

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

**OFFICER INVOLVED SHOOTING – 004-09**

<b><u>Division</u></b>	<b><u>Date</u></b>	<b><u>Duty-On(X) Off()</u></b>	<b><u>Uniform-Yes() No(X)</u></b>
Hollywood	02/04/2009		

<b><u>Officer(s) Involved in Use of Force</u></b>	<b><u>Length of Service</u></b>
Officer A	19 years, 10 months
Officer B	7 years, 10 months

**Reason for Police Contact**

Citizen complaint

<b><u>Subject(s)</u></b>	<b><u>Deceased ()</u></b>	<b><u>Wounded (X )</u></b>	<b><u>Non-Hit ()</u></b>
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. 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 November 11, 2009.

**Incident Summary**

Plainclothes Officers A (driver) and B (passenger) were driving an unmarked vehicle to investigate a citizen's complaint that a group of males regularly loitered in an alley to sell narcotics.

While driving, the officers observed a group of males standing on a sidewalk. As the officers drove past the group of males, Subject 1, a juvenile, approach the driver's side of the officer's vehicle and threw an object through the open driver's side front window,

striking Officer B's face. The object, an open can of beer, continued its path through the front vehicle compartment, striking Officer A on the left cheek and jaw area. Officer A informed Officer B that he had been hit.

Officer B accelerated the vehicle, negotiated a U-turn, and parked. Officer B then observed Subject 1 standing directly in front of the vehicle. Officers A and B immediately exited the vehicle and Officer B broadcast a back-up request. Officer B then placed his radio in his pants pocket.

According to Officer B, as he requested back-up, Subject 1 immediately ran up to him. When Subject 1 stepped toward him, Officer B lifted up his shirt to display his LAPD badge and stated, "Hey, police. LAPD." Officer B observed Subject 1 look directly at his badge and put his hands on his head. Subject 1 apologized and indicated to the officers that he thought they were someone else. Officer B stepped in front of the open driver's side door, took control of both of Subject 1's wrists using firm grips, and pulled Subject 1 behind the open driver's side door of their vehicle. Officer B then stood Subject 1 up against the closed rear passenger door with Subject 1's front torso pushed against the vehicle.

According to Officers A and B, Subject 1 was belligerent and appeared to be intoxicated. Officer B attempted to handcuff Subject 1. According to Officer B, when he applied the handcuff to Subject 1's right wrist, Subject 1 yelled an expletive and broke free from his grasp. Subject 1 then spun around and struck Officer B in the rib cage. Officer B struck Subject 1's face and instructed Subject 1 to stop resisting.

Officer B then handcuffed Subject 1. As Officer A walked around the rear of their vehicle, he observed Officer B in the process of handcuffing Subject 1.

According to Officer B, Subject 1 continued to resist the officers. Officer B then observed a group of ten to 12 individuals running toward their location from the area where Officer B had first observed the group of males. Officer B, believing these individuals were a possible threat because they were likely companions of Subject 1, decided to move Subject 1 to the ground. Officer B maintained his grip on Subject 1's arm and tripped him, forcing him to the ground.

Officer B's attention was drawn to Subject 2, who he believed was a gang member because of his clothing and tattoos and because Officer B heard other individuals around Subject 2 call him by a gang moniker.

As Subject 2 approached Officer B, someone in the group yelled to Subject 2, "Just shoot him." Officer B observed Subject 2's arm straighten, with his hand positioned inside of his shirt or pocket in the waistband area.

Officer B, believing that the situation could escalate such that deadly force may be necessary, drew his service pistol and pointed the pistol at Subject 2. Officer B verbally identified himself as a police officer.

Officer B, believing that Subject 2 was armed and that he and his partner were outnumbered, broadcast a help call. Officer B returned the radio to his pants pocket and reacquired a two-handed grip on his pistol.

Subject 2 advanced toward Officer B, prompting Officer B to take a step back. Subject 2 then took another step toward Officer B. According to Officer B, Subject 2 still had not taken his hand out of his pocket.

**Note:** According to Officer A, he felt like back-up was taking a long time to arrive. However, he could not use his radio to broadcast an additional request for back-up because his radio fell on the floorboard of the vehicle when he initially got out of the car. Officer A then reached down into the vehicle to retrieve his radio when he observed a group of four to eight males, all of whom were yelling and screaming, surround Officer B.

In order to create distance, Officer B kicked Subject 2's leg area. However, Officer B believed the kick was ineffective because Subject 2 closed the distance between them quickly. After the kick, Subject 2 swung his fist in a roundhouse motion, forcefully striking Officer B on the face. The strike momentarily stunned Officer B and caused him to take one or two steps back. Officer B immediately brought his pistol into a close-contact position on the side of Subject 2's body, with both hands on the pistol.

Subject 2 leaned into him and with two hands grabbed Officer B's forearm. Subject 2's hands then slid down Officer B's forearm to his hand and then to his pistol.

Instantaneously, as Subject 2 grabbed Officer B's hand and then pistol, Officer B, unaware of where his partner was, stunned from being struck in the face, and believing that Subject 2 was armed and attempting to take his pistol away and use it against him, fired two rounds from his pistol in an upward direction to Subject 2's torso. According to Officer B, Subject 2 released his grip on Officer B's pistol and stepped back. Subject 2 then buckled over, placed both of his hands to his chest area, turned and ran from Officer B.

Meanwhile, Officer A had walked Subject 1 around the front of their vehicle to the front passenger's side door and tried to put him in the car. However, Subject 1 kept struggling and eventually broke free and attempted to run away. Officer A grabbed Subject 1's shirt, causing it to rip, and then grabbed his arm and brought him back to where he was standing. Subject 1 continued to turn and attempted several times to spit on Officer A. Officer A used his bodyweight to lean into Subject 1 and hold him against the officers' vehicle. Officer A instructed Subject 1 to get down on the ground; however, Subject 1 did not comply with his orders.

As Subject 1 continued resisting Officer A's attempts to place him in the vehicle, two additional males approached Officer A. One male grabbed Subject 1 by the arm and tried to pull Subject 1 away. Officer A was able to maintain control of Subject 1. The male then walked away from Officer A toward Officer B and began to yell at Officer B.

Officer A observed at least two or three individuals, including Subject 2, approach Officer B, causing Officer B to walk backwards several steps. Officer A heard Officer B order the approaching individuals to get on the ground. According to Officer A, she also saw that Officer B had his gun out at that time. Officer A then observed Subject 2 grip Officer B's gun. Officer A left Subject 1 by their vehicle to help Officer B. Officer A heard two shots as she walked toward Officer B.

According to Officer A, as soon as the shots were fired, the group ran away. According to Officer B, as the group ran from the location, he re-holstered his pistol and broadcast the subjects' description and direction of travel.

Meanwhile, Officers C and D, were in a marked police vehicle when they heard Officer B's request for back-up and responded. Officers C and D, still in their vehicle, drove up next to Officer B and asked him what he had and what he needed. Officer C noted that Officer B appeared to be stunned and dazed. Officer B did not respond to their questions because he was communicating on his radio at the time.

As Officers C and D attempted to get information from Officer B, they observed three males running from the area. Believing that these individuals may be a part of the investigation, Officers C and D then followed the individuals in their vehicle to a nearby apartment complex. Officer C stopped and parked their vehicle facing east at the mouth of the driveway to the apartment complex. Officers C and D exited the vehicle. As the officers exited their vehicle, they observed two of the individuals run into an apartment, leaving the front door to the apartment open.

The third individual, Subject 2, collapsed on the steps leading up into the apartment. Officer C observed Subject 2 slumped forward on the ground. He observed an injury to Subject 2's wrist but did not see any other injuries. Officer C believed Subject 2's injury may have been a cut or laceration. Officer D observed large amounts of blood and an injury to Subject 2's hand and was unsure if Subject 2's injury was from a gunshot or stabbing. Officer C was still unaware that any shots had been fired at this point in the incident.

Officer C then took a position to the right of Subject 2 and the apartment's open front door, and Officer D took a position to the left of Subject 2 and the front door. Both officers heard a door slam inside the apartment, and both officers drew their service pistols. Officers C then walked over to the right front doorjamb of the apartment. Officers C and D issued several commands for the individuals to step out of the apartment.

After the suspects had exited the apartment, they began shouting at the officers that Subject 2 had been shot. At the same time, according to Officer C, he heard Officer B's description of Subject 2 over the radio and realized that the individual in front of him on the ground bleeding matched the description. Officer C then requested additional units to help detain the suspects, re-holstered his pistol, put on rubber gloves, and handcuffed Subject 2.

Sergeants A, B, C, and D, along with Officer E responded to the location. Sergeant A walked directly to the apartment complex and observed Officers C and D detaining three suspects, including Subject 2.

Sergeant A used his radio to request a Rescue Ambulance (RA) for Subject 2. Officers C and D advised Sergeant A that there were possible additional suspects in the apartment. Sergeant A requested additional officers to respond to the location to clear the apartment. A search team was assembled. No additional suspects were located.

### **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 a Tactical Debrief.

#### **B. Drawing/Exhibiting/Holstering**

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

#### **C. Non-Lethal Use of Force**

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

#### **D. Use of Force**

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

## **Basis for Findings**

### **A. Tactics**

In adjudicating this incident, the BOPC considered the following:

#### 1. Donning Ballistic Vests

The BOPC noted that Officers A and B were operating in a plainclothes capacity and did not don their ballistic vests. As the officers were in the area to solely gather intelligence for a citizen's narcotics complaint and had no intention to take any enforcement action, their attire was appropriate.

#### 2. Communication

The BOPC noted that Officers A and B did not advise CD of their unit designations at the beginning of their watch; therefore, they were not deployed in the computer aided dispatch system. By not ensuring their information was recorded with CD prior to deploying in the field and incorrectly utilizing a wrong call sign during their first broadcast to CD, a circumstance was created wherein, had the officers pressed their emergency trigger button, it would have been extremely difficult for CD to identify the unit requesting "help."

#### 3. Making contact with suspects

The BOPC noted that Officers A and B were victims of a violent assault with a beer can. Officer B conducted a U-turn, placed the vehicle in park and was immediately confronted by Subject 1. It was unclear what the officers' intentions were as they redeployed their vehicle. Regardless of their intentions, by Officer B positioning their vehicle as he did, without maintaining sight of Subject 1, Officers A and B were forced to confront Subject 1 in a known gang area, with limited equipment and minimal use of force tools.

#### 4. Broadcasts

The BOPC noted that while preparing to make contact with Subject 1, Officer B broadcast a back-up request to CD. A broadcast for "help" would have been more appropriate. Additionally, Officer B should have advised CD of the nature of the activity and provided a description of Subject 1. Officer B should also have included that shots had been fired and the subject may possibly be armed. The omission of information in both instances created a circumstance wherein responding personnel were not fully aware of the evolving tactical situation.

#### 5. Maintaining Control of a Suspect

The BOPC noted that Officers A and B were confronted by two separate threats and were forced to manage them individually. Officer A attempted to secure Subject 1 in the

police vehicle in order to engage the hostile group with his partner; however, his efforts proved unsuccessful and the officers continued to struggle to control the situation. When Officer A observed Subject 2 lunge forward and grab Officer B's drawn service pistol, Officer A released his hold on Subject 1, who remained handcuffed, and moved toward his partner. When Officer A traversed a few feet and was walking around the rear of their vehicle, he heard two gunshots. Officer A observed the group dispersing, ensured Officer B was not injured and responded back to the passenger side of the vehicle, where Officer A regained control of Subject 1 without incident. Although Officer A made a conscious decision to relinquish control of Subject 1, his decision to do so was reasonable, as his partner was faced with an individual attempting to disarm him.

## 6. Apprehension versus Containment

The BOPC noted that Officers C and D arrived at the location without knowing the nature of the back-up request. They drove up to Officer B and attempted to obtain information from him; however, were unable to. Simultaneously, Officers C and D observed three individuals running from the location and deduced that they may have been involved in the incident. Without obtaining further information from Officer B regarding what had transpired, the officers followed the potential suspects in their police vehicle to an apartment complex, where Officer C stopped at the driveway apron; both officers exited, and proceeded after the fleeing individuals. Subject 2 collapsed on the steps leading into the building, while the other two individuals ran into the apartment.

## 7. Equipment

As Officer A exited the vehicle his handheld radio fell onto the front passenger floorboard. A radio is a critical piece of equipment that provides a vital communication link to other officers. Officer A is reminded to ensure that his equipment is properly secured on his person.

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

## **B. Drawing/Exhibiting/Holstering**

The BOPC noted that in this instance, a group of males aggressively advanced towards Officers A and B as they attempted to take Subject 1 into custody. With Subject 1 handcuffed, Officer B turned his attention toward the approaching individuals, focusing on Subject 2. Officer B's training and experience led him to believe that Subject 2's actions were consistent with a suspect arming himself with a weapon, resulting in Officer B drawing his service pistol.

Officers C and D responded to the back-up request and observed three individuals running from the location. Without obtaining any information from Officer B, Officers C and D remained in their vehicle and followed the individuals to an apartment complex. As Officers C and D walked down the driveway adjacent to the apartment building, they observed Subject 2 lying on the steps leading into an apartment, while the two remaining individuals ran into the apartment through the open doorway. Both officers

noted Subject 2 was bleeding; however, they did not know the nature or extent of his injuries. It was at this point that Officers C and D drew their service pistols.

Due to Officers B, C, and D's reasonable belief that the situation may escalate to a level where deadly force could become necessary, the BOPC found their Drawing/Exhibiting to be in policy.

### **C. Non-Lethal Use of Force**

The BOPC noted that the following force was used during the incident:

#### Officer B

- Firm Grip
- Physical Force
- Takedown
- Open palm strike
- Kick

#### Officer A

- Firm Grip
- Physical Force
- Bodyweight

Subject 1 threw a beer can into the open driver's side window of Officers A and B's vehicle. As Officer A accelerated and redeployed from the location of the assault, Subject 1 ran after the officers' vehicle and confronted them as they exited. Officer B identified himself as a police officer, which prompted Subject 1 to place his hands on his head. Officer B made his approach, utilized firm grips to grab both of Subject 1's wrists and pulled him toward their vehicle, positioning Subject 1's front torso against the rear passenger door. Officer B secured a handcuff ratchet on Subject 1's left wrist, while Officer A walked around the rear of the vehicle to provide assistance. According to Officer B, as Subject 1 began to struggle, Officer A and he forced Subject 1's right arm behind his back and handcuffed him. Once handcuffed, Subject 1 became irate, yelled profanities and utilized his left elbow to strike Officer B in the left ribcage area, the force of which propelled Subject 1's entire body to turn in a counter clockwise direction. The officers lost their grasp on Subject 1 and Officer B responded by delivering an open palm strike to the Subject 1's left cheek with his left hand. Subject 1 appeared unaffected as he turned completely around, coming to rest facing Officer B.

At this time, Officer B observed a group of ten to 12 males running or jogging toward them. Officer B maintained a firm grip on Subject 1's left elbow, extended his left leg in front of Subject 1 and forced him to the ground.

Officer B then directed his attention toward the advancing group, drawing his pistol when he observed Subject 2 possibly arming himself.



In the interim, Officer A observed the approaching threat and attempted to secure Subject 1 in the back seat of their vehicle. Subject 1 broke free from Officer A's grasp and began to run. Officer A grabbed Subject 1 forced him back to the vehicle; however, all attempts to place him in the vehicle were thwarted by an unidentified male attempting to pull Subject 1 away from Officer A. The unidentified male ultimately released his hold on Subject 1 and directed his attention to Officer B. Still struggling to place Subject 1 into the vehicle and unable to render assistance to his partner, Officer A guided Subject 1 around the front of the vehicle to the passenger side and utilized bodyweight to hold him against their vehicle as he attempted to retrieve his radio from the front passenger floorboard.

The force utilized by Officers A and B was objectively reasonable and within Department guidelines.

#### **D. Lethal Use of Force**

Officer B fired 2 rounds . The BOPC noted that in this instance, Officer B attempted to increase the distance between himself and the encroaching group by taking steps rearward; however, Subject 2 closed the distance and grabbed Officer B's service pistol with both hands.

The BOPC determined that Officer B's use of lethal force was objectively reasonable to protect him from the immediate threat of serious bodily injury or death. Therefore, the BOPC found Officer B's use of lethal force to be in policy.