

Incident Summary

On April 17, 2009, Witness A was driving when he observed Subject 1 in the middle of the street "with a gun riding a bicycle" in front of his vehicle. Witness A called 911 when Subject 1 put his hand on the gun that he was holding in his waistband area.

Communications Division (CD) broadcast that a male was brandishing a handgun on a bicycle.

Officers A (driver) and B (passenger) were in a black and white police vehicle approximately two blocks from the location when the radio call was broadcast.

They observed a man who matched the description of the subject. The officers drove toward Subject 1 and, when they were approximately 30 feet away from him, he looked in their direction and reached for his rear waist area. Officers A and B saw that Subject 1 was attempting to conceal the handle of a black handgun in his waistband.

Subject 1 then reached for the gun, covered the handle with his shirt, and ran down a driveway of a residence. Officers A and B stopped, got out of the police vehicle, and started running after Subject 1. Officer B drew his weapon as he got out and ran. They broadcast that they were engaged in a foot pursuit of a man with a gun.

Note: Officer C heard a brief broadcast over the simplex frequency which caused him to believe there was a foot pursuit. A review of the Area base frequency found no audible foot pursuit broadcast by Officer A.

Subject 1 jumped over a fence connected to the rear of a residence.

Note: Officer B's intent in initially pursuing Subject 1 was to apprehend him, but once he jumped over the fence, Officers A and B were going to establish a perimeter.

Officer A requested additional units and an Air Unit to establish a perimeter. Officer B found cover behind a tree and maintained visual contact with Officer A, who used his police vehicle as cover.

Note: Officer B estimated that he and Officer A were 100 feet from one another.

Sergeant A responded and established a Command Post (CP). He coordinated incoming units, informed Lieutenant A about the unfolding incident, and requested a K-9 response.

A K-9 unit subsequently responded to the CP. A search team was assembled.

The K-9 led the search team to the rear of a residence where officers observed a shoe lying on the ground. The dog started hitting and scratching on the rear door. The shoe was next to a fence approximately five feet away from where Subject 1 had jumped.

Note: During the K-9 search, a neighbor informed officers that on prior occasions when subjects and gang members tried to escape from police officers, they typically entered the front of that residence.

Sergeant B decided to utilize the PA system to call the occupants of the residence out to detain them. Sergeant B notified Sergeant A, who was aware of what was happening.

Four males exited the residence in groups of two and were escorted by officers to the CP. As the males exited, officers asked them how many people remained in the residence. Information provided by the four males as to the number of outstanding people who remained in the house was inconsistent.

Officer A identified one of the detained males as possibly being the male he had seen earlier, but he was not absolutely sure.

A decision was made by Sergeants A, B, and C that Area officers would search the residence instead of the K-9 unit.

Sergeant B contacted Sergeant A to request additional officers, but they were not available for the search.

Sergeant B and Officers A, C, D, E, F, G, and H entered the residence with their service pistols drawn to conduct the search. Officer A was the "team leader" and directed Officer E to be the first officer to enter the house.

Note: According to Sergeant A, the search was conducted to ensure there were no additional armed subjects in the residence.

He also indicated that he was unaware that, when officers entered the residence, there was information that there could be an armed subject inside the residence. He said that had he been so informed, he would not have conducted a protective sweep because they may have had a barricaded subject.

In the course of searching the house, the officers came to a closed bedroom door. Officer E shoved the closed door open and entered. He observed Subject 1 lying face down with his hands underneath his body. He announced himself as a police officer and issued commands for Subject 1 to put his hands up two or three times, but no response was observed. Officer A moved behind Officer E as Officer E continued to order Subject 1 to put his hands up. Officer A yelled that if he did not show his hands, they were going to use the Taser on him. Subject 1 did not respond.

Note: Once Officer A saw Subject 1, he excluded the man he had earlier tentatively identified and affirmatively identified Subject 1 as the true subject.

Due to the fact that the officers could not see Subject 1's hands and because there was an outstanding weapon, Sergeant B determined Subject 1 was unsafe to approach and ordered a less-lethal weapon to be deployed.

Note: Officer A used the police radio to communicate the request for a less-lethal weapon to the CP.

Note: Officer A determined that a Taser was not the best weapon because a beanbag would be more directed or better aimed and better in the tight space they were in.

Officer A went to the front of the residence to retrieve a beanbag shotgun and then returned to the bedroom, where Officer E continued to order Subject 1 to show his hands.

Officer A initially warned Subject 1 that the beanbag shotgun was about to be deployed and that he may be injured. When there was no response, Sergeant B also issued a warning because Subject 1 continued to ignore the commands and the officers could still not see his hands.

Officer A, using the beanbag shotgun, fired one round at Subject 1's back from a distance of approximately 20 feet. Officer A, fearing that Subject 1 might be armed and at Sergeant B's direction, fired another shot to Subject 1's buttocks, which caused Subject 1's hands to come forward.

Note: Officer A was 7-10 feet away from Subject 1 when he fired the beanbag rounds, the first of which struck Subject 1 in the back between the shoulder blades and the second of which hit Subject 1's back. After the first round, Subject 1's arms came out in front of him but then went back under him.

After the second round struck Subject 1, he immediately started charging Officer C. Subject 1 was on all fours, crawling like a bear. He lunged toward Officer C while Officer C was still in a crouching position with his firearm out.

Officer A attempted to prevent Subject 1 from getting to Officer C. Officer A grabbed the beanbag shotgun's barrel with both hands and struck the left side of Subject 1's head one time with the butt of the weapon. The officer did not have time to pick a target. Officer A was trying to prevent Subject 1's movement toward Officer C and was aiming for the head and shoulder blade area to stop Subject 1 from reaching Officer C's gun.

Having been struck, Subject 1 went down to the ground. As Subject 1 tried to get up, Officer A stamped down with his right foot on to Subject 1's shoulder blades. Subject 1 tried to get up two more times, and each time, Officer C stamped down once again with his right foot. Then, in an attempt to immobilize Subject 1's hands, Officer A stepped on Subject 1's hands with his feet. Officers A and C then handcuffed Subject 1.

Once he was escorted out of the residence, Officers A and B identified Subject 1 as the person who fled from them earlier.

Once Subject 1 had been taken into custody, a K-9 article search was conducted. The search yielded a 9mm pistol in a rear yard.

A Rescue Ambulance (RA) was requested to respond to the location. It arrived and transported Subject 1 to the hospital.

A formal determination was made that a Categorical Use of Force had occurred. Officers were monitored and ordered not to discuss the incident. They caravanned to the station.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements, and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting/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 Sergeants A and B and Officers A, B, C, E, F, G, and H's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

The BOPC found Sergeant B and Officers A, B, C, E, F, G, and H's Drawing/Exhibiting to be in policy.

C. Use of Force

- The BOPC found Officer A's Less-Lethal Use of Force to be in policy.

- The BOPC found Officers A and C's Non-Lethal Use of Force to be in policy.
- The BOPC found Officer A's Lethal Use of Force to be in policy.

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered that:

1. Subject 1 observed Officers A and B approaching in their police vehicle and attempted to conceal the butt of a pistol in his rear waistband. Officer A stopped the police vehicle; both officers exited the vehicle, and ran after Subject 1. When the officers observed the pistol, both officers verbally warned each other that Subject 1 had a gun.

At this point, it would have been prudent for the officers to request help and provide CD with the pertinent information. By providing CD this information, it would be readily available to the responding units, allowing them to maximize their ability to properly respond and make the most appropriate tactical decision on their approach.

2. Officer B observed Subject 1 in possession of a firearm and elected to pursue him while maintaining his service pistol in his right hand. Additionally, Officer B later ran to a perimeter location (approximately 100 yards) with his pistol drawn. Based on his observations, it was reasonable for him to draw his service pistol while pursuing Subject 1; however, there is a heightened concern for an unintentional discharge when an officer runs with a service pistol drawn.
3. Officer A stopped the police vehicle approximately one car length north of where Subject 1 was last seen. Officers A and B immediately exited their police vehicle. As Officer B ran in the driveway, he observed Subject 1's foot going over a chain link fence. Officer A was directly behind him broadcasting the foot pursuit. Officer B's initial intent was to apprehend Subject 1 but once he observed him go over the fence, he reverted to containment mode.

The officers appropriately went into containment mode once they lost sight of Subject 1 and requested responding units to perimeter locations in an effort to contain Subject 1 within a specific area; however, their initial intent was to apprehend Subject 1. By establishing a perimeter, the subject will be contained and, when combined with discontinuing the foot pursuit, removes the inherent risks associated with pursuing. When an armed subject flees on foot, using a perimeter rather than chasing a subject through unfamiliar territory greatly decreases the likelihood of an ambush.

4. The involved officers were involved in a taskforce which was operating on a simplex frequency. As a result, Officer A utilized the simplex frequency to communicate

during the foot pursuit. History has shown that simplex frequencies are somewhat unreliable and important communications between officers are occasionally missed. Additionally, base frequencies are more reliable than simplex channels and are monitored and recorded by CD. In the event of an emergency being broadcast over a base frequency, CD personnel would be able to assist in the response of additional resources; however, since simplex frequencies are not monitored, the request for help may go unheard.

Here, officers heard the foot pursuit broadcast on the simplex frequency and relayed the information to CD and units that were not monitoring the simplex frequency. Due to the fact that patrol units in the area and CD were not monitoring the simplex frequency, it created a circumstance wherein responding personnel were not immediately aware of the rapidly unfolding tactical incident.

5. Officer B observed Subject 1 scale a fence and notified Officer A of Subject 1's actions. Officer A instructed Officer B to return to their vehicle. Officer A entered their police vehicle, activated the siren, and drove northbound (approximately 100 yards) while Officer B followed on foot. Once Officer B arrived at the intersection, Officer A drove westbound approximately 100 yards from his partner.
6. The officers received information from a neighbor that subjects who flee from the police were known to enter the involved residence. Armed with this information and the fact that the K-9 alerted to a scent to the rear of that location, the Incident Commander approved the decision to call out the occupants of the residence. The PA system was utilized to order the occupants out of the residence at which time four individuals exited. Officer A tentatively identified one of the individuals who exited the residence as the subject. The four individuals were escorted to the CP where Officer B tentatively identified the same individual whom Officer A had tentatively identified as the subject. The investigation revealed the officers received conflicting information regarding any remaining occupants inside the residence. Officer A believed one of the individuals advised him there was a male inside the location who was not coming out. Once the tentative identification was made, it was determined that the K-9 could not be used to conduct a search of the residence because of the tentative identification of the subject.

The entry officers and supervisor formulated a plan and made entry into the residence in an effort to locate the possible remaining occupant and secure the area for a "gun dog" to sweep the residence for the outstanding firearm.

The decision to clear the residence was reasonable and within Department policy. Two points support the decision to initiate the search. First, the barricaded subject criteria was not fully met due to the belief that the subject was not in the residence and a tentative identification of the subject was made of one of the individuals who exited; and secondly, Sergeant B received conflicting information regarding whether there was an additional person inside the residence not coming out.

7. Officers made entry into the residence and located Subject 1 lying on the floor of a bedroom. Upon observing Subject 1, multiple officers began issuing verbal commands to comply or a Beanbag Projectile Shotgun would be utilized against him if he refused to cooperate.
8. Officer A deployed the Beanbag Projectile Shotgun and discharged it two times, striking Subject 1 in the upper back between the shoulder blades and buttocks area. Current Department guidelines encourage officers to target specific areas on a subject such as arms, hands, or legs, listing the abdomen as a secondary target. It also warns that the Super-Sock round can cause fatal or serious injuries if it is fired at the head, neck, spine, chest, groin, or kidneys.
9. Officer A observed Officer C attempting to gain control of Subject 1 who was combative and actively resisting arrest. Officer A used his left hand to brace himself in the doorway and with his right foot he pushed down on Subject 1's shoulder blades. Officer A utilized this technique approximately three times in attempts to prevent Subject 1 from reaching for a weapon or placing his hands under his torso. Officer A also stepped on both of Subject 1's hands in order to help immobilize him as he attempted to stand.
10. Officer A observed Officer C straddling Subject 1 in an attempt to gain control of his hands to place them behind his back. Due to the tight quarters of the doorway, Officer A stepped out of the way to allow other officers into the room to guard the unsecure areas. Officer A repositioned himself back into the room and assisted Officer C in placing Subject 1's arm behind his back; however, Officer A held the Beanbag Projectile Shotgun while making contact with Subject 1.

Additional Topics

The investigation revealed that the entry team did not employ Less-Lethal force options prior to making entry into the residence. When Subject 1 initially refused to comply with orders, the Beanbag Projectile Shotgun was not available. Officer A had to remove himself from the scenario and return to the front door of the residence in order to obtain one from responding personnel.

The investigation revealed that Sergeant A ordered the involved officers not to discuss the incident. Later, Sergeant A allowed the involved personnel to drive their respective vehicles while they caravanned to the Station. Once at the Station, he monitored the involved personnel.

B. Drawing/Exhibiting

Officers A and B monitored a radio call broadcast of an individual on a bicycle brandishing a firearm. Officers A and B observed Subject 1 with the firearm protruding from his waistband. As Subject 1 ran down the driveway westbound away from the

officers, Officer B exited the police vehicle and drew his service pistol and pursued Subject 1 on foot.

Officers C, E, F, G, and H responded to a foot pursuit of a man with a gun who was believed to be secreted in a residence and, along with Officer A, drew their service pistols as they prepared to enter the location and possibly confront an armed subject.

Sergeant B drew his service pistol upon arriving in front of the target residence and prior to attempting to utilize his PA system to call out Subject 1 who was believed to be inside the residence.

In conclusion, due to involved personnel's reasonable belief that the situation may escalate to a level where deadly force may become necessary, the BOPC found Sergeant B and Officers A, B, C, E, F, G, and H's Drawing/Exhibiting to be in policy.

C. Use of Force

Less-Lethal Use of Force

In this instance, Officer C was kneeling in the doorway in order to provide cover for Officer A who was standing directly behind him with the Beanbag Projectile Shotgun deployed. After numerous attempts and verbal warnings were given by multiple officers, Subject 1 refused to comply and remove his hands from under his torso. Due to it being unsafe to approach Subject 1, Officer A discharged one Super-Sock round from the Beanbag Projectile Shotgun which struck Subject 1's upper back between the shoulder blades at a distance of approximately 10 to 15 feet. Subject 1 continued to refuse to comply with the officers' commands, and fearing he may still be armed, Officer A discharged one additional Super-Sock round from the Beanbag Projectile Shotgun which struck Subject 1's buttocks area. Subject 1 removed his hands from underneath his torso and placed them straight out in front of him.

Here, Subject 1's behavior and the possibility that he was in possession of a weapon created a circumstance wherein conventional tactics would have been ineffective because it was unsafe to approach within contact range of Subject 1. The BOPC determined Officer A's use of Less-Lethal force was reasonable to overcome Subject 1's actions, minimize injury, and take him into custody.

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

Non-Lethal Use of Force

Officers A and C were confronted with a non-compliant possibly armed subject who resisted the officers' attempts to handcuff him. Officer A had just utilized the Beanbag Projectile Shotgun on Subject 1, striking him in the upper back and buttocks area. The Beanbag Projectile Shotgun Super-Sock rounds caused Subject 1 to move his hands out from under his body and extend them over his shoulders while he lay in a prone

position on the floor. As the officers were attempting to handcuff Subject 1, he resisted. Officer C straddled Subject 1 while Officer A utilized his right foot to push Subject 1 back down to the ground approximately three times. Additionally, to prevent Subject 1 from reaching for a weapon or from placing his hands under his torso, Officer A utilized both of his feet and stepped on Subject 1's hands.

The BOPC evaluated the circumstances relevant to Officers A and C's use of Non-Lethal force and determined that the force was objectively reasonable to overcome Subject 1's resistance and take him into custody.

In conclusion, the BOPC found Officers A and C's Non-Lethal Force to be in policy.

Lethal Use of Force

Following the second Super-Sock round striking Subject 1, he momentarily complied, assumed a kneeling position, then quickly pivoted while lunging at Officer C. Fearing Subject 1 was attempting to gain control over Officer C's pistol, Officer A grabbed the Beanbag Projectile Shotgun by the barrel with both hands and struck Subject 1 once on the left side of the head.

The "head strike" was appropriately identified as a CUOF incident. The preponderance of evidence indicates that the "head strike" occurred when Officer A used the butt area of the Beanbag Projectile Shotgun to strike Subject 1 in an attempt to prevent him from engaging in a struggle with Officer C and attempting to gain access to his unholstered pistol.

The evidence in this case indicates that although Officer A intended on striking Subject 1 with the butt of the Beanbag Projectile Shotgun, the fact that it struck Subject 1 on the head was inadvertent, as there was no specific intent to strike him on the head. Therefore, the BOPC determined that the inadvertent head strike with the Beanbag Projectile Shotgun was objectively reasonable to overcome the aggressive actions presented by Subject 1.

In conclusion, the BOPC found the Lethal Force utilized by Officer A to be in policy.