

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

OFFICER-INVOLVED SHOOTING – 106-08

Division Date Duty-On (X) Off() Uniform-Yes(X) No()

Rampart 12/12/08

Officer Involved in Use of Force Length of Service

Officer A 11 years, 8 months

Reason for Police Contact

Officers responded to a radio call for help to establish a perimeter and apprehend a domestic violence subject.

Subject Deceased () Wounded (X) Non-Hit ()

Subject 2: Male, 18 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 Los Angeles Police Department Command Staff presented the matter to the Commission and made itself available for any inquiries by the Commission. 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 December 8, 2009.

Incident Summary

Police Officers A and B responded to a broadcast of a call for help and a request for the establishment of a perimeter. Upon their arrival, the officers were advised by an airship to take a perimeter position. Officers A and B did so and reported their location.

Other officers also responded to the help call, including plainclothes Sergeant A and Police Officer C, who also took a perimeter position.

Note: Approximately 30 minutes earlier, uniformed Police Officers D and E had responded to a domestic violence radio call. As Officers D and E approached the location, they observed a male (Subject 1) wearing a blue jacket and blue jeans standing in the balcony area in front of an apartment. When Subject 1 saw the officers, he ran toward an alley and up a stairwell. Officers D and E gave chase, running approximately 25 feet behind Subject 1. When Subject 1 reached the top of the stairwell, he turned toward the officers and pointed a pistol at them, but did not fire. Officer D broadcast a call for help and requested a perimeter.

A Command Post (CP) was established. Lieutenant A arrived at the CP and assumed the role of incident commander. Lieutenant A requested a K-9 unit to respond to the scene to assist with searching for Subject 1.

While conducting perimeter duties, which included screening vehicles and pedestrians exiting the perimeter, Officer A observed two males west of his location on the sidewalk: Subject 2, who was wearing a black hooded sweatshirt, and Subject 3, who was wearing a blue hooded sweatshirt. Officer A believed that Subject 3 was the subject they were searching for. Officer A proceeded to run west, toward Subjects 2 and 3.

Note: Officer B, while he was checking a vehicle, heard Officer A yell for the subjects to come to him. Officer B observed two males approximately 100 feet away, one of whom was wearing a light blue "hoodie." The males then began to walk northbound toward the residences within the perimeter. Officer B observed Officer A begin to run toward the males and followed behind him.

As Subjects 2 and 3 ran north into a fenced property, they disappeared out of Officer A's view. Officer A approached an adjacent garage, drew his pistol and then carefully cleared the corner of the garage.

Officer A looked in the front yard and observed a person's foot going over a three-foot-high chain-linked fence that separated two properties. Officer A yelled at the person to stop and show his hands. Officer A entered the stairs on the walkway leading to the front yard. Officer A's left hand clipped the edge of a wall causing him to drop his radio, which he left behind as he continued toward a tree in the front yard. Officer A's view was blocked by bushes and vegetation and he crouched down to see the front porch.

Officer A observed Subjects 2 and 3 on the front porch of Subject 2's residence, by the front door. Officer A believed that Subjects 2 and 3 were trying to find a way to get into the house.

According to Officer A, Subject 2 was facing in a northeast direction with his hands near his waistband. Subject 2 then turned his body east, toward Officer A, and as he did so, Officer A observed Subject 2 holding a small blue steel handgun in his right hand. Officer A then observed the barrel of Subject 2's pistol being pointed in his direction. Believing that Subject 2 was about to shoot him, Officer A fired one round in a northwesterly direction from a distance of approximately 22 feet, then retreated backward. Officer A did not believe his round had struck Subject 2 because he did not see Subject 2 move. Officer A then moved to a position of cover behind a three-foot-high brick wall and retrieved his radio from the ground. Officer A did not see if Subject 3 and Subject 2 had entered the residence or if they had run toward the rear of the residence through a walkway on the east side; however, he heard the rustling of bushes from the walkway.

Note: Subject 3 saw Officer A in the front yard with his pistol drawn. Subject 3 heard Officer A tell Subject 2 to freeze and then immediately heard one gunshot and observed the muzzle flash from Officer A's pistol.

Note: Subject 2 denied possessing a handgun or having had anything in his hands. According to Subject 2, as he reached his front porch and entered the front door, he took a quick glance at Officer A over his left shoulder and was shot in the left leg by Officer A. Subject 2 indicated that Officer A was by his front gate at the time of the shooting.

Note: During the subsequent investigation of this incident, an expended bullet was recovered in the interior of Subject 2's residence from the dining room floor. Examination of the projectile revealed a black fiber and some wood-like material within its hollow-point cavity. A perforating impact was discovered in the front door. Analysis revealed that Subject 2 was behind the front door with the door ajar when he was struck by the round.

Officer A broadcast that shots were fired and that one subject had a handgun.

Meanwhile, Officer B was still running on the sidewalk when Officer A entered the front yard out of his view. As Officer B was coming to a stop, he heard one gunshot and believed the males had fired at Officer A. Officer B drew his pistol as he reached the garage, but did not observe the subjects.

Note: Officer A did not advise Officer B that he had fired his pistol because he believed Officer B had seen him do so.

Meanwhile, Officer C was on the perimeter when he looked to his east and observed Subjects 2 and 3 in the street. Officer C observed Subjects 2 and 3 look east in the direction of Officers A and B, who were positioned on the other side of the perimeter. Officer C began running toward Subject 2 and 3's location and observed them begin to run northbound. As Officer C got closer, he heard one gunshot and drew his pistol. After reaching Subject 2's residence, he took a position of cover behind a parked vehicle.

Meanwhile, Sergeant A was on the perimeter when Officer C advised him of the subjects. Sergeant A looked east and observed Subjects 2 and 3. Officer C began running toward Subjects 2 and 3's location. Sergeant A followed, running approximately 20 to 30 feet behind Officer C. Sergeant A observed Officer B running west on the sidewalk. As Sergeant A was running, he heard one gunshot and drew his pistol.

Upon reaching the residence, Sergeant A asked Officer A who had fired the shot. Officer A advised him that he had fired one round. Sergeant A looked at Officer A's pistol, observed that the hammer was cocked back and directed him to de-cock his pistol. Sergeant A then moved over to Officer B's position and directed him to retrieve the shotgun from his vehicle. Officer B did as directed and then returned with the shotgun.

Note: Sergeant A did not obtain a Public Safety Statement (PSS) from Officer A because he felt it was inappropriate given they had two outstanding subjects and did not have enough officers at the scene.

In response to the "shots fired" broadcast, Police Officers F and G, plainclothes Police Officer H and plainclothes Sergeant B responded to the area of the residence, drew their pistols and took positions of cover.

Sergeant A advised the officers at the scene that he had responded in the past to a radio call of a man with a gun at that location and that gang members lived there.

Witness 1 (Subject 2's mother) came out of the opened front door, said they had shot her son and asked why. Officer A directed Witness 1 to come outside. Witness 1 advised she had to get her baby inside, went back in the residence, and came out with a baby. Witness 1 advised that Subject 2 was the only person left in the house and asked Officer A to request an ambulance for him. Witness 1 was then escorted to the street corner by Officer C.

Officers continued to order Subject 2 to come out of the residence. Subject 2 eventually came out with his hands on top of his head and advised that he could not move because his leg had been shot. Subject 2 was ordered to turn around and walk backward toward the sidewalk. Subject 2 complied with the commands and was handcuffed by Officer G without further incident. Sergeant B and Officer G escorted Subject 2 to the corner. Officer G searched Subject 2.

A rescue ambulance (RA) responded to the scene and Los Angeles Fire Department (LAFD) personnel treated Subject 2 for a gunshot wound to his left thigh. Subject 2 was transported in the RA to the hospital, accompanied by Officer G.

Note: Subject 2 sustained a through-and-through gunshot wound to the upper left thigh.

Officers A and B continued covering the residence until they were relieved by additional officers.

Officer A was transported to the CP, where he provided a PSS to uniformed Sergeant C. Officer A was subsequently transported to the police station by Sergeant D.

Note: Sergeant C did not ask all the pertinent questions related to the PSS. Force Investigation Division (FID) personnel subsequently obtained a complete PSS from Officer A.

Note: Officer A was not immediately separated and supervised because of the fluid and active scene.

K-9 officers arrived at the CP and were briefed regarding the incident. The K-9 officers devised a plan to conduct a search of the exterior and interior of Subject 2's residence and then to call out the residents of Subject 3's residence and search that residence for outstanding subjects.

K-9 officers began their search of Subject 2's residence. K-9 Police Officer I observed an Air Soft pistol in an open dresser drawer during the search. Officer I picked up the pistol by its grips using two fingers and placed it back down when he realized it was not a real firearm. No additional subjects were located within the residence.

Note: A search warrant was subsequently issued and served at Subject 2's residence. Two Air Soft pistols¹ were recovered from Subject 2's bedroom. DNA testing excluded Subject 2 as a possible contributor to a mixture profile found on both Air Soft pistols. The search did not reveal a small blue steel handgun, as Officer A had described having observed.

K-9 officers completed their search and requested that a police vehicle's Public Address System be used to call out the residents of Subject 3's residence, which was adjacent to that of Subject 2. Police Officer J called the occupants of that address out in both English and Spanish.

Subject 3, who carried a small boy, and four other people came out of the residence. Officer J and Detective A searched and handcuffed the residents without incident and

¹ An Air Soft pistol is a pellet gun which fires small plastic BBs at low velocities. The Air Soft pistols recovered during the search had the appearance of real firearms.

then escorted them to the street corner. The K-9 officers searched Subject 3's residence.

Officer A was transported from the station to the street corner to conduct a field show-up. Officer A identified Subject 3 as the male who was standing with Subject 2; however, Subject 3 was wearing a black T-shirt at the time the identification was made.

Note: Approximately 10 minutes after the first field show-up with Subject 3 was conducted with Officer A, a second field show-up with Subject 3 was conducted with officers who were involved in the initial encounter with the domestic violence subject. The second field show-up did not result in Subject 3's identification as the outstanding subject.

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

B. Drawing/Exhibiting/Holstering

The BOPC found Sergeant A's and Officers A, B and C's Drawing/Exhibiting to be In Policy.

C. Use of Force

The BOPC found Officer A'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. Perimeter Integrity.

In this instance, Officers A and B were assigned to the perimeter when Officer A observed two males, one of which matched the description of the subject, on the north side of the street. When the males ignored his verbal commands, Officer A initiated a foot pursuit with Officer B following behind. Sergeant A and Officer C, in plain clothes and driving an unmarked police vehicle, who were also positioned on the perimeter, observed the foot pursuit and responded on foot to assist. These actions caused two perimeter positions to be abandoned, compromising the integrity of the perimeter. The fundamental premise of perimeter containment necessitates that it be organized and disciplined enough to preclude individual action and requires that personnel remain at their positions of assignment unless properly relieved and directed to do otherwise.

2. Apprehension vs. Containment.

The inherent risks must be weighed against what will be gained by engaging in a foot pursuit. Officer A believed the subject was in possession of a firearm. The subjects were well within the boundaries of the already established perimeter, making it likely that the apprehension of the subject would occur during a systematic K-9 search.

Therefore, Officer A should have given further consideration to communicating his observations to the other perimeter units and utilizing available resources (i.e., air unit) to assist in monitoring the movements of the subjects. This would have influenced the K-9 search strategies in the search and apprehension of the subjects and maintained the integrity of the perimeter containment.

Officers A and B should have pre-planned a course of action in the event a subject presented himself within the perimeter and fled. A coordinated, controlled and disciplined response increases officer safety and the likelihood of apprehending the subject.

3. Cross-fire.

As Officers A and B were running westbound in foot pursuit of the potentially armed subjects, Sergeant A and Officer C observed the foot pursuit and responded eastbound on foot to assist. This created a circumstance wherein there was a potential for a cross-fire.

4. Broadcasting during a foot pursuit.

Generally, the primary role of the lead officer is to focus on the threat posed and direction of travel of the subject. The lead officer is closest to the subject and in a position to better assess any threat posed, give commands and direct the tactics of the pursuit.

5. Foot Pursuit Tactics.

In this instance, Officer B was checking vehicles when he heard Officer A yell at the subjects. As Officer B positioned himself to better observe his partner, he saw the subjects on the north sidewalk, walking toward the houses and his partner running in their direction in foot pursuit. In response to his partner's actions, Officer B followed behind. When Officer A lost sight of the subjects, he proceeded to carefully clear the corner of the garage before he proceeded into the front yard. Although at the time he initiated the foot pursuit he saw his partner through his peripheral vision, he proceeded into the front yard without confirming his partner was in a position to provide him with the desired level of tactical support.

From the initiation of a foot pursuit, officers should continually assess the tactical situation to determine the most appropriate course of action. The fundamental concept is to work as a team. Officer A did not work in unison with his partner, which created a circumstance for concern relevant to the proximity of the officers to one another throughout the foot pursuit. Officer B was not in line-of-sight of his partner, as reflected by his inability to accurately recollect where his partner was at the time he heard the gunshot. However, their distance was not so great that Officer B would not have been able to render assistance. And although Officer A had dropped his radio, Officers A and B were in a position to readily communicate by voice.

6. Contact and Cover.

As Officer A pursued the subjects on foot, he lost sight of them as they entered a front yard. He then proceeded westbound on the sidewalk and up the stairs and walkway leading into the yard where the subjects fled. This tactical scenario warranted a coordinated tactical movement wherein the movement into the yard would be done under the armed cover of Officer B.

7. Loss of Sight of Subjects / Loss of Radio.

In this instance, after Officer A lost sight of the subjects and dropped his radio, he was at a significant tactical disadvantage. The loss of sight of the subjects and no longer being in possession of a radio, a critical piece of equipment, warranted that consideration be given to using alternative tactical options other than a continued foot pursuit to apprehend the subjects.

8. De-cocking.

After discharging his firearm, Officer A moved from his shooting position in the yard to a position of cover adjacent to the wall along the street sidewalk. He did not de-cock his pistol until advised to do so by Sergeant A.

9. Tactical Communication.

After Officer A fired one shot at the subject, he neither advised Officer B that he had fired nor provided him with any details regarding the ongoing tactical scenario. Officer B believed that it was the subject who had fired at Officer A and did not know otherwise until over an hour later.

10. Public Safety Statement (PSS).

The purpose of a PSS is to provide the on-scene supervisor with the information necessary to properly manage the incident. In part, the information is meant to provide for sound tactical decisions relative to the deployment of additional resources. To that end, regardless of the practicality of immediately removing the officer(s) from an ongoing tactical scenario, a PSS should be obtained as soon as reasonably practical.

Therefore, although Officers A and B were involved in ordering the occupants out of the initial residence to be searched and were best suited to identify the suspects, Sergeants A and B should have promptly obtained a PSS and then facilitated their removal to the CP when the tactical scenario afforded the opportunity.

From the onset of the foot pursuit, Officer A took independent action that forced his partner, a probationary officer, to be reactive rather than inclusive in the employed tactics. Officer A was a tenured field officer, which carries the expectation that his tactical decisions be more reflective of tactical best practices. His actions were not consistent with the fundamental tactical concepts and created the circumstance wherein the perimeter integrity was compromised and he and other officers were exposed to a heightened risk of harm not justified by the tactical scenario.

Therefore, the BOPC determined that Officer A's tactical decisions and actions *"unjustifiably and substantially deviated from approved Department tactical training."* The BOPC found Officer A's tactics to warrant a finding of Administrative Disapproval.

Each tactical incident inherently results in considerations for improvement. Although there were identified areas for improvement for Sergeants A and B and Officers B and C, the tactical considerations neither individually nor collectively *"unjustifiably and substantially deviated from approved Department tactical training."*

Therefore, a Tactical Debrief is the appropriate mechanism for them to evaluate the events and actions that took place during this incident and assess the identified tactical considerations to better handle a similar incident in the future.

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

Additional Extensive Training/Tactical Debrief Topics

Officer A

- The investigation revealed that Officer A did not have his firearm loaded to capacity.

K-9 Unit

- During the search of Subject 2's residence, Officer I observed a gun in an open dresser draw. He picked it up to examine it and replaced it after determining that it was an Air Soft gun.

Officer I is reminded of evidence handling protocols and the importance of preserving the integrity of the recovery of trace evidence (Prints, DNA, etc.).

- Due to the length of time it took to obtain a search warrant, the K-9 article search of Subject 2's residence was not conducted. This decision was appropriate because had it been initiated before the warrant was obtained it may have compromised the admissibility of the evidence for prosecution purposes.

Although this was an appropriate tactical decision, the topic of K-9 article searches and search warrants will be discussed during the Tactical Debrief.

Command and Control

- Although there was knowledge that Subject 3's residence was a known gang location, there was no information that created a nexus between this location and the current investigation. Therefore, the officers lacked a legal basis for ordering the occupants out of the residence. However, a legal basis for the subsequent search of the location existed, as one of the occupants that exited the location was identified as the second subject.
- There was a lengthy detention of the occupants of Subject 3's residence. They were handcuffed and detained without apparent cause after being eliminated as suspects and after the search of the residence was completed. Additionally, an elderly gentleman was left in the residence for a significant amount of time without appropriate care.

- Officer C did not utilize a raid jacket or vest while being attired in plainclothes. Officer C was in a position where he was likely to have contact with the subject and identification as a police officer was desirable. Officer C is reminded to take the necessary precautions relative to wearing protective gear and identifiable attire.

B. Drawing/Exhibition/Holstering

Officers A and B responded to a perimeter regarding a subject who had pointed a handgun at officers. While maintaining a position on the perimeter, Officers A and B went in foot pursuit of two subjects, one of whom matched the description of the subject who pointed a handgun at officers. Officer A lost sight of the subjects as he approached the garage and drew his service pistol before he proceeded into the front yard. Officer B observed that his partner had drawn his service pistol and then lost sight of his partner, prompting him to draw his service pistol.

Sergeant A and Officer C also observed the two subjects and followed in the foot pursuit of the subjects. As Sergeant A and Officer C approached the residence they heard one shot and drew their service pistols.

Here, the inherent dangers associated with a foot pursuit of subjects believed to be armed, the loss of sight of the subjects and the hearing of a gunshot made it reasonable for the involved personnel to believe that at the time each decision was made to draw their service pistols, the tactical situation had escalated to the point where lethal force may become necessary.

The BOPC found Sergeant A's and Officers A, B and C's Drawing/Exhibiting to be In Policy.

C. Lethal Use of Force

Officer A

The BOPC found that Officer A's decision to use lethal force in this incident was consistent with Department policy, based upon the totality of the circumstances facing him in the moment that decision was made. Specifically, Officer A had been informed of the initial incident during which a male pointed a gun at officers. When Officer A first observed Subjects 2 and 3 together, Subject 3's appearance was consistent with that of the described outstanding suspect. When challenged, Subjects 2 and 3 appeared to flee. Officer A subsequently observed Subject 2 turn and place his hand near his waistband or pocket, and raise his arm toward Officer A in a manner that would be consistent with an attempt to assault Officer A with a handgun. Given these circumstances, the BOPC found it was reasonable for Officer A to believe that Subject 2 presented a threat of serious injury or death to him.

Note: Officer A reported observing Subject 2 with a gun in his hand. The investigation did not uncover physical evidence to corroborate this element of

Officer A's testimony. Although there were two Air Soft pellet guns located in the residence, the investigation did not establish a nexus between these items and Subject 2; therefore, they were not a factor in determining the reasonableness of Officer A's decision to use lethal force.

The BOPC considered that analysis of the ballistic evidence in this case determined the door of the residence was ajar when the bullet fired by Officer A struck the door. Subject 2 had entered the residence and was behind the front door when he was shot.

According to a study conducted by Doctor Lewinski, a clinical expert in reaction times in lethal force encounters, human response time can be defined as the time that elapses between the beginning of a subject's action and the officer's reaction to a threat. Studies have determined that at the beginning of an incident, it will require between .33 to two seconds for an officer to perceive a threat, develop a response and fire a weapon. This period of time is extended if the officer is multitasking or is surprised. This phenomenon also applies to the conclusion of an event. If an officer is being attacked and the subject stops their assault, it will require between .30 to .66 seconds for an officer to recognize that the threat has ceased. During this period, an officer can fire additional rounds from his weapon.

The BOPC found that lag-time could explain the incongruity between the physical evidence and Officer A's testimony regarding Subject 2's positioning at the time of the shooting. The BOPC noted, however, that the investigation did not establish a precise time-frame for Subject 2's movement from the position on the porch where Officer A observed him to the position at which he was struck by the round. As such, whether lag-time was a factor could not be evidentially established.

The BOPC found Officer A's use of Lethal Force to be In Policy.