

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

LAW ENFORCEMENT RELATED INJURY - 076-05

<u>Division</u>	<u>Date</u>	<u>Duty-On(x) Off()</u>	<u>Uniform-Yes(x) No()</u>
Hollenbeck	08/28/2005		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Sergeant A	16 years, 5 months
Sergeant B	25 years
Sergeant C	17 years, 4 months
Officer A	3 years, 7 months
Officer C	10 years, 10 months
Officer E	9 years, 3 months
Officer F	10 years, 4 months

Reason for Police Contact

Officers responded to a radio call of an assault with a deadly weapon. Subject 1 failed to comply with officers' commands to exit the residence and sprayed officers with a substance through a security screen door. The officers formulated a plan to enter the residence and take Subject 1 into custody. The officers entered the residence, and Subject 1 continued to ignore the officers' commands. A Beanbag Projectile Shotgun was deployed against Subject 1. Subject 1 was subsequently hospitalized because of injuries he sustained when he was hit with the beanbag rounds.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (x)</u>	<u>Non-Hit ()</u>
Subject 1: Male, 34 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 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 Chief 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.

The following incident was adjudicated by the BOPC on August 15, 2006.

Incident Summary

On the evening of August 28, 2005, Officers A and B responded to an "ADW¹ suspect there now" call at a duplex. Officers C and D heard the broadcast and also responded.

Officers C and D were the first to arrive at the location. The location was a duplex with two side-by-side units. There was a door within the building that allowed access between the two units. The officers were met by an unidentified male in front of the residence. The male informed the officers that two brothers inside the residence were fighting.

Officers A and B arrived at the location shortly after Officers C and D. Officer A informed the other officers that he had been to this location before and had been involved in a use of force with one of the occupants.

The officers approached the front door of the east unit of the duplex. Subject 1 came to the door and spoke to the officers from inside a wrought iron security screen door. Subject 1 told the officers that he was not going to come out, and told them to leave. Officer A recognized Subject 1 as the individual with whom he had previously been involved in a use of force. Officer A broadcast a request for an additional unit and a supervisor. Lieutenant A, Sergeant A, Officers E and F, and Officers G and H responded to the request.

Subject 1 continued to refuse to exit the unit to speak to the officers. Officer D went to his police vehicle to retrieve a TASER. Officer E retrieved the Beanbag Projectile Shotgun from the trunk of his police vehicle.

The officers continued to attempt to convince Subject 1 to come out of the residence, but to no avail. Officers B and F were positioned closest to the front door of the residence. At one point, Subject 1 sprayed a substance through the security door.² The substance made contact with Officer B's hand. The officers retreated from the door and took cover behind some trees in the front yard of the residence.

As the officers were attempting to get Subject 1 to exit the front of the east unit of the duplex, Witness 1 (Subject 1's brother), exited out the side door of the west unit of the duplex, and was detained by Officers C and D. Witness 1 stated that he and Subject 1 had been in a fist fight.

Witness 2 (also a brother of Subject 1), then exited the west unit of the duplex, followed by Witness 3 (Subject 1's mother).

When Witness 3 exited the front door of the west unit of the duplex, she left the front security door open. Subject 1 disappeared from the front door of the east unit,

¹ Assault with a Deadly Weapon.

² The substance was later determined to be Raid bug spray.

reappeared at the front door of the west unit, and closed and locked the screen door. Officers continued to instruct Subject 1 to exit the building.

As Subject 1 refused to come out, Sergeant A assembled an entry team to go into the residence to take Subject 1 into custody. Officer E deployed the Beanbag Projectile Shotgun, Officer C deployed the TASER and Officers A and F were designated as cover officers and arrest team. Officer G retrieved his Beanbag Projectile Shotgun and was positioned outside the front door in case Subject 1 exited that door. Officer D stayed in the street to maintain control of Witness 1 while Lieutenant A stood by Witness 3. The remaining officers stayed in front of the residence and continued to talk to Subject 1 through the security door in an attempt to convince him to come out.

Sergeant A and Officers A, C, E and F entered the residence through the side door of the west unit of the duplex. Initially, Officer E was in front, followed by Officer F. However, once inside, the order of the officers changed because of the extremely cluttered interior of the residence. As they entered the residence, Sergeant A and Officers A and F drew their service pistols. There were no lights on inside the residence. Sergeant A holstered Sergeant A's service pistol and used a flashlight to illuminate the residence.

The officers made their way from the side door, through the kitchen area into the living room. They observed Subject 1 standing inside the front security door with his back to them. Officer E instructed Subject 1 to put his hands up. Subject 1 turned around, and Officer E could see that Subject 1 had a spray can in his right hand and a shiny object in his left hand. Officer E advised the other officers that Subject 1 had an object in his hand. Officer E and Sergeant A instructed Subject 1 to drop what he had in his hands. They advised Subject 1 that if he did not obey their commands, he would be shot with the Beanbag Projectile Shotgun. Subject 1 refused to drop what he had in his hands and began to move toward the officers. Officer E fired one round from the Beanbag Projectile Shotgun at Subject 1, then reassessed. The round appeared to have no effect on Subject 1. Sergeant A and Officer E continued to instruct Subject 1 to drop what was in his hands. Subject 1 refused to drop the items. Officer E fired a second round at Subject 1, and, again, it appeared to have no effect. Officer E fired two more rounds, assessing after each round. These rounds also appeared to have no effect. Officer E then fired a fifth round. All five beanbag rounds struck Subject 1, causing injuries to his abdomen and left arm. After being struck by the fifth round, Subject 1 dropped the objects he was holding and fell to the floor.

Once Subject 1 was on the floor, Officer E told the other officers to move in and take Subject 1 into custody. Officer A moved up and handcuffed Subject 1 without further incident.

Officer E located the items that Subject 1 had in his hands and discovered that they were a can of Raid bug spray and a spoon.

In the meantime from the front of the residence, Officers G and H heard the beanbag rounds, moved around the residence and entered the residence through the same side

door that the entry team had entered. Officers G and H saw that Subject 1 was being handcuffed. Once Subject 1 was handcuffed, Officer H moved up and assisted Officer F to walk Subject 1 outside onto the front porch. The officers sat Subject 1 down on a chair just outside the residence, and Officer H monitored Subject 1 there.

Officers C and E requested a Rescue Ambulance ("RA").

Subject 1 was subsequently admitted to hospital for treatment of the injuries caused by the use of force.

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 Sergeant A and Officers A, C, E and F's tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC found Sergeant A and Officers A and F's drawing and exhibition of a firearm to be in policy.

C. Less Lethal Use of Force

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

D. Additional Considerations

The BOPC found that Sergeants B and C's actions warrant divisional training regarding policies and procedures relative to the investigation of non-categorical use of force ("NCUOF") incidents and relative to managing the aftermath of a categorical use of force ("CUOF"), respectively.

Basis for Findings

A. Tactics

The BOPC noted that Officer F, who was assigned as a cover officer on the entry team, made entry behind the Beanbag Projectile Shotgun officer, Officer E. The BOPC would have preferred that Officer F had entered the residence first to ensure the officers were prepared for a lethal threat, should it become necessary. The BOPC also noted that the TASER officer, Officer C, was in the rear of the entry team when the officers encountered Subject 1. This resulted in Officer C not being in a position to take appropriate action had the last beanbag round not been effective. It would have been preferable for Officer C to have assumed a forward position. The BOPC noted that Sergeant A became an active participant as opposed to placing himself in the rear to monitor the actions of the officers and Subject 1. The BOPC would have preferred that, when the officers' positioning had changed once inside the residence, Sergeant A had slowed down the search and ensured the officers remained in proper order. The BOPC noted that both Sergeant A and Officer E gave Subject 1 verbal commands. The BOPC would have preferred that a contact officer had been assigned to the entry team to allow Sergeant A and Officer E to focus on their designated roles. The BOPC determined that Sergeant A and Officers A, C, E and F will benefit from tactical training at Training Division.

B. Drawing/Exhibiting/Holstering

The BOPC determined that Sergeant A and Officers A and F had sufficient information to believe the incident might escalate to the point where lethal force may be justified when they drew their service pistols. The BOPC found Sergeant A and Officers A and F's drawing and exhibition of a firearm to be in policy.

C. Less Lethal Use of Force

The BOPC determined that Officer E's less lethal use of force was reasonable to stop Subject 1's actions. The BOPC found Officer E's less lethal use of force to be in policy.

D. Additional Considerations

Sergeant C was the Watch Commander at the time of the incident. Once the incident was determined to be a CUOF, the involved/witness officers were called back to the station to be separated and monitored. Sergeant C assigned Sergeant A to monitor Officers C and F. Sergeant A himself was involved in the incident, and, thus, should have been separated and monitored by an uninvolved supervisor.³ Sergeant A should not have been assigned to monitor other involved/witness officers. Thus, the BOPC

³ Consent Decree paragraph 61, and LAPD Manual, Volume 3, Sections 794.37 and 795.10.

found that Sergeant C's actions warrant divisional training regarding the proper policies and procedures to be applied following a CUOF.

Sergeant B was the first supervisor to respond to the scene after Officer E had fired the Beanbag Projectile Shotgun at Subject 1. Initially, prior to Subject 1's hospitalization, the incident met the criteria for a NCUOF. Sergeant B initiated a NCUOF investigation. As part of the NCUOF investigation, Sergeants A and B interviewed Subject 1's family members. The BOPC noted that the procedures for a NCUOF investigation provide that "[u]nder no circumstances shall a supervisor *involved* in a use of force incident be permitted to conduct the investigation."⁴ The LAPD Manual defines an *involved supervisor* as "a supervisor who provided guidance or direction during the use of force, or participated in on-scene pre-planning or directing related to the incident."⁵ Because of Sergeant A's involvement in the incident, Sergeant A should not have participated in the investigation of the incident. The BOPC would have preferred that Sergeant B had ensured that Sergeant A was not conducting any of the investigation of the incident. Thus, the BOPC found that Sergeant B's actions warrant divisional training regarding the policies and procedures for a NCUOF investigation.

⁴ LAPD Manual, Volume 4, Section 245.10.

⁵ *Id.*