

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

OFFICER-INVOLVED SHOOTING – 090-12

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Mission	12/29/12		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	5 years, 7 months
Officer B	4 years

Reason for Police Contact

Officers observed the Subject running down the street with a security guard following him. The security guard approached the officers and indicated that the Subject had pointed a gun at him and threatened to kill him. A short pursuit transpired, and an officer-involved shooting occurred.

Suspect	Deceased ()	Wounded (X)	Non-Hit ()
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Subject, male, 28 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 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 November 19, 2013.

Incident Summary

Uniformed Police Officers A and B were driving when they saw two males, later identified as the Subject and Private Security Guard A, running on the east sidewalk. The Subject, who was approximately 25 feet ahead of Security Guard A, ran to the apartment complex located at a particular address. The Subject opened the front security gate and closed it behind him as he entered the building.

Officer A stopped the police car as Security Guard A approached the driver's side window. Security Guard A told the officers that the Subject had pointed a gun at him and threatened to kill him. The Subject related that he was working security at an apartment complex located when the Subject, who is not a resident, attempted to enter the property. Security Guard A confronted the Subject and during the ensuing argument, the Subject threatened Security Guard A, armed himself with a small caliber semiautomatic pistol and pointed it at him. Security Guard A unholstered his pistol and shouted for the Subject to drop the gun. The Subject then ran north on the street.

Note: Witness A told investigators that he had observed the heated argument between Security Guard A and a male from his apartment window. Witness A indicated that the security guard unholstered his firearm. And the male grabbed what looked to be a small caliber handgun out of his right front hoodie pocket.

As Security Guard A was relating the above details to the officers, an unknown female approached Officer A and advised him that the Subject, after entering the front of the apartment building, exited the rear gate. Officer B broadcast on Mission frequency, for an additional unit to respond.

Uniformed Police Officers C and D arrived at the location and were briefed by Officers A and B. The Subject was described to them as a male wearing dark clothing with tattoos on his face, armed with a gun, and last seen in the alley. Officers C and D drove to an adjacent block to look for the Subject.

Officer B requested an airship to respond. Air Support Division (ASD) personnel advised they were en route and in addition, uniformed Sergeant A, arrived at the location.

Officer B provided a description of the Subject and that the Subject had pulled a gun on the security guard. Sergeant A, after speaking with Security Guard A, broadcast additional information indicating the Subject had bruising under his left eye with tattoos on his neck and the back of his head. He described the Subject as being armed with a small .25 caliber semiautomatic handgun.

Communications Division (CD) broadcast, "Units, [...] gang activity." Uniformed officers E and F, who were on foot in the north/south alley, heard the radio call and proceeded to the rear of an particular location. Officers C and D also monitored the radio call and drove toward the location.

Meanwhile, Police Officer G broadcast he had been monitoring the frequency and believed the Subject being sought was probably "Pelon" (the Subject), a gang member from the Blythe Street criminal street gang with tattoos on his face. He stated the Subject was a parolee at large (PAL) who had been running from officers for several months and was known to be carrying a handgun. Officer G further advised the Subject was probably in the area of the radio call at a particular address.

Officers E and F located an opened rear gate at the location. Prior to entering the property, Officer F advised the airship orbiting above they were approaching the location of the gang group. As the officers walked along the north side of the property they located the laundry room. Officer E illuminated the room by shining his flashlight through the window and saw the Subject inside the room concealing himself behind a water heater.

Both officers observed that the Subject had tattoos on his face and that he matched the general description of the subject being sought. The officers, believing the Subject was armed, unholstered their pistols.¹ Officer E began giving verbal commands to the Subject to get him out of the laundry room as Officer F broadcast their contact with the Subject.

Officer H requested a back-up for the officers confronting the Subject and provided their location. Officer E continued to give verbal commands to the Subject for him to show his hands and to come out of the laundry room. The Subject slowly made his way to the door while holding a cell phone in his right hand and his left hand either down to his side or toward his rear waistband. The Subject then told the officers that he was going to come out.

Note: Officers E and F both stated that the Subject appeared to be under the influence of an unknown intoxicant. According to Officer E, his eyes were open wide, and he was jittery. According to Officer F, the Subject he appeared to be sweating profusely, and his speech was slurred and unintelligible.

As this was occurring, Officers C and D arrived to the front of the identified location. Upon entering the property, they saw Officers E and F toward the rear of the property giving verbal commands to the Subject. Both officers identified the Subject as being the described armed subject and unholstered their pistols as they joined Officers E and F at the laundry room.²

¹ Officer E unholstered his pistol with his right hand and held it in a one-hand high ready position with his finger along the frame. With his flashlight in his left hand he supported his right hand by placing the backs of his hands together. Officer F unholstered his pistol with his right hand and held it in a two-hand low ready position.

² Officer C unholstered his pistol with his right hand and held it in a one-hand low ready position. Officer D unholstered his pistol with her right hand and held it in a low ready position with his finger along the frame.

As the Subject exited the laundry room, he had his left hand near his rear waistband and stated, "I'm not going back. I'm not going back. I got to do what I got to do." The Subject then ran from the officers toward the alley and exited the rear gate. Officers C, D, E and F holstered their pistols and chased the Subject into the alley. The Subject continued west across the alley and jumped over a fence into the rear parking area of a specific location. The Subject then ran west through the parking lot toward the street. Officers C, D, E, and F were delayed in following the Subject as they searched for access to the rear property of the location

Note: According to Officer H, multiple subjects came out of the laundry room.

Officer C broadcast, "He's running with a hand in his waistband. Have units stay over there[....] Coming out to the front [...] male, gray shirt, black pants. He's on the front."

Simultaneously, Officers A and B, who heard the broadcast that the Subject was running west toward, got in their car and drove south toward the airship's Nightsun light. Additionally, Sergeant A told Security Guard A to get in his car and together they drove south behind Officers A and B.

The Subject ran through the apartment building at the location and exited onto the street. The Subject then ran to the front door of the location and tried to gain access into the apartment building. The Subject pulled on the front door, but was unable to access the building. Officer A stopped the car in the middle of the street with the front of the car facing in a southeasterly direction toward the Subject who was approximately 25 feet away.

Both officers exited the police car and deployed behind their doors shouting for the Subject to show them his hands. The Subject did not comply and began to look around the general area and then stood with a group of people who were standing outside of the building. Officer B, believing the Subject was armed, unholstered his pistol.³

Note: According to Officer H, Officers A and B approached the Subject on foot and were approximately 8 to 10 feet from him when he ran.

Officer H requested a back-up unit for the officers and indicated that they were at the designated location where there was a possible man with a gun. As that occurred, the Subject ran west into the street then diagonally in a southwesterly direction. Officers A and B pursued the Subject as he ran south in the northbound lane of the street. Officer B was approximately 25 feet behind the Subject, followed by Officer A. Both officers were running in the middle of the roadway and were offset to the left of the Subject.⁴

³ Officer B unholstered his pistol because he believed The Subject was armed and had just previously pointed a gun at an armed security guard. He unholstered his pistol with his right hand and held it in a two-hand position with his finger along the frame.

⁴ Officer B ran with his pistol in his right hand in a low-ready position.

The Subject continued to keep his hands near the front of his waistband as he ran. At one point, The Subject looked back at the officers, slowed down and turned his body to the right toward the officers.

Note: According to Officer A, he did not believe the Subject slowed down when he turned.

As that occurred, both officers perceived the Subject was armed with a pistol and was going to shoot. Officers A and B engaged the Subject with their pistols. The Subject was struck by the gunfire and collapsed to the ground in a prone position with his head to the south.

According to Officer A, the Subject turned his upper torso to the right, raised his right arm and reached across his body with his left arm. The Subject placed his left hand under his right armpit and held his left hand as if he was holding a pistol. Officer A indicated he could see the Subject's left hand digging in his pants, and he knew the Subject could possibly have a gun. He was digging in his pants and holding his waistband. He spun to the right and stuck his left hand under his right armpit such that Officer A could see the Subject holding his hand in such a manner that he had the gun. Believing he was going to shoot him (Officer A), Officer A drew his pistol.

Officer A, believing the Subject was going to shoot, stopped running and unholstered his pistol with his right hand. He acquired a two-hand shooting position with his finger on the trigger and fired one round at the Subject from an approximate distance of 39 feet. Officer A noticed the round had no effect and still perceived the same threat and fired a second round. Officer A assessed again and after seeing no effect to the Subject, he stepped forward and fired a third round. The Subject immediately fell forward to the ground after the third shot was fired.

According to Officer B, the Subject slowed down and turned his body, approximately 180 degrees to the right, toward him. Officer B believed the Subject was armed and was preparing to shoot him. Officer B recalled that when the Subject turned to face him, he issued commands, "Let me see your hands. Let me see your hands," and the Subject did not comply, so Officer B believed the Subject was going to turn and pull out the handgun.

Officer B slowed to a walking pace, acquired a two-hand shooting position and fired two rounds at the Subject from an approximate distance of 31 feet. The Subject turned back southbound and continued running. Again without warning, the Subject slowed and turned to his right. Officer B, again believing the Subject was preparing to shoot him, fired three rounds at the Subject. The Subject fell facedown onto the pavement after the second volley was fired.

Note: According to Security Guard A, the officers chasing the Subject into the street came out of the same apartment building the Subject had exited on the east side of the street.

According to Security Guard A, the Subject turned to his left and extended his left arm to the left toward the officers. Security Guard A also believed the Subject had fired at the officers.

According to Witness B, the Subject did not turn and face the officers.

Note: Witness A observed the Subject turn to his right. Witness A indicated he could see the Subject just start to turn and could see his shoulder. Witness A saw flashes, heard sounds, and saw the Subject slide face down.

Officers H and I were in the airship monitoring the foot pursuit below; however, they did not see the OIS. Officer I indicated that he was distracted with flying the airship and then saw the Subject facedown on the ground.

According to Officer H saw the Subject fall to the ground. As he went down to the ground, Officer H thought he tripped initially, but then he didn't get back up right away, and Officer H never saw his hands go out to break his fall. At that point, considering at the way he fell, he determined that an officer-involved shooting had occurred, so he broadcast that there had been an officer-involved shooting and a help call requesting units for containment on the Subject to block traffic and establish a crime scene.

Officer H broadcast, "Officers involved. I got, ah, officer needs help. I got shots fired. Su[bj]ect is gonna be down. I need units for a crime scene, gonna need supervisors."

Officers A and B began approaching the Subject and were joined by Officer J. Officer B advised he would handcuff the Subject. As Officers A and J covered the Subject, Officer B holstered his pistol and made his approach to the left side of the Subject. Officer B placed a knee on the Subject and cuffed his hands behind his back.

Note: According to Security Guard A, Officer A handcuffed the Subject.

Officer J holstered his pistol and searched the Subject's waistband and front and rear pockets as well as his legs finding only personal items. At this time Officer A holstered his pistol.

Note: There were no weapons found on The Subject. The handgun that Security Guard A and Witness A had observed in the Subject's possession was never recovered during the subsequent investigation.

Immediately following the OIS, officers established an inner and outer perimeter as-well-as controlled the crowd near the OIS scene. Sergeant A advised Officers A and B to not discuss the incident and to stay with him until additional supervisors arrived.

Sergeant A broadcast a request for a rescue ambulance. Sergeant A also requested additional supervisors and resources to manage the crime scene and the involved officers.

Sergeant B also arrived at the scene. Sergeant A directed Sergeant B to Officers A and B. Sergeant B separated the officers and proceeded to obtain a public safety statement from Officers A and B, respectively. Officer A stated he fired three to four rounds in a southbound direction. According to Officer A, Officer B also fired his pistol and he was aware that the Subject was injured and had not fired any rounds at them. He said he was not aware of any witnesses or evidence to be secured and there were no outstanding suspects. Officer B stated he fired four rounds in a southbound direction. He did not believe the Subject fired at him and knew that the Subject was injured. According to Officer B, Officer A also fired his pistol. He said there were witnesses on the sidewalk, there were no outstanding subjects, and he was not aware of any evidence to be secured.

Note: Force investigation Division (FID) personnel reviewed all documents and circumstances surrounding the separation, monitoring and the admonition not to discuss the incident to officers prior to being interviewed by FID investigators. All protocols were followed.

Los Angeles Fire Department (LAFD) personnel were dispatched to the scene. Upon arrival, the Subject was transported by Rescue Ambulance to a local medical facility.

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 and 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 unanimously made the following findings.

A. Tactics

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

B. Drawing/Exhibiting

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 Officers A and B's lethal use of force to be in policy.

Basis for Findings

A. Tactics

1. Running with Service Pistol Drawn

According to Officer B, he pursued the Subject on foot with his service pistol drawn. Although Officer B engaged in a foot pursuit of a felony subject who he believed to be armed, Officer B is reminded there is an increased risk for an unintentional discharge when an officer runs with a service pistol in hand. This was a topic of discussion at the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

After a thorough review of the incident, the BOPC determined that the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training. Therefore, a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and individual actions that took place during this incident with the objective of improving overall organizational and individual performance.

Officers A and B attended a Tactical Debrief where specific identified topics are covered.

B. Drawing/Exhibiting

- Officers A and B were advised by Security Guard A that the Subject had pointed a handgun at him and fled. When the Subject reappeared on the street, he was observed attempting to force entry into the front door of an apartment complex. Officers A and B exited their police vehicle, stood behind their ballistic doors and directed the Subject to show his hands; however, he ignored the officers' commands. Based on the previously obtained information that the Subject was armed with a handgun, believing there was a substantial risk that the situation may escalate to the point where deadly force may be justified, Officer B drew his service pistol. Officer B believed that the tactical situation may escalate to the use of deadly force because the Subject had just pointed a gun at the security officer, he was not cooperating with officer commands, and Officer B knew that he was potentially armed with a gun.

The Subject subsequently ran from the apartment complex and attempted to secrete himself in a group of uninvolved persons who were standing on the sidewalk. Officers A and B continued to verbalize with the Subject, at which time the Subject fled on foot away from the uninvolved group and the officers. While running, the Subject slowed down and turned his upper torso clockwise toward Officers A and B. After observing the Subject with his hands at his front waistband area, coupled with him turning and bringing his hand across his body as if pointing a handgun, Officer A believed there was a substantial risk that the situation may escalate to the point where deadly force may be justified and drew his service pistol.

Officer A recalled that upon seeing the Subject spin his upper torso to the right and come across with his left hand, pointing it towards him (Officer A), that's when Officer A stopped his forward momentum and unholstered his gun. He believed the situation was going to escalate to the use of deadly force and believed the security guard was truthful when he said the Subject had a gun.

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 circumstances, would reasonably believe that the Subject was armed with a handgun and there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officers A and B's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

- Officers A and B observed the Subject being pursued by Security Guard A. After the Subject fled into the front door of the apartment complex at the designated location, Officers A and B spoke with Security Guard A regarding the Subject's actions. During the conversation, Security Guard A informed Officers A and B that the Subject was armed with a .25 caliber handgun that was secreted in his waistband.

Officer A recalled Security Guard A's statement, "Hey, that guy right there just pointed a gun in my face and said he was going to kill me."

Officer B recalled Security Guard A indicating that when he stopped the Subject, the Subject became very aggressive, angry, started arguing with him and at first simulated that he had a handgun by reaching into his waistband, stretching out his arms as if he was holding a gun. The first couple of times he did it to try to scare the security guard, and on the final time he actually did have the gun in his hand.

Officers A and B responded to an ASD broadcast indicating that the Subject was running in their direction approximately four apartment complexes south of their location. Upon arrival, Officer A observed the Subject attempting to enter an apartment complex located at the designated location. Officers A and B issued verbal commands to the Subject to raise his hands. The Subject ignored Officer A's

verbal commands and stood with a group of uninvolved people who were standing outside of the aforementioned building. The Subject continued to keep his hands in his waistband area and ran westbound into the street and continued southbound on the street, followed by Officers A and B.

- **Officer A** – (pistol, three rounds)

Officer A spoke with Security Guard A and was informed that the Subject was armed with a handgun. Subsequently, Officer A observed the Subject with his hands in his front pant/waistband area and surmised that the Subject was possibly armed with a handgun. Additionally, Officer A believed that the Subject's movement of turning his torso clockwise, while holding his left arm under his right armpit was consistent with an individual attempting to aim and discharge a handgun. Consequently, Officer A fired three rounds from his service pistol at the Subject to stop his actions.

Officer A recalled being able to see the Subject's left hand digging in his pants and knew he could possibly have gun. He was also holding his waistband, and when the Subject spun to the right he stuck...his left hand under his right armpit at Officer A, and Officer A could see him holding his hand in the manner he had a gun. Believing he was going to shoot, Officer A stopped where he was running, drew his pistol, and fired at him.

- **Officer B** – (pistol, five rounds)

Officer B spoke with Security Guard A and was informed that the Subject was armed with a handgun. Subsequently, Officer B observed the Subject with his hands in his waistband area and surmised that the Subject was possibly armed with a handgun. Officer B believed that when the Subject turned in his direction, the Subject intended to fire a handgun at him. Consequently, Officer B fired five rounds from his service pistol at the Subject to stop his actions.

Officer B recalled believing that the Subject was ready to reach into his waistband and fire a shot at him. Officer B believed the Subject still had a gun in his hand, and Officer B fired one round toward him. The Subject did the same thing again, slowed down, turned his body towards Officer B, and Officer B fired approximately two more rounds.

Note: The UOFRB recognized discrepancies in the independent accounts of the Subject's actions immediately prior to the OIS.

Security Guard A was seated in Sergeant A's police vehicle, north of Officers A and B. Security Guard A observed the foot pursuit and the subsequent OIS.

Security Guard A recalled that the Subject turned to his left and put his left hand up. As he was bringing it up and turning, the police officers fired. Although he believed the Subject had fired at them. Security Guard A was also thinking the Subject was

going to fire at he and Sergeant A next, so he was getting ready to jump out of the car and draw his weapon.

In reviewing this case with regards to Department personnel, the BOPC conducted a comprehensive and objective assessment of the actions of both officers involved in this incident in light of the facts known to them (individually) at the time they fired their service pistols. The BOPC also reviewed the medical records in which the attending physician reported "the entry wound is in the back of the neck and exit wound in the left later anterior neck," a right to left trajectory.

After a complete review of the evidence including the photographs, medical records and the positioning and perceptions of each officer, the BOPC determined that the Subject's actions at the time of the OIS were consistent with the account as described by Officers A and B, as well as Security Guard A.

The BOPC determined that it was objectively reasonable for Officer A to believe that the Subject was armed with a handgun based on the information gleaned from Security Guard A. Additionally, the Subject's actions with regards to digging in his waistband and suddenly turning while holding his left hand under his right armpit, was consistent with a subject who was armed with a handgun, intending to shoot. Therefore, the use of lethal force was objectively reasonable and within Department policy.

Moreover, the BOPC determined that it was objectively reasonable for Officer B to believe that the Subject was armed with a handgun based on the information gleaned from Security Guard A. Furthermore, the Subject's actions of turning and facing Officer B while running with his hand in his waistband were consistent with a subject that was armed and posed an immediate threat of death or serious bodily injury. Therefore, the use of lethal force was objectively reasonable and within Department policy.

In conclusion, the BOPC found Officers A and B's lethal use of force to be in policy.