

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

OFFICER-INVOLVED SHOOTING – 026-13

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Rampart	03/16/13		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	6 years, 5 months
Officer B	7 years
Officer C	5 years, 6 months

Reason for Police Contact

Officers responded to a call regarding a robbery in-progress at a local restaurant. Upon their arrival, an officer-involved shooting occurred.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
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Subject: Male, 27 years of age.

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 Los Angeles Police Department Command Staff presented the matter to the Chief 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 February 25, 2014.

Incident Summary

Uniformed officers responded to a radio call of a robbery in progress at a local restaurant. When the officers arrived at the location, they observed the Subject inside the restaurant armed with a handgun. The Subject exited the restaurant and pointed the gun at the officers, resulting in an Officer Involved Shooting (OIS). The investigation determined the Subject intended to commit suicide by pointing a replica handgun at officers.

***Note:** During the subject's interview with FID, he indicated he woke up feeling depressed, said goodbye to several friends, went home and taped a BB gun to his hand. He then walked over to the restaurant and called the police twice on his cellphone, reporting a suspicious looking guy with his description. He then told the cashier to call the police and tell them that the restaurant was being robbed.*

The incident began when Communications Division (CD) received a series of related calls at the same location. The Subject, a resident of Los Angeles, initially called 911 to report a suspicious male standing at a corner. The call was originally routed to the California Highway Patrol's (CHP) emergency dispatch center. While in the process of transferring the call to CD, the call was disconnected. Communications Division attempted a call back with no answer. The Subject called CD again and reported a male standing outside across the street from the restaurant and told the 911 operator that it looked like the man wanted to rob the store. The description he gave was that of a male, wearing a gray hoodie, and blue pants. The investigation later determined through phone records that the Subject was calling the police on himself.

After the initial two phone calls, the Subject entered the restaurant, which was open 24 hours a day. The restaurant's video surveillance system recorded the Subject entering the restaurant at a certain time. The sandwich shop was manned by store employees, Witnesses A and B. Witness A was working the front counter, and Witness B was in the back of the store prepping food. As the Subject entered, he was greeted by Witness A. For the next ten minutes, the Subject spoke with her in Spanish. They conversed about the daily specials and he subsequently ordered a sandwich. According to Witness A, the Subject appeared calm and spoke with an even tone of voice. While Witness B was making the sandwich, the Subject asked her to call Witness B to the front counter area.

When Witness B walked to the front near the cash register, the Subject pulled out a handgun from the left front pocket of his sweater. He then ordered Witness B to call the police and say the restaurant was being robbed. Fearing for her safety, Witness B called 911 and reported a robbery in progress. While providing a subject description to the emergency operator, the Subject ordered Witness B to end the call, and she did.

CD broadcast that a robbery was in progress at the location and that the subject was an unknown male armed with a handgun demanding money.

Uniformed Police Officers A and B acknowledged that they would respond to the call. The officers were in a marked black and white police vehicle equipped with ballistic door panels. Due to the type and seriousness of the call, the following uniformed personnel notified CD they were backing the primary unit: Police Officers C and D, E, F G and H, in addition to Sergeant A.

Officers A and B immediately responded with their emergency lights and sirens from the station and requested an air unit. Communications Division notified the officers that due to weather conditions the air units were unable to fly or respond. While enroute to the call, the officers discussed their tactical plans and the direction they would approach the location. The officers were familiar with this particular restaurant. They knew it was directly west and across the street from the school district's police headquarters. Officer B, via radio, requested CD to notify the school district's police department of the crime in progress in the event their personnel were nearby.

While officers were enroute, the Subject continued to hold Witness A and Witness B at bay by pointing his handgun at them. He engaged them in conversation and told them that they should expect to see four officers arrive. The Subject then ordered Witness B to place a fourth and final 911 call. Witness B complied and provided a more detailed description of the Subject, including the type of clothing he was wearing.

Note: Unbeknownst to the officers at the time, the Subject was specifically directing Witness B to call 911 and purposely waiting for the police to arrive.

Officers E and F arrived and notified CD they were at scene. They had positioned themselves on a corner, one block west of the restaurant. Within moments, they were joined by uniformed Officers I and J.

Officers A and B were driving eastbound when they observed the aforementioned four officers preparing to approach the location on foot. They stopped and discussed their plans on how to approach the restaurant. Due to the design and layout of the restaurant, the majority of its windows faced east. Based on the officers' prior knowledge of the location, they determined they would be at a tactical disadvantage if they approached eastbound. Officers E, F, I and J decided they would maintain their position to the west, and Officers A and B would approach the location from a different direction.

Officers C and D announced over the radio that they were at the scene. Since the officers were aware that the call was of an armed robbery in progress, Officer D retrieved a Department-issued shotgun from his vehicle. He chambered a round and held it in a low ready position, with his trigger finger along the receiver. Officer D positioned himself next to a building wall and used it as cover.

Officer C retrieved his Department-issued semiautomatic police rifle from the trunk of his vehicle. He inserted a magazine loaded with 28 rounds of ammunition into the rifle

and chambered a round. He held it in a low ready position, with his trigger finger along the receiver and positioned himself on the left side of Officer D. They were joined by Sergeant A, who remained behind the officers. From their location, they could clearly see the Subject inside the restaurant standing near the cash register area with his back toward them. According to Officers C and D, they believed the Subject was unaware of their presence.

Seconds later, Officers A and B drove into the parking lot east of the restaurant and stopped their car adjacent to the front door.

The Subject looked in the officers' direction, told Witnesses A and B, "You guys take care of yourselves," and walked toward the front door with the gun in his left hand in a close contact position.

It was at this point that Officer C first observed the handgun in the Subject's left hand. Officer C stated that he observed two events unfolding simultaneously. As the officers were approaching the location, the Subject was walking at a quick pace toward the door facing the parking lot. Officer C was concerned that the officers may not have seen the Subject with the gun. He feared that they may not have enough time to react to the Subject's actions before being shot and believed the officers' lives were in imminent danger. Officer C aimed his rifle at the Subject and fired one round at him as he neared the door. The Subject continued to advance towards the door, and Officer C fired two more rounds at him, from a distance of approximately 116 feet.

Note: According to Officer C, after he fired his second round, he believed there was an exchange of gunfire between the Subject and Officers A and B.

Simultaneously, Officers A and B perceived the threat and engaged the Subject with their firearms.

Officer B stated that, as he and his partner approached the location, he observed the Subject inside the restaurant. He saw the Subject pointing a gun at a restaurant employee standing behind the counter, wearing a green apron. He alerted his partner that the Subject had a gun. As soon as his partner stopped the car, he was the first to get out of the vehicle. He stood behind the front passenger door, using it for cover. He immediately unholstered his Department approved semiautomatic pistol. Officer B believed the situation had already escalated to the use of deadly force because the Subject had already pointed his pistol at a woman, placing her at risk of serious bodily injury or possibly death. The officers were instantly confronted with the Subject pushing the glass door open, with his gun in his left hand in a close contact position. The Subject pointed the gun at the officers, and Officer B believed he or his partner were about to be shot. He raised his pistol, aimed it at the Subject and fired four rounds from a distance of approximately 36 feet.

According to Officer A, he quickly approached the location. As he was nearing the driveway of the location, he observed the Subject inside the restaurant. The Subject was holding what appeared to be a gun in his hand, with his back towards the officers. The officers communicated with each other that the Subject had a gun. Officer A explained that he drove into the driveway because they could use their vehicle for cover, since it was equipped with ballistic door panels. Officer A said he stopped, exited the vehicle and immediately unholstered his Department-approved semiautomatic pistol. Officer A observed the Subject turn around and walk toward the exit door. The Subject opened the door while holding a pistol in a close contact position. Officer A indicated he saw the muzzle pointed in the direction of his partner. He heard a shot to the right of him and saw the Subject still with the weapon and as a threat to him and his partner. Officer A fired one round towards the Subject's center mass from a distance of approximately 36 feet.

The Subject was struck by gunfire and fell to the ground. The Subject remained laying on his back with his legs partially protruding outside the doorway and his upper torso inside the restaurant.

Note: Based upon the audio portion of the video from the restaurant, the gunfire erupted one and a half seconds after the Subject last spoke to Witnesses A and B.

Sergeant A immediately took command of the incident and instructed the officers to hold their positions until an arrest team could be assembled.

Officers A and B yelled back that they would remain in place and wait for the arrest team officers. Sergeant A, along with Officers C and D, made their way across the street. They approached the restaurant's northern door and found it locked. They were joined by Officers E, F, I and J, who had approached on foot from a different direction. Sergeant A directed the group of officers to make their way behind Officers A and B, form an arrest team, and approach the Subject. The arrest team consisted of Officers A, B, G and H, as well as Sergeant A.

Once the arrest team assembled at Officers A and B's vehicle, they approached the doorway of the restaurant. The Subject was laying motionless on the ground. As the arrest team neared the Subject, uniformed Officers K and L joined the team. Officer A saw that the Subject had black electrical tape wrapped around his left hand, essentially taping the gun to his hand. Officer A was the first to make contact with the Subject. As Officer A held his pistol in a right hand close contact position, he used his left hand to grab the Subject's hand that was taped to the gun as he wanted to prevent the Subject from using it against them officers. Officer H cut the tape and removed the handgun from the Subject's hand. Officer A then holstered his weapon, turned the Subject over, and handcuffed him. The Subject was moved out of the doorway and carried to the rear of Officers A and B's vehicle by Officers A and K, where they waited for the rescue ambulance (RA) to arrive.'

Upon arrival, Firefighter/Paramedics provided emergency medical treatment to the Subject for gunshot wounds to his stomach, right lower leg, left upper arm, and a graze wound to his right hip. The Subject was transported and treated at a local hospital. The Subject remained at the hospital until he was discharged.

When the arrest team entered the restaurant, they encountered Witnesses A and B, along with two customers. The two customers were handcuffed and momentarily detained until it was determined they were not involved with the Subject.

Uniformed Sergeant B then arrived on scene. Sergeant B observed officers in front of the restaurant with one subject in custody. Two officers moved the Subject to the back of a police car, with additional officers clearing the restaurant. Sergeant A told Sergeant B that an OIS had occurred and provided him with the names of the officers involved. Sergeant B separated Officers A, B, and C and obtained separate public safety statements from each officer. Sergeant C responded to the scene and monitored Sergeant A and Officer D until additional supervisors arrived and took over monitoring responsibilities.

Force Investigation Division (FID) personnel reviewed all documents and circumstances surrounding the separation, monitoring and the admonition not to discuss the incident with officers prior to being interviewed by FID investigators. All protocols were followed.

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 and Exhibiting 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 and C's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Officers A, B, and C's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

The BOPC found the use of lethal force by Officers A, B and C to be in policy.

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC identified the following tactical considerations:

1. Tactical Communication

Officer C did not communicate his location and capabilities prior to confronting the Subject. Additionally, Officers A and B did not establish containment that eliminated the ingress and egress into the affected area.

Officers are given discretion when coordinating their response to an armed robbery subject. The inclusion of the police rifle into the tactical plan can ensure an optimal outcome and enhance the tactical capabilities of the officer. Additionally, by securing the area to vehicle and pedestrian traffic, officers are afforded the opportunity to concentrate their efforts on the tactical incident. In this circumstance, Officers A and B were intimately aware of the configuration of the restaurant. As such, Officers A and B were aware that the east side of the restaurant was primarily glass and that there were two doors, one to the east and one to the north. As a result, a tactical plan was devised to maximize their tactical advantage. However, as Officers A and B initiated their tactical plan, they were unaware that Officer C had deployed his police rifle north of the location. Additionally, there was not a contingency plan in place to stop vehicle or pedestrian traffic on the street.

In conclusion, Officers A, B and C are reminded that communication is paramount for officer safety and planning. Officers are trained to work together and function as a team. Although there is area for improvement in relation to tactical communication on the part of the officers, they were each confronted with a rapidly evolving and dynamic incident. As such, Officers A, B and C's actions did not substantially deviate from approved Department training; however, in order to ensure that the officers are aware that effective tactical/radio communication is crucial to ensure a positive outcome, this topic will be discussed during the Tactical Debrief.

- The BOPC additionally considered the following:

1. Target Acquisition

In this instance, Officer C fired three rounds from his police rifle at the Subject from a kneeling position at a distance of approximately 116 feet. All three rounds

struck objects to the east of the intended target. Officer C should be reminded regarding the importance of target acquisition, background, sight alignment and sight picture.

2. Vehicle Deployment

In this instance, Officers A and B drove northbound on the street, negotiated a left turn into the restaurant parking lot, and positioned their police vehicle facing the east side of the restaurant. Officers A and B exited their police vehicle and deployed behind their ballistic doors while positioned approximately 36 feet from the storefront windows of the restaurant.

Although Department tactical training encourages officers to deploy their vehicles in a manner that allows them time to plan tactics, the immediate threat posed by the Subject necessitated an immediate response from Officer A to drive into the parking lot.

3. Involvement of Outside Agencies

When the OIS occurred, School Police Officer A was off duty assigned to the school police department. School Police Officer A was standing in the roadway conversing with two friends seated in a parked vehicle. School Police Officer A ran across the street, identified himself as an off-duty officer and asked if his assistance was needed. He had heard somebody say, "cover," so he took cover in a low ready position and then propped the restaurant door open so the officers could get in and out as fast as possible. School Police Officer A's attire consisted of shorts and a sweater. Although School Police Officer A was an individual with peace officer status and he was armed with a service pistol, he was not equipped with a ballistic vest. Given that the restaurant had not yet been searched, and sufficient personnel had not yet arrived at the scene, Officers A, B and C were reminded that the utilization of off-duty personnel should be discouraged.

4. Shotgun Manipulations

When Officer D exited his police vehicle he exhibited his Department shotgun in a low ready and disengaged the safety. It is unclear when he re-engaged the safety on his shotgun. In addition, Officer G and his partner responded to the scene and parked in the east/west alley south of the restaurant. Officer G exited his police vehicle and exhibited his Department shotgun. At the onset of the OIS, Officer G disengaged the safety. Subsequently, Officer G and his partner walked northbound to the restaurant, assisted with the search and once the search was completed Officer G re-engaged his shotgun safety.

5. Initiating Physical Contact of a Subject While Unholstered

As Officer A approached the Subject with his weapon drawn, Officer A observed the Subject breathing, lying on his right side with what he believed to be a handgun taped to his left hand. Officer A, while maintaining his service pistol in a right hand close contact position, grabbed the Subject's fingers that were taped to the gun with his left hand to avoid the possibility the Subject could shoot the pistol. Although Officer A was unaware the Subject taped the gun to his left hand, it would have been tactically prudent for Officer A to holster his service pistol prior to initiating physical contact with the Subject. This would minimize the potential for a negligent discharge as well as reducing the likelihood of losing control of the weapon to a subject. All the above topics will be discussed at the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

After a thorough review of the incident, the BOPC determined that the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training. Therefore, a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and individual actions that took place during this incident with the objective of improving overall organizational and individual performance.

The BOPC found that Officers A, B and C's tactics warranted a Tactical Debrief.

B. Drawing/Exhibiting

- In this instance, personnel from two divisions responded to a radio call of a robbery in progress at the restaurant, wherein the Subject was described to be armed with a handgun. As Officers A, B and C exited their vehicles, they deployed around the restaurant and deployed their respective weapon systems.

Based on the totality of the circumstances, the BOPC determined that officers with similar training and experience as Officers A, B and C, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officers A, B and C's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

Based on the information broadcast during the initial and subsequent radio calls, Officers A, B and C believed that they were about to encounter an armed robbery subject.

- **Officer A** – (pistol, one round)

Officer A and his partner were approximately two car lengths south of the parking lot apron when Officer A observed an individual at the front counter with an unknown hand extended and what he believed to be a gun in his hand. Fearing for the safety of the restaurant employees and patrons, Officer A drove into the parking lot and parked near the restaurant. Officer A exited the police vehicle, drew his service pistol and yelled, “Stop!”

Officer A recalled that the Subject turned around and opened the door with a pistol in a close contact position, and Officer A observed the muzzle of the gun pointed in his partner’s direction. He heard a shot to the right and observed the Subject still upright with the weapon and continuing to be a threat to immediately, to his partner and himself, so he fired one round at the Subject’s center mass and saw the Subject fall to the ground.

The BOPC determined that it was objectively reasonable for Officer A to believe that the Subject was armed with a handgun and posed an immediate threat of death or serious bodily injury. Accordingly, an officer with similar training and experience under like circumstances would reasonably perceive the manner in which the Subject exited the door and pointed his handgun at Officer A’s partner and himself was consistent with a subject preparing to engage an officer. Therefore, the use of lethal force was objectively reasonable.

In conclusion, the BOPC found Officer A’s use of lethal force to be in policy.

- **Officer B** – (pistol, four rounds)

As Officers A and B were approaching the location while driving into the restaurant parking lot, Officer B recalled seeing the Subject pointing a handgun at a female or a male. Officer B feared for his safety as well as the woman inside because she had the gun pointed at her. Officer B’s partner stopped the vehicle, and he unholstered his pistol. Officer B believed the Subject had a plan because it seemed as though the Subject saw the officers, and he tried tracking their movements as they got out of the car. He also held the pistol at a close contact position, facing in a southwest direction. He was coming around swinging that gun around at the hip level, and pointing the pistol at Officer A.

Officer B feared that his partner was at risk of serious bodily injury or possible death, so he immediately discharged his weapon at the Subject. Officer B believed he fired two rounds.

The BOPC determined that it was objectively reasonable for Officer B to believe that the Subject was armed with a handgun and posed an immediate threat of death or serious bodily injury. Accordingly, an officer with similar training and experience under like circumstances would reasonably perceive the manner in which the Subject exited the door and pointed his handgun at his partner and himself was consistent with a subject preparing to engage an officer. Therefore, the use of lethal force was objectively reasonable.

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

- **Officer C** – (rifle, three rounds)

Officer C, positioned on the northwest corner of an intersection, observed two individuals in the restaurant, a male wearing a grey sweater (the Subject), with his back toward Officer C, and an employee to the west of the Subject.

Officer C observed the Subject looking to his left and right and also saw a patrol vehicle traveling north. Officer C believed the Subject to be armed. Officer C then observed Officers A and B driving into the parking lot.

First Round

Regarding his decision to fire his first round, Officer C recalled feeling that the approaching officers were in imminent danger of death or serious bodily injury. He wasn't sure if those officers had seen him, so his concern was that if the Subject was to come out and engage, the officers could be at a disadvantage, so Officer C fired the first round.

Second and Third Rounds

According to Officer C, after he fired his first round a storefront window shattered. As a result, Officer C's observations were obstructed. He could still see the Subject's body and still see him moving towards the door, but he felt that that first round was ineffective, and the Subject was continuing to advance toward the officers that were approaching that door. Officer C felt that if he didn't take the second and third shot and if the Subject made it out that door, those officers would be at a disadvantage. After assessing the first round, Officer C made a decision to engage the Subject again.

The BOPC determined that it was objectively reasonable for Officer C to believe that the Subject, armed with a handgun and walking toward the east door, posed an immediate threat of death or serious bodily injury to Officers A and B. Accordingly,

an officer with similar training and experience under like circumstances would reasonably perceive the manner in which the Subject walked toward the door while armed, to be consistent with a subject preparing to engage an officer. Therefore, the use of lethal force was objectively reasonable.

In conclusion, the BOPC found Officer C's use of lethal force to be in policy.