

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

OFFICER-INVOLVED SHOOTING – 079-07

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Pacific	08/02/07		

Officer(s) Involved in Use of Force	Length of Service
Officer A	1 year, 10 months

Reason for Police Contact

Officer A responded to a radio call of a group of drunken males causing a disturbance.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
Subject 1: Male, 28 years of age.			

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 (“LAPD or 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 July 15, 2008.

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 male or female employees.

Incident Summary

Officer A was assigned to work as a one-officer unit and was deployed in a police vehicle. Officer A received a broadcast from Communications Division (CD) stating, “Any Pacific unit to handle a timed out...390 Group [address].”¹ Twenty seconds later, Officer A broadcast that he was at the location.

¹ The term “390 Group” refers to a drunken group.

Note: According to Witness A, early morning he was awakened by individuals talking loudly in the street. He observed two individuals on the sidewalk standing by a dark-colored, two-door, Sport Utility Vehicle (SUV) drinking and observed one of the males urinate in the street. He called the non-emergency line to report his observations. After several minutes, Witness A observed the individuals enter the SUV. Concerned that they would drive off while intoxicated, he called the non-emergency line again and provided the vehicle's license plate number.

Officer A drove around and did not observe anyone drinking on the sidewalk. Officer A negotiated several U-turns up and down the street and was finally flagged down by Witness A. Officer A exited his police vehicle and made contact with Witness A who informed him that he had called about the males. Witness A directed Officer A to an SUV that was parked on the east side of the street, south of their location, with a bicycle on the roof. Witness A indicated that the males might be sleeping inside the vehicle.

Officer A returned to his police vehicle, drove past the SUV, and did not observe any occupants inside. Officer A negotiated a U-turn with the intention of viewing the rear license plate. Officer A attempted to look through the rear windshield of the SUV; however, his view was obstructed by an unknown object. Officer A drove past it and negotiated a U-turn so he could approach Subject 1's vehicle from the front side. Officer A positioned his vehicle on the street facing south, approximately 46 feet away from the SUV, and utilized his driver's side spotlight to illuminate the vehicle. Officer A then exited his vehicle, walked over to the east sidewalk, and approached the SUV.

When he reached the SUV, Officer A illuminated the passenger compartment with his flashlight. Officer A observed a male, subsequently identified as Subject 1, lying in the rear passenger seat with his feet facing east toward the sidewalk and his head facing west. Subject 1 had his eyes closed and he held a can of beer, which was resting on his chest, with both hands. Officer A then observed what appeared to be the barrel of a rifle leaning against the passenger-side doorframe of the vehicle, with the barrel pointing upward.

Officer A retreated to his police vehicle, drove it back approximately 10 feet, and broadcast, "Show me a back up to my location, I got possible armed [subject], he's passed out. I need more units to make an approach." Officer A ran the SUV's license plate over the air and requested an air unit to respond to his location. Officer A then deployed his Department shotgun, crouched behind his vehicle door frame, and pointed the shotgun toward the SUV while awaiting the arrival of responding units.

Shortly thereafter, Officers B and C broadcast their arrival at the scene. Officer B parked his police vehicle to the right of Officer A's vehicle. Officers B and C exited their vehicle, drew their pistols, and took cover behind their respective doors. Officer A informed Officer B that Subject 1 was passed out in the SUV and had a rifle.

Officer A broadcast, "For any units arriving, there [were] other [subjects] with this [subject], they're no longer in sight, have units keep an eye in the area."

Officers D, partnered with Officer E, and Officer F, partnered with Officer G, arrived at the scene, exited their respective vehicles, and approached Officers A, B, and C's location. Officer F walked over to Officer C. Officer C directed Officer F's attention to the SUV and informed him that there were outstanding subjects. Officers D, E, and G made contact with Officer A who pointed out the SUV to them. After being briefed of the situation, the responding officers unholstered their pistols.

Officer E returned to his vehicle and retrieved his shotgun. Officers D and E then repositioned themselves behind a building where they were able to maintain a view of the SUV and look around for potential outstanding subjects.

Meanwhile, Officer B asked Officer A what he wanted to do. Officer A indicated that since Subject 1 was passed out, he would not come out easily. Officer B asked Officer A if he wanted to advance. The officers discussed approaching the SUV from the east sidewalk. Officer A then asked Officer B to assemble a contact team.

Officer B informed Officers C and F that they were going to approach the SUV. From their position of cover behind Officer C's right passenger door, Officers C and F moved to Officers A, B, and G's location. Officer G was assigned to be the rear guard. His duties were to remain by the police vehicle and watch for outstanding subjects. He was also directed to prevent pedestrian traffic from entering the area. After the contact team was assembled, the officers moved to the east sidewalk and began their approach toward the SUV.

As the contact team got closer to the SUV, Officer A repeatedly stated, "There's a gun in the car. There's a gun in the car." Once the officers reached the SUV, Officer A positioned himself by the front passenger window and pointed his shotgun in a southwest direction. Officer B was positioned slightly to the right of Officer A and pointed his flashlight and pistol in a southwest direction. Officer C was positioned closer to the front of the SUV, to the right of Officer B. Officer F moved past Officer A and positioned himself by the rear passenger window on Officer A's left side, with his pistol pointed west.

The officers observed Subject 1 still sleeping in the backseat of the vehicle. Officer A attempted to wake Subject 1 up and began yelling in English, "Put your hands up. Hands up," and in Spanish, "Manos arriba."² Officer B also gave verbal commands in English and Spanish and stated, "Hey, despeirta. Wake up."³ Subject 1 did not respond to any of the officers' verbal commands and his eyes remained closed.

² "Manos arriba" is Spanish for "hands up."

³ "Despeirta" is the Spanish word for "wake up."

Officer A directed one of the officers to open the door. Officer B moved forward and tried the door handle, using his left hand while holding his pistol with his right hand; however, the door was locked. Officer B knocked on the window using his flashlight but still Subject 1 did not respond. Officer B stepped back between Officers A and F and illuminated the inside of vehicle with his flashlight. Officer A observed the barrel of the gun leaning on the door frame and stated, "I see it. It's definitely a rifle."

Officer B told the officers to "stay their ground" and moved around the front of the SUV toward the driver's side door. Officer B observed approximately five inches of the top of the barrel pointing straight up and notified the other officers of his observation. Officer B then pulled on the driver's side door handle; however, it too was locked. Officer B tapped the driver's side window with his flashlight. On the third tap, Officer B said, "Wake up."

Meanwhile, Subject 1 opened his eyes while he was lying down, stared at the officers, and did not respond to anything. Officer A told Subject 1 they were police officers. Subject 1 continued to stare at the officers and eventually sat up. According to Officer A, the officers instructed him in English and Spanish to put his hands up; however, Subject 1 did not comply and reached forward with both hands, in a cupping motion, to grab the gun. Believing Subject 1 was about to shoot the officers, Officer A discharged one round from his shotgun at Subject 1.

Note: According to Officer B, as he was tapping on the driver's side window of the SUV, he heard Officer A yelling, "Let me see your hands." Subject 1 then sat up and lunged forward in the direction where the barrel was and, almost simultaneously, Officer B then heard one gunshot. Officer B redeployed back to the sidewalk to avoid a crossfire.

Note: According to Officer C, "They ordered him out. He didn't come out. And then I hear a shotgun, and I see the glass shatter." From his angle, Officer C was unable to see Subject 1's hands.

Note: According to Officer F, Subject 1 sat up but did not immediately place his hands up. Subject 1 appeared unsure what to do and lifted his hands up and down. Officer F recalled an officer yelling, "Keep your hands up. Keep your hands up," as Subject 1 began to lean forward with his hands coming down. Officer F heard an officer say, "Don't do that. Keep your hands up. Keep your hands up," and then heard a gunshot.

Note: According to Subject 1, the officers were giving him commands in English, which he did not understand because he only speaks Spanish. After he sat up, he moved the front passenger seat forward, leaned forward, and extended his right arm to unlock the front passenger door. As he did this, he was shot.

Subject 1 sat back in the middle of the rear passenger seat, moved his body around slightly, and placed his hands up. Officer A could see that Subject 1 was not going back toward the rifle. Officers A, C, and F moved back and attempted to find cover while continuing to point their firearms at Subject 1. Officer A continued to direct Subject 1 to keep his hands up as he moved backward on the sidewalk and backed into a hedge. Officer A then walked up a set of steps at the break of the hedge to keep Officer F out of his line of fire. Officer C broadcast, "Shots fired at our location."

From his position approximately 20 to 30 feet away, Officer D heard the gunshot and then heard Officer C's "shots fired" broadcast. Officer D could see Subject 1's upper torso and observed blood coming down from his hand. Officer D broadcast, "We are going to need a Rescue Ambulance (RA) respond and to stand by."

Meanwhile, the air unit had arrived over the scene and was monitoring the incident. Additional responding units had arrived in the vicinity, including Sergeant A and Officers H, I, J, K, and L.

According to Sergeant A, he arrived at scene and had been there approximately 30 to 35 seconds when he observed Officer A and another officer with their shotguns drawn at the SUV. As Sergeant A approached their location, he heard an officer yell "crossfire" and he ducked down. Approximately eight to nine seconds later, he heard a gunshot. Sergeant A crouched down and continued to move toward the location and observed Officer B on the sidewalk, approximately 50 feet in front of him. Sergeant A called Officer B back to him. Sergeant A asked Officer B who fired the round. Officer B stated, "I believe Officer A."

Sergeant A heard the officers by the SUV yelling, "Get out of the car. Get out of the car." Sergeant A observed that Subject 1 was not complying with the officers' commands and believed that Subject 1 was either drunk or simply did not understand the orders being given. With the knowledge that the majority of the local community residents were Hispanic, Sergeant A directed Officer B to return to his police vehicle and order Subject 1 out in Spanish.

Note: According to Officer B, he attempted to use his vehicle's Public Address (PA) system, but the PA System did not work.

Meanwhile, Officers H and L observed a group of officers by the SUV and began to approach on foot. Officer H heard the officers ordering Subject 1 to put his hands up numerous times and then heard a gunshot. Officers H and L positioned themselves behind a set of stairs for cover approximately ten feet away from the SUV. The officers by the SUV continued to direct Subject 1 to put his hands up. Officer H observed Subject 1 was not paying any attention to what the officers were saying, which caused him to believe that Subject 1 was a Spanish speaker. Officer H began giving verbal commands and said, "Put your hands up," numerous times in Spanish. Subject 1 eventually stuck his head and hands out of the front passenger window and looked at

Officer H. Officer H directed Subject 1 to reach out and open the front passenger door from the outside. Subject 1 complied, opened the door from the outside, and got out of the car.

Officer H then ordered Subject 1 to walk toward the middle of the street. At this point, Subject 1 walked behind the SUV, out of Officer H's sight, and Officer B took over giving verbal commands from his police vehicle.

Officer B observed Subject 1 walk around from behind the SUV and began giving him verbal commands in Spanish. Officer B directed Subject 1 to a prone position on the street and Subject 1 complied. Officer D holstered his pistol, donned a pair of latex gloves, moved up toward the SUV, and informed the officers nearby that he would take Subject 1 into custody. Officers C and F followed Officer D and covered Subject 1.

Officer D approached Subject 1, placed his knee on Subject 1's back, and placed a handcuff on Subject 1's left wrist. When Officer D grabbed Subject 1's right arm, he noticed that it was stiff and had limited mobility. Officer D requested a second pair of handcuffs to provide Subject 1 with greater mobility and to prevent further injury and completed the handcuffing process.

Officer D stood Subject 1 up, conducted a pat-down search, and then walked Subject 1 over to the location where the RA had been directed to respond. The RA arrived at scene and treated Subject 1 for a through and through gunshot wound to the right forearm. Subject 1 was then transported to the hospital.

Note: During the Force Investigation Division's (FID) investigation, a Daisy toy rifle was recovered on the floorboard behind the front passenger seat of the SUV.

Note: During his interview with FID detectives, Subject 1 indicated that the handcuffs were "real tight" and he sustained abrasions on his right wrist. Subject 1 also indicated that he told an officer he was hurting him.

Officer D stated that after he stood Subject 1 up, he checked to make sure the handcuffs were not on too tight or too loose. Officer D did not double-lock the handcuffs.

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 Officers A, B, C, D, F, and G's tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC found Officers A, B, C, D, F, and G's drawing to be in policy.

C. Lethal Use of Force

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

Basis for Findings

A. Tactics

The BOPC noted that Officer A appropriately identified the threat, redeployed to a position of cover, and requested additional resources. Subject 1 was asleep in his vehicle and the circumstances surrounding the incident did not indicate an exigent situation. It would have been safer for the officers to slow down and wait for a supervisor to arrive at the location. A supervisor, in conjunction with the officers, could have developed a tactical plan to deal with the situation at hand. In addition, the officers should have utilized the PA system in an attempt to call Subject 1 out of the vehicle from a safe distance. Knowing that Subject 1 was armed, in a position of advantage and not responding to commands, it should have been treated as a barricaded suspect. Time was on the officers' side. At this point, the officers could have requested an officer equipped with an Urban Police Rifle to respond, blocked off nearby streets, and called the Special Weapons and Tactics unit. This would have provided optimum safety for the officers involved.

Although the officers formed a contact team, their plan did not include individual assignments for each officer or detail their actions when they approached the vehicle. Discussing tactics in depth prior to the approach may have prevented confusion on the part of the involved officers and Subject 1.

The contact team approached the vehicle and issued several commands; however, Subject 1 did not open his eyes. Officer B walked around to the opposite side of the vehicle and tapped on the window in an attempt to wake Subject 1. By walking around the vehicle, Officer B placed himself in a crossfire position from the other officers. Officer B should have stayed with the contact team, thereby reducing the possibility of an officer being injured during the situation.

The BOPC noted that Officer D appropriately utilized two handcuffs when taking Subject 1 into custody; however, he did not double lock the handcuffs. Double locking the handcuffs prevents unnecessary injuries to the wrists and from accidental tightening.

The BOPC determined that Officers A, B, C, D, F, and G will benefit from additional tactical training. The BOPC found Officers A, B, C, D, F, and G's tactics to warrant formal training.

B. Drawing/Exhibition/Holstering

The BOPC noted that Officer A approached the vehicle and observed Subject 1 asleep in the rear seat with a rifle leaning against the passenger side doorframe with the barrel pointing up. Believing the situation could escalate to the point where deadly force would be necessary, Officer A deployed his shotgun.

Officers B, C, D, F, and G were alerted that Subject 1 was armed with a rifle inside a vehicle. Believing the situation could escalate to the point where deadly force would be necessary, Officers B, C, D, F, and G drew their service pistols.

The BOPC determined that Officers A, B, C, D, F, and G had sufficient information to believe that the situation had escalated to the point where deadly force may become necessary.

The BOPC found Officers A, B, C, D, F, and G's drawing to be in policy.

C. Use of Force

The BOPC noted that Subject 1 ignored several officers' verbal commands and reached toward the rifle with both hands. Believing Subject 1 was about to point the rifle at him and fire, Officer A fired one round in a southwesterly direction from an approximate distance of six feet at Subject 1 through the SUV's closed window.

The BOPC determined that Officer A reasonably believed that Subject 1 presented an immediate threat of serious bodily injury or death. The BOPC found Officers A's lethal use of force to be in policy.