

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

**OFFICER-INVOLVED SHOOTING – 072-12**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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Van Nuys	10/18/12		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Officer A	4 years, 2 months
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**Reason for Police Contact**

Officers were dispatched to a felony vandalism investigation and the Subject brandished a firearm resulting in an OIS occurred.

<b>Subject</b>	<b>Deceased (X) Wounded ( ) Non-Hit ( )</b>
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Subject: Male, 49 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, 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 September 17, 2013.

## **Incident Summary**

A construction crew was working to the rear of the apartment complex. One of the crew was breaking concrete with a jackhammer when he was approached by a male, later identified as the Subject. The Subject yelled at the crew to stop jackhammering, and removed a hatchet from his waistband. The crew member immediately stopped the jackhammer and backed away from the Subject. The Subject then struck the power cord of the jackhammer with his hatchet approximately three to four times, cutting the cord in half. The Subject then tucked the hatchet in his waist, dropped a knife and began to walk away. Witness A, the construction supervisor, observed the Subject cut the cord to the jackhammer. Witness A then observed the Subject leave and walk into the apartment complex located immediately west of them. The crew then called the police and the Communications Division (CD) dispatched the call, indicating that the Subject was armed with a knife and an ax, and that the Subject had threatened the construction crew.

Police Officers A and B monitored the radio call. Officer B advised CD that they would respond. CD then provided the officers with the Subject's description and directed them to contact the construction crew for further information.

Upon arrival, the construction crew flagged the down the officers. Officer A made a U-turn, parked the police vehicle, and the officers exited. The officers confirmed with the crew (Witnesses B, C and D) that the Subject had cut the powercord to the jackhammer, left a knife at the location, and also had been armed with a hatchet. The Subject returned to the apartment building west of the workers; however, the specific apartment was unknown. The construction crew described the Subject as wearing a white shirt, dark pants and was approximately six feet tall. Officer A directed the construction crew to stand by at the site.

Based on information that the Subject was armed with a hatchet, Officer B requested an additional unit to respond. Officers C and D broadcast they were en route and arrived a short time later.

Officers C and D met with Officers A and B on the sidewalk, in front of construction crew's complex. Officers A and B briefed Officers C and D of what had occurred and provided the Subject's description. The officers formed a tactical plan to search the apartment complex where they believed the Subject to be located and attempt to detain him and take him into custody. The officers directed Witness B to follow them at a distance and to call out to them if he saw the Subject. Witness C activated another jackhammer because the officers' planned to draw the Subject out again with the noise.

A woman, later identified as Witness E, who lived at the apartment complex, saw the officers and opened the front gate of the apartment complex for them. The officers and Witness B walked north into the apartment courtyard. Witness E followed the officers, identified herself as the apartment manager and asked if she could assist them. Officer C told Witness E they were looking for the Subject and provided a description.

As the officers walked out of the courtyard, they were aware several residents had walked out onto their balconies and patio areas on the east and west sides of the courtyard. According to Officer A, the residents appeared calm, and looked to see what was occurring. As the officers reached the northern section of the courtyard on the east side, a male, later identified as Witness F, exited a nearby apartment. Witness B observed Witness F and told the officers that he looked like the Subject. The officers noted that Witness F matched the Subject's description.

Officer B directed Witness D to step back toward them, away from the apartment doorway. Witness D complied, but told the officers he was not the person they were looking for and that he had exited his apartment to smoke a cigarette. Officer A approached Witness D from behind and handcuffed him. Officer A conducted a pat down search for weapons with negative results.

During this time, Witness E walked approximately 20 feet away from the officers, and stood near a gazebo in the center of the courtyard with several other neighbors, who had exited their apartments to observe what was happening.

According to Officer A, who assisted Witness F to an area nearby the apartment building to explain to him what was happening, Witness F was cooperative, but appeared scared and confused, and denied any knowledge of the incident or a hatchet.

During this time, Officer C asked Witness B if Witness F was the Subject; however, Witness B became unsure of his initial identification of Witness F, and told the officers another crew member had a better look at the Subject. Officer C advised Officer B that they needed to arrange a field show-up with that crew member and indicated to him to take Officer D with him. Officer B advised Officer A that he and Officer D would go next door to retrieve the crew member for a field show up.

Officers B and D, as well as Witness B, exited the courtyard and walked toward the construction area. Officer B, who was carrying a less-lethal beanbag shotgun, downloaded the beanbag shotgun and slung it over his shoulder, with the muzzle facing down.

Officer A stood with Witness F, who was still handcuffed. Officer A explained to Witness F that the officers were going to conduct a field show-up. Officer C stood approximately 15 feet south of them in a covering position. At this time, both Officers A and C observed another male (the Subject), wearing a white shirt and black jeans, walk from an apartment hallway approximately 20 feet north of them. The Subject walked quickly south, behind and past Officer A. The officers noticed that the Subject was wearing the same clothing as the person they had detained and also matched the Subject description. Both Officers A and C, believing the Subject may be the actual vandalism Subject, ordered him to stop and Officer C walked after the Subject. The Subject then turned to face the officers.

Officer C told the Subject they were there to investigate a noise complaint and asked him about the noise. The Subject admitted he was the one who had cut the cord to the jackhammer because the crew wouldn't shut it off. Officer C motioned to Officer A and

told him that the Subject was the real Subject. Officer C ordered the Subject to turn around and place his hands behind his back; however the Subject refused to comply.

During this time, Officer A observed that the Subject had taken an aggressive stance toward Officer C. Officer A directed Witness F to remain where he was against the wall of the apartment building, and he would take the handcuffs off, but he had to first help his partner. Witness F said he understood and complied. Officer A then walked toward the Subject. Both Officers A and C ordered the Subject to turn around and put his hands on his head. The Subject refused to comply and, raised his hands as if preparing to fight. At this point, Officer A believed the Subject intended to fight the officers, so Officer A deployed his baton and took a defensive posture. Officer A slowly approached to within approximately 30 feet of the Subject and again ordered him to put his hands up and turn around. The Subject again refused to comply and reached his right hand to his rear waistband area.

In the belief the Subject was reaching for a weapon and that the situation could escalate to one involving deadly force, Officer A dropped his baton on the ground, unholstered his pistol and held it in a low ready position. Officer A ordered the Subject to raise his hands. The Subject continued to reach behind his back, and then brought his right hand forward toward Officer A. As the Subject brought his right hand forward, Officer A saw that he was holding a handgun. Officer A commanded the Subject to drop the gun, but he pointed the the gun toward Officer A. In defense of his life, his partner's life, and the people at the scene, Officer A fired nine consecutive rounds at the Subject from a distance of 30 feet. Officer A observed the Subject fall to the ground and ceased his fire.

Officer C observed the Subject turn with his back to him (Officer C) and place his right hand to his waistband area as though he was attempting to remove something from his waistband or front pocket. Officer C believed the Subject was drawing a weapon, so he unholstered his pistol with his right hand and pointed it at the Subject. Officer C ordered the Subject to show him his hands, but the Subject did not comply. Officer C did not have a clear view of the Subject's right hand as it was pulling his hand out of his pocket. Officer C reached down to initiate a request for backup when he heard Officer A say, "Let me see your hands," followed by "Gun, gun, gun," and subsequently the sound of shots being fired. Officer C also observed the Subject fall to the ground and heard what sounded like metal striking the ground, as he saw the Subject's gun next to his right hand.

Witness F stated he heard officers tell the Subject to raise his hands. Witness F saw the Subject reach behind his back and begin to move his hand forward, holding what appeared to be a gun. Witness D saw the butt of a gun in the Subject's hand, and the officers fired several rounds at the Subject.

Witness G heard the officers tell the Subject to put his hands behind his back. Witness G saw the Subject back away from the officers, reach behind his back into his waistband and pull out a black gun. As the Subject began to swing his gun around, Witness G saw the officers shoot him.

Witness E, from her position near the gazebo located at one end of the courtyard, heard the officers shout several times at the Subject to stop. The Subject suddenly stopped and faced the officers. Witness E saw the Subject place his hand to the back side of his hip, and then extend his arm holding a pistol. Witness C observed the shooting, but could not determine who shot first, the officer(s) or the Subject.

Witness H saw the Subject walk past the officers and Witness F, and heard the officers order him to stop. The Subject turned toward the officers, took a few steps back, reached behind his back with his right hand to his waistband, and pulled out a pistol. Witness H then saw Officer A fire.

Witness I stated he heard the officers say something to the Subject, who appeared not to listen to them. The Subject reached behind his back, and as he faced the officers, he slowly pulled out a pistol. The Subject pointed the pistol at the officers and a shooting occurred.

Witness J saw the Subject face the officers, suddenly turn and reach behind his back to remove a gun from under his shirt. Witness J heard the officers tell the Subject, "Gun down," and believed the Subject wanted to shoot the officers.

Officer C issued a broadcast indicating that officers needed help and shots had been fired. He also requested a Rescue Ambulance (RA), an air unit, and a supervisor to respond.

The Subject was handcuffed, and officers checked on the welfare of residents in the apartment south of the Subject and ensured no one was injured.

Detective A responded to the help call and upon arriving at the scene, admonished the officers not to discuss the incident and separated them.

The RA arrived on the scene and Los Angeles Fire Department personnel assessed the Subject and determined his death.

Sergeant A, who had arrived on the scene, directed officers to secure the apartments affected by the impacts and to identify the occupants. The officers were monitored until their interviews with Force Investigation Division.

### **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 Officers A and B's tactics to warrant a tactical debrief.

## **B. Drawing/Exhibiting**

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

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

The BOPC found Officer A's use of lethal force to be in policy.

## **Basis for Findings**

### **A. Tactics**

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

#### 1. Tactical Communications / Updating Location

In this instance, Officers A, B, C and D conducted a search of an adjacent apartment building without properly notifying CD regarding their updated location.

After thorough evaluation, the BOPC determined that, although there were concerns regarding the failure to update their location with CD, the officers assembled adequate resources and were in close proximity to the initial radio call location.

In conclusion, although a follow-up broadcast would have been prudent, a detailed tactical plan was in place to ensure operational success. Moreover, based on the close proximity to the initial radio call location, responding resources could have easily been directed to address any unforeseen tactical concerns. Therefore, in evaluating the totality of the circumstances, the BOPC determined that A, B, C and D's actions did not represent a substantial deviation from approved Department tactical training. However, the importance of updating their status and location can never be understated.

#### 2. Witness accompanying officers on a tactical search

In this instance, Officers A, B, C and D established a tactical plan to conduct a systematic and detailed search for a felony vandalism subject. Additionally, a witness accompanied the search team to identify the subject if located. Although designated to follow the search team at a safe distance, the practice of having a

witness involved in a search is generally discouraged as it may unnecessarily place the witness in danger of having contact with the subject.

### 3. Simultaneous non-conflicting commands

In this instance, Officers A and C utilized non-conflicting simultaneous commands while attempting to order the Subject to raise his hands. Generally, the use of simultaneous commands is discouraged.

- 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 the individual actions that took place during this incident.

The BOPC directed that Officers A, B, C and D attend a Tactical Debrief and that the specific identified topics are also covered.

## **B. Drawing/Exhibition**

- Officers A and C observed the Subject's movements and believed they were consistent with an individual attempting to obtain a handgun from their waistband area. Accordingly, Officers A and B believed the incident may lead to a situation where the use of deadly force may be justified and drew their service pistols.

Following the OIS, Officer B responded to Officers A and C's location. As he entered the complex, Officer B believed the incident might escalate to a deadly force situation and drew his service pistol.

The BOPC determined that officers with similar training and experience as Officers A, B and C, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation might escalate to the point where deadly force may be justified. Therefore, the BOPC found Officers A, B and C's drawing and exhibiting of a firearm to be in policy.

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

- **Officer A (pistol, nine rounds)**

Despite numerous verbal commands, the Subject refused to comply, removed a handgun from his waistband and moved the handgun in the direction of the officers. Fearing for his life, the life of his partner and the lives of the bystanders in the area, Officer A fired his service pistol.

An officer with similar training and experience as Officer A would reasonably believe that the Subject posed an immediate threat of serious bodily injury or death and that the use of lethal force would be justified.

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