

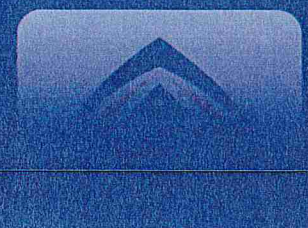
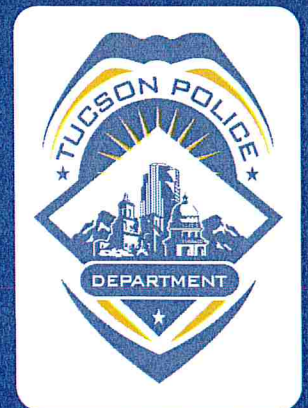
# TUCSON POLICE DEPARTMENT

## CRITICAL INCIDENT REVIEW BOARD

4750 S CAMPBELL ROAD

MARCH 28, 2018

OFFICER INVOLVED SHOOTING



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### INVESTIGATIVE CASE INFORMATION

**CIRB Number:** 18-0183  
**TPD Case Number:** 1803-28-0098  
**Date of Incident:** March 28, 2018  
**Location of Incident:** 4750 South Campbell Road

### INVOLVED PARTIES

#### **Field Response**

Officer Anthony Gutierrez #35051

- Operations Division South Patrol
- Lead Police Officer for approximately four years
- Tenure: Nineteen years

Officer Arturo Hernandez #100564

- Operations Division South Patrol
- Tenure: Three years
- Specialized Training: Rifle Operator

Officer Juan Caquias #43048

- Operations Division South Patrol
- Tenure: Twenty years in law enforcement, eighteen years with Tucson Police Department

Officer Alex Quiroz #51081

- Operations Division South Patrol
- Tenure: Ten years

Sergeant Richard Legarra #47238

- Operations Division South Patrol
- Patrol Sergeant for over four years
- SWAT Officer for six years prior to promoting to Sergeant
- Tenure: Thirteen years

Sergeant Adam Kidd #49555

- Specialized Response Division, Field Response Unit Supervisor
- SWAT Sergeant for over two years
- Sergeant for approximately three years
- Tenure: Eleven years

Sergeant Dain Salisbury #51925

- Specialized Response Division, SWAT Supervisor
- SWAT Sergeant for approximately two years
- Sergeant for approximately two years
- Tenure: Nine years

### **Community Member**

Mr. Francisco Castillo 03/16/1977

- Resident of 2404 West Helton Lane, Tucson, AZ 85713
- Treated for gunshot wounds
- Booked into the Pima County Jail for Aggravated Assault, Kidnapping, Armed Robbery, and unrelated arrest warrants

## **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 Homicide Investigations Unit and the Office of Professional Standards (OPS), as well as CIRB questioning of certain involved members.

The OPS and Homicide Unit investigations, along with testimony taken during CIRB proceedings, established the facts under review. As a matter of practice, CIRB does not ask all witnesses involved in an incident to testify nor does it require any witness to testify about matters already addressed in interviews. 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 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.

## **FACTUAL BACKGROUND**

At 12:08 a.m. on March 28, 2018, an employee at the Viva Burrito located at 2175 East Irvington called 911 to report the restaurant had just been robbed at gunpoint. The employee described the suspect as a dark-skinned Hispanic male with face tattoos wearing a dark hoodie

and jeans. He said the suspect, armed with a black handgun, left the area on foot and headed westbound.

Several officers from Operations Division South heard this call and responded to the area of Viva Burrito. Two officers went directly to the restaurant and others began searching the area for the suspect. The officers at the restaurant reviewed surveillance video and elicited further suspect details from the employees. Those officers conveyed over the radio that the suspect was heavy-set, wearing a red t-shirt under a dark hoodie, and had dark shoes with white trim. The officers circulated photos of the suspect obtained from the surveillance video. Officers searching behind the shopping center west of Viva Burrito located a black hoodie lying on the ground.

Lead Police Officer (LPO) Anthony Gutierrez responded to the area west of Viva Burrito to conduct a search for the suspect. While driving through the apartment complex located at 4175 South Campbell he noticed a male sitting on an exterior stairwell. Though the male initially drew his attention given the hour and location, LPO Gutierrez did not immediately believe the male was connected with the robbery. As a result, LPO Gutierrez left the apartment complex and continued his search for the suspect along Campbell Avenue.

Moments later LPO Gutierrez received the suspect's photo sent by officers reviewing surveillance video at the restaurant. After looking at the photo, he realized the man sitting on the stairs was wearing dark shoes with white soles and a red T-shirt with a design resembling the one worn by the suspect in the picture. He returned to the apartment complex, parked his patrol car out of sight, and requested additional officers to help him contact the suspect. Officers Caquias, Hernandez, and Quiroz arrived to assist with the contact.

The four officers gathered behind the apartments and approached the stairwell where LPO Gutierrez had seen the suspect. The group of officers, led by LPO Gutierrez, walked toward the suspect who sat at the top of the stairs. LPO Gutierrez said to the suspect, "Hey man can I see your hands?" In response, the suspect warned him not to go up the stairs. LPO Gutierrez then noticed the suspect had what appeared to be a black semi-automatic handgun in his right hand. LPO Gutierrez immediately told the other officers, "He's got a gun!" He then instructed them all to "back up." The officers tactically retreated to two separate areas that afforded both cover and concealment. One was around the corner of the apartment building and the other was behind the adjacent building.

The suspect quickly moved to the second-floor stair landing and began "donkey kicking" (kicking a door while your back is facing it) an apartment door in an apparent attempt to force entry. When the door would not open the suspect turned his attention to the apartment's front window and began breaking it to gain entry. The officers noticed several potted plants and a table with chairs arranged near the apartment door. They regarded this an indicator that the apartment the suspect was breaking into was very likely occupied. The officers feared that if the suspect managed to get in to the apartment the innocent residents inside would be in imminent danger. With this fear in mind, each officer took aim at the suspect and fired their

weapon. Twenty-five total rounds were fired. Three rounds struck the suspect, but none of the wounds the suspect sustained were incapacitating. Despite having three gunshot wounds, the suspect still managed to break the window and use the opening to jump into the apartment. The officers then secured the area and began the process to contain and call out the suspect.

Officers from throughout the city responded to assist. This included SWAT officers, hostage negotiators, and K-9 handlers. Once adequate resources arrived, the initial four officers were relieved of their responsibilities and removed from the scene in a manner consistent with officer-involved shooting protocol.

On-scene officers attempted to establish communication with the suspect while they simultaneously evacuated nearby apartments and coordinated the Hostage and SWAT unit response. During the evacuation process officers confirmed the apartment's 25-year-old resident and her three-year-old daughter were hiding in the child's bedroom closet.

They learned that the mother had run to the child's bedroom and called 911 when she heard the gunshots being fired. They also determined that she had sent messages to a neighbor through social media while she spoke to a Public Safety Communications Operator. An officer at the scene took over communications with the trapped resident using the neighbor's phone and began relaying information to on-scene personnel to facilitate the residents' immediate removal from the apartment. SWAT supervisors also formed a crisis entry team to rescue the mother and child if immediate entry became necessary.

While several officers continued trying to communicate with the suspect SWAT officers obtained ladders from the Tucson Fire Department and successfully evacuated the mother and child from the apartment through a window. Later that morning, after hours of negotiation, the injured suspect finally emerged from the apartment and surrendered himself. Officers rendered medical aid to the suspect who was then transported to the hospital where his injuries were more fully treated.

#### **CHAIN OF COMMAND REVIEW**

The officers' chain of command reviewed the investigative package prepared by OPS prior to the CIRB review. Following their review, the chain of command specifically addressed policy violations committed by individual officers but did not address tactics or other non-disciplinary issues. The chain of command found the uses of force by Officer Gutierrez, Officer Caquias, Officer Hernandez, and Officer Quiroz to be justified and within policy. The officers' actions were found necessary to protect the occupants of the apartment. CIRB concurred with the assessment made by the chain of command.

Although the chain of command found Officer Hernandez violated TPD General Orders 3764 and 1330.2 when he muted the audio on his Body Worn Camera (BWC) during the incident, they

ultimately deemed this mistake to be inadvertent. The chain of command chose to address this mistake through restorative supervision and counseling. CIRB concurred with this determination.

### **CIRB ANALYSIS AND FINDINGS**

This incident began with an armed robbery of a small restaurant. It devolved into an officer involved shooting when the suspect forcefully invaded an occupied apartment creating an immediate threat to innocent members of the community. Officers on scene rescued a mother and child from a second story window and eventually convinced the injured suspect to surrender. As with all cases, there were both positive and negative components to the overall response. This analysis highlights the main topics discussed by CIRB and presents a number of important agency learning and improvement opportunities.

#### **Round Accountability**

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 decide to take a shot. 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.

#### ***Accuracy***

Each focus officer fired their weapon several times. All of those officers believed most or all of their rounds either hit the subject or lodged in the ceiling of the apartment. In reality, only three of the 25 total shots struck the suspect. While many of the errant shots hit the outside apartment wall immediately behind the suspect, many penetrated the wall entering the interior of the apartment, including the child's bedroom. The potential consequences of the missed shots could have been catastrophic.

TPD Advanced Officer Training (AOT) Sergeant Dan Spencer testified to CIRB as a training subject matter expert. He explained during high stress events the human body experiences several physiological changes that negatively affect thought process and fine motor skills. Intense stress can influence levels of cortisol and adrenaline and affect sensory perception. These physiological and psychological responses combine to negatively impact an officer's ability to shoot accurately.

In an effort to proactively address the effects of stress on shooting accuracy department training staff aggressively reformatted the AOT regimen in 2018, placing an emphasis on creating "survival-based fear" during training situations. Artificially inducing stress in a training environment can be difficult to accomplish, but new technologies are being utilized at the training academy to help provide realistic training that incorporates some level of stress.

TPD now uses the VirTra® system, a virtual reality-training device that allows instructors to design scenarios that can be adjusted to the trainee's response to stimuli. The VirTra® scenarios include a level of realism that increases the kind of anxiety that often leads to inaccurate shooting. The training staff also uses a product called StressVest® during training scenarios. The vest replicates some of the sensations that may elicit survival-based fear. Through repetition and coaching, officers learn how to process and manage the stress response, enabling them to make sound decisions and improve their accuracy.

The 2018 AOT regimen (as well as future courses) also includes training scenarios designed to improve the identification of contagious and panic induced gunfire. Careful monitoring of the training is followed by a constructive feedback process. The training goal is to identify officers experiencing physiological symptoms that can have the potential to affect their performance and to provide them with the skills to manage and improve that performance.

These innovations represent the latest trend in progressive training, and the initial feedback from recipients of the training is encouraging. In time, the modified training will help mitigate instinctive response. With these new skills officers can inoculate themselves to the biological influences of stress, enabling them to utilize the training they have received on how and when to use their firearms.

### ***Backdrop and Ballistic Capabilities***

All the focus officers indicated they were never trained on shooting from a ground-floor position up to a second floor (as they were forced to in this incident). Nevertheless, the officers felt the angle they were firing at, as well as the frame and stucco backdrop, mitigated the threat of stray rounds endangering the apartment's occupants. The follow-up investigation clearly showed the rounds were more of a danger than the officers had perceived.

CIRB believes officers should understand the ballistic capabilities of the ammunition they deploy as well as the ability of backdrop materials to absorb the energy of a bullet. The officers in this case lacked this understanding, which presents a clear improvement opportunity for the department. CIRB agreed a greater knowledge of what happens after they pull the trigger, whether with a firearm or a less lethal device, would help officers make better decisions.

To that end, CIRB recommends officers receive more training on the specific ammunition they deploy, including ammunition deployed by rifle operators and SWAT members. As noted above, accuracy can, and in all probability will, decrease in critical incidents. This reality makes awareness of the backdrop in these situations even more critical.

CIRB believes future training should emphasize that sometimes the decision *not* to fire is the better option. Whether it's acknowledging the officer's own personal limitations or the situation at hand, a conservative approach may be appropriate. This is particularly true when an officer can trust that another officer, who is better situated to take an accurate shot, will do so.



### **Tactics and decision-making**

Officers Caquias, Hernandez, Quiroz, and LPO Gutierrez clearly work well together as a cohesive unit. Their mutual respect for one another allowed them to quickly control the scene after the shooting. Officer Caquias instantly became the single point of communication with the suspect without being directed to assume that responsibility. Allowing Officer Caquias to maintain control of communication enabled the officers to provide the suspect with a calm, consistent and controlled message. CIRB recognizes this automatic and seamless cooperation is indicative of officers who, through time and experience, have established trust in one another. CIRB found the way the scene was controlled post-shooting to be commendable.

The officers' familiarity with each other also led to a few tactical missteps. The officers acknowledged they did not formulate a plan for contacting the subject before their approach because they had worked countless calls for service together and knew what to expect from each other. The officers did not discuss who would establish communication or detain/arrest the suspect, nor did they develop a contingency plan in the event the suspect fled or resisted apprehension. Upon learning the suspect was armed they scattered to available cover in two different areas and had no pre-established plan for what should happen next.

LPO Gutierrez indicated that prior to initial contact he was not certain the person was a suspect. He intended to treat the contact as he would any other community member interaction. This was also why he did not request a rifle deployment. Officer Hernandez advised he did not deploy his rifle, because he believed four officers could handle the contact without it. Officer Caquias assumed the role of contact officer because he observed LPO Gutierrez and Officer Hernandez preparing their approach with their handguns unholstered. Officer Quiroz echoed LPO Gutierrez's perception that the contact would occur like countless other interactions, the frequency of which made a plan unnecessary. It appeared to CIRB the officers determined they did not need a plan because they were all familiar with the different tasks that needed to occur, they knew instinctively what to expect from each other and they would adapt as the incident progressed.

The group also failed to discuss whether they should deploy a patrol rifle. Officer Hernandez is equipped with a rifle and could have easily deployed it. If any of the officers on scene had recommended a rifle deployment, this may have provided the opportunity to discuss other important tactics, such as who would contact the subject, who would be a cover officer, and what to do in the event of unexpected issues. A rifle might have also provided the accuracy needed to quickly end a lethal threat while mitigating the likelihood of stray rounds impacting innocent parties.

### **Rescue Operation/ Equipment**

After the shooting, supervisors and additional patrol resources responded to the scene. Every sergeant who responded during the tactical portion of the incident currently or previously

served as a member of SWAT. This undoubtedly aided in the efficient management of the scene and the hasty rescue of the apartment occupants.

Supervisors focused on containing the suspect and evacuating nearby residents who could be in danger. The timing of the event was a significant factor that allowed for the immediate response of multiple officers. The Tac20 squad is a group of SWAT officers capable of responding to any part of the city. They typically assist areas of the city experiencing a heavy call load, or assist in mitigating tactical situations. The Tac20 squad responded to this situation and provided an immediate SWAT presence to assist with the unusual tactics required. Officers and supervisors agreed it was beneficial and fortunate that the incident occurred when the squad was available to assist.

The rescue of the woman and child inside the apartment was not without issue as SWAT does not routinely deploy with ladders. When officers realized they would need a ladder to rescue the occupants, they called the Tucson Fire Department (TFD) to bring ladders to the scene. The SWAT team routinely trains with TFD, but had never utilized the particular ladders TFD brought on this occasion. The ladders made significant noise when officers climbed them, which made a surreptitious extraction of the occupants almost impossible. To mitigate the problem, officers conducted a practice run to ensure they could safely conduct the rescue. Although necessary, the practice run caused a delay. Secondly, upon reaching the window, a SWAT officer needed to cut the window screen to create access. While not issued equipment, most SWAT officers carry knives or multi-tools suitable to this task. Leaders must ensure officers are appropriately equipped to complete assigned tasks.

TPD SWAT regularly trains alongside TFD for critical incidents. Both agencies report the training has been highly beneficial. One sergeant testified the training has taken the team to “the next level” and they plan to continue this training in the future. It’s also noteworthy the SWAT team has proactively trained with all of the different ladders utilized by TFD since this event. CIRB recognized the proactive nature of the TPD SWAT team.

The final issue identified during officer testimony was the difficulty one officer faced when he urgently needed to access another officer’s patrol vehicle, a Ford Explorer, and he could not get the doors to open. Until recently, TPD’s fleet of police vehicles consisted almost entirely of Ford Crown Victorias. Because of the ubiquity of the Crown Victoria, most officers could easily open another officer’s vehicle to obtain equipment or supplies in the event their own vehicle was far away or not equipped for a given situation. TPD is in the process of updating patrol vehicles to Ford Explorers, which are difficult to access by other officers. CIRB recommends officers carry multiple keys in the event they need to access a colleague’s vehicle.

### **Supervision**

During this incident there was strong supervision at all levels. No deficiencies were noted in the performance of field, investigative, or specialized response personnel.

### Wellness/BSU

The response by the Behavioral Science Unit (BSU) was considered excellent by all involved officers. It's important to note that individual officers process traumatic incidents differently. Following this event, all the officers felt the care they received from their chain of command and BSU more than adequately met their needs.

# CIRB MEMBERS

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Chairperson, Deputy Chief Chad Kasmar

Vice Chair, Captain Joe Puglia

Scribe, Lieutenant Troy Perrin

Member, Lieutenant James Brady

Member, Lieutenant Jennifer Pegnato

Member, Lieutenant Dave Leotaud

Peer Officer, Officer Ed Castillo

City Attorney, Ms. Julianne Hughes

Legal Advisor, Ms. Rebecca Cassen

Independent Police Auditor, Ms. Liana Perez

Independent Police Auditor, Mr. Mitch Kagen

Community Member, Ms. Anita Kellman

## Non-Voting Observers

TPOA Grievance Chair, Sergeant Steven Simmers

Office of Professional Standards, Sergeant Steve Erdman