

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

OFFICER-INVOLVED SHOOTING - 013-05

<u>Division</u>	<u>Date</u>	<u>Duty-On (x) Off()</u>	<u>Uniform-Yes(x) No()</u>
Newton	2/10/05		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	3 years, 8 months
Officer B	

Reason for Police Contact

Witness1 called 911 to report Subject 1 was pouring gasoline from a dispensing gas pump onto a shirt that he carried in his hand. Subject 1 was, according to the gas station attendant, walking from gas pump to gas pump pouring gas on what appeared to be his shirt and then throwing the gas pump nozzles on the ground. Officers responded and attempted to restrain Subject 1. An altercation between Subject 1 and the officers resulted in an officer involved shooting.

Suspect

Subject 1: Male Hispanic, 48 years old, wounded.

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 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 February 7, 2006.

Incident Summary

On February 10, 2005, Newton Patrol Officers A and B received a radio call of a man creating a disturbance at a gas station located within the Newton Division. The call originated from the gas station's attendant, Witness 1. Witness1 stated that there was a man at the station who was acting bizarrely in the area of the gas pumps, walking from

gas pump to gas pump, pouring gas on what appeared to be a shirt, and then throwing the pump nozzles on the ground.

When Officers' A and B arrived at the gas station, they pulled into the center gas pump island area of the gas station, stopping the patrol unit approximately 7 feet from Subject 1, who was standing on a gas pump island with a shirt in his hand. The officers observed several nozzles from the surrounding gas pumps lying on the ground. The officers exited the patrol unit and approached Subject 1. Upon contacting Subject 1, the officers formed the opinion that Subject 1 was potentially mentally ill as he engaged the officers in a rambling discourse about Subject 1's family. When asked his name and date of birth, Subject 1 responded with information that later turned out to be incorrect regarding his name and his date of birth. Upon obtaining the information, Officer B returned to the patrol unit to conduct a query based on the identifying information provided by Subject 1. Officer B could not confirm Subject 1's identity on the information provided but determined there were no outstanding wants or warrants linked to the name provided to the officers by Subject 1. During the time Officer B was attempting to confirm the information, Officer A stayed with Subject 1.

When Officer B returned to Subject 1 and Officer A, Subject 1 was questioned about the gas pump nozzles lying on the ground. Subject 1 stated that he had removed the gas pump nozzles from the gas pumps so the gas station attendant would call the police. Officer B told Subject 1 that the gas station attendant no longer wanted him at the gas station. Subject 1 responded that he could not leave the station as people were following him. When Officer B was conversing with Subject 1, he noticed that the shirt in Subject 1's hand was wet. Officer B asked Subject 1 if he had put gas on the shirt, to which Subject 1 responded that it was water on the shirt and that he had no intention of hurting himself. Officer A noted that Subject 1 had a book of matches in his hand, and attempted to reach for the matches. However, Subject 1 pulled away from the officers and walked to the other side of the gas pump island.

The officers followed Subject 1 to the other side of the gas pump island. Officer B grabbed Subject 1's right hand as Officer A grabbed Subject 1's left hand. Subject 1, began to struggle with the officers and again attempted to pull away. Officer A managed to remove the book of matches from Subject 1's hand and place them in his (Officer A's) pants pocket. Officer B continued to restrain Subject 1, but freed his left hand from Officer A's grip, spun to his right, and with his left hand grabbed at Officer B's service pistol. Officer B heard the safety strap on his holster unsnap, but the pistol remained holstered. However, using both of his hands, Officer B "capped"¹ his pistol, preventing Subject 1 from removing the pistol from Officer B's holster.

¹ "Capping" is a trained technique where an officer uses his or her hand(s) to shield the pistol from the suspect's grasp.

Officer B shouted "He's got a hold of my gun. He's got a hold of my gun."² In response to the warnings by Officer B, Officer A drew his 9mm-service pistol, determined his partner's location relative to Subject 1, and fired one round striking Subject 1 on the left side.

After being struck on the left side, Subject 1 stumbled and fell to the ground. Officer B then drew his pistol, but re-holstered it as he broadcast a help call with shots fired over his Astro radio. Officer A's pistol remained drawn and trained on Subject 1. Officer B then moved to Subject 1 to handcuff him, placed his knee on Subject 1's back and pulled back Subject 1's left hand securing the handcuffs on the left wrist. Officer A then re-holstered his pistol and assisted Officer B in pulling back Subject 1's right arm and securing the handcuffs on Subject 1's right wrist.

A Rescue Ambulance ("RA") was requested for Subject 1 and when it arrived Subject 1 was treated at that scene for the gunshot wound and transported to a regional hospital for further treatment.

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 the following areas: Tactics of the involved officer(s); Drawing/ Exhibiting/ Holstering of a pistol by any involved officer(s); the Use of Force by any involved officer(s) and any additional pertinent issues. 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 that Officers A and B would benefit from additional formal tactical training.

B. Drawing/Exhibiting/Holstering

The BOPC found Officers A and B drawing/exhibition/holstering of a firearm to be in policy.

C. Nonlethal Use of Force

The BOPC found Officers A and B use of force to be in policy.

² Three eyewitnesses to the altercation confirmed that Subject 1 grabbed at Officer B's service pistol or for something at the waistband level, before hearing or seeing the gunshot.

D. Use of Force

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

Basis for Findings

A. Tactics

The BOPC noted that Officers A and B did not discuss tactics prior to their arrival at the suspect's location. In addition, the BOPC noted that Officer B ran an inquiry via the MDT instead of utilizing the Astro radio and remaining with his partner. The BOPC also noted that as the officers attempted to detain the suspect, Officer A released his grasp of the suspect and attempted to remove matches from the suspect's hands, thus allowing the suspect to escape the grasp of the officers. The officers did not request an additional unit or a back up prior to the help call. In addition, Officers A and B both participated in handcuffing the suspect and neither officer searched him. Finally, the BOPC noted Officer A did not de-cock his service pistol and attempted to holster it after firing at the suspect. Due to the manner in which the officers handled the incident, the BOPC determined they would benefit from additional tactical training at Training Division.

B. Drawing/Exhibiting/Holstering

The BOPC determined that the Officers had sufficient information to believe the situation might escalate to the point where deadly force may become necessary. Accordingly, the BOPC finds Officer A and B's exhibiting, drawing and holstering in policy.

C. Nonlethal Use of Force

The BOPC has determined that Officer B's kneeling on Subject 1 and forcing his left hand behind his back to handcuff him and Officer A' assisting in the handcuffing by forcing Subject 1's right hand back was reasonable to effect an arrest and overcome the Suspect 1's aggressive/combatative actions. Accordingly, the BOPC finds Officer A and B's nonlethal Use of Force in policy.

D. Lethal Use of Force

The suspect aggressively grabbed Officer B's firearm. Officer B shouted, "He's got a hold of my gun! He's got a hold of my gun!" Officer A moved to the suspect's side, and fearing that the suspect was about to remove his partner's service pistol and shoot, fired one round at the suspect. The BOPC determined that Officers A and B reasonably believed that the suspect presented an immediate threat of serious bodily injury or death and found Officer A and B's Use of Force in policy.