

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

OFFICER INVOLVED SHOOTING 040-10

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off()</u>	<u>Uniform-Yes(X) No()</u>
Hollywood	05/20/10		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	2 years 7 months

Reason for Police Contact

Officers responded to a report of a man with a gun and a woman screaming.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded (X)¹</u>	<u>Non-Hit ()</u>
Subject 1: Male, 42 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 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.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to either male or female employees.

The following incident was adjudicated by the BOPC on 05/17/10.

Incident Summary

Victim 1 was returning to her apartment, after shopping. As she approached her apartment, she was confronted by Subject 1, who was armed with a handgun. When Victim 1 saw the gun, she screamed and was pistol-whipped by Subject 1.

¹ Although Subject 1 was not wounded during this incident, a bystander (referred to as Victim 4 in this report) was mistakenly identified as a gunman and was shot and wounded.

Victims 2, 3 and 4 (two females and a male, respectively) responded to help and were themselves held at gunpoint by Subject 1. Subject 1 took the victims' cell phones so they could not call the police. Another resident of the apartment complex heard Victim 1 scream and heard mention of a man armed with a gun; however, he did not look out of his apartment. The resident then called the police.

Police Officers A and B responded to the call. As the officers made entry to the apartment complex, Officer A saw Police Sergeant A arrive in the street.

Note: According to Sergeant A, he arrived, saw a police vehicle on the street and parked behind it. Sergeant A entered the lobby of the apartment complex and did not see anybody there. Sergeant A was unsure where the officers had gone and began to look for them.

According to Officer B, he and Officer A could not find the stairs and elected to take the elevator to the first floor of the apartment complex. As they entered the elevator, the officers saw a second set of doors on the opposite side of the elevator.

When the elevator stopped at the first floor, the doors on the opposite side opened. Outside the elevator was a hallway running north/south. Officer A exited first, turning south into the hallway. Officer B covered the north hallway. According to Officer B, when he stepped off the elevator, he did not hear anything.

Note: According to Officer A, as soon as the officers stepped out of the elevator, he heard loud talking and arguing coming from south and east of the officers' location.

Note: North of the elevator was an apartment and a stairwell. South of the elevator were two apartments. Near one of the southern apartments was a hallway which ran east/west, forming a T-intersection with the hallway running north/south.

The officers moved south, toward the intersection. As they moved, Officer A led while Officer B covered the north hallway behind them. Officer B later described himself as being approximately three to four steps behind Officer A. Officer A believed Officer B was directly behind him. Although Officer A did not look back to see exactly where Officer B was, Officer A believed Officer B was directly behind him.

According to Officer A, he turned eastbound into the east/west hallway from the north/south hallway. After turning the corner, Officer A saw two males and two females in the hallway, adjacent to the doors of two apartments.

Note: The investigation determined a third female was also present.

Note: The doors to the apartments were set back into alcoves. The alcoves were approximately 20 inches deep.

Officer A saw Victim 1 partially in the alcove of one of the apartments. As described by Officer A, Victim 1 was on her knees and appeared to be pleading with one or both of the males. Subject 1 and Victim 4 were standing side-by-side near the alcove of one of the apartments, facing Victim 1, with their backs to the alcove.

Officer A told investigators he did not have a clear view of all the individuals in the hallway, so he ordered everyone, in English, to step out where he could see them, and to put their hands up. According to Officer A, they did not comply. Officer A repeated his command.

As described by Officer A, after the second command, both males stepped back into the alcove and Officer A lost sight of them. Officer A ordered both males to step out where he could see them. Neither male complied.

According to Officer A, he saw a muzzle flash and heard a gunshot come from the alcove where the males were located. Officer A observed that the muzzle flash was directed toward Victim 1, but Officer A could not tell who was firing.

After the shot was fired, Officer A pointed his gun in the direction of the alcove. According to Officer A, he did not fire at that time because he did not have a clear target. Victim 4 then stepped out of the alcove.

Note: Officer A made a statement to investigators indicating that Subject 1 stepped out of the alcove along with Victim 4. As such, Victim 4 would have been positioned to the west of Subject 1, in-between Officer A and Subject 1.

Officer A observed what he perceived to be Victim 4 holding a gun, which was pointed at Victim 1. Officer A, believing Victim 4 was the assailant, fired a round at Victim 4 and ordered him to put the gun down. After firing at Victim 4, Officer A saw the gun discharge and believed Victim 4 had fired at Victim 1 again. Officer A believed he (Officer A) may have fired a second round at Victim 4 at that time. As described by Officer A, Victim 4 then started to turn counterclockwise toward Officer A. Officer A perceived that he saw a handgun in Victim 4's right hand as Victim 4 turned, and saw Victim 4 begin to raise the gun in his (Officer A's) direction. Officer A fired two to three more times at Victim 4. Victim 4 then fell to the ground and, according to Officer A, the gun fell out of Victim 4's hand. Meanwhile, all of the female victims ran east in the hallway.

Note: Victims 1-4 and Subject 1 told investigators that Victim 4 never fired nor possessed a gun during the incident. All described Subject 1 as the lone gunman. Two bullets consistent with the caliber of weapon fired by Subject 1 were later noted in x-ray images of gunshot injuries Victim 1 sustained during this incident.

Note: Victim 4 told investigators that when Subject 1 fired at Victim 1, he (Victim 4) turned and took two steps in a southwest direction. Victim 4 said that his hands and arms were initially at his side as he turned, and that he clutched his chest after being shot.

Note: Subject 1 and Victim 4 were both six feet tall. Subject 1 weighed 160 pounds and Victim 4 weighed 230 pounds.

As described by Officer A, he re-deployed back toward the intersection of the hallways and ordered Subject 1, who, according to Officer A, was in now in the alcove, to come out of the alcove. According to Officer A, Subject 1 came out of the alcove and proned himself out on the floor.

According to Officer B, meanwhile, while he was still positioned in the north/south hallway, he heard Officer A yelling, "Let me see your hands," and, "Drop the..." Officer B then heard four gunshots. Officer B assumed the gunshots were fired by Officer A. Officer B looked around the corner, saw Officer A and saw gun smoke. Officer B came up on Officer A's right side and asked him, "What do you got?" Officer A replied, "The guy's got a gun. He just dropped the gun." Officer B asked whom Officer A was referring to. According to Officer B, Officer A replied, "The man with the brown shirt."

Note: Subject 1 was wearing a brown shirt. Victim 4 was wearing a white shirt with a red design on it.

According to Officer B, Officer A also told Officer B that he believed that he (Officer A) may have shot a female.

Note: Victim 2 was grazed by a bullet; however, it could not be determined whose gunfire wounded her.

As recounted by Officer B, he saw a person run away, around the corner at the eastern end of the east/west hallway. Officer B could not tell who it was and was concerned that a subject may have been trying to circle around in order to approach the officers from the rear. Officer B told Officer A to continue to cover the east/west hallway. Meanwhile, as described by Officer B, he re-holstered his weapon and grabbed the back of Officer A's gun-belt, guiding him backwards to a position of cover at the intersection of the hallways.

Note: An expended shell casing, discharged from Officer A's weapon, was later found in the north/south hallway, approximately 14 feet south of the east/west hallway. According to Officer B, he slipped on something under foot in the east/west hallway, as he prepared to guide Officer A back to cover. He believed the item he slipped on was a shell casing.

As he guided Officer A back, Officer B broadcast a request for help on his radio; however, he did not hear a response. Officer B believed his radio was not working properly, so he depressed the emergency button on the radio to re-broadcast.

Note: Officer B's broadcast was recorded. Approximately five seconds into the recording, a high amplitude sound can be heard. Relative to the timing of officer-involved shooting, the sound was recorded several seconds after all gunfire reported by the officers had ceased.

When investigators asked Officer B about the sound, Officer B told them he believed the sound was, "me, heavy breathing." Officer B further explained, "Yeah, because I'm frustrated with Communications [Division]."

The recording was sent out by the Department for independent expert analysis. The analysis determined the recorded sound was, "consistent with a very high amplitude transient signal within an indoor environment, such as a gunshot event." The analysis further reported the sound was not consistent with an individual coughing; breathing; yelling or screaming; or a door slamming; items hitting a wall; or clothing rubbing against the microphone of the officers' radios.

All witnesses and involved parties were asked about the number of shots fired during this incident. Several were asked about the sequence and or grouping of the shots. None specified hearing a single shot or other sound that would explain the sound captured on tape. The relevant accounts are as follows:

Victim 4 told investigators, via an interpreter, "Well in total they [sic] were about four [shots]." When investigators asked him if all the shots were continuous or if there were pauses between any of them, he said, "No they were continuous."

Subject 1 remembered firing two shots, but did not recall how many or in what sequence the officer fired.

Witness 1 told investigators he heard, "four or five, maybe six gunshots."

Witness 2 told investigators he heard four or five gunshots, "Very quick, together."

Witness 3 told investigators he heard six or seven gunshots. When investigators asked if the shots were fired all in one group, he said, "Yeah it was." Investigators asked him if those were the only shots he heard, he replied, "Yes."

Witness 4 told investigators, via an interpreter, “[...] and then the first set of gunshots started ringing. So she told him her son to close the door [...] Then the second round of gunshots went through. She did not count it again, but it was many.”

Witness 5 told investigators, “[...] and there were gunshots. I would say four or five of them, quite a series.”

Witness 6, via an interpreter, demonstrated she heard about three gunshots. When investigators asked her if they were fast like she demonstrated, she replied, “Like that [...] They were equal. They were equal.”

Victim 1 only remembered being shot twice and did not know how many rounds, or in what sequence, Officer A fired. She believed she heard more shots after being rescued and carried outside.

Note: The available evidence suggests that the sounds Victim 1 actually heard after her rescue was that of doors being kicked by assisting officers performing public safety searches.

Victim 2 told investigators, via an interpreter, that she heard many shots. She did not know how many but when investigators asked her if it was more than one or two, she replied, “Yeah, yeah, yeah.”

Victim 3 told investigators, via an interpreter, that Subject 1 shot Victim 1 many times, but she never saw the police shoot. She demonstrated the sequence verbally stating, “He -- tu...tu...tu...tu...tu...tu.” She went on to explain, “When -- when the -- the man with the gun was -- was shooting, he -- he was they were rapid -- rapid fire. And then later she heard separate shots, one shot then gap, then another. It wasn’t rapid fire.”

Sergeant A told investigators, “They [the gunshots] were pretty much together. I couldn’t tell if there’s any delay. It appeared that they were right there.” In a follow-up interview, Sergeant A was asked specifically if the shots he heard were quick and together or spaced apart. He told investigators, “They were right there.” Sergeant A told investigators he did not hear any other shots after that, nor did he hear any other loud noises.

When he still did not get a response on his radio, Officer B grabbed Officer A’s radio and continued his broadcast. According to Officer B, shortly after putting out the request for assistance, he saw an officer (Sergeant A) at the east end of the hallway.

Meanwhile, additional officers responded to Officer B’s request for help. All of the wounded were evacuated to the front of the apartment building and treated by paramedics. A search team was formed by Lieutenant A, who also responded to the

request for help and deployed a shotgun. Entry was forced into two apartments to search for additional victims and/or suspects. No one else was located.

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 4-1 vote, found the tactics of Officer A to warrant a Tactical Debrief. The BOPC unanimously found the tactics of Officer B, Sergeant A and Lieutenant A to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC unanimously found Officers A and B, Sergeant A and Lieutenant A's drawing and exhibiting to be in policy.

C. Lethal Use of Force

The BOPC, by a 3-2 vote, found Officer A's use of lethal force to be in policy.

Basis for Findings

A. Tactics

Debriefing Point No. 1: Tactical Planning/Requesting Backup

In this instance, Officers B and A had reason to believe, based on the comments of the radio call, that the suspect was *"armed with a gun."* Upon arrival, the officers did not observe any activity which would have heightened their belief that a crime of violence was in progress and elected to enter the apartment building prior to the arrival of Sergeant A. Although there are circumstances where it would be appropriate to request backup prior to entering an apartment complex, based on what the officers knew/observed at the time they made their decision to enter, such a request was not necessary.

In conclusion, the BOPC found that Officer B and A's actions did not "unjustifiably or substantially" deviate from approved Department tactical training. However, Tactical Planning/requesting sufficient personnel is to be addressed during the Tactical Debrief.

Debriefing Point No. 2: Tactical Communication/ Tactical Deployment

Upon initial review of this incident, there was concern about the officers' ability to render immediate aid to one another due to their positioning at the time of the officer-involved shooting (OIS). The investigation revealed that although they were not in line of sight, at the time of the OIS they were in relatively close proximity to one another (approximately 30 feet).

While Officer B was not in line-of-sight with his partner, based on his statement, he was in a position to render immediate aid, and did so following the OIS when he moved parallel to Officer A and guided him backward toward the cover of the north/south hallway.

In conclusion, the BOPC found that the officers' actions did not "*unjustifiably or substantially*" deviate from approved Department tactical training. Nevertheless, the issue of Tactical Communication/Tactical Deployment will be addressed during the Tactical Debrief.

Debriefing Point No. 3: Running with service pistol drawn

In this instance, after hearing the gunshots, Sergeant A drew his service pistol and ran to the back of the building and up a flight of stairs to the first floor. When asked at what point he drew his weapon, Sergeant A recalled, "*I heard what sounded like gunshots and then I started running towards the rear and I heard the officer needs help, shots fired radio call. I continued through the rear garage gate, saw a flight of stairs to my right. I ran up the flight of stairs and at the top - - just to the first level...*"

In conclusion, the BOPC found that Sergeant A's actions did not substantially deviate from approved Department tactical training. Nevertheless, Sergeant A is reminded there is a heightened concern for an unintentional discharge when running with a service pistol drawn. Running with a service pistol drawn will be addressed during the Tactical Debrief.

B. Drawing/Exhibiting

Officers A and B

In this instance, Officers A and B, along with Lieutenant A and Sergeant A, responded to a radio call reporting a subject armed with a gun. Based on the content of the radio call, Officers A and B had a reasonable belief that the situation could escalate to the level where the use of deadly force may be justified.

Sergeant A

Sergeant A arrived at the scene as Officers A and B entered the location. After hearing gunshots, Sergeant A drew his service pistol and ran to the back of the building and up the stairs to the first floor.

Based on the nature of the radio call and upon hearing the gunshots, it was reasonable for Sergeant A to believe that the situation could escalate to the level where the use of deadly force may be justified.

Lieutenant A

Upon his arrival, Lieutenant A removed his shotgun from the trunk of his patrol vehicle and entered the apartment building.

Based on the knowledge that Lieutenant A possessed at the time; a man with a gun radio call, shots fired, and an ongoing tactical situation, it was reasonable for Lieutenant A to believe that the situation could escalate to the level where the use of deadly force may be justified.

In conclusion, the BOPC found that Officers A and B, Sergeant A, and Lieutenant A's Drawing/Exhibiting to be in policy.

C. Lethal Use of Force

In this instance, Officer A observed four individuals in the hallway, one of which, Victim 1, was on her knees with her hands up. Unsure of the circumstances, Officer A ordered the group to put their hands up, but they failed to comply. Subject 1 and Victim 4 immediately stepped back into the alcove and out of Officer A's view. As Officer A ordered the males to come out with their hands up, he observed muzzle flash emanating from the alcove.

Moments later, Officer A perceived that he observed Victim 4 emerge from the alcove with a handgun in his right hand. Fearing for his life and the lives of the other individuals in the hallway, Officer A fired one round at Victim 4. Officer A recalled, "I saw the suspect [Victim 4] walk out with the gun in his hand, pointing it at the victim. As I saw that, I shot one round at the suspect and ordered him to put his gun down."

Officer A believed that Victim 4 then fired again at Victim 1. According to Officer A, Victim 4 then turned counter-clockwise toward him. Fearing for his life and the life of Victim 1, Officer A fired four additional rounds at Victim 4 who fell to the ground. Officer A recalled, "To protect myself and to protect the victim, I shot again. I shot numerous times at the suspect. As the suspect then fell to the ground the gun fell out of his hand and onto the ground."

Shortly after Victim 4 fell to the ground, Subject 1 emerged from the alcove with his hands up and placed himself in a prone position.

Note: Though Officer A identified Victim 4 as the suspect who shot Victim 1, the investigation revealed that Subject 1 was actually the person who was armed with the gun and who shot Victim 1. Subject 1 and Victim 4 are both six feet tall but Subject 1 weighs 160 pounds and Victim 4 weighs 230 pounds. At the time of the OIS, Victim 4 was standing directly beside Subject 1 and in-between Subject 1 and Officer A. The BOPC considered that, due to the positioning of Victim 4 relative to Subject 1, Officer A perceived that Victim 4 was the one holding the gun and shooting at Victim 1.

The BOPC concluded that Officer A reacted based on his reasonable perception that Victim 4 was armed when he fired his service pistol to protect himself and others from the imminent threat of death or serious bodily injury. The decision to use lethal force was objectively reasonable in that an officer with similar training and experience would have reasonably perceived Victim 4's actions to be life threatening.

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