

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

OFFICER-INVOLVED SHOOTING – 006-12

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

77th Street 1/17/12

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

Officer A 16 years, 8 months

Reason for Police Contact

Officers were conducting an undercover surveillance when they were confronted by the Subject, which resulted in an OIS.

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

Subject 1: Male, 28 years old.

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 Department Command Staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC. In accordance with state law, divulging the identity of police officers in public reports is prohibited, so the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on December 11, 2012.

Incident Summary

Officer A, a member of a specialized unit, was assigned to a multi-agency task force, which was comprised of law enforcement representatives from various organizations. The mission/objective of this task force included buying illegal narcotics, purchasing weapons from gang members, infiltrating gangs, and utilizing informants. The task force also conducted covert surveillance operations. The day prior to this incident, Agent A requested the assistance of the task force with the apprehension of a federal fugitive who was wanted for sales of cocaine.

The next morning, Officer A, along with Officers B, C and D, as well as agents of a federal law enforcement agency, Agents A, B, C, D, E, F and G, met at a police station for a briefing. The plan was to monitor the fugitive's residence.

After the briefing, Officer A notified the Area Watch Commander, Lieutenant A, of the operation plan and provided him with the target location, the tactical frequency to be used and his contact number. Officer A also requested that a marked black and white police vehicle assist them. Lieutenant A assigned uniformed Officers E and F to assist in the tactical operation. They were deployed to a nearby intersection. Officer E indicated that his partner called one of the primary task force members on his cellular phone to advise them that they were the patrol unit assigned to assist the task force and to exchange cellular phone numbers. Officers E and F were told that the task force was conducting a surveillance on a wanted subject.

On the day of the operation, the officers and agents deployed to their assigned locations. Officer A was assigned the point position with Agent B. They were deployed at the corner of the intersection in their vehicle, a pickup truck. Officer A was the driver of the vehicle, and Agent B was the front passenger. Officer A and Agent B were attired in plain clothes. They were to monitor any activity at the subject's location. Officer A was to broadcast to the additional units who were on the perimeter. These units would then move in and arrest the subject if he exited the residence.

Agents A, E, and F were in a black sedan, positioned on the street. Officers C and D, as well as Agents C and D were in a pickup truck, and positioned along the curb. Officer C was the driver of the vehicle. Officer B and Agent G were in a blue sedan, and were positioned near an alley covering the rear of the target location.

A couple hours later, Officer A and Agent B observed a male, later identified as Subject 1, leaving a residence. Subject 1 was walking on the sidewalk toward the task force members' parked vehicle. As he walked past their vehicle, Subject 1 noticed their presence and continued to look back at them as he continued to walk. Subject 1 then crossed the street, where Officer A and Agent B lost sight of him.

Approximately five to ten minutes later, Officer A and Agent B observed another burgundy vehicle traveling toward the location. Officer A and Agent B both observed occupants inside of the vehicle. The vehicle was traveling at a slow speed and the

occupants were looking in their direction as they passed in the vehicle. Officer A noted the vehicle's windows were tinted and lowered approximately four to five inches. Officer A stated the vehicle practically stopped next to them. At that time, Officer A identified the right rear passenger as Subject 1, the male who had just walked by them.

As this was occurring, Officer A was on the telephone talking to Agent A. Officer A told Agent A he believed they were about to get shot. Officer A also told Agent B he believed the subjects in the vehicle were going to shoot at them. Officer A then told Agent A he was going to hang up.

At this time, the burgundy vehicle sped up as it continued down the street. The vehicle then stopped, Subject 1 exited the vehicle, and entered a residence. He was attired in a white hat, black jacket with some type of emblem on it, light colored jeans and white tennis shoes. The vehicle then conducted a U-turn while Subject 1 then exited the residence and re-entered the vehicle.

Once again, Officer A advised Agent B regarding his belief it was possible that they were about to be involved in a shooting. At this time, Agent B, who was armed with an assault rifle, chambered a round while he continued to sit in the passenger seat of their vehicle.

The burgundy vehicle then proceeded in the same direction at a very slow speed. As the vehicle approached, Officer A noted the occupants in the vehicle were focused on them. He observed a female in the front passenger seat, a male driver and Subject 1 in the rear passenger seat on the driver's side. When the vehicle was approximately two car lengths west of Officer A and Agent B's location, the burgundy vehicle slowed down to approximately two miles per hour. Officer A again told Agent B they were about to be involved in a shooting and that he was going to draw his weapon. Officer A unholstered his weapon and assumed a seated low-ready shooting position. Officer A held his semiautomatic service pistol below the level of the driver's side window so it would not be visible.

Moments later, the vehicle pulled along the driver's side of Officer A and Agent B's vehicle and stopped. The subject's rear driver's side passenger door was directly south of Officer A's door. The driver and Subject 1, rear passenger, were looking in the direction of Officer A and Agent B through their windows which were lowered approximately four to five inches.

Subject 1 then opened the rear passenger door on the driver's side. Subject 1 turned his body toward Officer A's direction and began to exit the vehicle. Officer A advised Agent B to look for a gun given his belief that a shooting was about to occur. Subject 1 exited the vehicle and began walking toward Officer A, who was closest to the burgundy vehicle. Subject 1 then reached down with his left hand and lifted the front of his jacket. Subject 1 reached down with his right hand and retrieved a blue steel handgun from his waistband. Subject 1 then came up with the handgun, holding it in a two-handed shooting position and pointed the weapon at Officer A and Agent B. Officer A feared for

his safety and the safety of his partner, and believed he was about to be shot or killed while sitting in the driver's seat of his vehicle. Officer A raised his weapon, pointed it above the door panel and fired through the driver's side window toward Subject 1 in order to stop the threat. Officer A believed he fired before Subject 1 or that it may have been a simultaneous exchange of gunfire. Officer A's goal was to stop Subject 1 before he fired his weapon. Officer A and Agent B believed that they were in a position of disadvantage because they could not move their vehicle and they did not have any cover. Officer A stated that their windows were not tinted and he observed muzzle flash from Subject 1's weapon. Officer A believed Subject 1 was trying to kill him and Agent B.

Officer A estimated he and Subject 1 exchanged gunfire from a distance of approximately five feet away from each other. Officer A fired two rounds at the armed subject. Subject 1 appeared to be startled and stopped advancing, but continued to point his weapon at Officer A and Agent B. Officer A believed he had shot Subject 1, but Subject 1 did not fall to the ground. Officer A then fired an additional two rounds at Subject 1 as Subject 1 turned to his left, ducked down, and almost stumbled to the pavement. Subject 1 took two to three steps, turned back with the gun in his right hand, and his head turned back at the officers. Subject 1 then began to fire at the officers as he ran in a direction opposite them. Subject 1 fired at least one to two rounds initially before he turned away. Officer A continued to fire back at Subject 1 as he ran down the driveway between the residences. Officer A then lost sight of Subject 1.

Agent B heard gunshots being fired from Subject 1's direction as Subject 1 began to run down the street. Subject 1 was crouched over and was pointing his weapon back toward them. Agent B, armed with his rifle, raised his weapon up on target and fired two rounds through the front windshield of his vehicle at the fleeing subject. Agent B fired his rounds from the passenger seat of his vehicle. Agent B stated he did not hear gunshots coming from the inside of their vehicle.

The burgundy vehicle fled in an unknown direction. Officer A exited his vehicle and utilized his radio to broadcast that he and Agent B needed assistance. Communications Division then broadcast "All units, officer needs help[.]"

As Officer A went to the rear seat of his vehicle on the driver's side to retrieve his tactical vest, he observed the burgundy vehicle reappear as it traveled at a slow speed. Officer A advised Agent B the vehicle was coming back and directed him to reposition himself to the rear of their vehicle, fearing another shooting with the occupants in the vehicle. The vehicle was traveling at a slow speed and, as it passed their location, Officer A believed the occupants may have noticed that they were law enforcement officers because the tactical vest he was now wearing had "Police" on the front and back, and he was also holding his radio in one hand and his service pistol in the other.

Officer A noticed that once the driver appeared to look at them he suddenly accelerated away at a high speed. Officer A then broadcast that there was a burgundy vehicle at

the location and that he needed a perimeter. Officer A also broadcast a description of Subject 1 along with his location.

In the interim, Officers C, D, and Agents C and D were positioned in their vehicle along the curb, when they monitored the radio broadcast from Officer A. They did not have a view of Officer A and Agent B nor did they hear the shots fired.

They immediately responded to the location where shots had been fired. While traveling, the burgundy vehicle passed them going the opposite direction. Officers C and the others in the vehicle did not know the vehicle was involved in the shooting at that time. Upon reaching Officer A and Agent B's location, they were advised by Officer A the vehicle they had passed was involved in the shooting. Realizing both Officer A and Agent B were okay, Officer C initiated an attempt to locate the burgundy vehicle. Officer A then holstered his weapon and continued to direct responding units and establish a perimeter.

Agent A, who was deployed on the street, received a phone call from Officer A advising him of a suspicious individual who was in the area. A few minutes later, the agents heard several gunshots emanating from the location. The agents immediately responded to the location and observed Officer A and Agent B. Agent B was armed with his rifle and was looking down the street. Officer A was visually scanning the area and advised the agents to drive one block south. Agent A asked for a subject description, then traveled accordingly. Upon reaching the OIS location, Agent A and the other agents observed a marked black and white patrol vehicle, staffed by Officers E and F.

Agent A followed the police vehicle in search of the fleeing vehicle. Agent A observed an older model red vehicle parked on the side of the street. The agent stopped near the vehicle and observed that there were no occupants inside. Agent E approached the vehicle and took photographs of it, forwarding the photos to Agent B via his cellphone.

The agents then responded to an assistance call at a nearby location, when they observed a heavysset male, subsequently identified as Subject 2, walking down the street. Moments later, Agent B contacted the agents and advised he was almost certain that the vehicle in the photographs was involved in the shooting. Subject 2, who the agents believed had walked around the block, was now walking on the street, approaching the burgundy vehicle. The agents approached Subject 2 and stopped their vehicle, exited their vehicle, and directed Subject 2 to his knees. Agent E placed Subject 2 in handcuffs and conducted a search of Subject 2 which yielded his California Driver License. Subject 2 stated the burgundy vehicle belonged to him and since he could not find parking near the market on one street, he decided to park it elsewhere. Subject 2 stated he was the only person who drove his vehicle. Subject 2 advised he was on parole and asked if this was a parole sweep. Agent F asked if he could look inside the vehicle and Subject 2 agreed. Agent E conducted a quick search of the vehicle and no weapon was found. Subject 2's vehicle was impounded and taken to a police facility, for additional forensic examination.

Shortly thereafter, Agent B responded to the location where Subject 2 was in custody. Agent B positively identified him as the driver of the burgundy vehicle during the shooting incident. Agent C also responded to the location and positively identified the burgundy vehicle and Subject 2 as the driver he observed driving away from the OIS as he initially responded to the help call with Officer C and the other agents.

Sergeant A was working in his office when he monitored the officer needs help call by Officer A. Immediately, Sergeant A, along with Lieutenant B, responded to the location. Upon arrival, Sergeant A was met by Lieutenant C, who directed him to obtain a Public Safety Statement (PSS) from Officer A.

Sergeant A met with and separated Officer A and obtained the PSS from him. Officer A believed he fired approximately six rounds at the subject as he fled along the side of the street and then between the residences. Officer A reported the subject was outstanding and he believed the subject may have been struck by gunfire. Officer A did not know if Agent B had fired his weapon. Officer A was monitored at scene by Sergeant A due to the fact that it was an ongoing tactical incident and the identification of the outstanding subjects had to be made.

Note: The investigation determined Officer A fired a total of seven rounds, Agent B fired two rounds and Subject 1 fired nine rounds. Officer A sustained a gunshot wound to his lower right leg (shin) area, which resulted in a minor laceration. Agent B was not injured during the incident.

With the assistance of the responding patrol units and airship, a perimeter was established around the immediate area for the search of the outstanding armed subject. A specialized unit was notified and immediately responded to the location. A Command Post (CP) was established.

Upon arrival, the specialized personnel unit began a systematic search of the area. While searching, Officer G and a K-9 discovered a handgun underneath the crawl space along a portion of a residence. Officer H crawled underneath the residence and recovered the weapon. The weapon was a semiautomatic pistol and was discovered to have one round in the chamber and three rounds in the magazine. Following Officer H's recovery of the weapon, Officer I drove an armored vehicle to the location and retrieved it from Officer H. Prior to bringing the weapon back to the Command Post, Officer I rendered the weapon safe and removed the magazine and a round from the chamber.

No additional subjects were located.

As a result of this incident, an Investigative Report for Attempt Murder was completed listing Officer A and Agent B as victims.

Subject 2 was transported to the police station, where he was interviewed after waiving his Miranda rights. During the interview, Subject 2 advised that his girlfriend was Subject 3. When asked about the shooting incident, Subject 2 invoked his Miranda Rights. Subject 2 was subsequently booked on a parole violation at the jail.

While in custody at the jail, Force Investigation Division (FID) personnel monitored and recorded Subject 2's conversations and phone calls. It was discovered that Subject 3 was in the vehicle at the time of the shooting incident. Department resources revealed that Subject 3 was on juvenile probation for burglary and had an outstanding probation violation warrant.

Three days following the incident, FID personnel received an anonymous telephone call stating the name of the person involved in the shooting. The individual stated he saw the person running away, armed with a handgun and he appeared to have been shot. The caller also stated that the person was staying with his girlfriend at a remote location.

Utilizing Department resources, FID personnel were able to follow-up on an anonymous tip to identify Subject 1 as a male, 28 years of age, residing at a particular address. It was also discovered that Subject 1 matched the description of the outstanding subject involved in the OIS. Detectives discovered that Subject 1 was paroled after serving time for robbery and possession of a firearm. Subject 1 had just been arrested in another county for driving under the influence; however, he was no longer in custody. Three days after the incident, an arrest warrant for a parole violation was issued for Subject 1. Further investigation revealed that Subject 1 was residing in another state.

Four days after the incident, Subject 3 was located and detained by the joint task force for her warrant while exiting an apartment. Subject 3 was transported to the police station for her juvenile probation violation. She waived her Miranda rights and was questioned regarding the shooting and denied being present, stating she only heard about the incident. After speaking with her father, who had responded to the station, she subsequently admitted to detectives she was in the vehicle at the time of the shooting. Subject 3 denied knowing who the shooter was or his whereabouts, and was detained at a juvenile hall on her juvenile probation violation warrant.

A week following the incident, an out-of-state task force comprised of personnel from various local, state and federal agencies, served a search warrant at the location where Subject 1 was taken into custody. Subject 1 was discovered to have sustained what appeared to be prior gunshot injuries to his abdominal area. Subject 1 was subsequently treated by local paramedics and then transported to a federal law enforcement agency office.

Subject 1 was monitored by outside agency Officer A and Agent H. While awaiting the arrival of FID detectives and federal agents, Subject 1 made spontaneous statements regarding the shooting incident with respect to this incident to Agent H. Subject 1 admitted to shooting at Officer A and Agent B, not realizing they were "cops." Subject 1 further stated that he could have killed them the first time he saw them on the corner.

Upon arrival of FID detectives and additional federal agents, Subject 1 was taken to a local hospital for a medical examination and was subsequently released. Subject 1 was then booked for a parole violation warrant.

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 Officer A's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting

The BOPC found Officer A's drawing and exhibiting to be in policy, no further action.

C. Lethal Use of Force

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

Basis for Findings

A. Tactics

In this instance, Officer A broadcast a request for "Assistance" rather than "Help." In explaining his rationale, Officer A indicated that he did not want to be "teased" by fellow officers. It would have been prudent for Officer A to have requested help while he remained focused on apprehending the fleeing subjects rather than being concerned about his peers' perception regarding his radio broadcast. Broadcasting the appropriate request allows the responding units to properly prepare and equip themselves to handle the situation prior to their arrival.

The BOPC assessed Officer A's logic and reasoning for requesting "Assistance" rather than "Help" and took into consideration that an officer with similar training and experience would reasonably perceive an "Officer Needs Assistance" broadcast requires an immediate response consistent with a "Help" call.

In conclusion, although Officer A did not broadcast the appropriate request, the deviation was not substantial in that it did not delay the emergency response of additional personnel resources.

In addition, the investigation revealed that the uniformed patrol officers assigned to assist in the surveillance were not present during the operational briefing. Although they were not going to take an active role in the operation, after determining their presence would be beneficial, they should have been present for the briefing.

Finally, it was noted that information critical to the operation was not disseminated to all involved personnel due to the different communication devices utilized by each unit. Therefore, having all units equipped with Department-issued handheld radios and utilizing them at this time would have been beneficial, keeping everyone informed of the unfolding situation.

After a thorough review of the incident, the BOPC determined that the identified tactical concerns neither individually nor collectively substantially deviated from approved Department tactical training. Therefore, 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 with the objective of improving overall organizational and individual performance. The BOPC directed that Officer A attend a Tactical Debrief and that the specific identified topics are covered.

B. Drawing/Exhibiting

In this instance, Officer A was seated in his vehicle when the subjects' vehicle approached him and Agent B at a slow rate of speed. Officer A observed that the occupants of the vehicle were focused on him and Agent B. Based on the totality of the circumstances, Officer A believed that the situation could escalate to a use of lethal force situation.

Officer A told his partner that they were about to be involved in a shooting. He reached down, unholstered his weapon, and turned his body towards the driver's side window or door and took up a low-ready shooting position inside the vehicle. He had his gun below the door panel so that it wouldn't be seen through the glass of the vehicle in kind of a low-ready position because he felt that something wasn't right about the way he and Agent B were being approached.

Based on 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 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 Officer A's Drawing/Exhibiting to be In Policy, No Further Action.

C. Lethal Use of Force

In this instance, as Subject 1 stepped out from the subjects' vehicle and pointed a handgun at him, Officer A feared for his safety and the safety of his partner, thinking that he was about to be shot or killed sitting in the driver's seat of the vehicle. He raised his gun above the door panel and fired through the driver's side window of the vehicle in the subject's direction, in an attempt to stop what he perceived as the threat of Subject 1 shooting he and his partner.

Subject 1 appeared startled and stopped moving toward Officer A but continued to point the handgun toward Officer A. Officer A indicated he could see muzzle flash and hear the bang from his firearm as he was shooting at Subject 1. After firing his first two shots, Officer A noticed that the subject appeared to be startled and he paused, still pointing his gun in his direction.

Upon observing that Subject 1 was still standing and armed with a handgun, Officer A continued to fire as Subject 1 began to flee from the location while turning and pointing his handgun at Officer A and Agent B. Officer A did not believe Subject 1 was "down," so he fired two more rounds. It appeared that he was startled and kind of paused. Officer A fired two more rounds and then turned, ducked down and almost stumbled and fell and turned. He turned his body to the left, took a couple of steps and then immediately turned back toward Officer A while holding the gun in his right hand.

An officer with similar training and experience as Officer A would reasonably believe that Subject 1's actions of advancing toward them while pointing a handgun in their direction, then fleeing while continuing to point the handgun in their direction, represented an imminent threat of serious bodily injury or death and that the use of lethal force would be a reasonable option. Therefore, the BOPC found Officer A's use of lethal force to be objectively reasonable and In Policy, No Further Action.