

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

HEAD STRIKE WITH AN IMPACT WEAPON 045-08

<u>Division</u>	<u>Date</u>	<u>Duty-On() Off(X)</u>	<u>Uniform-Yes() No(X)</u>
Hollenbeck	05/17/08		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Police Officer B	3 years, 5 months

Reason for Police Contact

Off-duty officer witnessed an assault and pursued the involved subject.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
Subject: Male, 22 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 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 April 21, 2009.

Incident Summary

Police Officer A was off-duty, in plain clothes, walking on a city street when he heard a person yelling. Officer A approached the wall of a building, peered around the corner, and observed Subject 1 leaning over Victim A, who was sitting on the ground with her back to the wall of the building. The Subject had both of his hands around the Victim's neck and appeared to be choking her. Officer A observed that the Victim A attempted to push the Subject away, but the Subject struck the Victim's face with his right hand.

Officer A then stepped partway from behind the wall and asked the Subject what he was going. The Subject looked up at Officer A, let go of Victim, and then ran away. Officer A verbally identified himself as a Los Angeles Police Department (LAPD) officer and ordered the Subject to stop and get on the ground. The Subject did not comply and continued to run as Officer A pursued him on foot.

As Officer A was running, he drew his pistol because he felt the incident might be related to a possible robbery, rape, or a violent felony that could escalate to the use of deadly force. As Officer A ran, he held his pistol in his right hand. Officer A did not observe a weapon in the Subject's hand; but saw that the Subject was running with his hands in front of his body.

Officer A caught up to the Subject two times and placed the palm of his left hand against the Subject's upper back. Officer A used his momentum and body weight to push the Subject to the ground. Officer A pointed his pistol at the Subject and verbally identified himself as an LAPD officer. Officer A ordered the Subject to stay on the ground, but the Subject, on two occasions, stood up and resumed running away.

Officer A again chased and caught the Subject. The Subject used his right hand to grab a hold of Officer A's wrist and his gun hand. The Subject attempted to pull the officer's gun away and gain control of it. According to Officer A, he feared for his life and safety, so he struck the Subject approximately four times in the head with the butt and barrel of his pistol. The Subject appeared dazed after he was struck. Witness A assisted Officer A and the Subject was rolled over onto his stomach. Officer A straddled the Subject and used his body weight to keep the Subject pinned against the ground.

Uniformed Officers B and Officer C were driving by and observed Officer A on top of the Subject. Officer B recognized Officer A, and subsequently assisted with the handcuffing of the Subject. A rescue ambulance responded and treated the Subject, who was then transported to the hospital for further treatment.

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 Administrative Disapproval.

B. Drawing/Exhibiting

The BOPC found Officer A's drawing/exhibiting to be in policy.

C. Lethal Use of Force

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

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered that:

1. Officer A took action while in an off-duty capacity.

Department policy instructs that an off-duty officer should act only after consideration of the tactical situation and of their possible liability and that of the City of Los Angeles.

In this instance, Officer A was off-duty when he encountered a subject choking the victim. Once Officer A gained the subject's attention, he immediately halted his attack on the victim and fled. Officer A's training and experience led him to believe that the Subject was attempting to either commit a robbery or rape.

Due to an officer's lack of available options and resources while in an off-duty capacity, in most circumstances it is preferred that officers refrain from taking enforcement action and instead, act as a good witness. In this case, the BOPC agreed that it was reasonable for Officer A to take action to safeguard the life of the victim.

2. Officer A gave chase with his pistol drawn.

Department Training instructs that running with a firearm in hand can increase an officer's chance of having an unintentional discharge. Officers should have their firearms holstered when involved in a foot pursuit. However, the drawing and exhibiting of an officer's firearm is based solely upon the officer's reasonable belief that the situation may escalate to the use of deadly force.

In this instance, Officer A observed an apparent violent felony in progress and drew his service pistol with the belief that the use of deadly force might become necessary.

Although there is a heightened concern for an unintentional discharge when an officer runs with his/her service pistol drawn, the tactical concerns associated with the reasonable belief that an incident could escalate to a use of deadly force takes precedence. Additionally, Officer A was equipped with an inside-waistband holster that had collapsed against his body once he drew his pistol. Expecting Officer A to continually draw and re-holster would not be reasonable under these circumstances and would increase the risk of an unintentional discharge.

Therefore, it was reasonable for Officer A to continue in the foot pursuit with his pistol drawn.

3. Officer A attempted to apprehend the Subject.

Department Training instructs that officers should not attempt to close the distance or run directly behind a Subject if the subject is believed to be armed with a weapon other than a firearm, and that officers should not attempt to follow a subject who is reasonably believed to possess a firearm.

In this incident, Officer A observed what he believed to be a violent felony in progress and initiated a foot pursuit when the subject fled. Although not critical of the decision to engage in a foot pursuit, the Department was concerned that Officer A went into apprehension mode and physically confronted the subject. Officer A believed that the Subject was potentially armed.

Due to his reasonable belief that the Subject was armed, it was not reasonable for Officer A to attempt to physically apprehend the Subject. Officer A should have proceeded with the intent to monitor the progress of the Subject and considered using his cell phone to notify Communications Division of his observations. This would have allowed time for the response of uniformed personnel and averted the physical altercation with the Subject and the possibility of a misidentification by responding officers.

4. A Rescue Ambulance was not requested in a timely manner.

Department Policy requires that it shall be the responsibility of all Department employees to request an ambulance for a subject, arrestee, or any person requesting emergency medical treatment or when it is apparent that they are in need of such treatment.

In this incident, Subject was struck four times in the head with a service pistol causing visible injury. Whenever force is used, officers are duly obligated to evaluate the subject for injuries and request appropriate care as needed. There was a 13 minute delay before officers made a request for an ambulance to evaluate the severity of the subject's injuries. Barring ongoing tactical concerns that could cause the delay of a request for an ambulance, officers should have requested one in a timely manner. Therefore, the 13 minute delay was unreasonable.

The BOPC found Officer A's tactics to warrant administrative disapproval.

B. 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."

The BOPC noted that in this incident, Officer A observed the Subject choking the Victim and then run from the scene upon being confronted. Officer A stated that he could not see the Subject's hands since he was running with them in front of him. Experience has shown that violent felony suspects are often armed, and when coupled with Officer A's observation that the Subject ran with his hands in front of him, a location subject's often times conceal weapons, it was reasonable for Officer A to believe the incident could escalate to a level where deadly force may become necessary.

Therefore, due to Officer A's reasonable belief that the situation could escalate to a level where deadly force could become necessary, the BOPC found the drawing and exhibiting to be in policy.

C. Non-lethal Use of Force

In this incident, Officer A attempted to take a subject into custody. Twice, Officer A closed the distance between himself and the Subject then pushed the Subject causing him to lose his balance and fall to the ground. Twice, the Subject regained his balance and again attempted to flee on foot. After Officer A closed a third time on the Subject, a struggle began over Officer A's pistol resulting in Officer A utilizing deadly force by striking the Subject in the head with his service pistol.

Following the use of deadly force, Officer A forced the Subject to the ground a third time and used his bodyweight and firm grips to maintain control over the Subject.

Although the BOPC was critical of the tactical decision to physically engage the Subject, Officer A's non-lethal applications of force were appropriate in his efforts to overcome the level of resistance presented by the Subject. In this instance, a reasonable officer, when confronted with similar circumstances, would believe that the level of force used was appropriate and consistent with Department policy.

Therefore, the BOPC found Officer A's non-lethal use of force to be in policy.

D. Lethal Use of Force

In this instance, the Subject refused to comply with Officer A's verbal commands as he chased on him on foot. Suddenly, the Subject stopped and faced Officer A within two feet. The Subject reached under Officer A's left arm, grabbed his wrist with an overhand grip and started to pull it toward him. Believing that the Subject was

attempting to disarm him, Officer A turned his body to the right and broke free from the Subject's hold.

Officer A then struck the Subject approximately four times in the head. The strikes were in rapid succession with the butt and barrel of his pistol.

While an officer is engaged in a struggle over possession of their service pistol, the use of deadly force may be reasonable to prevent the Subject from gaining control of the pistol. Officer A was confronted with a subject who reasonable appeared to be attempting to disarm him, thus presenting an immediate deadly threat to Officer A.

Therefore, the BOPC found Officer A's lethal use of force to be in policy.