

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

OFFICER-INVOLVED SHOOTING – 075-12

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Van Nuys	10/30/12		

Officer(s) Involved in Use of Force	Length of Service
Officer A	15 years, 6 months

Reason for Police Contact

Officers responded to a minor vehicle collision and observed a person flee in a vehicle after committing a theft from a nearby grocery store. Officer A fired his weapon at the vehicle.

Subject	Deceased ()	Wounded ()	Non-Hit (X)
Unidentified.			

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.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on October 1, 2013.

Incident Summary

A minor traffic collision occurred in a shopping center parking lot. One of the drivers refused to exchange information and departed the scene. The remaining driver phoned the Los Angeles Police Department Communications Division (CD) emergency 911 operator and requested that police respond to the location.

CD assigned the radio call to uniformed Police Officers A and B. The officers were driving a marked black and white police vehicle and were regular partners, who have worked together for approximately two years. According to both officers, they constantly discuss tactics and debrief incidents. Officers A and B arrived on scene and entered the parking lot. They drove through the parking lot searching for the involved parties of their radio call.

Unbeknownst to the officers, a theft was occurring inside a store, located in the shopping center, at the same time. During a subsequent interview with Witness A, an employee of the store, he stated that the store had experienced numerous thefts in the past with expensive alcoholic beverages being the common target stolen by thieves. As part of the store's loss prevention strategy, Witness A's job was to monitor the beverage area by maintaining a high visibility presence and to restock the shelves when necessary. While walking through his designated area, Witness A's attention was immediately directed toward the actions of a male with a shopping cart.

The male was grabbing bottles of expensive wine and placing them under his clothing. Witness A stated he stopped and observed the Subject's actions and it appeared that the Subject was wearing bags under his clothing. This allowed the Subject to insert and carry several bottles under his sweatshirt and waistband area.

Witness A approached and confronted the Subject, who did not respond. The Subject simply walked away at a quick pace toward the exit doors with the unpaid-for merchandise. Witness A alerted his supervisor, Witness B, about the theft in progress and Witness B chased after the Subject through the parking lot.

A third employee, Witness C, who was outside collecting shopping carts, saw Witness B chasing the Subject. Witness B yelled out to Witness C that the Subject had stolen from the store. Witness C was about to join the foot chase when he observed Officers A and B, driving through the parking lot. Witness B also observed the officers and flagged them down, pointing out the subject and saying he'd taken some wine.

The Subject ran in front of the officers' vehicle and continued through a walkway. Officer A observed the Subject holding his waistband as he ran.

Unsure of the type of crime in progress, the officers stopped and exited their vehicle near the walkway. Officer A exited his vehicle and scanned the parking lot looking for the Subject but lost sight of his exact location. Officer B, who was closer to the store

employees, made contact with them and was told the Subject was running towards a white van.

Officer A proceeded to walk through the same walkway the Subject had taken when he heard one of the store employees say that the subject had stolen from the store. Officer A then heard an unknown male, possibly his partner, yell, "The su[b]ject's in the white van."

Officer A continued to walk through the walkway, stopped at the rear end of the parked cars and saw the rear of a white van parked four to five spaces away from him. At that point, Officer A was now standing two to three feet into the driveway but took a few more steps into the parking lot to get a better visual of the white van.

Meanwhile, Officer B had deployed near the parking lot's exit onto the adjacent street.

The van then suddenly backed up very quickly out of its parking space. Officer A noticed the driver looked similar to the Subject who had run past him, but he decided to quickly scan the area for additional subjects. As that occurred, and as described by numerous eye witnesses, the Subject quickly accelerated the vehicle toward Officer A.

Officer A, who was now in the middle of the driveway, saw the van coming toward him at a high rate of speed. Officer A raised his left hand in a motion to stop and to identify himself as a police officer. He also stated he said, "stop, stop, and there was no reaction." At this point, Officer A realized the van was not stopping or yielding to him and began to step to his right, to gain distance from the on-coming vehicle. However, the Subject made no apparent attempt to stop or slow down and continued to drive toward Officer A.

Officer A described that he had mere seconds to react to the oncoming vehicle. Officer A continued to sidestep to move out of the vehicle's path but it was his opinion that the driver was intentionally aiming the vehicle at him.

Officer A, fearing for his life and believing he was about to be run over, unholstered his weapon with his right hand, held it in a single-hand, close-contact position, and fired two rounds toward the driver's side front windshield from a distance of two feet. Almost immediately, Officer A was struck on the left hand by the vehicle.

Note: Officer A believed he was struck by either the van's left front fender or the driver's side mirror.

Officer A fired two more rounds from a close-contact position at the driver through the driver's side window.

Officer A tried to step away from the vehicle but believed he was still in danger of being struck and fired two additional rounds through the driver's side window. Officer A

believed he then transitioned to a two-handed shooting position and fired one last round at the vehicle's rear, still believing it was a threat and to prevent its escape.

Note: According to all of the civilian witnesses in the area, all of the shots fired were in rapid succession. Officer B described the gunfire as happening in two volleys, with the second volley consisting of six to eight rounds fired continuously.

The vehicle sped past Officer A through the driveway, and turned onto the street. Once the vehicle sped away, Officer A holstered his weapon. From the holstered position, Officer A removed the magazine from his pistol and placed it in his right rear pants pocket. He then removed a fully loaded magazine from his magazine pouch and reloaded his pistol. Officer A located his partner and made sure he was not injured.

Officer A broadcast on the radio that he had arrived at the location, that there had been an assault with a deadly weapon on a police officer; that he observed a male travel in one direction, and that there had been "shots fired" at the location. Additional units were requested to establish a crime scene. Officers A and B remained at scene and began to cordon off the parking lot until additional units arrived and took over perimeter responsibilities.

Uniformed Sergeant A arrived on scene. Sergeant A separated Officers A and B and obtained a statement from Officer A. Force Investigation Division personnel reviewed all documents and circumstances surrounding the separation, monitoring and the admonition not to discuss the incident to officers prior to being interviewed by FID investigators. All protocols were followed.

As the events of the incident continued to unfold, responding units stopped two vehicles matching the description of the van broadcast by Officer A. The occupants were temporarily detained pending a field show-up. Sergeant A transported Officer A to the locations of the detained drivers and administered the field show-ups admonishment, with negative results. Field Interview (FI) Cards were completed on the two drivers and their vehicles were photographed. The vehicles had no apparent damage or any broken windows. As of this date, neither the Subject nor the van has been located and it remains unknown as to whether the Subject was struck by gunfire.

Force Investigation Division detectives identified eight individuals who witnessed a portion of the Officer-Involved Shooting (OIS). Their accounts of what occurred varied from one another, including the statements of Officer A and B. This created a number of conflicts in the investigation.

The statement of each witness has been summarized and a diagram of their position at the time of the OIS is contained within the investigative summary of this report. Although investigators are aware that the perceptions of each witness may vary, FID detectives made every investigative effort to understand how the conflicts could have occurred. However, not all of the discrepancies could be explained or resolved.

Witness A was standing in the store's parking lot approximately 190 feet away from where the OIS occurred. Witness A indicated he saw the theft in progress – the theft of 12 bottles of wine – and alerted the store manager.

The Subject ultimately fled the store, being chased by two store employees. Witness A remained at the front of the store and observed the Subject run through the parking lot and jump a row of bushes that separated two of the parking lots. Witness A then observed the Subject enter a white van that was parked in a parking stall five spots away from the pathway. Witness A indicated that after the Subject entered the van, he observed a uniformed officer use the pathway and run to the front of the van. The officer then began to bang on the hood of the van as it started to back out of the parking spot. The officer then went to the driver's-side window and started to bang on the window, yelling for the driver to stop.

The driver backed out of the stall, and the officer unholstered his weapon. The officer was now in front of the van with his gun drawn, pointing it at the driver, when the van accelerated toward the officer. The driver's side front portion of the van struck the officer and fled. Witness A then heard eight to 12 gunshots and saw the officer firing at the van as it passed.

During the review of his interview, it was discovered that FID detectives interviewed Witness A in the parking lot on the night of the incident but not in the actual location where he witnessed the incident. Although Witness A told investigators where he was standing at the time of the OIS, the investigators did not verify whether it was possible for Witness A to claim what he saw.

FID detectives later conducted a walk-through with Witness A and discovered that he was standing south of the front entrance of the store and was approximately 190 feet away from where the incident occurred. Investigators noted that from his position, the pathway was not visible and it would have been difficult for him to see what he had claimed. However, when he indicated he could see the corner, investigators found that to be true. This corroborated the fact that Witness A was a long distance from where the incident occurred.

Investigators also noted that Witness A was in conflict with all of the other witnesses when he claimed he saw the Subject jump over a row of bushes. It was noted that the height of the hedge separating the parking lots would have made it very difficult to see an officer banging on the front hood of the van when it was parked because the hedge would have obscured the view.

Witness B was standing between the north and south parking lots approximately 40 feet away from where the OIS occurred. Witness B was the store employee who chased the Subject through the parking lot. Witness B indicated that when the police arrived, one of the officers chased the Subject and was approximately 15 feet behind him when the officer unholstered his firearm. Witness B saw the Subject enter a white van parked four stalls away from the pathway and lock the door. The Subject backed

the van out of the parking spot when the officer approached the driver's side of the van and began to bang on the driver's side front window with the butt of his gun, ordering the driver out of the van. The van then sped off through the parking lot. As that occurred, Witness B lost sight of the officer and heard three gunshots. Witness B then saw the officer fire three more rounds at the back of the van as it sped off from a distance of three feet.

Investigators noted that the location where Witness B believed the OIS occurred was not supported by the physical evidence at the crime scene. The seven cartridge cases were located 50 feet away from where Witness B said the OIS occurred.

Witness B also said Officer A chased the Subject on foot and was approximately 15 feet behind him. The examination of the distances relevant to the investigation was reviewed and it is unlikely Officer A was ever in a position to be 15 feet behind the Subject while chasing him.

This determination was based upon a number of factors, which include the following: When the officers first observed the Subject, he was being chased by store employees and had run in front of their car. It was estimated that the officer's vehicle was approximately 40 feet away from the Subject as he crossed their path. The officers continued to drive for approximately 70 feet before the car was stopped and the officers exited. By the time the officers exited, it would most likely be plausible that the Subject would have already made it to his van. Also, the distance from the police car and location where Witness 2 claimed the OIS occurred, was approximately 110 feet.

Witness C was standing in the walkway approximately 38 feet away from where the OIS occurred. Witness C saw the Subject being chased by two store employees and flagged down the officers.

When the officers stopped, Witness C saw Officer A start to run after the Subject, yelling for him to stop. The Subject ran to his van, entered the driver's side door, and then backed out of the stall at a high rate of speed. Witness C saw Officer A, with his gun unholstered, ordering the driver to stop. The driver then accelerated the van toward Officer A who was now in the parking lot. Witness C heard a thud followed by four distinct gunshots and saw Officer A shooting toward the driver's side of the van. Witness C thought that the officer had been hit by the van and ran to Officer A to ensure he was okay.

Witness D was with his mother, Witness E, and was standing next to the passenger side of their parked vehicle one stall away from the walkway, approximately 10 feet away from where the OIS occurred.

Witness D had just exited the passenger side of their vehicle when a male, cradling some bottles, ran past him and entered a van west of him. Witness D heard yelling and saw a police officer and a store employee running after him. The van backed out of the parking stall into the parking lot. The officer walked into the driveway with his gun

unholstered, pointed it at the driver and ordered him to stop and get out. Witness D said the officer was three to four feet from the front of the van when he heard the van accelerate and saw the van drive toward the officer. The officer placed his left hand on the hood of the van and jumped out of the way of the van toward the driver's side of the van. After the van passed, the officer fired seven times at the back of the van.

The van continued and then exited the parking lot. Witness D believed that the van collided with another vehicle as it fled the parking lot because he heard the sound of breaking glass.

Witness E had just exited her vehicle and was with her son when the OIS occurred. Witness E heard a male voice yell, "He's in a white van," and then observed a white van back out of a parking stall west of her. When the vehicle was transitioning from reverse to forward, she observed a police officer run in front of the van, slap his hand on the windshield and yell "stop." The driver of the van accelerated at a high rate of speed and drove through the parking lot. Witness E momentarily lost sight of the officer on the driver's side of the van until the van had passed. After that occurred, she observed the officer shooting an estimated five times at the back of the van. Witness E later observed broken glass in the parking lot and in the street but was not aware if the officer's rounds had struck the van or its windows.

Witness F had just exited her vehicle in the parking lot approximately 88 feet away from where the OIS occurred. Her vehicle was parked in the second to the last stall next to the street. Witness F was near the trunk of her vehicle when she heard a gunshot. Witness F looked to her right and heard four to five more gunshots and saw an officer in the parking lot with his gun unholstered and shooting. Witness F then noticed a white van drive by her and exit the parking lot onto the street.

Witness G was walking in the parking lot near where the OIS occurred. Witness G was talking on her cell phone when she noticed a police car parked. Witness G observed two officers exit the vehicle and start to walk south. Witness G then noticed an individual running from the front of the grocery store being chased by two store employees. As the three ran past the officers, one of the employees alerted the officers of the fleeing subject. Witness G said one of the two officers, the taller one, turned around quickly and ran after the Subject being chased.

The Subject ran to a white van parked in the second stall west of the pathway and entered the vehicle. The Subject backed the van out of the parking spot as the officer approached with his weapon unholstered and pointing it at the driver. After the van backed up with the front end facing toward the street, the officer walked in front of the van in the parking lot. The driver then started to drive toward the street when the officer stepped out of the path of the vehicle. Witness G then heard five gunshots.

Note: The investigation determined Witness G did not have a clear or unobstructed view of the incident from her position.

Witness H was seated in her vehicle, approximately 37 feet away from where the OIS occurred. Witness H had just turned the ignition off to her vehicle when she heard gunshots. Witness H looked to her left and saw an individual in the roadway of the parking lot firing his gun in what she thought was her direction. Witness H then ducked down in the front seat for cover. Witness H believed she heard a total of seven shots being fired and heard the sound of breaking glass. Witness H looked up for a second time and discovered the individual was a police officer. Witness H never saw a white van.

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's tactics to warrant Administrative Disapproval. The BOPC found Officer B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Officer A's drawing and exhibiting of a firearm to be out of 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 their analysis of this incident, the BOPC identified the following tactical considerations:
 1. Tactical Communication

As the officers were driving in the parking lot, they observed an adult male, who was holding his waistband, running from two market employees. The officers, unsure if a crime had been committed, exited their police vehicle to investigate. Officers A and B did not communicate to each other or formulate a tactical plan. As Officer A looked for the person running, Officer B spoke to the market employees. Officer A heard someone state that the Subject was in a white van. Officer A then saw a white van back out of a parking stall and turn facing toward him. Officer A recalled that the driver of the van looked similar to the person that he saw being chased by the market employees.

Due to the unfolding situation, it would have been tactically advantageous for the officers to obtain information from the market employees of what, if any, crime had occurred, and to obtain a subject(s) description. The officers then could have communicated amongst themselves and coordinated their movements as well as, if needed, requested additional resources to assist.

In conclusion, although there are improvements that can be made, the BOPC found that the officers' actions did not represent a substantial deviation from approved Department tactical training. The officers are reminded of the role that effective tactical communication plays in ensuring that decisions and actions are consistent with fundamental tactical concepts and reflective of best practices.

2. Shooting at Moving Vehicles

Officer A was standing in the middle of the driveway when he observed the van back out of the parking stall and turn toward him. As the Subject drove the van towards him, Officer A raised his left hand and ordered the Subject to stop.

Officer A believed that if he had run across the front of the Subject's vehicle in an attempt to either take cover or hide behind the parked vehicles, he might have ended up being crushed or pinned underneath the vehicle. Officer A chose to side step but then stopped and did not continue northbound to move out of the van's path or to seek available cover.

When the Subject did not stop, Officer A, fearing he would be hit by the van, drew his service pistol to a right hand close contact shooting position. As the van continued to accelerate toward Officer A, he sidestepped to his right and fired his service pistol (see Lethal Use of Force) toward the driver. The van continued to advance and as it passed Officer A, the driver's side rear view mirror struck Officer A's left hand. Officer A fired additional rounds at the van as it passed him (see Lethal Use of Force).

While the policy is a general guideline and allows for exceptions when, a *person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle*, in this case, there is no credible evidence that the Subject presented such a threat. The BOPC was aware that Officer A

received minimal information from the employees and observed a white van being driven by the Subject. The officers were unsure what, if any, crime had occurred and did not have any pertinent information identifying the Subject as being involved in a violent or serious crime. The only weapon used by the Subject was the vehicle at the specific time that Officer A elected to utilize lethal force and there were no unusual circumstances wherein Officer A had no other option but to resort to lethal force.

In conclusion, by standing directly in front of the van and failing to complete his attempt to locate cover, Officer A's actions represented a substantial and unjustified deviation from approved Department tactical training.

- The BOPC additionally considered the following:

1. Discrepancies in Statements

During the FID investigation, discrepancies were noted between the statements of Officers A and B, along with witnesses who were at the scene during the OIS. Although all the witnesses and Officer B have different accounts of Officer A's positioning prior to the OIS, the witnesses and Officer B observed the Subject back out of the parking stall and drive the van toward Officer A. All the witnesses' accounts were consistent in that the Subject tried to cause Officer A harm.

According to Officer A, after firing the first two rounds he assessed then fired two more rounds, reassessed, fired two more rounds, reassessed, then fired his seventh and last round. According to all of the civilian witnesses in the area, the shots fired were in rapid succession. According to Officer B, he described the gunfire as being two volleys, with the second volley consisting of six to eight rounds fired continuously.

After the Subject vehicle had left the area, Officer A holstered his service pistol and removed the magazine and replaced it with a fully loaded magazine. Officer B saw Officer A perform a tactical reload after the OIS while holding his service pistol in his right hand and inserting the magazine with his left hand.

Although investigators are aware that the perceptions of each witness may vary, FID detectives made every investigative effort to understand how the conflicts could have occurred. However, not all of the discrepancies could be explained or resolved in the FID report, nor do the statement discrepancies have any adverse bearing on the BOPC's findings determination.

- 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 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 review and discuss the incident and individual actions that took place during this incident.

The BOPC conducted an objective assessment of this incident and remained focused on ensuring an equitable outcome based on the role and responsibility of all of the involved personnel. The BOPC was critical of the tactics employed by Officer A and concurred with the recommendation that Officer A's actions unjustifiably and substantially deviated from approved Department tactical training and warranted an administrative disapproval finding.

Regarding Officer B, the BOPC assessed his actions at every stage throughout this incident and have determined that his actions did not substantially deviate from approved Department tactical training. However, each tactical incident merits a comprehensive debriefing, and a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and individual actions that took place during this incident with the objective of improving overall organizational and individual performance.

B. Drawing/Exhibiting

- Officer A heard information that the Subject entered a white van. Officer A observed a white van back out from a parking stall and observed that the person in the driver seat looked similar to the Subject that had been chased by the store employees. The Subject abruptly accelerated the van toward Officer A. Officer A raised his left hand in a motion to stop and identified himself as a police officer; however, the Subject continued to close the distance while driving the van toward him. Officer A feared the van was going to cause serious bodily injury or death and drew his service pistol.

When Officer A realized the van was not stopping or yielding, he stepped to the right to give himself some distance. The van still continued coming toward him. He could hear the engine revving and the driver was not making any attempt to stop. He realized that the Subject was intentionally aiming this moving vehicle at him and as the vehicle approaches him, he drew and exhibited his firearm in the hopes that drawing and exhibiting his firearm would get the attention of the driver to realize the severity of what was going to happen if he didn't stop his vehicle.

In evaluating Officer A's articulation as to why he elected to draw his service pistol, the BOPC was concerned with his statement that by drawing his service pistol he would get the attention of the driver to realize the severity of what was going to happen if he didn't stop his vehicle. It is the BOPC's expectation that officers facing

this type of scenario, where the Subject's vehicle is the only known weapon, would seek cover or make every attempt to move out of the way of the approaching vehicle rather than repositioning a minimal distance and drawing their service pistol. The BOPC determined that an officer with similar training and experience as Officer A, while faced with a similar situation, would reasonably believe that Officer A had the time to move out of the van's path, thus avoiding the need to use deadly force.

In conclusion, the BOPC found that Officer A's drawing and exhibiting of a firearm to be out of policy.

C. Lethal Use of Force

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

Officer A was in the middle of the driveway between two lanes of parked vehicles. The Subject backed out of the parking stall and accelerated toward Officer A. Officer A recalled needing to make a life and death decision because otherwise he might die. He realized that the Subject's intentions were to hit him, that the Subject's vehicle was not going to swerve around him, and the van was still accelerating.

Officer A sidestepped to the right and stopped. The Subject continued to close the distance and, from a right hand close contact position, Officer A fired two rounds toward the Subject through the windshield.

As the van continued past Officer A, the driver door rear view mirror struck Officer A's left hand. Officer A, believing that the Subject was still a deadly threat to him, turned toward the van and fired two rounds toward the Subject through the driver's side window. As the van continued past Officer A, fearing that the Subject still posed a deadly threat to him, Officer A fired an additional two rounds toward the Subject.

Officer A, seeing the van continue to drive in the parking lot, transitioned to a two-hand shooting position and fired one additional round toward the back of the van to prevent the Subject's escape.

- Although Officer A felt that the need for deadly force was warranted, there was no evidence that a felony crime had occurred. The application of deadly force by Officer A did not meet the criteria of a fleeing felon set forth by the Departments Use of Force Policy.

Given the totality of the circumstances, the BOPC found that an officer with similar training and experience would not reasonably believe that the exception of the Shooting at Moving Vehicles policy had been met and/or that the situation had escalated to the point where the use of lethal force would be justified.

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