

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

HEAD STRIKE WITH AN IMPACT WEAPON - 017-05

<u>Division</u>	<u>Date</u>	<u>Duty-On (x) Off()</u>	<u>Uniform-Yes(x) No()</u>
77 th Street	02/17/05		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	7 years, 6 months

Reason for Police Contact

Officers A and B were flagged down by citizens who indicated that the occupant of a Lexus vehicle that was driving away had a gun and had just been involved in a robbery.

Subject

Subject 1: Male, 22 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 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 14, 2006.

Incident Summary

On February 17, 2005, Officers A and B were driving in their marked police vehicle when they were flagged down by a group of citizens. The citizens directed the officers to follow a silver Lexus and told the officers that the occupant in the Lexus had a gun and had just been involved in a robbery.¹ The officers observed the Lexus a few car-lengths ahead of them. The officers followed the Lexus as it turned left and accelerated to a high rate of speed, failing to stop at the stop signs at various intersections. Officer

¹ The investigation revealed these citizens had been the victims of a robbery and carjacking where they were taken from the Lexus at gunpoint and personal items (cash and jewelry) were stolen.

B advised Communications Division (“CD”) that they were in pursuit of the Lexus that contained an Assault with a Deadly Weapon (ADW) suspect armed with a gun. Officer B advised CD of their location as they continued following the Lexus. Officer B attempted to request a backup, however, that broadcast was not acknowledged by CD.

Officers C and D were in the area and heard the broadcast of the pursuit. They saw the pursuit proceed through an intersection behind them, so they turned around and became the secondary unit in the pursuit. However, they did not advise CD that they had joined the pursuit.

The driver (Subject 1) of the Lexus lost control of the vehicle, resulting in a 5-car collision. This collision forced the Lexus and one other vehicle to flip and come to rest upside down.²

Officers A and B parked their police vehicle just south of the accident and got out of their vehicle. Officer B believed he advised CD that they were at the accident location, but all that came through that broadcast was “we’re going to need, . . . standby.” After getting out of the police vehicle, the officers began checking the involved vehicles for occupants. Believing Subject 1 might be armed, both officers drew their service pistols in addition to drawing their flashlights to illuminate the area. As the officers approached the Lexus, they observed Subject 1 crawl from the Lexus.

Officers A and B began giving Subject 1 contradictory verbal commands, specifically Officer A ordered Subject 1 to stay on the ground and Officer B ordered Subject 1 to get up and face away from the officers. As Subject 1 began to crawl from the Lexus, Officer A put his finger on the trigger of his service pistol and ordered Subject 1 to stay on the ground, which Subject 1 did not do. Subject 1 grabbed at his waistband, turned away from the officers and began to run in a northeast direction. Officer A closely followed Subject 1 while Officer B tracked them and broadcast the foot pursuit. As Subject 1 was running he turned and looked back at the officers when Officer A again instructed Subject 1 to get down.

Officer A caught up to Subject 1 just as Subject 1 stumbled at the front of a vehicle parked in a driveway. Officer A pinned Subject 1 face down against the hood of the vehicle. When Officer B caught up, he holstered his service pistol and attempted to get control of Subject 1’s right arm. By this time, Officers C and D had arrived at the scene and proceeded to the driveway where Officers A and B had Subject 1 pinned on the vehicle hood. As Officer C made his way through the wrecked vehicles, he attempted to broadcast the foot pursuit and to request a Rescue Ambulance (“RA”). However, no such broadcast was audible on the 77th Street base frequency.

Subject 1 refused to comply with the officers’ commands. Officer A struck Subject 1 in the back of the head with the butt of his service pistol. Officer B struck Subject 1 once in the right shoulder blade with the palm of his right hand. Subject 1 continued to resist. Officer D then approached and attempted to assist Officer B in getting control of Subject

² All of the other vehicles involved in the collision were parked and unattended at the time of the collision except for the Lexus.

1's right arm. Officer D struck Subject 1 in the right shoulder blade four times with his right fist. Subject 1 continued to resist. Officer A then struck Subject 1 in the back of the head with the butt of his service pistol a second time. The officers were then able to gain control of Subject 1's right arm. Once Subject 1's right wrist was handcuffed, Officer A holstered his service pistol and assisted with the handcuffing of Subject 1's left wrist.

Once Subject 1 was handcuffed, Officers A and D conducted a pat-down search of Subject 1 but did not locate any weapons or contraband. Other units began to arrive on scene and Officer B requested a RA. The RA arrived, administered medical treatment to Subject 1, and then transported Subject 1 to a local hospital.

A subsequent search of the route of the vehicle pursuit resulted in the discovery of a .40 caliber semiautomatic pistol in the yard of a residence along the route of the pursuit. A subsequent investigation revealed that this pistol had been stolen in a residential burglary. The first supervisor to arrive on scene separated the officers and notified Watch Commander Sergeant A of the incident. Sergeant A then responded to the scene. However the Department Command Post was not notified of this incident by Assistant Watch Commander Sergeant B until 45 minutes after the incident had occurred.

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 weapon 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 with regard to Tactics, Drawing/Exhibiting/Holstering and Nonlethal Use of Force. The BOPC's finding with regard to the Lethal Use of Force was by a 3-1 vote.

A. Tactics

The BOPC found Officer A's tactics to warrant administrative disapproval; Officers B, C and D's tactics to warrant formal training; and Sergeants A and B's tactics to warrant divisional training.

B. Drawing/Exhibiting/Holstering

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

C. Non-Lethal Use of Force

The BOPC found Officers A, B and D's non-lethal use of force to be in policy.

D. Use of Force

The BOPC found Officer A's use of force to be out of policy, warranting administrative disapproval.

Basis for Findings

A. Tactics

The BOPC noted that Officers A and B did not obtain specific information regarding the robbery/carjacking including the description of the suspect and the fact that there was an additional vehicle that possibly contained additional suspects. In addition, the BOPC noted that Officers A and B did not immediately broadcast a location for the traffic collision or subsequent foot pursuit, and they gave Subject 1 conflicting commands as he crawled out of the Lexus. The BOPC also noted that Officer B's broadcast was incomplete and he did not immediately request backup. The BOPC also noted that Officer A was not faced with an immediate deadly force threat when he placed his finger on the trigger of his service pistol as Subject 1 was crawling out of the Lexus. Officer A also did not utilize cover while standing approximately five to seven feet from Subject 1, whom he believed to be armed. The BOPC also noted that Officer A limited his tactical and use of force options by holding his service pistol in his right hand and his flashlight in his left hand while he struggled to gain control of Subject 1 and that there was a crossfire situation created when Officer B approached Officer A and Subject 1 who were at the front of the vehicle in the driveway. The BOPC also noted that Officers A and D searched Subject 1 simultaneously, and Officers C and D did not advise CD when they arrived at the scene of the termination of the pursuit.

The BOPC determined that Officer A's tactics were seriously deficient, warranting administrative disapproval. The BOPC also determined that Officers B, C and D will benefit from divisional training.

The BOPC noted that the Department Command Post was not notified of the incident until approximately 45 minutes after it occurred and after the first supervisor arrived on scene. The first supervisor to arrive on scene separated the officers and notified Watch Commander Sergeant A of the incident. The Department Command Post was not notified of this incident by Assistant Watch Commander Sergeant B until 45 minutes after the incident had occurred. Thus, the BOPC determined that Sergeants A and B will benefit from divisional training regarding the requirement to immediately notify the DCP when they learn about a Categorical Use of Force.

B. Drawing/Exhibiting/Holstering

The BOPC found that at the time Officers A and B drew their service pistols, they reasonably believed Subject 1 was armed with a gun. The BOPC found Officers A and B's drawing and exhibition of a firearm to be in policy.

C. Non-Lethal Use of Force

The BOPC determined that Officers A, B and D's use of nonlethal force was reasonable to overcome Subject 1's resistance. The BOPC found Officers A, B and D's non-lethal use of force to be in policy.

D. Use of Force

The BOPC noted that Officers are authorized to strike a suspect on the head with an impact device only when lethal force is justified. Because Officer A did not observe Subject 1 with an object that could have been used as a weapon against the officers, the BOPC determined that Subject 1 did not reasonably present an immediate threat of serious bodily injury or death at the time Officer A struck Subject 1 in the head with the butt of his service pistol. The BOPC would have preferred that Officer A had holstered his service pistol prior to making contact with Subject 1 and utilized both hands to detain him.

The majority of the BOPC, by a vote of 3-1, found Officer A's use of force to be out of policy, warranting administrative disapproval.