

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

OFFICER-INVOLVED SHOOTING – 020-18

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	10 years
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Reason for Police Contact

Officers responded to a “shooting just occurred” radio call. As the officers responded, they encountered the Subject, who exited his vehicle and pointed a pistol at them, resulting in an officer-involved shooting (OIS).

Suspect	Deceased ()	Wounded ()	Non-Hit (X)
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Subject: Male, 35 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 BOPC 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 February 12, 2019.

Incident Summary

Witnesses A and B were walking and talking on the sidewalk when Witness A observed a white van, driven by a male, later identified as the Subject. The Subject slowed the van and, according to Witness A, began to stare at her. Witness A directed her attention back to Witness B and they continued to converse.

Witness A turned her attention back in the direction of the Subject and observed that the Subject was now holding what she believed to be a black pistol, out of the driver's window, which was pointed in her direction. Witness A then heard a gunshot and believed that the Subject had discharged a round at her and Witness B. Witness B stated that he heard the gunshot strike a metal door. As Witnesses A and B began to move, Witness A heard another gunshot and then observed the van slowly continue driving.

Casings from the Subject's pistol were not recovered from the street or from inside his vehicle.

Witnesses A and B then ran to a nearby business and called 911. The LAPD Communications Division (CD) then broadcast the call.

Officers A and B responded to the radio call. The officers were equipped with Body Worn Video (BWV) cameras. The officers were driving a dual-purpose police vehicle which was not equipped with a Digital in Car Video System (DICVS).

While on the way to the scene, Officer A asked Officer B to check their Mobile Data Computer (MDC) for additional information on the incident. According to Officer A, often there is more detailed information regarding the radio call on the MDC than what is broadcast.

Officers A and B responded to the scene, but they did not broadcast accordingly.

CD broadcast that the Subject's vehicle was still in the area, and provided a detailed description of the Subject.

Meanwhile, Officer A observed a white van, which he/she pointed out to Officer B. According to Officer A, the white van and his police vehicle concurrently entered the intersection. The Subject looked in the officers' direction as their two vehicles passed each other in the intersection. According to Officer B, the Subject's eyes "grew big," when he looked in the officer's direction and he (the Subject) appeared surprised.

Officer B's BWV captured their police vehicle and the Subject's white van enter the intersection at the same time.

According to Officer A, once he/she drove past the Subject, he/she began to conduct a U-turn, and, believing the white van matched the vehicle description and the driver

matched the suspect description from the radio call, advised Officer B to broadcast that the officers were following a possible suspect vehicle. Once Officer A completed the U-turn, he/she realized that the Subject stopped his van. Officer A stopped the police vehicle approximately 10 feet behind the white van, and Officers A and B observed a male pedestrian coming into their view from the front of the white van, and then run from the location.

The pedestrian immediately left the area and was not identified. Officers A and B both activated their BWV prior to exiting their vehicle.

According to Officer A, the pedestrian appeared to be frightened as he ran away from the location. As Officer A stopped the police vehicle behind the van, he/she observed the driver's door open and the Subject start to exit. Officer A placed the police vehicle in park, exited, and believing that the Subject was an Assault with a Deadly Weapon (ADW) suspect, unholstered his/her service pistol. The officers had not activated their vehicle's emergency equipment at this point in the incident.

Officer B exited the police vehicle and, believing the tactical situation would escalate to one involving the use of deadly force, unholstered his/her pistol with his right hand, while holding his/her radio in his/her left hand. The Subject exited the white van, facing away from Officer A, who gave him commands to put his hands up. The Subject did not comply with Officer A's commands and quickly turned to his left, which afforded Officer A an opportunity to observe a blue steel pistol, that the Subject held in his right hand, moving in Officer A's direction.

Officer B's BWV captured the Subject outside of the white van, with a pistol in his right hand, turn in Officer A's direction. According to Officer A, he/she opined that the Subject identified him/her and Officer B as police officers.

The Subject raised his pistol to waist level, causing Officer A to believe that the Subject was about to engage him/her with a firearm. Officer A aimed his/her service pistol at the Subject's center body mass and discharged five rounds. As the Subject moved left toward his white van, Officer A observed the Subject still armed with a pistol, which Officer A believed was pointed in his/her direction, and targeted the right side of the Subject's body. The rounds did not appear to have any effect on the Subject as he re-entered his white van.

Officer B stated he/she did not shoot because once his partner engaged the Subject, the Subject moved back behind the van and Officer B no longer had a sight picture.

According to Officer B, the Subject moved toward Officer A, and from Officer B's angle, he/she observed the Subject holding a black pistol in his right hand in a low-ready position, which was pointed toward Officer A. Officer B broadcast on another frequency, "Shots fired, [...];" however, the Radio Transmit Operator (RTO) did not broadcast the information.

Officer A, who was originally positioned between his/her open door and the police vehicle, redeployed backward and slightly to his/her left, still maintaining cover behind his/her open police vehicle door. According to Officer A, as he/she looked through the rear window of the white van, he/she could see the Subject seated in the driver's seat. According to Officer A, the Subject was turned in his/her direction and saw a silhouette of the Subject's head, which protruded higher than the driver's seat headrest. According to Officer A, he/she did not see the Subject drop his pistol, nor did he/she hear what he/she believed to be a pistol being tossed to the ground, and Officer A opined that the Subject was attempting to gauge the officers' location in preparation for engaging them. Officer A aimed his/her service pistol at the Subject's head and fired one round. The round did not appear to have any effect on the Subject as he closed the van driver's door and drove away.

The Subject's movements within the white van were not captured on either officer's BWV. The transparency of the rear windows was evaluated during similar lighting conditions.

Officers A and B holstered their service pistols, entered their vehicle, and followed the Subject while putting out another "help" call.

Officer A activated the police vehicle's emergency lights, but Officer B did not broadcast that he/she and Officer A were following or in pursuit.

A back-up unit arrived in the area a short time later, and the Subject stopped and surrendered without further incident. A loaded handgun was recovered from the vehicle.

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 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'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.)

- During its review of the incident, the BOPC considered the following:

1. Back-Up Request

Officers A and B did not conduct a broadcast requesting a back-up unit as they stopped behind the Subject's van.

The officers intended to follow the van until additional units could arrive to assist them with conducting a high-risk traffic stop. However, after the officers conducted the U-turn, the Subject abruptly stopped his van in the roadway. At this point, Officer B had his/her radio in his/her left hand and intended to broadcast the officers' location. However, when the Subject exited the van armed with a handgun, Officer B made the decision to maintain his/her tactical advantage and focus his/her attention on the immediate deadly threat of an armed suspect.

Based upon the totality of the circumstances, the BOPC determined that Officers A and B's actions were reasonable and not a substantial deviation from approved Department tactical training.

2. Tactical Vehicle Deployment

Officer A stopped the police vehicle in a position offset to the passenger side of the Subject's van.

In this case, the Subject abruptly stopped his van in the roadway as Officer A was conducting his/her U-turn. As Officer A completed the U-turn, he/she observed that the Subject was opening the driver's side door. As a result, Officer A made the decision to immediately stop and exit the police vehicle to address a possibly armed ADW subject. Due to the Subject's actions, Officer A was not afforded the time necessary to place the police vehicle in a position of tactical advantage.

Based upon the totality of the circumstances, the BOPC determined that Officer A's positioning of the police vehicle was reasonable and not a substantial deviation from approved Department tactical training.

- The BOPC also considered the following:
 1. **Tactical Communication** – The investigation revealed that Officer B did not broadcast on the police radio that he/she and Officer A were responding to the ADW shooting radio call to assist other units.
 2. **Holding Service Pistol in Right Hand and Hand-Held Radio in Left Hand** – The investigation revealed that Officer B drew his/her service pistol in his/her right hand while holding his/her hand-held radio in his/her left hand.
 3. **Non-Conflicting Simultaneous Commands** – The investigation revealed that Officers A and B gave simultaneous commands to the Subject during the incident.

These topics were to be discussed at 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 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 Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing and Exhibiting

- According to Officer A, the Subject opened the driver's door of the van and was about to exit. Believing that the Subject was an ADW suspect who may still be armed, Officer A exited his/her police vehicle and drew his/her service pistol.

According to Officer A, after the OIS, the Subject entered his van and drove away from the scene. The Subject subsequently pulled over and put his hands out the window. Officer A exited his/her police vehicle and drew his service pistol.

According to Officer B, Officer A stopped their vehicle behind the white van. Officer B exited the police vehicle. Believing the Subject was the shooting suspect and was armed, Officer B drew his/her service pistol with his/her right hand and assumed a position of cover behind the passenger side door of the police vehicle.

According to Officer B, after the OIS, the van started moving. The van subsequently stopped and the Subject had his hands out of the window. Officer B exited the police vehicle and drew his/her service pistol.

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

C. Lethal Use of Force

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

First Sequence – five rounds in a northeasterly direction from an approximate distance of 27 feet.

According to Officer A, the Subject exited the van and was facing away from him/her. As Officer A began to give the Subject commands to put his hands up, the Subject quickly turned around towards Officer A. At that point, Officer A observed that the Subject was holding a blue steel pistol in his right hand. He/she further observed that the Subject's right hand was at waist level and was moving in Officer A's direction. Believing that the Subject was going to start shooting at the officers, Officer A believed he fired three rounds from his/her service pistol at the Subject to stop the threat.

According to Officer A, after firing, he/she assessed and observed that the Subject was still holding the handgun and was looking in his/her direction. He/she further observed that the Subject started to move closer to the van, with the gun raised in his/her direction. Officer A believed that the Subject was trying to gain a position of cover. Believing that his/her initial rounds were ineffective and that the Subject was still a threat, Officer A believed he/she fired three additional rounds from his/her service pistol at the Subject to stop the threat. A review of Officer A's BWV revealed that Officer A fired five continuous rounds from his/her service pistol.

Second Sequence – one round in a northeasterly direction from an approximate distance of 25 feet.

According to Officer A, after firing, he/she assessed and observed the Subject enter back into the van through the driver's side door. At that point, he/she was able to see through the rear window of the van and observed the Subject in the driver's seat. Officer A observed that the Subject's face and hat were raised higher than the headrest, and the Subject was looking back at the officers. Based upon his/her training and experience, Officer A believed that the Subject was trying to get a better position of advantage to assess Officers A and B's position. In fear that the Subject was preparing to engage him/her and Officer B, Officer A fired one additional round from his/her service pistol at the Subject's head to stop the threat.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, would reasonably believe that the Subject's actions presented an imminent threat of death or serious bodily injury, and that the lethal use of force (rounds 1-5) would be objectively reasonable.

Additionally, the BOPC considered several factors in determining the reasonableness of Officer A's sixth round. After Officer A fired his/her first sequence of rounds, the Subject had the opportunity to discard his/her handgun and surrender to the uniformed officers. However, the Subject held onto the handgun, entered his/her van and did not immediately attempt to drive away. Officer A then observed the Subject make several movements inside the van that he/she believed were consistent with a suspect who was assuming a tactical position in an effort to locate, assess, and shoot at the officers.

Based upon Officer A's observations, coupled with his/her belief that the Subject was just involved in an ADW shooting and was still armed, the BOPC determined that it was reasonable for Officer A, at that moment, to believe the Subject was intending to shoot and was therefore an imminent threat to both officers and the community.

As such, based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, would reasonably believe that the Subject's actions presented an imminent threat of death or serious bodily injury, and that the Use of Lethal Force (round 6) would be objectively reasonable.

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