

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

**OFFICER-INVOLVED SHOOTING - 064-09**

<b><u>Division</u></b>	<b><u>Date</u></b>	<b><u>Duty-On(x) Off( )</u></b>	<b><u>Uniform-Yes(x) No( )</u></b>
Hollenbeck	09/20/09		

<b><u>Involved Officer(s)</u></b>	<b><u>Length of Service</u></b>
Officer A	13 years, 3 months
Officer B	3 years, 10 months

**Reason for Police Contact**

Officers conducted a pedestrian stop, which resulted in an officer involved shooting.

<b><u>Subject(s)</u></b>	<b><u>Deceased ( )</u></b>	<b><u>Wounded (x)</u></b>	<b><u>Non-Hit ( )</u></b>
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Subject: Male, 25 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 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, 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 September 7, 2010

**Incident Summary**

Officers A and B observed the Subject walking on the sidewalk and talking on a cellular phone, which he held in his left hand. As Officers A and B got within two to three car lengths of the Subject, the Subject turned around and saw their police vehicle. When

Officer A stopped the vehicle, he observed the Subject's right hand move towards his front waistband area, where a bulky object was present. Officer A advised Officer B that the Subject had a gun.

Officers A and B exited their police vehicle. Officer B drew his pistol, took a position of cover behind a parked vehicle, and repeatedly ordered the Subject to put his hands up. The Subject raised his right hand and Officer B observed the butt of a handgun in the Subject's waistband. Officer B stated, "Partner, gun."

Officer A also drew his pistol and took cover behind a parked vehicle. Both officers ordered the Subject to turn around and get on his knees, but the Subject refused to comply. Officer A subsequently ordered the Subject to put his hands on a nearby fence. The Subject put his hands on the fence but continued to look back at the officers.

Officer A put his pistol away and advised Officer B to cover him. Officer A then moved toward the Subject, grabbed his right wrist, and brought it behind his back to handcuff him. The Subject began to struggle and attempted to pull his arm away from Officer A. Officer A pushed the Subject against the fence to prevent him from escaping. Officer B put his pistol away and grabbed the Subject's left arm. Officer B then used his right knee to deliver four to five strikes to the Subject, but it had no effect.

The Subject pulled his right hand toward his waistband and grabbed the grips of his pistol. Officer A yelled, "He's going for the gun." Officer A managed to momentarily pull the Subject's hand away from the pistol before the Subject grabbed it again. Officer A capped the Subject's right hand to prevent the Subject from pulling the pistol out. Officer B drew his pistol and stated, "I'm going to shoot."

Officer A stepped back from the Subject as Officer B fired three rounds at the Subject from approximately two feet away. During this time, the Subject still had a hand on his gun and then the Subject subsequently fell to the ground. Officer B put his pistol away.

As the Subject fell to the ground, his shirt went up and Officer A saw a pistol in the Subject's waistband. Officer A drew his pistol and ordered the Subject to turn onto his stomach and place his hands on his head. The Subject eventually complied and both officers approached the Subject to take him into custody. The Subject remained uncooperative and continued to struggle with them. Both Officers ordered the Subject to give them his hands and keep them away from his waistband. Officer A put his knee on the Subject's back and grabbed the pistol out of the Subject's waistband. The Subject then bucked Officer A off of his back, knocking the pistol out of Officer A's hand. As the Subject got up on his knees, he placed his hand near his pistol. Officer A stood up and drew his pistol. Officer B saw the Subject stand up, move away from the officers, and place his hands in front of him. Believing the Subject was about to shoot him, Officer B drew his pistol and fired a fourth round at the Subject from approximately four feet away. The Subject fell to the ground. Officer A picked up the Subject's pistol from the ground and secured it in his back pocket. Both officers put their pistols away and ran over to the Subject to take him into custody. Officer A handcuffed the Subject

and began to search him. Officer B broadcast a call for backup, as well as for a Rescue Ambulance (RA).

Officer B observed a crowd of people coming toward their location, yelling obscenities at them. Officer A advised Officer B that he would monitor the Subject while Officer B dealt with the crowd. Officer B retrieved his baton, which had fallen on the ground during the struggle, assumed a striking stance, and ordered the crowd to get back.

As responding units arrived at the scene, Officer B directed them to get the crowd back and to begin setting up a perimeter. The Los Angeles Fire Department arrived on the scene and transported the Subject to the hospital.

### **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 administrative disapproval and Officer B's tactics to warrant a tactical debrief.

#### **B. Drawing/Exhibiting/Holstering**

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

#### **C. Non-Lethal Use of Force**

The BOPC found Officer A and B's non-lethal use of force to be in policy.

#### **D. Use of Force**

The BOPC found Officer B's use of force to be in policy.

### **Basis for Findings**

#### **A. Tactics**

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

The exact positioning of the Subject in relation to the officers' police vehicle at the time he grabbed his waistband area cannot be determined. Based on the officers' statements, evidence supports that they were generally parallel to the Subject at the time of their initial contact with him. In some cases, such a parallel position may be unavoidable; however, in situations where officers initiate a planned contact, they should do so consistent with a tactical plan and always maintain a tactical advantage. In this case, it would have been tactically advantageous for Officer A to have stopped the police vehicle behind the Subject, thereby utilizing the police vehicle as cover while they attempted to gain consent to speak with the Subject. In conclusion, Officers A and B are reminded to develop a tactical plan prior to initiating such contacts, including consideration as to the positioning of the police vehicle in order to maintain a tactical advantage.

While policy requires that officers go Code Six, often officers are required to focus on their tactics and officer safety. In those cases, officers are expected to notify Communications Division (CD) as soon as possible of their location and update their status when changes occur. In a best-case scenario, Officers A and B should have notified CD of their location prior to initiating contact with the Subject; however, they quickly became focused on the Subject and his reaction to them. Once Officers A and B assumed positions of cover, they had a position of advantage and it would have been prudent for them to broadcast their status and location and request additional resources prior to approaching the Subject. Additionally, following the first officer-involved shooting (OIS), both officers approached the Subject with the intention of taking him into custody without advising CD of their location or requesting additional resources. Neither officer made any type of radio broadcast until after the second OIS once the Subject had been handcuffed. In conclusion, although not immediately going Code Six was reasonable under these circumstances and was not a substantial deviation from policy, the officers' failure to update their status with CD and to request additional resources once they obtained a position of cover and prior to approaching the Subject was a substantial deviation from Department training. As it relates to Officer B, the failure to go Code Six was based on his limited tenure and experience and was justifiable under these circumstances. As it relates to Officer A, BOPC noted that he has had two prior Categorical Use of Force incidents in which he received training in utilizing cover, going Code Six, and requesting backup. BOPC does not believe that another officer with similar training and experience as Officer A would find it reasonable or be able to justify not going Code Six.

In order to avoid confusion, officers are trained to utilize the concept of contact and cover in which one officer gives verbal commands while the other provides cover from a position of advantage. In this instance, due to the Subject's refusal to follow the officers' verbal commands, both Officers A and B simultaneously issued commands. Due to the increased level of threat, it is not unreasonable for both officers to have issued commands in an attempt to control the suspect's actions. However, best practices dictate that one officer should issue commands when feasible to avoid confusion and to ensure the cover officer is focused on his role. In conclusion, the actions of Officers A

and B were not unreasonable; however, they are reminded of the importance of coordinating their roles to ensure the integrity of the contact and cover concept.

In this instance, believing that the Subject was armed with a handgun in his front waistband area, Officers A and B approached the Subject, who was standing on the sidewalk with his hands on a fence. Officer A's decision to approach a standing subject who was armed with a handgun without updating their status and requesting the response of additional personnel limited the amount of time available to them to respond to any threat posed by the suspect, thereby placing them at a tactical disadvantage. In conclusion, while BOPC understands the danger the Subject posed to the community and appreciates the rationale of both officers in making contact, officer safety is paramount and the officers' actions placed themselves in a significant tactical disadvantage. It would have been tactically advantageous and consistent with Department tactical training for both officers to have maintained distance between themselves and the Subject while directing him into a high-risk prone position, updating their location with CD, and coordinating the response of additional resources. BOPC believed that Officer A's decision to approach the Subject prompted Officer B to move forward and placed both officers at a tactical disadvantage.

In this instance, following the first OIS, Officer A approached the Subject. Instead of immediately handcuffing him, Officer A recovered the Subject's handgun from the Subject's front waistband. After Officer A recovered the handgun, the Subject was able to stand, then knocked the handgun out of Officer A's hand and attempted to flee. Officer B, focused on the Subject, did not see the handgun fall from Officer A's hand and was under the impression that the Subject was still armed prior to the second OIS. In a best-case scenario, the Subject would comply with the officers' commands and a "high-risk prone search" would be completed. Here, the officers were aware that the Subject was armed. Furthermore, the Subject had demonstrated his unwillingness to comply with the officers' commands and had attempted to retrieve the handgun from his waistband during the struggle. Research has shown that officers perceiving a grave threat will focus their senses on the threat, to the exclusion of other less important events. Officer A said that he was focused on the threat presented by the handgun and elected to recover the threat from the Subject prior to handcuffing him. Although Officer A's action of attempting to recover the handgun prior to handcuffing the Subject deviated from current training guidelines, it was not unreasonable. In conclusion, while Officer A's action was not unreasonable, in this case it would have been tactically safer for the officers to ensure that the Subject was handcuffed prior to recovering the handgun from his waistband.

Officer B was involved in a second OIS due to his belief that the Subject was armed and would shoot him; yet, when the Subject fell the second time, Officer B immediately holstered his service pistol. A fallen subject does not necessarily mean that he or she is incapacitated. In conclusion, Officer B is to be reminded that following an OIS, a proper assessment prior to holstering would afford him the opportunity to immediately re-engage a suspect should he or she remain a deadly threat.

In conducting an objective assessment of this case, BOPC found that the tactics utilized by Officer A substantially and unjustifiably deviated from approved Department tactical training, thereby requiring a finding of Administrative Disapproval. Based on his more limited amount of experience and training, BOPC did not find that Officer B's actions unjustifiably deviated from Department training.

## **B. Drawing/Exhibiting/Holstering**

In this instance, Officer A attempted to detain the Subject who he perceived as being in possession of a handgun. As Officer A exited the police vehicle he observed the Subject reaching into his waistband area. Officer A believed the Subject was attempting to arm himself with a weapon. As a result, Officer A drew his service pistol. Following the first OIS, the Subject fell to the ground and Officer A drew his service pistol a second time.

Once the Subject fell to the floor, Officer A approached him and removed the handgun from the Subject's waistband. The Subject stood up and knocked the handgun from Officer A's hand. Officer A drew his service pistol a third time.

In this instance, Officer B attempted to detain the Subject who he perceived as being in possession of a handgun. As Officer B exited the police vehicle, he observed the Subject reaching into his waistband area. Officer B believed the Subject was attempting to arm himself with a weapon. As a result, Officer B drew his service pistol.

After the officers had approached the Subject and attempted to take him into custody, the Subject resisted, broke free from Officer B's grasp, turned toward Officer B and placed his hand on the grip of a handgun that he had in his waistband area. As a result, Officer B took a step back from the Subject and drew his service pistol a second time.

Following the first OIS, Officer B holstered his service pistol and approached the Subject to attempt to take him into custody. The Subject then popped up and attempted to flee from the officers. The Subject put his hands in front of him, causing Officer B to draw his service pistol a third time.

Officers with similar training and experience would reasonably believe that the actions performed by the Subject presented a risk of great bodily injury or death to the officers. Therefore, it was reasonable for Officers A and B to believe that the situation could escalate to the level where the use of lethal force might become necessary.

In conclusion, BOPC found Officers A and B's drawing and exhibition of a firearm to be in policy.

## **C. Non-Lethal Use of Force**

In this instance, Officer A approached the Subject and grabbed the Subject's right arm in an attempt to place it behind his back for handcuffing. As Officer A made contact, the Subject began to struggle. The Subject swung his left arm and twisted his upper torso

back and forth. Officer A gave the Subject commands to stop resisting, but the Subject refused and continued to resist by twisting back and forth.

Officer B observed the Subject resisting Officer A. Officer B holstered his service pistol and approached Officer A to assist him with controlling the Subject. Officer B grabbed the Subject's left arm with both hands. The Subject continued to resist the officers by twisting his upper body back and forth. In an attempt to control the Subject, Officer B delivered four to five knee strikes with his right knee to the Subject's left midsection.

The strikes did not appear to have any effect, seeing as the Subject continued to resist the officers. At that point, the Subject broke free from Officer A's grasp, reached down to his waistband with his right hand, grabbed the grip of his handgun and began to remove the handgun from his waistband. Officer A placed his right hand over the Subject's hand, pushed the handgun back into the Subject's waistband and pushed the Subject against a fence.

Officer B fired three rounds at the Subject and the Subject fell to the ground. Officer A ordered the Subject onto his stomach and approached the Subject, placing his left knee on the middle of the Subject's back. The Subject continued to resist, utilizing his upper body strength.

Shortly after the second sequence of fire, the Subject fell to the ground and Officer A approached the Subject to take him into custody. Officer A placed his left knee on the Subject's back and applied his bodyweight to control the Subject. Officer A was able to force both of the Subject's arms behind his back and handcuff him.

In conclusion, officers with similar training and experience would reasonably believe that the Subject was actively resisting the officers, thereby warranting the application of non-lethal force. Therefore, the non-lethal force used by Officers A and B to overcome the actions of the Subject was objectively reasonable and within Department guidelines. The BOPC found the non-lethal applications of force utilized by Officers A and B to be in policy.

#### **D. Use of Force**

In this instance, Officer B observed the Subject place his right hand on the grip of his handgun and simultaneously turn his upper torso toward Officer B. Officer B advised Officer A, "I'm going to shoot him." Fearing for his life, Officer B fired three rounds at the Subject's upper torso from an approximate distance of two feet.

After the first three rounds, the Subject went down to the ground. Officers A and B approached the Subject with the intention of taking him into custody. Then, however, the Subject was able to rise to his feet and run from the Officers. As he ran, the Subject placed his hands in front of him. Fearing he was about to be shot, Officer B fired one round at the Subject's upper torso from an approximate distance of two feet.

The Subject's action of placing his hand on the grip of his handgun in conjunction with turning his upper torso toward Officer B reasonably represented a deadly threat. Furthermore, after the first sequence of fire, when the Subject rose to his feet and fled, the Subject once again turned toward Officer B with his hands in front of him.

While BOPC is aware that the gun was not in the Subject's possession, another officer with similar training and experience, unaware of that fact, upon observing a Subject who he perceived to be armed (known to have been in possession of a firearm) moving in a similar manner, would reasonably believe that the Subject posed a threat of serious bodily injury or death and would have reasonably reacted in the same manner. Consequently, it was objectively reasonable for Officer B to perceive the Subject's actions as a deadly threat and utilize force in defense of his life.

In conclusion, BOPC found Officer B's application of force to be objectively reasonable and in policy.