriately authorized the pursuit of Rael who had committed several violent acts against the community and MPD.

Officer Keena's use of deadly force against Rael was justified by Department policy.

CIRB found that Officer Keena was justified in his use of deadly force against Rael who had shot at him several times and then tried to flee the scene. CIRB determined Officer Keena was justified in

² When one radio transmission "covers" another, it preempts the covered transmission.

his application of lethal force throughout his contact with Rael, including when he fired into the patrol vehicle at Rael as Rael attempted to flee the scene. Officer Keena justified his actions by articulating that Rael still had a long gun in his possession in the patrol vehicle and that he believed Rael was reaching for it. He testified that Rael would be a danger not only to Officer Keena but also to the larger community if he was able to flee the scene.

The actions and tactics of Officer Merz were consistent with TPD General Orders and practices.

Officer Merz testified that his actions were to intentionally disable the patrol vehicle Rael was driving to prevent Rael's further flight and continued violent actions against the community. CIRB finds his actions to be objectively reasonable under the circumstances.

There were issues with communication due to multiple divisions and agencies being involved.

There were deficiencies in the department's ability to effectively communicate with Marana Police Department. As noted in the MPD Board of Inquiry, the MPD police radios were not functioning at optimum performance, more than likely due to the location within the City of Tucson which is well beyond the range of their traditional operating area. At the time of this incident, the MPD radios were not capable of interdepartmental direct communication with TPD. MPD officers were forced to conduct much of their communication over cell phones which created a level of confusion not only among their staff but also in communicating with TPD Communications and field personnel.

MPD has since updated to the PCWIN radio platform and they are now capable of interdepartmental direct communication.

The role of the department's ASU in fleeing vehicle scenarios warrants clarification regarding policy, training, and radio use protocols.

This topic was reviewed under CIRB 16-0374. A repeated area of concern identified by CIRB involves ASU's ability to override the radio transmissions of all other members in the field. Though done with good intentions, creating this capability has resulted in ground units at times finding themselves unable to transmit without being covered. In addition, radio discipline (which involves excessive and unnecessary radio traffic) will continue to be a challenge in every critical incident.

There was a lack of understanding by patrol officers regarding SWAT tactics as well as the composition, purpose, and utilization of a Quick Reaction Force.

SWAT and the QRF played a critical role in this incident. Not all department resources involved in this incident were aware of how and when a SWAT QRF could be utilized. CIRB recommends a department wide update on current applicable SWAT tactics and resources.

The actions and tactics of Officer Wilfert involving how he handled his firearm were not consistent with TPD training principles.

Officer Wilfert told CIRB he thought he was driving around the corner into an active gunfight with Rael. He explained that he chose to unholster and hold his duty firearm because he believed he would need to immediately engage Rael who had just shot at officers. When Rael and Officer Merz collided it caused Rael's vehicle to come into the path of Officer Wilfert, resulting in a second collision. Officer Wilfert lost control of his firearm when the airbag deployed. Driving with a gun in your hand is not a department trained technique and in this situation proved to be a poor tactical decision.

CIRB determined the collision between Officer Wilfert and Rael was not intentional, but it did result in Officer Wilfert losing control of his duty firearm. Due to the significant damage to his vehicle and the unknown status of Rael's ability to continue to use lethal force against the officers, Officer Wilfert chose not to attempt to reacquire his duty firearm. Officer Wilfert quickly exited his vehicle and obtained another law enforcement officer's secondary firearm.

CIRB REPORT

CASE OVERVIEW

On July 28, 2016, at 1:46 p.m., Marana Police Communications notified TPD Communications that MPD personnel were conducting surveillance within Operations Division South (inside the city limits of Tucson) on a bank robbery suspect who had robbed a Marana Bank of America and fled from MPD on July 27, 2016. MPD advised they lost sight of the suspect and requested TPD vehicles stay out of the area via their patrol vehicle computers.

A short time later, TPD learned the suspect had shot at MPD officers, carjacked a marked MPD patrol vehicle, and used the stolen patrol vehicle to stop a white Chevrolet Impala at 1400 West Valencia. The suspect held the driver of the Impala at gunpoint, pulled him out of the car, threw him to the ground, and then drove over his legs while fleeing the scene.

MPD requested emergency assistance, providing TPD with the make, model, license plate of the Impala, and a description of Rael. Sergeant Frie contacted SWAT Sergeant Kidd, detailing the series of violent criminal acts committed by Rael. Sergeant Kidd and Sergeant Frie determined that a Quick Reaction Force should be assembled. Two QRF teams, one led by Sergeant Kidd deployed from Operations Division Midtown (ODM) in an unmarked SWAT vehicle, were deployed. While leaving the ODM substation, they observed a Chevrolet Impala drive past them that appeared to match the description of the carjacked vehicle. Officers confirmed the license plate matched the plate on the carjacked vehicle and passively followed the Impala while waiting for a marked patrol vehicle to initiate a traffic stop.

Before the marked patrol vehicle could get into a position to stop the Impala, Rael began to accelerate at a high rate of speed. The unmarked SUV followed him and a marked vehicle approached the area. Given the series of violent acts already committed by the suspect, Sergeant Kidd authorized a pursuit. The Air Support Unit was requested for support as well as to call out the direction of travel for the pursuit. A marked patrol vehicle moved into position to pull over the vehicle but Rael refused to stop and instead drove away at high rate of speed. The sole pursuing patrol vehicle overheated and lost sight of the Impala.

The officers in the unmarked QRF vehicle were also unable to maintain sight of Rael. ASU continued to call out Rael's direction of travel and Officer Keena, who was driving a marked police vehicle, joined the pursuit and was able to position his vehicle behind Rael. Rael again refused to stop, and continued to drive erratically and at dangerously high speeds. Rael ultimately collided with a curb and road sign which deflated his front driver's side tire at the northeast corner of 8th Street and Campbell Avenue. With his stolen vehicle now disabled, Rael fled on foot running southeast from the vehicle into a residential yard.

Officer Keena told OPS that ASU had transmitted that Rael was running southeast through the yard of a second house and was jumping fences. He said he also heard the call made over the

radio to set up quads³. Officer Keena stated it was his intent to set up the first corner of containment when he saw Rael charging at him. Officer Keena immediately got out of his marked patrol vehicle and engaged Rael by giving verbal commands. Officer Keena's vision of Rael's hands was blocked during their initial interaction. When Officer Keena was able to see Rael's hands, Rael was pointing a rifle directly at him.

Officer Keena realized he was taking fire when he saw a puff of white smoke come from the barrel of Rael's rifle. Officer Keena returned gunfire as he moved away from the driver's side front door of his patrol vehicle toward the engine block while Rael continued to advance towards him. Officer Keena realized Rael had an elevated tactical position of advantage, so he tactically retreated from the vehicle to the south. Rael utilized the timing of Officer Keena's repositioning to gain control of the running patrol vehicle and began driving east on 8th Street.

Officer Keena fired at Rael as Rael attempted to drive away in the patrol vehicle but disengaged as he observed another patrol vehicle approaching. As Rael attempted to flee Officer Keena, Officer Merz approached the scene westbound on 8th Street. Officer Merz indicated he intentionally struck the stolen patrol vehicle. Officer Wilfert said he drove westbound behind Officer Merz and collided with Rael, leaving the stolen police vehicle inoperable and Rael surrounded. SWAT members removed Rael from the vehicle and assessed Rael's injuries. SWAT EMT medics then rendered aid until TFD transported him to the University Medical Center where he was pronounced deceased.

As the primary law enforcement agency involved with Rael's initial series of criminal acts, Marana PD reviewed Rael's criminal actions against their personnel, the pursuit of Rael in the Impala, the shooting involving MPD officers, the theft of the MPD patrol vehicle, and the carjacking of the civilian victim. A copy of the MPD Board of Inquiry and review of the findings is embedded in this review. MPD BOI #1607-1087 found that the actions of MPD personnel were **Justified, Within Departmental Policy**.

INVOLVED PARTIES

Field Response

Officer Matthew Keena #53659

- Operations Division Midtown – Patrol
- Tenure: 3 years
- Separated from TPD on June 28, 2018

Officer Matthew Merz #41544

- Service Dog Unit – K9 Handler
- Tenure: 17 years
- Became involved responding from home

³ The deployment of *Quads* is a small unit tactic which utilizes four corner containment to locate a suspect who has fled on foot.

Officer Douglas Wilfert #52282

- Operations Division South – Patrol
- Tenure: 7 years
- Responded from Operations Division South during combined communication frequencies

Sergeant Adam Kidd #49555

- SWAT Quick Reaction Force Team
- Tenure: 10 years
- Sergeant for less than 1 year

Investigative Response

Homicide Unit

Aggravated Assault Unit

Robbery Unit

Audit and Best Practices Unit

Office of Professional Standards

Community Member

Mr. Jesus Rael 12/6/84

- Deceased

Officer Matthew Keena #53659

Officer Keena was interviewed by CIRB addressing **tactics** and **decision-making**.

CIRB's clarifying questions sought to determine:

- How Officer Keena came to be involved in this incident
- Whether Officer Keena received supervisory direction during the incident
- Whether Officer Keena knew what a Quick Reaction Force was
- If Officer Keena's radio transmissions were covered by ASU
- What Officer Keena's plan was when he turned onto 8th Street
- Why Officer Keena left his vehicle, which afforded Rael the opportunity to take it
- Whether Officer Keena was justified in utilizing lethal force
- Why Officer Keena chose to shoot at a moving vehicle

Investigative Statement and CIRB Testimony

Officer Keena was originally interviewed on July 27th, 2016. OPS conducted a follow up interview on August 10th, 2016 to review the MVR video that captured aspects of this incident. Officer Keena did not have any additional clarifying information to add after watching the video.

On the day of the incident, Officer Keena said he was in full uniform with a marked patrol vehicle working a special duty assignment at Sunnyside High school located within Operations Division South (ODS). He said he received a message from TPD Communications on his computer indicating MPD was conducting follow-up on a bank robbery suspect within ODS. They asked TPD marked units to stay out of a specified area while they conducted their operation. Officer Keena was not initially concerned about the exact area because it did not impact his special duty assignment. He told OPS that he monitored the radio to ensure the situation would not impact the school. Officer Keena later transferred onto regular duty when he completed his off-duty job.

Officer Keena told OPS that MPD's initial request for emergency assistance through TPD Communications lacked specificity. He stated additional information was eventually provided that MPD personnel had been involved in an officer involved shooting (OIS) and that the suspect had stolen their patrol vehicle (which was later used in a carjacking).

Officer Keena said a patrol supervisor was working to clarify the information and that a commander had directed personnel to respond to the MPD OIS scene to relay information from MPD personnel in real time. Officer Keena said additional information came out that the suspect in the OIS (Rael) had fled the scene with a shotgun or rifle and that he had also carjacked a vehicle and ran over the victim of the carjacking. Officer Keena said he was aware Rael was last seen driving a Chevrolet Impala in the area of Santa Cruz and Irvington.

At the conclusion of his special duty assignment, Officer Keena traveled northbound on Campbell Avenue into Operations Division West (ODW) to pick up DUI equipment. He monitored the radio frequencies in ODS and ODM to track radio transmissions on Rael. He heard a SWAT unit transmit the suspect vehicle was in the area of 22nd Street and Country Club Road and requested marked patrol assistance. Information was provided that Rael fled before a traffic stop could be initiated on the vehicle.

ASU identified the carjacked vehicle and began broadcasting the vehicle's direction of travel. Officer Keena positioned his vehicle at the intersection of Aviation Parkway and Kino Parkway believing he might intercept the carjacked vehicle. He heard ASU broadcast that Rael was traveling at a high rate of speed and he heard a SWAT sergeant ask if any units in the area had road spikes.

Officer Keena watched Rael drive on the median to pass vehicles that were stopped at the intersection. Officer Keena told OPS he immediately activated his emergency equipment⁴ and engaged in the pursuit of Rael. He attempted to catch up to Rael's vehicle but he was unable to do so due to the dangerously high speeds that Rael was driving the stolen vehicle. Officer Keena heard ASU transmit that Rael's vehicle had crashed at Campbell Avenue and 8th Street. Officer Keena responded to that location but was not able to broadcast this information on the radio because his radio transmissions were overridden by ASU's transmissions.

Officer Keena arrived at the scene of the crashed vehicle and heard ASU transmit that Rael was running southeast through the yard of the second house and jumping fences. Officer Keena exited his marked patrol vehicle and saw Rael charging at him. Officer Keena yelled, "show me your hands." Due to the overhead light bar and the patrol vehicle roof, he was not able to initially see Rael's hands.

When Officer Keena did see the suspect's hands, Rael was pointing a long gun directly at him. An instant later Officer Keena watched a puff of white smoke come from the barrel of the long gun. Officer Keena quickly returned fire and ducked down, knowing that he had been fired upon. Realizing the patrol vehicle was not providing adequate cover, he stood back up to find a better tactical position. He saw Rael was shooting and moving towards him abruptly moving up and down and utilizing items between them as a barrier.

Officer Keena is a certified rifle operator familiar with the ballistic capabilities of a rifle. This training allowed Officer Keena to recognize the need to obtain a position of cover behind a solid barrier versus objects that only offer concealment. Officer Keena attempted to get behind the front wheel of the patrol vehicle in order to use the engine as cover, but stated he was physically too large to take a position behind the front tire of his patrol vehicle. Officer Keena stated he could not shoot under his patrol vehicle because Rael had taken a position on an elevated platform along the street curb. Officer Keena felt he had no choice but to abandon his position of concealment since he was being overrun by Rael, who he believed had already fired at him at least three times.

⁴Overhead lights and audible siren.

Officer Keena ran around the front of his patrol vehicle to the south. Mobile Vehicle Recording (MVR) footage from vehicle #914 showed Officer Keena with his duty weapon drawn and pointed in the direction of Rael. Officer Keena stated he was approximately 30 feet to the southeast of his marked patrol vehicle when Rael got into the driver's seat of the patrol vehicle with his long gun. Officer Keena told CIRB he felt he could not allow Rael to flee from the scene.

Still 30 feet away and without cover, Officer Keena knew Rael had a rifle and that he could also "kill someone with the car." Officer Keena stated he continued firing at Rael aiming for Rael's center mass (chest area). He said he fired these rounds after Rael got behind the wheel but before Rael began driving the vehicle. Officer Keena stated his first rounds struck the windshield and then the vehicle started moving. He said he continued firing from approximately 30 feet away while he moved towards the vehicle. He said he closed the distance to approximately 10 feet on the passenger side of the vehicle before the vehicle sped away. Officer Keena stopped firing when he realized other units were responding from the east and he did not want to create a crossfire situation.

Officer Keena indicated he thought he experienced "auditory exclusion"⁵ during the gunfire. Although he was not sure how many times Rael fired the long gun at him, Officer Keena thought it might have been as many as two or three rounds.

Officer Keena had 15 rounds in each of his magazines. The firearms staff from the Training Division instruct commissioned personnel to carry 14 rounds in their magazines to avoid issues with the magazine springs overloading which can cause the weapon to malfunction.

Officer Keena said he didn't think there were any supervisory issues involved in this incident. The only equipment issue Officer Keena brought up was that he wished he had his patrol rifle with him, however since he was working special duty at a high school, he had left his rifle secured at the substation.

Analysis

How did Officer Keena come to be involved in this incident?

Officer Keena believed he was in a good position to get behind and pursue the fleeing vehicle. SWAT had requested a marked patrol unit assist them and no other units had been able to catch up with Rael. As Officer Keena got behind Rael, the communication on the radio was unclear because ASU transmissions covered Sergeant Kidd's direction.

It was not his intention to take Rael into custody, but rather to be in a position to assist the SWAT officers with containment of the crash area. Officer Keena said he was unaware Rael was still close to the crash scene when he made the turn off of Campbell Avenue. Despite the communication

⁵ Auditory exclusion is an extremely common physiological effect experienced by officers involved in critical high stress incidents such as officer involved shootings. They often cannot recall hearing loud ambient noises in their environments during these incidents.

challenges, Officer Keena said he felt he had enough information to make decisions. In hindsight, Officer Keena said he realized having ASU articulate Rael's position or waiting for SWAT to take the lead might have been better options.

Did Officer Keena receive supervisory direction?

Officer Keena could not hear the instructions from Sergeant Kidd. Heavy radio traffic, including ASU's overriding of the ground units' radio transmissions and Sergeant Kidd's IC transmissions, caused communication challenges. As a result, Officer Keena was also unable to broadcast his attachment to the call or his location. The heavy radio traffic was a point of discussion for most of the personnel involved in this incident.

Were Officer Keena's radio transmissions covered by ASU and other responding units?

Officer Keena's radio transmissions were covered by ASU and other responding units making it difficult for the Incident Commander to direct responding personnel. Officer Keena told CIRB he tried to advise on the radio that he was the unit behind Rael during the pursuit. He told CRIB that he did not think to utilize the emergency button on his radio to take control of the air when he saw Rael approaching him on foot.

Did Officer Keena announce his presence over the radio?

Officer Keena attempted to transmit on his radio, however the transmissions were covered by ASU and other units involved in the incident. The heavy radio traffic was a point of discussion for most of the personnel involved in this incident.

Did Officer Keena know what a Quick Reaction Force was?

Officer Keena did not know what the QRF was or how they deployed.

What was Officer Keena's plan when he turned onto 8th Street?

Officer Keena stated ASU broadcast the crash location and that Rael was fleeing on foot in a southeast direction through residential properties. His intention was to take up a position of containment near the location where the carjacked vehicle had crashed. He was aware Sergeant Kidd had provided direction for SWAT to take primary apprehension responsibilities. Notwithstanding the communication difficulties, Officer Keena said he did not initially plan to engage or pursue Rael on foot. He testified he was not aware of Rael's exact location when he first arrived at the crash scene.

Why did Officer Keena leave his vehicle?

As Officer Keena took a position of containment, he observed Rael immediately charging at him. Officer Keena said he couldn't see Rael's hands from his position in the vehicle and therefore exited

his vehicle and gave Rael verbal commands to show his hands. He noted that it was unclear if Rael had a shotgun or a hunting rifle.

Officer Keena clearly explained the decisions he made to leave the concealment and cover of his vehicle during his exchange of gunfire with Rael. Officer Keena wisely abandoned cover as Rael quickly advanced on his position next to his patrol vehicle. As his vehicle was struck with gunfire from Rael, Officer Keena stated he relied on his department training to move behind the engine block of his vehicle. He told CIRB that Sergeant Kowalski had just held a squad training after the Dallas Police Department shooting. During the training, Sergeant Kowalski discussed the death of one of the officers in that incident and the possible need to leave the safety of cover to press a lethal threat. He noted he thought about that training during this incident.

In hindsight, Officer Keena said he realized removing the keys from the patrol vehicle when he made the decision to leave the concealment of his patrol car would have been advantageous. He explained that when he stopped his patrol vehicle, Rael immediately not only ran towards him but also fired his long gun directly at him. Officer Keena appropriately articulated his decision to leave the concealment and limited cover of his patrol vehicle while returning gunfire during this incident.

Was Officer Keena justified in his use of deadly force?

Yes, he was justified in his use of force. Officer Keena was aware Rael had been involved in multiple violent acts including lethal force encounters with law enforcement just prior to his contact with him. Officer Keena testified that once he was fired upon he felt his life was in danger and therefore responded with lethal force. He said Rael entered the driver side of the running patrol vehicle and appeared to be reaching for his long gun. Officer Keena believed Rael was going to level the weapon and continue firing at him. He believed his life, the lives of responding officers, and community lives were in danger based on the series of violent acts Rael had already engaged in with MPD officers and civilian victims. He said he shot at Rael aiming for center mass and continued to fire at him as the vehicle pulled away. He ceased fire when he saw another patrol vehicle approaching from the east to avoid a crossfire situation.

Did Officer Keena explain his tactics and appropriately justify why he chose to shoot at a moving vehicle?

CIRB determined Officer Keena was justified in his application of lethal force throughout his contact with Rael including when he fired into the stolen patrol vehicle at Rael as Rael attempted to flee the scene. Officer Keena justified his actions by articulating that Rael still had a long gun in his possession in the patrol vehicle and he believed Rael was reaching for it when he re-engaged him. He testified that Rael was not only a danger to him but also a danger to the larger community and responding officers if he was able to flee the scene.

Findings and Recommendations

CIRB found Officer Keena's use of deadly force throughout his encounter with Rael was consistent with Tucson Police Department *General Orders* as well as the department's training principles. While department

policy typically prohibits shooting at a moving vehicle, CIRB finds Officer Keena acted appropriately and that his actions were objectively reasonable given the life threatening and tactically dynamic situation he faced. CIRB finds Officer Keena's use of deadly force in this incident was **Justified, Within Department Policy**.

CIRB commends Officer Keena's willingness in the months following the incident to review his actions with a critical eye. This type of post incident reflection afforded both Officer Keena and the department an opportunity to identify areas for possible improvement. To that end, upon reflecting on the situation, Officer Keena thought he potentially could have waited for the QRF units before engaging Rael. Officer Keena also stated it might have been possible during the incident for him to wait for clarification from ASU or SWAT prior to proceeding onto 8th Street.

CIRB recognizes the issue with heavy radio traffic during critical incidents and ASU covering ground units at times continues to be a challenge for the department. Critical information was never communicated in this incident due to excessive radio traffic and radio bonking issues. This issue will be further addressed in the CIRB review of Sergeant Kidd's actions.

Officer Keena gave very positive feedback on services provided from the TPD Behavioral Sciences Unit and expressed his appreciation for the way his fellow department members treated him following this incident. He said he benefited from Eye Movement Desensitization and Reprocessing (EMDR)--commonly referred to as laser light therapy--and that his eating and sleeping had greatly improved through this process assisting him in his transition period back to full duty.

Training Opportunity

Officer Keena had 15 rounds in each of his magazines. This issue was addressed by the training academy during the post officer-involved shooting re-qualification process.

Officer Matthew Merz #41544

Officer Merz was not interviewed by CIRB because his statement to OPS did not require additional clarification. The areas addressed and reviewed related to Officer Merz were **tactics** and **decision-making**.

Investigative Statement

Officer Merz told OPS he heard the broadcasts concerning this incident starting at approximately 1:34 p.m. He said he was preparing for his shift by loading his dog and equipment into his marked patrol vehicle at his residence. While driving to work, Officer Merz continued to monitor the radio communications.

Officer Merz said he didn't know which unit had authorized a pursuit but he heard "in pursuit" transmitted on the radio. Officer Merz responded to the location of Rael's vehicle based on the directions given by ASU. As Officer Merz was listening to radio transmissions he said he recognized the pursuit suspect was Rael, who he knew had been involved in an armed robbery the night before.

Officer Merz heard ASU broadcast that the suspect vehicle had crashed at Campbell Avenue and 8th Street. He drove north on Campbell Avenue and east on 9th Street in an attempt to contain Rael. He said he was aware of the earlier MPD pursuit, stolen MPD patrol vehicle, MPD officer-involved shooting, and the civilian carjacking. Officer Merz recognized the suspect from his previous shift and knew it was a possibility that the suspect had a long gun. He determined Rael met the criteria for a K-9 apprehension.

Officer Merz stated he was waiting for an opportunity to broadcast to responding units that they needed to set up a perimeter so he could effectively deploy his K-9 partner. While waiting for a break in radio transmissions, he heard ASU broadcast "a unit is engaging the suspect." Officer Merz immediately drove northbound on Norris Avenue, stopping at the alley which runs east and west between 8th Street and 9th Street. He said he attempted to determine if Rael was north of the alley and anticipated the possibility of a foot chase.

Officer Merz advised he heard ASU broadcast, "[t]he officer is in a gunfight." Officer Merz drove northbound on Norris Avenue again. ASU made the additional broadcast, "[h]e's stealing the police car." Officer Merz turned westbound on 8th Street and observed a marked TPD patrol vehicle stationary on the south side of the road facing him.

Officer Merz saw a uniformed patrol officer pointing his duty weapon at the police vehicle. He watched the marked TPD patrol vehicle start accelerating eastbound on the south side of the road toward his position in the roadway. As the vehicle got closer, Officer Merz was able to identify the driver as the wanted armed robbery suspect he had seen in a photograph the night before. Beyond his knowledge of the series of violent crimes Rael had committed over the past 24 hours, Officer Merz now knew that Rael had also shot at a TPD officer and stolen his police vehicle, possibly

with a rifle inside. Officer Merz “feared for members of the public” and wanted to minimize potential injury to himself, so his intention was to hit the vehicle with the right side of his vehicle to “take this car out and immobilize it.” Although Officer Merz did not intend to utilize deadly force, he unequivocally believed deadly force was justified and that his actions were necessary to stop the suspect from further flight.

Officer Merz did not identify any deficiencies with supervision or tactics. He did express an equipment concern. Officer Merz recommended that the department evaluate vehicle immobilization devices which are designed to prevent an unauthorized person from taking control of a running police vehicle.

Analysis

Officer Merz clearly articulated the seriousness of the incident and the violent actions committed by Rael as the situation unfolded. During his interview with OPS, Officer Merz appropriately justified his tactical decisions and his use of deadly force.

Findings and Recommendations

Officer Merz responded to the area to deploy his K-9 and assist the QRF. CIRB determined he acted quickly, decisively, and reacted appropriately when he and Officer Keena were faced with a deadly force situation. CIRB did not find any deficiencies with Officer Merz’ tactics or decision making. CIRB found Officer Merz’ use of deadly force was **Justified, Within Department Policy**.

Officer Douglas Wilfert #52282

Officer Wilfert was interviewed by CIRB. The areas addressed and reviewed with Officer Wilfert were **tactics** and **decision-making**.

CIRB's clarifying questions sought to determine:

- If Officer Wilfert used deadly force by intentionally colliding with Rael as Rael was driving the stolen police vehicle
- Why Officer Wilfert had his gun in his hand while he was driving

Investigative Statement and CIRB Testimony

Officer Wilfert responded to the original emergency broadcast for Rael's violent acts against MPD officers and civilians in ODS. He told OPS Sergeant Frie had advised over the radio that units should assist MPD in the area of I-19 and Irvington Road. Officer Wilfert drove towards that location when he heard a carjacking call come out at 1400 West Valencia Road. Due to the proximity of the two calls he thought there was a good possibility that the two incidents could be related. He responded to the carjacking scene but realized they had resources from TPD, Pima County Sheriff's Department, and the Department of Public Safety to handle the scene. Officer Wilfert told OPS he decided to set up a bullseye⁶ containment at Mission Road and Ajo Way. He later moved his location when he heard a possible updated sighting of the suspect vehicle in the area of Country Club Road and 22nd Street.

Officer Wilfert attempted to engage in the pursuit in the area of South Kino Parkway and East 36th Street when he saw Rael travelling northbound on Kino Parkway. Sergeant Kidd had already authorized a pursuit at this point of the incident. Officer Wilfert joined the end of the pursuit after the engaged pursuit officer(s) passed his position. He told OPS he thought he was second or third in the pursuit of Rael. Officer Wilfert was ultimately unable to maintain sight of the suspect vehicle due to the excessive speeds and reckless nature of Rael's driving. Officer Wilfert remained in the general area of the pursuit guided by ASU radio transmissions that called out Rael's location.

Officer Wilfert said he heard ASU advise that Rael had crashed his stolen vehicle at Campbell Avenue and 8th Street. ASU advised that Rael was running southbound through residential yards. Officer Wilfert drove eastbound on 9th Street and moved into position behind K-9 Officer Merz. Officer Wilfert remained stationary momentarily in the area of 9th Street and Norris Avenue in an effort to assist with containment. ASU then broadcast Officer Keena was in a gunfight with Rael and Officer Wilfert immediately followed Officer Merz northbound on Norris Avenue and westbound on 8th Street.

⁶ Bullseye containment is a tactic used when members want to locate a vehicle that has fled from a scene and there is reason to believe that the vehicle is still in the general area. A marked patrol unit will typically set up on a corner of an intersection and watch traffic flow for the outstanding vehicle.

Officer Wilfert told CIRB he thought he was about to drive around the corner into an active gunfight. He explained he decided to un-holster and hold his duty weapon in his right hand because he believed he could possibly need to immediately engage Rael.

As he drove around the corner, Officer Wilfert heard ASU describe that Rael had stolen a marked patrol vehicle (Officer Keena's patrol car) and was now eastbound on 8th Street. Officer Wilfert said he observed the two patrol cars sideswipe each other in the middle of 8th Street and that while the collision didn't cause the stolen patrol vehicle to immediately stop, he said it was a significant impact. He told OPS that he thought he was 40 to 50 yards behind Officer Merz when the collision occurred.

Officer Wilfert stated his intention was to maneuver his vehicle out of the way of the damaged stolen police vehicle by pulling to the south side of 8th Street. He told OPS that if Rael continued to drive the severely damaged vehicle, he thought he could get into a position to pursue Rael since he didn't think the vehicle Rael was driving could make it very far. Instead of the continued pursuit he anticipated, Officer Wilfert said Rael veered south into his vehicle. Officer Wilfert told OPS he thought he was either stopped or traveling at less than five miles per hour (MPH) when Rael drove the stolen cruiser directly into the front passenger side of his patrol vehicle at 20-25 MPH.

As a result of the impact, Officer Wilfert's patrol vehicle air bag deployed which knocked his duty weapon out of his hand. Officer Wilfert was unable to locate his firearm in plain sight. Officer Wilfert told CIRB he immediately got out of his damaged vehicle, believing Rael could still be alive and that he could start shooting through his windshield at any point in time. He told CIRB that he had to force his door open to get out of his patrol vehicle.

Officer Wilfert said a white unmarked Chevy Tahoe with emergency lights pulled alongside his driver's door. He said an unknown male got out of the vehicle wearing a police tactical vest and who had a rifle. Officer Wilfert told the officer that he had lost control of his firearm during the collision. Officer Wilfert told CIRB that while he knew he had a shotgun in his trunk, he did not feel that it was the best tactical decision to attempt to retrieve it.

The officer from the unmarked Tahoe gave Officer Wilfert his handgun and they both engaged Rael in verbal commands. Officer Wilfert said they thought Rael might still be armed (with his original long gun or additional police weapons potentially located in the stolen patrol vehicle) and continue to pose an immediate threat. Officer Wilfert said he did not consider retrieving his pistol or retreating behind a barrier because he was already engaged and felt the most pressing concern was containing and apprehending Rael.

The SWAT QRF arrived almost instantaneously and took over control of the scene. Officer Wilfert said a potential crossfire situation occurred with all the responding law enforcement setting up on the stolen police vehicle. SWAT operators gave direction to the non-SWAT members on scene to stand down. SWAT then took over the responsibilities of engaging and taking Rael into custody. Officer Wilfert stated the non-SWAT members backed away from the tactical situation. Officer Wilfert told OPS he estimated there were 15 to 20 seconds of verbal directions with no response by

Rael. He said the SWAT operators then moved up to make contact with Rael. He said SWAT members then removed Rael from the vehicle and performed first aid until TFD arrived.

Officer Wilfert said he returned the firearm he had been given since he no longer needed it to provide lethal cover. He located his firearm wedged between the passenger seat and the passenger window area of his patrol vehicle. He said the magazine had been knocked out (which he was unable to locate). He reloaded his gun with a magazine off of his duty belt.

Officer Wilfert told CIRB that he thought the dynamic incident was properly supervised. He stated Sergeant Frie declared himself Incident Commander early in the event. In speaking with OPS, Officer Wilfert stated the only concern he had specific to tactics utilized in this incident involved the crossfire situation which the SWAT QRF members quickly rectified.

Analysis

Did Officer Wilfert use deadly force by intentionally colliding with Rael's vehicle?

Officer Wilfert testified the collision that occurred between his patrol vehicle and the stolen police vehicle was caused by Rael's actions as Rael attempted to flee on 8th Street. Crime scene photographs verified this was a reasonable account of how the secondary collision with Rael occurred.

Why did Officer Wilfert have his firearm in his hand while he was driving?

Officer Wilfert felt it was necessary to drive with his duty weapon in his hand because he thought he was moving into an active gunfight. This tactic proved to be ineffective. Officer Wilfert became unarmed after colliding with Rael. Officer Wilfert's duty weapon was knocked out of his hand when the airbag in his vehicle deployed. He was unable to quickly and safely reacquire his firearm due to the final resting position of the two collided patrol cars. Officer Wilfert could have found himself in a tactically deficient position if Rael had immediately fired upon him following the collision.

Officer Wilfert advised he had completed training that included getting out of a vehicle with his firearm in his hand during high risk⁷ stops. He acknowledged he had not been trained to drive with a firearm in his hand. He told CIRB he wanted to be ready for a gunfight when he turned the corner. In response to questioning by CIRB, Officer Wilfert stated he had his seatbelt on during the collision and that high risk stop training during his basic training taught him how to safely remove his seatbelt with his duty weapon in his hand.

Officer Wilfert's tactic of driving with his duty weapon in his hand in this incident proved to be ineffective, as an unexpected collision rendered him unarmed.

⁷ A high risk stop is conducted during a high risk traffic stop. Officer(s) utilize a marked patrol car(s) to conduct a traffic stop on a vehicle, preferably in a safe location that allows for a slow, deliberate tactical response by police personnel. During a high risk stop the driver is strategically directed to turn the vehicle off, slowly follow a series of commands to exit the vehicle and walk back to officers with their hands empty and in clear view where they are detained. The final act of a high risk stop is for the vehicle to be cleared to confirm it is unoccupied.

Findings and Recommendations

CIRB brought up additional and available tactical options at the time of the incident for Officer Wilfert to consider. While the board acknowledged this was a dynamic incident, CIRB finds Officer Wilfert should have deployed better tactical decisions in his response to the situation instead of driving into the scene with his firearm in his hand.

Officer Wilfert chose to unholster and carry his duty weapon in his right hand while driving. This is not a tactic that is taught by the department and it proved to be problematic in this incident. CIRB discussed other tactical options available to Officer Wilfert at the time he heard that Officer Keena was engaged in a lethal encounter with Rael.

CIRB found Officer Wilfert should have taken a slower tactical approach coming around the corner on to 8th Street. This would have allowed him to identify Rael's exact location without his firearm in his hand and place him in a better tactical position to utilize his patrol car as lethal force if necessary.

As a result of the CIRB discussion with Officer Wilfert, the board determined he realized the tactic he deployed by driving with a firearm in his hand during this incident was ineffective. CIRB noted that Officer Wilfert being unarmed could have resulted in grave consequences. CIRB did not feel that retraining was necessary in this situation since Officer Wilfert had already reflected on his tactical decision to drive with his firearm and had learned from this incident. CIRB found this was a learning opportunity for Officer Wilfert and the larger agency. CIRB recommends this incident be incorporated into high risk stop training for new police recruits as well as during Advanced Officer Training in the future.

Officer Wilfert obtained a firearm from an unknown federal plain clothes officer after the collision with Rael. Department policy requires patrol personnel to qualify with their department issued and approved firearm platform prior to deploying with the firearm. CIRB found Officer Wilfert put himself in the precarious position of not having a firearm (by driving with his firearm in his hand prior to the collision) during a potentially ongoing lethal encounter with a violent felon who had already tried to kill multiple police officers. He was forced to obtain a firearm that he was unfamiliar with to deploy timely, lethal cover on Rael until additional support arrived at the scene. CIRB found Officer Wilfert appropriately tactically retreated when the SWAT QRF team arrived. The board further noted that Officer Wilfert subsequently returned the "borrowed" firearm and obtained his own weapon when it was safe to do so.

CIRB found the exigency of the incident articulated by Officer Wilfert and the actions of Rael warranted Officer Wilfert operating outside of department policy in this circumstance and deploying a firearm he had not qualified on. CIRB reminds department personnel of the increased liability of round accountability by deploying a firearm they are unfamiliar with in an exigent circumstance such as this. CIRB did not find Officer Wilfert in violation of *General Orders*.

Sergeant Adam Kidd #49555

Sergeant Kidd was interviewed by CIRB. The areas addressed and reviewed with Sergeant Kidd were **incident command** and **decision-making**.

CIRB's clarifying questions sought to determine:

- If Sergeant Kidd communicated his tactical plan to patrol units
- If patrol knew about the composition, purpose, and proper utilization of a QRF
- Whether Sergeant Kidd had the required criteria to authorize a pursuit
- If ASU and heavy radio traffic hindered Sergeant Kidd's ability to control the pursuit

Investigative Statement and CIRB Testimony

Shortly after the emergency broadcast from MPD, Sergeant Kidd received a phone call from Sergeant Frie detailing the series of violent criminal acts committed by Rael and that Rael's location was unknown. Sergeant Kidd and Sergeant Frie determined that a QRF deployment was an appropriate and necessary response for this incident.

As Sergeant Kidd left the ODM parking lot with the Quick Reaction Force in an unmarked police vehicle, they were almost immediately passed by Rael in the carjacked vehicle. The QRF team began to follow Rael. Sergeant Kidd attempted to get a marked police unit to assist with a high risk stop. Rael fled from the QRF before a marked patrol unit could initiate such a stop.

With Rael, who was violent and armed, still on the loose, Sergeant Kidd stated he authorized the pursuit of Rael as they tried to close in on him. He said they were unable to safely keep up with Rael as he fled in the carjacked vehicle. As a result, Sergeant Kidd said he requested ASU to assist and he authorized the use of road spikes in the event a unit could safely deploy them. Sergeant Kidd stated that he would have also directed TPD Communications to combine the ODS and ODM radio frequencies but the frequencies were already combined before he made the request. Sergeant Kidd stated due to Rael's propensity for violence, he wanted to have a ground unit close to Rael to avoid another carjacking, additional assault on community members, or Rael running into a residence if the vehicle he was driving was no longer operable.

Sergeant Kidd attempted to get on the radio to advise the other units they would be deploying the QRF team on foot when Rael stopped driving. Sergeant Kidd was unable to transmit on the radio because ASU was on the air and kept "covering" the ground units when they attempted to get on the radio. He said due to this, he was not able to effectively relay his tactical plan to the involved ground units when Rael crashed his vehicle and fled on foot.

Sergeant Kidd took his team to 8th Street based upon ASU's direction that Rael had crashed. He told CIRB he gave direction over the radio for units to "go to quads" and that QRF units would be responding, but the transmission was bonked⁸.

By the time his team arrived, Rael had collided with Officer Wilfert. Sergeant Kidd said he deployed his team on the scene. Sergeant Kidd gave instructions to correct a cross-fire situation between Officer Keena, QRF personnel, and Officer Wilfert. Once Rael was secured and no longer posed a threat to the officers, Sergeant Kidd assigned Officer Guinee as a cover officer to Officer Keena. Sergeant Kidd acted as the Officer Involved Shooting Incident Commander until Incident Command was taken over by Captain Hall.

CIRB asked Sergeant Kidd if the department had received training on the functionality of a QRF. He stated while the department has always retained the ability to quickly mobilize smaller units of SWAT operators for special details, he told CIRB the QRF concept was created in response to the Dallas Police Department personnel ambush incident. He stated that while some of the patrol officers knew what the QRF was at the time of the incident, it would be beneficial for SWAT to conduct department-wide QRF functionality training for patrol.

When asked by CIRB if he had reflected on his response to this incident and whether he would change anything, he told CIRB he would have ensured personnel in Operations Division Midtown had all of the information on the violent acts Rael had committed in Operations Division South.

When asked by CIRB about equipment matters specific to this incident, Sergeant Kidd told CIRB due to the age of the unmarked vehicle his team was driving, they were unable to safely keep up with Rael. He said they were driving at sub-Code 3 driving speeds. He said in an appropriate speed-rated vehicle they could have possibly been closer to Officer Keena when Rael engaged him in lethal force.

Analysis

Did Sergeant Kidd explain his tactical plan to patrol units?

Sergeant Kidd attempted to transmit his tactical plan over the radio several times but was unable to do so because he was covered by ASU and other radio traffic. This meant that officers involved in the pursuit of Rael, including Officers Keena, Merz, and Wilfert responded with limited or no knowledge of Sergeant Kidd's plan and his intended deployment of the QRF.

Has the department received training on what a SWAT Quick Response Force is and what they do?

CIRB determined that many of the patrol officers did not know what a QRF was and what a QRF response entailed. This may have led to some additional difficulties in relaying the tactical plan and limited the role of the patrol officers in interacting with QRF when it was deployed.

⁸ Personnel describe being "Bonked" when their radio transmissions are covered by another unit.

Did Sergeant Kidd have the required criteria to authorize a pursuit?

CIRB determined Sergeant Kidd had all the necessary information and factors required by department *General Orders* to authorize a pursuit. The decision to try to keep a ground unit with the pursuit, as opposed to just having ASU attempt to follow Rael, was a sound decision and justified based on the potential for ongoing violent acts by Rael. Sergeant Frie maintained Incident Command of the scene in ODS while Sergeant Kidd became the Pursuit Supervisor.

Did ASU and heavy radio traffic hinder Sergeant Kidd's ability to control the pursuit?

CIRB determined that there was heavy radio traffic during this incident as is common during many dynamic critical incidents. The radio traffic negatively impacted Sergeant Kidd's ability to transmit critical information to involved personnel. It is imperative that the Incident Commander on the ground retain the ability to provide overall direction and control during an incident of this type. ASU is a valuable asset in these types of situations, but it can also hinder communication if it "covers" the incident commander attempting to provide direction.

Findings and Recommendations

Sergeant Kidd took incident command of the Rael pursuit and made sound decisions consistent with *General Orders* and training. He was unable to relay his tactical plan to the ground units but made adjustments to managing the situation after the Rael shot at Officer Keena.

CIRB recommends the department receive training on the capabilities of the QRF team. Sergeant Kidd stated in his CIRB testimony he would like to be engaged with providing QRF training for patrol units.

CIRB recommends the radio covering issue with ASU and the larger conversation of radio discipline on priority incidents continue to be an ongoing topic of conversation and training throughout the agency. Avoiding excessive radio traffic during priority calls for service continues to be all members' responsibility to ensure everyone's safety. This incident serves as an example where officer safety was impacted by heavy, undisciplined radio traffic.

As part of this review process, SWAT received two new unmarked Chevy Tahoe police package SUVs.

Finally, CIRB commends Sergeant Kidd for thoughtfully reflecting on his performance and providing CIRB with his thoughts and suggestions related to this incident.

GENERAL RECOMMENDATIONS AND FINDINGS

Policy

TPD *General Orders* Chapter 3600 was updated on February 15, 2018. The update further clarified the role of ASU in a pursuit or fleeing vehicle situation as well as the radio procedures to be utilized. No *General Orders* were violated during this incident.

Equipment

The Critical Incident Review Board identified the need for departmental equipment upgrades in the following areas:

Recording equipment is needed on the Air Support Unit helicopter to memorialize critical incidents.

Research should be done on the potential for installing a bladder or “shift button” in patrol vehicles. These devices are covertly mounted under the floor mat and have to be depressed by the driver for the vehicle to be shifted out of park. The Arizona Department of Public Safety currently equips its patrol vehicles with this safety measure to prevent suspects from stealing police vehicles.

The Public Safety Communications Department is researching the ASU override feature on the PCWIN radio system. Currently ASU has the capability to override all ground units to make broadcasts. This feature is referred to as “covering” a ground unit or commonly referred to as “bonking.” In this incident, ASU and overall heavy radio traffic did not allow ground units to broadcast pertinent information. This led to a lack of communication between units on the ground.

A patrol vehicle failed while responding to this critical incident and the unmarked QRF SUV was unable to operate in an appropriate manner. MVR footage showed a unit responding to assist when the vehicle died. The TPD marked and unmarked fleet is currently being upgraded with the passing of a tax proposition by community voters. Proposition 101 (Tucson Delivers) added 70 marked patrol vehicles and 27 unmarked vehicles to the TPD fleet in fiscal year 2018. 51 additional marked patrol vehicles, 30 unmarked vehicles, and 4 motorcycles are being added to the fleet in fiscal year 2019. Tucson Delivers will infuse over \$20 million dollars over its five-year approved life-span into the department’s vehicle fleet.

MPD detectives were looking for Rael within the city limits of Tucson when this incident unfolded. At the time, the MPD did not have the capability to communicate directly with TPD. The radio system utilized by the Marana Police Department has since been upgraded to remedy this issue.

Training

The Critical Incident Review Board identified training opportunities in the following areas:

Quick Reaction Force training for patrol units. Some patrol members involved in this incident had not heard of a QRF deployment and did not know what the capabilities of the QRF were. SWAT members had a tactical plan to attempt to apprehend Rael in this case, however patrol units on the combined frequencies did not know what a QRF was or how it was going to be utilized. If the units had that knowledge, it might have changed their tactics. CIRB recommends the department receive training on QRF capabilities.

The training academy has incorporated shoot and move, or “bounding” techniques, as well as engagement of moving targets into department training. Bounding is the technique utilized to advance to a position of cover/concealment to effectively provide lethal protection, gather intelligence for the situation, and help direct assets for rescue or cover positions. This technique is typically utilized with two or more officers. While one officer is addressing the threat from a position of cover, the second officer will advance to or past the cover officer to the next position of cover. Once set, the movement sequence continues until the desired position is obtained.

Officer Wilfert was driving with his issued handgun in his hand while approaching the shooting scene. When Rael collided with Officer Wilfert’s patrol vehicle, Officer Wilfert lost control of his handgun. This tactic will be discussed and discouraged in high-risk stop training at the academy to avoid this happening again in the future.

CIRB continues to be concerned with ASU’s ability to override the radio transmissions of all other members in the field. This capability has resulted in ongoing challenges with supervisory control of rapidly evolving incidents and field units’ frustration in finding themselves unable to transmit.

Critical incident response and radio discipline should continue to be regularly discussed and debriefed.

CIRB recommends that ASU personnel and the Field Services Bureau (FSB) sergeants who interface with them form a committee to work on communication issues, with a goal of creating FSB wide training. The training should include, but not necessarily be limited to, radio discipline and the use of specific terminology/information when describing proximity of police personnel to a fleeing vehicle. CIRB recommends the training be created, implemented, and reviewed prior to discussion of removing the radio override function from ASU. Should the problem continue to impact supervisors’ ability to manage calls for service after the committee work and training takes place, then department consideration should be given to removing the ASU override function.

Use of Force

It is CIRB’s collective opinion the actions and tactics of Officer Keena were reasonable and necessary given the situation. CIRB found the actions and tactics of Officer Keena in using deadly force were consistent

with all Tucson Police Department *General Orders* and training principles. His entire use of deadly force was justified and in policy.

It is also CIRB's collective opinion the actions and tactics of Officer Merz were reasonable and necessary given the situation. Officer Merz used deadly force to stop Rael from his ongoing threat to public safety, including his repeated use of deadly force against community members and police officers. Officer Merz' use of deadly force was justified and in policy.

CIRB determined that the collision between Officer Wilfert and the fleeing suspect vehicle was not intentional. CIRB determined that Officer Wilfert's actions did not constitute deadly force.

Supervision

Incident command in this situation was clear to all members involved. Sergeant Frie maintained incident command of the situation in ODS, while Sergeant Kidd assumed the role of Pursuit Supervisor. After the shooting and collision, Sergeant Kidd assigned cover officers and took control of the crime scene until Captain Hall arrived on scene and formally assumed incident command. CIRB commends both sergeants for their excellent communication and joint management of this dynamic incident.

CIRB DIRECTION and ACTION ITEMS

The findings and recommendations of CIRB will be forwarded to the affected members' command for review and appropriate action. Recommendations impacting equipment, training, and policy will be forwarded to the appropriate units and the Academy for action. Implementation will be monitored and tracked by the Audit and Best Practices Unit.

CIRB recommends additional training for supervisors and ASU personnel to ensure effective and appropriate radio communications in fleeing vehicle situations. Field Services Bureau Assistant Chief Kevin Hall will have oversight and assign personnel to facilitate this recommendation.

CIRB recommends additional training for the agency on what a Quick Reaction Force is and its functionality. Field Services Bureau Assistant Chief Kevin Hall will have oversight and assign personnel to facilitate this recommendation.

CIRB MEMBERS

Chairperson, Deputy Chief Chad Kasmar

Vice Chair, Captain Eric Kazmierczak

Scribe, Lieutenant Ray Mechtel

Member, Lieutenant Jennifer Pegnato

Member, Lieutenant Robert Garza

Member, Lieutenant Corey Doggett

Member, Lieutenant Alisa Cunningham

Member, Lieutenant Michelle Pickrom

Peer Officer, Officer Steve Placencia

City Attorney, Ms. Julianne Hughes

City Attorney, Ms. Rebecca Cassen

Legal Advisor, Ms. Lisa Judge

Independent Police Auditor, Ms. Liana Perez

Community Member, Ms. Margo Susco

Non-Voting Observers

TPOA Grievance Chair, Officer Don Jorgenson

Office of Professional Standards, Sergeant Stacie Schaner

APPENDIX

- Appendix A –Updated General Order 3600 (all vehicle operations)

APPENDIX A

Updated and Published February 15, 2018

3600 DEPARTMENT VEHICLES

3601 GENERAL

Members authorized to drive Department vehicles shall abide by all applicable state and local laws and regulations as well as City Administrative Directives and specific Department procedures. Members shall operate Department vehicles at all times with due regard for safety. All members shall wear seat belts when operating or as a passenger in any City vehicle. All passengers, including prisoners in screened units, shall be appropriately restrained.

3601.1 Driver Licenses Required

Members who operate any City or Department vehicle shall obtain and maintain a valid Arizona Driver License of the appropriate class. Loss of a required license due to suspension or revocation renders the involved member subject to disciplinary action up to and including termination.

Members, who are classified as primary or secondary drivers as defined by City Administrative Directive, who have their license suspended or restricted by the state for a period of less than 180 days may be reassigned by the Chief of Police to a position that does not involve driving as a job requirement. A primary or secondary driver whose license is suspended or restricted by the state for a period exceeding 180 days is subject to termination.

3610 VEHICLE ASSIGNMENT

3610.1 Inspection and Security

Each time a member begins a duty tour and operates a vehicle, they are required to inspect the vehicle for proper mechanical and electrical operation, serviceability, items of property not assigned to the vehicle (e.g. personal property, contraband, etc.), required service or emissions inspection, and unreported damage. The interior of vehicles used for the transportation of prisoners shall be searched before and after each transport, including a thorough search of the prisoner transport area of the vehicle for contraband, dangerous instruments, weapons, etc.

At the conclusion of their tour of duty, vehicle operators shall again inspect the vehicle for damage or any property not assigned to the vehicle. A supervisor shall be notified of any discrepancy. The vehicle will be left with not less than one-half tank of fuel. Operators shall remove all trash from the interior and keep the vehicle as clean as reasonably possible. The vehicle keys shall be returned to the appropriate location.

3611 Marked Units

The Department marked fleet is the primary vehicle for first responders. Markings and emergency equipment on each marked unit shall be consistent in design and shall not be altered except by direction of the Chief of Police.

3611.1 Standard Vehicle Equipment

In addition to the required emergency lights, safety equipment, and communications equipment each marked unit shall have the following equipment immediately available:

- stocked first aid kit and blanket
- fire extinguisher
- road flares
- traffic cones
- serviceable spare tire and related tools

Division Fleet Technicians shall maintain replenishment supplies at each substation and at Headquarters. Drivers shall ensure that each vehicle they drive contains these items.

No equipment may be affixed inside the vehicle in a manner which could obstruct the driver's view without prior approval.

3612 Unmarked Units

The Department unmarked fleet is primarily for follow-up responders, undercover operations, and administrative use. Division Commanders shall be responsible for the assignment of these vehicles in accordance with Bureau policies. Assigned drivers shall be responsible for the operation, maintenance, and security of their vehicles.

An assigned vehicle will remain with the Department member unless they are assigned to a detail that utilizes leased vehicles. Detectives leaving the detective assignment shall relinquish control of the vehicle to the Administrative Resources Division (ARD). Vehicles shall not be reassigned from one member to another without the approval of the ARD.

Unmarked units shall be subject to additional specific policies outlined in the Unmarked, Plainclothes, and Undercover Driving Manual.

3613 24-Hour Vehicles

When approved for an assignment, a 24-hour take-home vehicle is provided for use at the option of the employee, and its use by the employee is strictly voluntary. Members shall not take a City-owned vehicle home unless they have 24-hour take home status granted through their chain of command including the Chief of Police or previously documented approval from their supervisor. Members authorized a 24-hour vehicle shall complete a "Request for Assignment of 24-hour City Vehicle" form in accordance with City Administrative Directives and submit it to the ARD before receipt of a vehicle. The forms shall be maintained by the ARD.

Members with approved 24-hour take-home status shall comply with City Administrative Directives and the requirement that employees shall live within 20 miles of their permanent work site, except with approval from the City Manager.

3614 Specialty Vehicles

The Department fleet includes various specialty vehicles. These vehicles may have unique operating characteristics that require specific training for safe operations. Members shall be trained and qualified before operating specialty vehicles.

3614.1 Off-Road Vehicles

The Department fleet includes four-wheel-drive and off-road vehicles (e.g. side-by-side utility task vehicles).

3614.2 Vans and Trucks

The Department uses vans and trucks for a variety of purposes including Identification, Evidence and Forensics, Prisoner Transport, Mobile Field Force transport, Commercial Vehicle Enforcement, and transportation of oversized items.

3614.3 Mobile Command Center

The Mobile Command Center is available 24 hours-a-day for critical incident response and by appointment for community demonstrations. The Mobile Command Center shall be the responsibility of the Special Operations Section. Operators are responsible for maintaining and updating the inventory of all related equipment when used.

3614.4 SWAT Vehicles

The SWAT team is assigned a number of specialty vehicles including raid vehicles, equipment transports, and armored vehicles. SWAT shall be responsible for the training and qualification of its members in the safe operation of each specialty vehicle. The use of any of these vehicles shall be governed by tactical need, within the scope of training and the capability of the vehicle.

3614.5 Police Motorcycles

Police motorcycles shall be assigned through the responsible FSB commander. Motorcycles will be deployed primarily for traffic-related purposes, but may be used for specialized functions such as parades or crowd-control. Their operation and maintenance is outlined in the Solo Motors Manual.

3614.6 Other Specialty Vehicles

The Department maintains other vehicles, including tractor and tank trailers and High Mobility Multipurpose Wheeled Vehicles (HMMWV), commonly called "Humvee," for use in special circumstances. These vehicles are assigned to specific units and their use is governed by operational need.

3620 VEHICLE SERVICE AND DEADLINING

When a vehicle is not in serviceable condition or the condition is such that repair cannot immediately be completed, the vehicle shall be deadlined according to procedure. To maintain vehicle availability, marked police vehicles shall not be deadlined for minor problems that do not constitute a hazard to the operation of the vehicle. If the operator discovers a flat tire during the initial inspection, it shall be the operator's responsibility to change the tire unless a Fleet Technician is available to assist. The vehicle operator shall change flat tires occurring in the field.

When a member deadlines a vehicle for service or repairs, the member shall:

- park the marked unit in the designated area of one of the field divisions;
- complete the Vehicle Discrepancy Report and note the location of the vehicle on the report;
- place a traffic cone on the hood of the vehicle; and
- place the keys in the appropriate location for the Fleet Technician.

Vehicles not assigned to one of the field divisions shall be the responsibility of the operator. If they are deadlined, the operator shall complete the discrepancy report and ensure the vehicle is taken to Fleet Services at Park and Ajo. If the vehicle requires routine maintenance

(including the annual emissions testing for vehicles three years or more in age), it is the operator's responsibility to schedule an appointment with Fleet Services. If the vehicle is deadlined for an extended period, the operator may contact the Logistics Section for temporary assignment of a pool vehicle. The member shall collect any personal or Department property not assigned to the vehicle prior to dead lining it.

When a City vehicle breaks down in the field, the member shall notify Police Communications of the vehicle number, the vehicle location, and the general nature of the problem. Communications will notify City Fleet Control and a mechanic or City contract tow truck (not necessarily the Police contract tower) will be dispatched to the vehicle location. It is the operator's responsibility to ensure the vehicle is repaired or towed to Fleet Services.

3630 DEPARTMENT VEHICLE OPERATION

All members shall operate Department vehicles with due regard for the safety of all persons, including while utilizing a mobile tactical computer (MTC) during normal vehicle operations. The Department recognizes that it may be necessary at times to operate department vehicles in violation of Arizona Revised Statutes (ARS) Title 28 and Tucson City Code; however, members shall be able to justify their driving behavior in consideration of the associated risks against the need to do so for the benefit of the community.

3631 Emergency Driving

Emergency Driving is defined as anytime a vehicle is operated in violation of state or local law for a legitimate law enforcement purpose. Under normal circumstances the operator shall not exceed 20 miles per hour beyond the posted speed limit. Any time emergency driving exceeds 20 miles per hour beyond the posted speed limit, the operator will immediately notify a supervisor via radio of his/her speed and the legitimate law enforcement purpose which makes it necessary. When engaging in emergency driving, members shall do so with due regard for the safety of all persons. If feasible and appropriate, members engaging in emergency driving will use their Code-3 equipment. Members driving a vehicle shall not utilize their MTC while engaged in emergency or Code-3 operation, and shall use the police radio for critical communications including call updates. Supervisors are responsible for monitoring the operation of units engaging in emergency or Code-3 operation, as well as the number of units operating in either capacity. Supervisors shall terminate emergency or Code-3 operation as appropriate.

3632 Code-3

A Code-3 response is the operation of a properly marked and equipped police vehicle while continuously employing the siren and all available emergency lights to expedite response to an emergency. Only those vehicles equipped with approved fixed mount or portable red, or red and blue, emergency lights and siren may operate Code-3. Driving Code-3 does not

relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons.

3632.1 Operational Considerations

When members are responding Code-3 to an emergency call for service, or are in vehicular pursuit of a suspect (see *General Order 3640*), the following shall be adhered to:

- The member shall have the siren and all emergency lights in operation, as well as the headlights on an unmarked unit. Members will take necessary steps (e.g., rolling up windows, etc.), to better enable them to hear radio transmissions and to ensure that the dispatcher understands their transmissions.
- A member responding Code-3 to any call for service will notify the dispatcher that he/she is responding Code-3.
- When a member operating Code-3 approaches an intersection, the intersection shall be traversed with due regard for the safety of other vehicle traffic and pedestrians at all times. When traversing an intersection with a red light or stop sign for the direction the member is traveling, the member shall come to a complete stop before entering the intersection and traverse the intersection only when it can be done safely. Each lane of travel shall be cleared individually before proceeding through the intersection.
- If equipment failure involving the vehicle's emergency lights, siren, radio, brakes, steering or other essential equipment occurs, the member shall discontinue any emergency driving.

3632.2 Level-1 Calls

A Level-1 call for service is an emergency incident posing an immediate threat to life. Only units dispatched to the call or who have advised that they are responding may operate Code-3.

3632.3 Level-2 Calls

A Level-2 call for service is a critical incident involving imminent danger to life or a high potential for a threat to life to develop or escalate. A member responding to a Level-2 call may operate Code-3 only when it reasonably appears that an on-going emergency requires such response, or when traffic or other conditions make such response necessary. Only those units dispatched to the call or who have advised that they are responding may operate Code-3.

3633 Traffic/Suspect Stops and Traffic Hazards

Emergency driving is often necessary in order to initiate a traffic stop. The emergency lights alone may be used as a means of stopping traffic violators or suspects, or for minimizing possible traffic hazards (e.g., at a collision scene). The siren will be activated only when it is apparent that the emergency lights alone have not attracted the attention of the violator. If the violator fails to stop after an attempt utilizing both emergency lights and siren, and pursuit criteria is not met, notification shall be made over the radio and further attempts to stop or follow the vehicle shall cease.

3634 Escorts/Processions

3634.1 Emergency Escorts/Processions

Members engaging in an escort for emergency purposes shall utilize lights and sirens. Members are prohibited from serving as an escort for any vehicle, except for the preservation of life, escorting the movement of special Department vehicles (e.g., SWAT armored vehicles), or when expediting movements of supplies and personnel of the Armed Forces. In all such cases it is incumbent on the escorting member to adhere to the purpose of an escort, which is to safely expedite passage of the escorted vehicle through traffic without resorting to excessive speed or subjecting citizens to unnecessary risk. In medical emergencies, the patient should be transported by ambulance.

3634.2 Non-emergency Escorts/Processions:

All other escorts or processions (e.g., political dignitaries, foreign officials, etc.) require the approval of the Chief of Police, or designee, or shall occur as part of an approved operation plan. Under certain circumstances, continuous use of the emergency lights without the siren may be appropriate while convoying or escorting. The siren may be intermittently employed to clear traffic.

3640 VEHICLE PURSUIT

3641 General

A pursuit is the active attempt by law enforcement to apprehend one or more occupants of another moving vehicle when it is reasonably apparent that the driver of that vehicle is aware of that attempt and is resisting apprehension by disobeying traffic laws or attempting to elude the member.

A pursuit is authorized when a member can articulate a reason to believe that the occupant(s) of the fleeing vehicle have been involved in a violent felony offense against persons (for example, homicide, sexual assault, aggravated assault or robbery). A pursuit is

not justified merely because the driver is committing the offense of felony fleeing. A pursuit for a traffic offense, property crime (i.e., burglary or auto theft), or suspicious activity is prohibited. In choosing whether to initiate a pursuit or to allow its continuation, members shall consider the degree of risk to themselves and others.

Members and supervisors shall constantly evaluate the circumstances surrounding a pursuit, and shall immediately terminate the pursuit when the danger to members and/or the public outweighs the need to continue pursuing the fleeing vehicle. The continual assessment of the circumstances and conditions of the pursuit shall include the likelihood of apprehension, whether or not the identity of the offender is known, vehicle speeds, traffic volume and conditions, environmental factors such as weather and light conditions, location, and types of streets involved. Members engaged in a pursuit shall be responsible for the safe and prudent operation of their vehicles at all times and shall exercise due regard for the safety of all persons. All members involved in a vehicle pursuit shall be prepared to justify their actions and shall be able to justify any deviation from department policy or procedures.

3641.1 Definitions

The following definitions shall be used within the context of the vehicle pursuit policy.

Air Active Pursuit: Defined as situations when the Air Unit is assisting in the active attempt to apprehend one or more occupants of a moving vehicle when it is reasonably apparent that the driver of the vehicle is aware of that attempt and is resisting apprehension by disobeying traffic laws or attempting to elude the member.

Air Surveillance: Defined as situations when the Air Unit is assisting with following a suspect vehicle, but under conditions where it is reasonably apparent that the driver of the vehicle is not aware of law enforcement's attempt to follow their vehicle, and the driver is not resisting that attempt by disobeying traffic laws or attempting to elude law enforcement.

Primary Unit: The police vehicle that initiates a pursuit, or any unit that subsequently assumes the lead vehicle position immediately behind the fleeing driver.

Secondary Unit: The police vehicle that serves as the backup to the primary unit and which follows the primary unit at a safe distance.

Tertiary Unit: A third unit necessary to assist in a stop of the vehicle when performing Close Quarter or High-Risk Felony stop techniques.

Pursuit Supervisor: A member holding the rank of sergeant (or LPO designated as an acting sergeant), or above, who assumes control of a vehicle pursuit. In the absence of the above listed personnel, a communications supervisor will have the authority to monitor and

terminate a pursuit. The Pursuit Supervisor shall not be engaged in the pursuit as a primary or secondary unit.

Specialty Vehicle: A police motorcycle, low-profile marked unit with emergency lights and siren but not an overhead light bar, marked four-wheel drive police vehicles, or marked police vans which are equipped with overhead lights and siren.

Terminate: All units discontinue emergency vehicle operation, cease pursuit of the fleeing vehicle, and either pull to the side of the road or resume normal operations in the opposite direction of travel.

3642 General Vehicle Pursuit Procedures

Except as specified in 3643.6, only marked police vehicles equipped with both emergency lights and sirens shall engage in a vehicle pursuit. While in a pursuit, the emergency lights and siren shall be in constant operation.

A unit involved in a vehicle pursuit shall immediately cease involvement if their police vehicle experiences a failure of any vital safety system, including engine, brakes, emergency lights or siren.

3642.1 Prohibited Conduct in Vehicle Pursuits

A police unit involved in a vehicle pursuit shall not attempt to overtake, pull alongside or pass the fleeing vehicle without specific authorization from the Pursuit Supervisor. Members shall not pass other units involved in a pursuit unless the passing member receives specific permission from the unit being passed.

No more than three police vehicles (primary, secondary and tertiary unit) will be involved in a vehicle pursuit unless specifically authorized by the Pursuit Supervisor. Other units in the area of a vehicle pursuit will monitor the pursuit and position themselves to be of assistance, but shall not join in the pursuit unless authorized by the Pursuit Supervisor. Units positioning themselves to possibly assist are not authorized to parallel a vehicle pursuit or otherwise engage in unauthorized vehicle operations.

3642.2 Passengers in Police Vehicles

Except in extraordinary circumstances, members shall not participate in pursuits when any person who is not a peace officer occupies their vehicle, to include prisoners, suspects, complainants, witnesses, or civilian observers. If a police unit with a non-peace officer occupant is involved in a pursuit, the member shall, as soon as practical, terminate involvement in the pursuit and either pull to the side of the road or resume normal operations in the opposite direction of travel.

3642.3 Use of Deadly Force in Vehicle Pursuits

The use of a vehicle as deadly force against the fleeing vehicle and its occupants shall only be considered as a last resort and only in those circumstances where the use of deadly force meets the guidelines set forth in *General Order Chapter 2000*. The use of deadly force in these circumstances shall require permission from the Pursuit Supervisor if feasible.

3643 Pursuit Unit Responsibilities

3643.1 Primary Unit Responsibilities

The first unit to become involved in a vehicle pursuit will be designated as the primary unit. The primary unit shall be considered the Incident Commander for the pursuit until a Pursuit Supervisor is identified. Immediately upon initiation of a pursuit, the primary unit shall broadcast the following information:

- Primary unit identifier;
- Nature of the offense for which the suspect is being pursued;
- Location, direction of travel, and speed of the vehicle;
- Description of the vehicle being pursued;
- Description and number of the occupants in the vehicle being pursued; and
- Special information, e.g., hazards to members, traffic conditions, etc.

The primary unit may advise and request additional units from the Pursuit Supervisor if conditions, such as multiple suspects in the fleeing vehicle, warrant the need for additional units.

3643.2 Secondary Unit Responsibilities

The second unit joining the pursuit shall advise Communications that they are the secondary unit. The secondary unit shall follow the primary unit at a safe distance. When a secondary

unit joins a pursuit they will relieve the primary unit of the responsibility for broadcasting the following information:

- Location, direction of travel, and speed of the suspect vehicle;
- Description of the suspect vehicle;
- Description and number of occupants in the suspect vehicle; and
- Other relevant information, e. g., hazards to members, traffic conditions, etc.

The secondary unit will not pass or overtake the primary unit unless requested to do so by the primary unit, or if directed to do so by the Pursuit Supervisor. If this is accomplished the secondary unit will assume the responsibilities of the primary unit.

3643.3 Tertiary Unit Responsibilities

A third unit joining the pursuit shall activate their emergency lights and siren and advise Communications that they are the tertiary unit. It will be the responsibility of the tertiary unit to back up the primary and secondary units and be prepared to position themselves as one of the units conducting a Close Quarter Stop should the Pursuit Intervention Technique (PIT) be utilized. The tertiary unit shall follow the secondary unit at a safe distance.

The tertiary unit shall not pass or overtake the secondary unit unless requested to do so by the secondary unit or if directed to do so by the Pursuit Supervisor. If this is accomplished, the tertiary unit will assume responsibilities of the secondary unit.

3643.4 Supervisor Responsibilities

Upon notification of, or awareness that, a vehicle pursuit has been initiated, a Pursuit Supervisor shall be designated and assume responsibility for the pursuit. The supervisor responsible for the pursuit shall be, in order:

- The immediate supervisor of the primary unit;
- A supervisor from the Division in which the pursuit originates; or
- If neither of the above are available, a supervisor designated by the dispatcher or Communications supervisor.

The Pursuit Supervisor shall be the Incident Commander, and is responsible for:

- Monitoring and continually assessing the appropriateness of the pursuit;
- Delegating unit assignments and tactical decision-making; and
- Advising the Air Unit whether Air Active Pursuit or Air Surveillance will be employed for following and observing the fleeing vehicle or if the Air Unit will terminate involvement.

The Pursuit Supervisor shall order the termination of a pursuit if, in their judgment, the level of danger involved in allowing the pursuit to continue outweighs the necessity of apprehension.

At the conclusion of the pursuit, the supervisor shall respond to the stop location. The Pursuit Supervisor shall not change for the duration of the pursuit regardless of whether the pursuit involves multiple divisions or personnel.

The Pursuit Supervisor shall conduct a debriefing of all involved members as soon as practical, and complete the BlueTeam Pursuit report in accordance with these procedures. The supervisor authorizing TPD participation in a pursuit initiated by another jurisdiction (See *General Orders 3646*) shall complete the BlueTeam Pursuit report; justification for TPD participation shall be articulated.

3643.5 Terminating Pursuits

All units involved in a vehicle pursuit are responsible for continually monitoring appropriate radio frequencies for commands regarding the conduct or termination of a pursuit. The order to terminate a pursuit shall be the phrase, "*Terminate the pursuit.*" No other verbiage is authorized to order termination of a pursuit. All units shall adhere to the termination order, whether given by any unit involved in the pursuit or the Pursuit Supervisor. Failure to comply with a pursuit termination order shall be a basis for disciplinary action against the non-complying member.

Pursuits shall be immediately terminated when any of the following occur:

- The danger created by the pursuit outweighs the necessity for immediate apprehension;
- Visual contact with the fleeing vehicle is lost for a period of time (approximately fifteen seconds or more); or
- A pursuit termination order has been given.

3643.6 Specialty Vehicles

Police motorcycle units, low-profile marked and unmarked units with emergency lights and siren but without an overhead light bar, four-wheel drive police vehicles and police vans which are fully marked and equipped with overhead emergency lights and sirens may become involved in a pursuit only when they are the primary unit and only when they have initiated the pursuit and it is authorized. Unmarked units shall be subject to additional specific policies outlined in the *Unmarked, Plainclothes, and Undercover Driving Manual*.

While functioning as a primary unit, these vehicles shall activate their emergency lights and siren. These units will, as soon as possible, turn the pursuit over to a fully marked police unit and terminate their involvement, ceasing emergency vehicle operation and resuming

operation at the legal speed limit. A fully marked unit is defined as one that is marked and equipped with emergency lights to include an overhead light bar.

3643.7 Additional Duties of Initiating Specialty Unit

Once the fleeing vehicle has been stopped, the initiating specialty unit that was replaced from the pursuit shall respond to the capture scene to assist in report preparation. If the fleeing vehicle escapes, the initiating special unit shall be responsible for coordinating report preparation with the Pursuit Supervisor.

If the primary unit is a specialty vehicle, or is otherwise precluded from being in a pursuit by these procedures or conditions, the primary unit shall clearly direct the secondary unit to assume primary pursuit responsibilities.

3643.8 Air Support Unit Responsibilities

The purpose of conducting air surveillance is to maintain visual contact with a vehicle that has refused to stop for ground units, or that is being monitored while ground units are directed to the vehicle location to attempt a stop. The ASU flight crew shall advise the incident commander of any abnormal driving behavior and the approximate distance of any police units to the offender, e.g. officers are Code-3, one block back. If the offense for which the vehicle is to be stopped does not meet department pursuit criteria, then the following shall occur:

- If the vehicle fails to stop for ground units, but returns to normal driving after ground units have disengaged, then air surveillance may be appropriate.
- If the vehicle continues to operate in an unsafe manner, the ASU crew members will assume that the presence of the Air Unit is a contributing factor and will terminate visual contact with the vehicle immediately.
- While conducting air surveillance of a vehicle that has fled from an attempted stop and for which no pursuit has been authorized, no additional attempts will be made by ground units to contact the vehicle until it can be reasonably assured that such contact will not cause the vehicle to flee again in an unsafe manner.

The Air Unit spot light shall not be used during air surveillance operations. Night Vision Goggles (NVGs) and Forward Looking Infrared (FLIR) cameras may be used. Air surveillance will continue until advised by the Incident Commander to stop/terminate visual contact, at which point the aircrew will advise via radio "we copy termination" and will change direction of flight in a safe manner at the earliest opportunity.

When the Air Support Unit (ASU) responds to a pursuit, the Air Unit Tactical Flight Officer (TFO) shall notify the dispatcher as soon as the TFO has visual contact with the fleeing vehicle, and will, if feasible and unless otherwise instructed by the incident commander, give

information over the radio regarding the direction of the pursuit. ASU shall be aware of their radio capabilities, and coordinate with the incident commander. It is the responsibility of the incident commander to ensure all units exercise radio discipline and keep radio transmissions to a minimum. This allows pertinent information to be relayed over the air in a timely manner by any member involved in the incident.

The Pursuit Supervisor shall advise the ASU whether active pursuit or surveillance will be employed for following and observing the fleeing vehicle, or if the ASU will terminate participation. Flight safety parameters remain under the control of the pilot in command.

If the Air Unit is directed to assist with an Active Pursuit, the TFO will advise of the approximate speeds of the suspect vehicle, the direction of travel, the driving behavior, and any potential dangers for the field units.

Once the ASU has made visual contact with the fleeing vehicle, the Pursuit Supervisor is responsible for deciding and announcing whether or not the pursuing ground units will maintain active pursuit of the suspect vehicle. The Pursuit Supervisor may direct that units continue pursuing the fleeing vehicle or discontinue emergency vehicle operation and resume normal vehicle operations. If the Pursuit Supervisor orders ground units to discontinue emergency vehicle operation, but directs the ASU to maintain visual contact with the fleeing vehicle, the ASU will provide direction information and coordinate the response of ground units to apprehend the fleeing vehicle in a safe manner.

The Pursuit Supervisor may order the ASU to terminate its visual contact with the fleeing vehicle at any time. If a Pursuit Supervisor issues a termination order, he/she shall specify to the ASU whether or not further air surveillance is to occur.

3644 Special Pursuit Tactics

3644.1 Use of Road Spikes

The use of road spike systems shall only be undertaken after specific authorization of the Pursuit Supervisor, and only by members who have been trained in their use. Spike systems may also be deployed in non-pursuit situations with supervisory approval by trained personnel to prevent a vehicle from fleeing.

Each Division is assigned road spikes. The spikes are accessible through an on-duty supervisor (or a trained LPO) 24 hours-a-day. Other specialty units (e.g., SWAT and Service Dog Units) carry and have the ability to deploy road spikes.

3644.2 Roadblocks/Ramming Fleeing Vehicles

Roadblocks shall not be used to terminate a pursuit. Pursuing units shall only use a police vehicle to intentionally ram the suspect vehicle to disable it and prevent further flight in circumstances that warrant the use of deadly force, or which are authorized by the Pursuit Supervisor.

3644.3 Special Pursuit Tactics (PIT)

The Pursuit Intervention Technique (PIT) is an interdiction technique that involves direct vehicle-to-vehicle contact between a law enforcement vehicle and a fleeing vehicle. The PIT is intended to cause the fleeing vehicle to spin out and stall, thereby bringing the pursuit to an end. When the PIT is used, the member employing the technique shall ensure that all of the requirements are met and shall announce the intention to employ the PIT over the radio so that other members are aware that the PIT is being employed. The Pursuit Supervisor shall continually monitor the situation to ensure that resources are in place to safely detain the occupants of the fleeing vehicle after the PIT has been used.

The PIT is a tactic available to members under very limited circumstances. All of the following requirements apply before a member is authorized to employ the PIT technique:

- The pursuit is authorized pursuant to *General Order 3640*, or the moving vehicle poses an imminent threat to public safety;
- If reasonable to do so, use of the tactic is authorized by the Pursuit Supervisor;
- The speed of the fleeing vehicle does not exceed 35 MPH;
- The member employing the technique is trained in PIT;
- The member is operating his/her vehicle pursuant to ARS 28-624 which requires the use of emergency lights and siren;
- The environmental, traffic, and roadway conditions are suitable for use of the PIT; and
- The types of vehicles involved in the pursuit are appropriate for use of the PIT.

3645 Responsibilities of Police Communications

3645.1 Dispatcher Actions upon Pursuit Initiation

When a pursuit is initiated, the involved dispatcher will activate the emergency traffic tone and dispatch the closest unit to assist as the secondary unit. If the primary unit's supervisor or a supervisor from that Division is unavailable, the dispatcher shall immediately ensure that a Pursuit Supervisor is designated from another Division and that the designee acknowledges responsibility for the pursuit. No additional units will be dispatched to join in the pursuit without the express request of the primary unit and the approval of the Pursuit Supervisor.

When a pursuit moves from one patrol Division to another, the dispatcher from the adjoining Division will notify units in adjoining Divisions/frequencies of the pursuit. The pursuit will remain on the original pursuit frequency and the Pursuit Supervisor will be identified to the other relevant Divisions/frequencies. The other frequencies will not be combined, unless a tactical scenario requires frequencies to combine. Personnel assisting in the pursuit shall switch to the original pursuit frequency.

3645.2 Notification of Air Support Unit

Upon the initiation of a pursuit, the dispatcher shall request the Air Support Unit respond to the location of the pursuit. If the Air Unit is unavailable, notification will be made to the ground units. Upon notification by the Air Unit that visual contact with the suspect has been established, the dispatcher will broadcast that information to the ground units.

3645.3 Dispatcher Actions upon Pursuit Termination

When a Pursuit Supervisor or an involved unit orders the pursuit terminated, the dispatcher will immediately advise all units to terminate the pursuit and the emergency traffic tone will be cleared.

Upon pursuit termination, Communications personnel shall immediately broadcast the following, citywide:

- the vehicle description and information;
- that the pursuit was terminated; and
- the designator of the Pursuit Supervisor ordering the termination.

3645.4 Dispatcher Record Keeping

Throughout the pursuit, the dispatcher will keep notes on the direction of travel and description of the suspect and the suspect's vehicle. This information will be relayed only when it is obvious that some of the field units have not been able to copy the information previously. The dispatcher will note the time that the pursuit is initiated and the time that the pursuit is ended.

3646 Pursuits Involving Other Jurisdictions

3646.1 TPD Pursuits Outside of the City Limits, Communications

Pursuits beyond the City limits require the approval of a Department supervisor and shall be conducted according to Department policy. The Pursuit Supervisor may request assistance from other jurisdictions as necessary for a vehicle pursuit leaving the City limits.

Once a pursuit has left (or is obviously leaving) City jurisdiction Police Communications will activate the interoperability function. This will allow the Pursuit Supervisor to communicate with other agency supervisors.

3646.2 Pursuits in the City Limits by Other Police Agencies

TPD units will only become directly involved in another agency vehicle pursuit within the City limits if requested to assist by that agency.

When other law enforcement agencies enter the City in pursuit of a vehicle, a TPD member may become involved in the pursuit with approval from a supervisor, provided the pursuit is consistent with, and conducted in compliance with Department policy.

In the event another agency's pursuit is occurring in (or will soon enter) the City of Tucson, the following shall occur:

- Police Communications shall activate the "LE Interop system";
- A patrol supervisor shall coordinate Department resources and response with the pursuing agency, and shall monitor and supervise the conduct of Department members for the duration of the assistance; and
- The pursuit policy shall be adhered to during the duration of the other agency's pursuit (to include completion of a BlueTeam entry).

A supervisor may authorize other non-pursuit assistance.

3646.3 Use of TPD Air Support Unit for Other Agency Vehicle Pursuits

The use of the Air Unit for a vehicle pursuit by another agency, whether or not it is within the City limits, may be authorized by a supervisor. The Air Unit will adhere to Department pursuit policy.

3647 Reporting Procedures

3647.1 Vehicle Pursuit Summary

The Pursuit Supervisor shall be responsible for completing a BlueTeam Pursuit Report at the end of a vehicle pursuit regardless of its duration or outcome, including the issuance of a

termination order. This responsibility shall not be delegated and shall be completed by the end of the Pursuit Supervisor's shift. The Pursuit Supervisor shall be responsible for documenting the actions of all participants in a vehicle pursuit.

When a pursuit involves any injury or property damage, the Pursuit Supervisor shall forward a copy of the pursuit report to the Legal Advisor and Risk Management.

3647.2 Debriefing Required

Except in situations involving a CIRB, the Pursuit Supervisor shall conduct a debriefing of the involved personnel upon conclusion of a vehicle pursuit. This debriefing will include all involved members, as practical, and shall occur as soon after termination as possible.

3647.3 Documentation of Out-of-Policy Pursuit Actions

If the Pursuit Supervisor or her/his Chain of Command determines that a pursuit or any actions involving a pursuit were not consistent with Department policy, the circumstances shall be documented on Personnel Reports for review and possible disciplinary action. The Office of Professional Standards (OPS) shall be responsible for tracking disciplinary actions arising from pursuits to ensure uniform application throughout the agency.

3647.4 Report Tracking and Summaries

Once the chain of command and OPS have reviewed the *BlueTeam* entry, it shall be forwarded to the Training Division for tracking and evaluation for training purposes. The Training Division shall be responsible for tracking pursuit records and for the preparation of quarterly and annual statistical analysis summaries for presentation to the chain of command and for training purposes.

3647.5 Charging Requirements

Violators apprehended after a vehicle pursuit shall be charged appropriately, including a felony violation of *Unlawful Flight from a Pursuing Law Enforcement Vehicle*, as well as the underlying offense for which the pursuit was initiated.

3650 COLLISIONS

3651 Collisions Involving City Vehicles

A City vehicle collision is any collision occurring between a City owned or leased vehicle (or private car when the employee is on official City business and has been formally authorized mileage) and another vehicle, pedestrian, animal or fixed object. The Department shall investigate any collision involving a City vehicle, whether on a public roadway or private

property. If the collision occurs on a public roadway, the investigator shall complete an *Arizona Collision Report*. If the collision occurs on private property, the investigator shall complete an incident report and a *Supplemental Diagram*. If the collision occurs outside of the jurisdiction of the Department, the law enforcement agency having jurisdiction shall be summoned for a report.

3652 Collisions Involving Department Vehicles

When a Department vehicle is involved in a collision, the operator or investigating member shall immediately request that a supervisor respond to the scene. Documentation of vehicle collisions shall be made in accordance with the guidelines established on the current version of the *City of Tucson Property Damage/Personal Injury Report (City Form 103)*.

Documentation is still required for incidents where no damage to either vehicle is apparent and no injury is alleged.

3652.1 Enforcement Action

If the supervisor can determine responsibility for the collision the supervisor shall direct the investigator to take appropriate enforcement action, to include the issuance of traffic citations.

If the supervisor cannot determine responsibility for the collision, the supervisor may request the response of a representative from Traffic Investigations. If they are not available, the package may be referred to them for subsequent follow-up.

An exception to this policy occurs when the collision will be referred to the Critical Incident Review Board (CIRB). In CIRB cases, any enforcement action shall be coordinated through Traffic Investigations.

Enforcement action is independent of any corrective or disciplinary action that may be administered against an employee.

3652.2 Civil Compromises

A civil compromise involves a plaintiff or victim signing an agreement not to prosecute or assist in prosecution in exchange for some compensation or who declares that they are satisfied with the settlement.

Members shall not enter into any civil compromises involving City vehicles or on-duty personnel. Members shall refer any person who is attempting to reach such a civil compromise to the City Risk Management Office.

3652.3 Deadlining Department Vehicles

Department vehicles that have been damaged as the result of a collision shall be deadlined for damage estimates even when they are serviceable.

3652.4 Documentation

When a Department vehicle sustains collision damage the following documentation is required:

- *Incident Report;*
- *Personnel Report; and*
- *City of Tucson Property Damage/Personal Injury Report (City Form 103).*

Any collisions involving Department vehicles shall be reviewed by the member's chain of command.

3660 NON-COLLISION DAMAGE TO POLICE VEHICLES

If the on-scene supervisor determines that negligence is a factor in damage to a police vehicle, they shall document who was negligent and make recommendations on disciplinary action.

3661 Documentation

Incidents where Department vehicles sustain substantial non-collision damage, i.e., broken window, bent doorframe, serious acts of vandalism, etc. require the following documentation:

- *Incident Report;*
- *Personnel Report; and*
- *City of Tucson Property Damage/Personal Injury Report (City Form 103).*

The supervisor shall include the unit number on all reports when describing the damaged Department vehicle.

Photographs shall be taken of any damage to Department property. *Supplementary Reports* shall be completed when applicable.

3662 Other Property Damage

When non-City property is damaged as a result of action by a Department member appropriate documentation shall be forwarded through the chain of command with copies routed to the Legal Advisor. Reports completed by the member will include:

- *Incident Report;*
- *Personnel Reports, if applicable; and*
- *City of Tucson Property Damage/Personal Injury Report (City Form 103).*

When someone other than a Department member damages City property, appropriate enforcement action shall be taken.

3663 Fleet Management System (FMS)

3663.1 General

The Department will deploy a fleet management system on designated police vehicles. The FMS is intended to promote safe driving behavior by members of the Department while operating both marked and unmarked police vehicles. The device has the capability of providing an accurate and unbiased record of operator history. In addition to providing potential reduced liability to the City, the program will reinforce transparency. The goal of the program is to improve driver safety and reduce collisions. The wireless device installed on designated vehicles has the capability to monitor operator driving behavior in near real time and collect historical data in the following areas:

- vehicle diagnostics;
- idling;
- fuel consumption;
- GPS;
- speed;
- hard braking;
- hard acceleration; and
 - other analytical functions

3663.2 Definitions

The following definitions shall be used within the context of the fleet management system policy.

Driving Behavior Monitoring Device: A small electronic device that plugs into the electrical system of a motor vehicle. The device captures information detailing operator driving behavior and vehicle diagnostics.

Key Identification Fob: An electronic device used to synchronize an assigned driver with a particular vehicle and driving monitoring device.

3663.3 General Operation

Driving behavior monitoring devices are assigned to designated vehicles. Members are prohibited from manipulating or tampering with any installed device. Vehicle operators shall utilize the device in accordance with established training protocols. Any issue that may affect the use or operability of the device shall be reported to the member's immediate supervisor as soon as practical. Any malfunction shall be reported by the supervisor to the Information Services Unit staff as soon as practical. A vehicle with a malfunctioning device shall be deadlined for repair, unless authorized by a supervisor as follows. In the event of low or depleted vehicle resources, supervisors can authorize the use of vehicles with a malfunctioning device. Additionally, Division Fleet Technicians, who become aware of a malfunctioning device shall report those findings to the Department Fleet Manager and the Information Services Unit.

Fleet monitoring devices are assigned by vehicle. Because some vehicles are shared and others individually assigned, designated operators will be issued key identification fobs. Department members issued individual identification fobs shall, upon beginning their shift, initiate the process of syncing the driving monitor device to the key identification fob. Department members shall be trained in the proper use of the system by designated training staff.

3664 Management of the Networkfleet Program

3664.1 Department Program Administrator

The Technology Section Commander is the designated program administrator for the Networkfleet program. The program administrator is responsible for system configuration and access.

3664.2 Commander Responsibility

Commanders shall review all questionable driving behavior complaints, pursuits, or other necessary administrative matters concerning department members. Historical driving behavior and analytical tools shall be made available for commanders in their review.

3664.3 Supervisor Responsibility

Supervisors shall monitor the driving behavior of their assigned subordinates. Historical driving behavior data of subordinates shall be made available for supervisors in their review. Supervisors will be notified of potentially inappropriate driving behavior by a subordinate via a Department smart phone device text message and/or email. Upon receiving an alert,

supervisors shall inquire regarding the circumstances generating an alert to determine whether the driving is within policy. Supervisors shall investigate all driving complaints, pursuits, or other necessary administrative reviews.

3664.4 Records Retention and Public Records Requests

All information regarding employee driving in the course of duty is the property of the Tucson Police Department and considered a public record. Driving historical data is available for 365 days. Data is archived by the vendor after one year. Any request for data beyond 365 days must be obtained from the vendor.

3664.5 Internal Review

The Office of Professional Standards shall have proxy rights to all system data. This will include full access to all historical driving data of Department members.

3664.6 Inspection and Audit

Commanders and supervisors shall conduct bi-weekly reviews of member driving behavior to determine compliance with driving policies and identify trends for training purposes.