

TUCSON POLICE DEPARTMENT Force Review Board

Incident Information	
Case Number: 2008040022	OPS #: 20-0359
Date of Incident: 08/04/2020	OPS Findings and Recommendation: Within policy
Involved Officers: Ofcs. Bowman (103056), Frank (50737), Knorr (10222), & Schnomisch (102565)	COC Findings and Recommendation: Concur/closed
Incident Location: 5100 block of East Waverly	County Attorney Findings: Justified/closed
Level of Force	
Type 0 - Use of handcuffs	
Investigative Information	
Investigating Supervisor: Sgt. Mark Ewings (45657)	
Unit [Team/Squad]: ODM/10, SRD/K9	
Date Use of Force Investigation Complete: 9/22/20	
Date Use of Force Investigation Follow-up [if any] Complete:	
Board Information	
Date of Board: 6/21/21	Board Chair: Assistant Chief Kevin Hall, TPD
Scribe: Lisa Markkula, TPD	Member: Matt Brady, TPD
Member: Leslie Gallagher, TPD	Member: Mike Gamez, TPD/TPOA
Member: Tom Hawke, TPD	Member: Engel Indo, Community Member
Member: Mieke Iventosch, Community Member	Member: Mitch Kagen, Independent Police Auditor
Member: Michael Krammes, TPD	Member: Paul Lefkowitz, Community Member
Member: Ray Mechtel, TPD	Member: Belinda Morales, TPD
Member: Jimmy Muñozcano, Community Member	Member: Robert Quesnel, TPD
Member: Adria Santa Anna, Community Member	Member: Paul Sheldon, TPD
Member: Pam Treadwell-Rubin, Community Member	Member: Stephanie Williams, Community Member
Member: Craig Wilson, Community Member	
Date of Submission:	Legal Advisor: Antonio Zapata, TPD
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

TUCSON POLICE DEPARTMENT

Force Review Board

Analysis Methodology

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.**

The Office of Professional Standards made the following materials available to FRB members on June 1, 2021:

- Administrative documents
- Office of Professional Standards Investigative Summary and Officer Report
- Investigative documents, including
 - Autopsy Report
 - Case Reports
 - Crime Lab Report
 - TFD Report
- 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 4, 2020, Officers Knorr, Schomisch, and Bowman responded to the 5400 block of E. Waverly regarding a prowler call. The elderly complainant [REDACTED] told dispatchers that an unknown male was in his backyard moving his furniture. [REDACTED] believed he might be under the influence of drugs. Officers Knorr and Schomisch located Jesus Gutierrez lying in the backyard. They noticed that he was having difficulty breathing and requested emergency medical services (EMS). Officer Bowman joined them in the backyard. They detained Mr. Gutierrez in handcuffs, placed him in the recovery position, and administered Narcan twice. They requested EMS a second time. Officer Frank arrived on scene during this time. The officers carried Mr. Gutierrez into the front yard so paramedics could reach him more easily and quickly. Once he was in the front yard, officers could not find a pulse. They unhandcuffed him and began cardiopulmonary resuscitation (CPR). Tucson Fire Department (TFD) paramedics arrived and assumed medical treatment but were unsuccessful in reviving him and Mr. Gutierrez was pronounced deceased.

TUCSON POLICE DEPARTMENT
Force Review Board

Officers located drug paraphernalia and suboxone in the backyard. The medical examiner ruled the death an accident due to intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine.

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: The only force used was placing the subject in handcuffs, which is recommended for safety prior to administering Narcan.

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 only force used was placing the subject in handcuffs, which is recommended for safety when administering Narcan, a medication that reverses the effects of opioids. People sometimes become violent after Narcan is administered.

Equipment

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

- YES
 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:

TUCSON POLICE DEPARTMENT Force Review Board

In vehicles/not deployed:

In the field not at the scene:

No less-lethal or lethal tools were used or needed by officers in this situation.

8. What additional equipment could have been used during the incident? (e.g. shield, LRAD)

The Board discussed equipment in the context of the officers moving the subject from the back yard to the front yard in order to expedite medical treatment by EMS. The Wrap was brought up but dismissed as inappropriate in this circumstance because there was no resistance. TPD SWAT has "MegaMovers" – a type of stretcher. Beyond the discussion of equipment, however, the Board felt that TPD leadership should seek expert medical guidance regarding moving someone suspected of overdose and see if there's any opportunity for improvement there to department policies and procedures.

The Board asked if Narcan was ever contraindicated and was told that it cannot cause harm but simply reverses the effects of opioids, if opioids are present.

Supervision

9. Was a supervisor present at the time force was used?

- YES
 NO

10. If yes, did the on-scene supervisor(s) provide appropriate tactical guidance and support to the field during the incident?

- YES
 NO
 N/A

11. Did the supervisor(s) provide appropriate tactical guidance and support to the field after the incident?

- YES
 NO
 N/A

If NO, please explain:

Check all that apply for each supervisor:

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

Comments, Explanations, and/or Recommendations:

The Board did not have any concerns with the supervision of the incident.

Reporting, Investigation, and Review

12. Was the review thorough, complete, and supported by the evidence presented?

- YES – The review board finds that the investigation is thorough and complete.
 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 did not have any concerns with the investigation of the incident.

Findings

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

TUCSON POLICE DEPARTMENT

Force Review Board

- YES Handcuffs are a Type 0 use of force.
 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:

The only force used was placing the subject in handcuffs, which is recommended for safety when administering Narcan. People sometimes become violent after Narcan is administered to reverse the effects of opioids.

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

The Board wrestled with trying to make recommendations for the department to consider, as it was felt that not only had officers followed policy; they had done a good job. The compassionate care and concern the officers displayed for Mr. Gutierrez was noted very favorably by Board members.

The Board felt that TPD leadership should seek expert medical guidance regarding moving someone suspected of overdose and see if there's an opportunity for improvement to department procedures.

Incident Chronology

TPD Event E202170086 / TFD Run number 2053594/F202170023

0228 - 911 call
0230 - Officer Knorr (3210), Officer Schomisch (3A07) dispatched, en route
0238 - Officer Bowman (3A02) dispatched
0239 - 3A07 arrived
0241 - 3210 arrived
0242 - 3A02 en route
0242 - 3A02 arrived
0242 - Officer Frank (S2) dispatched
0244 - S2 en route, arrived
0245 - 3A07 advised a male was laying on the ground, had "labored breathing," and requested medical attention. He asked 3A02 to bring Narcan. She told him that 3210 had Narcan with him.
0246 - Dispatched Engine 7

TUCSON POLICE DEPARTMENT

Force Review Board

0248 - Engine 7 en route
0249 - 3A07 advised they gave Narcan
0250 - 3A02 advised they need paramedics as soon as possible because the male was going in and out of consciousness.
0250 - 3A02 advised they gave 2nd dose of Narcan.
0251 - Engine 7 on scene
0252 - 3A02 advised they were not getting a pulse, paramedics were on scene, they unhandcuffed the male and were starting CPR.
0252 - Sgt. Dominguez (3U10) en route
0253 - TFD performed CPR
0254 - TFD provided oxygen via a re-breather
0255 - TFD provided an "IO" 250 ml
0256 - TFD provided "Epi 1:10,000" 1 mg
0257 - TFD provided 2 mg Narcan
0259 - TFD provided "iGel" Supraglottic Airway
0259 - S2 advised that TFD was still doing CPR
0304 - TFD provided "Epi 1: 10,000" 1 mg
0304 - TFD provided 1 mg Narcan
0313 - 3U10 arrived
0315 - 3U10 advised that the subject was pronounced deceased at *0253. *This time does not appear to be correct.
0321 - TFD confirmed Code 900/DOA
0323 - TFD In-Service

TUCSON POLICE DEPARTMENT Force Review Board



Pima County Attorney's Office

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Tucson, AZ 85701-1451

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Laura Conover
Pima County Attorney

February 26, 2021

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

Re: Tucson Police Department In-Custody Death Investigation 2008040022, Officers Barry Schomisch (Badge # 102565), Matthew Knorr (Badge # 102222), and Officer Michela Bowman (Badge # 103056).

Dear Chief Magnus:

The Pima County Attorney's Office has completed its independent review of the in-custody death investigation where Tucson Police Officers detained and handcuffed Jesus Gutierrez. This incident occurred at about 2:30 a.m. on August 4, 2020, in a residential neighborhood at the 5400 block of East Waverly Street. Officers responded to a 911 call whereupon they discovered Mr. Gutierrez lying on the ground in the back yard of the residence belonging to the 911 caller. Mr. Gutierrez had labored breathing and appeared to be unconscious. Officers handcuffed him to administer two doses of Narcan.¹ Mr. Gutierrez stopped breathing and officers began chest compressions. Tucson Fire Department (TFD) arrived on scene and attempted life-saving measures, but those efforts were unsuccessful. Mr. Gutierrez was pronounced deceased at the scene at 3:15 a.m.

This review is strictly limited to a decision about whether there is sufficient evidence to file criminal charges against Officer Barry Schomisch, Officer Matthew Knorr, or Officer Michela Bowman. The scope of our legal inquiry is narrow and limited. We only address whether there is sufficient admissible evidence to prove beyond a reasonable doubt 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 death. In making this determination, we reviewed and assessed the facts, and applied Arizona statutes defining criminal offenses. We also considered whether any use of restraint, physical force and/or deadly physical force and/or any other acts or omissions were or were not legally justified as a defense to criminal liability under Arizona law.

¹ NARCAN® Nasal Spray may counteract the life-threatening effects of an opioid overdose. Some patients may show aggressive behavior upon abrupt reversal of an opioid overdose. (www.narcan.com).

TUCSON POLICE DEPARTMENT

Force Review Board

Issues of civil liability or violations of departmental policies regarding use of force and de-escalation tactics and procedures are not the subject of our inquiry.² Our review involves a substantially different standard and a higher burden of proof than what is applied to personnel disciplinary matters or civil liability.

Facts Involving the Officers' Conduct:

The County Attorney's Office received and reviewed numerous written reports and other items supplied by Detective Josh Cheek, of the Tucson Police Department, including: the 911 call, the call texts received by officers on their mobile data terminals, audio communications, police reports, the autopsy and toxicology reports, witness statements, photographs, and body worn camera recordings. For legal reasons, we were unable to review statements given by the officers to internal affairs.³ Based on our review of the materials supplied by Detective Cheek, we understand the salient facts to be the following:

On August 4, 2020, at about 2:30 a.m. an elderly man called 911 to report that an unknown male was in his back yard and on his back porch. The man described that the male was moving all his patio furniture around and "tearing" things up in his back yard. He further described that the male was talking to himself and may be under the influence of drugs. He advised the dispatcher that he was 95 years old and lived alone. Officers were dispatched at 2:30 a.m.

Officer Matthew Knorr and Officer Barry Schomisch arrived at the residence and found an open gate leading into the back yard. When they walked through the gate and into the back yard, they found Mr. Gutierrez lying on his back on the ground in a somewhat confined area. Officer Schomisch advised dispatch that "the male is lying down on the ground," and has "labored breathing," and then he requested that dispatch "start meds" to their location. Officers Knorr and Schomisch announced their presence to Mr. Gutierrez in loud voices, but Mr. Gutierrez did not respond. The labored and rattled breathing can be heard on their body worn cameras. Officer Schomisch requested that other officers responding bring Narcan, whereupon Officer Knorr stated that he had some. In preparation for administering Narcan (*see* footnote 1), Officers Schomisch and Knorr rolled Mr. Gutierrez onto his stomach to detain him in handcuffs behind his back. Officer Schomisch placed Mr. Gutierrez in handcuffs and then he and Officer Knorr immediately rolled Mr. Gutierrez onto his side and gave him a dose of Narcan.

At that point Officer Michela Bowman arrived in the back yard. She was advised by Officers Knorr and Schomisch that they had just given Mr. Gutierrez a dose of Narcan. Officer Bowman suggested that they do sternum rubs to help keep Mr. Gutierrez conscious and breathing. The three officers did sternum rubs, kept Mr. Gutierrez on his side, and repeatedly said to Mr. Gutierrez "stay with us," "talk to us" and "what's your name." Officer Schomisch then left the back yard to obtain another dose of Narcan from one of the patrol vehicles. Officer Bowman and

² In this case policies and procedures were reviewed and considered only to determine potential criminal negligence or recklessness and what a reasonable officer would do under the same circumstances.

³ The officers' statements made in connection with a personnel investigation were not reviewed, because such review is not permissible in connection with a criminal investigation. It would violate their rights under the Fourteenth and Fifth Amendments to the U.S. Constitution, as explained by the Supreme Court in *Garrity v. New Jersey*, 385 U.S. 493, 499-500 (1967).

TUCSON POLICE DEPARTMENT

Force Review Board

Officer Knorr continued with sternum rubs and continued telling Mr. Gutierrez to “stay with” them.

Officer Kyle Frank then arrived in the back yard where Officer Knorr and Officer Bowman were trying to keep Mr. Gutierrez conscious. Officer Frank asked if Mr. Gutierrez was breathing. Officer Bowman responded that he was. Officer Frank later described to detectives that he observed that Mr. Gutierrez was breathing, drooling, and blinking his eyes but with a distant look. The officers questioned each other multiple times whether Mr. Gutierrez was breathing, each time they confirmed amongst them that he was. Officer Schomisch returned with another dose of Narcan and gave Mr. Gutierrez a second dose.

About 4 ½ minutes after Officer Schomisch’s request for paramedics, Officer Bowman asked for paramedics, code “10-18” (immediately). She described that Mr. Gutierrez was “in and out of consciousness.” Officer Frank decided that they should move Mr. Gutierrez to the front of the residence so that paramedics would have easier access to him. As the four officers started carrying Mr. Gutierrez to the front yard the sirens from the TFD vehicles could be heard in the background on the body worn cameras.

Once Mr. Gutierrez was placed down on the driveway, the officers immediately rolled him on his side. The officers then checked to see if he was breathing and checked for a pulse. Officer Bowman didn’t find a pulse and advised the other officers of that. At that time TFD paramedics were on scene but were still retrieving their equipment. The officers removed the handcuffs and performed chest compressions. TFD paramedics then took over first aid. This was about eight minutes after Officers Knorr and Schomisch first discovered Mr. Gutierrez in the back yard. Paramedics treated Mr. Gutierrez for approximately 20 minutes, whereupon Mr. Gutierrez was pronounced deceased at the scene.

Dr. Tiffany Morrison, a forensic pathology fellow under the supervision of Forensic Pathologist Dr. Krista Timm conducted the autopsy and authored the autopsy report. She reviewed body worn camera footage from the incident. She concluded in her report that the manner of death was accident and that the cause of death was ascribed to “intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine.” The toxicology results indicated that Mr. Gutierrez had cannabinoids, methamphetamine, and opioid analgesics - specifically buprenorphine and fentanyl in his blood. His urine also tested positive for Methamphetamine and Opioids. Mr. Gutierrez was 29 years old, 5’6”, and 172 lbs.

Legal Analysis:

In assessing criminal liability for restraining Mr. Gutierrez in handcuffs, first a determination must be made whether the officers knowingly restricted his movements without legal authority, in a manner that substantially interfered with his liberty. The law provides police officers with the legal authority as a defense to criminal liability if the restraint is accomplished by a peace officer acting in good faith, in the lawful performance of his or her duty. Here, the officers were acting in good faith in the lawful performance of their duties. The officers were responding to an emergency 911 call from an elderly man who lived alone that there was a male subject in his back yard, talking to himself, acting as if he were on drugs, and tearing stuff up. Once on scene,

TUCSON POLICE DEPARTMENT

Force Review Board

the officers found Mr. Gutierrez lying on the ground, non-responsive, and had labored breathing. Their criminal investigation very quickly became a medical emergency and the officers treated it as one.

One might question the decision to handcuff Mr. Gutierrez behind his back since he was unresponsive and in and out of consciousness. Arizona law authorizes peace officers to administer Narcan if they have been trained to do so. The law requires the development of a training module. The training provided to officers by the Tucson Police Department directs officers to use caution when administering Narcan because a rapid opioid withdrawal can result in agitation and combativeness, and also because drug addicts are at a higher risk for communicable diseases and bodily fluids are often present during an overdose. In addition, the officers were advised to protect themselves and to take into account that most overdoses involve the victim lying on the ground in confined quarters with awkward access." Given this context of the training they received and the warnings from the manufacturer, the officers were acting in good faith in the performance of their duties when they handcuffed Mr. Gutierrez.

In assessing potential criminal liability for Mr. Gutierrez' death, a determination must be made as to whether the officers caused Mr. Gutierrez' death, and if so, did they disregard a known risk of death or fail to perceive the risk of death during their contact with Mr. Gutierrez. When the officers found Mr. Gutierrez in the back yard, they immediately requested paramedics. After handcuffing Mr. Gutierrez, the officers immediately rolled him on his side in a recovery position. The officers then administered two doses of Narcan and then constantly assessed whether Mr. Gutierrez was breathing. Officer Bowman requested paramedics again when Mr. Gutierrez was "in and out of consciousness." They took Mr. Gutierrez to the front of the residence so that the paramedics would have easy access to him for their treatment. Finally, when they observed that Mr. Gutierrez had no pulse and was not breathing, they did chest compressions until TFD took over first aid. The officers were clearly aware of the risk of death and did not ignore that risk.

Even if there was an argument to be made that the officers ignored a known risk or failed to perceive a risk, there is no evidence that the officers caused Mr. Gutierrez' death. The State must prove, beyond a reasonable doubt, that but for the officers' conduct, through their acts or omissions, Mr. Gutierrez would not have died. To prove causation, the State must be able to prove, beyond a reasonable doubt, that the conduct of one or more of the officers contributed to and caused the death. The Medical Examiner's autopsy concluded that Mr. Gutierrez' death was not a homicide. She concluded that the death was an accident that was caused by "intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine." Here there is no evidence that the officers' conduct caused Mr. Gutierrez' death. Because there is insufficient evidence of any crime, the County Attorney's Office declines to file criminal charges.

TUCSON POLICE DEPARTMENT
Force Review Board

If additional materials are obtained in the future, we would appreciate the opportunity to review those materials to consider whether they add to our understanding of this incident. If you have any questions or need anything else in connection with this matter, please don't hesitate to contact me.

Sincerely,



Nicol R. Green
Chief Trial Counsel

cc: Laura Conover, Pima County Attorney,
Tamara Mulembo, Chief Deputy,
Dan South, Chief Criminal Deputy
Detective Josh Cheek, Tucson Police Department

TUCSON POLICE DEPARTMENT
Force Review Board

JESUS GUTIERREZ

20-2563

AUTOPSY REPORT

PIMA COUNTY, ARIZONA

TUCSON POLICE DEPARTMENT

CASE # 2008040022

AUGUST 5, 2020

Page 1

TUCSON POLICE DEPARTMENT
Force Review Board

20-2563

Re: JESUS GILBERTO GUTIERREZ

Page 2

FINAL DIAGNOSES:

- I. Intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine
- II. Schizoaffective disorder and drug use, clinical history
- III. Minor blunt force injuries
- IV. Simple serous cyst, right kidney
- V. Therapeutic intervention

OPINION:

In consideration of the known circumstances surrounding this death, the available medical history, and the examination of the remains, the cause of death is ascribed to intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine.

The manner of death is accident.

Digitally signed by Tiffany T. Morrison, MD
Forensic Pathologist Krista Timm, MD
Date: 2020.09.14 14:40:26 -07'00'

TUCSON POLICE DEPARTMENT Force Review Board

TUCSON POLICE DEPARTMENT PERSONNEL REPORT

TO: CHIEF OF POLICE	NAME OF PERSON ABOUT	
VIA: Bureau Commander	WHOM REPORT IS WRITTEN	
VIA: Captain J. Puglia #34981	Officer Knorr	PR#: 102222
Lieutenant M. Petersen #37962	Officer Bowman	PR#: 103056
	Officer Schomisch	PR#: 102565
	Officer Frank	PR#: 50737
<hr/>		
Div/Sq: ODM/10	Hours: 2100-0700	D.O.: TWR
SRD/K9	1800-0400	VARIES

EXECUTIVE REVIEW

DIVISION COMMANDER	CHIEF OF POLICE	BUREAU COMMANDER
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Reference: OPS Case Number 20-0359

Details:

On August 4th, 2020 Officers Knorr, Schomisch, and Bowman responded to 5 █ E. Waverly in reference to a prowler call. The complainant █ told dispatchers that an unknown male was in his backyard moving his furniture. █ believed he might be under the influence of drugs. Officers Knorr and Schomisch located Jesus Gutierrez in the backyard. They noticed that he had difficulty breathing and requested medical attention. They detained him in handcuffs and began treating him. Officer Bowman joined them in the backyard. Officers administered two doses of Narcan and placed him in the recovery position. They requested medical attention a second time. Officer Frank arrived on-scene during this time. They carried Mr. Gutierrez into the front yard so he could be easily accessible by paramedics. Once he was in the front yard, officers could not find a pulse. They unhandcuffed him and began cardiopulmonary resuscitation (CPR). Tucson Fire Department (TFD) paramedics arrived and assumed medical treatment. He was later pronounced deceased. Officers located drug paraphernalia and suboxone on the scene. The medical examiner ruled the death an accident due to intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine.

Allegations and Findings

Officer Bowman	
212 – Failure to Take Appropriate Action	UNFOUNDED
Officer Knorr	
212 – Failure to Take Appropriate Action	UNFOUNDED
Officer Frank	
212 – Failure to Take Appropriate Action	UNFOUNDED
Officer Schomisch	
212 – Failure to Take Appropriate Action	UNFOUNDED

INSTRUCTIONS:
 Maker shall sign and date report immediately after last sentence and then draw a line across page below maker's signature. Subsequent endorsements will be made in inverse rank order with each endorser drawing a line across page immediately below the endorser's signature. Back side of page will be used if more space is needed.

THIS REPORT IS CONFIDENTIAL – FOR OFFICIAL USE ONLY

TUCSON POLICE DEPARTMENT

Force Review Board

NARRATIVE (Continued)

Methodology:

The following materials were referenced in this investigation:

- 911 Call Audio
- TPD Event Chronology E202170086
- TFD Event Chronology F202170023
- Radio Transmissions
- Case Report 2008040022
- Body-worn Camera Footage
- Crime Scene Photographs
- Training Records
- Autopsy Report
- Crime Lab Analysis

Event Chronology Timeline:

TPD Event E202170086/ TFD Run number 2053594/F202170023

0228 – 911 Call
0230 – Officer Knorr (3Z10), Officer Schomisch (3A07) Dispatched, En route
0238 – Officer Bowman (3A02) Dispatched
0239 – 3A07 Arrived
0241 – 3Z10 Arrived
0242 – 3A02 En route
0242 – 3A02 Arrived
0242 – Officer Frank (S2) Dispatched
0244 – S2 En route, Arrived
0245 – 3A07 Advised a male was laying on the ground, had "labored breathing" and requested medical attention. He asked 3A02 to bring Narcan. She told him that 3Z10 had Narcan with him.
0246 - Dispatched Engine 7
0248 – Engine 7 En route
0249 – 3A07 Advised gave Narcan
0250 – 3A02 Advised they need paramedics as soon as possible because the male was going in and out of consciousness.
0250 – 3A02 Advised they gave 2nd dose of Narcan.
0251 – Engine 7 On scene
0252 – 3A02 Advised they were not getting a pulse, paramedics were on scene, unhandcuff and they were starting CPR.
0252 – Sgt. Dominguez (3U10) En route
0253 – TFD Performed CPR
0254 – TFD Provided Oxygen via a re-breather
0255 – TFD Provided an "IO" 250 ml
0256 – TFD Provided "Epi 1:10,000" 1 mg
0257 – TFD Provided 2 mg Narcan
0259 – TFD Provided "iGel" Supraglottic Airway
0259 – S2 advised that TFD was still doing CPR
0304 – TFD Provided "Epi 1:10,000" 1 mg

Page 2 of 8

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TUCSON POLICE DEPARTMENT

Force Review Board

NARRATIVE (Continued)

0304 – TFD Provided 1 mg Narcan

0313 – 3U10 Arrived.

0315 – 3U10 advised that the subject was pronounced deceased at *0253. **This time does not appear to be correct.*

0321 – TFD Confirmed Code 900/DOA

0323 – TFD In-Service

Investigative Summaries:

Mr. Jesus Gutierrez Background

Jesus Gutierrez's family were contacted and notified of his death. During that interview, Detective Cheek learned that Mr. Gutierrez was homeless and suffered from mental health problems. When he was in a manic state, he would frantically move furniture around. He had substance abuse problems and used methamphetamine and heroin. According to family members, he had been in Northwest Hospital a few days before his death. At the time of his death, he had two active warrants for his arrest. One was for trespassing and the other was related to a dangerous drug violation.

911 Call

██████████ called 911 and stated an unknown male was sitting on his back porch. He said he, "looks like he's doing exercises" and that he was "going nuts" moving all the furniture. ██████████ stated, "he's having some kind of problem." The dispatcher asked if he was under the influence of drugs or alcohol. ██████████ responded, "probably drugs." He could see the individual "rolling around on the ground." At this time noises could be heard in the background. ██████████ stated the male was talking to himself. At 00:15:51 ██████████ noticed that he couldn't hear the male in his backyard. ██████████ observed the officer's flashlights at 00:16:30 of the call. He stated, "Looks like they might have found him" at 00:18:19. Additional voices are heard in the background of the call. Later, Officer Bowman could be heard saying, "Stay with us OK" in the background. Sirens are heard at 00:22:03.

Autopsy Results

Mr. Gutierrez's autopsy was conducted on August 5, 2020 at the Pima County Office of the Medical Examiner. It was performed by Tiffany Morrison, M.D.

The final report stated:

- Intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine
- Schizoaffective disorder and drug use, clinical history
- Minor blunt force injuries
- Simple serous cyst, right kidney
- Therapeutic intervention

The opinion is listed as, **"The cause of death is ascribed to intoxication by the combined effects of buprenorphine, fentanyl, and methamphetamine. The manner of death is accident."**

Several abrasions and lacerations were noted on his head and body. The abrasions or contusions were between 1-2.5 centimeters. Note that officers located Mr. Gutierrez lying on the ground. He was moved to the cement driveway where officers and paramedics performed CPR on him. He had a fractured anterior right 4th rib "consistent with resuscitation."

Page 3 of 8

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TUCSON POLICE DEPARTMENT

Force Review Board

NARRATIVE (Continued)

Crime Lab Analysis

Items 07B and 09 were both tested by the Tucson Police Department Crime Laboratory. Both items were plastic baggies with residue that were located at the scene. Both tested positive for methamphetamine.

Victim Interview

Detectives Cheek and Lockwood interviewed [REDACTED]. He is [REDACTED] years old. In the early morning hours, he heard something that woke him up. He went to the sliding glass door by his backyard. He opened a curtain, turned on a light, and saw someone outside. He shut the curtain and turned off the light then called 911. The person was about 4-5 feet away from the sliding glass door. [REDACTED] didn't know the person and he didn't have permission to be in his backyard. The male had been throwing things around in his backyard. [REDACTED] could hear him talking but he couldn't understand what the person was saying. Officers arrived and he didn't see them again until they were doing CPR on the male in the driveway.

Officer Kyle Frank Criminal Witness and Administrative Focus

Detectives Cheek and Lockwood interviewed Officer Frank. When the call was dispatched, he was parked at Pima Street and Swan Road typing a report. He heard over the radio that Officer Bowman was going to a containment position to the rear of the residence. He began responding to the area to help. As he was approaching the location, he heard officers say they were walking up to the residence. Officer Frank parked and walked up with his canine. As he got to the house, he heard on radio that the person was either detained or laying down. He took his canine back to his patrol car then drove up to the residence. Officer Frank heard a request for meds over the radio and for Officer Bowman to bring Narcan. Officer Frank walked into the backyard noted that items were scattered all over the backyard. The scene was "consistent with the call text." Mr. Gutierrez was handcuffed behind his back and lying in the recovery position on his right side. Officer Frank could see discarded Narcan on the ground. He was breathing and saw his chest rising and falling slowly. Officer Frank saw him blink a few times. According to Officer Frank, Officer Knorr administered Narcan and "used it appropriately." Someone was checking Mr. Gutierrez's carotid pulse. Officers Knorr and Bowman were trying to communicate with Mr. Gutierrez, but he was unresponsive. Mr. Gutierrez was still breathing, and officers were constantly checking his pulse. Officer Frank heard a second request for medical attention. Officer Frank wanted to move him to the front yard. He felt it would make it easier for paramedics to treat Mr. Gutierrez. According to Officer Frank, he wanted to leave him handcuffed in case Narcan took affect while they were moving him to the front yard. Based on Officer Frank's training and experience, Narcan recipients may become combative after regaining consciousness. He and other officers carried Mr. Gutierrez face down, but off the ground. When they got to the front yard, Officers set him down on the driveway and placed him back into the recovery position. Officers again checked Mr. Gutierrez's pulse but did not find one. At this point, Officer Frank did not see a rise and fall in his chest. Officer Frank saw officers unhandcuff him and begin CPR. TFD paramedics arrived, and he spoke with them. He explained that they gave two doses of Narcan and explained the call for service. Officer Frank suspected this incident might be ruled as an in-custody death, and requested additional units to lock down the scene. He separated from other officers and did not discuss the situation. Officer Frank never witnessed or was told of any force used against Gutierrez. He did not see any injuries on Mr. Gutierrez.

Page 4 of 8

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TUCSON POLICE DEPARTMENT

Force Review Board

NARRATIVE (Continued)

Officer Knorr Administrative Focus

Officer Knorr stated that he responded to a prowler call regarding a white male in his twenties. They requested an additional officer for containment and Officer Bowman responded. Officer Knorr saw information in the call text that the suspect was possibly under the influence of drugs. Officer Knorr and Schomisch went through the gate in the backyard. He noticed that the patio furniture was moved around. He saw a male laying on his back making "grunting" sounds. He described it as "agonal breathing" and knew the subject was experiencing medical difficulties. Mr. Gutierrez was pale, and his face was flush. His pupils were dilated. Officer Knorr knows that people usually have pinpoint pupils when they are on opioids. However, his behavior was consistent with "nodding off" from opioid use rather than "excited delirium" from methamphetamine. It was "evident" that he needed Narcan. Officer Knorr always carries Narcan with him. He has been trained that Narcan doesn't hurt anyone if it's administered and they aren't on opioids.

Officer Schomisch called for paramedics. Due to training and experience, he knew Narcan could make someone violent. He described a personal experience in which a subject became aggressive after being given Narcan. He wanted to prevent a possible confrontation. Additionally, they were investigating a crime. After he was handcuffed, they put him on his side in the recovery position. Officer Knorr then administered a full dose of Narcan in Mr. Gutierrez' left nostril.

Officer Knorr used his leg to brace Gutierrez and keep him from rolling onto his stomach. He stated that the recovery position helps to prevent a person from having all their weight on their organs. It makes breathing easier, and if they were to vomit, it would help prevent choking. Officer Knorr has spoken with paramedics regarding Narcan use and has heard that people can start vomiting. He was looking out for this in case they needed to move his head placement. There was nothing around his face that obstructed his breathing. They were doing sternum rubs to elicit a reaction from him. He asked for Officer Bowman to come around from rear containment to help them. He administered a second dose of Narcan. Mr. Gutierrez' breathing became more labored. Officer Bowman made a second request for paramedics. Around this time, Officer Frank arrived. They were checking Mr. Gutierrez' carotid pulse constantly. When they arrived, he was initially breathing eight breaths a minute, but it slowed to two breaths a minute. Officer Frank wanted to move him to the front of the residence to make it easier for paramedics to work on him. It took less than a minute to bring him to the front yard. When they arrived, Officer Bowman checked his pulse but could not find one. Officers removed the handcuffs and started CPR as trained. He felt Mr. Gutierrez' sternum separate from his ribs during compressions. Paramedics arrived and took over treatment. Officer Knorr said that no one used force on Mr. Gutierrez.

Officer Bowman Administrative Focus

Officer Bowman stated that she responded to a suspicious person call for service. The caller reported that an unknown male was in his backyard moving furniture. The caller did not know the person and he did not have permission to be there. She was asked by other officers to provide "rear containment." When she arrived, she could hear someone in the backyard. She later walked around the fence and joined Officers Schomisch and Knorr. She saw a male lying on the ground. Officer Schomisch was behind him holding him on his side so he did not fall onto his stomach. Officer Knorr was in front and there was a used Narcan Nasal Spray on the ground. Officer Bowman saw that he was handcuffed and in the recovery position. She was not present when he was handcuffed. She described what the recovery position is and stated it is used to help people breathe easier. There was not anything covering his face or obstructing his breathing. Officer Bowman relieved Officer Schomisch and held Mr. Gutierrez up so he did not fall forward, while

Page 5 of 8

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TUCSON POLICE DEPARTMENT

Force Review Board

NARRATIVE (Continued)

Officer Schomisch went to retrieve more Narcan. She believed that it was possibly an overdose because she did not see any injuries and there was no obvious reason he was unconscious. She initially did not see any drug paraphernalia around him. Officers did sternum rubs but did not receive a response from Gutierrez. She could see his chest rising, and air coming from his nose and mouth. She observed saliva coming from his mouth and nasal mucus fluid from his nose. Mr. Gutierrez was groaning, and mumbling, but he was not answering questions.

Officer Bowman is aware Narcan is used for opioid overdoses. She stated it is the only medical tool they have to treat an overdose. Officer Bowman remembered that someone had already requested paramedics before she entered the yard. After the second dose of Narcan, he was becoming less conscious. The length of time between Gutierrez moving his head or moving at all were extended. Officer Bowman requested paramedics expedite their response to the scene. Officer Frank arrived around this time. She did not hear emergency equipment coming. Officer Frank suggested moving Mr. Gutierrez to the front yard to make it easier for medical personnel to treat him. They carried him to the driveway. After they set him down, they immediately put him in the recovery position. Officer Bowman was behind him. She checked for a pulse and could not feel one. Another officer looked at Mr. Gutierrez' eyes. His pupils weren't responding to light. They took his handcuffs off and started CPR. The Tucson Fire Department arrived and took over treatment. Officer Bowman returned to the backyard and located paperwork with his name on it. He had a bag that had an empty prescription for Suboxone. Officer Bowman knows that this medication is used to treat opioid addiction. She also saw a baggy on the ground with residue.

Officer Bowman explained that she and other officers carry nasal Narcan. She has been trained on how to provide Narcan intravenously or through the nasal cavity. Officer Bowman was present when the second dose of Narcan was administered. It was administered consistent with how they were trained. She saw officers perform CPR and it was consistent with her training. Officer Bowman stated that she has provided Narcan to people and it was effective. She has also experienced aggressive behavior after a Narcan recipient has come to. In the past month, she has received extra training on Narcan, recovery position, and critical incidents. She was taught that there are no negative effects if a person is not on opioids and they are given Narcan.

Officer Schomisch Administrative Focus

Officer Schomisch was a backup unit for this call. He requested a third unit to help. He wanted Officer Bowman for rear containment. Officer Schomisch said that they were investigating a crime. They found a gate open on the east side of the residence. When they walked back there, he saw a male subject lying on the ground. His positioning looked like "he fell over backward." As they approached him, Officer Schomisch could hear "labored breathing." He called for paramedics. He wanted to get him in handcuffs because they "don't know fully what's going on with him." Officer Schomisch thought there was a possibility that he would pop up and begin fighting when they contacted him. He wanted to detain him then begin investigating the call. They put him on his side in the "recovery position" because he was having a hard time breathing. It was obvious there was a medical issue to Officer Schomisch. Officer Schomisch tried to talk to him however, he did not receive a response. Officer Knorr used Narcan. He recognizes Narcan is used for opioid overdoses and could potentially save his life. Mr. Gutierrez had foam coming out of his mouth. Officer Schomisch was behind him holding him, to keep him on his side. There was nothing blocking his ability to breathe. This was the first time he was present when Narcan was used. After the first dose was given, Officer Bowman assisted them in the backyard. She took his place when he ran back to his car to get another dose. He returned and gave it to Officer Knorr. Officer Frank was now on-scene. Officer Knorr administered another dose of Narcan the same way as before, but it did not have

Page 6 of 8

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TUCSON POLICE DEPARTMENT

Force Review Board

NARRATIVE (Continued)

any effect. Officer Bowman asked for paramedics again. Officer Frank wanted to move Mr. Gutierrez to the front to make it easier for paramedics to work on him. Officer Schomisch noted the other items in the backyard and thought it was a good idea. They picked him up and carried him to the driveway face down. They never hit anything on the way. Once he was in the front yard, Officer Schomisch could not hear him breathing and Officer Bowman could not find a pulse. Officer Knorr took off his handcuffs and started CPR. He went to the backyard to try and find some form of identification of the male. Officer Schomisch located a baggie with "methamphetamine residue."

Officer Schomisch did not notice injuries to Mr. Gutierrez. They administered Narcan consistent with his training. The handcuffing and CPR were consistent with his training. He said no one used force on Mr. Gutierrez. Officer Schomisch recently received additional in custody death training.

Body-Worn Camera Footage

The following is a summary of the actions seen in Officer Frank, Schomisch, Knorr, and Bowman's body-worn camera footage as they contact and treat Mr. Gutierrez.

Officer Bowman was outside of the backyard fence. She advised that she could hear mumbling in the backyard from a male voice. Officers Knorr and Schomisch located Mr. Gutierrez lying down. On the video, you can hear Mr. Gutierrez breathing and grunting. Officer Knorr mentioned using Narcan. They placed Mr. Gutierrez in handcuffs then onto his side. Officer Bowman joined the other officers in the backyard. She told Officer Knorr to do sternum rubs on Mr. Gutierrez. They attempted to talk to him but did not get a response. Mr. Gutierrez continued to make noises. Officer Knorr mentioned that he was going to take him out of cuffs and start CPR. Officer Bowman commented that Mr. Gutierrez was still breathing. Officer Frank suggested taking him to the front yard so paramedics can treat him. They picked him up and walked him out. A firetruck can be heard in the distance. They walked him to the driveway. Officer Bowman checked his carotid pulse again and could not find it. Officer Schomisch shined a light at Mr. Gutierrez's eyes. They removed the handcuffs and Officer Knorr began CPR. Tucson Fire Department arrives and took over CPR and provided medical treatment.

Training Documentation

All officers received training in First Aid, CPR, handcuffing, and excited delirium during their basic training academies. They have also received additional training since then.

Course Title	Officer	Date of Training
Use of Naloxone by Law Enforcement	Bowman	12/12/18
	Frank	08/18/16
	Knorr	12/14/17

Officers Bowman, Knorr, and Schomisch also received this material during their basic training.

The training states:

- "Will cause no harm in case of accidental administration or ingestion"
- "May result in sudden onset of withdrawal"
- The possibility that "your victim turns violent during the treatment"
- "If alone, request backup prior to administration of Naloxone due to potential for violence from the victim."

Page 7 of 8

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TUCSON POLICE DEPARTMENT

Force Review Board

NARRATIVE (Continued)

- Recommends "sternum rubs"
- After a first dose is given, a 2nd dose may be given after a few minutes
- "Be alert for vomiting/diarrhea & agitation"
- "Consider rescue breathing or CPR if trained"
- "Maintain recovery position"

April Road Show	Bowman	05/13/19
Drug Ingestion as Related to Arrest	Frank	05/13/19
And Control Tactics	Schomisch	05/13/19

This training discusses the use of the recovery position if an arrestee consumes drugs in your presence.

Managing In-Custody Deaths	Bowman	07/02/20
	Knorr	07/02/20
	Schomisch	07/02/20

This training goes over excited delirium as well as first aid considerations.

Deflection Refresher	Bowman	7/24/20
	Knorr	7/24/20

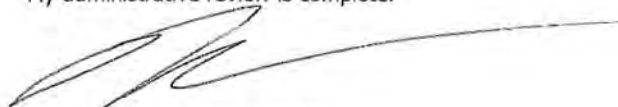
This training discussed the use of Narcan and Naloxone as well as a demonstration of how to use it. It also states, **"The potential exists that they will go into immediate withdrawals and could become combative."**

Analysis and Conclusion:

Officers responded to a call for service and were investigating a crime. Upon arrival, they located Mr. Gutierrez in the backyard of a stranger's residence. Once they contacted him, they suspected that he was suffering from a drug overdose. They immediately requested medical attention, detained him, and attempted life-saving treatment. Unfortunately, Mr. Gutierrez died, despite the efforts of the Tucson Police and Tucson Fire Department. An autopsy confirmed that the cause of death was due to an overdose.

Based on my administrative investigation and by a preponderance of the evidence, I find Officer Bowman, Officer Knorr, Officer Frank and Officer Schomisch to be Unfounded with regard to Allegation 212 – Failure to Take Appropriate Action.

My administrative review is complete.



Sergeant Mark Ewings #45657

09/22/20

Page 8 of 8

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Backyard, 5100 block E. Waverly

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Passage from backyard to front yard, 5100 block E. Waverly

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Narcan administered on-scene

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Advanced Training Section Commander and Deputy Chief Signature

[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:

*✓ 32622
K. Hall*

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]

Deputy 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:

DEPARTMENT

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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** None
 - a. **What unit will address follow-up?**
 - b. **What follow-up is requested?**
 - c. **When is a response due?**
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**
 - a. **What unit will address follow-up?** **Advanced Training Section**
 - b. **What follow-up is requested?** The Board recommended that the department seek expert medical guidance regarding moving someone suspected of overdose and see if there's an opportunity for improvement to department procedures.
 - c. **When is a response due?** **October 1, 2021**
6. **Equipment recommendations**
 - a. **What unit will address follow-up?** **Advanced Training Section**
 - b. **What follow-up is requested?** Depending on what expert medical guidance the department receives (see 5, above), is there particular equipment, such as the MegaMover, that would be helpful in moving someone suspected of overdose?
 - c. **When is a response due?** **October 1, 2021**

TUCSON POLICE DEPARTMENT Force Review Board

Department Responses to FRB Recommendations

Rec. #	Recommendation/Assignments	Outcome	Target Date
1.	Seek expert medical guidance re moving someone suspected of overdose. Advanced Training Section	Joshua B. Gaither, M.D., FACEP, a professor at the University of Arizona in the Department of Emergency Medicine, was consulted regarding moving a patient suspected of overdose. His opinion was that carrying the patient to a place where there is adequate space and light to be able to perform first aid is appropriate and common. He also included moving a patient to expedite paramedics locating them as an additional consideration, which was also a concern brought up by the officers on scene. See above.	October 1, 2021
2.	Depending on what guidance the department receives, is there equipment that would be helpful in moving someone suspected of overdose? Advanced Training Section		October 1, 2021