



TO: Joseph Chacon, Chief of Police;
Sylvia Hardman Acting, Director - Office of Police Oversight

FROM: Richard Barner, Chair - Community Policy Review Commission
Yesenia Rodriguez, Vice-Chair - Community Police Review Commission

DATE: January 26, 2023

SUBJECT: CPRC Case Review #2021-0036

Introduction

On January 23, 2023, the Community Police Review Commission (CPRC) held a meeting to review Internal Affairs (IA) case # 2021-0036. The meeting began at 3:00 and concluded at 10:30 p.m. The meeting consisted of CPRC case review, a briefing from IA, a public session to receive public comment. After receiving all information, the commissioners deliberated and voted on final recommendations.

Incident Overview and Background

On January 5, 2021, at approximately 12:33 AM, at the 2500 Block of Wickersham Ln., Austin Police Department (APD) Officer Gutierrez badge #8063 and Officer Serrato badge #8791 were involved in a critical incident.

Officer Gutierrez fired into a civilian vehicle from his driver side window into the passenger side of the civilian vehicle striking the passenger and driver of the vehicle. An infant child was also in the rear passenger seat of the vehicle in a car seat. One of the rounds exited out of the driver side passenger window. There was a witness that stated they heard a verbal exchange between the occupants of the two cars, however, the witness could not clearly hear the conversation prior to shots being fired. Officer Gutierrez was the only one in this instance that fired their weapon – firing eight (8) shots.

Officer Serrato badge #8791 was the first active-duty officer to arrive on the scene, at that time the decedent (Mr. Alex Gonzales) was standing outside the driver side of the vehicle. Officer Gutierrez did not inform Officer Serrato that he had shot the decedent. Officer Gutierrez stated on the 911 call that the decedent had blood on his clothes. The decedent began walking toward the rear of the vehicle while Officer Serrato and Officer Gutierrez shouted commands to get on the ground. The decedent stumbled to the rear passenger door then opened it. The passenger of the decedent's vehicle was laying on the ground next to the passenger side of the vehicle. She was yelling "**My Baby My Baby**". The decedent reached into the back passenger door and Officer Serrato fired ten (10) shots towards the decedent striking and killing him, while the female passenger of the decedent's vehicle lay on the sidewalk within striking distance of Officer Serrato's shots.

Public Input

The CPRC accepted public input from 18 individuals. The citizens stood in solidarity in believing that that continued employment of the two officers is an ongoing threat to the community.

CPRC RECOMMENDATIONS

Based on all the evidence presented and a totality of the circumstance including the below identified policy violations, the CPRC recommendations are as follows:

- a. CPRC is unanimous in recommending indefinite suspension of Gutierrez
- b. CPRC recommends indefinite suspension of Serrato by a majority vote of 6-1

CPRC Policy Violations

The CPRC found that Officer Gutierrez badge #8063 violated the general orders listed below regarding Off-Duty Law Enforcement Actions. General orders listed below relating to Off-Duty Law Enforcement Actions:

- *364.2 Policy*
- *364.4 Decision to Intervene*
- *364.4.1 Intervention Procedure*
- *364.4.2 Incidents of Personal Interest*
- *200.3.1 Determining the Objective Reasonableness of Force*

The CPRC found that Officer Serrato badge #8791 violated the general orders listed below:

- *200.3.1 Determining the Objective Reasonableness of Force*