

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

OFFICER-INVOLVED SHOOTING – 083-09

<u>Division</u>	<u>Date</u>	<u>Duty-On(x) Off()</u>	<u>Uniform-Yes(x) No()</u>
Rampart	12/03/2009		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Sergeant A	23 years, 2 months

Reason for Police Contact

Officers responded to a radio call of a robbery in progress. Officers made contact with a Subject, which resulted in an officer involved shooting incident.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (x)</u>
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Subject 1: Male, 21 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 November 9, 2010.

Incident Summary

Sergeant A and plainclothes Officer A were assigned to a multi-agency task force. Sergeant A and Officer A's regular vehicle had been returned to the task force, and due to the pending arrival of a new vehicle, Sergeant A and Officer A used a black and white police vehicle so they could collect some administrative paperwork.

Sergeant A and Officer A were driving when Communications Division (CD) issued a broadcast of an armed robbery in progress. The call was assigned to Officer B and C. Sergeant B advised CD that he would also respond to the scene of the robbery as backup and requested an air unit. Additional responding personnel included Officers D, E, F, G, and I, Lieutenant A, and plainclothes Detective A.

Sergeant A and Officer A made the decision to go towards the call, and noticed a black and white police vehicle in front of them make a right turn. Sergeant A then saw a male running up the same street.

The Air Unit arrived in the area of the reported robbery and observed a vehicle which Flight Officer H believed to be related to the robbery. Officer H then observed the vehicle stop on the curb, and observed three subjects exit the vehicle. Officer H broadcast the information.

According to Sergeant B, as he approached an intersection, he stopped and observed a male running toward him on the other side of the street. According to Sergeant B, the male was holding his waistband with both of his hands, and when he saw the black and white police vehicle stop he started running away from Sergeant B, who pursued the man in his vehicle.

Sergeant A noticed that the black and white police vehicle driving in front of him appeared to be paralleling Subject 1. Sergeant A observed that Subject 1 looked like he was trying to go into an opening, and then turned into a driveway, ran and grabbed onto a fence. Sergeant A noticed that the black and white police vehicle ahead of him appeared to be coming to a stop, so he passed the vehicle, and stopped his own vehicle almost parallel to where Subject 1 entered in the driveway.

Sergeant A and Officer A made no radio broadcasts because the air unit was making broadcasts. According to Sergeant B, he did not make any radio transmissions because the air unit was still putting out information for responding units about the additional subjects.

According to Sergeant A, Subject 1 attempted to open the fence's gate to enter the building, but was unsuccessful. Subject 1 then turned away, brought his hands down to his waistband, and started walking back down the driveway, to the sidewalk. Sergeant A explained that he drew his pistol the moment Subject 1 went to his waistband and turned back towards the officers' location because the radio communication stated that the robbery subjects were armed, and he thought he may have to engage Subject 1.

Sergeant A opened his vehicle's driver door, and as he did so Subject 1 looked in the officers' general direction and continued running.

According to Officer A, Subject 1 shrugged his shoulders, shook his head and motioned his body to face in the officers' direction. Officer A simultaneously saw a gun come out from somewhere near Subject 1's waistband, and the subject pointed it in the officers' direction. As soon as he saw the gun pointed in his direction, Officer A said, "gun!"

Sergeant A looked at Subject 1 as he was approaching and saw him move his hand from his waistband and produce a pistol. As described by Sergeant A, Subject 1 was holding the gun in a manner consistent with somebody who's going to fire a weapon, and wasn't holding it like he was going to toss it. Sergeants A saw Subject 1 raise the weapon and make eye contact with the officers. To prevent himself and his partner from being shot, Sergeant A fired two rounds from his pistol, and immediately observed Subject 1 drop to the pavement as if he had been shot. Sergeant A thought Subject 1 was going to shoot because of the way he was holding his gun. Sergeant A believed that there was no time to give commands to Subject 1 before firing at him. Subject 1 was not struck by either of the rounds fired by Sergeant A.

When Officer A saw Subject 1's gun, he opened the door to get cover because he knew that if he was to actually return fire, he could have possibly jeopardized his own partner's safety due to crossfire. Officer A unholstered his weapon as he exited the police vehicle because he saw a gun pointed towards his direction and he feared for his safety and his partner's safety. Officer A indicated that Sergeant A had fired two rapid shots. Once on the ground, Subject 1 lay in a prone position.

Sergeant B heard two gunshots in rapid sequence, turned his attention to the black and white police vehicle and noticed Sergeant A. According to Sergeant B, his vehicle was still moving when he heard the first shot, which he believed were coming from Sergeant A. Sergeant B turned toward the black and white police vehicle, after he heard the first shot, and saw Sergeant A shoot one more round towards Subject 1. Sergeant B also saw Subject 1 go down to the ground and heard something metallic hitting the sidewalk. Sergeant B exited his vehicle, stood behind his door, and drew his firearm.

According to Witness C, after Subject 1 ran up the driveway and came back down, that's when she saw the gun. According to Witness C, Subject 1 was holding the gun beside him, but Witness C thought Subject 1 was not aiming it at anyone but instead just holding it. According to Witness C, Subject 1 threw a gun by the front of her car and then proceeded to lie down. Before Subject 1 lay down, Witness C heard two to three shots. Witness C also heard commands given to Subject 1 to "lay down, spread 'em out." Witness C did not notice the gun until after she heard shots and put her head down. When she put her head back up, that's when Subject 1 came back around and threw the gun next to her car. When asked to clarify when she saw the gun, Witness C stated, "When he's coming down, he has his right hand inside the pocket. And at that time, I can't be sure, but I think he had the gun kind of already on the side coming out when he's coming down the driveway of the apartments. I can't tell if he shot – who shot. But at that time I heard shots and he threw the gun."

Sergeant B crossed the street to where Sergeant A and Officer A were standing and noticed a female civilian (Witness C) sitting inside her vehicle, adjacent to where Subject 1 was lying. Sergeant B's first thought was that they had to do something to either take Subject 1 into custody or get Witness C out of the car because Sergeant B was trying to wave her out of the car but she wasn't listening.

Lieutenant A was driving when he observed Sergeant A and Officer A's patrol vehicle stopped in the middle of the street and all of a sudden heard two shots. Lieutenant A thought that the subjects were shooting at the officers. According to Lieutenant A, he exited his vehicle, drew his pistol from its holster and made his way up to Sergeant A and Officer A's position. Officer I was also driving on the street at the time of the officer-involved shooting (OIS) when he heard a single gunshot, exited his vehicle and observed Subject 1 with a gun in his hand. Officer I put out a shots fired officer needs help call because he had no idea who had shot. According to Lieutenant A, he also initiated three "shots fired officer needs help" broadcasts because he was not sure if the initial call went through, and also broadcast that he was Code Six. Force Investigation Department's (FID) review of the CD recordings revealed that an officer did broadcast a help call, but this officer could not be identified. Additionally, Lieutenant A's Code Six broadcast was not received by CD.

Officers D and E arrived at the scene, advised CD that they were Code Six, and drew their weapons. Sergeant B holstered his weapon and formulated a plan to take Subject 1 into custody. Sergeant B advised Officers E, D and I that they would form an arrest team. Sergeant B also communicated his plan to Sergeant A and Officer A. The plan was for Officer E to cover the houses due to there being outstanding subjects. Officers D and I would then approach Subject 1, and Officer D would handcuff Subject 1. Simultaneously, Sergeant B would approach with the officers and direct Witness C away from the location. The Subject was then taken into custody without further incident. According to Sergeant B, as soon as Subject 1 was in handcuffs, he ordered the female civilian to exit her vehicle.

When Officer A saw other officers approach Subject 1 and begin to take him into custody, he reholstered his weapon. Officer A indicated that as the officers took Subject 1 into custody, he approached Subject 1's gun to secure it. Officer A holstered his weapon because Subject 1 was in custody, and there was no longer a threat.

A perimeter was established, and Subject 2 and Subject 3 were subsequently apprehended and taken into custody. A backpack with U.S. currency and a semiautomatic pistol were recovered from the location where Subject 2 was arrested.

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 Sergeant A, B, and Officer A's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting/Holstering

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

C. Use of Force

The BOPC found Sergeant A's use of force to be in policy.

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered the following:

In this instance, Sergeant A and Officer A responded to a robbery radio call without updating their status and location with CD prior to the OIS. Although officers are generally required to provide CD with this information, based on the totality of the circumstances, it was reasonable for Sergeant A and Officer A to initially forgo their broadcast of their status and location in order to keep the frequency clear and allow pertinent information to be broadcast. However, the importance of updating their status and location with CD will be a topic of discussion at the Tactical Debrief.

In this instance, Sergeant A was seated inside his vehicle with the intention of monitoring Subject 1 as he attempted to escape on foot. In doing so, Sergeant A positioned his police vehicle parallel to Subject 1 as he fled down the driveway. Based solely on his statement, Sergeant A's positioning of the police vehicle potentially placed him at a tactical disadvantage.

Sergeant A is reminded that as the driver of the police vehicle, he is responsible for positioning it in a manner that affords him and his partner the greatest tactical advantage. This will be a topic of discussion at the Tactical Debrief.

In conclusion, a Tactical Debrief is the appropriate outcome for Sergeants A and B as well as Officer A.

B. Drawing/Exhibiting/Holstering

In this instance, while seated in his police vehicle, Sergeant A was confronted by a robbery suspect who ran toward him while holding his waistband area. In response, Sergeant A drew his service pistol. Sergeant B observed a potential armed robbery subject fleeing while holding his waistband area and heard a shot fired. In response, Sergeant B exited his police vehicle and drew his service pistol. Officer A observed a robbery suspect running and suddenly produced a handgun and pointed it toward him.

In conclusion, the BOPC found that it was reasonable for Sergeants A, B and Officer A to believe that the situation may escalate to the point where deadly force may be justified. Therefore, the BOPC found Sergeants A, B and Officer A's Drawing/Exhibiting to be in policy.

C. Use of Force

In this instance, Sergeant A was attempting to monitor a fleeing subject who he believed was just involved in an armed robbery. As Sergeant A remained in his police vehicle, Subject 1 suddenly turned toward him while armed with a handgun. Believing that Subject 1 was about to shoot him, Sergeant A drew his service pistol and fired two consecutive rounds at Subject 1. Based on his actions, it was reasonable for Sergeant A to perceive that Subject 1 presented a significant risk of serious bodily injury or death. As such, it was objectively reasonable for Sergeant A to utilize Lethal Force in defense of his life. In conclusion, the BOPC found Sergeant A's application of Lethal Force to be in policy.