

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

OFFICER-INVOLVED SHOOTING 043-09

Division	Date	Duty-On(x) Off()	Uniform-Yes(x) No()
West LA	07/06/09		

Involved Officer(s)	Length of Service
Officer A	13 years, 9 months

Reason for Police Contact

On duty officers assigned to a surveillance detail responded to a grand theft auto radio call. During their response to the call, an officer involved shooting incident occurred.

Subject(s)	Deceased (x)	Wounded (x)	Non-Hit ()
Subject 1			
Subject 2			

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 subject 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; and the report and recommendations of the Inspector General. The Department Command Staff presented the matter to the BOPC 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 September 7, 2010.

Incident Summary

Officers A,B, C and D were driving individual plain vehicles and assigned to a Surveillance Detail. Although the officers drove in plain vehicles, they wore their full uniform, but wore additional outer clothing to conceal their identity as law enforcement officers.

Due to an increase in auto-related crimes in the area, the Surveillance Detail was deployed by the Watch Commander and a detective to six Reporting Districts (RDs). The Surveillance Detail officers were at the police station when they heard a radio call of a possible burglary from motor vehicle (BFMV) subject in the area. The four officers responded to the area, but were unable to locate the subject, described as a White male, wearing dark clothing. While they were searching for that subject, the officers heard a broadcast of a grand theft auto (GTA) radio call, which reported that the subject, who was described as a male White, with blond hair, and a goatee was in the area. Officer D arrived to the area and observed a White male (subsequently identified as Subject 1), wearing a gray shirt, jeans, with a goatee, standing in between parked vehicles. Officer D advised the other officers over the radio that he observed Subject 1 moving and looking into parked cars. Officer D drove around the block and lost sight of Subject 1.

Officer B observed Subject 1 walking on the east side of the street. Officer B advised Officer A of his observation and Officer A took a position on the northwest corner. Officer B then lost sight of Subject 1. Officer A drove southbound in the alley and observed Subject 1 walk directly in front of his car.

The four officers drove to the area to put themselves in a better position to observe Subject 1. Officer A used his binoculars and observed Subject 1 meet up with a male wearing all dark clothing (subsequently identified as Subject 2). Officer A advised the other units of his observation. Subject 1 and Subject 2 continued walking northbound and entered a convenience store. Officer A observed Subject 1 repeatedly walk in and out of the store and argue with patrons as he entered and exited the store. Officer A also observed Subject 1 argue with several transients outside of the location. Officer A advised Officer B over the radio to take a position at the northwest corner so he would be in a position to observe Subject 1 and Subject 2 exit or run. Officer A also directed a black and white patrol unit occupied by Officer E and F to stand by west of his location in case they needed to help stop Subject 1 and Subject 2.

Subject 1 and Subject 2 exited the store and walked east, then southbound. Officer A lost sight of the subjects and advised the other to move south. Officer B observed Subject 1 and Subject 2 approach a vehicle stopped in the middle of a street and bang on the passenger and driver's side doors in an attempt to open the doors. However, the vehicle drove away quickly. Subject 1 and Subject 2 ran south and Officer B lost sight of them. Officer B communicated to the other officers what had just occurred and followed the vehicle so he could speak with the vehicle's occupants to determine if a crime occurred.

Communications Division (CD) put out a broadcast of an attempt grand theft auto just occurred, and reported one of the subjects was a male White, wearing a grey shirt, and the other was wearing a blue shirt and dark pants. CD division also broadcast information indicating that a robbery had just occurred; and that the robbery victim had been last seen on foot, and the two subjects were a male Hispanic and male White, last seen on foot. The four officers heard the CD crime broadcasts and according to Officer A, they saturated the area with plain cars.

When Officer A arrived in the area, he observed a group of three males (subsequently identified as witnesses A, B, and C) walking southbound on the sidewalk, one of whom had a baseball bat and another a cooking pan. Officer A asked the males if they were looking for someone and if they had seen anybody run. The men advised Officer A that two males had just robbed somebody and had fled the location running eastbound. Officer A told the other Surveillance Detail officers that Subject 1 and Subject 2 had ran eastbound.

Officer A quickly drove away and observed Subject 1 and Subject 2 run across the street to the south sidewalk and approach a male and female (later identified as Victim A and B) in front of an apartment building. Victim B walked up stairs to a landing in front of the apartment building's entrance when Subject 2 attempted to forcefully take the bags Victim A was carrying. Victim B began screaming for help. Officer A, whose vehicle windows were down at the time, heard Victim B scream for help and believed that Victim A and B were being robbed. Officer A broadcast that he needed back up for robbery subjects. Officer A observed Subject 2 grabbing and hitting Victim A, so Officer A upgraded the back-up request to a help call. Officer A stopped his vehicle in the street, exited and removed his outer shirt to reveal his uniform. Officer A stepped in front of his driver's side door and yelled, Police! Police! LAPD! Subject 1 shuffled backwards and then started to run away from Officer A. Subject 2 ran in between two parked vehicles and into the street.

Officer A ran in the direction of Subject 1 and Subject 2. Officer A observed Subject 2 run northbound into the middle of the street, and then turn, lift his shirt, and use his left hand to pull something out of his pocket or waistband. Officer A believed it was a gun because of the preceding radio calls, the fact that the object was dark, and because of the manner in which Subject 2 was holding the object (pistol grip). Officer A believed that Subject 2 was pointing a gun at him, so he slowed his pace, drew his service pistol with his right hand, and acquired a two-handed shooting grip. Officer A was also aware that he was in the middle of the street with no cover immediately available to him. As he was moving, Officer A fired five rounds at Subject 2's chest area, from a decreasing distance of 39 to 26 feet. Officer A fired his pistol, when Subject 2 turned to the left in a counterclockwise direction with his arm extended out and ran eastbound alongside parked vehicles. Officer A believed that Subject 2 had not been struck by gunfire and was continuing to flee so Officer A holstered his pistol and pursued Subject 2 on foot. Officer A broadcast that that shots had been fired and requested help.

Subject 2 ran east, stumbled, and fell into a prone position in the street. Officer A was unable to see Subject 2's right arm after Subject 2 fell to the ground so Officer A unholstered his pistol again. Officer A approached Subject 2 with his pistol at a low ready position and instructed him not to move. Officer A then holstered his pistol and handcuffed Subject 2's left wrist. According to Officer A, Subject 2's right arm was pinned underneath his body and Officer A could not see what was in his right hand. Officer A got down in a kneeling position and placed Subject 2's left arm in the small of his back.

At that time Officer C approached and assisted Officer A with freeing Subject 2's right arm and handcuffing. After Subject 2 was handcuffed, Officer A observed a cell phone on the left side of Subject 2's body, near the waistband area. No gun was recovered at the scene.

Additional units began responding to Officer A's location and Officer A motioned to those additional units by pointing in an easterly direction that Subject 1 had run eastbound. Officer A broadcast over a tactical frequency, that he needed a Rescue Ambulance (RA) for male with a gunshot wound. Officer B repeated Officer A's request for an (RA) on the base frequency.

Officer D who was driving east toward Officer A's location, observed Officer A standing just outside of his vehicle and heard him screaming orders at Subject 1 and Subject 2. Officer D observed Officer A with his weapon unholstered and heard two or three gunshots. Officer D heard Officer A broadcast that shots had been fired, and then saw Subject 2 fall to the ground and Officer A approach Subject 2. Officer D saw Subject 1 run eastbound so Officer D followed Subject 1 in his vehicle. Officer D communicated to Officers B and C on the tactical frequency that he was in pursuit of Subject 1. Officer D then observed Subject 1 run southbound and jumped a fence into an elementary school, where Officer D lost sight of him.

An off-duty officer was subsequently identified as Officer G, who at the time of the OIS, had been exercising in the Police Station and responded on foot to the scene after hearing over the stations public announcement system that shots had been fired and that an officer needed help. Officer D saw Officer G as he drove toward Officer A's location.

Meanwhile, Officer B was in the area when he heard Officer A broadcast a request for back-up and responded in the direction of Officer A's location. Officer B was driving and heard what he believed to be four to five gunshots. He continued northbound and turned eastbound on the street, at which time Officer B observed Officer A with his gun drawn and pointing it at Subject 2, who was lying face-down on the ground. Officer B heard Officer D broadcast over the tactical frequency that he was in pursuit of Subject 1 into the school yard. Officer B continued past Officer A and drove to Officer D's location. Officer B drove to Officer D's location and observed Officer D approaching the fence at the school yard. Officer B told Officer D to hold his position, and Officer B drove southbound and observed Officer H and Police Officer I in a marked black and white patrol vehicle at that location. Officer B told Officers H and I to hold their position and he continued eastbound and held his position there.

Officer C was driving and heard Officer A broadcast that Subject 1 and Subject 2 were just east of the police station, which was north of Officer C's location. Officer C continued northbound and heard Officer A put out a back-up call, which Officer A almost immediately upgraded to a help call. As Officer C approached the corner of a street, Officer A broadcast, that shots had been fired. Officer C immediately turned eastbound and observed Officer A's vehicle parked in the middle of the street.

Officer C pulled his vehicle in front of Officer A's vehicle and observed Officer A standing over Subject 2, who was lying face-down on the south side of the street. Officer C exited his vehicle and approached Officer A's right side. Officers A and C approached Subject 2 and handcuffed him. Officer C asked Officer A if he was okay and if he was hit. Officer C reported that he observed a marked black and white patrol vehicle driving to establish a perimeter and search for Subject 1. Officer C, believing that Officer A was safe and that Subject 2 was secure, got back into his vehicle and drove eastbound and stopped mid-block on a street to lock down that side of the perimeter.

Sergeant A responded on foot to the scene and spoke with Officer A. Sergeant A determined Officer A was not injured, but did not immediately obtain a Public Safety Statement (PSS) because he felt that the incident was an ongoing tactical situation and he needed to help establish a perimeter, protect the crime scene, and request additional supervisors. Sergeant A ordered Officers B, C and D to return to his location and ordered them to be separated and not to discuss the incident. Sergeant A assumed the role of Incident Commander and established a Command Post. Sergeant B arrived at the scene and took over monitoring responsibilities and obtained a PSS from Officer A.

Personnel from the Los Angeles Fire Department (LAFD) responded to the scene and assessed Subject 2's injuries. Subject 2 was found to be nonresponsive, with no pulse, dilated pupils, and not breathing. LAFD personnel contacted Doctor A at the local hospital by phone and advised Doctor A of Subject 2's condition. Doctor A pronounced Subject 2 dead.

Subject 1 was taken into custody during a K-9 search and was bitten by the K-9 during the search as he attempted to grab and punch the K-9. Subject 1 was transported by LAFD personnel to the hospital where he received treatment for his injuries and released for booking.

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, B, C, D tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

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

C. Unintentional Discharge

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

Basis for Findings

A. Tactics

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

1. Making contact with suspects while working as a one person unit

In this situation, the tactics utilized by the involved officers are unique as they are working alone in their vehicles and the common tactics utilized while working with a partner in the vehicle are not necessarily applicable. With this in mind, Officer A, observed what he reasonably perceived to be a robbery in progress and took action. Although this was a deviation from the operational plan, it was based on Officer A's belief that the situation was exigent and that a robbery was taking place.

Officer A requested a back-up and upgraded the back-up to a help call when the robbery turned into a physical altercation between one of the suspects and one of the victims, and based on the earlier broadcasts, he was also aware that Officers B, D, C and units, uniformed patrol officers, were in the immediate vicinity.

In conclusion, although Officer A's actions deviated from the operational plan, based on the totality of the circumstances, Officer A's actions were based on his reasonable perceptions that a violent felony crime was taking place. An officer similarly assigned to the Surveillance Detail and similarly trained would have reasonably taken the same action based on the expectations of unit members, as articulated by senior member, Officer B, that officers are expected to take appropriate actions when *there is a life endangering situation... At which time, [the involved officer] is expected to exit [the] vehicle and take appropriate action....*

While the BOPC found the use of this tactic to be reasonable in this circumstance, the details of this incident and the topic of making contact with suspects while working in a surveillance detail as a one person unit will be covered at the Tactical Debrief.

2. Utilizing Cover

In this instance, after identifying himself to the suspects, Officer A stepped out from behind the cover provided by his vehicle, stepped into the middle of the street and

began to pursue Subject 2 as he fled from the area. Soon after the beginning of the pursuit, Subject 2 ran between cars and into the street directly in front of Officer A and continued running away.

Furthermore, following the OIS, believing that his rounds had not struck Subject 2, Officer A elected to again pursue Subject 2, whom he believed was armed with a handgun, without cover.

Eventually, Officer A holstered his service pistol, approached Subject 2, knelt down and handcuffed Subject 2's left wrist. It was not until this occurred that an additional officer (Officer C) approached and assisted with taking Subject 2 into custody.

In this case, Officer A left the cover of his vehicle to pursue Subject 2. While the initial pursuit afforded Officer A some cover with parked cars, when Subject 2 ran into the street, Officer A was without any cover and at a tactical disadvantage.

In conclusion, while Officer A's commitment to capture the suspects is commendable, it would have been tactically advantageous for Officer A to not leave cover, remain at his vehicle and coordinate the response of assisting officers. However, in comparison to other similar cases, based on Officer A's broadcast. In fact, at the time that Officer A broadcast the help call, Officer D was driving east and at the time of the OIS was approximately three car lengths behind Officer A. Officer B was northbound when he heard four or five gunshots. Officer C was less than half a block from Officer A. In summation, at the time that Officer A elected leave cover and pursue the suspects, the officers were either in close proximity or within blocks from Officer A in anticipation of encountering the suspects.

In the balance, the BOPC found that while Officer A's tactics did substantially deviate from established tactical training, in this case that deviation was justifiable to some degree in light of the established containment and the initial cover afforded by parked cars.

Because of the unique and serious nature of this incident and circumstances, the BOPC directed that the issue of cover/concealment be covered as specific Training Point for Officer A, as part of and, in addition to, the Tactical Debrief.

3. Pursuit of Armed Suspects

When officers have reasonable suspicion to detain a suspect and the suspect flees, the involved officers should make a quick assessment of the situation. They should evaluate the risk to themselves, other officers, the suspect and the public safety versus what will be gained by engaging in the pursuit. Factors to consider are whether the suspect is armed, the offense committed and the location and ability to apprehend the suspect at a later time. (Los Angeles Police Department Use of Force Tactics Directive No. 3, Foot Pursuit Concepts, July 2009)

The same analysis and rationale apply to this Debriefing and Training Point. In this instance, Officer A pursued Subject 2, whom he believed was armed with a handgun. Although the foot pursuit was relatively short, once Subject 2 ran into the street, Officer A had no cover and pursued Subject 2 with the intent of apprehending him.

There were additional officers enroute to Officer A's location and the incident occurred roughly a block from the station, making the possibility of apprehending Subject 2 at a later time probable. It would have been tactically safer for Officer A to monitor Subject 2's location as he fled and broadcast Subject 2's description to responding personnel.

In conclusion, the BOPC found the tactics of pursuing an armed suspect to deviate from established tactical training. However, because of Officer A's awareness of officers nearby (loose containment) and the unique circumstances involved, the deviation was not unjustifiable. Therefore, the BOPC directed that the issue of pursuit of armed suspects also be covered as specific Training Point for Officer A, as part of and, in addition to, the Tactical Debrief.

4. Post OIS Tactics

Separation (Split Up): *Separation occurs whenever the distance between the two officers is so great that one cannot render aid to the other when confronted by the suspect or barriers exist that would unreasonably delay the partner officer from being able to render aid.*

Note: *While in containment mode, partner officers may separate a reasonable distance for the limited purpose of setting up a perimeter, as long as they have line of sight of each other. When separated, officers should not normally transition back into apprehension mode and attempt to take the suspect into custody alone. (Los Angeles Police Department Use of Force – Tactics Directive, Foot Pursuit Concepts, July 2009)*

Officers are considered split up when either their distance is so great from one another, or barriers exist that would unreasonably delay an officer's ability to assist his or her partner when confronted by a suspect. In the rare instance where it may be tactically permissible for officers to split up, the involved officers must be able to articulate the facts to justify their actions. Remember, the specific facts must be what is known by the officers at the time they decided to split up. (Los Angeles Police Department Training Bulletin, Volume XXXV, Issue 17, July 2003)

In this instance, immediately following the OIS, Officers D and B arrived at Officer A's location. Prior to ensuring that Subject 2 was taken into custody, both officers continued past Officer A and pursued Subject .

Upon initial review of this incident, the BOPC was concerned with the tactic utilized by Officers B and D when they did not stop to render aide to Officer A and continued on after Subject 1 as this generally deviated from established Department tactical training.

However, the Surveillance Unit operates in a unique operational and tactical environment where they work individually in plain vehicles and by design start their watch in a separated capacity. As such when considering the performance of the individual officers, the BOPC took into account the unusual manner in which they are deployed.

While the BOPC would have preferred that Officers B and D remain with Officer A, he did not find that the resulting separation to be inconsistent with the manner in which they are deployed and therefore do not find the tactics to be unreasonable.

However, because the actual unit mission and tactics and Area expectation are not clearly delineated (except through Officer B's opinion), the BOPC directed Operations-West Bureau, in concert with Training Division, to conduct a review of the units tactical operations to ensure future appropriate tactical performance.

Tactics

Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance." (Use of Force Directive, July 2008)

Department policy relative to Administrative Disapproval is: "A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training." (Use of Force Directive, July 2008)

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. Each tactical incident inherently results in considerations for improvement.

Each incident must be looked at objectively and the areas of concern must be evaluated based on the totality of the circumstances. In this case, although there were identified areas where improvement could be made, the tactics utilized did not "*unjustifiably and substantially deviate from approved Department tactical training.*"

In conclusion, a Tactical Debrief is the appropriate outcome for Officers A, B, D and C, to evaluate the events and actions that took place during this incident and assesses the identified tactical considerations with the objective of developing peak individual and organizational performance. Additionally, specific Training Points as outlined above will cover critical issues in this case.

The BOPC directed that Officers A, B, D and C attend a Tactical Debrief and that the specific Training Points outlined above are covered with the applicable officers.

B. Drawing/Exhibiting/Holstering

Department policy relative to drawing and exhibiting a firearm is: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified." (Los Angeles Police Department Manual, Section 1/556.80)

Officer A confronted two suspects who he observed committing a street robbery. After he confronted the suspects, both suspects began to flee on foot. One of the suspects, Subject 2, stopped and turned counter clockwise in Officer A's direction. As Subject 2 turned, he lifted his shirt, removed an object from his front pants pocket or waistband with his right arm and pointed the object in Officer A's direction. In response, Officer A drew his service pistol.

After Officer A fired his rounds, Subject 2 began running eastbound. Believing his rounds had missed Subject 2, Officer A holstered his firearm and began to pursue the suspect. Shortly thereafter, Subject 2 collapsed onto the roadway. Officer A drew his firearm once again to cover the downed suspect whom he believed was armed with a handgun.

In conclusion, due to Officer A's reasonable belief that the situation had/would escalate(d) to a level where deadly force had become necessary, the BOPC found his drawing and exhibiting to be in policy.

C. Use of Force

Officer A – .45 cal, 5X from a decreasing distance of approximately 39 to 26 feet.

Officer A confronted two suspects who he observed committing a street robbery. Officer A was aware that the suspects had been involved in criminal activity, such as Grand Theft Auto and Carjacking, just prior to his observation of the street robbery. After he confronted the suspects, both suspects began to flee on foot. One of the suspects, Subject 2, stopped and turned counter clockwise in Officer A's direction. As Subject 2 turned, he lifted his shirt with his left hand, removed an object from his front pants pocket or waistband with his right hand and pointed the object in the officer's direction. Believing that Subject 2 was armed with a handgun and about to shoot him, Officer A drew his service pistol and fired five consecutive rounds at Subject 2.

Another officer with similar training and experience, armed with the same information and upon observing a suspect making movements as the suspect did in this incident, would reasonably believe that the suspect was pointing a handgun at them and that the suspect posed a threat of serious bodily injury or death to the officer. As such, it was objectively reasonable for Officer A to perceive the suspect's actions as a deadly threat and utilize Lethal Force.

In conclusion, the BOPC found Officer A's use of force to be objectively reasonable and in policy.