

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

**OFFICER INVOLVED SHOOTING – 001–09**

<b>Division</b>	<b>Date</b>	<b>Duty-On(X) Off()</b>	<b>Uniform-Yes(X) No()</b>
Foothill	01/01/2009		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Sergeant A	16 years, 3 months
Officer A	6 years, 10 months
Officer B	3 years, 5 months

**Reason for Police Contact**

911 Radio Call.

<b>Subject(s)</b>	<b>Deceased (X)</b>	<b>Wounded ( )</b>	<b>Non-Hit ( )</b>
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Subject 1: Male, 41 years old

**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 BOPC 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. 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 December 15, 2009.

## **Incident Summary**

Sergeant A, along with several other officers and an Air Unit responded to a residence pursuant to a 911 call regarding the subject threatening to kill several family members. It was reported that the subject had fired a weapon, was drunk and had been violent toward his family in the past. Upon arrival at the location Sergeant A determined that there were two structures on the property consisting of a primary residence in the front and a secondary residence in the rear.

Sergeant A established a Command Post (CP) and assigned officers to a perimeter around the residences. Sergeant A telephonically conferred with the subject's wife, who was in the front the residence and instructed her and any other occupants to exit the residence. Upon exiting the residence the subject's wife advised Sergeant A that the subject had exited the back of front residence.

Sergeant A became concerned that, if the subject had entered the rear residence, the officers "may very well have a barricaded suspect inside that back garage." Sergeant A returned to the CP, met with Sergeant B, and called the Metropolitan Division (Metro) duty desk. Sergeant A intention was to "get [Metro's] opinion if [they had] enough for a barricaded suspect at that point."

**Note:** Sergeant A believed that his phone call to Metro lasted approximately 20 to 30 seconds. Sergeant A stated that he did not tell the Metro desk officer that they had a barricaded suspect in the rear residence during this phone call because that information was not known to him at the time.

The Metro officer on duty, said that he asked Sergeant A if the incident met the four criteria for a barricaded suspect call-out, i.e., that the suspect: was probably armed, was believed to be involved in a criminal act or was a significant threat to the lives and safety of citizens and/or the police, was in a position of advantage, and refused to submit to arrest. However, according to the Metro officer, Sergeant A did not have sufficient information at the time to determine if the incident met the criteria. The sergeant said he would call Metro back when he had more information.

A search team then entered the front residence and failed to locate the subject. Sergeant A next focused his attention toward the rear residence and determined that there were two occupants inside. The occupants were ordered to exit the residence and when questioned denied that the subject was in the residence.

Sergeant A along with several officers, including Officers A and B, entered and searched the rear residence without locating the subject. As they were exiting the rear residence, Sergeant A noticed that there was an opening approximately one-and-a-half feet by one-and-a-half feet in the ceiling of the kitchen covered by a panel with a refrigerator directly beneath it. He believed that this opening led to an attic crawl space. He also noted that there was debris that looked like fallen cement or stucco on top of the refrigerator.

**Note:** The kitchen was a narrow space, which Sergeant A estimated to be approximately five feet by five feet, directly inside the front doorway of the rear residence. The north wall had a sink, counter, and cabinets. The south wall had a white, full-size refrigerator and a smaller, stainless steel refrigerator.

Sergeant A stated that he “want[ed] people out” of the rear residence and the officers exited. Sergeant A then instructed Officer A to position himself inside the kitchen to cover the crawl space panel. Sergeant A exited the rear residence and asked the Air Unit to determine whether the subject was “inside [the rear] house.” The Air Unit responded that the subject could not have left the rear property.

**Note:** Sergeant A instructed the officers in and near the rear residence to turn down their radios so that the subject, if he were in the attic, would not hear his broadcasts.

Around this time, Sergeant A advised Sergeant B, who had arrived at the location, about the attic crawl space and the debris. Sergeant B then asked the two individuals, who had exited the rear residence if they had helped the subject crawl into the attic. They said they had not. Sergeant B then asked the subject’s wife about the crawl space. According to Sergeant B she responded that the space was “much too small for anybody to crawl in.”

Sergeant A, along with Officers A, B, C, D, E and F then re-entered the rear residence. Sergeant A positioned himself along the eastern wall of the kitchen, slightly northeast of the crawl space opening, while Officers C and D stood directly north of (behind) him, against the kitchen counter.

Sergeant A, concerned that if the subject was in the crawl space he might begin shooting downward into the kitchen at the officers, positioned officers who could provide cover fire. He positioned Officer E along the southern side of the kitchen near the white refrigerator and Officers A and B just inside the kitchen doorway facing upward and southeast at the crawl space. The officers unholstered their pistols and pointed them toward the kitchen ceiling.

Around this time, the initial Air Unit was relieved by another Air Unit, and Sergeant A informed the new Air Unit team that if the officers encountered the subject, that they may fire upwards through the ceiling of the rear residence.

Sergeant A then used a bullhorn to inform the subject that the officers were inside the rear residence. He instructed the subject, in English, to exit the attic crawl space with his hands visible, that the officers might use force if they had to enter the attic crawl space, and that the subject might be injured if force was used. A similar announcement was made in Spanish by Officer E.

**Note:** Sergeant A stated that he had no confirmation that the subject was actually in the attic at this time. He stated that he had a “responsibility to

ensure that attic was cleared” before the officers “walked away from that [residence].”

According to Officer A the “plan was to make contact with the subject, prop the attic, and have [the subject] peacefully give himself up.” The officers knew the subject was armed because the initial call to 911 said that the subject had a gun.

As Officer E made the announcement in Spanish, while Officer C set up a ladder directly underneath the crawl space panel. Officer C used his baton to maneuver the panel, a piece of drywall, to create an opening into the attic crawl space.

**Note:** There was no light in the attic crawl space. The officers used their flashlights to illuminate the crawl space.

According to Sergeant A, at the same time that Officer C was sliding open the drywall panel, he heard a “faint voice in Spanish.” Sergeant A determined that the voice was the subject’s and that he was in the attic crawl space.

**Note:** Other officers’ accounts suggest that the subject made noise in the attic crawl space before Officer C opened the drywall panel.

According to Officer E, moments after he made the announcement in Spanish, he heard a voice say, “You don’t know where I’m at.” Officer E responded, “I know you’re in there. You need to exit with your hands up.” He then observed Officer C use his baton to open the crawl space.

According to Officer A, after Officer E made the announcement, he heard a voice saying, in Spanish, “You know where I am,” and cursing. At that point, he observed Officer C “prop” the attic drywall panel open. The subject then began speaking with the officers in Spanish.

According to Officer C, when he returned with the ladder and mirror, Officer E was making an announcement in Spanish. He “thought he heard something” from the attic crawl space, but did not know “if it was a voice or a noise.” Officer C set up the ladder under the crawl space. He then “hit [the drywall panel] real fast because the comments had said that [the subject] was armed.” Officer C then pushed the panel out of the way. Officer C observed the subject’s face and the forearm of his left arm, dropped his baton to the floor, and unholstered his pistol.

At this point, Sergeant A could see the subject laying face down with his head facing the opening. Sergeant A informed the officers that he saw the subject and unholstered his pistol. He then said, “Let me see your hands.”

The other officers began verbalizing with the subject. Officer B heard the subject say, “Don’t point your light at me,” in Spanish.

Sergeant A instructed the officers to “quiet down” so that Officer E could communicate with the subject in Spanish. Officer E instructed the subject, in Spanish, to show both of his hands.

Sergeant A next observed the subject wiggling the fingers of his left hand. Officer B heard the subject state something to the effect of, “I’m going to kill you. I don’t care if I die,” in Spanish. Officer E translated for the officers that the subject had stated that he was going to kill one or all of them. The subject continued to move his left hand.

Officer C, who could see the subject, instructed Officers A and B, who could not see the subject, to aim their weapons at the subject’s position in the attic crawl space. The officers did so.

Sergeant A informed the officers on the perimeter and the Air Unit that they had made contact with the subject. He requested that a TASER be brought to their location. An officer, who had been directing traffic on the perimeter, brought a TASER to the rear residence. Officer F acquired the TASER and aimed it at the subject.

Sergeant A then saw the barrel of a handgun pointed over the edge of the crawl space opening. Sergeant A believed that the subject was going to shoot him and fired one shot from his pistol at the subject’s head from a distance of approximately four feet. Sergeant A continued to see the barrel of the handgun and fired a second shot at the subject’s head. The subject then rolled partially to his right side.

Simultaneously, Officer B heard an officer yell, “Gun,” observed muzzle flash to his left side where he knew Sergeant A was standing, and heard a loud bang. Believing that Sergeant A had been shot by the subject, Officer B fired one round from his pistol upward at the ceiling.

Meanwhile, Officer A heard shots and observed smoke. Believing that the subject was firing at his partner officers, Officer A fired one round from the shotgun toward the ceiling where he believed the subject was located.

Sergeant A instructed the officers to cease their fire. Sergeant A believed that the subject had been hit because he saw what appeared to be injuries on the subject’s face, but observed that the subject was still moving. He broadcast that the officers had fired at the subject.

Meanwhile, Sergeant B called the Metro duty desk and requested a Special Weapons and Tactics (SWAT) response to the location. As he was speaking to Metro, he heard shots from the rear residence. He informed Metro that he would call them back and requested information from Sergeant A. Sergeant A told Sergeant B that the location was safe and the subject had been hit. Sergeant B moved to the rear of the property and entered the rear residence and instructed an officer to call a Rescue Ambulance (RA) when he heard the shots fired.

Officers B and E stepped out of the rear residence and an officer turned on the lights in the kitchen. The officers then observed the subject’s left hand fall through the opening in

the crawl space. Sergeant B instructed the officers to check his pulse. Officer B re-entered the kitchen area and provided cover. Sergeant A climbed onto the first rung of the ladder, grabbed the subject's left wrist, and determined that the subject had no pulse.

While Officer A provided cover, Officer F climbed the ladder, moved the subject's left arm and observed a cocked revolver underneath the subject's chest and right hand. Officer F de-cocked the handgun and passed it to another officer, who placed it in the trunk of his police vehicle.

From the doorway of the kitchen, Sergeant B asked the officers who had fired rounds about their direction of fire, and if the subject had fired any rounds. Sergeant A and Officers A and B responded that they had fired.

**Note:** Sergeant B said this was an "abbreviated version" of the Public Safety Statement (PSS). Each shooting officer subsequently gave an individual PSS when they were separated.

Officer B then holstered his pistol and exited the rear residence. As he exited, Sergeant C, who had arrived to the location, pointed to a shell casing in front of the rear residence front door. Officer B moved the casing to the side

Los Angeles Fire Department Firefighter A and Paramedic/Firefighter B arrived at the location, assessed the subject by climbing into the attic crawl space, and declared him dead.

Around this time, other officers approached the subject's truck, which was parked in the rear of the location. The officers observed a rifle in the passenger side of the front compartment.

**Note:** In addition to the revolver, officers recovered a .22 caliber rifle from the bedroom of the rear residence, a 9 millimeter pistol from the front seat of the subject's truck, and a .30-06 caliber bolt action rifle from the floor of the truck.

The involved officers were ordered not to speak about the incident and were monitored.

### **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 Sergeant A and Officers A, B, C, D, E, and F's tactics to warrant a Tactical Debrief.

#### **B. Drawing/Exhibiting/Holstering**

- The BOPC found Sergeant A, and Officers A, B, C, D, E, and F's drawing and exhibiting to be in policy.

#### **C. Use of Force**

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

#### **Basis for Findings**

##### **A. Tactics**

In adjudicating this incident, the BOPC considered that:

1. The Foothill Area simplex frequency was used to communicate throughout the entire incident. History has shown that simplex frequencies are somewhat unreliable and that occasionally, important communications between officers are missed. Tactical frequencies are not only more reliable than simplex channels, but monitored and recorded by CD. In the event of an emergency being broadcast over a tactical frequency, CD personnel would be able to assist in the response of additional resources; however, since simplex channels are not monitored, the request for help may go unheard.

Therefore, all significantly involved personnel are to be reminded that officer safety is enhanced through abiding by established communication protocols. To accomplish this, the officers should operate on their assigned base frequency or a monitored tactical frequency.

2. The officers were confronted with a situation where it was believed that the subject was armed and inside the residence with his wife and children. The subject had fired rounds into the air and potentially had access to additional weapons. As the wife and children exited the residence, the air unit broadcast that a person matching the suspect's description had exited the rear of the residence, walked to a parked truck before a covered carport obstructed the air unit's view of the suspect.

Sergeant A made the decision to enter and clear the front residence based on the following:

- He was confident the subject was not in the residence.
- He was under the impression that there had been a party at the residence, and he wanted to ensure that there were no additional victims inside the residence.
- He did not believe that requesting personnel from Metropolitan Division (K-9) was a viable option because of the 20-60 minute response delay for K-9 on New Year's Eve.
- A telephone call to the residence, Public Address (PA) system broadcast by the air ship and attempts by the patrol units to call the subject out of the residence in English and Spanish were all met with negative results.
- Lastly, he was confident that his personnel were capable of making a safe approach and entry into the residence.

Therefore, Sergeant A's decision to clear the residence was reasonable and within Department policy. Three points support the decision to initiate the search. First, the barricaded suspect criteria was not fully met due to the belief that the subject was not in the residence; secondly, Sergeant A reasonably believed under the circumstances that exigent circumstances existed wherein potentially there were additional victims inside the residence; and lastly, the his personnel were sufficiently trained to safely conduct the search.

The BOPC further noted that Sergeant A contacted the Metro duty desk to keep them aware of the situation. Although he did not believe the current circumstances met the SWAT response criteria, he wanted to keep them advised. The telephone call was made without collaborating with the Foothill Division Watch Commander. Although not at scene, the watch commander was responsible for the handling of the incident and making decisions relative to supervisory oversight, deployment of personnel and proper notifications. The notification process was hindered when Sergeant A deviated from the traditional flow of command information.

**Note:** The Foothill Division Watch Commander had been notified of the incident; however, he was not consistently updated or aware that Sergeant A had notifying Metropolitan Division.

Therefore, in order to ensure all proper notifications are made, Sergeant A was reminded to ensure that the watch commander is continually updated with up-to-date information and to work under their direction.

Sergeant A made the decision to clear the rear residence because he believed that the two occupants were credible when they advised him that the subject was not inside. This influenced his belief that the circumstances did not meet the barricaded suspect criteria. Additionally, repeated commands for any occupants of the converted garage to exit were met with no response, suggesting to Sergeant A that the converted garage was vacant. Based on the above, Sergeant A made the decision to proceed with a tactical search to clear the structure.



Therefore, based on the aforementioned information, Sergeant A's decision to clear the converted garage with his personnel was reasonable and within Department policy.

The BOPC further noted that the criteria for a K-9 search was as follows:

- *A K-9 team will assist officers in searches for felony suspects.*
- *A K-9 search team will assist officers in searches for misdemeanor suspects known to be armed with a gun(s).*
- *At the request of the Metropolitan Division, Special Weapons and Tactics (SWAT) OIC in conjunction with a pre-planned or spontaneous SWAT related incident.*
- *Lost or missing persons.*
- *Evidence related to an on-going criminal investigation.*

Although Sergeant A's decision to search the attic space was reasonable based on information he had at the time, an alternative course of action could have been to have his team exit and secure the residence, then request Metropolitan Division personnel to respond and determine the most appropriate personnel and resources to be utilized to complete the search.

Therefore, Sergeant A was reminded of the importance of continually assessing the tactical circumstances surrounding an incident as well as both the "barricaded suspect" and "K-9 search" criteria.

3. Once Sergeant A could see the subject, he directed him to show his hands. At that point, multiple officers started verbalizing with the suspect. Sergeant A appropriately recognized this as a potential problem and directed the officers to stop yelling. Sergeant A then assigned Officer E, a Spanish speaker, as the contact officer.

Therefore, the involved personnel are reminded that when multiple officers give commands, it may create confusion in the mind of the suspect, potentially resulting in non-compliance. This topic will be discussed at the Tactical Debrief.

Accordingly, the BOPC found Sergeant A and Officers A, B, C, D, E, and F's tactics to warrant a Tactical Debrief.

The BOPC also directed that Lieutenant A and Sergeants A, B, and C attend a separate Tactical Debrief focusing on specific supervisory issues regarding this incident.

This Tactical Debrief shall include the following debriefing points:

- Command and Control – Proper Watch Commander notifications and ensuring he/she is continually updated with up to date information and that they work under their direction.
- Barricaded Suspect and K-9 Search Criteria

## **B. Drawing/Exhibiting/Holstering**

- The BOPC noted that in this instance, as Sergeant A and Officers A, B, C, D, and E were searching for and ultimately located the subject; they drew and exhibited their respective weapons. Moreover, based upon the information they possessed was reasonable for them believe that the tactical situation had escalated to the point where lethal force may become necessary. Therefore, the BOPC found Sergeant A and Officers A, B, C, and E's Drawing/Exhibiting to be in policy.

**Note:** In addition to the above listed employees, there were additional persons that drew or exhibited firearms during this incident. This drawing/exhibiting was appropriate and requires no specific findings or action in regard to these officers.

## **C. Use of Force**

- The BOPC noted that the subject refused to comply with several orders to show his concealed right hand and threatened to kill the officers. As Officer E continued his efforts to negotiate the safe surrender of the subject, Sergeant A observed the barrel of a handgun through the attic space opening. Believing that the subject was positioning his handgun to fire at him and fearing his life was in danger, Sergeant A fired two rounds. Fearing that the subject was shooting at his partners, Officer B fired one round from his shotgun at into the ceiling, where he believed the subject was positioned. Believing that the subject was shooting at Sergeant A and fearing for his own life, Officer C fired one round into the ceiling where he believed the subject was positioned.

An officer with similar training and experience would believe that the actions committed by the subject posed a substantial risk of serious bodily injury or death. It was objectively reasonable for the sergeant and officers to utilize Lethal Force in defense of their lives and their partner's lives.

Therefore, the BOPC found Sergeant A and Officers A and B's use of Lethal Force to be in policy.