



## **Incident Summary**

Officers A and B received a radio call from Communications Division (CD) of a Burglary Alarm Activation at a wholesale electronics store. The broadcast indicated the alarm covered the door and the alarm system detected motion in the lobby. The officers responded, arrived on scene and showed themselves at the location via their Mobile Digital Computer (MDC). The officers parked their vehicle one building south of the location and approached the location on foot. The officers immediately noticed the door facing the street was open. Officer B requested an additional unit for an open door.

**Note:** Officer C acknowledged and responded to the additional unit request.

While they waited for the additional units, Officer A deployed on the northwest corner of the building and monitored the north side windows and the west side door. Officer B positioned himself to cover the west side open door.

Officer A heard what he believed was a whistle coming from the apartment complex on the west side of street directly northwest of him. According to Officer A, "It was a loud tweet [...] As soon as a patrol car drives into the location everybody starts doing that whistle to alert everybody that the police are there."

Officer A directed his attention to the apartment complex across the street and observed three males, including the Subject, standing on a second floor balcony, looking in his and his partner's direction, from a distance of approximately 262 feet. The three males were yelling something; however, Officer A could not ascertain what they were saying.

**Note:** Officer A stated he first observed two males on the balcony, and at some point a third subject emerged. Officer A could not recall when the third person emerged.

Officer A redirected his attention back to the open door, and then heard what he believed was a small rock striking the building in front of him. Officer A immediately directed his attention to the three males, who remained standing on the balcony and continued to look toward his direction. Officer A again redirected his attention to the open door, but looked back to the three males in time to see the Subject bend down and pick up an unknown object. The Subject appeared to manipulate the object by pumping it, before kneeling down on the balcony in front of the railing. Officer A observed the Subject "shoulder" the object, point the object in his direction, and then he heard the same sound he had earlier believed was a small rock striking the side of the building. Officer A surmised that the Subject was armed with an air rifle and was firing at either him or his partner.

**Note:** Officer A issued a broadcast for assistance. He stated, "I got three males in the apartment complex across from us shooting at us with an air rifle." Communication Division upgraded the request to a "Help Call," and requested an Air Unit to respond.

Simultaneously, Officer C arrived on scene and, unaware that Officer A was being shot at, parked his vehicle in the parking lot north of the location, facing southbound. Officer C remained in his vehicle and observed Officer A crouch down and run toward his position. Officer A took cover behind Officer C's driver's side door and advised Officer C via the driver's side window they were taking rounds from the balcony across the street.

**Note:** Officers B and C did not hear the assistance call or any gunshots coming from the balcony.

Officer C advised Officer A they needed to move out of the line of fire. Officer B, not hearing any shots himself, had walked over to Officer C's vehicle when he heard Officer A tell Officer C they were being fired upon. Officer B immediately entered the front passenger seat of Officer C's vehicle as Officer A remained crouched down along the driver's side. As Officer C backed his vehicle out of the line of fire, Officer A utilized the police vehicle as cover. Officer C drove the vehicle in reverse, northbound and out of the line of sight of the balcony.

As the vehicle moved out of the line of fire, Officer A redeployed himself along the tree line on the east side of the street. Officer A attempted to gather further information and the address of the apartment complex. Officer A indicated he was trying to collect an address, but he couldn't see the address due to blue neon lights.

Officer A ran westbound across the street north of the apartment complex driveway, without communicating with the other officers, and toward a small retaining wall to obtain an address so he could broadcast the information. As Officer A closed the distance, he could hear the males still on the balcony.

**Note:** Officers B and C remained in the police vehicle across the street and negotiated a U-turn in the parking lot. The officers were out of sight of the balcony, and believed when Officer A redeployed, he was behind the trees on the east side of the street. Officers B and C did not see Officer A run across the street.

Officer A made his way closer to the balcony and used a tree on the southeast corner of the building as cover. Officer A crouched down to peek at the balcony and observed a male standing on the rail, holding the top portion of the balcony with his left hand. The male leaned over, and Officer A believed he was trying to locate the police vehicle. The Subject and a third male had their hands on the rail and had leaned forward on the balcony which also made Officer A believe they were trying to locate the police vehicle.

**Note:** According to Officer A, he could see that Officers B and C were in the police vehicle and appeared to be crossing the street to join him. According to Officers B and C, they remained seated in the police vehicle in the parking lot facing northbound until they heard a gunshot.

Officer A believed the three males had not seen him and they did not know his position. At this time Officer A could see that none of the males on the balcony had any weapons in their hands, and to avoid a possible shooting situation when Officers B and C arrived in the police vehicle, as well as responding units, Officer A made the decision to cover the three males and hold them until additional officers arrived.

Officer A believed the three males were unarmed, but had a weapon in close proximity. He unholstered his pistol and held it in a two-handed, low-ready position with his finger along the frame. Officer A then took a few steps west into the driveway, approximately 30 to 40 feet south of the balcony, so that the three men on the balcony could see him, and he identified himself as a police officer. From his position just below the balcony, Officer A raised his pistol with his finger along the side of the frame and according to Officer A, he stepped out from behind the tree and took a couple of steps with his gun drawn and identified himself.

Officer A gave several commands for the three individuals to turn around and place their hands on their heads. The Subject and the other two males did not comply with the commands. One of the subjects stated that he (Officer A) was not going to shoot him.

**Note:** According to the Subject, "Yeah. He told us--Yeah, he said to put our -- put our hands in the air. And then I just remember looking ... and I was like, "What? Is he serious? He's pointing a gun at us."

Officer A gave commands once again for the Subject and the two other males to turn around and place their hands behind their heads, at which time the Subject, while looking at Officer A, backed up, looked into the apartment, then reached down while bent at the knees and picked up a rifle with his right hand. The Subject held the rifle approximately eight inches from the tip of the barrel and according to Officer A, he was giving commands to turn around and face the wall, but instead the Subject reached for his weapon. Officer A was afraid that the Subject was going to shoulder it again and take a shot at him." As the Subject looked right at him, Officer A fired one round in a northeast direction at the Subject's chest area from a distance of approximately 35 feet.

**Note:** Officer A's round missed the Subject and struck the wall west of the sliding glass patio door.

The Subject and one of the males immediately ran into the apartment, while the other male jumped off the railing and onto the balcony, landing on his feet. He had his hands in the air and said, "Don't shoot." Officer A redeployed westbound with his pistol pointed at the balcony and then moved diagonally toward a parked vehicle for cover.

Officers B and C heard a gunshot west of them while they were seated in their police vehicle facing northbound. Officer B stated he broadcast a "Help Call, Shots Fired," as Officer C drove the vehicle westbound across the street. Officer C observed a silhouette either on the street or closer to the building by the driveway, but surmised that

the silhouette was Officer A. Officer C parked the police vehicle at the mouth of the driveway that led to the apartment complex.

Officer C exited the driver's side and observed Officer A with his weapon pointed at a balcony, where one male subject was standing with his hands over his head. Officer C believed that a shooting had just occurred and his life was in danger. He unholstered his pistol and pointed it toward the balcony, with his finger along the frame.

Officer B observed Officer A with his pistol pointed toward the balcony and standing behind a parked vehicle, immediately unholstered his pistol as he exited the passenger side of the police vehicle. Officer B looked toward the balcony and saw a male subject standing with his hands on his head. Officer B deployed behind a block wall near Officer A. Officer B pointed his pistol with his finger along the frame, toward the balcony as he gave commands to the subject to keep his hands up.

According to Officer C, "At this time, I asked Officer A, I yelled to him, 'did you fire?' And he said, 'Yes.' Officer C then broadcast, "Officer needs help, shots fired."

Sergeant A broadcast he was at scene and directed units how to approach the scene. Sergeant A identified himself as the Incident Commander (IC) and coordinated responding units to contain the apartment complex.

**Note:** Sergeant A had previously responded to the apartment complex on unrelated radio calls and had knowledge of the layout of the apartment complex.

Officer C holstered his weapon and approached Sergeant A to provide a brief summary as far as what had occurred. Sergeant A directed unknown officers with a shotgun and a Police Rifle to relieve Officers A and B so that he could determine if a Public Safety Statement was required by each officer. Upon Officers A and B being relieved, they each holstered their weapons and responded to Sergeant A's location. Sergeant A directed responding supervisors to monitor the officers and obtain further information.

Sergeant B responded and obtained a Public Safety Statement (PSS) from Officer A. Officer A advised Sergeant B he fired in a northwest direction, and that the Subject had fired at him. Sergeant B advised Sergeant A regarding the information he obtained during the PSS.

An Air Unit from the Los Angeles Police Department Air Support Division responded and assisted with securing the scene and the apprehension of the subjects.

**Note:** During the tactical operation, two females, tenants of the apartment that the Subject had fled into, exited the apartment and advised Officer A that the Subject and the other two males were not armed and wanted to cooperate. They also gave the officers consent to enter their residence.

Other responding officers took control of the entry into the subject's apartment and established an arrest team. The officers knocked on the door of the apartment and called for the Subject, and the other two males to exit. They complied with the officers' commands and were taken into custody without incident. The officers then rendered the apartment safe from any possible outstanding subjects.

Force Investigation Division (FID) Detective A read the Subject his Miranda rights, at which time the Subject indicated he understood and waived his rights. The Subject stated he had consumed numerous alcoholic beverages, and admitted he fired the pellet gun three times; however, he denied shooting it directly at the officers. The Subject stated he had fired the pellet rifle at a posted sign that was at the end of the driveway directly east of his location. The Subject stated shortly thereafter, the officer appeared and ordered him to put his hands up. The Subject thought the officer was joking, and he did not recall if he picked up the rifle in the officer's presence.

**Note:** The direction in which the Subject had fired the pellet rifle and Officer A's' perception of where the rounds were striking were consistent with the shots being fired westbound from the balcony of the apartment.

### **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). 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, made the following findings:

#### **A. Tactics**

The BOPC found Officers A's tactics to warrant Administrative Disapproval. The BOPC found Officers B and C's tactics to warrant a Tactical Debrief.

#### **B. Drawing/Exhibiting**

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

#### **C. Lethal Use of Force**

The BOPC found Officer A's use of lethal force to be out of policy.

## **Basis for Findings**

### **A. Tactics**

- In its analysis of this incident, the BOPC identified the following tactical considerations:

#### 1. Help Call

Officers are given discretion regarding the appropriate the broadcast. Accordingly, the appropriate broadcast can ensure sufficient resources to deal with an incident. In this circumstance, Officer A conducted an assistance broadcast as a result of taking rounds.

Officer A recalled, "I said X -- I believe I'd said -- I don't remember exactly what I said, but [unit] requesting assistance. I believe I said I've got guys on a balcony shooting at us with an air rifle. A balcony across the location shooting at us with an air rifle."

Under these circumstances, an "Officer Needs Help" broadcast would have been tactically prudent, due to the nature of the call. However, the BOPC noted that absent the word "Help" the content of the broadcast appropriately communicated the urgency of the circumstances to responding units. As a result, Communications Division (CD) appropriately upgraded the broadcast to a Help Call.

Based on the totality of the circumstances, the BOPC determined that Officer A's actions did not substantially deviate from approved Department tactical training.

#### 2. Tactical Communication

Officer A redeployed without communicating his observations or intentions with Officers B and C.

Operational success is based on the ability of officers to effectively communicate during critical incidents. Officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and to work collectively to ensure a successful resolution. A sound tactical plan should be implemented to ensure minimal exposure to the officers, while keeping in mind officer safety concerns. With the initial tactical plan to move out of the line of fire, Officer A deviated from the tactical plan and made the decision to redeploy without communicating to the other officers, thus reducing officer safety. In this instance, Officer A placed himself unnecessarily in a tactical disadvantage by leaving his partners without the benefit of communicating his movement or observations.

In conclusion, the BOPC determined that Officer A's tactics were a substantial deviation from approved Department tactical training, without justification. .

### 3. Separation / Pursuing Possible Armed Subjects

Officer A separated from Officers B and C while moving alone, approximately 262 feet, into a position across the street to observe and subsequently confront a potentially armed subject(s).

Establishing a perimeter and attempting to contain an armed subject demands optimal situational awareness. The ability to maintain the tactical advantage rests on the ability of the officers to effectively communicate thus ensuring a coordinated effort and a successful resolution. In this circumstance, Officer A moved across the street toward the apartment where a possibly armed subject was located. Without communicating his movements, Officer A moved alone toward a subject that he believed was armed without the benefit of Officers B and C. Additionally, Officers B and C did not observe Officer A move across the street toward the apartment complex.

Upon approaching the apartment complex, Officer A heard the three subjects on the balcony. Subsequently, Officer A moved into position to obtain the exact address of the apartment complex to conduct a broadcast to CD.

Officer A recalled, "At that point I was trying to collect an address, but I couldn't see the address 'cause of the blue neon."

The BOPC determined that pertinent communication did not occur to the extent necessary to facilitate the best tactical practice of working together as a team to most effectively handle the incident. Consequently, Officer A unnecessarily separated from his partners and any additional police personnel which left him at a distinct tactical disadvantage while confronting an armed subject. The separation occurred without sufficient articulable facts to support that the separation was reasonable under the circumstances. Additionally, Officers B and C were not in a position to render aid in a timely manner.

The BOPC determined that Officer A substantially and unjustifiably deviated from approved Department tactical training.

### 4. Utilization of Cover

Officer A left his position of cover and confronted a potentially armed suspect without the benefit of cover.

The utilization of cover enables an officer 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 circumstance, Officer A moved from a position of cover and confronted a possibly armed suspect.

Officer A recalled, Officer A recalled, "But when I saw that he didn't have the weapon in his hands that I would -- could step out and basically take them into custody or have eyes on them until a unit could get up to the apartment."

In its analysis of these events, the BOPC took into consideration the officers' statements, and the circumstances surrounding the assault with a deadly weapon. The BOPC also took into account that the use of cover would have enhanced Officer A's ability to create distance between himself and a potentially armed suspect.

In conclusion, the BOPC found that Officer A's actions substantially and unjustifiably deviated from approved Department tactical training.

- 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.

After a thorough review of the incident, regarding Officers B and C, the BOPC determined that the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training.

Regarding Officer A, the BOPC determined that his actions substantially and unjustifiably deviated from approved Department tactical training, requiring a finding of Administrative Disapproval.

## **B. Drawing/Exhibiting**

- Officers A and B responded to a radio call of a Burglary Alarm Activation. Officer A heard what he believed were rocks striking the window of the building. Officer A believed he was being fired at with an air rifle by subjects across the street from a balcony. Officer A approached the location and drew his service pistol.

Officer A recalled drawing his weapon because he knew the subjects had a weapon within close proximity and it could have escalated to the use of deadly force.

Officers B and C moved northbound through the parking lot, out of the line of fire of the air rifle and heard a shot being fired emanating from Officer A's location. Subsequently, Officers B and C responded to Officer A's location and drew their service pistols.

Officer B recalled hearing a gunshot go off and his partner advising that they were getting shot at. Officer B also heard a shot go off, so he drew his gun to protect himself and his partner from what he believed could lead to death.

Officer C recalled that he feared for his safety and knew it may escalate, so he drew his weapon because the situation may escalate to where deadly force may be authorized.

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

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

### **C. Lethal Use of Force**

- **Officer A** – (pistol, one round.)

Officer A stepped onto the driveway away from the tree, approximately 30 to 40 feet south of the apartment balcony. Officer A observed the three male subjects and issued verbal commands to them.

Officer A observed the Subject bend down and pick up a rifle while holding the barrel in his right hand. Consequently, Officer A discharged one round from his service pistol at the Subject.

Officer A indicated, that the subject in the white T-shirt, who's in the middle, "bends at the knees and comes up and I can see in his right hand he has the rifle. And then I immediately identified it as a rifle. He's holding it about eight inches from the tip of the barrel. And at that point I fired a round directly at him."

Although Officer A indicated that the Subject was armed with an air rifle and that an individual can kill with them, his beliefs are not consistent with the beliefs of an officer with similar training and experience. In conclusion, the BOPC determined there was no indication that Officer A's life was in immediate peril at the time that he fired his service pistol. Accordingly, given the totality of the circumstances, an officer with similar training and experience would believe that it would be unreasonable to discharge their service pistol at the Subject at the time that he held an air rifle in his hand.

In conclusion, the BOPC found Officer A's use of lethal force to be out of policy.