

TUCSON POLICE DEPARTMENT Force Review Board

Incident Information	
Case Number: 2008220071	OPS Number: 20-0398
Date of Incident: August 22, 2020	OPS Findings and Recommendation: Within Policy
Involved Officers: Ofc. Calderon (#103058), LPO Jahnke (#53673), Sgt. Lansdale (#53365)	COC Findings and Recommendation: N/A, Within Policy
Incident Location: 3100 block of East Behan Street	County Attorney Findings: Justified
Level of Force	
Type IV – Officer-involved shooting	
Investigative Information	
Investigating Supervisor: Sgt. Brian Knight	
Unit [Team/Squad]: TPD Office of Professional Standards	
Date Investigation Complete: August 12, 2021	
Date Investigation Follow-up [if any] Complete: N/A	
Board Information	
Date of Board: September 13, 2021	Board Chair: Assistant Chief Kevin Hall
Scribe: Lisa Markkula	Member: Officer Ryan Azuelo
Member: Sergeant Matt Brady	Member: Sergeant Eric Evans
Member: Officer Mike Gamez, TPOA	Member: Officer Ariel Giessuebel
Member: Lieutenant Thomas Hawke	Member: Mitchell Kagen, Independent Police Auditor
Member: Officer Michael Krammes	Member: Officer Daniel Lee
Member: Lieutenant Ray Mechtel	Member: Lieutenant Belinda Morales
Member: Jimmy Munoz-Cano, Community Member	Member: Sergeant Paul Sheldon
Member: Detective Jason Southard	Member: Pam Treadwell-Rubin, Community Member
Member: Craig Wilson, Community Member	Member:
Date of Submission: October 6, 2021	Legal Advisor: Rebecca Cassen
Topics for Review	
Tactics/Decision Making	<input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Equipment	<input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Supervision	<input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Reporting, Investigation, and Review	<input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
OPS Findings	<input checked="" type="checkbox"/> Agree <input type="checkbox"/> Agree / Out of Policy <input type="checkbox"/> Disagree
Analysis Methodology	

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The Tucson Police Department (TPD) Force Review Board (Board) reviewed this incident with a focus on department policy, tactics/decision making, supervision, equipment, reporting, internal investigation, and training. Determining administrative violations and assigning discipline resulting from the incident are the purview of the Office of Professional Standards (OPS) and the involved officers' chain(s) of command. Those recommendations occur independently and prior to this review.

The Board evaluated photographs, video, documents, interviews, reports, training records, and associated materials generated during the criminal and administrative investigations of this incident, in addition to Department General Orders. **The Board determined that the assembled materials were sufficient for a thorough review of the incident and that no additional evidence collection or interviews were necessary.**

On August 23, 2021, The Office of Professional Standards made extensive materials available to FRB members, including:

- Administrative documents
- Office of Professional Standards Investigative Summary
- Investigative documents, including
 - Case Reports
 - Crime Lab Reports
- 911 call audio
- Crime scene photographs
- Body-worn camera video
- Witness and Officer Interviews
- Personnel Reports
- Training documentation
- Pima County Attorney's Office declination letter

Event Summary

On August 22, 2020, officers from Operations Division South (ODS) responded to the area of East Behan Street and South Bonney Avenue for an embezzled/stolen vehicle that the owner was tracking using GPS. At approximately 1040 hours, Officer Engelkes located and attempted to conduct a traffic stop using his lights and siren, but the vehicle fled and officers did not pursue. Community Service Officer (CSO) Bojorquez contacted the vehicle owner to complete a police report. The vehicle owner gave updated GPS locations to CSO Bojorquez, who relayed that information to officers. That information led Lead Patrol Officer (LPO) Jahnke, Officer Calderon, Officer Lujan, Officer Marroquin, and Officer Engelkes to the intersection of East Behan Street and South Bonney Avenue, by a trailer park. Aware of how many units were in the area, LPO Jahnke assumed Incident Command.

Officer Calderon canvassed the area and located the suspect vehicle in the middle of the mobile home park, backed in between two units. Officer Calderon stopped his marked police vehicle in front of the suspect vehicle and radioed that he had located the vehicle. He described both passenger side doors as open, and a female was standing near the rear passenger door. She began to run south as Officer Calderon exited his police vehicle. Officer Calderon was readily identifiable as a police officer as he was wearing a police

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uniform. A male (later identified as Fernando Valenzuela) was in the driver's seat. Officer Calderon said he could see him moving around a lot in the front seat, but could not tell what he was doing. Officer Calderon shouted "Show me your hands! Hey!" to Mr. Valenzuela. Officer Calderon radioed that the female was running south. Mr. Valenzuela exited the vehicle and turned to run south. Officer Calderon saw him raise his arm, pointing in his direction, and heard him shoot at him. Officer Calderon started moving to cover at the front of a unit as Mr. Valenzuela fired an additional two rounds at Officer Calderon. Officer Calderon radioed "Shots fired" and moved to the east, giving a suspect description as he began moving south. Mr. Valenzuela fired another round. Officer Calderon radioed that the suspect was "actively shooting." Sergeant Lansdale implemented a citywide 10-99 (Officer needs Emergency Assistance) response. This prompted officers from across the city to respond with lights and sirens to the mobile home park.

LPO Jahnke responded to the driveway where Officer Calderon had parked his patrol vehicle. He ran south to the next driveway and radioed that he saw two males running west. He continued running south to East Behan Street and then west on Behan Street. LPO Jahnke had not heard any further radio transmissions from Officer Calderon, and had heard approximately 15-20 shots from the mobile home park. He believed that Officer Calderon had been shot and was down and that this was an active shooter situation. LPO Jahnke entered the mobile home park alone to stop the threat. Once he entered, he began to move west.

Officer Calderon encountered Mr. Valenzuela a second time. This time, he was hiding behind a trash can. Officer Calderon described Mr. Valenzuela as actively looking for him. He felt Mr. Valenzuela was "hunting" him to kill him. Officer Calderon fired once at Mr. Valenzuela; the round went through the top of a large plastic garbage can and hit a metal pole next to it. Mr. Valenzuela then fled north and west.

Officer Calderon moved west and encountered Mr. Valenzuela a third time between two mobile homes. He ran north toward the suspect as the suspect ran west. Mr. Valenzuela raised his arm and pointed a gun at Officer Calderon. Officer Calderon fired three rounds at Mr. Valenzuela. Two of the rounds struck the lower side of one mobile home; the third struck another mobile home. Mr. Valenzuela fired at Officer Calderon. His round struck near the top of a mobile home, entering the structure and going through a wooden cabinet, refrigerator, east wall, and exiting the home, coming to rest in front of another mobile home. Criminal investigators were not able to identify any other structures shot by the suspect. Mr. Valenzuela continued west, then south, and Officer Calderon lost sight of him.

Officer Calderon then saw LPO Jahnke in the alley, moving in the wrong direction (north). He shouted out a warning that the suspect was behind him, to the south. LPO Jahnke turned around, and seconds later, Mr. Valenzuela rounded the corner and pointed a pistol and a short-barreled rifle (SBR) at him. LPO Jahnke fired six rounds at the suspect, striking him three times. The three other rounds fired by LPO Jahnke hit and penetrated the trailer park office wall, coming to rest in various locations in and adjacent to the office.

Mr. Valenzuela fell to the ground, eventually dropping both weapons. LPO Jahnke and Officer Calderon were the first two officers to reach him. Officer Marroquin was third to arrive and placed the suspect in handcuffs. Officer Lujan responded a short time later. Officers immediately rendered first aid using their Individual First Aid Kit (IFAK) and requested the Tucson Fire Department respond. TFD transported Mr. Valenzuela to Banner University Medical Center.

Additional responding officers, including members of the Pima County Sheriff's Office (PCSO), contained the area and continued to look for the female and other male who ran from the suspect vehicle. Both were located and detained without incident.

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Days later, Mr. Valenzuela was released from the hospital and booked into the Pima County Jail. Detectives charged him with two counts of Aggravated Assault-Deadly Weapon/Dangerous Instrument on a Peace Officer, Discharge of a Firearm in City Limits, Prohibited Possessor of a Firearm, and Felony Fleeing from Law Enforcement.

Board Findings

Based on its review of materials, the Board concurred with the findings of the Office of Professional Standards that the officers' actions were within department policy.

Tactics/Decision Making

1. Did the officer(s) employ tactics consistent with policy?

- YES Based on the documentation provided, the tactics employed appear to be consistent with policy .
 NO Based on the documentation provided, the tactics employed do **NOT** appear to be consistent with policy.
 If NO, please explain:

2. Did the officer(s) employ tactics consistent with training?

- YES Based on the documentation provided, the tactics employed appear to be consistent with training.
 NO Based on the documentation provided, the tactics employed do **NOT** appear to be consistent with training.
 If NO, please explain:

3. Did the involved officer(s) make reasonable efforts to de-escalate prior to using force?

- YES
 NO
 NOT FEASIBLE

If NO, please explain:

4. Could additional de-escalation tactics have been used in the circumstances?

- YES
 NO

If YES, please explain:

5. Did the officer's(s') action(s) contribute to the need to use force?

- YES
 NO

If YES, please explain:

Check all that apply for each officer:

- None
 Refer officer to Chain of Command
 Refer officer to Training
 Refer officer/case to OPS
 Refer officer to other:

Comments, Explanations, and/or Recommendations: The suspect was not contained and was shooting, including at an officer, in a residential area. Officers needed to pursue and eliminate the threat. They displayed enormous courage in doing so. Had officers attempted to slow this particular situation down, the suspect would have hidden (as he attempted to do behind a trash can), which would have posed its own dangers, both to officers and to the neighborhood.

Equipment

6. Was the equipment used within policy/training guidelines?

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<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If NO, please explain:
7. What less-lethal tools were available to the officer(s), and if so, were they feasible in this situation? On officer's(s) person: In vehicles/not deployed: In the field not at the scene: Less-lethal tools were available but not feasible.
8. What additional equipment could have been used during the incident? (e.g. shield, LRAD) A K9 might have been helpful in this incident. At the time, K9 units were not available. Now, a K9 unit is on duty during the day.
Supervision
9. Was a supervisor present at the time force was used? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
10. If yes, did the on-scene supervisor(s) provide appropriate tactical guidance and support to the field during the incident? <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A
11. Did the supervisor(s) provide appropriate tactical guidance and support to the field after the incident? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A If NO, please explain: Check all that apply for each supervisor: <input checked="" type="checkbox"/> None <input type="checkbox"/> Refer supervisor to Chain of Command <input type="checkbox"/> Refer supervisor to Training <input type="checkbox"/> Refer supervisor/case to OPS <input type="checkbox"/> Refer supervisor to other:
Comments, Explanations, and/or Recommendations: All OPS investigations of officer-involved shootings include a review of supervisors' actions, now under the heading "supervisor during a critical incident." Previously, this automatic review came under the heading "failure to supervise," whether or not there was any indication of a failure to supervise.
Reporting, Investigation, and Review
12. Was the review thorough, complete, and supported by the evidence presented? <input checked="" type="checkbox"/> YES – The review board finds that the investigation is thorough and complete. <input type="checkbox"/> NO – The review board finds that the investigation is NOT thorough and complete. Provide feedback to investigator(s):
Comments, Explanations, and/or Recommendations: The Board discussed interview methods and were pleased with the more open-ended approach to OPS interviews in this case. Department members

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discussed using evidence-based interview methods, such as empathetic interviewing, letting people talk, then coming back with clarifying questions, as opposed to a more adversarial technique.

Findings

13. Is the Use of Force investigation properly categorized by type? Please explain.

- YES
 NO

14. Was the officer's(s') use of force necessary, reasonable, and proportional?

- YES – Based on the documentation provided, the force used was consistent with TPD's Use of Force policy.
 YES, BUT OUT OF POLICY – Based on the documentation provided, the force used was NOT consistent with TPD's Use of Force policy; however, the force was objectively necessary, reasonable, and proportional.
 NO – Based on the documentation provided, the force used was NOT consistent with TPD's Use of Force policy.

Comments, Explanations, and/or Recommendations: There was some discussion of the officers' having fired 10 shots with 3 hits. The national average is 20%. This was 30%, better than the national average. TPD is moving toward using red dot sights on weapons and that will likely improve accuracy. With the "red dot," officers can fire with both eyes open, seeing more of their surroundings.

There was also discussion of using rounds that would not go through, for example, building walls. In TPD's rifle program, rounds are chosen that almost instantly deliver all their energy when they hit their target. With handguns, it's a balance between that and being able to shoot through, for example, automotive glass.

Board Recommendations

15. Are there any issues or lessons learned from this incident that should be communicated?

- YES – See additional comments below.
 NO

Refer to:

- Involved Officer(s)/COC
 Legal
 Training
 Other: Executive Leadership Team

Comments, Explanations, and/or Recommendations: Drones were again brought up as a potential way to keep track of an armed, fleeing suspect. The Board asked if the exchange of gunfire between suspects and officers had increased over the years. It has not; however, members of the public shooting at each other has increased.

Incident Chronology

TPD Event / TFD Run number: E202350415
Case number: P2008220071

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10:18:09 Initial call comes in. Manager reports a stolen vehicle. Vehicle was rented and due 8/10 (it is now 8/22).

10:21:42 First unit dispatched

10:22:26 Caller gives location of vehicle from GPS: in motion Park and Irvington

10:29:39 GPS showing near hotels on Elvira

10:37:24 1A14 has eyes on the vehicle in the 6900 block of South Tucson Boulevard

10:39:39 Vehicle takes off

10:41:29 Officer does not pursue vehicle

10:41:38 4 units now assigned

10:42:55 6 units now assigned

10:44:10 Vehicle fails to stop, takes off from officers

10:47:11 7 units now assigned

10:49:59 GPS showing vehicle no longer moving: at 3100 block East Behan Street

10:55:06 1 unit is circling the mobile home park

10:57:27 Officer Calderon sees a female and a male exit the vehicle. The male fires shots, runs.

10:57:52 Male suspect "actively shooting"

10:59:15 Additional shots fired

10:59:19 8 units now assigned

10:59:34 LPO Jahnke fires shots, striking the suspect

11:01:50 10-99 (officer needs emergency assistance) called by TPD; all officers are ok

11:05:08 Female is detained

11:06:22 27 units now assigned

11:06:32 The scene is secured for medics to move in and treat the suspect

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Pima County Attorney's Office

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www.pcao.pima.gov

Barbara LaWall
Pima County Attorney

November 4, 2020

Chief Chris Magnus
Tucson Police Department
270 S. Stone Avenue
Tucson, AZ 85701

**Re: Officer Involved Shooting/TPD Case #2008220071
Officer Edward Janke and Officer Jesus Calderon**

Dear Chief Magnus:

The Pima County Attorney's Office has completed an independent review of the above-referenced officer-involved shooting incident in which Tucson Police Department Officers Edward Janke and Jesus Calderon both fired their weapons in response to an immediate and deadly threat posed by Fernando Valenzuela. This review is strictly limited to a decision on whether to file criminal charges against Officers Janke and Calderon by assessing the facts, and by applying Arizona statutes defining both criminal offenses and legal justification defenses to criminal liability.

The scope of our legal inquiry is narrow and limited. We only address whether sufficient admissible evidence exists to prove that a crime has been committed under Arizona law, and whether there is sufficient evidence to support the filing of a criminal charge in connection with the shooting. In making that determination, we have also considered whether the use of deadly physical force was or was not legally justified as that term is defined in Arizona law as a defense to criminal liability.

Issues of civil liability, departmental policies regarding use of force and de-escalation tactics and procedures are not reviewed or considered. Our review is different and involves a substantially higher standard of review than that applied to personnel matters or civil liability. For the reasons set forth below, we conclude that this shooting was lawful.

The incident occurred on August 22, 2020, at approximately 11 am in a Mobile Home Park in the area of Behan and Country Club. Earlier that morning, at approximately 10:16 am, a local car rental company called police to report a stolen vehicle that should have been returned on August 10, 2020. Officer Engelkes located the vehicle and attempted a traffic stop, but the driver

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Fernandez saw the suspect, later identified as Mr. Arviso, walk east through the wash. Body worn camera video from Officer Fernandez shows Mr. Arviso in the distance at the ramp on the east side bank. Mr. Arviso walked up the ramp at 3:48 p.m. Several TPD officers chased him on foot and commanded him to drop his gun. Mr. Arviso quickly moved into an eroded ditch and crouched low to the ground.

Two patrol vehicles were stopped about thirty yards from Mr. Arviso. Officer Knowlton and four other officers positioned themselves directly north of Mr. Arviso and used one patrol vehicle as cover. Officer Knowlton aimed his department-issued patrol rifle at Mr. Arviso. Officer Mendoza, Officer Azuelo, and several other officers positioned themselves northeast of Mr. Arviso behind the second patrol vehicle. Officer Mendoza identified herself as a Tucson Police Officer and over the next ten minutes, repeatedly commanded Mr. Arviso to surrender using a loudspeaker. Officer Azuelo also identified himself as a Tucson Police Officer and issued loud commands to Mr. Arviso, explaining that that he could guarantee Mr. Arviso's safety if he would put down his gun and walk out with his hands raised.

Mr. Arviso put his gun down at one point but then quickly picked it back up. Officers also saw him aim the gun at his own head and to the south. Mr. Arviso extended his right arm and pointed the gun to the south toward Valencia Road, which TPD officers had cleared as a safety measure. After he pointed the gun to the south, Mr. Arviso, as observed by several officers², pointed the gun in a clockwise sweeping motion ending at Officer Knowlton and the officers behind the patrol vehicle. Officer Kush then heard Officer Knowlton release the safety on his rifle and fire the first of his two shots.

Due to the terrain, none of the available body worn cameras captured an image of Mr. Arviso pointing the gun at Officer Knowlton, and Mr. Arviso was not always visible. However, statements captured by the body worn camera immediately before and after the shooting corroborate that Mr. Arviso had pointed his gun at officers before they fired. The body worn camera recorded Officer Knowlton saying that he intended to fire if the suspect pointed the gun at them. Just before the first shot was fired, Officer Fehringer said the suspect was pointing his pistol at them. Nine seconds before the first shot, Officer Knowlton said, "I see the gun, he's pointing it to the west." About seven seconds later, Officer Kush said, "[h]e's pointing the gun towards us." Officer Knowlton then fired the first shot, which missed Mr. Arviso. Officer Knowlton's second shot was fired two seconds after the first shot. Officer Knowlton said, "[s]econd one was, I believe, a hit. Did you see that gun pointed toward us?" Officer Kush replied, "yes."

Officer Fehringer said the first shot from Officer Knowlton had no effect and that the suspect was still pointing the gun at them when Officer Knowlton fired his second shot. Several officers saw the second shot strike Mr. Arviso, who dropped and stopped moving. Officers found Mr. Arviso motionless on the ground with a gunshot wound on the right side of his head. His right hand held a silver .380 pistol with black grips. Officer Kidd observed that Mr. Arviso's finger was still on the trigger. Mr. Arviso succumbed to his injury.

Three recovered spent cartridge cases from the Big 5 parking lot shooting were later determined to have been fired from Mr. Arviso's silver .380 pistol. A fourth spent cartridge case was found with Mr. Arviso and had been fired from the .380 pistol. Mr. Arviso did not fire his weapon from his concealed position in the ditch. This fourth spent cartridge case was likely caught up in Mr. Arviso's clothing after he fired two shots in the wash. Mr. Arviso's weapon contained a live round in the chamber.

² Officers Cortez, Kush, and Fehringer were standing next to Officer Knowlton and confirmed that Mr. Arviso pointed the gun at them before Officer Knowlton fired.

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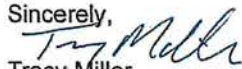
Here, Mr. Valenzuela wielded a firearm in each hand as he ran through the residential area and fired at Officer Calderon. It is clear that Officer Calderon discharged his weapon at Mr. Valenzuela in an attempt to protect himself and residents of the mobile home park. Accordingly, Officer Calderon was legally justified in his use of deadly force.

Officer Janke had just turned around when he was faced with an assailant wielding two separate firearms, one in each hand, that were being raised at him. Officer Janke was aware that Mr. Valenzuela had fired upon Officer Calderon at several different locations within this residential area. Officer Janke was aware that Mr. Valenzuela had been ignoring commands by Officer Calderon to surrender as he continued to evade police through the mobile homes. Body worn camera footage from Officer Janke clearly displays Mr. Valenzuela raising both firearms towards him when Officer Janke fired his weapon. It is clear that Officer Janke was acting in self-defense and defense of others when he shot Mr. Valenzuela. Accordingly, Officer Janke was legally justified in his use of deadly force.

For these reasons, the Pima County Attorney's Office declines to file any criminal charges against Officer Janke or Officer Calderon arising from this incident.

If additional materials are obtained in the future, I would appreciate the opportunity to review such materials to consider whether they add to my understanding of this incident. If you have any questions or need anything else in connection with this matter, please contact me at 520-724-5493.

Sincerely,



Tracy Miller

Bureau Chief, Special Victims Bureau

Cc: Barbara LaWall, Pima County Attorney
Nicol R. Green, Chief Trial Counsel
Detective Patrick Robinson, TPD

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Advanced Training Section Commander, Assistant Chief, and Chief Signatures

[Handwritten Signature]

Lieutenant Signature

07.14.23

Date

- I agree with the Force Review Board's findings.
 - I disagree with the Force Review Board's findings.
- Comments/Additional Recommendations:

[Handwritten Signature]
32623
15-14-23

Assistant Chief Signature

7.14.2023

Date

- I agree with the Force Review Board's findings.
 - I disagree with the Force Review Board's findings.
- Comments/Additional Recommendations:

[Handwritten Signature]

Chief Signature

7-18-2023

Date

- I agree with the Force Review Board's findings.
 - I disagree with the Force Review Board's findings.
- Comments/Additional Recommendations:

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Specific Recommendations and Assignments for Follow-Up

1. **OPS Referrals** None
 - a. **Officer Name and PR**
 - b. **General reason for referral (for each officer)**

2. **Individual officer training recommendations/Individual referrals** None
 - a. **What unit will address follow-up?**
 - b. **What follow-up is requested?**
 - c. **When is a response due?**

3. **Department training recommendations**
 - a. **What unit will address follow-up?** Training
 - b. **What follow-up is requested?** Continue to conduct firearms training that includes stressful scenarios.
 - c. **When is a response due?** N/A _____

4. **Policy change or clarification recommendations** None
 - a. **What unit will address follow-up?**
 - b. **What follow-up is requested?**
 - c. **When is a response due?**

5. **Procedure change or clarification recommendations** None
 - a. **What unit will address follow-up?**
 - b. **What follow-up is requested?**
 - c. **When is a response due?**

6. **Equipment recommendations**
 - a. **What unit will address follow-up?**
 - b. **What follow-up is requested?** Investigate the possibility of using drones in tactical situations, which has been brought up before. (See FRB 20-0530.)
 - c. **When is a response due?**

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Department Responses to FRB Recommendations

Rec. #	Recommendation	Action Plan/Assignments	Target Date
1.	Continue to conduct firearms training that includes stressful scenarios.	Training	Ongoing
2.	Investigate the possibility of using drones in tactical situations, which has been brought up before. (See FRB 20-0530.)	Currently being explored by the Patrol Services Bureau and SWAT	N/A
3.	Continue to use evidence-based interview methods in administrative interviews, such as starting with open-ended questions.	OPS	Ongoing