

TUCSON POLICE DEPARTMENT

CRITICAL INCIDENT REVIEW BOARD

5401 SOUTH PARK AVENUE

MAY 26, 2017

OFFICER INVOLVED
SHOOTING



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EXECUTIVE SUMMARY

INVESTIGATIVE CASE INFORMATION

CIRB Number: 17-0282
TPD Case Number: 1705-26-0497
Date of Incident: May 26, 2017
Location of Incident: 5401 South Park 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 Office of Professional Standards (OPS); and CIRB questioning of certain involved members as well as subject matter experts.

The OPS investigation and Homicide Unit investigation, 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 or 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. All members of CIRB are encouraged to participate in discussion and deliberation, giving fair consideration to differing points of view. This report represents the collective judgment of the board.

Introduction

On May 26, 2017, at approximately 1830, Mr. Joseph Zimmerman called 911 to report he was feeling suicidal. He stated he had a gun in his possession and was at South Lawn Cemetery (located at 5401 S Park). Mr. Zimmerman advised the Police Service Operator (PSO) he did not want to go to jail or to the hospital. During the approximately twenty-minute 911 call, Mr. Zimmerman advised the PSO he wanted to "go to a dark place," and made threats to commit "suicide by cop." The PSO urged Mr. Zimmerman to follow officers' commands and attempted to facilitate telephone contact with the officers as they responded.

Several officers from Operations Division South responded to the cemetery to locate Mr. Zimmerman. Once they developed a plan, they drove into the cemetery using their patrol vehicles as cover. The Air Support Unit (ASU) responded to the incident and located the person

they presumed to be Mr. Zimmerman near the southwest corner of the cemetery seated near a concrete monument.

Officers continued further into the cemetery in an attempt to obtain a visual of Mr. Zimmerman. Officer Anderson and Officer Magos utilized the optics on their rifles and provided information to Sergeant Bustamante, who was also on scene. At one point, Mr. Zimmerman stood up and started walking toward the officers with a handgun to his head. As he closed the distance to approximately fifty yards, he lowered the handgun and pointed it at the officers. Officer Anderson and Officer Magos each fired one round from their rifles striking Mr. Zimmerman in the torso. Mr. Zimmerman was pronounced deceased at the scene. There were no officers injured during this encounter.

Issues Identified and Examined by CIRB

CIRB examined the following issues:

- Proper decision-making and tactics, as well as potential deficiencies in training, policy, and equipment
- Incident command (IC)
- Supervision of the incident, before, during, and after the shooting
- Effectiveness of the Air Support Unit
- Communication methods
- De-escalation efforts
- Training for Communications personnel

Findings

CIRB determined the following after a review of this incident:

- The incident was properly supervised with a clear designation of incident command
- The tactics utilized were appropriate and consistent with current training
- Communication was sometimes difficult due to the noise associated with the helicopter
- De-escalation techniques were used and within policy
- The use of the PA system to establish communication was appropriate
- The Tucson Police Department needs to establish training regarding suicidal subjects in “open area” situations
- Police service operators and dispatchers need to be included in the administrative investigation stage of critical incidents
- Police service operators and dispatchers would benefit from additional training to deal with persons in mental crisis situations
- The pace of the incident was dictated by Mr. Zimmerman when he chose to walk toward the officers

- There needs to be further policy clarification within the Office of Professional Standards regarding officer viewing of body worn camera footage
- Officer Magos' use of deadly force was **Justified** and **Within Policy**
- Officer Anderson's use of deadly force was **Justified** and **Within Policy**

CIRB REPORT

CASE OVERVIEW

On May 26, 2017, at approximately 1830, Mr. Joseph Zimmerman called 911 to report he was feeling suicidal. He stated he had a gun in his possession and was at South Lawn Cemetery (5401 South Park). Mr. Zimmerman advised the police service operator (PSO) he did not want to go to jail or to the hospital. During the approximately twenty-minute 911 call, Mr. Zimmerman advised the PSO he wanted to “go to a dark place,” and made threats to commit “suicide by cop.” The PSO urged Mr. Zimmerman to follow officers’ commands and attempted to facilitate telephone contact with the officers as they responded to the scene.

Officer Piña and Officer Anderson were the first officers to respond and staged at the west entrance of the cemetery. Sergeant Bustamante responded as well and was the third person on scene. Officer Magos, Officer Rodriguez (wearing a body-worn camera), Officer Carrillo, Officer Ornelas, and Officer Nicholl also responded. The Air Support Unit (ASU) responded to the incident (operated by Officer Allen and Officer Wilson). ASU advised Mr. Zimmerman was in the southwest corner of the cemetery near a concrete monument. Sergeant Bustamante coordinated the response into the cemetery from the west entrance.

Officers entered the cemetery in their marked patrol vehicles. Two Chevrolet Tahoes were in front, with Ford Crown Victoria vehicles behind them. Officer Anderson rode in the passenger seat of Officer Piña’s Tahoe while Officer Magos rode with Sergeant Bustamante in his Tahoe. They made a slow approach into the cemetery trying to locate Mr. Zimmerman. The approach was deliberate and methodical as they were aware Mr. Zimmerman was armed. ASU continued to supply Sergeant Bustamante with updates and provided the location of Mr. Zimmerman, who was sitting near the concrete monument.

Officer Anderson got out of Officer Piña’s Tahoe and began his approach on foot using the Tahoe as cover/concealment. Officer Anderson utilized the magnified optic on his rifle to get a better view. Officer Magos got out of Sergeant Bustamante’s Tahoe and used his magnified optic in the same manner. Officer Carrillo used his binoculars to attempt to locate Mr. Zimmerman. During this time, the officers maintained their distance from the suspect as they only had the Tahoe for cover.

Officer Pedersen and Officer Jahnke responded and set up a containment position along the western wall of the cemetery. Lieutenant McNitt and Lead Police Officer Morgan were also on scene and began clearing the community members east of Mr. Zimmerman’s location out of the cemetery. Approximately three to four minutes into the incident, Lieutenant McNitt took incident command from Sergeant Bustamante; however, Sergeant Bustamante retained control of the tactical response.

As the officers continued their approach, a ballistic blanket was utilized on the passenger side of

Sergeant Bustamante's Tahoe. Officer Piña moved to the passenger seat and began giving verbal commands to Mr. Zimmerman using the public address (PA) system in the Tahoe. Mr. Zimmerman was still on the phone with the 911 call taker and did not acknowledge the officers or their commands.

Sergeant Bustamante obtained a phone number for Mr. Zimmerman and directed Officer Carrillo to try and call him. Sergeant Bustamante told the PSO to end communication with Mr. Zimmerman to allow Officer Carrillo to establish dialogue at the scene. Officer Carrillo is Crisis Intervention trained (CIT) and for that reason was used to try and establish telephone communication. Mr. Zimmerman refused to answer the call from Officer Carrillo.

Officer Anderson was positioned over the hood of Sergeant Bustamante's Tahoe. He utilized the hood to support the bipod on his rifle. Officer Magos repositioned himself to the passenger side of Sergeant Bustamante's Tahoe to provide cover for Officer Piña. At this point, Mr. Zimmerman was approximately one hundred yards from the officers.

Mr. Zimmerman stood up and began walking towards the officers holding a black handgun to the left side of his head. Officer Piña continued to give Mr. Zimmerman commands to drop his gun and stated the officers were "here to help." Mr. Zimmerman covered approximately fifty feet walking at a rapid pace while yelling incomprehensibly at the officers. As Mr. Zimmerman approached the officers he lowered the black handgun and pointed it in their direction.

At that point Officer Anderson and Officer Magos each fired one round from their rifles. Mr. Zimmerman was struck twice in the torso and fell backward. All the officers approached Mr. Zimmerman to provide first aid utilizing their department-issued Individual First Aid Kits (IFAK). Paramedic units were requested immediately and pronounced Mr. Zimmerman deceased upon their arrival.

INVOLVED PARTIES

Field Response

Officer Timothy Anderson #52772

- Operations Division South - Patrol
- Tenure: 5 years, 10+ months
- Member of the SWAT Team/SWAT Sniper

Officer Francisco Magos #49557

- Operations Division South - Patrol
- Tenure: 10 years, 6+ months
- Specialized Training: Certified patrol rifle operator

Sergeant Luis Bustamante #34951

- Operations Division South - Patrol
- Tenure: 23 years

Additional Officers on Scene

- Lieutenant Lee McNitt
- Officer Patrick Piña
- Officer William Ornelas
- Officer Ashley Rodriguez
- Officer Brian Carrillo
- Officer Daniel Nicholl
- Officer John Morgan
- Officer Barrie Pedersen
- Officer Edward Jahnke
- Officer Andrew Allen
- Officer Beau Wilson

Investigative Response

Members of the Homicide Unit, Aggravated Assault Unit, Office of Professional Standards, and several command staff members responded as part of this investigation.

Subject Matter Expert

Lieutenant Christopher Dennison #46588

- Advanced Officer Training Commander
- Tenure: 13 years, 3+ months

Communications Personnel

Police Service Operator Molly Roberts #100185

- Tenure: 3 years

Community Member

Mr. Joseph Zimmerman 08/17/1982

- Type of Weapon: Black 1911BB Crossman Air Gun
- Deceased

Lieutenant Christopher Dennison #46588

Lieutenant Dennison was interviewed by CIRB. The areas addressed were current training practices and future training programs adopted by the Tucson Police Department.

CIRB sought to determine:

- If there were any training practices that could be improved upon
- If there were any recommendations or suggestions for future training
- An understanding of Crisis Intervention Training, the *Critical Decision-Making Model* training, and module training
- The status of relevant training at the time of the incident

Investigative Statement and CIRB Testimony

Lieutenant Dennison provided an overview of the training being conducted at the academy. He said the majority of the agency had completed Mental Health First Aid training and said he hoped to have one hundred percent compliance by 2018. Lieutenant Dennison discussed module training and how it was being implemented. Topics in module training included de-escalation techniques, use of force, as well as the Critical Decision-Making Model. This model allows lecture-based training at the division or section level. Additional hands-on training after each module is then required (taught at the Southern Arizona Law Enforcement Training Center). At the time of his testimony, the agency had gone through six training modules, all taught by lieutenants.

Lieutenant Dennison discussed CIT, stating that approximately sixty percent of the Agency is trained in CIT. He explained attendance in CIT training is voluntary. Based on the protocols of CIT International, mandatory training in CIT is not recommended. The idea is to have people interested in this training attend on a volunteer basis. The difference in CIT and Mental Health First Aid is that CIT is more advanced training. Lieutenant Dennison described Mental Health First Aid as being more of a basic “101” type course to give attendees the ability to recognize people in crisis. This training focuses on how to communicate with people in crisis including how to establish a rapport. All Tucson Police Department Communication Center employees receive this curriculum as part of their training.

Lieutenant Dennison discussed the department’s Critical Decision-Making Model. He testified that it was focused on training members on how to make informed decisions under dynamic circumstances. After the lecture portion of this training, agency members receive additional instruction on how to apply these techniques.

Analysis

Should CIT training be mandatory training?

CIRB determined that making CIT training mandatory was not necessary or advisable. Those interested in receiving additional training should attend on a volunteer basis.

Should CIT training be made available to Public Safety Communication Department personnel?

CIRB determined CIT training should be available to all Public Safety Communications Department (PSCD) personnel, not just commissioned officers.

Is module training an effective method of distributing training to the TPD organization?

CIRB recognized the importance of agency module training and believes this is a good way to provide continuous training throughout the year.

Findings and Recommendations

CIRB believes the Training Division has done commendable work in keeping up with new training techniques and teaching officers real-time best practices. CIRB recommends anyone in the agency who wishes to receive CIT be allowed to attend on a volunteer basis.

Police Service Operator Molly Roberts #100185

PSO Molly Roberts was interviewed by CIRB. During this incident she received the initial 911 call from Mr. Zimmerman and kept in communication with him until directed to disconnect.

CIRB's clarifying questions sought to determine:

- The circumstances of the initial contact with Mr. Zimmerman and any rapport established
- The possibility of connecting an officer on scene into the phone call between Mr. Zimmerman and the PSO (i.e., a 3-way call)
- The possible benefit of Communications Center personnel receiving CIT training

Investigative Statement and CIRB Testimony

PSO Roberts testified to CIRB about her duties. She stated staffing levels at the Communications Center are very low. She stated she takes many calls during her shift and has very little time for any breaks. She testified many people who call 911 have to be put on hold until there is an operator available to speak with them. She stated people frequently berate her over the phone due to the long hold times. Her tactic to deal with the frustrated callers is letting them vent first; then she can typically establish a rapport.

PSO Roberts stated she received good training when she was hired three years ago. She stated since then there have not been many additional training opportunities. She said she attended a suicide prevention class and that she is open to receiving more training, including CIT.

PSO Roberts discussed her phone conversation with Mr. Zimmerman. She stated she has difficulty remembering the entire call, but remembered clearly that Mr. Zimmerman told her he had a gun and was suicidal. She also recalled Mr. Zimmerman telling her several times not to hang up. PSO Roberts stated she had not listened to the recorded phone conversation and doesn't have a desire to do so. At one point in the conversation she was told to hang up with Mr. Zimmerman so the officers at the scene could call him. She said that if she had been given the choice she would have preferred to stay on the line with him because she felt they had established a rapport.

PSO Roberts discussed a few of the operational procedures inside Communications. She stated if she's on the phone with a suicidal person only a supervisor can listen in on the conversation. Dispatchers who relay the information to officers are not able to listen in to the PSO call. She testified she would be open to having an officer respond to Communications to assist with negotiations with a mentally unstable person.

PSO Roberts stated the entirety of the conversation was not documented in the call text that the officers could see. She explained she only inputs information that she believes is pertinent to the call. She said she did not list the reasons Mr. Zimmerman was feeling suicidal. However, PSO

Roberts said she was open to the idea of all information about a suicidal subject being documented in case a hostage negotiator needed it to establish rapport.

In considering the testimony of PSO Roberts, CIRB recognized the need for capturing the observations and experiences of PSCD personnel directly following a critical incident. Currently, PSCD has no investigative personnel to perform this function.

Analysis

Is TPD providing Public Safety Communication Department personnel training opportunities that are relevant to police dispatch?

CIRB determined Communications personnel would benefit from additional TPD training, including CIT.

Would it be beneficial to have sworn personnel or specially trained mental health technicians available to support mental health crisis calls to communications?

CIRB found commissioned officers making themselves available or being patched into certain types of calls such as this incident might be useful to assist with callers in mental crisis. CIRB also recognized there are ongoing conversations and work being done to embed mental health clinicians into the call taking process on mental health crisis calls.

Findings and Recommendations

CIRB recommends that effective immediately, any member of the Tucson Police Department who wishes to attend CIT training be allowed to do so.

CIRB recommends Communications personnel be involved in the OPS administrative investigation from the beginning of a critical incident.

CIRB recommends the Behavioral Sciences Unit (BSU) continue to provide behavioral health services to all Communications personnel involved in a critical incident as needed.

Sergeant Luis Bustamante #34951

Sergeant Bustamante was interviewed by CIRB. The areas addressed with Sergeant Bustamante were **tactics, decision-making, use of force, equipment, training and policy.**

CIRB's clarifying questions sought to determine:

- The initial plan made prior to entering the cemetery
- Considerations associated with sending an officer or hostage negotiator to Communications
- The reasons for having Mr. Zimmerman disconnect with the PSO
- The de-escalation techniques used prior to the shooting
- Concerns with available equipment

Investigative Statement and CIRB Testimony

Sergeant Bustamante described his initial plan outside the cemetery to CIRB. He stated ASU was already at the scene looking for Mr. Zimmerman. He said he assigned Officer Anderson and Officer Magos to deploy long gun (rifle) support for the incident. He said he received information Mr. Zimmerman was possibly at the south end of the cemetery. As a result, he decided to move inside the cemetery to obtain a visual of Mr. Zimmerman. He said Officers Magos and Anderson were the lethal cover for the duration of the incident. However, he stated he wanted to create as much distance between the officers and Mr. Zimmerman as possible in order to not agitate Mr. Zimmerman or provoke an altercation.

As the officers moved in, Sergeant Bustamante had everyone stop around seventy-five to one hundred yards away from the suspect. He stated he wanted to establish contact with Mr. Zimmerman by using the PA system in one of the Tahoes. He believed it was unlikely anyone could hear the commands from that far away, therefore he instructed everyone to move closer by approximately twenty yards.

Sergeant Bustamante described having contact with Mr. Zimmerman in real time. He described the delay in getting updated information from Communications. As a result, he made the decision to have the PSO disconnect from Mr. Zimmerman. Sergeant Bustamante said he wanted to have a visual of Mr. Zimmerman prior to telephone contact being disconnected with the PSO. He stated he had CIT trained Officer Ornelas try and establish telephone contact with Mr. Zimmerman but was unsuccessful.

Sergeant Bustamante was asked if it would have been beneficial for an officer on scene to be patched into the phone conversation with PSO Roberts and Mr. Zimmerman. He agreed this would be very helpful but was unsure if it was even possible. Sergeant Bustamante stated he requested an officer or hostage negotiator respond to Communications to assist in speaking to Mr. Zimmerman.

He said he wasn't sure if that request was heard or followed through on. He stated the situation happened very quickly.

Sergeant Bustamante testified regarding the urgency to locate Mr. Zimmerman. He stated he was aware there were members of the public in the cemetery paying respect to loved ones. It was therefore imperative that the officers locate Mr. Zimmerman quickly to prevent harm to anyone else. Once Mr. Zimmerman's location was determined, Sergeant Bustamante's plan was to have all officers keep a safe distance away from Mr. Zimmerman as they attempted to communicate with him.

Sergeant Bustamante stated approximately three or four minutes into the call, Lieutenant McNitt took incident command from him. He indicated he was not able to brief Lieutenant McNitt, however he maintained control of the tactical response and it had no effect on his plan. He stated he was not aware of Lieutenant McNitt's location and only realized later that Lieutenant McNitt was assisting in evacuating members of the public from the cemetery.

Sergeant Bustamante stated Officer Magos and Officer Anderson had obtained a visual of Mr. Zimmerman through the magnified optics on their rifles. He also stated Officer Carrillo had visual contact through a pair of binoculars and he was providing updates on Mr. Zimmerman's actions. At one point he was told Mr. Zimmerman had put a gun to his own head. He said soon after doing this Mr. Zimmerman stood up from the concrete memorial and started walking toward his location. Sergeant Bustamante stated he went to the rear of his patrol Tahoe and retrieved a flex baton—a less lethal weapon. He stated he did this himself in order to keep enough officers available to detain Mr. Zimmerman if the opportunity presented itself.

During this time, Officer Piña gave verbal commands to Mr. Zimmerman. He told Mr. Zimmerman to "stop" and "put the gun down." Mr. Zimmerman continued to advance towards the officers. Because Officer Piña was seated in the passenger side of the Tahoe, Sergeant Bustamante stated he had a ballistic blanket placed over the windshield in order to provide additional protection to Officer Piña. When Mr. Zimmerman was approximately sixty yards away he pointed the handgun at the officers and Sergeant Bustamante heard what sounded like one gunshot. He later realized Officer Magos and Officer Anderson had fired almost simultaneously. Immediately after the shooting, officers approached Mr. Zimmerman at the direction of Sergeant Bustamante.

Sergeant Bustamante discussed one equipment issue encountered at the scene. He indicated some of the PA systems in the patrol vehicles were inoperable.

Sergeant Bustamante stated that in his opinion the training within the agency before and after this incident has been progressive and effective. He said one area where there could be greater improvement would involve employee wellness. He stated many of the officers involved in this critical incident were on the scene for twelve hours. He stated many of the officers were exhausted yet expected to report back to work the next day. Sergeant Bustamante suggested that everyone involved in an incident of this type (whether they fired their gun or not) be provided with some amount of administrative leave. He suggested after a division encounters a critical incident there

should be the option of calling in officers from other divisions to assist with calls for service and other activities as required.

Analysis

What was the initial plan prior to entering the cemetery?

Sergeant Bustamante articulated his priority was to get a visual of Mr. Zimmerman. He stated he was aware there were members of the public inside the cemetery property and that Mr. Zimmerman was armed. He said he assigned rifle operators for lethal coverage as they made their way inside the cemetery. Once officers had a visual of Mr. Zimmerman it was his goal to keep distance and communicate with Mr. Zimmerman.

Was there consideration given to sending an officer or hostage negotiator to Communications?

Sergeant Bustamante stated he considered this and made the request. He stated the situation unfolded very rapidly so he wasn't sure if the request was ever followed through on. He acknowledged this was a good idea but thought implementing the request posed challenges, particularly due to staffing in the field.

What was the reason for having the PSO disconnect with Mr. Zimmerman?

Sergeant Bustamante said he had the PSO disconnect with Mr. Zimmerman so direct contact with him could be made at the scene. He said there was a delay in getting information from Communications so having direct contact with Mr. Zimmerman would allow a CIT trained officer to communicate with Mr. Zimmerman directly, allowing for fast and efficient information exchange.

What de-escalation techniques were utilized prior to the shooting?

Sergeant Bustamante articulated to CIRB his primary goal was to establish visual contact with Mr. Zimmerman and then communicate with him. He stated once communication was established he would contact members of the Mental Health Support Team (MHST) in order to further de-escalate the situation. Sergeant Bustamante stated through his twenty-three year career he has experience in dealing with people in crisis and is also CIT trained. He stated as part of initial de-escalation efforts he maintained a safe distance from Mr. Zimmerman, attempted to establish direct communication, and did not agitate the situation by moving closer.

Were there any concerns with available equipment?

Sergeant Bustamante discussed issues with the PA systems in the patrol vehicles. He stated some of the systems were inoperable and therefore of no benefit to personnel. Fortunately, one of the patrol Tahoes had a system that was functional.

CIRB commended Sergeant Bustamante for his quick thinking to utilize a ballistic blanket to place over the passenger side windshield of his Tahoe in order to provide Officer Piña with more security.

Findings and Recommendations

CIRB finds Sergeant Bustamante established incident command of this incident from the beginning. He developed a tactical plan prior to making entry into the cemetery property. His primary goal was to establish visual contact with Mr. Zimmerman since they weren't positive of his location. Sergeant Bustamante was aware of other members of the public on the property. He realized this was not a situation he could walk away from since he thought Mr. Zimmerman could be a threat to the community.

Once incident command was transferred to Lieutenant McNitt, Sergeant Bustamante remained in charge of the tactical response as the operations chief. He became aware of Lieutenant McNitt's location only after the incident ended and it did not affect his tactical response.

CIRB finds Sergeant Bustamante utilized de-escalation techniques that were in accordance with his training at the time of the incident. He told CIRB he wanted to keep a safe distance from Mr. Zimmerman in order to not agitate him. Once Mr. Zimmerman's location was confirmed, Sergeant Bustamante had the PSO hang up with him in order to attempt direct communication. He utilized two methods for communication—the vehicle's PA system as well as his department-issued cell phone. Unfortunately, neither method was effective.

CIRB finds Sergeant Bustamante should have directed another officer to retrieve his flex baton while he remained in control of the tactical response. Although the less lethal flex baton was not utilized, the incident commander or operations chief should designate someone else to handle this type of task in order for him to retain full control of the situation.

CIRB finds Sergeant Bustamante handled this situation professionally and in accordance with his training. He utilized several de-escalation techniques that were appropriate. Unfortunately, Mr. Zimmerman's decision to walk toward the officers and ultimately point a gun in their direction dictated the speed of the response and the actions of the officers. Officers were left with no choice but to defend themselves from a lethal threat. It was only after the situation ended that it was determined Mr. Zimmerman's gun was a BB gun.

CIRB finds Sergeant Bustamante's response was in accordance with General Orders.

Officer Francisco Magos #49557

Officer Magos was interviewed by CIRB. The areas addressed with Officer Magos included **tactics, decision-making, use of force, equipment, training, and policy.**

CIRB's clarifying questions sought to determine:

- Officer Magos' understanding of the plan when he arrived at the cemetery entrance
- Officer Magos' feelings about being positioned next to Officer Piña with little cover
- The impact of ASU radio use on the proactive communication between officers
- If Officer Magos thought the K-9 officer or his partner could have been utilized
- If there was any discussion of a tactical retreat communicated while on scene

Investigative Statement and CIRB Testimony

Officer Magos told OPS that when he heard the call being dispatched he was in the parking lot of the Pima County Jail. He attached himself to the call using his computer and responded as an officer providing patrol rifle support. When he arrived at the cemetery entrance most of the briefing had already occurred. Officer Magos stated he was initially assigned to remain at the entrance of the cemetery to prevent vehicles from entering. He stated his assignment quickly changed once it was determined he could assist with his patrol rifle.

Although he felt slightly rushed, Officer Magos said he had a good understanding of the plan and had no questions.

Once officers entered the cemetery Officer Magos stated he did not feel entirely comfortable not knowing Mr. Zimmerman's location. He believed the ballistic blanket draped over the windshield was a good idea and that it protected Officer Piña while Officer Piña was utilizing the PA system. Officer Magos said that from where he was positioned on the passenger side he did not have much cover other than the passenger door. He said he remained standing and used the door as a platform for his rifle. He relayed information to Sergeant Bustamante about what he observed through his optic which had magnification.

During his interview with OPS Officer Magos stated Sergeant Bustamante became frustrated with not being able to use the radio. ASU was providing information which made it difficult for officers on scene to use the radio at the same time. Officer Magos told CIRB that having ASU on scene was beneficial and not a hindrance. In his opinion, ASU helped direct the officers into the cemetery and if they had not been there, officers would have essentially entered the scene "blind." He stated he somehow became aware ASU agitated Mr. Zimmerman but was not sure exactly why. He thought if Mr. Zimmerman were to flee from the area ASU was available to maintain visual of him in order to facilitate and alternate officer response.

Officer Magos told CIRB he was aware of a K-9 Officer being on scene to the west of Mr. Zimmerman. He stated he thought about what the K-9 could do to assist. He came to the conclusion that if the K-9 was deployed it would have agitated Mr. Zimmerman and provoked the situation further.

During Officer Magos' interview with OPS he stated he knew the situation was about to come to a conclusion when Mr. Zimmerman started walking toward the officers. At one point, Mr. Zimmerman threw his red cell phone in the direction of the officers. Officer Magos said once he observed that, he knew all additional attempts at communication would not be successful.

Officer Magos acknowledged that he considered the possibility of a "tactical retreat." Officer Magos did not communicate this consideration with anyone on scene as he believed his role was limited to providing lethal coverage and because a tactical retreat was not a viable option while Mr. Zimmerman approached them with a gun in his hand. Officer Magos regarded the plan Sergeant Bustamante developed as a good one and believed that the officers effectively used the resources available to them.

Officer Magos told CIRB he felt like he had adequate training at the time and that he likes the direction the Tucson Police Department has taken regarding additional scenario based training.

Officer Magos was asked about equipment available to him at the time of this incident. He stated certain patrol vehicles have a ballistic panel and would have felt safer if the Tahoe had that equipment. He reemphasized the use and benefit of the ballistic blanket draped over the windshield.

Officer Magos told CIRB the tactics used in this incident were appropriate. He stated Mr. Zimmerman was a person in crisis who ended up pointing a gun at officers. This action forced the officers to react to this threat and left Officer Magos with no choice but to shoot his rifle.

Officer Magos said he thought the investigative personnel who arrived at the scene needed more training to better manage a critical incident. He was appreciative of the services BSU provided. He said he thought his chain of command did a good job communicating with him and checking his welfare.

Analysis

What was Officer Magos' understanding of the plan when he arrived to the cemetery entrance?

Officer Magos was one of the last officers to arrive at the cemetery entrance. His initial assignment was to block the entrance so no vehicles could enter. Once his assignment changed, he stated he felt rushed. He adapted to the plan once he understood they would use the Tahoes for cover. His understanding of the plan was clear and he mentioned if he had questions he would have asked for clarification.

What was Officer Magos' feeling about being positioned next to Officer Piña with little cover?

Officer Magos stated he was not comfortable being positioned on the passenger side of the patrol vehicle with little cover. He understood he was positioned there to provide additional support to Officer Piña who was communicating over the PA system. Officer Magos kept a visual of Mr. Zimmerman through his optic and continued to relay information to Sergeant Bustamante. Officer Magos described moving the ballistic blanket toward Officer Piña in order to provide Officer Piña with additional protection as he was seated in the passenger seat.

Did the ASU interfere with communication among officers on scene?

Officer Magos stated having ASU on scene was more beneficial than not. He stated the ability for them to guide the officers into the cemetery was helpful since they were not sure of Mr. Zimmerman's location at the time. He described being aware Mr. Zimmerman was agitated by the ASU. However, he did not think it was appropriate that they should be called off.

Did Officer Magos think the K-9 officer or his partner could have been utilized?

Officer Magos stated he was aware of the K-9 officer on scene. He stated he thought about how they could help the situation. He decided that introducing a K-9 into the situation could provoke Mr. Zimmerman and likely agitate him further. Officer Magos was aware Mr. Zimmerman possessed a gun and felt that continued communication attempts were the appropriate response.

Was the possibility of a tactical retreat communicated while on scene?

Officer Magos told CIRB he thought about the benefit of a tactical retreat, however, once Mr. Zimmerman approached, he believed this was not a viable option. Officer Magos stated he did not communicate his ideas with others as he understood his assignment was to provide lethal cover for other officers on scene.

Findings and Recommendations

CIRB finds Officer Magos's decision to fire his rifle at Mr. Zimmerman was **Within Policy**. The Pima County Attorney's Office found Officer Magos's decision to use deadly force was legally justified. Officer Magos described and perceived a lethal threat from Mr. Zimmerman when the gun was pointed in his direction. Officer Magos had no other option available but to fire his rifle to end the deadly threat. Officers at the scene had no reason to believe that the handgun Mr. Zimmerman carried was a BB gun.

CIRB finds Officer Magos adjusted to Sergeant Bustamante's plan, even though Officer Magos felt slightly rushed. Officer Magos took a position where he did not have sufficient cover, however he stayed in his position in order to provide further security to Officer Piña while he utilized the PA system.

CIRB recognized Officer Magos' frustration with the timeliness of the investigation on the day of the incident and also with the review process. CIRB and the Executive Leadership Team (ELT) will continue to work on implementing organizational efficiencies to create a more timely review process.

Officer Timothy Anderson #52772

Officer Anderson was interviewed by CIRB. The areas addressed with Officer Anderson were **tactics, decision-making, use of force, equipment, training** and **policy**.

CIRB's clarifying questions sought to determine:

- What Officer Anderson thought of the tactical plan developed by Sergeant Bustamante
- Issues associated with the ballistic blanket and its benefits
- The options available when Mr. Zimmerman approached Officer Anderson's location
- If Officer Anderson thought the K-9 officer or his partner could have been utilized

Investigative Statement and CIRB Testimony

Officer Anderson was the second officer on scene at the cemetery entrance. Once Sergeant Bustamante arrived, a tactical plan was developed. Officer Anderson stated he was in agreement with Sergeant Bustamante's plan and that they needed to obtain a visual on Mr. Zimmerman. He stated he considered the wall that runs along the west side of the cemetery as a place to observe with cover. He initially thought this might be a good location for someone to better assess the situation, but ultimately agreed with the plan to drive into the cemetery using the Tahoes.

Officer Anderson told OPS he made the decision to use the ballistic blanket over the windshield. Officer Anderson said it was an effective tool primarily for blocking handgun rounds and for providing extra protection to Officer Piña who was seated in the passenger seat of the Tahoe using the PA. During their approach the officers made one stop and then proceeded further to obtain a better visual of Mr. Zimmerman. Officer Anderson told CIRB he wondered, "at what point was too close?" He felt that when they stopped a second time they still maintained a good distance and he was able to observe Mr. Zimmerman's actions through the magnified optic on his rifle.

CIRB asked Officer Anderson if the K-9 could have been utilized in this situation. Officer Anderson stated it could have been used with a "crisis team" in the event Mr. Zimmerman dropped his gun. However, due to the distance, it would have been ineffective to use such a response under the circumstances.

Officer Anderson, who is a member of the SWAT Team and a sniper, stated his focus was to watch Mr. Zimmerman through his patrol rifle optic. He updated Sergeant Bustamante with information about Mr. Zimmerman's actions that he observed through his optic. He made the suggestion to Sergeant Bustamante that a hostage negotiator was at the Operations Division South Substation and that she could be sent to Communications to assist the PSO in talking with Mr. Zimmerman. He was not sure if this was communicated directly to Sergeant Bustamante, but he clearly remembered mentioning it during the incident. Officer Anderson stated if sending a hostage negotiator to Communications wasn't a possibility, then perhaps PSOs could be better trained to handle these types of situations.

Officer Anderson was asked what training could benefit the agency to assist with situations like this. He stated he supported the Training Division's use of modules. He also briefly discussed the *Critical Decision-Making Model* and how it helped officers make better decisions during critical incidents.

Officer Anderson was asked what equipment improvements should be considered in the future. He stated the magnified optics on patrol rifles were beneficial for these types of incidents since they allowed the officers to watch Mr. Zimmerman from a safe distance. Officer Anderson believes all patrol rifles should be equipped with such optics. He did caution more training is required to use the optic because once you zoom in it decreases your field of view and the operator needs to learn how to adapt to a subject who moves out of the field of view.

Although Officer Anderson did not believe there were any policy deficiencies, he recommended a departmental armorer be allowed to view the autopsy to evaluate the department's ammunition. He stated this could facilitate updating or changing the type of ammunition officers carry in the field.

During this incident Officer Ashley Rodriguez had a body worn camera that did not capture the shooting portion of the incident. It was able to capture the officer's approach to Mr. Zimmerman after he was shot and when they provided him with first aid. After Mr. Zimmerman was provided aid, an officer was heard saying "nice shot." Officer Anderson explained that through his SWAT experience, he has heard officers make comments of this type as a way of "de-stressing" after a critical incident. He said this is likely to happen with greater frequency now that more body-worn cameras are being rolled out.

Officer Anderson stated to CIRB that the BSU services he received were great. He said they provided him with information about some of the feelings he might experience. He also stated his chain of command provided him with additional support throughout this experience.

Analysis

What did Officer Anderson think of the tactical plan developed by Sergeant Bustamante?

Officer Anderson was in full agreement with the tactical plan developed by Sergeant Bustamante. He thought it was necessary to have a visual of Mr. Zimmerman since Mr. Zimmerman was armed inside the cemetery with other members of the public. Officer Anderson briefly considered how they could utilize the wall that runs along the west side of the cemetery property to gain a better view, but ultimately agreed they needed to all go in together to establish contact.

What issues were associated with the ballistic blanket?

Officer Anderson stated the ballistic blanket is a tool for providing added security when dealing with an armed individual. From his perspective the ballistic blanket is used primarily for blocking handgun rounds and he regards it is an effective tool that should be available in all divisions.

What options did Officer Anderson consider as Mr. Zimmerman approached his position?

Officer Anderson said that during this incident he was concerned about maintaining a safe distance. He felt if they were to move any closer to Mr. Zimmerman they would compromise their safety. Officer Anderson stated the flex baton was the only other tool he considered. He believed it would only be effective if Mr. Zimmerman dropped his gun. Otherwise the flex baton could essentially provoke a reaction from Mr. Zimmerman and might not have been effective because of the distance.

Could the K-9 officer or his partner have been utilized?

Officer Anderson stated that if Mr. Zimmerman had been closer and unarmed a K-9 could have been used as part of a crisis team (a team of officers ready to detain an individual). Because the officers were over one hundred yards away from Mr. Zimmerman he did not think a K-9 would be effective.

Findings and Recommendations

CIRB finds Officer Anderson's decision to fire his rifle at Mr. Zimmerman was **Within Policy**. The Pima County Attorney's Office found Officer Anderson's decision to use deadly force was legally justified. Officer Anderson perceived a lethal threat from Mr. Zimmerman when Mr. Zimmerman pointed the gun in his direction. Officer Anderson had no other option available to him but to fire his rifle to end the deadly threat. Neither Officer Anderson nor Officer Magos had reason to believe that the handgun Mr. Zimmerman carried was a BB gun. Officers Anderson and Officer Magos fired their rifles almost simultaneously having both perceived the threat at nearly the same time.

GENERAL RECOMMENDATIONS AND FINDINGS

Policy

The Tucson Police Department restructured its training curriculum throughout 2017. This restructuring included the implementation of module-based training, an instructional format that uses one hour blocks taught by commanders. Module training provides officers with updated policies, explains new procedures, and presents new techniques. The overall goal of the module-based training is to provide instruction in a more intimate setting where officers can engage and easily ask questions of the instructor. Each year the Training Division anticipates officers will receive approximately 40 hours of module training separate from the annual advanced officer training already required each year. 2017 modules focused on a revised Use of Force General Order that included definitions for the principles of *de-escalation*, *provocation*, and *proportionality*.

Another topic covered during module training was the *Critical Decision-Making Model*. This block of instruction provided officers with techniques to continuously adjust decision-making based on circumstances and departmental policies.

There were several additional policy recommendations discussed by CIRB. As this incident unfolded it took a long time for union representation to be contacted for the officers involved. CIRB recommends a more expedient notification to both the Tucson Police Officers Association and Fraternal Order of Police.

There were several officers at the scene who witnessed the incident but did not fire their handguns. CIRB believes that when appropriate, witness officers should also be allowed administrative leave following a critical incident. CIRB recommends certain witness officers be afforded the same level of treatment as officers directly involved with utilizing deadly force.

CIRB also recommends any division in the city that experiences a critical incident be allowed to seek resources from other divisions to assist with call-load mitigation.

CIRB recommends getting feedback from the department armorer about whether the armorer should attend autopsies when an officer involved shooting results in a fatality. The armorer's attendance would be used to assess if any changes in equipment/ammunition need to be made.

Equipment

Officers used a vehicle equipped with a PA system to communicate with Mr. Zimmerman. The reliability of these PA systems on all department patrol vehicles will need to be investigated. The department should also consider other technological solutions for communicating across long distances.

Officer Magos articulated to CIRB that his positioning behind a patrol car door wasn't effective cover. He said he maintained his position in order to provide support for Officer Piña and other officers. He discussed the option of outfitting patrol vehicles with a ballistic panel for added protection. The department explored this option and found the cost of outfitting a patrol vehicle with ballistic panels at the factory was an additional \$1,500 per vehicle. There is also an option available to retrofit current vehicles. CIRB recommends outfitting every patrol vehicle with ballistic panels.

CIRB agreed the ballistic blanket was effectively used in this situation. CIRB recommends a department wide audit to determine the number and location of these blankets to ensure even distribution among the patrol divisions.

Training

Lieutenant Dennison discussed the evolution of training within the agency. All members interviewed for this CIRB collectively agreed that scenario-based training is effective. CIRB recommends the agency continue with this type of training.

CIRB recognized the efforts to establish a rapport by PSO Roberts during her phone conversation with Mr. Zimmerman. CIRB agreed she did a great job engaging in conversation with Mr. Zimmerman and kept him on the line until instructed to disconnect. PSO Roberts said she hasn't received additional training since she was hired. CIRB recommends all Public Safety Communications Department personnel have CIT training made available to them.

CIRB discussed how an incident commander can lose command oversight of a situation when they take on operational roles. In this situation, CIRB agreed Sergeant Bustamante should have directed an officer to retrieve a flex baton instead of doing it himself. While this did not have an effect on the outcome of the situation, members functioning as incident commander need to delegate duties appropriately.

Once they started to treat his injuries, one of the officers commented they needed a mouthpiece for CPR and began looking through IFAK kits. Unable to find to one, officers only performed chest compressions. Current CPR training for all officers is the "chest compression only" technique that does not require a mouthpiece which is why the officer was unable to find one.

CIRB commends the officers who testified to the board during this investigation. Sergeant Bustamante, Officer Magos, and Officer Anderson were all well prepared and articulate in their responses.

Use of Force

Use of force was a focal point of CIRB review. Both officers encountered a lethal force situation which unfolded quickly when Mr. Zimmerman approached them with a gun. The lethal force utilized by both

Officers Magos and Anderson was both legally justified and **Within Policy** as outlined in General Orders.

Supervision/Incident Command

CIRB agreed the supervision in this situation was appropriate and tactically sound. While out of the norm, Sergeant Bustamante had clear control of the tactical response and Lt. McNitt handled evacuations in the cemetery. CIRB agreed that even though Lt. McNitt did not receive a proper briefing prior to taking incident command he appropriately allowed Sergeant Bustamante to continue with the tactical response until the situation was resolved. CIRB recommends that all supervisors and commanders taking incident command of a critical incident be properly briefed.

Tactics

CIRB agreed the tactics used in this situation were appropriate and within current policy. Officers described how keeping distance from Mr. Zimmerman was the best tactical option. As Mr. Zimmerman approached the officers with a gun in his hand Officer Magos considered a tactical retreat, but determined this was not viable. The officers did a remarkable job using one vehicle for cover and communicating Mr. Zimmerman's actions to Sergeant Bustamante.

The use of ASU was beneficial to the officers on the scene. The ASU identified Mr. Zimmerman's location and directed officers into the cemetery. These benefits outweighed the challenges created by the blade noise, which included agitating Mr. Zimmerman.

CIRB recognized the discipline shown by the other officers on scene. The only officers designated to provide lethal coverage were Officer Magos and Officer Anderson. All other officers had their handguns holstered during this situation. The restraint the other officers showed reflects Sergeant Bustamante's control of the situation.

Following the shooting officers immediately approached and provided first aid to Mr. Zimmerman. CIRB commends the officers for being prepared with their IFAK kits and administering aid as quickly as possible. CIRB recommends continued officer training on how to properly utilize their department issued IFAK kits for sustained preparedness.

Wellness/BSU

Sergeant Bustamante, Officer Magos, and Officer Anderson all testified to CIRB how beneficial BSU was during this process. All members appreciated the communication and wellness checks conducted by members of BSU.

CIRB DIRECTION and ACTION ITEMS

The findings and recommendations of the CIRB will be forwarded to the affected members' Chain(s) of Command for review and appropriate action. Recommendations regarding equipment, training, and policy will be forwarded to the appropriate units and the academy for prompt action.

Implementation will be monitored and tracked by the Audit and Best Practices Unit.

CIRB recommends Crisis Intervention Training be available for all members of the Tucson Police Department and the Public Safety Communications Department.

Deputy Chief Kasmar will have oversight of this recommendation.

CIRB recommends analyzing the costs of outfitting all patrol vehicles with ballistic panels.

Administrative Support Bureau Chief Kazmierczak will have oversight of this recommendation.

CIRB recommends considering whether members other than the focus officers be afforded administrative leave following a critical incident.

Since this incident, the department has already begun to establish administrative leave availability for witness officers involved in a critical incident.

CIRB recommends the department research technological solutions which can be utilized to communicate across long distances.

Administrative Support Bureau Chief Kazmierczak will have oversight of this recommendation.

CIRB MEMBERS

Chairperson, Deputy Chief Chad Kasmar

Vice Chair, Captain Joe Puglia

Member, Lieutenant Michelle Pickrom

Member, Lieutenant Jennifer Pegnato

Member, Lieutenant Ray Mechtel

Scribe, Lieutenant Bob Garza

Member, Lieutenant Alisa Cunningham

Peer Sergeant, Sergeant John Malovich

Peer Officer, Officer Andy Birtcil

City Attorney, Ms. Julianne Hughes

City Attorney, Ms. Rebecca Cassen

Independent Police Auditor, Ms. Liana Perez

Community Member, Ms. Margo Susco

Non-Voting Observers

TPOA Grievance Chair, Sergeant Steven Simmers

Office of Professional Standards, Sergeant Matthew Brady

GENERAL ORDER DEFINITIONS

2060 Deadly Force

Deadly force is authorized when an officer reasonably perceives an imminent threat of serious physical injury or death to the officer or another person. Deadly force is a measure to be employed only in the most extreme circumstances when all lesser means of force have failed or could not be reasonably employed.

Officers shall, whenever possible, identify themselves as police officers and issue a verbal warning prior to using deadly force, unless such identification and warning would jeopardize their safety or the safety of another person.

2423 Incident Command

The person managing the police scene is the Incident Commander. Normally, this will be the member assigned the call. Designation of an Incident Commander is intended to provide coordination among members assigned to the incident. It is the responsibility of the Incident Commander to become acquainted with the facts and ensure appropriate action is being taken.

Usually the first officer to arrive on-scene will become the Incident Commander. An Incident Commander will remain so until formally relieved. This does not preclude a supervisor or Commander from making recommendations or providing guidance on an incident, even when Incident Command has not been assumed. Members on scene have the responsibility of notifying the Incident Commander if an incident is being improperly handled and notifying a supervisor if necessary.

A field supervisor shall immediately advise dispatch that they are enroute to major incidents or to any scene requiring a supervisor. In cases where a supervisor has not indicated he or she is enroute, the dispatcher shall ensure that one is dispatched. The supervisor will assume Incident Command when appropriate. Supervisors and commanders arriving on-scene shall use the following guidelines for conduct:

- *Contact the Incident Commander for a briefing*
- *Assess the nature of the situation and the police response*
- *Assume or decline Incident Command*
- *If not Assuming Incident Command:*
- *Advise the Incident Commander*
- *Make suggestions and act as a resource*
- *Advise the Incident Commander if leaving the scene*

RELATED VIDEO LINK

To review video associated with the incident, click [here](#).