

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

OFFICER-INVOLVED SHOOTING – 016-16

<u>Division</u>	<u>Date</u>	<u>Duty-On () Off (X)</u>	<u>Uniform-Yes () No (X)</u>
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Outside City	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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Lieutenant A	29 years
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Reason for Police Contact

Lieutenant A confronted two subjects who had burglarized his home, resulting in an officer-involved shooting (OIS).

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Subject 1: Male, 17 years of age. (Wounded)

Subject 2: Male, 16 years of age. (Wounded)

Subject 3: Male, 17 years of age.

Subject 4: Male, 17 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 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 7, 2017.

Incident Summary

Lieutenant A was off-duty and asleep inside his residence when he was awakened by a loud noise. Unsure where the sound originated from, he got out of bed, looked out his bedroom window, and noticed a burgundy colored Sport Utility Vehicle (SUV or utility vehicle) parked facing east in front of his neighbor's residence.

Note: Lieutenant A's bedroom was located in the northwest corner of his residence. Lieutenant A was by himself at the time of this incident.

This vehicle drew Lieutenant A's attention because he did not recognize it and because it was positioned several feet from the south curb, which he found unusual.

The vehicle was later determined to be driven by Subject 1. Subject 1 and three of his juvenile companions, Subjects 2, 3, and 4, arrived in this neighborhood minutes earlier for the purpose of committing a residential burglary. They randomly chose Lieutenant A's residence because they believed no one was home. While Subject 4 remained in the vehicle, Subjects 2, 3, and 4 exited and climbed over the padlocked side gate on the east side of Lieutenant A's property. Once in the backyard, Subject 4 pried open a kitchen window with a crowbar and climbed inside with Subjects 2 and 3.

Note: Subject 3 later told detectives that he did not enter the residence and remained in the backyard to act as a lookout. When interviewed, both Subjects 2 and 4 stated that Subject 3 entered the residence with them.

Meanwhile, as Lieutenant A looked out his window, he heard the sound of footsteps walking across his hardwood floor at the opposite end of his residence. Based on the sounds, he perceived that there were several individuals moving through his house. Lieutenant A became alarmed and considered calling 911, but he did not have a landline telephone in his bedroom. Lieutenant A did, however, have a cellphone, but was concerned that he would be overheard by the subjects and that his call would first be routed through the California Highway Patrol. Also of concern to him was the fact that the subjects potentially had access to two of his firearms, one of which was in a small room near his kitchen and the other inside his personal vehicle parked in his attached garage.

Lieutenant A elected to arm himself with pistol he kept in his bedroom nightstand and confront the subjects before they had an opportunity to locate his other weapons.

Note: Lieutenant A did not take his cellphone with him.

As Lieutenant A opened his bedroom door and moved into the hallway, he heard the sound of footsteps running through his house. With his weapon held at a low ready position, he opened the hallway door and stepped into his living room. Lieutenant A moved forward approximately 15 feet in an easterly direction until he reached an entryway on his right, which led into a small dining room and the kitchen area. From that vantage point, Lieutenant A peered around the corner and observed two male

subjects in his kitchen. One of the subjects was kneeling on the countertop preparing to climb out a window, while the other subject stood directly behind him on the kitchen floor. Lieutenant A observed that neither of the two subjects appeared to be holding a weapon and began walking toward them while ordering them to stop.

Note: The investigation determined that these two individuals were most likely Subjects 2 and 4. Based on Lieutenant A's account of what occurred, it appeared he never observed Subject 3 either inside or outside his residence.

Both subjects then hastily exited headfirst through the open window. As Lieutenant A walked into the kitchen, he observed Subject 2 and 4 approximately seven feet from the kitchen window walking quickly away from his residence in an easterly direction. The subjects were in close proximity to each other, with one subject being slightly behind and to the right of the other. Lieutenant A again ordered them to stop and warned them that he had a gun. Lieutenant A's intention was to convince them to remain where they were and then use his kitchen landline telephone to call the police. Lieutenant A stated that approximately 15 seconds passed from the time he awoke from a deep sleep to the moment he first observed the subjects in his kitchen.

When Lieutenant A announced that he was armed, one of the subjects turned his head to the left to look over his shoulder, while simultaneously making a quick movement with his right hand toward his front waistband area. Based on his actions, Lieutenant A believed he was reaching for a weapon while attempting to acquire his position.

Note: Adding to his suspicion that at least one of the subjects could have been armed was the fact that they potentially had access to two of his firearms while he was sleeping. As mentioned previously, at the time of this incident, one of his weapons was inside his vehicle parked in his attached garage. While confronting the subjects, Lieutenant A noticed the door leading from his dining room into his garage was open. This concerned Lieutenant A because he normally kept this door closed and locked. Seeing it open suggested to him that one of the subjects might have gained access to his vehicle and armed himself with one of his weapons.

Lieutenant A believed he was about to be shot when he fired three to four rounds through his open kitchen window at the Subject's center mass/upper back area. Lieutenant A explained that he was concerned about the issue of "lag time" (e.g., the amount of time it would take him to respond to the Subject's actions) and did not wait to see a gun or allow the Subject to completely face him before he fired.

Note: Subjects 2 and 4 were both struck by gunfire during this incident. Subject 4 sustained a through and through gunshot wound to the center of his lower back and to the left side of his abdomen. Subject 4 also sustained a gunshot wound to the front of his left knee. Subject 2

sustained a gunshot wound to the left side of his abdomen, as well as a through and through gunshot wound to his left thigh.

The evidence recovered during the investigation, including cartridge cases, bullet fragments, and impacts to a block wall, indicate that Lieutenant A fired all his rounds from the kitchen, through the open window, in an easterly direction.

After discharging his rounds, Lieutenant A lowered his weapon to assess and observed both subjects turn left around the east side of his residence. Lieutenant A believed that the subjects were possibly running to the utility vehicle parked near the front of his residence, and he ran to his front door to obtain their direction of travel. Lieutenant A's intention was to obtain a better description of them and then call 911 to report what had occurred. Lieutenant A opened his front door and, while using the doorjamb as cover, looked outside for the subjects and their vehicle. After seeing neither, he stepped onto his front porch to obtain a better view of his side gate. Moments later, he observed Subject 4 emerge from the east side of his residence walking toward his front driveway. While maintaining his weapon in a low ready position, Lieutenant A ordered Subject 4 into a prone position by yelling at him to get down on the ground.

Subject 4 initially complied by lowering himself to his knees and laying on his stomach with his head positioned in a westerly direction. Then, after a few moments, Subject 4 began using his arms to push his upper body off the ground. Lieutenant A stepped off his front porch, walked around behind Subject 4, and approached the Subject from his feet. With his weapon in his right hand, Lieutenant A ordered Subject 4 to stay down and placed his left hand on his upper back. As Subject 4 complied, Lieutenant A placed his left knee on his back to better control him and began scanning the area for additional subjects.

Note: Unbeknownst to Lieutenant A, Subjects 2 and 3 were able to run from his residence and enter the utility vehicle before he opened his front door. Subject 4 then drove to a local hospital to obtain treatment for Subject 2's wounds.

Lieutenant A was still without a cellphone and unable to call 911. In an effort to attract the attention of one of his neighbors, Lieutenant A began yelling. Within a few moments, Witnesses A and B exited their residence to see what was occurring, and observed Lieutenant A in a kneeling or crouched position. Lieutenant A shouted to Witness B and directed him to call 911 and say that an off-duty police officer had been involved in a shooting and to request an ambulance. Witness B agreed and returned to his residence to make the call. When Witness B came back outside minutes later, Lieutenant A called him over to assist. Witness B saw that Subject 4 was injured and not resisting and began assessing his vital signs and level of consciousness, which he found to be normal. Prior to doing so, Witness B verified that Subject 4 was unarmed and the backpack lying nearby did not contain any weapons while Lieutenant A covered Subject 4 with his pistol.

Note: Witness A remained in the front yard of her residence and never had contact with Subject 4.

Realizing that he had not cleared his residence, Lieutenant A decided to confirm that there were no additional suspects still inside his residence that could pose a threat to him. After discussing this with Witness B and asking him to watch Subject 4, Lieutenant A went back into his residence and quickly cleared it while checking to see if any weapons had been taken.

Note: Lieutenant A confirmed his weapons were undisturbed. Lieutenant A estimated he was inside for no more than a minute before returning to his driveway and placing a knee again on Subject 4's back. Witness B believed that Lieutenant A did not enter his residence or leave him alone with Subject 4 until after the arrival of the outside law enforcement agency.

When the outside agency police department arrived on scene, they observed Lieutenant A holding Subject 4 at gunpoint in his driveway and Witness B standing nearby. Lieutenant A identified himself verbally as a Los Angeles police officer.

The outside agency fire department arrived and evaluated Subject 4 at scene. Subject 4 was conscious and breathing and was determined to have sustained several gunshot wounds. Subject 4 was transported to a local hospital and was subsequently arrested for burglary.

Note: Subjects 2 and 3 were detained by the outside police agency shortly after Subject 1 dropped them off at a nearby hospital. Subject 1 was detained several minutes later during a traffic stop. All three subjects were arrested for residential burglary.

Uniformed Sergeant A arrived at scene and obtained a Public Safety Statement (PSS) from Lieutenant A. According to Sergeant A, Lieutenant A informed him that he fired three to four rounds in an easterly direction while standing in his kitchen. Lieutenant A indicated that he struck two subjects with gunfire and described them as "hot prowler" burglary subjects.

Note: Lieutenant A stated that at some point during the time he was being monitored in his residence by the outside police agency, and prior to Sergeant A's arrival, he overheard officers mentioning that a second Subject [B] had been located at a nearby hospital with gunshot wounds.

After obtaining a PSS, Sergeant A monitored Lieutenant A until relieved by Force Investigation Division 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). 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 Sergeant A's tactics to warrant Administrative Disapproval.

B. Drawing/Exhibiting

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

C. Non-Lethal Use of Force

The BOPC found Lieutenant A's non-lethal use of force to be in policy.

D. Lethal Use of Force

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

Basis for Findings

A. Tactics

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

1. Off-Duty Tactics

Lieutenant A did not facilitate the response of the local law enforcement agency in a timely manner, after he became involved in an off-duty OIS and detained a possibly armed suspect in his front yard.

In this case, Lieutenant A elected to pursue after the subjects as they fled his residence through a kitchen window, resulting in an OIS. Following the OIS, Lieutenant A proceeded to the front of his residence and detained one of the

subjects in the front yard without first ensuring that the local law enforcement agency was notified of the incident.

In addition, once Lieutenant A placed the one Subject in a prone position, he should have recognized the risk posed to his safety when he chose to contact and detain the Subject while not in possession of a telephone to call 911 and without any other equipment readily available, other than his off-duty service pistol.

Based on the totality of the circumstances, the BOPC determined that the off-duty tactics of Lieutenant A during this incident was a substantial deviation, without justification, from approved Department tactical training.

2. Utilizing Cover

After an off-duty OIS, Lieutenant A left a position of cover to approach a possibly armed suspect.

The utilization of cover enables officers to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options.

In this case, Lieutenant A repositioned himself to the front door of his house, utilizing the door jamb as cover. From there, he observed one of the subjects walking across his front yard and ordered the Subject into a prone position. Lieutenant A then left his position of cover to make contact with the Subject.

Lieutenant A's decision to leave cover and engage a person whom he believed to be possibly armed with handgun, limited his tactical options and unnecessarily endangered his safety.

Based on the totality of the circumstances, the BOPC determined that Lieutenant A's decision to leave cover was a substantial deviation, without justification, from approved Department tactical training.

3. Public Safety at Critical Incidents

Lieutenant A left his neighbor, a civilian witness, alone with an unrestrained Subject while he entered his residence to search for additional suspects.

In this incident, Lieutenant A asked his neighbor to stay with the Subject while he re-entered his residence. The Subject was unrestrained and had not been searched. Placing an uninvolved civilian in physical jeopardy should be avoided at every opportunity. Lieutenant A's decision to leave his neighbor with an

unrestrained and possibly armed Subject was unreasonable and unnecessarily jeopardized the safety of that civilian.

The BOPC determined that Lieutenant A's decision to leave a civilian witness alone with an unrestrained Subject was a substantial deviation, without justification, from approved Department tactical training.

- The BOPC additionally considered the following:

1. Initiating Physical Contact While Holding a Service Pistol

Lieutenant A had his off duty service pistol drawn when he initiated contact with the Subject. Initiating physical contact with a Subject while holding a service pistol may inhibit an officer's ability to fully engage the Subject, and increases the risk of the Subject getting a hold of the service pistol.

- 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 Lieutenant A's tactics to warrant a finding of Administrative Disapproval.

B. Drawing/Exhibiting

- According to Lieutenant A, he realized that he had two firearms accessible to the subjects, one stored inside his truck, parked in the attached garage, and the other in a room adjacent to the kitchen. Lieutenant A then became concerned the subjects could have discovered the firearms and armed themselves, so he retrieved an off-duty pistol from his nightstand and removed the pistol from its holster.

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

Therefore, the BOPC found Lieutenant A's drawing and exhibiting of a firearm to be in policy.

C. Non-Lethal Use of Force

- **Lieutenant A: Bodyweight**

According to Lieutenant A, he observed Subject 4 attempting to push himself up and then ordered him to stay down. Lieutenant A then approached Subject 4, pushed him down with his left hand, and placed his left knee on Subject 4's back to prevent him from standing up.

The BOPC determined that an officer with similar training and experience as Lieutenant A would reasonably believe that the applications of non-lethal force to overcome Subject 4's resistance was reasonable and would have acted in a similar manner.

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

D. Lethal Use of Force

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

According to Lieutenant A, he observed the Subject looking at him, believed that the Subject was acquiring him as a target, that he was going to shoot him. In fear for his safety and concerned about his lag-time if he waited for the Subject to produce a handgun, he fired three rounds at the Subject's center mass/upper back area to stop the threat.

Given the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Lieutenant A, would not reasonably believe that the Subject's actions while running away, with his upper back area facing toward Lieutenant A, presented an imminent threat of death or serious bodily injury, at the time he fired he fired his weapon.

The BOPC found Lieutenant A's use of lethal force was not objectively reasonable and out of policy.