

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

OFFICER-INVOLVED SHOOTING – 059-16

| Division | Date | Duty-On (X) Off () | Uniform-Yes () No (X) |
|-----------------|-------------|----------------------------|-------------------------------|
|-----------------|-------------|----------------------------|-------------------------------|

| | | | |
|---------|---------|--|--|
| Central | 9/16/16 | | |
|---------|---------|--|--|

| Officer(s) Involved in Use of Force | Length of Service |
|--|--------------------------|
|--|--------------------------|

| | |
|-----------|--------------------|
| Officer A | 7 years, 11 months |
|-----------|--------------------|

Reason for Police Contact

The Subject confronted Officer A, who sat near the Subject’s tent, and struck Officer A in the face. The Subject then placed his hands on his waistband, at which point an officer-involved shooting (OIS) occurred.

| Subject | Deceased () | Wounded () | Non-Hit (X) |
|----------------|---------------------|--------------------|--------------------|
|----------------|---------------------|--------------------|--------------------|

Subject: Male, 52 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, 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 August 29, 2017.

Incident Summary

Officer A, who was in plainclothes and not readily identifiable as a police officer, sat with his back to a wall near an outside tent when he was approached by the Subject, who came from his right side. According to Officer A, the Subject said something unintelligible to him. As Officer A turned his head to look up, the Subject bent over him and placed his hand on Officer A's chest. The Subject then placed his hand on Officer A's right sweatshirt pocket, and began reaching into his pocket. Officer A feared that the Subject would touch his pistol, which was holstered inside his right waistband, or would take the money that he had inside the pocket. Officer A placed his right hand over his pocket and began to stand up. No property was taken from Officer A.

According to Officer A, the Subject struck Officer A on the right side of his mouth with his left hand. Officer A pushed the Subject away from him. The Subject reached for his waistband with his right hand. According to Officer A, he was not sure if the Subject's hand went under his baggy clothing that hung over his belt.

Officer A stated that he was scared because the Subject had tried to rob him and had struck him in the face. When the Subject reached for his waistband Officer A thought he was going to attack him with a knife or a gun. Officer A never saw a weapon or anything that looked like a weapon, and no weapon was recovered during the course of the investigation.

According to Officer A, he held his pistol in a close contact position and fired one round toward the Subject. Officer A's round missed the Subject. Officer A stated that the incident occurred so quickly he had no opportunity to give the Subject any verbal commands.

The Subject fell on his back, with the contents of a shopping cart spilling on top of him. Officer A could not see the Subject's hands, so he kept his pistol pointed toward the Subject in a low-ready position as he assessed the situation. Officer A broadcast a request for assistance and was quickly joined by colleagues, including Detective A and Detective B.

According to the Subject, he had been homeless for a number of years. He stated that homeless people have specific areas on the public sidewalk that are self-claimed to be their property, and that when someone refuses to leave, they would be forced to leave.

According to the Subject, he approached a man (Officer A) who was sitting next to his tent, with the intention of telling him to leave the area; the Subject was unaware Officer A was a police officer. The Subject first touched Officer A's shoulder and then tapped Officer A's foot to make him stand up. Once Officer A stood up, the Subject used his right hand to shove Officer A's face and told him to leave the area. As the Subject shoved Officer A in the face with his right hand, he used his left hand to hold up his baggy sweatpants. At this point Officer A removed a handgun and fired at the Subject.

He attempted to run, however, he tripped over a nearby shopping cart. The Subject denied placing his hand in Officer A's pocket.

The Subject was taken into custody and transported to the hospital, where he was examined for minor injuries. The Subject was not struck by the bullet. Officer A was treated at scene for a minor injury to the inside of his upper lip.

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 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 made the following findings.

A. Tactics

The BOPC found Officer A and Detectives A and B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

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

C. Lethal Use of Force

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

Basis for Findings

Detention

- The available evidence establishes that, at a minimum, the Subject committed an assault against Officer A. As such, the detention of the Subject was consistent with Department standards.

A. Tactics

Tactical De-Escalation

- Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

As addressed in the Use of Force analysis below, the BOPC does not believe that the available evidence in this case establishes that the force used during this incident was objectively reasonable. As such, the BOPC believes that Officer A unduly escalated his response during this incident.

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.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

In conclusion, the BOPC found that Officer A and Detectives A and B's tactics warranted a Tactical Debrief.

B. Drawing/Exhibiting

- According to Detective B, he responded to the location where a shooting had occurred and an officer needs help broadcast had been initiated. Upon his arrival, he exited the vehicle and drew his service pistol.

According to Officer A, he observed the Subject reach for his waistband area. Believing the Subject was going for a weapon to shoot or stab him, he immediately drew his service pistol.

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

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

C. Lethal Use of Force

- **Officer A** – (pistol, one round)

Although Officer A expressed that the Subject's actions caused him to fear being shot or stabbed, the factors upon which he explained this fear do not meet the standard of an objectively reasonable belief of imminent death or serious bodily injury, as Department policy would require for the use of deadly force to be authorized.

According to Officer A, the Subject approached him from his right side as he was seated outside the tent and said something unintelligible to him. The Subject then placed his hand on Officer A's right sweatshirt pocket and began reaching into the pocket.

Note: The Subject denied placing his hand(s) in Officer A's pockets.

According to Officer A, as he began to stand up, the Subject struck him (Officer A) on the right side of his mouth with his (the Subject's) left hand. Officer A could not recall whether he was struck with a closed fist or a slap.

Note: The Subject stated that he pushed Officer A in the face with an open hand.

Officer A sustained a minor abrasion to the inside of his top lip. The minor nature of this injury indicates that the strike to his mouth was not powerful in nature.

When interviewed, Officer A stated that he hadn't seen a weapon; however, he believed that the Subject was attempting to obtain either a knife or gun from his waistband using his right hand. When asked whether the Subject lifted his clothing up as he reached for his waistband, Officer A stated that he hadn't. Later in the interview Officer A was asked if the Subject's hands were on his waistband when he shot, to which he replied they were on the waistband. Officer A was again asked whether the Subjects hand were on top of his clothing or underneath as he reached for his waistband, to which Officer A replied that he did not know.

Officer A did not make any statements to indicate that he made any observations other than the Subject's hand going to his waistband (such as a bulge or a sighting of an unknown object) to support his belief that the Subject either possessed a weapon or was arming himself.

According to the Subject, his left hand was holding his sweatpants up because they kept falling down as he pushed Officer A in the face with his right hand. The Subject

is right handed. The investigation established that the Subject was not in possession of a weapon at the time of the OIS.

Although Officer A did not remember exactly what he broadcast immediately following the OIS, several officers recalled hearing Officer A broadcast that the suspect had a knife.

According to Detective B, as he responded to the OIS, Officer A told him that the Subject had a knife. This is corroborated by the Subject, who stated that he immediately denied having a knife.

In its analysis of the use of lethal force by Officer A, the BOPC considered that Officer A never saw a weapon. Beyond the Subject placing his hand at his waistband, Officer A did not report any further objective observations (such as a sighting of a bulge or unidentified object, or a reach into a pocket or waistband area) to further support a belief that the Subject was retrieving a weapon.

Officer A's stated belief that he was in imminent danger of being attacked with a knife or a gun was based upon the Subject placing his hand in Officer A's pocket, then striking Officer A in the mouth (an assault that caused a very minor injury), and the observation that the Subject's hand went to his waistband. Although Officer A's statements establish that he was fearful of the Subject's actions, the objective facts are insufficient to support a reasonable belief that the Subject presented an imminent threat of serious bodily injury or death at the time Officer A employed deadly force.

Based on the totality of the circumstances, the BOPC believed that an officer with similar training and experience as Officer A would not reasonably believe the Subject's actions presented an imminent threat of death or serious bodily injury, and that the use of lethal force would not be objectively reasonable to stop the threat.

Therefore, the BOPC found Officer A's lethal use of force to be objectively unreasonable and out of policy.