

Civil, internal consequences for February shootout up in the air

By: Kaitlin Durbin Aug 29, 2018 Updated 57 min ago



The criminal investigation into the Feb. 5 shootout in which El Paso County sheriff's Deputy Micah Flick was killed ended without charges, but civil and internal ramifications have yet to be determined.

Civilian Thomas Villanueva, who was partially paralyzed in the shooting, has filed paperwork indicating he may sue for his injuries. And law enforcement agencies say they are now reviewing the shooting internally to ensure policies and procedures were sound.

The 4th Judicial District Attorney's Office ruled last week that Beat Auto Theft Through Law Enforcement task members were justified in shooting and killing suspected car thief Manuel Zetina after he fired at them during his arrest, killing Flick and wounding three other officers along with Villanueva. But the office does not critique tactics or policies, it said.

That job is up to the respective agencies involved.

“We have critical incident reviews on everything we do,” Colorado Springs police spokesman Lt. Howard Black said Wednesday, referring to any use-of-force incident.

The reviews, he said, include “in-depth” examinations of tactics used and officer preparation to determine “what was right and what was wrong.” Though the reviews are conducted by the Internal Affairs Unit, they are different from internal affairs investigations, which focus specifically on officer misconduct, Black said.

The sheriff’s office also “normally” conducts the same in-house review, spokeswoman Jacqueline Kirby said. The process has not yet started, she said, but it will likely be done in conjunction with police and the Colorado State Patrol, which oversees the BATTLE task force.

It’s unknown how long the reviews may take or if the public will ever learn the results.

Any changes to policies, procedures or tactics would “not necessarily” be explained or released, though some of the information, like policies, would be independently available to the public, Black said. As with IA investigations, the reviews are internal documents that police have broad discretion to withhold under the Criminal Justice Records Act.

As history shows, the department rarely sides in favor of release. In denying numerous Gazette requests for IA investigations, the department most often argues release is “contrary to public interest” on grounds it could hinder future investigations if witnesses know their statements can be revealed to the public. Other arguments have included: the release could infringe on officer privacy; it could negatively impact officer morale; or the records have always been “historically confidential files.”

A bill introduced in April aimed to require public disclosure of those internal records of police misconduct once the investigation is complete, recognizing that investigations often lead to out-of-court settlements with taxpayer dollars, but it was “postponed indefinitely.” The bill does not cover the release of results from critical incident reviews.

As a rule, agencies also protect any information pertaining to tactics.

For example, the police department is preparing to release the February shooting’s full investigative file — accounts of the events from each of the officers

involved, summaries from supervisors, interviews with witnesses and a general reconstruction of the scene — but it is redacting some employee information protected by privacy laws and “tactical information that we would never release,” Black said.

The state patrol, for the same reason, also declined to answer questions about whether BATTLE’s tactics already have changed.

“We’re not going to go into the details of how they operate or do not operate, just for officer safety,” patrol spokesman Joshua Lewis said.

It is the efficacy of BATTLE’s policies, procedures and tactics that are most in question. The incident has been swept up in controversy since witnesses first accused officers of not identifying themselves before making the arrest and approaching a potentially dangerous suspect with their guns holstered.

The district attorney’s review later confirmed those accounts, determining Zetina started shooting “before any member of law enforcement fired their weapons.” In the process, Villanueva, who unknowingly walked into the middle of the encounter, was struck by one of Zetina’s “spray” of bullets.

Villanueva’s father, Tom Villanueva, has questioned whether better procedures could have spared his son, specifically criticizing police’s decision to conduct the arrest in a highly populated area with children and innocent residents nearby, approaching a suspect with guns holstered, and allowing unsuspecting bystanders to wander into potentially dangerous situations.

The DA’s office said Villanueva “was not initially visible to members of the task force at the time the team made the decision to take Zetina into custody.” None of the 10 officers saw Villanueva until he was directly in front of them and parallel to Zetina, who started shooting seconds later, the office said.

Deputy Scott Stone, who was struck in the hip by one of Zetina’s bullets and has not returned to work, said he’s been instructed by the sheriff’s office not to discuss the shooting because of potential litigation. The office itself has declined to answer questions for the same reason.

As of Wednesday, Villanueva had not filed a lawsuit, nor had he responded to inquiries about whether he planned to do so. His attorneys at Ramos Law also have not returned The Gazette’s calls for comment.