

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

OFFICER-INVOLVED SHOOTING – 018-09

<u>Division</u>	<u>Date</u>	<u>Duty-On()</u>	<u>Off(X)</u>	<u>Uniform-Yes()</u>	<u>No(X)</u>
Outside City	03/22/09				

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	8 years, 1 month

Reason for Police Contact

Off-duty confrontation.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (X)</u>
Unidentified			

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 February 23, 2010.

Incident Summary

Officer A was off-duty and returning from out of state to his residence in Los Angeles. Officer A had just exited the freeway when he heard the sound of screeching tires, looked in his rearview mirror, and observed the subject's vehicle traveling toward him with headlights on and at a high rate of speed. The subject's vehicle struck the rear of Officer A's vehicle.

After hitting Officer A's vehicle, the subject's vehicle went around Officer A's vehicle and then proceeded to leave the scene of the accident. Officer A decided to follow the

subjects' vehicle to get its license plate to report the accident and told Witness 1, his passenger, to dial 911 so that he could provide the license plate number to the 911 operator.

Officer A continued to follow the subject's vehicle while beeping his horn and flashing his lights, apparently trying to get the driver to stop, according to Witness 2, who was following both involved vehicles in another vehicle. Officer A followed the subject's vehicle into a residential neighborhood and observed it make a U-turn and stop. Officer A also stopped his vehicle at this time.

According to Officer A, upon stopping, he exited his vehicle, opened his trunk, and attempted to obtain his flashlight from his backpack, located in the trunk of his vehicle, for approximately 10-15 seconds. However, Officer A heard a vehicle coming in his direction, was distracted, and retrieved his gun, a two-inch revolver, from a pocket holster located in a backpack instead of the flashlight.

Officer A was positioned behind his vehicle when he saw the subject's vehicle coming toward him. He believed the subject was going to try to run him over and he feared for the safety of the occupants in his vehicle. Officer A stepped into the road away from the rear of his vehicle.

Officer A fired one round at the subject's vehicle. Officer A then fired two additional rounds.

The subject's vehicle departed the scene. Officer A placed his revolver back in his backpack in the trunk of his vehicle and returned to the passenger compartment of his vehicle to check on its occupants.

As Officer A returned to the vehicle, Witness 1 was still on his cell phone with the 911 operator and made a number of statements, which were recorded. Officer A then took the phone from Witness 1 and, using profanity, stated that an individual had attempted to run him over. Officer A also told the 911 operator that he was an LAPD officer and the victim of a hit-and-run accident, but did not state that shots had been fired.

A local Sheriff's Department deputy subsequently arrived at the scene. Officer A told the deputy he was the victim of a hit-and-run collision and that he shot at the suspect because the suspect almost hit him with the vehicle. When the deputy asked Officer A if he hit the suspect's vehicle, Officer A replied that he did not because he was trying to shoot the tires.

A second deputy subsequently arrived at the scene and obtained a Public Safety Statement from Officer A, which included the number of shots fired, direction of the shots, and where his weapon was located.

A California Highway Patrol (CHP) Officer also arrived to investigate the hit and run traffic collision. Officer A next advised LAPD of the shooting incident and was instructed not to discuss the OIS with anyone until his lieutenant and captain arrived.

The hit-and-run suspects and their vehicle were not identified and remain outstanding. No evidence was recovered to indicate that anybody was injured by Officer A's gunfire.

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 A's tactics to warrant Administrative Disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC found Officer A's drawing and exhibiting to be out of policy.

C. Use of Force

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

Basis for Findings

A. Tactics

In its analysis of the incident, the BOPC noted the following tactical considerations:

1. The BOPC noted that, while off-duty and driving his personal vehicle, Officer A was the victim of a hit-and-run traffic collision and made the decision to follow the suspect's vehicle with two other occupants in his vehicle.

Officer A's decision unnecessarily jeopardized his safety, that of the occupants in his vehicle and that of the public. A more sensible decision would have been for Officer A to remain at the scene of the traffic collision, contact emergency services from the cellular telephone that he had in his possession and file the appropriate reports with the CHP.

2. The BOPC noted that once the suspect's vehicle stopped, Officer A exited his vehicle and walked to the rear of his vehicle to retrieve his flashlight from his

backpack in the trunk. According to Officer A, his intentions were to obtain the suspect's vehicle license number and a description of the suspect or to exchange information with the driver. Here, it would have been safer for Officer A to position his vehicle in a way which would have enabled him to utilize his vehicle's headlights to obtain the suspect's vehicle license plate number. This would have allowed Officer A to remain in his vehicle and provide the information to the waiting 911 operator instead of involving himself and the occupants of his vehicle in a tactical situation.

3. The BOPC noted that apparently Officer A's emotions played a critical role in his decision making process, resulting in actions that placed the occupants of his vehicle and the public's safety in jeopardy. The preponderance of the evidence demonstrates that the tactics and decisions employed during this incident unjustifiably and substantially deviated from approved Department tactical training relative to off-duty actions.

B. Drawing/Exhibiting/Holstering

The BOPC noted that Officer A believed the suspect's vehicle was possibly stalled and had become inoperable or they had stopped to exchange information. Officer A exited his vehicle and walked to the rear of his vehicle to retrieve his flashlight from his backpack in the trunk. According to Officer A, his intentions were to obtain the suspect's vehicle license number and a description of the suspects or to exchange information with the driver. While Officer A was in the process of searching for his flashlight, he heard the sound of spinning tires, looked up and observed the headlights from the suspect's vehicle heading toward him.

The BOPC was critical of Officer A's rationale for drawing his pistol based on his claim that he meant to retrieve his flashlight from his backpack, but inadvertently drew his pistol instead. Furthermore, at the moment when Officer A drew his service pistol, he failed to articulate a reasonable belief that the situation may escalate to the point where deadly force may become necessary and actually stepped into the roadway toward the moving vehicle

Therefore, the BOPC found Officer A's drawing and exhibiting to be out of policy.

C. Use of Force

The BOPC noted that Department policy prohibits shooting at moving vehicles "*unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle.*" The policy further states, "*the moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants.*"

As the oncoming vehicle accelerated toward him, Officer A, pointed his pistol at the driver and fired one round. He then fired two more rounds toward the vehicle as it drove past him.

Although there is little doubt that Officer A was in fear of being struck by the vehicle, the BOPC was critical of his unreasonable decision to leave a position of cover behind his vehicle and step out into the roadway which unnecessarily placed him in harm's way.

In conclusion, the BOPC determined that Officer A's use of force was not objectively reasonable and was out of policy.