



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Policy and Practice Recommendations for the Antioch Police Department Related to the Officer- Involved Shooting of Guadalupe Zavala on December 10, 2021

ISSUED PURSUANT TO CALIFORNIA GOVERNMENT CODE
SECTION 12525.3, SUBDIVISION (B)(2)(B)(III)

May 2024



POLICY AND PRACTICE RECOMMENDATIONS

The Attorney General is required to include “[r]ecommendations to modify the policies and practices of the law enforcement agency, as applicable” as a component of this report. (Gov. Code, § 12525.3 subd. (b)(2)(B)(iii).) Therefore, the Department of Justice (DOJ) through its Police Practices Section (PPS) conducts a supplemental review of the information obtained through the criminal investigation, including body-worn camera footage, interview recordings, video recordings, witness statements and other records, as well as the publicly-available policies of the agency employing the officers who are subject to the criminal investigation.

Because of the nature of this process, PPS does not generally obtain additional information from the employing law enforcement agency, or conduct independent investigation of the agency’s practices outside of the single incident under review, which makes this process different from the DOJ’s formal Civil Code section 52.3 investigations and oversight reviews of local law enforcement agencies. PPS uses the review process under Government Code section 12525.3, subdivision (b)(2)(B)(iii), to identify “applicable” recommendations, including any recommendations to modify policies and practices that may reduce the likelihood that officers use deadly force, as well as recommendations to address any other deficiency or concern related to the officers’ conduct or the agency’s response that PPS observes. PPS’s goal is that these recommendations will assist the agency and the officers involved in the incident in understanding, from an independent perspective, improvements that may be made to address what was observed through this incident.

PPS limited its review to the information obtained through this criminal investigation. However, the Antioch Police Department (APD) is currently under civil investigation by the DOJ pursuant to Civil Code section 52.3, and the findings of that investigation may lead to further recommendations to APD that supplement or expand upon the recommendation below. PPS’s recommendation herein will not serve to limit or otherwise prevent PPS from making additional recommendations after it concludes its active civil investigation.

As background, on December 10, 2021, at approximately 1:09 p.m., APD officers were dispatched to a call of a male shooting a gun, while also carrying a rifle, and walking around in camouflage clothing, ballistic helmet, and barefoot on Dove Court (court) in a residential neighborhood. The male with the gun was later identified by dispatch as the decedent, Guadalupe Zavala (Zavala), and the Automated Firearms System found that he had a rifle and a pistol listed in his name.

Throughout the time the APD officers were on scene of the eventual officer-involved shooting, they had difficulties communicating with one another. Their radio communications with dispatch and each other were working sporadically, and many of their department-issued cell phones did not have reception in the area. Acting Captain Desmond Bittner called the radio communication “horrible,” explaining that:

[W]e had fairly good cell reception and radio communication throughout the city, but that one area is probably the worst spot in the city, so as I’m trying to get things put out over the air, my radio at times wouldn’t work, and I couldn’t get it across. So sometimes I tried to make a cell call to Sergeant Hoffman, my cell phone wouldn’t work, so it was a bad situation.

Officer Eric Rombough also stated that that they had to “constantly walk back and forth to the CNT [crisis negotiations team] truck to get updates because of the radios being so horrible,” and that at one point several officers had to “huddle[] around a phone together, the one that actually had service, and trying to watch [the drone APD had flown inside Zavala’s home].” These statements about communications problems were confirmed by other officers on scene, as well.

At approximately 4:51 p.m., nearly four hours after APD officers were dispatched to the scene, Zavala exited his front door with his rifle held in a low-ready position. He looked toward a neighbor’s residence, as if looking to acquire a specific target. Both APD snipers fired their weapons. Zavala fell to the ground, then opened his front door and crawled inside.

For the next two hours, officers strategized and utilized multiple means to contact Zavala, including making numerous announcements from the armored rescue vehicle (ARV) that Zavala was surrounded and to “stop shooting,” deploying a 40 mm foam baton round from the turret APD’s ARV through the front window and using Pittsburgh Police Department’s (PPD) ballistic armored tactical transport vehicle (BATT) to remove the front windows of Zavala’s residence, flying an unmanned aerial vehicle (UAV) into the residence, and flying a UAV with a throw-phone into the residence. Zavala did not respond other than to throw items at the UAVs in his residence. APD and PPD SWAT officers and their tactical commanders also discussed additional less-lethal options, including introducing gas into the residence and deploying a canine into the residence to confirm if Zavala was injured or to encourage him to surrender.

Before gas or a canine could be deployed, at approximately 6:50 p.m., a fire was observed in the area of Zavala’s garage. Zavala exited the north side window of his residence holding what appeared to be a rifle in his hands. Flames and smoke poured out of the windows throughout the residence. Zavala moved to the back of his house, then to the side yard and hid under a grill, with what appeared to be a pistol in his hands. PPD breached the south fence with their BATT. As they backed up their BATT, Zavala moved quickly toward the BATT and appeared to take a shooting stance, pointing at the BATT.

Though APD snipers had difficulty communicating with other officers, they were aware that the fire had forced Zavala out of the house and could observe him in his yard heading towards the PPD BATT. One APD sniper across the street and two APD SWAT officers inside the ARV parked in the street at the north side of Zavala’s residence fired at and struck Zavala. APD officers quickly moved Zavala away from the fire, and officers and medics provided first aid until the paramedics arrived on scene and took over medical care. Zavala was declared deceased at the scene at approximately 7:12 p.m., more than six hours after the initial 911 calls.

PPS commends APD for the manner in which they handled this volatile, dangerous situation, coordinating with neighboring agencies, exploring less-lethal options, and rapidly deploying the SWAT and CNT teams to the incident to attempt to achieve a peaceful surrender. PPS evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), PPS advises that APD review and implement the following focused recommendation.¹

1. COMMUNICATION

APD should evaluate its communications systems, including radios and department-issued cell phones, to ensure that officers can communicate with each other throughout the region covered by APD. Due to the hilly terrain of the area, many of the officers' radios and cell phones did not work properly, so they could not send or receive radio broadcasts and cell phone messages, and when messages were sent or received, it required multiple attempts. Multiple officers confirmed the severity of the communication problems during their interviews. Acting Captain Desmond Bittner, Officer Rombough, and Detective Ryan McDonald all volunteered during their interviews that the challenges with communications made it difficult for officers to communicate with each other on scene.

Importantly, those challenges do not appear to have affected the overall outcome because the APD sniper and SWAT team members were able to observe the fire forcing Zavala out of his house and into the yard and were in position to be able to see him as he advanced towards the Pittsburgh BATT. However, failed or inconsistent radio communications and cell phone reception have the potential to place officers and the public at risk if officers cannot efficiently and effectively communicate with each other during critical incidents regarding their location, what they are seeing and hearing, any potential risks to officers or the public, and strategies and tactics. Moreover, in an already stressful environment with a dangerous and chaotic situation, communications problems should not add to the officers' stress.

APD should ensure that officers are equipped with effective communications devices that can operate in the hilly areas covered by their Department. APD can seek additional coverage or upgrades through their department-issued cell phone or radio carriers or, if that is impracticable or not feasible, examine whether there are other cell phone carriers or radio channels that would work in all areas they serve. While this may be beyond the current resources of APD, or the City of Antioch, they should explore their options to increase the communications capacity of their officers to be able to address any critical incident without the added challenge of inadequate communications systems.

Additionally, APD was coordinating at the scene with officers from PPD, Oakley Police Department, Brentwood Police Department, and deputies from Contra Costa County Sheriff's Office. The tactical commanders from APD, PPD, and the other agencies were communicating with each other regarding less-lethal options and strategies to communicate with Zavala, but they had to conduct these communications in person because their agencies could not communicate with each other through their radio systems. Thus, APD officers were not always aware of what PPD and other officers were

¹ PPS reviewed and evaluated APD's Crisis Intervention policy as part of its assessment. Though APD called its Mobile Crisis team, in this instance, the team would not have been able to intervene because Zavala was armed and shooting at the neighbors' residences and cars, and so he presented an ongoing and dangerous threat. APD Crisis Intervention Incident policy would only be applicable in a non-violent incident that did not involve any criminal activity. (Antioch Police Department Policy No. 414, "Crisis Intervention Incidents" (July 28, 2021).) In this incident, APD's SWAT/CNT and Hostage and Barricade Incidents policy are the primary policies that APD did follow. (Antioch Police Department Policy No. 310, "Special Weapons and Tactics (SWAT) & Crisis Negotiation Team" (July 28, 2021) and No. 407, "Hostage and Barricade Incidents" (July 28, 2021).)

doing. For example, Officer Rombough stated in his interview that he did not know if the PPD team was in their armored BATT vehicle when Zavala started running toward the vehicle.

APD should assess their communications systems to ensure their radios have regional channels capable of communicating with other neighboring agencies. When there are mutual aid calls to agencies from multiple counties and cities for critical incidents, it is important for officers to be able to communicate with the other officers from their neighboring agencies, especially as the events are unfolding and rapid tactical decisions must be made. APD should ensure that their officers can effectively and efficiently communicate with officers from other agencies in future incidents by setting up regional radio channel systems for interagency communication.