

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

OFFICER-INVOLVED SHOOTING – 048-18

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
Southwest	7/29/18		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	16 years, 4 months
Officer B	10 months

Reason for Police Contact

Uniformed police officers responded to a radio call. While the officers were interviewing the person reporting (PR), they heard multiple gunshots and observed a muzzle flash emitting from a nearby vehicle, causing the officers to believe that they were being fired upon. As the Subject's vehicle drove in the officers' direction, an officer-involved shooting (OIS) occurred.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (X)</u>
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Unidentified male.

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 June 4, 2019.

Incident Summary

Uniformed Police Officers A and B were working patrol in a marked police vehicle. The officers responded to a call for service from Witnesses A and B at the corner of an intersection.

Officer A parked the police vehicle in the street with the vehicle's parking lights and ambers activated. The police vehicle was double-parked, partially blocking one lane of the street.

Both officers activated their Body Worn Video (BWV) cameras, exited their patrol car, and contacted the two witnesses in the street next to Witness A's vehicle, adjacent to the police vehicle. Officer B was facing toward and speaking to Witness A, who was facing the opposite direction. Witness A relayed information regarding the investigation to the officers and provided documents regarding the matter.

As the officers were gathering information from Witness A and examining his documents, Officer A's BWV captured a silver sedan, followed by a Sport Utility Vehicle (SUV), driving down the street.

The silver sedan was in the No.1 lane and the SUV was in the No.2 lane. It was later determined that the SUV had two occupants inside of the vehicle; an unidentified male driver (the Subject) and the registered owner of the vehicle, Witness C.

As the SUV approached the intersection, Officer A's BWV captured the sound of four consecutive gunshots, in rapid succession, and four muzzle flashes emitting from the driver's side window of the SUV. The SUV immediately turned in the officers' direction.

Four discharged cartridge casings were subsequently recovered from the street at the intersection.

According to Officers A and B, they heard the gunshots and immediately looked in the direction of the vehicles. Both officers observed muzzle flashes emitting from the driver's side of the SUV and believed that the driver was armed and actively shooting at them and/or Witnesses A and B. Coinciding with the gunshots and muzzle flashes, Officer A observed the Subject pointing a blue-steel handgun out of the driver's window and across the windshield, in the officers' direction, as he negotiated the turn toward the officers.

According to Officers A and B, at that point they feared for their safety and those around them. They believed that they were getting shot at by the Subject. Officer A fired four rounds at the Subject, as he drove toward them. Officer B fired seven rounds.

Officer B did not observe a weapon in the Subject's hand throughout the entire incident; however, he/she did observe muzzle flashes, as previously mentioned.

According to Officer A, immediately following the OIS, he/she observed smoke or steam emitting from the SUV and believed that it may have been damaged or disabled as a result of the OIS. The officers ran along the street to track the movements of the Subject's vehicle.

Officer A broadcast that shots had been fired at the intersection. Communications Division (CD) broadcast a help call for the officers. The Subject turned down a side street, which was one street away from the intersection. Officer A advised the responding units of the Subject's description and last known direction. Both officers holstered their pistols and ran back toward their vehicle and the witnesses.

Officers A and B were concerned for the safety of Witnesses A and B, and after determining they were uninjured, directed the women to enter their personal vehicle.

Uniformed Police Officers C and D heard the help call and responded to the location. The officers turned on the side street that the Subjects' vehicle had turned down and located the Subject's abandoned vehicle. According to Officer C, smoke was emitting from the Subject's vehicle. The officers noted that there were multiple bullet impacts on the vehicle.

There was no blood or forensic evidence within the vehicle to indicate that the occupants were injured as result of the OIS.

Officer C advised responding units of the Subject vehicle's location and that the vehicle was unoccupied.

Officers A and B assisted with containment and set up a perimeter. Numerous additional personnel responded to the scene and a perimeter was established.

Sergeant A arrived at the scene, followed by Sergeants B and C.

Several minutes after the OIS, Witness C called 911 from his cellular telephone several blocks from where his vehicle had been abandoned. Witness C alleged that he was the victim of a carjacking/kidnapping. Uniformed Police Officers E and F were assigned the radio call and responded to his location.

According to Witness C, moments before the OIS, the Subject ran into the street, stopped in front of his vehicle, and pointed a black handgun in his direction. The Subject ordered him to open the driver's side door and move to the front passenger seat of his vehicle. Witness C complied with his commands, at which time the Subject entered the vehicle and started driving.

According to Witness C, as they approached the intersection (where the OIS occurred) the Subject fired approximately two shots at an unknown person or vehicle through the open driver's side window. As the Subject was shooting, he negotiated an immediate right turn, at which time Witness C observed a police vehicle. Witness C then heard multiple shots being fired and opined that the police officers were shooting at the

Subject. Witness C said he never observed the police officers because he ducked and covered his face as the Subject was shooting.

The Subject then made a left turn and ordered Witness C to exit the vehicle. When the Subject slowed down, Witness C exited the vehicle and ran to the area where he dialed 911 and reported the incident.

Officers A and B returned to the OIS scene and notified Sergeants A and B that they were involved in an OIS. Sergeant C separated the involved officers and requested additional supervisors to assist with Public Safety Statements (PSS) and monitoring responsibilities.

Sergeants D and E arrived at the scene and obtained a PSS from Officers A and B respectively.

Watch Commander Lieutenant A arrived at scene and assumed the role of Incident Commander (IC).

One day after the incident, Force Investigation Division (FID) Detectives were notified by Area personnel that a citizen reported that his vehicle had been impacted by bullets while driving in the intersection where the OIS occurred.

FID Detectives interviewed Witness D, who stated that he was driving through the intersection with Witness E, when he heard multiple gunshots being fired nearby. Upon arriving home, he observed four bullet impacts on the passenger side of the vehicle.

Neither Witnesses D or E observed who fired the rounds at their vehicle and were unaware of any motive or event that may have precipitated the shooting. The ballistic evidence recovered from the vehicle was later determined to be consistent with the casings recovered at the scene linked to the Subject's pistol.

Los Angeles Board of Police Commissioners' Findings

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

A. Tactics

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

B. Drawing and Exhibiting

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

C. Lethal Use of Force

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

Basis for Findings

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

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

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

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

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or

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

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force.

(Use of Force Policy, Los Angeles Police Department Manual.)

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

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a 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

- In evaluating this incident, the BOPC noted the following tactical considerations:

1. Situational Awareness

The investigation revealed that Officers A and B met with Witnesses A and B in the roadway and initiated their investigation in front of their police vehicle, during hours of darkness. Although the officers had double parked their police vehicle to block approaching traffic, and the vehicles' parking lights and flashing rear amber lights were illuminated, Officers A and B were reminded of the dangers posed by conducting activities on the roadway, especially during the hours of darkness. In this case, the BOPC would have preferred that the officers had conducted their investigation on the sidewalk and not in the roadway.

2. Utilization of Cover

The investigation revealed that following the OIS, Officers A and B briefly tracked the Subject vehicle, while running in the roadway, without the benefit of cover. Although Officers A and B were attempting to maintain visual contact with the Subject vehicle while broadcasting its direction of travel, the officers were

reminded of the importance of utilizing cover when involved in a tactical situation involving a potentially armed Subject.

3. Command and Control

Sergeant B responded to the scene. Shortly thereafter, Officers A and B advised Sergeant B that they were involved in an OIS. Although Sergeant B requested additional supervisors to the scene to assist with the separation and monitoring of the involved officers, he/she did not order the involved officers not to discuss the incident and did not ensure that they were separated and monitored. As a result, the involved officers were left unattended for approximately six minutes.

A review of Officers A and B's BWV revealed that during the six-minute time period, Officers A and B were in the vicinity of Sergeant B attempting to locate items of evidence in the roadway and assist with setting up the perimeter. The BWV reflects that Officers A and B did not discuss the incident during this time period.

The BOPC noted that upon arrival, Sergeant B was faced with an ongoing tactical incident involving a perimeter, an outstanding Subject, and an active crime scene. Sergeant B, who had been a field supervisor for approximately one month at the time of this incident, began to monitor the radio and assess the scene in an effort to gain situational awareness of the incident.

During this time, Sergeant A assisted with setting up perimeter containment, securing the scene and requesting additional resources. Sergeant C established a Command Post. Lieutenant A assumed the role of IC. Sergeant D obtained a Public Safety Statement (PSS) from Officer B, and Sergeant E obtained a PSS from Officer A.

- 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 Sergeant B and Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing and Exhibiting

- According to Officer A, as the SUV approached the crosswalk of the intersection and began to negotiate a right turn, Officer A heard gunshots. He/she simultaneously observed several muzzle flashes coming from outside the driver's front window and observed the driver of the SUV with his left hand extended out of the driver side window, reaching over in front of the windshield, and pointing a blue steel semi-automatic handgun across the windshield in the officers' direction. Officer A dropped the documents, sidestepped to his/her left, crossing behind Officer B, and drew his/her service pistol.

A review of Officer A's BWV captured the sound of four gunshots and four muzzle flashes emitting from the area of the driver's side window of the SUV.

According to Officer B, as he/she was talking with Witness A, he/she heard a gunshot. Officer B turned around and observed a SUV, with tinted windows, traveling in the number one lane. Officer B then heard two or three more gunshots and observed one muzzle flash coming from the driver's side of the SUV. Believing that the gunshots were directed towards the officers or Witnesses A and B, Officer B drew his/her service pistol. A review of Officer B's BWV captured the sound of four gunshots, but it did not capture any muzzle flash due to his position in the roadway.

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

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

C. Lethal Use of Force

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

According to Officer A, he/she believed the driver of the SUV was actively shooting at them and, at that split-second moment, believed he/she had no chance of getting to cover. At that point, Officer A believed the officers or Witnesses A and B were going to get shot. In fear that the driver was trying to kill them, Officer A came up on target and fired four rounds from his/her service pistol at the driver to stop the threat.

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

According to Officer B, he/she observed a person in the driver's seat of the SUV but could only see a hand on the steering wheel. Although he/she did not see a weapon, Officer B believed the driver of the SUV was shooting at the officers. Additionally, at the speed the SUV was traveling in the officers' direction, Officer B believed he/she did not have enough time to move to cover. In fear for the

officers' safety, and the safety of Witnesses A and B, Officer B believed that he/she fired approximately four rounds from his/her service pistol at the driver to stop the threat. The investigation revealed that Officer B fired seven rounds from his/her service pistol.

The BOPC considered several factors in evaluating the reasonableness of Officers A and B's use of lethal force. In this case, Officers A and B were faced with a rapidly unfolding tactical situation when they both heard gunshots and observed muzzle flash coming from the driver's side of a vehicle that was quickly approaching in their direction. Additionally, according to Officer A, he/she observed the driver of the SUV with his left hand extended out of the driver's side window, reaching over in front of the windshield, and perceived that the driver was pointing a blue steel semi-automatic handgun across the windshield in the officers' direction.

The BOPC noted that both officers independently assessed the situation and based upon the speed and the direction of travel of the SUV, the officers did not believe they had time, at that moment, to re-deploy to a position of cover. The officers both believed that the driver of the SUV, who was approximately 69 feet away and closing the distance, was shooting at them or the two witnesses and that all their lives were in immediate peril.

The BOPC further noted that the officers were forced to make a split-second decision under stressful circumstances to not only protect their lives, but the lives of the witnesses. The BOPC believed that the officers had a responsibility to safeguard and protect the lives of the witnesses. As such, based on the totality of the circumstances, the BOPC determined, that an officer with similar training and experience as Officers A and B, would reasonably believe that the driver's actions presented an immediate threat of death or serious bodily injury and that the use of lethal force would be objectively reasonable.

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