

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

OFFICER INVOLVED SHOOTING – 102-08

Division	Date	Duty-On(X) Off()	Uniform-Yes(X) No()
Southeast	11/29/2008		

Officer(s) Involved in Use of Force	Length of Service
Officer A	3years, 11 months

Reason for Police Contact

Officers A and B observed several males in a parking lot who appeared to be drinking from open alcohol containers. A struggle ensued with one of the males, who was carrying a firearm.

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
Subject 1: Male, 27 years old			

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force (CUOF) 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 (FID) 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 (UOFRB) 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.

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 November 10, 2009.

Incident Summary

Uniformed Officers A (driver) and B (passenger) were in their police vehicle on routine patrol when they observed three to four male subjects standing in the parking lot of a liquor store. The males appeared to be drinking from open alcohol containers.

Officer A advised Officer B that he would pull into the parking lot. The group of males looked in the officers' direction and began to walk toward the entrance of the liquor store. As Officer A stopped his police vehicle, he stated, "Let me talk to you," however, the males continued walking into the liquor store.

Officer A stopped the police vehicle approximately four feet away from the front entrance of the liquor store. As they exited their police vehicle, Officer A advised Officer B that he would detain Subject 1, who was drinking from a white Styrofoam cup. In turn, Officer B advised that he would detain Subject 2.

Note: According to Officer B, he and Officer A continually ordered the males to stop as they approached the liquor store. Officer B further indicated that he observed Subject 1 attempt to remove either contraband or a weapon from his waistband area and hand it off to Subject 2.

Note: Officer B recognized Subject 1 from prior contacts and knew him to be a gang member. Officer B also believed that Subject 1 was on parole or probation for either robbery or burglary; however, he did not advise Officer A of this information.

Note: Officers A and B did not advise Communications Division (CD) of their status and location.

Officers A and B entered the liquor store. Officer A caught up with Subject 1 and an unidentified male by the checkout counter and directed them place their hands on top of their heads. Subject 1 and the unidentified male complied. Officer A grabbed Subject 1's interlaced fingers and began to conduct a pat down search. Officer A turned his head and observed Officer B in one of the aisles in the liquor store, approximately 10 feet away, detaining Subject 2. As Officer A turned his head back toward Subject 1, he observed an unidentified female, who had initially been standing at the checkout counter, in a crouched position next to them, reach and touch Subject 1's waistband area with her left hand. The female then retracted her hand when she saw Officer A. Officer A believed that the female was attempting to remove contraband from Subject 1. Officer A pushed the female away and directed her to back up, then lifted Subject 1's shirt and observed a blue steel semiautomatic pistol tucked between Subject 1's belt and pants. Officer A advised Officer B that Subject 1 had a gun.

Subject 1 immediately lunged forward, bringing his arms down to his waistband area. Officer A believed that Subject 1 was reaching for his pistol and as a result, Officer A grabbed Subject 1's left arm with his right arm, drew his pistol with his left hand and

pushed Subject 1 against a Plexiglas partition. Officer B observed the struggle and immediately moved to assist Officer A, drawing his pistol as he approached.

Officer B looked at Subject 1's front waistband area and observed the butt of a blue steel handgun on his right side. Officer B pointed his pistol at Subject 1 as he grabbed Subject 1's left arm. Subject 1 struggled with Officers A and B and stated that he was not going back to jail. Officer A ordered Subject 1 to stop resisting and to place his hands behind his back; however, Subject 1 continued to struggle and continuously stated, "You guys are going to have to shoot me. You guys are going to have to shoot me. I'm not going to jail."

As the struggle continued, Witness B approached Subject 1 and the officers, grabbed Subject 1's shirt and attempted to pull Subject 1 away from the officers toward the front door. Meanwhile, the female was also grabbing at Subject 1's clothing, which caused Officer B to believe she was attempting to retrieve Subject 1's pistol. As Officer B struggled with Subject 1, he pushed the female away.

Officer A holstered his pistol, removed his handcuffs and attempted to place them on Subject 1's wrist to "get a better hold on him and keep him from reaching his waistband;" however, Officer A dropped the handcuffs during the struggle. Officer A drew his pistol again as the struggle shifted back and forth within the store from the checkout counter to the front door.

Note: According to Officer B, throughout the struggle, Subject 2 walked up to the officers and yelled profanities at them.

Note: According to Officer A, at some point during the struggle, he broadcast a request for backup, which he later upgraded to a "help" call.

Note: According to Witness B, during the struggle he was advising Subject 1 to comply with the officers. Additionally, Witness B stated that he attempted to help the officers by pushing Subject 1 against the Plexiglas partition.

As described by Officer A, "We continued to struggle. He continues to go to – goes to his – go to his waistband. And at this point I felt that he's fought us such that he's going to go for his gun, and he's going to either shoot my partner, who's standing off to his left, or he's going to reach back and shoot me." Officer A advised Officer B to stand out of the way and then fired one round toward Subject 1's mid-back area from a distance of approximately two inches.

Note: According to Officer B, after Officer A advised him that he was going to shoot Subject 1, Officer A also advised Subject 1 that if he kept reaching for the pistol that he (Officer A) would shoot him.

After being struck by the round, Subject 1 immediately fell forward to the floor onto his left side causing Officer A to go down with him. Officer B holstered his pistol and

broadcast a request for help, but his transmission was garbled. As a result, CD broadcast Officers A and B's last known location, which was not the liquor store.

Officer B knelt down next to Subject 1 and handcuffed him. Officer A holstered his own pistol and removed the pistol that was in Subject 1's waistband. Officer A removed the magazine from the pistol, pulled the slide back and observed there was no round in the chamber. Officer A then tucked Subject 1's pistol in his (Officer A's) waistband.

Meanwhile, Subject 2 began to advance toward Officers A and B with his fists clenched while yelling obscenities towards them. Officers A and B drew their pistols again and Officer A directed Subject 2 to vacate the premises.

Note: According to Officer A, he drew his pistol because he believed that Subject 2 was possibly a gang member and that gang members are known to be armed. Officer B indicated he drew his pistol for his safety, his partner's safety and the safety of the civilians who were inside the liquor store.

Officer A verified their location with CD and requested a Rescue Ambulance (RA) for a male with a gunshot wound to the back.

Shortly thereafter, additional personnel arrived at the scene, including Officer C. Officer B directed Officer C to detain Subject 2. Officer C took Subject 2 into custody with the assistance of Officer D. Meanwhile, Officers A and B went to a storage area of the store for a period of approximately 25 seconds.

The RA arrived, treated Subject 1 for a gunshot wound to his mid-back area and transported him to a hospital.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each CUOF 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 administrative disapproval.

B. Drawing/Exhibiting/Holstering

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

C. Non-Lethal Use of Force

- The BOPC found Officers A and B's non-lethal 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:
 1. Officers A and B observed a misdemeanor violation and decided to initiate a detention for investigative purposes without first notifying CD of their status and location. This error was compounded because at the time they requested "Help," CD showed their status as still being at their previous location. Lacking the updated status and location, CD inaccurately broadcast the location of the "Help" call. The purpose of the mandate to broadcast a status and location is to enhance officer safety. Since the responding units were unaware of the accurate location of the "Help" call, the omission of this broadcast could have resulted in dire consequences.
 2. Officer B recognized Subject 1 from two to three prior contacts and knew him to be a gang member. In addition, he believed that Subject 1 was on parole or probation for either robbery or burglary. Officer B did not communicate this information to Officer A until after Subject 1 was in custody.
 3. Officers A and B discussed the roles of contact and cover prior to entering the store; however, the plan inappropriately delineated them both as contact officers, with Officer A pre-designated to detain Subject 1 and Officer B pre-designated to detain Subject 2. As the officers followed the three individuals into the store, Officer A walked past Subject 2, detained Subject 1 and the third unidentified male in the aisle just east of the cashier's booth, while Officer A followed Subject 2 down an adjacent aisle and initiated contact. As the officers conducted their independent searches, Officer A discovered the handgun in Subject 1's waistband, a struggle ensued and Officer B responded to assist Officer A. Although Officer B was in position to render immediate assistance to his partner, he did not adhere to the role of contact and cover, wherein one officer provides protection from a position of surveillance and control.

In addition, after Subject 1 collapsed to the floor, Officer A removed the handgun from Subject 1's waistband, both officers holstered their service pistols and Officer B handcuffed him without cover.

4. While struggling to prevent Subject 1 from reaching down and arming himself with the handgun, Officer A reached down to his radio with his right hand, pressed the transmission switch and broadcast a back-up request. When circumstances warrant an emergency response of additional personnel, as occurred in this instance, it is imperative that CD has the pertinent information readily available to provide to the responding units, maximizing their ability to properly respond and make the most appropriate tactical decision.
5. As Officers A and B struggled to gain control of Subject 1's arms and prevent him from retrieving his handgun, Officer A removed a pair of handcuffs, intending to *"...handcuff at least one of his arms to get - - get a better hold on him and keep him from reaching his waistband."* By retrieving the handcuffs with his right hand when he was unable to gain full control of Subject 1's right arm with both hands, Officer A further hindered his ability to fully engage Subject 1.
6. After Subject 1 was handcuffed and additional resources were arriving at the scene, Officers A and B walked to the back storage room without disseminating pertinent information to officers arriving at the scene. According to Officer B, *"My concern at that time was my partner's safety. I -- I assumed that the suspect was dead, because he wasn't moving, and he wasn't talking. Having known that traumatic experience, I wanted to get my partner away from the suspect out of his sight away from every -- from all the other officers just so he could have his thoughts and get his bearing back."* Officer B further stated, *"I just wanted to get him away from everyone so he could get his thoughts back or get his bearing back."* After the aforementioned discussion transpired for approximately 25 seconds, Officers A and B returned to the front store area.

Although Officer B believed it necessary to ensure Officer A was mentally and physically prepared to continue, the BOPC was concerned with the decision and manner in which they moved to a secluded area within the store, as their actions could create a perception of impropriety. Also concerning was the fact that they removed themselves from the ongoing tactical situation, wherein the securing of the crime scene and apprehension of outstanding subjects was delayed.

The BOPC found Officers A and B's tactics to warrant administrative disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC noted that while searching Subject 1, Officer A observed the grips of a handgun protruding from Subject 1's waistband which caused him to draw his service pistol and alerted Officer B of his observations. As Officer B responded to Officer A's location to render assistance, he drew his service pistol. With both officers struggling to control Subject 1's arms while holding their service pistols in their primary hands, Officer

A began to lose control of Subject 1's right arm. At this point, Officer A holstered his service pistol and grabbed Subject 1's right arm with both hands; however, during the ongoing struggle Subject 1 was able to pull his right arm free from Officer A's grasp. Believing that Subject 1 was preparing to arm himself, Officer A drew his service pistol for a second time.

After the OIS, Subject 1 fell to the floor and landed on his left side. While maintaining his service pistol in his left hand, Officer A removed the handgun from Subject 1's waistband with his right hand and holstered his service pistol. Officer B then holstered his service pistol, placed Subject 1 in a prone position, handcuffed him and attempted to broadcast a request for help.

Two individuals remained in the store, approached and threatened the officers with bodily harm, resulting in Officers A and B once again drawing their service pistols.

The BOPC determined it was reasonable for Officers A and B to believe that the tactical situation had escalated to the point where lethal force may become necessary.

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

C. Non-Lethal Use of Force

The BOPC noted that Officers A and B utilized firm grips and physical force in an attempt to force Subject 1's arms behind his back after Officer A observed the handgun in Subject 1's waistband, and Subject 1 attempted to reach for his weapon.

Therefore, as a result of Subject 1's aggressive actions, it was objectively reasonable for Officers A and B to utilize non-lethal applications of force to protect themselves and to take Subject 1 into custody.

The BOPC found Officers A and B's non-lethal force to be in policy.

D. Lethal Use of Force

As Officers A and B struggled to gain control of Subject 1 and prevent him from reaching toward the handgun protruding from his waistband, Subject 1 repeatedly shouted that he was not going back to prison and that the officers would have to kill him. Subject 1's action of pulling his right arm out of Officer A's grasp and reaching for his front waistband area caused Officer A to fear for his and his partner's lives. An officer with similar training and experience would believe that Subject 1 posed a substantial risk of serious bodily injury or death.

The BOPC determined it was objectively reasonable for Officer A to utilize lethal force in defense of his and his partner's lives.

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