

# TUCSON POLICE DEPARTMENT

## CRITICAL INCIDENT REVIEW BOARD

850 EAST FORT LOWELL ROAD

APRIL 10, 2018

OFFICER-INVOLVED SHOOTING



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## INVESTIGATIVE CASE INFORMATION

**CIRB Number:** 18-0205  
**TPD Case Number:** 1804100200  
**Date of Incident:** April 10, 2018  
**Location of Incident:** 850 East Fort Lowell

## INVOLVED PARTIES

### **Field Response**

Lead Police Officer Jeffrey Stover #34970

- Operations Division West – Squad 4 Patrol
- Rifle Operator
- Tenure: 24 years

### **Community Members**

Mr. Mark A. Powell Jr. 05/17/1978

- Shot twice in the upper torso
- Armed with 9mm handgun
- Deceased

Ms. Edith Martinez

- Robbery victim

## 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 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**

On April 10, 2018 at 8:49 a.m., Tucson Police Department (TPD) officers responded to a robbery in progress occurring at the Ace Cash Express located at 850 East Fort Lowell Road. The business manager, Mr. Ruben Moreno, called the victim, employee Ms. Edith Martinez, after she failed to check-in as expected upon opening the business. She denied being okay and indicated that she was being robbed by an armed suspect during their telephone conversation. Mr. Moreno called the alarm company and requested they call 911 to report the situation.

Officers were dispatched to the incident location at 8:51 a.m. and the first officer arrived at 8:52 a.m. Sergeant Roland Gutierrez acknowledged the call and took incident command. He coordinated the associated police response, called the business, and spoke to Ms. Martinez. He was able to ascertain that the robbery was still taking place at the business in his coded conversation with Ms. Martinez. She was able to articulate that the suspect (Mr. Mark Powell) was wearing a red shirt and was actively robbing the business.

Sergeant Gutierrez responded to the scene and continued to request and organize responding resources. Officer Jeffrey Stover responded to the scene at 8:57 a.m. and took a containment position on the northeast side of the building, which allowed him to have coverage on the main entrance of the business. Officer Stover is a trained rifle operator and deployed with his rifle. As officers responded, they took positions around the business to provide containment and to ensure that the armed suspect was not able leave the business or enter the surrounding neighborhoods.

Arriving officers took precautions to ensure that the suspect was unaware of the police response. Personnel took this precaution to reduce the likelihood that Mr. Powell would barricade himself and take Ms. Martinez hostage if he observed patrol vehicles. Mr. Powell exited the north door of the business at 9:06 a.m.

Officer William Bradway (set up on the northwest side of the property) transmitted over the radio that the suspect had a bandanna over his face and that he was exiting the building. Multiple officers gave commands for the suspect to get on the ground once he was clear of the building. Officer Bradway also transmitted that the suspect had a gun to his (the suspect's) head.

Officer Stover identified a silver handgun in Powell's right hand as the suspect exited the business and ran in his direction. Officer Bradway's body-worn camera (BWC) captured the suspect's actions as he left the building. The suspect attempted to flee, running north out of the

building, and ran directly towards Officer Stover, who was concealed behind a power pole on the northeast corner of the property.

Officer Stover confronted Mr. Powell, which caused him to retreat to the easement on the east side of the business. Officer Stover told OPS that Mr. Powell then put the gun up to his own head and moved toward the east side of the building and a parked, unoccupied vehicle. Officer Stover yelled, "Stop!" at Mr. Powell. Mr. Powell continued to walk to the passenger side of the vehicle, which was facing north.

Officer Stover told OPS that Mr. Powell turned toward the vehicle and pointed the firearm in his direction as he attempted to open the car door. Officer Stover perceived this as a lethal threat and he told OPS that he pulled the trigger of his rifle, but the rifle, "failed to fire." He said he immediately followed department training to prepare the rifle to deploy (this will be discussed in greater detail under the Rifle Malfunction section).

Officer Stover told OPS that Mr. Powell walked around to the driver side of the vehicle and again pointed his firearm at him at waist level as he twisted to his right, facing south. For a second time, Officer Stover was concerned that Mr. Powell was going to fire his weapon at him and he fired two shots from his rifle at Mr. Powell. He told OPS that Mr. Powell went down and he requested an individual first aid kit (IFAK) and medical response.

Officers immediately provided medical aid once it was determined that Mr. Powell no longer posed a lethal threat. Officers utilized equipment from an IFAK to provide aid until personnel from the Tucson Fire Department (TFD) arrived and took over care. Mr. Powell was transported to Banner-University Medical Center where he was pronounced deceased at 9:37 a.m. by Dr. Kulvatunyou.

Sergeant Gutierrez and Sergeant Anthony Archibald coordinated cover officers and scene management until Lieutenant James Wakefield was briefed and took incident command (IC) from Sergeant Gutierrez. Numerous officers were present at the time of the shooting to contain the large commercial property area. Due to the large area, fencing, and positioning, the personnel were not direct eyewitnesses to the shooting. Officers not interviewed by investigative personnel documented their information regarding hearing shots fired in their supplementary reports.

### **CHAIN OF COMMAND REVIEW**

Officer Stover's chain of command reviewed the investigative package prepared by OPS prior to the CIRB review. Following their review, the chain of command specifically addressed a policy violation committed by Officer Stover, but did not address tactics or other non-disciplinary issues. OPS and Officer Stover's chain of command found the lethal use of force to be within department policy. Officer Stover's actions were found necessary in response to the

immediate, lethal threat posed by Mr. Powell when he pointed his handgun at Officer Stover on two occasions. CIRB concurred with the assessment made by OPS and the chain of command.

The chain of command found that Officer Stover violated General Orders 3764 and 1330.2 when he failed to activate his Body-Worn Camera (BWC) during the incident. They deemed this mistake to be inadvertent and addressed the violation through restorative supervision. CIRB concurred with this determination.

### **CIRB ANALYSIS AND FINDINGS**

CIRB called Sergeant Gutierrez and Officer Stover to speak with the board during a formal convening held on December 20, 2018. CIRB board members had a full understanding of this officer-involved shooting after reviewing the complete criminal and administrative investigations; therefore, board questions were focused on specific process-related areas of inquiry.

#### **Victim contact**

CIRB commended Sergeant Gutierrez for his quick and creative thinking in acquiring vital information about what was occurring inside the business during an in-progress robbery so as not to place the victim in harm's way while she dealt with the suspect. He recognized that Ms. Martinez was in the presence of Mr. Powell and could not speak freely without fearing the suspect would overhear the conversation and know she was talking to the police. Sergeant Gutierrez quickly adapted to Ms. Martinez's "coded" conversation under the guise of discussing loan paperwork. For example, when he asked Ms. Martinez about the color of the paperwork, she was able to describe the color of the suspect's clothing. His interaction provided responding personnel with the information that there was one suspect involved in the robbery and a general description of the suspect's clothing.

When asked by CIRB if he would have done anything differently, Sergeant Gutierrez noted that he inadvertently disconnected with Ms. Martinez during their first phone call. He believed this occurred when he was transmitting on the radio to provide direction to responding officers. While this was not ideal, he quickly restored contact with her.

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

Sergeant Gutierrez provided initial direction over the police radio and assisted in getting resources to the officers responding to the robbery scene. This included requesting that a Flexbaton<sup>1</sup> be brought to the scene.

Officers contained the business and set up a perimeter. Officer Stover was positioned on the northeast side of the business, while other officers took positions of coverage at the remaining

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<sup>1</sup> A shotgun platform that fires a less-lethal beanbag which is meant to temporarily incapacitate a subject.

corners. Sergeant Gutierrez arrived on scene and was briefed by Officer Sean Ramsey, who was the first officer to arrive at the incident. Utilizing the principles of incident command (IC), only then did Sergeant Gutierrez take IC of the scene. A short time later, the suspect emerged from the business, holding a handgun.

Sergeant Gutierrez noted that the situation developed rapidly once he took IC, and he commented that he would have liked to verbalize his tactical plan over the radio. Less than 20 seconds passed from the time Mr. Powell exited the business to the time lethal force was deployed on the armed suspect. Sergeant Gutierrez acknowledged that his plan was not communicated well due to the pace at which the event unfolded. Sergeant Gutierrez also noted that he had requested on-duty hostage personnel response and was developing a crisis entry team, both of which were not finalized due to the suspect's rapid exit from the business.

When asked by CIRB for feedback on department training, Sergeant Gutierrez told CIRB that he felt there could be additional agency training on a how to manage a hostage situation. He articulated the challenges personnel can face facilitating a Hostage/Crisis Unit response while establishing contact with a suspect, versus containing a building and waiting for a suspect to exit a structure.

CIRB members discussed that while each incident's specificities might vary, there was no training or policy regarding which approach would be the most effective in situations like this. The Board further determined that each department member must calculate the most appropriate response based on factors they face during a developing incident. The training academy will create a refresher training to reinforce these principles.

### **Rifle malfunction**

Officer Stover stated that the suspect pointed a handgun at him, causing him to attempt to fire his rifle, but that when he pulled the trigger, the rifle did not fire. Officer Stover performed a gun clearing maneuver called a "tap rack," which is when an officer manipulates a firearm to clear a stuck or malfunctioning round. He told OPS that when he conducted this process, a live round was ejected from the rifle. Officer Stover then returned to a cover position and fired two shots only after the suspect pointed his gun at him a second time. The rifle fired with no additional failures.

Officer Stover's rifle was inspected by the department armorer and no defects were detected. The rifle was in operational order and the armorer determined that there was likely not a round in the chamber the first time Officer Stover pulled the trigger. Officer Stover, along with all other officers who carry a rifle, attends annual training and qualification, where they practice loading and carrying their rifles.

## **Patrol rifle program update**

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.

Training and deployment of patrol rifles continues to be refined through additional CIRB review (CIRB 18-0377). Also, the entire program underwent a wholesale update in the beginning of 2019. As part of that, what had been an annual training increased to three sessions per year 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, VirTra<sup>2</sup>, and the StressVest<sup>3</sup>.
- Session Three, 5 hours
  - The third session of training is devoted to night shooting, VirTra, and StressVest scenarios.

## **Supervision**

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

## **Wellness/BSU**

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

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<sup>2</sup> 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.

<sup>3</sup> StressVest™ is the world's first non-projectile force-on-force firearm tactical training system capable of delivering a pain penalty for training feedback.



Officer Stover noted that the academy's updated reintegration program was excellent. This program is tailored to individual officers and provides the opportunity to gain support and additional training opportunities to ensure that officers are ready to return to full duty.

### **CIRB post-board discussion**

CIRB members discussed two items that may benefit the department and community. First, they noted that it would be beneficial for newer police sergeants to shadow an incident commander following an officer-involved shooting, if practicable. This would have the benefit of exposing newer supervisors to the complexity surrounding these types of dynamic responses and help new sergeants better prepare themselves to respond to and lead a similarly complex incident in the future.

After hearing interest from department members, CIRB determined that it would be beneficial to create diverse training scenarios for sergeants to practice giving direction at scenes. With the recent addition of VirTra training aids (computer-based training in a nearly 360-degree setting), TPD personnel can train utilizing numerous different realistic scenarios. VirTra is fully customizable and will be an effective tool to augment other supervisory training.

# CIRB MEMBERS

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Chairperson, Deputy Chief Chad Kasmar

Vice Chair, Captain Joe Puglia

Scribe, Lieutenant Colin King

Member, Lieutenant James Brady

Member, Lieutenant Jennifer Pegnato

Member, Lieutenant Dave Leotaud

Member, Lieutenant Troy Perrin

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 Stacie Schaner