

ABRIDGED SUMMARY OF CATEGORICAL USE OF FORCE INCIDENT AND FINDINGS BY THE LOS ANGELES BOARD OF POLICE COMMISSIONERS

OFFICER-INVOLVED SHOOTING – 002-18

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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77 th Street	1/8/18		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	17 years, 6 months
Officer B	9 years, 10 months

Reason for Police Contact

Officers planned on stopping the Subject for reckless driving; however, the Subject struck a pole before the planned stop. As the officers stopped at the traffic collision, the Subject pointed an assault pistol at them, resulting in an officer-involved shooting (OIS).

Subject(s)	Deceased (X)	Wounded ()	Non-Hit ()
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Subject: Male, 46 years of age.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent Subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

Because the Department is currently legally prohibited from divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on December 11, 2018.

Incident Summary

Officers A and B were assigned to conduct crime suppression. Officer A was the driver of an unmarked hybrid police vehicle equipped with a forward-facing emergency red light and siren, while Officer B was the front passenger.

The officers were tasked with conducting pedestrian and vehicular code enforcement in high frequency gang crime areas to impact an increase in gang conflicts.

Officers A and B were driving when they observed a black four-door vehicle, illegally parked along a red curb, close to a Shell gas station. As officers passed by the vehicle, they observed a male seated in the driver's seat, identified as the Subject. According to Officer A, what caught his attention was that the Subject's driver's side window was down and his arm hanging out of the window. Officer A noticed that everyone else had their windows up due to the rainy weather.

After passing the vehicle, Officer A negotiated a U-turn and positioned the police vehicle behind it, so Officer B could conduct a computer inquiry of the license plate. According to Officer A, the Subject leaned out of the driver's side window and looked in the officers' direction with a startled and surprised look on his face. The Subject placed his upper body back into the vehicle and turned the steering wheel, preparing to pull away from the curb. The Subject suddenly accelerated and drove away at a high rate of speed, entered the gas station's lot via the northernmost driveway and quickly exited the south driveway. Officer A proceeded to follow the vehicle through the lot as the Subject drove diagonally in a reckless manner across the intersection. The Subject failed to stop for a red-phase tri-light and nearly collided with oncoming traffic.

According to Officer A, he activated the forward-facing emergency red light and siren to clear the intersection as he followed the Subject through the intersection. Simultaneously, Officer B conducted a computer inquiry of the license plate number via their Mobile Digital Computer (MDC). According to Officer B, the inquiry revealed that the vehicle had no wants or warrants, and he advised Officer A of the Subject's vehicle status, at which time Officer A turned off the police vehicle's emergency lights and followed the Subject. Officer B estimated that the officers' speed at approximately 35-40 mph and approximately 40 yards behind the Subject.

The gas station video footage captured the Subject driving through the gas station lot and intersection with the lights still activated.

Officers C and D were stopped in the left turn lane. Officers C and D were in a marked black and white police vehicle, equipped with a Digital In-Car Video System (DICVS) and were transporting an arrestee. Officer C observed a vehicle exit a driveway at a high rate of speed followed by Officers A and B's unit. The DICVS captured the incident.

Officer B broadcast, “[...] we’re going to be following a vehicle failure to yield, [...] vehicle just TC’d.”

According to Officer A, the Subject’s vehicle was approximately one block ahead of them, traveling approximately 70-80 mile per hour (MPH). Officer A observed the vehicle zigzagging in and out of lanes of traffic and between motorists. The Subject lost control of his vehicle and collided with a vehicle. After colliding with the vehicle, the Subject spun out and slid across lanes of traffic, striking the curb, and colliding with a light pole.

Communication Division (CD) broadcast that there was a traffic collision and that Officers A and B were requesting back-up.

Detectives retrieved video footage from several businesses in the area that captured various views of the incident.

Below is an account of each of the officers’ actions during the OIS and their rationale for using Deadly Force. This information was obtained by viewing the video evidence, walk throughs with the involved officers, and Bullet Path Analysis.

The Subject’s vehicle came to rest on the sidewalk with the driver’s side of the vehicle partially straddling the roadway. According to Officer A, he re-engaged his lights and siren to maneuver around traffic and render aid to the Subject and the other motorist involved in the traffic collision. According to Officer A, he angled his police vehicle facing toward the Subject’s vehicle to use it as cover and illuminate the Subject’s vehicle with his police vehicle’s headlights.

According to Officer A, as he approached the Subject’s vehicle, initially, he was unable to see the Subject in the vehicle as he maneuvered his vehicle into position. As Officer A drove closer to the Subject’s vehicle, he observed the Subject seated in the driver’s seat. The Subject leaned back into his seat and suddenly raised his body up out of his driver side window holding a pistol with his right hand on the pistol grip and his left hand on the forward rail. According to Officer A, the Subject extended his arms forward in their direction and aggressively pointed the pistol at Officer B and shouted, “Shoot me, [expletive deleted].” According to Officer A, based on his training and experience as a firearms instructor, he believed the Subject’s movement was a distinct movement used to clear the barrel of a long weapon when getting ready to shoot from a vehicle.

Officer A opened his driver side door, unholstered his service pistol while keeping his right foot on the brake pedal and assumed a two-handed shooting position while seated. According to Officer A, he did not have time to place his vehicle into park.

Officer A aimed his pistol between the vehicle’s open door and its A-frame. Seeing the Subject pointing his gun toward Officer B, Officer A feared for his and his partner’s lives

and fired one round at the Subject from an approximate decreasing distance of 15-10 feet. The Subject then turned toward Officer A and pointed his gun at him. Believing the Subject was going to shoot him, Officer A lowered himself in the driver's seat to gain better cover and fired two additional rounds at the Subject from an approximate decreasing distance of 15-10 feet. Officer A stated that while he was firing at the Subject his foot came off the brake pedal, causing the police vehicle to move forward. Officer A regained control of his vehicle and observed the Subject bleeding from the head and hunched over. Officer A observed the Subject's pistol lying on the ground directly below him in the street.

According to Officer B, after the Subject crashed, he could not see the Subject in the vehicle. As Officer B began to open his car door, he suddenly saw the Subject emerge from the driver's side window and place his upper torso out of the window holding an assault rifle, which was pointed directly toward him. Officer B described the Subject's rifle as red and black in color with an extended magazine. According to Officer B, the Subject held the rifle with both hands tight to his body as he leaned forward in an aggressive shooting position.

Simultaneously, Officer B, fearing for his life, un-holstered his service pistol while seated and assumed a two-handed shooting position, pointing his pistol between the vehicle's passenger door and its A-frame at the Subject's torso. According to Officer B, he placed his right leg against the passenger door with his left leg on the floorboard and buttock partially on the seat. Officer B fired two rounds at the Subject from an approximate decreasing distance of 15-10 feet, which had no effect. Officer B then observed the Subject turn his body and point the rifle at Officer A. According to Officer B, he believed Officer A was about to be shot, so he fired a final round at the Subject's head from an approximate decreasing distance of 15-10 feet.

After being struck in the head by gunfire, the Subject dropped the rifle and slumped over with his upper torso hanging out of the driver's side window. According to Officer B, he observed that he struck the Subject's in the head with his last round fired.

According to Officer A, he asked Officer B, "Are you ok? Are you hit?" Officer B told Officer A he was not hit. According to Officer A, he told Officer B, "Hey, I'm going to back up our vehicle," because their vehicle was too close to the Subject's vehicle. As Officer A reversed the police vehicle, Officer B exited the vehicle, assumed a two-handed, low-ready position, and used the passenger door as cover as Officer A slowly reversed the police vehicle to a safe distance from the Subject.

Officer B requested two Rescue Ambulances (RA), one for the Subject who was suffering from a gunshot wound and one for the victims involved in the traffic collision.

Numerous additional officers responded to the "help" call, including Sergeant A. Sergeant A assumed command and control.

The Subject was later declared deceased at the location. The victims involved in the traffic collisions had suffered non-life threatening injuries.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting of a firearm by any involved officer(s); and the Use of Force by any involved officer(s). Based on the BOPC's review of the instant case, the BOPC made the following findings:

A. Tactics

The BOPC found Sergeant A as well as Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Officers A and B's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

The BOPC found Officers A and B's lethal use of force to be in policy.

Basis for Findings

In making its decision in this matter, the Commission is mindful that every "use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public. The Department's guiding value when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers." (Use of Force Policy, Los Angeles Police Department Manual.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in Graham v. Connor, 490 U.S. 386 (1989), that:

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where the subject’s actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so. (Tactical De-Escalation Techniques, October 2016.)

- During its review of this incident, the BOPC noted the following tactical considerations:

1. Code-Six

Officers A and B did not advise Communications Division (CD) of their Code-Six location as they arrived at the scene of the traffic collision.

As the officers' vehicle came to a stop, the officers' attention was directed to the immediate threat of a suspect armed with an assault rifle. Immediately after the OIS, Officer B broadcasted a help call, including the officers' location.

Based upon the totality of the circumstances, the BOPC determined that Officers A and B's actions were a substantial deviation, with justification, from approved Department tactical training.

2. Tactical Vehicle Deployment

In this case, Officer A placed himself and his partner at a significant tactical disadvantage by positioning the police vehicle in close proximity to the Subject's vehicle.

Based upon the totality of the circumstances, the BOPC determined that the positioning of the vehicle was a substantial deviation, with justification, from approved Department tactical training.

3. Shooting from a Moving Vehicle

In this case, as the officers pulled up to the Subject's vehicle, they were immediately confronted with a rapidly unfolding tactical situation when the Subject pointed an assault rifle in their direction. Faced with a deadly threat, Officer A did not have time to put the police vehicle in park and made the decision to draw his service pistol, while keeping his right foot on the brake pedal. As both Officer A and his partner fired their service pistols from seated positions in the police vehicle, Officer A's foot came off the brake pedal and the police vehicle began moving forward.

Based upon the totality of the circumstances, the BOPC determined that in this instance, Officers A and B's actions were reasonable and not a substantial deviation from approved Department training.

Based on the totality of the circumstances, the BOPC determined the officers' actions were not a substantial deviation from approved Department tactical training.

- The BOPC also considered the following:

Situational Awareness – The investigation revealed that Officer B incorrectly broadcast that they were following the Subject in an eastern direction.

Shooting Foreground – The investigation revealed that two of Officer A's rounds struck the hood of the police vehicle he was utilizing as cover.

Required Equipment – The investigation revealed that Officer A did not have his OC Spray on his person during the incident.

Occupying a Moving Vehicle with a Service Pistol Drawn – The investigation revealed that while responding to the help call, Officer D drew his service pistol while in the back seat of his police vehicle, seated directly next to an arrestee.

Use of Seatbelt – The investigation revealed that Officer D removed his seatbelt while responding to the location of the help call.

Timely Transportation of an Arrestee – The investigation revealed that Officers C and D responded to the help call with an arrestee in their police vehicle. The arrestee remained at the scene for approximately one hour and thirty-nine minutes.

Preservation of Evidence – The investigation revealed that Officer E donned a glove, picked up the Subject's rifle, and moved it away from the vehicle so the arresting officers could safely remove the Subject from his vehicle.

These topics were to be discussed at the Tactical Debrief.

In conclusion, the BOPC found Sergeant A and Officers A and B's tactics to warrant a Tactical Debrief.

Command and Control

- Sergeant A responded, assumed the role of IC, and began assessing the situation. He observed that a vehicle had collided with a pole and that the Subject was hanging halfway out of the vehicle and appeared to be unconscious. He further observed approximately six to eight officers positioned behind the Subject's vehicle, as well as behind the police vehicles that were parked in the roadway.

Based upon his observations at that time, Sergeant A believed that the Subject's vehicle had been searched. Sergeant A also believed the Subject, who displayed no obvious signs of life, was not going to be removed from his vehicle. As such, Sergeant A focused his attention on identifying, separating, and obtaining a PSS from the involved officers.

As Sergeant A was identifying the involved officers, Sergeant B arrived and assisted Sergeant A with monitoring Officer B.

Sergeant C arrived approximately two minutes after Sergeant A. Sergeant C assessed the situation, assumed the role of IC and obtained a PSS from Officer B.

In this case, Sergeants A, B, and C should have acted with a greater sense of urgency, communicated sooner, and formulated a tactical plan to address the ongoing incident.

Based upon the totality of the circumstances, the BOPC determined that Sergeants A, B, and C's actions were not a substantial deviation from approved Department supervisory training.

B. Drawing/Exhibiting

- According to Officer A, the Subject leaned back in the driver's seat and then came up with what appeared to be a long gun in his hands. The Subject leaned forward, punched the weapon out of his window, and Officer A drew his service pistol in response to the Subject's actions.

According to Officer A, after the OIS, he observed that the Subject was hunched over out of his vehicle window and the long gun was on the ground. Officer A holstered his service pistol and moved the police vehicle back and away from the Subject's vehicle, in case they had to reengage him. After moving the vehicle, Officer A drew his service pistol a second time.

According to Officer B, the Subject emerged from the driver's side window of his vehicle, produced a red and black assault rifle, and pointed the barrel directly at him. Officer B then drew his service pistol.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, while faced with similar circumstances, would reasonably believe there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officers A and B's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

- **Officer A** – (pistol, three rounds)

Round One

According to Officer A, the Subject leaned back in the driver's seat and then came up with what appeared to be a long gun in his hands. The Subject leaned forward, punched the weapon out of his window, and pointed it towards Officer B. Fearing for

his partner's life, Officer A remained seated and assumed a shooting position with his service pistol set between his open door and the A-frame of his police vehicle. Officer A fired one round from his service pistol at the Subject to stop the threat.

Rounds Two and Three

According to Officer A, after firing, he assessed and observed the Subject turning toward him and aiming the weapon at him. Believing that the Subject was going to shoot him, Officer A tried to get lower behind his vehicle door and fired two additional rounds from his service pistol at the Subject to stop the threat.

- **Officer B** – (pistol, three rounds)

Rounds One and Two

According to Officer B, the Subject emerged from the driver's side window of his vehicle, produced a red and black assault rifle and pointed the barrel directly at him. Officer B remained in a seated shooting position and acquired a sight picture between his open door and the A-pillar of his vehicle. Believing the Subject was going to shoot him or his partner, Officer B fired two rounds from his service pistol at the Subject to stop the threat.

Round Three

According to Officer B, after firing, he assessed and believed his rounds struck the Subject. However, the Subject immediately moved his entire upper torso and the barrel of the rifle towards his partner. Believing his partner was going to be killed, Officer B fired one round from his service pistol at the Subject's head to stop the threat.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B would reasonably believe that the Subject's actions presented an imminent threat of death or serious bodily injury and that the lethal use of force would be objectively reasonable.

Therefore, the BOPC found Officers A and B's lethal use of force to be in policy.