

INTRADEPARTMENTAL CORRESPONDENCE

July 5, 2018
3.2

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: OFFICER INVOLVED SHOOTING FID NO. 059-17

Honorable Members:

The following is my review, analysis, and findings for Officer Involved Shooting (OIS), Force Investigation Division (FID) No. 059-17. A Use of Force Review Board (UOFRB) was convened on this matter on June 18, 2018. I have adopted the recommendations from the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

SUMMARY

On August 4, 2017, at approximately 2050 hours, Officers [REDACTED], Serial No. [REDACTED], and [REDACTED], Serial No. [REDACTED], Pacific Patrol Division, were in full uniform, driving a marked black and white police vehicle. The officers responded Code Two to a radio call of a *Domestic Dispute* [REDACTED] Venice Boulevard.

The comments of the call stated, "*See PR [Person Reporting] in a 2004 dark blue Chevrolet Avalanche parked on Venice near residence, Suspect/ex-boyfriend "Todd Hurlburt" male/white, 53 years inside above residence, no weapons inside residence history of Domestic Violence, PR and suspect have a "No Negative Contact" Restraining Order against each other that allows both to reside at residence but to have no negative interaction with each other. Suspect has been breaking PR's property inside residence. PR has asked him to leave but he is refusing, requests Police Department standby to keep the peace. Code/Priority per Pacific Watch Commander, Sergeant [REDACTED]*

Note: The investigation revealed that due to the unusual type of Restraining Order involved in the incident, Communications Division (CD) personnel contacted Sergeant [REDACTED] Serial No. [REDACTED] Watch Commander, Pacific Patrol Division, regarding the appropriate priority classification of the radio call. Sergeant [REDACTED] advised that the call be classified as Code Two.

[REDACTED]

According to the officers, while en route, Officer ██████ read the *comments of the call* aloud and they determined that Officer ██████ would be the contact officer and Officer ██████ would be the cover officer.

According to the officers, upon arrival, they met with the PR, later identified as ██████, on the north *sidewalk* of Venice Boulevard, *west of* ██████ residence. ██████ advised that ██████ ex-boyfriend, later identified as Todd Hurlburt, who had been living in ██████ home for the past *eight months*, had *destroyed* some of ██████ property and she wanted him to move out. ██████ did not know if Hurlburt was still inside ██████ residence. ██████ further advised that ██████ had a *No Negative Contact Restraining Order* against Hurlburt, which allowed them to live together as long as there was *no negative contact* between them.

Note: During an interview with FID investigators, ██████ stated that approximately *10 to 15 minutes* before the officers arrived, ██████ looked *through the window* of ██████ residence and observed Hurlburt sitting in ██████ chair. ██████ was also aware that Hurlburt had been drinking *vodka*, had *feigned suicide* a week prior, had a *prior arrest* for *Domestic Violence* in *December of 2016* and had *ordered parts to build a rifle*. ██████ further advised investigators that Officers ██████ and ██████ asked ██████ if Hurlburt had a weapon and ██████ replied, "*Not that I am aware of. To the best of my knowledge, no.*" The investigation revealed that ██████ did not disclose the above information to the officers.

According to Officer ██████, the *comments of the radio call* indicated that there were *no weapons present* and ██████ and ██████ partner did not specifically ask ██████ if there were any weapons in the house.

According to Officer ██████, the *comments of the call* indicated there were *no weapons in the house* and ██████ did not recall asking ██████ if there were any weapons inside the residence.

According to the officers, based upon the information ██████ provided to them, they advised ██████ that they *could not compel or force* Hurlburt to leave the residence. ██████ then asked if they *could just talk to him and take things from there*. They agreed to *speak to Hurlburt to de-escalate* the situation and *keep the peace* (Debriefing Point No. 1).

According to Officer ██████ followed *behind* ██████ and ██████ partner as they *approached* the residence. When they reached the steps leading up to the front door, ██████ partner and ██████ walked up the steps, while ██████ stood at the bottom *step*. ██████ partner then stood *to the left* of ██████ as ██████ opened the front door. ██████ then *backed up and came back down the stairs*. ██████ then walked up *the four stairs* and took a position *at the doorway* to the right of ██████ partner (Debriefing Point No. 2).

According to Officer ██████, while standing *on the right side of the doorway*, ██████ looked inside the residence and observed Hurlburt sitting on a *rocking chair, facing completely away from* them. ██████ then heard ██████ partner say, "*Hey, drop it,*" and *immediately un-holstered* ██████ service

pistol. *At that point, [REDACTED] believed [REDACTED] partner observed something that [REDACTED] could not see from [REDACTED] position, so [REDACTED] drew [REDACTED] service pistol (Drawing/Exhibiting).*

According to Officer [REDACTED], *Hurlburt got up from the rocking chair and turned to [REDACTED] left. [REDACTED] immediately observed that Hurlburt was holding a black colored rifle with his right and left hand and that the rifle's barrel was aimed in [REDACTED] direction. Believing that Hurlburt was going to start shooting in [REDACTED] and [REDACTED] partner's direction, [REDACTED] fired one round from [REDACTED] service pistol at Hurlburt to stop the deadly threat (Lethal Use of Force).*

According to Officer [REDACTED] and [REDACTED] partner followed [REDACTED] as she started walking up to the front door of the residence. When they reached the front door, [REDACTED] unlocked it and then stepped to the side. [REDACTED] passed [REDACTED] entered the threshold of the doorway and immediately observed Hurlburt, approximately 15 feet in front of him, sitting on a chair, in the middle of the living room, with his back facing them.

According to Officer [REDACTED] then observed that Hurlburt was holding an assault rifle in both of his hands. [REDACTED] immediately [REDACTED] drew [REDACTED] service pistol, stepped approximately two feet into the residence and assumed a position of cover behind a wall that was closest to [REDACTED] (Drawing/Exhibiting).

According to Officer [REDACTED], [REDACTED] immediately yelled commands for Hurlburt to drop the rifle or drop the gun to try to de-escalate the situation. Hurlburt ignored [REDACTED] commands and then stood up holding the rifle. [REDACTED] again gave Hurlburt commands to drop the rifle. Hurlburt ignored the commands and then turned his body towards [REDACTED] and [REDACTED] partner, while moving the rifle in their direction. [REDACTED] then heard one shot from [REDACTED] partner.

Note: According to [REDACTED] unlocked the deadbolt of the door, walked through door and observed Hurlburt sitting in a chair, in front of [REDACTED] at the dining room table. Hurlburt then started to turn around and [REDACTED] could see the barrel of a rifle start to come up. [REDACTED] then heard the officers scream several times, "Sir, put the weapon down, sir." [REDACTED] ducked down and then heard a pop.

According to Officer [REDACTED], after the OIS, Hurlburt fell to the ground. [REDACTED] could not see Hurlburt's hands and observed the rifle was approximately an arm's length away from Hurlburt. [REDACTED] checked to see if [REDACTED] partner was okay and then broadcast officer needs help, shots fired and requested a Rescue Ambulance (RA) for Hurlburt, who was still breathing. [REDACTED] and [REDACTED] partner then held their positions and waited for additional units to arrive.

According to Officer [REDACTED], once the additional officers arrived, [REDACTED] formulated a tactical plan to approach Hurlburt and take him into custody. Upon their approach, [REDACTED] observed that one of Hurlburt's hands was still underneath his body and not visible. Concerned that the rifle was still within Hurlburt's reach, [REDACTED] used [REDACTED] foot to move the rifle out of Hurlburt's reach. Hurlburt was then handcuffed without further incident (Additional Tactical Debrief Topics – Preservation of Evidence).

Sergeant [REDACTED] Serial No. [REDACTED] Pacific Patrol Division, responded, assumed the role of Incident Commander (IC) and ensured that the involved officers were separated, monitored and that a Public Safety Statement (PSS) was obtained from Officer [REDACTED].

Los Angeles Fire Department personnel responded and provided medical treatment to Hurlburt for a gunshot wound to his upper torso and then transported him to Ronald Regan, University of California Los Angeles, Medical Center for emergency medical treatment. He failed to respond to treatment and was pronounced dead at 2133 hours.

FINDINGS

Tactics – Tactical Debrief, Officers [REDACTED] and [REDACTED].

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

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

ANALYSIS

Detention

The officers responded to a Domestic Dispute radio call. Upon arrival, the PR directed the officers to the suspect who was seated in a chair holding an assault rifle. After ignoring the officer's commands to drop the rifle, the suspect stood up and pointed the rifle in the officers' direction, resulting in an OIS. The officers' actions were appropriate and within Department policies and procedures.

Tactics

Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance" (Los Angeles Police Department Manual, Volume 3, Section 792.05).

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.

[REDACTED]

Tactical De-Escalation

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques).

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, the involved officers were faced with a rapidly unfolding tactical situation when the PR opened the front door of the residence and one of the officers observed the suspect seated in a chair holding an assault rifle. The officer attempted to verbalize with the suspect to de-escalate the situation, get him to surrender and resolve the situation peacefully without the use of force. However, the suspect immediately stood up, turned toward the officers and pointed the rifle in their direction.

Faced with an imminent threat of serious bodily injury or death, one of the officers utilized lethal force to stop the deadly threat.

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

Debriefing Point No. 1 Tactical Communication/Planning

Officers are trained to work together and function as a team. In order to ensure officer safety and help ensure an appropriate outcome, the primary officers and cover officers must effectively communicate with one another. Appropriate communication involves advising the primary officer of any critical occurrences or safety issues (California Commission on Peace Officers Standards and Training Learning, Domain No. 22).

Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).

Officers [REDACTED] and [REDACTED] did not effectively communicate and plan with each other during the incident.

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 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.

While there were several shortcomings in the communication and planning between the officers, the UOFRB determined, and I concur, that the officers' actions were based on the limited information that they had at the time, and therefore were not a substantial deviation from approved Department tactical training. I will direct this be a topic of discussion during that Tactical Debrief.

Debriefing Point No. 2 Public Safety at Critical Incidents

Reverence for human life is the primary consideration in developing tactics and strategies in pursuit of our motto: "To Protect and To Serve." Whenever an operation designed to achieve an immediate goal such as the arrest of a felon or the gathering of evidence to complete a criminal investigation causes a victim, witness, or other innocent person to be subjected to potential injury or death, our primary objective must be to protect that person. No arrest, conviction, or piece of evidence can outweigh the value of human life (Los Angeles Police Department Manual, Volume 1, Section 130.25).

Officers [REDACTED] and [REDACTED] allowed [REDACTED] to accompany them to the front door of [REDACTED] residence where Hurlburt was possibly located.

Placing a member of the public in harm's way should be avoided at every opportunity. It would have been tactically prudent and safer for the involved personnel to not include [REDACTED] in their initial approach of the residence and request an additional unit to remain with [REDACTED] while they conducted their investigation.

In this case, the UOFRB concluded, and I concur, that based on the comments of the radio call indicating that Hurlburt was not armed and the information that [REDACTED] provided to the officers, and the fact that the officers were in close proximity to [REDACTED] as they approached the location, the officer's actions did not substantially jeopardize [REDACTED] safety.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that Officers [REDACTED] and [REDACTED]'s actions were not a substantial deviation from approved Department tactical training. However, in an effort to enhance future performance, I will direct this topic be discussed at the Tactical Debrief.

Additional Tactical Debrief Topics

Preservation of Evidence – The investigation revealed that Officer [REDACTED] used [REDACTED] foot to move the rifle away from Hurlburt to prevent him from re-arming himself. The officers are reminded, whenever tactically feasible, it is preferable to leave evidence undisturbed until FID investigators can properly document and preserve the scene. I will direct this topic be discussed during the Tactical Debrief.

Command and Control

Sergeant [REDACTED] responded, assumed the role of IC and ensured the involved officers were separated and monitored.

Sergeant [REDACTED] Serial No. [REDACTED], Pacific Patrol Division, obtained a PSS from Officer [REDACTED].

The actions of these supervisors were consistent with Department supervisory training and met my expectations of field supervisors during a critical incident.

Tactical Debrief

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

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

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

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

General Training Update (GTU)

On August 25, 2017, Officers [REDACTED] and [REDACTED] attended a GTU. All mandatory topics were covered, including Force Option Simulator.

Drawing/Exhibiting

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

According to Officer [REDACTED] observed Hurlburt sitting on a chair, in the middle of the living room, holding an assault rifle with both of his hands. [REDACTED] immediately [REDACTED] drew [REDACTED] service pistol, stepped approximately two feet into the residence and assumed a position of cover behind a wall.

Officer [REDACTED] recalled,

So, I go inside and I, upon immediately entering the threshold of the doorway, I observe the suspect sitting down with what looked to me as an assault rifle in both of his hands. I immediately, you know, drew my weapon due to the fact that I believed the tactical situation could escalate to the use of deadly force.

As soon as I entered and I saw the suspect holding what I believe to be an assault rifle, I thought that the situation had escalated to the use of deadly force. So, to protect myself and my partner, I unholstered my weapon.

According to Officer [REDACTED] observed Hurlburt sitting on a rocking chair, facing away from them. [REDACTED] then heard [REDACTED] partner say, "Hey, drop it," and immediately un-holstered [REDACTED] service pistol. At that point, [REDACTED] believed [REDACTED] partner observed something that [REDACTED] could not see from [REDACTED] position, so [REDACTED] drew [REDACTED] service pistol.

Officer [REDACTED] recalled,

And he was facing away from us. From there, I'm on -- in the doorway, I'm on the right side of the doorway. And my partner's on the left. And so from there, I -- I hear -- I overhear my partner say, "Hey, drop it." And [REDACTED] un-holstered immediately. And because [REDACTED] un-holstered, I believe at that point [REDACTED] saw something that I probably didn't see. Maybe he was in a better position. That I do not know, but I un-holstered because of that.

At that point, there was some -- some fear there, perhaps, could have had a gun or something that for us so draw our weapons at because, like, [REDACTED] probably saw something could hurt us.

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

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

[REDACTED]

Lethal Use of Force

Law enforcement officers are authorized to use deadly force to:

- *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
- *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
- *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

Officer [REDACTED] – 9mm, one round in a northwesterly direction from an approximate distance of 23 feet.

According to Officer [REDACTED], Hurlburt got up, turned to his left and [REDACTED] immediately observed that Hurlburt was holding a rifle with his right and left hand, and that the rifle's barrel was aimed in [REDACTED] direction. Believing Hurlburt was going to start shooting at [REDACTED] or [REDACTED] partner, [REDACTED] fired one round from [REDACTED] service pistol at Hurlburt to stop the deadly threat.

Officer [REDACTED] recalled,

And the second he got up from the rocking chair and turned to his left, I immediately know -- saw that it was a, from what I believed, it was a -- a rifle. Black colored, I would say. Long barrel. At that point, we already -- at that point, we already had drew [SIC] our guns, aimed it towards him. When he was turning to his left, I saw that the -- the rifle's barrel aimed towards where I was at standing. When he was moving his -- the rifle with his right hand and his left, at that point, I believe that he was setting up to -- to put it under a mounted position. And from there, I -- I shot him.

...my initial belief was that -- that he was going to -- he was going to put it there but the second I saw that barrel aimed towards -- towards me, I was afraid that he was going to start shooting towards our direction. [REDACTED]

I was afraid he was going to start shooting us, shooting toward my direction. fearing that he was going to shoot at my partner and even shoot at the- the -- the [REDACTED] or the [REDACTED]

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officer [REDACTED], would reasonably believe Hurlburt's

[REDACTED]

actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable.

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

Audio/Video Recordings

Digital In-Car Video System (DICVS) / Body Worn Video (BWV) – Pacific Patrol Division vehicles were equipped with DICVS at the time of this incident. However, none of the DICVS captured the OIS. Pacific Patrol Division officers were not equipped with BWV at the time of this incident.

Respectfully,



MICHEL R. MOORE
Chief of Police

Date: _____

7-5-18