

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

OFFICER-INVOLVED SHOOTING – 003-11

| Division | Date | Duty-On (X) Off () | Uniform-Yes (X) No () |
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|---------|----------|--|--|
| Pacific | 01/14/11 | | |
|---------|----------|--|--|

| Officer(s) Involved in Use of Force | Length of Service |
|--|--------------------------|
|--|--------------------------|

| | |
|-----------|------------------|
| Officer B | 1 year, 5 months |
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Reason for Police Contact

Officers responded to a theft radio call when they encountered the suspect and pursued him on foot. At the termination of the foot pursuit, the officers engaged in a physical altercation with the suspect, resulting in an officer-involved shooting.

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

Subject: Male, 25 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 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.

In accordance with state law, divulging the identity of police officers in public reports is prohibited, so the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on December 6, 2011.

Incident Summary

Officers A and B were patrolling an area in a marked black and white police vehicle.

Meanwhile, Witness A, a taxicab driver, picked up a male passenger (subsequently identified as the Subject) at a hotel. According to Witness A, the Subject asked to be taken to a location, which Witness A did.

According to Witness A, upon arrival at his destination, the Subject did not pay the cab fare, which was approximately \$50. The Subject told Witness A that he would have to go inside the building to get the money. Witness A asked for the Subject's identification or another item to hold onto while the Subject went inside. According to Witness A, the Subject's behavior became erratic at that point and the Subject stripped off all of his clothes and began screaming and jumping on parked vehicles. Witness A got back into his vehicle and called the police.

Communications Division (CD) broadcast a "theft-suspect there now" radio call at the location. Officer A advised CD that he and Officer B would handle the call.

Communications Division subsequently broadcast a radio call of a naked man in the same location as the previous call. Believing that this second call was related to the theft radio call, Officer A advised CD that they would handle the call involving the naked man. Officers C and D broadcast that they were also responding.

Officers A and B arrived at the location and Officer A notified CD of their status.

Officer B's account

Officer B drove toward the location. Officer B did not initially see the Subject but did see Witness A, who was parked at the location. Witness A stood next to his taxi while talking on his cellular telephone and motioned southbound. According to Officer B, he interpreted Witness A's motioning to mean that the Subject had run in that direction. Officer B proceeded southbound.

The officers continued southbound until they reached an intersection, where Officer B observed an individual directing their attention eastbound. Officer B turned east, where he observed another individual who directed their attention northbound. Officer B turned north. Officer B then maneuvered their vehicle to the left of the center divider and began driving northbound in the southbound lanes of traffic. According to Officer B, there were no oncoming vehicles or pedestrians on the street when he made the decision to drive on the wrong side of the road.

As the officers traveled north, Officer B observed the Subject, who was naked, running. According to Officer B, the Subject was holding a piece of cloth or article of clothing in his hand. Officer B stopped the police vehicle approximately 50 to 75 feet away from the west curb of the street.

According to Officer B, the Subject slowed down, looked over his shoulder and saw the officers.

Officer A broadcast the officers' updated location.

Officers A and B exited their vehicle. Officer B told the Subject to, "Step off of the sidewalk." Officer B began to approach the Subject and, as he did so, the Subject placed his hands on top of his head. According to Officer B, as he approached the Subject, Officer A remained at the police vehicle.

Officer B walked up behind the Subject, grabbed both of the Subject's wrists and pulled the Subject's hands behind his back. The Subject balled his hands into fists and then placed his fists together. Officer B held both of the Subject's hands with one of his. As Officer B reached back to retrieve his handcuffs, the Subject looked over his shoulder and jerked his arms, breaking free from Officer B's grasp. The Subject then ran westbound, and Officer B ran after him.

As the Subject reached a corner of the intersection, Officer B lost his footing and fell forward to the ground, landing on his left knee and left arm. The Subject slowed down to look behind him and saw that Officer B had fallen. According to Officer B, the Subject then stated to him in what Officer B perceived to be a mocking tone, "So they sent the LAPD after me?" Officer B stood up and noticed a scrape on his left elbow and a tear in his left pant leg.

Meanwhile, Officer A, who was approximately ten to 15 feet behind Officer B, caught up to Officer B. According to Officer B, Officer A was assessing the situation and whether the circumstances justified them going into foot pursuit of the Subject. Officer B did not say anything to Officer A but began to jog toward another corner so as not to lose sight of the Subject. Officer A caught up to Officer B and told him that, "This is our [California Penal Code Section] 484 [theft] suspect." According to Officer B, Officer A nodded in agreement and then asked Officer B if he was equipped with a TASER, and Officer B answered that he was. Officers A and B then walked north.

Officer A broadcast their updated location as back at the original call location.

As Officer B walked north, he unholstered his TASER and maintained it in a low-ready position with his finger off of the trigger. Officer B saw the Subject run toward another location.

Officers A and B walked toward the Subject and, according to Officer B, they "triangulated" around the Subject. Officer B faced east toward the Subject's back/right side and stood approximately five feet away from the Subject while Officer A faced north toward the Subject's front.

Officer B then activated the TASER red sighting laser and, as the Subject turned and faced Officer A, Officer B pointed the laser at the Subject's right side/oblique muscle area. At this point, Officer B became aware that the Subject was wearing a pair of shorts. The Subject was speaking quickly and Officer B heard the Subject say that he lived at that location or that he knew someone that lived at the location.

The Subject looked down at Officer B's TASER and, according to Officer B, stated to him, "Oh, what's that? Is that a gun? Oh, you gonna (sic) shoot me? Go ahead. Shoot me." Officer B advised the Subject that it was a TASER.

Meanwhile, Officer A attempted to communicate with the Subject, who was talking in a rapid manner and not responding directly to Officer A. Officer B believed the Subject may have been mentally ill and was concerned that if the Subject entered the location he may hurt himself or others.

Officer B decided that while the Subject was distracted by Officer A, he was going to come up behind the Subject, grab his right arm and attempt to apply a twist lock.

As Officer A continued to attempt to communicate with the Subject, the Subject started squaring himself and clenching his fists. The Subject also started "walking tall," and Officer B believed that Officer A was intimidated by the Subject. According to Officer B, in response to the Subject's advance, Officer A backed up three or four steps. Officer A continued to speak with the Subject while attempting to create space between them.

Officer B approached the Subject and, as he did so, the Subject began to run. The Subject ran southbound, toward another location. Officer B ran after the Subject.

Note: Portions of this incident were captured by multiple video cameras at the location. The relevant portions of the recordings show the Subject arrive in Witness A's cab to the location. The Subject exits the vehicle as does Witness A. Witness A walks around the back of the van toward the Subject and the Subject and Witness A appear to exchange words. The Subject gestures toward the entrance to the building. The Subject then removes his shirt and begins to pace around the entrance, manipulating his cellular telephone. The Subject also repeatedly approaches Witness A's vehicle, gesturing with his arms. The Subject removes all of his clothes, including his shoes, and throws the clothing over the car, on the sidewalk and into the street. The Subject also throws some papers that were at the location. The Subject then runs southbound and out of view of the cameras.

Later, the video shows the officers arriving and stopping their vehicle so that Officer A can exit and speak briefly with Witness A before re-entering the police vehicle. The officers then proceed southbound in the direction that the Subject ran. Several minutes later, the Subject runs back to the

location, puts his shorts back on and waits for the officers to arrive. Officer B arrives first and Officer A arrives shortly thereafter.

Officer B approaches the Subject with his TASER out and points it at the Subject. Officer B takes a position on the Subject's right. Officer A takes a position to the Subject's south.

The video shows the Subject engage in conversation with the officers, gesturing with his arms. The Subject walks toward Officer A several times and Officer A backs up each time. The Subject continues to gesture with his arms and pace back and forth. Meanwhile, Officer B continues to point the TASER at the Subject, aiming the TASER sighting laser at the Subject's back/right side.

Officers A and B then begin to close in around the Subject. Officer B removes his handheld radio with his left hand and with his right hand reholsters his TASER. The Subject suddenly runs south into the street. The video shows the officers running after the Subject.

The Subject ran to another location. Officer B believed that the Subject was attempting to gain entry to the location.

Note: Relevant portions of the video show the Subject run into the second location, followed almost immediately by Officer B and then Officer A; however, the video does not cover the area inside of the location.

The investigation revealed that a video camera was pointed toward the location where the officer-involved shooting occurred. Investigators along with a video technician attempted, unsuccessfully, to retrieve the recording from this camera on the date of the incident. According to the technician, the camera system had been updated approximately one week prior to the date of the incident and that process appeared to have corrupted the memory for that camera. According to the investigator that viewed the video, the camera pointed down and did not capture any activity in the location.

According to Officer B, as he ran toward the Subject, the Subject squared himself, clenched his fists and punched Officer B, striking Officer B in his jaw area.

Note: According to Witness B, the first officer to arrive to the second location (Officer B) was punched hard and fell to the ground. According to Witness B, Officer B stayed on the ground for five to ten seconds. The other officer (Officer A) then came around the corner and he went down, too.

According to Officer B, he felt his head and neck “snap back” when the Subject punched his jaw, and he fell down to the ground on his hands and knees. Officer B became disoriented and thought he was going to lose consciousness. When Officer B tried to get back onto his feet, he was hit hard another two times on his head. According to Officer B, he could feel his head snap with every blow on the back of his head. Officer B fell onto his left side, exposing his right side, his gun side. According to Officer B, the Subject put both hands on top of Officer B’s gun and holster and began “shaking” the holster as if he was trying to get the gun. Officer B then heard the Subject say, “[Expletive omitted] this. Give me this [expletive omitted].” Officer B believed that the Subject was going to knock him unconscious, take his gun and kill him. The Subject then let go of the gun and holster.

Officer B remained on the ground. According to Officer B, every time he attempted to stand up, the Subject punched him in the head. Officer B saw the Subject’s torso swivel as the Subject threw punches at him and at Officer A, who was on the Subject’s other side. Officer B then saw Officer A staggering. Officer B, who was still woozy from being punched in the head, grabbed the Subject’s legs but was unable to use them to gain leverage or control of the Subject. According to Officer B, the location was a very tight space and there was no room to move around and maneuver to get in a better position. The Subject continued to punch Officer B’s head and Officer B believed he was going to lose consciousness and that he would not be able to prevent the Subject from getting his gun and killing both officers. Officer B believed he had to stop the Subject before the Subject knocked him out.

The Subject continued punching Officer B in the head and as he did so, Officer B unholstered his pistol. Officer B got up on his right knee. Officer B looked up at the Subject and saw the Subject’s upper body. The Subject turned toward Officer B and he fired two rounds at the Subject.

Officer B saw the Subject stop fighting and fall to the ground on his side. Officer B stood up and looked at the Subject. Officer B observed the Subject to have a gunshot wound.

Officer A broadcast a “help” call.

Officer B stood with Officer A and then stated to him, “He - - he - - he went for my gun,” to which, according to Officer B, Officer A replied, “I couldn’t see that.”

Officer A’s account

Upon their arrival at the call location, Officers A and B pulled up next to Witness A and Officer A asked Witness A through the passenger’s side window which way the Subject went. According to Officer A, Witness A pointed southbound and advised the officers that the Subject was naked.

The officers proceeded southbound when Officer A observed an individual near an intersection, pointing eastbound. The officers made an eastbound turn when Officer A observed another individual who was pointing in the direction of the Subject. Officer A observed the Subject, who was naked, on the corner, facing in the officers' direction. The Subject was initially on the sidewalk and then walked into the street.

Officer B stopped and parked the officers' vehicle near the intersection, and Officers A and B exited. According to Officer A, Officer B stopped their vehicle approximately ten feet away from the Subject.

Officer A saw the Subject had something in his right hand, which Officer A believed to be a cellular telephone. Officer B approached the Subject from behind and ordered the Subject to put his hands behind his head and to turn around while Officer A stood in front of the Subject, "covering." According to Officer A, the Subject placed his cellular telephone on the ground and placed his hands behind his head, interlocking his fingers. Officer B approached the Subject from behind as Officer A stood in front of the Subject. As Officer B attempted to gain control of the Subject's hands, the Subject lowered his hands and began to run westbound.

Officers A and B ran after the Subject.

As the officers were running after the Subject, Officer B fell, dropping his flashlight. Officer A picked up Officer B's flashlight and advised Officer B to "hold on" as it was "just a [California Penal Code Section] 311 [indecent exposure] man." Officer B reminded Officer A that the Subject was also a theft suspect. Officer A asked Officer B if he had a TASER with him, which Officer B did. Officer A told Officer B that if the Subject were to get combative then Officer B was to use his TASER to control the Subject, allowing the officers to take him into custody. The officers then jogged after the Subject.

As the officers turned the corner to go northbound, they observed the Subject running northbound in the street. The officers followed him. The Subject approached the first location and Officer A observed the Subject pick up a pair of shorts and put them on. Officer A contacted CD and updated their location.

According to Officer A, Officer B went behind the Subject toward the Subject's right side and had the TASER ready. Officer A ordered the Subject to turn around and put his hands on his head. According to Officer A, the Subject did not do so but instead told Officer A to put his (Officer A's) hands on his (Officer A's) head. Officer A again ordered the Subject to put his hands on his head. The Subject did not. Officer A ordered the Subject a third time to put his hands on his head. The Subject did not. According to Officer A, the Subject appeared agitated, angry and the Subject was yelling and being uncooperative. Officer A ordered the Subject to place his hands on top of his head. The Subject then took a step toward Officer A.

As the Subject stepped toward Officer A, Officer A put his right hand forward and told the Subject to “step away” and not to get close to him. The Subject complied and backed away from Officer A. The Subject then turned toward Officer B and Officer A ordered the Subject to put his hands on his head. The Subject then ran through the gap between Officers A and B in a southwest direction toward the second location.

Officers A and B pursued the Subject to the second location. Officer B was approximately three or four strides ahead of Officer A. As Officer B approached the Subject, the Subject turned around and faced Officer B. According to Officer A, Officer B attempted to tackle the Subject. Officer A saw the Subject push or throw Officer B against a wall. Officer A then ran at the Subject and the Subject punched him on the left side of his face in the cheek area. Officer A did not see the punch but believed it was a closed fist punch.

Upon being punched, Officer A went down on one knee. At that point, according to Officer A, he decided the best way to control the Subject was to grab the Subject’s legs and get him off balance. As Officer A tried to grab the Subject’s legs, Officer A felt the Subject punch him on the left side of his head approximately three or four times. As Officer A struggled to gain control of the Subject’s legs, he was unable to see Officer B.

Officer A verbalized for Officer B to broadcast a help call. Officer A then heard one gunshot and felt the Subject fall down to the ground. Officer A stood up and broadcast, “Officer needs help, shots fired.” The Subject fell on his back, and Officer A observed the Subject to have a gunshot wound. Officer A requested an ambulance for the Subject.

Note: The investigation revealed that the officers were in the second location with the Subject for a total of 37 seconds.

According to Officer A, he asked Officer B if he shot the Subject and Officer B replied that he had. Officer B further advised Officer A that the Subject had attempted to remove his gun from his holster and that Officer B was losing consciousness so he fired his weapon at the Subject.

Officer A handcuffed the Subject.

Los Angeles Fire Department personnel arrived at the location and treated the Subject for gunshot wounds. The Subject was transported to the hospital where he was pronounced dead.

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 revolver 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, by a vote of 3-1, found Officers A and B's actions to warrant a tactical debrief.

B. Drawing/Exhibiting

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

C. Use of Force

The BOPC unanimously found Officer B's use of lethal force to be in policy.

Basis for Findings

A. Tactics

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

1. Handcuffing

In this instance, Officer B ordered the Subject into the roadway in front of their vehicle. The Subject walked into the roadway and placed his hands on his head. Officer B approached the Subject and utilized his hands to move the Subject's hands behind his back.

After observing the Subject's hands ball into fists, Officer B feared the Subject would resist and immediately grabbed both hands with his left hand as he reached for his handcuffs with his right hand. At this point, the Subject jerked his hands away from Officer B's grasp and ran northbound.

Officer B recognized that the Subject's nudity was an indicator that the Subject potentially suffered from mental illness or may have been under the influence of narcotics or other drugs. As people who are under the influence or suffering from some forms of mental illness may pose an increased risk of violence when confronted by police, the manner in which Officer B attempted to handcuff the Subject placed Officer B at a tactical disadvantage.

Although, Officer B's handcuffing techniques were unorthodox, the BOPC determined they did not substantially deviate from Department approved tactical training.

2. Foot Pursuits

The Subject fled from the officers and they pursued him on foot. Officer A advised CD with their updated location and believed that another unit was en route to the location. Neither officer broadcast that they were in foot pursuit nor did they request a backup or help.

In this instance, Officer A provided his updated location to CD and believed that another unit was already en route to assist them. Additionally, after a short time, the Subject slowed to a walking pace and the officers were able to track his progress without running.

Because of the slow pace of the foot pursuit combined with Officer A's knowledge that an additional unit was already responding and the location updates he provided to CD, the BOPC determined the officers' actions did not substantially deviate from approved Department tactical training related to foot pursuits.

- The BOPC identified additional tactical considerations with respect to this case:
 - Tactical Planning/Communication:

In this instance, Officers A and B were assigned to work a patrol unit. During the BOPC's review of the incident, they noted that the officers did not discuss a tactical plan on how they intended to deal with the Subject during the incident and that there was limited communication between the officers as the incident unfolded. When evaluating the officers' tactical planning/communication as well as other tactical areas, it is important to recognize that applicable tactical standards are very broad and incident dependent. Additionally, throughout their careers, both in a training environment and in field situations, officers are trained to employ reasonable tactics based on Department training when confronted with situations such as traffic or pedestrian contacts.

This approach was evident when Officer B initially attempted to handcuff the Subject while Officer A provided cover as well as during the encounter at the first location when the officers deployed on the Subject in an "L" configuration and

attempted to de-escalate the situation by verbalizing with the Subject. It is noteworthy that both of these encounters with the Subject were based on the officers' training and did not require additional planning or communication with each other.

While the BOPC recognizes the benefit of ongoing planning/communication between partners, the BOPC also recognizes that it is incident specific. Therefore, the BOPC found that the officers' actions related to this topic did not substantially deviate from approved Department tactical training.

- Decision to Approach the Suspect:

In order to properly evaluate the officers' decision to approach the Subject, the incident must be broken into three phases with the discussion of each phase based on what the officers knew at that point in the incident.

- Phase One – Initial attempt to handcuff the Subject

At this point of the incident, the officers were directed by witnesses to the location of a possible theft suspect. The officers found the Subject, who was naked, walking on a sidewalk. Neither officer observed an odor of an alcoholic beverage from the Subject or other indicators of being under the influence of drugs. Other than the radio call comments, neither officer was aware of the Subject's unusual behavior prior to their arrival. Additionally, Officer A was aware that another unit was responding to their location.

Officers are routinely required to make contact with criminal suspects. Although the Subject's nudity was an indicator of possible mental illness or of being under the influence of alcohol or drugs, he was initially compliant with the officers' commands. In this case, the officers appropriately deployed on the Subject and attempted to handcuff him. There is no requirement or expectation on the part of the BOPC that officers wait on the arrival of an additional unit prior to attempting to take a compliant suspect into custody.

- Phase Two – First location

At this point of the incident, the Subject had fled from the officers and run into the first location. The Subject briefly attempted to gain access to location. The officers elected not to make physical contact with the Subject but rather deployed in an "L" configuration around the Subject and attempted to de-escalate the situation and gain the Subject's compliance.

As the Subject was no longer attempting to enter the location and was responsive to, but not compliant with, the officers' orders, the officers' decision to maintain distance between themselves and the Subject was appropriate and

demonstrated the officers desire to avoid a physical confrontation with the Subject.

- Phase Three – Second location

The Subject was again able to flee from the officers and ran to the second location. The officers pursued the Subject with Officer B in the lead position. Officer B observed the Subject and was concerned about the Subject entering the second location and possibly hurting himself or hurting someone else.

Based on his concern, Officer B approached the Subject with the intent of making physical contact. It is noteworthy that up until this point in the incident, the Subject had not taken any aggressive actions toward the officers. Because of the concern about the Subject potentially entering the location, it was reasonable for Officer B to take immediate action to stop him from doing so and gaining access to other potential victims.

While the Department trains its officers in tactics that are designed to minimize the risk to officers, suspects and the community, it is impossible to eliminate all risk. There are times when officers are required to make split-second decisions which may entail putting themselves at increased risk in the interest of public safety. In this situation, the officers' decision to approach was consistent with the BOPC's expectations of Los Angeles police officers.

In conclusion, the BOPC found Officers A and B's actions to warrant a tactical debrief.

B. Drawing/Exhibiting

- Officer B was involved in a violent physical altercation with the Subject. During the altercation, the Subject attempted to remove Officer B's service pistol from its holster and repeatedly punched him in the face and head. Fearing that the Subject's blows were about to cause him to lose consciousness and that he would be killed if he did not take action, Officer B drew his service pistol.

The repeated punches to Officer B's head and face by the Subject created a situation wherein an officer with similar training and experience who was about to be rendered unconscious would reasonably believe that the tactical situation had escalated to the point where lethal force was justified.

In conclusion, the BOPC found Officer B's drawing and exhibition of a firearm to be in policy.

C. Use of Force

- Officer B's decision not to utilize a TASER:

An officer's decision to use a specific force option is governed by the Department's Use of Force policy and a standard of objective reasonableness. In this case, the BOPC evaluated Officer B's decision not to utilize the TASER during the encounter with the Subject at the first location. In reviewing Officer B's statement, it is clear that it was Officer B's belief that the situation did not meet the criteria for using the TASER based on his understanding of Department policy during this portion of the incident.

- Officer B's use of lethal force

Officers A and B were involved in a violent physical altercation with the Subject. During the altercation, the Subject attempted to remove Officer B's service pistol from his holster and repeatedly punched both officers in the face and head. Fearing that the Subject's blows were going to cause him to lose consciousness and that he would be killed if he did not take action, Officer B fired two rounds at the Subject's torso.

In reviewing this incident, it is clear that the altercation and degree of physical resistance by the Subject was unusually and unpredictably violent. In this instance, the BOPC determined that the Subject's actions would cause an officer with similar training and experience as Officer B to reasonably believe that the Subject was inflicting serious bodily injury; and that if he did black out, the Subject would disarm him and may use his gun to shoot him and his partner.

Therefore, Officer B reasonably feared the infliction of serious bodily injury; and reasonably feared for his life and the life of his partner. Therefore, the BOPC determined the decision by Officer B to utilize lethal force was objectively reasonable and consistent with Department policy.

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