

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

OFFICER-INVOLVED SHOOTING – 083-17

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	4 years, 7 months
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Reason for Police Contact

Officers responded to a radio call of a “415” man with a gun. Upon their arrival, the officers observed the Subject and ordered him to stop. The Subject removed a pistol, raised it in the officers’ direction, and an officer-involved shooting (OIS) occurred.

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
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Subject: Male, 33 years			
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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 November 20, 2018.

Incident Summary

Witness A was working at a local restaurant, and the business had just closed for the night. Witness A was mopping the floor near the front door, when he observed the Subject walking outside the business. According to Witness A, the Subject appeared drunk and, when the Subject faced the glass windows, he made eye contact with him (Witness A). The Subject gestured with two of his fingers toward his own eyes and then pointed his index finger toward Witness A. This was the same gesture that the Subject used toward Witness A on an earlier night, during a previous encounter.

The Subject then raised the front of his jacket, exposing the handle of a pistol that was in the left side of his waistband. The Subject then walked in the parking lot, out of Witness A's view. Witness A, in fear for his safety, called 911. Witness A told the operator about the Subject being armed and about the previous incident. Witness A described the Subject. The Subject walked out of Witness A's view to another restaurant two businesses away from Witness A's location. The Subject ordered some food, and then waited in the parking lot while his food was being prepared.

Communications Division (CD) broadcast a "415 man with a gun" call, and gave the Subject's description.

The call was assigned to Officers A and B, who advised CD they were responding with emergency lights and siren (Code Three).

This was Officers A and B's second day working together. According to Officer B, they had previously discussed tactics, specifically about communicating with their partners and being mindful of their surroundings. In addition, they discussed receiving calls that could escalate to deadly force, and less-lethal options. According to Officer A, he/she had discussed with Officer B what equipment they carried on their belts and in their police vehicle and, at the beginning of their shift, they agreed that Officer A would be the contact officer and Officer B would be the covering officer.

As the officers drove, Officer A read the comments of the call to his/her partner, including the suspect's description. The officers agreed that Officer B would take on the less-lethal role with the TASER or the beanbag shotgun, if needed.

Sergeant A broadcast he/she was backing this radio call. Sergeant A read the comments of the call and traveled toward the call location.

Officers C and D also broadcast they were backing the primary unit on the call.

After the Subject got his food from the restaurant, he began to walk in the parking lot. The Subject carried his food in a white plastic bag with his left hand.

As this was occurring, Sergeant A began to approach the parking lot entrance, and Officers A and B approached from the opposite direction. Sergeant A saw Officers A

and B's vehicle traveling toward him, and observed the Subject to his left walking in the parking lot.

Officer A saw that the Subject matched the suspect's description, was walking in the parking lot, and directed Officer B to turn right, into the driveway that led to the parking lot. Officer A recalled telling Officer B, "He's right there. He is right there. Turn. Go, go, go," as he/she pointed at the Subject.

As the officers approached the entrance to the parking lot, the Subject changed his direction of travel and started to walk away from the police vehicle, in the parking lot. Officer B made a right turn into the driveway, followed by Sergeant A.

According to Officer A, the reason why he/she wanted to make contact with the Subject rather than holding back in contacting a possible armed suspect was due to the fact that the radio call indicated the Subject had brandished a weapon at patrons and employees. In Officer A's mind, the businesses were still open and there was a possibility that the Subject could run into another business and take hostages. He/she wanted to initiate contact with the Subject, so whoever was in the area would not be affected by him. Officer A's main concern was to approach the Subject, get his attention, and take him into custody. In addition, Officer A was aware of a second unit behind them that could provide assistance, if needed.

The Subject continued to walk and as he did so, a video camera captured the Subject reaching into the left front side of his jacket and remove what appeared to be a pistol with his right hand. The Subject still had his back to the police vehicles and concealed the pistol near the right front waistband area, which was not visible to the officers.

As Officer B slowed the police vehicle to a stop, Officer A reached across his/her chest with his/her left hand, opened the car door and unholstered his/her weapon with his/her right hand.

When the vehicle stopped, Officer A began to stand up ordering the Subject to stop. Officer A raised his/her pistol to a right, two-handed shooting position with his/her arms extended between the door frame and the A-pillar of the police vehicle. Officer A placed his/her right foot on the ground and his/her left foot inside the floorboard of the vehicle.

The Subject stopped and turned his body to his left with the pistol down to his right side in his right hand. Officer A saw the pistol and yelled, "Drop it, drop it!" The Subject turned slightly more to his left and then raised the weapon. As that occurred, Officer A aimed at the left portion of the Subject's body and fired one round from an approximate distance of 30 feet. The Subject was struck by the gunshot, went to the ground, and dropped the pistol.

According to Officer A, he/she fired because, "I immediately thought [...] if he gained an actual location from my partner and was able to line up his sights, that he would fire a round in the direction of my partner, and then turning further, facing us, then possibly

shoot at me. So I didn't give him the opportunity to. As soon as I saw the pistol rise, I fired one shot."

According to Officer A, he/she could not tell if the Subject dropped the pistol and then fell or if he dropped the pistol as he fell to the ground, however, once the Subject was on the ground, Officer A saw that the pistol was no longer in the Subject's control. Officer A assessed the situation and did not feel the need to fire a second round. As the Subject laid on the ground on his right side, Officer A asked his/her partner to request a backup unit and ordered the Subject not to move. The Subject complied.

Officer A maintained his/her position behind the passenger door of the police vehicle, holding his/her pistol at a low-ready position until he/she observed responding officers approach from behind.

Simultaneously, Officer B placed the vehicle transmission into park, exited the vehicle, unholstered his/her weapon with his/her right hand, and raised it to a right two-handed shooting position, when Officer A fired. Officer B said once he/she saw the Subject with the gun, he/she had just transitioned his/her finger to the trigger when Officer A fired.

Officer B stated, "As soon as I was able to identify that as a gun," he/she remembered putting his/her finger on the trigger and heard a gun going off.

Officer B observed the Subject drop the handgun to the ground. Officer B then moved his/her index finger from the trigger, placed it alongside the frame of his/her pistol, and observed the Subject go down to the ground. Officer B maintained his/her position behind the driver's door while Officer A ordered the Subject not to move, and waited for responding officers to arrive.

Sergeant A did not witness the OIS. However, after Sergeant A stopped his/her vehicle close to Officers A and B's vehicle, he/she heard what he/she believed to be Officers A and B giving commands to the Subject, who was approximately 30 to 40 feet in front of their police vehicle. Sergeant A indicated he/she also heard one round being fired, which he/she believed came from the officers.

As the gunshot went off, Sergeant A saw the Subject going to the ground and, with his left hand, also saw the Subject throw an item that resembled a handgun to the ground.

Video depicted the Subject bending down and simultaneously placing the gun on the ground with his right hand and the white plastic bag on the ground with his left hand.

Sergeant A broadcast a "shots fired" help call and requested a back-up unit.

Sergeant A did not activate his/her DICVS as he/she responded to this incident.

CD broadcast a help call indicating, "shots fired," causing the response of multiple units to this incident.

Officers C and D drove into the parking lot a few seconds after the shot was fired. They stopped their vehicle behind Officers A and the B's vehicle. Officer C ran to Officer A, then drew his/her pistol to a right, two-handed, low-ready position. From that position, Officer C observed the Subject laying on the ground with a black semi-automatic handgun next to his/her left foot and ordered the Subject not to move. Since there was not enough cover for both of them behind the passenger door, Officer C moved a few feet away and took cover behind a Shoe Repair kiosk.

According to Officer C, he/she believed the gunshot was fired after he/she drove into the parking lot and began to exit his vehicle.

Simultaneously, Officer D exited his vehicle, drew his pistol to a two-handed, low-ready position, and moved next to Officer B, advising Officer B that Officer D was to Officer B's left.

Officer C stated he/she drew his/her pistol after hearing the gunshot because he/she believed the situation could escalate to one involving further use of deadly force. Officer D stated he/she drew his/her pistol because of the comments of the call and the gunshot he/she had just heard, and he/she believed the situation had escalated to the point where deadly force could be necessary.

Officers E and F responded to the help call and arrived at the scene. According to Officer E, he/she decided to deploy his/her police rifle based on the radio broadcast. After the officers stopped their vehicle on the street near the driveway, Officer E deployed his/her police rifle and approached Officer A, taking a cover position behind the passenger door. Officer E maintained cover on the Subject with his/her rifle aimed at a low-ready position while waiting for an arrest team to form.

Officer F approached the passenger door next to Officer A. He/she held his/her pistol momentarily with a one hand grip until his/her partner arrived with his/her rifle, and Officer F then holstered his/her pistol.

Officers G and H also responded to the help call.

According to Officer G, he/she drew his/her pistol because of the totality of the circumstances and not knowing if the suspect was still armed. Officer G approached Officer A and noticed the Subject on the ground with a handgun near his feet. Officer G asked if this was an OIS, and Sergeant A told him/her, "Yes," and that the Subject needed to be taken into custody.

Officer G then formulated a quick plan to take the Subject into custody in which he/she and Officer H would approach the Subject and handcuff him. According to Officer H, as he/she exited their vehicle and approached the scene, he/she drew his/her pistol and held it with two hands at a low-ready position because he/she observed a handgun near the Subject.

With their pistols at a low-ready position, Officers A, G, and H began their approach toward the Subject. Officer F joined the officers in their approach but remained holstered. Once the officers moved past the passenger door of Officer A's vehicle, Officer E lowered his/her rifle. Officer C, who also stayed behind cover, holstered his/her pistol at that point. As Officers G and H approached the Subject, Officer F decided to kick the Subject's handgun away from him to prevent him from trying to reach for it. While Officer H covered with his/her pistol, Officer G holstered his/her pistol, retrieved his/her handcuffs, and handcuffed the Subject without incident.

Sergeant A requested a Rescue Ambulance (RA) to respond to the location to treat the Subject. Shortly after, Sergeant A broadcast that the incident had been resolved (Code Four) and that the Subject was in custody.

Officer F believed the handgun was made of plastic after he/she kicked it because it felt light. The investigation determined it was an air soft pistol.

Officer A did not recall seeing anyone move or kick the handgun and only noticed that after he/she reviewed his/her BWV.

After the Subject was taken into custody, Officers A, B, D, and H holstered their pistols. Officer E subsequently returned to his/her police vehicle, downloaded his/her police rifle, and secured it.

Sergeant A did not recall drawing his/her pistol; however, Officers A and B's BWV depict him/her with his/her pistol drawn immediately after the arrest team made contact with the Subject. Sergeant A was then seen holstering his/her pistol.

Officer G conducted a pat down search on the Subject for additional weapons and none were found. As Officer G conducted the search, the Subject stated he was drunk and indicated that the handgun was not real. As the officers waited for the RA to respond, Officer H completed a Field Interview card on the Subject and obtained his/her personal information.

Sergeant B responded to the help call and arrived just before the Code Four was broadcast. He/she made contact with Sergeant A and learned an OIS had occurred, that Officers A and B were involved as the primary unit, and Sergeant A was a witness to the OIS. Sergeant B then obtained a Public Safety Statement (PSS) from Officer A.

Sergeant C arrived at the scene and Sergeant B requested that Sergeant C separate and monitor Sergeant A. Sergeant B requested additional supervisors to respond to assist with the separation and monitoring of the involved personnel.

Sergeant D responded to the help call and was directed by Sergeant B to separate and monitor Officer B. Sergeant D separated Officer B and obtained a PSS from him/her.

Los Angeles Fire Department (LAFD) personnel responded to the scene and provided medical treatment to the Subject's injuries. LAFD assisted in cutting the Subject's clothing and drove the ambulance to the hospital. LAFD personnel assisted in the back of the ambulance with patient care while en route to the hospital. Officer G rode in the back of the ambulance with the Subject, while Officer H rode in the front. During the ride to the hospital, the Subject was non-responsive and did not make any statements.

The actions by LAFD personnel were documented during the witness interviews. Since the Subject was non-responsive and interviewing the additional LAFD personnel would not add additional investigative insight to this case, they were not formally interviewed.

Real-Time Analysis and Critical Response (RACR) Division was notified of the Categorical Use of Force.

Force Investigation Division (FID) Detectives responded to the hospital and interviewed the Subject about this incident. The Subject stated he was drunk and was carrying a "toy gun" in his waistband. When he attempted to walk out of the parking lot, officers told him to stop and to drop the gun. According to the Subject, the officers told him in Spanish, "Drop the gun that you have." The Subject stated he grabbed the pistol, dropped it on the ground along with his food, and then the officers shot him. The Subject then collapsed to ground, lying on his right side.

The commands given by Officer A to the Subject were all in English.

FID Detectives reviewed the documents and circumstances surrounding the separation, monitoring and the admonition not to discuss the incident prior to being interviewed by FID investigators.

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 Sergeant A's, along with Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing and Exhibiting

The BOPC found Sergeant A's, along with 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 allow 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 suspect 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 considerations:

1. Code-Six

Officers A and B did not advise Communications Division (CD) they were Code Six upon arrival to the radio call location.

The purpose of going Code Six is to advise CD and officers in the area of their location and the nature of the field investigation, should the incident escalate and necessitate the response of additional personnel.

In this case, the officers responded to the same location as identified in the original radio call. The officers also had knowledge that multiple additional units were responding to the same location. Upon their arrival, they observed another unit approaching the location. Officers located the suspect within the same area, who was armed with a handgun, and initiated contact without notifying CD.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's actions were a substantial deviation, with justification, from approved Department tactical training.

2. Holding Service Pistol in Right Hand and Hand-Held Radio in Left Hand

The investigation revealed that Sergeant A held his/her service pistol in his/her right hand while holding his/her hand-held radio in his/her left hand. Sergeant A was reminded of the tactical disadvantage of having a service pistol in one hand and an additional piece of equipment in the other hand. In this case, it was understandable because the situation was rapidly evolving and Sergeant A needed to broadcast information, while simultaneously being concerned about the potential for a deadly threat.

3. Backup Request vs. Help Call

The investigation revealed that Sergeant A broadcast a backup request after the OIS. Although the BOPC understood he/she was faced with a rapidly unfolding tactical situation, it would have been more tactically prudent for Sergeant A to broadcast a *help call* rather than a request for *back-up* in order to alert responding officers of the seriousness of the incident.

4. Command and Control

After the OIS, Sergeant A formulated a tactical plan of approach and monitored the officers as they took the Subject into custody.

Sergeant B responded and assumed the role of IC. He/she separated, monitored, and obtained a Public Safety Statement (PSS) from Officer A.

The investigation revealed there was a delay in the separation and monitoring of Officers A and B. The actions of Sergeant B were brought to the attention of the area Captain, and were addressed through corrective action at the divisional level.

Sergeant D responded, separated, monitored, and obtained a PSS from Officer B.

The actions of Sergeants A and D were consistent with Department supervisory training and met the BOPC's expectations of field supervisors during a critical incident.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident

specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Each tactical incident merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

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

B. Drawing and Exhibiting

- Sergeant A did not believe he/she drew his/her service pistol during the incident. However, Body Worn Video (BWV) revealed that Sergeant A drew his/her service pistol after the OIS.

According to Officer A, as he/she and Officer B entered the parking lot, the Subject looked at them and then started walking in the parking lot, away from the officers. Officer A believed that the Subject matched the description of the Subject described as having a gun in the radio call. As the police vehicle stopped, Officer A exited and drew his/her service pistol as the Subject continued to walk away from them.

According to Officer B, as the officers arrived at the location, he/she observed the Subject walking through the parking lot. Officer B entered the parking lot, drove towards the Subject, and observed him walking away from the officers. Officer B stopped the vehicle, exited, and drew his/her service pistol as the Subject continued to walk away.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Sergeant A, along with 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.

Therefore, the BOPC found Sergeant A's, along with Officers A and B's drawing and exhibiting of a firearm to be In Policy.

C. Lethal Use of Force

- **Officer A** – (pistol, one round)

According to Officer A, he believed the Subject would gain an actual location for his/her partner, line up the sights of his pistol, and fire a round at Officer B. The Subject would then turn his body further and possibly shoot Officer A. Officer A fired one round from his/her service pistol at the Subject to stop the lethal 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 the Subject's actions presented an imminent threat of death or serious bodily injury and that the lethal use of force would be objectively reasonable.

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