

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

LAW ENFORCEMENT-RELATED INJURY 069-08

<u>Division</u>	<u>Date</u>	<u>Duty-On(X) Off()</u>	<u>Uniform-Yes(X) No()</u>
Hollenbeck	08/08/08		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Police Officer A	18 years, 7 months
Police Officer B	12 years, 3 months
Police Officer C	4 years, 9 months

Reason for Police Contact

Officers responded to a call of a violent male with mental illness.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Subject: Male, 31 years old

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 suspect 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 BOPC of Police; and the report and recommendations of the Inspector General. The Los Angeles Police Department Command Staff presented the matter to the Commission and made itself available for any inquiries by the Commission.

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 July 14, 2009.

Incident Summary

Uniformed Police Officers A and B were requested to respond Code Three to handle a violent male with mental illness. The comments on the Mobile Data Computer (MDC) of the call indicated that Witness A's son was possibly under the influence of a narcotic, had attempted to physically harm her, and was throwing items around the house.

Officers A and B developed a tactical plan whereby Officer A would deploy the beanbag projectile shotgun and be the contact officer and Officer B would deploy a TASER. The officers arrived at the location and parked one residence west of the address. The officers exited their vehicle and observed the Subject standing on the porch of the residence waving his arms around. The Subject seemed extremely agitated, was yelling, and when he saw the police, ran back into the house and closed a metal security door behind him.

Officer B notified Communications Division that they were Code Six at the location and requested a backup. Officers A then retrieved the beanbag projectile shotgun from the police vehicle. Officers A and B approached the stairs and heard the sound of a woman screaming from inside the residence. The officers ran up the stairs believing that an assault was possibly in progress.

As Officers A and B proceeded along the walkway on the side of the residence, they passed a closed metal security door, then came upon a small window where they observed Witness A sticking her head out screaming. Upon observing the officers, Witness A yelled for help and said, "He's going to hurt us. He's going to hurt me." The officers then observed Witness B, and the Subject's brother, through a bedroom window. Witness B asked the officers to get her out because someone was going to kill them. None of the windows were large enough to provide an exit for Witness A or Witness B, and the door on the side of the residence was locked.

Officer A broadcast a request for assistance for a violent person inside a residence. The officers redeployed to the front yard area and took cover behind a large tree to wait assistance. Officer A holstered his pistol and then chambered a super-sock round in the beanbag projectile shotgun.

Within minutes, several uniformed police officers arrived at the residence. Officer A directed Officers C and D to cover the side of the residence. Officer E was assigned to a cover position on the side of the residence, and Officer F deployed behind Officer A. Officer A designated Officers G and H as the arrest team.

The Subject exited the front door of the residence, stood on the porch and yelled. As described by Officer A, the Subject looked like he had spit or thick saliva coming from his mouth and dripping off his chin, down his chest. The subject had no T-shirt and Officer A believed the Subject looked very combative and extremely aggressive.

Officer A raised the beanbag projectile shotgun to his shoulder and pointed it at the Subject, and then ordered him to put his hands up, turn around, and place his hands on top of his head. The Subject did not comply with Officer A's commands so Officer A again ordered him to submit to an arrest. The Subject responded, "What are you going to do, shoot me?"

Officer A notified the officers that he was about to discharge the beanbag projectile shotgun. None of the officers responded to Officer A's notification, so he ordered the Subject a third time to put his hands on top of his head.

Officer A again notified officers he was going to fire the beanbag and an unidentified officer acknowledged his notification. Officer A feared that the Subject was going run inside the house, and either severely injure or kill the witnesses, so Officer A fired one beanbag round, which struck the Subject in the middle of the stomach. Officer A fired the beanbag projectile shotgun from a distance of approximately twenty-four feet.

According to Officer A, he did not warn issue a warning to the Subject about the beanbag injuring him because the Subject had direct eye contact and could already see the beanbag shotgun. According to Officer E and G, Officer A did give a beanbag warning, and told the Subject that if he didn't comply with instructions, he would be hurt by the beanbag.

After the super-sock round struck the Subject, Officer A saw no reaction from the Subject, so he fired a second round, which struck the Subject in the upper chest. The Subject immediately fell down to his stomach and onto the porch. Officers G and F approached the Subject to take him into custody, but the Subject continued to move around and would not obey Officer G's orders to place his hands behind his back. Officers G and F each grabbed one of the Subject's arms and brought them back behind his back. Officer G placed handcuffs on him, and searched the waistband of the Subject's pants for weapons, but found none.

An ambulance responded and treated the Subject at the scene. The Subject was transported to the hospital, and was admitted for a possible injury to his abdominal wall.

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 that a Tactical Debrief was the appropriate mechanism for Officers A, B, F, and G to evaluate the events and actions that took place during this incident.

B. Drawing/Exhibiting/Holstering

The BOPC found Officer A's drawing and exhibiting of a firearm to be in policy, requiring no further action.

C. Use of Force

The BOPC found Officer A's use of less-lethal force to be in policy, requiring no further action.

The BOPC found Officer F and G's use of non-lethal force to be in policy, requiring no further action.

Basis for Findings

A. Tactics

1. Verbal Warning.

Police officers are required to give a verbal warning in situations which require the use of a TASER, Beanbag Shotgun, less lethal munitions or impact device to control an individual, when feasible. The use of force warning, or why it was not given, must be documented.

In this instance, Officer A utilized a beanbag shotgun to assist in effecting the arrest of a violent subject. Officer A alerted the other officers of the deployment of the beanbag shotgun but did not provide the Subject a verbal warning because it was evident the Subject knew he was facing a shotgun, as evidenced by his statement, "Go ahead and shoot me."

The BOPC found that Officer A's justification for not providing a verbal warning was reasonable, even though no documentation pertaining to the verbal warning not being given could be found in the Arrest Report as required by current Department policy.

Therefore, the BOPC concurs that a Tactical Debrief is the appropriate mechanism for Officers A, B, F and G to evaluate the events and actions that took place during this incident.

B. Drawing/Exhibiting/Holstering

Department policy relative to drawing and exhibiting a firearm is that, "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified."

In this instance, Officer A drew his service pistol upon hearing the sound of items being broken inside the residence accompanied by the sounds of screaming. It was reasonable for Officer A to believe that a violent crime was in progress and the situation had escalated to a level where the use of lethal force might become necessary.

Therefore, the drawing and exhibiting by Officer A warrants a finding of in policy, with no further action required.

C. Non-lethal Use of Force

Department non-lethal force instructs that officers must exercise control when affecting arrests, and may use whatever force is reasonable and necessary to protect others or themselves from bodily harm.

In this instance, Officers F and G were members of the arrest team assembled to take the Subject into custody. Once the Subject was struck with the second beanbag round and fell to the ground, Officers G approached and placed a firm grip on the Subject's left arm causing him to roll onto his stomach. When the Subject continued to move around and yell, Officer F assisted by applying a firm grip to the right arm, and Officer G was able to subdue the Subject without further incident.

Therefore, the BOPC found that Officer F and G's non-lethal use of force warrants a finding of in policy, with no further action required.

D. Less-lethal Use of Force

Department training instructs that the Beanbag Shotgun is not an alternative to lethal force, but is instead another tool to help control or temporarily incapacitate the Subject, so officers can safely approach.

Before an officer may be justified in using the Beanbag Shotgun, the following factors must be present: lethal force does not appear to be justifiable and/or necessary; attempts to subdue the subject by other conventional tactics have been, or will likely be, ineffective in the situation; or there is a reasonable expectation that it will be unsafe for officers to approach to within contact range of the subject.

In this instance, Officer A fired one beanbag round at the Subject which struck him in the abdomen, but had no effect. Officer A assessed, realized that the first round did not have the desired effect, and immediately fired a second beanbag round at the Subject, striking him in the chest area. The Subject's actions demonstrated his unstable and aggressive nature making it unsafe for the officer's to approach and affect an arrest.

Therefore, the BOPC found the deployment of the beanbag shotgun was within Department guidelines, and that Officer A's less-lethal use of force warrants a finding of in policy, with no further action required.