

TUCSON POLICE DEPARTMENT

Force Review Board

Incident Information	
Case Number: 2110050150	OPS Number: 21-0418
Date of Incident: 10/5/2021	OPS Findings and Recommendation: Use of Force: Within Policy
Involved Officers: Ofc. Cooper, #102554; Ofc. Guevara, #49552; Sgt. Campos, #41932; Sgt. Davis #31478	COC Findings and Recommendation: Same as OPS.
Incident Location: 90 block of East Fort Lowell Road	County Attorney Findings: Use of Force: Justified
Level of Force	
Type IV – Officer-involved shooting	
Type II – K9 bite	
Investigative Information	
Investigating Supervisor: Det. Trace Gutknecht, #100625	
Unit [Team/Squad]: Office of Professional Standards	
Date Use of Force Investigation Complete: 12/27/2021	
Date Use of Force Investigation Follow-up [if any] Complete: N/A	
Board Information	
Date of Board: August 1, 2022	Board Chair: Lt. Thomas Hawke
Scribe: Lisa Markkula	Member: Ofc. Ryan Azuelo, TPD
Member: Lt. Matt Brady, TPD	Member: Sgt. Luis Bustamante, TPD
Member: Sgt. Derek Duffy, TPD	Member: Sgt. Eric Evans, TPD
Member: Sgt. Leslie Gallaher, TPD	Member: Independent Police Auditor Mitch Kagen, City Manager's Office
Member: Det. Conor Keating, TPD	Member: Ofc. Michael Krammes, TPD
Member: Sgt. Troy Lansdale, TPD	Member: Adria Santa Anna, Community Member
Member: Ofc. Marcos Santa Maria, TPD	Member: Cedric Smith, Community Member
Member: Pam Treadwell-Rubin, Community Member	Member:
Member:	Member:
Date of Submission:	Legal Advisor: Antonio Zapata
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 July 13, 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
 - Autopsy Report
 - 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 October 5, 2021, officers from Operations Division West were dispatched to a business in the 90 block of East Fort Lowell Road for a report of shots fired. A man (later identified as Donte Laster) had been told to leave by an employee. Mr. Laster then brandished a handgun. He discharged it, but not at anyone. Mr. Laster was seen pacing in the business' fenced yard.

Sgt. Davis was in the area and verbally contacted Mr. Laster, who fled behind the business, out of sight. Sgt. Davis gave chase, then heard a single gunshot and radioed, "Shots fired." Other units arrived to set containment. Sgt. Davis remained in the northeast area and announced that he had incident command.

Operations Division Midtown Communications broadcast that there was an officer-involved shooting in Operations Division West (ODW). Officer Cooper heard the transmission as he was securing from a special

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duty shift. He found Lt. Allen and asked if ODW needed assistance. Lt. Allen responded that he didn't know. Officer Cooper put on his uniform and responded to assist. He did not have his body-worn camera due to his off-duty status.

Sgt. Campos and other officers located Mr. Laster on the west side of the building. Sgt. Campos verbally contacted Mr. Laster, who held the handgun to his own head. Sgt. Campos gave commands for Mr. Laster to drop the gun. He lost visual contact as Mr. Laster moved under a carport-type area, where large boxes of tile presented him with cover and concealment.

Sgt. Campos continued to try to build rapport with Mr. Laster, who was talking but not engaging with Sgt. Campos. Ofc. Winegrad was on rifle and able to see Mr. Laster as he paced underneath the "carport." Commands were given to drop the gun, but Mr. Laster failed to comply. Instead, he began to walk southeast. Commands were given for him to stop. He obeyed and went back underneath the "carport."

Ofc. Guevara and Ofc. Cooper arrived to assist Sgt. Campos' group. Ofc. Guevara took an additional rifle position. Ofc. Cooper relieved Ofc. Winegrad, who needed a break due to fatigue.

The loose containment around the area had officers positioned to the north, south, and east. Employees were inside the business and there were residential homes directly south of Mr. Laster.

Mr. Laster dropped the magazine out of the handgun. Commands were given for him not to pick up the magazine. Instead, he picked up the magazine and put it in the handgun. Mr. Laster said, "I'm going to shoot these tiles," which Ofc. Cooper did not hear. Mr. Laster fired two rounds. Ofc. Cooper could not see where Mr. Laster was pointing the handgun, but he knew there were officers and community members in the immediate area. Ofc. Cooper fired one round, which struck Mr. Laster in the right side. He fell to the ground, laying on the handgun.

Sgt. Campos urged Mr. Laster to relinquish the gun he was lying on, but he did not comply. TAC units moved in and took over commands. Mr. Laster was confirmed to have control of the handgun. Captain Dennison, Lt. Hand, and Sgt. Legarra made the decision to have Ofc. Azuelo release his K9 on a long line to bite Mr. Laster while the handler pulled on the leash, to move Mr. Laster away from the handgun, so they could render first aid. Ofc. Azuelo did so and it was successful. Officers then rendered aid to Mr. Laster, who was transported to the hospital where he unfortunately succumbed to his injuries.

Two homes to the south of the business were struck by gunfire. Both were occupied at the time. Bullets were recovered from each, and the round trajectories indicated that they likely were fired by Mr. Laster. One round came within a few feet of striking an elderly bed-ridden resident.

Mr. Laster fired six rounds during the incident. Ofc. Cooper fired a single round. Round counts revealed that Ofc. Guevara had an extra round in his rifle magazine. He stated that he had miscounted the rounds when placing them in the magazine.

Mr. Laster had prior arrests for obstruction of law enforcement/trespassing, marijuana possession, domestic violence, robbery, aggravated assault, theft, prohibited possessor. The gun in his possession was confirmed to have been stolen during a residential burglary less than 24 hours prior to the officer-involved shooting.

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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: Sgt. Campos tried to engage Mr. Laster, offering him water, trying to get him to put the gun down, trying to get him not to pick up the magazine when it fell to the ground. The board thought he had done a good job communicating with Mr. Laster.

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:

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:

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Less-lethal was not an option in this situation.

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

Equipment that was used included shields, rifles (some with optics). There was discussion of the number of drones the department has that are not SWAT-related (several) and that drones are more mobile than robots. Anyone in the department can call for a drone through air support and a drone was on its way. SWAT is also doing a pilot drone program.

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:

There was discussion of two aspects that were felt to be less than ideal but not to have contributed to the outcome.

In negotiating with Mr. Laster, Sgt. Campos, who had Crisis Intervention Team training, was directly involved and thus not in the best position to supervise.

Sgt. Davis took incident command and held it until Lt. Hand took over. However, Sgt. Davis didn't know what was happening with Sgt. Campos in the back, where the suspect was. More communication or changing position would have helped Sgt. Davis have better information.

Reporting, Investigation, and Review

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

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):

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Comments, Explanations, and/or Recommendations: There was some discussion of who is a focus and who is a witness officer in investigations (focus meaning subject to investigation). Any supervisor at a critical incident and any officer who used force should expect to be a focus, at least initially. It was also mentioned that it is easier to categorize officers initially as a focus and get them the appropriate representation, etc., then later recategorize them as a witness (if appropriate), than it is to do the reverse.

Findings

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

- YES Type IV, Officer-involved shooting; also Type II K9, dog bite
 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 shooting was found to be within policy. While use of a K9 to pull a person away from a handgun is not specifically laid out in policy, it was not a violation and, in fact, expedited providing aid to the subject. The board expressed no issues with either use of force.

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

There was discussion regarding the Public Safety Communications Department (PSCD) call taker's not asking if the caller was safe or could move to a safe location – not facilitating getting the caller away from the person with the gun. Some relevant questions weren't asked. There was also a delay in the call. As a result of questions regarding PSCD's role, it was decided to have a PSCD representative present at future Force Review Board meetings, whenever possible. (PSCD is not part of the Tucson Police Department; but is its own separate city department.)

There was concern on the part of the board as to why Sgt. Davis was at work that day, as he had been present at the Amtrak mass shooting the day before. It was suggested that, while time off can be and is approved at the division level, there should perhaps be a department policy mandating time off after certain critical incidents. This has been discussed in the past, but not acted upon.

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Officers often wait around to be processed after critical events, resulting in very long shifts. In addition to dealing with the traumatic impact of a critical event, returning to work the next day may mean that the officer has had very little sleep.

Incident Chronology

TPD Event

**Times are approximate. Event chronology, radio transmissions, GPS data, and body-worn camera information were combined to create the following timeline.*

- 14:03 911 call made referencing shots fired
- 14:06 Sgt. Davis was dispatched and arrived on scene; suspect fled westbound, no visual
- 14:09 Suspect fired a shot, no visual; officers started to set containment
- 14:11 Suspect fired a shot, no visual
- 14:12 Suspect fired a shot, no visual
- 14:13 Suspect fired a shot, no visual; officer-involved shooting was broadcast on ODM channel
- 14:14 Western containment was set, shield was present, and Ford Taurus was used as cover on the South/West quad
- 14:16 TAC was set as eastern containment; K9 was on scene
- 14:17 Ofc. Azuelo clarified that no officers had fired, but the suspect had fired
- 14:18 Sgt. Davis announced that he had incident command
- 14:22 Sgt. Campos contacted the suspect, who had the handgun to his own head
- 14:23 Sgt. Campos' group moved up and started a dialogue with the suspect
- 14:30 TAC held position outside the fenced yard as Sgt. Campos' group had visual
- 14:31 Lt. Hand announced that he had incident command
- 14:32 Sgt. Legarra announced that hostage negotiators and a drone were on scene. Sgt. Legarra planned to move up with a Suburban, tighten containment, and start a dialogue with the suspect.
- 14:33 Ofc. Cooper took position on rifle. Capt. Dennison announced that he had incident command and that Lt. Hand was operations chief.
- 14:34 The suspect's magazine dropped out of the gun onto the ground. Commands were given for him to leave it on the ground. The suspect picked up the magazine and put it back into the gun. The suspect fired two shots. Ofc. Cooper fired one shot and struck the suspect.
- 14:40 The K9 was deployed to pull the suspect off the gun he was lying on top of. TAC medics rendered aid.
- 14:43 The scene was secured for Tucson Fire paramedics to come in and render aid.

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Laura Conover
Pima County Attorney



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Administration Division

February 3, 2022

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

Re: Officer Involved Shooting, Tucson Police Department Case Number 2110050150

Dear Chief Kasmar:

The Pima County Attorney's Office has completed its independent review of the officer-involved shooting where Tucson Police Officer Michael Cooper discharged his firearm at Donte Laster on October 5, 2021, at the business [REDACTED], [REDACTED] E Ft. Lowell Rd. Mr. Laster sustained a gunshot wound, was transported to the hospital, and died from his injury.

This review is strictly limited to a decision about whether there is sufficient evidence to file criminal charges against Officer Cooper. 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.

Deputy County Attorney Bruce Chalk responded to the scene of the shooting on October 5, 2021 and was briefed on the relevant facts while on scene. He also reviewed the materials that were submitted to this office regarding the above referenced case. The materials submitted included police reports, interviews, Body Worn Camera (BWC) footage, transcripts, surveillance video from the business, photographs and diagrams.

Based on our review of the material provided, the facts are as follows. Members of the Tucson Police Department responded to a call from the business concerning a man with a gun on their property. It was determined that Mr. Laster had entered the rear of the property and was observed by an employee on surveillance video. The employee went out to tell Mr. Laster to leave and agreed to give him a few minutes to finish his cigarette. When he came back, Mr. Laster displayed a gun and then discharged a round near the employee. The employee went back inside, called 911, and watched as Mr. Laster discharged the weapon at stone or tile and in the direction of the residential area south of the commercial yard.

Officers arrived and established a perimeter. Officer Cooper's position eventually was primary on a long gun, behind some pallets of stacked stone tile. A body worn camera was placed in a stable location with a view in the same direction as the officers.

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As the officers deployed a perimeter around Mr. Laster, he took the gun and held it to his head. Mr. Laster wandered and mumbled mostly unintelligibly. Sgt Luis Campos tried to engage Mr. Laster verbally, telling him to put the gun down. Eventually, the magazine from the weapon fell to the ground. Despite Sgt Campos imploring Mr. Laster not to pick it up and put the gun down, he picked up the magazine and loaded it into the gun. Mr. Laster then walked back to a covered open car port like area used for storage. He took a position behind some stone and tile. He then discharged the gun two more times at tile opposite him. Officer Cooper discharged one round from his rifle. Eventually, Mr. Laster died because of this shot.

In applying Arizona law to these facts, Officer Cooper was justified in using deadly force against the unlawful deadly force used by Mr. Laster.

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(C)(2) authorize the use of deadly physical force to effect an arrest or prevent escape if the peace officer reasonably believes: (a) that the person "[h]as committed, attempted to commit, is committing or is attempting to commit a felony involving the use or a threatened use of a deadly weapon," (b) "[i]s attempting to escape by use of a deadly weapon," or (c) "[t]hrough past or present conduct of the person which is known to the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay." A reasonable person in Officer Cooper's position would conclude that deadly physical force was immediately necessary to arrest or prevent the escape of Mr. Laster for a felony involving the use of a deadly weapon, and that under the circumstances there was danger to human life unless Mr. Laster were apprehended without delay.

Here, the suspect had discharged his weapon in the direction of a store employee, fired repeatedly at various objects in the yard with a residential area next door. Then, when the magazine dropped from his pistol, after being told not to pick it up, he picked it up and placed it back in his weapon. Finally, discharging his weapon at more tile, Mr. Laster presented a clear danger to the public and officers on the scene.

Based on all the circumstances presented here, we find that there is no basis for the filing of criminal charges against Officer Michael Cooper for firing his weapon at Donte Laster. Officer Cooper's actions were reasonable and immediately necessary to protect himself and others against Mr. Laster's actions and the threat he posed. Therefore, his actions were justified under Arizona law, and the State would be unable to prove otherwise in any criminal proceeding.

If additional materials are obtained later, we would appreciate the opportunity to review such materials to consider whether they add to our understanding of this incident. If you have any questions or need anything else in connection with this matter, please contact us at 724-5600.

Sincerely,



Laura Conover, Pima County Attorney



Dan South, Chief Criminal Deputy

Cc: Detective Scott Ahlskog, Tucson Police Department

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Advanced Training Section Commander, Assistant Chief, and Chief Signatures

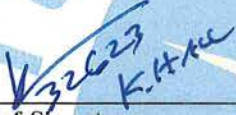


Lieutenant Signature

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.A.C.

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:



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:

DEPARTMENT

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Specific Recommendations and Assignments for Follow-Up

1. **OPS Referrals** None
 - a. **Officer Name and PR**
 - b. **General reason for referral (for each officer)**
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** 1) Consider a policy re time off after critical incidents. 2) Add a Public Safety Communications Department representative to the FRB.
 - a. **What unit will address follow-up?** 1) Executive Leadership Team; 2) This has been done.
 - 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** None
 - 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.	Consider a department-wide policy re time off after critical incidents	Executive Leadership Team (in practice, involved officers are given time off)	
2.	Add a representative from the Public Safety Communications Department to the FRB	This has been done.	