

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

OFFICER-INVOLVED SHOOTING – 036-18

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Hollenbeck	6/9/18		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	6 years
Officer B	9 years, 3 months

Reason for Police Contact

Officers A and B transported the Subject to a hospital for a medical examination. At the request of medical staff, the Subject was unhandcuffed. When the officers attempted to handcuff the Subject following the examination, he resisted, grabbed the pistol of one of the officers, and attempted to remove it from the holster, resulting in an officer-involved shooting (OIS).

Subject(s)	Deceased (X)	Wounded ()	Non-Hit ()
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Subject: Male, 34 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.

The following incident was adjudicated by the BOPC on April 30, 2019.

Incident Summary

The Subject was arrested for robbery and transported to the local police station for booking. While at the station, the Subject alleged to have a medical condition and a Rescue Ambulance (RA) was contacted. The Subject was transported to a nearby hospital for treatment.

While at the hospital, the Subject was transferred from the RA gurney to a hospital bed. Officer B handcuffed both of the Subject's hands to the hospital bed. The doctor ordered a Computed Tomography (CT) scan of the Subject. According to Officer A, while waiting for the CT scan, medical staff periodically spoke with the Subject. During those interactions, the Subject kept his eyes closed, but he was cooperative with the staff. Officer A also spoke with the Subject and noticed that he appeared calm and primarily kept his eyes closed, but occasionally opened them slightly to see what the officers were doing. During his conversation with the Subject, Officer A learned that he had been classified as a Level Four inmate during his prior incarceration in prison. Officer A understood that Level Four prisoners were considered high risk due to their violent behavior. Officer A relayed this to Officer B, and both officers indicated that this information caused them to maintain a more heightened state of awareness regarding their interactions with the Subject.

A CT Technician wheeled the Subject to a CT room. Officers A and B followed behind. A security camera in the hallway of the ER recorded the Subject as he was moved to the CT room. In this video, the Subject can be seen wearing boxer shorts and a short sleeve shirt, while lying on his back with the bedrails in the raised position.

Upon entry into the CT room, officers were told to unhandcuff the Subject in order to allow him (the Subject) to move from the hospital bed to the CT bed. According to Officer A, he would have preferred to have kept the Subject handcuffed but felt it was necessary to comply with the request by medical personnel. Officer A removed the Subject's right handcuff, while Officer B removed the left. The CT technician placed the hospital bed next to the CT bed and directed the Subject to slide over. The Subject complied, but according to Officer A, he kept moving, fidgeting, and looking around while being strapped to the CT bed. The CT technician then directed the officers to stand in the control room behind a protective wall located on one side of the room. From this vantage point, the officers were able to monitor the Subject through a window in the protective wall.

After the scan was completed, the CT technician placed the hospital bed next to the side of the CT bed with one bedrail up and the other bedrail in the down position. Officer A stood at the foot of the CT bed next to the CT technician and Officer B stood on the north side of the hospital bed. The Subject then maneuvered himself over to the hospital bed using his own strength. As the CT technician raised the bedrail that had been down, Officer A moved between the CT bed and the hospital bed to handcuff the Subject.

As Officer A grabbed the Subject's right arm, Officer B prepared to handcuff his left wrist. According to Officer A, the Subject then violently swung his right fist from right to left across the center of his body and jumped off the side of hospital bed near Officer B. Officer A did not remember if the handcuff he was holding was attached to the bedrail, but he released it at that point and moved to the side of the hospital bed to gain control of the Subject. As that occurred, Officer B grabbed the Subject's right forearm/wrist area using a two-handed firm grip.

Officer A grabbed the Subject's left arm using a firm grip with both hands. The struggle then moved toward the corner of the CT room as the Subject pushed Officer B against the counter along the wall. As that occurred, both officers issued commands to the Subject. According to Officer A, he believed that he and Officer B told the Subject to stop resisting. Officer B did not recall the specific commands he gave. The CT technician stated he heard the officers communicating with each other and with the Subject, but he could not recall what was said.

The officers stated they did not have time to activate their BWV's when the Subject unexpectedly jumped off the hospital bed. While processing the crime scene, Force Investigation Detectives (FID) recovered the officers' BWV from the floor of the CT room.

According to the CT technician, the Subject jumped off the base of the hospital bed and immediately turned to his left and violently grabbed and/or pushed Officer B.

The Subject's momentum caused Officer B to stumble backward into the shelves located in one corner of the room. The CT technician believed the Subject's intent was to grab Officer B in a bearhug around his torso. Officer B was able to prevent that from occurring by reaching his arms out at waist level and grabbing the Subject's forearms. Officer A assisted by grabbing the Subject's left arm. Each officer then attempted to hold the Subject by the wrist and elbow, but they were unable to control him. The CT technician indicated that he did not anticipate that type of behavior from a patient who was being treated for a seizure, and stated that prior to this sudden action, the Subject appeared lethargic and sleepy.

Officer B indicated that he told his partner he was going to request a backup unit; however, he feared losing control of the Subject's right arm and did not release his grip to reach for his radio. Officer B stated that while the Subject continued to resist, he said, "Okay. Okay. Okay. I'm shitting myself. I'm taking a shit[,]” and momentarily decreased his level of resistance. The officers believed this was a ploy to have them release their grip. Despite the Subject's statement, Officer B maintained control of the Subject's right wrist with his right hand, while simultaneously using his left hand to bend the Subject's right hand backwards in what he described as a twist lock. The Subject renewed his resistance at that point and continued to struggle with the officers. Officer A looked to the CT technician for help, but he remained standing at the door of the CT room, adjacent to the hallway.

The CT technician stated he was in shock as he watched the struggle unfold and went to look for help in the hallway, but he did not see anyone. He further stated that he intended to push the emergency button in the CT room, but did not move because he was scared. He remained in the doorway of the CT room throughout the duration of the struggle.

According to Officer A, while struggling with the Subject in the corner of the room, he lost control of the Subject's left arm, and while attempting to regain control, grabbed the Subject's left shoulder. The Subject then momentarily grabbed the back of Officer A's head with his left hand and tried to pull it toward him (the Subject). As Officer A pulled his head away, he regained control of the Subject's left arm by pinning it to the wall. Officer A described using both of his hands to extend the Subject's left arm out at shoulder level, with the back of the Subject's hand against the wall. Officer A then released his (Officer A's) left hand, attempted to reach his TASER on the left side of his duty belt, and told Officer B he was going to tase the Subject. Officer A depressed the hood of his TASER holster, but was unable to draw the TASER, due to the angle of his body in relation to the holster, and his need to resume a two-handed grip on the Subject's left arm.

According to Officer B, during the struggle, he made eye contact with Officer A and shook his head to the right, as a means of nonverbal communication to indicate they should try to move the Subject toward the hospital bed. Officer B's intent was to use the bed as a controlling agent and began shuffling across the room toward it.

When interviewed by FID, Officer A did not indicate he observed the nonverbal communication described by his partner.

The CT technician stated that during the struggle, the Subject ended up with his back against the shelves along the wall with Officers A and B positioned to the right and left of him (the Subject) respectively. It appeared to the CT technician that each officer was trying to grab the Subject's arms at the elbow and wrist. As the struggle progressed, he observed the Subject bent over and perceived the officers were attempting to force him to the ground. Despite their efforts, the Subject remained on his feet and attempted to free himself from their grasp by moving his shoulders left and right, his arms forward and back, and his hands up and down. In the CT technician's opinion, the Subject appeared very strong, and the officers were not able to control him.

According to Officer A, the Subject violently pulled his left arm down from the wall, which caused him (Officer A) to lose control of it. Officer B indicated he felt one or two tugs on his equipment belt, looked down, and saw the Subject's hand on his pistol with his fingers wrapped around the grip. Officer B then yelled to his partner several times, "He has my gun or he's grabbing my gun." Officer A indicated he did not have time to tell Officer B that he had lost control of the Subject's left arm before he heard Officer B yell that the Subject had his gun. According to Officer B, the Subject pulled on his pistol up and down and side to side. Officer B believed he was trying to gain control of his pistol and said, "Once he got ... his hand on my gun, it came to my mind that he was

trying to disarm me to furthermore aid in his, in his escape by either shooting me, [or] shooting my partner...”

In an effort to maintain control of his pistol, Officer B indicated he either placed his right hand on top of the Subject's hand to push down on his pistol and/or grabbed the Subject's wrist/forearm area. When performing this action, Officer B was unclear as to whether he ever released his grasp on the Subject's right arm. As they continued to struggle, Officer B stated the Subject violently pulled on his pistol in what he believed was an attempt to remove it from his holster. In an effort to convey the seriousness of the situation to his partner, Officer B deepened and elevated his voice and yelled approximately five times, “He has my gun,” or, “He's grabbing my gun.”

A subsequent analysis of Officer B's pistol determined the presence of the Subject's deoxyribonucleic acid (DNA) on the grip and other exposed portions of the pistol.

Regarding the statement made by his partner, Officer A stated, “The first time he said it loud and I could, I could hear the desperation in his voice. The second time he said it, he said it even louder and with more desperation in his voice. I thought, I thought he was, once my partner, I heard my partner say it the second time, I thought the gun was going to come out and he was going to turn around and shoot me.” In discussing the same issue, Officer A also stated, “Once my partner said, ‘He had my gun,’ he said -- he said -- his voice sounded very sounded very stressful, cracking. I felt like he, [Officer B], was also having a hard time breathing. I felt like he, [the Subject], had complete control of his gun since he said he has his gun.”

As Officer B and the Subject continued to struggle, Officer A briefly observed both of the Subject's hands on the grip of his partner's pistol. The Subject had his right hand on the inside portion of the grip, closest to Officer B's body, and his left hand was on the outside portion of the grip. According to Officer A, the Subject tried to pull Officer B's holstered pistol toward him (the Subject). In an effort to stop the Subject's actions, Officer A grabbed the Subject's left arm at the elbow with both hands. Despite his efforts, he was unsuccessful in pulling the Subject's hands away from Officer B's pistol. Officer A indicated that he lost sight of the Subject's hands during the struggle, but he believed they remained on Officer B's pistol, because his partner continued to struggle to get away and the Subject's hands remained in the location of his (Officer B's) holster.

According to Officer A, he was facing in the direction of the Subject positioned between him and Officer B, who was offset to his (Officer A's) left. The Subject had his back to Officer A and was facing Officer B during the struggle.

Officer B believed the Subject's right-side torso was positioned against his (Officer B's) left arm.

According to the CT technician, Officer B was on the Subject's right side, and Officer A was on the Subject's left side.

After hearing Officer B declare that the Subject had his pistol, Officer A unholstered his pistol, [with his right hand], took a step back and fired three shots in rapid succession from an approximate distance of 2 ½ feet.

Officer A indicated that after he fired his first shot at the Subject's lower back, the Subject began turning in a counterclockwise direction. Although Officer A could not specifically see the Subject's hands, he observed that the Subject's arms remained extended outward and in a downward angle, as if they were still grasping his partner's gun. As Officer A fired his additional shot(s), the Subject continued to turn counterclockwise, but he did not recall acquiring a specific target area.

The investigation determined that Officer A fired a total of three rounds.

Officer A said he fired his rounds with his pistol close to his own torso in what he described as a close contact shooting position. However, he did not recall if he did so while using a one or two-handed grip. Officer A indicated that he was cognizant of his partner's position at the time he fired and did so at an angle so as not to injure him.

Regarding his decision to use deadly force, Officer A stated, "I'm trying to like yank his hand out of my part -- out of my partner's -- off my partner's gun, and I thought he was going to swing around and shoot me with my partner's gun and then kill my partner. So I with -- I withdrew. I got out of my holster to -- to defend my life and my partner's life and possibly any people inside the -- inside the hospital. I discharged approximately two or three rounds."

The CT technician observed that at the time Officer A fired his rounds, the Subject was still bent forward at the waist and was struggling with the officers. He was not able to see the position of the Subject's hands, because Officer A partially blocked his view and because the Subject's position kept changing. The CT technician believed he observed Officer B make eye contact with Officer A, and then heard Officer B say something to his partner. The CT technician did not recall the words Officer B used, but he characterized it as a short, approximate two-word statement. His perception was that Officer B was giving his partner a direct order to do something. Officer A then immediately unholstered his pistol with his right hand and held it close to his chest area, while holding the Subject with his outstretched left arm. Officer A pointed his pistol at the Subject's left rib cage area and fired two rapid shots, which caused the Subject to fall to the ground.

Officer A stated the Subject collapsed to the floor on to his right side/stomach area with his head oriented toward the wall. Officer B gave a similar description and added that following the shots fired by his partner, the Subject released his grip on his (Officer B's) pistol and fell to the floor in a supine position.

Immediately after the OIS, Officer B looked to verify that his pistol was still in the holster and then advised his partner that he was going to request help. Officer B broadcast a "shots fired" call. Officer A told Officer B they needed to take the Subject into custody

and holstered his pistol. Officer B grabbed the Subject's left arm and rolled him onto his stomach. Officer A pulled the Subject's right arm out from under his body, which then allowed Officer B to handcuff the Subject's hands behind his back. Moments later, several hospital personnel entered the CT room. At their request, Officer B removed the Subject's handcuffs, so he could receive medical treatment. Witness A stated she heard three pops, walked to the CT room, and looked in. Witness A observed smoke in the air and an officer holstering his pistol, while saying, "He was trying to get my gun. He was trying to reach for my gun."

The Subject was treated for his wounds and pronounced dead by medical personnel.

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 Officers A and B's tactics to warrant a finding of Tactical Debrief.

B. Drawing/Exhibiting

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

C. Non-Lethal Use of Force

The BOPC found Officer A and B's non-lethal use of force was in policy.

D. Lethal Use of Force

The BOPC found Officers A'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 Palencia’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 subject 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.)

A. Tactics

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

1. Transporting Arrestees

The investigation revealed that Officers A and B had turned in their assigned equipment before they were requested to escort the Subject to the hospital. Officer A had to locate a police vehicle to drive and was delayed in leaving the police station. This resulted in Officer A not following directly behind the RA while Officer B rode inside with the Subject. Officer A was reminded of the importance of remaining in close proximity to his partner officer when transporting arrestees.

2. Situational Awareness

The investigation revealed that Officer A utilized another unit's MDC, which was still logged on, to advise CD of his and Officer B's Code Six location; therefore, CD was advised of the correct location and status of Officers A and B, but under the wrong unit designation. While this did not result in a delay of officers responding to the location, Officer A was reminded of the tactical importance of CD knowing officers' exact locations.

3. Contact and Cover

The investigation revealed that Officer A holstered his service pistol after the OIS and prior to handcuffing the Subject. The officers were reminded that they should utilize the concept of contact and cover, during which one officer initiates contact while the other officer provides cover.

The above topics were to be discussed during the Tactical Debrief.

- 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.

Each tactical incident also merits a comprehensive debriefing. In this case, there

were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

The BOPC found Officers A and B's tactics to warrant a finding of Tactical Debrief.

B. Drawing and Exhibiting

- According to Officer A, he lost control of the Subject's arm during the physical struggle, and the Subject turned and grabbed Officer B's service pistol. Believing that the Subject had control of Officer B's service weapon, Officer A drew his service weapon to defend his own life, his partner's life, and the lives of others inside the hospital.

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

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

C. Non-Lethal Use of Force

- **Officer A** – Firm grips and physical force.

According to Officer A, as he grabbed the Subject's left hand and attempted to take him into custody, the Subject violently attempted to escape. Officer A attempted to retrieve his handheld radio to request a back-up unit but was unable to do so without losing control of the Subject's arm since the Subject was actively fighting the officers. When the Subject attempted to grab the back of Officer A's head, Officer A pulled away and attempted to pin the Subject's arm against the wall.

According to Officer A, as he was reaching for his TASER, the Subject broke free from Officer A's grip and immediately reached towards Officer B's waist area. Officer A heard Officer B yell, "He has my gun." Officer A saw the Subject's hands on Officer B's service pistol. Using two hands, Officer A grabbed the Subject's forearm and bicep area to try and pull the Subject's hand from his partner's service pistol but was unsuccessful.

- **Officer B** – Firm grips, twist locks and physical force.

According to Officer B, as he was attempting to handcuff the Subject to the rail of the gurney, the Subject jumped off of the gurney. Officer B applied firm grips and physical force using both of his hands to the Subject's right wrist and forearm in an attempt to prevent him from escaping.

According to Officer B, he used firm grips and physical force to prevent the Subject from gaining control of his service pistol.

Based upon 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 believe that these same applications of non-lethal force would be reasonable to overcome the Subject's resistance while preventing his escape and taking him into custody.

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

D. Lethal Use of Force

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

According to Officer A, he observed the Subject's hands on Officer B's service pistol. Officer A was unable to remove the Subject's hands from Officer B's service pistol. Officer A believed the Subject had control of Officer B's service pistol and was going to turn around and shoot him, and then shoot his partner. Officer A fired his service pistol to stop the Subject's actions and protect his life, his partner's life, and the lives of others inside the hospital.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, 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 Officer A's lethal use of force to be in policy.