

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

OFFICER-INVOLVED SHOOTING – 061-10

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Southwest	07/24/10		

Officer(s) Involved in Use of Force	Length of Service
Officer A	15 years, 2 months

Reason for Police Contact

Officers responded to a radio call involving a domestic dispute, where a man was “possibly armed” with a gun. Officers knocked at the door and Subject 1 opened the door, armed with a gun. Subject 1 raised the gun toward the officers, resulting in an OIS.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
Subject 1: Male, 40 years.			

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). Because state law prohibits divulging the identity of police officers in public reports, 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. 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.

The following incident was adjudicated by the BOPC on 07/05/10.

Incident Summary

Events preceding the OIS

Subject 1 took his dog outside for a walk. The dog ran down the street and out of Subject 1's sight.

Subject 1 returned to his residence, a large industrial space converted into a loft where he lived with a roommate, Witness A. Subject 1 was crying, yelling and screaming, and throwing things around.

Subject 1 departed the apartment a second time in an attempt to find his dog. Subject 1 returned to the apartment depressed and dejected, as he was unable to find his dog.

Witness A observed Subject 1 continue to cry, scream, and then grab Witness A's half-gallon vodka bottle and drink close to one half of the bottle over the next two hours. Witness A indicated that Subject 1 was "well lit" and "very drunk."

Note: Subject 1 recalled that he had consumed a couple of beers over the course of several hours that night, but did not recall drinking any additional alcohol.

Subject 1 retrieved a handgun and told Witness A that he wanted Witness A to shoot him because it was his fault he lost his own dog and "thought he was a loser." According to Witness A, Subject 1 laid the gun in Witness A's hand, but Witness A subsequently set it down and told Subject 1, "No, I'm not going to do that."

Note: Witness A did not call the police when Subject 1 told him he wanted to be shot. Witness A indicated that he did not feel threatened, but that he was concerned Subject 1 was a danger to himself, given that Subject 1 pointed the gun toward his own head at times. Witness A further indicated that Subject 1 had chambered a round, and that the hammer was cocked when the gun was pointed toward his head.

Several neighbors overheard the dispute between Subject 1 and Witness A throughout the course of the evening and became concerned.

Witness B, who lived on the other side of a separation wall at the location, called 911 because she was concerned for Witness A's safety. According to Witness B, Subject 1 was upset and banging on the walls. Witness B also heard Subject 1 threaten to burn the building down and heard Subject 1 blaring on his car horn and saying, "F the world. I hate this [...] I don't care anymore."

Note: Witness C, who also lived next door to Subject 1 and Witness A, believed that Subject 1 was under the influence of alcohol.

Officers A and B initiated response to a radio call resulting from Witness B's phone call, which was broadcast as a roommate dispute.

Witness B placed a second call to 911 and reported overhearing Subject 1 ask where his gun was and accusing Witness A of hiding it. Officer A heard an updated radio call regarding a possible gun.

Note: Officer A did not believe the call indicated there was "definitely" a gun. Rather, the call indicated there "might be" a gun on the premises."

Upon arriving at the location identified in the radio call, Officers A and B illuminated the building, which appeared to be an industrial building. Officer B called the reporting party to confirm the location and to obtain additional information about what she heard regarding a potential gun.

Upon receiving confirmation the officers were at the correct location, Officer A parked the officers' vehicle on the south curb of the street, west of the identified location. The officers had agreed that Officer B would be the contact officer while Officer A would cover him.

Note: Officer B broadcast that the officers had arrived at the location.

Accounts of Officers and Witnesses Outside the Residence

Officers A and B exited the vehicle and approached the apartment. Officer B approached the door first, as Officer A initially thought he would take cover behind a tree and was grabbing his baton.

Officer B knocked on the door, identified himself as the "Los Angeles Police" loud enough that the person on the other side of the door "absolutely" would have heard him, and knocked again when he heard the arguing getting more intense.

Note: According to Witness C, he could not discern if the officers said, "[T]his is the police department," or not. Another neighbor, Witness D, indicated he was not aware of any knocking on the door or police being outside until after shots were later fired. Witness B also heard the knock at the door and Subject 1 yelling, "F you guys," but she was not sure whether she heard the officers' voices or not.

Officer B knocked on the door and identified himself, as "Los Angeles Police Department." At that point Officer A heard a male yell a profanity, then saw the door open and a male (Subject 1) with a handgun in his hand. According to Officer A, Subject 1 "pointed the handgun at [him] and brought up his hand on target." Officer A yelled, "Gun."

According to Officer B, he drew his weapon and started stepping back because he did not have cover. Officer B heard Officer A telling Subject 1 to “put the gun down.” Officer B indicated he could not see Subject 1’s hands and the only visual he saw was the opening of the doorway. Officer B further indicated that he could not see Subject 1.

Note: Witnesses B and C did not hear any yelling or “police-type commands.”

Note: Officer B unholstered because he heard Officer A tell him that Subject 1 had a gun and because it was an immediate defense of life situation where he had no cover.

Officer A indicated Subject 1 immediately raised the gun to eye level with his right hand and had Officer A on target. Accordingly, Officer A unholstered his weapon and fired three rounds. Subject 1 cursed and shut the door. Officer A immediately retreated to his police vehicle to seek cover.

Note: With respect to Officer B’s position when Officer A fired his first three shots, video evidence portrays Officer B walking northbound in the street and to Officer A’s left (to the east), close in time to when Officer A fired the first three shots, but neither Officer A nor B recalled where Officer B was actually positioned.

Suddenly the apartment door opened again, and Officer A saw Subject 1 holding his waistband and a dark object, which appeared to be the same handgun Subject 1 had the first time. Officer A was afraid he was going to be shot, and that he and his partner were in fear of their lives, so he fired one additional round at Subject 1.

Note: Subject 1 opened the door the second time approximately five to 15 seconds after he had previously closed it.

Meanwhile, Officer B turned around the corner of the building when he heard Officer A issuing additional commands of “put the gun down,” and then heard what he believed to be two additional rounds being fired. Officer B also saw Officer A standing in the street and moving toward the black and white vehicle for cover prior to hearing the second two shots.

According to Officer A, Subject 1 swung the door shut a second time, and Officer A verbalized with him to come out with his hands up. Officer A ordered Subject 1 to “walk out of the door frame and to get on the ground and to show [him] his hands.”

Account of Witnesses Inside the Residence

Subject 1 and Witness A were inside the apartment when Subject 1 heard two bangs, approached the door, opened it abruptly, and saw a man whom Subject 1 could not say for certain was a police officer.

Note: Witness A heard a knock and was “pretty sure” Subject 1 had his gun in his hand when he approached the door.

Subject 1 indicated he did not hear anyone announce who was at the door, and that when he saw the door open, he just saw the gun go off.

Witness A heard several gunshots, observed Subject 1 come back in the apartment and then say, “I’ve been shot!” When Witness A asked Subject 1 who shot him, he responded, “The police.”

Note: Witness A believed he heard at least three shots in succession, without a pause. Witness A did not hear anyone identify themselves as officers prior to hearing the shots.

According to Witness A, before Subject 1 went back outside, he threw his gun on the bed inside the apartment. Witness A further indicated that Subject 1 threw the gun before opening the door a second time and going back outside the apartment. Witness A saw the gun laying on the bed and believed the hammer was still cocked when Subject 1 threw it on the bed.

Witness A told Subject 1 that he had to “go out and face the police” after shots were fired. Witness A recalled advising Subject 1 to go back outside prior to Subject 1 opening the door a second time. When Subject 1 exited the apartment, Witness A heard officers tell him to “get on the ground,” and Subject 1 cooperated with these commands.

Note: There is some discrepancy between Officer A’s and Witness A’s statements, regarding how many times Subject 1 opened and closed the door. According to Officer A, Subject 1 opened the door a total of three times, while Witness A’s account suggests that Subject 1 opened the door only twice. Given that Witness A believed Subject 1 only went outside twice, Witness A either did not witness the second OIS or did not distinguish the fourth and final round as distinct from the first sequence of shots. Witness A’s account also suggests that Subject 1 did not discard his weapon on the bed until *after* the shots were fired.

Note: When Subject 1’s pistol was recovered, it was determined that the pistol’s hammer was in a cocked position with the safety in a ready-to-fire position. The chamber was empty, and the magazine contained six live cartridges.

Events subsequent to the OIS

After Officer A fired his final shot, Officer B ran closer to where Officer A was positioned, communicating to Officer A that he was behind him.

Officer B broadcast a “shots fired, officer needs help” call, indicating the officers’ location and also requesting a Rescue Ambulance (RA).

Subject 1 then exited the apartment and cooperated with the officers. Officer A could clearly see that Subject 1 did not have his weapon in his hands because when Subject 1 opened the door for the third time, his hands were to his sides and got down on the ground in a fetal position.

Officer A continued issuing commands because Subject 1 kept raising his head and moving his hands. Officer A also did not know if the gun was near Subject 1’s waistband area.

In response to Officer B’s “help” call, uniformed Officers C and D responded to the scene. Officers C and D exited their police vehicle and were briefed by Officer B.

Additional officers arrived at the scene, performed a search of the residence and took Subject 1 into custody.

Officer E was chosen to move Subject 1. He grabbed Subject 1 with both hands from the ankles and dragged him away from the open door.

After removing Subject 1 from the path of the search team, Officer E then asked for Subject 1’s hands, and Subject 1 was cooperative as Officer E handcuffed him.

Meanwhile, according to Officer A, upon making entry into the residence, he observed blood on the floor and a handgun on top of a mattress. Officer A recognized the gun as the same weapon that Subject 1 had pointed toward him earlier.

A Los Angeles Fire Department RA unit arrived and treated Subject 1 for gunshot wounds to his abdominal area, right leg and right forearm. Fire Department personnel believed Subject 1 was in an “altered” state because he was not exhibiting the usual signs and symptoms of someone who had been shot.

Note: A treating paramedic stated that he could smell alcohol on Subject 1’s breath.

The RA unit transported Subject 1 to a hospital.

Los Angeles Board of Police Commissioners’ Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting/Holstering of a weapon by any involved officer(s); and the Use of Force by any involved officer(s).

All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort to ensure that all officers benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC unanimously made the following findings.

A. Tactics

The BOPC found Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

The BOPC found Officers A and B's drawing to be in policy.

C. Lethal Use of Force

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

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered that:

1. Officers A and B received updated information that indicated the potential for the presence of a firearm at the radio call. As they deployed on the location, Officer A was delayed when he retrieved his baton. Officers are trained to communicate and deploy in a manner consistent with working as a team. However, Officer A retrieved his baton, which provided him with optimal use of force options. This action occurred prior to the contact with the suspect and did not result in a substantial tactical deviation (i.e. officer separation, etc.).
2. Officer B turned and exposed his back to the door for a brief moment, which created a circumstance wherein neither officer had a visual on the door when Subject 1 opened it. Officers are trained to communicate in a manner that ensures that the contact and cover responsibilities are maintained. However, consideration must be given to the challenges presented by the environmental characteristics of the area. The location was in an industrial area that provided limited cover for the officers and was less than ideal to apply and maintain the tactical deployment concept of contact/cover. The action did not substantially and unjustifiably deviate from approved Department tactical training.

The BOPC found Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC determined that officers with similar training and experience would reasonably believe that the situation had escalated to the point where deadly force was justified when Subject 1 was observed in possession of a handgun and pointed it at Officer A.

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

C. Lethal Use of Force

The BOPC evaluated the circumstances relevant to Officer A's lethal uses of force and adjudicated the lethal force as in policy. The BOPC determined that the preponderance of the evidence established that Subject 1 confronted Officer A while holding a handgun. As such, it was objectively reasonable for Officer A to believe that Subject 1's actions presented an imminent threat of death or serious bodily injury.