

Office of Independent Review

Audit Report

Internal Affairs Case Number 2015-0096 (OIS)

Complainant: (Race/Gender)	C- The FPD
Subject Officer: (Race/Gender)	S- An Officer (H/M) S1- An Officer (W/M)
Subject Officer's Years of Service:	S- 12 years S1-11 years
Alleged Policy Violation(s):	Improper Use of Force: OIS
Findings as determined by the IA Investigation:	Within Policy
Date of Alleged Incident:	9/3/15
Date Investigation Requested:	9/3/15
Date Filed with Internal Affairs	9/3/15
Date Audit Completed:	3/6/16
Interviews Reviewed:	7

It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.

Synopsis:

The initial call to dispatch started with the following quote:

Yes, hi, um, I want to report a man that just came up to my door. He's walking around, um, shirtless, with a lot of tattoos and he came up to my door and said he was a Federal Agent and he pulled out a—a gun and I just slammed the door, 'cause I—it's just me and my—my kids...

Um, and asked if George lives here and if we sold drugs and—he said, um, you guys better not be selling drugs, where's George and he—you

know, pulled out the gun and said, you know, he was a Federal Agent and, um—

Officers S and S1 were nearby and responded to the call in their unmarked police car with S, the driver, activating his emergency lights as he approached C. Both officers were wearing “soft clothes” covered by a well-marked FPD tactical ballistic vest. There could be no confusion about the identity of either officer plus the unmarked police car had its lights activated. Additionally, both officers were wearing body cameras, both of which were activated and captured the event. Due to the fact that two body cameras captured this event, there is no need to include the statement of citizen witnesses who saw portions of the interaction.

The officers arrived on the scene after being dispatched on this call involving a detailed description of the individual who was armed with a gun who had knocked on a door of another citizen. Both officers activated their body cameras that captured the events on videotape but with the audio portion not being available for OIR review due to an ongoing migration to a new data sharing program. Both videos are very clear with S’s footage being the best as S1’s video is occasionally obscured when he brings his weapon up to take aim, obscuring C.

As the officers exit their police car, both drew their weapons and pointed them at C, giving him commands. *(Note: see S & S1’s interview)* C is then clearly seen reaching his right hand into his front right pocket. On S’s video, a black object is seen in his hand, pointed down, when both officers fired their weapons, striking and ultimately killing C.

The FPD is the complainant:

The FPD automatically reviews all OISs and did so in this case too. Since no other FPD officers were present, there is nothing of substance to include in this section. The involved citizen in this encounter will be referred to as C so that the events can be properly described.

An officer, herein referred to as S, is the subject of this matter and stated:

S stated the following in his recorded interview:

Dispatch stated a shirtless male was knocking on the front door of the reporting party. The male was wearing black shorts no shirt and pointed a black handgun at the reporting party “Victim”.

S continued by saying:

I asked Officer S to tell me what happened as they drove up to Orange Av. He told me as he was driving eastbound on Ventura from First Street; Sgt. B told him and Officer S1 that the suspect pointed a gun at the reporting party. Sgt. B told them that the reporting party described it as a small

black handgun and the suspect had it in his gym shorts pocket. He continued to say the suspect had no shirt on and multiple tattoos and was last seen walking on Orange Av towards Ventura. Officer S stated he had known the suspect was walking towards Ventura. Officer S stated as he approached Orange Av, he made a southbound turn onto Orange Av and immediately saw a person matching the description walking north bound on the east sidewalk of Orange.

S continued and stated:

Officer S told me the suspect looked up at him making eye contact as Officer S stood behind the driver side door. Officer S stated the suspect immediately reached into his right shorts pocket with his right hand. He stated he ordered the suspect to get on the ground. Officer S stated he did not know what the suspect was reaching for in his right pocket. Officer S stated as the suspect brought his right hand out of his pocket, Officer S stated he focused on the suspect's right hand and could see the butt end of a pistol. He told me he could see the pistol at the bottom of his hand as he removed it from his pocket. Officer S told me once he removed his hand out of his pocket; Officer S saw the top portion of the firearm. Officer S stated at that time he fired his department issued firearm at the suspect. I asked Officer S if the suspect heard his commands. Officer S told me when he yelled commands at the suspect; the suspect looked up at him and made eye contact with Officer S.

S explained that as C drew the "weapon" from his pants that he was in fear for his life and the life of his partner and so he fired his weapon. S believes he fired 3-4 rounds, and then he assessed the situation and noted that C had not fallen to the ground so he fired again.

An officer, herein referred to as S1, is the subject of this matter and stated:

S1 said the following in his interview:

Officer S1 told me as he and Officer S were driving to the Orange Av call, he was listening to the updates to the call that dispatch was broadcasting via radio. He stated he heard dispatch say there was a subject armed with a gun in the area of Orange and Lowe. He stated dispatch was broadcasting that the male said he was an officer of some type and he had a gun. He stated dispatch provided a description of the suspect, Hispanic male no shirt, black shorts and several tattoos on his body. Officer S1 stated he advised dispatch via his radio that he was going to be responding to the call for service with Officer S.

S1 continued by stating:

Officer S1 told me when he first saw the suspect he was approximately 10 to 15 yards north of El Monte on Orange Av. Officer S1 stated when he saw the suspect matching the description; he told his partner Officer S there he is, as he pointed to the suspect. He stated he pointed towards the suspect to confirm they had seen the same person. He told me Officer S continued to drive south and pulled up along the east curb and parked. Officer S1 told me as his partner pulled up along the curb; he removed his firearm from his holster and turned on his camera. He said he did this because the suspect was armed with a gun. He stated he opened the door and stepped out of the vehicle and at the same time Officer S stepped out of the vehicle on the driver side. Officer S1 told me as he was getting out of the car he could hear Officer S identify himself and began giving commands to the suspect to go to the ground. Officer S1 stated when he stepped out of the car he identified himself and began yelling at the suspect to show him his hands. He told me Officer S made contact with the suspect first and immediately began giving commands for the suspect to get on the ground...

Officer S1 told me when the suspect dropped his hands; he began giving commands to the suspect to put his hands up. Officer S1 told me he thought when the suspect dropped his hands down to his side that the suspect was going to reach into his pocket to get the gun.

I asked Officer S1 if the suspect ever removed the gun from his pocket and he stated yes. Officer S1 told me he began screaming at the suspect to put his hands up and the suspect would not listen to him. He told me when the suspect pulled his hands out of his pocket; he had a black object in his hand. Officer S1 told me when the suspect pulled the object; he focused in on the suspects hand and saw a gun in his hand. Officer S1 told me he was unsure what hand the suspect used to pull the object out of his pocket.

I asked Officer S1 how it made him feel when the suspect pulled the black object out of his pocket. He told me at the time he felt that he was going to be ok standing on the passenger side of the unmarked vehicle. Officer S1 told me the suspect had locked on and was staring at Officer S. Officer S1 became very quiet and emotional as his eyes began to fill with tears and his bottom lip began to quiver. Officer S1 told he felt that the suspect was going to shoot his partner Officer S. Officer S1 stated he thought the suspect was going to raise the gun up and point it at his partner. Officer S1 stated when he saw the suspect pull out the weapon he fired at the suspect because he was afraid the suspect was going to shoot his partner. Officer S1 stated he fired to protect Officer S and to help prevent him from being hurt.

Evidence:

E: S's body camera footage: S properly activated his camera which captured the arrival of the police car carrying both officers. S can be seen exiting his vehicle and drawing his weapon almost immediately. Although OIR could not hear the audio portion of the interaction, it is clear that verbal commands are being given based upon how his weapon is moving. It is equally clear that C was not aware of the police car and two officers until they had exited their vehicle and were pointing their guns at him. C then must see the officers as he quickly inserts his hand into his pocket and removes a dark colored object from it. In reviewing this event repeatedly, C's actions are most accurately described as a frantic movement to remove something from his pocket. This object becomes visible and is similar in shape and size as that associated with a dark colored semiautomatic handgun. C, once he pulls free this object is unable to do anything more as S opened fire, shooting five rounds at C. *(Note: both S and S1 opened fire nearly simultaneously and both fired five rounds. Seven rounds struck C who passed away at a later date due to the wounds he suffered.)*

E1: S1's body camera was properly activated and captured the events as described above. Although he had a slightly different angle on C, and although C was obscured for some parts of the encounter due to S1 having his weapon raised, thereby blocking a consistent view of C, there was nothing different on his tape than what was described above.

E2: The spray nozzle was recovered at the scene, near where C fell to the ground. It is black in color with a tapered look that is very similar to the profile of a black, semiautomatic handgun. It does not possess a large flared end so that water cycles can be modified and instead remains fairly consistent in girth throughout the "barrel portion" of the sprayer. In other words, the nozzle in question does look similar to a handgun with no bright colors or other distinctive shapes that would indicate that the object was for yard use.

E3: The toxicology report is of no use to this investigation as drugs were present in C's blood stream but it is as likely that they came from the extensive medical treatment he received prior to his death. In other words, the Tox report is of no value.

E4: The firearms training reports for both officers reveal that they were current and qualified on the duty weapons they employed in this matter.

Allegations:

Due to this being an OIS, an automatic review is initiated to see if the officers' actions were either "Within" or "Not Within" policy.

Definitions

Unfounded: The reported incident did not occur.

Exonerated: The employee's actions were reasonable under the circumstances.

Not Sustained: There is insufficient evidence to support a conclusion as to whether or not the employee violated policy.

Sustained: The employee's action(s) are in violation of the policy or procedure of the Police department.

Analysis and Recommendation:

This case is a tragedy for all involved and even more so for the family of C. OIR extends its condolences to that family. OIR is also saddened that two officers had to take action that lead to the death of another man and is aware of the toll that these decisions make upon involved officers.

This case is a great example of the value of body cameras as without those videos, there could be considerable angst within the community due to the fact that the "weapon" that both officers saw, was in fact, a simple garden nozzle. Like was plainly stated above, this nozzle not only greatly resembled a weapon, but the manner in which C produced it was clearly with intent to make the officers think he was drawing a weapon. The urgency of C's motion to pull out the nozzle is exactly the motion someone would use to draw and deploy a weapon. Based upon his recorded actions, there is no way that C was attempting to safely remove an object that could have been mistaken as a weapon, based upon instructions from officers or out of fear that he may be hurt for having such an object in his possession. On the contrary, his actions are clearly captured on videotape and for reasons unknown, C elected to "draw" this nozzle as if it was a real weapon. The object becomes viewable by the officers who were there to interact with someone a 911 caller claimed had pulled a gun on her, and her kids. The officers both described their thoughts and the videotapes confirm the aggressive manner in which C "drew" the object. The nozzle is also seen on videotape and it does seem similar to a handgun while in his hand and the photo of the nozzle after the incident had concluded really illustrates how closely it resembles an actual gun.

Both officers opened fire nearly simultaneously and both fired five rounds, with seven striking C. Both officers stated that they were in fear of their own lives and were worried about the safety of their partner. Based upon the evidence available, including two videotapes, the officers acted reasonably based upon what they knew at that time.

Auditor Findings:

As to the review that either S and/or S1 acted improperly in this OIS, OIR makes a finding of "Within Policy" on both officers.

Richard A Rasmussen, Auditor

3/6/16