

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

OFFICER-INVOLVED SHOOTING – 092-06

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off()</u>	<u>Uniform-Yes() No(X)</u>
Rampart	10/15/2006		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer A	8 years, 11 months
Officer B	1 year, 7 months

Reason for Police Contact

Officers A and B, in plain-clothes and driving an unmarked vehicle, observed Subjects 1 and 2 walking adjacent to parked vehicles and slowed their vehicle to monitor them. Subject 1 then used a derogatory term, displayed a gang hand sign, drew a gun from his waistband and pointed it at the officers' vehicle. Officers A and B fired several rounds in response.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (X)</u>
Subject 1: Male, 25 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.

The following incident was adjudicated by the BOPC on 08/07/07.

Incident Summary

Officers A and B were engaged in a crime suppression detail. The officers were dressed in plain clothes and were driving a plain vehicle. The detail also included Sergeant A and Officers C and D, who were wearing uniforms and driving marked police vehicles.

Officers A and B observed two males, Subjects 1 and 2, walking on the sidewalk. The officers noticed that although both Subjects 1 and 2 were walking together, they were several feet apart and walked adjacent to the vehicles parked at the curb. Officer B believed both were possibly Burglary from Motor Vehicle (BFMV) suspects. As the officers neared Subjects 1 and 2, Officer A said he heard Subject 1 use a derogatory Spanish-language slang term referring to the police.

Subject 1's statement caused Officer A to believe that Subjects 1 and 2 knew he and Officer B were the police. Officer A then took his foot off of the accelerator causing the officers' vehicle to slow down. As the officers' vehicle passed the suspects, Officer A saw that both Subjects 1 and 2 had their hands in their pockets. Officer A continued to observe Subjects 1 and 2 using the vehicle's side mirror. Officer A alerted Officer B to the comments made by Subject 1, and Officer B turned slightly to look over his shoulder in order to watch Subjects 1 and 2.

Officer A then slowed to a stop as he approached the red light at an intersection. Subjects 1 and 2 continued walking. Subject 1 yelled out to Officers A and B, "Where you from?"

Upon hearing this, Officer A unholstered his pistol and placed it against his body, near his lap. Simultaneously, Officer A saw a vehicle stop behind the officers' vehicle. Officer A turned and looked back in the direction of Subjects 1 and 2 and observed Subject 1 displaying a gang sign with his hand in the direction of the vehicle behind them.

Subject 2 then yelled, "Do it now." Officer A then saw Subject 1 step into the roadway, raise his shirt with his hand, remove a handgun from his waistband and point it at the officers. Officer A alerted Officer B to the presence of the gun.

Meanwhile, Officer B unholstered his pistol, turned his body toward Subject 1, positioned his pistol between the driver and passenger seats, and pointed it in the direction of Subject 1. Simultaneously, Officer A raised his pistol and extended it out the driver's side door in the direction of Subject 1.

According to Officer A, Subject 1 then fired two to three rounds at he and Officer B. At the same time, Officer A fired two to three rounds at Subject 1 and accelerated the vehicle through the intersection. Officer A saw Subject 1 continue to fire his weapon at them.

Officer B stated he saw a muzzle flash and fired two rounds through the police vehicle's rear windshield in the direction of Subject 1.

Note: No firearm, expended casings or ballistic impacts were located by investigators in connection with Subject 1's alleged gunfire. An inoperable BB gun was later recovered.

Officer A fired six to seven shots at Subject 1 from the same shooting position, then reloaded his pistol. Officer B fired an additional seven to eight rounds through the rear windshield at Subject 1 from the same position.

Officer A continued driving through traffic-calming barricades placed in the middle of the roadway. Officer A used his radio to broadcast a help call and their location to Communications Division (CD).

Believing it was safe to do so, Officer A made a U-turn, drove a short distance, and stopped the vehicle. After coming to a stop, Officer B exited the vehicle. Because Officer A's door was jammed, he climbed over the center console and exited the passenger side of the vehicle to join Officer B. Upon exiting their police vehicle, the officers noticed that Subjects 1 and 2 had fled the area.

Officer A broadcast a request to CD that a perimeter be established. Subjects 1 and 2 were subsequently apprehended.

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 and B's tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC found Officers A and B's drawing to be in policy.

C. Use of Force

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

Basis for Findings

A. Tactics

The BOPC noted that the personnel involved in this incident were working a specified crime suppression detail that consisted of a supervisor and a plainclothes and uniform contingency.

The BOPC noted that the assigned personnel discussed tactical considerations related to the operation; however, a written "game plan" was not completed. Although not mandated, due to the involvement of plainclothes personnel and the pre-planned nature of the operation, the BOPC would have preferred that a "game plan" had been completed, submitted to and approved by the area commanding officer.

As a result of this incident, the area commanding officer advised that a divisional policy has been implemented that requires that a "game plan" be approved by the commanding officer prior to the initiation of plain clothes operation.

Officers A and B were approaching an intersection when they noticed Subjects 1 and 2 on the sidewalk. The officers noted the two individuals were walking apart from one another and adjacent to several parked cars. Officer B believed the two individuals could be BFMV suspects.

Upon observing Subjects 1 and 2, Officer A took his foot off the accelerator, causing the police vehicle to slow down. Officer A then heard the suspects make a derogatory comment regarding the police in Spanish and alerted Officer B.

The BOPC believed that, upon making these observations, Officer A should have maintained his driving speed. By slowing down, Officer A risked unduly alerting the males to the officers' presence and/or precipitating an adverse reaction from them. Reduced speed is more consistent with the tactics used by officers driving a marked police vehicle, versus those attempting to operate inconspicuously. This, coupled with the officers' use of a plain vehicle and plain clothes, could have contributed to the officers being mistaken for rival gang members.

After the officers passed Subjects 1 and 2, Officer B observed Subject 1 reach toward his waistband. Officer B, who was seated in the passenger seat, turned his body and monitored Subjects 1 and 2, as did Officer A through his side-view mirror.

After the officers passed Subjects 1 and 2, Officer A slowed down and stopped for a red light at the intersection. Subjects 1 and 2 continued to walk and, before they reached the rear of the police vehicle, Subject 1 yelled out, "Where you from?" The officers did not respond but continued to watch the two individuals while waiting at the red light.

Note: The term, “Where you from” is gang terminology used to challenge the other party to determine which gang they are from and often can be followed by an aggressive act.

As this was occurring, Officer A looked through his rear-view mirror and noticed a vehicle stop behind their vehicle. Officer A looked back toward Subjects 1 and 2 and saw that Subject 1 was displaying a gang sign in the direction of the vehicle behind them. Officer A then observed Subject 1 lift up his shirt, remove a handgun from his waistband, point it at the officers and fire at the officers.

In response, Officer A engaged Subject 1 with gunfire and accelerated the vehicle through the intersection. Officer A expended the ammunition in his service pistol, reloaded and broadcast an officer needs help call. Officer A then conducted a U-turn and stopped the vehicle.

The BOPC noted that Officer A became involved in multiple tasks. The BOPC would have preferred that Officers A and B had a pre-determined tactical plan with established driver/passenger responsibilities. Such a plan would have allowed Officer A to focus on driving the vehicle away from the threat.

Additionally, Officer A’s decision to continue to drive directly away from the threat caused he and his partner to remain in Subject 1’s line of fire. The responsibility of the driver officer is to, as quickly as possible, drive out of the area. The responsibility of the passenger officer is to engage the identified threat.

The BOPC found Officers A and B’s tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC noted that while waiting at the red light, Subject 1 yelled out, “Where you from?” The officers did not respond but continued to watch the two suspects while waiting at the red light. At that point, Officer A drew his service pistol and held it across his body near his lap.

Subject 1 stepped into the roadway, lifted up his shirt, removed a handgun from his waistband, and pointed it at the officers. In response to the suspect’s actions, Officer B drew his service pistol.

The BOPC determined that Officers A and B had sufficient information to believe the situation may escalate to the point where deadly force may become necessary. The BOPC found Officers A and B’s drawing to be in policy.

C. Use of Force

The BOPC noted that as the officers were waiting for the red light, Subject 1 stepped into the roadway, lifted up his shirt, removed a handgun from his waistband and pointed it at the officers.

Note: The officers perceived that they were fired upon; however, the investigation identified no bullet casings attributable to the suspects and no evidence of impacts to substantiate that either suspect fired at the officers.

Officer A, who was seated in the driver's side front seat, turned his body and extended his service pistol out of the driver's side window back toward Subject 1. Officer A fired two to three rounds at Subject 1. Officer B fired two rounds at Subject 1 through the rear window of the vehicle.

Officer A accelerated the vehicle through the intersection, looked back in the rear view mirror, and saw Subject 1 still firing his weapon. Officer A fired six to seven additional rounds as he continued to drive. Simultaneously, Officer B fired seven to eight additional rounds at Subject 1.

Both Officers A and B reported seeing muzzle flashes coming from Subject 1's handgun. Although it was not conclusively determined that the officers were fired upon, the BOPC determined that it was objectively reasonable that the officers had this perception. In the event the officers were not fired upon, and the weapon pointed at them was the BB gun, the reflection of each partner officer's muzzle flashes could have reasonably been perceived as muzzle flashes coming from Subject 1's handgun. Additionally, Subject 1 pointed what appeared to the officers to be handgun, which would have justified the use of deadly force.

The BOPC determined that Officers A and B reasonably believed that Subject 1 presented an immediate threat of serious bodily injury or death.

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