

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

LAW ENFORCEMENT-RELATED INJURY – 015-16

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
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Southeast	3/15/16		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Officer A	3 years, 9 months
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Reason for Police Contact

Officers recognized a bicyclist as a subject wanted for assault with a deadly weapon. The subject refused to stop for the officers, and when he finally dismounted his bicycle, he pulled a gun from his waistband. Unable to safely stop and seek cover, the pursuing officer drove into the subject, resulting in a law enforcement-related injury (LERI).

<u>Suspect</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Subject: Male, 39 years old.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on February 14, 2017.

Incident Summary

Victim A was at a recycling center located in the rear parking lot of a local market in the City of Los Angeles. The Subject approached Victim A armed with a silver handgun in his hand, pointed the handgun at Victim A, and stated, "I'm going to get you this time." The Subject then struck Victim A on her left cheek with the handgun, rendering Victim A unconscious. When Victim A awoke, she fled the location and responded to Southeast Area police station. An ADW Investigative Report (IR) was completed.

The following day, Police Officers A, B, and C became aware of the aforementioned investigation. The officers utilized Department resources to conduct a criminal history inquiry of the Subject. During their inquiry, Officers A, B, and C became aware that the Subject was a gang member who had a history of carrying firearms.

The officers also received information from Sergeant A about information he received from local business owners and transients who congregate near the adjacent freeway. Sergeant A was advised and warned by citizens of a male with the same name as the ADW suspect who was habitually under the influence of methamphetamine and carrying a handgun. This information was discussed and distributed to officers during roll call. Officer A printed a color photo of the Subject to assist them in identifying him.

Five days after the briefing from Sergeant A, Officers A, B, and C were assigned to patrol in the area. Officer A was driving through a fast food parking lot. When the officers reached the exit, they noticed the Subject, on a bicycle in the gas station at the northeast corner of the street. Officer B observed that the male resembled the Subject.

According to Officer B, the Subject exited the gas station and began to pedal north. The Subject looked in the officers' direction, negotiated a U-turn, and re-entered the gas station lot travelling east through the lot. Officer B alerted Officers A and C of his observations.

Officer A drove out of the fast food parking lot and drove across the street into the gas station parking lot to verify if the person on the bicycle was the Subject. The officers momentarily lost sight of the Subject as they travelled through the gas station parking lot to the exit. The officers then noticed the Subject riding his bicycle along the north curb against the flow of traffic while pedaling at a high rate of speed.

Officer A drove east in an attempt to verify if the bicyclist was the Subject. The Subject continued east and failed to stop for a red phase tri-light. Suddenly, the Subject rode across vehicular traffic to the south side of the highway and continued to ride east. The officers decided to conduct a traffic stop for the observed violations and to ascertain if he was the wanted suspect. When the Subject reached the next street, he made a right turn and peddled south along the west curb. According to Officer C, he estimated they were approximately five to six car lengths back when the Subject began to travel south. According to Officer A, he believed the Subject was on the west sidewalk.

According to Officer C, once the officers began to travel south, Officer A “chirped” their siren to acquire the Subject’s attention. The Subject looked back in the officers’ direction and continued to ride south. As the Subject continued south, the officers closed their distance to within five to 10 feet behind him, when Officers C and B began to order the Subject to stop through the open windows of their moving vehicle. The Subject again looked back at the officers, but continued south. Officer B ordered the Subject one additional time to get off his bicycle, with negative results.

Officer C unholstered his TASER while seated in the right rear passenger seat, activated the TASER, and aimed the red laser dot on the Subject’s person. According to Officer C, the Subject looked back toward the officers, at which time Officer C warned the Subject to stop or he would be tased. According to Officer C, the Subject was slightly in front of them and almost parallel with Officer B. The Subject ignored this tactic and continued pedaling south. Officer C then holstered his TASER.

Officer C stated he used this tactic twice as a ruse in order to have the Subject stop. According to Officer B, he estimated they were approximately five feet behind the Subject when Officer C threatened to use the TASER.

A check of the TASER’s internal data storage device determined the TASER was armed and then rendered safe one second later. The TASER was armed again and rendered safe again, also one second later. According to the officers, it was at this time they felt confident the Subject was the person they had been seeking. The officers did not broadcast they were following a wanted suspect or request back-up at this time.

Unexpectedly, the Subject stopped his bicycle. Officer A immediately applied the brakes, but passed the Subject. Officers A, B, and C opened their respective doors and began to exit the police vehicle. Suddenly, the Subject pedaled east across the street. The officers re-entered the police vehicle as Officer A placed the vehicle in drive and looked toward the rear of the police vehicle to ascertain the Subject’s location.

According to Officer B, he believed Officer A drove the police vehicle past the Subject in an effort to cut off his path.

Officer A negotiated a U-turn to pursue the Subject. According to Officer A, as he negotiated the U-turn, he saw the Subject pedaling east. The Subject looked toward the officers, reached toward the front right side of his waistband area with his right hand, and suddenly drew a small handgun, placing his right hand and gun on the handlebars. The Subject then placed the handgun back into his waistband area and returned his right hand to the handlebars.

Officers B and C did not see the gun being removed. However, according to Officer C, as Officer A negotiated the U-turn, he heard Officer B say, “Watch his hands. I think he’s armed.” Officer B did not indicate he made this statement.

Officer A believed the Subject was going to toss the handgun when he retrieved the handgun from his waistband area. Officer A never conveyed his observation to his partners, due to it happening quickly.

The Subject rode east then abruptly stopped. According to Officer A, the Subject faced them, but he was unsure if the Subject had gotten off the bicycle. According to Officer C, he observed the Subject partially on his bicycle in a contorted position as if the Subject had fallen off his bicycle. Officer C could not recall if the Subject was on one knee or both knees. The Subject was frantically reaching toward his waistband, at which time Officer C advised Officers A and B, "Hey, he's reaching, he's reaching, he's reaching."

According to Officer B, he saw the Subject fall off his bike and reach toward his right pocket. The Subject denied he ever stopped or got off his bike.

It was at that time the Subject removed the handgun for a second time. Officer A felt that because the Subject had not discarded the weapon the first time, he believed the Subject was going to use it to shoot at them.

Officer A said the Subject drew the handgun completely out of his waistband area and he could see the barrel of the gun. Officer A could not recall which hand the Subject had the gun in. Officer A said the gun was at a low-ready position and appeared to be coming upward toward the direction of their approaching police vehicle. Officer A stated, "At that moment I was like, you know what? We're not going to have time. This guy is going to start shooting us right now."

Officer A stated he did not believe he had sufficient time to stop and exit his police vehicle and did not want to get shot while seated in the police vehicle.

Believing the Subject was about to fire upon them, Officer A made the decision to use the police vehicle to strike the Subject. Officer A accelerated the police vehicle from an approximate distance of 10 to 12 feet, utilized the left front bumper and collided into the middle portion of the bicycle and the Subject's legs. Officer A estimated the police vehicle was travelling at an estimated speed of 15 to 20 miles per hour (mph) when the Subject was struck. Officer A stated he simultaneously applied the brakes to take away some of the forward momentum of the police vehicle.

Immediately after being struck by the police vehicle, the Subject fell on his back. Officer A stated he observed the handgun fly out of the Subject's right hand and land just north of the Subject along the curb.

Officer A stated he had no time to alert his partners on his decision to strike the Subject and his observation of the Subject removing a handgun from his waistband area.

According to Officer B, the Subject was facing their police vehicle when he was struck. Officer B did not see a weapon until after the Subject was struck by the police vehicle and then observed a gun in the air landing along the north curb.

According to Officer C, he observed the Subject reach toward his waist when he was struck in the middle to upper torso. Officer C observed the Subject fall backwards and land along the north curb. Officer C believed the handgun was on the street adjacent to the Subject's left buttock.

Officer A stopped the police vehicle just east of where the Subject came to rest and the officers exited their police vehicle. Officers B and C unholstered their service pistols, maintained them in a two-handed, low-ready position, and approached the Subject, followed by Officer A.

The Subject was conscious, lying on his back and partly sitting up. Officer B approached the Subject and ordered him onto his stomach. The Subject placed himself on his stomach with his hands to his sides. Officer B then holstered his service pistol, walked up to the right side of the Subject's torso and, using his set of handcuffs, handcuffed the Subject's right wrist.

Simultaneously, Officer C observed the handgun near the Subject's buttocks and within arm's reach. Officer C noticed the hammer was in the cocked position. Officer C approached the handgun, utilized his right foot, and moved the gun toward the north curb gutter so Officer B could safely handcuff the Subject. Officer C holstered his service pistol and then retrieved his police radio.

Officer C broadcast the officers' location and requested a supervisor. As Officers B and C handcuffed the Subject, Officer A recovered the handgun from the ground and placed the gun in his right rear pants pocket. Officer A indicated he picked up the gun because it was within arm's reach of the Subject.

Simultaneously, as Officers B and C were in the process of handcuffing the Subject, Officer A ran to the corner to verify their location. Officer A broadcast the officers' location, requested a back-up, and advised they were on a "415 man with a gun" call.

At the conclusion of the Subject being handcuffed, the Subject advised the officers he could not breathe. Officer C placed the Subject on the left side of his torso and advised Officer A to request a Rescue Ambulance (RA). Officers B and C then conducted a search of the Subject's clothing for any additional weapons and/or contraband. The officers removed the Subject's property and placed it along the north curb. Officer B indicated he observed lacerations and blood on one of the Subject's legs.

Officer A broadcast the incident had been resolved, that the Subject was in-custody, and requested a supervisor in addition to an RA.

Lieutenant A arrived at the location and separated Officer A and obtained a Public Safety Statement (PSS) from him. Officer A stated he was east when he observed the suspect armed with a handgun and intentionally struck the suspect with his police vehicle. Officer A advised Lieutenant A he had the handgun in his right rear pants pocket.

At the conclusion of the PSS, Lieutenant A advised Officer A to secure the handgun in the trunk of his police vehicle. Officer A obtained a pair of latex gloves, placed the gloves on his hands, and removed the gun from his rear pants pocket. Officer A stated he removed the magazine from the handgun and placed the gun in the trunk of the police vehicle. Officer A stated he did not manipulate the weapon.

LAFD personnel arrived at the scene and began medical treatment, then transported the Subject to the hospital.

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/Holstering of a weapon by any involved officer(s); and the Use of Force by any involved officer(s). All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort to ensure that all officers benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC made the following findings.

A. Tactics

The BOPC found Officers A, B, and C's tactics to warrant Administrative Disapproval.

B. Drawing and Exhibiting

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

C. Non-Lethal Use of Force

The BOPC found Officer C's less-lethal use of force to be in policy.

D. Use of Lethal Force

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

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC considered the following tactical issues:

1. Back-Up Request

Officers A, B and C did not request a back-up when they began to follow the Subject.

Although officers are given discretion regarding the appropriate time to request additional resources based on the ongoing tactical situation, in this case, the officers were following a felony ADW suspect, who they knew was a documented gang member and had a history of carrying firearms.

It would have been tactically advantageous for the officers to request a back-up immediately upon following the suspect in an effort to ensure the appropriate resources were responding, in the event they were needed.

Based on the totality of the circumstances, the BOPC determined that Officers A, B, and C's decision not to request a back-up was a substantial deviation, without justification, from approved Department tactical training.

2. Tactical Communication and Planning

Officers A, B and C did not communicate their observations or plan their actions with one another on multiple occasions throughout the incident.

Operational success is based on the ability of officers to effectively communicate during critical incidents. Officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, the officers' lack of planning and inability to effectively communicate with one another placed them at a significant tactical disadvantage.

Based upon the totality of the circumstances, the BOPC determined Officers A, B and C's lack of effective communication and planning with each other throughout the incident was a substantial deviation, without justification, from approved Department tactical training. The BOPC directed that this topic be discussed during the Tactical Debrief.

3. Initiating Contact While Seated in a Police Vehicle

Officers A, B and C initiated contact with an ADW suspect, who was reported to be armed with a handgun, while still seated in their police vehicle.

The positioning of the police vehicle when conducting a stop of a bicycle is critical in order to provide the officers a tactical advantage should the incident escalate.

In this case, the officers observed the Subject, identified him as the ADW suspect, and knew that he had utilized a handgun when he committed the crime. Armed with this knowledge, the officers still attempted to stop the Subject from a close distance, by issuing commands while seated in their police vehicle.

Based upon the totality of the circumstances, the BOPC determined that Officers A, B and C's decision to contact the Subject while still seated in their police vehicle was a substantial deviation, without justification, from approved Department tactical training.

4. Tactical Vehicle Deployment –

During this incident, Officer A positioned his police vehicle adjacent to and in front of a potentially armed suspect.

Positioning the police vehicle is critical in order to provide the officers with a tactical advantage should the incident escalate.

In this case, Officer A indicated he drove parallel to the Subject because he was concerned that the Subject may flee on foot, and the officers would lose him in a nearby homeless encampment. Furthermore, when the Subject stopped, Officer A also attempted to stop; however, the momentum of the police vehicle caused the officers to continue to roll past the Subject.

Officer A placed his partners and himself at a significant tactical disadvantage by positioning the police vehicle directly alongside and in front of a potentially armed suspect.

Based upon the totality of the circumstances, the BOPC determined that Officer A's tactical positioning of the police vehicle, next to and in front of the Subject, was a substantial deviation, without justification, from approved Department tactical training.

Additional Tactical Debrief Topics

1. Simultaneous Commands (Conflicting) –

The investigation revealed that Officers C and B gave simultaneous conflicting commands to the Subject during the incident. The officers are reminded that simultaneous commands can sometimes lead to confusion and non-compliance.

2. TASER

The investigation revealed that Officer C armed his TASER and pointed the red laser at the Subject as a ruse to get him to stop and comply with their commands. Although he stated that he never intended to use the TASER, Officer C is reminded that pointing a TASER while seated in a moving vehicle is not a preferred de-escalation technique to gain compliance.

3. Situational Awareness

The investigation revealed that Officer A had to run to the corner to verify his location prior to broadcasting a back-up request and during a subsequent broadcast incorrectly stated his location. Officer A is reminded of the importance of maintaining constant awareness and broadcasting the correct location to ensure responding units arrive in a timely manner.

4. Preservation of Evidence

The investigation revealed that Officer A picked up the subject's handgun without gloves and placed it in his rear pants pocket, and then later removed the magazine from the handgun and placed both items in the trunk of his police vehicle under the direction of a supervisor. In this case, the hammer of the handgun was cocked back in the single action position. Officers are reminded that moving a possibly loaded weapon, with the hammer cocked back, could possibly cause an unintentional discharge. In addition, the officers are also reminded that it is preferable to leave evidence undisturbed until FID investigators can properly document and preserve the scene.

5. Requesting Rescue Ambulance

The investigation revealed that Officer A requested an RA for contusions to the Subject's legs, but did not advise Communications Division the Subject had been struck by a vehicle. Injuries sustained from being struck by a motor vehicle can result in trauma or internal injuries that may not be visually apparent. Officer A is reminded of the importance of providing all the necessary information needed to ensure the response of the appropriate emergency medical personnel.

These topics were to be discussed during the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and 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 review and discuss the incident and individual actions that took place during this incident.

In conclusion, the BOPC found Officers A, B and C's tactics to warrant Administrative Disapproval.

B. Drawing and Exhibiting

- Officers B and C knew that the Subject was an ADW suspect and was possibly armed. Based on their observations, Officers B and C exited the police vehicle, and drew their service pistols.

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

Therefore, the BOPC found Officers B and C's drawing and exhibiting of a firearm to be in policy.

C. Non- Lethal Use of Force

- **Officer C** – Body weight.

According to Officer C, he heard Officer B ask him for assistance and observed that the Subject was resisting and wasn't putting his hands behind his back. He then placed a knee on the Subject's left upper shoulder and applied bodyweight to control his movements and utilized a second pair of handcuffs to secure both of his hands behind his back.

Based upon the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer C, while faced with similar circumstances, would believe this same application of non-lethal force would be reasonable to overcome the Subject's resistance, prevent escape, and effect an arrest.

In conclusion, the BOPC found Officer C's non-lethal use of force to be objectively reasonable and in policy.

D. Use of Lethal Force

- **Officer A** – Police Vehicle.

According to Officer A, he observed the Subject stop in the roadway, turn his body in the officers' direction, and retrieve the handgun a second time. He then observed

the handgun coming up and believed that the Subject was going to start shooting at them. In defense of his life and the lives of his fellow officers, he intentionally struck the Subject with the left front bumper of the police vehicle to stop the deadly 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 use of lethal force would be objectively reasonable.

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