

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

HEAD STRIKE WITH AN IMPACT WEAPON – 080-08

Division	Date	Duty-On(X) Off()	Uniform-Yes() No(X)
Newton	08/29/08		

Involved Officer(s)	Length of Service
Officer B	3 years, 2 months

Reason for Police Contact

Officers received information about a subject with a gun, who they contacted and pursued.

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
Subject 1: 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 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 August 4, 2009.

Incident Summary

Officers A and B were attired in plain clothes and were in a plain vehicle. Officer A wore a black ballistic vest over his shirt which had an "LAPD" patch affixed to the front chest area and to the back of the vest. Officer A had his LAPD badge on a chain hanging from his neck. Officer B wore a blue ballistic vest over his shirt with his LAPD badge on a chain hanging from his neck.

According to Officer A, he received information that that there were five or six male subjects at a residence who were armed with .45 caliber handguns. Officer A advised Officer B of the information.

Officers A and B responded to the vicinity and drove by the residence, observed bulging underneath the males' clothing as they walked up to the street, looking up and down. Officer A and B believed Subject 1's actions were consistent with handguns. The officers did not notify the Area Watch Commander of their presence and did not notify an Area supervisor regarding the information they received or the field operation that they were conducting outside their assigned area.

Officers A and B contacted plain clothes Officers C and D, advised them of the circumstances, and requested their response. Officers C and D responded separately, each driving an unmarked vehicle.

Officers A and B observed one of the males who they had seen earlier at the location riding a beach cruiser. The male stopped and looked up and down the street. Officer A believed the male's actions were consistent with those of a lookout. Shortly thereafter, four additional males arrived at the corner on foot.

Officer A advised Officers C and D of their observation and advised them to put their ballistic vests on. Officer B retrieved a shotgun from the trunk of his vehicle by lowering the rear back seat, which gave access to the trunk compartment from within the vehicle.

Officer A observed the male on the beach cruiser point to a male Hispanic who was walking on the sidewalk. The males began walking faster in the male Hispanic's direction. Officer A advised Officer B, "I think they're going to do a robbery," and then advised the units that they were going to deploy on the males once they reached the corner.

Officer B broadcast his location to Communication Division.

Officer A drove toward the males, and Officers C and D followed in their respective vehicles. Officer A stopped his vehicle on the corner, facing toward the males, and drew his pistol. Officers A and B exited their vehicle and verbally identified themselves as police officers.

The males immediately ran in different directions. Subject 1 and an unidentified male ran into the driveway of a business. Officer B chased Subject 1 and the unidentified male on foot into the driveway, followed by Officer A.

Officers C and D observed Subject 2 and the unidentified male riding the beach cruiser continue on the sidewalk past the driveway of the business and continued to follow them in their vehicles.

None of the officers broadcast that they were involved in a foot pursuit. According to Officer B, his radio fell out of his left rear pants pocket as he exited his vehicle.

Officer A observed Subject 1 reach into his waistband and retrieve a pistol. Officer A yelled, "Gun, gun, gun." Officer A then observed Subject 1 throw the pistol toward the roof of the residence located east of the business.

Footage from a security surveillance camera which captured the entrance of the business was subsequently recovered. Subject 1 can be seen running into the driveway of the business with what appeared to be a pistol in his hand, followed by the unidentified male. Within seconds, Officers B, armed with his shotgun, and A, armed with his pistol, can be seen running after the two males. Approximately nine seconds later, the unidentified male subject who ran into the driveway with Subject 1 reappears and can be seen running out of the driveway.

Subject 1 ran toward a narrow space between stacked freight and the cinderblock wall of the driveway. Officer B followed Subject 1 and observed Subject 1 attempting to jump and reach the top of the cinderblock wall. Officer B ordered Subject 1 to get on the ground. Subject 1 complied and placed his hands on top of his head and squatted down, facing away from Officer B. The east cinderblock wall was approximately five feet high topped by a four foot high wrought iron fence with barbed wire.

Officer B approached Subject 1 to handcuff him and was approximately an arm's length away. Officer B attempted to reposition his shotgun, by moving it in a downward motion toward the left side of his leg and letting it hang from its sling, to free his hands. According to Officer B, as he repositioned his shotgun, he felt either the barrel or flashlight of his shotgun getting "banged up" because of the confined space between the stacked objects and the wall. Officer B then realized it was tactically safer for him to back up, continue to cover Subject 1 with his shotgun, and have Officer A take Subject 1 into custody. Officer B yelled, "I've got a guy over here," to Officer A.

According to Subject 1, Officer B yelled, "Don't move," and he responded, "I'm not." Officer B then directed Subject 1 get on the ground on his stomach and placed his hands behind his head. Subject 1 indicated that Officer B approached him, turned the gun upside down, and "cracked" him on the head with the butt of the shotgun, causing him to "blank out a little bit."

Officer B then directed Subject 1 to keep his hands on top of his head and slowly walk backward out of the confined space. When Subject 1 had moved away from the stacked objects, Officer B ordered Subject 1 to go down on his knees. Officer A then approached Subject 1, handcuffed him, and conducted a pat-down search.

Officer A then noticed blood on his hands and observed that Subject 1's left hand was covered in blood. Officer A wiped the blood on his hands on Subject 1's shirt. Officer A attempted to find the source of Subject 1's injury with negative results and asked Subject 1 if he was okay and if he needed medical attention. Subject 1 shook his head "no" and did not make any verbal statements.

Officers A and B believed that Subject 1 sustained his injury when he attempted to climb the wall with barbed wire. Officers A and B did not request a rescue ambulance (RA) for Subject 1.

Meanwhile, Officers C and D subsequently located Subject 2. Officer C pulled his vehicle over to apprehend Subject 2; however, Subject 2 continued to run. Officer D drove his vehicle past Officer C's vehicle, pulled his vehicle over into a driveway behind Subject 2, exited his vehicle, drew his pistol, and yelled, "Stop police." Subject 2 complied and raised his hands. According to Officer C, he did not draw his pistol.

Upon arriving at the business, Officer D observed Officers A and B walking Subject 1 toward their vehicle. Officer B asked Officer D to monitor Subject 1 so that he could retrieve the pistol that Subject 1 had thrown on the roof. Officer B climbed onto the roof top and retrieved a six-shot blue steel Colt .45 caliber revolver.

Uniformed Police Officers E and F responded to the scene, where Officer D placed Subject 2, and Officer A placed Subject 1, into the back seat of the black-and-white police vehicle. Officers E and F then transported Subject 2 and Subject 1 to the station.

Watch Commander Lieutenant A asked Subject 1 the required screening questions. When asked if he was sick, ill, or injured, Subject 1 replied, "No;" however, Lieutenant A observed blood on Subject 1's shirt and asked him how it got there. Subject 1 stated that a cop hit him on his head with a gun. Lieutenant A observed a small quarter-inch laceration on the left rear side of Subject 1's head and requested a RA, which transported Subject 1 to the 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, B, C, and D's tactics to warrant Administrative Disapproval.

B. Drawing/Exhibiting

The BOPC found Officer A, B, and D's drawing/exhibiting to be within policy.

C. Use of Force

The BOPC found Officer B's use of force to be within policy.

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered that:

1. Officers A and B had telephonic contact with a Confidential Informant and did not notify a supervisor of the nature of the contact as soon as practical. The circumstances did not prevent a timely notification to a supervisor, as they had sufficient time to telephonically contact Officers C and D and request their response. Furthermore, Officers A, B, C, and D were in plainclothes and took enforcement action without making the proper notifications to their Watch Commander and the Area Watch Commander.

Proper notifications serve to ensure an appropriate level of supervisory oversight, but most importantly, to enhance officer safety. The inherent risk of the misidentification of plainclothes personnel is of paramount concern, especially when working outside of an employee's Area of assignment. Notification to the Watch Commander of the involved Area is critical in that the uniform personnel can then be made aware of the plainclothes operation to more appropriately respond, if necessary.

2. Officer A's attire consisted of a grey shirt, blue jean shorts, and a black ballistic vest with an "LAPD" patch affixed to the left front and "LAPD" in large white letters affixed on the back, with his Department badge displayed on a chain that hung from his neck. Officer B was wearing his blue Department-issued ballistic vest over a black short sleeved T-shirt and black pants, with his Department badge clipped onto his vest. Officers A and B contend that they were merely monitoring the location; however, there was substantial information that should have led them to believe that they were likely to become involved in enforcement activities. Therefore, tactical concerns made it desirable that they be readily identifiable as police officers to Subject 1, the general public, and responding uniform personnel.

The Department recognized practice for the identification of non-uniform personnel during tactical situations is the use of the raid jacket. Officers C and D wore their raid jackets, but Officers A and B did not and wore their concealable ballistic vests as external garments. Officers A and B should have donned their raid jackets to ensure that they were readily identifiable as police officers. The BOPC noted that the officers' unit has since been issued Department-approved tactical ballistic vests that meet the recognized identification specifications.

3. Officers A and B believed that the five to six subjects they observed in front of the residence were possibly armed with handguns. As they were outside of their Area of

assignment and unfamiliar with the location, further efforts should have been made to obtain information about the residence. Absent exigent circumstances that require immediate police action, it is tactically safer to maximize intelligence gathering efforts to formulate a tactical plan that includes adequate personnel resources, the presence of uniform personnel, and delineates specific duty assignments (i.e., arrest teams, communication officer, etc.).

Whenever possible, efforts should be made to obtain information from the relevant investigative or enforcement entity within the Department. To that end, inquiries should have been made to the Area Gang Enforcement Detail and Narcotics Enforcement Detail.

4. Officer A and B's first notification to CD was when the three unmarked vehicles deployed on the suspects and Officer B broadcast, "[Unit Call Sign], show us Code Six at [location]." Officer B did not include Officers C and D in the broadcast nor did he advise CD the nature of their activity. Therefore, Area Patrol Division personnel were not made aware of the tactical situation, which could have resulted in plainclothes personnel and uniformed officers becoming involved in a rapidly unfolding tactical scenario.

Additionally, Officers A, B, C and D did not broadcast that they were in pursuit of possible armed suspects. When circumstances warrant an emergent response of additional personnel, as occurred in this instance, it is vital that CD has the pertinent information readily available to provide to the responding units and influence their ability to properly respond and make the most appropriate tactical decision.

As Officer B exited the vehicle, his radio fell out of a rear pants pocket. Although a radio is not specifically listed as a required piece of equipment, a radio is a critical piece of equipment that provides a vital communication link to other officers. By not maintaining control of his radio, Officer B created a circumstance where he had no means of communicating to other units or CD. The BOPC noted that Officer B was reminded to ensure his equipment is properly secured on his person.

5. Officer A observed two possible armed suspects run into a business parking lot and out of his line of sight. Prior to entering the property, Officer A 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 entering and traversing a location where armed suspects may be lying in wait takes precedence. Expecting Officer A to holster and reholster would not be reasonable under these circumstances and would increase the risk of an unintentional discharge. Therefore, it was reasonable for Officer A to have had his service pistol drawn while in foot pursuit.
6. Officers A, B, C, and D believed the subjects were armed with handguns and pursued them in an apprehension mode, which is evident by the fact that Officer B

reduced the distance to within an arm's length from Subject 1. In a pre-planned tactical incident with multiple suspects running in different directions, the officers should have worked as a team, utilized proper resources, and established containment, thus making apprehension more likely.

Since the subjects were believed to be armed with a firearm, Officers A, B, C, and D should have proceeded while making an ongoing assessment of the presence of adequate cover with the intent of establishing an effective perimeter for containment. In this rapidly unfolding tactical situation, an evaluation of the appropriateness of a continued foot pursuit must be assessed. Once a reasonable amount of cover became unavailable, they should have established a perimeter by directing units to specific perimeter positions.

7. Officers A, B, and D observed blood on Subject 1's person; however, they could not locate the source of the blood. Unable to clearly identify the nature of the injury, the officers should have requested the response of personnel from the LAFD. Instead, Subject 1 was transported to the police station and presented to the Watch Commander for screening. Lieutenant A observed blood on Subject 1's shirt and a quarter-inch laceration on the back of his head. When Lieutenant A asked how the injury was obtained, Subject 1 advised him that an officer struck him on his head with a gun. It was at that point that Lieutenant A made a request for an RA.
8. Officers C and D followed Subject 2 in their respective vehicles as he ran. They noted that Subject 2 was becoming increasingly fatigued, so stopped their vehicles and exited with Officer D giving verbal commands. Once Subject 2 took a prone position, Officer D holstered his service pistol, approached and handcuffed Subject 2. Officer C did not draw his service pistol and provide cover as Officer D approached and handcuffed a potentially armed suspect. Partner officers must coordinate their roles to ensure that the integrity of the contact and cover concept is not compromised, especially when taking a potentially armed suspect into custody during a scenario where additional suspects remain outstanding.
9. After Officer D handcuffed Subject 2, Officer D placed Subject 2 in the rear seat of his non-partitioned vehicle and transported him back to the origination of the foot pursuit by himself. Although the distance was not considerable, this practice minimizes the officer's ability to effectively monitor and control the arrestee. Officer D placed himself in a situation of undue danger had Subject 2 proven to be armed with a weapon. An officer must accompany an arrestee in the rear seat when utilizing a non-partition-equipped vehicle for transportation.

B. Drawing/Exhibiting

The BOPC noted that Officers A, B, and D obtained information and made personal observations that substantiated a belief that subjects were likely armed with handguns. As Officers A, B, and D deployed on the subjects, they drew and exhibited their weapons. In this instance, it was reasonable for them to believe that the situation could escalate to the point where deadly force may be justified.

In conclusion, the BOPC found Officers A, B, and D's Drawing/Exhibiting to be reasonable and within Department guidelines and accordingly to be in policy.

C. Use of Force

The BOPC noted that the "head strike" was appropriately identified as a Categorical Use of Force incident for investigative purposes to determine whether it occurred intentionally or accidentally during a use of force. The preponderance of evidence indicates that the "head strike" occurred when Officer B chose to sling the shotgun in order to handcuff Subject 1, who was compliant and providing no resistance. The "head strike" was neither a result of an intentional application of force nor occurred unintentionally during an application of force. Therefore, since there was no actual, intended or perceived use of a less-lethal control device or physical force at the time the shotgun impacted Subject 1's head, the "head strike" was inadvertent.

In conclusion, the BOPC found Officer B's inadvertent use of lethal force to be within policy.