

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

OFFICER-INVOLVED SHOOTING – 062-12

Division	Date	Duty-On () Off (X) Uniform-Yes () No (X)	
Outside City	09/26/12		

Officer(s) Involved in Use of Force	Length of Service
Officer A	7 years, 6 months

Reason for Police Contact

While off-duty at his residence, Officer A engaged in a use of force incident with the Subject when the Subject initiated an attempt to burglarize Officer A's residence.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
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 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 13, 2013.

Incident Summary

Specialized unit Officer A, on-loan to another specialized unit, was off-duty at his residence, located outside the City of Los Angeles.

Officer A awoke to the sound of the sliding screen door opening. He looked to his right to determine if his daughter was at the sliding screen door and discovered that she was asleep on the bed. He stood up and observed through the sliding door's sheer curtain, the screen door fully opened and a silhouette of a male, later identified as the Subject, crouched at the threshold, facing into the bedroom. Although he did not see the face of the individual, Officer A stated he had believed the individual was a male based on the individual's larger stature.

The Subject, who was several feet away from Officer A, reacted as if he observed Officer A, and he ran toward the rear yard wooden gate door. Officer A exited the bedroom and pursued the Subject to detain him until police arrived.

Regarding his decision to pursue, Officer A stated he tried to detain the Subject because he did not know what the Subject's intentions were and did not know him. Officer A believed that had he not detained the Subject, he possibly would have put his family in danger because he was not sure if the Subject would continue to be a threat to his family.

The Subject ran out of the rear yard then onto a walkway that meandered through the west side of the complex. The Subject ran to a planter area near the property wall, adjacent to two additional units. He placed his hands atop the cinder block wall and attempted to climb it. Officer A grabbed the Subject by placing one of his hands on the Subject's shoulder and his other hand on the Subject's waist area, causing the Subject to fall onto the dirt. Officer A struggled to control the Subject as they fought. Officer A could not recall if he was communicating with the Subject during this portion of the altercation.

The Subject stood up onto his feet and ran down the walkway toward two large bushes near Officer A's front door entry way. Officer A pursued the Subject and they fell into the bushes. Officer A continued his attempt to control the Subject on the ground. He could not recall if he communicated with the Subject during this altercation. Officer A indicated that during this two minute struggle, the Subject stated some unintelligible words, then indicated, "Kill me, kill me."

The struggle continued several feet south toward the main building's electrical meter enclosure containing four sliding doors. During the struggle, the Subject and Officer A fell onto the doors, causing them to come off their track. The two were on the ground near the doors when Officer A, who was fatigued, yelled out to Witness A to call the police and bring him his gun.

Regarding his decision to direct Witness A to retrieve his pistol, Officer A stated he didn't know if there was more than one subject and didn't know if this subject was armed. He wanted Witness A to bring his gun so he could protect himself from any bodily injury or death and because he was getting winded, he felt as though the only resort he had was to get his firearm.

After a brief moment of uncertainty, as to what to do, Witness A retrieved the holstered pistol and used Officer A's cell phone to dial 911. She again exited her residence while holding a cellphone to her ear and the holstered pistol in her other hand. She gave the holstered pistol to Officer A, then re-entered her residence.

Officer A took possession of his holstered pistol and held it in his right hand as he pinned the Subject onto the ground with his body weight and left hand. The Subject was able to break free, stood up and ran toward a commercial size trash dumpster contained within a gated enclosure located on one portion of the concrete parking area. Officer A followed the Subject, with his holstered pistol, intending to maintain visual contact with the Subject and direct responding police personnel of his whereabouts. Officer A stated that he unholstered his pistol, as he stepped onto the concrete parking area, due to his belief that the situation could escalate to the use of deadly force because he knew from experience that burglars are known to carry weapons. He held his pistol in a two handed low-ready position, with his right index finger along the frame, while also holding onto the off-duty belt concealment holster in his left hand.

Officer A directed the Subject to, "Get down." The Subject ignored the commands and walked into the enclosure through the open gate. The Subject then climbed into the dumpster. He continued toward an adjacent cinder block wall. Concerned that the Subject would climb over the adjacent wall onto a preschool property, Officer A approached the dumpster.

Officer A stood two to four feet away when the Subject suddenly dropped down from the dumpster and charged at Officer A. The Subject grabbed onto both of Officer A's wrists. Fearing that the Subject was attempting to disarm him then use the pistol against him or his family, Officer A discharged one round from his pistol as it was pointed toward the Subject's lower torso area.

Witness A indicated she heard a single gunshot, at which time she again looked out the living room window. She observed Officer A point his pistol at the Subject as they stood approximately three to four feet apart. She heard the Subject indicate he had been shot and observed Officer A direct the Subject not to move and to get down. She did not believe that the Subject was struck, because after hearing the gunshot, she observed the Subject continually move back and forth. Witness A did not maintain a continuous visual of the Subject and Officer A. As she again looked through the living room window, she observed an officer from an outside agency place handcuffs on the Subject near the cinder block wall.

After Officer A discharged his pistol, the Subject stepped back, turned around and walked toward the cinder block wall near the trash dumpster. The Subject attempted unsuccessfully to climb over the wall as Officer A directed him to, "Get down!" The Subject then paced back and forth in the parking area while facing Officer A, who had his pistol in a low-ready position. The Subject appeared as if he was waiting for an opportunity to escape.

Officer A heard a siren and observed a police vehicle approach north on the driveway. He placed his pistol into its holster, placed it onto the ground, then raised his arms up. The Subject looked in the direction of the approaching police vehicle, turned and ran toward the cinder block wall.

As the outside agency officer exited the police vehicle, Officer A identified himself as an off-duty LAPD officer. The outside agency officer then ran and directed the Subject to get down as the Subject climbed the cinder block wall. The outside agency officer grabbed onto the Subject and took him into custody.

The local city's Fire Department personnel received an alarm call to respond to the location and subsequently arrived on scene. They were directed to the Subject, who was handcuffed, and lying in a prone position, near the cinder block wall, where they provided him medical treatment.

The District Attorney's Office reviewed the case and filed charges of 459 PC (Residential Burglary), 241(a) PC (Assault on Peace Officer), 243(b) PC (Battery on Peace Officer), and 11364.1(a) HS (Possession of Controlled Substance Paraphernalia) against the Subject.

During the Subject's one-day admission at the hospital, he was examined and treated by various medical staff personnel. On his discharge summary, a CT scan of his head was performed which revealed some cranial swelling and facial abrasion. Also, a CT of the Subject's lower left extremity was performed which revealed a bullet tract with entry and exit sites in the left proximal medial thigh, approximately five centimeters away from the groin and medial in nature.

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 made the following findings.

A. Tactics

The BOPC unanimously found Officer A's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting

The BOPC found, by a vote of 3-2, Officer A's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

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

Basis for Findings

A. Tactics

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

1. Responsibility of Off-Duty Officers

The evaluation of the decision to take enforcement action in the capacity of an off-duty officer requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Each incident must be looked at objectively and the areas of concern must be evaluated based on the totality of the circumstances.

Officer A was off-duty and at home, asleep with his wife and young daughter when the Subject attempted to enter his residence through the sliding screen door in his bedroom. The BOPC's analysis is based in part on the instinctual response to defend one's family from current and potential future harm, specifically when the decision is made upon just awakening from sleeping.

Officer A was awakened when he heard the screen door of the bedroom he and Witness A and his daughter were sleeping in being opened. He observed the Subject standing in the threshold of the doorway and made a split-second decision to take enforcement action. He attempted to detain the Subject with the safety of his family at the forefront of his concerns.

Officer A recalled that he detained the Subject because he did not know what the Subject intended to do. Officer A felt if he had not detained the Subject, it possibly would have put his wife and kids in danger.

- The BOPC conducted a thorough and comprehensive review of this case and determined that it was reasonable for Officer A to have responded as he did in this instance. However, the BOPC determined that Officer A could benefit from a discussion of off-duty considerations associated with the decision to initiate enforcement action. The BOPC directed that Officer A attend a Tactical Debrief and that the topic of off-duty considerations be discussed.

B. Drawing/Exhibiting

- In this instance, Officer A followed the Subject at a distance, while observing his direction of travel, thus enabling him to accurately direct responding police resources. While following the Subject, Officer A unholstered his service pistol fearing the situation may escalate to a deadly force incident.

Officer A recalled that he unholstered his weapon due to the fact that he had a reason to believe that the situation would escalate to the use of deadly force due to the fact that the Subject was a burglary subject and the fact that he possibly went into Officer A's house to try to harm his wife and children. Additionally, Officer A did not know if the Subject was armed or not.

The BOPC determined that officers with similar training and experience as Officer A, 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 Officer A's drawing/exhibiting of a firearm to be in policy.

C. Lethal Use of Force

- In this instance, Officer A pursued the Subject into the enclosed dumpster area of his townhome complex. The Subject attempted to climb the brick wall, utilizing the dumpster to assist him, while Officer A gave repeated commands to get down onto the ground. The Subject was unable to climb the wall and immediately turned and charged toward Officer A. The Subject advanced toward Officer A while he held his service pistol at a low ready position. The Subject subsequently grabbed Officer A's wrists and, fearing that the Subject was attempting to disarm him, Officer A fired one round at the Subject's lower torso.

Officer A recalled already feeling fatigued from fighting for so long, running after the Subject, giving commands, and he was worried about his wife. The Subject was going for Officer A's gun, so Officer A was thinking the Subject was probably going to try to take his gun, use it against him, and he could possibly harm his family. So Officer A discharged a round.

The BOPC evaluated the circumstances relevant to Officer A's lethal use of force. The BOPC determined that Officer A's use of lethal force was objectively reasonable

to protect himself from the immediate threat of serious bodily injury or death. An officer with similar training and experience as Officer A would reasonably believe that the Subject posed an imminent threat of serious bodily injury or death and the use of lethal force would be a reasonable option.

Therefore, the BOPC found Officer A's use of lethal force to be in policy.