

TUCSON POLICE DEPARTMENT

CRITICAL INCIDENT REVIEW BOARD

2480 NORTH PANTANO ROAD AND
7811 EAST WRIGHTSTOWN ROAD

OCTOBER 18, 2017

OFFICER INVOLVED SHOOTING



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INVESTIGATIVE CASE INFORMATION

CIRB Number: 17-0625
TPD Case Number: 1710-18-0658
Date of Incident: October 18, 2017
Location of Incidents: 2480 North Pantano Road (Robbery)
7811 East Wrightstown Road (Officer Involved Shooting)

INVOLVED PARTIES

Field Response

Sergeant Kelly Poarch #41242

- Operations Division East - Squad 6 Patrol Supervisor
- Tenure: 18 years

Sergeant Jason Hochstettler #49662

- Operations Division East - Community Response Team Supervisor
- Tenure: 11 years
- 5 months tenure as Community Response Team Supervisor

Sergeant Matthew Alexander #43116

- Operations Division East - Squad 7 Patrol Supervisor
- Tenure: 17 years

Lead Police Officer Carter Wingate #54042

- Operations Division East - Squad 10 Patrol
- Specialized Training: Basic Patrol Rifle School, January 2016; Enhanced Patrol Rifle School, March 2017
- Equipped with an enhanced optic on his patrol rifle
- Operating a marked patrol vehicle in full uniform
- Tenure: 4 years

Lead Police Officer Nathaniel Foster #50738

- Operations Division East - Community Response Team
- Working in plainclothes capacity
- Operating an unmarked vehicle
- Tenure: 10 years
- 5 years as Community Response Team Officer

Officer Matthew Kosmider #100498

- Operations Division East - Squad 10 Patrol
- Operating a marked patrol vehicle in full uniform
- Tenure: 3 years
- Resigned from the Department May 5, 2018

Officer Rafael Rodriguez #51584

- Operations Division East - Community Response Team
- Working in plainclothes capacity
- Operating an unmarked white pickup truck
- Tenure: 6 years
- 1 year as Community Response Team Officer

Officer Matthew Merz #41544

- Service Dog Unit - Canine (K9) Handler
- Operating a marked patrol vehicle in full uniform
- Tenure: 18 years
- 5 years tenure as K9 Handler

Community Members

Mr. Jose Topete

- Robbery, assault victim

Mr. Daniel Spear 03/07/1982

- Robbery, assault suspect
- Fired at officers
- Deceased

Mr. Paul Gasbarri 02/18/1971

- Robbery, assault suspect
- Arrested and charged with homicide, aggravated assault, and armed robbery

INVESTIGATIVE 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); as well as CIRB questioning of certain involved members.

The OPS and CID investigations, along with testimony taken during CIRB proceedings, established the facts under review. CIRB elected to take testimony from limited witnesses for the purpose of

either eliciting clarifying information or obtaining 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 were encouraged to participate in discussion and deliberation, giving fair consideration to differing points of view. This report represents the collective judgment of the board.

FACTUAL BACKGROUND

Mr. Topete left the Desert Sports and Fitness located at 2480 North Pantano Road after his workout. As he walked to his car, he noticed two males trying to break into his vehicle and confronted them. Mr. Topete produced a Beretta firearm he was carrying to defend himself. Mr. Spear responded by producing a shotgun and pointing it at him. While Mr. Topete was attempting to disengage the safety on his firearm, Mr. Gasbarri also produced a handgun, causing Mr. Topete to surrender his handgun. He told detectives that while he was focused on Mr. Gasbarri, he was struck in the back of the head with what he believed to be the stock of the shotgun by Mr. Spear.

Mr. Topete ran away from the two suspects and entered the fitness center for safety. He immediately alerted Desert Fitness employee Jason Mitchell that he had just been robbed in the parking lot, informed him that the suspects were still inside of his vehicle, and told him to call 911.

Mr. Mitchell was aware that off-duty Tucson Police Department Officer Phillip Hengsteler was inside the fitness center working out. Mr. Mitchell and Mr. Topete immediately contacted Officer Hengsteler and told him what had just happened. Officer Hengsteler and Mr. Topete went outside of the front doors of the business to observe the suspects while Mr. Mitchell called 911. They were able to observe at least one suspect inside of the victim's vehicle in the driver's seat who appeared to be looking for something.

Officer Hengsteler used Mr. Topete's car keys to set off the vehicle's panic button. The car alarm and lights went off and the horn began to honk, causing the suspect to exit the vehicle. The suspect (later identified as Mr. Spear) looked at Officer Hengsteler and Mr. Topete as he placed something into a bag. Officer Hengsteler then moved back inside of the fitness center to take over the 911 call.

Officer Hengsteler told detectives that he had been on the phone with 911 describing the incident as it was unfolding. He said the suspect (Mr. Spear), was casually walking towards Pantano Road approximately 25 yards away from the victim's vehicle when he heard 6 to 10 gunshots coming from the area where the suspect was positioned. As Mr. Spear continued heading west across Pantano Road another suspect (Mr. Gasbarri), who was believed to be working in tandem with Mr. Spear, fled from the area in a white Ford truck. Several gunshots struck the Desert Sports and Fitness storefront.

Officers arrived at the fitness center parking lot and established a perimeter around the scene of the robbery. As this containment effort was underway, Officer Kosmider broadcast that a subject ran into the automatic carwash bay with something long in his hands. Officer Rodriguez had just left the carwash parking lot in his unmarked TPD truck to look for a suspicious white truck that had just left the area. He responded back to the northern parking lot of the carwash facility located at 7811 East Wrightstown Road after hearing Officer Kosmider's radio transmission. Officer Rodriguez thought Officer Kosmider said, "wash", not "carwash." He told CIRB he believed he was responding to the carwash parking lot to set up containment on a wash adjacent to the carwash property.

Officer Rodriguez parked his unmarked TPD white truck in the northern parking lot of the carwash. He exited his truck to get a better sense of the unfolding situation and put his tactical police vest on. He observed one officer approaching on foot to contain the south end of the carwash property. He initially focused on the wash, but while scanning the area he noticed Mr. Spear crouching and hiding behind one of the spinners in the automatic carwash bay. Mr. Spear's back was facing Officer Rodriguez. Officer Rodriguez attempted to transmit what he was observing over the radio but the sound of the radio transmission caused Mr. Spear to turn and look at Officer Rodriguez. Mr. Spear stood up with a shotgun in his hands and leveled it at Officer Rodriguez. Officer Rodriguez said they made eye contact and he tactically retreated for cover.

Sergeant Alexander told CIRB he was going to take a position of concealment at a building west of the automatic carwash bay. He described seeing the suspect hiding inside the carwash bay prior to making to his position of concealment. He said as he backed away from the pony wall he attempted to get Officer Wingate's attention. Mr. Spear emerged from the bay with a shotgun and fired at personnel in the southern carwash parking lot. Sergeant Alexander, Officer Kosmider, and Lead Police Officer Wingate immediately tactically retreated and moved to positions that gave them cover and concealment.

Officer Rodriguez also retreated to a position of cover and concealment when the shots were fired by Mr. Spear. As he was repositioning he heard a shotgun blast and believed he was the target of Mr. Spear. Video would later show Mr. Spear fired the first shotgun round to the southwest (at Sergeant Alexander) and the second round towards Officer Rodriguez to the north. It was later determined that Sergeant Alexander sustained a graze wound to the right forehead (scalp, hairline area) from the shotgun round. Not being in a tactical place of cover and fearing for his safety, Officer Rodriguez turned and fired three shots from his handgun. Officer Foster was also in a CRT plainclothes capacity on the northside of the carwash. He observed Mr. Spear shoot at Officer Rodriguez and he thought Rodriguez had been shot.

Mr. Spear quickly walked from the carwash bay into the north parking lot where he entered the unmarked TPD truck that Officer Rodriguez had exited just before being shot at. Officer Foster deployed on foot to check the welfare of Officer Rodriguez. When he realized Officer Rodriguez had cleared the area (and there was no sign that he had been hit) he moved over to the driver side of Officer Merz's patrol car. He told OPS that he immediately realized that he was not in a safe tactical position and he repositioned to a nearby large mesquite tree.

When Mr. Spear presumably realized there were no keys in the truck, he exited the truck and simultaneously fired his shotgun at the officers surrounding him. Officer Foster told OPS he believed Mr. Spear was aiming at him when he fired the shotgun. Officer Merz had to conceal himself behind his patrol car which was struck by gunfire. Officers Wingate, Foster, and Kosmider all returned fire. Mr. Spear was struck by three rifle rounds during this final exchange of gunfire and died at the scene from those injuries.

Through further investigation, officers later located the suspect's unoccupied white Ford truck that had been driven by Mr. Gasbarri when he fled from the scene of the robbery. Although investigators could not immediately connect Mr. Gasbarri to the robbery and officer involved shooting, he was later arrested and charged with several felonies stemming from the incident.

Department rifle rounds fired at the suspect during his attack on the officers struck apartment walls approximately 600 feet to the north of the officer involved shooting scene. One of these apartments was occupied. Several of these rounds damaged furniture within the occupied apartment. More importantly, the rounds that entered into the apartment understandably alarmed those inside and caused them to immediately take a prone position on the floor.

PIMA COUNTY ATTORNEY'S OFFICE REVIEW

The Pima County Attorney's Office (PCAO) reviewed the investigative package prepared by the Criminal Investigations Division. PCAO found the lethal force used by Officer Wingate, Officer Foster, Officer Kosmider, and Officer Rodriguez was justified. CIRB also concluded that the use of lethal force by all officers was within department policy. The officers' actions were found to be necessary to protect the lives of the officers and community members in the immediate area.

CIRB ANALYSIS AND FINDINGS

This incident began with an armed robbery and aggravated assault of a community member outside a fitness facility. It devolved into an officer involved shooting after two suspects fled from the original scene. Video captured Mr. Spear positioning himself behind large carwash bay spinners with his shotgun pointed at department personnel as they approached his location. In a clear attempt to ambush them, he fired upon them as they approached the opening of the bay.

Personnel responded with lethal force in two separate exchanges of gunfire which resulted in Mr. Spear sustaining lethal injuries at the scene. Occupied apartments north of the officer involved shooting sustained damage from deployed department rifle rounds. The occupants of one of these apartments endured a harrowing experience because of the actions of Mr. Spear.

CIRB comprehensively evaluated all components of the overall response. The following analysis highlights the main topics discussed by CIRB and presents important opportunities for learning and improvement in each area described below:

Training

In 2017, based on CIRB discussions and recommendations, the Advanced Officer Training (AOT) Unit incorporated new defensive tactics instruction and scenario training. This was done in conjunction with the department's implementation of a critical decision-making model and a renewed curriculum emphasis on community-based policing. All phases of the new instruction included a focus on stress inoculation. This inoculation is achieved by introducing stressors at various points during training scenarios to help officers work through problem-solving and decision-making in an environment that more closely mimics real-world dynamics.

Sergeant Alexander recommended to CIRB that a rifle supervisory program be developed for supervisors to better understand the capabilities of the rifle platform that their subordinates deploy.

Round Accountability and Backdrop

The principle of round accountability holds that an officer is legally, morally, and ethically responsible for every round they fire. Department training on round accountability makes clear that all officers must carefully evaluate several safety factors before they respond to a lethal force threat. These factors include, but are not limited to, distance to the target, the likelihood the officer will hit their intended target, and their backdrop if they miss their intended target.

CIRB discussed how officers must understand the ballistic capabilities of the ammunition they deploy as well as the ability of backdrop materials to absorb the energy of a bullet. In this situation, rounds fired by officers struck apartments across the street from the incident scene approximately 600 feet to the north. While none of the residents were injured, apartment walls and personal property were damaged and the occupants of one apartment were understandably traumatized by the event. This will be further discussed under the "Secondary Victim" section.

To that end, CIRB recommends officers receive more training on the specific ammunition they deploy, including ammunition deployed by rifle operators. They should also participate in additional "shoot-don't shoot" scenarios.

CIRB recommends training for sergeants and commanders designed to provide an overview of all weapon systems potentially carried by personnel in their charge. The training should prepare supervisors to make informed decisions regarding deployment and utilization of the various weapon systems.

Patrol Rifle Program

The patrol rifle program consists of 40 hours of training and includes an introduction to the rifle platform, a full review of rifle nomenclature, training on the ballistics and functionality of the system, and practical instruction regarding moving and shooting. All aspiring rifle operators must

successfully qualify with a 90% score (the highest score requirement among Arizona law enforcement agencies) in order to be approved to carry a patrol rifle.

The training and deployment of patrol rifles continues to be refined through additional CIRB review (See, CIRB 18-0377). Additionally, the entire program underwent a wholesale update in the beginning of 2019. As a part of this update, what was historically once a year training increased to three sessions per year broken down as follows:

- Session One, 10-hours
 - The first five hours of training is the required annual qualification, followed by another five hours of training devoted to tactical shooting. A mobile robot was purchased and introduced into the training to work on target identification, backdrop assessment, and shooting at moving targets.
- Session Two, 5-hours
 - The second session of training is devoted to precision shooting utilizing both live fire, VirTra¹ and StressVest².
- Session Three, 5-hours
 - The third session of training is devoted to night shooting, VirTra and StressVest scenarios.

In 2018, additional lessons learned from CIRB review led to the development of an agency wide Advanced Officers Training (AOT), course which included the following:

Area Search Scenario

1. The junior officer will brief the supervisor on what they have at the scene (training staff works off of a script).
2. The supervisor should develop a plan and conduct an area search with the officers. The suspect will be hiding within the area.
3. If the officers find the suspect he will comply with any commands given.
4. If the officers cannot locate the suspect, the suspect will stand up holding the handgun, which is pointed down.
5. Once the officers identify the suspect, the suspect will comply with any commands given.

Success Criteria:

1. The supervisor will come up with a plan for an open area search and brief it to the officers.

¹ The VirTra system provides law enforcement organizations with a full line of the best judgmental use of force training and firearms simulator training available, from portable, single-screen firearms simulators to the most advanced 300-degree use of force simulator.

² StressVest™ is the world's first non-projectile force on force firearm tactical training system capable of delivering a pain penalty for training feedback.

2. The supervisor will coordinate officers' movements to arrest the suspect.
3. Officers identify and respond to any possible threats. Personnel recognize and avoid crossfire situations as they arise.
4. The supervisor will debrief the incident with the officers and provide critical feedback.

Tactical Scenario

Officers respond to an active shooter situation at an open business. Once they arrive to the scene they locate an unresponsive community member in the dirt area south of the business parking lot. While attending to the possible victim, a shooter ambushes the personnel with an assault rifle (live fire blanks are utilized). While officers egress a second shooter drives up to the location and flanks the officers.

Success Criteria:

1. One of the personnel takes charge of the situation and develops a plan and communicates it to other personnel before acting.
2. Sound tactics are used throughout the scenario.
3. IFAK³/ tourniquet is used properly on the injured victim.

Stress Management

Three-part module training:

Module 18-01 introduction into *human performance and stress management during critical incidents*:

Performance Objectives (PO):

1. PO 1- Identifying signs of Sympathetic Nervous System (SNS) stress for awareness.
2. PO 2- List the types of Perceptual Distortions that could occur under stress.
3. PO 3- Identify strategies for effective operational communication.
4. PO 4- Demonstrate techniques to mitigate stress from SNS overload and enhance performance.

Module 18-02 stress management class:

Performance Objectives:

1. List the key elements that shape our orientation for decision making.
2. List the key methods where training can shape our orientation.
3. Identify the two human senses used most to process information and guide orientation.

³ Individual First Aid Kit (IFAK)

Module 18-03 was designed to provide students with a greater understanding of how to handle stress.

Performance Objectives:

1. The overall goal of the course was to provide the students with an understanding of how the human mind selects outcomes for their decisions.
2. Provide the students methods to perform better in law enforcement critical incident situations.

Radio Discipline

The radio traffic was heavy throughout the dynamically unfolding event. The need to orchestrate initial crime scene containment and investigation, to conduct a search for the outstanding suspect(s), and the dangerous possibility that one suspect was on foot and another was in a vehicle, resulted in a significant amount of radio traffic. This was further complicated by the large number of units responding to assist with the incident, to include ODE Community Response Team members and SWAT members. Both of these specialized units had been operating on other radio frequencies when the event was reported over the radio.

CIRB found there was a general lack of radio discipline which contributed at times to the inability of both Sergeant Alexander and Sergeant Poarch to effectively transmit direction over the radio. Multiple people were asking for quads to be covered, yet containment positions remained empty while responding personnel arrived to the scene and began searching for the suspect. Requests for suspect description were made and provided multiple times. CRT and a K9 personnel were in the area, but patrol officers were unaware of their presence during the initial deployment. Officers were unable to transmit due to the heavy radio traffic and at times the Air Support Unit (ASU) overrode field radio transmissions. In addition, information was conveyed over both the ODE and ODE/CRT radio frequencies.

Radio issues of this kind have been noted in previous CIRB reviews. CIRB continues to be concerned with the 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' reported frustration in finding themselves unable to transmit at times.

Given the continued concern, CIRB recommends ASU personnel and Field Services Bureau sergeants form a committee to work on communication issues and communication-related training associated with air support. CIRB recommends such training be created, implemented, and reviewed prior to any 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 the department should consider removing the ASU override function.

Additionally, critical incident response and radio discipline should continue to be regularly discussed and debriefed in the field.

Supervision and Incident Command

Sergeant Poarch was the identified supervisor who acknowledged the original call from the dispatcher on the radio and responded to the robbery incident at the fitness facility. While he did not identify himself as the incident commander (IC) over the radio, he clearly managed the call over the radio, directed the responding resources to the original call, and directed quads (patrol unit tactics to establish containment around an area) be established prior to the search for the suspect. Sergeant Alexander told CIRB he felt all responding personnel were clear that Sergeant Poarch was IC of the call.

Community Response Team Sergeant Hochstettler arrived at the fitness facility and coordinated with Sergeant Poarch. He ultimately took control of the robbery scene while Sergeant Poarch continued to coordinate the larger scene management and ongoing search for the outstanding suspects.

Sergeant Alexander initially responded to the apartment complex across the street from the carwash to conduct a search for the suspect. He responded to support officers when two subjects were located in a large parking lot south of his location. While attempting to gather information on whether the two men who had been detained were involved at the incident, a male was observed running into a carwash bay with a long object in his hand just to the north of their location.

Sergeant Alexander, Officer Kosmider, and Officer Wingate crossed the street together, moving towards the automatic carwash bay where the suspect was observed. Sergeant Alexander led the group advancement. Sergeant Alexander told CIRB he thought the suspect would continue to flee north and he did not plan to enter and clear the automatic carwash bay to look for the suspect. He thought they would all move as a cell to the building just to the west of the automatic carwash bay to contain the area. When he realized Officer Wingate was positioned east of the automatic carwash bay, he felt that Officer Wingate's position was potentially exposed to the suspects last reported location. He stated that he looked into the bay from the cover of the half wall to make sure that the suspect was not there in order to cover Officer Wingate.

Sergeant Alexander told CIRB the event unfolded faster and that it was much darker in the area than the video footage depicted. CIRB agrees, and through video analysis found that within 60 seconds of the suspect being observed running into the carwash bay, personnel were fired upon by the suspect the first of three times as they approached the south facing automatic carwash bay.

CIRB found that Sergeant Alexander should have supervised the containment of the carwash bay at a greater distance from the south facing opening of the bay. CIRB found that clear supervisory direction for the approaching personnel to take and hold specific containment positions,

utilization of the K9 Unit, use of long gun operators from both patrol and SWAT, and increased use of the ASU observation platform above to conduct the search would have potentially slowed the situation down. A slower pace would have afforded time to develop the appropriate tactical response, placing personnel in the best tactical advantage possible.

Sergeant Alexander had an obligation to control the operational momentum and ensure the officers and the IC clearly understood his tactical plan. It is ultimately the incident commander's responsibility to ensure appropriate direction is provided to responding units.

Although Sergeant Poarch felt that he was the clear IC through the event, CIRB found some of the responding units lacked clarity on which of the three sergeants on the call was the incident commander. Following the officer involved shooting, Sergeant Poarch told the responding ODE commander on the radio that he had IC of the incident.

The IC is responsible for monitoring and confirming the direction he or she provides is appropriately followed. When the IC hears his or her direction is not being followed, they have an obligation to obtain clarification or any additional facts and reassume control over the response. In the review of the radio transmissions of this incident, CIRB found Sergeant Poarch missed several opportunities to control officers who were deploying on foot prior to containment being set in the area. This occurred even after K9 Unit Officer Matthew Merz arrived on the scene and reminded personnel to set up containment.

CIRB found having three supervisors actively involved in multiple scenes, within a single larger event, requires increased communication and clear delineation to personnel who has IC. Sergeant Poarch reported that he did not give more specific direction to personnel approaching the carwash bay where the suspect was last observed with a long gun because he knew Sergeant Alexander was with the personnel and in a better tactical position to determine the appropriate next steps to search for the suspect.

Tactics and Decision-Making

The purpose of establishing containment at an incident scene is to keep a suspect in a specific area and allow additional resources to safely take a suspect into custody. Sergeant Alexander explained his decision to move across the street and toward the carwash was to contain the southern end of the carwash and not allow the suspect to either cross the street or force officers to engage the suspect across a major street. He also stated the larger carwash facility was still open for use, it was being utilized by patrons and he was concerned for their safety.

Sergeant Alexander believed he and the other officers needed to move aggressively across the street since there was no cover and that they were in a "giant fatal funnel" until they reached cover. He told CIRB his objective was to contain the suspect from continuing into more populated areas adjacent to the carwash area and to achieve containment in the carwash parking lot since larger scene containment had not been set.

Sergeant Alexander noted he did not verbally communicate his position because he did not want to broadcast his location to the suspect. Sergeant Alexander acknowledged he provided limited verbal direction to the other officers who followed him across the street, nor did he use patrol vehicles to block traffic or use as cover while they crossed the street. Officer Carter stated that he followed Sergeant Alexander and Officer Kosmider towards the carwash bays without a full understanding of the plan or what the other personnel had observed. He was also cognizant of the potential for an ambush type situation to occur.

Sergeant Poarch told CIRB that knowing both Officer Wingate and Officer Kosmider were rifle operators and knowing that ASU and a K9 Unit Officer Merz were on scene, he did not provide direction for them to take and hold a containment position on the south side of the street. He said he believed Sergeant Alexander was directing officers as they approached the carwash, but he did not know what Sergeant Alexander and the responding officers were seeing and experiencing. The situation evolved rapidly and since he could not see what was occurring or what the other officers were seeing, he did not feel comfortable telling the personnel at the carwash to slow down.

Overall, the tactics led by Sergeant Alexander as personnel approached and cleared the car wash bays caused them to be exposed with no concealment or cover. Their actions contributed to placing themselves in a tactical disadvantage to Mr. Spear who was concealed in the automatic carwash bay waiting to ambush the personnel. It was clear to CIRB that most personnel involved in this incident had the mindset that the suspect would try to avoid capture, not actively attack them during their containment efforts.

CIRB concluded that “operational momentum” took hold during this incident when the suspect was observed running into the automatic car wash bay. Proper identification of an IC, incident management, and communication all could have been improved.

CIRB commends Sergeant Alexander for his discussion with the CIRB. It was clear that the incident had a significant impact on him, not only because he was shot at, but also because he felt a clear responsibility for Officer Wingate and Officer Kosmider’s safety. Sergeant Alexander displayed a willingness with CIRB to not only to speak in greater detail about his decision making on the night of the event, but also to provide additional insight after he had time to reflect on the incident as a learning opportunity for the agency.

Sergeant Alexander said if he faced the same situation again he would have kept tighter control on his rifle operators as they moved across the street, while using a patrol vehicle for cover. He also acknowledged that there were benefits and negative aspects of having multiple sergeants involved with the incident. He stated that all three sergeants managing different aspects of the incident possibly limited getting the information out effectively.

Wellness/Behavioral Sciences Unit (BSU)

Based on witness testimony, CIRB found that the BSU response and support provided by the unit was generally well received. During the period of this CIRB review, and as a result of feedback from officers involved in previous CIRB incidents, larger group debriefings were tested following critical incidents. Based on input from focus members and others, the department has evaluated several national level studies regarding the value of this type of debriefing and discontinued the pilot practice.

Members needing to communicate about an incident following their criminal and administrative interviews are encouraged to do so initially through BSU. Because of feedback elicited during CIRB review that personnel would like to be able to talk about their experiences with peers before critical reviews have been completed, CIRB recommended that OPS remove the confidentiality order from members after all needed interviews have been completed. This change allows focus members to talk about their experiences with each other in weeks, not months or years.

Members called before the CIRB board expressed uncertainty about what information should appropriately be provided or discussed at various stages of the review process. This uncertainty likely effected the flow of information in the attempt of the agency to create a sentinel review learning environment. CIRB recommends that OPS close critical incidents in the same manner all lesser investigations are completed. This process includes OPS identified policy violation findings and chain of command reviews prior to matters being brought in front of CIRB for sentinel review. CIRB believes this new protocol for information sharing would greatly increase the opportunity for agency learning and growth.

It was determined by CIRB that the appropriate agency documentation for Sergeant Alexander's injuries sustained during the incident was not completed by his chain of command. CIRB reminds all first line supervisors, and command staff to ensure the appropriate documentation of work-related injuries occurs on minor and significant employee injuries.

Equipment

Sergeant Alexander recommended increasing the number of rifles deployed in the field. He also recommended adding additional ballistic shields, specifically ones capable of stopping rifle rounds.

Secondary Victims

Operations Division East command staff responded to the scene following the officer involved shooting. Lieutenant Monica Prieto explained that although she had initially been advised property damage occurred to nearby apartments on the night of the incident, she was not made aware of the nature of the damage at that time. It was not until five days after the incident that she learned several areas of nearby apartments had sustained bullet strikes.

Lieutenant Prieto said she personally contacted the impacted residents and learned little had been done to address their concerns, including one residents' desire to receive counseling services. Pima County's Victim Services was contacted on October 25th to request they respond to the apartments and speak with the affected residents. However, when Lieutenant Prieto followed up the next day she found out this had not taken place. She then teamed up with the Tucson Police Department Behavioral Sciences Unit to visit the impacted residents to offer them assistance.

One couple whose apartment was struck by several rounds was particularly displeased with the response they received, which included a personal visit from the Chief and Assistant Chief. They were offered counseling and provided with information on how to file a claim with the City's Risk Management Division. They felt the follow-up they received was insufficient.

It is of the utmost importance that supervisors notify their chain of command any time officers become aware of secondary victims that are injured or experience property damage as a result of department actions. Risk Management must also be notified immediately and become appropriately engaged in working with these victims as quickly as possible.

General Order Violations

CIRB found that Sergeant Alexander failed to act in the full capacity of a sergeant while leading the search of the carwash area where the suspect was observed with a long gun. He oversaw or orchestrated poor tactics and failed to utilize the K9 Unit, ASU, SWAT, and long gun resources at his disposal. For these reasons, CIRB found Sergeant Alexander in violation of General Order 1143.6 - Authority of Supervisors,

1143.6 Authority of Supervisors

Supervisors shall constantly direct their efforts toward the intelligent and efficient performance of the functions of the Department and possessing the authority to do so, shall require their subordinates to do the same. They shall not regularly perform the duties assigned to a subordinate when the subordinate is available. **Supervisors shall be responsible for their own conduct and performance and for the conduct and performance of their subordinates.** They shall initiate an investigation of any misconduct or non-performance of duty as soon as it comes to their attention. When it is appropriate, supervisors will notify their superior or their supervisor of matters of concern.

Non-sworn employees shall not have tactical authority over sworn employees in the exercise of police power.

Supervisors may issue orders that deviate from existing orders in an emergency for the duration of the emergency. Supervisors shall immediately report to their superior any deviation from existing orders.

Supervisors shall ensure that subordinates complete all required duties and functions required of their positions. Supervisors shall be responsible for the evaluation, training and development of their subordinates. When a supervisor is absent, the supervisor shall designate a member of the next lower rank to act in that capacity. The member so designated shall have all the authority necessary to perform that assignment.

CIRB MEMBERS

Chairperson, Deputy Chief Chad Kasmar

Vice Chair, Captain Joe Puglia

Scribe, Lieutenant Colin King

Member, Lieutenant Michelle Pickrom

Member, Lieutenant Jennifer Pegnato

Member, Lieutenant Alisa Cunningham

Member, Lieutenant Robert Garza

Peer Sergeant, Sergeant Luis Bustamante

Peer Officer, Officer Brett Kaczynski

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

Ward 2 Representative, Mr. Ted Prezelski

Non-Voting Observers

TPOA Grievance Chair, Sergeant Steven Simmers

Office of Professional Standards, Sergeant Dallas Hearn

Related Video Link

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