

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

OFFICER-INVOLVED SHOOTING 057-09

<u>Division</u>	<u>Date</u>	<u>Duty-On(x) Off()</u>	<u>Uniform-Yes(x) No()</u>
Southeast	08/21/2009		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Officer A	5 years, 1 months

Reason for Police Contact

Officers responding to shooting call at a location, which resulted in an officer involved shooting incident.

<u>Subject(s)</u>	<u>Deceased (x)</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
Subject: Male, 84 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, the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on August 10, 2010.

Incident Summary

Communications Division (CD) received a 911 call from an unidentified female stating she had been shot by a tenant at a residence. CD broadcast an "Ambulance Shooting" at the location and advised that the person reporting had provided no subject description and had terminated the call.

The Subject, a resident of the retirement home shot Victim A, the manager of the retirement home. The Subject had difficulties with several of his care-givers, did not get

along well with the other residents, and had recently been diagnosed with terminal cancer.

Sergeant A arrived at the location and broadcast that he was Code Six. He was flagged down by a female, who told him that an older male inside the house had just shot a female, and that he was now on the second floor, possibly in another unit. One of the civilians standing outside told Sergeant A that the person who had been shot was just inside the lobby. Officer A and B arrived and joined Sergeant A. Sergeant A requested additional units, including air support. Officer C, D, E, and F all in uniform responded to Sergeant A's location.

Sergeant A made the decision to enter the building to rescue Victim A. According to Sergeant A, "At that point I believed it was necessary for us to enter to preserve her life, knowing that she was shot." As Sergeant A and the team of officers entered the lobby, they noticed an office to the left which had a window. Through the window, Sergeant A observed Witness A standing in the office and pointing to the ground. At first he feared she was pointing to the subject, who could have concealed himself in the office. As he got closer, he observed Victim A lying on the ground and noticed that she had blood on her shirt. Sergeant A advised the officers that the victim was in the office, and either Witness A or one of the officers opened the door. Witness A was not injured and she exited the building. Victim A was able to stand up, and Officers A and E carried her outside to a waiting Rescue Ambulance (RA). As Sergeant A was standing near the front doors, he heard four or five gunshots and the glass windows above him were shot out. Believing that the subject was now shooting at the officers and/or the RA from the second floor, Sergeant A put out a help call advising that shots had been fired.

According to Witness B, he was in a common area of the apartments on the second floor, standing near a window. Witness B had looked out and noticed LAFD fire trucks and the police cars. He had also observed Victim A being carried out of the building and placed on the sidewalk. The Subject rolled into the room on his wheelchair, and Witness B asked the Subject what had happened downstairs. The Subject did not say anything, but pulled a gun out of a bag and started shooting at Witness B. According to Witness B, the Subject fired four rounds; three went through the window and one hit the wall. Witness B was not injured. The physical evidence at the scene indicated that the Subject fired his weapon twice while on the second floor; one round went through the window and one went into the wall.

The officers carried Victim A to the RA, and paramedics accessed her injuries, which included a gunshot wound to her left scapula and a grazing wound to her neck. After the shots were fired from the second floor, LAFD personnel redeployed to a safe location and Victim A was transported by the RA to the hospital.

Based on the help call from Sergeant A, uniformed Sergeant B, who had positioned himself on the perimeter, responded to the lobby of the apartment building and joined Sergeant A. Sergeant A and B formed a contact team to search for the subject. As recalled by Sergeant B, "I knew that there was gunfire,

active gunfire upstairs. I also felt that the guy could be upstairs shooting people, and I didn't want to be in a position where people were getting killed and we were stuck downstairs in the lobby not going to protect them. So basically [I] felt that people's lives were in jeopardy upstairs and that we had to do something. There was no option to wait because it was an active situation at that moment."

The contact team was comprised of Sergeants A and B, and Officer F, C, D, G, H, and I. The contact team, with Officer D armed with a shotgun as the rear guard, moved to the stairway that led upstairs where they believed the subject was located. Sergeant A used the radio to keep Air Support, and additional officers who had responded to secure the perimeter, updated on the position of the contact team.

Meanwhile, according to Officer C, as the officers were assisting Victim A out of the office area, other elderly residents were milling about and told the officers that the subject was a male, about 80 years old. Officer C heard the gunshots upstairs and saw glass falling to the ground. Sergeant B gave him a shotgun, and told him they were going to form a contact team and proceed to the second floor. Officer C was assigned the point position. According to Officer C, as they were preparing to move upstairs, the Subject exited the elevator on the first floor in his wheelchair. Not knowing at the time that the subject was in a wheelchair, Officer C instructed the Subject to leave the building; however, the Subject ignored him. According to Officer C, other elderly residents did not respond to his instructions either and he allowed the Subject to continue down the hallway.

Meanwhile, according to Officer D, he had arrived at the location with his partner, Officer C attempted to advise CD that they were Code Six, however, due to the heavy air traffic he was unable to broadcast. Officer C advised him not to broadcast as he might cover the air traffic of on-scene officers disseminating information. Officer C instructed him to take the shotgun, and he retrieved it, chambered a round, and added another round so that he had a total of five rounds in the shotgun. Officer D and Officer C entered the lobby with the other officers. According to Officer D, he observed Witness A in the office crying hysterically and waving her hands. One of the officers stated that the subject might be in the office. Officer D covered the hallway as other officers knocked on the closed office door and told Witness A to open it. While they were attempting to enter the office, CD broadcast that the subject was a male, approximately 80-years-old. Witness A finally opened the door and he observed Victim A with blood on her. He continued to cover the hallway as other officers assisted Victim A out of the building.

As recalled by Officer D, "As they were walking out with the victim, we suddenly hear two or three gunshots being fired. And then one of the sergeants, I believe Sergeant A, went outside, looked up and stated, the subject is up there. He's shooting down. He's shooting down. He's shooting at us. He's on top of us." It was decided that the officers would have to do a search for an active shooter as there might be more victims. Officer C instructed him to cover the rear with his shotgun, and Officer C, who also had a shotgun, was at the front. Sergeant A

was directly in front of Officer D with several officers in-between. Just prior to going up the stairs, Sergeants A and B had a discussion and Sergeant A decided to go back to the lobby to form another search group. Sergeant A asked Officer D to stay with him.

Officer D started walking back with Sergeant A to where they had first started, clearing each area as they walked down the hallway. Officer D was in the lead, carrying his shotgun at the low-ready position, with Sergeant A following, carrying his pistol in the low-ready position. When they were about halfway down the hallway, they observed the Subject in a wheelchair holding what appeared to be a tan and white bag, with his hand inside the bag. Both Officer D and Sergeant A instructed the Subject to leave. The Subject gave some type of response, but they could not make out what he said. According to Officer D, the Subject then pulled out a stainless steel revolver with his right hand and pointed the gun at him. Officer D advised Sergeant A, "Partner he has a gun." As recalled by Officer D, "And fearing for my safety and the safety of my sergeant, fearing for our lives, I went ahead and removed the safety and shot the subject." As far as Officer D could recall, the Subject did not fire his gun. Officer D fired one round from his shotgun, which caused the Subject to drop the gun and fall to the ground from his wheelchair.

According to Sergeant A, as the search team reached the staircase, he realized that Sergeant B had enough officers with him and he decided to let Sergeant B lead the team, and that he would return to the lobby area to be the team leader for the officers still in that area. As he was leaving, he instructed Officer D to come with him, because he had a shotgun, and there were enough officers with Sergeant B. As Sergeant A and Officer D, who was in the lead, walked back through the hallway towards the lobby, they observed the Subject sitting in a wheelchair, stopped in the middle of the hallway. Sergeant A had his pistol at a low ready position, and Officer D had the shotgun. Sergeant A's immediate thought was that they needed to get the Subject out of the hallway. Sergeant A could not recall if he gave any instructions to the Subject, but he thought he might have told him to leave. He recalled that the Subject had a blank stare and then Officer D yelled, "Gun." Sergeant A observed what he believed to be a chrome semi-automatic handgun in the Subject's right hand, which was pointed directly at him.

According to Sergeant A, when he recognized that the Subject was holding a gun, he heard one blast from Officer D's shotgun. The pellets hit the Subject in the midsection area and he dropped the gun on the floor, hunched over and then fell onto the ground. The Subject was within a foot of the gun when he fell to the ground, and the Subject was still moving. He instructed Officer D to cover him, and he approached the Subject, pulled him away from the gun and handcuffed him. According to Sergeant A, when he heard Officer D yell "gun," he almost immediately heard the shotgun blast. Officer D did not give any directions or orders to the Subject prior to firing the shotgun. According to Sergeant A, the Subject was pointing his gun directly at him, and he believed the Subject was going to shoot both of them. Sergeant A broadcast that there had been an

officer-involved shooting, and that the subject was being taken into custody. He also requested an RA unit.

Prior to the officer-involved shooting, as the sergeants and team of officers had started down the hallway toward the stairs, Officers F, E, and B stayed downstairs in a day room near the manager's office off of the lobby to provide cover for that area. According to Officer F, he asked CD if there was any better description of the subject other than a male, 80-years-old, but he was unable to obtain any further information. Minutes after making that request, the Subject rolled into the room on his wheelchair. The officers ordered the Subject to stop, put his hands up, and that if he went for a gun he would be shot. The Subject ignored them, and he turned around and started down the hallway in the same direction the team of sergeants and officers had gone. Shortly after the Subject disappeared down the hallway, Officer F heard one gunshot and then a broadcast that there had been an officer-involved shooting.

Officer J, along with Officer A, responded to assist Sergeant A and Officer D. Officers J and A placed the Subject in his wheelchair so he could be taken outside to an RA, as it was still not clear if there were additional subjects inside. Officer J rolled the Subject outside to the waiting RA.

Sergeant B and his team of officers continued to search until it was determined that there were no additional victims or subjects.

Detectives A and B arrived on scene. The detectives contacted Sergeant A and Officer D as they were exiting the apartment building. Detective A learned from Sergeant A that Officer D had been involved in an officer-involved shooting. Detective B took possession of Officer D's shotgun, unloaded it and secured it in the trunk of Detective A's vehicle. Detective A obtained a Public Safety Statement from Officer D. Detective A drove Officer D to Southeast Station, where he monitored him.

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 directed that Sergeant A and Officer D attend a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

The BOPC found Sergeant A and Officer D's Drawing/Exhibiting to be in policy.

C. Use of Lethal Force

The BOPC found Officer D's application of Lethal Force to be in policy.

Basis for Findings

Tactics

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. Each tactical incident inherently results in considerations for improvement. In this instance, although there were identified areas for improvement, the tactical considerations neither individually nor collectively *“unjustifiably and substantially deviated from approved Department tactical training.”*

In conclusion, a Tactical Debrief is the appropriate mechanism for Sergeant A and Officer D to evaluate the events and actions that took place during this incident.

The BOPC directed that Sergeant A and Officer D attend a Tactical Debrief.

Drawing/Exhibiting/Holstering

In this instance, Sergeant A and Officer D responded to a radio call of an “ambulance shooting” at a retirement home. Fearing that there was an active shooter still inside the location, Sergeant A drew his service pistol and Officer D exhibited a Department shotgun.

In conclusion, it was reasonable for Sergeant A and Officer D to believe that there was a substantial risk that the situation had escalated to the point where the use of deadly force may be justified. The BOPC found Sergeant A and Officer D's Drawing/Exhibiting to be in policy.

Use of Force

In this instance, Sergeant A and Officer D were walking southbound in the second floor hallway searching for an active shooter when they encountered the Subject seated in a wheelchair. At this point, no information was given that the shooter was seated in a wheelchair. Sergeant A and Officer D ordered the Subject to leave the area.

Officer D stated the Subject failed to comply and produced a revolver from a canvas bag. the Subject then raised the revolver and pointed it in the direction of the officers. Fearing for his life and that of Sergeant A, Officer D fired one round from his shotgun at the Subject, striking him in the abdomen.

In conclusion, an officer with similar training and experience would reasonably believe that the Subject's actions resulted in an immediate threat of serious bodily injury or death. Therefore, it was objectively reasonable for Officer D to utilize force in order to protect his life and the life of Sergeant A. The BOPC found Officer D's use of force to be in policy.