

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

OFFICER INVOLVED SHOOTING – 038-16

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	9 years, 2 months
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Reason for Police Contact

Officers attempted to initiate a stop of the Subject, at which time he became non-compliant. The Subject walked away from the officer with his hands in his pockets, then turned around quickly, bringing his hand out of his pocket and towards the officer, resulting in an officer-involved shooting (OIS).

Subject	Deceased ()	Wounded ()	Non-Hit (X)
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Subject: Male, 23 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 Subject 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 Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

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.

The following incident was adjudicated by the BOPC on June 13, 2017.

Incident Summary

Uniformed Police Officers A and B were working a crime suppression detail. Officer A was the driver of an unmarked police vehicle, and Officer B was the passenger.

Witness A was outside his residence hosting a barbecue. Also, present for the barbecue were his neighbors, the Subject, and Witnesses B and C. Witness A had his barbecue grill positioned adjacent to the wall of the apartment building on a cement slab that spanned approximately 25 feet from the sidewalk. Parked upon the cement slab and facing in a southbound direction was an SUV.

As Officers A and B were traveling in their vehicle approaching the location of the barbecue, Officer A observed the Subject and Witnesses B and C standing on the sidewalk next to the apartment complex. As they neared the group, Officer A observed the three drinking beer in violation of Los Angeles Municipal Code 41.27.

Note: Officer B stated that he only saw Witnesses B and C drinking beer, but saw the Subject with a beer in his hand.

According to Officer A, he informed his partner that he wanted to speak with the individuals regarding their open containers and then stopped his police vehicle at an angle on the street in front of the barbecue. With his window rolled down, Officer A told Subject 1 and Witnesses B and C that he wanted to speak with them due to their drinking in public and proceeded to exit his police vehicle. Officer A observed the Subject immediately begin to separate himself from the group. Officer A informed his partner that the Subject was walking away from him and that he was going after him.

As the officers pulled up, Officer B observed the Subject look at the officers as if he was scared and began to walk away. Furthermore, Officer B observed the Subject reach for the front of his waistband with both hands. According to Officer B, he had intended to notify Communications Division (CD) of the officers' status and location but did not based on his belief that the Subject was arming himself. Therefore, instead of reaching for the radio, he opted to arm himself. According to Officer B, he notified his partner that the Subject was reaching for his waistband and believed the Subject was possibly arming himself. Officer B exited the police vehicle and, fearing an armed confrontation, immediately unholstered his Department-approved service pistol and held it in a low-ready position.

Note: The officers' accounts of their communications immediately prior to contacting Subject 1 and the witnesses are inconsistent, and neither officer corroborated the other's account in this regard. According to Officer A, he told Officer B that he wanted to talk to the men about their open containers; however, when asked Officer B indicated that he had not. According to Officer B, Officer A just stopped the vehicle and then Officer B exited the vehicle immediately. According to Officer B, he observed the Subject place his hands in his waistband and advised his

partner of this, but Officer A did not make any statements indicating he heard such a warning.

According to Officer A, from along the driver's door of the police vehicle, he observed the Subject "toss a beer" and then put his right hand in his right front pocket. Officer A saw what appeared to be a bulge and some sort of metallic object but could not opine what it was, as it was covered by the Subject's hand.

Note: A total of four open beer cans were recovered from the crime scene. Following the OIS, all the beer cans at the scene were in upright positions, and none was in a position consistent with having been "tossed."

As the Subject walked away toward the SUV, Officer A began to command him to stop. Officer B noted that as the Subject continued walking, both of his hands were in the front of his waistband and he kept looking back towards the officers.

As the Subject proceeded to the passenger side of the SUV, Officer A observed that the Subject stopped, turned in his direction, and stood near the right front quarter panel of the vehicle.

With Officer B's view of the Subject obstructed by the SUV, he moved into the street, leaving Witnesses B and C unattended. As Officer B moved, he utilized the vehicles parked in the street as cover. Officer B then deployed to the parkway where he tracked the Subject's movements through the tinted windows of the SUV.

Simultaneously, Officer A lost partial sight of the Subject's lower body and deployed along the passenger side of a vehicle which was parked in the driveway. According to Officer A, from this position, he and Officer B formed a triangular configuration on the Subject.

Officer A told the Subject to stop, take his hand out of his pocket, and show both his hands. The Subject did not comply, asked him what he wanted and told Officer A to leave him alone. While still facing Officer A, the Subject momentarily removed his right hand from his right pocket and then placed it back inside, causing Officer A to become fearful that the Subject had a weapon. Officer A unholstered his Department-approved service pistol.

As Officer A held his weapon in a low-ready position, the Subject turned away from him. The Subject began to walk forward and then, with his back still to Officer A, leaned up against the SUV.

Officer A continued to order the Subject to turn around and show his hands. The Subject failed to comply and began to walk further away. Officer A could not see the Subject's hands, which remained in front of his body and, therefore, while keeping his finger along the frame of his pistol, raised it in the Subject's direction. Upon reaching

the rear passenger quarter panel of the SUV, the Subject suddenly stopped, stepped to his left, and began to pivot counterclockwise in the direction of Officer A. As the Subject's body began its rotation, Officer A observed that his left hand was empty but could not see his right hand. As the Subject's motion continued, Officer A observed that the Subject's right hand had remained inside his pants pocket. As the Subject was completing his turn toward Officer A, the Subject took his hand out and swung it towards the officer.

Officer A stated that as the Subject was rotating in his direction, he immediately deployed to his left (one step) and began to drop to his right knee. According to Officer A, he believed that the Subject was armed with a gun. As the Subject completed his pivot, Officer A was still in the process of going down to his right knee. Officer A, believing that he was about to be shot, fired one round from his service pistol at the Subject from approximately 26 feet away. The Subject immediately fell to the ground while clutching his abdominal area with both his hands. Officer A did not observe any type of object in the Subject's hand at the time of the OIS.

Note: Officer A recalled losing his balance as he fired his weapon and went down to the ground and ended up on both knees, following the OIS.

Officer B, from his position on the parkway, heard the gunshot and then lost sight of the Subject's silhouette. Officer B moved to Officer A and observed the Subject laying on the ground. Officer A, believing the Subject was still armed, commanded him to show his hands. Officer B ordered Witnesses B and C to get on the ground and they complied.

Officer A notified CD that shots had been fired and that the officers needed help. Believing the Subject had been shot, Officer A requested a Rescue Ambulance (RA). Once additional officers arrived, they took the Subject into custody and determined he had not been struck by the bullet fired by Officer A. It was also determined that the Subject was not armed.

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 of a firearm 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 found Officers A and B's tactics to warrant a finding of Administrative Disapproval.

B. Drawing/Exhibiting

The BOPC found Officers A and B's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

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

Basis for Findings

Detention

- Officer A observed Subject 1 and Witnesses B and C consuming alcohol on a public sidewalk. According to Officer B, he observed Witnesses B and C drinking alcoholic beverages, but he didn't see any alcoholic beverage in the Subject's hand. The officers were attempting to detain the suspects for a violation of Los Angeles Municipal Code 41.27. The officers' actions were appropriate and consistent with Department policies and procedures.

A. Tactics

- In its analysis of this incident, the BOPC noted the following tactical considerations:

1. Contacting Suspects while Seated in Police Vehicle

Officer A initiated contact with the suspects while both officers were still seated in the vehicle. Officer A's actions in this regard placed the officers at a significant tactical disadvantage.

Based on the totality of the circumstances, the BOPC determined Officer A's decision to contact the suspects while seated in the police vehicle was a substantial deviation, without justification, from approved Department tactical training.

2. Communications and Planning

Officers A and B did not communicate effectively as the incident unfolded. According to Officer A, his intention was to stop the group, and that he was going after the Subject. Officer A did not indicate that any further communications occurred until after the OIS. Meanwhile, Officer B stated that he observed the

Subject make a waistband reach and that he advised his partner of this observation. Officer B stated that he heard no response from Officer A.

Officer A did not make any statements to investigators to indicate that he heard an advisement about the Subject reaching for his waistband, and Officer A's actions as he initially sought to contact the Subject (approaching the Subject without cover and with his pistol holstered, and telling the Subject to "come here") do not reflect that Officer A initially believed he was encountering a possibly armed suspect.

Furthermore, Officer A later stated that he observed a "bulge" in the Subject's pants, and that he observed a metallic object in the Subject's pocket, yet Officer A did not communicate these potentially critical observations to Officer B.

Additionally, the officers did not coordinate during the incident to ensure effective fulfillment of contact and cover roles. Both officers focused their attention on the Subject, resulting in the officers exposing themselves to the other individuals present and failing to ensure coverage of the group as the stop unfolded.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's lack of communication was a substantial deviation, without justification, from approved Department tactical training.

3. Use of Cover

In this case, Officers A and B both left cover during this incident, despite both officers indicating that, at different points, they believed that the Subject could be armed. These actions of leaving cover unnecessarily exposed the officers to the potential threat of being assaulted.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's decision to leave cover was a substantial deviation, without justification, from approved Department tactical training.

4. Code Six

The officers did not broadcast their Code Six location prior to initiating the pedestrian stop of Subject 1 and Witnesses B and C to investigate their apparent drinking in public. Rather, as described by Officer A, he (Officer A) initiated contact with the group while still seated in the vehicle, telling them to stop and that the officers wanted to talk to them.

Meanwhile, according to Officer B, he first observed the group from one or two properties south of their location as the officers travelled toward the group. From a distance of approximately 30 feet, Officer B observed the Subject reaching for his waistband. Officer B stated that he advised his partner of this observation,

and decided to forego broadcasting their Code Six location in favor of drawing his weapon as he exited the police vehicle.

Officer A did not report having heard Officer B's warning and did not draw his own weapon until a later point in the incident. The apparent incongruity of the officers' statements regarding this portion of the incident cannot be resolved based on available evidence; nevertheless, the BOPC was concerned by the lack of a Code Six broadcast and the associated tactical disadvantage at which the officers were placed.

These topics will be discussed at the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident-specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

In conclusion, the BOPC found Officers A and B's tactics to warrant a finding of Administrative Disapproval.

B. Drawing/Exhibiting

- According to Officer A, he continued to verbalize with the Subject to show his hands, but he refused to comply. Fearing that the Subject was reaching for a weapon in his pocket, he drew his service pistol into a two-handed, low ready position.

According to Officer B, as the officers drove up to the group, he observed the Subject looking in their direction and then immediately reached for his waistband and started walking away. Believing that the situation would escalate to a situation involving the use of deadly force, when the vehicle came to a stop, he exited and drew his service pistol.

Based on the totality of the circumstances, the BOPC determined an officer with similar training and experience as Officers A and B, when faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officers A and B's drawing and exhibiting of a firearm to be in policy.

C. Lethal Use of Force

- **Officer A** - (pistol, one round)

The Subject was initially non-compliant when Officer A attempted to detain him. The Subject walked away from Officer A as Officer A gave him commands to stop, and to turn around and take his hands out of his pockets. According to Officer A, during this period of initial non-compliance by Subject 1, Officer A observed that the Subject's hands were in his pockets, observed an unidentified "metallic object" in the Subject's pocket, and observed a "bulge" in the Subject's pocket.

The investigation did not elicit a description of the metallic object from Officer A, nor did it establish what, if anything, he believed the metallic object to be. Other than beer cans, no metallic objects were recovered at the scene, and no items were recovered from the Subject.

According to Officer A, just prior to the OIS, he told the Subject to show him his hands and turn around. The Subject turned around quickly to face Officer A. As the Subject was turning, he took his hands out of his pockets and swung his hands towards Officer A in a motion, as if the Subject was pointing something at Officer A.

Officer A stated that as the Subject completed his turn, Officer A went to his knee and fired one round at the Subject in defense of his life.

Although Officer A expressed that the Subject's actions caused him to fear being shot, the factors upon which he explained this fear do not meet the standard of an objectively reasonable fear of imminent death or serious bodily injury, as Department policy would require. Officer A did not observe the Subject with a weapon, nor any other item he believed to be a weapon. Upon seeing the bulge and the metallic object in the Subject's pocket, Officer A did not draw his own weapon. Rather, he attempted to follow the Subject without cover. These actions were not consistent with a belief that the object and bulge were a gun, nor did Officer A state that he believed any such objects to be a gun. Other than beer cans, no metallic objects were recovered at the scene, and no items were recovered from the Subject's person. When the Subject removed his hands from his pockets and turned toward Officer A, he was doing what Officer A had just told him to do. Although Officer A's statements indicate that he was fearful of the Subject's actions, the objective facts of the case do not support a finding that the use of lethal force was authorized.

In conclusion, the BOPC found Officer A's lethal use of force was not objectively reasonable and out of policy.