

INTRADEPARTMENTAL CORRESPONDENCE

February 1, 2018
3.2

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: OFFICER INVOLVED SHOOTING FID NO. 015-17

Honorable Members:

The following is my review, analysis, and findings for Officer Involved Shooting (OIS), Force Investigation Division (FID) No. 015-17. A Use of Force Review Board (UOFRB) was convened on this matter on January 17, 2018. In this case, the recommended findings were not unanimous with a minority opinion rendered in regards to the Tactics and Lethal Use of Force findings for Officer [REDACTED] Serial No. [REDACTED]

I have carefully weighed each opinion, considered the case in its entirety, and adopted the recommendations of the majority opinion for Tactics and Lethal Use of Force. I hereby submit my finding in accordance with Police Commission policy.

SUMMARY

On March 4, 2017, at approximately 1222 hours, Communications Division (CD) broadcast, *Any Central Unit, ADW suspect Olympic and Main, in front of the Carl's Jr. Suspect is male Hispanic with gray hair, wearing a brown jacket, black pants, swinging a pipe. Code Two.*

Officer [REDACTED] and Reserve Officer [REDACTED] Serial No. [REDACTED] Central Patrol Division, were in full uniform, driving a marked black and white police vehicle. The officers heard the broadcast and responded to the call.

According to the officers, while en route, they discussed tactics and scenarios that included different force options available to them based upon encountering a suspect armed with a pipe. They also discussed the safety of the community, deploying from the police vehicle quickly, and TASER deployment (Debriefing Point No. 1).

Note: The investigation revealed that it was Reserve Officer [REDACTED] first full day working in a field assignment.

[REDACTED]

Officers [REDACTED] and [REDACTED] arrived at the Carl's Jr. and were unable to locate the suspect. The officers requested further information from CD. While waiting for additional information, CD broadcast, *1A85, additional on your ADW suspect. Additional PR called and advised suspect is male Hispanic, 65 years, wearing all black clothing, armed with a stick at Olympic and Broadway.*

According to Officer [REDACTED] as [REDACTED] drove west on Olympic Boulevard toward Broadway, [REDACTED] observed the suspect, later identified as A. Mendez, on the southwest corner armed with *a long stick or pipe*, and as *people would approach he'd swing and they'd back up*. [REDACTED] then activated [REDACTED] DICVS as they initiated their approach (Additional Tactical Debriefing Topics – Body Worn Video/DICVS).

According to Officer [REDACTED] observed Mendez *waving the metal pipe or rod* at a security guard wearing a yellow shirt, and the security guard was using [REDACTED] bicycle as a *barrier* to shield [REDACTED] from Mendez' actions (Additional Tactical Debriefing Topics – Agitated Delirium).

Note: The officers DICVS video depicts Mendez sidestepping toward a security officer as he does a two-handed jabbing motion with the metal pole, forcing the security officer to take several steps back and place [REDACTED] bicycle in between [REDACTED] and Mendez.

According to Officer [REDACTED] directed Officer [REDACTED] to broadcast a backup request at Olympic and Broadway. Officer [REDACTED] hesitated, so [REDACTED] grabbed the microphone and broadcast a back-up request for a *415 Man with a pipe*.

According to Officer [REDACTED] observed *a group of people* near Mendez. Mendez *would walk, swing the pipe*, and then *back up* causing the group of *people* to move *back and forth*. Based on [REDACTED] observations, [REDACTED] believed that *somebody* could be *hit by the pipe*, so [REDACTED] *couldn't wait for a backup* and *had to move*.

According to Officer [REDACTED] as they approached the corner, [REDACTED] reminded [REDACTED] partner *to exit the car immediately*. [REDACTED] stopped their vehicle facing west toward Mendez in the number two lane of southbound Broadway. [REDACTED] then directed Officer [REDACTED] to *deploy* and to *make sure that* [REDACTED] [REDACTED] *TASER ready* (Debriefing Point No. 2).

According to Officer [REDACTED] due to Mendez' actions of swinging the pipe at the citizens on the sidewalk as [REDACTED] approached the scene, [REDACTED] believed *the situation was escalating*, so [REDACTED] drew [REDACTED] service pistol and held it in a low-ready position as [REDACTED] exited [REDACTED] vehicle (Drawing/Exhibiting).

According to Officer [REDACTED] as [REDACTED] exited the vehicle Officer [REDACTED] directed [REDACTED] to tase Mendez. [REDACTED] pulled out the *TASER* and began *giving commands* to Mendez. [REDACTED] also heard [REDACTED] partner *giving Mendez commands* (Additional Tactical Debrief Topics – Non-Conflicting Simultaneous Commands).

According to Officer [REDACTED] *there was a sign on the corner, and [REDACTED] couldn't see the pedestrians on the other side of the sign. [REDACTED] took a couple of steps up to have a full view and [REDACTED] continued to give verbal commands to Mendez (Debriefing Point No. 3).*

According to Officer [REDACTED] continued giving verbal commands to Mendez, but Mendez would *not comply and continued to move around. [REDACTED] believed that [REDACTED] needed to get in front of the door to use the TASER and to make sure it was within range. So, [REDACTED] moved up and ordered Mendez to stop and drop the stick (Debriefing Point No. 3).*

According to Officer [REDACTED] announced, *TASER, TASER, TASER*, as [REDACTED] discharged the TASER at Mendez. Mendez retreated backwards, and the TASER probes appeared to *have bounced off* of Mendez' jacket. The TASER had no effect (Less-Lethal Use of Force and Additional Tactical Debriefing Topics – Use of Force Warning).

According to Officer [REDACTED] observed Officer [REDACTED] *deploy* the TASER. One dart appeared to *hit Mendez' jacket and the second dart flew past Mendez. [REDACTED] directed Officer [REDACTED] to reload [REDACTED] TASER, and Officer [REDACTED] advised [REDACTED] that [REDACTED] did not have an additional TASER cartridge.*

According to Officer [REDACTED] holstered [REDACTED] TASER. Believing that *the only way he would be able to defend [REDACTED] partner would be to use [REDACTED] firearm, [REDACTED] drew [REDACTED] service pistol (Drawing/ Exhibiting).*

According to Officer [REDACTED] continued to give verbal commands to Mendez to *drop the stick. Mendez was clenching the pipe and advancing towards [REDACTED] thought about [REDACTED] safety and the safety of [REDACTED] partner as Mendez was coming at them. [REDACTED] also was thinking about the citizens that were in the area and believed it that would have only taken a couple of seconds for Mendez to advance toward one of them and hit somebody in the head with that heavy metal pipe. Fearing for [REDACTED] life, [REDACTED] fired two rounds from [REDACTED] service pistol at Mendez to stop the lethal threat (Lethal Use of Force).*

Note: Following the OIS, Mendez dropped the pipe and collapsed on to the sidewalk. The pipe rolled approximately two to three feet and came to rest near the feet of Officer [REDACTED]

According to Officer [REDACTED] thought [REDACTED] *was going to get hurt and felt [REDACTED] may have to fire shots to sustain [REDACTED] life and prepared to fire [REDACTED] service pistol. As [REDACTED] brought [REDACTED] firearm up on target, [REDACTED] heard [REDACTED] partner fired two shots. [REDACTED] observed the suspect go down and holstered [REDACTED] service pistol.*

Officer [REDACTED] covered Mendez with [REDACTED] service pistol, retrieved [REDACTED] radio and advised CD the suspect was down. Officer [REDACTED] requested additional units and a supervisor, and directed [REDACTED] partner to handcuff Mendez. Officer [REDACTED] then handcuffed Mendez without further incident.

Officer [REDACTED] requested a rescue ambulance (RA) for Mendez. Los Angeles Fire Department (LAFD) personnel responded and transported Mendez to California Hospital where he failed to respond to treatment and was pronounced dead at 1315 hours.

Sergeant [REDACTED] Serial No. [REDACTED] Central Patrol Division, responded, separated the officers and obtained a Public Safety Statement from Officer [REDACTED]

FINDINGS

Tactics – Administrative Disapproval, Officer [REDACTED] Tactical Debrief, Officer [REDACTED]

Drawing/Exhibiting – In Policy, No Further Action, Officers [REDACTED] and [REDACTED]

Less-Lethal Use of Force – In Policy, No Further Action, Officer [REDACTED]

Lethal Use of Force – Out of Policy, Administrative Disapproval, Officer [REDACTED]

ANALYSIS

Detention

The involved officers responded to a radio call of an ADW suspect who was armed with a pipe. The officers located the suspect and observed that he was still armed with the pipe, approaching citizens in a threatening manner. The officers exited their vehicle, ordered the suspect to drop the pipe, and attempted to detain the suspect. The officers' actions were appropriate and within Department policies and procedures.

Tactics

Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."

Department policy relative to Administrative Disapproval is: "A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training" (Los Angeles Police Department Manual, Volume 3, Section 792.05).

[REDACTED]

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Tactical De-Escalation

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 (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques).

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.

In this case, the officers made the decision to immediately deploy on the suspect, thus limiting the amount of time they would have to assess the situation or consider other tactical options. I would have preferred the officers' plan include the consideration of the deployment and use of a longer range less-lethal tool, i.e. bean bag shotgun. This tool would have provided officers a greater range for dealing with weapons other than firearms.

Officer [REDACTED] was aware [REDACTED] was working with a reserve officer who working [REDACTED] first day in a field assignment. Consequently, Officer [REDACTED] should have developed a plan that would have allowed enough time to safely assess the situation, redeploy in a safe manner if necessary, and request the resources needed to resolve the incident with the least amount of force necessary.

During the review of the incident, the following Debriefing Topics were noted:

Debriefing Point No. 1 Equipment – TASER (Substantial Deviation – Officer [REDACTED])

All on-duty uniformed officers, who are deployed to the field and trained to operate an ECD, shall CARRY a TASER X26P on their person, UTILIZING a Department-approved holster, unless either is unavailable (Office of Operations, Operations Order No. 4, September 2015).

Officer [REDACTED] was not carrying the X26P TASER on [REDACTED] person when [REDACTED] deployed in the field as required.

In this case, the investigation revealed that Officer [REDACTED] failed to check out a TASER at [REDACTED] start of watch, as required. The UOFRB determined that Officer [REDACTED] failure to deploy a TASER as required limited [REDACTED] force options.

The UOFRB determined, and I concur, that Officer [REDACTED] failure to carry [REDACTED] TASER on [REDACTED] person as required was a substantial deviation without justification from approved

Department tactical training. In an effort to enhance future performance, I will direct that this be a topic of discussion during the Tactical Debrief.

Debriefing Point No. 2 Tactical Vehicle Deployment

When stopping one or more suspect(s) using the police vehicle; position the patrol vehicle to maximize officer safety for both officers (Los Angeles Police Department Regular Basic Course, Tactics Lesson Plan, Pedestrian Stops, Page 7-8, February 2003).

Officer [REDACTED] stopped in the number two lane of southbound Broadway and deployed on the suspect head on.

Positioning of the patrol vehicle is critical in order to provide the officers with a tactical advantage should the incident escalate.

In this case, Officer [REDACTED] decision to deploy the patrol vehicle at such close proximity to the suspect, limited their option, thus decreasing their tactical advantage.

The UOFRB determined, and I concur, that in this instance, Officer [REDACTED] actions were not a substantial deviation from approved Department tactical training. In an effort to enhance future performance, I will direct that this be a topic of discussion during the Tactical Debrief.

Point No. 3 Utilization of Cover

Cover is defined as any object that will stop the opponent's bullets. Officers should attempt to seek cover when involved in any tactical situation and especially when there are weapons involved. Officers should be aware of what items in their surrounding areas can be used as cover and what type of cover is required to stop certain rounds (gun, shotgun, or rifle rounds) (Los Angeles Police Department Basic Firearms Manual, January 2014).

Whenever possible, officers should place an object between themselves and the suspect as cover or a barrier. A barrier could be a chain link fence, wrought iron gate or any similar object that prevents the assailant from reaching the officer. If the suspect is contained and does not pose an immediate threat to officers, the public or himself/herself, time is our best tool. Time allows more opportunity to communicate with the suspect and helps to calm the situation (Training Bulletin, Volume XXXV, Issue 9 May 2003).

Officers [REDACTED] and [REDACTED] moved from the cover of their vehicle's ballistic door panels when they encountered Mendez armed with a pipe.

The utilization of cover enables officers to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options.

In this case, when Officer [REDACTED] indicated that due to a large sign blocking [REDACTED] view [REDACTED] redeployed from the cover of [REDACTED] ballistic door in order for [REDACTED] to maintain sight within [REDACTED]

peripheral vision. Officer [REDACTED] deployed in front of [REDACTED] door to deploy the TASER and closed the distance to be within the effective range of the TASER.

The UOFRB determined, and I concur, that in this circumstance, Officers [REDACTED] and [REDACTED] actions were not a substantial deviation from approved Department tactical training. In an effort to enhance future performance, I will direct that this be a topic of discussion during the Tactical Debrief.

Additional Tactical Debrief Topics

Body Worn Video/DICVS - The investigation revealed that Officer [REDACTED] did not activate [REDACTED] BWV as required. Additionally, Officer [REDACTED] DICVS microphone was not securely attached to [REDACTED] person. I will direct this be a topic of discussion during the Tactical Debrief.

Agitated Delirium - The investigation revealed that during this incident Mendez' behavior was consistent with a person suffering from a state of Agitated Delirium. In an effort to improve future tactical performance the officers should review Los Angeles Police Department Use of Force Tactics Directive No. 13.1, Agitated Delirium, dated December 2013. I will direct this topic be discussed during the Tactical Debrief.

Non-Conflicting Simultaneous Commands - The investigation revealed that Officers [REDACTED] and [REDACTED] gave simultaneous commands to Mendez during the incident. Although the commands were non-conflicting, the officers are reminded that simultaneous commands can sometimes lead to confusion and non-compliance. I will direct this be a topic of discussion during the Tactical Debrief.

Use of Force Warning - The investigation revealed Officer [REDACTED] did not provide a Use of Force Warning prior to deploying [REDACTED] TASER. Officer [REDACTED] is reminded that a Use of Force Warning shall be given whenever feasible. I will direct that this topic be discussed during the Tactical Debrief.

Command and Control

Sergeant [REDACTED] responded and assumed the role of Incident Commander (IC). [REDACTED] ensured that the involved officers were separated and that a PSS was obtained from Officers [REDACTED]. The actions of this supervisor were consistent with Department supervisory training and met my expectations of field supervisors during a critical incident.

Tactical Debrief

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, I will direct Officers [REDACTED] and [REDACTED] attend a Tactical Debrief and that the specific identified topics are discussed.

Note: Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

Officers [REDACTED] and [REDACTED] attended GTU's on April 27, 2017 and May 3, 2017, respectively. All the mandatory topics were covered including Mental Health Intervention, Body Worn Video, and Mandatory TASER deployment.

Drawing/Exhibiting

Department policy relative to drawing and exhibiting a firearm is: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified" (Los Angeles Police Department Manual, Volume 1, Section 556.80).

According to Officer [REDACTED] as they approached in their police vehicle, he observed Mendez swinging the pipe at citizens on the sidewalk. Believing that the situation could escalate to the use of deadly force, [REDACTED] drew [REDACTED] service pistol as [REDACTED] exited [REDACTED] vehicle.

Officer [REDACTED] recalled,

I saw his actions as I was driving up. I saw how he was swinging it. I saw the way the people were moving back.

The reason why I drew my weapon was I – I feared that the situation was escalating so much that it would lead [REDACTED] – would lead to great bodily injury or death to me or my partner.

According to Officer [REDACTED] deployed the TASER, but it was ineffective. [REDACTED] then holstered [REDACTED] TASER and drew [REDACTED] service pistol.

[REDACTED]

Officer [REDACTED] recalled,

I reholstered my TASER and I withdrew my weapon, because at that point, I felt that there was no other way I could defend myself or anyone else there. He had a long metal rod that was longer than my baton or anything I could get out at that time, and we had no time to react, so I drew my weapon. [REDACTED]

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

Therefore, I find Officers [REDACTED] actions of Drawing/Exhibiting to be In-Policy, No Further Action.

Less-Lethal Use of Force

It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

The TASER may be used on suspects who are violent, or who pose an immediate threat to themselves or others when an officer believes:

- *Attempts to subdue the suspect with other tactics have been, or will likely be, ineffective in the situation; or*
- *There is reasonable belief that it will be unsafe for officers to approach within contact range of the suspect.*

Verbal threats of violence by a suspect do not alone justify the use of the TASER. Any threat must be a credible one (Los Angeles Police Department Use of Force – Tactics Directive No. 4.4, Electronic Control Device TASER – June 2015).

Officer [REDACTED] – One Taser activation, in probe mode, from an approximate distance of 16 feet. According to Officer [REDACTED] continued giving verbal commands to Mendez to drop the pipe, but Mendez would not comply and continued to move around with the pipe in his hand. [REDACTED] then deployed the TASER in probe mode at Mendez.

[REDACTED]

Officer [REDACTED] recalled,

I yelled drop the stick. Stop. Drop the stick... Pull out my TASER, continue giving commands. The suspect continues to move around, does not comply... Still (unintelligible) the stick towards different directions, coming towards us, backing up, going towards the road, back towards us... Then I yell 'stop.' I yelled, 'TASER, TASER, TASER,' and I fired the TASER at the suspect [REDACTED]

Based upon the totality of the circumstances, the UOFRB determined, and I concur that an officer with similar training and experience as Officer [REDACTED] while faced with similar circumstances, would believe the applications of a less-lethal force to stop Mendez' actions was objectively reasonable.

Therefore, I find Officer [REDACTED] Less-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

LETHAL 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 (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

Officer [REDACTED] .45 Caliber, two rounds in a westerly direction from an approximate distance of 16 feet.

According to Officer [REDACTED] continued to give verbal commands to Mendez to drop the stick. Mendez was clenching the pipe and advancing towards [REDACTED] Fearing for [REDACTED] safety and for the safety of the citizens around [REDACTED] fired two rounds from [REDACTED] service pistol at Mendez to stop the threat.

[REDACTED]

Officer [REDACTED] recalled,

And then when I looked at him, I kept telling him, 'drop the stick.' And then I could see it in his eyes, he was clenching the pole – the pipe, and he came at me, and I fired – I fired two rounds to stop his threat.

At that moment when I fired, you know, I was thinking about myself because he was coming at me, my partner. I was thinking about the other people that were all there, if he – it would take, literally, a couple seconds for him to advance and just start swinging and hit somebody in the head with that really heavy pipe

Based upon the totality of the circumstances, I have determined, that an officer with similar training and experience as Officer [REDACTED] while faced with similar circumstances, would not reasonably believe the suspect's actions posed an imminent threat of death or serious bodily injury, at the moment Officer [REDACTED] fired his weapon.

Therefore, I find Officer [REDACTED] use of Lethal Force was not objectively reasonable and Out of Policy, Administrative Disapproval.

Additional/Required Equipment

Body Worn Video (BWV)/TASER– The investigation revealed that Officer [REDACTED] was not in possession of [REDACTED] assigned TASER and did not activate [REDACTED] BWV as required. Additionally, the investigation revealed that after the OIS Officer [REDACTED] discussed the incident with [REDACTED] partner and responding officers. The violations related to the TASER and BWV, as well as any issues related to the discussion of the incident will be addressed in a Personnel Complaint [REDACTED]

Audio/Video Recordings

Digital In-Car Video System (DICVS) – Officers [REDACTED] and [REDACTED] vehicle was equipped with a DICVS that captured both video and audio of the OIS.

Body Worn Video (BWV) – Officer [REDACTED] activated [REDACTED] BWV after the OIS. Reserve Officer [REDACTED] had not been issued or trained on BWV. Multiple officers responding to the incident had their BWV activated at the scene. None of their BWV captured the OIS or application of less-lethal force.

Outside Video – Additional video that was taken by witnesses with their cellular telephones captured audio and video of the OIS.

[REDACTED]

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Video obtained from surveillance cameras at the Broadway Palace Apartments depicts Mendez entering the apartment complex and arguing with a Security Officer. The video also captured Mendez on the west sidewalk of Broadway, swinging a pipe at a male witness wearing all white clothing.

Respectfully,



CHARLIE BECK
Chief of Police

Date: 2-1-18