

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

HEAD STRIKE WITH AN IMPACT WEAPON 112-05

Division	Date	Duty-On (X) Off()	Uniform-Yes(X) No()
Hollenbeck	12/23/05		

Officer(s) Involved in Use of Force	Length of Service
Officer A	11 years, 1 month
Officer B	10 years, 7 months
Officer C	6 years, 11 months
Officer D	9 years
Officer E	7 years, 5 months
Officer F	9 years, 7 months

Reason for Police Contact

Officers were at a motel looking for a subject wanted on an outstanding felony narcotics warrant when they noticed a suspicious subject in the parking lot of the motel and contacted him. After the officers approached the subject, they recognized him as an attempted murder suspect and a use of force occurred.

Suspect	Deceased ()	Wounded (X)	Non-Hit ()
Subject 2: Male, 23 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 May 15, 2007.

Incident Summary

On December 22, 2005, Police Officers A and B responded to a motel to attempt to locate Subject 1, who had an outstanding felony warrant. Officers A and B parked their marked police vehicle in an alley near the motel and took a position behind a tall cinderblock wall that separated the alley from the motel parking lot. From that position, the officers were able to observe the motel and parking lot.

The officers observed some pedestrian and vehicular activity, but did not see Subject 1. Then, Officer B spotted a Dodge Stratus drive into the motel parking lot and park in a stall in the corner of the parking lot. Officer B was able to see over the cinderblock wall and noted that there was a female driving the Dodge (Witness 1), and a male sitting in the front passenger seat (Subject 2).

Officer B watched as Witness 1 exited the Dodge and walked into the motel office. According to Officer B, a few minutes later, Subject 2 exited the Dodge and walked toward the center of the parking lot. Officer B stated that Subject 2 was wearing a hooded sweatshirt and baggy clothing. Officer B could not see Subject 2's face. Officer B believed Subject 2 to be suspicious, because of the way he was wearing the hood over his head and looking around the parking lot, as if he was "casing." Officer B also noted that it was his understanding that this motel was a "hotbed for criminal activity," and was a hangout for local gang members. Based upon the officer's knowledge of the motel, the fact that the officers were looking for a felony warrant suspect, and the suspicious activity of Subject 2 including Officer B's belief that Subject 2 was "a gang member type," Officer B informed Officer A that he thought they should go see whom the subject wearing the hooded sweatshirt was.

Officers A and B decided to approach Subject 2 to identify him. Officers A and B approached the Dodge on foot. Officer A indicated that he drew his pistol as he was walking and held it down by his side, given that Subject 2's attire resembled gang attire and he believed that gang members are commonly armed.

According to Officer B, a van was parked next to the Dodge. He peered around the front of the van and noted a silhouette of an individual inside the passenger seat of the Dodge. Officer B walked to the rear of the van, drew his service pistol and held it down toward his side. Officer B drew his pistol because he believed he had reasonable suspicion that Subject 2 was a gang member, the motel was a known narcotics and gang location, Subject 2 was suspicious based upon the way he was dressed and his actions in walking around the parking lot, and Officer B could not see Subject 2's waistband or inside the vehicle.

Officers A and B then approached the rear of the Dodge with Officer B in the lead. Officer B walked toward the passenger side of the Dodge while Officer A stayed at the driver-side rear of the Dodge to cover the driver side of the vehicle.

Officer B walked toward the passenger door of the Dodge and then used his flashlight to illuminate the interior of the Dodge. As soon as he did so, Subject 2 jumped out of the

front passenger seat and stated, "It's not me officer. It's not me. It's not me."
According to Officer B, Subject 2 was no longer wearing his hood.

As soon as Subject 2 exited the vehicle, Officer A recognized him as a person Officers A and B knew was wanted for attempted murder. Officer A informed Officer B of Subject 2's identity.

According to Officer B, Subject 2 rushed him and Subject 2 used both of his hands to attempt to push past Officer B. As Subject 2 pushed, Officer B was able to grab onto Subject 2 with his left arm, while he used his right hand still at his side holding his pistol. Officer B attempted to control Subject 2 so that he could re-holster his pistol. After a few seconds of struggling with Subject 2, Officer B was able to re-holster his pistol. Officer B then used a bear hug technique and took Subject 2 to the ground.

Subject 2 landed prone on the ground or slightly on his (Subject 2's) side. Officer B also fell into a prone position, on top of Subject 2's back. According to Officer B, Subject 2 had both of his hands underneath his body near his waistband area.

Officer B then focused on gaining control of Subject 2's hands, which were still underneath Subject 2's body. Officer B was able to gain control of Subject 2's right hand and bring it out from underneath his body. According to Officer B, the entire time Officer B and Subject 2 were on the ground, Subject 2 was attempting to buck Officer B off of him by pushing his (Subject 2's) body up and attempting to get onto his feet.

Because Subject 2 was thrashing around violently and kicking his legs, Officer A used his ASP collapsible baton ("ASP") in its closed state to hit Subject 2 on the legs four to five times.

Officer B then focused his attention on Subject 2's left arm. According to Officer B, he reached with his left hand underneath Subject 2's body and grabbed hold of Subject 2's left hand. Officer B stated that Subject 2's left hand was in a fist. Officer B used his hand to feel over Subject 2's left hand. According to Officer B, he could feel a hard/solid object, which he believed to be a gun, in Subject 2's left hand.

Officer B told Officer A, "He's got a gun." Officer B believed that Subject 2 was trying to get to his feet to arm himself. Officer B tried to push Subject 2 to the ground using his body weight. Officer B then released his hold on Subject 2's left hand.

Believing that Subject 2 was attempting to get a gun out and use it on him or his partner, Officer B indicated that he believed that lethal force was justified. According to Officer B, the only body part that was exposed was Subject 2's head. As such, Officer B hit Subject 2 on the head three times with his pistol.

Note: Officer B indicated that he used his ASP baton ("ASP") to strike Subject 2 on the head. However, the BOPC found that a preponderance of the evidence demonstrated that Officer B used his pistol, not his ASP, to strike Subject 2 on the head.

Having heard his partner yell “gun,” Officer A moved up to a position where he was able to assist Officer B in controlling Subject 2’s arms. Officer B focused on controlling Subject 2’s right arm while Officer A focused on controlling the left arm. Officer A indicated that he attempted to pull Subject 2’s left hand from underneath his body but was unable to do so. Instead, Officer A used his body weight to hold Subject 2’s left arm down against the ground.

Officers A and B held Subject 2 to the ground until the arrival of backup officers. Officers C, D, E, and F arrived at the motel. Officer A yelled out to the backup officers, “He’s got a gun, guys. He’s got a gun. He’s got a gun.” Officer F arrived and grabbed Subject 2’s left arm, relieving Officer A. Officer E arrived, placed his knee and shin on Subject 2’s shoulder, and took control of Subject 2’s right arm using firm grips, relieving Officer B. Officers C and D controlled Subject 2’s legs using bodyweight. Officers A and B, both tired from the struggle, disengaged while Officers E and F handcuffed Subject 2.

Searches of Subject 2 and of the area of the incident were conducted and no gun was found. However, a cellular telephone, a marijuana pipe, and a cigarette lighter were all found in the immediate area where Subject 2 had been prone on the ground. A set of keys was discovered a short distance away.

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

In a 4 to1 vote, the BOPC found that Officer B’s tactics require administrative disapproval. The BOPC unanimously found Officers A’s tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

In a 4 to 1 vote, the BOPC found Officers A and B’s drawing and exhibition of a firearm to be out of policy, requiring administrative disapproval.

C. Non-Lethal Use of Force

The BOPC unanimously found Officers A, B, C, D, E, and F's use of non-lethal force to be in policy.

D. Use of Force

In a 3 to 2 vote, the BOPC found Officers B's use of force to be out of policy, requiring administrative disapproval.

Basis for Findings

A. Tactics

The BOPC noted that the intent of Officers A and B was to monitor the motel to determine if Subject 1 was at the location. If Subject 1 was seen at the motel, the officers intended to request an additional unit and a supervisor to effect the arrest. The officers devised a plan; however, they did not adhere to it. Officers A and B could have maximized their ability to take Subject 2 into custody without incident by waiting for an additional unit before taking action. In addition, the BOPC would have preferred that the officers had notified a field supervisor or the watch commander of their intentions, in the event that their activities evolved into a tactical situation.

The BOPC noted that although Officer B did not initiate the contact between Subject 2 and himself, the BOPC would have preferred that Officer B re-holstered his pistol prior to taking hold of Subject 2. This would minimize the potential for a negligent discharge as well as reduce the likelihood of losing control of the weapon to a suspect.

The BOPC noted that Officer B utilized a one-man takedown and Subject 2 fell to the ground in a prone position with both hands concealed underneath his body. Officer B landed on top of him, and as he attempted to retrieve Subject 2's left hand, Officer B felt what he believed to be a handgun and communicated this information to Officer A. Officer B relinquished this hold on Subject 2's left hand. The BOPC is concerned that Officer B did not maintain control of Subject 2's left hand, when he knew that Subject 2 was wanted for attempted murder and he believed Subject 2 was holding a handgun in his left hand.

The BOPC noted that during the struggle, Officer A requested "help" via Communications Division. As responding officers drove into the parking lot, they did not see a black and white police vehicle, nor did they see Officers A and B. Believing Officers A and B were possibly inside one of the rooms, the officers began to walk toward the motel, until they were redirected by a citizen to the corner of the parking lot. In a situation where their location was not readily apparent, broadcasting an exact location was vital should the incident deteriorate and additional assistance was required.

The BOPC was concerned that Officer B yelled out "He's got a gun" to his partner when

Officer B could not confirm that Subject 2 was actually armed with a gun. When Officer A heard the unconditional statement, "He's got a gun" and saw Subject 2 and Officer B struggling, Officer A may have decided it was necessary to utilize lethal force, given that Officer B had identified an unconditional lethal threat. Given that other officers are entitled to rely on the information provided to them by their partners, officers must always be careful about identifying a lethal threat until they are reasonably sure that one exists. Notably, in addition to Officer B advising Officer A that Subject 2 was armed, Officer A used that information and informed the arriving backup officers that Subject 2 had a gun. Several of the officers that arrived to assist Officers A and B heard an officer say that Subject 2 had a gun or may have a gun. This information, which proved to be erroneous, could also have led one of the backing officers to use lethal force. The BOPC would have preferred that Officer B had informed Officer A that he felt a hard object or that Subject 2 *may* be armed, rather than calling out, "He's got a gun."

The BOPC was concerned that a pistol was used as an impact device. Even if lethal force was justified under the circumstances, utilizing a pistol as an impact weapon poses several tactical concerns. First, the risk of a negligent discharge increases dramatically. Second, the risk that the subject could take the pistol away from the officer increases substantially. Third, the risk of the pistol becoming inoperable and useless should it need to be fired increases as well. Thus, the BOPC would have preferred that Officer B had not utilized his pistol as an impact weapon.

The BOPC noted that Officer B walked between two parked cars when initially approaching Subject 2, who was seated in the front passenger seat of the Dodge. Given that Officer B recognized the possibility of (1) a subject exiting the vehicle unexpectedly and (2) a subject exiting the vehicle and posing a threat to Officer B, the BOPC was concerned that Officer B nevertheless decided to walk between the two parked vehicles in a confined space and approach the passenger door of the Dodge vehicle with his pistol drawn. Doing so not only closed the distance between Officer B and any potential danger, but it also placed him in an extremely confined area wherein he had very little room to maneuver or re-deploy. Moreover, Officer B placed himself in this tactically disadvantageous position while still holding his service pistol. The combination of these factors seriously limited Officer B's force options and also increased the chance of danger to himself should he be attacked in such a confined area. The BOPC would have preferred that Officer B had maintained a position of advantage and a position of cover behind the vehicle next to the Dodge. From that position, Officer B could have called out to Subject 2 and requested that Subject 2 exit the Dodge and walk back toward Officer B.

The BOPC noted that Officer B indicated that when Subject 2 charged at him, Officer B struggled to keep Subject 2 at bay while he re-holstered his pistol. Officer B then used a bear hug technique to take Subject 2 to the ground. Officer B stated that because he was focused on other things, he did not issue any commands to Subject 2 at that time. The BOPC would have preferred that Officer B had also verbalized with Subject 2.

The BOPC noted that Officer A's radio battery was dead. This precluded Officer A from placing his initial assistance call to Communications Division and forced Officer A to use

Officer B's radio instead. The BOPC would have preferred that Officer A had maintained a charged battery for his ASTRO radio and had ensured that his radio was functioning prior to contacting Subject 2.

The BOPC found that Officer B's tactics warrant administrative disapproval, and that Officer A's tactics warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC noted that according to LAPD policy, officers may draw their pistol when they have a reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. In this case, Officers A and B believed that Subject 2 was acting suspiciously by walking around the parking lot with a hooded sweatshirt on, combined with the high crime and gang activity in the area.

Given that Officers A and B did not suspect Subject 2 to be involved in any specific criminal activity and given that they did not believe Subject 2 to be the subject they were looking for and simply wanted to see who Subject 2 was and identify him, the BOPC found that Officers A and B's decision to draw their pistols was unwarranted.

The BOPC determined that Officers A and B had insufficient information to believe the situation might escalate to the point where deadly force may become necessary and found the officers' drawing and exhibition of a firearm to be out of policy, requiring administrative disapproval

C. Non-Lethal Use of Force

The BOPC noted that Subject 2 charged at Officer B and attempted to push past him with both hands. Officer B utilized a one-man takedown and Subject 2 fell to the ground in a prone position with both hands concealed underneath his body. Officer B landed on top of him and Subject 2 attempted to get up. Officer B reached under Subject 2's body with his right hand and pulled Subject 2's right arm out to his side; however, due to Subject 2's resistance, Officer B was unable to bring Subject 2's right arm to the small of his back to facilitate handcuffing.

The BOPC noted that as Officer B attempted to gain control of Subject 2's arms, Officer A took a position by Subject 2's legs. Due to Subject 2 violently kicking his legs in an attempt to strike Officer B with his heels, Officer A was unable to control Subject 2's legs. Officer A removed his ASP from his duty belt and without extending it, struck Subject 2's legs four to five times.

The BOPC noted that with Subject 2's right hand exposed, Officer B reached under Subject 2's body with his left hand and felt what he believed to be a handgun in Subject 2's left hand. Officer B communicated this information to Officer A, Officer A holstered his ASP and proceeded to place firm grips with both hands and bodyweight to Subject 2's left forearm to prevent him from pulling out the arm holding the handgun.

The BOPC noted that as the incident progressed, Officer A requested help. Officers C, D, E, and F arrived, and with the application of firm grips and bodyweight, they were able to handcuff Subject 2.

The BOPC determined that Officers A, B, C, D, E, and F's use of non-lethal force was reasonable to overcome Subject 2's resistance and effect his arrest. The BOPC found Officers A, B, C, D, E, and F's use of non-lethal force to be in policy.

D. Use of Force

The BOPC noted that Officer B decided to use lethal force in the form of a head strike with an impact weapon because he believed that Subject 2 concealed a handgun underneath his body in his left hand. This belief was based upon Officer B using his left hand to feel the outside of Subject 2's left hand, which was located underneath Subject 2's body at the time. Officer B described this object as "hard" and "solid," and did not indicate what else, if anything, made him believe that the object felt like a handgun. Indeed, Officer B provided no explanation for his conclusion that what he felt underneath Subject 2's body inside Subject 2's left hand was in fact a gun.

The BOPC also noted that some of Officer B's actions were inconsistent with his stated belief that Subject 2 was holding a gun in his left hand. First, instead of continuing to hold Subject 2's left hand underneath his body believing that it was holding a gun, Officer B elected to release the hand. The BOPC found that Officer B's decision to release Subject 2's left hand was inconsistent with his stated belief that Subject 2 was holding a gun in his left hand.

Further, the BOPC noted that after three strikes with the impact weapon, Officer B discontinued hitting Subject 2 in the head and then continued to struggle with him. The BOPC found that Officer B's decision to discontinue the head strikes with an impact weapon before the perceived threat ended was inconsistent with his stated belief that Subject 2 was holding a gun.

The BOPC noted that there is no conclusive evidence to show that there was any solid or hard object in Subject 2's left hand at the time Officer B hit Subject 2 in the head with an impact weapon. Although a cellular telephone, marijuana pipe, cigarette lighter, and keys were found in the area, there is no evidence to show that Subject 2 held any of these items in his left hand at the time Officer B determined that a deadly threat existed.

The BOPC determined that under the circumstances presented in this case, it was unreasonable for Officer B to believe that Subject 2 was armed and was about to shoot him or his partner. Rather, Officer B's belief that Subject 2 was armed was speculative at best. The BOPC noted that speculation alone does not form the basis for a reasonable belief that a lethal threat exists.

The BOPC found that Officer B did not reasonably believe that Subject 2's actions presented an immediate threat of serious bodily injury or death, and found Officer B's use of force to be out of policy, requiring administrative disapproval.