

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

OFFICER-INVOLVED SHOOTING – 038-10

<u>Division</u>	<u>Date</u>	<u>Duty-On(x) Off()</u>	<u>Uniform-Yes(x) No()</u>
77 th Street	05/07/2010		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Officer A	15 years
Officer B	13 years, 1 month

Reason for Police Contact

Radio call of an assault with a deadly weapon.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (x)</u>	<u>Non-Hit ()</u>
Subject: Male, 26 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 suspect 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.

In accordance with state law divulging the identity of police officers in public reports is prohibited, so the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on April 26, 2011.

Incident Summary

Events prior to the officer-involved shooting (OIS)

Witness A called 9-1-1 to report a fight between her husband, Witness B, and her son, the Subject, outside of her home. Witness A advised the operator that the Subject had a weapon; however, she did not state the type of weapon. Communications Division (CD) broadcast an "Assault with a Deadly Weapon [ADW]" call, indicating that the suspect was assaulting his father and was possibly armed. Shortly thereafter, CD updated the call stating that a gun was involved.

Note: Witness A did not indicate to the 9-1-1 operator that the weapon her son possessed was a gun.

Meanwhile, Officers A and B were several blocks away from the call location, resolving a vicious dog incident, when they heard the CD broadcast and notified CD that they would respond.

Note: Officers A (driver) and B (passenger) were traveling in a marked black and white vehicle. As the officers approached the location, according to Officer A, he discussed with Officer B what to do if they were confronted by the subject or in case of a foot pursuit, including that he (Officer A) would not separate from Officer B, nor would he chase the subject through a house. In addition, Officer A discussed with Officer B that he (Officer A) was going to stop and turn their vehicle's emergency lights off mid-block as they neared the location, so that the officers could approach and see what was occurring without alerting the subject to their presence.

According to Officer B, while en route to the location, he and Officer A "briefly discussed" contact and cover, and they determined that Officer B was going to be the contact officer and Officer A would be the cover officer.

As the officers approached the residence, Officer A turned off their vehicle's emergency lights and sirens, and stopped the vehicle along the south curb, two houses west of the location. According to Officer A, Officer B notified CD of their Code Six status (location) via the "MDC [Mobile Digital Computer]," and then Officer A also broadcast their Code Six status over the radio several seconds later.

Note: The investigation revealed that Officer A's Code Six broadcast was not recorded.

Officer A's account of the incident

Officer A observed the Subject in front of a residence arguing with a female (Witness C) as they stood near a gray minivan/SUV parked facing northwest in the front yard. Officer A saw the Subject push Witness C, and then heard Witness C yelling, "He's drunk. He's drunk."

Note: According to Witness C, the Subject had consumed several cans of beer that day and she "wasn't okay with him driving drunk."

According to Witnesses A and B, the Subject was drunk.

The investigation revealed that the Subject's blood alcohol content (BAC) level was between .088 - .090%.¹

Based on his observations, Officer A determined that the Subject was the individual referenced in the radio call. Officer A pulled their vehicle along the south curb and stopped directly behind a parked vehicle. Officer A stated to Officer B, "I'm going to walk around the car [parked in front of them]," and Officers A and B exited their vehicle.

According to Officer A, Witness C and the Subject were arguing and Witness C was holding onto the Subject and yelling at him (the Subject), "Don't do anything. Don't be stupid. Don't do anything. You're drunk." The Subject began to pull away from Witness C, and Officer A observed the Subject holding a blue steel semi-automatic handgun in his left hand.

Note: Officer B saw an outline of a gun in the Subject's left hand.

Officer A stated to Officer B, "Gun," and moved forward (east) from the driver's side of the police vehicle to the driver's side of the vehicle parked directly in front (east) of them. Officer A, believing he (Officer A) "could be shot or killed," unholstered his pistol.

Note: Officer A's pistol was also equipped with a frame-mounted flashlight.

Officer A saw the Subject place the gun in his left front pants pocket. The Subject then began to run south, toward the driveway.

Note: According to Officer A, the Subject was standing approximately 15 to 20 feet away from him, and he (Officer A) could see the Subject's hands the entire time.

Officer A continued to move east while the Subject continued to run south down the driveway. As described by Officer A, "He [the Subject] turned his body and bladed so I - I believed it was because he didn't want me to see it [the gun]." Officer A continued,

¹ Blood drawn from the Subject was serum, not whole blood. Taking that into account, the Subject's ethanol level converted to a BAC level range of .088 - .090%.

“As he [the Subject] turned into that bladed position, I moved further east so I could see his - - I could see the - - the butt of the gun, and I could see it because he had uncovered it with his hand and he was shoving it into his pocket.” The Subject then ran further down the driveway, which was not illuminated at the time of the incident, and Officer A lost sight of him.

Note: The investigation revealed that there was no lighting in the driveway but a light pole in front of the residence illuminated the street on the night of the incident.

Officer A maneuvered around the engine block of the parked vehicle and saw the Subject run down the driveway and “deeper and deeper into the darkness.” Officer A used his flashlight to illuminate the Subject and saw him standing next to his vehicle, a white pickup truck. The Subject opened the driver’s side door and stood behind it. As described by Officer A, “He’s [the Subject is] almost shielding himself with that door.” Officer A was able to see the Subject’s head above the door frame but he could not see his hands. Officer A communicated the Subject’s position to Officer B and Officer B moved closer, next to the SUV. Officer B then began to “yell” at the Subject to “come out.”

According to Officer A, the Subject sat in his pickup truck and closed the door. Officer A stopped at the mouth of the driveway and had a direct line of sight down the driveway. Officer A broadcast, “I need a back-up [at the location]. Possible man with a gun. He jumped into a car, truck.... We are on the south side of the street, mid-block. Standby. Let me get...first unit to our location? Air unit come on back.”

Note: Officer A’s statement, “Air unit come on back,” referred to a Department helicopter that Officer A observed flying just east of his location.

According to Officer A, he believed that the Subject was just going to sit in the pickup truck and “make us come and get him.” As described by Officer A, “I - - it was my belief that he was just going to sit there and it was going to be a standoff.” At that point, Officer A stated to Officer B, “Hey, I’m going to get the black and white,” and Officer B stated, “Roger. I got him [the Subject] covered.” Officer A holstered his pistol, got back into their police vehicle and drove it into the driveway apron the location. According to Officer A, he drove up the slight incline of the driveway apron and positioned the vehicle facing south in the driveway in the direction of the Subject’s pickup truck. Officer A then utilized the police vehicle’s overhead and spotlights to illuminate the Subject.

Note: Witnesses B, D, E, and F reported seeing a police vehicle parked in the street and blocking the driveway at the location.

According to Officer B, Officer A parked their police vehicle in the driveway or driveway apron area facing in a southeasterly direction.

Sergeant A, a court-certified traffic accident reconstruction expert,

determined that Officers A and B's vehicle was not parked in the driveway but rather at an angle facing in a southeasterly direction where the asphalt street meets the concrete ramp of the driveway (near the gutter).

Officer A attempted to retrieve his Department shotgun from the shotgun rack; however, he was unable to do so. Unable to retrieve his Department shotgun, Officer A decided to retrieve his Patrol Rifle, which he stored in the trunk of their vehicle. Officer A pressed the trunk-release button when he saw the brake lights of the Subject's pickup truck come on followed by the sound of the truck's engine starting. According to Officer A, the pickup truck then immediately began to reverse down the driveway, toward the police vehicle. Officer A started to exit the police vehicle when the rear of the pickup truck "rammed" the front of the police vehicle, causing the police vehicle to be pushed back several feet and the driver's side door, which was still open, to strike Officer A in the hand. Officer A stepped backwards, toward the rear of the police vehicle, and unholstered his pistol a second time. According to Officer A, he unholstered his weapon the second time because "one, I was in fear of my life. Two, I saw a gun prior to him getting into the truck, and I believed he was still armed. [...] And the fact that he had just assaulted, you know, the police car where he - - I believed that he thought I was still in it. You know, that was assault on me. So at that point to protect myself and to protect my partner, I drew down."

Officer A crouched down behind the rear of the police vehicle. Officer A then stood back up "to see what was going on," and saw the Subject holding a gun in his (the Subject's) right hand and pointing it (west) toward Officer B. Officer A heard one gunshot and saw the pickup truck start to drive forward. In fear that his partner was going to be shot, Officer A fired two rounds in a southerly direction at the top of the Subject's head. As described by Officer A, "The only target that was present was the top of his [the Subject's] head and his hand. I elected to go for the bigger target, the head." According to Officer A, the first round he fired at the Subject "shattered" the pickup truck's back window. After firing the second round at the Subject, Officer A "heard a male scream." The Subject then drove the pickup truck forward and ducked or "slumped" down in the vehicle to where Officer A could no longer see him. The pickup truck then veered left (east) and appeared to Officer A to make contact with a wall surrounding the residences. In addition, according to Officer A, the Subject drove forward and pointed the gun toward Officer B a second time and then back at Officer A. As described by Officer A, "As he [the Subject] drove forward, he came back up with the gun and pointed it westerly - - west - - in a westerly direction and then back at me holding his arm would be over his right shoulder backwards. Almost aiming the gun behind his head blindly."

Note: According to Officer A, the Subject's gun was upside down as he (the Subject) pointed it at Officer A, such that the base of the gun's magazine was facing upwards.

Officer A communicated with Officer B and determined that Officer B had not been injured. After the pickup truck struck the wall, it came to a stop and Officer A, believing that the Subject may have been injured by the officers' gunfire, decided to leave his

position behind the police vehicle and approach the pickup truck. As described by Officer A, "At that point believing that he [the Subject] was hit, I was going to assess to see if he was down and, you know, be able to broadcast how many more units I would need to be able to do - - effect the arrest." Officer A told Officer B that he was moving up, which Officer B acknowledged by shaking his head. Officer A walked south along the driver's side of the police vehicle and stopped near the vehicle's spotlight when he saw the pickup truck's reverse lights come on and the Subject raise the top of his head above the head rest. The Subject then reversed the pickup truck and according to Officer A, the Subject's truck came "barreling down the driveway." Officer A, believing he was going to be struck by the reversing vehicle, stepped out of the driveway and onto the sidewalk, utilizing a small wrought-iron fence along the property line as cover.

The Subject continued to reverse the truck down the driveway until the rear of the pickup truck collided with the front of the police vehicle. According to Officer A, as the Subject's truck reversed down the driveway and struck the officers' vehicle a second time, the Subject again pointed his gun to his right (west) at Officer B. The Subject also pointed his gun out of the back window toward Officer A. Officer A then heard repeated gunshots, and believing that the Subject was shooting at or was going to shoot at him and his partner fired five rounds at the Subject. Simultaneously, Officer A heard and saw muzzle flashes coming from Officer B's direction. The Subject ducked down in his vehicle and Officer A could no longer see the Subject's head but was able to see the Subject's elbow, arm and the gun, which was pointed in his direction. Officer A heard Officer B yell, "Malfunction. Malfunction," which Officer A understood to mean that Officer B's weapon had malfunctioned and Officer B was no longer able to fire it. Officer A then saw Officer B either kneel down or move behind an object and lost sight of Officer B.

Note: The investigation revealed that Officer B fired an initial volley of nine rounds at the Subject, emptying his magazine and causing his pistol to go into slide lock. Officer B indicated that he told Officer A after the OIS that he had had a "malfunction;" however, after further questioning from detectives Officer B indicated that he "may" have told Officer A about the malfunction during the OIS. Further, Officer B also indicated that he now knows that he did not in fact have a "malfunction," but rather emptied his magazine resulting in his pistol going into slide lock.

Meanwhile, Officer A heard the Subject yelling at the officers, "challenging" them and "screaming his head off." The Subject pulled the truck forward approximately 15 feet, and continued to point his pistol out of the back and passenger's side windows in both officers' direction. The Subject then reversed the truck back down the driveway and struck the police vehicle a third time, pushing the police vehicle further into the street. As the pickup truck reversed down the driveway toward the police vehicle, Officer A heard more gunshots from his right and then he heard Officer B say that he had another malfunction, which Officer A understood to mean that Officer B was out of ammunition and would have to reload his weapon. According to Officer A, the Subject reached across his body and pointed the gun at him (Officer A). In response, Officer A fired four or five rounds at the Subject, emptying his magazine and going into slide lock.

Simultaneously, Officer B finished reloading his pistol. As described by Officer A, "When my partner finished loading, he said either he was back up - - he said either, 'I'm back up,' which I - - I believe that he had - - he had rounds back in his gun, and that's when I went dry. I had a spongy trigger." Officer A knelt down behind the police vehicle, reloaded his pistol and stood back up as quickly as he could.

The Subject drove forward and then reversed back down the driveway again, "ramming" the police vehicle a fourth time. According to Officer A, the police vehicle was pushed completely out into the street, facing a northeasterly direction. Officer A saw the Subject continue to point his gun in his direction and Officer A fired three more rounds at the Subject in a southeasterly direction.

Officer A subsequently broadcast detailed information about the subject, subject's vehicle, possible injuries to the subject, and indicated that the subject was armed with a "blue steel" handgun.

Note: Two spent bullets recovered from the street on which the residence is located, east of Officer A's shooting position, were determined to have been fired from Officer A's pistol. In addition, a metal fragment and a bullet jacket were also recovered in the street east of Officer A's shooting position.

Officer B's account of the incident

Meanwhile, according to Officer B, he and Officer A pulled up to the location and saw the Subject in the front yard arguing with Witness C. Officers A and B exited the vehicle and began to walk toward the Subject and Witness C. As the officers approached, Officer B observed the Subject's left hand in his waistband. The Subject turned and identified Officers A and B as police officers. As described by Officer B, "He [the Subject] didn't - - he didn't say anything, but he saw that we were the police because we were driving a black and white police car and we were in full uniform." The Subject then ran in a southeast direction, toward the driveway, and as he did, Officer B saw the outline of a gun in the Subject's left hand. Officer B unholstered his pistol and held it in his right hand while holding his flashlight in his left hand using a Harries Flashlight Technique.² Officer B then moved quickly to the back end of the gray SUV parked in the front lawn.

According to Officer B, the Subject continued to hold the gun in his left hand while "desperately trying to unlock the door and get into the truck" with his right hand. Officer B instructed the Subject to put his hands up and to not get into the truck. The Subject was finally able to open the door and jumped into the truck. Officer B told Officer A to "get the [police] car," because Officer B believed that the Subject was attempting to leave the location. Officer B then heard the Subject yelling, "I'm not going back to jail. I'm not going back. I'm not going to jail." Officer B continued to tell the Subject to get out of the truck and show his hands.

² The Harries Flashlight Technique involves holding a flashlight in one hand in and a pistol in the other hand. The hand holding the flashlight is used to support the hand holding the pistol.

Officer A had pulled the police vehicle into the driveway when the Subject started his truck and began revving the engine. Officer B observed the truck's reverse lights come on, and then the tires started to spin and the truck started backing up. Officer B jumped out of the way as the Subject reversed the truck down the driveway and struck the police vehicle. The Subject drove the truck forward and then reversed down the driveway, striking the police vehicle a second time. Officer B then saw Officer A fire his pistol at the Subject. As described by Officer B, "At - - at that time I could see my partner - - it looked like he had just jumped from the - - our black and white as - - as it got hit. And then he began to fire at the [Subject]. The back window of - - of the truck shattered, and all the glass fell out." Officer B saw the Subject holding a gun in his left hand while maneuvering the truck.

Note: According to Officer B, the passenger's side window of the Subject's truck was not tinted and he thought it might have been down at the time of the OIS because he could clearly see the Subject through the window.

It appeared to Officer B that when the Subject drove the truck forward, the truck collided with the house or a fence, and it came to a stop at the south end of the driveway.

Meanwhile, Officer B formed the opinion that the Subject may be injured. Officer B stepped back from the SUV and walked out onto the driveway to assess the Subject's condition. Approximately five to eight seconds later, the truck's tires started spinning and the truck reversed back down the driveway at a high rate of speed. Officer B saw the Subject sit up in the driver's seat and turn around, and Officer B formed the opinion that the Subject was trying to run the officers down with the vehicle. Officer A had also started to walk up the driveway toward the truck but had to quickly get out of the way as the truck reversed down the driveway. Officer B, fearing that Officer A might get run over and that the Subject was going to shoot him (Officer B), fired nine rounds—one round and a pause, another three rounds and another pause and then five more rounds—in a south/southeasterly direction at the Subject. As described by Officer B, "I was able to back-peddle. That's when I saw my - - my - - my partner desperately trying to get back between the car, the fence and clear. And I thought - - I thought he [the Subject] was going to run my partner over. So I - - I shot several times at him in the - - in the cab, and I - - I thought I struck him." As further described by Officer B, "I could see the gun in his hand because he was like steering the car and driving at the same time. Then I seen (sic) my partner running back. I thought he [the Subject] was - - I thought he was going to run - - I thought he was going to run my partner over. And that's when I first - - when I engaged him."

Note: Officer B initially told detectives that he fired at the Subject because he believed that the Subject was going to run over Officer A with his truck and kill him. Detective A then asked Officer B, "Okay. And the - - when you first fired your rounds, you could see the gun come around pointed at you?" Officer B replied, "Yeah. And I - - and - - and at the same time I could see my partner trying to squeeze back between the car. I thought

he [the Subject] was going - - I thought he was going to run my partner over and kill him.”

At a subsequent point in Officer B’s interview, the interviewing detective attempted to clarify what Officer B saw the Subject doing with his hands while the Subject was driving his truck back and forth in the driveway. Officer B told the detective that the Subject was holding the gun in his left hand and “maneuvering the car” with his right hand. Detective B then asked Officer B, “Okay. But you could see that he had the gun in his left hand and he was pointed at you?” Officer B then replied, “Yes. The whole time.” Later in the same interview, a second detective asked Officer B directly if the first time that he fired the Subject had pointed a gun at him, and Officer B replied, “Yes, he did point it. And at the same time that was when my - - I thought my partner was going to be run over.”

Officer B’s pistol went into slide lock and he reloaded it with another magazine.

Note: Officer B’s pistol had an initial capacity of nine rounds, with eight rounds in the magazine and one in the chamber. Officer B’s additional magazines were each loaded with eight rounds.

Officer B observed the Subject drive forward and back again and collide with the police vehicle, which had been pushed partially into the street from the prior collisions. Officer B saw the Subject reach across his chest with his left hand and point his gun at Officer B. As described by Officer B, “[He] hits our car. And he’s lined up directly with me. And that’s when I see the gun come across his chest and his left hand, and he’s - - and he’s looking at me, and he’s pointing it at me. And I - - I thought he was going to shoot me.” Officer B fired eight rounds at the Subject and Officer B’s pistol went into slide lock a second time. Officer B reloaded his pistol with another magazine. The Subject reversed his truck into the police vehicle a fourth time—this time Officer B observed the Subject continue to accelerate his truck, pushing the police vehicle completely out into the street. According to Officer B, after the Subject reversed his truck into the police vehicle the fourth time, Officer A fired his pistol at the Subject. As described by Officer B, “And he hit the car one more time, and then but this time he stayed on the gas and he was able to push the car out into the street while I was - - while I was changing my magazine. And - - and then my partner engaged him [the Subject] as he was in the - - in the street.” The Subject then drove eastbound. Officer B broadcast “Shots fired,” and “officer needs help.”

Witness accounts

Witness C

Meanwhile, according to Witness C, the officers told the Subject to get out of his truck three times before he reversed his truck down the driveway. Witness C reported that the Subject had reversed the truck approximately 20 feet down the driveway when an officer started shooting at him. According to Witness C, the officer initially fired three times at the Subject.

Note: According to Witness C, she did not see the Subject point anything at the officers.

Witness C, believing it was not safe to stand outside, ran to the neighbor's house and went inside. While inside, Witness C heard approximately seven more gunshots, though she did not know who fired them.

Witness D

Meanwhile, Witness D, whose residence is directly across the street and one house west of the location of the OIS, saw two officers with their guns drawn and yelling at someone to get out of a truck. Witness D saw the truck back up down the driveway and almost strike one of the officers who was standing by a white fence. Witness D then saw this officer—the officer that was standing by the white fence and who was almost struck by the truck—fire their gun. According to Witness D, the officer fired a total of ten rounds at the Subject and the Subject's truck. The officer fired an initial volley of three rounds at the rear of the truck as the truck reversed in the officer's direction. The officer then fired four rounds at the truck as the truck rammed the police vehicle.

Note: According to Witness D, the truck rammed the police vehicle six times.

Witness D stated that the officer then fired another three rounds at the Subject as the Subject drove approximately one car-length east of the location.

Witness G

According to Witness G, whose residence is directly across the street and one house east of the location, an officer was standing by a "white gate" and yelling at a person in a truck to "Stop," but the truck did not stop. The officer, whose gun was already drawn, then fired at the pickup truck as it was being driven eastbound down the street.

Witness A

According to Witness A (the Subject's mother), who remained inside her residence throughout the entire incident, the Subject backed his truck out of the driveway and then police officers fired ten rounds at his truck.

Witness H

According to Witness H, whose residence is next door to the location, she heard gunshots, looked outside and saw a white truck reversing down a driveway toward a police officer. Witness H heard someone yell, "Get out of the car," and she ducked inside her residence. According to Witness H, she then heard a "thump," or, "crash," and heard "burning rubber," which she attributed to the truck driving away from the scene very fast. Witness H reported hearing an additional five to six gunshots being fired after the truck had "left."

Witness I

According to Witness I, there were approximately five officers present at the time of the OIS. Witness I saw a man in a truck reverse down the driveway and collide with the police car and heard the police officers yell at him to "Stop" and to "Get out of the car." The Subject continued to "hit" the police car three times with his truck and the police officers fired approximately 12 gunshots at the Subject. The Subject was able to push the police car with his truck and drive away and as he did, according to Witness I, six police officers fired an additional five rounds at the Subject.

Events following the OIS

Officer A broadcast a help call, immediately followed by Officer B broadcasting "Shots fired. Shots fired." In addition, Officer A broadcast detailed information about the Subject, including a physical description, direction of travel, and information about the pickup truck and Officer A also requested a supervisor respond to their location and a Rescue Ambulance unit.

Officers A and B remained at the scene, while additional units pursued the Subject over 90 miles to a termination point in another county. Officers utilized less-lethal force, including bean bag rounds, and eventually took the Subject into custody.

Lieutenant A and Sergeant B were monitoring the radio when they heard Officer A's help call and responded to the location. Upon their arrival, Lieutenant A was approached by Officer B who advised him that he (Officer B) and Officer A had been involved in an OIS. Lieutenant A obtained a Public Safety Statement (PSS) from Officer B and Sergeant B obtained one from Officer A.

Following the OIS, Officers C and D arrived at the location to assist with the crime scene. Shortly thereafter, Officer C observed a handgun lying in the flower bed/planter area in the front yard of the residence.

Captain A arrived at the scene and assumed the role of Incident Commander. Officers A and B were admonished not to discuss the incident and were separated and monitored until their interviews with investigators.

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/Holstering of a weapon by any involved officer(s); and the Use of Force by any involved officer(s). All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort to ensure that all officers benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC unanimously made the following findings.

A. Tactics

The BOPC found Officer A and B's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting/Holstering

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

C. Use of Force

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

Basis for Findings

In their analysis of this incident, the BOPC identified the following considerations:

Tactics

1. Deployment of the police vehicle

In this instance, Officers A and B were confronted by the Subject who was armed with a handgun, was possibly intoxicated, refused to comply with the officers' commands and ultimately entered a pick-up truck. Officer A holstered his service pistol, entered the police vehicle and blocked the driveway facing southbound toward the Subject and the rear of the truck blocking his escape.

Although establishing a physical barricade (road block) is strongly discouraged when a suspect is being pursued, in this situation, no pursuit was involved. The officers developed a well thought out tactical plan to prevent him from leaving while the vehicle was stationary, due to the threat he posed.

In conclusion, the BOPC found the officers' actions did not unjustifiably or substantially deviate from approved tactical training.

2. Leaving cover

Department tactical training encourages officers not to rush into situations where they may be susceptible to attack, and to request additional personnel when appropriate. However, officers must use best judgment in tactical situations and, in this case, they did *approach ... with officer safety in mind* with a well thought out tactical plan. It was reasonable for the officers to believe that the Subject was incapacitated and to safely approach and determine if he needed medical attention and to coordinate his arrest.

In conclusion, although it would have been prudent for the officers to have remained behind cover and assess the Subject's situation from that position, the BOPC concurred that the officers reasonably believed that the Subject was incapacitated and therefore believe that they could safely approach while maintaining a tactical advantage (contact/cover and communication). Accordingly, the actions of both officers did not *substantially deviate* from approved Department tactical training.

In conducting an objective assessment of this case, the BOPC appreciated the dynamic nature of the incident and the limited time that both officers had to make effective tactical decisions to protect the community from an armed and intoxicated suspect. The BOPC found that the tactics utilized by Officers A and B did not unjustifiably or substantially deviate from approved Department tactical training.

The BOPC found Officer A and B's tactics to warrant a tactical debrief.

Drawing/Exhibiting/Holstering

In this instance, Officers A and B responded to an "Assault with a Deadly Weapon" radio call at a residence. The comments of the call stated the suspect was a male, assaulting his father and was *possibly armed*. While the officers were en route to the call, CD updated the call and broadcast a gun was involved. Upon arrival, Officers A and B observed the Subject armed with a handgun. In response, Officers A and B drew their service pistols.

Officer A reholstered his service pistol when he moved the police vehicle into the driveway. As the Subject rammed the police vehicle with his truck, Officer A exited, drew his service pistol a second time and retreated to the rear of the police vehicle.

Based on the comments of the radio call and their observations, Officers A and B had a reasonable belief that the situation had escalated to the level where the use of deadly force may be justified.

In conclusion, the Drawing/Exhibiting of Officers A and B was reasonable and within Department guidelines. The BOPC found the Drawing/Exhibiting of Officers A and B to be in policy.

Use of Force

In this instance, Officer A exited the police vehicle as the Subject rammed his truck into the front of the police vehicle. Officer A exited, drew his service pistol and retreated to the rear of the police vehicle where he observed the Subject who was seated in the driver's seat of the truck, pointing a handgun toward Officer B. In fear for his partner's safety, Officer A (first sequence of fire) fired approximately two rounds at the Subject's head. Officer A recalled,

"As I was getting out of the vehicle, the suspect's vehicle struck the front of my police car slamming the driver's door on my arm. Just hitting my hand. It was at that point where I drew my weapon, backed away from the vehicle to the behind - - to behind - - from behind it. And it was simultaneous when I observed him holding that same weapon that I observed him put in his left pocket but now holding it with his right hand. I could see clearly the top of his head, the extended arm, his extended right arm, with the pistol pointing westbound in the direction where my partner was standing. It was at that point where I feared that my partner was going to be shot. I had lights. I had cover. It was at that point that I fired the first round. I know that I shattered the window because I saw that the window imploded in, and he ducked down."

In regards to shooting at the Subject's head, Officer A stated,

"The - - the present - - the only target that was present was the top of his head and his hand. I elected to go for the bigger target, the head. I do remember in the back of the truck there was a lot of clothes, a bed frame, or there was a lot of - - not debris but there was a lot of valuables in the back, one being a suitcase. And that was shooting up covering half of the window, half of the rear - - the rear truck window."

Following the first volley of shots, *the Subject slumped/ducked down in the truck and drove forward in the driveway appearing to have struck the house or wall surrounding the location.* Officers A and B moved forward and approached the truck to access the Subject's condition. The Subject again reversed his truck toward the officers and struck the police vehicle a second time. After the truck struck the police vehicle, the Subject pointed his handgun toward Officer B, and then over his shoulder out the broken rear window toward Officer A. Fearing that the Subject was going to shoot him, Officer A (second sequence of fire) fired approximately seven rounds at the Subject. Officer A recalled,

"And it was at this point I observed him again training his arm, his right arm, outward facing west pointing it in the direction my partner was - - was at and then attempting to stick the gun back through the window in my direction or in the direction of the police car. I was moving back and forth behind the take-down lights and the spotlight, and at which point I fired a second volley."

In the interim, although Officer B was able to avoid being struck by the truck, he believed Officer A was going to be hit. After the truck rammed the police vehicle, according to Officer B, the Subject pointed his handgun toward him (Officer B). Holding

his service pistol in his right hand and his flashlight in his left hand (Harries shooting position), Officer B (first sequence of fire) fired nine rounds at the Subject in a period of approximately three seconds. As a result, Officer B's service pistol went to slide lock and he yelled to Officer A, "malfunction."

Officer B recalled,

"And by this time I could see him right along - - I thought he was - - I thought that he had the - - I could see the gun in his hand because he was like steering the car and driving at the same time. Then I see my partner running back. I thought he was - - I thought he was going to run - - I thought he was going to run my partner over. And that's when I first - -when I engaged him, when I was back-peddling."

Detective A: *"And the - - when you first fired your rounds, you could see the gun come around pointed at you?"*

Officer B: *"Yeah. And I - - and - - and at the same time I could see my partner trying to squeeze back between the car. I thought he was going - - I thought he was going to run my partner over and kill him."*

Officer B later clarified,

Detective B: *Okay. But you could see that he had the gun in his left hand and he was pointed at you?"*

Officer B: *"Yes. The whole time."*

Detective B: *"Okay. And what was going through your mind at that point there? What were you thinking?"*

Officer B: *"I thought he was going to shoot me."*

Detective A: *"Okay, so the first time you shot, did he point the gun at you?"*

Officer B: *"He - - yes, he did point it. And at the same time that was when my - - I thought my partner was going to be run over."*

Detective A: *"Okay. And now the second time you fired, he pointed a weapon at you?"*

Officer B: *"Yes."*

Officer A heard Officer B yell, "malfunction." Following the second volley of shots, the Subject crouched down in the seat of his truck and drove forward approximately 15 feet. Officer A moved further behind the rear bumper area of the police vehicle. The Subject then pointed his handgun toward Officer B and then back toward Officer A through the driver side and rear windows of the truck. Fearing for their lives, Officer A (third sequence of fire) fired approximately five more rounds at the Subject, resulting in his

service pistol going into slide lock. Officer A dropped to his knee behind the trunk of the police vehicle and reloaded. Officer A recalled,

“He kept sticking the gun through the back broken-out window. He kept continue to stick it out the driver’s side window pointing his hand and the gun but keeping his body lower than the - - the seat. Based on that I fired a third volley moving back. And in that time - - and I can’t pinpoint - - he continued to go forward and slam the police car until it made it to the street. Then the third volley I heard my partner say “malfunction” a second time and then followed up with reloading. It was at that point I understood that my partner had run out of ammo and was going to be reloading, and I assessed the situation and observed that the suspect still was pointing the gun in his direction at that time. And I continued to fire. When my partner finished loading, he said either he was back up - - he said either, ‘I’m back up,’ which I - - I believe that he had - - he had rounds back in his gun, and that’s when I went dry. I had the spongy trigger. I - - identified that it was - - it was at slide lock. I dropped to one knee. Got that magazine out as quickly as I could. Threw it and reloaded and came back up. All this was from behind the distance of the police car.”

During this time, the Subject rammed the police vehicle a third time, then pointed his handgun across his chest with his left hand in the direction of Officer B. Fearing that he would be shot, Officer B (second sequence of fire) fired eight rounds at the Subject. Officer B recalled,

“And this time I was pretty much lined up - - I could - - I could see him, and he could see me. And he had the gun in his left hand pointed it across his chest at me. I thought he was going to shoot me. So I engaged him again and shot another eight rounds at the suspect, at which point he pulled - - he pulled forward again.”

The rear of the Subject’s truck pushed the police vehicle, spinning the police vehicle counterclockwise into the street. Meanwhile, Officer B reloaded his service pistol with a fresh magazine. The Subject drove forward in the driveway and then reversed a fourth and final time ramming his truck into the police vehicle.

When the Subject rammed the police vehicle a final time, he pushed the police vehicle further into the street and pointed his handgun out of the rear window of his truck toward Officer A. Fearing for his life, Officer A (fourth sequence of fire) fired approximately three rounds at the suspect in a southeasterly direction. Officer A recalled,

“But it - - during the reload, that’s when the suspect was able to push the car a lot further that I was able to walk backwards. And that’s why I decided to change my direction of retreat or redeployment out into the street so that I didn’t get hit because I didn’t know when the car was going to stop. And I fired my - - I believe my last three rounds with a fresh magazine in the direction of the suspect. And that was the last time I saw his gun in his hand pointing up when he was driving away, and it was also the same time where now the lights were trained back on me of the police car.”

Note: There were two spent bullets recovered from the street, east of the officers shooting positions, which were matched to being fired from Officer A's pistol.

Witness D stated only one officer fired his weapon, whom she described as the officer who blocked the driveway with the police vehicle (Officer A). The officer initially fired at the rear of the truck three times while it was reversing toward him and almost struck him as he moved out of the way; he then fired at the truck four more times as it rammed the police vehicle in reverse and then he fired three more shots at the rear of the truck as it drove away eastbound on the street.

Witness G observed the last two shots being fired by an officer at the truck as it was being driven eastbound on the street.

Witness A (mother) heard gunshots as her son had left the driveway in the truck, but did not witness the shooting or her son drive away.

Witness H stated she was ducking down inside of her house when the OIS occurred. She thought she heard gunshots after the truck left the scene.

Witness I heard about five gunshots after the suspect was driving away.

Witness B (father) believed the officers fired excessive shots at his son and also believed the officers fired at his son before he hit the police car and after he had escaped.

Witness C (girlfriend) never saw the Subject point a gun at the officers.

Witness E supports the officers' account of the incident, but did not see the suspect point a handgun at the officers.

Witness J heard the officers begin to fire gunshots before she heard the crash.

Witness F heard the officers telling the Subject to get out of the car with their guns pointed at the Subject. Witness F then closed his front door and heard gunshots; then opened his door and observed the Subject had left and saw the damage to the police vehicle.

Five additional witnesses heard, but did not see, the incident.

Note: At the termination of the pursuit, no firearm was recovered from the Subject's vehicle or on his person. The Commission determined, based upon a preponderance of the evidence contained in the investigation, that the gun found in the flower bed was not the same gun the officers observed the Subject pointing in their direction during the OIS.

In this case, a search of the 97 mile course of the pursuit was not feasible. Additionally, at the termination point, a television (helicopter) reporter stated the Subject threw a gun from the vehicle. The investigation determined that the item the Subject threw out of the vehicle was more than likely a set of keys.

Regarding Officer A's final rounds:

Officer A stated that he was firing in a southeast direction while addressing the threat presented as the truck was pushing the police vehicle aside and the Subject was pointing a handgun toward him. According to Officer A, he stopped firing as the Subject drove away eastbound and was no longer a threat; however, evidence supports that Officer A fired three rounds toward the truck as the Subject drove eastbound. Officer A recalls firing his last volley in a southeasterly direction.

The BOPC assessed these rounds and believed that Officer A did not intentionally fire at the vehicle as it was leaving the scene. The BOPC is aware of research which supports that officers involved in a dynamic and stressful lethal force encounter may unintentionally fire several shots after a threat has objectively ceased.

Peer reviewed research supports that it takes time for an officer to react to a lethal threat. The same holds true for once a threat has ceased, as it takes time for an officer to recognize that the threat is over and then actually (physically) stop reacting to the threat. In that time, Officer A could have fired several rounds within short amount of time it would take for the car to change direction.

Officers A and B reacted, based on their training, when they fired their service pistols to protect themselves from the "imminent threat of death or serious bodily injury." The BOPC found the officers' decision to use lethal force was "objectively reasonable" in that an officer with similar training and experience would have reasonably perceived the Subject's actions to be life threatening.

Department policy dictates that firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The BOPC found that the preponderance of the evidence in this case established that the officers were faced with an armed suspect who possessed and pointed a gun at the officers. For each of the rounds fired by Officers A and B, the officers stated that they fired at the Subject because the Subject pointed a handgun at them. And although the Subject was the driver of a moving vehicle, the BOPC found that Officers A and B fired at the Subject, who was armed with a handgun, in defense of their lives and in direct response to the Subject's gun, and not at the moving vehicle. Accordingly, the BOPC found that, given the facts known to the officers at the time, it was objectively reasonable for them to perceive that the Subject's actions created an imminent threat of serious bodily injury or death, that they were faced with such a threat by means other than the vehicle, and therefore, that Officers A and B's use of lethal force was consistent with the Department's Shooting at Moving Vehicles policy.

In conclusion, the BOPC found Officers A and B's application of lethal force to be in policy.