

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

OFFICER-INVOLVED SHOOTING – 002-12

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Olympic	01/01/12		

Officer(s) Involved in Use of Force	Length of Service
Officer A	16 years, 1 month
Officer D	11 months

Reason for Police Contact

A witness called 9-1-1, indicating that there was a screaming man inside an apartment. When officers responded, there were repeated attempts to order the Subject out of the apartment. When the Subject did not comply and pointed a revolver at officers, an officer-involved shooting occurred.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
Subject: Male, 59 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 November 20, 2012.

Incident Summary

Los Angeles Police Department Communications Division (CD) received a 911 emergency call from Witness A, who advised the operator that she had heard screaming and strange sounds coming from a nearby apartment. She could not determine if the screaming was because someone was in danger or because they were angry. Witness A believed there were other people in the apartment, including a female, and that the screaming sounded like a monster. Witness A told CD that she did not want to be identified.

CD initiated an emergency radio broadcast for the location, "Screaming man, [...] inside apartment[.]"

Uniformed Police Officers A and B advised CD they would handle the call. Sergeant A notified CD he had arrived at the location and directed CD to notify the responding unit that he would standby. Shortly thereafter, Officers A and B arrived at scene, and met with Sergeant A.

The three entered the front door of the four story apartment building, ascended the stairs, and located the apartment. As the officers approached the apartment, they could hear the sound of a loud television inside the apartment. The officers positioned themselves on both sides of the door, and Officer B knocked on the front door. A male, later identified as the Subject, said "What do you want?" Officer B identified himself as a police officer and asked the Subject to open the door. The Subject refused and told the officers to leave.

The Subject's speech was slurred, and Officer B believed the Subject was intoxicated. Officer B knocked on the door several times and asked the Subject to open the door so the officers could check to see if he was okay. The Subject continued to refuse and at one point, told the officers to go away or he would hurt somebody.

Sergeant A directed the officers to hold off and retrieved a key to the Subject's apartment from the manager. The sergeant and officers then discussed entering the apartment and believed it was necessary to check on the welfare of the occupant(s). They also requested an additional unit.

Sergeant A left Officers A and B outside of the Subject's apartment and went to the manager's apartment on the first floor. After knocking on the manager's door with no response, Sergeant A telephoned the property management company for the apartment building. Due to the holiday, there was no answer, and Sergeant A received a recorded message.

Sergeant A contacted CD and requested that the woman who called 9-1-1 meet with the officers.

Sergeant A then called the Watch Commander, Sergeant B, and advised him of the situation and of the officers' intention to enter the apartment. Sergeant A informed Sergeant B of the Subject's comment to hurt them if they entered his apartment.

Sergeant A was unsure who was in the apartment and whether anyone inside was injured. Sergeant A also advised Sergeant B that an additional unit was en route and they were going to force entry. Sergeant A believed Sergeant B approved of the plan.

Note: Sergeant A recalled Sergeant B telling him that kicking the door was "fine." Sergeant B recounted that he asked Sergeant A several questions to better assess the exigent circumstances for a warrantless entry – how many people were in the apartment? Was there a crime in progress and if so, what crime? Was anyone else in the apartment? Was anyone inside the apartment injured or hurt? Sergeant B indicated that Sergeant A wasn't able to say one way or another. Sergeant B added that based on Sergeant A's responses, he didn't feel at that point there was enough information even to know what crime had been occurring.

After the phone call, Sergeant B returned to the fourth floor, met with Officers A and B and waited for the additional unit. Officer A told Sergeant A the Subject had been making monster noises while he was gone.

At this time, Officers C and D arrived and notified CD they were Code-Six. Officers C and D responded to the fourth floor and were briefed by Sergeant A and Officer A. Sergeant A and Officer A explained the prior circumstances with the Subject and told them they were going to make entry into the apartment if he did not come out.

A tactical plan was devised for Officer D to kick in the front door, followed by Officers A and B then making entry into the apartment, and Officer C was to utilize the TASER. As the officers were being briefed, Officer B knocked on the Subject's door in an attempt to persuade him to open the door by telling him that he had free coupons. The Subject continued to refuse and at one point stated, "If you come in, I'll shoot you." All of the officers then unholstered their weapons, and they prepared to force entry into the apartment.

Sergeant A believed exigent circumstances existed and felt it was necessary to check on the welfare of the individual(s) who may be in the apartment. Sergeant A did not consult with SWAT because he did not believe it met their criteria for a call out. Sergeant A believed the criteria for a SWAT callout included having some type of felony.

Officer A and Sergeant A were on the right side of the door and Officers B, D and C were to the left. Prior to Officer D kicking the door, Sergeant A unholstered his weapon and held it down at his right thigh in his right hand, finger along the frame. Officer D holstered his weapon and began to kick the front door utilizing a front kick. After seven attempts, Officer D could not get the door open. An additional warning was given to the

Subject to open the door or it would be forced open. The Subject told the officers to make a decision and indicated, "If you come in, I'm going to shoot you."

Officer B directed Officer D to switch positions with him and he (Officer B) would attempt to open the door. Once open, Officers A and D would then make entry into the apartment. Officers B and D holstered their weapons, and Officer D took a position to the left side of the door.

Officer B utilized a front kick with his right foot three times unsuccessfully. Officer B then transitioned to a rear kick and forced the door open. The Subject, who was seated on a couch in the living room approximately 11 feet away from the officers, was pointing a handgun at Officer A as he entered the room.

Note: At the time the weapon was recovered, the pistol was loaded with six live rounds. It was determined the weapon had not been fired by the Subject.

Officer A identified the threat and fired one round from his pistol, from a distance of approximately eleven feet in the direction of the Subject. Officer A then moved to his right and sought cover behind a chair and took a right kneeling shooting position. Once Officer A moved, Officer D saw the Subject pointing the handgun in his direction. Officer D then fired one round from his pistol, from a distance of 16 feet.

As Officer D fired his round, Officer A peeked around the chair and could still see the Subject armed with the handgun. Believing the sound of gunfire came from the Subject, Officer A fired two additional rounds from a distance of eleven feet at the Subject. The Subject, yelled, "*All right that's it,*" and placed the handgun on the shoulder rest of the couch and then put his hands up in the air.

Officers A and D ordered the Subject down to the floor. The Subject complied and took a position on the floor on his stomach. Officer C notified CD that shots had been fired at their location. As a result, an "officer needs help" call was broadcast by CD.

Officers B and C and Sergeant A then entered the apartment. Officers B and D handcuffed the Subject, and Officer B conducted a search of the Subject's waistband area. Sergeant A and Officer C searched and cleared the apartment.

Sergeant A requested a Rescue Ambulance (RA) for the Subject. Seconds later, Sergeant A notified CD that the incident had been concluded. Sergeant A directed the officers not to discuss the incident and monitored them until additional supervision arrived. Sergeant A also requested that three additional supervisors respond to the location. Uniformed Sergeant C, arrived at scene and was briefed by Sergeant A. Sergeant C then took Officers A and D to the hallway and obtained a Public Safety Statement (PSS) from them separately.

An RA arrived and transported the Subject to a local hospital. All of the officers and Sergeant A were transported to the station.

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 unanimously made the following findings.

A. Tactics

The BOPC found Sergeant A's tactics, as well as those of Officers A, B, C and D to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Sergeant A's, along with Officers A, B, C and D's, drawing and exhibition of a firearm to be in policy.

C. Lethal Use of Force

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

Basis for Findings

A. Tactics

- In their analysis of this incident, the BOPC identified the following tactical considerations:

1. Contact and Cover/Tactical Planning

In this instance, Officer C reasonably believed that the situation may escalate to the point where deadly force may be justified, so he secured the TASER and drew his service pistol. Although the TASER remained accessible, it could not immediately be discharged once entry was made, had Less-Lethal Force become necessary.

The BOPC evaluated Officer C's actions and found that they were reasonable given the totality of the circumstances. The BOPC determined that Officer C's decision to secure the TASER and draw his service pistol did not substantially deviate from

approved Department tactical training; however, the BOPC will direct that the topics of Contact and Cover, and Tactical Planning be discussed during the Tactical Debrief to enhance future performance during similar situations.

2. Barricaded Subject/Special Weapons and Tactics (SWAT) Notification

As delineated above, once the Subject stated that if the officers came inside his apartment, he would shoot them, the incident possibly met the criteria for a barricaded suspect, prompting notification to SWAT. Sergeant A decided to have his team force entry into the Subject's apartment based on his belief that exigent circumstances existed to check on the welfare of the Subject and any other occupants.

Sergeant B believed the incident did not meet the criteria for SWAT notification for a barricaded subject, in that they did not know if he was armed. Once the Subject raised the level of threat, indicating that he would hurt "somebody," Sergeant A believed it was necessary to enter the apartment to protect individuals that may be inside and in need of assistance.

Sergeant A recalled that no felony crime had been committed. The officers did not know if there was someone in the residence being injured or if he was injuring someone else at that point. Sergeant A also reasoned that although the Subject threatened to shoot anyone that entered his apartment, the officers could not verify if he was armed and they did not know if the incident may be related to a prior child abuse incident, which was referred to in the comments of the radio call.

Finally, Sergeant A indicated that if the officers had any verification that firearms were present; i.e. the sound of a magazine seating, action being racked, he would have pulled back, secured the location and called SWAT.

Officer A further indicated he did not have all the facts and did not know that the Subject was inside and armed. Officer A did not know the Subject was actually barricaded and fortified. He just thought it was possible the Subject was 5150. He did not know if the Subject had any weapons or if a felony had been committed at that point.

The BOPC evaluated Sergeant B and Officer A's actions related to entering the apartment without requesting SWAT and determined that based on the totality of the circumstances their actions were reasonable, and did not represent a substantial deviation from approved Department tactical training.

In conclusion, in an effort to enhance future performance, the BOPC directed that the topic of Barricaded Subjects and SWAT Notification Criteria be discussed during the Tactical Debrief, to include clarification that being "fortified" does not need to be met for a barricaded suspect.

- The BOPC additionally considered the following:

1. Code-3 Response to Emergency Calls for Service

In this instance, Officers A and B had a noticeable delay in response to the emergency call for service, totaling 24 minutes and 40 seconds. Although Sergeant A was already at the call location, he did not enter the apartment building, as he awaited the arrival of Officers A and B. This created a delay in response to the Subject's apartment.

The BOPC assessed the effect and outcome that this had during this incident, and determined that the delay did not cause significant issue. Additionally, it is understood that Officers A and B knew that Sergeant A was at the call location, presuming that if a heightened need for police service was required, that he would request additional resources as necessary. The BOPC also understood that Officers A and B cancelled an outside unit to maintain area integrity within the Area. Officers A and B were reminded that upon being assigned an emergency call for service, they are obligated to respond to that call as quickly as possible. The BOPC directed that this be a topic during the Tactical Debrief.

2. Breaching a Door with Firearm Drawn

After Officer B kicked the door open, it did not open completely to allow unimpeded entry into the apartment. Officer A, with his service pistol drawn, used his foot to kick the door open further prior to the officers and sergeant making entry. Officer A recalled that the door didn't open completely all the way so he further kicked it to make sure it opened completely.

Tactics are often conceptual and dynamic during incidents such as this. Officer A improvised and ensured the door was open to the point that the officers could enter safely and have a clearer view of the interior of the apartment. In doing so, Officer A had already drawn his service pistol and had begun to enter the apartment. It would have been unreasonable and tactically unsafe once in the threshold of the doorway for Officer A to retreat or holster his service pistol at that point and time. However, Officer A is reminded that dealing with obstacles and performing other tasks with his service pistol in hand increases the likelihood of an accidental/negligent discharge. Therefore, the BOPC directed that this be a topic of discussion during the Tactical Debrief.

3. Service Pistol Manipulations

Upon drawing his service pistol, Sergeant A positioned it alongside his leg. While this is not prohibited, it is not a best option for maintaining a state of readiness when confronting a possible lethal threat, or for preparing for a stable shooting platform. The BOPC determined that Sergeant A's service pistol manipulations were appropriate and reasonable under the circumstances, as he

was positioned directly behind Officer A. Had Sergeant A placed his service pistol in any position other than the holster, he likely would have unsafely covered Officer A with his muzzle. However, in an effort to enhance future performance and safety during Service Pistol Manipulations, the BOPC directed that this topic be addressed at the Tactical Debrief.

4. Searching Suspects

After the OIS, Officer B searched the Subject's waistband area. While the Subject was receiving medical treatment at the scene by LAFD personnel, it was discovered that he had a sheathed knife attached to his right ankle. Although the Subject was handcuffed and being medically treated, Officer B was reminded of the importance of conducting a proper search of subjects as soon as practicable. Department personnel have experienced incidents in the past where handcuffed subjects were able to obtain weapons and use them against officers. The Area Captain advised that he addressed this issue at the divisional level and issued a comment card to Officer B. The BOPC determined this action to be appropriate and will direct that the topic of Searching Subjects be discussed during the Tactical Debrief.

5. Warrantless Entry

Sergeant A, along with Officers A and B, responded to a "Screaming Man" radio call. The comments indicated that there was screaming heard from inside of the apartment and that it sounded like a "monster." This information, along with observations made at scene caused the sergeant and officers to believe that other persons were possibly inside. Repeated attempts to have the Subject open the door were met with negative results. The officers clearly identified themselves as police officers and at one point the Subject responded that the officers should leave or he was "going to hurt somebody."

While assessing the exigency to enter the Subject's apartment without a search warrant, the BOPC took into account the totality of the circumstances and thoroughly reviewed and analyzed each employee's statements obtained during the investigation. A plan was developed and ultimately Sergeant B, along with Officers A, B, C and D believed exigent circumstances existed which justified their immediate entry into the apartment.

After taking into account the totality of the circumstances presented to the involved personnel, the BOPC determined that they acted appropriately, within Department policy and law. However, in an effort to enhance future performance, the BOPC directed that the topic of Warrantless Entry be discussed during the Tactical Debrief.

6. Watch Commander/Field Supervisor Communication

There was confusion between Sergeants A and B, who believed that he (Sergeant A) would investigate further and re-contact him (Sergeant B) to discuss how to proceed. There was a level of miscommunication between Sergeants A and B regarding the intended course of action. Captain A recommended to the UOFRB that Sergeant B attend the Tactical Debrief in order to discuss effective communications and tactical incidents between field supervisors and watch commanders. The BOPC concurred with this recommendation and encouraged Sergeant B to attend the Tactical Debrief to discuss the aforementioned topic.

- 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.

After a thorough review of the incident, the BOPC determined that the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training. Therefore, a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and individual actions that took place during this incident with the objective of improving overall organizational and individual performance.

In conclusion, the BOPC found Sergeant A's tactics, along with those of Officers A, B, C and D, to warrant a Tactical Debrief.

B. Drawing/Exhibiting

- In this instance, given that the Subject threatened to shoot the officers if they entered his apartment, the BOPC determined that officers with similar training and experience, while 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 Sergeant A's, along with Officers A, B, C, and D's drawing and exhibiting to be in policy.

C. Lethal Use of Force

- **Officer A** (pistol, 3 rounds)

In this instance, Officer B successfully kicked open the door and stepped aside. Officers A and D entered the room and observed the Subject sitting on a couch

pointing a handgun at them. Believing they were about to be shot, Officers A and D fired their service pistols in defense of their own lives.

Officer A saw the barrel and recognized that there were rounds in the cylinder. And at that point, believing he was going to die, he fired his first round and took a position of cover.

Officer A moved down to one knee behind a chair, and then lowered himself to his right buttock to gain better cover. While approximately eleven feet from the Subject, Officer A heard a single shot and believed that the Subject was shooting at him. Officer A fired two to three additional rounds at the Subject, resulting in the Subject releasing the handgun and surrendering with his hands in the air.

Officer A recalled that when he rounded the corner, the Subject was still holding the gun, Officer A heard a shot and thought the Subject was still shooting at him. Officer A fired what he believed to be three rounds.

Given the totality of the circumstances, an officer with similar training and experience as Officer A would reasonably believe that the Subject posed an imminent threat of serious bodily injury or death and that the use of lethal force would be justified.

In conclusion, the BOPC found Officer A's use of lethal force to be in policy.

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

Officer D followed Officer A into the Subject's apartment. Upon entry, Officer D heard a single gunshot and observed the Subject pointing a handgun at him. Believing he was about to be shot, Officer D fired one round from his service pistol to stop the Subject's actions, then sought cover behind the frame of the door.

Note: The investigation revealed that the Subject did not fire his handgun during the incident; therefore it was Officer A's round being fired that Officer D heard and perceived to be fired from the Subject's handgun, although he did not know this at the time of the OIS.

Officer D could see the Subject with his revolver pointed at him, at which point, he fired a round, moved back toward the cover of the door frame. And then looked back over again to see that the Subject did not have the revolver in his hand anymore.

Given the totality of the circumstances, an officer with similar training and experience as Officer D would reasonably believe that the Subject posed an imminent threat of serious bodily injury or death and that the use of lethal force would be justified.

In conclusion, the BOPC found Officer D's use of lethal force to be in policy.