

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

OFFICER-INVOLVED SHOOTING 063-09

Division	Date	Duty-On () Off (X)	Uniform-Yes () No (X)
Northeast	09/12/2009		

Officer(s) Involved in Use of Force	Length of Service
Officer A	2 years

Reason for Police Contact

An off-duty officer became involved in a confrontation which resulted in an officer-involved shooting.

Subject

Subject 1: Male, unknown age.
Subject 2: Male, unknown age.
Subject 3: Male, unknown 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 suspect 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 May 24, 2011.

Incident Summary

Officer A and Witnesses A and B departed a bar. As the three of them exited the bar and started walking toward Officer A's vehicle, which was parked in a nearby parking

lot, a vehicle pulled up next to them. Subject 1 (passenger) had his window down and shouted out a derogatory comment toward Witness A.

According to Witness B, the vehicle was stopped as she, Officer A, and Witness A approached. Witness B also indicated that the vehicle was occupied by three males – a driver, passenger and a third passenger seated in back. Witness B believed it was the front passenger (Subject 1) who made the comment out the window.

Officer A did not remember Subject 1's comment, but did remember that it was disrespectful to him and Witness A. According to Witness B, Officer A was angry because he was protective over Witness A.

The driver (Subject 2) made a U-turn in the middle of the street and pulled into the parking lot where Officer A's vehicle was parked. Officer A got scared because he was walking back to his car, and had a feeling that the situation might escalate. Officer A believed the subjects in the vehicle were going to come back and confront him. Upon arriving at his vehicle, Officer A obtained his off-duty weapon.

Officer A started his vehicle and rolled down the windows. As Officer A was pulling out of the driveway of the parking lot, he observed the subjects' vehicle park in the lot. As he was stopped in the driveway, Officer A looked in his rearview mirror and saw Subject 1 approaching his vehicle from behind on foot.

As Officer A pulled the vehicle toward the parking lot exit, something hit him in the face. Officer A was certain it was Subject 1 who had hit him, because A recognized the black muscle shirt that Subject 1 had worn as well as his tattoo. Officer A indicated that Subject 1 was standing outside his vehicle between the driver's side and the back door partition.

Witness B indicated that although she did not directly see Subject 1 strike Officer A, she saw Officer A's head snap backwards.

Officer A was unsure whether Subject 1 struck him multiple times, because the first strike was strong and caught him off guard. Officer A was also disoriented by the first strike, which resulted in a temporary hearing and sight loss. Officer A stated that he sustained ringing in his ears, a bruise the size of a dime on his top lip, redness on his lower lip, and a headache. Witness B indicated that Officer A was struck one time.

Officer A then retrieved his weapon and fired at Subject 1. Officer A indicated that he was shooting at the threat posed by Subject 1.

Officer A shot two to three times, at a downward motion, directly outside his vehicle window, in the direction of the threat.

According to Witness B, after Officer A was hit in the face, he reached under his thigh and then she heard two pops. Witness B also indicated that Officer A's arm appeared

to be as fully extended and was slightly out the window. According to Witness B, at the time the shots were fired, the vehicle was stationary, but Subject 1 was no longer standing next to Officer A's vehicle. After Subject 1 struck Officer A, he disappeared from Witness B's line of vision. Witness B knew the popping noises were gunshots, but she did not see any muzzle flashes.

Following the shooting, Officer A left the scene immediately because he wanted to get Witness A and Witness B away from the area and to protect them. After he fled the scene, Officer A noticed that he had blood on his hands, from his own face. He also believed there was a possibility that the subjects would follow him to his residence, because he looked in his rearview mirror and saw bright lights and believed he was being followed.

Witness B indicated that Officer A drove aimlessly, getting on and off the freeway twice, such that it took them an hour to return to Officer A's residence. Officer A turned the vehicle's interior light on and saw blood on his hands, which was coming from his nose. According to Witness B, Witness A asked Officer A what he was going to do, but he did not respond. Also according to Witness B, while in the vehicle, Witness A found what appeared to be a link of a watch in her lap. She assumed that it was related to Officer A shooting someone and that it had flown into the car. Officer A reassured Witness A he had not hit anybody. Witness A told Witness B, that based on the cut on Officer A's face, the piece of metal looked like it could have come from a watch.

Later that night, Officer A used a pay phone outside a convenience store near his residence to call Officer B, who in turn called Officers C and D and arranged for them to meet Officer A at the convenience store.

Sergeant A received a phone call from Officer C indicating that Officer A was having a problem. Officer A then told Sergeant A that someone had attacked him and that he had fired his off-duty weapon.

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's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Officer A's drawing and exhibiting to be Out of Policy.

C. Lethal Use of Force

The BOPC found Officer A's lethal use of force to be Out of Policy.

Basis for Findings

A. Tactics

Due to the nature of the incident and the lack of a nexus to law enforcement activity or tactics, the evaluation of tactics was not necessary. However, current Department policy states that any officer involved in a Categorical Use of Force incident shall be directed to attend a Tactical Debrief.

B. Drawing/Exhibiting

Officer A was seated inside his vehicle when Subject 1 punched him in the face. In response, Officer A drew his off-duty pistol from a holster that was secreted between the front seat cushion and center console of his vehicle.

In determining the appropriateness of the decision to draw his pistol, consideration must be given to the Subject 1's proximity to Officer A when the act of drawing occurred. After Subject 1 punched Officer A, Witness B recalled that Subject 1 backed away from the car. Officer A also relayed that he pointed his pistol out the window behind him, at the direction of the threat. Both statements indicate a circumstance wherein at the time Officer A made the decision to draw his pistol, Subject 1 had already moved from the driver's side window and was no longer in a position to be a viable threat. Therefore, Officer A lacked sufficient cause to draw his pistol.

The BOPC found Officer A's Drawing/Exhibiting to be Out of Policy.

C. Use of Force

In this case, consideration must be given to the extent Officer A was "*disoriented*" and the level of threat posed by Subject 1 when the decision to use lethal force was made. Although Officer A indicates that he was "*disoriented*" as a result of being punched by Subject 1, the distance and time that he drove after leaving the scene and his lack of

effort to obtain immediate medical attention minimizes the amount of weight that can be given to this as a consideration to justify his use of lethal force.

As for the threat posed by Subject 1, Witness B stated that after Officer A was punched, Subject 1 backed away from the car. Witness B elaborated that Subject 1 hit Officer A once and then seemed to disappear from her line of sight. She described a circumstance wherein Subject 1 had moved away from the vehicle, and Officer A pointed his pistol back at an angle over his shoulder before he fired. Furthermore, Witness B's depiction of events was corroborated by Officer A, as he described that he pointed his pistol out the window and "behind" his position before he shot approximately two to three times in the direction of the threat, in a downward motion. In giving equal weight to these statements, the balance of evidence established that Subject 1 had moved from the driver's side window prior to the decision to use lethal force, which conflicts with the assertion that Subject 1 continued to pose an imminent threat. Absent a perceived or actual presence of an additional threat (e.g., a firearm) and the fact that Officer A was capable of driving away to avoid further conflict, Officer A lacked sufficient justification for the use of lethal force.

In addition, Officer A's statement that he fired in the direction of the threat indicates that he neither acquired a sight picture nor had Subject 1 in view when he fired. Officers are held to a standard where they are responsible for every shot fired. By pointing his pistol over his shoulder and firing in the direction he perceived Subject 1 to be in, Officer A jeopardized the safety of innocent bystanders. To that end, the balance of the evidence refutes the existence of circumstances that would support a reasonable belief that Officer A and/or the occupants of his vehicle were at risk of serious bodily injury or death at the time the decision was made to use lethal force.

In conclusion, the BOPC found Officer A's application of Lethal Force to be Out of Policy.