

TUCSON POLICE DEPARTMENT Force Review Board

Incident Information	
Case Number: 2104120066	OPS Number: 21-0149
Date of Incident: 4/12/2021	OPS Findings and Recommendation: Use of Force: Within Policy. Body-worn camera not timely activated (Officer Garcia). Body-worn camera not present (Officer Packard).
Involved Officers: Ofc. Atkinson #54026; Ofc. Garcia #100619; Ofc. Martinelli #104200; Ofc. Rodriguez #54038; Ofc. Wasem #100739	COC Findings and Recommendation: Same as OPS.
Incident Location: Desert wash near the 4000 block of East Paradise Falls	County Attorney Findings: Use of Force: Justified
Level of Force	
Type 4 – Officer-Involved Shooting	
Investigative Information	
Investigating Supervisor: Det. Gutknecht #100625	
Unit [Team/Squad]: Office of Professional Standards	
Date Use of Force Investigation Complete: July 19, 2021	
Date Use of Force Investigation Follow-up [if any] Complete: N/A	
Board Information	
Date of Board: 7/11/2022	Board Chair: Assistant Chief Kevin Hall
Scribe: Lisa Markkula	Member: Ofc. Ryan Azuelo, TPD
Member: Lt. Matt Brady, TPD	Member: Sgt. Leslie Gallaher, TPD
Member: Ofc. Mike Gamez, TPD	Member: Lt. Thomas Hawke, TPD
Member: Traci Hockett, Community Member	Member: Mitch Kagen, Independent Police Auditor
Member: Sgt. Troy Lansdale, TPD	Member: Ofc. Daniel Lee, TPD
Member: Craig Wilson, Community Member	Member:
Member:	Member:
Member:	Member:
Member:	Member:
Date of Submission:	Legal Advisor: Rebecca Cassen
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 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.**

On June 6, 2022, the Office of Professional Standards made extensive materials available to FRB members, including:

- Administrative documents
- Office of Professional Standards Investigative Summary
- Investigative documents, including
 - Case Reports
 - Crime Lab Reports
- 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 April 12, 2021, Officer Rodriguez was off duty when he saw James Pacheco and a female walking in the area of George Mehl Park (4000 E. River Rd.). Officer Rodriguez knew that James and the female were wanted for questioning. As of that date, there was probable cause to arrest Mr. Pacheco for sexual assault and kidnapping. The female had a "stop and field interview" flag regarding the same incident.

Officer Rodriguez called 911 and reported that Mr. Pacheco and the female were wanted by TPD and asked to speak to an on-duty sergeant in Operations Division Midtown (ODM). He spoke with Sergeant Stone, who directed units to the park. He also requested a K9 unit, air support, and ODM CRT (Community Response Team – units that, among their duties, assist with arrests of violent suspects). None of these were available.

Responding officers had a possible sighting of Mr. Pacheco and the female at the business complex near the 4000 block of East Paradise Falls. Sergeant Stone directed patrol to contain the area. Officer Garcia

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responded to assist, joining other officers who were conducting a foot search in the area southeast of the complex.

An officer saw two individuals in tunnels in the area and announced to officers in the area, "south side." Officer Garcia looked south and saw Mr. Pacheco looking at him. Mr. Pacheco then ran south and Officer Garcia chased him. As he entered the wash, he realized Mr. Pacheco had changed directions and was now running toward him. Mr. Pacheco raised two large knives over his head in an attack position. Officer Garcia gave him commands to "get down!" Instead, Mr. Pacheco gave a battle cry and charged toward Officer Garcia. In fear for his life, Officer Garcia fired his duty weapon six times. Four rounds struck Mr. Pacheco, who fell to the ground. Officer Garcia held Mr. Pacheco at gunpoint until other officers arrived and began administering first aid, using their Individual First Aid Kits (IFAK) until paramedics arrived.

Officer Garcia turned on his body-worn camera immediately after the shooting. The shooting itself was captured as part of the camera's "pre-event buffering," a mode that captures video, but not audio.

Board Findings

Based on its review of materials, the Board concurred with the findings of the Office of Professional Standards that the officers' use of force was 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: Mr. Pacheco charged at Officer Garcia, two knives raised overhead, leaving no time for de-escalation other than giving commands to Mr. Pacheco to "get down."

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

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- Refer officer/case to OPS
 Refer officer to other:

Comments, Explanations, and/or Recommendations:

One officer failed to turn on his body-worn camera at the start of the foot search; another officer left his body-worn camera at the station. As a result, both received restorative supervision. The department is obtaining signal sidearms that turn body-worn cameras on when a sidearm within approximately 30 feet comes out of its holster.

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:

In vehicles/not deployed:

In the field not at the scene:

Not feasible in this situation.

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

The supervising sergeant asked for a K9 unit, air support, and CRT; however, none were available. Drones might also have helped the search in this difficult terrain (desert wash).

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 sergeant's requests for a K9 unit, air support, and CRT were appropriate.

Reporting, Investigation, and Review

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

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- 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:

Findings

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

- YES
 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 board felt that the officer had no other options given the imminent threat to his life posed by Mr. Pacheco.

Board Recommendations

15. Are there any issues or lessons learned from this incident that should be communicated?

- YES – See additional comments below.
 NO

Ongoing considerations include the use of drones in searches, which is the subject of a pilot study in one patrol division.

Refer to:

- Involved Officer(s)/COC
 Legal
 Training
 Other: Executive Leadership Team

Incident Chronology

Times are approximate. Event chronology, radio transmissions, MPS messages, GPS data and body-worn camera information was combined to create this timeline: Officer Garcia's Axon Audit Trail indicated his camera was turned on at 0851.

Time
0824

Description

Sgt. Stone on the phone with Ofc. Rodriguez #54038 (off-duty). Sgt. Stone advised via radio of the stop and arrest on Mr. Pacheco and the stop and field interview on the female.

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|------|---|
| 0825 | Sgt. Stone directed patrol to George Mehl Park. Patrol responded and attempted to set a loose containment. CRT, canine, or air units were unavailable. A zebra unit attempted to assist with an unmarked vehicle. |
| 0832 | An updated location was provided by Sgt. Stone. The subjects were walking southwest from George Mehl Park. Sgt. Stone advised that the subjects were seen walking toward Alvernon. |
| 0844 | An officer sees the subjects walking into a business complex. |
| 0846 | Ofc. Garcia arrives on scene. |
| 0847 | Sgt. Stone announced that he had incident command and directed units to contain the business complex. |
| 0849 | K9 is en route from Marana. |
| 0850 | A subject is seen on the south side of East Paradise Falls in the wash. One is running southbound through the wash. |
| 0851 | Shots fired. |
| 0852 | Mr. Pacheco and the female are detained. |
| 0852 | IFAK deployed. |
| 0902 | The Tucson Fire Department transported Mr. Pacheco to the hospital. |



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Laura Conover
Pima County Attorney



(520) 724-5600
pcao.pima.gov
32 N. Stone Avenue, Tucson, AZ 85701

Administration Division

February 1, 2022

Chief Chad Kasmar
Tucson Police Department
270 S. Stone Ave.
Tucson, AZ 85701

Re: Tucson Police Department Officer Involved Shooting Investigation TPD2104120066
Officer Daniel Garcia, #100619

Dear Chief Kasmar,

The Pima County Attorney's Office has completed its independent review of the officer-involved shooting where Tucson Police Officer Daniel Garcia discharged his firearm at Mr. James Pacheco on April 12, 2021, at 4000 E. Block Paradise Falls. Mr. Pacheco sustained multiple gunshot injuries and was transported to the hospital. He survived his injuries.

This review is strictly limited to a decision about whether there is sufficient evidence to file criminal charges against Officer Garcia. The scope of this 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 shooting. In making this determination, we reviewed and assessed the facts, and applied Arizona statutes defining criminal offenses to those facts. We also considered whether any use of 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. 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. Our review involves a substantially different standard and a higher burden of proof than what is applied to personnel disciplinary matters or civil liability.

In May 2021, Tucson Police Sergeant Marco Borboa contacted Chief Criminal Deputy Dan South and advised him that there had been an officer-involved shooting. On that same day, Deputy County Attorney Mark Diebolt met with homicide detectives and conducted a walk through and briefing at the scene. Detective Patrick Robinson provided materials including police reports, photographs, a list of evidence collected, audio recordings (911 calls, radio communications, and interviews), and video recordings (surveillance and body worn camera footage). Based on a review of those materials, we understand the salient facts to be the following:

April 9, 2021, Mr. Pacheco was wanted by Tucson Police in connection to a sexual assault involving a juvenile victim. A "Wanted Bulletin" was circulated describing the offense and indicating that Mr. Pacheco was possibly armed and dangerous. Off-duty TPD Officer Anthony Rodriguez observed Mr. Pacheco and another person in the desert area of Paradise Falls. That officer called in the location of Mr. Pacheco and uniformed officers arrived, including Officer Garcia.

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2104120066

Interviews and review of officer's body worn cameras show that Mr. Pacheco was armed and attacking Officer Garcia with two knives, one in each hand. These knives were described as being consistent with a M7 Bayonet designed to be attached to the end of a military rifle. These knives are seen in BWC in Mr. Pacheco's hands as he is charging toward Officer Garcia. These knives were located, photographed, collected, and booked into evidence.

Officer Cory Atkinson can be heard announcing "Tucson Police" at the north end of the tunnel, Officer Atkinson verbally directed other officers present to the southside of the tunnel. Officer Atkinson made a radio transmission that there are "subjects on the southside of the wash." Through Officer Atkinson's BWC it appears that Officer Garcia said, "hands up." There was a pause then Officer Garcia is heard saying "get down" before six shots are heard. Mr. Pacheco is also audibly screaming just before the shots are heard. Six cartridge cases were located at the scene and Officer Garcia's weapon contained six rounds less than a normal load. Staff at UMC Banner Main indicated that Mr. Pacheco was hit four times; BWC indicates that any additional rounds (or rounds that passed through Mr. Pacheco's body) hit the dirt embankment just behind Mr. Pacheco. Officer Garcia's BWC indicates that Mr. Pacheco was already south of officers in the wash when police arrived and turned around and came back north to confront Officer Garcia after the uniformed officers attempted to arrest him. In addition to examination of the scene, Detectives conducted several interviews. Those interviews also confirmed that Officer Garcia was the only officer who fired his weapon. The person with Mr. Pacheco used no force against the police and was not injured.

In applying Arizona law to these facts, Officer Garcia was justified in using deadly force against the unlawful deadly force used by Mr. Pacheco. A reasonable person under the circumstances would conclude that Officer Garcia was making a lawful arrest based on probable cause, which Mr. Pacheco resisted with unlawful deadly force. A.R.S. §§ 13-404, 13-405 and 13-406 allow a person to use deadly physical force to protect themselves and/or a third person when and to the extent a reasonable person, similarly situated, would believe that deadly physical force is immediately necessary to protect themselves or a third person from another's use of deadly physical force. Additionally, A.R.S. §§ 13-409 and 13-410 permits the use of deadly physical force if immediately necessary to make an arrest, when the arrest is being resisted with deadly force, or if the person is committing a felony using a deadly weapon. When Officer Garcia discharged his firearm, it would have appeared to a reasonable person under the circumstances that he and other officers were being attacked by an armed assailant carrying deadly weapons in both hands. Officer Garcia was justified in using deadly force.

For the reasons stated here, this Office declines to file any criminal charges against Officer Daniel Garcia.

If additional relevant materials become available, we would appreciate the opportunity to review those materials to consider whether they add to our understanding of these events.

Sincerely,


Laura Conover, Pima County Attorney


Dan South, Chief Criminal Deputy

Cc: Detective Patrick Robinson, Tucson Police Department

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Advanced Training Section Commander, Assistant Chief, and Chief Signatures

[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:

*32623
K. H. H.*

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]

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:

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Specific Recommendations and Assignments for Follow-Up

1. **OPS Referrals** None for use of force.
 - a. **Officer Name and PR** Officer Garcia #100619; Officer Packard #100561
 - b. **General reason for referral (for each officer)** Officers Garcia and Packard received restorative supervision for failing timely to activate (Officer Garcia) and failing to have present (Officer Packard) their body-worn cameras.
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** None
 - a. **What unit will address follow-up?**
 - b. **What follow-up is requested?**
 - c. **When is a response due?**
6. **Equipment recommendations** The department is purchasing signal sidearms that activate all body-worn cameras within approximately 30 feet. Drone use in searches is being piloted in one patrol division.
 - a. **What unit will address follow-up?**
 - b. **What follow-up is requested?**
 - c. **When is a response due?**

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Department Responses to FRB Recommendations

Rec. #	Recommendation	Action Plan/Assignments	Target Date
1.			
2.			