

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

OFFICER-INVOLVED SHOOTING – 085-08

Division	Date	Duty-On (X) Off ()	Uniform-Yes(X) No ()
Hollenbeck	09/21/2008		

Officer(s) Involved in Use of Force	Length of Service
Officer A	13 years, 6 months

Reason for Police Contact

After being assaulted by Subject 1, Victim A responded to the local police station with Witness A to file a crime report. As he was about to leave the station, Witness A received a phone call indicating that Subject 1 was assaulting Witness A's sons, and officers responded to the location of the assault.

Subject	Deceased ()	Wounded ()	Non-Hit (X)
Subject 1: Male, 28 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 BOPC 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 August 11, 2009.

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.

Incident Summary

Subject 1 confronted Victim A at Victim A's residence. Subject 1 and Victim A were neighborhood acquaintances. Subject 1 accused Victim A of taking his property and secreting it in Victim A's vehicle. Victim A denied the accusation and allowed Subject 1

to search Victim A's vehicle in order to demonstrate that Victim A did not have Subject 1's property.

According to Victim A, Subject 1 began fighting with him. At some point during the altercation, Subject 1 retrieved a handgun from his waistband, pointed it at Victim A, and then struck Victim A over the head approximately five to ten times with the handgun. As a result of being struck by the handgun, Victim A sustained a one-inch laceration to the top of his head.

Witness A observed the assault as it was unfolding. Witness A owns the property where Victim A lives. Witness A resides at the residence with his family and rents a room to Victim A.

Witness A was returning to his residence when he witnessed the assault. After Victim A was struck with the gun, Victim A fled inside the residence, followed by Subject 1. Witness A crossed the street and was confronted by Subject 1 who had exited the residence and still had the gun in his hand. Subject 1 put the gun into a pocket of his trousers and left. Witness A entered the residence, contacted Victim A, and convinced him to report the incident to the police. Witness A then accompanied Victim A to the police station.

At the police station, Witness A and Victim A met with Officers A and B at the front desk. Officer A saw that Victim A had injuries to the side of his face. Officer A requested two additional patrol units to respond to the station for an Assault with a Deadly Weapon (ADW) investigation, as well as a supervisor for a follow-up investigation at the location of the incident. Sergeant A and Officers C, D, E, and F responded to the station.

Sergeant A saw that the victim was bleeding and that he had an injury on his forehead. Officers A and B briefed the units that showed up about the situation. Officers were getting ready to respond to the location when Witness A received a phone call on his cell phone and stated that Subject 1 was outside the house and was fighting with some of his family members.

While Victim A and Witness A were at the station, Victims B and C, Witness A's sons, along with their cousin, Witness B, had returned to Witness A's residence. Victim B said his mother informed them of what had happened and that their father and Victim A had gone to the station to file a police report. Witness B suggested the three of them go to the station to see what was transpiring, and the three started walking toward the station. While walking toward the station, Victims B and C and Witness B passed by Subject 1's residence, and Subject 1 called out to them.

Victim C said that Subject 1 called out to him and then came outside the residence and pushed Victim C. Victim C relayed that Subject 1 asked, "Where's my fucking thing?" and then lunged and socked Victim C.

Victim B got in front of his brother and told Subject 1 to calm down, but Subject 1 took out a gun. Subject 1 then pointed the handgun at Victim B. Victim B took a step backwards and told his brother, "Let's go." Subject 1 then used the handgun to strike Victim B twice on the head.

In response to this assault, Victim B struck Subject 1 several times with his fists in order to defend himself. Victims B and C and Witness B ran down the street. Subject 1 pursued them and caught up to Victim C. Subject 1 grabbed Victim C by the shirt and told him that he couldn't leave. Victim B told Subject 1 to let his brother go. Subject 1 pushed Victim B, and Victim B hit Subject 1 with his fists. Subject 1 then struck Victim C on the head with the handgun he was holding. Victims B and C and Witness B broke away and ran back toward Witness A's residence.

Meanwhile, Witness A's wife, Witness C, had been alerted to the fact that Subject 1 was assaulting Victims B and C in front of Subject 1's residence. She telephoned Witness A, who was still at the station. Witness A told the officers that Subject 1 was hitting his kids, grabbed the keys to the truck, and was going to leave, but Officer A told him he could not leave.

The officers returned to the residence, and Subject 1 was standing outside the location. Officer A said that as the officers drove up, they saw an individual in the front courtyard of the residence fitting the description provided by Victim A. Subject 1 looked in the officers' direction, gave them a surprised look, and started walking to the back of the residence. Officer B ordered Subject 1 to stop; however, Subject 1 ignored Officer B's repeated orders to stop and ran along the side of the residence. Officers C and F, after leaving the station, had followed directly behind Officers A and B in their police vehicle. Officers A and B started running behind Subject 1, while Officers C and F drove to try to surround Subject 1. Officer C broadcast to Communications Division (CD) that Officers A and B were in foot pursuit.

Meanwhile, Officer E, who was driving the third police vehicle in the caravan, put his vehicle in reverse and attempted to set up a perimeter.

Officers A and B ran into the alley near Subject 1's residence. Officer A observed Subject 1 holding a blue steel semiautomatic handgun in his right hand, so Officer A yelled out, "Drop the gun. Drop the gun." When Officer A saw the blue steel semiautomatic in his right hand, Officer A drew his weapon.

Officer B noticed that Officer A drew his weapon and pointed it between the houses. Officer B immediately unholstered his weapon, maintained it at a low ready position, and approached his partner.

Subject 1 continued to run and then began to climb over a chain-link fence and into an adjoining yard. Officer A said that Subject 1 was holding a gun as he swung his right leg over the fence and actually pushed the gun against the fence to help him push off to

get over. At that time, Officer A shot, and Subject 1 turned and then ran again. Subject 1 turned in front of a residence and disappeared from Officer A's view.

Officer A made a radio broadcast indicating that shots had been fired, the officers needed help, and requested a perimeter. Sergeant A heard Officer A's broadcast.

Officer A saw Subject 1 pop out from the side of a yellow house. When Subject 1 saw that Officer A was still in the area, he retreated.

Officer D said that he and Officer E backed their car up to hold down a corner and saw a sweaty male down the street who was wedged between a gate and a vehicle pulling out of a driveway. Officers D and E went toward the man in a foot pursuit.

Sergeant A, who was on foot attempting to establish a perimeter, saw Officers D and E stop, jump out of their car, and draw their weapons. At about that time, Subject 1 popped out of the yard, ran toward the street, and up the sidewalk.

Sergeant A unholstered his pistol as he ran to the officers' assistance. As Officers D and E approached, they observed three males start kicking and holding on to a male that was on the ground. As the officers got closer, the males advised that Subject 1 had hit one of the males and his face was covered in blood. Witness A had returned to the neighborhood from the station to join Victims B and C, and together, they had encountered Subject 1 and pushed him to the ground in order to prevent him from fleeing before the officers arrived.

Officer E said that the officers separated the three males that were kicking and punching Subject 1 at that time. The officers asked the males to separate and then detained Subject 1 and placed him under arrest.

Officer D grabbed Subject 1's arms and Officer E grabbed Subject 1's legs in order to control him during and after they handcuffed him. Officers A and B rejoined the other officers at their location approximately 20 seconds after hearing Subject 1 was in custody.

Officer E said the officers were approached by a citizen who advised that Subject 1 was in his backyard when he observed him with a gun, which he possibly threw into one of the neighbor's rear yards.

Officer D told Officer E they should search the back of the yard. The officers searched through some trash cans and found a blue steel handgun, which appeared to have blood on the grip. Officer D told Officer E they should stay to secure it.

Two Rescue Ambulances were requested. Subject 1 was not injured as a result of the OIS; however, as a result of the altercation with the witnesses just prior to the arrival of Officers D and E, he sustained a bruise to the right side of his head and minor lacerations and scratches to the back of his neck. Victim B sustained a laceration to his

eye, Victim C sustained a laceration to his head, and Victim A sustained a laceration to his head as a result of being struck by Subject 1. Subject 1 refused to be transported to a local hospital and was subsequently transported to the police station.

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 Sergeant A's and Officers A, B, C, D, E, and F's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

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

C. Non-Lethal Use of Force

The BOPC found Officers D and E's non-lethal use of force to be in policy.

D. 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:

The officers were at the station developing a tactical plan for a follow-up ADW investigation when the witness received a telephone call and informed them that Subject 1 was striking additional victims with a firearm. Officers who receive information of a violent crime in progress should advise CD by requesting a clear frequency and providing a crime broadcast. Additionally, when the nature of the crime warrants an

emergency response, officers should determine the most appropriate mode of response.

In this instance, the officers were only two blocks away and knew they were responding in force with three units. Although a crime broadcast would have been ideal, the limited time to respond made a crime broadcast impractical. The rapidly unfolding tactical scenario forced the officers to use discretion in determining which actions would facilitate a controlled, coordinated response to the violent crime in progress.

Therefore, when practical, initiation of a crime broadcast is desirous. It serves to inform other field units of the crime in progress and provides CD with the ability to provide the responding units with additional information should it become available from other sources.

Additionally, the decision to initiate an emergency response was at the discretion of each vehicle operator. Under the specific circumstances, it was reasonable to elect not to respond "Code Three" with lights and sirens.

Officer B broadcast a location, but the broadcast neither included the other two units nor the nature of their activity. The lack of information created a circumstance wherein CD was unaware of the extent of the police activity and what units were actually on scene.

Therefore, had the broadcast included more thorough information, the tactical deployment of responding units and the ability of CD to coordinate the response of necessary resources would have been enhanced as the incident escalated.

In this instance, although it was Officers A and B in foot pursuit, Officers C and F broadcast that they were in foot pursuit. Officers A and B did not broadcast subsequent information to update CD and the other officers on scene of their location or direction of travel.

Therefore, the officers were reminded that it is the responsibility of the officers involved in the foot pursuit to make the initial foot pursuit broadcast and broadcast progress.

In this instance, the officers clearly engaged in a foot pursuit with the intent to contain Subject 1 rather than close the distance for apprehension purposes. They did not pursue Subject 1 into the yard but entered the alley and monitored Subject 1's movement as he fled through the adjacent backyards. The officers neither attempted to close the distance nor run directly behind Subject 1. Throughout the foot pursuit, the officers maintained a position consistent with containment rather than apprehension mode.

Therefore, it was reasonable for Officers A and B to engage in a foot pursuit for the purpose of containment of the armed subject.

In this instance, 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 an incident could escalate to a use of deadly force takes precedence.

Therefore, it was reasonable for Officers A and B to draw their service pistols while in foot pursuit.

The BOPC found Sergeant A's and Officers A, B, C, D, E, and F's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The involved personnel responded to a reported violent crime where the subject was reported to be armed with a handgun. Officers A and B ran and tracked the subject. Officer A observed the subject holding a handgun in his right hand. Officer A unholstered his service pistol as he continued to follow the subject through the alley. Officer A yelled to Subject 1 to drop his gun, but Subject 1 ignored the commands and continued to run.

Officer B saw that Officer A had unholstered his service pistol and heard him yell, "Drop the gun! Drop the gun!" Officer B slowed down and unholstered his service pistol.

Sergeant A observed Subject 1 run and momentarily lost sight of him. Sergeant A then observed Officers D and E driving, exiting their police vehicle mid-block, drawing their service pistols, and approaching Subject 1, who was already down on the sidewalk. Sergeant A responded on foot and unholstered his service pistol.

In this situation, it was reasonable for the involved personnel to believe that the tactical situation could escalate to the point where lethal force may become necessary.

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

C. Non-Lethal Use of Force

In this instance, Officers D and E approached the subject. Officer D told Victims B and C, as well as Witness A to back up and stop hitting the subject. According to Officer E, the subject was moving and trying not to get handcuffed. Officer E used firm grips and bodyweight to hold the subject's legs while Officer D utilized firm grips to take the subject into custody.

Officers D and E's non-lethal applications of force were appropriate in their efforts to overcome the level of resistance presented by the subject.

The BOPC found Officers D and E's non-lethal use of force to be in policy.

D. Lethal Use of Force

Officer A – fired one round from an approximate distance of 44 feet.

Officer A was between a parked utility van and a wrought iron fence that ran along an alley maintaining sight of Subject 1 as he fled. Subject 1 ran to where there was a three-foot high chain-link fence that separated the two properties. The subject climbed over the fence while still holding the handgun in his right hand. According to Officer A, as the subject was climbing over the fence, his handgun was pointed in Officer A's direction. Once the subject was over the fence he raised his handgun with his right arm locked out and pointed it at Officer A. Fearing that the subject was going to shoot him, Officer A fired one round at the subject.

It was objectively reasonable for Officer A to believe that it was necessary to protect himself from the immediate threat of death or serious bodily injury presented by the subject's actions.

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