

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

**OFFICER INVOLVED SHOOTING – 006-08**

<b><u>Division</u></b>	<b><u>Date</u></b>	<b><u>Duty-On(X) Off( )</u></b>	<b><u>Uniform-Yes( ) No(X)</u></b>
77 <sup>th</sup> Street	01/28/08		

<b><u>Involved Officer(s)</u></b>	<b><u>Length of Service</u></b>
Officer C	10 years, 10 months

**Reason for Police Contact**

After observing a possible gun buy transaction, on subject fled on foot from officers, then turned abruptly while appearing to pull an item from his waistband, resulting in an officer-involved shooting

<b><u>Subject(s)</u></b>	<b><u>Deceased (X)</u></b>	<b><u>Wounded ( )</u></b>	<b><u>Non-Hit ( )</u></b>
Male, 20 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 suspect 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 Los Angeles Police Department Command Staff presented the matter to the Commission and made itself available for any inquiries by the Commission.

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 January 13, 2009.

**Incident Summary**

Police Officer A received information that a sale of handguns was going to occur. Officer A advised his partner Police Officer B, and his supervisor, Detective A, of the information and it was decided that a Gun Buy Operation would be conducted. Officer A telephoned Detective B and his partner Police Officer C to request their assistance in the operation.

Officer A drafted a Tactical Plan which assigned operational responsibilities to the involved personnel. The plainclothes personnel involved in the Gun Buy Operation wore ballistic vests, including a patch on the upper back that read "POLICE" in large white lettering over a black background, and a badge affixed over the left portion of the chest area. Uniformed Police Officers D and E also assisted.

Officer C and Detective B positioned their vehicle where they had a clear and unobstructed view of a restaurant. Officer C utilized a pair of binoculars to assist him with monitoring the restaurant.

Detective A, Officers D and E, and Officers A and B parked their respective vehicles around the restaurant's shopping center parking lot.

Officer C and Detective B observed three Subjects arrive at the restaurant. Given the number of subjects involved, Detective A requested an additional chase unit and the air unit to respond to their location. Patrol Officers F and G responded.

Through his binoculars, Officer C observed Subject 1 pull his sweater up to show what appeared to be the grip of a black handgun in his front waistband. Officer C advised Detective B of his observation, and Detective B broadcast to the rest of the units that Subject 1 had a gun in his waistband.

Subjects 1, 2 and 3 entered the restaurant. Officer C then lost sight of the subject for approximately five minutes while they were inside the restaurant. All 3 subjects subsequently exited the restaurant and walked away together. Detective B advised the chase units to start driving toward the location.

Subjects 1 and 3 began to jog away from Subject 2. Officers A and B subsequently approached Subject 2 and detained him without incident.

Subjects 1 and 3 left the shopping center area, and Detective B advised the chase units to come in and take the subjects down. Officer C drove his plain vehicle from the shopping center parking lot driveway and stopped his vehicle in front of the subjects.

Officer C and Detective B exited their vehicle, verbally identified themselves as the police and told Subjects 1 and 3 to stop. Detective B drew his pistol as he exited the vehicle. Subject 3 immediately went down to the ground in a prone position. Subject 1 remained standing on the sidewalk, looking to his left and right, as if he were looking for an avenue of escape. Subject 1 then turned and began jogging away.

Detective B observed an LASD vehicle coming toward his location. Detective B yelled that he had control of Subject 3. Detective B approached Subject 3, applied his bodyweight on Subject 3 and waited for Deputies A and B to assist him.

Officer C began to chase after Subject 1. As Officer C he was going up to the sidewalk, his radio fell out of his left rear pocket.

Officer C did not run at a full sprint after Subject 1 because he believed that Subject 1 was possibly armed. Officer C remained approximately 30 feet behind Subject 1 with the intention of tracking him until the other units were able to make contact. As Officer C ran, he was also looking for positions of cover. Detective B broadcast that officers were in pursuit.

According to Officer C, Subject 1 never looked back as he ran, but looked in the direction of Officers E and D's vehicle. Subject 1 never ran at quick speed, which made Officer C believe that Subject 1 was possibly baiting the officers to get closer to him.

Subject 1 made a turn into a bank parking lot and reached toward his front waistband with his right hand and appeared to be pulling out an object. Subject 1 took a crouching position behind a three-foot cinderblock wall that separated the parking lot from bushes and plants on the sidewalk. Officer C took a position of cover behind the wall of a business east of the bank, approximately 15 to 20 feet from Subject 1.

From his crouching position, Subject 1 stood up, turned around and moved northbound in the parking lot. Officer C left his position of cover, unholstered his pistol, and moved toward the three-foot cinderblock wall where Subject 1 had previously crouched behind.

As Officer C approached the cinderblock wall, he yelled, "Police. Stop." As Officer C continued to give verbal commands, Subject 1 stopped, turned toward Officer C, lifted the front of his sweater with his left hand and reached into his waistband with his right hand, where Officer C had previously observed the grips of a handgun. Officer C believed that Subject 1 was going to pull out a firearm and shoot him. In response, Officer C fired one round from his service pistol from a distance of approximately 15 to 20 feet. Subject 1 immediately fell forward to the ground and yelled that he had been shot.

Officers E and D had been closing toward Subject 1, and they observed the shooting. Officers F and G were following E and D. Officer F saw the shooting, and Officer G heard the single gunshot.

Officers D and E, and Officers F and G stopped their respective vehicles and exited. Officers D, E and G moved to Officer C's location and all three approached Subject 1. Officer C removed a pair of handcuffs and handcuffed Subject 1 with the assistance of Officers D and G.

Officer D searched Subject 1 as Officers C and F searched the bushes nearby. No weapons were recovered from Subject 1, and a search of the area did not yield any weapons.

Detective A requested a rescue ambulance for Subject 1, who was treated at the scene, then transported 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 unanimously made the following findings:

### **A. Tactics**

The BOPC found Detectives A and B and Officer C's tactics to warrant Administrative Disapproval,

The BOPC found Officer A, B, D, and E's tactics to warrant a tactical debrief.

### **B. Drawing/Exhibiting**

The BOPC found Detective B's and Officer C's drawing and exhibiting of a firearm to be in policy, requiring no further action.

### **C. Use of Force**

The BOPC found Officer C's lethal use of force to be in policy, requiring no further action.

## **Basis for Findings**

### **A. Tactics**

In its analysis of this incident, the BOPC noted the following tactical considerations identified in the Department's investigation:

1. The written operation plan was incomplete, lacked specifics relative to the responsibilities of each team member, and the tactical brief was conducted without all involved personnel present.

Department Special Order directs that a written Operation Plan shall be submitted to the approving Watch Commander or Officer in Charge (OIC) on all pre-planned Observation Posts (OP). In the event of a "spontaneous OP," or if circumstances preclude officers from creating a written Operation Plan, verbal notification shall be made to the approving Watch Commander or OIC

Although the Watch Commander and OIC were advised of the operation, the inherent dangers associated with a plain clothes firearms transaction operations warrant a thorough tactical plan. In this instance, the tactical plan involved the use of an observation post. To that end, the circumstances neither justified a “spontaneous OP” nor precluded the involved personnel from completing a written Operation Plan.

The premise behind the mandate to complete a written Operation Plan is fundamentally based on officer safety. The plan should identify the mission and specific responsibilities of each assignment. The tactical brief provides a forum to discuss the Operation Plan, clarifies the specific roles for each assignment, and serves as a time to determine contingencies relative to any foreseen tactical eventuality. Furthermore, it allows the uniformed officers to familiarize themselves with the plain clothes personnel and their attire, enhancing recognition capabilities should circumstances arise wherein plain clothes personnel and uniformed officers become involved in a rapidly unfolding tactical scenario.

2. The officers did not advise Communications Division (CD) of the location of the operation, and communicated on simplex radio frequency without monitoring the Area base frequency.

The purpose of notifying CD of the type and location of a tactical operation is to enhance officer safety. When circumstances warrant an emergent response of additional personnel, as occurred in this instance, CD has the pertinent information readily available to provide to the responding units, maximizing their ability to properly respond and make the most appropriate tactical decisions.

Additionally, the use of simplex radio frequency has inherent limitations. It has a reduced effective communications range, is neither monitored by CD nor heard by personnel operating on the Area base frequency, and does not capture communications for later review. Most importantly, officer safety was compromised as none of the assigned officers were monitoring the Area base frequency, creating a circumstance wherein Area patrol officers were unaware of the rapidly unfolding tactical scenario and unable to effectively communicate with the involved personnel.

Detective A as the coordinating supervisor should have ensured that CD and Area uniform patrol personnel were advised of the status and location of the operation, and that his personnel were monitoring the Area base frequency.

3. The operation was allowed to continue after all means to monitor the firearms transaction were determined to be ineffective.

The Department Manual instructs that officers must remember that their basic responsibility is to protect the public.

The safety of the general public is of the highest priority when conducting police activities. The Operation Plan should have contained a contingency plan that established the appropriate actions in the event the involved personnel became unable to effectively monitor the firearms transaction. The restaurant contained numerous patrons, as evident in the security video obtained by Force Investigation Division. Members of the general public were in close proximity of the firearms transaction, which was not actively being monitored to ensure immediate police intervention, if necessary. Although not pre-determined in the Operation Plan, Detective A should have given decisive direction to his personnel to re-establish visual contact or given consideration to abort the operation.

4. Detective B and Officer C deviated from the tactical plan and initiated contact with subjects before the arrival of the uniformed chase vehicles.

Department Standardized Roll Call Training instructs that undercover officers must always have an operations plan which includes the duties of support personnel as security (plainclothes), arrest (uniformed or raid jackets), and chase (uniformed). The Roll Call Training reminds that undercover officers are the eyes and ears for the team, with a duty as intelligence gatherer.

The BOPC concurred with the Department's analysis that Detective B and Officer C's decision to deviate from the tactical plan was not warranted. Whenever possible, it is preferred that the initial contact of potentially armed suspects be made by personnel that are readily identifiable as police officers. Here, the potential misidentification of Detective B and Officer C by the Los Angeles Sheriff's Department (LASD) deputies could have resulted in dire consequences; and Detective B and Officer C should have maintained their observation post responsibilities and provided the chase vehicles and air unit with direction as to where to initiate contact, increasing the likelihood of making the arrests without incident.

The BOPC found that, as Los Angeles police officers, Detective B and Officer C should have been familiar with the importance of adhering to a tactical plan and that, as such, the unwarranted deviation represents a significant shortcoming in tactical performance.

5. Detective B and Officer C failed to effectively communicate with each other or with other involved units.

Neither Detective B nor Officer C broadcast to other units involved in the operation that they were attempting to detain Subjects 1 and 3, or provide the location of the stop. As such, they limited the capacity of other units and the operational supervisor to ensure prompt assistance would be provided. As a consequence of this omission, the air unit was unable to locate Officer C and Detective B until after the officer-involved shooting (OIS). As the passenger officer, Detective B had the primary responsibility for ensuring the appropriate

broadcasts were made; however, given that his partner did not make the broadcast, Officer C should have made the broadcast himself or advised his partner to do so.

Also, Officer C did not communicate to Detective B that an approaching marked unit was an LASD patrol (as opposed to a Los Angeles Police Department (LAPD) chase unit involved in the operation). As members of an outside agency with no prior knowledge of the operation, the deputies in the unit could not have been expected to know what was taking place, potentially limiting their capacity to provide immediate and appropriate assistance.

6. Officer C and Detective B chose to separate.

Officer C separated from Detective B, leaving him alone with an unhandcuffed and potentially armed suspect. By the account of the LASD Deputy A, who subsequently assisted Detective B with the detention of Subject 3, the foot pursuit was underway before the deputies reached Detective B. Further, by Detective B's account, the deputies were pulling up as he heard the gunfire, indicating that Detective B was alone with Subject 3 for the duration of Officer C's foot pursuit. The BOPC does not believe that this situation represented an instance in which it would be tactically permissible to split up. The threat posed by a potentially armed suspect, even one who appears to be complying, can be manifested rapidly. The impending arrival of a non-LAPD unit to the scene was not sufficient to appropriately protect Detective B from this potential threat. Moreover, chase units were approaching Subject 1's location and thus were available to have taken Subject 1 into custody while Officer C remained with Detective B. Finally, Officer C continued his pursuit even though he had dropped his radio, limiting his capacity to communicate with other units or to broadcast the foot pursuit. The BOPC found that the separation represented an unjustified and substantial deviation from the trained standard.

7. Officer C tracked the progress of a suspect who was reasonably believed to possess a firearm.

Department Training instructs that officers should not attempt to follow a suspect who is reasonably believed to possess a firearm. The exception is if the surroundings provide a reasonable amount of cover to allow the officer to move from one position of cover to the next.

Officer C clearly proceeded with the intent to track and monitor, rather than apprehend. He made a concerted effort not to close the distance for apprehension purposes and continually evaluated the surroundings for viable positions of cover, which was evident by his use of the building adjacent to the bank parking lot, and the cinder block wall as cover. The Department opined that the threat posed to the general public by a reasonably believed armed suspect warranted the measured risks taken to engage in the tracking of the suspect. The Department recognizes that a balance must be maintained between those

tactics that provide a sufficient likelihood that a suspect will be apprehended and those that afford an appropriate level of officer safety. The Department determined that, in this instance, Officer C had adequate cover to continue to pursue and his actions were consistent with the intent to track and monitor the suspect, and the BOPC concurred.

8. Detective B holstered his service pistol, approached and utilized his bodyweight to control a potentially armed suspect.

Department Training instructs that in high-risk situations are those in which the involved officers reasonably believe that the subject(s) poses a substantial risk of serious injury to the officers and/or the public. These situations usually involve felony crimes or investigations; however, a number of misdemeanors involving firearms or deadly weapons are termed "high-risk." High-risk situations are potentially dangerous. Due to the serious nature of the circumstances, officers must protect themselves and the public. The officers shall not give up the tactical advantage.

The BOPC would have preferred that Detective B maintain a position of cover and directed the uniform LASD deputies to approach and handcuff the suspect; however, the plain clothes tactical concern of being readily identifiable as a police officer factored into his decision. Although Detective B was at a disadvantage by holstering his weapon and making contact with a potentially armed suspect, the decision to holster, approach and control the suspect with body weight was reasonable when taking into consideration his misidentification concerns.

9. The air unit was not briefed on when to respond and was not effectively used as a tactical resource.

The proper utilization of available resources is paramount in any tactical operation. The air unit has the ability to monitor an incident and provide direction to personnel on the ground to either affect an arrest or initiate a perimeter. Detective A should have ensured that his personnel maximized the tactical effectiveness of the air unit and that all personnel, including those assigned to the air ship, had a clear understanding of their defined role and corresponding responsibilities.

10. Detective A did not obtain a Public Safety Statement (PSS) and ensure the timely separation of involved personnel.

A Supervisor in charge of a categorical use of force scene shall obtain sufficient information to conduct his/her duties at the scene (e.g., establishing a perimeter, protecting the crime scene, locating witnesses/evidence, managing the response of additional resources, etc.). The supervisor shall obtain a public safety statement from employees as necessary.

Detective A should have immediately obtained a PSS and facilitated the separation of the involved personnel once he learned that an OIS occurred. As the first responding supervisor, Detective A should have assumed a supervisory role and managed the incident through the appropriate delegation of duties. The lack of immediate supervisory oversight created the circumstance wherein Officer C returned with Detective B, where Sergeant A responded and took the PSS, as required. Although there is no evidence of improper intent, the mere fact that the separation was delayed provided the potential for the perception of impropriety.

Furthermore, Detective A failed to obtain the PSS information from Sergeant A, limiting the ability to properly manage the scene and provide the FID investigative personnel with a detailed brief, which became increasingly important after Sergeant A was directed to respond to an unrelated shooting call. Ultimately, the lack of supervisory oversight delayed the FID investigation and potentially caused the loss of evidence and/or witnesses.

#### 11. The entire operation lacked sufficient supervisory oversight.

The Department Manual defines a “Line Supervisor” as a supervisor who has the specific responsibility of issuing directions and orders to designated subordinates, and who shall be held accountable for achieving conformance with the directions and orders that he/she issues.

Detective A failed to provide sufficient supervisory insight throughout the entire operation. The lack of supervisory oversight was evident in the planning, initiation, and post incident activities. The identified concerns throughout this incident could have been avoided had a more critical level of supervisory oversight been imposed. In this instance, the BOPC concurs that Detective A was culpable should be held accountable.

#### **Drawing/Exhibiting**

Department policy relative to drawing and exhibiting a firearm is that, “An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified.”

Detective B and Officer C believed that Subjects 1 and 3 were involved in the gun transaction, and specifically that Subject 1 had displayed a pistol in his waistband. When Detective B and Officer C pulled up in their vehicle to detain Subjects 1 and 3, Detective B pulled his weapon. At the time of contact, Detective B had sufficient information to reasonably believe that there was a substantial risk that the situation might escalate to the point where deadly force may become necessary.

Officer C stated that he first drew his service pistol as he moved to the cover of the cinder block wall while tracking Subject 1. However, the LASD deputies reported that they observed Officer C pointing a handgun out of the driver’s side window of his

vehicle at the time of the initial detention. When questioned about the discrepancy, Officer C said that although he did not have a conscious recollection of the act, it was possible that he drew his service pistol at that time. Whether Officer C drew his weapon when first contacting Subjects 1 and 3, or while tracking Subject 1 after observing him to appear to pull an object from his waistband, Officer C's actions would have been objectively reasonable.

Therefore, the drawing and exhibiting by Detective B and Officer C warrants a finding of in policy, with no further action required.

### **Use of Force**

Department Policy directs that "An officer is authorized to use of deadly force when it reasonably appears necessary to protect himself or others from an immediate threat of death or serious bodily injury."

Officer C had observed what he believed to be the black grips of a handgun in Subject 1's front waistband and, on two separate occasions, observed Subject 1 reach for that same area, resulting in a reasonable belief that he was in possession of a firearm. When coupled with Subject 1's actions of abruptly stopping, then turning and reaching for his waistband, it was objectively reasonable for Officer C to perceive that he was confronted with an immediate threat of serious bodily injury or death.

Additionally, Officer C had observed Subject 1 to look toward uniformed Officers D and E. Subject 1 was not running at a fast pace, and he momentarily concealed himself behind a cinder block wall. Officer C believed Subject 1 was possibly trying to bait Officers D and E into a response, and that Subject 1 presented an immediate threat of serious bodily injury or death to Officers D and E.

Therefore, the BOPC found it was objectively reasonable for Officer C to perceive that it was necessary to protect himself and Officers D and E from the immediate threat of death or serious bodily injury presented by the Subject 1's actions, and that Officer C's use of lethal force warrants a finding of in policy, with no further action required.