

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

**OFFICER-INVOLVED SHOOTING – 088-13**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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Mission	10/11/13		
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<b>Officers(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Officer A	15 years, 6 months
Officer B	19 years, 7 months
Officer C	5 years, 5 months

**Reason for Police Contact**

Officers responded to a call of a Subject making threats. The Subject brandished and threw a hammer, and an officer-involved shooting occurred (OIS).

<b>Subject(s)</b>	<b>Deceased ( )</b>	<b>Wounded ( )</b>	<b>Non-Hit (X)</b>
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Subject: Male, 21 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 Los Angeles Police Department Command Staff presented the matter to the Chief 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 23, 2014.

## **Incident Summary**

Witness A made a 911 call and told the emergency operator that the Subject was trying to break into his house and threatened to kill him if he did not open his door.

Sergeant A and several officers responded to the call, including Officers A, B, and C.

Upon their arrival, officers spoke to Witnesses A and B. They learned that the Subject had mental health problems and was off his medication. The officers also saw blood smeared on the wall near the front door. Witnesses A and B believed the blood was from the Subject and told the officers the Subject had intentionally cut his wrists in the past.

Parked on the driveway was a blue pickup truck, with a camper mounted on the bed. The witnesses told the officers they thought the Subject was inside the camper. They did not elaborate on why they believed this was the case.

Officers could hear movement inside the camper and attempted to make contact with the Subject; however, he responded with profanity and refused to come out. The officers also confirmed the camper door was latched from the inside. They allowed a neighbor to try and talk the Subject out of the camper, from a safe distance, again without success.

Due to the Subject's aggressive behavior, the presence of blood and the Subject's mental health, Sergeant A requested a pry tool from the station, to force entry.

Officer B deployed a beanbag shotgun and his partner, Officer C, deployed a TASER. Another officer deployed a shotgun.

The witnesses stated that they did not want the Subject arrested, but instead wanted only to get him assistance for his mental health condition. Sergeant A briefed the officers and formulated a tactical plan to make contact with the Subject.

Meanwhile, Officer B continued making verbal requests for the Subject to exit the camper and at one point asked the Subject if he was bleeding. The Subject responded with profanities and refused to exit. According to Officer A, Officer B told him that he was not making any progress communicating with the Subject, so Officer A took over. Officer A requested that the Subject exit the camper and tried to reassure him that he was not in trouble and they just wanted to get him help. He also asked the Subject if he was injured or bleeding. The Subject did not answer for several minutes, before yelling additional profanity.

Sergeant B arrived on scene with the pry tool. Sergeant A formulated a tactical plan to distract the Subject away from the camper door, while the camper door was pried open. He assigned officers to use their batons to strike the south side of the camper, which included smashing out a window, while another officer provided cover for them with a shotgun. For the contact team, he designated

Officers A and another officer as lethal cover, Officer B to the beanbag shotgun, Officer C to the TASER, and another officer to breach the camper door with the pick.

Witnesses C and D, who resided close to the incident location, were inside their home as the incident unfolded. Using their cellular phones' video cameras, Witnesses C and D captured images of the officers prying the camper door open and the force used when the officers made contact with the Subject. Though they were filming the same incident from the same house, they provided two slightly different perspectives. Witness C's images were clearer, more zoomed-in and the center of focus was the Subject, with the officers being completely out of view during the first portion of the use of force and then in view as they moved toward the Subject. Witness D's images, although somewhat blurred and obscured by the center frame of the window, captured the entire use of force.

Witness C's video images revealed the following: When officers began their distraction and entry, the glass window on the camper door was smashed from the inside. The Subject appeared at the open doorway with a hammer in his right hand, yelling profanity. Simultaneously, the Subject sharply lowered his right hand with the hammer from above his head down to his right side twice. He transferred the hammer from his right hand to his left hand at waist level, rapidly pointed to his chest with his right hand, and yelled something unintelligible.

Several officers yelled for the Subject to drop the hammer. The Subject transferred the hammer at waist level back to his right hand and threw the hammer, underhanded, to the west. Simultaneously, a gunshot can be heard and gun smoke appeared from the left side of the frame. The Subject remained in the doorway yelling profanity and someone out of view yelled, "Beanbag, tase him." Several officers yelled commands, simultaneously, that were mostly unintelligible. A beanbag shotgun discharge could be heard as the Subject stepped backward two to three feet farther into the camper. Officers yelled, "Get down, get down" as they came into view. The Subject was warned that the beanbag shotgun would be used if he did not come out of the camper and that it would hurt. The Subject appeared to be exiting and was tased by Officer C as he stood with his hands to the sides of his body. The Subject exited the camper by jumping to the ground while the TASER was still activated. As the Subject stood on the ground facing the officers with his hands to his sides, Officer B fired his beanbag shotgun. The sock round can be seen striking the Subject's abdomen. Several officers approached the Subject, the TASER was deactivated, and he was handcuffed.

Because Witness D's video camera was focused from farther out than Witness C's video camera, the following additional images were captured: While an officer was striking the camper with his baton and another officer was prying the door open, an additional officer could be seen on the driveway covering the southeast portion of the camper with his pistol. The Subject proceeded to throw the hammer, and Officer A can be seen firing his pistol simultaneously. Officer B pointed a beanbag shotgun toward the Subject when a second shot could be heard; however, it could not be determined

from the video if the beanbag shotgun was actually fired. Witnesses C and D's videos did not reveal how close the hammer came to striking the officers or where it landed.

The officers involved in the use of force provided the following statements: Officer A recalled that the Subject was swinging the hammer around and pointing it at the other officers. Officer A ordered the Subject to drop the hammer and heard other officers telling him to drop the hammer as well. When the Subject did not comply, Officer A yelled, "Beanbag" and heard other officers yelling beanbag.

Officer B recalled the Subject was yelling, appeared angry, and was holding the hammer over his head in a threatening manner as if he were going to throw the hammer at them. In response, Officer B fired one sock round at the Subject from his beanbag shotgun from a distance of approximately 19 feet. Officer B believed that by the time he was able to fire the beanbag shotgun, the Subject had stepped back farther into the camper and the sock round missed.

Officer A believed he heard Officer B's beanbag shotgun discharge, but was not aware if it struck the Subject.

**Note:** Officer A was unaware that he fired his pistol before Officer B fired his first of two beanbag sock rounds.

Officer A stated the Subject continued to swing the hammer around, pointing it at the officers. He saw the Subject put his arm up in the air as if he was going to throw the hammer. And he was looking right at Officer A, and that's when he decided to fire to try to stop him from throwing the hammer at me." Officer A fired his pistol at the Subject one time in an easterly direction, from a distance of approximately 17 feet. His round missed the Subject. According to Officer A, when he fired his pistol, the Subject simultaneously threw the hammer in an overhead motion, similar to how a baseball player would throw a ball, and moved his head and body slightly to the left as the hammer passed by him.

According to Officer C, he was standing to the rear of the camper, and his view of the Subject was partially blocked by the camper door that had swung open from right to left. Officer C was unaware that Officer A fired his pistol until after the Subject was in custody. Officer C heard another officer telling him to "tase" the Subject.

According to Officer C, when the Subject came into his view and was stepping down from the camper to the ground, he aimed the TASER at the Subject's upper torso and activated it from a distance of approximately 6 feet. Just prior to the activation the Subject was yelling, "F-U, pigs, come on, you're going to have to kill me." When he activated the TASER, Officer C's recollection was that the Subject still had the hammer in his right hand and was waving it back and forth in a threatening manner. One TASER dart struck the Subject's chest and the second dart missed him altogether, making the activation ineffective.

At this point, the Subject was standing on the driveway just outside the camper. According to Sergeant A, he ordered the Subject to get on the ground and warned him that if he did not comply, he would be shot again with a beanbag. The Subject did not get on the ground and continued to curse at the officers.

Officer B heard someone yell, "Shoot him." He was unaware that the Subject had already thrown the hammer and later observed it lying in the street after the Subject was taken into custody. According to Officer B, the Subject was not complying with Sergeant A's order to go to the ground, so he fired the beanbag shotgun again in an easterly direction at the Subject, this time from an approximate distance of 16 feet. The sock round struck the Subject's right lower abdomen area.

According to Sergeant A, once the sock round struck the Subject, he became static and stopped yelling. The Subject was then taken into custody.

Sergeant B notified CD that the Subject was in custody and requested a Rescue Ambulance (RA) because of the TASER activation and sock round strike.

**Note:** Force Investigation Division was unable to establish what time Sergeant B actually arrived on scene. There was no evidence of a Code-Six broadcast by him on the radio, and a report noted his arrival time incorrectly because he broadcast over radio that the Subject was in custody and requested a RA at the same time. This time frame would not have allowed Sergeant B adequate time to provide the pick to the officers, breach the camper door, and take the Subject into custody. In addition, when viewing the operation from a nearby location, Sergeant B positioned himself such that he was facing with his back to the pending tactical operation.

### **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 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 the tactics of Sergeant A, along with Officers A, B and C to warrant a Tactical Debrief. The BOPC found the tactics of Sergeant B to warrant Administrative Disapproval.

## **B. Drawing/Exhibiting**

The BOPC found the drawing and exhibiting, by Sergeant A, along with Officers A and C, to be in policy.

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

By a vote of 4-1, the BOPC found the less-lethal use of force by Officer C (TASER), to be out of policy. The BOPC unanimously found the less-lethal use of force (Bean bag) by Officer B to be in policy for the first round and out of policy for the second round.

## **D. Lethal Use of Force**

By a vote of 4-1 the BOPC found the use of lethal force by Officer A to be out of policy.

## **Basis for Findings**

### **A. Tactics**

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

#### **1. Force Options (Positive)**

The officers were in possession of less-lethal force options, which included a beanbag shotgun and a TASER, when they made contact with a reported aggressive and potentially combative person suffering from mental illness. By having multiple force options readily available, the officers increased their tactical options and ability to respond to various situations.

#### **2. Weapons Other Than Firearms/Utilizing Cover**

The investigation revealed the two teams of officers converged on the camper simultaneously. As one officer forced open the camper door, Officers A, B, C, along with Sergeant A and another officer, left the cover afforded them by the police vehicle to the north and entered the roadway in front of the camper door, closing the distance to the Subject. Officer C closed the distance between himself and the Subject to approximately six feet, when he deployed a TASER cartridge at the Subject.

Although it was not definitively determined that the Subject was armed prior to the officers' approach, officers are trained to utilize cover and concealment when possible. Given the officers' need to verify the wellbeing of the Subject and possibly provide medical assistance, it was reasonable for the officers to move from cover in order to move closer to the camper and the Subject to obtain a better view and, should it become necessary, utilize less lethal force.

### 3. Simultaneous Commands

As the Subject appeared in the open doorway of the camper holding a hammer, multiple officers simultaneously issued verbal commands to the Subject.

### 4. Preservation of Evidence

After the Subject was taken into custody, Officer B removed the sock round from the chamber of the beanbag shotgun and secured it back on the butt cuff.

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.

After a thorough review of the incident, the BOPC determined that the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training. Therefore, 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 with the objective of improving overall organizational and individual performance.

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

Regarding Sergeant B, the BOPC conducted a thorough assessment of his actions from the time he arrived until the conclusion of the tactical incident. Sergeant B delivered the entry tool and met with Sergeant A. Sergeant B was briefed on the tactical plan and, believing Sergeant A had control of the situation, in addition to there being a likelihood that the incident could result in a non-categorical use of force, walked to an intersection, and stood facing with his back to the tactical operation.

**Note:** As delineated in the Office of the Chief of Police, Special Order No. 13, 2004, generally, a supervisor who witnessed a non-categorical use of force incident should not conduct a use of force investigation. However, the watch commander may make exceptions on a case-by-case basis, based on exceptional operation needs.

Although Sergeant B was not involved in the development of the tactical plan, nor was he the first supervisor at scene, Department supervisory training and expectation is that supervisors assume a leadership role when arriving at the scene of an ongoing tactical operation, no matter the circumstances. With eight officers present and an ongoing tactical operation underway, it would have been tactically prudent for Sergeant B to remain in a position to assist Sergeant A and the officers should it become necessary.

The BOPC determined that Sergeant B, knowing the nature of the radio call, in addition to receiving a briefing on the tactical plan and role of officers by Sergeant A, should be characterized as “Substantially Involved.” The Department definition of Substantially Involved in relation to Use of Force includes, “the employee(s) applying force or who had a significant tactical or decision making role in the incident.” (Los Angeles Police Department Manual, Volume 3, Section 792.05)

Based on his knowledge of the tactical incident and decision to remove himself from it, the BOPC determined that Sergeant B should receive a formal finding for Tactics. Furthermore, Sergeant B’s actions substantially deviated from approved Department tactical and supervisory training, without justification, warranting a finding of Administrative Disapproval.

## **B. Drawing/Exhibiting**

- Based on the totality of the circumstances, the BOPC determined that officers with similar training and experience as Sergeant A, along with Officers A and C, while faced with similar circumstances would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Sergeant A, along with Officers A and C’s drawing and exhibiting of a firearm to be in policy.

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

- **Officer B** – (Beanbag Shotgun, two rounds)

**Note:** The video depicts that there were approximately five seconds from the time Officer A fired his service pistol until the first beanbag shotgun sock round was discharged by Officer B. Officer B was unaware that the Subject threw the hammer at approximately the same time Officer A discharged his service pistol.

### Deployment of First Sock Round

After the camper door opened, the Subject held a hammer in his right hand and ultimately threw the hammer toward Officer A, resulting in an OIS (see Lethal Use of

Force). The Subject moved rearward, approximately two to three feet into the camper, at which time Officer B fired his first sock round at the Subject.

Department policy states that the decision to use force must be judged through the perspective of a reasonable officer with similar training and experience and in a similar circumstance. The BOPC determined that an officer with similar training and experience would reasonably believe that 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 B's Less-Lethal Use of Force to be objectively reasonable and In Policy.

#### Deployment of Second Sock Round

Officer B believed the first sock round did not strike the Subject and he reappeared in the threshold of the camper door. It was at this point that Officer C deployed a TASER cartridge on the Subject (see TASER Deployment).

**Note:** Audio captured during both video recordings does not reflect that commands were provided to the Subject after he exited the camper and stood on the street, prior to the second beanbag shotgun sock round being discharged.

Believing the TASER was ineffective, coupled with not knowing if the Subject still held the hammer, Officer B fired a second sock round at the Subject, striking him on the abdomen, in an effort to gain his compliance and ultimately affect his detention.

Department policy states that the decision to use force must be judged through the perspective of a reasonable officer with similar training and experience and in a similar circumstance. The BOPC determined that an officer with similar training and experience would reasonably believe that the application of less-lethal force to effect a detention of the Subject was reasonable and would have acted in a similar manner.

However, after extensive review of the captured video and based on the facts contained within the FID investigation, the BOPC had significant concern regarding Officer B's decision to discharge the second beanbag sock round at the Subject at the time he chose to do so.

After a review and analysis, the BOPC determined that a reasonable officer with similar training and experience, while faced with the same or similar circumstances, would not have discharged the second and final beanbag shotgun sock round at the Subject at the time Officer B decided to do so.

In conclusion, the BOPC found Officer B's less-lethal use of force, for the discharge of the second beanbag sock round to be out of policy.

- **TASER Deployment**

**Officer C** – (TASER, one cartridge)

In this instance, when initially interviewed regarding his decision to discharge the TASER at the Subject, Officer C indicated that when the discharge occurred, the Subject was waving a hammer and had stated “F-U, pigs, come on, you’re going to have to kill me.” The investigation established, however, that the Subject had discarded the hammer prior to the use of the TASER, that he was no longer yelling at the officers, that he had been given commands to exit the camper, and that he was moving as if to step down from the camper. When re-interviewed, having been shown video evidence contradicting his account, Officer C stated that his recollection had not changed.

An assessment of Officer C’s decision to use less-lethal force against the Subject must be judged from the perspective of a Los Angeles police officer with similar training and experience placed in generally the same set of circumstances. In this case, as the investigation established, those circumstances were that the Subject was moving as if to step off the camper, as he was being instructed by officers to do so. At that time, the Subject was not making any aggressive statements nor exhibiting any physically aggressive behavior.

The BOPC found that it was not objectively reasonable to use less-lethal force against the Subject as he appeared to be exiting the camper, as the Subject’s actions at this time were apparently compliant with the commands he was being given. Furthermore, even if Officer C did not hear those commands, the Subject’s actions at the time nevertheless would not support an objectively reasonable belief that the use of a TASER was warranted.

By a vote of four-to-one, the BOPC found Officer C’s use of less-lethal force to be out of policy.

#### **D. Lethal Use of Force**

- **Officer A** – (pistol, one round)

The BOPC conducted a critical but objective assessment of the details of this incident, while taking into consideration that this was a highly stressful and dynamic incident. The BOPC also considered that there is a discrepancy regarding Officer A’s perceptions versus the captured video. The investigation and facts support that the Subject was agitated, displayed aggressive behavior and held/manipulated a hammer, which he threw toward Officer A, coming to rest on the roadway.

However, after extensive review of the video evidence, FID investigation and totality of the circumstances, the BOPC determined that the Subject’s overt forward movement to throw the hammer in an underhand manner, and in fact doing so, with

the amount of throwing force applied, did not constitute a threat of serious bodily injury or death.

Although the BOPC took into consideration that police officers are often forced to make split-second decisions during rapidly evolving situations, the BOPC found that a reasonable officer with similar training and experience as Officer A, while faced with the same or similar circumstances would not believe that the Subject's actions presented an imminent threat of serious bodily injury or death and would not have utilized Lethal Force.

By a vote of four-to-one, the BOPC found Officer A's use of lethal force to be out of policy.