

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

**OFFICER-INVOLVED SHOOTING – 093-13**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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Hollenbeck	11/3/13		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Officer A	6 years
Officer B	5 years, 8 months

**Reason for Police Contact**

Officers approached the Subject, who was known to them and standing at a bus stop. The officers expressed that they wanted to talk with the Subject, who fled from them. A short foot pursuit ensued, and an officer-involved shooting occurred.

<b>Subject</b>	<b>Deceased ( )</b>	<b>Wounded (X)</b>	<b>Non-Hit ( )</b>
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Ricardo Subject: Male, 18 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, 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 October 7, 2014.

## **Incident Summary**

Uniformed Police Officers A and B, were driving north when they observed an individual known to them, standing at the bus bench on a street corner. The aforementioned individual, later identified as the Subject, was standing with his girlfriend.

**Note:** The Subject was on probation. His probation conditions included not being out of his residence during certain hours without parental consent, and not possessing or being in the presence of any deadly weapons.

Officer A believed the Subject may have been armed because he was openly showing his gang affiliation in rival gang territory. Officer A advised Officer B that he wanted to conduct a consensual encounter with the Subject. Ultimately, Officer A indicated that he wanted to try to see if the Subject would have a conversation with the officers and wanted to see if he would talk with them.

According to Officer B, his intentions in agreeing to stop the Subject were that he and Officer A were wanting to talk to him. Officer B believed it was going to be a consensual encounter.

Officer B drove north through an intersection and conducted a U-turn. Officer B then stopped the vehicle facing south in a driveway north of the bus bench where the Subject was standing.

As Officers A and B prepared to exit their vehicle, the Subject, who was now facing east, began to “sidestep” in a southerly direction on the sidewalk. As the Subject moved away from the officers, he placed his right hand to his front waistband area. As Officers A and B exited their vehicle, the Subject began to run, causing the officers to chase him on foot.

**Note:** Officers did not broadcast that they had arrived at the location. Officer B advised he did not issue a broadcast indicating such, because he was the driver and cover officer. Officer A attempted to issue a broadcast, but as he reached for the microphone, the Subject began moving south, away from the officers. Officer A exited the vehicle and immediately started chasing after everyone.

Officer A, who was approximately 10 feet behind the Subject as he ran in a southwesterly direction across the street, yelled, “Stop, Police. You’re not going to get away.” Officer B followed approximately five feet behind Officer A.

According to Officer A, the Subject kept his right hand in his front waistband area and looked back over his right shoulder numerous times as he ran. Officer B heard Officer A yell, "He's reaching in his waistband. He's reaching in his waistband."

According to Officer A, based on his training and experience, if a subject is running while holding his waistband, there's a good chance they've either got some type of dope or a firearm on them. Officer A indicated he wanted to track Subject until he decided to give up, until he threw his gun, which the officers suspected he possessed, or until other units arrived, and the Subject would realize that he was surrounded.

Officer B believed the Subject was armed based on his movements with his elbows along his side with his hands in front of his body. Officer B also noticed that the Subject was holding his waistband immediately once he started running. In Officer B's experience, usually when someone is holding their waistband they're carrying a gun or a weapon.

The Subject continued running in a southwesterly direction toward the west curb. According to Officer A, when the Subject was approximately five to 10 feet from the curb, he removed his right hand from his right front pocket area and exhibited a dark colored revolver. Officer A described the position in which the Subject held the revolver by saying, "It was still held down. Like an outward and forward like he was holding it running." Officer A unholstered his pistol and shouted, "Gun." Officer A held his pistol in his right hand at a low-ready position as he continued to follow the armed subject.

According to Officer A, as the Subject ran onto the sidewalk, the Subject turned his upper torso to his right, fully extended his right arm with the revolver in his right hand, and pointed the firearm at Officer B, who was offset to the right just behind Officer A.

Officer A believed it was in the Subject's mind that he was going to try to shoot at he and Officer B, and try to kill them to get away. Officer A thought the Subject was going to fire at him and Officer B. Officer A, while slowing from a run, assumed a right-handed shooting position and fired two rounds in rapid succession at the Subject in a southwesterly direction.

According to Officer B, as the Subject ran onto the curb, he heard Officer A yell, "He's reaching for something. He's reaching for something." While facing away from Officer B, the Subject "began fumbling his waistband reaching for whatever was in his front waistband, he then got turned around, or started turning towards – towards my direction. I then observed a handgun pointed at me." Officer B could not recall in which hand the Subject was holding the handgun.

Also according to Officer B, as the Subject turned to his right, he was holding the handgun adjacent to his front waistband/abdomen area with the muzzle of the firearm pointed at Officer B's feet. The Subject then began to raise the muzzle of the firearm upward toward Officer B's torso as soon as the Subject became turning in Officer B's direction.

Officer B observed the handgun pointed at him and quickly drew out his weapon. Officer B heard one pop, which he believed to be the gunshot fired by the Subject. Officer B then returned fire.

Officer B, while slowing from a run to a stop, fired a total of six rounds at the Subject, who was now on the sidewalk, in a southwesterly direction from a decreasing distance of 16 to eight feet. Officer B initially fired four rounds in rapid succession from his pistol at the armed subject. While holding his ASTRO radio in his left hand, Officer B fired the first one to two rounds from a close contact shooting position and the second two rounds from a right arm/hand fully extended shooting position. Officer B then assessed for approximately one second and observed that the Subject continued to turn toward him and pointed the handgun at him.

Officer B, utilizing a right arm/hand fully extended shooting position, then fired two additional rounds in rapid succession at the armed subject. Officer B issued a radio broadcast that the officers were engaged in a foot pursuit.

**Note:** Officer A is heard in the background yelling, "Get your hands..." A clicking sound is then heard on the radio. Approximately three seconds later Officer B broadcast, "Officer needs help [...] Shots fired."

According to Officers B and A, Subject then began to fall forward to the ground. As he fell, Subject threw the revolver into the street. Officer A believed Subject used his right hand to throw the revolver over his head onto the street. Officer B believed Subject used his left hand to throw the revolver onto the street. The officers believed the revolver was possibly hit by a passing vehicle due to hearing a loud bang and the location it was found.

Officer B broadcast that the Subject was down and requested a Rescue Ambulance (RA).

The Subject lay prone on the ground with the top of his head facing in a southwesterly direction. Officer A ordered the Subject to place his hands where they could be seen. The Subject complied. Officer A directed Officer B to take the Subject into custody. As Officer A provided cover, Officer B holstered his pistol and approached the Subject's right side. Officer B placed his left knee on the Subject's back and handcuffed him behind his back.

Sergeant A arrived at the scene. He assumed command and control of the incident and obtained Public Safety Statements (PSS) from Officers A and B.

Uniformed Officers C and D were the first unit to arrive at scene in response to the radio broadcast issued from Officers A and B. Officers C and D located the Subject's revolver near the middle of the street. Officers C and D guarded the revolver where it lay in the street until relieved by Force Investigation Division (FID) detectives.

**Note:** Department personnel recovered the Subject's revolver from the southbound number one lane of traffic on the street, which was approximately 90 feet south of where the Subject fell to the ground. The revolver had been heavily damaged on the muzzle and the rear sight. The revolver was laying on its right side with the muzzle facing southeast and the hammer was down. The revolver was loaded with six unfired .38 caliber cartridges. The revolver could not be test fired due to the considerable damage that was inflicted upon it in the street.

The RA arrived and transported the Subject to a local hospital, where he was treated for multiple gunshot wounds.

Force Investigation Division detectives reviewed all documents and circumstances surrounding the separation, monitoring, and the admonition not to discuss the incident that was given to the officers prior to being interviewed by FID investigators. All protocols were followed and appropriately documented.

### **Supplemental FID Report**

Months after the incident occurred, a relative of the Subject in this incident indicated that she had become aware of a cellular telephone video of the Officer-Involved-Shooting (OIS) taken by a witness, who was subsequently identified as Witness A. She further advised that managers of the nearby market had seen the cellular telephone video. It should be noted that Witness A was at the bus stop during the OIS and interviewed on the night of the OIS by FID detectives, however did not mention that he had cellular telephone video of the incident.

As a result of this information, FID detectives responded to the market and interviewed the managers about having seen the video. The managers had not seen nor heard of a cellular telephone video depicting the incident. One of the managers advised investigators that she was not shown any cellular telephone video but said she was approached by a man in the market the day after the OIS who claimed to have cellular telephone video of police vehicles after the shooting, but not of the actual OIS.

Additional witnesses confirmed that they were seated inside of their vehicle in the parking lot at the time of the OIS. During their respective interviews, their accounts of what they observed vary somewhat, although all three indicated that they heard the discharge of a TASER (Thomas A. Swift Electronic Rifle) prior to the OIS. Although the officers were equipped with a TASER which was stored in the glove compartment of their police vehicle, neither officer deployed a TASER at the time of the OIS. Witness B indicated in his interview that the Subject's arms/elbows were in a raised position prior to the OIS, demonstrating the action which was similar to having his hands behind his head; however he was the only witness who reported this information. Other witnesses interviewed on the night of the OIS reported seeing the Subject running with his hands at or near his waistband area at the time of the OIS.

FID detectives were able to make contact with Witness A by cellular telephone after repeated efforts. Witness A advised that he did not have cellular telephone video of the OIS, but had cellular telephone photographs of police officers and vehicles after the OIS. Witness A declined to provide any additional information or cooperate any further.

### **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**

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

1. Code-Six

Officers A and B did not place themselves at the location upon observing Subject and determining that they would conduct a consensual encounter.

Officers are required to balance officer safety considerations against the need to make a timely Code-Six broadcast. That being said, officers must be afforded

some discretion in determining the appropriate time to make their broadcast. Department tactical training allows for officer safety concerns to take precedence over making an immediate Code-Six broadcast. In this circumstance Officers A and B intended to conduct a consensual encounter, but as the officers stopped their police vehicle, they observed the Subject turn away and begin to sidestep while holding his waistband. Officer A attempted to conduct a Code-Six broadcast but observed Subject moving away while holding his waistband.

Almost simultaneously, Subject fled on foot at which time Officer B removed his police radio and conducted a broadcast indicating their location and status. Officer B recalled broadcasting the unit's designation and location, in addition to the fact that he was in foot pursuit.

In evaluating Officer A and B's actions, the BOPC determined that based on the totality of the circumstances, the delay of the officers' Code-Six broadcast did not represent a substantial deviation from approved Department tactical training. However, Officers A and B were reminded of the importance of a timely Code-Six broadcast and a broadcast of additional pertinent information regarding the subject's actions and location.

## 2. Foot Pursuit Concepts

Officers A and B were commended for their effective tactics while involved in a foot pursuit of an armed subject.

Officers are encouraged to discuss various tactical options with their partners thus enhancing the possibility of operational success. Moreover, once implemented, officers must continually assess their tactics to ensure their effectiveness. In this circumstance, Officers A and B had worked together previously, where they had trained together and discussed foot pursuit tactics. On this particular incident, Officers A and B discussed tactics prior to arriving at the location. Officer A recalled that he and Officer B had discussed that the officer on the same side as the Subject would be the contact officers, especially if that officer had "eyes on" the Subject and was the closest. The backup officers, the officer "out second," would be the cover officer and responsible for broadcasting. In the case, Officer A was the first one out the door closest to the Subject and was, therefore, the contact officer, while Officer B was the cover officer.

Officer A continued,

"With the - - where his hand was I wasn't going to get right up on him so it wasn't like an immediate hands on apprehension. I was more of a track until either he decides to give up, until he throws it, until we can get another unit to kind of get him to where, okay, he gets the mindset, okay I'm surrounded."

The BOPC conducted an assessment of Officers A and B's tactics associated with their foot pursuit. Clearly, both officers have an understanding of the importance of planning their tactics prior to their implementation. Moreover, their communication skills, relative to the Subject's actions of arming himself, were effectively communicated. Lastly, Officer B was aware that the Subject was armed and therefore their foot pursuit tactics were implemented in a containment mode.

Although the philosophy behind a Tactical Debrief is to enhance future performance by discussing areas where improvements could be made, discussions pertaining to positive aspects of the incident lead to additional considerations that would be beneficial in future incidents.

These topics were to be discussed at the Tactical Debrief.

- The BOPC additionally considered the following:

1. Tactical Driving (Wrong Way)

Officer B conducted a U-Turn at an intersection and continued to drive southbound, in the northbound lanes of the street. Officer B parked the police vehicle towards the sidewalk into a driveway. As a result, the left tires were on the sidewalk while the right tires were on the street. Although there was no oncoming traffic and Officer A justified his actions by stating that they did not want to pass Subject again. Officers A and B were reminded of the dangers of driving in the opposite lanes of traffic.

2. Audio/Video Recordings

The FID investigation revealed surveillance video footage from three surrounding businesses within the immediate area of the OIS. The video footage from a gas station did not depict any portions of the OIS.

The video footage captured from a restaurant depicted Subject and a female entering and leaving the restaurant. A review of the footage indicated that the OIS was not captured in the video recording.

A review of the video footage from the nearby market showed three individuals running southbound down the street. FID detectives were unable to positively identify any of the persons in the video because of the poor video quality due to distance of the individuals from the camera. Based on the accounts of the officers and the time frame, the individuals could be identified as the Subject, followed by Officers A and B. The video footage did not depict any portions of the OIS.



### 3. Witnesses

The FID Investigation revealed approximately thirteen witnesses who observed all or portions of the OIS and sixteen individuals who were identified as Heard Only Witnesses. As the investigation continued, FID was contacted by an additional witness, who stated there was possible cell phone video, which depicted the OIS. As a result, FID interviewed additional witnesses, of which three observed portions of the OIS.

The FID investigation did not reveal any video footage that depicted OIS, but FID detectives were advised of three individuals who were in the parking lot of the nearby market and witnessed the OIS. Subsequently, FID detectives conducted the interviews approximately ten months after the OIS.

FID interviewed Witness C, who was sitting in his truck with Witnesses B and D. Witnesses B, C and D stated they were seated inside their parked truck and witnessed portions of the OIS. During their respective interviews, they each described the sound of an electronic device being activated prior to the hearing the OIS. They identified this sound as a TASER (Thomas A. Swift Electronic Rifle) that was used by an unidentified officer immediately prior to the OIS. Although Officers A and B were equipped with a TASER, it was stored in the glove compartment of their police vehicle and was not deployed at the time of the OIS.

During Witness B's interview, he recalled the Subject's arms and elbows were in a raised position prior to the OIS, which he described as above the Subject's head. Witness B is the only witness who reported this information. All the other witnesses reported seeing the Subject running with his hands at or near his waistband. Witness C recalled the Subject's hands were raised but suddenly lowered immediately prior to the OIS. In summary, the BOPC believed the incident occurred as described by the officers and that the account was supported by all available evidence.

The FID detectives were unable to conduct the interviews with Witnesses B, C and D, due to an unidentified officer approaching Witness C immediately after the OIS and advising them to leave the parking lot due to the crime scene. Although FID conducted multiple canvasses to identify witnesses, the oversights of the additional witnesses were brought to the attention of the Commanding Officer of FID. As a result, the issue of canvassing for witnesses will be addressed as a training issue at the next training day.

The identity of the officer who advised the witnesses to leave the parking lot, remains unknown.

These topics were to be addressed 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.

Each tactical incident merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and the individual actions that took place during this incident.

Therefore, the BOPC found that Officers A and B's tactics warranted a Tactical Debrief.

## **B. Drawing/Exhibiting**

- Officers A and B observed the Subject standing at the bus kiosk, as Officer A identified him. As a result, the officers determined to conduct a consensual encounter. Subsequently, Officers A and B exited their police vehicle and the Subject began to sidestep in a southern direction while holding his waistband area and fled on foot. The officers initiated a foot pursuit and observed the Subject remove a handgun from his waistband, causing the officers to draw their respective service pistols.

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 there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

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

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

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

Officer A observed the Subject holding his right hand in his waistband area. The Subject then removed a handgun from his right front pants pocket and extended his arm while turning toward Officer B. Fearing the Subject would shoot Officer B or himself, Officer A fired two rounds from his service pistol at the Subject.

Officer A recalled that as the Subject was continually looking in his and his partner's direction, the Subject was turning, so Officer A believed the Subject was going to fire rounds at him and his partner. He fired what he believed to be approximately two-three rounds at the suspect.

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

As Officer B was in foot pursuit of the Subject, he observed the Subject turn toward him and raise a handgun as it was pointed at him. Officer B heard a gunshot and

observed the Subject pointing a handgun in his direction. Consequently, Officer B fired six rounds from his service pistol at the Subject.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B would reasonably believe that the Subject's actions of pointing a revolver in the direction of Officers A and B, presented an imminent threat of death or serious bodily injury and therefore, the use of lethal force would be reasonable in this situation. The BOPC found the actions of Officers A and B to be in compliance with Department policy and tactical training.

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