

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

OFFICER-INVOLVED SHOOTNG – 004-07

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On (X) Off()</u>	<u>Uniform-Yes(X) No()</u>
Southeast	01/10/2007			

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Sergeant A	17 years, 2 months

Reason for Police Contact

A radio call was generated, indicating that approximately 250 people were involved in a fight. Officers responded and subsequently heard shots fired inside the location.

<u>Subject</u>	<u>Deceased (X)</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
Subject 1: Male, 43 years.			

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate the 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 and addenda items); the 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.

The following incident was adjudicated by the BOPC on 12/11/07.

Incident Summary

Sergeant A, Sergeant B, Officer A, Officer B, Officer C, and Officer D responded to a radio call of a fight in progress.

The radio call was generated in response to a 9-1-1 call, which indicated that there were approximately 250 people present at the location. Upon his arrival, Sergeant A observed what appeared to him to be several gang members exiting the fight location. Sergeant A and Officers A, B, C, and D exited their police vehicles and began to approach the front door of the location.

As they approached, a male (later identified as Witness A) exited the location and identified himself as the individual who had previously called 9-1-1. Witness A told the officers that there had been a fight inside the location, which was now over, and the parties involved in the fight had left. Sergeant A asked Witness A to reenter the location and verify that nobody was injured or otherwise in need of medical attention. Witness A reentered and then came back out and told the officers that everyone inside was all right.

Sergeant A remained near the scene for a minute or two before departing for the Area Police Station. Meanwhile, Sergeant A and Officers A, B, C, and D began to depart from the scene in their vehicles.

Sergeant A was driving toward the front entrance of the location when he observed a male (Witness B) attempting to enter the location and another male (Witness C) attempting to prevent him from doing so. A third male (Witness D) was next to the first two. Sergeant A stopped and observed Witness B eventually push his way into the entrance of the location. Witnesses C and D also entered the location at this time. Sergeant A then heard what sounded like people fighting and items being tossed.

In response to these observations, Sergeant A requested backup and advised Communications Division (CD) that the fight was resuming at his location. Approximately five to seven seconds later, Sergeant A heard approximately fifteen to twenty gunshots and saw muzzle flashes from inside the location.

Sergeant A broadcast a help call, placed his police vehicle into reverse, and started to back up in order to further distance himself from the front door. As he did so, he heard bullets traveling past his vehicle. He then decided to stop the vehicle and exit in order to seek cover. Sergeant C arrived at the scene in response to the original radio call regarding a fight in progress. Sergeant C also heard gunfire, and he broadcast a help call.

Upon exiting his vehicle, Sergeant A drew his service weapon and began to move toward some parked vehicles on the same side of the street as the fight location. As he moved, Sergeant A observed Witness D exit the front of the fight location. Witness D was bleeding profusely from his head, and Sergeant A thought that he had been shot. Sergeant A yelled, "Get down, get down."

Sergeant A then observed Subject 1 exit the front of the fight location with his right hand inside his front, right pants pocket and his left hand reaching across his torso, covering his right hand. Sergeant A then observed Subject 1's right elbow begin to rise up, and he formed the belief that Subject 1 was about to remove a handgun and either fire at him or at Sergeant C, or possibly fire at Witness D in an attempt to "finish him off." In response, Sergeant A fired two rounds at Subject 1. Sergeant A then observed Subject 1 turn 180 degrees and fall to the ground, where he lay motionless.

Meanwhile, Sergeant C parked his police vehicle on the street near Sergeant A's vehicle. Sergeant C exited his vehicle and drew his service weapon. Sergeant A continued to seek cover behind the parked vehicles. He observed approximately eight to ten individuals exit the front entrance of the fight location, circle around where Subject 1 had fallen, and then go back inside the location. Sergeant A demanded that the individuals get down on the ground, but they failed to comply. Sergeant A also observed some individuals making their way toward the rear yard behind the fight location.

Sergeant C indicated that although he did see individuals exiting the fight location, he did not specifically observe Subject 1's movements immediately before or after Sergeant A fired at him. Sergeant C also indicated that although he heard multiple gunshots as he deployed in front of the location, he could not determine where they were coming from, and he was unaware that Sergeant A had been involved in an officer-involved shooting (OIS) until Sergeant A told him.

Numerous other officers then began to arrive at the scene in response to the help calls. Sergeant A reloaded his weapon. Among others, Officers A and D responded to the rear of the location, where they observed numerous individuals exiting. Officers at both the front and the rear of the location then began to direct all of the individuals exiting the location to get down on the ground. Sergeant C directed some of the responding units to take some of the individuals who had exited the hall into custody.

Around this time, Sergeant D and Sergeant E arrived at the scene, who both requested the response of rescue ambulances (RAs) to the scene. As additional individuals exited the location, they were ordered into horizontal positions. Then, one by one, the individuals were directed to walk backward with their hands on their heads toward officers who subsequently handcuffed them.

The officers at the scene ordered any individuals remaining inside the fight location to exit, although the location had still not been cleared. Subject 1 remained on the sidewalk in front of the entrance to the location, unresponsive to officers' commands. Sergeant E arranged a team of officers who would utilize a gurney from one of the RAs at the scene to extract Subject 1 so that he could receive medical treatment. Officer E, who was one of the officers comprising the extraction team, conducted a pat-down search of Subject 1's waistband area and pockets for weapons prior to helping place him on the gurney. After Subject 1 was placed onto the gurney, he was taken to an awaiting RA.

Meanwhile, personnel from the Department's Metropolitan K-9 unit entered the location and verified that there were no additional suspects or victims inside. The individuals who had been ordered out and detained at the scene were transported to the Area station, where they were interviewed about their observations. Witness D was transported by an RA to a nearby hospital for further medical treatment. Subject 1 was declared dead at the scene by paramedics.

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 Sergeant A and C's tactics to warrant divisional training.

B. Drawing/Exhibiting/Holstering

The BOPC found Sergeant A and C's drawing to be in policy.

C. Lethal Use of Force

The BOPC found Sergeant A's lethal use of force to be in policy.

Basis for Findings

A. Tactics

The BOPC noted that Sergeant A appropriately advised accompanying officers that it would not be safe for them to enter the hall due to a large number of gang members inside. Sergeant A and four officers safely approached and made contact with the manager south of the location to determine the need for police officers or medical attention. Once the need for emergency personnel was determined not to be necessary, Sergeant A and the other officers departed.

Sergeant A remained in the area to monitor any additional activity associated with the location. As Sergeant A drove, he observed a minor disturbance at the front door to the location, followed by loud voices and arguing from within the location. Believing that another fight had broken out, Sergeant A appropriately requested a back-up through CD. Shortly thereafter, Sergeant A heard numerous gunshots from within the location. Sergeant A broadcast a help call, placed his vehicle into reverse and drove rearward in an effort to move away from the front of the location and the source of the gunfire. He heard several rounds of gunfire pass within close proximity to him. Although Sergeant A may have had other alternatives such as continuing to drive in reverse and out of sight, this incident escalated rapidly, requiring immediate action on his part. In addition,

Sergeant A believed that there was a murder in progress taking place inside the location. Based on these circumstances, the BOPC believed that Sergeant A exercised prudent judgment in his decision making.

During the ensuing tactical operation to clear the location, detain numerous suspects and establish order, Sergeants A and C coordinated resources through effective radio communications. In addition, after Sergeant A's OIS, he reloaded his weapon once he determined it was safe to do so.

Additional responding officers and supervisors assembled a search and rescue team to clear the building and safely extract Witness D and Subject 1 from the front of the location. The officers cleared the building and surrounding areas, detained multiple suspects and recovered numerous guns as evidence. This demonstrated effective communication and supervision among all present.

Although Sergeants A and C generally performed and communicated well during a spontaneous situation requiring immediate and decisive action, Sergeant A did not explicitly request the response of an RA after he fired at Subject 1. Although he had broadcast a request for help immediately prior to the OIS, indicating that shots had been fired at the location, this broadcast did not draw the response of an RA unit, which was needed at the scene in order to assist Subject 1. An RA unit was also needed at the scene in order to assist Witness D, whom Sergeant A had observed exiting the location, bleeding profusely from his head. As Witness D exited, Sergeant A also observed another male, who requested Sergeant A's assistance in calling an ambulance.

Similarly, Sergeant C did not request the response of an RA, or verify whether Sergeant A had already done so, after Sergeant A said to him, "The guy's got a gun, and I got him," or, "I think I got him," shortly after the OIS took place. It appears that no RA unit was requested until after the OIS had occurred, when Sergeant E made a request for the response of four RAs.

Although it is acknowledged that the circumstances surrounding this incident were extremely chaotic and dangerous, Sergeant A was aware that two individuals (Witness D and Subject 1) had potentially been shot, and Sergeant C was informed that one individual (Subject 1) had been shot. They each had the opportunity to request the response of RAs to provide medical treatment, but neither did. In light of these facts, the BOPC recommended that Sergeants A and C receive training with regard to requesting an RA immediately upon becoming aware of the need for one.

In addition, Sergeant C removed his police vehicle from the scene after the OIS had occurred. He should have been aware of the importance of preserving the scene of a categorical use of force. Failing to preserve such a scene can potentially compromise the integrity of an investigation, and can also give rise to an appearance of impropriety. The BOPC also recommended that Sergeant C receive training with regard to the preservation of the scene of a categorical use of force.

The BOPC found that Sergeant A and C's tactics warranted divisional training.

B. Drawing/Exhibiting/Holstering

The BOPC noted that, after hearing shots being fired, observing muzzle flashes, observing possibly armed gang members fleeing the building and fearing an armed confrontation, Sergeant A drew his service pistol.

After hearing shots being fired nearby, observing numerous possibly armed gang members fleeing from the building and fearing an armed confrontation, Sergeant C drew his service pistol.

The BOPC determined that Sergeants A and C had sufficient information to believe that the situation had escalated to the point where deadly force may become necessary.

The BOPC found Sergeant A and C's drawing to be in policy.

C. Lethal Use of Force

The BOPC noted that Sergeant A observed Witness D exit the building, limping and bleeding noticeably from his head, as rounds were being fired just inside the doorway of the location. Sergeant A also observed several other people exit the location and gave general orders for everyone to lie down. Sergeant A noted that there were still shots being fired within the location and gave Subject 1 numerous commands to lie down, which Subject 1 ignored. Sergeant A believed that Subject 1 intended to "finish-off" Witness D and/or fire on him and Sergeant C. Subject 1 continued to raise his right arm as if drawing a weapon from his pocket at which time Sergeant A fired two rounds to stop Subject 1's actions.

The BOPD noted that Sergeant A was not only present in the immediate vicinity of a shooting in progress, but had himself been fired upon. Based on the numerous shots that had been, and were being fired within an enclosed and crowded space, Sergeant A reasonably believed that there was a murder taking place. In addition to Subject 1's actions described above, the BOPC noted that Subject 1's behavior was not consistent with a disinterested bystander or victim fleeing the scene of a shooting in progress. Also, a gunshot residue test on Subject 1 returned positive for both of his hands. Lastly, although no firearm was found on Subject 1, it is apparent that there were numerous individuals who were in close proximity to, or had some access to Subject 1 and could have conceivably taken possession of any weapon that he may have possessed. In fact, shortly after the OIS, eight to ten people exited the nightclub, circled Subject 1 and then walked back into the club.

The BOPC determined that Sergeant A reasonably believed that Subject 1 presented an immediate threat of serious bodily injury or death.

However, the BOPC also found that ambiguities between the transcribed account of the incident that was given by Sergeant A and physical evidence does not definitively resolve what actually occurred. Accordingly, it is difficult to ascertain certain details regarding the circumstances of Sergeant A's decision to use lethal force against Subject 1.

A photograph (Photo #1) taken at the scene from the location where Sergeant A indicated that he was standing at the time of the OIS appears to show that it may have been difficult for Sergeant A to see Subject 1's hands and, possibly, his right elbow as well. There were parked vehicles between Sergeant A and Subject 1 that may have obstructed Sergeant A's view of Subject 1's lower body. It is plausible that Sergeant A was able to see Subject 1's hands and right elbow through the windows of the vehicle that was parked between them. However, this is unclear in light of the point of view provided by Photo #1.

It was determined during the investigation that Sergeant A fired at Subject 1. The County of Los Angeles, Department of Coroner's Report (Coroner's Report) indicates that the trajectory of the bullet that struck Subject 1 was both left to right and downward. A photograph taken during Subject 1's autopsy indicates that the bullet was traveling significantly downward as it entered Subject 1's neck. For Sergeant A's bullet to have struck Subject 1 along such a downward path, Subject 1 would have had to have been bending down significantly.

However, Sergeant A made no indication whatsoever that Subject 1 was bending down when Sergeant A fired at him. Furthermore, Photo #1 suggests that the bullet fired by Sergeant A had to clear the roof of the vehicle that was parked between him and Subject 1 in order to strike Subject 1. Thus, it is unclear just how Subject 1 was positioned at the time he was struck by the bullet that was fired by Sergeant A.

Despite these ambiguities, however, the BOPC noted that the preponderance of the evidence in this case does not establish that the actions of Sergeant A were in violation of Department policy. The BOPC noted that none of the information regarding the gunshot residue test or that numerous individuals had some access to Subject 1 and could have conceivably taken any weapon that he may have possessed was known to Sergeant A when he made the decision to use lethal force against Subject 1. As such, the BOPC did not consider this information in formulating its recommendation regarding Sergeant A's use of lethal force.

The BOPC found Sergeant A's use of lethal force to be in policy.