

COPY

February 25, 2002

TO: B. R. HOLDER
Chief of Police

ATTN: W. A. SAWYER
Assistant Chief of Police

FROM: KIRBY C. RAINSBERGER
Assistant City Attorney

RE: I.A.B. Case 00F-527
Officer David K. Duncan

Sir:

This is the disposition memorandum concluding the Internal Affairs investigation into the shooting death of Antonio Scott by Officer David K. Duncan which occurred on December 23, 2000. On that date at approximately 1622 hours, Officer Duncan was on duty in a marked unit together with Reserve Officer Brian Brundage when Brundage spotted a white GMC Yukon matching the description of a stolen vehicle on the most current hot sheet. The officers turned and attempted to catch up to the Yukon which was northbound on 40th Street from the intersection with Hillsborough Avenue. Officer Duncan was driving and used the overhead emergency lights of his patrol car intermittently to clear traffic in order to catch up to the Yukon. Upon getting close enough to read the Yukon's license plate, the officers confirmed that the plate matched the plate of the stolen Yukon on the hot sheet and requested by radio that Communications run a high speed check to verify that the vehicle had not been previously recovered. Before Communications could respond, the Yukon drove into the parking lot of a small shopping center located at 6425 N. 40th Street and stopped. This action was initiated by the Yukon driver inasmuch as the police vehicle was not displaying emergency lights at that time.

The Yukon was facing east and was in a parking space immediately in front of the shopping center. Officer Duncan pulled in behind and roughly perpendicular to the Yukon. The police vehicle was stopped well behind the Yukon, too far behind to effectively block it in.

The only passenger in the Yukon immediately opened the right front door and ran south with Officer Brundage close behind. Officer Duncan ran to the driver's side of the Yukon and drew his service weapon with his right hand. The driver's door remained closed as Duncan approached, pointed the firearm at the driver seated inside, and repeatedly ordered the driver to get out of the car. Upon getting no response, Duncan grabbed the driver's door handle with his left hand and opened the door. Duncan continued to yell orders to the driver while pointing the firearm with his right hand and holding on to the exterior door handle with his left.

Officer Duncan states that he stepped closer to the driver until he (Duncan) was within the doorway of the Yukon but continued to grasp the exterior door handle. Up until this point, the

Yukon had been stationary but now the Yukon "jerked back" according to Officer Duncan and he heard the tires of the Yukon make a sound he described as spinning on loose gravel.

Officer Duncan states that the backward movement of the vehicle caused the open driver's door to strike him, forcing him to move ("hop") laterally with the vehicle for a distance of approximately five feet. During this time, Duncan maintained his grasp of the exterior door handle and continued to order the driver to stop. Officer Duncan states that he feared he would fall under the wheels of the Yukon or be pinned between the Yukon and the police vehicle. He also states that he did not know where Officer Brundage was and feared that Brundage could be run over or crushed between the vehicles.

Ostensibly fearing for the life of Officer Brundage as well as his own, Officer Duncan fired his Glock pistol twice from a distance he estimated to be three feet. Both shots hit the driver in the left arm and side but Duncan saw no immediate signs of compliance. The driver apparently put the Yukon into neutral or park at about this time and stiffened up in the seat resulting in the driver's foot pressing the accelerator pedal. This caused the Yukon's engine to rev loudly but the vehicle remained stationary.

Officer Duncan states that within seconds of the shooting, Officer Brundage appeared beside him to the left. As the Yukon's engine raced loudly, Duncan says that he grabbed Brundage and both jumped back from the vehicle's open door. Momentarily, Duncan realized the vehicle was not moving and the driver was not complying with his commands. Duncan states that he holstered his weapon and lunged toward the driver, grabbing the driver and removing him from the vehicle.

The driver was immediately taken to the pavement, handcuffed by the officers and his physical condition was checked. Upon discovering the driver was not breathing, officers started CPR with Officer Duncan doing respirations. This effort continued until the arrival of EMS. Shortly thereafter the driver, later identified as Antonio Scott, was pronounced dead at the scene. Officer Duncan was uninjured.

Inside the Yukon on the front passenger's seat was found what appeared to be a semiautomatic pistol. It was later determined to be a B-B gun. Officer Duncan had not seen the B-B gun before or during the incident.

Because Officer Brundage was engaged in a foot pursuit of the Yukon passenger, he witnessed none of the actual shooting. Upon hearing the shots, however, Brundage immediately looked and ran back toward the Yukon. He observed Duncan standing within the driver's door of the Yukon and heard him yelling at the driver to get out of the car. The best known witness is Ms. F. Williams who was seated in a parked compact car on the right side of the Yukon during the entire event. Ms. Williams stated that she heard the officer (Duncan) tell the driver of the Yukon numerous

times to get out of the vehicle. She said that during that time, the Yukon was rolling backward and revving loudly. She reports that the officer held the gun with two hands and that four shots were fired.

Officer Duncan's statement concerning the shooting is largely corroborated by the witnesses mentioned above and by the physical evidence on scene with two potential exceptions. One is the tire marks found on the scene, the other is the conclusion of the F.D.L.E. lab that Antonio Scott's shirt showed no firearm discharge residue.

TPD homicide detectives and an accident reconstructionist took the Yukon back to the scene of the shooting to determine the origin of tire marks left by the Yukon at the time of this incident. They collectively concluded that the tire marks were caused not by the Yukon in rapid reverse acceleration, but by the Yukon in forward motion braking abruptly. The significance is that the reverse movement of the Yukon described by Officer Duncan, including the "tires spinning rapidly" on gravel sound, was not of a nature as to leave tire marks on the parking lot surface. This fact is not altogether inconsistent with Officer Duncan's statement. He acknowledges the vehicle moved only a short distance (five feet), that he was able to move with the vehicle, and that he was not injured by contact with the Yukon's door. Altogether the witness statements and the physical evidence tend to support the conclusion that the Yukon was moving backwards, but not violently so, at the time of the shooting.

Of greater concern is the F.D.L.E. lab report reflecting that the T-shirt worn by Mr. Scott at the time of the shooting "displayed six (6) holes which were examined visually, microscopically, and chemically for the presence of close range firearm discharge residues and none were found." The six holes are so situated as to be consistent with the passage of two projectiles, but the lack of discharge residue from shots fired at the distance described by Officer Duncan raises doubt as to whether Duncan truly was within the doorway of the Yukon at the time of the shooting as he says.

F.D.L.E. declined to do any distance analysis in this case so all relevant pieces of evidence, as well as report and photograph copies, were sent to the F.B.I. lab in Washington, D.C. Upon completion of testing, the F.B.I. lab reported that firearm discharge residues were present in their testing (using Officer Duncan's actual firearm) as far back from the target as seven (7) feet.

I contacted the F.B.I. lab analyst who performed the testing to determine whether the test result conclusively established that the muzzle of Officer Duncan's firearm was at least seven feet from Mr. Scott when discharged. I was informed that the test could not be said to have established that proposition. The analyst explained that firearm discharge residue typically consists of unconsumed gunpowder granules and vaporous lead. The gunpowder granules are not generally embedded in the target material and are prone to being dislodged by rough handling of the material. In this particular case, after the shooting Mr. Scott was forcibly removed from the vehicle to the pavement where he was placed face down, handcuffed, and then rolled onto his back. CPR was administered by police officers and EMS personnel who apparently cut the shirt away from Mr. Scott

in their efforts to revive him. It is certainly possible that any initially attached gunpowder residue was lost during these efforts. Vaporous lead is frequently found, even when jacketed bullets are utilized, and is a much more durable residue. However, the likelihood of finding vaporous lead diminishes dramatically at distances beyond two feet. Accordingly, the lack of vaporous lead would not conclusively establish that Officer Duncan was outside of the Yukon doorway at the time of the shooting.

The policy of the Tampa Police Department regarding the use of deadly force is exceptionally strict. The general philosophy appears in SOP 536 (III) (E):

Any action taken by an officer in self-defense or in defense of others, up to and including the death of the assailant, or any action taken by an officer in apprehending a suspect, will be considered warranted and justified if there is sufficient cause, as would appear real and reasonable to a prudent police officer, to fear the life or safety of the officer or another, or providing each of the following factors is present, given the special circumstances at hand:

- 1) The police officer is acting officially within the boundaries of legal authority and established department policies and procedures;
- 2) The means and the force employed are not such as a prudent officer would consider excessive, unreasonable, or unnecessary and is within the law and established department policies and procedures; and
- 3) The use of firearms is within the guidelines set forth in current policies and procedures.

Regulation 1602 provides: "Department employees shall not use excessive force in making an arrest or in dealing with a prisoner or any other person."

The more specific mandates appear in SOP 537:

Police officers are authorized to use deadly force when the officer reasonably believes that such force is necessary to:

1. Prevent immediate death or great bodily harm to the police officer;
2. Prevent immediate death or great bodily harm to another human being; or

3. Apprehend the perpetrator of a felony which involved the use or threatened use of deadly force and the individual who is sought poses a threat of immediate death or great bodily harm to the police officer or another person.

The SOP goes on to provide at V.B.6: "Any doubt as to the justification for the use of deadly force must be resolved in favor of not using deadly force."

In this particular case, Officer Duncan's justification for using deadly force depends exclusively on whether he reasonably feared death or great bodily harm from the movement of the Yukon. The physical evidence does not particularly support the officer, but does not conclusively establish that the shooting was unreasonable. By Duncan's own testimony, the Yukon moved only a short distance, five feet. He was not bruised or otherwise injured by his bodily contact with the door. He was able to keep up with the Yukon without falling by hopping laterally while holding on to the exterior door handle. That he was even within the doorway of the Yukon at the time of the shooting is supported only by his own testimony. The lack of firearm discharge residue suggests otherwise but not conclusively so. There being insufficient conclusive evidence to place Officer Duncan other than where he testifies he was standing, the policy requires a consideration of whether being inside the doorway of the moving Yukon under the control of a felony suspect ignoring orders to stop could have caused a reasonable officer to fear for his life. My considered opinion is that such circumstances could cause a reasonable officer to fear immediate death or great bodily harm. As to the use of deadly force, therefore, the disposition of this investigation required by policy must be no violation.

Independent of the shooting is the issue of whether the stop of the Yukon occurred in conformance with SOP 831: Vehicle Stops – Felony/High Risk. Officer Duncan recognized that he was dealing with a probable stolen vehicle and a felony car stop. Both officers testified that Mr. Scott turned into the parking lot of his own accord and not in response to a direct order to do so inasmuch as the police vehicle was not displaying emergency lights when the Yukon stopped. The officers did not, therefore, violate the provision of SOP 831 requiring felony stops to be conducted by at least two police vehicles.

SOP 831 also requires "Both officers (two officer unit) remain at the cover position of their patrol car until all occupants are removed." Particularly in a stolen vehicle situation, when the suspects bolt from the vehicle the felony car stop is transformed into a foot pursuit. Here, the Yukon passenger ran and the officers did not know who, if anyone, remained inside. Officer Duncan wisely chose to continue to treat the Yukon as if one or more suspects remained inside but then violated SOP 831 by giving up his cover position and approaching the vehicle on foot. Had the gun on the front seat of the Yukon been real and Mr. Scott inclined to use it, Officer Duncan might well have sacrificed his life in an effort to save an insurance company a few thousand dollars. Violation of SOP 831 is sustained.