

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

OFFICER-INVOLVED SHOOTING – 047-18

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Mission	7/27/18		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	10 years, 10 months
Officer B	9 years, 1 month

Reason for Police Contact

Officers conducted a traffic stop on the Subject. The Subject exited the vehicle, pulled a pistol, and shot at Officer B, resulting in an officer-involved shooting (OIS).

Subject(s)	Deceased (X)	Wounded ()	Non-Hit ()
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Subject: Male, 32 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.

The following incident was adjudicated by the BOPC on June 18, 2019.

Incident Summary

Officers A and B were conducting extra patrol in a designated area. The officers were in a marked black and white sport utility vehicle (SUV), equipped with a Digital In-Car Video System (DICVS). On the night of the incident, the officers agreed that Officer B would be the contact officer during traffic stops, while Officer A would be the cover officer.

As Officers A and B were driving, Officer B observed a silver sedan, also travelling in the same direction. The driver of the silver vehicle merged into the left-turn lane and stopped for the red tri-light at the intersection. Officer B recognized the vehicle and its license plate number from his/her experience working a specialized detail. Officer B was aware the vehicle belonged to the Subject, who he/she believed was on Federal Probation. Officer B asked Officer A to conduct a vehicle license plate inquiry on the Mobile Digital Computer (MDC). Officer A submitted the vehicle inquiry, which returned with the Subject listed as the registered owner.

Officer B had one previous contact with the Subject: a traffic stop that occurred approximately one year prior to this incident. It was during this past traffic stop that Officer B learned of the Subject's Federal Probation status. According to Officer B, the prior traffic stop on was the first time he/she had met the Subject. During that stop, Officer B learned that the Subject was on federal probation for firearms-related crime(s). Officer B did not know what specific conditions were associated with the Subject's federal probation, but he/she expressed the opinion that it would be likely that the Subject's probation would include search conditions.

The investigation established that the Subject's probation did not include search conditions.

Once the tri-light illuminated green, the driver of the silver vehicle conducted a left turn. According to Officer B, as the silver vehicle turned left, he/she was able to observe the driver through the side-view mirror. Officer B positively identified the driver as the Subject. The officers turned left and followed the silver vehicle.

Officer B recognized that the Subject was driving out of one rival gang territory and into another rival gang territory. The Subject's route of travel, coupled with his standing in the street gang, and his past Federal Probation status, led Officer B to believe that the Subject was potentially trying to locate rival gang members.

There is no evidence that Officer B communicated information to Officer A regarding the Subject's presence in rival gang territory. When asked by investigators, Officer A reported that the only other information Officer B provided was that they [Officers A and B] were going to conduct a traffic stop, "[b]ecause of the federal probation."

According to Officer B, he/she provided the Subject's date of birth to Officer A to verify if the Subject's Federal Probation was still active and if he had any outstanding arrest warrants.

The Subject conducted a right turn. As the officers followed, Officer A submitted a want and warrant inquiry of the Subject via their MDC. The Subject's want and warrant information returned 14 seconds later and revealed that he was still on Federal Probation. Officer B told Officer A that they should conduct a traffic stop on the Subject based on his Federal Probation status.

The officers initiated their traffic stop when Officer B activated the overhead emergency (Code Three) equipment and forward-facing red light. Officers A and B then illuminated their spot lights on the Subject's driver's side-view mirror and rear-view mirror, respectively. The Subject stopped his vehicle in front of a residence. Officer A broadcast that the officers had arrived at the location (Code Six.) As Officer B placed the officers' vehicle in park, Officer A exited and began his/her approach towards the Subject's vehicle. Officer B exited the police vehicle approximately two seconds after Officer A. The positioning of the officers' police vehicle was offset to the left and approximately 10 feet behind the Subject's vehicle.

When Officer A made the Code Six broadcast, he/she did not specify the nature of the call, including the stopping of a vehicle or the license plate number associated with the vehicle.

Officers A and B's approach was staggered. Officer A exited first, approached the passenger side of the Subject's vehicle, and activated his/her BWV. According to Officer A, he/she cleared the vehicle by looking through the passenger side windows (the driver and passenger front windows were down). Officer A then told the Subject (the sole occupant of the vehicle), who was sitting in the driver's seat with both hands up just above shoulder level, to turn off the vehicle. The Subject complied and then returned his hands to the previous position. As this was occurring, Officer B approached the driver's side of the vehicle and spoke with the Subject.

Officer B stood near the B-pillar of the Subject's vehicle and spoke to him. Officer B inquired if the Subject was still on probation, and he confirmed that he was. Officer B then advised the Subject he was going to have the Subject step out of the vehicle. According to Officer A, the Subject was instructed to exit the vehicle because the officers intended to conduct a probation search.

According to Officer B, his/her intention during the stop was to have the Subject exit the vehicle and then handcuff him because he was on Federal Probation for a firearms violation. Officer B then planned on verifying the Subject's search conditions before proceeding any further.

According to Officer B, in his/her experience, "[I]t's very rare that somebody [on federal probation] does not have search conditions."

Investigators asked Officer B if he/she intended to search the Subject upon stopping him, or whether he/she was “going to confirm” his probation conditions first. Officer B replied, “I was going to confirm. My intention was to get him out of the vehicle and have him handcuffed at [a] minimum.” Officer B described the justification for handcuffing the Subject as “officer safety,” due to the fact the Subject was a “known gang member on probation for guns.”

Investigators asked Officer B his/her “reasoning for approaching the vehicle as opposed to bringing [the Subject] out of the vehicle from a distance.” Officer B responded, “Because at this [...] point, [...] nothing had escalated to change it from a regular traffic stop.” He/she added that this traffic stop was conducted in the same manner as the prior stop of the Subject. Officer B also indicated that at no time did he/she think the Subject had a gun on him or that the Subject was going to shoot him/her.

In response to Officer B asking if he had anything on him, the Subject lifted a blue bandana and cellphone from his lap, placed them on the front passenger seat, and quickly glanced in the direction of Officer A. The Subject unbuckled his seatbelt and again raised his hands above shoulder level. The Subject then moved his left hand to the interior, driver’s side door handle. Almost simultaneously, Officer B said, “You’re good,” and opened the front driver door from the outside. Officer B then motioned for the Subject to exit the vehicle. The Subject hesitated momentarily with his hands still above shoulder level and then proceeded to exit from his vehicle.

According to Officer B, the Subject’s movements inside the vehicle were “very exaggerated,” “slow,” and “strange.” According to Officer B, the Subject’s behavior was unlike his/her past experience with him, leading Officer B to believe the Subject may attempt to flee or possibly fight.

This behavior prompted Officer B to open the vehicle door. Nearly 17 seconds elapsed from the time Officer B instructed the Subject to “step out of the vehicle” until the time he actually exited. Officer B indicated he/she opened the Subject’s door because the Subject was moving “too slow.”

As the Subject raised himself from the driver seat, his right hand lowered, out of the view of Officer A’s BWV. His right hand moved toward his right pocket/waistband area. The Subject then armed himself with a handgun that was located in the vehicle. In one continuous motion, the Subject raised the handgun to his right side in a close contact position and stood up to face Officer B, who was standing several feet outside of the driver door. The Subject extended his right arm and pointed the firearm towards Officer B’s torso. Officer B reacted by extending his/her right arm towards the Subject’s right hand and firearm. The Subject used his left hand and moved Officer B’s right hand away, back toward his/her (Officer B’s) right side. Simultaneously, the Subject pulled his right hand back, towards his right side, and fired one round, striking Officer B in the upper left leg. Officer B fell to the ground.

Immediately upon hearing the Subject's gunshot being fired at Officer B, Officer A unholstered his/her handgun while side stepping to the left from the front passenger side to the rear quarter panel of the Subject's vehicle.

With his/her flashlight still in his/her left hand, Officer A assumed a right, one-handed grip on his/her firearm and aimed at the Subject. Simultaneously, the Subject turned in a counter-clockwise manner towards Officer A, also assumed a right, one-handed grip on his firearm, and aimed it towards Officer A. The Subject and Officer A aimed their firearms at one another from an approximate distance of five feet and from opposite sides of the vehicle. Officer A stood near the right rear door and aimed toward the Subject. The Subject stood at the left front door and aimed toward Officer A.

From approximately five feet away, Officer A fired one round at the Subject over the roof of the vehicle. Immediately afterwards, both Officer A and the Subject lowered their heads closer to being parallel with the roof of the vehicle. From this position, Officer A and the Subject each fired a single round towards each other. Officer A fired his/her second round approximately one tenth of a second before the Subject. As the Subject fired, he began falling to the ground and his right hand lowered, resulting in his round striking the roof of the vehicle. Officer A continued lowering his/her body and backing away from the vehicle. Simultaneously, Officer A fired two additional rounds at the Subject from approximately eight feet away through the rear passenger window and rear windshield. The Subject fell to the ground and lay on his stomach. Officer A believed that the Subject fired at him/her first before he/she (Officer A) returned fire.

According to Officer A, he/she observed the Subject fall to the ground; however, Officer A still believed the Subject to be a threat. Officer A switched to a two-handed, low-ready position, and using the Subject's vehicle as cover, began to move around the rear bumper from the passenger side to the driver side.

According to Officer A, as he/she continued to move around the vehicle, he/she observed the Subject face-down on his stomach. The Subject's right arm was stretched out in front of his head towards his left side. His right hand was near the left rear tire and slightly underneath the vehicle. According to Officer A, he/she believed the Subject's right hand was underneath the vehicle and moving in a manner consistent with pulling a handgun out from underneath the vehicle. From approximately five feet away, Officer A fired a single round at the Subject. At that point, the Subject's torso slightly moved and his right hand slid further underneath the vehicle.

As Officer A completed moving toward the rear driver's side wheel of the Subject's vehicle, Officer B unholstered his/her firearm, believing the Subject was about to execute him. Although Officer B could not move his/her left leg, he/she lifted his/her shoulders off the ground and looked towards the Subject's vehicle. Officer B observed the Subject lying on the ground. Officer B knew the Subject was still alive because he/she could hear him breathing. However, Officer B realized that the Subject was no longer a threat and holstered his/her weapon.

Additional officers arrived, and the Subject was transported to the hospital, as was Officer B. The Subject passed away several days later. As a result of the gunshot, Officer B sustained a fractured femur that required surgery.

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 Officer 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.)

A. Tactics

- In its analysis of this incident, the BOPC identified the following tactical consideration:

1. Vehicle Stop Tactics

In this case, Officers A and B observed a vehicle that contained a known gang member who was on federal probation for firearms possession. Officer B had formed the opinion that the Subject may possibly be attempting to locate rival gang members, prompting the officers to conduct an investigative stop on the vehicle.

The officers ran the vehicle for wants and warrants, placed themselves Code Six at the location, and utilized vehicle stop tactics consistent with Department tactical training. The officers confirmed that the Subject was the sole occupant of the vehicle prior to conducting the vehicle stop. Officer B considered his/her prior contact with the Subject, and approached this vehicle stop utilizing the same tactics as his/her first contact with the Subject. Based on the lack of wants or warrants in the systems for the Subject or his vehicle, and because he was the sole occupant of the vehicle, the officers did not believe that additional resources were necessary at the time, nor were they required by Department policy.

- The BOPC also considered the following:

1. Code Six vs. Traffic Stop

The investigation revealed that Officer A notified CD and placed the officers Code Six rather than placing them on a Traffic Stop on the Subject's license plate.

2. Bloodborne Pathogens

The investigation revealed that Officer A did not don protective gloves prior to handcuffing the Subject.

3. Handcuffing

The investigation revealed that Officer A did not immediately handcuff the Subject who was known to be armed.

4. Protocols Subsequent to a Categorical Use of Force Incident

The investigation revealed that Sergeants A and B did not monitor, separate, or admonish Officer B during transport to the hospital.

5. Body Worn Video (BWV) Activation

The investigation revealed that Sergeant A and Officer C did not activate their BWV during the incident.

6. Use of Profanity

The investigation revealed that Officer D utilized profanity prior to moving the Subject.

7. Utilization of Personal Camera

The investigation revealed that Sergeant C utilized his/her personal cellular telephone camera to take photographs of evidence, prior to the movement of the primary unit's vehicle.

8. Required Equipment

The investigation revealed that Officers A and B left their batons in the vehicle and that Officer A was not in possession of his/her Hobble Restraint Device (HRD) when they left their vehicle to contact the Subject.

9. Preservation of Evidence

The investigation revealed that the officers entered and searched the Subject's vehicle in search of the outstanding firearm.

10. Tactical Communication

There is no evidence to indicate that Officer B communicated to his/her partner his/her observation of the Subject driving in rival gang territories.

11. Contact and Cover

Following the OIS, and prior to the Subject being handcuffed, both officers holstered their pistols.

- Each tactical incident 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.

Therefore, the BOPC found Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing and Exhibiting

- According to Officer A, as he/she approached the rear passenger side quarter panel of the vehicle, he/her heard the Subject shoot Officer B and heard Officer B scream, prompting Officer A to draw his/her service pistol.

According to Officer B, he/she knew he/she had been shot, but the pain had not set in. Officer B stepped back and fell backwards onto the ground as he/she heard the back and forth exchange of gunfire. Believing he/she immediately needed to get his/her gun out and find his/her target because the Subject was still going to shoot and execute him/her, Officer B drew his/her service pistol.

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

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

C. Lethal Use of Force

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

First Sequence: two rounds from an approximate distance of five feet.

According to Officer A, after hearing the Subject fire one round at Officer B, he/she observed the Subject turn in a bladed one-handed stance, point the handgun over the roof of the vehicle, and fired a round at him/her. Fearing for his/her life, Officer A returned fire, firing two rounds from his/her service pistol, also over the roof of the vehicle, at the Subject to stop his actions.

Second Sequence: two rounds from an approximate distance of eight feet.

According to Officer A, as the Subject engaged him/her, Officer A continued his/her fluid momentum around the rear of the vehicle, lowered his/her stance, and fired two rounds from his/her service pistol through the rear windshield of the vehicle. Officer A fired at the Subject to stop his actions. Officer A then observed the Subject go down and out of sight.

Third Sequence: one round from a distance of approximately five feet.

According to Officer A, as he/she moved around the rear of the vehicle, he/she observed the Subject lying face-down, parallel to the vehicle, with his head and hands closest to the rear passenger door. The Subject's right arm was tucked under his head and his right hand was concealed by a shadow underneath the car. Officer

A then observed the Subject's hand moving out from underneath the car. Believing the Subject still had the gun and was going to shoot Officer A or Officer B, who was on the ground next to the Subject, Officer A fired one round from his/her service pistol at the Subject to stop his actions.

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 was objectively reasonable.

Therefore, the BOPC found Officer A's lethal use of force to be In Policy.