



TUCSON POLICE DEPARTMENT

Force Review Board

Incident Information

Case Number: 1908140102	Use of Force #: 19-0528
Date of Incident: August 14, 2019	OPS Findings and Recommendation: Within Policy
Involved Officers: LPO Olivares #35662	COC Findings and Recommendation: Concur / Closed
Incident Location: 2900 N. Craycroft	County Attorney Findings: Justified

Level of Force

Type IV (Officer Involved Shooting): Use of deadly force regardless of whether officer's actions resulted in injury or death

Investigative Information

Investigating Supervisor: **Sgt. Matthew Brady**
 Unit [Team/Squad]: **Office of Professional Standards**
 Date Use of Force Investigation Complete: **December 5, 2019**
 Date Use of Force Investigation Follow-up [if any] Complete: **None**

Board Information

Date of Board: March 2, 2020	Board Chair: Lt. Corey Doggett # 44794 – Advanced Training
Scribe: Lt. Anthony De La Ossa	Legal Advisor: Antonio Zapata
Member: Lt. Ray Mechtel	Member: Independent Police Auditor, Mitch Kagen
Member: TPOA Sgt. Anthony Archibald	Member: Community Advisory Council, Pam Treadwell-Rubin
Member: Sgt. Lorence Jove	Member: Community participant, Paul Lefkowitz
Member: Sgt. Paul Sheldon	Member: Community participant, Jimmy Munoz-Cano
Member: Sgt. Amanda Voss	Member: Community participant, Mark Lennox
Member: Sgt. Leslie Gallaher	
Member: Det. Jason Southard	
Member: Officer Ray Smith	
Member: Officer Mike Krammes	

Date of Submission: May 14, 2020

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



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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 all documents, video, interviews, and associated materials generated during both the criminal and administrative investigations, in addition to department General Orders 2000 (Use of Force), 2510 (Officer Involved Shooting Protocols), and 3700 (Specialized Equipment). **The Board determined that the assembled materials were complete and 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 on February 21, 2020:

1. Cover Sheet and COC Notice Form
2. IA Pro and Investigative Summary
3. Case Report and Supplements
4. Event Chronology
5. BWC Footage
6. Scene Photos
7. Drone Aerials of scene
8. Officer Olivares photos
9. Photos of gun exchange
10. Crime Scene Mapping
11. Evidence List (Web Beast)
12. 911 and Radio Transmissions
13. Focus Officer(s) Interview
14. Witness Officer(s) Interview
15. Blue Team Use of Force Report
16. Firearms Qualifications Record
17. Media Release
18. TFD Report
19. OIS Protocols
20. Misc. Admin. Documents
21. LINX Report
22. Previous TPD Case Reports
23. PCAO Declination Letter



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24. Personnel Report(s)

The above-listed materials were collated and made available to all Board members on February 21, 2020. They were reviewed for content and to determine if any pertinent issues were overlooked or remained unaddressed by OPS. The Board convened on March 2, 2020 and **submitted its finding on March 2, 2020**. Officers Oliver and Olivares attended the Board Meeting and gave additional input into their actions.

Event Summary

On August 14, 2019, just after 11:00 a.m., Patrol Officer Dufresne was riding with officer in training, Officer Oliver, as they finished an unrelated call for service. The officers drove to the eastern parking lot of Ft. Lowell Park located at 2900 N. Craycroft Road to finish their paperwork and discuss the next phase of Officer Oliver's training. Lead Patrol Officer Olivares also met with the officers at the park.

While at the park, the officers noticed a male, Kelly Smith, and female, [REDACTED] acting suspicious. Smith retrieved a bicycle from the bed of a truck near them and rode away toward a nearby bicycle trail. Officer Dufresne made contact with [REDACTED] who was cooperative and advised that Smith was acting "weird and agitated" because she believed he was smoking "G" (methamphetamine) that morning. Shortly after, Smith returned on the bicycle and brandished a large knife (commonly referred to as a KA_BAR) that he placed to his own neck and stomach. Smith yelled multiple times at Officer Dufresne, "Shoot me." Officer Dufresne radioed for the emergency tone and for Officer Oliver and Lead Police Officer Olivares to respond. Officer Dufresne gave verbal commands to Smith for him to put the knife down as he pointed his duty weapon at Smith while backing away. Smith had the knife at his own neck while closing the distance with Officer Dufresne.

Lead Police Officer Olivares attempted to deploy his TASER to stop Smith's advance on Officer Dufresne. The TASER was unsuccessful in stopping Smith, who then quickly turned and advanced on Lead Police Officer Olivares while still armed with the knife. Lead Police Officer Olivares retreated backwards, as he transitioned to his firearm, and fired two rounds at Smith within a distance of 8-10 feet away. Smith was struck in the abdomen and left arm.

Tucson Fire was requested by radio as Officer Dufresne directed Officer Oliver to get the IFAK (Individual First Aid Kit). Both Officer Dufresne and Officer Oliver rendered first aid to Smith. Tucson Fire responded and then transported Smith to Banner University Medical Center.

No officers were injured during the incident.

Detectives with the Tucson Police Violent Crimes Unit and sergeants with the department's Office of Professional Standards Unit responded to continue the investigation. The Violent Crimes Unit conducted the criminal portion of the investigation, while the Office of Professional Standards Unit conducted a separate, but parallel administrative investigation to examine the actions of department personnel. This is standard protocol in all officer-involved shootings.



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Board Findings

Based upon all provided materials and subsequent review, the Force Review Board concurs that the actions of Officer Olivares were within department policy. The Board also agrees with the findings of OPS and recommends this matter be closed.



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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 and training.

NO - Based on the documentation provided, the tactics employed do **NOT** appear to be consistent with policy training.

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 policy and training.

NO - Based on the documentation provided, the tactics employed do **NOT** appear to be consistent with policy 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 Board discussed training and tactics/decision making and observed that Officer Dufresne and Lead Police Officer Olivares had reverted to their training during this incident. Smith coming back to the scene with a large knife did not allow enough time for Officer Dufresne to de-escalate the event. Smith continuously walked towards Officer Dufresne and did not pause to consider the directions he was being given. Officer Dufresne radioed for the emergency tone and for Officer Oliver and Lead Police Officer Olivares to respond to assist, as he had his duty weapon trained on Smith while giving him verbal commands to drop the knife. Smith then walked around the blue parked truck in the parking lot and walked quickly toward Officer Dufresne while holding a large knife to his own neck. Officer Dufresne used good tactics and saw Lead Police Officer Olivares and Officer Oliver running to the event from behind Smith. Officer Dufresne had his duty handgun pointed at Smith and exclaimed to the officers, "Watch the crossfire!" This shows that Officer Dufresne was cognizant of the background behind Smith. Officer Dufresne continued to provide verbal commands to Smith to "Put the knife down." Smith remained with his own knife to his neck and replied, "Shoot me," as he continued to press forward toward Officer Dufresne, who had his duty handgun still aimed at Smith. At this time, Officer Dufresne yelled out, "TASER," as Lead Police Officer Olivares assessed the situation and determined that using his TASER would be his best option. Lead Police Officer Olivares explained that if he drew his duty handgun, this would create a crossfire between him and Officer Dufresne. Lead Police Officer Olivares then deployed his X26 TASER at Smith from an angle. The TASER was unsuccessful as Smith appears to flinch as if only one of the TASER probes had struck him. Smith then stops his fast walk toward Officer Dufresne and turns to Lead Police Officer Olivares. From the body-worn camera, Smith is seen pulling his knife away from his own neck and looking at Lead Police Officer Olivares. As Smith starts to run toward Lead Police Officer Olivares, he transitions to his duty



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handgun and fires two rounds at Smith. Smith was struck in the chest and left arm. Smith then fell to the ground. Once the threat was stopped, Lead Police Officer Olivares stopped firing his duty handgun. Officers Dufresne and Oliver were on scene and began rendering medical aid to Smith once Lead Police Officer Olivares placed Smith in handcuffs. The Board found that Lead Police Officer Olivares acted appropriately and did exactly as he was trained. Furthermore, the Board found that Officers Dufresne and Oliver did exactly what they were trained to do, such as providing medical aid to Smith and acting with professionalism. The Board, in reviewing this incident, felt that the body-worn camera footage from Lead Police Officer Olivares was very telling and displayed tactics he used that most likely saved his life. The Board felt that the body-worn camera footage should be released to the Academy as soon as possible to be used for training purposes. Members of the Advanced Training Section confirmed that this footage had already been used to create an in-person Roadshow department-wide training in January 2020.

EQUIPMENT

6. Was the equipment used within policy / training guidelines? YES NO N/A

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: Conducted Electrical Weapon (CEW): TASER X26 – This TASER is effective at a distance of 9-15 feet. It is reserved for use against someone being actively aggressive while either unarmed, armed with a blunt object or armed with an edged weapon.

In vehicles / not deployed: None

In the field not at the scene: Not Applicable.

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

Not Applicable

Equipment - TASER

The Board did raise a question of equipment issues or deficiencies in respect to the TASER. The question was asked, if the TASER was deployed unsuccessfully in this event, then why do police officers use the TASER? The Board asked the sworn personnel in the room to give any testimony to the positive uses of the TASER. Although only a few positive involvements with the TASER were mentioned by the sworn police personnel, it was concluded that the TASER could still be a useful tool for the officer to use if the situation called for its use.

Equipment - IFAK (Individual First Aid Kit)

When the officers were rendering aid, Officer Oliver was having trouble with the IFAK in locating the correct item to use for the wounds. Officer Oliver was viewed through the body-worn camera footage as being calm. Having prior IFAK and medical aid experience from the military, Officer Oliver was familiar with the contents, but they were packed differently in the military. Officer Oliver advised that if colored tape was used to signify certain items in the IFAK to address certain wounds, then it would be easier for the Officer rendering aid to use. Another idea was to pack the IFAK similar to the military's version so it



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can make use of the same standard protocol. The Board made the recommendation of looking into the feasibility of using colored tape or something similar to color identify the IFAK items.

SUPERVISION

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

YES NO

10. If so, 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:

In this incident, Sergeant Brotherton was monitoring the radio and responded to the scene, where he assumed Incident Command. Shortly after, Lieutenant Mechtel responded to the scene and ensured a complete and thorough investigation was completed. The Board had no issues with the supervision of this incident.



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REPORTING, INVESTIGATION, AND REVIEW

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

The Board concluded the reporting, investigation and review were complete and thorough. No additional follow-up was needed. For these reasons, we saw no need to conduct additional interviews.

If No, please comment:

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 Describe:

Comments, Explanations, and/or Recommendations:

None

FINDINGS

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

YES - Type IV was appropriate. Defined as “use of deadly force regardless of whether officer’s actions resulted in injury or death.” – See cover sheet for further.

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 department Use of Force policy

NO - Based on the documentation provided, the force used was **NOT** consistent with TPD’s Use of Force policy.

Agree / Out of Policy: - Based on the documentation provided, the force used was **NOT** consistent with department Use of Force policy. However, the force was objectively necessary, reasonable, and proportional based on the circumstances.

Comments, Explanations, and/or Recommendations:

The Board found that the reporting, review, and investigation were complete and thorough. In this incident, Smith immediately walked towards Officer Dufresne with a knife to his neck while telling him to, “Shoot me.” The Officers gave verbal commands clearly to Smith to drop the knife and attempted to reposition themselves to gain time and shielding. Lead Police Officer Olivares attempted to TASER Smith, who then turned around and ran toward Lead Police Officer Olivares with a knife in his hand. Lead Police Officer Olivares then transitioned to his duty handgun and discharged his weapon at Smith. Lead Police Officer Olivares’ use of force was necessary, reasonable, and proportional.



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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

Training -

The Board in reviewing this incident felt that the body-worn camera footage from Officer Dufresne and Officer Oliver was very telling and displayed tactics used that most likely saved their and Lead Police Officer Olivares' life. The Board felt that the body-worn camera footage should be released to the Academy as soon as possible to be used for training purposes.

Members of the Advanced Training Section confirmed that this footage had already been used to create an in-person Roadshow department-wide training in January 2020.



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INCIDENT CHRONOLOGY

4T23 OIT Officer Christopher Oliver #103285
4T23 FTO Officer Michael Dufresne #51065
4L2 LPO Officer Alberto Olivares #35662
4U2 Sgt David Brotherton #40733
4C3 Lt. Mechtel #35798

11:12:00 4L2 Change Location to 2900 N CRAYCROFT RD @ FT LOWELL PARK
11:15:24 4T23 Vehicle Records Check License BVC1736.AZ
11:16:35 4T23 Records Check on Victoria Hodges 02191970
11:19:28 4T23 10-39
11:19:49 4T23 SHOTS FIRED
11:20:41 4L2 SHOT FIRED ONE DOWN 4U2 COPIED
(4T23 BWC -medical attention rendered by Officers)
11:20:58 4U2 Dispatched
11:21:46 4T23 SECURE FOR MEDS TO MOVE IN
11:22:03 4L2 NE SIDE OF THE PARK TAKE THE NE ENTRANCE
11:23:56 4T23 ALL UNITS ARE C4
11:25:05 4T23 MEDS NEEDED TO THE NE PART OF FORT LOWELL PARK
11:26:15 4U2 On scene
11:33:04 4U2 IC
11:35:29 4C3 On scene



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2900 N. Craycroft – Fort Lowell Park





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2900 N. Craycroft – Fort Lowell Park





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Large Knife (KA-BAR or military style fighting knife) – Kelly Smith’s Weapon





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Barbara LaWall
Pima County Attorney

December 23, 2019

Chief Chris Magnus
Tucson Police Department
270 South Stone Avenue
Tucson, Arizona 85701

**Re: Officer-Involved Shooting Investigation/TPD Case Number 1908140102/
Officer Alberto Olivares #35662**

Dear Chief Magnus,

Introduction

I have been assigned by the Pima County Attorney's Office to review an officer involved shooting which took place on August 14, 2019 at Ft. Lowell Park in which Officer Alberto Olivares shot twice at Kellie Smith, and Smith survived his injuries. The purpose of my review is to determine whether the shooting was justified under Arizona law or whether criminal charges should be pursued.

The Tucson Police Department (TPD) investigated the shooting. I met with and discussed the case with TPD Detective Patrick Robinson, the case detective, and we reviewed officer body worn camera video of the shooting. Det. Robinson provided me with the following additional materials that I reviewed: TPD event chronology, scene and investigatory photographs; police reports; transcribed witness statements of Officer Olivares, Officer Michael Dufresne, Officer Christopher Oliver, city employee Ernesto Chavez, and [REDACTED] - a friend of Smith; as well as body worn camera video from Officers Dufresne and Oliver. Additionally, I read reports of a previous "suicide by cop" attempt made by Smith. I studied the scene diagrams, property sheets, and a body worn camera timeline summary. Based upon all of the foregoing, it is my understanding that the facts are as follows.



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Summary of the Facts

On August 14, 2019, Officer Olivares came to the aid of Officer Dufresne as Smith advanced on Dufresne with a knife. After Olivares' Taser did not stop Smith, Smith charged Olivares with the knife now pointing at Olivares. Olivares transitioned from his Taser to his firearm and shot twice, hitting Smith. Smith fell to the ground, and officers immediately disarmed him and rendered first aid. Smith survived the event.

The Facts

Officer Dufresne was field interviewing [REDACTED] at Ft. Lowell Park during daylight hours when Smith rode up on a bike, got off, pulled a knife from a sheath, and placed it to his own neck. Dufresne backed off and pulled his firearm while ordering Smith repeatedly to drop the knife. Smith instead advanced aggressively on Dufresne telling Dufresne several times to shoot him. Dufresne backed away gaining time and distance while issuing verbal commands to Smith to drop the knife. At one point Officer Oliver came up, and Dufresne warned him of the potential for crossfire, so Oliver moved. Right afterwards Officer Olivares, who was present as Dufresne ordered Smith to drop the knife, came up, and Dufresne yelled "Taser!" Olivares discharged the Taser in an effort to stop Smith from his aggressive advance on Dufresne, but it was ineffective at disabling Smith. Smith then turned his full attention to Olivares. He aggressively approached Olivares and moved the knife from his own neck and pointed it at Olivares. Olivares was backpedaling, trying to create distance between himself and Smith. Smith narrowed the distance between them quickly. Olivares transitioned from Taser to handgun and shot twice at a range of approximately six feet to protect himself from Smith. The bullet strikes put Smith on the ground. Olivares told Oliver to get an IFAK and render first aid to Smith as he lay wounded on the ground. The matter ended with Smith being disarmed and Officer Oliver administering an IFAK first aid kit and paramedics taking Smith to the hospital. Smith had two surgeries and has been discharged from the hospital after a long stay.

Legal Standards

Arizona Revised Statutes §§ 13-404 and -405 allow a person to use deadly physical force against another when he believes deadly physical force is immediately necessary to protect himself from another's use of deadly physical force. A.R.S. §§ 13-404 and -406 allow a person to use deadly physical force against another when he believes deadly physical force is immediately necessary to protect a third person from another's use of deadly physical force. Additionally, A.R.S. §§ 13-409 and -410 permit the use of deadly physical force in law enforcement when 1) an officer believes such force is necessary to defend himself or others against another's imminent use of deadly force, 2) an officer is effecting an arrest of a person the officer reasonably believes is attempting to commit a felony involving the use of a deadly weapon, and 3) an officer,



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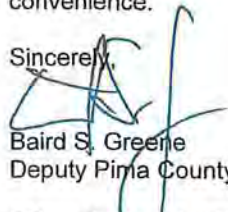
through past or present conduct the person, knows that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.

Findings

Officer Olivares shot to protect himself and others. Smith did not give him a choice with his attempted attack. Olivares tried to give ground to create distance between himself and Smith to avoid a violent situation, but he could not backpedal faster than Smith advanced on him and was gaining ground. Olivares was justified in acting in self-defense and in defense of the other officers. For these reasons, the Pima County Attorney's Office declines to pursue any criminal charges against Olivares in connection with this incident.

If I may be of further assistance in the matter please contact me at your earliest convenience.

Sincerely,


Baird S. Greene
Deputy Pima County Attorney

CC: Barbara LaWall, Pima County Attorney
Jonathan Mosher, Chief Criminal Deputy, Pima County Attorney's Office
Detective Patrick Robinson, Tucson Police Department Homicide Detail



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TUCSON POLICE DEPARTMENT PERSONNEL REPORT

TO: CHIEF OF POLICE	NAME OF PERSON ABOUT	
VIA: Bureau Commander	WHOM REPORT IS WRITTEN	
VIA: Lieutenant J. Pegnato	Officer Alberto Olivares	PR#: 35662
	Div/Sq: ODE/Squad 2	Hours: 0600-1600
		D.O.: F,S,U

EXECUTIVE REVIEW

DIVISION COMMANDER	CHIEF OF POLICE	BUREAU COMMANDER
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Reference: OIS FRB 19-0528

Details:

Synopsis:

On August 14, 2019 Field Training Officer Michael Dufresne PR#51065 was riding with an officer in training, Officer Christopher Oliver PR #103285. They had just completed a call for service at 57███ E. Glenn with Lead Patrol Officer Alberto Olivares PR #35662. Officers Dufresne and Oliver drove to the eastern parking lot of Fort Lowell Park (2900 N. Craycroft Road) and met with Officer Olivares to complete paperwork.

After parking, they began to discuss the next phase Officer Oliver would be entering in his training. Officer Dufresne spoke about the need to begin engaging in on-site sector policing and becoming comfortable conducting field interviews. As this conversation ensued, Officer Dufresne observed an older truck backed in nearby. A male subject, later identified as Kelly Smith, removed a bicycle from the bed of the truck as he paid close attention to officers. Officer Dufresne found Smith's clothing to be odd for the hot weather along with a backpack he wore. He suspected Smith could be involved in vehicular or residential burglaries. Smith rode off on the bike trail and Officer Dufresne walked over to speak with the female left alone at the truck.

Officer Dufresne identified her as ██████████ ██████████ was cooperative and provided her driver's license to the officer. She would later tell officers that Smith was acting "weird and agitated" that morning believing he may have been on "G" (methamphetamine). Just moments later, Smith returned on his bicycle. After discarding his bicycle, he brandished a large fixed blade knife (commonly referred to as a KA-BAR) placing it to both his neck and stomach. Smith yelled multiple times, "Shoot me". Officer Dufresne immediately radioed the emergency tone and for Officers Oliver and Olivares to come to him as he had encountered a male with a knife. He then begins to yell commands at Smith to put the knife down. Officer Dufresne trained his firearm on Smith while backing away from him. Smith quickly closed distance with Officer Dufresne with the knife held to his neck. Officer Olivares attempted to deploy the TASER to stop Smith's advance on Officer Dufresne. This was unsuccessful and Smith turned his attention to Officer Olivares. Smith then quickly advanced towards Officer Olivares armed with the knife. Officer Olivares attempted to retreat backwards as he quickly transitioned to his firearm. Officer Olivares fired two rounds at Smith within an approximate distance of 8-10 feet striking him in the abdomen and left arm. Officer Dufresne's body-worn camera captured the shooting incident. The officers then deployed an IFAK kit to render aid to Smith. Smith was transported by the Tucson Fire Department to University Medical Center with life-threatening injuries. He subsequently recovered and has been charged with two counts of Aggravated Assault with a Deadly Weapon/Dangerous Instrument.

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.

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TPD 642 (1-87)



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NARRATIVE (Continued)

Methodology:

The investigative methodology incorporated into this OPS investigation included considerations of the following criteria:

- All interviews conducted to include both criminal and administrative.
- All written documents to include case reports, supplements, and Event Chronologies.
- All radio transmissions associated with this call.
- Crime Scene photographs, drone photographs, and diagram mapping.
- Body-worn camera systems worn by involved department members.
- Officer Involved Shooting protocols.

Use of Force:

Lawful Purpose:

The officers involved had just completed a call for service and had relocated to a public park to complete additional paperwork. A conversation had taken place with Officer in Training Oliver who had just completed Phase 1 and was going to soon begin Phase 2. Officer Dufresne spoke about the need to begin engaging in on-site sector policing and interacting with the public. He observed a truck backed into a space nearby. His attention to the vehicle was drawn by a combination of factors based upon his experience as a police officer. Smith had paid close attention to the officers' parked vehicles as he removed a bicycle from the bed of the truck. The apparel worn by Smith with the backpack he wore made Officer Dufresne suspect that he could possibly be involved in larcenies involving vehicles or residences. Smith then rode off on a bike path which afforded him quick access to a number of parking lots and nearby residences. Officer Dufresne decided to conduct a field interview with ██████████ who remained at the truck alone. ██████████ was cooperative and volunteered her driver's license. Officer Dufresne also conducted an MVD records on ██████████ pickup truck.

De-Escalation:

Officer Dufresne was immediately faced with a deadly force encounter with Smith. He recognized that Smith was armed with a large fixed blade knife. He quickly gave verbal commands for Smith to drop the knife. At the same time, Officer Dufresne tried to create space between him and Smith moving backwards while training his firearm at him. Officer Olivares arrived and recognized a cross-fire situation. He deployed his TASER and attempted to stop Smith's advance towards Officer Dufresne. The TASER was not effective and Smith then rushed towards Officer Olivares armed with the knife. Because of the immediacy of the threat, it afforded no time to further assess the situation for de-escalation options.

Provocation:

The entire use-of-force incident was captured on Officer Dufresne's body-worn camera (BWC). Unknown to the officers at the time, Smith was reportedly on methamphetamine and experiencing some sort of mental health issues involving a heightened sense of paranoia as well as a "flashback" of some sort. It was the mere presence of Officer Dufresne with Hodges that spurred his initiation of a lethal force encounter.

Proportionality:

The officers were immediately faced with a deadly force encounter in which they had seconds to react. Smith charged Officer Dufresne while armed with a large fixed blade knife. Due to the crossfire situation, Officer Olivares attempted to use a TASER to subdue Smith, but when this failed the only option left was lethal force as Smith then charged him armed with the knife.

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NARRATIVE (Continued)

Use of Force Analysis:

Given the immediacy of action required by the officers based upon Smith's actions their use of force was appropriate in this encounter. The officers recognized the imminent threat of serious physical injury or death Smith posed to themselves and any innocent third parties. Officer Dufresne attempted to gain time and space while quickly backing away from Smith as he charging him. Officer Olivares attempted use of a TASER to stop Smith. Officer Olivares narrowly saved his own life by a very quick transition from his TASER to his firearm. It was obvious that Smith was intent on forcing the officers to use deadly physical force against him.

Policy/Procedure Violations:

Officer Olivares body-worn camera system was not turned on while seated in his vehicle. This was not outside of policy as he was not in contact with the public. When Officer Dufresne radioed that he needed assistance he jumped into immediate action and within seconds was involved in a deadly force encounter. During his interview, Officer Olivares readily admitted his focus was exclusively on Officer Dufresne's safety and well-being. In this circumstance it is reasonable that he simply was preoccupied with rushing to the aid of his colleague.

Incident Command/Supervision:

Sergeant Brotherton arrived on scene soon after the event. He first contacted Officer Olivares and confirmed he was not injured. He did not ask him any specific public safety questions upon his initial contact. Upon viewing his BWC, it became apparent that his failure to ask the public safety questions may have been related to an issue he raised during a Sergeant AOT session he attended on 07/25/19. In that AOT session, taught by Sergeant Marco Borboa, Sergeant Brotherton expressed some level of resistance as to whether he was obligated to ask the public safety questions and whether the member was obligated to answer those questions. Sergeant Borboa did stress to the group in general terms that it was TPD policy that as the first on-scene supervisor he would to ask the pertinent public safety questions and that the member was obligated to answer them. It was Sergeant Borboa's impression that Sergeant Brotherton did not either understand the policy or understand what the public safety questions were. Sergeant Borboa suggested he follow-up with him after the training session for further discussion. Sergeant Brotherton did not do so.

On his BWC, Sergeant Brotherton does assign a cover officer to Officer Olivares and ascertains that there were two additional witness officers. Almost a minute later, Lieutenant Mechtel contacted Officer Olivares and then asked him the pertinent public safety questions. Additionally, Sergeant Brotherton appeared to be confused as to whether witness officers are to be assigned cover officers. This was soon cleared up and cover officers were assigned. During the investigative briefing, Lieutenant Mechtel covered the public safety questions. Sergeant Scott Haynes was in attendance and believed he had an obligation to inform Lieutenant Mechtel of Sergeant Brotherton's stance during the AOT session.

An administrative investigation was conducted reference this matter. It was determined that Sergeant Brotherton had been a motor supervisor for approximately 12 years and had become unfamiliar with protocols in place reference officer involved shooting incidents. He was debriefed by Lieutenant Mechtel on the date of the incident and was receptive to the feedback reference why the public safety questions are asked. During an administrative interview with Sergeant Brotherton, he expressed that his confusion was as to whether an officer was obligated to answer the public safety questions. He has since come to learn that those questions shall be asked as a supervisor. He also has the understanding that witness officers are in fact required to have a cover officer assigned to them.

As to the overall supervision of the incident, Sergeant Brotherton did declare Incident Command soon after his arrival. Lieutenant Mechtel arrived shortly after, at which time the span of the crime scene was ascertained and resources were quickly put in place. A concise and complete briefing was subsequently provided by both Sergeant Brotherton and Lieutenant Mechtel.

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TUCSON POLICE DEPARTMENT Force Review Board

NARRATIVE (Continued)

Findings:

Sergeant David Brotherton:
700-Policy and Procedures: **Sustained/Blue/Track 3**

Conclusion:

Based upon this investigation, the use of force utilized by Officer Alberto Olivares was found to be **within departmental policy**.

The following General Order Violation(s) against Sergeant Brotherton is **Sustained**. The Office of Professional Standards recommends the discipline type fall under **Restorative Supervision**.

1330.3 Required Knowledge

All officers shall have a working knowledge of all criminal, constitutional, and motor vehicle laws, and ordinances enacted within the City of Tucson, as well as City Administrative Directives, department General Orders, and policies and procedures of their respective divisions and bureaus, as may be appropriate to their assignment or classification. Non-sworn employees shall have a working knowledge of all laws, City Administrative Directives, department General Orders, and policies and procedures of their respective divisions and bureaus as may be appropriate to their assignment or classification.

All members are responsible for seeking and obtaining any additional information or clarification necessary in order to comply with laws, ordinances, City Administrative Directives, department General Orders, department policies and procedures or any other subject area with which they must be familiar.

Sergeant Steve Erdman #28219 **10/30/2019**

I have reviewed Sergeant Erdman's investigative summary and find that it accurately and thoroughly documents the facts and circumstances of this incident. I concur with Sergeant Erdman's findings that Officer Olivares' use of deadly force in this incident was **Within Department Policy**.

I also find that the allegation of Policy and Procedures against Sergeant Brotherton is **Sustained**. I concur with Sergeant Erdman's recommendation that the discipline type falls under **Restorative Supervision**.

Lt. Jennifer Pegnato #41541

October 31, 2019

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TUCSON POLICE DEPARTMENT Force Review Board

ADVANCED TRAINING SECTION COMMANDER AND DEPUTY CHIEF SIGNATURE

Lieutenant:

Lt. Corey Duggan

Signature

Date: May 14th, 2020

- I agree with the Force Review Board's Findings
- I disagree with the Force Review Board's Findings

Comments / Additional Recommendations:

Deputy Chief:

32623 K. Hoke For D.C. Puccio
Signature

Date: *7.14.2023*

- I agree with the Force Review Board's Findings
- I disagree with the Force Review Board's Findings

Comments / Additional Recommendations:



TUCSON POLICE DEPARTMENT

Force Review Board

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Specific Recommendations and Assignments for Follow-Up

1. **OPS Referrals**
 - a. **Officer name and PR:**
 - b. **General reason for referral (for each officer):**
 - c. **FRB to initiate referral by direct entry into IA Pro:**

2. **Individual officer training recommendations / Individual referrals**
 - a. **What unit will address follow-up:**
 - b. **What follow-up is requested:**
 - c. **When a response is due:**

3. **Department training recommendations**
 - a. **What unit will address follow-up:**
 - b. **What follow-up is requested:**
 - c. **When a response is due:**

4. **Policy change or clarification recommendations**
 - a. **What unit will address follow-up:**
 - b. **What follow-up is requested:**
 - c. **When a response is due:**

5. **Procedure change or clarification recommendations**
 - a. **What unit will address follow-up:**
 - b. **What follow-up is requested:**
 - c. **When a response is due:**

6. **Equipment recommendations**
 - a. **What unit will address follow-up:**
 - b. **What follow-up is requested:**
 - c. **When a response is due:**



TUCSON POLICE DEPARTMENT Force Review Board

Tucson Police Department *Department / Function Responses to FRB Recommendations*

Department / Function: Tucson Police Department

Department / Function Head: Police Chief Chris Magnus

FRB Liaison: Advanced Training Section Commander - Lieutenant Doggett

FRB Case #: 19-0528 **Incident #:** 1908140102

Rec. #	Recommendation	Action Plan / Assignments	Target Date
A			
	Notes:		
B			
	Notes:		
C			
	Notes:		
D			
	Notes:		



TUCSON POLICE DEPARTMENT Force Review Board

Rec. #	Recommendation	Action Plan / Assignments	Target Date
E	Notes:		
F	Notes:		
G	Notes:		
H			



TUCSON POLICE DEPARTMENT Force Review Board

Rec. #	Recommendation	Action Plan / Assignments	Target Date
	Notes:		
I	Notes:		