

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

OFFICER-INVOLVED SHOOTING – 051-13

Division	Date	Duty-On (X) Off ()	Uniform-Yes () No (X)
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Wilshire	6/25/13		
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Officers(s) Involved in Use of Force	Length of Service
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Detective A	19 years, 10 months
Officer A	11 years, 1 month

Reason for Police Contact

Officers entering the driveway of a police station encountered a male whose actions caused the officers to perceive that they were being attacked.

Subject(s)	Deceased ()	Wounded ()	Non-Hit (X)
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Subject: Male, 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 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 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 May 13, 2014.

Incident Summary

Officer A and Detective A were on duty, returning to the police station after their completion of an assignment. The officers were in plain clothes, and were driving a plain vehicle. Officer A was the driver and Detective A was the passenger.

Officer A had his window rolled down as he drove into the driveway in order to open the gate to the station, which is located on the north side of the street. Officer A noticed a male (the Subject) walking on the sidewalk on the north side of the street, toward the officers' vehicle. Officer A noticed that the Subject's hands were down to his sides and that he was walking "briskly," as if he were jogging or "walking with a purpose."

Note: The Subject was never identified. He was described as a male, 5 feet 9 or 10 inches tall, approximately 160 pounds, between 25 and 35 years of age, and wearing black clothing.

Detective A recalled that the Subject's actions seemed odd and that he appeared to be "amped up". He recalled telling Officer A to "watch out." As Detective A watched the Subject approach their vehicle, he saw the Subject make a two-hand motion as if he was assuming a shooting stance.

Detective A did not see a weapon in the Subject's hands, but the Subject's actions prompted him to unholster his gun. Detective A watched as the Subject continued to walk behind their vehicle. Detective A turned his body to his right and over his right shoulder saw the Subject continue to walk on the sidewalk behind their vehicle.

At that point, Detective A believed he saw a muzzle flash, heard glass breaking and believed that the Subject was shooting at them. Detective A turned to his right and fired over his right shoulder, out the right rear window.

Detective A believed that he fired at the Subject at least twice, in a southeast direction, while still seated in the front passenger seat. Detective A then experienced a pistol malfunction. He cleared the malfunction, opened his door and exited the vehicle. As he exited the vehicle he yelled, "Gun." According to Detective A, the Subject remained standing between the apron of the driveway and the westbound parking lane. The Subject moved from side-to-side and took a stance similar to a shooting stance.

Note: A closed circuit television (CCTV) camera was located on the front of a nearby business. The location was across the street from the police station. It captured the incident from approximately 290 feet away. Because of the distance and lighting conditions, the Subject's actions at this point in the incident were not fully discernible.

The Subject then ran southbound toward the center median of the roadway. Detective A believed that the Subject fired in Detective A's direction from the area of the center median.

Note: An independent witness saw the Subject near the center median, looking back and either “aiming” or “pointing” toward the officers.

Detective A believed he could see muzzle flashes from the Subject’s position. Detective A fired multiple rounds at the Subject. Detective A deployed to the front of the vehicle for better cover. As he moved, Detective A slipped and fell. Detective A then got up and looked south, trying to find the Subject.

The Subject ran across the street, reached the south curb and again assumed a shooting stance. Detective A again fired multiple rounds at the Subject, in a southbound direction.

Note: The Subject can be seen on the video running across the street from the rear of the officers’ vehicle to the south curb.

Note: As the shooting progressed, Detective A began to conduct an out-of-battery speed reload of his pistol and reached to his belt to get another magazine. He realized he was not wearing his magazine pouch. Detective A then moved toward the rear passenger door of the vehicle, reached through the broken window, opened his backpack and obtained his magazine pouch.

Detective A then observed the Subject, now on the south sidewalk and approximately 100 feet west, and perceived that the Subject was shooting in his (Detective A’s) direction. At this time Detective A did not see muzzle flashes but heard popping sounds and was able to see the Subject in a shooting stance, as if he was shooting in the officers’ direction.

Detective A again fired at the Subject, firing approximately ten rounds. According to Detective A, he knew the Subject was shooting at him because he now saw muzzle flash. Detective A then saw the Subject run away, southbound, and lost sight of him.

Note: The investigation revealed that Detective A fired a total of 23 rounds during this incident.

Note: The CCTV video recordings from the business were of fair quality, notwithstanding the lighting conditions. There was no audio recording. The cameras were mounted near the roof line of the single story complex, with one camera mounted facing east and the other facing west. Although the distance from the east facing camera was too great to clearly see the first contact between the officers and the Subject, the Subject can later be seen moving southwest to the center median. While on or near the center median, the Subject can be seen shuffling backwards and/or side-stepping, with his arm (unknown which one) extended back toward the officers’ location. The Subject’s movements appear consistent with several of Detective A’s and the independent witness observations. No

weapon or other object can be discerned in the Subject's possession at this point in the recording.

The video shows that the Subject eventually reached the south sidewalk area and walked westbound. The video shows that the Subject was holding an unidentified object in his right hand. The object was elongated and protruded several inches downward from the Subject's right hand.

Meanwhile, according to Officer A, as the Subject approached the officers' vehicle, he heard Detective A say, "Oh, [expletive]," and saw Detective A turn to his left and then quickly to his right. Officer A then heard glass breaking and saw muzzle flashes to his rear. Officer A simultaneously removed his seatbelt and unholstered his pistol.

As Officer A unholstered his pistol, he felt a ringing in his ears. He recalled pointing his weapon upward and then turning to his left, because it was awkward to shoot over his right shoulder and he believed the threat was behind him. At this point, he realized he had unintentionally fired a round into the roof of his vehicle, because he saw debris flying around him and he had ringing in his ear. At about the same time, he felt pain that caused him to believe that he had been shot in the back of his head.

Note: Based on physical evidence, the investigation established that Officer A unintentionally discharged his weapon four times. Officer A did not recall unintentionally firing more than one round.

Note: Officer A sustained a two-inch laceration to his head. The doctor who treated the injury declined to describe it as a gunshot wound.

According to Officer A, after firing into the roof of the vehicle, he fired four rounds over his left shoulder, where he believed the Subject was located based on his observation of muzzle flash. He then heard more shots being fired by his partner and heard Detective A yell, "Get it. Call it out. Call it out." Officer A realized that the vehicle was now slowly rolling backwards into the street. He quickly placed the vehicle in park.

Note: The investigation revealed that Officer A fired six rounds in this volley.

Officer A crawled across the front passenger seat, exited the vehicle through the open front passenger door and broadcast an "officer needs help" call. He did not hear any response to his broadcast so he grabbed another radio he had on the seat. He turned it on and broadcast another "officer needs help" call.

As Officer A was crouched down and broadcasting, he heard Detective A say, "I don't see him. I don't see him." Fearing the Subject may have been hiding underneath their vehicle, Officer A looked under the car to clear it. According to Officer A, while he was clearing the area underneath their vehicle, Detective A fired additional rounds. Officer A then deployed to the front of the vehicle, but he could not see where the Subject was.

Note: A thorough examination of the officers' vehicle and the surrounding area revealed there were no impacts or other physical evidence to support that the Subject fired a weapon.

The Subject was not apprehended and remains unidentified. No evidence was recovered to indicate that the Subject was hit by any of the shots fired.

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, by a vote of 3 to 1, made the following findings.

A. Tactics

The BOPC found Detective A's tactics to warrant Administrative Disapproval, and Officer A's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Detective A's and Officer A's drawing and exhibition of a firearm to be in policy.

C. Unintentional Discharge

The BOPC found the unintentional discharge of rounds 1-4 by Officer A to be negligent.

D. Use of Lethal Force

The BOPC found the use of lethal force by Detective A, and rounds 5-10 for Officer A, to be in policy.

Basis for Findings

A. Tactics

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

1. Required Equipment – Plainclothes Assignment (Substantial Deviation), Detective A

In this instance, Detective A did not have extra ammunition contained within an additional magazine on his person, nor did he have a pair of handcuffs. These facts later contributed to Detective A's ability to quickly and seamlessly respond to the perceived ongoing threat in an effective manner.

The BOPC found that Detective A's actions in this regard substantially deviated from approved Department policy and tactical training, without justification.

2. Crossfire

As Detective A was standing in front of the vehicle for cover, he fired an unknown amount of rounds in a southbound direction over the top of the vehicle at the Subject. During this firing sequence, Officer A was inside the vehicle, which created a potential cross-fire situation.

3. Tactical Communication

Officer A did not advise Detective A of any Unintentional Discharges (UDs) he experienced during the OIS. Detective A did not advise Officer A of his pistol malfunctions.

4. Pistol Malfunctions

During the incident, Detective A experienced two pistol malfunctions and demonstrated pistol manipulation techniques, while under extreme pressure, clearing the obstructions. Detective A immediately recognized each pistol malfunction and cleared each malfunction enabling him to return back to addressing the perceived threat.

5. Target Acquisition

While the Subject moved away from the officers, Detective A continued firing in an attempt to stop the perceived threat. During a search for evidence at the scene, investigators identified numerous impacts to buildings located on the south side of the street. Detective A and Officer A should be reminded of the importance of target acquisition, background, sight alignment and sight picture.

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. In conducting an objective assessment of this case, the BOPC found the tactics utilized by Detective A, by not carrying a spare magazine, substantially and unjustifiably deviated from approved Department tactical training.

The BOPC found Detective A's tactics (Required Equipment – Plainclothes Assignment) to warrant Administrative Disapproval. The BOPC found Officer A's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting

- In this instance, as the Subject continued to walk toward the rear trunk area of the involved officers' vehicle, Detective A observed the Subject take a shooting stance. Though Detective A did not see a handgun in the Subject's hands, he drew his service pistol.

Detective A relayed to Officer A his observations, as he turned to his left and then turned to the right. Based on his partner's statement, and upon hearing glass break and seeing muzzle flash, Officer A drew his service pistol.

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

C. Unintentional Discharge

- The investigation revealed the following four ballistic impacts occurred on the left side of the vehicle, moving in an outward direction. The first impact was through the front window, near the rooftop area of their vehicle and rear view mirror. The second impact went through the top of the vehicle's passenger compartment roof in a position that would have been in-line with Officer A's right shoulder as he was seated in the vehicle. The third and fourth impacts were on the left side of their vehicle, near Officer A's headrest.

The BOPC evaluated the circumstances relevant to Officer A's unintentional discharges and determined that the discharges were negligent, warranting Administrative Disapproval.

D. Lethal Use of Force

- **Officer A** – rounds 5-10.

After Officer A's first four rounds, he fired an additional six rounds over his left shoulder, in the direction where he had last seen the Subject and muzzle flashes.

- **Detective A** – 23 rounds.

Based on the Subject's actions, Detective A believed the Subject may have been holding a weapon. Although, Detective A could not see a handgun in the Subject's hands, based on the Subject's actions, he believed the Subject was in possession of a handgun.

After turning to his right, Detective A observed the Subject in a shooting-type stance, with his hands pointed in their direction. Detective A believed he observed muzzle flash to the rear of the officers' vehicle and glass shattering. Believing the Subject discharged a handgun, Detective A discharged his service pistol.

After firing his first two rounds, Detective A opened the front passenger door, placed one foot outside of the vehicle, as the other foot remained inside the vehicle. Believing the Subject was still shooting at them, Detective A acquired his sights on the Subject. Detective A then fired additional rounds at the Subject.

According to Detective A, the Subject ran to the center median of the street and fired toward his (Detective A's) location, causing Detective A to redeploy to the front of the officers' vehicle for additional cover.

Detective A fell to the ground, then got back up and continued shooting at the Subject in a southbound direction until his service pistol was empty of ammunition. Detective A attempted to conduct an out-of-battery speed reload and reached for his waistband to retrieve another magazine, then realized he was not wearing his magazine pouch.

At this time, the Subject was standing on the south curb of the street just west of the officers' location. The Subject appeared to be in a shooting stance and pointing in their direction. Detective A heard popping sounds.

Realizing his partner was still inside the vehicle, Detective A fired approximately 10 more rounds at the Subject. Although Detective A was not sure if the Subject was still firing at them, the Subject was still in what appeared to be a shooting stance. Detective A also wanted to provide cover fire for Officer A so that he could exit their vehicle.

Detective A then saw the Subject run away southbound, either through the buildings or southbound on a nearby street.

The actions of the Subject, which Detective A and Officer A took to be the pointing and firing of handgun at them, represented a reasonably perceived imminent threat of serious bodily injury or death. An officer with similar training and experience, under the same or similar facts and circumstances, would have the same belief and thus the application of lethal force would be reasonable.

The BOPC found Detective A's use of lethal force, and rounds 5-10 discharged by Officer A, to be objectively reasonable and in policy.