

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

OFFICER-INVOLVED SHOOTING – 015-17

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Central	3/4/17		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	22 years, 10 months
Officer B	2 years, 11 months

Reason for Police Contact

Officers responded to a call of a suspect armed with a pipe, threatening people in the area. Officers arrived on scene and gave the subject commands to drop the pipe. The Subject refused the officers' commands and confronted the officers with the pipe, resulting in an officer-involved shooting (OIS).

Subject(s)	Deceased (X)	Wounded ()	Non-Hit ()
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Subject: Male, 70 years of age.

Board of Police Commissioners' Review

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

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 13, 2018.

Incident Summary

Witness A called 911 and advised he was outside a fast food restaurant and had observed a male, the Subject, swinging a pipe at citizens on the street. Witness A further advised that in addition to swinging the pipe at him twice, the Subject also attempted to strike an unknown male passing by on a bicycle.

Communications Division (CD) broadcast the call to the Central Area units as an emergency call (Code Two incident).

CD assigned the radio call to Officers A and B. According to the officers, while driving to each of their radio calls they discussed tactics, including the Department's policies pertaining to escalation and de-escalation of force.

While driving to this call, Officer A quizzed Officer B regarding probable cause and the different levels of force available to them based upon the Subject's actions. Officer A advised Officer B that if the Subject was swinging the "stick" and hitting somebody, that would likely cause great bodily injury. Officer A also advised that if the Subject had a person on the ground and he's beating them with the "stick", that could lead to death and deadly force might be necessary to stop the Subject's actions. Officer A added that if the Subject was just standing and holding the "stick" and not harming anyone, then the officers would have probable cause to make contact and talk with the Subject.

The weapon wielded by the Subject was variously described by witnesses and officers as a stick, a rod, a bar, a pipe, and a pole. The investigation determined that it was, in fact, a 64-inch-long piece of galvanized steel pipe that weighed 5.84 pounds.

Prior to the officers' arrival, the Subject walked away from the location and into the ground floor parking area of a nearby apartment complex, a large complex located across the street from the original location.

Security camera footage from the apartment complex depicted the Subject holding two sticks or pipes. The Subject became involved in a verbal confrontation with Witness B. The Subject waved the pipe he was holding in the air, moved within a few feet of Witness B and then walked away.

According to Witness B, the Subject approached him in the apartment complex. The Subject told Witness B to put his hands up and fight and then swung the pipe at Witness B, but missed. The Subject then approached another passer-by (later identified as Witness C) and struck him on the hand with the pipe.

The Subject is again seen in apartment complex video footage showing the Subject and an unknown male wearing white clothing approach each other and then making a stabbing motion with the pipe in the direction of the unknown male. The unknown male then retreated as the Subject continued to advance on him until both men went out of view.

Witness D was at a nearby business and observed the unknown male walk by the business. Seconds later, Witness D observed the Subject pass by as if he was chasing the unknown male. The Subject and the male stopped and at that point Witness D observed the Subject strike the male with the pipe. The male was yelling that the Subject had “poked” him earlier with the pipe and the Subject continued to pursue him.

Officers A and B arrived at the original location and noted that the Subject was no longer at the scene. The officers requested further information on their call via their Mobile Data Computer (MDC). While waiting for a return on their request, the officers drove around the area in an attempt to locate the Subject.

Meanwhile, Witness D called 911 and reported the confrontation between the Subject and the unknown male at the new location, and CD broadcast the updated information to the responding officers. After hearing the radio broadcast and simultaneously receiving updated information via their MDC, Officer A drove toward the new location.

Officer A activated their DICVS (Digital In-Car Video System), which captured the officers' approach and the actions of the Subject toward the civilians on the sidewalk as they drove up to the scene. Officer A's DICVS also captured audio and video of the confrontation between the officers and the Subject, as well as the TASER deployment, and the OIS.

As the officers approached the location, they could see the Subject armed with a long pipe waving it toward civilians, including a security guard, later identified as Witness E.

As the officers continued to approach, Officer A directed Officer B to broadcast a backup request. Officer B hesitated, which caused Officer A to then take the radio microphone and make the request himself.

The officers were equipped with a Beanbag Shotgun, but did not deploy it. According to Officer A, he observed Officer B having trouble manipulating the shotgun rack at the beginning of the shift.

According to Witness E, he heard a broadcast over his radio of a fight at the location. Witness E advised he was the first security guard from his company at the scene. When he arrived at scene, the Subject was arguing with and swinging a 6 to 7-foot metal pipe at an unknown male wearing white clothes. The male told him that the Subject had struck him with the pipe. The Subject then walked to the corner and argued with a second citizen, later identified as Witness C. Witness E asked the Subject to drop the pipe, but the Subject refused. The Subject became very aggressive and started walking toward Witness E. According to Witness E, the Subject came toward him as if he were going to spear him with the metal pipe. Witness E drew his canister of Oleoresin Capsicum (OC) spray and placed his bicycle between himself and the Subject as a barrier.

Based on his observations of the Subject being armed with a long pipe, Officer A made the decision that he and Officer B would exit their vehicle and move away from the vehicle doors so they would have room to maneuver.

The DICVS depicted Officers A and B approaching the location and the Subject walked toward Witness E, while holding the pipe level to the ground with the tip pointing at Witness 5. The Subject then made a stabbing motion at Witness E with the pipe. The DICVS also depicted that the Subject was speaking to the officers.

The officers discussed tactics while responding to their radio call. However, once at scene of the radio call, the officers immediately engaged with the Subject and did not discuss tactics or movements as they verbalized with the Subject.

Officer A stopped their police vehicle in the crosswalk at the curb of the location. Both officers exited their respective doors and immediately began giving the Subject commands to drop the pipe. The Subject refused to obey the officers' commands. The Subject continued walking back and forth and toward the civilians standing on the sidewalk next to the businesses.

The Subject then turned his attention to the officers. The Subject walked toward Officer B while holding the metal pipe in an upright position in his right hand. He then began to hold the pipe with both hands, while pointing the tip toward Officer B. The Subject took eight to ten steps in his direction and Officer A directed Officer B to get the TASER out. Officers A and B continued to give commands to the Subject to drop the "stick" but the Subject refused. In response to the Subject walking toward him, Officer B shouted, "TASER, TASER, TASER," and fired one TASER cartridge at the Subject. As Officer B discharged the TASER, the Subject stepped backwards, apparently unaffected by the TASER.

According to Officer A, one TASER dart appeared to have bounced off the Subject's arm and the second dart flew past the Subject. According to Officer B, he was not sure if the darts made contact with the Subject. Officer B reached for his TASER holster to reload the TASER for a second deployment but realized his holster did not have an extra TASER cartridge. Officer B then holstered his TASER. The investigation determined that Officer A did not check out a TASER at the beginning of his watch.

The Subject walked toward Officer B as he held the pipe parallel to the ground with one end pointed at Officer B. According to B, he unholstered his weapon at that point because he believed there was no other way to defend himself or protect anyone else. The Subject then backed up, but continued to walk around in different directions while still holding the metal pipe and refusing to comply with the officers' orders to drop it.

According to Officer A, the civilians present at the scene were telling the officers, "Shoot him. Shoot him." The Subject was yelling back at the civilians and then moved toward the civilians. The Subject then again turned toward the officers and took three steps at a quick pace toward Officer B while still holding the pipe. The officers continued to give

the Subject commands to drop the pipe, but he refused to do so. The Subject, still holding the pipe, walked in the direction of Officer A.

According to Officer A, he was concerned about his sighting and background. He was familiar with the business in the background and was aware it had large glass windows; he could see several customers inside the location. This caused Officer A to adjust his position to the left to stay between the Subject and the civilians to prevent the Subject from causing them any harm.

The officers' DICVS depicted the tip of the pipe was being raised above the Subject's head. According to Officer A, at the moment he fired he was thinking about himself and his partner because the Subject was coming at them. He was also thinking about the other people that were present in the area. He believed it would have only taken a couple of seconds for the Subject to advance and strike one of the civilians with the pipe.

The investigation determined Officer A utilized fired two rounds from a distance of approximately 16 feet.

According to Officer B, he was preparing to shoot just as he heard Officer A fire his weapon.

Officer A broadcast to CD that an OIS had occurred and requested a supervisor and a Rescue Ambulance (RA).

Officer A directed Officer B to handcuff the Subject. Officer B holstered his pistol and approached the Subject who was laying on his right side. Officer B rolled the Subject to a face down position and placed the Subject's hands in the small of his back and handcuffed him without further incident.

Los Angeles Fire Department (LAFD) personnel arrived at the location, along with other officers who assisted with securing the OIS scene and witnesses.

Sergeant A separated Officers A and B and obtained a Public Safety Statement from the involved officers. Eighteen witnesses observed the OIS.

Witness F said that he arrived at the OIS scene at the same time as Officers A and B. When he arrived, the Subject was being aggressive with the pipe, swinging the pipe at citizens. The Subject was pacing back and forth as the officers gave him commands to drop the pipe.

Witness G said that when Officers A and B were at the scene, an unknown man was yelling at the Subject, that he should not put the pipe down as the officers issued commands to the Subject to drop the pipe. This same man told the officers to, "Shoot him. Shoot him," referring to the Subject. Witness G said he saw the passenger officer (Officer B) fire the TASER at the Subject, but the TASER did not have an effect

because the wires were wrapped around the pipe. The Subject took a few steps back and then he started to approach the officers. Also according to Witness G, the officers told the Subject to put the pipe down the entire time, but the Subject started walking toward the officers at a fast pace and then the shots were fired. Witness G estimated that the Subject was six to seven feet from the officers at the time the shots were fired.

The digitally recorded interviews of the involved and percipient officers, as well as civilian witnesses, were stored in the Training Evaluation and Management System (TEAMS II) database.

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

FID Detectives reviewed all documents and circumstances surrounding the separation, monitoring and admonition not to discuss the incident prior to being interviewed by FID investigators. All protocols were followed and were appropriately documented.

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 Officer A's tactics to warrant Administrative Disapproval. The BOPC found Officer B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

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

C. Less-Lethal Use of Force

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

D. Lethal Use of Force

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

Basis for Findings

- **Detention**

The involved officers responded to a radio call of an ADW suspect who was armed with a pipe. The officers located the Subject and observed that he was still armed with the pipe, approaching citizens in a threatening manner. The officers exited their vehicle, ordered the Subject to drop the pipe, and attempted to detain the Subject. The officers' actions were appropriate and within Department policies and procedures.

A. Tactics

- 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.

- **Tactical De-Escalation**

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.

In this case, the officers made the decision to immediately deploy on the Subject, thus limiting the amount of time they would have to assess the situation or consider other tactical options. The BOPC would have preferred the officers' plan include the consideration of the deployment and use of a longer range less-lethal tool, i.e. Beanbag shotgun. This tool would have provided officers a greater range for dealing with weapons other than firearms.

Officer A was the senior and should have developed a plan that would have allowed enough time to safely assess the situation, redeploy in a safe manner if necessary, and request the resources needed to resolve the incident with the least amount of force necessary.

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

1. Equipment – TASER

Officer A was not carrying his TASER on his person when he deployed in the field as required.

In this case, the investigation revealed that Officer A failed to check out a TASER at his start of watch, as required. The BOPC determined that Officer A's failure to deploy a TASER as required limited his force options.

The BOPC determined that Officer A's failure to carry his TASER on his person as required was a substantial deviation without justification from approved Department tactical training.

2. Tactical Vehicle Deployment

Officer A stopped in the number two lane of the roadway and deployed on the Subject head on.

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

In this case, Officer A's decision to deploy the patrol vehicle at such close proximity to the Subject limited their options, thus decreasing their tactical advantage.

The BOPC determined that in this instance, Officer A's actions were not a substantial deviation from approved Department tactical training.

3. Utilization of Cover

Officers A and B moved from the cover of the police vehicle's ballistic door panels when they encountered the Subject armed with a pipe.

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, Officer A indicated that due to a large sign blocking his view, he redeployed from the cover of his ballistic door in order to maintain sight within his peripheral vision. Officer B deployed in front of his door to deploy the TASER and closed the distance to be within the effective range of the TASER.

The BOPC determined that in this circumstance, Officers A and B's actions were not a substantial deviation from approved Department tactical training.

- The BOPC also considered the following:

1. BWV/DICVS

The investigation revealed that Officer A did not activate his BWV as required. Additionally, Officer A's DICVS microphone was not securely attached to his person.

2. Agitated Delirium

The investigation revealed that during this incident the Subject's behavior was consistent with a person suffering from a state of Agitated Delirium. In an effort to improve future tactical performance the officers were instructed to review Los Angeles Police Department Use of Force Tactics Directive No. 13.1, Agitated Delirium, dated December 2013.

3. Non-Conflicting Simultaneous Commands

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

4. Use of Force Warning

The investigation revealed that Officer B did not provide a Use of Force Warning prior to deploying his TASER. Officer B was reminded that a Use of Force Warning shall be given whenever feasible.

These topics were to be discussed at the Tactical Debrief.

Therefore, the BOPC found Officer A's tactics to warrant Administrative Disapproval. In addition, the BOPC found Officer B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

- According to Officer A, as the officers approached in their police vehicle, he observed the Subject swinging the pipe at citizens on the sidewalk. Believing that the situation could escalate to a situation involving the use of deadly force, he drew his service pistol as he exited his vehicle.

According to Officer B, he deployed the TASER, but it was ineffective. He then holstered his TASER and drew his service pistol.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, while faced with similar circumstances, would reasonably believe 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 A and B's drawing and exhibiting of a firearm to

be in policy.

C. Less-Lethal Use of Force

- **Officer B** (TASER, one activation in probe mode, from an approximate distance of 16 feet)

According to Officer B, he continued giving verbal commands to the Subject to drop the pipe, but the Subject would not comply and continued to move around with the pipe in his hand. He then deployed the TASER in probe mode at the Subject.

Based upon the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer B, while faced with similar circumstances, would believe the application of less-lethal use of force to stop the Subject's actions was objectively reasonable.

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

D. Lethal Use of Force

- **Officer A** (pistol, two rounds)

According to Officer A, he continued to give verbal commands to the Subject to drop the "stick." The Subject was clenching the pipe and advancing towards him. Also according to Officer A, fearing for his safety and for the safety of the citizens around him, he fired two rounds from his service pistol at the Subject to stop the threat.

Based upon the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, while faced with similar circumstances, would not reasonably believe the Subject's actions posed an imminent threat of death or serious bodily injury at the moment Officer A fired his weapon.

Therefore, the BOPC found Officer A's lethal use force not to be objectively reasonable and was out of policy.

E. Audio/Video Recordings

- Digital In-Car Video System (DICVS) – Officers A and B's vehicle was equipped with a DICVS that captured both video and audio of the OIS.

Body Worn Video (BWV) – Officer A activated his BWV after the OIS. Officer B had not been issued or trained on BWV. Multiple officers responding to the incident had their BWV activated at the scene. None of their BWV captured the OIS or application of less-lethal force.

- Outside Video – Additional video that was taken by witnesses with their cellular telephones captured audio and video of the OIS.