

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

OFFICER-INVOLVED SHOOTING 025-15

Division **Date** **Duty-On () Off (X)** **Uniform-Yes () No (X)**

Outside City 3/25/15

Officer(s) Involved in Use of Force **Length of Service**

Officer A 18 years

Reason for Police Contact

Officer A attempted to prevent the Subject from escaping after the Subject committed a residential burglary at Officer A's home. As the Subject drove away, Officer A fired several rounds, resulting in an officer-involved shooting (OIS).

Subject **Deceased ()** **Wounded (X)** **Non-Hit ()**

Subject: Male, 25 years of age.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent 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 February 16, 2016.

Incident Summary

Officer A was asleep and alone inside his residence when he was awoken by the voice of a male speaking in an unintelligible manner and moving within his home. Simultaneously, Officer A observed a light from what he perceived to be a flashlight moving around in his living room, kitchen, and dining room areas. Officer A was not expecting anyone to enter his home and believed that he was the victim of a home invasion robbery.

When Officer A called out, "Who's there?" the illumination immediately turned off and he heard rapid footsteps as if someone was running within his home. Fearing for his personal safety, Officer A retrieved his weapon. Deciding to take a defensive position and to prevent himself from becoming trapped inside his home, Officer A made his way to where he had last seen the light.

When Officer A neared his front door, he opted to exit his house and continued walking toward his driveway. Officer A observed an unfamiliar and unoccupied car parked in his driveway facing the garage door, which confirmed his fear that someone had entered his home. According to Officer A, within 1-2 seconds, the Subject exited Officer A's backyard via a pedestrian gate and began walking across Officer A's driveway towards the vehicle and Officer A, who was standing approximately 7-10 feet from the driver's door. Officer A then shifted from a "self-preservation mode" to a focus of trying to apprehend the Subject and prevent his escape. Officer A commanded the Subject to stop between five and ten times and to get on the ground. The Subject appeared startled but continued toward Officer A and the driver's side door of his vehicle, walking between the bumper of the vehicle and the closed garage door of Officer A's house. When the Subject reached the driver's side door, Officer A told the Subject that if he tried to get in his vehicle, he would shoot him.

Note: Officer A purposely refrained from telling the Subject that he was a police officer because he believed that the Subject would take a homeowner more seriously about shooting him and would be reluctant to flee.

The Subject's facial expressions made Officer A believe that the Subject may have been fearful of his threat of shooting him. Officer A started mentally evaluating his situation based on his law enforcement experience. Officer A knew that most residential burglaries occurred during the day when residences were likely unoccupied and that nighttime burglaries often lead to take-over robberies. Officer A considered that another suspect may be nearby and that he was alone in the early morning hours. Officer A knew that when he went to sleep that night, he had left a knife out on his kitchen counter, and though the Subject appeared unarmed, the Subject might have retrieved it. Lastly, Officer A realized that he could not call 911 because he was not in possession of his cellular phone.

Officer A yelled for the Subject to get on the ground in a prone position, and that he would hurt or shoot him if he did anything crazy, hoping that his neighbors would hear him and call the police. The Subject partially complied by getting on his knees. Officer A felt frustrated when he did not get a response from his neighbors, nor did he hear sirens or a police helicopter overhead.

Note: Officer A was unaware that some of his neighbors had heard him commanding the Subject to get on the ground and called 911.

Assuming that the Subject would have a cellular phone, Officer A told the Subject to give him his phone. The Subject tossed Officer A his wristwatch that had a built-in cellular phone, but Officer A was unfamiliar with how to operate the watch's phone capability. As the Subject began pleading with Officer A that it was a big mistake and he was just looking for a friend, Officer A heard a male voice that he did not recognize coming from several houses north of him. The unidentified male said something to the effect of "leave him alone," which led Officer A to believe a second suspect was present. Fearing for his safety, Officer A momentarily looked in the direction of where he heard the voice. Simultaneously, the Subject arose to his feet and entered his vehicle.

Officer A pointed his pistol behind the Subject toward the left rear passenger window and fired a warning shot from approximately 6 feet away. Officer A stated his reasoning for the shot was because he wanted to alert neighbors to call the police, he was concerned that an additional suspect might approach him, he wanted to let the Subject know that he was serious about his threats and hoped to startle him into freezing, and he wanted to mark the vehicle so that responding law enforcement could recognize it.

Note: The local law enforcement agency's Incident Report noted that, according to Officer A, when the Subject tossed his watch to Officer A, the Subject made a quick movement toward the inside of his vehicle like he was reaching for something. Fearing for his safety, Officer A shot at the Subject, striking the rear driver side window. The report did not specify whether Subject was inside or outside his vehicle when he reached for something.

Officer A then stepped toward the Subject's vehicle and deliberately used the butt of his revolver to strike the driver's window, unsuccessfully attempting to smash it for further distinction for law enforcement.

The Subject backed his vehicle out of Officer A's driveway and then shifted the vehicle into drive. Not wanting the Subject to escape, and to make his vehicle more distinguishable to responding law enforcement, Officer A moved to where his driveway met the street and fired a second time at the Subject's vehicle from approximately 15 feet away. Officer A aimed at the Subject's right rear passenger window. Officer A estimated the Subject to be driving at least 10-15 miles per hour and rapidly accelerating when he fired his round.

As the Subject began negotiating a turn, Officer A stepped into the street in front of his house and fired a third round from approximately 22 feet away at the rear of the Subject's vehicle, aiming at the rear license plate, believing it would make the vehicle stand out even more to law enforcement.

As the Subject fled in his vehicle, Officer A went back inside the residence and retrieved his cellular phone and car keys. Not wanting the Subject to escape apprehension, Officer A entered his vehicle that was parked in his garage and while backing out of his driveway, called 911 to report the incident. The local law enforcement agency created a call for service and, while still on phone with an emergency operator, Officer A contacted nearby officers and told them what had occurred.

Later that same day, the Subject was apprehended by personnel from the local law enforcement agency. Following his arrest, the Subject was treated for a minor injury resulting from the OIS.

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 Officer A's tactics to warrant a finding of Administrative Disapproval.

B. Drawing/Exhibiting

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

C. Lethal Use of Force

The BOPC found Officer A's lethal use of 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. Warning Shot – (Substantial Deviation)

Officer A intentionally fired a warning shot through the rear driver's side window of a vehicle occupied by the Subject.

In this case, Officer A stated that he fired the warning shot because he wanted to let the Subject know that he was serious about his threats and also wanted to mark the vehicle so it could be recognized by responding law enforcement.

The BOPC determined that Officer A's decision to fire a warning shot into an occupied vehicle was a substantial deviation, without justification, from approved Department training.

2. Shooting at a Moving Vehicle – (Substantial Deviation)

Officer A fired three rounds at a moving vehicle as the Subject was attempting to flee the scene.

According to Officer A, he then fired a second round at the rear passenger window and one to two additional rounds at the vehicle's rear license plate as the vehicle drove away in an effort to make the car more identifiable to responding law enforcement personnel.

The BOPC determined that Officer A's actions and reasons for shooting at a moving vehicle as the Subject fled the scene constituted a substantial deviation, without justification, from approved Department training.

3. Off Duty Tactics – (Substantial Deviation)

Officer A attempted to affect the arrest of the Subject and failed to facilitate the response of the local law enforcement agency.

The BOPC expressed deep concern and was critical of Officer A's actions as the incident unfolded. With Officer A not in possession of a telephone to call the police or any equipment readily available other than his revolver, he should have recognized the risk posed to his safety as he repeatedly issued commands to the Subject from a position void of cover.

Once the Subject entered his vehicle, Officer A continued to compromise his safety by attempting to smash the driver's side window with the butt of his revolver and then pursuing the Subject in his personal vehicle.

Although Officer A stated he issued commands loudly in an effort to prompt his neighbors to call the police, it is clearly apparent that Officer A's first consideration was to take enforcement action and not facilitate the response of the local law enforcement agency, contrary to the expectations of the Department.

Additional concerns identified by the BOPC in regards to the off-duty tactics displayed by Officer A included the following:

- Simultaneously manipulating an object in his left hand (Subject's wristwatch) while maintaining his revolver in his right hand.
- Carrying a firearm with no manner to secure/holster it.
- Not being in possession of any Department identification while being armed and driving after the Subject.
- Maintaining an object in his hand while being detained by an outside agency.

The BOPC determined that the off-duty tactics employed by Officer A during this incident were a substantial deviation, without justification, from approved Department tactical training.

- The BOPC additionally considered the following:

1. Elements of Handgun Marksmanship

When Officer A fired his first round he held his revolver in his primary hand only and did not use his sights. When he fired the remaining rounds, he stated that he used his sights; however, he continued to hold his revolver with one hand as he fired. Officer A was reminded that each element of marksmanship is vital to the accurate and effective deployment of a firearm.

These topics will be discussed during the Tactical Debrief.

- 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 that 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 individually and collectively, and a Tactical Debrief is the appropriate forum for the involved personnel to discuss the incident and individual actions that took place.

In conclusion, the BOPC found Officer A's tactics to warrant a finding of Administrative Disapproval.

B. Drawing/Exhibiting

- Officer A was sleeping in his home when he was awoken by a male voice speaking and the sound of movement inside his residence. Upon opening his eyes, he observed a light, which he believed to be a flashlight. Believing that an intruder was in his home, Officer A drew his weapon. Officer A believed that he had to take some action to prevent becoming a victim in his own home. Officer A stated that he feared for his safety, and thus obtained his firearm.

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

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

C. Lethal Use of Force

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

Round No. 1 – (Warning Shot)

Officer A observed the Subject emerge from the walkway that led to his backyard and walk to the driver's side of an unfamiliar vehicle parked in his driveway. Believing that the Subject was the intruder that was in his residence, Officer A ordered him to the ground. The Subject complied and assumed a kneeling position, but then later stood and got into the driver's seat of his vehicle. In response, Officer A fired a warning shot into the rear driver's side window of the Subject's vehicle.

Officer A believed that he had no other options to exhaust. Officer A didn't have any means of communication and his neighbors were not coming to his aid. According to Officer A, he fired a warning shot because he did not believe the situation warranted the use of deadly force.

Round No. 2 – (Shooting at a Moving Vehicle)

According to Officer A, he then fired a second round at the rear passenger window and two additional rounds at the vehicle's rear license plate as the vehicle drove away in an effort to make the car more identifiable to responding law enforcement personnel. Officer A did not want the Subject to be successful in his escape, so as the car was driving away he fired one additional round.

Rounds No. 3 and 4 – (Shooting at a Moving Vehicle)

Officer A recalled that as he observed the car driving away, his first reaction and instinct was just to follow for a few feet and attempt to give it one more mark which was to shoot the license plate on the car. Officer A believed that this would make the car stand out even more than a broken window. Officer A recalled that it was possible that he fired a fourth round, but could not be certain.

In this instance, once the Subject was in the confines of his vehicle, his actions, as articulated by Officer A, did not warrant a warning shot to avoid the need to use deadly force. As such, the BOPC determined that Officer A failed to adhere to the Department's policy for firing a warning shot.

With the Subject now in his vehicle driving away, the BOPC found that the Subject did not present an imminent threat of serious bodily injury or death to Officer A or another person. As such, the BOPC determined Officer A failed to adhere to the Department's policy regarding shooting at a moving vehicle.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A would not reasonably believe the Subject's actions presented an imminent threat of death or serious bodily injury and that the lethal use of force would not be objectively reasonable to address this threat.

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