

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

K-9 CONTACT REQUIRING HOSPITALIZATION – 010-13

Division **Date** **Duty-On (X) Off ()** **Uniform-Yes (X) No ()**

77th Street 02/06/13

Officer(s) Involved in Use of Force **Length of Service**

Officer E 18 years

Reason for Police Contact

Officers observed a male who matched the description of a burglary subject that had been broadcast over the police radio. The Subject fled from the officers, and a K-9 unit responded. In the course of conducting a search for the Subject, a K-9 contact occurred, requiring hospitalization.

Subject **Deceased ()** **Wounded (X)** **Non-Hit ()**

Subject: Male, 33 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 January 7, 2014.

Incident Summary

After assisting with the service of a search warrant in the Area, uniformed Police Officers A and B were riding with Sergeant A en route to the local station in a black and white police vehicle.

Communications Division (CD) broadcast, "Any 77th unit, possible [burglary] su[bj]ect there now[.] Su[bj]ect is a male [], dark clothing, entered (inaudible) side window. Bicycle still out front, no cars parked."

Uniformed Police Officers C and D also broadcast that they were responding to the radio call and requested an air unit to respond. CD broadcast the subject's last location and that he was a "Male [], black shirt, black pants."

Sergeant A and Officers A and B were in the area of the radio call when CD broadcast additional information that the subject was last seen riding a bicycle west as Sergeant A drove in the same direction. Officer B observed a male who matched the 459 subject's description, riding a bicycle north. The male was later identified as Subject 1, 33 years old.

When Sergeant A turned north, the Subject negotiated a U-turn on his bicycle and peddled south toward the police car.¹ The Subject looked at the officers, accelerated and turned east into the driveway at the location. Sergeant A stopped the police car and Officers A and B exited and observed the Subject's bicycle abandoned adjacent to a fence at the east end of the driveway and heard chain link fences rattling and dogs barking.

Note: According to Sergeant A, the Subject dropped the bicycle and headed east down the driveway.

Officer A remained in front of the location, while Officer B ran north to a nearby intersection, and Sergeant A drove to a different intersection to hold the perimeter until additional units arrived. Officers A and B maintained visual contact with each other.

Officer B broadcast, "[H]old the frequency....give me a perimeter for a possible 459 su[bj]ect running eastbound[.] Male [...], black beanie, black over black, possibly 20 to 25 years." Officer B also broadcast that he needed an additional unit.

Officer B next broadcast, "[T]o all responding units to the perimeter, su[bj]ect is going to be a male [...], approximately 20 to 25 years of age. He's going to be 5-9 to six foot, thin build, wearing a black beanie, black sweater and dark pants."

¹ The Digital In-Car Video System (DICVS) was queried for Sergeant A's vehicle, but since the system had not been activated, there was no video captured.

When additional units arrived and secured the perimeter, Sergeant A established a command post (CP). Air Support Division (ASD) personnel arrived and assisted securing the perimeter pending the notification and arrival of Metropolitan Division K-9 units. The officers switched to a tactical channel with respect to communicating on the radio.

Note: While waiting for the K-9 units to respond, Officers A and B returned to the designated location and verified that a burglary had occurred and conducted a preliminary investigation.

Sergeant A telephonically spoke to specialized unit uniformed Sergeant B, to verify if the incident met Department policy for K-9 deployment. Since there was a confirmed burglary, the officers had a signed Incident Report, and an officer could visually identify the subject, Sergeant B directed specialized unit uniformed Police Officers E and F to respond to the CP. Sergeant B was first to arrive at the CP.

Note: While waiting for K-9 units to arrive, the officers were notified by Witness A, that her nephew, Witness B, was asleep inside her detached garage near the location. Witness B was awakened by the Subject who ran into the garage saying that the police were chasing him. The Subject removed his clothing and hid them in the garage. After the Subject's arrest, the clothing was recovered and booked as evidence.

According to the Subject, he was a gang member and was being chased by rival gang members.

Officer E and his dog arrived at the CP and was briefed by Sergeants A and B and Officers A and B. Sergeant B and Officer E formulated a tactical plan in which Officer E, his dog, and Officers A and B, and uniformed Officer G, would go to the residence where the Subject was last seen in the detached garage. When Officer F arrived, he and his dog and a search team would be deployed to search along the east side of one street as Officer E's team searched the west side of a different street. Sergeant B briefed Sergeant A and, as the incident commander, approved the tactical plan. Sergeant B gave approval to Officer E to conduct the K-9 search.

Note: Sergeant A was the Incident Commander and approved the tactical plan.

Officer E briefed Officers A, B and G on K-9 search tactics. Officer A was assigned the point position and his assignment was to protect Officer E while he focused on the dog. Officers B and G were assigned to guard the peripheral and rear. Officer E broadcast over the radio that the K-9 search was commencing. Officer E was wearing his tactical gear and Officers A, B and G were wearing ballistic vests and helmets and were armed with their service pistols.

Officer C parked the police vehicle in front of the designated location, and broadcast a K-9 search announcement in English via the Mobile Digital Computer (MDC). Officer C broadcast a Spanish K-9 announcement.² At the direction of Officer E, Officer I verbally broadcast an English K-9 announcement as an air unit orbited over the perimeter.

Note: According to Sergeant B's K-9 Deployment Report, and Officer E, the announcements were verified to be concise and clearly audible. Sergeant B was at the CP and also confirmed the announcements.

According to Sergeant A, he did not hear the announcements at the CP, but recalled Sergeant B documenting the times.

According to Witness C, who lived nearby, the air unit gave an announcement for the Subject to surrender or a K-9 would be used. Additionally, while Witness C was sitting on his front porch, an officer requested he go inside because there was going to be a K-9 search.

According to Witness A, the air unit gave warnings in both English and Spanish for the Subject to surrender. Officers also instructed her to stay inside her home due to a K-9 search.

According to Witness D, who also lived nearby, he heard the air unit notify the Subject to stop or a dog would be sent in.

According to Witness E, she heard the air unit make an unknown announcement.

Officers A, E and G unholstered their pistols to the low-ready at the start of the K-9 search in front of the location.³ The K-9 dog cleared the front yard before the team moved to the gate separating the front driveway and rear detached garage. The air unit advised that the north side pedestrian door of the detached garage was open.

Officer E verbally gave a K-9 search announcement, in English, in the direction of the rear detached garage. Officer E gave a second K-9 search announcement directed toward the garage. Officer E waited one minute and heard no reply or sounds from the Subject. Officer E opened the gate and sent the K-9 dog toward the garage.

Note: Officer E approximated that he verbally gave two K-9 search announcements in the direction of the garage door, approximately one minute apart.

² The Digital In-Car Video system had not been activated in the officers' police vehicle, there was no video captured.

³ According to Officer B, he never unholstered his pistol.

The K-9 dog searched up to the garage door and then moved to the north side of the garage where the open pedestrian door was located. Officer E verbally placed the dog into a down position near the door to allow the search team time to obtain cover behind parked cars. Officer E could see the dog, but not the open side pedestrian door. Officer E heard noises from inside the garage and heard the air unit broadcast that the Subject was running. Officer E moved and observed the Subject climbing west over the rear fence into the rear yard of a residence behind the location. The K-9 dog remained in a down position and did not chase the Subject.

Since he was still the only K-9 search team at scene, Officers A, E and G holstered their pistols and walked to the front of the location with Officer B. Officer E went to the rear gate across the driveway and gave a verbal search announcement, but there was a large dog in the rear yard and did not enter.

Note: During the next five minutes, the Subject who was clad in blue pants, a black shirt and black shoes, moved back and forth over the fences between the two residence rear yards. The air unit maintained visual contact with the Subject and continued to update the ground units via the tactical channel of his position within the perimeter.

The air unit broadcast over the radio that the Subject was out of view, possibly inside of a garage, which was a secure garage

When Officer F arrived, his team was deployed on the street, but did not begin to search. Officers A, E and G unholstered their pistols to the low-ready and went to the wrought iron gate across the south driveway that led to the rear detached garage at the location. The garage door was open and while standing at the gate, Officer E verbally announced to the Subject that the air unit could see him and this was his last chance for him to surrender prior to a K-9 search. Officer E waited one minute, but the Subject did not respond.

Note: According to Witness F, prior to entering his rear yard, Officer E warned the Subject three or four times that a dog would be released. Officer E waited ten minutes for the Subject to surrender prior to beginning the K-9 search of the rear yard.

Officer E opened the wrought iron gate and directed the K-9 dog to search the garage area. The K-9 dog searched for three or four minutes, but did not locate the Subject. Officer E moved Officer G forward to open a chain link gate that led into a grassy area on the north side of the detached garage. Officer G holstered his pistol, opened the gate and then unholstered his pistol. Officer E directed the K-9 dog to search the grassy yard, and Officers E and G followed. Officer A waited in the driveway to guard the rear and the open garage door.

The K-9 dog searched west in the yard and went south behind the detached garage, and then out of Officer E's view for three or four seconds. Officers E and G moved west

and looked south behind the detached garage, which was an ivy covered space that was approximately two feet wide between the detached garage west wall and the rear fence. Officer E observed the K-9 dog's buttocks and tail on the opposite side of a red igloo cooler. There were rustling noises and Officer E observed the Subject's hands and fists intermittently coming out of the ivy in striking motions toward the K-9 dog. The K-9 dog was trained to defend himself when attacked, but due to the cooler blocking his view of the Subject, Officer E believed the K-9 dog had a bite hold on him, but could not observe it.

Note: According to the Subject, he was lying down hiding from rival gang members and did not observe the officers, but heard their commands to show his hands prior to being bitten by the canine.

Officer G gave repeated commands for the Subject to show his hands, but he failed to comply. Officer A moved to Officer G's position, used his flashlight to observe the Subject and gave repeated commands for the Subject to show his hands and to surrender. Officer E called the K-9 dog to return to him. The K-9 dog tried to pull back and away, but then snapped forward. Officer E repeated the command, and the K-9 dog again pulled back. The Subject's forearm was in front of the K-9 dog, and Officer E opined the Subject was holding onto one of the K-9 dog's collars, which prevented him from returning.

Officer G was positioned at the northeast corner of the garage as the designated cover officer and Officer A was next to him. Officer E handed Officer A the TASER and directed him to stand next to Officer G as the less lethal officer. The Subject swung his arms and punched the K-9 dog once in the left muzzle with his right fist. Officer E ordered the Subject to stop hitting the K-9 dog and recalled the K-9 dog a third time. The K-9 dog turned and returned to him and Officer E attached the leash. The K-9 dog was behind the garage for 15 to 20 seconds, and Officer E believed the K-9 dog bit the Subject, but never observed it.

Note: Due to the confined area and vegetation behind the garage, none of the officers witnessed the K-9 contact.

Officer G repeatedly ordered the Subject to raise his hands, stand-up and to come out, but the Subject did not comply. The Subject refused to exit and responded that he hurt too much. Officer E issued a radio request for a long tool so the ice chest could be removed. An officer on the street obtained a long metal pole from a construction crew and passed it over the rear fence to the search team. The pole was used to remove the ice chest for a more direct view of the Subject's hands. Numerous commands were given for the Subject to surrender, but he failed to comply. Officer E requested additional officers in the rear yard and Officers B and C responded.

Officer E formulated a plan for two officers to enter the space between the garage and fence to arrest the Subject. Since the Subject's hands were now visible and he was not holding a weapon, one officer would have a TASER. Officer B was assigned as the

contact officer, Officer A as the less-lethal officer with the TASER, and Officer G was the cover officer. Officer C unholstered his pistol to a low-ready position and remained back as a second cover officer.

Note: The officers estimated the Subject refused to surrender for approximately five to ten minutes.

Officer B ordered the Subject to place his hands straight out in front of him and he complied. Officer B advised the Subject that he was moving toward him. The Subject was in a prone position and Officer B moved six feet south behind the garage and knelt down. Officer A followed Officer B south behind the garage, and Officer B handcuffed the Subject's outstretched arms. The Subject said he could not walk and to pull him out. Due to the narrowness of the space, Officer B did not direct the Subject to stand up. Instead, Officer B grasped the Subject's forearms, lifted up and pulled him north until he was out from behind the garage. Officer B removed the handcuffs, moved the Subject's hands behind his back and reapplied and double locked the handcuffs on his wrists. Once the Subject was secure, Officer A went behind the garage to search for evidence or contraband, but nothing was found.

Note: According to Officer C, the Subject took two or three steps on his knees north prior to the officers moving south toward him.

The FID investigation determined that due to the Subject's hiding location behind the garage and Witnesses C and F's positions inside their residence, there was no direct line of sight as they indicated, therefore it was impossible for them to observe anything that occurred behind the garage.

Officer E observed bite wounds to the back of the Subject's neck and requested via the radio that the CP request a rescue ambulance (RA). Sergeant A broadcast, "[C]an I get an RA to my location [...] for a male [...], approximately 25 years of age, dog bite, conscious and breathing."

Officers B and C walked the Subject out of the rear yard. Sergeant B was standing in front of the location when the Subject was walked out and asked if the Subject heard the search announcement and he replied, "No, I did nothing." Officers B and C walked the Subject to receive medical treatment.

Los Angeles Fire Department (LAFD) personnel responded and provided preliminary treatment to the Subject. The firefighter-paramedics were dispatched and arrived at the scene. The Subject received medical treatment at scene, and Fire Department personnel transported the Subject to a local hospital.

Note: During his transport, officers reported that the Subject did not speak about the incident, he only complained of pain.

The Subject was treated for multiple canine bite wounds to his left ear, left posterior neck and on the left scapula and was admitted to the hospital and discharged a couple days later. The Subject was discharged from the hospital and was transferred to the Los Angeles County Jail.

Sergeant B went to the hospital on the night of the incident and was advised that the Subject was going to be admitted due to the K-9 contact. Sergeant B admonished Officer E not to discuss the incident and telephonically notified relevant parties that the Subject was being hospitalized. Sergeant B directed Sergeant C to assign a sergeant and officers to secure the K-9 contact location.

The Subject was arrested for violating Section 459 (Burglary) of the California Penal Code (PC). The District Attorney's Office filed two counts of 459 PC (Burglary) and one count 236 PC (False Imprisonment) against the Subject.

Note: The K-9 dog was not injured by the Subject; therefore, no criminal charges were filed concerning the Subject punching the K-9 dog.

A review of the Sergeant's Daily Reports revealed Officer E was monitored in accordance with all Department protocols concerning a categorical UOF investigation.

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. Deployment of K-9

The BOPC found deployment of the K-9 dog to be consistent with established criteria.

B. Contact of K-9

The BOPC found the contact of the K-9 dog to be consistent with established criteria.

C. Post K-9 Contact Procedures

The BOPC found post K-9 contact procedures to be consistent with established criteria.

Basis for Findings

A. Deployment of K-9

- In its analysis of this incident, the BOPC identified the following tactical consideration:

Sergeant B, a specialized unit K-9 supervisor, responded and received information that the Subject was wanted for a felony crime. Additionally, Sergeant B determined that the circumstances met established K-9 criteria. A K-9 search announcement was given in English and Spanish via the PA system from a black and white police vehicle. The announcement was audible at the CP and verified by one of the officers at the scene. Furthermore, Officer I utilized the Air Unit's PA system and broadcast a K-9 announcement that was audible at the CP and was also verified by Sergeant B. Nonetheless, the importance of providing adequate K-9 search announcements can never be understated, and this topic was discussed at the Tactical Debrief.

In conclusion, the BOPC determined that the deployment of the K-9 resources were consistent with established Department criteria.

B. Contact of K-9

- Numerous K-9 announcements were given that were audible at the CP as well as by Officer Heredia. Additionally, six independent residents, who live in close proximity within the perimeter, heard the K-9 announcements. Lastly, Officer E gave two additional announcements prior to entering the location. Based on where the Subject was hiding relative to the CP, it can be surmised that the K-9 announcements were audible by the Subject.

In this situation, it was the actions of the Subject that prompted the K-9 dog to protect himself and bite the Subject. Officer E observed the Subject fighting with the K-9 dog as well as the Subject striking the K-9 dog's head. Officer E stated that the K-9 dog is trained to defend himself against a combative subject. Officer E repeatedly attempted to recall the K-9 dog with negative results. Officer E believed that the Subject was holding the K-9 dog by his collar. Eventually, the K-9 dog was able to free himself and returned to Officer E. Sergeant B unsuccessfully attempted to interview the Subject due to the fact that the Subject was possibly under the influence of a controlled substance.

The BOPC determined that the K-9 Contact was consistent with established Department criteria.

C. Post-Contact Procedures

- Officer E observed the Subject with visible K-9 bite injuries and contacted the CP for a Rescue Ambulance (RA) to respond. The Subject received medical treatment by LAFD at scene. The Subject was subsequently transported to the hospital for further treatment.

Sergeant B conducted a follow-up to the hospital and verified the Subject's medical condition. Sergeant B was informed by staff at the medical facility that the Subject would be admitted due to the K-9 contact. Sergeant B notified Sergeant A and advised that the Subject was being admitted and the K-9 contact would be handled as a Categorical Use of Force investigation. Sergeant B made the proper notifications once it was determined that the K-9 contact was deemed a Categorical Use of Force Incident and followed all FID protocols.

The BOPC determined that the post contact procedures were consistent with established Department criteria.