

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

OFFICER-INVOLVED SHOOTING – 012-09

<u>Division</u>	<u>Date</u>	<u>Duty-On(X) Off()</u>	<u>Uniform-Yes(X) No()</u>
Foothill	03/06/09		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer D	12 years, 10 months
Officer E	15 years, 9 months
Officer F	19 years, 4 months
Officer G	14 years, 3 months

Reason for Police Contact

911 call regarding attempted suicide and discharge of a firearm.

<u>Subject(s)</u>	<u>Deceased (X)</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
Female, 53 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 February 2, 2010.

Incident Summary

This incident began with the receipt of a 911 call at Communications Division in the early evening, regarding the discharge of a firearm by the subject and the individual's attempted suicide. In response, several patrol officers responded to the location and were met by a female friend (Witness 1) of the subject, who advised officers that the subject had been drinking all day and was intoxicated. Moreover, the subject had fired

two shots inside the guest house where she was currently located and had threatened to commit suicide. Additional patrol officers arrived at the scene and a perimeter was established.

The officers at the perimeter ordered the occupants of a guest house adjacent to the main residence to come out and Witness 2 exited the guest house. Witness 2 then advised officers that the subject was his ex-girlfriend and was currently residing with him. Moreover, the subject was distraught by Witness 1's presence and an argument had occurred. Following the argument, the subject went into her bedroom and a gunshot was heard. Fearing that the subject might have harmed herself, Witness 2 went to the bedroom and discovered that the door was locked. As Witness 2 conversed with the subject through the bedroom door, there was another gunshot, and Witness 2 unlocked the bedroom door and observed the subject holding a .38 caliber revolver with the barrel pointed in her mouth, threatening suicide. Witness 2 attempted to reason with the subject until the arrival of the police officers. Witness 2 indicated that the subject suffered from depression, was bipolar and had not been taking her prescribed medications.

The officers at the perimeter utilized a police vehicle's public address system to order the subject to exit the guest house. The officers then heard two gunshots from inside the guest house. The officers contacted the subject over her cellular phone and asked her several times to come out. When the subject refused, Metropolitan Division Special Weapons and Tactics (SWAT) was notified.

SWAT personnel subsequently arrived at the scene and a Command Post (CP) was established near the guest house. Arriving SWAT officers were briefed regarding the incident. SWAT Sergeants A and B were assigned as the tactical supervisors for the incident, while SWAT Sergeant C was assigned as the entry team supervisor. SWAT Sergeants D and E were also assigned to supervise the Crisis Negotiation Team (CNT), which consisted of SWAT Police Officers A, B, and C, along with a doctor from the Department's Behavioral Science Services Section (BSS).

Sergeants A and C, along with several SWAT uniformed police officers, which included Officer D, formed a scout team, entered a Ballistic Engineered Armored Response (BEAR) vehicle, and drove up the driveway of the target location to assess the area and develop a tactical plan. Additional smaller BEAR (BEARCATs) vehicles, along with additional SWAT personnel were requested at this time.

A SWAT sniper team was designated to take a position inside the entrance of the front door of the main residence to cover Sides 3 and 4 of the guest house. A second team was positioned on a hill just west of the guest house to cover Sides 2 and 3.

Officer A, in the CNT, then made contact with the subject via her cellular phone. The subject refused to come out and stated that if anyone tried to come in, that she would shoot herself. The subject discontinued the conversation and hung up. Officer A made several attempts to call the subject back; however, the calls went directly to the subject's voicemail.

Sergeant A, who was seated in one of the BEARCATs, then used a bullhorn and attempted to start a dialogue with the subject, who next appeared at a second story window of the guest house and started to shout and yell at the officers. In response, Sergeant A advised the subject that the police only wanted to help her and asked her to answer her phone. Sergeant A attempted to converse with the subject for approximately one hour and the subject intermittently would appear at the window and yelled for Witness 2. Sergeant A advised the subject to surrender and come out with her hands up; however, she did not comply.

SWAT officers next placed a hand held telephone on the first floor of the guest house to enable officers to facilitate communication between the subject and the CNT; however, the subject refused to come downstairs to retrieve the telephone and advised that she had charged her cellular phone. The CNT then moved from the CP to the main residence to gain better cellular phone reception with the subject.

Over the next few hours, the CNT had numerous telephone contacts with the subject. During these contacts, the subject's demeanor would fluctuate between being calm and upset. The subject's speech was also slurred. At one point, the CNT advised the subject that if she would not surrender, they would use teargas. The subject then advised officers that she would shoot herself if they used teargas.

In another attempt to calm the subject and encourage her to exit the residence peacefully, the CNT met with Witness 2 and had him record a message to the subject, which was played to her over the telephone. In response, the subject indicated she wanted to see Witness 2 and wanted to know how he was doing. The CNT advised the subject that Witness 2 was fine and was concerned for her well-being. The CNT did not allow the subject to see Witness 2 because he might cause the subject to become more agitated. Additionally, the subject had made statements to the effect of, "I want to talk to my boyfriend before I go."

The subject also told the CNT that she wanted the police to go away and that she wanted to sleep. The CNT agreed to allow the subject to sleep for a few hours and advised her that they would call her back at sunrise, to which she agreed. The CNT advised the containment officers of their plan to allow the subject to sleep.

Upon day-break the CNT again contacted the subject over the telephone. The subject's speech sounded slurred and she indicated that she had not slept. Officer A continued to talk with the subject and obtained the name of her psychologist, who was contacted by the CNT, and agreed to come to the location to assist the CNT.

Additional SWAT officers, including Officers E, F, G, and H, next responded to the scene to relieve officers. Due to fatigue concerns, SWAT officers who were originally designated as the entry team positioned at Side 3 of the subject's residence were replaced and moved to containment positions.

The subject's psychologist and his supervisor next arrived at the location and were briefed by the CNT regarding the situation. The CNT asked the psychologist to act as a third party negotiator. The CNT and psychologist contacted the subject and discussed the possibility of prescribing different medications for her if she were to come out of the location peacefully and the subject agreed.

Members of the CNT next responded to the CP and discussed a tactical plan to deliver medication to the subject and the BSS doctor and the subject's doctor made arrangements to have the prescription filled at a local pharmacy. Negotiations went on stand-down mode pending the arrival of the medication. The CNT subsequently returned to the main house.

SWAT Officer H was in one of the BEARCATs, adjacent to an open door, while Sergeants B and C were also seated in the BEARCAT. Officer H and Sergeant C next observed the subject appear on the first floor at the threshold of a stairway that led to the second floor of the guest house, with an object in her right hand. As the subject approached the door, Officer H and Sergeant C observed that she was holding a handgun. Officer H then advised the officers outside the BEARCAT, that the subject was approaching the door of the guest house with a gun in her right hand and that she was moving fast. As Officer H finished his statement the subject had already exited the residence and walked east, out of Officer H's view. Officer H then advised officers that the subject was coming around the front of the BEARCAT and was out of his sight.

Meanwhile, Officers D and E were standing outside the BEARCAT when they heard that the subject had exited the residence. Officer E next looked around the right rear corner of the BEARCAT and observed the subject approaching in his direction. Officer E described the subject as having a "frantic expression on her face" and she appeared to be looking in all directions as if she were looking for where the officers were positioned. Officer E observed the subject holding a small revolver in her right hand and heard officers ordering her to drop the gun. Officer E directed Officer D to get his Sage.¹ Upon return with the Sage, Officer D took a position behind Officer E, and ordered the subject to drop the gun. The subject ignored the order and moved to her right and out of their view. Officers M and G then believed that the subject was moving toward the driver's side of the BEARCAT and they quickly moved to the left rear corner of the BEARCAT to intercept her.

Officer E next observed the subject's shadow moving toward the front passenger's side of the BEARCAT and yelled that the subject was coming back on his side. The subject next re-emerged at the front passenger's side of the BEARCAT and was now in closer proximity. The subject saw Office E, walked toward him and pointed her pistol at him. In response, Officer E, who was armed with a rifle, fired one round at the subject, who dropped to the ground.

Simultaneously, Officers D and another officer heard Officer E yell that the subject was coming back on his side. Officer D heard Officer E continually order the subject to drop

¹ A Sage is a weapon capable of firing a less-lethal impact projectile.

her gun as he moved toward the right rear side of BEARCAT. Officer D next positioned himself behind Officer E, slightly over his right shoulder, and observed the subject approaching with her pistol pointed at Officer E. In response, Officer D fired one round from his Sage at the subject. According to Officer D, he did not have time to issue any verbal warnings prior to firing his Sage at the subject. Moreover, he did not have enough time to transition the rifle he carried instead of using the Sage.

Meanwhile, Officer F heard officers yell that the subject was out of the guest house, and from his position at the front door of the main residence, Officer F observed the subject walking east while holding a gun down to her side and began tracking her with his scoped rifle. According to Officer F he heard officers issuing verbal commands to the subject to drop the gun. Officer F gave the subject time to comply with the officers; however, he then observed the subject raise her pistol and point it in an easterly direction. Officer F was aware that there were officers positioned east of his location and in response, he fired one round in a southwesterly direction from his rifle at the subject, who immediately dropped to the ground.

Meanwhile, Officer G, who was positioned on Side 1 of the guest house observed the subject emerge from the northeast corner of the house, and walk east toward the BEARCAT. The subject continued to walk east toward the BEARCAT, and then raised her pistol and pointed it toward the officers who were positioned at the BEARCAT. According to Officer G, fearing for the officers' lives, he fired one round from his rifle at the subject and observed her fall to the ground.

Several officers and Sergeant A next approached the subject and Officer D observed the subject's gun on the ground next to her. Officer D recovered the gun and handed it to Sergeant A.

Sergeant A next requested that the Los Angeles Fire Department Rescue Ambulance (RA), which was on standby at the location, respond to treat the subject. The RA immediately assessed the subject's wounds and noted that she had no signs of life. However, RA personnel transported the subject to a local hospital where she was pronounced dead by emergency room personnel.

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 Officers D, E, F, and G's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

The BOPC found Officers E, F, and G's drawing and exhibiting to be in policy.

C. Non-Lethal Use of Force

The BOPC found Officer D's use of Non-Lethal Use of Force to be in policy.

D. Use of Force

The BOPC found Officers E, F, and G's use of force to be in policy.

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered that:

1. Officer H was seated inside the Bearcat parked on the north side of the residence to monitor the doorway for any signs of activity, and observed the subject emerge while holding a handgun in her right hand. According to Officer H, he verbally alerted other officers of his observations, but did not broadcast the information over the radio; however, the Force Investigation Division's (FID) investigation revealed that several SWAT officers assigned to the operation heard what they believed to be the officer alert them over the radio frequency. Although Officer H was not cognizant of this broadcast, it appears that he disseminated the appropriate information and ensured SWAT personnel were aware of the unfolding tactical situation.

Therefore, although it appears that crucial information was appropriately disseminated to SWAT team members during this incident, in the spirit of ensuring that such information is shared in the future, the topic of Tactical Communications will be addressed in the Tactical Debrief.

2. From the time the subject exited the guest house to the time of the officer involved shooting, the officers were cognizant that she was armed; therefore, the officers had to balance the need to maintain a position of cover with the need to monitor the subject's actions. In doing so, no single officer had a constant line of sight of the subject as she proceeded in an easterly direction. Because of this, a circumstance was created wherein several officers simultaneously issued verbal commands. Although multiple officers are generally discouraged from giving commands as it may create confusion in the mind of the subject, in this situation it was unavoidable. Confusion was minimized by the officers as they all issued the same commands.

Therefore, although justified in this instance, the topic of issuing simultaneous commands to suspects and when it is and is not appropriate will be addressed during the Tactical Debrief.

3. Officer D utilized a Sage Less-Lethal Weapon System to assist in effecting the arrest of the subject. Officer D did not provide a verbal warning prior to using the Sage and stated that he did not provide the warning as there was insufficient time to do so.

It was further noted that negotiations between the subject and SWAT personnel occurred intermittently for over 13 hours and at different times during the dialogue, the subject was advised that her failure to comply with the officers' commands may dictate the officers to utilize force that could cause her injury.

Accordingly, the BOPC determined that it was reasonable for Officer D to fire a Sage round at the subject without first providing a verbal warning.

4. After the subject was struck by gunfire, she collapsed to the ground with the handgun landing within inches from her right hand. As the officers made their approach to handcuff the subject, Officer D noted that the hammer of the handgun was in the cocked position and based on his belief that the subject remained a viable threat, he retrieved the handgun from the ground and relinquished it to Sergeant A. Accordingly, the BOPC found it reasonable for Officer D to have recovered the handgun.

B. Drawing/Exhibiting/Holstering

The BOPC noted that Officers E, F and G were advised that the incident involved a despondent individual who was armed with a handgun, had fired rounds inside the location and had threatened to commit suicide. Once the officers were placed in their positions around the residence, they exhibited their Department rifles. An officer with similar training and experience would believe that the situation could rise to the level where the use of lethal force may become necessary.

Therefore, the BOPC determined that Officers E, F, and G possessed a reasonable belief that the situation might escalate to a level where deadly force could become necessary, and found the officers' drawing/exhibiting to be in policy.

C. Less-Lethal Use of Force

The BOPC noted that Officer D was predetermined to be the Less-Lethal officer. Upon hearing an officer state that the subject had exited the residence, Officer D deployed on the passenger's side of the BEARCAT with his Sage and observed the subject walking in his direction, armed with a handgun in her right hand. As Officer D raised his weapon and attempted to acquire a target, the subject turned and proceeded in a southerly direction. Officer D then moved to the driver's side of the vehicle and waited for the subject to reappear.

Officer D stated that he heard his partner yell that the subject was on his side. Furthermore, Officer D observed the subject walk towards his partner with her gun raised and point at him and, therefore, fired one round at the subject. Therefore, the BOPC found Officer D's application of Less-Lethal Force to be in policy.

D. Use of Force

The BOPC noted that Officers E, F, and G were placed in positions around the guest house where the subject was located. After maintaining their positions for several hours while the CNT worked toward a peaceful solution, the subject exited the guest house armed with a handgun. Fearing for their safety and the safety of fellow officers, Officer E fired one shot at the subject, while Officers F and G also fired one shot each at the subject.

Based upon the facts and circumstances, the BOPC determined that 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 to the officers and/or their partners and, therefore, determined that Officers E, F, and G's use of Lethal Force was objectively reasonable and was in policy.