

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

OFFICER-INVOLVED SHOOTING 054-09

Division	Date	Duty-On(x) Off()	Uniform-Yes(x) No()
77 th Street	08/09/2009		

Involved Officer(s)	Length of Service
Officer A	5 years, 4 months
Officer B	5 years, 4 months.

Reason for Police Contact

Officers conducted a pedestrian stop of a gang member, to determine whether the he was in compliance with his parole conditions and to see if the subject had any warrants.

Subject(s)	Deceased (x)	Wounded ()	Non-Hit ()
Subject: Male, 37 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 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 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, the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on August 3, 2010.

Incident Summary

Officers B (driver) and A (passenger) were in a marked black and white police vehicle and were traveling west on a street approaching the mid-block area. The officers then observed two males whom they recognized as the Subject and Witness A standing on opposite sides of an apartment complex. The Subject was standing in front of a parked vehicle in a carport of the complex and Witness A was standing approximately 20 to 25 feet west of the Subject in front of the complex.

The officers knew that the Subject was on parole at the time and had gang conditions. Officer A had had prior contact with the Subject approximately three or four times. According to Officer A, he and Officer B received information that gang members were selling narcotics in the area. Officers A and B were also aware that the Subject and Witness A had been previously arrested for selling narcotics, and that both the Subject and Witness A were gang members. Therefore, Officer A formed the opinion that the Subject and Witness A were selling narcotics or directing other younger gang members to sell narcotics.

The officers decided to conduct a "parole stop" on the Subject, according to Officer B, to determine whether the Subject was in compliance with his parole conditions and that he did not have any warrants. The officers did not notify Communications Division (CD) of their Code 6 status. Officer B stopped the vehicle, and Officer A opened his door and began to exit when he observed the Subject, who was talking on a telephone at the time, look directly at him. Officer A stated to the Subject that he wanted to speak with him. The Subject turned around slowly away from Officer A and walked northbound into the carport. Officer A walked north towards the Subject and stated, "hold up." The Subject continued walking away from Officer A and stopped in front of a blue vehicle parked in the east parking space in the carport. The Subject turned around again, faced Officer A and got off of the telephone. According to Officer A, his view of both of the Subject's hands was blocked by the vehicle. Officer A then said to the Subject, "let me see your hands." The Subject began to "shuffle," or, "side step" eastbound behind the parked vehicle. The Subject then jumped on top of the vehicle and jumped over an approximately five-foot high cinder block wall directly to his east (and adjacent to the carport). The Subject began running through the front yard of the neighboring residence. Officer A ran northbound into the carport after the Subject. Officer A jumped on top of the blue vehicle and then jumped over the cinder block wall into the front yard. Officer A pursued the Subject eastbound through the front yard.

Meanwhile, as Officer A walked north toward the carport and attempted to contact the Subject, Officer B exited and walked to the rear of the vehicle, and took a position approximately 20 yards south of Officer A. Officer B observed a bulge underneath the Subject's shirt in the waistband area and saw the Subject grab his waistband as he jumped over the wall. Officer B formed the opinion that the Subject was armed with a gun, got back into the police vehicle and drove westbound. Officer B broadcast a request for back-up for a "415 man with a gun." Officer B's stated his reason for driving away was to provide containment of the subject on the north side of the block.

Just prior to driving away, Officer B observed Officer A standing at the wall and the Subject standing in the front yard, but he was unable to see what the Subject was doing. Furthermore because he drove away from the location he was unable to observe the Subject's actions after that point. Officer B was setting up a perimeter for containment of an armed subject was consistent with training he received from supervisors.

After he took a position Officer B observed an additional police unit approaching. Officer B directed that unit to the corner to hold the east side of the perimeter.

According to Officer A, after the Subject started running he yelled back to Officer B. The Subject ran through the front yard and then turned (left) northbound into the driveway. Officer A was approximately 15 feet behind the Subject. As the Subject turned the corner, Officer A observed the Subject lose his footing, hit the ground with one knee and his left hand and then push himself back up. The Subject turned around toward Officer A with an object in his right hand that appeared to Officer A to be a gun. Officer A continued running toward the Subject and grabbed the barrel or magazine well area of the Subject' gun with his left hand. Officer A and the Subject began to fight. Officer A struck the Subject several times in the body with his right fist as he held onto the Subject' gun with his left hand. The Subject struggled to pull his gun free from Officer A. Officer A felt the Subject move his left hand from around his neck toward the right side of his body, so Officer A blocked the Subject' hand with his right arm. According to Officer A, the Subject tried to forcefully push his hand below Officer A's arm, toward his belt. Officer A formed the opinion that the Subject was attempting to grab his (Officer A's) gun. Officer A placed his right hand over the top of his exposed pistol to block the Subject from grasping the butt of the pistol. The Subject grabbed Officer A's uniform shirt around the chest area and continued trying to free his own gun from Officer A's grasp.

Officer A unholstered his service pistol and placed the muzzle of his pistol directly into the left side of the Subject's rib cage. Officer A pulled the trigger twice; however, the pistol did not fire. As described by Officer A, he then created distance between himself and the Subject by either pushing the Subject back with his left hand or stepping back and pulling his own gun back into a close contact position along the side of his body. Officer A released his grip on the Subject's gun, but he was unsure of the exact moment when he did so. Officer A fired two rounds at the Subject in a northerly direction from a distance of approximately three feet. Officer A believed that the rounds struck the Subject in his center body mass. The Subject backed up but did not go down to the ground. Believing that the Subject was still armed with the gun, Officer A "punched" his gun out, brought his gun up in a two-handed grip. Officer A then fired three rounds at the Subject's body and one round at the Subject's head from a distance of approximately six feet

The Subject fell to the ground on his back with his right hand either underneath his right thigh or next to his right thigh area, which prevented Officer A from being able to see the Subject's right hand. Officer A paused for approximately five seconds and assessed the situation. As he did so, Officer A observed the Subject "starting to get up like -- like lifting up," with his head coming up off the ground approximately one to two inches and his shoulders rolling forward. Believing that the Subject was still armed and was going to kill him, Officer A fired an additional round at the Subject's head from a distance of approximately eight feet. Officer A observed the round impact the Subject's head, and the Subject stopped moving. Officer A broadcast, "there's going to be shots fired, subject is down to the rear of the location. Get me a [Rescue Ambulance] for a male, suffering from gunshot wounds."

Officer A holstered his weapon and approached the Subject. Officer A then turned the Subject onto his stomach and handcuffed him behind his back. Officer A did not find a weapon on or near the Subject after rolling him onto his stomach. Officer A then began searching the area where he first made physical contact with the Subject. and saw a gun in the bushes.

Officer B heard Officer A's broadcast of "shots fired," left his position on the perimeter and responded to area. Officers C and D responded to Officer B's request for back-up and arrived on scene. Officer A directed Officer C to monitor the Subject's gun in the bush and Officer C monitored the weapon until it was recovered.

Sergeant A advised CD that he was Code 6 at the location and broadcast that there were sufficient units at scene. Sergeant B arrived on scene. Sergeant A assumed the role of Incident Commander and separated Officers A and B. Sergeant A directed Sergeant B to monitor and obtain a Public Safety Statement (PSS) from Officer B. Sergeant A then obtained a PSS from Officer A. Los Angeles Fire Department (LAFD) personnel arrived on scene and assessed the Subject's injuries. The firefighters/paramedics initiated cardiopulmonary resuscitation (CPR) and contacted Doctor A at the hospital and Doctor A pronounced the Subject dead.

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 and B's tactics require a finding of Administrative Disapproval.

B. Drawing/Exhibiting/Holstering

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

C. Non-lethal Use of Force

The BOPC found that the application of Non-Lethal force by Officer A 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

Tactics

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 this situation, the officers failed to coordinate their actions when dealing with multiple subjects and separated from each other. When Officer A became involved in a life-or-death struggle, Officer B was not in a position to render immediate aid and was not aware of his partner's location. The magnitude of Officer A and B's separation is further demonstrated by the fact that Officer B arrived at the location after the Subject was handcuffed.

In addition, although both Officer A and B are responsible for ensuring that they are in a position to render aid to their partner, under the circumstances of this case, Officer B's action of prematurely leaving Officer A on his own with a subject who he believed to be armed with a handgun is inconsistent with Department training. Although Officer B believed he was following his training in regards containment, the BOPC believed his act of driving away from his partner in an attempt to contain the subject to be unreasonable based on his training and experience.

The BOPC found Officer A and B's tactics require a finding of Administrative Disapproval.

Drawing/Exhibiting/Holstering

Based on his belief that the Subject was going to try and kill him, it was objectively reasonable for Officer A to believe the situation had escalated to one requiring the use of lethal force. Therefore, the BOPC found Officer A's Drawing/Exhibiting to be in policy.

Non-lethal Use of Force

As the Subject began turning in a counter-clockwise direction toward Officer A, he did so with a handgun in his right hand. Officer A continued to run toward the Subject and grabbed the barrel of the gun with his left hand. A struggle over the handgun ensued wherein the two moved in a westerly direction into some bushes. Unable to gain control of the Subject's handgun, Officer A utilized his right hand and punched the Subject on the left side of his body an unknown number of times. The Subject appeared unaffected as he maintained his right hand on the handgun and simultaneously reached for Officer A's service pistol with his left hand. Officer A placed his right hand over his holstered

service pistol and pinned the Subject' left hand between his bicep and forearm. The Subject pulled his left hand free and grabbed the front of Officer A's uniform shirt. It was at that point that Officer A drew his service pistol and attempted two close contact shots to the Subject' left torso area which resulted in an unintentional weapon malfunction. Believing he needed to create further distance between the Subject and himself to effectively engage the subject, Officer A used either his left hand to push or right knee to strike the Subject. The non-lethal force used by Officer A to overcome the actions of the Subject was objectively reasonable and within Department guidelines. Therefore, the BOPC found that the application of Non-Lethal force by Officer A to be In policy.

Use of Force

In this instance, when his attempts to gain control of the Subject' handgun failed, Officer A drew his service pistol, placed the muzzle of his service pistol against the Subject' left torso area and pressed the trigger twice, resulting in an unintentional malfunction. Realizing the placement of his weapons muzzle created a malfunction, Officer A believed he needed to increase the distance between the Subject and himself and accomplished this by utilizing non-lethal force. With approximately three feet between them, Officer A fired two rounds in a northerly direction at the Subject.

Officer A fired four additional rounds at the Subject from an approximate distance of six feet, three rounds aimed at the body and one to the head. In response, the Subject fell rearward onto his back with his right hand concealed. From Officer A's vantage point he was unable to determine if the Subject' hand was underneath or adjacent to his right thigh. Officer A had not seen the subject throw, discard or otherwise lose control of his (the Subject') weapon, therefore, Officer A still believed the Subject was in possession of the handgun. As Officer A continued to monitor the Subject and assess the situation, and he observed the Subject attempt to lift his upper body, shoulders, and head approximately two inches off the ground. During this situation, Officer A became involved in a physical struggle with the armed Subject who he believed was attempting to gain control of his service pistol. Another officer with similar training and experience would believe that a subject, who was already armed with a handgun and attempting to gain control of the officer's weapon, posed a threat of serious bodily injury or death to the officer. As such, it was objectively reasonable for Officer A to fire rounds 1-6 in defense of his own life.

After Officer A's second sequence of fire, he appropriately assessed the situation. Again, an officer with similar training and experience would believe that an armed subject with whom he had already been engaged in a shooting who was attempting to lift himself from the ground was doing so with the intent of shooting at the officer. As such, the use of lethal force by an officer under those circumstances was objectively reasonable to prevent the subject from doing so. Therefore, the BOPC found Officer A's application of lethal force to be in policy.