

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

OFFICER-INVOLVED SHOOTING 035-12

Division	Date	Duty-On (X) Off ()	Uniform-Yes () No (X)
Southeast	5/23/12		

Officer(s) Involved in Use of Force	Length of Service
Officer A	7 years, 5 months
Officer B	7 year, 1 month

Reason for Police Contact

Officers working in a plainclothes capacity observed three subjects walking down the street. One subject was carrying a gun and pointed it at the officers. A categorical use of force occurred.

Subject	Deceased ()	Wounded ()	Non-Hit (X)
Subject 1: Male, 18 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 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 April 23, 2013.

Incident Summary

Officers A and B were working in a plainclothes capacity, wearing blue Los Angeles Police Department (LAPD) raid jackets over their clothing. Officer A was driving an unmarked green police vehicle and Officer B was seated in the front passenger seat. Both officers were equipped with their duty weapons, handcuffs and Department radios. Officer B had two additional magazines of ammunition. The officers were not wearing ballistic vests.

Officers A and B were searching for a male robbery subject known to frequent a particular area. The officers concluded their search of the area and were returning to the station to complete their work day. As Officer A was driving down the street, both officers separately observed two males and a female walking on the sidewalk. Both officers looked at the males closely in order to determine if one of them was the wanted robbery subject. Both officers separately recognized one of the males as Subject 1, a local gang member, known to them by a particular moniker. The officers had several previous contacts with him, including the arrest of an associate for possession of a firearm, where he was present. The other two individuals were later identified as his brother and sister, Subjects 2 and 3.

As the officers continued looking at Subject 1, he looked at the officers and established eye contact. Officer B believed that Subject 1 recognized the officers from previous contacts. Officer A stated that Subject 1 was looking at the officers very intensely. Subject 1 stated that the officers were staring at him and he believed that they were rival gang members who wanted to fight him. Subject 1 also stated that he saw the driver of the vehicle (Officer A) with his hand on his gun as he drove by.

Note: Although Subject 1 stated he could see Officer A with his hand on his gun, he stated he could not see the raid jackets being worn by the officers. Subject 1 further indicated he could not see what the passenger was wearing; however, he stated that the driver was wearing what he believed to be a blue jacket.

While the officers continued, in the middle of an intersection, Subject 1 reached to his waistband as he was crossing the intersection. Officer B observed Subject 1 grabbing his waistband as though he was trying to grab something; he believed Subject 1 was armed with a firearm trying to grab it or pull it out to use it on the officers. Officer A also believed that Subject 1 had a weapon. Subject 1 stated that since he believed that the officers were gang members who were about to attack him, he reached to his waistband to retrieve his pistol. Subject 1 later acknowledged his belief that the officers saw the pistol.

Note: Subject 1 was armed with a semiautomatic pistol. The pistol was loaded with one live cartridge in the chamber and 5 additional live cartridges in the inserted magazine. During the render safe procedure later performed by LAPD's Scientific Investigation Division (SID), it was

noted that the magazine was not fully inserted into the magazine well, and the safety was in the down, or off position.

The officers continued, passing Subject 1. Officer B turned his head to continue watching Subject 1's actions. Officer A verbally communicated to Officer B that he believed Subject 1 was armed with a gun, then slowed and negotiated a U-turn with the vehicle. Officer A stated that he made the U-turn in order to avoid being shot from behind by Subject 1. As Officer A was completing the turn, Officer B made a broadcast to Communications Division (CD), indicating that the officers had arrived at the location.

Note: With regard to the communication between the officers, Officer B recalled Officer A saying, "He's got it. He's got it. He's got it." Having worked together for years, Officer B understood this statement to mean that Subject 1 had a firearm.

During the U-turn, Officer B observed Subject 1 still clenching and grabbing at his waistband, trying to take out his firearm. It seemed like the Subject had it either too far down his pants or maybe it got stuck on his belt because the Subject was pulling on it hard and his hand continued to stay at his waistband. Subject 1 also kept looking at the officers.

Officer A, believing that Subject 1 had identified him and his partner as police officers, noted his surprise that Subject 1 had not taken off running, which would be typical of individuals who are armed with handguns. Officer A completed the U-turn and brought the police vehicle to a stop. He exited his vehicle and moved towards Subject 1. Believing that Subject 1 was about to fire at him and his partner, he unholstered his service pistol and acquired a two-hand grip. He described Subject 1 as still moving at an accelerated pace while pulling a handgun from his right waistband. Officer A ran diagonally across the street to get away from the vehicle because he believed the vehicle provided a large target for Subject 1 and did not provide him cover.

Officer A yelled to Subject 1, "LAPD! Drop the gun!" Subject 1's right arm, with gun in hand, was pointed toward Officer A. Officer A believed that Subject 1 intended to shoot him and his partner, causing them serious bodily injury or death. Officer A obtained a sight of Subject 1's upper torso and fired two rounds. Subject 1 responded by crouching down in what Officer A believed was an attempt to obtain cover from the rounds. Subject 1's gun was still pointed at Officer A, so he fired another round at Subject 1's upper torso. Subject 1 then dropped his handgun next to his right side and lay down on the ground.

Note: An examination of Officer A's pistol and physical evidence at scene indicated that he fired a total of four rounds. Officer A did not recall firing the fourth round.

Officer B described that, as the officers completed the U-turn and came to a stop, Subjects 1, 2 and 3 had all crossed the street, continuing north. Subject 1 came to a

stop and faced toward the other direction, waiting for the officers. With his right hand, Subject 1 was trying to pull out a firearm from his waistband. Officer B exited the vehicle thinking that if there was any doubt in the Subject's mind, once he saw the officers' blue (LAPD) jackets he would know they were law enforcement. Officer B unholstered his service pistol as he opened his door and exited the vehicle. He was unsure whether he used a one or two-hand grip, but recalled that his right index finger was along the frame. He utilized the vehicle door and engine block as cover and yelled "Police" to Subject 1, who had crouched down, drawn a pistol and was pointing it at Officer B. Officer B believed that Subject 1 was going to try to kill him, so in defense of his life, he believed he fired two rounds at Subject 1. Officer B targeted Subject 1's upper torso. Subject 1 responded by dropping his handgun and lying on the ground.

Note: An examination of Officer B's pistol and physical evidence at the scene indicated that he fired one round.

Subject 1 stated that when the police vehicle stopped and the doors opened, he removed his pistol from his waistband and pointed it at both men who exited. Subject 1 believed that the officers were gang members who were going to try to kill him and that he was going to shoot them. When the officers fully exited the vehicle, Subject 1 saw that the blue jackets the officers were wearing said "Police," so he dropped his handgun. Subject 1 then lay on the ground, but the officer who exited the driver's side of the vehicle began shooting at him. Subject 1 stated that the passenger officer did not shoot. Subject 1 further indicated that after the officer stopped firing, he yelled to Subject 1, "Get on your knees!"

Note: Subject 1 indicated that the officers did not issue any verbal commands before the driver officer (Officer A) fired his weapon. Witness A was standing on the sidewalk looking inside her vehicle when she heard someone yelling, "Get to the ground." She then heard gunshots, which caused her to turn and look at the unfolding incident. Witness A further stated she heard, "Drop the -- Get down on the ground." And then heard, "pow, pow."

After the rounds had been fired and Subject 1 lay on the ground, Officer B moved across the street in order to cover Subject 1. As he did so, he made a broadcast to CD: "Don't Move!...[S]how us shots fired officer needs help... Get down on the ground!"

As a result of the commands from both officers, Subjects 1 and 2 lay on the sidewalk. Subject 3 had run north and moved between two parked cars, where she was screaming. Officer B had his service pistol drawn at a low ready, covering both Subjects 1 and 2 as Officer A moved toward Subject 1 to handcuff him. Officer B placed his foot on Subject 1's handgun, which was approximately five feet away from Subject 1's right foot, in order to control it. Officer A holstered his service pistol and told Subject 1 to put his hands behind his back. Officer A handcuffed the compliant Subject 1 and performed a pat down search for additional weapons.

After handcuffing Subject 1, Officer A unholstered his service pistol again and moved toward Officer B. He asked Officer B where his handcuffs were and retrieved them from his rear belt loop. Officer A then moved to handcuff Subject 2 while Officer B continued to cover him. Officer A holstered his pistol and handcuffed Subject 2 behind his back. As he was doing so, Police Officers C and D arrived at scene and broadcast accordingly.

Officer B broadcast to CD, “[W]e are going to have the su[bj]ect in custody.”

Officer A informed Officers C and D about Subject 3, who was behind a parked car near where he was standing. Officer D observed movement behind the car and then a left foot appeared. Officer D unholstered his service pistol, held it at a low ready with his index finger along the frame and moved around the front of the car to the street. When he approached the rear of the car, he observed Subject 3 with a gunshot wound to her right foot. Subject 3 was rolling on the ground in pain from the injury and asked Officer D if her brother was okay. Officer D ordered her to show him her hands and she complied. Officer C, standing behind Officer D, requested an ambulance for Subject 3.

Additional units began to arrive at scene, including the first responding supervisor, Detective A. Detective A arrived at scene and determined that both Officers A and B had been involved in an OIS. Detective A separated both officers and obtained Public Safety Statements (PSS) from each.

In Officer A’s PSS, he stated he fired two or three shots in a northwest direction. Officer A also stated that his partner had fired rounds and that he did not believe Subject 1 had fired. Officer A pointed to Subject 1’s handgun as the only evidence to be secured. Officer A went on to state that when he and Officer B had attempted to stop Subject 1, he had retrieved the gun and pointed it at them.

In Officer B’s PSS, he stated he fired two or three shots in a northwesterly direction. He also stated that Officer A had fired shots and that he did not believe that Subject 1 had fired. Officer B also pointed out Subject 1’s handgun as the only evidence.

Detective A ordered both officers not to discuss the incident and directed them to be monitored by other supervisors. Force Investigation Division Detective B, reviewed all documents and circumstances surrounding the separation, monitoring and the admonition not to discuss the incident to officers prior to being interviewed by FID investigators. All protocols were complied with and were properly documented.

Los Angeles Fire Department (LAFD) personnel arrived on scene and treated Subject 3. Paramedics transported her to a local hospital in stable condition with her only injury being a gunshot wound to her right foot.

Force Investigation Division Detective C filled out an LAPD Arrest Report for Assault with a Deadly Weapon on a Police Officer, naming both Officers A and B as victims and

Subject 1 as the subject. Subject 1 was arrested and booked for California Penal Code (PC) Section 245(D)(2).

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 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 made the following findings.

A. Tactics

The BOPC found Officers A and B's tactics to warrant administrative disapproval.

B. Drawing/Exhibiting

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

C. Lethal Use of Force

The BOPC found Officer E's use of lethal force to be in policy.

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC identified the following tactical considerations:
 1. Body Armor

In this instance, Officers A and B were investigating a recent robbery and were searching the area for a subject; an activity likely to result in enforcement contact. Officers A and B were not wearing their body armor.

Although the BOPC was pleased that the officers were wearing identifiable clothing, officer safety is the BOPC's paramount concern. With that said, the officers' decision not to wear body armor while actively searching for a robbery

subject substantially and unjustifiably deviated from approved Department tactical training.

2. Foot Pursuits – Utilizing Cover

Once the U-turn was completed, Officer A stopped and exited his vehicle then left the cover afforded by his vehicle and approached Subject 1 while issuing commands to “drop the gun.”

In reviewing Officer A’s actions, the BOPC noted that prior to exiting his vehicle and electing to pursue Subject 1, Officer A observed Subject 1 reaching for his waistband and the butt of a handgun in his waistband. Additionally, when asked if he had a destination in mind when he pursued Subject 1, Officer A stated that he was trying to close the distance between himself and the Subject. When asked if he had cover available to him as he was crossing the street, Officer A stated, “No.”

Although the foot pursuit was a relatively short distance (approximately 65 feet) prior to the initial OIS, Officer A’s decision to move from a position of limited cover provided by his vehicle (coupled with the absence of a ballistic vest) and advance toward the threat presented by Subject 1, placed him at a significant tactical disadvantage.

Based on the totality of the circumstances, the BOPC found that Officer A’s actions substantially and unjustifiably deviated from approved Department tactical training.

- The BOPC additionally considered the following:

1. Foreground/Background

Here, the officers fired their service pistols and a person other than the intended target was struck by their gunfire. In evaluating the officers’ actions, the BOPC took into consideration that the officers were confronted with an imminent threat of serious bodily injury or death and when they discharged their service pistols. Moreover, both officers articulated that they were acting in defense of their lives based on Subject 1’s act of pointing a handgun at them.

During immediate defense of life scenarios, officers are forced to make split second decisions under extremely stressful circumstances. The BOPC carefully evaluated the circumstances of this incident and in this case, foreground/background became a secondary consideration.

2. Preservation of Evidence

Officer B stepped on Subject 1's handgun while Officer A handcuffed Subject 1. Officer B is reminded of the importance of preserving evidence used in the crime and the possibility of an accidental discharge resulting from stepping on the firearm.

3. Crime Scene Preservation

A review of the Digital In-Car Video System (DICVS), showed several officers walking through the crime scene after Subject 1 was taken into custody. Captain A informed the UOFRB that he had provided training to the Area personnel regarding the necessity to enter crime scenes and will continue to emphasize the importance of limiting access to crime scenes in order to preserve evidence and avoid potential contamination.

4. Tactical Use of Profanity

The FID investigation revealed profanity may have been used during the incident. When asked if he used profanity, Officer B recalled that he could have done.

The BOPC evaluated the officers' actions and determined that in this case, the use of profanity was reasonable due to the fact that it was utilized to emphasize the importance of complying with the officers' orders.

5. Awaiting Additional Resources

In this instance, Officers A and B elected to take Subjects 1 and 2 into custody prior to the arrival of additional resources. In order to maintain a tactical advantage while confronting multiple potentially armed subjects, it is preferred that officers maintain a position of cover and await the arrival of additional personnel prior to approaching the subjects in order to take them into custody.

6. Securing Arrestees

In reviewing the in-car camera video, Subject 1 can be seen on the sidewalk face down in a prone position for approximately nine minutes after he was taken into custody. Based on the totality of the circumstances, the BOPC would have preferred that Subject 1 had been stood up and placed into a police vehicle after a thorough pat down search had been completed.

- 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.

The BOPC conducted an objective assessment of this incident and remained focused on ensuring an equitable outcome based on the role and responsibility of the significantly involved personnel. The UOFRB was critical of the tactics employed by the aforementioned personnel and the BOPC concurred with the Chief's recommendation that their actions unjustifiably and substantially deviated from approved Department tactical training and warranted administrative disapproval.

B. Drawing/Exhibiting

- In this instance, Officers A and B were driving on the street, when they observed the Subject grab his front waistband area. Officers A and B communicated to each other that Subject 1 was grabbing his waistband. Believing the situation could rise to the level where lethal force would be justified, Officers A and B drew their service pistols as they exited the vehicle.

Officer B recalled that Subject 1 was facing the officers and towards their vehicle, with his hands inside his waistband and trying to pull out the firearm with his right hand. Officer B believed Officer A was already putting the vehicle in park as he was opening his door and simultaneously drawing his weapon.

Officer A recalled that as he put the vehicle in park, Subject 1 was trotting away from the officers as Subject 1 was also pulling a handgun from his waistband. Officer A immediately exited the vehicle and drew his weapon, believing that his and his partner's lives could be in danger and the situation could escalate to deadly force.

Officer A holstered his service pistol as he approached Subject 1 to take him into custody while Officer B provided cover. After Subject 1 was handcuffed, Officer A drew his service pistol a second time as he approached Subject 2.

Officer A didn't know if Subject 1 was armed or not since he knew there was at least one gang member. He also believed that more than likely there was a second gang member who also had a gun. Officer A covered Subject 1 until he got to what he believed to be a secure position for Officer A to handcuff him.

Based on the totality of the circumstances, the BOPC determined that officers with similar training and experience as Officers A and B and 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 at the time Officers A and B drew their service pistols.

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

C. Lethal Use of Force

- **Officer A** – (pistol, four rounds)

First Sequence of Fire - two rounds, from a distance of approximately 75 feet.

Officer A exited the vehicle and gave orders to Subject 1. Officer A started to run at an angle toward Subject 1 but feared for his life when Subject 1 pointed his handgun at him. As a result, Officer A fired two rounds at Subject 1. Officer A recalled verbalizing to Subject 1, “LAPD, LAPD, drop the gun. Drop the gun,” but also had seen Subject 1’s hand coming out and a handgun pointing back in his direction and believed Subject 1 was going to shoot him or his partner. Since the gun was pointed at him, and Officer A had already announced his presence as a police officer, he was clearly dressed in a blue police raid jacket, Subject 1’s actions had not ceased and the gun was pointed at him, Officer A believed that Subject 1 was going to shoot one of the officers.

Second Sequence of Fire – two rounds, from a distance of approximately 65 feet.

Immediately following his first sequence of fire, and while still advancing toward Subject 1, Officer A observed Subject 1 crouched down slightly while he continued to point his handgun in Officer A’s direction. In response, Officer A fired two additional rounds at Subject 1.

Note: Officer A only recalled firing one round during his second sequence of fire. However, based on the physical evidence such as his magazine count and the location of the shell casings, the investigation revealed he in fact fired two rounds during the second sequence of fire.

Given that the gun was still pointed in Officer A’s direction, even though Officer A was still verbalizing, “Drop the gun,” Officer A fired another round.

Based on the totality of the circumstances, an officer with similar training and experience as Officer A would reasonably believe that Subject 1’s action of pointing a handgun at him presented an imminent threat of death or serious bodily injury and that the use of lethal force would be justified.

In conclusion, the BOPC found Officer A’s use of lethal force to be in policy.

- **Officer B** – (handgun, one round)

In this instance, Officer B exited his vehicle and took cover behind his passenger door. Officer B observed Subject 1 arm himself with a handgun and point it at him. In response, Officer B fired one round at Subject 1.

Officer B recalled exiting the vehicle and thinking that if there was any doubt in the Subject's mind once he saw the officers' blue raid jackets, he would know that they were law enforcement. Subject 1 couched down and was still bent at the knees and continued to have his hand underneath his waistband, fidgeting near his waistband. He pulled out a blue steel handgun and pointed it towards the officers. Officer B saw the firearm pointing straight at him and thought Subject 1 was going to try to kill him. In defense of his life he fired two rounds at Subject 1. Officer B saw Subject 1 drop the firearm right in front of him.

Note: Officer B stated he fired two rounds during this incident. However, based on the physical evidence such as his magazine count and the location of the shell casings, the investigation revealed he only fired one round.

Based on the totality of the circumstances, an officer with similar training and experience as Officer B would reasonably believe that Subject 1's actions represented an imminent threat of serious bodily injury or death and that the use of lethal force in order to stop the threat would be reasonable.

In conclusion, the BOPC found Officer B's use of lethal force to be in policy.