

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

CATEGORICAL USE OF FORCE INVOLVING A POLICE VEHICLE – 091-06

| <u>Division</u> | <u>Date</u> | <u>Duty-On(X) Off()</u> | <u>Uniform-Yes(X) No()</u> |
|------------------------|--------------------|--------------------------------|-----------------------------------|
| Newton | 10/13/2006 | | |

| <u>Involved Officer(s)</u> | <u>Length of Service</u> |
|-----------------------------------|---------------------------------|
| Officer A | 8 years, 11 months |
| Officer B | 11 years, 4 months |

Reason for Police Contact

Officers A and B observed what they believed was a robbery in progress. They observed the suspect ride away on a bicycle and commanded him to stop. The officers then observed the suspect carrying what they believed to be a gun and intentionally struck him with the front portion of their police vehicle.

| <u>Subject(s)</u> | <u>Deceased ()</u> | <u>Wounded (X)</u> | <u>Non-Hit ()</u> |
|-----------------------------------|---------------------------|---------------------------|--------------------------|
| Subject 1: Male, 30 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 09/18/07.

Incident Summary

Officers A and B observed a truck stopped in the roadway. Officer A monitored the truck and formed the opinion that an individual next to the truck (Subject 1) was attempting to rob the driver of the truck. Officer A advised his partner of his observations and told him to turn their police vehicle around. Officer B then negotiated a U-turn. The officers then observed Subject 1 riding a bicycle on the sidewalk.

The officers used their vehicle spotlights to illuminate Subject 1. Officer A commanded Subject 1 to stop. Officer A observed Subject 1 look in their direction several times and attempt to conceal an object with a blue rag. Officer A further indicated that Subject 1 looked back in their direction while grabbing his waist with his right hand as if attempting to retrieve a handgun.

Officer B also observed Subject 1 look in the officers' direction several times and drop a sweater or sweatshirt at the corner. Officer B observed that Subject 1 was in possession of a utility tool belt.

Subject 1 did not comply with the commands to stop and turned onto a side street. Officer A observed what appeared to him to be the handle of a handgun in Subject 1's waistband.

As the officer continued to follow, Subject 1 slowed down and grabbed his waistband, prompting Officer A to open his door, exit the vehicle with his gun drawn, and tell Subject 1 to get off of the bike and to place his hands up. When Subject 1 again sped away on his bicycle, Officer A holstered his service pistol and closed his door.

Subject 1 turned his body and Officer A saw an object he believed to be a handgun. Officer A informed his partner that Subject 1 had a gun. Officer B then turned his patrol car toward Subject 1 and intentionally struck him with the front portion of the vehicle.

As a result of the impact, Subject 1 was pinned between the front end of the police vehicle and a fence, which partially collapsed as a result of the impact. The impact of the collision also bent the wheels of Subject 1's bike.

Following the collision, and believing that Subject 1 was armed, Officer A immediately exited the patrol car, and, with his service pistol drawn, ordered Subject 1 to raise his hands.

Pinned between the vehicle and the fence, Subject 1 struggled to free himself and motioned toward his waist several times. Neither officer observed a weapon in Subject 1's possession at this time. Moments later, Subject 1 freed himself and ran, prompting Officer B to follow him on foot. Officer B then tackled Subject 1 around his upper torso and a struggle ensued between the two. At one point during the struggle, Subject 1 lifted Officer B off of the ground and carried him a distance of three to four feet before Officer A arrived to render assistance.

During the course of the struggle, Officer B placed his bodyweight on Subject 1's back and torso and applied firm grips to both of his arms. Officer B also delivered six to ten elbow strikes to Subject 1's torso, neck and head area. Officer A placed bodyweight upon Subject 1's upper body and neck using his knee. Officer A also utilized firm grips to Subject 1's hands, wrists and right arm. Officer A delivered two to three knee strikes to Subject 1's head and upper torso, and a punch to his face, which may not have been a direct strike. In addition, Officer A delivered approximately two elbow strikes to Subject 1's upper body and approximately two kicks to his groin area; however the

strikes to the groin area did not connect. As the struggle ensued, Officer A felt something hard on Subject 1's person.

Note: A wrench was subsequently recovered from the location where Subject 1 was placed under arrest.

As the officers sought to control him, Subject 1 swung his arms and did not comply with the officers' verbal commands to stop resisting.

The officers' combined use of their bodyweight enabled them to overcome Subject 1's resistance and place him under arrest without further incident. A search of Subject 1's person revealed that he was not armed. Then, Officer B contacted Communications Divisions (CD), advised it of their location and requested a supervisor. Officer B also subsequently requested a Rescue Ambulance (RA).

Once Subject 1 was secured in the police vehicle, the officers noted that a group of individuals had formed and was upset over the manner in which Subject 1 had been arrested. Wanting to secure evidence and ensure that it was not compromised by the group, Officer B left his partner and recovered items of evidence.

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 made the following findings.

A. Tactics

The BOPC unanimously found Officers A and B's tactics to warrant administrative disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC unanimously found Officer A's drawing to be in policy.

C. Non-Lethal Use of Force

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

D. Use of Force

By a 3-to-1 vote, the BOPC found Officer B's use of deadly force to be out of policy, warranting administrative disapproval.

Basis for Findings

A. Tactics

The BOPC noted that Officers A and B observed what they believed to be a robbery. There were several opportunities for Officers A and B to follow Subject 1 at a safe distance and request additional units and an Air Unit. While continuing to follow Subject 1, Officers A and B ordered him to stop, which he refused. The officers believed Subject 1 to be in possession of a gun, and came within close proximity of him on several occasions. These tactics compromised their safety and reduced their ability to effectively engage Subject 1. The BOPC was critical of Officers A and B's failure to immediately advise CD of their observations and request the necessary resources to apprehend Subject 1.

Officers A and B did not advise CD of their location or activities until after Subject 1 was in custody. It is vitally important for officers to advise CD of their location and activities to ensure timely response of additional resources. A more effective use of available resources could have proven beneficial in the apprehension of Subject 1.

Officers A and B followed Subject 1 as he rode his bicycle on the sidewalk. Officer B, fearing that Subject 1 would point a firearm at the officers, drove the police vehicle at him, striking him and pinning him between the vehicle and a fence. The police vehicle, driven by Officer B, struck Subject 1 and the fence with such force that the fence partially collapsed. This course of action risked causing the police car's airbags to deploy, which could have temporarily incapacitated the officers and inhibited their ability to appropriately respond to any threat Subject 1 could have presented.

After Subject 1 freed himself, Officers A and B pursued him on foot. The officers did not indicate that they considered, or attempted, a foot pursuit broadcast at this time. This lack of communication led to a lengthy and violent struggle with Subject 1 without the benefit of additional resources responding to assist.

The BOPC was critical of the decision to physically engage Subject 1 with the potential that he was still in possession of a handgun. It would have been more appropriate to engage in a foot pursuit for monitoring purposes rather than with the intent to apprehend.

After pursuing Subject 1 a short distance on foot, Officer B tackled him to the ground with the assistance of Officer A. It is preferable to push suspects to the ground during a foot pursuit, instead of tackling them, so as to avoid injury to the involved officer.

Finally, the BOPC noted that Officer B did not have a baton on his person when exiting from the police vehicle to pursue Subject 1 on foot. Officer B also dropped his flashlight, which he previously maintained between his legs, onto the ground when he exited the police vehicle to pursue Subject 1.

The BOPC found Officers A and B's tactics to warrant administrative disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC noted that Officer A drew his service pistol on two separate occasions during this incident. Officers A and B followed Subject 1 as he rode his bicycle. Subject 1 slowed his speed on the bicycle and grabbed at his waistband area with his right hand. Officer B slowed and then stopped the police vehicle in response to Subject 1's actions. Fearing that Subject 1 was about to engage the officers in gunfire, Officer A drew his service pistol while in the police vehicle with the passenger side door open.

After Officer B pinned Subject 1 between the police vehicle and the fence, Subject 1 continued to reach toward his waistband area, even after he was ordered to place his hands up. Officer A, while still seated inside the police vehicle with the door open, again drew his service pistol, fearing that Subject 1 was about to fire upon them.

The BOPC determined that Officer A had sufficient information to believe that the situation might escalate to the point where deadly force may become necessary.

The BOPC found Officer A's drawing to be in policy.

C. Non-Lethal Use of Force

The BOPC noted that, after Subject 1 freed himself from between the police vehicle and fence, he ran on the sidewalk. Officer B tackled Subject 1 and a ground struggle ensued. The incident ultimately resulted in a violent physical struggle on the ground in a concerted effort to detain Subject 1.

Officer B used bodyweight on Subject 1's back and torso, and firm grips to both arms during the struggle. Officer B also delivered six to ten elbow strikes to Subject 1's torso, neck and head area.

Officer A used bodyweight upon Subject 1's upper body and back of his neck with his knee. Officer A also utilized firm grips to Subject 1's hands, wrists and right arm. Officer A delivered two to three knee strikes to Subject 1's head and upper torso, and a punch to his face, which may not have been a direct strike. In addition, Officer A delivered approximately two elbow strikes to Subject 1's upper body and approximately two kicks to his groin area.

The BOPC noted that during the efforts to detain Subject 1, both Officer A and B struck areas not designated as primary target areas. This portion of the incident was recognized as a violent struggle to detain an aggressive and possibly armed subject.

While it was objectively reasonable for Officers A and B to utilize strikes that were not purposefully delivered to primary target areas during this violent struggle with a potentially armed suspect, these force options were used as a result of deficient decision making leading up to the violent struggle itself.

The use of knee strikes to Subject 1's head may have presented an undue risk of serious injury. The head is not a primary target for knee strikes, and such strikes are generally disfavored as a means to cause a suspect to submit to arrest or to stop an offensive action.

The BOPC determined that Officers A and B reasonably believed that Subject 1 presented an immediate threat of bodily harm.

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

D. Use of Force

The BOPC noted that, as Subject 1 continued to ride his bicycle, Officer A advised Officer B that Subject 1 had a gun. Subject 1 continued to reach toward his waistband area and Officer B believed he needed to be stopped immediately to prevent him from raising and firing what he believed was a handgun inside of his waistband area.

Department policy provides that, "An officer is authorized to use deadly force when it reasonably appears necessary to protect himself or others from an immediate threat of death or serious bodily injury." Further, policy requires that deadly force "shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable."

In this case, Officer B indicated that Subject 1 had his hand in his waist in a pistol grip. Officer B saw something that looked to him like a pistol. Officer A also saw a gun in Subject 1's possession and yelled, "gun!" As soon as Officer B heard his partner's alert, he made the decision to drive the patrol car into the suspect to prevent any further action. Neither officer observed Subject 1 draw a weapon.

While Officer B's belief that Subject 1 was armed was reasonable, the manner in which Officer B responded to that potential threat was not. Deadly force is an option of last resort than can only be utilized when an officer reasonably believes that they face an *immediate* threat of death or serious bodily injury. In this case, the subject's actions did not support a reasonable belief that he was about to launch a deadly attack on the officers. Further, other options were available to the officers. These included Officer B drawing his service pistol while still seated inside of the patrol car or stopping the patrol car, exiting, and drawing his service pistol to confront the perceived deadly threat.

The BOPC determined that it would have been appropriate for Officer B to stop and exit the vehicle, and to point his pistol toward Subject 1, continually assessing the situation as he did so. This course of action would have been consistent with the actions officers

routinely take when they confront subjects who may be armed. Such action could have facilitated Officer B defending himself, had Subject 1 gone on to present to an immediate deadly threat, but would not have necessitated that deadly force be employed. As such, the BOPC determined that Officer B did not exhaust all reasonable alternatives, or that the use of such alternatives was impracticable, before he resorted to the use of deadly force.

By a 3-to-1 vote, the BOPC found Officer B's use of deadly force to be out of policy, warranting administrative disapproval.