

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

OFFICER-INVOLVED SHOOTING 079-12

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Hollenbeck	11/15/12		

Officer(s) Involved in Use of Force	Length of Service
Officer A	4 years, 8 months

Reason for Police Contact

Officers were patrolling the area when they observed the Subject, a known narcotics user and gang member, exhibiting suspicious behavior. As they attempted to detain the uncooperative Subject, an officer became involved in a categorical use of force.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
Subject: Male, 45 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 October 8, 2013.

Incident Summary

Uniformed Officers A and B were on patrol. They were in a marked black and white police vehicle. Officers A and B wore ballistic vests and had Department-approved handguns, handcuffs, canisters of Oleoresin Capsicum (OC) spray, Thomas A Swift Electronic Rifle (TASER), and had either their ASP or PR-24 batons attached to their equipment belts.

Officers A and B were driving down the street when Officer B observed a male wearing a gray T-shirt and blue denim shorts, walking on the sidewalk. Officers A and B recognized the male (Subject 1) to be a known gang member. Both Officers A and B had previous contacts with the Subject and knew him to be a frequent narcotic user.

After making visual contact with the officers, the Subject immediately walked through the front of a yard. Based on the Subject's objective symptoms of intoxication, as observed by the officers, Officers A and B decided to initiate a pedestrian stop and conduct a narcotic investigation.

As the officers approached an intersection, Officer A observed the Subject standing on the corner staring at the officers and screaming incoherently. Officer B heard the Subject scream to the officers that he wasn't going to go with them.

Officer A advised Officer B he would be the contact officer due to the Subject's position on the corner. Prior to stopping and parking their police vehicle, Officers A and B reiterated to each other that the Subject was a gang member who was known to ingest PCP.

Note: Officer B did not broadcast the officers' location because the Subject started running.

As Officer A exited the driver side of his police vehicle, the Subject challenged Officer A to a fist fight. Officer A observed the Subject sweating profusely, while exhibiting muscle rigidity and a tightening of his jaw line.

Officer A ordered the Subject to turn around and place both hands on top of his head. The Subject failed to comply. Officer A repeated his commands and the Subject began to turn around. As Officer A approached the Subject from behind, the Subject suddenly turned around, ripped off his T-shirt, and looked skyward, while extending both arms up. The Subject then bladed his body, clenched both fists and assumed a fighting stance. The Subject continued to be uncooperative and was screaming upward toward the sky for strength.

Despite the light rainy conditions, the Subject was sweating profusely. This solidified the officers' belief that the Subject was under the influence of PCP.

The Subject began to jog away from the officers. Officer A immediately followed the Subject on foot as they jogged across the street. Officer A heard Officer B say, "I'm grabbing the TASER," then observed the Officer B run back to the passenger side of their police vehicle. Furthermore, Officer A did not believe the Subject was attempting to flee or evade arrest when he jogged away, but instead, was only attempting to gain time in order to formulate a plan. Officer A characterized the pace of the foot pursuit as a "light jog."

Note: When asked why he did not broadcast his status and location when the Subject started running, Officer B responded that he wanted to catch up to his partner so that they would maintain sight of the Subject.

In the interim, Officer B maintained visual contact with Officer A as he pursued the Subject on foot. Officer B retrieved the TASER from the glove compartment box, then ran around the black and white police vehicle and entered the driver's side. Officer B drove such that he was paralleling the foot pursuit.

As the Subject jogged away, Officer A observed the Subject grab his front waistband area with his right hand. Officer A recalled shouting, "He's reaching for his waistband," and continued to follow the Subject at a safe distance as the Subject repeatedly shouted out loud, "I'm not going to let you take me." During this time, Officer A believed the Subject was arming himself with some type of weapon.

Officer A stated that during the foot pursuit he remained approximately three to four car lengths behind the Subject. As Officer A continued to follow the Subject, Officer A observed the Subject slow down. Simultaneously, the Subject continued to struggle to pull something out of his front waistband area. Officer A characterized the Subject's actions as an "upward jerking motion." Officer A believed the Subject was attempting to pull a gun from his front waistband area. Officer A believed Officer B was following him in their police vehicle. Officer A shouted out loud, "He's reaching for his waistband." The Subject briefly turned around and looked backward over his left shoulder in Officer A's direction. Officer A opined the Subject was attempting to obtain target acquisition prior to removing his weapon.

Note: Officer B did not recall hearing Officer A shout, "He's reaching for his waistband," at the termination of the foot pursuit.

Meanwhile, Officer B attempted to prevent the Subject's escape and drove approximately 20 feet past the Subject, then immediately stopped and exited the police vehicle.

Officer B grabbed the TASER from the passenger seat, exited the police vehicle, and ran around the rear trunk of his police vehicle toward where the Subject had stopped.

Officer A stopped jogging, unholstered his service pistol, and assumed an isosceles shooting stance on the sidewalk. Officer A pointed his pistol at the Subject and ordered

him to place his hands on top of his head. The Subject ignored Officer A's commands, then suddenly stopped, turned in a counter-clockwise direction and with a right-handed pistol grip, pointed an unknown black object in Officer A's direction. As the Subject began to turn around and raise the dark object in Officer A's direction, Officer A shouted, "gun."

Officer A perceived the black object in the Subject's right hand to be a blue steel handgun because it appeared the Subject was grabbing the handle of a pistol. Then as the Subject started turning towards Officer A and drew his weapon towards him, that's when Officer A fired three rounds, and because Officer A was in fear for his life, Officer A fired one round at the Subject. After firing his first round, Officer A observed blood splatter onto the Subject's front torso area. During his assessment, Officer A observed the Subject continue raising what he believed was a blue steel handgun in his right hand. Officer A, still in fear for his safety, fired a second round at the Subject. Officer A continued to assess the situation and observed the Subject still holding the dark object in his right hand, causing Officer A to fire a third and final round at the Subject. Officer A indicated that as the Subject was raising the weapon up, Officer A started shooting. All three rounds were fired from an approximate distance of 18 feet.

After the Subject fired the third round, the Subject fell to the ground, landing on his right side. As the Subject's right arm hit the ground, a dark object bounced out of his right hand and onto the ground.

Note: Subsequent investigation revealed the Subject was not armed with a handgun. The dark object was a black leather wallet.

Before Officer B could transition from his TASER to his pistol, he heard approximately three gunshots, and then observed the Subject fall onto the ground. Officer B broadcast his location over the radio, indicating, "[O]fficer needs help, we have shots fired, su[b]ject down."

Witness A was inside his nearby apartment when he heard approximately three gunshots. He looked out his balcony window and observed officers behind parked vehicles ordering the Subject to place his hands up in the air. Witness A observed the Subject lying on the ground adjacent to a trash bin. Witness A did not hear any verbal commands being given prior to hearing the gunshots, and did not observe the OIS.

Witness B was in the same building. Witness B was downstairs on the first floor in the laundry room when he heard several gunshots. He ran upstairs to his apartment, looked out the balcony window and observed the aftermath of the OIS. Witness B did not hear any verbal orders prior to hearing the gunshots.

Witness C was inside another apartment with her husband, Witness D, and her three children. Witness C was assisting her children with their homework at the kitchen table when she heard approximately two to three gunshots. Witness C did not observe the OIS, but looked out the kitchen window and observed the Subject sitting on the ground

while leaning against a trash bin. Witness C did not hear any verbal orders prior to hearing the gunshots.

Witness D was inside his living room watching television when he heard two to three gunshots. He looked out his living room window and observed the Subject on the ground bleeding, lying in front of the trash bin. Witness D observed a police vehicle parked in front of his apartment, and he observed two officers. The officer standing on the sidewalk had his gun unholstered as the other officer, who was standing near the police vehicle, was just looking on. Witness D did not hear any verbal orders prior to hearing the gunshots.

Uniformed Police Officers C and D were at the end of their shift and completing overtime slips when the help call was broadcast. Officers C and D ran out the rear door of the police station to their black and white police vehicle. As Officers C and D prepared to leave the parking lot, uniformed Officers E and F also ran to the rear of the police station. Officers E and F, who were also at the end of watch, flagged down Officers C and D and entered into the rear of their police vehicle. Air Support Division (ASD) uniformed Officers G and H monitored the help call and advised CD they were responding as well.

Officer B contacted CD via his handheld radio and requested a Los Angeles Fire Department (LAFD) Rescue Ambulance (RA) saying, that he “need[ed] an RA unit, male [...] gunshot wounds to the chest. [I]t’s going to be a male[...], approximately 40 years of age, conscious and breathing at this time.”

An RA, staffed by LAFD personnel, received the alarm and responded to the scene. The Air Unit advised CD they had arrived at the location. After verifying there were no outstanding subjects, Officer H coordinated the arrival of responding units and the establishment of the perimeter around the scene.

Officer C advised CD he and the other officers had arrived at the location. Officer C parked his police vehicle, exited with Officer D, and ran to the scene to check on the condition of the involved officers. Officer C observed the Subject leaning against a blue dumpster while sitting on the ground.

The Subject was bleeding from his upper chest area. Officer C instructed Officer D to handcuff the Subject’s wrists behind his back, which he did. In order to facilitate the Subject’s breathing pattern, he also instructed Officer D to assist the Subject into a seated position on the ground, which Officer D also completed. Officer D stated he did not physically search the Subject after handcuffing him because he did not have a shirt on, but he did visually clear the Subject’s pockets.

Officer F cordoned off the block and directed all vehicular and pedestrian traffic away from the scene. Officer F also directed all responding officers as they arrived on scene. Officer E established an inner perimeter around the immediate area.

Sergeants A and B were the first uniformed supervisors at scene. Sergeant A identified the involved officers as Officers A and B. After ensuring Officers A and B's safety, Sergeant A observed the Subject lying on the ground being treated by paramedics. Sergeant A separated Officer A from Officer B and obtained a Public Safety Statement (PSS). Uniformed Watch Commander, Sergeant C, responded to the scene. Sergeant C established a Command Post (CP) and assumed the role of Incident Commander (IC).

Meanwhile, LAFD personnel drove the RA unit to a local hospital, while paramedics continued administering emergency medical treatment to the Subject in the rear of their paramedic unit.

Uniformed Police Officers I and J also responded to the help call. Officer I rode in the rear of the RA unit for paramedic safety as Officer J followed behind the RA unit in their black and white police vehicle.

FID Detectives conducted a follow-up to Los Angeles County Men's Central Jail to interview the Subject. The Subject was admonished and given his Miranda rights, which he waived by indicating that he did not know what happened.

The Subject did not recall taking off his shirt and challenging the officers to a fight, nor did he recall running away from the officers. He also did not recall abruptly stopping, turning and pointing an object in the officers' direction. The Subject recalled leaning against a fence, hearing two gunshots and then falling on his chest with both arms extended outward; however, he did not recall being shot by the police.

No criminal charges were filed against the Subject as a result of this case. His probation was revoked and he was sentenced to two years in prison.

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 B's tactics to warrant administrative disapproval.

The BOPC found Officer A'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

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

Basis for Findings

A. Tactics

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

1. Code Six Broadcast

Officers A and B observed the Subject, who they recognized as an active gang member and initiated a pedestrian stop on him without notifying CD of their location and status.

Prior to detaining Subject, Officers A and B discussed their respective roles regarding contact and cover. Above all, their tactical discussion delegated the broadcast responsibility to the cover officer.

The purpose for providing a timely Code Six broadcast is to ensure that other units in the area are aware of the officers' location in the event the incident escalates and the response of additional personnel or resources becomes necessary. Accordingly, a sound tactical plan, when applied, ensures operational success. In this instance, Officers A and B discussed and employed a tactical plan prior to making contact with the Subject. Officer A was the designated contact officer and Officer B was designated the cover officer with the pre-determined responsibility to conduct the Code Six broadcast, along with any additional necessary broadcasts.

Although officers must be afforded some discretion in determining the appropriate time to make the notification, a balance must be maintained to ensure a sufficient level of officer safety in every circumstance. That being said, it was determined that Officers A and B had sufficient time and opportunity to broadcast their location prior to initiating contact.

The BOPC determined that Officer B's failure to broadcast the officers' Code Six location substantially and unjustifiably deviated from approved Department tactical training, as he did not adhere to the pre-discussed plan, and therefore failed to broadcast. Officer A's reliance on Officer B to adhere to the tactical plan, relative to contact, cover and broadcast was reasonable; therefore the BOPC determined that Officer A's actions did not substantially deviate from approved Department tactical training.

2. Foot Pursuit Broadcast

While Officers A and B pursued the Subject, the officers neither broadcast the initiation of the foot pursuit nor provided any subsequent broadcast regarding its progress. In addition, Officers A and B had discussed the specific roles of the contact and cover officers during a foot pursuit.

The BOPC determined that Officer B's decision to forgo a timely foot pursuit broadcast placed both officers at a significant tactical disadvantage, and substantially and unjustifiably deviated from approved Department tactical training. On the other hand, Officer A's reliance on Officer B to complete the appropriate foot pursuit broadcast did not substantially deviate from approved Department tactical training. Accordingly, the BOPC directed that these identified issues will be discussed during the Tactical Debrief.

3. Tactical Vehicle Deployment

Officer A elected to engage in a foot pursuit of the Subject while Officer B entered the police vehicle and drove to catch up to Officer A. While driving alongside Officer A, Officer B elected to drive past Officer A and the Subject. Officer B stopped approximately 20 feet in front of the Subject in order to prevent him from crossing the street and continuing through a hole in a fence where, based on his past experiences and observations in the area, Officer B believed the Subject was headed toward. Officer B indicated he was attempting to catch up to his partner and prevent the Subject's escape.

The BOPC realized that the actions of passing a subject and stopping in front of a subject deviate from general tactical training. However, in this specific circumstance, the BOPC's expectation is for officers to take decisive action to minimize the continued threat to public safety. In this case, based on the facts and circumstances of the contact, the BOPC believed that those actions were justified. To that end, the BOPC found the decision to close the distance while still seated in the police vehicle and to move into a position ahead of the Subject, in order to prevent him from accessing an escape route, to be a reasonable one, increasing the likelihood of apprehension and ensuring public safety.

Therefore, the BOPC found that Officer B's actions substantially deviated from approved Department tactical training but were justified. However, to enhance

future performance, the BOPC directed that the topic of Tactical Vehicle Deployment be discussed during the Tactical Debrief.

- The BOPC additionally considered the following:

1. Unit Designation Broadcast

At the termination of the foot pursuit, Officer B inadvertently broadcast a help call with the incorrect unit designation. Although involved in a stressful incident, Officer B is reminded of the importance of accuracy while broadcasting.

2. Equipment (Hobble Restraint Device - HRD)

Officer B was not equipped with his HRD during the incident. It was in his vehicle. Officer B was reminded of the importance of maintaining the required equipment on his person, in order to ensure that all detention options remain available. The BOPC directed that these topics be discussed during the Tactical Debrief.

3. Search of a Subject

Subsequent to the OIS, Officer D handcuffed Subject. Upon completion of the handcuffing process, Officer D did not complete a pat down search of the Subject for weapons. Officer D observed that the Subject was not wearing a shirt, so he could see the Subject's upper torso as well as his waistband. Although a visual inspection of the Subject was completed, Officer D was reminded of the importance of completing a pat down search of subjects that were taken into custody. As a result, the BOPC directed the Commanding Officer of the Area to document and discuss this issue with Officer D.

B. Drawing/Exhibiting

Officers A and B initiated contact with the Subject, knowing he was an active gang member. As the officers made their approach, the Subject displayed aggressive behavior and jogged down the street, followed by Officer A. The Subject ran and subsequently Officer A observed the Subject pulling at his waistband area. Officer A alerted his partner of his observations and continued to follow the Subject. Meanwhile, Officer B followed the foot pursuit in his police vehicle. The Subject slowed his gait and ultimately stopped.

Officer A could see that the Subject, with his right hand, was struggling to pull something from his waistband. He formed the belief that he was trying to pull out a weapon. Officer A believed the Subject was trying to acquire a target, so Officer A drew his weapon.

Officer B drove past the Subject, exited his vehicle with the TASER and took a position behind the front driver side fender of the truck, parked adjacent to the Subject. Officer B was in the process of removing the TASER from its holster when the OIS occurred and the Subject fell to the ground.

The BOPC determined that an officer with similar training and experience as Officers A and B, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation might escalate to the point where deadly force may be justified.

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

C. Lethal Use of Force

Officer A (pistol, three rounds)

Officer A observed the Subject while driving his police vehicle and immediately identified him as a gang member from previous contacts, as well as a heavy narcotic user, also known to carry weapons.

The Subject disappeared from the officers' line of sight through the nearby residences. When Officer A started to approach the Subject, the Subject ripped his shirt off, threw his hands up towards the sky, bladed his body, clenched his fists, and then began to verbalize that he was not going to go with the officers.

Officer A recalled he formed the belief that the Subject was armed with a weapon and was going to fight to his ultimate end.

At the termination of the foot pursuit, the Subject slowed his gait. The Subject remained with his back to Officer A. Officer A observed the Subject struggling to remove an object from his front waistband area with his right hand. Simultaneously, the Subject turned his head and looked over his left shoulder as if he was trying to acquire a target. Officer A recalled seeing the Subject grabbing what he believed to be the handle of a pistol and turning towards him. Officer A fired three rounds.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A would reasonably believe that the Subject posed an immediate threat of serious bodily injury or death and that the use of lethal force would be justified.

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