

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

OFFICER-INVOLVED SHOOTING – 032-18

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
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77 th Street	5/12/18		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Officer A	10 years
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Reason for Police Contact

Officers attempted to contact two males. One of the males (the Subject) ran and produced a handgun, resulting in an officer-involved shooting (OIS).

<u>Suspect</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (X)</u>
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Subject: Male, 20 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.

Because the Department is currently legally prohibited from 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 March 26, 2019.

Incident Summary

Officers A and B were assigned to conduct crime suppression due to recent shootings in the area.

As the officers drove on a residential street, they observed two males (Witness A and the Subject) walking west. According to Officer B, he observed Witness A and the Subject mid-block, crossing from the south side of the street to the north, toward a residence where he had previously participated in several probation searches. Additionally, Officer B was aware of several investigations involving another nearby residence, where stolen vehicles and firearms had been recovered. Officer B wanted to determine if Witness A and the Subject were gang members and directed his partner to drive down the street to where he last observed them.

Officer A indicated that he also noticed Witness A and the Subject. His attention was drawn to them because it appeared they were walking quickly while looking side-to-side. Officer A believed they were possibly preparing to commit a robbery or some other crime and suggested to his partner that they conduct a consensual encounter. According to Officer A, he and Officer B discussed their intent to conduct a consensual encounter with the purpose of determining if the men lived in the area, were on probation or parole, and to gain intelligence regarding possibly gang activity.

As the officers drove to where they last observed Witness A and the Subject, they observed them standing on the sidewalk in front of the residence. Officer A stopped their vehicle in the street adjacent to this location and activated his rear amber lights to alert other motorists. Both officers then exited their vehicle intending to make contact with these individuals. As Officer B stepped onto the curb, he walked toward Witness A and asked if he could talk with him.

Note: The investigation determined that neither officer broadcast their Code Six location upon initiating contact with Witness A and the Subject.

Upon reaching the sidewalk, Officer B noticed the Subject standing approximately ten feet to the right of him. Officer B indicated that the Subject appeared startled by his presence and immediately placed his right hand near his front waistband and grabbed what appeared to be a black object. Officer B observed that a small portion of the object was visible below the Subject's right wrist and believed it was some sort of a handle. The Subject then immediately turned to his left and ran, while attempting to maintain control of the object in his waistband. Based on his observations and prior gun arrests, Officer B formed the opinion that the object concealed by the Subject was a firearm and ran after him on the sidewalk.

Officer B did not communicate his observations to Officer A, because he observed him to his right in his peripheral vision, running after the Subject. Officer B heard his partner verbalize that the Subject had a gun and concluded he had made the same observations that he (Officer B) had.

Based on prior discussions he and Officer A had regarding foot pursuits with armed subjects, Officer B stated he knew the officers were not going to attempt to apprehend the Subject. Officer B's plan was to contain the Subject by directing resources to the scene with the goal of safely apprehending him.

According to Officer A, as he exited his driver's door and walked to the rear of his vehicle, he observed the Subject look in his direction and begin to run on the sidewalk. Based on the Subject's reaction, Officer A initially believed the Subject possessed contraband and initiated a foot pursuit by running in the street. Officer A indicated that his initial intent was to apprehend the Subject; however, that quickly changed when he noticed him reaching toward his front waistband. Officer A believed the Subject was either trying to reach for a firearm he was concealing, or prevent one from falling through his clothing. Moments later, Officer A observed the Subject remove what appeared to be a blue steel handgun from his front waistband and hold it in his right hand in a downward position. Believing that the situation could possibly escalate to the point where deadly force might be necessary, Officer A drew his pistol with his right hand and continued to chase the Subject.

Note: The Subject later acknowledged possessing a black 9-millimeter (mm) pistol of an unknown make and indicated he carried it inside his right front waistband as he ran. This item was not recovered during the investigation. However, based on the video evidence and the Subject's admission, it will be referred to as a pistol throughout the remainder of this report.

Officer A's Body Worn Video (BWV) depicted him exit his vehicle and immediately run in the street as the Subject fled on the sidewalk. Within approximately one second of initiating the foot pursuit, Officer A can be heard yelling, "Gun, Gun, Gun! Don't [expletive] move! Don't [expletive] move!"

Note: Officer A acknowledged using profanity. Officer A characterized his words as tactical language and used them as a means to convince the Subject to stop without having to resort to deadly force.

According to Officer A, his intent in pursuing the Subject changed at that point from apprehension to containment. His goal was at that point to maintain sight of the Subject and request back-up, an Air Unit, and a supervisor. Despite his intent, Officer A acknowledged that he did not initiate a broadcast during the foot pursuit. He indicated that because he was closer to the Subject, he believed requesting those resources was Officer B's responsibility. Officer A added that given the Subject's actions, he believed he might have had to use deadly force, and therefore, he felt it was unsafe to reach for his radio.

As the foot pursuit continued, Officer A observed the Subject discard an unknown dark object to the ground, but saw he was still running with a pistol in his right hand.

Meanwhile, as Officer B continued in foot pursuit, he too observed the Subject discard a black metallic object from his right hand that landed just behind the Subject in a grass area adjacent to the sidewalk. Officer B believed the Subject had dropped a gun and slowed down to retrieve it. As Officer B bent down to grab the item, he recognized it was a pistol magazine. Officer B quickly picked up the magazine with his right hand and continued running. Officer B saw that the Subject was still running with his right hand near his front waistband and that he (the Subject) was increasing the distance away from him. He also observed that Officer A was ahead of him running in the street and realized it was now his (Officer B's) responsibility to broadcast they were in foot pursuit.

Note: According to the Subject, he was unaware his magazine had become dislodged from his pistol. He indicated the magazine was seated loosely inside his pistol and inadvertently fell to the ground as he was running.

Despite his intent, Officer B indicated that he was unable to broadcast, because he was simultaneously trying to secure the flashlight he had in his hand, recover the magazine from the ground, activate his BWV, and remove his radio from his equipment belt.

Officer B stated that by the time he finished those tasks, he heard gunshots, broadcast that the officers needed help, and advised Communications Division (CD) of their location. In addition to the above described tasks, Officer B's BWV also depicted him drawing and holstering his pistol during the beginning stages of the foot pursuit.

According to Officer A, when the Subject initially began to run, he observed him pointing the muzzle of his pistol in a downward direction. As the foot pursuit continued, he saw the Subject's arms move back and forth and the muzzle of his pistol canted in an upward direction. Officer A also noted that the Subject looked over his right shoulder several times in his direction. Officer A believed the Subject was attempting to ascertain his location to shoot him. As a means to provide him a measure of cover and concealment, Officer A remained in the street and ran along the parked vehicles positioned against the curb.

Officer A ran with his pistol drawn for the duration of the foot pursuit because he did not believe he had time to holster his pistol. He also indicated that while running in the street, he pointed his pistol at the Subject each time the Subject turned to look over his shoulder in his direction.

Note: Officer A's BWV depicted him pointing his pistol at the Subject twice during the first ten seconds of the foot pursuit.

As the Subject continued to run, Officer A momentarily lost sight of him for approximately one car length because of the parked vehicles that were between them. When Officer A regained sight of the Subject, he observed that he was no longer

running with the firearm in his right hand and believed he had placed it in his waistband in order to run more effectively. According to Officer A, the Subject began reaching for his waistband while continuing to look over his shoulder in his (Officer A's) direction. Officer A believed the Subject was trying to track his movements in order to shoot him.

Unbeknownst to both Officer A and Officer B, the Subject had thrown his firearm to the ground moments earlier.

Note: The Subject acknowledged that he discarded the pistol as he ran and then attempted to lift his shirt to show the officers he was not armed.

The Subject continued to run and crossed over a driveway to an alley. As Officer A approached the same driveway, he saw he was no longer going to have cover, because the next vehicle in front of him was a small passenger vehicle parked on the other side of the driveway.

Officer A acknowledged he closed the distance on the Subject for the purpose of maintaining sight of him and broadcasting the Subject's location to responding officers.

Officer A perceived the Subject was purposely slowing down to engage him. This fear was further established by the Subject continuing to reach toward his front waistband area with his left hand, while turning his body to look back at him. Officer A made the decision at that point to move diagonally from the street to the sidewalk and give up his cover, because he believed the Subject was about to shoot him.

Now that Officer A was exposed and without cover, he believed the Subject knew his (Officer A's) location and was preparing to shoot him. Officer A was also aware that the Subject was approaching a major thoroughfare and was concerned he would kill someone. Officer A indicated he did not want to give the Subject the opportunity to completely turn and face him, and fired two to three rounds at the Subject's center body mass. Officer A estimated he was approximately half of a car length behind the Subject when he discharged his first round.

Security video obtained in the area depicted the actions of the Subject immediately preceding the OIS. The Subject was captured running with a slight bend in his left arm and with his left hand near his front waistband. His right hand, however, appeared to swing back and forth in a running stride. The Subject moved beyond the view of the camera at the time the OIS occurred.

Officer A's BWV depicted him raise his pistol with his right hand as the Subject was in the process of turning his upper body in his (Officer A's) direction. By the time Officer A joined his hands to form a two-handed shooting position, the Subject turned his body away from Officer A. A fraction of a second later, Officer A fired two rounds at the Subject in rapid succession. At the time Officer A fired his rounds, the Subject's arms were partially in view and appeared to swing back and forth. The Subject continued to run an additional seven to eight steps, while transitioning from the sidewalk to the grass area. As Officer A followed behind, he momentarily released his two-handed grip on his

pistol and lowered it with his right hand. He quickly raised his pistol back to a two-handed shooting position and fired an additional round at the Subject. Officer A fired his rounds while running and from a decreasing distance of approximately 14 to 10 feet. He fired all three of his rounds in approximately two and a half seconds. None of his rounds struck the Subject.

Note: Based on a review Officer A's BWV, it appeared that he fired at the Subject while both he and the Subject were in a full sprint.

According to Officer A, he assessed after firing his first round and observed the Subject continue to reach for his waistband with his left hand while looking back at him. Officer A believed the Subject still posed a deadly threat to him and fired two additional rounds. Officer A believed that at the time he fired his rounds, the Subject had his back to him, but his shoulders were turning in his (Officer A's) direction.

Note: The investigation revealed that one of Officer A's rounds struck Witness B's SUV as he (Witness B) was exiting; another round struck a residence and penetrated a bedroom window, with the projectile coming to rest on the bedroom floor. It is unknown whether the bedroom was occupied at the time of the OIS. No impact associated with the other round fired by Officer A was located.

Following Officer A's last shot, the Subject continued forward an additional one to two steps and stumbled to the ground, landing on his right side. He was then taken into custody without further incident.

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 Administrative Disapproval.

B. Drawing/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 out of 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. **Debriefing Point No. 1 Code Six** (Substantial Deviation – Officers A and B)

In this situation, the officers were not initially faced with a rapidly unfolding tactical situation and had sufficient time to broadcast their Code Six location, as well as any other relevant information prior to initiating their investigation.

Based on the totality of the circumstances, the BOPC found that Officers A and B, despite having the time and opportunity to do so, failed to notify CD of their location, resulting in a substantial deviation, without justification, from approved Department tactical training.

2. **Debriefing Point No. 2 Tactical Vehicle Deployment** (Substantial Deviation – Officer A)

In this case, Officer A placed himself and his partner at a significant tactical disadvantage by positioning the police vehicle in close proximity to the Subject and Witness A. Officer A indicated it was his intent to conduct a consensual encounter. This decision should have afforded him the time to determine where it would be most advantageous to stop his police vehicle.

3. **Apprehension vs. Containment Mode/Pursuing Possibly Armed Suspect**
(Substantial Deviation – Officer A)

Officer A engaged in a foot pursuit of an armed suspect in apprehension mode, rather than pursuing him in containment mode.

4. **Separation/ Utilization of Cover** (Substantial Deviation – Officer A)

In this case, Officer A initially engaged in a foot pursuit in containment mode, but made the decision to leave cover and transition into apprehension mode despite believing the Subject was armed. Officer A left the cover of the vehicles parked in the street to run behind the Subject on the sidewalk and closed the distance between himself and the Subject. Consequently, when the Subject who had his hand near his waistband, turned his upper body in Officer A's direction, Officer A was forced to engage the Subject without the benefit of cover. During the foot pursuit, Officer A was not aware that his partner, Officer B, had stopped to pick up an item that the Subject had discarded. This lack of awareness of his partner's location resulted in him becoming separated from Officer B by approximately 162 feet by the time the OIS occurred. This separation limited the officers' ability to effectively communicate or render immediate aid to one another. Additionally, after the OIS, Officer A failed to redeploy to available cover and wait for his partner and additional resources to coordinate taking the Subject into custody.

5. **Contact and Cover** (Substantial Deviation – Officer A)

In this case, Officer A placed himself at a tactical disadvantage by initiating physical contact with what he believed to be an armed subject, without the benefit of a cover officer.

Based on the totality of the circumstances, the BOPC found that Officer A's actions were a substantial deviation, without justification, from approved Department tactical training.

- The BOPC also considered the following:

1. Foot Pursuit Broadcast

The investigation revealed that Officer B did not immediately broadcast that he and Officer A were in foot pursuit. When the situation quickly escalated from a consensual encounter into a detention and foot pursuit, Officer B was faced with a rapidly evolving scenario and was required to process multiple tasks. Officer B realized his role and attempted to initiate a broadcast, but the OIS had already occurred by the time he was able to advise CD of the officers' location.

2. Running with Service Pistol Drawn

The investigation revealed that during the foot pursuit, Officer A rapidly ran after the Subject with his service pistol drawn.

3. Stable Shooting Platform

The investigation revealed that Officer A fired his service pistol while running.

4. Initiating Physical Contact While Holding a Service Pistol

The investigation revealed that Officer A had his service pistol drawn when he initiated physical contact with the subject.

5. Body Worn Video (BWV) Activation

The investigation revealed that Officer B activated his BWV late.

6. Profanity

The investigation revealed that Officer A utilized profanity while giving the Subject commands.

7. Cover

Officer B did not draw his weapon to cover Officer A after he (Officer B) arrived at the location of the OIS, prior to the Subject being handcuffed and searched.

- 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.

B. Drawing/Exhibiting

According to Officer B, the Subject grabbed an object in his waistband as he fled on foot. Officer B opined that the Subject was armed with a firearm. Officer B drew his service pistol while in foot pursuit of an armed subject.

According to Officer A, he drew his service pistol because he observed the Subject armed with a firearm and believed the situation could escalate to the use of deadly force.

The BOPC found Officers B and A's Drawing/Exhibiting to be In Policy.

C. Lethal Use of Force

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

According to Officer A, when he observed that the Subject no longer had the firearm in his hand, he believed that the Subject had placed the firearm back into his waistband. Despite Officer A's repeated commands to stop reaching for his waistband, the Subject continued to do so as he ran from Officer A. Officer A observed the Subject slowing down and turning toward him while the Subject gripped his waistband with his left hand. Officer A believed the Subject was slowing down to acquire Officer A's position and was going to turn around and shoot him. Officer A fired his service pistol three times to stop the Subject's actions.

The BOPC considered several factors in evaluating the reasonableness of Officer A's decision to discharge his weapon. Officer A believed the Subject was still armed and attempting to acquire him as a target. The BOPC took into consideration that this was a rapidly unfolding tactical situation and that Officer A was forced to make a split-second decision under stressful circumstances. However, in this circumstance, although the Subject was fleeing from Officer A with his hands concealed, there is no evidence that the Subject made any other movements that would constitute an imminent threat at the time Officer A discharged his weapon.

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