

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

OFFICER-INVOLVED SHOOTING – 004-18

Division **Date** **Duty-On (X) Off ()** **Uniform-Yes (X) No ()**

Hollenbeck 1/14/18

Officer(s) Involved in Use of Force **Length of Service**

Officer A 7 years, 7 months

Reason for Police Contact

Officers responded to a radio call of a possible Assault with a Deadly Weapon (ADW). The comments of the call indicated two males were sleeping on the ground with one of the males holding a pistol.

Subject **Deceased (X)** **Wounded ()** **Non-Hit ()**

Subject 1, Male, 22 years of age.
Subject 2, unidentified.

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 December 18, 2018.

Incident Summary

On the morning of January 14, 2018, Witness A noticed two males (Subjects 1 and 2) on a residential driveway. Subject 1 was lying on his back with his eyes closed holding a gun in his right hand. Witness A believed both males were asleep.

Witness A walked away and called the police.

Witness A contacted the Los Angeles Police Department (LAPD) Communications Division (CD) via 911. Witness A informed the 911 emergency operator that he had observed two males sleeping and that one of the males was armed with a handgun

CD broadcast a request for a Hollenbeck unit for a possible ADW (Assault with a Deadly Weapon) suspect, at the address provided. Subject 1 was described as male, 20 years, black hoodie, black pants, and holding a black handgun. Subject 2 was described as male unknown and wearing all black. Witness A indicated that both suspects were sleeping on the ground behind a vehicle

A review of the 911 call determined that no allegation of ADW was made by the caller.

Hollenbeck Patrol Division uniformed Police Officers A and B accepted the call for service. Officers A and B had been assigned as partners approximately fifteen times during three-deployment periods. During their previous times working together, the officers had general discussions regarding foot pursuit tactics, rendering medical aid to one another, and de-escalation techniques.

Officer B issued a broadcast, accepting the call as Officer A began to drive toward the radio call location. According to Officers A and B, they did not activate their Digital In-Car Video System (DICVS) because the call was generated as a non-emergency (Code Two) call and it was their belief that it did not meet the Department's requirements to activate the DICVS.

Although the officers did not activate their DICVS, Officers A and B did activate their Body Worn Video (BWV).

According to Officer A, Officer B read the comments of the call as they responded to the radio call location. The officers determined that Officer A would be the contact officer and Officer B would be the cover officer. The officers discussed parking away from the location and approaching cautiously on foot. According to Officer A, he intended to establish an observation post (OP) due to the possibility of encountering an armed suspect. Officer B did not mention an OP during his interview with FID investigators.

According to Officer B, he did not request an additional unit or an Air Unit because he wanted to establish whether the Subjects were at the location and what type of call they had prior to utilizing additional resources. Officer A also indicated that he did not believe units were available because it was an extremely busy morning and it was near the end of their watch, that he did not request an Air Unit because it was his belief that

police helicopters were not available at that time of the morning, and that he did not consider having CD contact the person reporting (PR) for additional information.

Unbeknownst to Officers A and B, an additional unit was in fact responding to assist with the call. According to Air Support Division, helicopters are not routinely launched at the time of the incident, but are available to respond to officer-safety issues, back-up, pursuits, or help calls.

Officers A and B were unsure where the call was located, at which time Officer B utilized his personal GPS system. While en route to the call, the BWV worn by Officer A began to record and depicted the officers responding to the radio call location. Due to the topography of the location and the winding streets, the GPS system directed the officers to the wrong location, albeit nearby. Officer A transmitted over the police radio that the officers had arrived at the location (Code Six).

According to Officers A and B, as they exited the police vehicle, they unholstered their service pistols because the comments of the call indicated one of the suspects was possibly armed with a handgun. The officers walked along the street to locate the suspects.

Officer B observed the numbers on the exterior wall of the residences and realized they were on the wrong street. The officers holstered their service pistols and returned to their vehicle.

The officers entered their police vehicle and Officer A drove the vehicle to the correct street.

According to Officer A, as he searched for the address, he suddenly observed the two Subjects on the driveway. One of the men was seated as the other man lay supine on the driveway. Officer A stated the men matched the descriptions of the ADW suspects based on the radio call comments.

BWV captured Officer A's surprise upon locating the Subjects. Officer A stopped the police vehicle one house away from where the Subjects were observed. Officers A and B exited their vehicle, unholstered their service pistols, and maintained them in a two-handed, low-ready position.

According to Officer A, Subject 2 was seated on the driveway, scanning the area as he held onto his knees. Subject 1 was lying on the driveway and appeared to be asleep.

Officer A walked behind the left front bumper of his vehicle, raised his pistol, and illuminated the Subjects with the light attached to his service pistol, telling Subject 2 to stand up. Simultaneously, Subject 2 looked in the officers' direction, stood up, and began to run away from the officers. Officer B stated he observed Subject 1's feet on the ground and then observed Subject 2 stand up and flee. Officer A did not observe a handgun at this point in time.

Officer B pursued Subject 2 along the side of the residence, while holding his pistol in his right hand, as Subject 1 remained lying on the driveway. Officer B did not give

Subject 2 any commands as he ran away and stated Subject 2 was 50-100 feet ahead of him. Officer B stated he believed Officer A was moving forward with him.

According to Officer A, he planned to use his police vehicle as cover and give verbal commands to the Subjects but began to follow Officer B to avoid separating from him. Officer A moved around the front of his vehicle and obtained his police radio with his left hand, while running with his pistol in his right hand. Officers A and B stated that Subject 2 was holding his waistband area as he ran away.

Officer A's BWV depicts Subject 1 lying on his back on the driveway. Subject 1 had his right arm resting on the driveway, bent at the elbow, with his right hand on his front waistband area holding onto what appears to be a handgun. Officer A stated it appeared that Subject 1 was sleeping. Officer A did not observe the handgun in the Subject 1's hand at this point in time.

Officer A entered the driveway of the location and broadcast a request for a back-up, Air Unit, and supervisor.

Simultaneously, Officer B continued to pursue Subject 2, who was now running between the adjoining houses into the yard at the rear.

Officer A passed Subject 1, paused by the rear of one of the vehicles parked on the driveway, and continued to illuminate Subject 1 with his service pistol's light. It was at this time that Officer A observed that Subject 1 had a handgun. Officer A recounted that he believed the handgun was in Subject 1's left hand, although BWV depicts the handgun in Subject 1's right hand.

Officer A's BWV captured Officer A call out to Officer B, "Hey partner, partner, partner, partner, partner, partner, partner, partner." Subject 1 appeared to awaken and began to sit up and turn toward Officer A.

Subject 1 looked toward Officer A as Officer A told the Subject 1, "Don't move, don't move!" According to Officer A, the Subject started to point his handgun toward the direction where Officer A was standing. Officer A's BWV depicts Subject 1 turning his upper torso and head toward Officer A while his right hand moved from the front waistband area to his right side.

According to Officer A, believing Subject 1 was about to shoot him, Officer A backed away from Subject 1, raised his service pistol, and fired five consecutive rounds in rapid succession at Subject 1. The rounds were fired from a distance of approximately 6 feet.

Officer B was not in a position to see the Subject 1's actions or the OIS incident because his view was blocked by vehicles parked in the driveway.

Officer A broadcast, "Officer needs help, shots fired." Officer B ran from the black wrought iron gate between the houses, met briefly with Officer A, and told him he would cover the rear of the driveway. Officer B kept his gun unholstered and covered one portion of the driveway in case Subject 2 returned.

Officer A then broadcast that he had one Subject down and one Subject running through the houses. Officer A also provided a description of Subject 2 and his direction of travel.

In response to the help call, several police units responded to the scene, which included Officers C and D.

Subject 1 was lying on his back with both arms now resting on the driveway, alongside his torso. Subject 1's pistol was lying near his left knee. Officer D approached Subject 1 and handcuffed him, securing both hands behind his back.

Los Angeles Fire Department (LAFD) personnel responded to the location and determined that Subject 1 was deceased.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting of a firearm by any involved officer(s); and the Use of Force by any involved officer(s). Based on the BOPC's review of the instant case, the BOPC made the following findings:

A. Tactics

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

B. Drawing/Exhibiting

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

C. Lethal Use of Force

The BOPC found 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 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

During its review of this incident, the BOPC considered the following:

- Department training establishes a clear expectation that officers will develop tactical plans when they have the opportunity to do so. With regard to planning, the Department's *Tactical De-Escalation Techniques Use of Force – Tactics Directive* states the following:

Officers should attempt to arrive at scene with a coordinated approach based upon initial information and any pre-existing knowledge of the suspect(s) or the involved parties. The dynamic nature of most incidents will require tactical plans to be flexible, and officers need to adapt their plan(s) as additional information or factors become known to the officer(s).

Prior to their arrival at the call location, Officers A and B had been provided with the “initial information” that two ADW suspects were asleep on a residential driveway, and that one of the suspects had a handgun. According to Officer A, the officers planned to approach the scene on foot, considered an observation post, and discussed who would be contact and who would be cover. Officer B’s account of the plan was similar, except that he did not reference an observation post.

Despite this, the investigation established that the officers did not develop a plan specifically relative to the initial information available to them. For instance, there is no evidence to indicate that the officers planned how they would deal with the unusual circumstance of a sleeping and armed subject, how they would react to foreseeable scenarios wherein one or both of the subjects would flee on foot, or how they would gain a tactical advantage using factors such as distance, cover, and additional resources prior to and during their engagement with the suspects. The officers had ample time to discuss such plans while en-route to the call, but they did not take advantage of this opportunity to do so.

As a consequence of this lack of effective planning, the officers were unprepared and were uncoordinated in their reaction when one of the subjects began to flee. This resulted in both officers placing themselves at a significant tactical disadvantage as the incident unfolded, despite the officers encountering a scenario that closely matched the initial information they had been provided in the radio call.

In addition to establishing an expectation that officers develop tactical plans, the Department’s de-escalation training also establishes an expectation that officers will communicate effectively. In this regard, the Department’s *Tactical De-Escalation Techniques* training states the following:

Maintaining open lines of communications between officers and communicating effectively with a suspect are critically important when

managing a tense or potentially dangerous encounter. Communication between officers can improve decision-making under tense circumstances and increase the effectiveness of coordinated actions. In addition, when a suspect observes that officers are prepared, well organized, professional, and working as a team, he or she may be deterred from attempting to flee, fight, or actively resist.

In this case, the officers did not communicate upon arrival at the scene, other than Officer A's indication to his partner that they had arrived at the location. Critically, the officers did not communicate at all when Subject 2 began to flee, resulting in a lack of coordination that saw both officers leaving cover, becoming separated, and passing by an armed suspect. When Officer A belatedly attempted to call his partner back, he did so while remaining in a position of extreme tactical disadvantage – in close proximity to an armed subject, and without cover. It was while Officer A was calling out to his partner that Subject 1 awoke and the OIS occurred.

Officers A and B's above-described failures to plan based on initial information and to communicate constituted substantial deviations from the Department's tactical training regarding de-escalation.

Additionally, the BOPC considered the following Tactical issues:

1. Utilization of Cover

Officer B left a position of cover when he observed Subject 2 flee on foot.

The utilization of cover enables an officer 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, Officer B indicated he left the cover of his ballistic door with the intent to get close enough to the unidentified Subject 2 to give him commands to stop and take him into custody without incident.

Officer B's decision to leave cover placed himself in a distinct tactical disadvantage and unnecessarily endangered his safety. Officer B acted independently and without good cause to support that leaving cover was reasonable under the circumstances.

Officer A indicated that he re-deployed from his ballistic door and assumed a position of cover behind the engine block of his vehicle because he wanted to get a better view of the Subjects. He then left the cover of the engine block because his partner was in foot pursuit and he did not want to separate from his partner.

2. Passing an Unsearched Suspect

Officer B ran past Subject 1, who was a potential threat, to pursue a possibly armed Subject 2.

Officers, when faced with an ongoing tactical situation, must remain alert to improve their overall safety by their ability to recognize an unsafe situation and then work collectively to ensure a successful resolution.

In this case, as Officer B pursued Subject 2 up the driveway, he ran past Subject 1, who was armed with a handgun, and lost sight of Subject 1. Officer B's decision to run past an unsearched suspect placed him in a distinct tactical disadvantage and unnecessarily endangered his safety.

3. Separation/Pursuing Possibly Armed Suspects

Officer B separated from his partner and pursued a possibly armed suspect while in apprehension mode.

Generally, officers are discouraged from pursuing armed suspects on foot. Nonetheless, officers must be afforded a level of discretion regarding the appropriateness of their decision to engage in a foot pursuit of an armed suspect.

Containment of an armed suspect demands optimal situational awareness. The ability to maintain the tactical advantage rests on the ability of the officers to effectively communicate, thus ensuring a coordinated effort and successful resolution.

In this case, Officer B exited the police vehicle and made the decision to engage in a foot pursuit, in apprehension mode, of a suspect whom he believed was possibly armed with a handgun. In this specific circumstance, it would have been tactically prudent for Officer B to have recognized the need to transition into containment mode upon exiting the vehicle and begin establishing perimeter containment.

The BOPC found Officers A and B's tactics to warrant a finding of Administrative Disapproval.

B. Drawing/Exhibiting

- According to Officer A, he exited his vehicle and drew his service pistol, based upon the comments of the radio call that one of the suspects was armed with a gun.

According to Officer B, he exited the vehicle and drew his service pistol, based upon his reasonable belief that one of the suspects was armed with a firearm.

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 that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, 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)

According to Officer A, he observed that Subject 1 was holding a handgun in his left hand. Subject 1 then started to sit up. According to Officer A, Subject 1 started to point the handgun in a direction towards where he (Officer A) was standing. Believing that the Subject 1 was about to shoot him, Officer A jumped back and fired five rounds from his service pistol at Subject 1.

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 1's actions presented an imminent threat of death or serious bodily injury and the Use of Lethal Force would be objectively reasonable.

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