

TUCSON POLICE DEPARTMENT

CRITICAL INCIDENT REVIEW BOARD

TUCSON BOULEVARD/
BLACKLIDGE DRIVE

MAY 14, 2018

OFFICER INVOLVED
SHOOTING



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INVESTIGATIVE CASE INFORMATION

CIRB Number: 18-0268
TPD Case Number: 1805-14-0086
Date of Incident: May 14, 2018
Location of Incident: Tucson Boulevard/Blacklidge Drive

INVOLVED PARTIES

Field Response

Officer Matthew Powell #51785

- Operations Division East – DUI Enforcement Squad
- Department issued firearm: Glock 22 Gen4 .40 caliber pistol
- Tenure: 9+ years

Officer Robert Rabert #101381

- Operations Division Midtown – Squad 9 Patrol
- Riding in DUI apprenticeship program
- Tenure: 2+ years
- Resigned: June 19, 2019

Community Members

Mr. Paul Irvin

- Armed with a Llama Especial .380 caliber pistol
- Driver of vehicle

Mr. Nathan Botelho

- Passenger in vehicle

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). The OPS and CID investigations established the facts under review.

Once fact gathering and review 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 May 14, 2018 Officers Powell and Rabert were riding as a two-person unit conducting proactive DUI enforcement with the DUI Enforcement Squad near the area of East Grant Road and North Tucson Boulevard, when they observed a black Chevrolet dually pickup truck traveling westbound on Grant Road with a loud engine, suggesting possible engine problems. The truck made a right turn onto northbound Tucson Boulevard. The officers began to follow the truck and noticed one of the four dually tires was missing. The officers conducted a records check of the displayed license plate and discovered that the plate had expired in 2016. Officers Powell and Rabert effected a traffic stop at the 2500 block of East Blacklidge Drive at approximately 3:05 a.m.

As Officer Rabert approached the passenger side of the truck, he noticed that the registration year sticker did not match the license plate. Officer Rabert spoke with the passenger, Nathan Botelho, and Officer Powell contacted the driver, later identified as Paul Irvin. Mr. Irvin was unable to provide any identification or valid registration for the truck, and gave the false name of "Paul Erving." Officer Powell walked back to the patrol vehicle to conduct a records check, which revealed that the truck was registered to Paul Irvin, who was driving on a suspended license and had an active felony warrant. Further, the license plate had a 2018 sticker, yet Motor Vehicle Department records showing that the plate had expired in 2016, which is a fictitious plate violation under A.R.S. Title 28. Officer Powell then walked back to the truck and asked Mr. Irvin to step out of the truck. Mr. Irvin asked, "For what?" but nonetheless opened the door and exited the truck. As Officer Powell reached for Mr. Irvin's hands to detain him, Mr. Irvin immediately pulled away and began to run away.

Officer Powell gave chase, commanded Mr. Irvin to stop running, and warned him that he would deploy his Taser. Officer Powell saw Mr. Irvin reach toward the right side of his waistband and then immediately saw a muzzle flash and heard a loud "pop" sound, which he identifies as being a gunshot from Mr. Irvin's position. Officer Powell stopped, pointed and fired his department service weapon at Mr. Irvin, then continued to pursue him. Officer Powell then stopped again and took a second shot at Mr. Irvin, who fired again at Officer Powell. A bullet ricochet can be observed on Officer Rabert's body-worn camera, in close proximity to where Officer Rabert and Mr. Botelho were at the truck. Neither Officer Powell nor Mr. Irvin were struck by any bullets during the exchange of gunfire. Officer Powell stopped his foot pursuit, due to losing sight of Mr. Irvin.

Several seconds later, both he and Officer Rabert heard another gunshot coming from approximately two blocks from their location in the direction that Mr. Irvin had fled. Small unit tactics¹ were deployed to find and capture Mr. Irvin.

Officer Powell stated he was concerned Mr. Irvin was attempting to shoot him and Officer Rabert, so he fired at Mr. Irvin to reduce or eliminate the risk of being shot.

A search of the area yielded two .40 caliber casings. This was consistent with Officer Powell's statement and the number of rounds missing from his duty weapon's magazine. Further, a .380 cartridge casing was located in the dirt area in front of 2517 East Blacklidge, which was along the path Mr. Irvin traveled and was the approximate location of Mr. Irvin when he fired at Officer Powell.

Later that day, Mr. Irvin was located, taken into custody, and found to be in possession of a .380 pistol. Mr. Irvin admitted that he knew he had a warrant for his arrest and said he fired the pistol into the ground so Officer Powell would not pursue and arrest him.

ADMINISTRATIVE REVIEW

The Office of Professional Standards conducted an administrative review of this incident, including all aspects of the criminal investigation. The conclusion of that investigation found Officer Powell's use of force to be *In-Policy*.

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 that the lethal force used by Officer Powell was *Justified*.

CIRB ANALYSIS AND FINDINGS

CIRB also concluded that the lethal use of force by Officer Powell was within department policy. Officer Powell's actions were found to be necessary to protect the lives of the officers and community members in the immediate area.

This incident began as a lawful traffic stop for expired registration. It devolved into an officer-involved shooting after Mr. Irvin ran from Officer Powell and fired upon him. Officer Powell discharged his firearm at Mr. Irvin, but discontinued once he lost sight of him.

¹ Small Unit Tactics are methods of directing and coordinating a small group of officers to accomplish a particular task through the use of teamwork and tactics. They are commonly used to locate, contain, or capture a suspect.

CIRB evaluated components of the overall response. The following analysis highlights focused topics.

Lawful Purpose

Officers Powell and Rabert were conducting proactive patrol with the DUI Enforcement Squad near Grant Road and Tucson Boulevard when they observed Mr. Irvin's vehicle. Officers Powell and Rabert conducted a records check on the license plate and discovered that the registration on Mr. Irvin's vehicle expired in 2016. Officer Powell lawfully initiated a traffic stop for a civil traffic violation. Upon conducting further records checks, Officer Powell discovered that not only was the plate expired by two years, but also that a false tab of 2018 was being displayed, which is a misdemeanor criminal offense. While completing additional records checks, Officer Powell discovered Mr. Irvin's true identity. Officer Powell had lawful purpose to conduct a traffic stop of Mr. Irvin and, once he ran a records check, developed probable cause for his arrest.

Tactics

Provocation

The entirety of this use of force was captured on body worn camera (BWC) systems. In review of the BWC and interviews conducted of Officer Powell and Officer Rabert, there was no indication that Mr. Irvin was provoked by Officer Powell's actions. Mr. Irvin's actions were his alone and he admitted during his interview that he purposely shot his handgun to avoid being arrested.

De-escalation

Officer Powell appropriately attempted to detain Mr. Irvin prior to him fleeing. Further, during the pursuit, Officer Powell gave Mr. Irvin verbal commands to stop running and threatened to use his Taser. After being fired upon and returning fire, Officer Powell ended the foot pursuit for tactical reasons and to prevent another potentially lethal encounter with Mr. Irvin.

Proportionality

Officer Powell's use of force began as empty hand soft control² when he attempted to detain Mr. Irvin. Mr. Irvin immediately pulled away from Officer Powell and began to flee. Officer Powell escalated his force by threatening the use of a Taser in response to Mr. Irvin's active attempt to resist arrest by fleeing. When Mr. Irvin used deadly force by firing his weapon, Officer Powell responded with the use of deadly force to defend Officer Rabert, Mr. Bothelho, and himself. Officer Powell's use for force escalated proportionally to the level of resistance used by Mr. Irvin.

² Empty hand soft control is a technique using the officer's body, without the aid of weapons or equipment, meant to separate, guide, and/or control, which does not cause injury greater than temporary pain or redness.

Use of Force

Officer Powell's use of force consisted of the application of empty hand soft control techniques, the threatened use of an intermediate weapon³, and the use of deadly force. His use of force was consistent with department policy, procedure, and training guidelines.

CIRB MEMBERS

Chairperson, Deputy Chief Chad Kasmar

City Attorney, Ms. Julianne Hughes

Independent Police Auditor, Mr. Mitch Kagen

³ Weapons that provide a means of controlling subjects when deadly force is not justified and empty hand control techniques are insufficient or tactically unsound.