

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

**OFFICER-INVOLVED SHOOTING AND K-9 CONTACT  
REQUIRING HOSPITALIZATION – 039-12**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
77 <sup>th</sup> Street	06/06/12		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Officer A	5 years, 4 months

**Reason for Police Contact**

Officers attempted to stop two subjects in a stolen vehicle. One of the subjects fled on foot and reached for his waistband, resulting in an officer-involved shooting. The Subject sustained a dog-bite injury when he was located during a subsequent K-9 search.

<b>Subject</b>	<b>Deceased ( )</b>	<b>Wounded (X)</b>	<b>Non-Hit (X)<sup>1</sup></b>
Subject: Male, 50 years of age.			

**Board of Police Commissioners' Review**

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

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on May 7, 2013.

<sup>1</sup> Subject 1 was not hit by gunfire, but was injured as a result of the K-9 contact.

## Incident Summary

Uniformed Officers A and B were driving a black and white police vehicle. Officer A was wearing a ballistic vest and carried a .45 caliber semiautomatic pistol, two extra magazines, oleoresin capsicum spray, one pair of handcuffs, a radio on his equipment belt and a flashlight in his left rear pants pocket.

Officer A was driving on the street when he observed a black compact sedan driving in the opposite direction. The black sedan turned right without signaling, a violation of the California Vehicle Code (CVC). The driver was Subject 1, a male, 50 years, and the passenger was Subject 2, a male, and 61 years. Officer A intended on following and citing Subject 1 for the traffic violation, but Subject 1 immediately stopped along the curb.

Officer A turned left and stopped, off-set to the left, behind the black sedan as Officer B queried the vehicle's license plate via the Mobile Digital Computer (MDC). The officers received information, via the MDC, that the car was stolen and both officers exited to conduct a high-risk stop. With a surprised look, Subject 1 looked back toward the officers. Within two or three seconds, Subject 1 drove away down the street.

**Note:** According to Subject 1, he stopped at the curb and took a "hit" of rock cocaine when he observed the police car stop behind him. Because rock cocaine makes him paranoid, he panicked and drove away. According to Subject 2, after they drove away, he heard an officer say, "Stop! Pull over!"

The officers re-entered their car, and Officer A followed Subject 1 and activated the police vehicle's emergency lights and siren. As Officer B prepared to broadcast the officers were in pursuit of a stolen car, Subject 1 abruptly stopped the car in the middle of the roadway. Subject 1 immediately exited the driver's door and ran. Officer A intended on stopping behind Subject 1, but Officer A partially drove past the black sedan on the passenger side to where the driver's door was. Officer A exited and ran in front of the black sedan and, through his peripheral vision, observed Subject 2 in the front passenger seat with his hands raised as if he was surrendering.

As he ran after Subject 1, Officer A yelled at Officer B to stay with Subject 2. Officer B exited, drew his pistol and moved along the passenger side to the left side of the police car's rear bumper. Officer B aimed his pistol at Subject 2 and ordered him not to move, to raise his hands and to stay in the car. Subject 2 raised his hands and calmly responded that he was staying there. Officer B moved back to the police car's right rear wheel well to take cover. Officer B held his pistol in his right hand in a low-ready position and removed his radio with his left hand. Officer B issued a broadcast for a back-up and a perimeter.

According to Officer A, his intent was to verify Subject 1's direction of travel, to establish a perimeter and ensure that Subject 1 could not double-back on himself and Officer B.

Subject 1 ran to the sidewalk and past two houses. Subject 1 then veered through a front yard to a north/south driveway located on the side of a residence. Officer A was ten to 15 yards behind and followed Subject 1's same basic path. As Subject 1 ran in the driveway of the location, Officer A yelled, "Stop! Police!"

Subject 1 ran to a six-foot-high chain-link fence located along the southern property line that separated the rear parking area from a vacant lot. Subject 1 went into the vacant lot through a one to two foot wide opening between two separated fence sections. Officer A followed Subject 1 through the fence and stopped midway through the vacant lot, where he had no cover or concealment. Officer A yelled for Subject 1 to stop as he (Subject 1) climbed over a second six foot high chain-link fence topped with loose strands of barbed wire located along the south side of the vacant lot. With his back toward Officer A, Subject 1 responded, "Shoot me, I don't care!"

Once on the opposite side of the fence, Subject 1 faced Officer A and stated, "I'm going to kill you!" Subject 1 reached both hands to the outer portion of an un-tucked, oversized white t-shirt that concealed his waistband. Because of Subject 1's statement that he was going to kill Officer A, combined with his reaching into his waistband, Officer A thought that Subject 1 was going to attempt to shoot him.

**Note:** Officer A did not observe a firearm, and no firearm was recovered during the subsequent investigation.

Because Officer A believed Subject 1 was arming himself with a gun when he reached to his waistband, he drew his pistol with his right hand. Officer A aimed at Subject 1's center torso and, from an approximate distance of 20 feet, Officer A fired once. Subject 1 said, "ouch," turned and ran along the side of the residence located and out of Officer A's sight.

**Note:** Subject 1 was not struck by the officer's round.

**Note:** Officer A later advised that Subject 1 had reached toward his front waistband for "a moment or seconds." Officer A fired only one round because Subject 1 was no longer facing in his direction and had fallen onto his back.

**Note:** Witness A told investigators that Subject 1 had just scaled the fence when he (Witness A) heard a gunshot.

Officer A broadcast, "Shots fired, officer needs help! Subject's running [...] through the houses..."

Meanwhile, Officer B observed a black and white police car containing Officers C and D driving toward him. Since Subject 2 was cooperative, and because he wanted to rejoin Officer A, Officer B moved along his police vehicle's rear bumper toward the black

sedan's passenger door and ordered Subject 2 to exit. Officer B holstered his pistol and quickly searched and handcuffed Subject 2.

As Officer B walked Subject 2 toward the sidewalk, he heard a gunshot. Officer B directed Subject 2 to sit on the curb and gave control of Subject 2 to Officers C and D. Because he heard a gunshot, Officer B drew his pistol and held it in his right hand down along his right leg as he ran on the driveway. Officer C searched Subject 2, ensured the handcuffs were double locked and placed him in the backseat of the police car.

Officer B broadcast for a perimeter while Officer A broadcast, "Airship, right here [...] Southbound from my location, white shirt blue jeans. Shots fired, officer needs help."

Officer B located Officer A. Because Officer A was pointing his pistol and was talking rapidly, Officer B believed that Officer A was distraught and upset. Officer B asked Officer A if Subject 1 had shot at him, and Officer A nodded.

A perimeter was established and K-9 units responded to search for Subject 1.

A pre-programmed K-9 search announcement was broadcast via a police car's PA system, in both English and Spanish. An air unit also gave the K-9 search announcement in English, via its PA system.

After waiting four to five minutes, the team, with the K-9 working off-leash, moved to a residential property close to the approximate area where Subject 1 was last seen running. Because the property had several parked vehicles in the dark driveway, and the area was obstructed by overgrown bushes, the K-9 handler directed the K-9 to search the front yard. The K-9 ran across the front yard and then along the side of the driveway, between the house and vehicles. The K-9 handler lost sight of the K-9 in the darkness and seconds later, he heard a scream and believed the K-9 had located Subject 1.

The K-9 was trained to bite and hold a subject, and because Subject 1 was believed to be armed, the K-9 handler decided to leave the K-9 on Subject 1 until he could determine Subject 1's exact position.

Subject 1 was located underneath a vehicle. The K-9 handler ordered Subject 1 several times to stand up. Subject 1 used his left arm to slide out from underneath the vehicle. The K-9 maintained control of Subject 1's right forearm and Subject 1's left fingers were underneath the K-9's leather collar. The K-9 handler observed that Subject 1 was not holding a gun and called the K-9 off, but since Subject 1 was holding his collar, the K-9 could not return.

The K-9's front paws were off of the ground and it appeared that Subject 1 was choking him. The K-9 handler ordered Subject 1 to release the K-9 and to raise his hands. After several commands, Subject 1 released the K-9's collar and raised his hands and the K-

9 released Subject 1's right forearm. The K-9 handler took control of the K-9 and Subject 1 was taken into custody.

A Rescue Ambulance (RA) was requested for Subject 1.

Subject 1 was treated for canine bite wounds at scene by Fire Department personnel. The RA then transported Subject 1 to a local hospital.

Subject 1 was treated for bite wounds to his right forearm and was admitted 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 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 Officer A's tactics to warrant administrative disapproval. The BOPC found Officer B's tactics to warrant a Tactical Debrief.

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

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

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

By a vote of 3-2, the BOPC found Officer A's use of lethal force to be out of policy.

#### **D. Deployment of K-9**

The BOPC found the deployment of a K-9 to be consistent with established criteria.

## **E. Contact of K-9**

The BOPC found the contact of a K-9 to be consistent with established criteria.

## **F. Post K-9 Contact Procedures**

The BOPC found the post-contact K-9 procedures to be consistent with established criteria.

## **Basis for Findings**

### **A. Tactics**

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

#### **1. Code Six and Requesting Additional Resources**

In this instance, the officers did not initially broadcast their status and location to Communications Division (CD) when they stopped to the rear of the subjects' vehicle. The BOPC determined that Subject 1's actions resulted in a rapidly unfolding tactical scenario that required that quick and decisive police action be taken.

Although the expectation is that officers communicate their code-six location and their actions to ensure other officers are aware of their location, this is based on the facts and circumstances of the contact. When sufficient time reasonably exists for a broadcast to be made without shifting critical attention from the subject(s), the broadcast should be made. However, the primary concern is that officers maintain focus on tactical concerns and make the broadcast as soon as reasonable under the circumstances. With that in mind, the BOPC determined that the fluid nature of the incident and associated tactical concerns warranted a delay in the initial broadcast.

The BOPC concluded that the delay in the initial code-six broadcast, in this specific case, did not represent a substantial deviation from approved Department tactical training.

#### **2. Police Vehicle Deployment**

In this instance, Officer A intended to stop behind the subjects' vehicle, but was unable to stop until he had partially passed the passenger side of the vehicle. When the police vehicle came to rest, the rear passenger door of the police vehicle was in front of the front bumper of the subjects' vehicle, thereby placing the officers at a tactical disadvantage.

The BOPC evaluated the circumstances surrounding the vehicle deployment and determined that although it substantially deviated from approved Department tactical

training, it was justified. Officers are forced to maintain a balance between the reasonable likelihood of the apprehension of the suspect and the welfare of the community in general. As this pertains to vehicle pursuits, officers are forced to make a quick judgment as to an appropriate distance to maintain from the pursued vehicle. The goal is to maintain a distance that affords the ability to react to the progress of the pursuit and observe any evidence that may be discarded while also ensuring the pedestrian and vehicle traffic are aware of the approaching pursuit.

Here, the subjects' vehicle had just pulled from the curb of a residential street and fled at a high rate of speed. Thus, Officer A was forced to establish a distance wherein these concerns, which at times seem to conflict, are sufficiently addressed. Therefore, although the position of the police vehicle at the time it stopped was not ideal, it was a consequence of maintaining a balance between the competing tactical concerns and the reaction time required to respond to the movements of the pursued vehicle. The nature of vehicle pursuits makes this type of occurrence unavoidable at times.

Based on the totality of the circumstances, the BOPC found that Officer A's tactical driving and ultimate vehicle positioning substantially deviated from approved Department tactical training, with justification.

### 3. Foot Pursuits

Officer A exited the police vehicle and ran in front of and alongside the subjects' un-cleared vehicle. According to Officer A, when he elected to pursue Subject 1, his intent was to verify Subject 1's direction of travel in order to establish a perimeter and to ensure that Subject 1 could not double back on him and Officer B. However, once Officer A followed Subject 1 in the driveway, he was out of view of Officer B, effectively separating from his partner. Additionally, when Officer A continued to pursue Subject 1 as he fled to the rear of the residence, and continued through an opening in a chain link fence and into a vacant lot, which provided no form of cover or concealment, his actions would be more consistent with apprehension rather than containment.

In evaluating the officers' actions, the BOPC took into consideration that this incident was rapidly evolving and required the officers to make split second decisions while balancing a rush of adrenaline resulting from Subject 1's unexpected actions. However, the BOPC was critical of Officer A's decision to pass the un-cleared vehicle and his pursuit of Subject 1 in a manner which was consistent with apprehension mode to the point where he lost sight of and separated from Officer B. These actions led to significant tactical disadvantages where both officers were confronting subjects without the benefit of having their partners available to render aid. Additionally, because of Officer A's actions, Officer B was forced to decide whether to abandon Subject 2, an unsearched felony subject, and follow Officer A thereby exposing his back to Subject 2, or to remain with Subject 2 and attempt to monitor

him until additional personnel could arrive and Subject 2 could be safely taken into custody.

The BOPC found that Officer A's actions substantially and unjustifiably deviated from approved Department tactical training. The BOPC determined that it was Officer A's actions that created the tactical disadvantages associated with this incident and caused Officer B to be confronted with a less than ideal tactical scenario wherein he was forced to confront a subject while alone. The BOPC found that Officer B's actions pertaining to the foot pursuit and separation did not represent a substantial deviation from approved Department tactical training.

#### 4. Tactical Approach/ Contact and Cover

In this instance, Officer B elected to take Subject 2 into custody without the benefit of a cover officer. When asked why he did not wait for additional personnel to arrive prior to taking Subject 2 into custody, Officer B responded that hearing a gunshot "changed everything." However, this depiction of events conflicted with additional statements made by Officer B that indicated he heard the gunshot during the process of taking Subject 2 into custody.

The BOPC acknowledged the discrepancies in the reported sequence of events and determined that the available evidence did not conclusively establish whether Officer B had started to remove Subject 2 from the vehicle before the shot was fired. Thus, it could not be determined to what extent, if any, the shot being fired influenced Officer B to remove Subject 2 from the vehicle before backup units arrived.

Nonetheless, tactical training emphasizes the necessity for officers to not separate and, in the event it occurs, priority must be given to making an attempt to reestablish contact with one's partner to ensure the ability to render aid as necessary.

Furthermore, consideration must be given to the fact that Subject 2 was compliant upon the initial contact with the officers and made his hands visible to Officer B. Officer B described Subject 2's demeanor as cooperative and that his hands were where he could see them.

In conclusion, the BOPC determined that Officer B's actions in this regard did not substantially deviate from approved Department tactical training.

- The BOPC additionally considered the following:

##### 1. Required Equipment

Officers A and B were not in possession of hobble restraint devices. Additionally, both officers left their side-handle batons in the police vehicle and were not in possession of collapsible batons.



## 2. Running with a Firearm

After hearing the “shots fired,” broadcast, Officer B ran with his service pistol to aid Officer A. Running with his service pistol in anticipation of facing a possible felony subject was reasonable based on the officer's belief that the situation may escalate to the use of deadly force. Although Officer B was not actively involved in a foot pursuit, he is reminded that running with a firearm can increase an officer's chance of having a negligent discharge.

## 3. Profanity

During a review of Officers A and B's Digital In-Car Video, it was determined that Officer B used profanity when giving a command to Subject 2.

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

- In this instance, Officers A and B were in a short pursuit of a stolen vehicle. Officer A then went into foot pursuit of the driver while Officer B remained at the stolen vehicle to detain the passenger.

#### **Officer B**

Officer B exited the police vehicle, drew his service pistol and held it at the low ready with his finger along the frame as he used the police vehicle for cover. When asked why he drew his service pistol, Officer B responded that the stolen vehicle provided a reason to believe the situation could escalate to serious body injury or death.

Officer B re-holstered his service pistol when he approached, searched and handcuffed Subject 2, then drew his service pistol a second time when he heard the single shot fired and ran toward the sound of the gunshot.

The BOPC determined that an officer with similar training and experience as Officer B, while faced with similar circumstances would reasonably believe that the situation may escalate to the point where deadly force may be justified. Similarly, it was reasonable for Officer B to believe the situation may escalate to the point where deadly force may be justified upon hearing and responding toward the sound of gunfire.

In conclusion, the BOPC found Officer B's drawing and exhibiting of a firearm to be in policy.

#### **Officer A**

According to Officer A, Subject 1 scaled a chain link fence, faced Officer A and stated that he was “going to kill” Officer A. Subject 1 then reached both hands to the outer portion of his un-tucked oversized white t-shirt that concealed his waistband. In response, Officer A drew his service pistol. Officer A recalled that in response to

his command to “stop,” Subject 1 said something to the effect of, “Shoot me. I don’t care,” and, “I’m going to kill you,” as he was climbing over the fence. Officer A ceased his foot pursuit and drew his firearm.

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.

In conclusion, the BOPC found Officer A’s drawing and exhibiting of a firearm to be in policy.

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

- **Officer A** (pistol, one round)

The BOPC found that the actions of Subject 1, as described by Officer A, did not constitute an objectively reasonable basis for a belief that Subject 1 posed an imminent threat of death or serious bodily injury. In particular, the BOPC noted that Officer A did not observe any weapon or potential weapon in the possession of the subject. As such, the BOPC found, by a vote of three to two, that the use of lethal force by Officer A was out of policy.

### **D. Deployment of K-9**

- In this instance, Sergeant D responded to the scene and received the following information: Subject 1 fled on foot, jumped over a fence, then possibly pointed a gun at an officer, resulting in an OIS. The subject continued running out of the officer’s view and a perimeter was established. It was unknown if Subject 1 was hit by the gunfire. Sergeant D appropriately determined that the circumstances met the K-9 search criteria and approved the K-9 deployment.

The investigation revealed that Subject 1 was at a location where the K-9 search announcement could have been heard; however, the names of the perimeter officers verifying the announcement was heard and understood were not documented in the K-9 Deployment Report. Although it appears the procedural requirement of documenting that the K-9 announcement was appropriately heard and understood was not conducted, the criteria for conducting the K-9 search was clearly consistent with the established standard for deployment.

The BOPC determined that the deployment of the K-9 was consistent with established criteria.

### **E. Contact of K-9**

- After the K-9 search announcements were given, the team waited approximately four to five minutes. The K-9 handler then initiated the search by letting the K-9 off

leash in close proximity to where Subject 1 was last seen running. The K-9 cleared the front yard then searched in the dark, narrow driveway.

Within seconds, the K-9 handler heard a scream and believed the K-9 had located Subject 1. The K-9 was trained to bite and hold a subject, and because Subject 1 was believed to be armed, the K-9 handler decided to leave the K-9 on the bite-hold until he could ascertain whether or not Subject 1 was armed. When the K-9 handler observed that Subject 1 was not in possession of a handgun he called the K-9 off; however, the K-9 could not return because Subject 1 maintained a grasp on the K-9's collar.

The K-9 handler ordered Subject 1 to release the dog. Once Subject 1 complied, the K-9 handler took control of the K-9, placing it back on leash.

The BOPC determined that the K-9 contact was consistent with established criteria.

#### **F. Post-Contact Procedures**

- Once Subject 1 was taken into custody, a Rescue Ambulance was requested.

The BOPC determined that the post-contact procedures were consistent with established criteria.