

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

**OFFICER-INVOLVED SHOOTING – 069-10**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ()</b>	<b>Uniform-Yes (X) No ()</b>
Olympic	08/28/2010		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Officer A	10 years, 6 months

**Reason for Police Contact**

Officers responded to a radio call of an Assault with a Deadly Weapon in progress.

<b>Subject</b>	<b>Deceased (X)</b>	<b>Wounded ()</b>	<b>Non-Hit ()</b>
Subject: Male, 20 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 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.

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.

The following incident was adjudicated by the BOPC on August 2, 2011, and August 25, 2011.

## **Incident Summary**

### **Events preceding the officer-involved shooting (OIS)**

Two vehicles stopped next to each other at a red light in a busy intersection. A black vehicle was in the left-hand turn lane at the intersection, and a red Sports Utility Vehicle (SUV) was stopped in the number one lane, directly parallel to the black vehicle.

While the vehicles were waiting for the light to change, the occupants of the black vehicle, Witness A and the Subject, exited their vehicle and approached the SUV, which was occupied by Witnesses B and C.

Witness A approached the hood of the SUV and put his arms across it, thereby preventing the vehicle from moving forward when the light changed, while the Subject approached the SUV's driver's side window, where Witness B was seated, and started banging on the window with his fist.

Other witnesses indicated that both Witness A and the Subject directed various statements at the occupants of the SUV.

Witness B attempted to tell Witness A to give him an opportunity to park, and he would get out of the car. Witness C called the police.

Witness D indicated that the Subject was initially banging on the driver's window with his hand, yelling threatening obscenities, and demanding to be let into the vehicle.

Witness E, who was parked nearby, indicated that Witness A threatened the occupants of the black vehicle.

After a few minutes of beating on the window with his fist, the Subject walked to the trunk of his vehicle, pulled out an object and began striking the driver's side window of the SUV with the object.

Witness F observed the Subject holding a black object, which Witness F believed could be a knife or a gun, and called 911.

According to Witness G, he observed the Subject go to the back of his car and grab "a little black object." Witness G then observed a piece of the object fall to the ground, and the Subject holding an eight-inch-long piece of a small souvenir bat, which Subject 1 repeated struck against the SUV's window.

Witness H believed the object the Subject was holding looked like a small bat.

Witness I believed the object was a tire iron.

Witness D observed the Subject angrily hitting the window with a stick and demanding that the occupants get out of the vehicle.

Witness J heard the Subject banging on the window with two metal objects.

Other witnesses variously described the object as a three-foot-long stick, black, "something like a leather case," and a flashlight.

Meanwhile, Officers A and B heard a radio broadcast regarding an Assault with a Deadly Weapon (ADW) in connection with this incident. The officers were approximately one-half mile from the location of the incident when they heard the broadcast, and they responded to the call.

Officer A indicated that as his partner drove toward the location, the call was updated with additional details at least twice, which included an update relaying that one of the subjects was armed with a knife and a gun. Officer A also reported that, initially, the call comments had stated that one of the subjects was armed with a bat.

As the officers approached the location, they noticed people at the nearby gas station, as well as the people on the corner across the street, all looking in one direction. Officer A verbalized to his partner that everyone was looking toward the intersection and noted that Officer B was aware of this fact as well. Officer A saw an SUV and a black vehicle in the intersection and "a guy standing at the driver's side window on the outside of the car, and he was beating on the window with his left hand." The officers stopped south of the intersection. They didn't want to enter the intersection because they believed the Subject was possibly armed with a gun. Rather than announcing their presence, entering the intersection and losing the advantage of possibly having surprise, the officers decided to stop short of the intersection. The officers did not use the siren on their police vehicle as they pulled up to the intersection because they did not want to alert the Subject to their presence.

#### Events leading up to and including the OIS

##### *Officer A's account*

As Officer A advanced into the intersection, he observed the Subject banging on the window. Officer A also saw Witness B with his hands up in the air. Officer A indicated that the Subject's right hand came down and that he saw a handgun in the Subject's right hand, which he described as being a black barrel, approximately eight inches long and circular.

Officer A believed that the man in the vehicle was in jeopardy of being injured or shot by the Subject, who still had his back to Officer A. Officer A drew his weapon when he was positioned halfway between the police vehicle and the Subject's position, as he moved forward and was approximately 20 feet away from the Subject, because he believed the situation could escalate to the point where he or Witness B could be shot or injured.

Officer A continued moving to his left to give himself a better view of the Subject. Officer A moved further to the left and saw the Subject's arm move forward again, such that he believed that a gun was pointed at Witness B. Officer A believed a crime was being committed, based on the radio call and the Subject's actions. Officer A fired one or two rounds, and believed he struck the Subject.

After the discharge of the first shot(s), according to Officer A, the Subject stopped, turned around, and faced Officer A. Officer A stepped to his left and fired a second volley of one or two rounds. Officer A did not recall seeing the position of what he believed to be the gun when he fired the second volley of shot(s), but believed the gun was pointed at him.

The Subject turned and then ran between the two vehicles. Officer A yelled, "Stop, stop, stop," as the Subject ran. Officer A believed the Subject was taking cover. Officer A could not see the Subject because the Subject had bent down. Officer A also believed the Subject was going to "pop" out of the other side and start running or take a position to engage him. Officer A was concerned that the Subject had cover and that he did not.

As Officer A arrived at the area behind the black vehicle, the first thing he saw was the Subject turning towards him. Officer A believed that something "cued" the Subject, and the Subject turned again. The Subject still had the gun in his hand and Officer A fired a fourth round at the Subject.

#### *Officer B's account*

Officer B exited the police vehicle and followed Officer A. Officer B observed Officer A come to a stop and unholster his weapon. Officer B also saw Witness A in front of the SUV banging on the hood, pointing at the driver with his finger, and yelling something while the Subject was between the two vehicles.

Officer B saw Officer A come to a stop and fire one round at the Subject. Officer B saw the Subject almost simultaneously turn around slightly clockwise, and saw the Subject's right hand holding an object which Officer B believed to be a pistol or the grips of a pistol.

Officer B next observed the Subject walking between the two vehicles. He also observed Witness A look at the officers and run behind the SUV. Officer B indicated he dropped to his knees and saw Witness A's legs as Witness A ran. Officer B issued commands in English and possibly Spanish to Witness A, telling him, "Let me see your hands."

As Officer B observed Witness A come to a stop behind the rear tire of the SUV, he heard an additional gunshot from Officer A's direction. Also according to Officer B, he

saw the Subject, who was at the rear of the black vehicle, walk toward Officer A. Officer B believed Officer A was being shot at.

#### Witness statements regarding the OIS

##### *Witness D*

Witness D observed the Subject standing in the street, banging a stick on the window of the SUV, and attempting to break the window. Witness D indicated that the Subject did not see the officers approaching, and within a second of Witness D seeing Officer A the first shot was fired.

##### *Witness G*

Witness G observed the police vehicle stop before it entered the intersection and then observed Officer A crouched down with his gun drawn and walking straight towards the dark car.

Witness G indicated that after banging on the SUV window with a bat, the Subject turned counterclockwise and was holding the bat at chest height. Witness G heard two shots and then another two shots.

##### *Witness E*

Witness E saw three officers standing in the street and heard shots being fired. She also heard one of the officers say, "Stop," and, "Don't move," but the Subject did not stop, and ran behind a car. Witness E also indicated she saw the Subject with his right arm up to the side of his head as he was running. When the Subject was behind the vehicle, Witness E saw that he had an object in his hand.

##### *Witness I*

Witness I believed he heard an officer yell, "stop," and observed the Subject run from the officer. Witness I also noted that the Subject ran to the rear of the vehicles and turned around with a tire iron. Witness I then heard five shots being fired.

##### *Witness K*

According to Witness K, Officer A started shooting when the Subject's back was toward the officer. The Subject started running to the back of the vehicle, and the object he was holding fell to the ground. Witness K indicated the object appeared to be a battery or a small flashlight.

### *Witness L*

Witness L observed a man standing by a vehicle tapping on the window with an object, heard a “pop,” and then observed an officer say, “Stop. Put your hands up,” and, “Get down,” followed by another pop. Witness L subsequently observed that the Subject “got down on the ground.” Further, according to Witness L, when the Subject fell, a black object that was in his hand hit the ground.

### Events Subsequent to the OIS

After Officer A’s final round struck the Subject, the Subject fell to the ground. Officer A heard an item, which he believed was a gun, land on the ground next to the Subject. When Officer A looked down, he realized the item that had fallen to the ground was a small, black bat or club that had broken in half.

### 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**

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

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

The BOPC found Officer A’s use of lethal force to be out of policy.

## **Basis for Findings**

### **A. Tactics**

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

Officers A and B requested that the radio call be assigned to them and drove toward the intersection. As the northbound lanes of traffic were congested, Officer B drove northbound in a southbound lane with the vehicle emergency lights activated and the siren off. According to the officers, the siren was not utilized as they did not want to alert the subjects of their approach.

The nature of the radio call allowed the officers to respond in emergency fashion. The officers' actions in this regard did not substantially deviate from approved Department policy.

In addition, while the officers discussed tactical issues during their response to the incident, and it was noted that Officer A directed Officer B to stop the police vehicle, Officer A did not provide Officer B with his observations or tactical plan. While circumstances during critical incidents can change quickly, it is important for partner officers to have a tactical plan and communicate that plan to their partner whenever possible and in a timely manner. The BOPC found that this issue did not represent an unjustified and substantial deviation from approved Department training.

Finally, after Officer A exited the police vehicle and proceeded through the intersection, his view of the Subject was obscured. In response, Officer A redeployed in a direction which was void of any cover. Although officers are trained to utilize cover or concealment when possible, circumstances may arise which prompt an officer to move away from a position of cover. Officer A articulated that he moved from cover to get a better observation and because there were so many citizens in the vicinity.

It was reasonable for Officer A to move from cover in order to gain a better understanding of the incident and to address the tactical situation. The potential exigency of this incident (*i.e.*, the potential that a victim was being immediately threatened by an armed subject) justified Officer A's decision to close the distance between himself and the subject, and to do so without the benefit of cover. Given this exigent circumstance, the BOPC believed it was permissible for Officer A to position himself in relative proximity to the Subject in order to provide assistance to the apparent victims inside the SUV.

In conclusion, the BOPC found that Officer A's decision to leave cover did not substantially deviate from approved Department tactical training; however, the BOPC also noted that there are potential risks associated with closing the distance to a potentially armed subject, and potential tactical consequences of doing so without cover.

## **B. Drawing/Exhibiting**

The BOPC noted that Officers A and B responded to a radio call in which the last updated broadcast by CD stated a subject was armed with a knife and a gun. Officer A recalled he saw a handgun in the Subject's right hand, and he believed the citizen in the vehicle was in jeopardy of being injured or shot by the Subject. The BOPC determined that an officer with similar training and experience would reasonably believe that an individual armed with a handgun and pointing it at another individual represented a substantial risk that the situation may escalate to the point where deadly force may be justified.

Officer B recalled he saw his partner fire his weapon and then almost simultaneously observed the Subject turn around slightly, his right hand holding what Officer B believed to be the grips of a pistol. Having seen his partner fire his service pistol and observing the Subject to be armed with a handgun, an officer with similar training and experience would reasonably believe that the situation had already risen to one in which deadly force may be justified.

The BOPC found the Drawing/Exhibiting of Officers A and B to be in policy.

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

In this case, Officer A responded to an incident wherein he had been informed over the radio that an ADW was taking place and that callers had reported that the Subject possessed a weapon, variously described as a bat, a gun and a knife.

The evidence in this case shows that the Subject was holding a small wooden bat when encountered by Officer A. The bat, which, according to a witness had broken prior to the arrival of the officers, had an overall length of 18-inches, and was subsequently recovered broken into two pieces of roughly equal length. The bat was dark blue in color. Officer A observed this item in the Subject's hand and mistook it for a handgun. Officer A's initial formulation of the belief that the bat was a gun formed the basis for his decision to discharge each of the four rounds fired in relatively close succession during this incident. Officer A observed the item during daylight hours, and from a distance of approximately 20 feet, at the time he commenced firing at the Subject. The BOPC found that the appearance of the bat was such that it could not have been reasonably mistaken for a gun under the conditions and circumstances.

In considering the reasonableness of Officer A's belief that the item the Subject was holding was a gun, the BOPC also noted that it was broadcast to Officer A during his response to this incident that the Subject was armed with a "gun and a knife." The BOPC found that, while this information should have been critical to informing the officers' tactical approach to the incident, it could not supplant the need for Officer A to make his own independent observations once he arrived at the scene. Indeed, as an officer of similar training and experience to Officer A would be aware, it is often the case that incidents initially reported by callers to involve the use/presence of weapons do not,

in fact, ultimately involve weapons. As such, given an officer's responsibility to evaluate a situation in light of the actual facts and circumstances of a particular case, the BOPC did not find that the information broadcast to Officer A alone rendered objectively reasonable his belief that the bat was a gun.

In addition, instructive to the BOPC's decision was that the large majority of witness accounts of the incident were inconsistent with Officer A's observation that he saw a gun in the Subject's hand. In fact, the vast majority of witnesses observed the object in the Subject's hand to be something *other than* a gun.

Based on the above, the BOPC found that Officer A's belief that the Subject's actions presented an imminent threat of death or serious bodily injury was not objectively reasonable. Accordingly, the BOPC found Officer A's use of lethal force to be out of policy.