

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

OFFICER-INVOLVED SHOOTING 026-05

<u>Division</u>	<u>Date</u>	<u>Duty-On (x) Off()</u>	<u>Uniform-Yes(x) No()</u>
Newton	03/29/05		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	5 years, 0 months
Officer B	4 years, 0 months
Officer C	9 years, 10 months

Reason for Police Contact

Officers on patrol were flagged down by a female who reported that she had been robbed and pointed to a car driving away from the scene. The officers attempted to stop the car and a brief pursuit ensued. The pursuit ended when the car collided with a wall. Officers stopped behind the vehicle, which then backed towards them. Three officers fired their weapons at the driver of the vehicle.

<u>Suspect</u>	<u>Deceased ()</u>	<u>Wounded (x)</u>	<u>Non-Hit ()</u>
Subject 1: Male, 20 years.			
Subject 2: Male, 38 years.			

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; the report and recommendations of the Inspector General and correspondence and photographs presented by Subject 1's criminal and civil attorneys. 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 April 18, 2006.¹

¹ This case was adjudicated more than one year after the incident due to the conduct of supplemental investigation.

Incident Summary

In the early hours of Tuesday, March 29, 2005, Newton Patrol Division uniformed Officers A and B were on duty, patrolling in a marked police car when they were flagged down by a female. The officers stopped and were told by the female that she had been robbed. The female said something to the officers about a "black car" and pointed at a car driving away from the scene. The officers saw that the car was driving without lights, and they began to follow that car. The officers did not give any instructions to the female or request another unit to meet with her. She was not identified during the investigation of this incident. Unbeknownst to the officers, the car (a Honda Accord with tinted windows) had been reported stolen. It was subsequently determined that the car was being driven by 20 year old Subject 1. Subject 2 (38 years old) was a passenger in the car.

Officer A, who was driving the police car, activated the car's emergency lights and siren. Officer B broadcast that his unit was in pursuit of possible robbery suspects and requested back-up and a helicopter. The officers continued to follow the Honda as it drove through residential streets at excessive speed and failed to stop for a stop sign. They were unable to see inside the car or determine how many occupants it had due to its tinted windows. Officer A and B were the primary car in the pursuit.

In the meantime, Newton Patrol Division uniformed Officers C, D, E and F had monitored the pursuit broadcasts and were responding to assist. As the Honda was travelling north, both responding units were travelling southbound on the same street several blocks north of the Honda. As they saw the pursuit approach them, Officer D drove her police car (with Officer C as a passenger) onto a side street and made a U-turn, intending to join the pursuit as it passed. Officer E drove his police car (with Officer F as a passenger) to the curb of the street to wait for the pursuit to pass. As the Honda approached, Officer E saw that it had two occupants.

As the Honda approached an intersection, it veered to the right and drove onto the sidewalk. The Honda traveled approximately 21 feet north along the sidewalk. The right front corner of the Honda collided with a wall and came to a stop, positioned between a lamppost and the wall.

Officer A stopped his police car behind the Honda. In the interim, Officers D and E began maneuvering their cars toward respective positions to the left and to the right of the primary police car.

Officers A and B exited their police car and drew their pistols, intending to take positions behind the cover of their doors for a high-risk stop. According to Officer A, he heard the Honda's engine revving in what he believed was an unsuccessful attempt to continue northbound. Officer A then saw the Honda's reverse lights illuminate and saw that the rear tires appeared to spin. Officer A looked over to his partner, Officer B, and saw that half of his body was inside the car and the other half was out of the door on the passenger side of the police car. According to Officer A, approximately two seconds later the Honda gained traction with the sidewalk and began to reverse at a high rate of

speed. As the Honda moved rearward, it veered toward Officer B's position. According to Officer A, the movement of the Honda caused him to fear for his partner's life. Officer A responded by firing seven rounds toward the driver's compartment of the Honda as the car reversed.

According to Officer B, as soon as his police car came to a stop he saw the Honda's reverse lights illuminate and the wheels spin. Officer B opened his door and, while still seated, kicked the door open with his foot. As he did so, Officer B got the impression that his partner, Officer A, had got his equipment belt stuck on the steering wheel, was holding onto the steering wheel or had his hand on the gear shifter. Concerned that Officer A would reverse the car and he would fall underneath it, Officer B yelled something to the effect of "Not yet," or "I'm not out, don't."

According to Officer B, as he began to exit the police car the Honda came back toward him. As he was partially out of the car, Officer B did not think he could get to a position of cover or escape the Honda's path. Seeing a threat from the Honda, Officer B fired seven rounds toward the driver of the Honda. As he continued to exit the police car, Officer B stepped onto the uneven road surface and partially lost his balance. According to Officer B, he was still positioned at his car door when the Honda collided with the front of his police car and feared that the Honda would go over his door and over him. The Honda then changed direction and moved forward and Officer B moved to a position of cover behind a nearby wall.

According to Officer C, Officer D positioned their police car to the left of the primary car and he exited, taking a position behind his car door. As he did so, the Honda reversed toward the primary car at a high rate of speed. Believing that the Honda was going to cause death or serious injury to Officer B, Officer C fired three rounds in the direction of the Honda's driver. According to Officer C, there was no time available for the officers to reposition themselves. Officer C also reported that, after he fired his shots, the Honda slowed significantly before it struck the primary car.

Meanwhile, Officer D exited her police vehicle, took cover behind her door and drew her weapon. Officers E and F stopped to the right of the primary car, exited their car and did the same.

After colliding with the police vehicle, the Honda drove forward a short distance, collided with a parked car and came to a stop. All officers at the scene reported that shots were fired only as the Honda reversed, and that no shots were fired once the Honda moved forward.

Officer B began ordering the occupants of the Honda to show their hands and exit the vehicle. There was no response from inside the Honda and none of the officers could see into the Honda.

Officers A and C saw that the Honda was rocking, indicating that its occupants were moving. According to Officer C, he considered that the occupants could be formulating a plan of escape or attack, as well as the possibility that they were injured and unable to

respond. Officer C decided to use a less-lethal beanbag shotgun to break out the Honda's windows in order to afford the officers a view inside the Honda.

Officer C reholstered his pistol, equipped himself with a beanbag shotgun, moved into the middle of the street and fired three beanbag rounds at the windows of the Honda. One of the beanbag rounds struck and perforated the driver's window. However, the window did not shatter or fall out. The other two rounds struck the rear driver's side window and bounced off without any penetration. Officer C then equipped himself with a lethal shotgun and continued to cover the Honda.

After additional verbal commands were issued for the occupants of the Honda to come out, Subject 2 emerged from the left rear passenger door. Subject 2 was directed to raise his hands, face away from the officers and kneel. He did as directed, but then failed to comply with an additional instruction to lie prone on the ground.

In the meantime, additional units had responded to the scene. Uniformed Officers G and H drew their weapons and covered Officer D as she holstered her weapon, approached Subject 2 and handcuffed him. Subject 2 was then moved back, away from the Honda.

The first supervisor to respond to the scene was Sergeant A. When the sergeant arrived, a number of additional officers had already arrived on the scene and a team was being assembled by Officer C for the purpose of taking Subject 1 into custody. Sergeant A directed Officers K and L, along with Officer E to effect the arrest. Officer I was given the role of designated shooter and Officer J was assigned to cover with a shotgun. Officer C was directed to carry a TASER. In order to equip himself with a TASER, Officer C returned the lethal shotgun to his car's trunk. When he did so, he did not return the shotgun to "patrol ready" condition by downloading the round in the chamber.

The arrest team, accompanied by Sergeant A, approached the Honda. Subject 1 told the team that he could not move. Officers K and L pulled Subject 1 from his position in the driver's seat, via the open front passenger door, and took him into custody.

Paramedics responded to the scene and transported Subject 1 to a local hospital. Subject 1 was subsequently determined to have sustained a single gunshot wound to his back, causing paralysis from the chest downward. None of the involved officers, or Subject 2, was injured in the course of this incident.

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 that Sergeant A, and Officers A, B, C, D, E and F's, tactics require formal training.

B. Drawing/Exhibiting/Holstering

The BOPC found Officers A, B, C, D, E, F, G, H, I and J's drawing and exhibition of a firearm to be in policy.

C. Use of Force

The BOPC found Officers A, B and C's use of force to be in policy.

D. Other (Tactical discharge of Beanbag Shotgun)

The BOPC found Officer C's tactical discharge of a beanbag shotgun requires formal training.

Basis for Findings

A. Tactics

The BOPC noted that Officers A and B were flagged down by a female who stated that she had been robbed and immediately gave chase to the suspects' car. The BOPC noted that it would have been tactically advantageous for the officers to quickly obtain critical information from the victim such as the number of suspect(s), their descriptions, whether they were armed and the type of property that was taken. Additionally, the BOPC determined that Officer B should have requested a unit to respond to the victim's location to obtain further information and to complete a Preliminary Investigation Report.

The BOPC noted that having driven toward the pursuit and having observed two males in the suspect vehicle, Officer E did not advise other officers of his observation. The BOPC would have preferred that Officer E had alerted the officers of the number of suspects in the car to provide responding officers additional information about the tactical situation.

The BOPC noted several communication issues that took place during this incident that could have been improved upon. At the termination of the pursuit, Officer B did not provide his location to Communications Division (CD). The BOPC would have preferred that the location had been given. The BOPC further noted that when Officers E and F

arrived at the termination of the pursuit, they did not advise CD of their status and location and that after the officer-involved shooting occurred, Officers A and E's broadcasts to responding units provided an incorrect location.

The BOPC noted that after he exited the Honda, Subject 2 complied with commands to go to his knees but then ignored further commands ordering him to prone himself out on the pavement. Officer D left a position of cover as another officer covered her while she took Subject 2 into custody. The BOPC further noted that after Subject 2 was taken into custody, none of the officers questioned him as to the number of additional suspects or weapons that may have been in the car. The BOPC determined that the officers should have ordered Subject 2 to walk backward to the awaiting officers who were behind cover, and that Subject 2 should have been interviewed regarding the additional person that remained inside the vehicle.

The BOPC noted that Officer C placed a loaded shotgun in the trunk of his police car without removing the live round from the chamber and would have preferred that he had downloaded the shotgun to "patrol ready" condition.

Noting that time was on the side of the officers and that there was no need to immediately take Subject 1 into custody, the BOPC determined that Sergeant A should have established command and control of the scene and that additional planning could have provided better tactical considerations to arrest Subject 1. The BOPC noted further that consideration could have been given to use of ballistic helmets for the officers as they approached the possibly armed subject in the vehicle, use of a car equipped with ballistic doors to provide rolling cover, viewing the car from other angles to get further intelligence, continued dialogue with Subject 1, questioning of Subject 2, and calling SWAT for advice on how to proceed. The BOPC would have preferred that Sergeant A had maintained a supervisory role and not become directly involved with the arrest team. Lastly, the BOPC noted that multiple officers were giving commands throughout the incident, risking confusion on the part of the subjects.

The BOPC found that Sergeant A and Officers A, B, C, D, E and F's tactics require formal training.

B. Drawing/Exhibiting/Holstering

The BOPC determined that Officers A, B, C, D, E, F, G, H, I and J had sufficient information to believe the situation might escalate to the point where deadly force may become necessary and found all officers' drawing and exhibition of a firearm to be in policy.

C. Use of Force

The BOPC noted that the Honda's back-up lights illuminated and the engine began racing, with the tires spinning briefly before gaining traction. Officer A observed his partner, Officer B, leaning halfway out of the open passenger door of the police car. The Honda suddenly gained traction and accelerated rearward toward his vulnerable

partner. Fearing that his partner was unable to get out of the way of the Honda, and believing the Honda would strike Officer B causing serious bodily injury or death, Officer A fired seven rounds at the area where the driver was presumed to be seated.

The BOPC noted that in the interim, Officer B had kicked open the passenger door of the police car and leaned out as his partner braked their unit to a stop behind the Honda. In his peripheral vision, he observed Officer A gripping the steering wheel and thought he may have shifted gears into reverse with the intention of backing up. Officer B was knocked off balance as the passenger door rocked back against his foot.

The BOPC noted that Officer B observed the Honda accelerating in reverse and feared he was at risk of being crushed if the suspect's car succeeded in backing over the right side of the police car. Off-balance, unable to get back inside the police car or move away, and in immediate defense of his life, Officer B drew his service pistol and fired seven rounds at the area where the driver was presumed to be seated. Officer B ceased firing when the Honda drove forward.

The BOPC noted that Officer C observed the Honda accelerating in reverse, toward the passenger side of Officer B's car. Believing Officer B was in immediate threat of being seriously injured or killed by the Honda, Officer C fired three rounds in an effort to incapacitate the driver.

The BOPC noted that even though Special Order No. 1, "Shooting At or From Moving Vehicles," was disseminated on February 16, 2005, Training Division had not completed the curriculum to train the Department at the time of this incident. Nevertheless, the BOPC determined that exigent circumstances existed and the immediate defense of life took precedence in this incident. At the moment the officers fired, they believed that Officer B was in imminent peril of being seriously injured by the Honda.

The BOPC found that Officers A, B and C reasonably believed that Subject 1's actions could result in serious bodily injury or death, and found their use of force to be in policy.

D. Other (Tactical Discharge of Beanbag Shotgun)

The BOPC noted that Officer C stepped out from cover, moved to a position near the middle of the street and fired three beanbag rounds at the Honda with the intent of breaking the windows to afford officers a view of the interior of the Honda. The BOPC specifically noted that at the time the beanbags were discharged, time was on the side of the officers and that improved planning and communications would have increased their tactical proficiency and safety.

The BOPC also noted that Officer C did not advise the other officers at the scene of his intention to discharge the beanbag rounds and that this lack of communication could have led officers to believe that live rounds were being fired and that a deadly threat existed. The BOPC further noted that that it was reasonable to deduce there was a driver in the Honda and that the beanbag round fired at the driver's window could

potentially have struck Subject 1 in the head. Lastly, the BOPC noted that the deployment of the rounds was not part of a broader tactical plan.

The BOPC determined that Officer C's tactical discharge of the beanbag shotgun requires formal training.