

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

**LAW ENFORCEMENT-RELATED INJURY – 015-15**

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

Van Nuys                      2/20/15

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

Officer F    7 months

**Reason for Police Contact**

Officers responded to a citizen flag down and were directed to the Subject, who had armed himself with an axe. When the Subject did not comply with the officer's commands to drop the axe, beanbag rounds were deployed, which resulted in a law enforcement-related injury (LERI).

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

Subject: Male, 22 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 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 26, 2016.

## **Incident Summary**

On the date of this incident, the Subject was driving his vehicle and approached an intersection. The Subject was driving in the number one lane of traffic when he collided with the rear end of another vehicle, being driven by Witness A. Witness B, who was a passenger in Witness A's vehicle, exited and looked at the Subject, seated in the driver seat of his vehicle. The Subject began gesturing with his hands and according to Witness B, he couldn't tell if the Subject was throwing up gang signs or gesturing for him to meet him over in the store's driveway nearby. After colliding with Witness A's vehicle, the Subject backed up his vehicle and, according to witnesses, fled the scene and into the rear parking lot of a store. Once in the rear parking lot, the Subject backed his vehicle across several parking spaces, placed his vehicle in park and exited.

Witness C was just outside the back door of the store when the Subject parked his vehicle in the parking lot, exited, approached her and asked for a cigarette. Witness C walked back into the store to retrieve her cigarettes. When Witness C returned outside, she saw the Subject holding a hatchet in his hand. Witness C gave the Subject a cigarette and remained outside, continuing to smoke her cigarette.

Simultaneously, Officers A and B were conducting a traffic stop nearby. As Officers A and B were conducting their traffic stop, they were flagged down by Witness B. Officer B noticed that Witness B was frantically waving his arms to get their attention. Officer B advised Officer A of his observations and asked Officer A if he was okay with handling the traffic stop so that he could see what Witness B was trying to tell them. Officer A acknowledged him and told him it was okay to see what Witness B wanted. Officer B then walked east across the street and spoke with Witness B, who told him that the Subject had crashed into their vehicle and drove away into the rear parking area of a store. Officer B returned to where Officer A was standing and relayed the information that he had received from Witness B. Upon receiving the information from Officer B, Officer A gave a verbal warning to the operator of the vehicle they had stopped, in order to investigate the Hit and Run Traffic Collision (TC).

Officers A and B backed their vehicle up and then drove it into the mouth of the driveway of the store and parked it near the sidewalk. Officers A and B exited their vehicle and walked west in the driveway toward the rear parking lot. Officer A walked along the south side of the driveway as Officer B walked along the north side of the driveway. As Officer A approached the halfway point of the driveway he began to slowly make his way around the corner of the store, looking in a northwesterly direction. Officer A saw a vehicle parked in the rear parking lot with damage to the right front bumper area. Officer A then saw the Subject standing near the southwest corner of the store, approximately five feet away from him, holding a black colored axe in his right hand and clutched toward his chest. As the Subject saw Officer A, he raised the axe above his head in an aggressive manner and appeared to be surprised at the sight of officers. According to Officer A, it appeared that the Subject looked as if he wanted to ambush somebody and he was going to strike. Officer A yelled out to Officer B that the Subject was armed with an axe.

**Note:** The axe the Subject was holding was a black forged steel, approximately 15" United States Marine Corps military tactical axe, with an approximately 4" blade, sharpened edge and a sharp pointed spike on the other end.

Officers A and B quickly drew their duty pistols and moved back into the alley, while maintaining sight of the Subject. The Subject began walking toward Officer A closing the distance while holding the axe above his head. As Officers A and B walked backwards, Officer A continued giving the Subject commands to drop the axe. The Subject ignored the commands, lowered the axe down in front of his chest and walked back toward the southwest corner of the store, out of the officers' sight. According to Officer A, he knew that there was an entrance to the store and did not want to lose sight of the Subject and allow him to enter the store. Simultaneously, Witness C walked back into the store and into a rear room to seek shelter.

Officer A broadcast a request for a backup unit. Officer A moved forward in the driveway until he regained sight of the Subject. From a distance of approximately 12 feet, Officer A gave the Subject commands to drop the axe, which he ignored and gestured with his middle finger to the officers. According to Officer A, he asked the Subject why he had the axe, and the Subject told him someone was trying to kill him. The Subject also told officers that he did not want to be arrested and placed the spike portion of the axe against his right temple. Officer A opined that the Subject possibly may have been under the influence of alcohol or drugs or possibly suffering from mental illness. According to Officer A, at this time, the Subject placed the handle of the axe in his waistband and had both of his hands free.

The Air Unit arrived overhead. Officers C and D observed the two officers and the Subject on the ground and requested units to respond with a TASER and a beanbag.

Officers E and F heard the back-up request, as well as the request for a beanbag shotgun and responded. While responding, Officers E and F discussed tactics. Officer E was going to be the contact officer, while Officer F would deploy the beanbag shotgun when they arrived at scene. Officers E and F advised Communications Division of their arrival at the scene. Officer F immediately retrieved the beanbag shotgun from the trunk of his police vehicle and chambered a round. Officer F then retrieved a round from the butt cuff, placed it into the magazine tube and made his way, along with Officer E, to the store's driveway where Officers A and B were positioned.

Officer F stood along the south wall of the store. Upon seeing Officers E and F, the Subject appeared to become agitated, removed the axe from his waistband and raised it above his head. Officers A, B and E were to Officer F's left in a southerly direction. Officer A yelled commands at the Subject to put the axe down several times; however, the Subject did not comply. The Subject taunted the officers by placing the axe to his head and stepping toward them and then backwards. According to Officer F, he believed the Subject was under the influence or suffering from mental illness. Officer A told the Subject that if he did not drop the axe, officers would deploy the beanbag shotgun, which could cause injury.

As the Subject continued to ignore Officer A's commands to drop the axe, Officer F feared that the Subject was going to advance on officers and yelled, "Beanbag ready." Officer A heard Officer F's command of beanbag ready and yelled, "Beanbag stand-by, beanbag stand-by." According to Officer F, approximately 30-45 seconds later, the Subject took a step toward officers, holding the axe in his right hand between his chest and head, as if he was about to attack them. Officer F used his right index finger, disengaged the safety on the beanbag shotgun, aimed it at the Subject's stomach and fired one sock round, in a west direction, from a distance of approximately 17 feet.

After Officer F fired the first sock round, and lowered the barrel of the beanbag shotgun to asses, he observed that the sock round struck the Subject in the abdomen, leaving a red mark. After being struck by the first sock round, the Subject continued to hold the axe as he crouched, grunted and walked backwards toward the southwest corner of the building, momentarily out of the officers' sight. Officer A moved to re-acquire sight of the Subject, due to the fact that there was a rear entrance to the store where he had seen an individual, other than the Subject, when they initially approached.

Sergeant A along with Officers G, H, I, and J arrived at scene, exited their vehicles and ran toward the driveway of the store. As they reached the driveway, Sergeant A directed officers who were approaching on foot to bring another beanbag shotgun in the event it was needed. As Sergeant A reached the officers, he verbally advised them to move back behind a parked vehicle that was in the driveway of the store for cover. However, Officer A advised him that he didn't want to leave his position in the driveway because he didn't want to lose sight of the Subject. Officer A indicated that officers could not move east in the mouth of the driveway to a position of cover without losing sight of the Subject, who could enter the store and injure the occupants inside.

Sergeant A then directed Officer B to holster his firearm and stand back behind the other officers. Simultaneously, Officer F took his finger off the trigger of the beanbag shotgun, pointed the barrel down toward the ground and re-deployed in a southwest direction to a position between Officers A and E near the north exterior wall of the apartment building adjacent to the store.

Meanwhile, Officer J had returned to his police vehicle trunk and retrieved the beanbag shotgun. Officer H, who was equipped with a Department TASER, drew the TASER, which he held in his right hand, as he approached the officers in the driveway.

Just after requesting a second beanbag shotgun, Sergeant A directed Officer F to, "Hit him with the beanbag[,] " when the Subject stepped back out again holding the hatchet. Sergeant A then yelled out to all officers, "Beanbag stand-by, everybody stand-by." Shortly thereafter, the Subject stepped back out from around the corner of the store and walked in the officers' direction, holding the hatchet in his right hand at chest/shoulder level. Sergeant A tapped Officer F on the shoulder and told him, "Hit him with the beanbag." Officer F took aim at the Subject's abdomen and fired a second sock round, from a distance of approximately 21 feet, approximately 45-60 seconds after the first round. The round struck the Subject in the abdomen and caused him to crumple over,

causing a red contusion. Regarding his decision to discharge the beanbag shotgun a second time, Officer F stated, "I was a little nervous because we couldn't retreat to any - there was no cover around. Our backs were kind of up against that apartment wall a little bit. There was a car right behind us, so we didn't really have any cover to go to. He was holding an axe, not listening to any commands we were giving him."

After being struck by the second sock round, the Subject again retreated to the southwest corner of the store. Officers held their positions in the driveway and Officer A continued ordering the Subject to put the axe down. Sergeant A yelled out to the Subject, "Hey, we don't want to hurt you. Drop the hatchet. Drop the hatchet."

While around the corner of the building, the Subject placed the axe down on the ground. Although the Subject no longer held the axe, his hands were now clenched into fists, approximately chest high, as he again approached the officers. Officer F believed that the Subject was going to attempt to fight with officers. The Subject took three steps toward officers and, according to Sergeant A, appeared to be angry. Sergeant A attempted to get a TASER in place; however, the Subject was approaching them quickly and there was no time to get Officer H into position. According to Officer F, the Subject continued to ignore officers' commands to get back. Sergeant A directed Officer F, "Okay. Hit him again with the beanbag," and yelled out to Officer F, "Beanbag stand-by." Officer F took aim at the Subject's abdomen and fired a third sock round from a distance of approximately 21 feet. The sock round struck the Subject in the abdomen, causing a red contusion. The Subject fell on to his knees, then to the ground into a fetal position holding his stomach with his arms.

Officers A, E, and I moved toward the Subject to take him into custody. Officer A positioned himself on the left side of the Subject, grabbed his left arm with both hands, and placed the Subject's arm behind his back. Officer E positioned himself on the right side of the Subject and grabbed onto the Subject's right arm, placing it behind his back. Officer G moved forward, bent down, and grabbed onto the Subject's left ankle with both hands to prevent him from kicking the officers. Officer B moved forward, bent down, and held onto the Subject's right ankle with both hands. Officer I used both hands on the Subject's upper back to hold him down while officers handcuffed him. Officer A placed handcuffs on the Subject's wrists and searched him for any additional weapons. After being handcuffed and searched, the Subject was rolled onto his left side and placed into a seated position. Officer F placed the safety on the beanbag shotgun, downloaded the additional beanbag rounds and placed them back into the butt cuff attached to the stock. Sergeant A requested a Rescue Ambulance (RA) for the Subject.

After the Subject was taken into custody, Officer A smelled the odor of alcohol emitting from the Subject's breath. Officer A also noted the Subject's slurred speech, watery/bloodshot eyes, and flushed face, and opined that he was under the influence of alcohol. Officer A recovered the Subject's axe from the ground and gave it to Officer B to secure in their vehicle. Officer B took the axe and placed it on the front passenger floor board of the officers' police vehicle.

The RA responded to the scene and transported the Subject to the hospital for medical treatment. Sergeant A directed Officers J and I to go to the hospital with the Subject. Due to the Subject's injuries resulting from the use of force described above, the Subject was admitted for further observation and the incident was upgraded to a Categorical Use of Force.

## **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 made the following findings.

### **A. Tactics**

The BOPC found Sergeant A, and Officers A, B and F's tactics to warrant a Tactical Debrief.

### **B. Drawing and Exhibiting**

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

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

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

## **Basis for Findings**

### **A. Tactics**

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

#### **1. Weapons Other Than Firearms**

Officers A and B came within approximately five to six feet of a suspect who was armed with an axe.

In this case, the officers were flagged down by a citizen whose vehicle was struck by a hit and run driver who fled from the scene of the traffic accident and drove into the rear parking lot of a nearby business. The officers parked their

vehicle in the mouth of the driveway, exited and tactically approached the rear parking lot. As the officers made their approach, Officer A tactically pried the corner and saw the Subject lying in wait around the corner with an axe in his right hand, clutched near his chest. Upon observing the Subject, Officer A immediately advised his partner of his observations and both officers redeployed rearward approximately 12 feet away from the Subject.

According to Officer A, they wanted to maintain sight of the Subject because they feared for the safety of a female that he observed in the parking lot. Because of the Subject's position they were unable to create more distance without losing sight of him. The evidence reflects that the officers were aware of the dangers associated with a suspect armed with an axe and remained vigilant as they attempted to maintain a safe distance from the Subject. The officers also demonstrated a reverence for human life by utilizing extensive verbalization and less-lethal force options.

Based on the totality of the circumstances, the BOPC determined that the officers' actions were appropriate and consistent with approved Department tactical training under these specific circumstances.

## 2. Utilization of Cover

Officers A and B confronted a suspect armed with an axe without the benefit of cover. Officers are trained to utilize cover during tactical incidents involving armed suspects. The utilization of cover enables an officer to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options.

The BOPC discussed the officers' decision to not seek cover behind a nearby vehicle that was parked in the driveway. In this case, Officers A and B wanted to remain in a position that allowed them to maintain an unobstructed view of the Subject in the event they needed to take immediate action if it became necessary to prevent the Subject from attacking a female they observed in the parking lot or entering the rear door of the store and possibly harming the occupants inside.

The BOPC determined Officers A and B's decision to forgo cover was a substantial deviation from approved Department tactical training, but with justification.

- 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.

Each tactical incident merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and 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.

In conclusion, the BOPC found Sergeant A, and Officers A, B and F's tactics to warrant a Tactical Debrief.

## **B. Drawing and Exhibiting**

- As Officers A and B tactically approached the rear parking lot, they observed the Subject holding an axe and drew their service pistols. Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, while faced with a similar circumstance would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

In conclusion, the BOPC found Officers A and B's drawing and exhibiting of a firearm to be in policy.

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

- **Officer F** – three beanbag shotgun sock rounds.

As Officer F stood in the driveway he observed the Subject holding an axe about chest to head level up in the air. Officer A issued verbal commands to the Subject to put the axe down. The Subject continued to hold onto the axe and failed to comply with Officer A's commands. Officer F observed the Subject step toward the officers and fired one sock round from his beanbag shotgun at the Subject to stop his actions. After being struck by the sock round, the Subject stepped back behind the southwest corner of the building, momentarily out of Officer F's view. Sergeant A repositioned Officer F, and directed him to fire the beanbag shotgun at the Subject, if he steps out again. The Subject stepped out and once again refused to drop the axe. Officer F then fired a second sock round at the Subject. The Subject moved behind the southwest corner of the building and put the axe down. The Subject then stepped out from behind the building in a fighting manner, clenching both fists, taking a fighting stance and approaching the officers. After ignoring Officer A's commands to get back, Sergeant A directed Officer F to fire the beanbag shotgun at the Subject. Officer F then fired a third sock round from the beanbag shotgun at the Subject, causing him to collapse to the ground.

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 F 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.



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