

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

OFFICER-INVOLVED SHOOTING – 084-15

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Van Nuys	10/3/15		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	7 years, 7 months
Officer B	7 years, 5 months

Reason for Police Contact

Subject	Deceased (X)	Wounded ()	Non-Hit ()
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Subject: Male, 46 years old.

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 September 20, 2016.

Incident Summary

Uniformed Police Officers A and B were provided with information regarding an Officer Safety Notification Bulletin. This bulletin informed officers of a videotape depicting an individual who was parked behind a Los Angeles Police Department Central Area officer. This individual recorded the unknown officer exiting his marked black and white police vehicle. The individual then panned the camera down to reveal himself in possession of a silver revolver in his lap.

Note: Officers A and B stated they each viewed the videotape mentioned in the bulletin. According to Officer A, they specifically discussed information regarding the aforementioned bulletin; however, Officer B stated that he does not recall having a specific conversation about the information from the bulletin.

Officers A and B worked as partners for the past one and a half years and had, on prior occasions, discussed tactics. According to Officer A, they discussed tactics regarding contact and cover, ambushes and shooting situations. Officer B stated they discussed tactics after radio calls and what they might have done better.

Officers A, passenger, and B, driver, were in a marked black and white police vehicle. The officers had cleared from a radio call and were going to respond to the police station to complete reports. The officers drove south toward a major intersection and, according to both officers, vehicular traffic appeared to be light, and the area was well lit with overhead street lights. According to Officer A, he observed some pedestrians on the sidewalk, but nothing out of the ordinary.

Note: According to Officer B, he did not take note of pedestrian activity.

Officer B drove their black and white police vehicle south and into the left turn lane, where he was the first vehicle stopped for the red tri-light signal. Officers A and B were conversing as they were stopped in their police vehicle, awaiting the tri-light signal to allow them to proceed east.

Note: Investigators located a video surveillance camera on the southwest corner of the intersection. The video appears to depict two vehicles stopped in the traffic lane directly to the west of Officer A and B's police vehicle. There also appears to be a third vehicle in the area but investigators were unable to determine if the vehicle was stopped behind the police vehicle or to the side. Investigators were unable to positively identify these vehicles or the occupants.

Witness A began to walk north in the crosswalk toward the northeast corner of the intersection. As she was crossing, she saw Officers A and B's police vehicle stopped in the left turn lane pocket waiting on the traffic light. Once at the northeast corner,

Witness A saw a male (the Subject), walking in her direction. Witness A indicated that she did not see him carrying anything; however, she was not focused on his hands.

According to Witness A, it appeared that the Subject, who was approximately 12 to 15 feet from her, immediately became upset and put his arms up into the air, which she believed was due to his upset temperament.

According to Witness A, the Subject began to curse, yell, and walk in a southwest direction toward Officers A and B's police vehicle.

Although Witness A could not understand what the Subject was saying, she believed him to be upset. The Subject continued to curse as he proceeded toward the stopped police vehicle.

According to Witness A, the Subject stopped adjacent to the driver's side of the police vehicle's trunk. The Subject leaned toward the rear window, making a gesture that caused his hands to be near the rear window.

According to Witness A, the Subject threw an unknown object at the police vehicle's back window. Witness A then heard a loud noise and believed that the Subject had broken the rear window of the police vehicle, and, although she has heard glass break before, this sound was louder than the normal sound of breaking glass.

Note: The investigation revealed that the Subject had broken the window of the police vehicle with a beer bottle.

Due to her position on the corner, and the position of the police vehicle, Witness A was unable to see the rear window.

According to Officer A, the officers had been stopped for approximately five to ten seconds. While the officers were conversing, they heard what they both believed to be the rear window of their police vehicle being struck by a gunshot, which caused the police vehicle's rear window to shatter. According to Officer B, his driver's side window was open, and he did not hear any noise prior to what he believed to be a gunshot that shattered the police vehicle's rear window. According to Officer A, he heard two separate noises; the first he believed to be a gunshot, followed by a second noise, which was the police vehicle rear window shattering.

Note: Officer A first stated that he could not separate the two different noises. Later in his interview, Officer A stated that he heard two sounds, a gunshot, then the window breaking, but they occurred instantaneous to each other.

Both officers verbally communicated with one another, with Officer A stating, "Shots fired," and Officer B stating, "We just got shot at." Officer A looked over his left shoulder and observed that the police vehicle's rear window was shattered with an approximate 12-inch hole. Officer A did not observe a vehicle stopped behind the officers' police

vehicle and opined that it was not a traffic collision. Officer B began to open the driver's side door but realized that the vehicle was still in drive and placed the police vehicle in park. According to Officer B, he believed that officers were being shot at from a vehicle stopped behind them, and, although he did not see a vehicle, he believed that the officers were being ambushed from behind.

Officer A opened his vehicle door and began to exit, when he heard one to two more gunshots that appeared to emanate from behind the police vehicle. Officer A exited and unholstered his service pistol, which he maintained in a low-ready position with his finger along the frame. Using the police vehicle's trunk area as cover, Officer A began to scan the area behind their police vehicle. Simultaneously, Officer B opened his vehicle door and, while placing his right hand on his holstered service pistol, stuck his head outside of the police vehicle to turn and look back. According to Officer B, he observed a male (the Subject) in the roadway, running toward him and Officer A. At this time, Officer B stated that he did not observe anything in the Subject's hands. Once Officer B looked back and observed the Subject, he opened his door further, expecting that the door was going to be struck by gunfire. Officer B placed his left foot outside of the police vehicle, on the ground, while he remained seated in the police vehicle, and placed his right foot in the area of the door hinges to prevent the door from closing on him.

According to Officer A, approximately one to two seconds after stepping out of the police vehicle, he observed a male (the Subject). The Subject was standing in the roadway, approximately 20 to 30 feet behind the police vehicle, faced in his direction.

According to Officer A, he observed what he believed to be a black handgun in the Subject's right hand, which he also believed was pointed in his direction.

According to Officer A, he could see that the black handgun was somewhere between the Subject's shoulder and waist area but could not recall if the Subject's arm was extended forward in his direction.

According to Officer B, while still seated in his police vehicle, he turned back to face what he perceived to be the threat, the Subject, and noted that he was still advancing toward officers. At this time, according to Officer B, he observed the Subject to be holding a black object in his right hand that was pointed in the direction of Officer A.

Officer B stated that he could see that the Subject's thumb was over a portion of the black object.

Note: No item of evidence was identified or recovered to account for the officers' observation of a black object or a handgun. Both officers and several witnesses described the area as well lit.

Upon observing the Subject quickly advancing on the officers, and believing that they had just been shot at and that the Subject would shoot at them again, Officer B unholstered his service pistol.

Note: The available evidence suggests that there was insufficient time for the Subject to be close enough to touch the police vehicle (as described by Witness A), retreat, and again start “running” toward the officers or advancing “very quickly,” as described by Officer B.

Officer B placed his service pistol into a two-hand grip and placed the back of his left support hand against the police vehicle’s “B” pillar, assuming a barricade shooting position.

Note: Witness A stated that she saw the police vehicle driver door open and a silver gun “peeking” out of the door, which was pointed north in the direction of the Subject.

Officer A did not have the time to verbalize with Officer B and stated, “And at this point I knew that my partner’s life and my life was in danger because he shot at us once and -- or twice and I believed he was going to shoot at us again.” According to Officer B, the Subject was bladed sideways, facing west toward Officer A.

According to Officer B, the Subject’s right arm was close to his body, with an approximate 90 degree bend in his elbow, pointing what Officer B believed to be a handgun that was protruding away from his body at Officer A. According to Officer B, the Subject’s left arm was in a similar position to his right arm; however, his left arm was canted slightly lower than his right arm. Officer B believed that the Subject was engaging Officer A with the perceived handgun, although he did not hear any gunshots.

Officer A raised his service pistol and targeted the Subject’s torso, center body, and discharged two to four rounds at the Subject, in a northeast direction from a distance of approximately 33 feet, which did not appear to have any impact. After firing his fourth round, Officer A stopped firing to assess and observed the Subject running in an east direction toward the sidewalk.

Simultaneously, Officer B remained seated in his police vehicle with his lower body turned in an east direction and upper body in a northeast direction, while he maintained his barricade shooting position against the police vehicle’s “B” pillar. While maintaining his seated position, Officer B leaned his body to his right, slightly outside of the police vehicle. Officer B pointed his service pistol at the Subject, targeting his mid torso area and discharged three rounds from a seated position in a north direction from a distance of approximately 17 feet. According to Officer B, the Subject’s attention was toward Officer A and it appeared that the Subject did not expect to be engaged by Officer B. Officer B did not see the rounds strike the Subject, but stated that the Subject reacted as if the rounds had struck him. According to Officer B, after he discharged his rounds, the Subject initially turned away from him, at which time Officer B observed that the dark object, which he believed to be a gun, was still in the Subject’s right hand, as the Subject continued toward the east sidewalk.

According to Officer A, as the Subject continued east toward the sidewalk, the Subject's body was faced in an east direction; however, the perceived black object that he believed to be a gun was still pointed in the officers' direction.

Officer A stated, "It still posed a threat to me and my partner." According to Officer B, as the Subject walked east, he pivoted his body in an unknown direction toward officers, with the black object in his hand. Officer A did not have time to communicate with Officer B. Officer A pointed his service pistol at the right side of the Subject's body, center mass, and discharged an additional six to eight rounds in a northeast direction from a distance of approximately 39 feet.

Simultaneously, Officer B, believing that the Subject was going to shoot at officers, and from a seated position in the police vehicle, pointed his service pistol at the Subject's side, mid torso area, and discharged two rounds in a northeast direction from a distance of approximately 30 feet.

Note: Witness A stated that the Subject walked in a northeast direction but was uncertain if it was before or after the gunshots.

Note: The investigation established that Officer A fired a total of thirteen rounds, and that Officer B fired a total of five rounds.

The Subject then stumbled and fell along the east curb. Officer A broadcast a "help" call. A request for a Rescue Ambulance was also broadcast.

Additional officers responded to the scene, and the Subject was handcuffed.

Paramedics responded and provided medical treatment. The Subject failed to respond and was determined to have died.

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 unanimously found Officers A and B's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

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

C. Lethal Use of Force

By a 4-1 vote, the BOPC found rounds 1-4 fired by Officer A to be out of policy. The BOPC unanimously found rounds 5-13 fired by Officer A to be out of policy.

The BOPC unanimously found all rounds fired by Officer B to be out of policy.

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC considered the following tactical issues:

Ambush Tactics

What are some ways to survive an ambush?

- *Determine the location of the suspect*
- *Return fire and simultaneously move to cover*
- *Do not turn your back and run*
- *Returning fire may be the officer's best defense against the suspect's offense*

Vehicle Considerations

- *If police vehicle is being fired upon, take the first driveway, opening or space that is available in order to drive out of the immediate kill zone*
- *Try to deploy to the same side of the street as the suspect(s)...*
- *Reversing or negotiating a U-turn should be discouraged. Slowing down or stopping the police vehicle causes a time delay which allows the suspect(s) to concentrate fire on the vehicle (California Commission on Peace Officers Standards and Training, Learning Domain No. 23).*

Believing that he was being fired upon, Officer B parked the police vehicle in the roadway to engage the immediate threat.

In this case, Officer B was the driver of a police vehicle that was stopped for a red tri-light when the back window of the vehicle suddenly shattered. Believing that they were being fired upon, Officer B made the decision to place the vehicle in park so he could address the immediate deadly threat.

Based on the totality of the circumstances, the BOPC determined that Officer B's decision to exit the police vehicle and engage the suspect was not a substantial deviation from approved Department tactical training.

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

Additional Tactical Debrief Topics

- **Equipment Required** – The investigation revealed that Officer A did not have his Hobble Restraint Device on his person at the time of the incident. The officers are reminded to have all of their required equipment on their person while performing field patrol duties.
- **Situational Awareness** – The investigation revealed that Officer A did not broadcast a direction of travel to the units that were responding to the OIS. Officer A is reminded of the importance of broadcasting pertinent information regarding direction of travel to avoid potential crossfire situations.
- **Target Acquisition** – The investigation revealed that several of the rounds fired by the officers during this incident struck buildings in the immediate area, rather than their intended target. The officers should be reminded of the importance of target acquisition, background, sight alignment and sight picture.

B. Drawing and Exhibiting

- Officers A and B were seated in their black and white police vehicle stopped at a red tri-light when their back window was shattered. Believing that they were being fired upon by a suspect, the officers drew their service pistols.

Officer B recalled, "And knowing that we had just gotten shot at and he was advancing towards us very quickly, I un-holstered my weapon in the anticipation that he was going to continue firing at us."

Officer A recalled, "As I was getting out I heard either one or two more shots. And I, at that time I unholstered my handgun just because I believe that I was getting shot at and the tactical situation had escalated to the point where I had to -- deadly force may have been justified."

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

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

C. Lethal Use of Force

- The BOPC found that, prior to their use of lethal force, Officers A and B each had an objectively reasonable belief that they had been fired upon, based on the noise made by the bottle/window shattering, which could understandably be mistaken for the sound of a gunshot. Neither officer knew where the perceived shot had come from, other than it was from behind their vehicle.

The BOPC noted that the available evidence does not support that there was an objectively reasonable basis for the officers to identify the Subject as presenting an imminent threat of death or serious bodily injury. Notably, although both officers stated that they saw an object in the Subject's hand, and Officer A stated that he observed the object to be a black handgun, no object was recovered at the scene to account for these stated observations.

The BOPC found that the evidence does not support that Officers A and B had an objectively reasonable belief that the Subject presented an imminent threat of death or serious bodily injury at any point in time during the OIS. Accordingly, the BOPC found all rounds fired by the officers to be out of policy.