

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

LAW ENFORCEMENT-RELATED INJURY – 054-16

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

Foothill 8/16/16

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

Officer A 12 years, 2 months

Reason for Police Contact

Officers conducted a traffic stop on two suspects who had been armed with assault rifles during a prior street protest. A 40 millimeter (mm) less-lethal round was deployed, inadvertently striking one suspect in the right orbital area, resulting in a Law Enforcement Related Injury (LERI).

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

Subject 1: Male, 35 years
Subject 2: Male, 30 years (not injured)

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 August 8, 2017.

Incident Summary

An outside police agency responded to multiple 911 calls reporting two suspects armed with rifles, helmets, and camouflage clothing in the middle of the street. The suspects, Subject 1 and Subject 2, were engaging in an apparent street protest.

Over the course of the next two and one half hours, Subjects 1 and 2 spoke to multiple news media personnel who broadcast portions of the incident live on local television stations. Subjects 1 and 2 also filmed small crowds on the streets as they made anti-police statements. The Subjects refused to cooperate with officers who ordered them to lay down their weapons. The outside agency requested Air Support from the Los Angeles Police Department (LAPD) to respond to the incident and Air Support Division (ASD) responded.

The Subjects continued to ignore orders to lay down their arms while they continued their street protest. The situation became static as the outside agency monitored their actions. The Subjects now entered a vehicle and drove onto a nearby freeway, heading northbound. The Subjects drove into the City of Los Angeles as numerous news media vehicles trailed behind. The outside police agency turned the incident over to LAPD Air Support. The Subjects continued northbound into the San Fernando Valley and exited the freeway.

Air Support Division personnel broadcast that they were tracking the vehicle and provided officers with information that they were armed with long rifles and what their actions were up to this point. Air Support tracked the Subject's vehicle to an apartment building in Mission area. The Subjects parked the vehicle in a parking lot under the building.

Due to the weapons and threat to public safety posed by the Subjects, a Command Post (CP) was established at Operations-Valley Bureau (OVV) Headquarters. Detectives from Major Crimes Division (MCD) responded to the CP to assume investigative responsibility of the incident. The registered owner of the vehicle was identified as Subject 1.

Multiple uniformed personnel assembled nearby to track the movements of the Subjects: Officers A, B, C, D, E, F, G, H, I, J, and Sergeant A.

Sergeant A advised the officers that the Subjects were armed with rifles from the previous protest the evening prior, and that they were attempting to provoke a confrontation with officers. Sergeant A advised the officers to "stand down" and not engage the Subjects and await further instruction from the CP and Mission Area Commanding Officer Captain A. While awaiting further instruction, Sergeant A directed the officers to set up containment around the apartment building approximately one block away to the north, south, east, and west. Sergeant A further advised the officers who were armed with rifles, to don their ballistic helmets and tactical vests with additional rifle magazines.

Note: Sergeant A stated that although he did not broadcast that he was the Incident Commander (IC), he acted as the IC throughout the incident.

During the next hour, five radio calls were broadcast on the Mission Area radio frequency with specific information regarding the two Subjects, armed with rifles and wearing body armor in the area. Sergeant A directed Officer A to advise Communications Division (CD) that he had arrived in the area (Code Six) in the area with the above-assembled officers and he would handle the calls.

Major Crimes Division officers were in the area, in an effort to obtain a search warrant for the Subject's residence and vehicle.

Meanwhile, Sergeant A was summoned to the CP at OVB. Prior to leaving the assembled officers that were holding a loose perimeter around the apartment building, he advised them to continue to "stand-down" and not to engage the Subjects unless he directed them to do so from the CP.

Sergeant A arrived at the CP along with a number of other personnel.

Air Support personnel then broadcast that the vehicle had exited the apartment building garage. Officers followed the vehicle and confirmed that the vehicle was occupied by Subject 1 (driver), and Subject 2 (front passenger seat). Officers also confirmed that the license plate was the same from the incident earlier in the evening.

Air Support asked the IC if he wanted to facilitate a traffic stop on the vehicle. According to Sergeant A, after conferring with others at the CP, they determined that there was sufficient cause to stop the vehicle. Sergeant A advised Air Support that he wanted the vehicle stopped. Air Support relayed this information to ground units, who responded to handle the request.

Note: At no point was there any discussion at the CP of SWAT handling any potential vehicle followings because SWAT did not have the resources to follow any number of vehicles that the Subjects could have used to exit the apartment building, and there was confidence that Mission Patrol units had adequate resources to be tasked with that mission.

Air Support tracked the Subject's vehicle, as local news media stations broadcast the vehicle following. Officers G and H caught up to the vehicle and became the primary unit in the following. Numerous other officers trailed behind Officers G and H.

Officers G and H activated their overhead forward-facing red light and emergency light bar to initiate a felony traffic stop. The Subjects exited the freeway, turned south, and continued driving for approximately three quarters of a mile, stopping in the westbound number one lane of traffic.

Officer G stopped his vehicle approximately 18 feet behind the Subjects' vehicle and offset a few feet to the left. Officers I and J stopped to the right of the primary unit while Officers C and D stopped their vehicle to the left of the primary unit. Officers E and F stopped to the rear of the primary unit offset a few feet to the right. The officers exited their respective vehicles, deployed their sidearms or rifles, and took cover behind their respective ballistic armored doors.

In order to get a better vantage point on the Subjects, Officer E redeployed behind the passenger side ballistic armored door of the vehicle in front of him and next to Officer H, while Officer F re-deployed behind the passenger side ballistic panel door of the vehicle in front of him and next to Officer J. While the officers took cover and deployed their weapons in a westbound direction, Air Support personnel broadcast for additional responding units to stop traffic to the west, north, and south of the intersection.

Officer G ordered Subject 1 to exit the vehicle with his hands above his head. Subject 1 complied, exited the vehicle on the driver's side, and faced the officers. Subject 2 remained seated in the vehicle and put his hands out the passenger window. Officer G ordered Subject 1 to lay face down on the ground. Subject 1 failed to comply with any further commands, put his arms out to his side and told Officer G to shoot him.

Officers A and B, who had been trailing further behind the vehicle, arrived at the scene and stopped their vehicle furthest to the left of the primary vehicle. Officer B deployed his rifle from behind his ballistic armored door while Officer A went to the rear of the officers' vehicle and retrieved a 40mm less-lethal launcher.

Note: The 40mm less-lethal launcher had recently been approved for use during a pilot program for deployment by patrol personnel. Officer A had completed training to certify him to deploy the less-lethal platform prior to the date of this incident.

Officer A loaded a 40mm less-lethal round in the launcher and moved forward to the vehicle to his right behind the driver side ballistic armored door next to Officer C.

As Officer G gave repeated commands to Subject 1 to get on the ground, he paced about near his driver side door, shouted back, and talked over Officer G in a non-stop, belligerent, and hostile manner. Subject 1 stated that he was doing this for his people, that he was protesting; that he was in the military and was an infantry man; and that the officers would have to shoot him.

As it became apparent to the officers that Subject 1 was refusing to comply with their commands, Officer J said, "I'm getting a 40!" Officer J holstered his weapon and retrieved his 40mm less-lethal launcher from the rear of his vehicle, loaded a round, tucked two additional rounds inside his Sam Browne utility belt, and moved forward to his vehicle's driver side ballistic side panel door.

Officers on the right side of the configuration, including Officers E, F, and I became concerned that while Subject 1 was demonstrating that he was not going to cooperate

with the officers' commands, Subject 2 was left inside the vehicle with possible weapons and/or additional occupant(s). The rear windows on the vehicle were tinted, and the officers could not see inside. The officers discussed having Subject 2 exit the vehicle, even though Subject 1 was not cooperating with the officers' commands.

Officer I, believing that the officers had sufficient officers at the scene to handle two possible uncooperative Subjects outside the vehicle, said, "I'm getting him out."

Officer I ordered Subject 2 to exit the vehicle. Subject 2 complied with this command, but like Subject 1, that was the only command he followed. As he was repeatedly ordered to get on the ground by Officer I, and then by Officer F, who took over giving commands, Subject 2 shouted back at the officers and talked over them in a belligerent and hostile manner as he moved his hands about. Subject 2 stated he was not going to get on the ground and yelled expletives.

Officer A advised Officer D that he was armed with the "40" and was ready to deploy it. Officer D told him to "target the driver" (Subject 1), who was positioned in front of Officer A. Simultaneously, Officer J heard from an unidentified officer that Subject 1 was being targeted with a "40," so he focused on the passenger (Subject 2) with his 40mm less-lethal launcher.

Officer A pointed the 40mm at Subject 1 and announced in a loud voice, "40 standby!" Other officers present shouted acknowledgment that the 40mm less-lethal launcher was ready to be deployed.

Officer D, the senior officer at the scene, stated to Subject 1, "If (you) don't comply you will be hit with a 40mm round and it will hurt!" Subject 1 replied to Officer D, "I'm not going to do what you say...I'm not going to the ground...You are going to have to shoot me!" Officer E stated to Subject 2, "We are going to use a 40...it will hurt you."

Both Subjects failed to comply with the officers' orders and continued to move about near their respective sides of the vehicle while shouting at the officers. Subject 2 yelled at the officers that he didn't want to be shot. Officer I told him if he complied with their commands he would not be shot with the "40." Subject 2 then took his shirt off, pulled down his pants, and sat down on the curb.

After receiving verbal confirmation from the other officers' present acknowledging that the 40mm less-lethal launcher was going to be deployed, Officer D told Officer A, "We are ready for the 40!" Officer A again stated, "40mm standby!"

In an effort to de-escalate the situation and prevent Subject 1 from re-entering the vehicle with possible weapons inside, Officer A deployed one 40mm less-lethal round in a northwesterly direction aiming at Subject 1's lower abdominal area from a distance of approximately 43 feet. The round inadvertently struck Subject 1 in the right orbital area and he fell to the pavement and rolled over face down.

At this point, Subject 2 began to cooperate and proned himself out face down on the street. Officer D began to coordinate the arrest of the Subjects as Officer A went to the rear of his vehicle to obtain and load another 40mm round.

Officers moved forward toward the Subjects. Upon visually clearing the vehicle of any possible additional Subjects, Officer G placed his right knee on Subject 1's back and handcuffed his wrists together behind his back. Officer E then handed his rifle to Officer H, placed his right knee on Subject 2's back, and handcuffed his wrists behind his back.

Note: A search of the vehicle revealed no rifles or other weapons inside, however several rounds of .22 caliber ammunition and a high capacity magazine were recovered from the right rear floor board.

Officer A broadcast a request for a rescue ambulance (RA) for Subject 1, who had sustained an injury beneath his right orbital area.

Officers E and F transported Subject 2 to the local police station. In an effort to clear the area of numerous media personnel that had congregated, and with the approval of Captain A, officers were directed to transport Subject 1 to the station and have the Los Angeles Fire Department (LAFD) RA meet them there for medical treatment.

The RA arrived at the scene as just as the officers were leaving the scene to drive Subject 1 to the station. Officer A directed LAFD personnel to follow them to the station for their assessment of Subject 1. The RA subsequently treated Subject 1, and he was transported to a nearby hospital and admitted for his injuries.

A search warrant was subsequently served at Subject 1's residence later that day and two assault rifles and ammunition were recovered.

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 Sergeant A, and Officers A and D's tactics to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

The BOPC found Officer A'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. Non-Conflicting Simultaneous Commands

The investigation revealed that Officers E, F, G, H, I, and J were giving simultaneous commands to the Subjects during the incident. Although the commands were non-conflicting, the officers are reminded that simultaneous commands sometimes lead to confusion and non-compliance.

2. Contact and Cover

The investigation revealed that Officer I elected to order the passenger out of the vehicle while officers were already dealing with an uncooperative Subject. Although Officer I was able to articulate he had sufficient resources to remove and gain compliance from the passenger, it unnecessarily placed the officers at a tactical disadvantage.

3. Command and Control

A supervisor was not present during the stop of the Subjects. As the senior officer at the scene, Officer D monitored the incident and provided direction to the officers. Sergeant A assumed the role of the Incident Commander (IC) throughout the incident.

The BOPC determined that the actions of Officer D and supervisory personnel were consistent with the BOPC's expectations of a field supervisor at a critical incident. The investigation also revealed lessons learned in regards to the Incident Command System (ICS). As a result, this topic will be discussed with involved Command Staff.

These topics will be discussed with the involved officers at the Tactical Debrief.

- **Tactical De-Escalation**

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

The officers conducted a felony traffic stop on a vehicle, to investigate the occupants for possible weapons violations. After being ordered out of the vehicle, the suspects immediately refused to comply with the officers' commands. The officers attempted to de-escalate the situation and gain the suspects' cooperation by verbally relating to them, but the suspects still refused to comply.

As the incident continued to escalate and the possibility of one of the suspects re-entering the vehicle and arming themselves increased, an officer deployed less-lethal munitions, resulting in the Subject's compliance and apprehension.

- 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 and D's tactics to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

- **Officer A** – (Less-Lethal Launcher, one 40mm sponge round)

According to Officer A, he utilized the 40-milimeter launcher to prevent Subject 1 from re-entering the vehicle and obtaining a weapon.

Officer A recalled that he verbalized having the 40-milimeter weapon at stand by. Officer A was trying to prevent Subject 1 from getting in the car and either accessing a weapon or engaging the officers in a shooting. Officer A was also trying to prevent Subject 1 from getting in the car and leaving the location and getting in a pursuit, which is inherently dangerous, not only to the officers, but the community. According to Officer A, he determined that the less than lethal munition, the 40-milimeter, was appropriate. Officer A targeted the mid to lower abdomen and fired one round of the 40-millimeter munition.

Based upon the totality of the circumstances, the BOPC determined an officer with similar training and experience as Officer A, while faced with similar circumstances,

would believe that this same application of less-lethal force would be reasonable to overcome Subject 1's resistance.

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