

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

OFFICER-INVOLVED SHOOTING – 078-08

<u>Division</u>	<u>Date</u>	<u>Duty-On () Off(X)</u>	<u>Uniform-Yes() No(X)</u>
Outside City	08/25/2008		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	1 year, 11 months

Reason for Police Contact

Officer A was off-duty and driving his personally-owned vehicle when Subject 1 collided with his vehicle and did not stop. Officer A followed Subject 1 until Subject 1 stopped in the parking lot of a grocery store. During an ensuing confrontation, Officer A shot Subject 1.

<u>Subject</u>	<u>Deceased (X)</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
Subject 1: Male, 50 years.			

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate the 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 and addenda items); the 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 06/30/09.

Incident Summary

On August 25, 2008, between 3:39 p.m. and 3:46 p.m., the California Highway Patrol (CHP) received three telephone calls from motorists travelling on a freeway.

The first telephone call was received from Witness A at 3:39 p.m. Witness A reported that a pickup truck had nearly been involved in a traffic collision. The driver of the pickup had thrown a can onto the roadway and the pickup was being driven in a reckless manner.

The second telephone call was received from Witness B at 3:44 p.m. Witness B reported that a pickup truck was being chased by the driver of an SUV. Both vehicles were using all lanes of the roadway and being driven at approximately 100 miles per hour (MPH).

The third telephone call was received from Witnesses C and D at 3:46 p.m. Witness C reported that approximately fifteen minutes earlier, a pickup truck collided had with an SUV. The pickup truck had fled after the collision and the driver of the SUV had given chase.

During the span of time in which the CHP received these telephone calls, Officer A was entering a freeway. Officer A, who was off-duty and wearing civilian clothing, was driving an SUV. Officer A was accompanied by his thirteen-month-old son, who was secured in a car seat. The car seat was secured in the center of the rear seat in Officer A's vehicle.

Officer A was armed with a pistol that he carried in a retention holster secured on his right waistband. The pistol and holster were concealed by Officer A's untucked polo shirt.

According to Officer A, as he travelled on the on-ramp, the roadway narrowed just prior to intersecting with the lanes of the freeway. He glanced at his vehicle's right side rearview mirror and saw another vehicle attempting to pass his vehicle by using the shoulder. As Officer A reached the top of the on-ramp, the vehicle, a pickup truck driven by Subject 1, passed Officer A. The left rear of the pickup truck struck the right front fender area of Officer A's vehicle. Officer A estimated he was travelling at approximately 15 to 20 MPH when the collision occurred. He did not recall how fast the pickup truck was being driven.

Note: Neither Officer A, nor his son, were injured as a result of the collision. The collision caused minor damage to Officer A's vehicle.

As recalled by Officer A, "[A]s we're both on the on-ramp [. . .] he cut my vehicle off [. . .] and then he struck my vehicle with his back end of his truck, hitting my front end of my vehicle. At that moment [. . .] believing he was unaware that he struck my vehicle, he continued ahead on the freeway [. . .] At that moment, I followed the vehicle in an attempt to catch up to him and flag him down or hopefully [. . .] let him know that he struck my vehicle. He [. . .] travelled maybe three-fourths of a mile, and at that moment I observed [him] weaving in and out of lanes. At that moment [. . .] a thought came into my mind [;] he's trying to avoid me, evade my vehicle."

Officer A assessed that the traffic conditions were moderate and estimated that the pickup truck was being driven at between speeds of 65 and 80 MPH.

In Officer A's estimation, the pickup truck was approximately an eighth of a mile in front of him, continuing to weave in and out traffic, as he began to follow. At that distance, Officer A was unable to see the rear license plate on the pickup truck.

Note: Officer A, who had a cellular telephone with him, did not use it to call for police assistance. When asked why he did not call for police assistance, Officer A responded, "I didn't have any information on the vehicle whatsoever. So what I tried to do, I tried to get as close as I can to the vehicle to get some make, model, or license plate, some recognition towards the vehicle so I could make a phone call and get the CHP or any police units or police department helping me out, so I could give them some type of information about the vehicle. So down the future, they could track it down."

Officer A continued to follow the pickup truck until it exited the freeway and pulled into the parking lot of a grocery store.

Note: The distance travelled from the scene of the traffic collision to the parking lot was approximately 5.5 miles.

Officer A saw the pickup truck enter the parking lot and park on the south side of the store.

Standing on the south side of the parking lot were Witnesses E and F.

According to Witness E, "a [pickup truck] comes screeching in [. . .] I mean just like 30, 40 miles an hour [. . .] Tires squealing, coming into the parking lot and that's when I started out walking this way [. . .] I was gonna tell him [. . .] you gotta slow down. I got customers coming in and out of the store [. . .] be a little more cautious [. . .] I'm walking forward and that's when the [SUV] pulled in. The [SUV] pulled in kinda real, you know, sly, slow. Parked [. . .] kinda crooked. But what was odd was he parked where cars come in and out of this circle area [. . .] I stopped and I figured [. . .] you know what, these guys are gonna fight. Something happened over here and I figured there was gonna be a fistfight."

As recalled by Witness F, "Within a second or a second and a half, I saw [an SUV] approach or pull behind the [pickup truck] in a manner that appeared like an officer of the law would park a safe distance away but not in any [. . .] marked parking space. The gentleman exited the [SUV], immediately pulled a weapon at the same time a man was exiting the pickup truck. The man in the [SUV] yelled a command to get on the ground."

As recounted by Officer A, "I observed where the subject parked [. . .] I put my vehicle into park. I turned off the ignition, opened my driver's side door. I got off of my vehicle. And my son being in the back seat [. . .] the weather's really hot. It was close to like 101 degrees [. . .] So being that the air conditioning was off in my vehicle, I went towards the back door, the driver's side rear door, and opened that door to get my son some ventilation."

Note: Officer A had stopped and parked his vehicle southeast of Subject 1's vehicle. Officer A was parked diagonally so that his vehicle's left front bumper was approximately twenty-five feet from the right rear bumper on Subject 1's north-facing vehicle.

According to Officer A, "After I open up the rear [. . .] driver's door to give my son ventilation, I stayed close to the rear door [. . .] parallel to the rear tire. At that moment, I looked forward. I looked in a western direction, and I observed [Subject 1] [. . .] out of the vehicle and approach[ing] my direction, very aggressive and combative. He kept on approaching."

Note: Unbeknownst to Officer A at this time, Subject 1 had a passenger (Witness G) in the right front seat of the pickup truck. According to Witness G, Subject 1 had exited the freeway so Witness G could purchase some beer. When Subject 1 stopped at the store, Subject 1 told Witness G that there was "a cop" behind them. Without saying anything else, Subject 1 stepped out of the pickup truck.

According to Witness E, meanwhile, "[B]efore I knew who it was, he [Officer A] had already gotten out of the [SUV] and stepped towards the front of his vehicle and by the time he got to about where his headlights were, the driver of the [pickup truck] [. . .] got out of his truck. And I figured like some cuss words went on because I couldn't quite hear what was being said at that time. And the guy [Subject 1] kinda threw up his arms like told him [Officer A] to 'F' off and whatever."

Also witnessing these events was Witness H. Witness H was seated in her vehicle when she noticed Officer A's SUV enter the parking lot. Witness H had the windows rolled up on her vehicle and the air conditioner was on. She had not observed, nor could she see from where she was, Subject 1's pickup truck enter the parking lot and park on the south side of the store.

According to Witness H, "I got in my car [. . .] looked out my [. . .] back window, because I had just started pulling out, and I saw this car [Officer A's SUV] pull in [. . .] And he kind of whipped in here." Witness H observed Officer A get out of the SUV and start walking towards the store. She saw that Officer A had both arms extended out in front of him. Although she did not actually see Officer A holding a gun, she felt that it was a possibility because of the way his arms were extended and joined together in front of him.

Officer A recalled that Subject 1 had, "[C]lenched fists. He's very furious. His skin color is very red [. . .] veins popping out. And he's pretty much using vulgar language."

According to Officer A, "As he was approaching me, I verbalized to him, 'Sir, sir, stop. Let's talk about what occurred [. . .] Stay where you're at. Let's talk.' I verbalize with him three times, saying to him the same words, 'Sir, stop [. . .] Let's talk about what's going on. Stay where you're at. Don't come any closer.' [. . .] After I verbalized with him

three times [. . .] I verbalized to him, 'Stop. I'm a Los Angeles Police [. . .] Officer. Stay where you're at. Don't come any closer.'

As recounted by Officer A, "He still kept closing in. At that moment, I took two steps back. I put my hand on my head. My weapon was still concealed; still wasn't exhibited. I say to him one more time, 'Stay where you're at. Don't come any closer.' His attitude was still combative and aggressive [. . .] I believe [. . .] when I say to him I was a police officer [. . .] I believe that enraged him even more."

Meanwhile, according to Officer A, he backed away from Subject 1's advance and his pistol was still holstered. Officer A backed to a point where he was adjacent to his vehicle's left rear tire. Officer A was approximately one or two feet southwest of the rear tire and from this position, he could still see his son in the back seat. Subject 1 was now adjacent to the open driver's door on Officer A's vehicle. Officer A lifted his polo shirt in order to show Subject 1 his holstered pistol. At the same time, he continued to talk to Subject 1.

According to Officer A, "At that moment [. . .] [Subject 1] closes [. . .] the distance. He's now adjacent to my rear driver's side door [. . .] I verbalize to him once again [. . .] exhibiting my weapon [. . .] keeping my weapon in the holster [. . .] At that moment, I observed [Subject 1] [. . .] still looking at me, direct his attention from myself to my son, also canting his body, shifting his body towards the direction of my son [. . .] [With] his left hand [. . .] he made a 'C-grip.' [. . .] [H]e had his left hand stretched out. He took two steps to where my son was at [. . .] I felt my son was in danger. I feared for my son's safety [. . .] [H]e kept eyes on my son. He directed a threat for myself to my son [. . .] He turned his whole body towards my son [. . .] At that moment I unholster my gun [. . .] and shot him once in the chest."

Note: Officer A did not know if Subject 1 actually touched his son; however, according to Officer A, he heard his son scream.

Officer A recounted, "At that moment he [Subject 1] still had his left arm fully extended towards my son. And when I shot him [. . .] he turned his torso a bit to the right, and that's when I shot him in the center of the chest."

According to Officer A, "At that moment I knew his hand was fully inside the vehicle, and I knew my [. . .] son's life was in danger."

Note: None of the witnesses to this incident reported having seen Subject 1 place his outstretched arm inside Officer A's SUV.

Officer A observed Subject 1 start walking backwards. Once Subject 1 passed the open driver's door on Officer A's vehicle, Subject 1 turned toward his pickup truck and shouted, "Grandfather, I'm shot. I'm dead." Subject 1 then fell to the ground.

Additional events leading up to and immediately following the officer-involved shooting (OIS), as recalled by the witnesses, are outlined in the following paragraphs.

Prior to the OIS, Witness H saw Officer A momentarily return to his vehicle. According to Witness H, "I'm thinking [. . .] he's not going to shoot him or whatever. He's just angry or whatever and get in his car and leave. Well, he didn't leave. He [. . .] walked back out again."

As recounted by Witness F, "He [Subject 1] came around the back of the truck and was saying stuff to the officer as he approached the officer [. . .] With his [Subject 1's] arms out and up." Witness F recalled that Officer A twice ordered Subject 1 to get on the ground as Subject 1 approached Officer A.

According to Witness E, "[Officer A is] yelling at him to get down on the ground two, three times. The guy didn't listen to him. Kept walking towards him [. . .] I heard him say something the third time but I wasn't sure. He [Officer A] took about two steps back and kinda dropped the firearm back down to his side and that's when they guy [Subject 1] quick stepped him [. . .] just [. . .] picked up his speed with his arms up [. . .] walking towards him."

As recalled by Witness F, Subject 1 got to within 12 feet of Officer A before Officer A started backing towards his SUV.

Witness I was leaving the store when he saw Officer A standing in the parking lot approximately three or four steps in front of the SUV. Witness I recalled there was a small boy in the back seat of the SUV and the back door of the vehicle was closed. Officer A was telling Subject 1 to not come any closer. At that point, Witness I saw that Officer A was holding a pistol. Witness I also heard Officer A identify himself as an officer of the Los Angeles Police Department. Witness I then ran to his own vehicle, which was in the parking lot of the store, approximately 25 feet south of Officer A's SUV.

According to Witness F, as Officer A backed towards the SUV, he started to reholster his pistol. Subject 1 then moved faster towards Officer A. Officer A brought his pistol back up and fired a round at Subject 1, who, according to Witness F, was approximately four to five feet from Officer A. At the time of the OIS, Witness F saw that Officer A was standing adjacent to the open driver's door of his SUV. No other doors on the SUV were open. Witness F estimated that only 15 seconds had elapsed between the time Subject 1 and Officer A pulled into the parking lot and the occurrence of the OIS.

As recalled by Witness E, both left side doors on the SUV were open at the time of the OIS. Officer A retreated to a point where he was standing between the open doors on the SUV. Subject 1 had closed to within approximately six feet of Officer A, and was roughly at the front bumper of the SUV when Officer A fired a round at him.

Witness E stated that immediately after Officer A shot Subject 1, Subject 1 shouted, 'Oh, my God.' Subject 1's arms went forward, he took a step toward his left, fell to the ground and assumed a fetal position.

According to Witness H, when she finally was able to see Subject 1, he was moving towards Officer A gesturing with his hands. It was at this point that Officer A fired one round at Subject 1. Witness H estimated that Officer A was standing on the driver's side of the SUV, three to four feet in front of the front bumper when he fired.

Witness I did not see the OIS; however, he heard it. When he reached his vehicle, he looked back towards the OIS scene and saw that Subject 1 was lying on the ground. Officer A told Witness I that he was a police officer and not to leave.

According to Witness G, who had remained seated in Subject 1's pickup truck, "I don't know if he [Officer A] said he was an officer [. . .] he might have said something [. . .] I don't know [. . .] exactly what he said but I just seen him pull a gun [. . .] [H]e [Officer A] shot him [Subject 1] [. . .] He [Subject 1] dropped."

According to Witness E, "As soon as he [Subject 1] fell that's where he laid. That guy [Officer A] never even walked over to check him or anything [. . .] He just stood by his doors telling people to get away [. . .] I did not hear him identify himself at all. I heard [. . .] get down on the ground two, three times but I did not hear him say LAPD until I was on the phone with [. . .] 911. And he was yelling at me to get an ambulance and other officers [. . .] there's been a shooting [. . .] That's when I heard LAPD and I told 911 he's claiming to be LAPD but I never saw a badge."

As recounted by Witness F, he did not hear Officer A identify himself as an officer until after the OIS. According to Witness F, Officer A shouted, "[C]all 911. Tell them I'm LAPD."

The first officer to arrive at the scene was CHP Officer B.

According to Officer B, "When I first arrived [. . .] there was a lady [. . .] waving me in [. . .] I seen a [SUV with a] male standing outside holding an ID up in the air [. . .] He was standing to the left rear of his vehicle [. . .] He said he was LAPD. He had his ID in [. . .] his other hand [. . .] both [. . .] hands up [. . .] he didn't have a weapon on him when I pulled up."

Note: According to Officer A, he was holding his pistol in his right hand at the low-ready when he was approached by Officer B. After Officer B confirmed Officer A's identity, Officer A holstered his pistol and allowed Officer B to take charge of the scene.

Officer B saw Subject 1 lying in a fetal position approximately 10 to 15 feet in front of the SUV and slightly to the left of the SUV's left headlamp. Officer B asked Officer A where Subject 1's weapon was. Officer A told Officer B that Subject 1 was unarmed.

According to Officer B, “After that, the only thing he said to me was, ‘He was coming after my son.’”

Note: Officer B saw that Officer A’s son was still secured in the car seat. Officer B recalled the left rear door on the SUV being open; however, he did not recall if any other doors on the SUV were open. He also recalled that Officer A’s son was not crying. Officer B stood by with Officer A while he awaited the arrival of additional units.

Paramedics responded to the scene and transported Subject 1 to a hospital, where he was subsequently pronounced dead.

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/Holstering

The BOPC found Officer A’s drawing to be out of policy, warranting administrative disapproval.

C. Lethal Use of Force

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

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered that:

1. Pursuing the subject after a misdemeanor hit-and-run traffic collision.

While off-duty and driving his personal vehicle on the freeway on-ramp, Officer A was the victim of a misdemeanor hit-and-run traffic collision. Officer A made the decision to follow the subject by driving on the right shoulder and at an unsafe speed, in violation of the California Vehicle Code and with his one-year-old son in the vehicle.

Officer A's decision unnecessarily jeopardized his safety, his son's safety and the safety of the public. The BOPC was critical of Officer A's decision to follow Subject 1. Officer A should have contacted 9-1-1 from his cellular telephone and filed the appropriate reports with the CHP.

2. Approaching the subject.

According to independent witnesses, at the termination of the following, Officer A exited his vehicle and moved toward the subject, giving up what little tactical advantage he had. Because there was no evidence that immediate action was required, Officer A should have called 9-1-1 and been a good witness, rather than confronting Subject 1 and involving his one-year-old son in a tactical situation.

The circumstances of this incident did not support the tactical decisions made by Officer A. Officer A's tactical performance unjustifiably and substantially deviated from approved Department tactical training.

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

B. Drawing/Exhibiting/Holstering

According to Officer A, Subject 1 redirected his attention from Officer A and turned his entire body left toward Officer A's son. Subject 1 fully extended his left arm toward Officer A's son with his left fingers formed in a "C" configuration, which Officer A believed was a choking grip. After hearing his son scream and fearing for his son's safety, Officer A drew his service pistol.

Several witnesses statements indicate that Officer A had his service pistol drawn when he first exited his vehicle, a significant period of time prior to Officer A's account that the subject approached the rear passenger door of Officer A's vehicle and was in a position to reach into the vehicle to harm Officer A's child. Officer A's stated justification for drawing his weapon was that the subject reached into the rear seat area of his vehicle. The preponderance of the

evidence indicates that this did not occur. As such, Officer A's drawing of his weapon was not warranted.

The BOPC found Officer A's drawing to be out of policy, warranting administrative disapproval.

C. Lethal Use of Force

According to Officer A, Subject 1 redirected his attention from Officer A and turned his entire body left toward Officer A's son. Subject 1 fully extended his left arm toward Officer A's son with his left fingers formed in a "C" configuration, which Officer A believed was a choking grip. After hearing his son scream, Officer A drew his service pistol and fired one round at Subject 1, striking him in the chest. Officer A stated, "*He was real - - pretty much able to grab my son at - at that time, and I - and I feared for my son's safety. The reason - like I said earlier, the reason being, he's one year old and he's incapable of protecting himself.*" According to Officer A, after being shot, Subject 1 covered his chest with both hands and walked backward past the open front door of the SUV. Subject 1 took several additional steps backward and fell to the ground, landing face down with his hands tucked close to his body.

The preponderance of the evidence indicates that Subject 1 neither approached the rear passenger door of Officer A's vehicle nor was in a position to reach into the vehicle to harm Officer A's child. Witnesses statements indicate the subject was shot before he reached the front of Officer A's SUV. This version of events is further supported by the witness statements that indicate Subject 1 immediately fell to the ground after being shot, the description of the scene as depicted by a responding CHP officer and deputy sheriff, and by physical evidence. Officer A's account of the incident as it pertains to his justification for the use of lethal force is not evidentially supported.

The BOPC found Officer A's lethal use of force to be out of policy, warranting administrative disapproval.