

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

**Law Enforcement-Related Injury – 010-15**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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Hollywood	2/7/15		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Officer K	3 years, 5 months
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**Reason for Police Contact**

Officer K was assisting officers who were attempting to remove an individual (Subject) from a residential roof. As Subject picked up a large piece of wood and held it over his head, Officer K perceived his actions as a threat to the officers and fired one round from his beanbag shotgun, resulting in a Law Enforcement Related Injury, (LERI).

<b>Subject(s)</b>	<b>Deceased ( )</b>	<b>Wounded (X)</b>	<b>Non-Hit ( )</b>
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Subject: Male, 35 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 12, 2016.

## **Incident Summary**

Witness A and his family were inside their residence when the Subject climbed onto the roof of their residence. Witness A, from within the house, called out to the Subject in English and Spanish, asking him to get down from the roof or he would call the police. The Subject did not respond, prompting Witness A to call 911.

A Communications Division (CD) emergency board operator (EBO) received the 911 call from Witness A and broadcast to Area Units that there was a prowler on the roof of Witness A's residence.

Uniformed Police Officers A and B, driving a marked black and white police vehicle, contacted CD and requested the call. While en route to the location, Officer B requested that an Air Unit respond to assist with the investigation. Officers A and B arrived at the location; however, the Air Unit had not yet arrived overhead. Upon seeing the Subject on the roof, both officers exited the police vehicle and took cover behind their respective ballistic doors.

Officer B advised CD they had arrived at the location with the Subject on the roof and requested an additional unit to respond to contain the residence. Officer A immediately began giving verbal commands to the Subject, directing him to come down from the roof. Officer A also warned the Subject that force could be used, which could cause him pain and serious injury if he did not comply. The Subject did not respond to the commands and continued pacing back and forth.

Uniformed Police Officers C and D arrived immediately after Officers A and B. Officer C retrieved the beanbag shotgun from his vehicle, chambered a round, and along with Officer D, accompanied Officers A and B at their police vehicle.

Air Support Division Police Officers E (pilot), and F, Tactical Flight Officer (TFO), also arrived at scene.

The Subject continued to ignore the presence of the officers and the airship overhead as he paced back and forth. As the officers monitored his movements and actions, the Subject was observed at different times holding a box cutter in his hand and picking up a cinder block and large piece of plywood. Officer E broadcast the Subject's actions to the personnel at the scene and because of his erratic behavior, requested a beanbag shotgun. Officer F also directed responding units to containment positions around the residence.

Uniformed Sergeant A arrived at the scene. Officer F directed Sergeant A to a containment position. Sergeant A was relieved by Hollywood Patrol Division uniformed Police Officers G and H. Sergeant A met with Officers A, B, C and D and was briefed on the incident. Sergeant A assumed the role of Incident Commander and established an arrest team, consisting of four officers. Sergeant A assigned Officer C as the point officer, armed with a beanbag shotgun, and Officer D as the contact officer, because he

was bilingual, while Officer A was equipped with a TASER, and Officer B was assigned the role of using lethal force.

Uniformed Police Officers I and J arrived at the scene. Officer J retrieved the beanbag shotgun from the trunk of his police vehicle and chambered a round. Almost immediately, Officers I and J were redeployed to a containment position. Officers I and J arrived at their designated containment position. Upon exiting their vehicle, Officer J again retrieved the beanbag shotgun from the trunk and carried it slung over his shoulder with a round in the chamber and the safety on. Officers I and J monitored broadcasts describing the Subject in possession of a box cutter and a cinder block; therefore, they unholstered their pistols, as they and believed the situation could escalate to the use of deadly force.

Uniformed Police Officers K and L arrived at scene. As Officer K was responding to the beanbag shotgun request, he retrieved the beanbag shotgun from the trunk of his police vehicle and made himself available to Sergeant A for assignment.

As containment around the residence was established, Sergeant A utilized the public address (PA) system of Officer A's police vehicle to order the Subject to come down from the roof. Sergeant A further advised that if the Subject did not comply with his commands, a beanbag shotgun could be used and it could cause serious injury. Sergeant A repeated these commands in English several times over the PA system. The Subject did not respond.

Sergeant A requested that Los Angeles Fire Department (LAFD) personnel respond to the location with a ladder. Sergeant A was hopeful that a ladder against the house would provide easy access for the Subject to climb down from the roof and also facilitate officers with going up onto the roof, if needed. While they awaited the arrival of LAFD, Sergeant A directed Officer D to make further verbal commands over the PA system for the Subject to come down and again warn him that force could be used. Officer D gave the commands and warnings in English and Spanish.

Uniformed Sergeant B arrived at scene and met with Sergeant A. Sergeant A briefed Sergeant B regarding the designated arrest team, the request for a ladder from the LAFD, and the numerous failed attempts in English and Spanish to communicate with the Subject.

Sergeant B assembled a cover team that would stay on the ground if the arrest team approached a ladder to ascend to the roof. The cover team consisted of Officer K, armed with a beanbag shotgun, and Officer L assigned as lethal force. Sergeant B discussed with Officer K his requirement to announce beanbag ready, beanbag standby, and that he was to aim for the lower abdomen.

Uniformed Police Officers M and N arrived at the scene and assumed a position near Officer K.

Upon the arrival of LAFD personnel, Sergeant A briefed Battalion Chief A. Sergeant A, with the concurrence of Battalion Chief A, decided that a ladder would be placed against the corner of the house, opposite of where the Subject was located. As Officer F provided updates on the Subject's position on the roof, LAFD personnel approached the house with the ladder. Officer C, armed with a beanbag shotgun, and Officer D, who had unholstered his pistol, provided cover for LAFD Firefighters as they approached the house with the ladder. The ladder was placed against the house without incident and as the LAFD personnel retreated back to cover, Officer D holstered his pistol.

With the ladder in place, additional attempts to communicate with the Subject were made via the PA system. The Subject briefly stopped and looked at the ladder but went back to his erratic behavior of pacing back and forth on the roof and picking up miscellaneous items.

Sergeants A and B were aware that residents, including children, were inside the house. According to Sergeant B, the age and condition of the residents inside the house was unknown. In the event officers attempted to evacuate the residents, it was unknown if they could make a quick and safe exit from the door to a safe position away from the house; therefore, the residents were instructed to remain in a safe place within the house. Sergeant A observed that the Subject's behavior was very erratic and unpredictable, and he was concerned that the Subject may attempt to gain access to the inside of the house. Believing he had exhausted all means to communicate with the Subject, Sergeant A decided to deploy his arrest team onto the roof. However, prior to coming to this decision, he had considered many factors.

As Sergeant A monitored the Subject's movements on the roof and gleaned information about the roof from Officer F, he concluded the officers assigned to ascend the ladder to go onto the roof would have ample room to safely move about. Also, throughout the time the Subject had been monitored by the personnel on scene, including the airship, he had not been seen in possession of a firearm. According to Sergeant A, if the Subject had been observed in possession of a firearm, he would have identified the situation as a barricaded Subject scenario and implemented protocols necessary for that type of scenario.

Sergeant A was aware of the challenges associated with affecting an arrest on the roof and was cognizant of the safety concerns. With that in mind, he admonished Officers A and C to not fire their beanbag shotgun and TASER, respectively, until he gave a direct order to do so. Sergeant A was concerned that if either weapon was deployed, while the Subject was too close to the edge of the roof line, his safety could be compromised. Additionally, Sergeant A identified the beanbag shotgun as the preferred less than lethal force option. Sergeant A was concerned the TASER would require his officers to get too close to the Subject and unnecessarily compromise their safety since the Subject was arming himself with cinder blocks and a large piece of plywood. Sergeant A was hopeful that a uniformed presence on the roof, supported by the uniformed officers on the perimeter, would influence the Subject to adhere to the verbal commands and voluntarily submit to arrest without incident.

Prior to making the approach to the ladder, Sergeant A advised all units via his radio that he and the arrest team were approaching the ladder to ascend to the roof. Simultaneously, the cover team and arrest team moved toward their respective positions.

Officer K, who had retrieved a beanbag shotgun from the trunk of his police vehicle and made himself available to Sergeant A, was assigned the lead position on the two-person cover team. Officer K chambered a round and announced, "Beanbag ready." Officer K was followed by Officer L, who had unholstered his pistol, and Sergeant B, who remained to the rear of the cover team.

Sergeant B unholstered his duty pistol as the arrest team approached the residence. Sergeant B reacted to the Subject's actions, out of safety to the officers, as the Subject appeared to focus on the approaching team and quickly moved toward them as he reached down. Sergeant B was concerned that the Subject was reaching for a weapon. Sergeant B holstered his pistol after seeing Officer L unholstered and in a better position. Sergeant B remained holstered and continued in his role as supervisor to the officers on the cover team. Officer M supplemented the cover team as an additional lethal force officer and unholstered his pistol.

The arrest team was assembled near the ladder. Officer C was to be the first up the ladder with his beanbag shotgun. As Officer C waited for the order to climb the ladder, he secured the beanbag shotgun with it slung over his back and the barrel pointed up. The beanbag shotgun had a round in the chamber and the safety was on. Officer D was adjacent to Officer C followed by Sergeant A, while Officers A and B brought up the rear. Officers A and B unholstered their pistols as they approached the house.

Sergeant A was communicating with Officer F regarding the Subject's movements. As the Subject moved away from the ladder, Officer F informed Sergeant A, who then directed his team to start up the ladder. As Officer C began to climb the ladder with Officer D directly behind, the Subject began moving across the roof in their direction. Officer C was halfway up the ladder when he saw the Subject approaching him. Officer C unslung the beanbag shotgun and shouldered it, while Officer D supported him by holding onto his utility belt. Officer C aimed the beanbag shotgun at the Subject as he dipped out of sight.

Officer A, who was on the ground, saw the Subject approaching the ladder and issued him commands in English and Spanish that the Subject should comply with the officers or force could be used. Meanwhile, Officer C had slung the beanbag shotgun over his shoulder and took a couple more steps up the ladder when he again had a visual of the Subject. Officer C unslung the beanbag shotgun and shouldered the weapon. With his finger on the safety, he aimed the beanbag shotgun at the Subject, who again moved out of his view. During this time, the Subject picked up a large L-shaped piece of plywood and held it in various positions in front, behind and over his head. With the beanbag shotgun slung again, Officer C took one more step up the ladder, which enabled him to see that the Subject was now standing approximately 21 feet away

holding the plywood. Officer C unslung the beanbag shotgun and shouldered the weapon with his finger on the safety.

Simultaneously, Officer K, from his position on the ground, observed the Subject with the plywood raised over his head. Officer K had his beanbag shotgun shouldered and aimed at the Subject's center body mass as the Subject was standing on a flat area toward the center of the roof. Officer K perceived the Subject's movement as a threat and believed he intended to assault the officers on the ladder. Officer K fired one round as he saw the Subject move toward the officers on the ladder.

According to Sergeant B, the Subject was standing on a flat section of the roof and was approximately six feet or more away from the edge of the roof line. The Subject was holding the plywood over his head as he looked toward the officers on the ladder and turned his body. Sergeant B believed that the Subject was preparing to throw the plywood at the officers on the ladder and was thinking about giving a verbal command to Officer K to fire the beanbag shotgun when Officer K fired one round. The beanbag shotgun was fired from an approximate distance of 28 feet and struck the Subject in the face as he crouched down. Officer K immediately chambered a second round in the beanbag shotgun and assessed the situation.

The Subject immediately went down onto the surface of the roof. A verbal announcement was made by an unknown officer advising personnel at scene that the Subject was down, influencing Sergeant A to order the arrest team to get onto the roof. Officer C slung the beanbag shotgun over his back and climbed up the ladder with Officer D directly behind him. Sergeant A went next, followed by Officers A and B.

Once on the roof, Officer C unslung his beanbag shotgun and Officer D unholstered his pistol. With their weapons at a low-ready position, the officers moved toward the Subject, who was lying on his left side holding his face. As Officer C did not see any weapons in proximity to the Subject, he slung the beanbag shotgun over his back and grabbed the Subject's left arm. Officer B grabbed the Subject's right arm and placed his right knee between his shoulder blades and his left knee on his lower back. With both arms secured behind his back, Officer D, who had holstered his pistol as Officer C grabbed the Subject's left arm, removed his handcuffs and secured them on the Subject's wrist. Officer D searched the Subject for weapons. Officers B and C then sat the Subject up.

Sergeant A broadcast that the incident had been resolved and that the Subject was in custody (Code-Four). Sergeant A then directed LAFD personnel to respond to the roof to treat the Subject for a laceration to the face. Upon hearing the Code-Four broadcast, Officer K downloaded his beanbag shotgun, verified the chamber was empty, and slung it over his shoulder.

LAFD personnel climbed the ladder onto the roof to evaluate and treat the Subject's injuries, at which time the Subject began flailing his feet in an aggressive manner. Officers B and C rolled the Subject onto his stomach and Officer C applied a hobble

around the Subject's ankles to prevent him from kicking. The Subject was treated on the roof by LAFD personnel for a laceration to his face. The Subject was secured and lowered to the ground.

Officer K picked up the expended beanbag shotgun shell from the ground and placed it in the sidesaddle on the beanbag shotgun as he was concerned it would be in the way of or damaged by LAFD personnel working to remove the Subject from the roof. At the direction of Sergeant B, Officer K secured the shotgun in the trunk of Sergeant B's police vehicle. Sergeant B notified the Acting Watch Commander Sergeant C of the possible Categorical Use of Force (CUOF). Sergeant C consequently contacted Force Investigation Division.

LAFD transported the Subject to a nearby hospital, where he was admitted for his injuries. Officer J rode in the RA with the Subject, and according to Officer J, the Subject did not make any statements while he was being transported.

Sergeant C arrived on scene and separated and monitored Officers K and L, as well as Sergeants A and B. Sergeant C followed Officers K and L in their police vehicle and Sergeants A and B in their respective police vehicles to the station.

Detectives interviewed the Subject at the hospital and he agreed to discuss the details of the incident. The Subject stated he did not live at the residence and had climbed onto the roof for no particular reason. Two to three hours prior to climbing on the roof, he had smoked methamphetamine and believed he was "high" at the time he was on the roof. While on the roof, the Subject picked up items such as cinder blocks, a bucket, sticks, and a piece of plywood because he was "bored."

The Subject was aware police officers were on the ground, and a helicopter was circling over the house. The Subject knew the police officers wanted him to come down, but could not articulate what the officers were saying to him. The Subject observed the ladder against the house, but was afraid to come down as he believed the officers were going to hurt him. The Subject remembered holding a piece of plywood, but did not know if he was holding it when he was shot with the beanbag shotgun.

### **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 Sergeants A and B's tactics to warrant a finding of Administrative Disapproval.

## **B. Drawing/Exhibiting**

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

## **C. Less-Lethal Use of Force**

The BOPC found Officer K's use of less-lethal force to be in policy.

## **Basis for Findings**

### **A. Tactics**

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

#### 1. Barricaded Suspects

The facts of the situation met the criteria of a barricaded Subject, however, personnel from Metropolitan Division, Special Weapons and Tactics, were neither requested to respond nor called for advice.

Sergeants A and B conducted independent assessments of the situation, as well as shared information. At no point during their assessments did either supervisor recognize the incident as a barricaded Subject situation, and as a result they never sought the guidance of Department resources that were available to them.

The BOPC determined that the situation met the criteria of a barricaded Subject, and no exigent circumstance existed that would have warranted a deviation of the protocols when dealing with a barricaded Subject. In this case, Sergeants A and B's decision to have officers ascend a ladder to make contact with the Subject unnecessarily compromised the safety of the officers and was a substantial deviation without justification from approved Department tactical training.

#### 2. Tactical Plan

Sergeant A developed a tactical plan that was agreed upon by Sergeant B to have officers ascend a ladder and take the Subject into custody on the roof.

The BOPC was critical of Sergeant A's decision to have officers ascend a ladder to confront a Subject that had various weapons at his disposal. The BOPC concluded that the plan compromised the safety of the officers and placed the officers at a distinct tactical disadvantage. The investigation also revealed Sergeant A never



made any attempt to contact or secure the occupants of the residence during incident.

Additional concerns identified by the BOPC in regards to the tactical plan included the following:

- Lack of ballistic helmets
- Point officer armed with the Beanbag Shotgun
- Loose perimeter around the residence

A review of the investigation revealed that Sergeants A and B discussed and agreed with the plan prior to its execution. Although Sergeant A was the Incident Commander and formulated the tactical plan, the evidence reflects that Sergeant B agreed with the plan and, therefore, shared equal responsibility in the formulation and execution of the plan.

The BOPC determined that Sergeants A and B's tactical plan was a substantial deviation, without justification, from approved Department training. These topics will be discussed at the Tactical Debrief.

- The BOPC additionally considered the following:

1. Effective Encounter with Mentally Ill Persons

Prior to the beanbag shotgun being fired, the Subject's behavior was consistent with a person suffering from a mental illness, and/or being under the influence of drugs or alcohol. In an effort to bring further awareness to the personnel at scene, this topic will be discussed during the Tactical Debrief.

2. Beanbag Shotgun Manipulation

The investigation revealed when Officer K chambered a sock round in the beanbag shotgun, he did not load a fifth round from the side saddle into the magazine tube. Although loading a fifth round is not required, Officer K is reminded of the tactical advantage afforded when the beanbag shotgun is fully loaded.

3. Beanbag Shotgun (Target Areas)

According to Officer C, he was aiming at the Subject's upper stomach, lower chest area. According to Officer K, when he fired, he aimed for the Subject's center body mass. Officers C and K are reminded that the primary target area for the Beanbag Shotgun is the naval or belt line.

#### 4. Stable Shooting Platform

The investigation revealed Officer C was designated as the less-lethal officer on the arrest team and assumed the lead, or “point” position as the arrest team ascended the ladder. On several occasions while climbing the ladder, Officer C unslung his beanbag shotgun and attempted to acquire a sight picture on the Subject. Officer C was to be reminded of the importance of maintaining a stable shooting platform when deploying a firearm or lethal or less-lethal weapon system.

#### 5. Beanbag Shotgun Deployment on a Subject Located on an Elevated Platform

In this case, Officer K observed the Subject approaching the officers while holding a piece of plywood over his head and fired a sock round at the Subject while he was standing on the roof of a single story residence. Although the evidence reflects that Officer K deployed the beanbag appropriately to stop the Subject from harming the other officers, officers should always consider the increased dangers associated whenever deploying any type of less-lethal weapon on a Subject who is on an elevated platform.

#### 6. Handcuffing with a Slung Weapon

The investigation revealed that Officer C assisted with the handcuffing process with his beanbag shotgun slung instead of allowing one of the other officers on the arrest team to assist with the handcuffing. Officer C is to be reminded when designated as a less-lethal officer it is best to allow other available officers to make contact with the Subject rather than engaging in physical contact with a Subject while maintaining possession of a beanbag shotgun.

#### 7. Transporting a Beanbag Shotgun

The investigation revealed that Officer J placed the beanbag shotgun in the truck of his police vehicle with a live round in the chamber when he quickly redeployed to another location. Although the BOPC understood the need to redeploy was based on the evolving tactical situation, Officer J is reminded of the requirement of downloading his weapon to “patrol-ready” prior to transporting the weapon.

#### 8. Equipment Required

Officers A, C, and L did not have an HRD on their person when the incident occurred, and Officer C was also not equipped with OC spray. Officers A, C and L are reminded to have all of their required equipment on their person while performing field patrol duties.

## 9. Protocols Subsequent to a Categorical Use of Force Incident

The FID investigation revealed that Sergeant C followed Officers K and L in their police vehicles and Sergeants A and B in their respective police vehicles to the station instead of having them monitored and transported individually as required by Department policy. Captain A has since provided training on Categorical Use of Force Protocols.

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.

In conducting an objective assessment of this case, the BOPC found that the tactics utilized by Sergeants A and B substantially and unjustifiably deviated from approved Department tactical training, requiring a finding of Administrative Disapproval.

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

- Sergeant B responded to a prowler radio call and believed that he may potentially encounter an Assault with a Deadly Weapon Subject from an earlier radio call who had previously eluded apprehension. Sergeant B responded and deployed upon arrival at the residence. Sergeant B drew his service pistol at various times while monitoring the Subject's actions on the roof.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Sergeant B, 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 B's drawing and exhibiting of a firearm to be in policy.

### **C. Less-Lethal Use of Force**

- **Officer K** – (beanbag shotgun, one round)

Officers K was designated as a less-lethal cover officer for the arrest team as they approached and ascended the ladder in order to take the Subject into custody on the roof. As the officers were ascending the ladder, Officer K observed the Subject walk toward the ladder while holding a piece of plywood over his head. Fearing for the safety of his fellow officers, Officer K fired one sock round at the Subject to stop his actions.

Officer K recalled that as the officers were making the approach, he observed that the Subject was arming himself with a piece of plywood approximately three feet by four feet and was approaching the officer's position. As the officers were climbing the ladder the Subject raised the plywood over his head. Officer K stated it was his belief that the Subject was going to use that piece of plywood to cause injury to the officers on the ground or on the ladder. Being that the Subject was unsafe to approach and knowing that he was armed and had access to weapons that could cause serious bodily injury to the officers, Officer K decided to fire the beanbag.

Department policy states that the decision to use force must be judged through the perspective of a reasonable officer under the similar circumstances. The BOPC determined that an officer with similar training and experience as Officer K would reasonably believe the application of less-lethal force to stop the Subject's actions was reasonable and would have acted in a similar manner.

Therefore, the BOPC found Officer K's less-lethal use of force to be objectively reasonable and in policy.