

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

LAW ENFORCEMENT RELATED INJURY – 094-07

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off()</u>	<u>Uniform-Yes(X) No()</u>
Southeast	10/05/2007		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Officer E	11 years, 0 months
Officer G	19 years, 11 months
Officer I	2 years, 6 months

Reason for Police Contact

As officers approached a group of individuals, Subject 1 ran, grabbing a bulge in his waistband. Officers pursued Subject 1 and took him into custody. Subject 1 was injured during the arrest.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Subject 1: Male, 43 years.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate the 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 and addenda items); the 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 09/09/08.

Incident Summary

Officers were driving three marked police vehicles in trail, with Officers A and B in the lead vehicle followed by Officers C and D with Officers E and F in the trailing vehicle. The officers were conducting directed gang crime suppression.

The officers observed a large group of individuals on the sidewalk in front of a duplex. Officers A and B stopped their vehicle 10 to 15 feet from the group and exited their vehicle. As they approached, Subject 1 made eye contact with the officers, looked

startled, grabbed a noticeable bulge in his waistband area and ran up the driveway toward the rear duplex. Officers A and B believed Subject 1 had a gun in his waistband as they pursued him on foot. Both officers gave Subject 1 verbal orders to stop, but he ignored their commands. Subject 1 ran into the rear duplex apartment where he closed and locked the door.

In the meantime, Officers C, D, E and F parked and got out of their vehicles. The officers observed Officers A and B chasing Subject 1 and they followed. Officer B then informed Officer C that Subject 1 had a handgun in his waistband. Officer C had Officers D, E and F go to the rear of the residence while he and Officers A and B remained at the front.

Officer A requested a supervisor and two additional units. The additional units covered the rear of the residence, enabling the original officers to move to the front in preparation for an entry. While waiting for the additional units to arrive, officers maintained containment around the house, knocked on the door, identified themselves as police officers and ordered the occupants to open the door. There was no response.

Officers G and H arrived on scene and moved to the rear of the residence, replacing Officers D and F who were sent to the front.

While maintaining containment on the rear of the residence, Officer G heard the bathroom window open. Officers E and G observed wet clumps of marijuana being thrown out of the window. In addition to the observation of marijuana, Officer E heard a toilet flush. Officer E broadcast this information to the officers at the front of the residence. Officer C heard the broadcast and recognized the possibility that evidence was being destroyed inside the residence. Based on that information, Officer C organized an entry team of officers. Officer A retrieved the metal ram from Officer C's vehicle in preparation to force open the locked door.

Meanwhile, Officers I and J arrived on scene.

Officer A struck the front door with the metal ram forcing the door open. Three females sitting on a couch and one male occupied the living room. The four individuals were ordered out of the residence and were detained by officers. A moment later, a fifth individual walked out from the hallway and was detained.

Simultaneous with the front door being forced open, Officer H heard the rear door rattle as if someone were trying to open the door. Concerned for his and Officer G's safety, Officer H told Officer G that someone was opening the back door. Both officers drew their service pistols. When the door opened, Subject 1 stood in the doorway and appeared as if he was ready to run. Officer H ordered Subject 1 down to the floor but, ignoring the command, Subject 1 retreated inside the residence then closed and locked the door. Officer H used his right foot to kick the door open. Subject 1, standing just inside the doorway, was then ordered to get down onto his stomach and he complied.

Officer E ordered Subject 1 to crawl out of the residence. Subject 1 crawled to the doorway and then rose into a push-up position.

Believing Subject 1 was preparing to jump up and run, Officers E and G approached Subject 1 and grabbed his arms; Officer G the left and Officer E the right. The officers dragged Subject 1 from the residence to a position four to five feet outside the doorway. Officers E and G lifted Subject 1 high enough that the upper portion of his body, from his chest, was up off the ground.

Officers at the front of the residence heard the rear door being kicked open, followed by verbal commands. Officer C told Officers A, B and D to remain at the front door without entering the residence as he went to the rear to check on the officers. Officers F, I and J, also hearing the commotion, went to the rear of the residence to check on the officers.

In an attempt to take Subject 1 into custody, Officer G placed his right knee on Subject 1's lower back. Officer G attempted to bring Subject 1's left arm behind his back but Subject 1 pulled free and tucked his arm under his body. Officer G told Subject 1 to stop resisting and continued to apply body weight. After 15 to 20 seconds, Subject 1 released the tension in his arm, which allowed Officer G to pull it from under his body and place a handcuff on Subject 1's left wrist. Officer E used both knees to apply body weight to Subject 1's back and was able to control and handcuff his right wrist. Assisting in the effort to take Subject 1 into custody, Officer I used a firm grip and body weight, placing both of his hands on Subject 1's calves to control his legs.

Handcuffed, Subject 1 was lifted to his feet and then seated in a chair. According to Officer H, Subject 1 had blood above his right eyebrow and near his left ear.

Sergeant A arrived on scene and immediately assumed control of the operation. Under the direction of Sergeant A, each room in the residence was searched for subjects until the officers encountered a locked bedroom door. Several commands were given to open the door without a response. The door was forced open using the metal ram. A subject was found inside the bedroom and was taken into custody without incident.

Sergeant A was concerned with the potential of additional narcotics and firearms inside the residence and ordered the residence searched. Officers located marijuana and a pellet gun inside the residence.

In the meantime, Sergeant A contacted Subject 1, observed blood on his head and requested a rescue ambulance. Based on Subject 1's visible injuries and complaint of neck pain, he was transported to a hospital. At the hospital, Subject 1 was treated for an abrasion to his right eye and a laceration to his left ear requiring eight sutures. A doctor was concerned that Subject 1 might have a fractured neck and subsequently admitted Subject 1 to the hospital.

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, B, C, D, E, F, G, H, I and J's tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC found Officers A, B, D, E, F, G, H, I and J's drawing to be in policy.

C. Non-Lethal Use of Force

The BOPC found Officers E, G and I's non-lethal use of force to be in policy.

Basis for Findings

A. Tactics

The BOPC noted that the involved personnel had a pre-planned tactical communications strategy that did not advise Communications Division (CD) of their status and location until after they established containment on the residence. The BOPC evaluated the circumstances and determined that in this instance, wherein six officers were working in unison and able to immediately support the rapidly unfolding tactical scenario, the officers met the expectation of the policy.

Despite the communications plan, Officers A and B elected to initiate a consensual encounter with a large group of individuals without first communicating their intent to the other officers. This created a circumstance wherein the officers were merely reacting to, rather than working in unison with, the actions of Officers A and B.

Officer statements established that Officers A and B were not readily visible as they ran through the group of individuals after Subject 1. The officers believed Subject 1 was armed with a handgun and had the potential threats associated with the additional

members within the group. Although the officers were in close proximity and able to immediately respond to the rapidly unfolding events, it is important to remain disciplined to ensure the tactical advantage is not lost.

After containment was established, a request was made for two additional units and a supervisor. The BOPC was concerned the magnitude of the situation was not fully embraced, considering that a subject that was believed to be armed had just barricaded himself inside a residence and that the officers were unaware of who may also occupy the residence, additional subjects and/or potential victims. Officers must accurately evaluate a scenario and request the appropriate resources to ensure proper management of the incident and preparation for potential eventualities.

The BOPC determined that sufficient legal justification was present to initiate a forced entry of the residence to prevent the further destruction of evidence but noted however, the forced entry, although reasonable, was flawed from a tactical perspective. The officers believed Subject 1 was armed with a handgun; he refused to comply with directives to exit the residence; and a substantial amount of marijuana had been thrown out the rear window, minimizing the need for a forced entry and the inherent risks associated with it.

In this incident, Subject 1 was believed to be armed; posed a significant threat to the safety of citizens and police; was in a tactically advantageous position inside the residence that afforded him cover and concealment; and refused to submit to arrest. These circumstances take precedence over the prevention of the destruction of evidence and warrant a notification to Metropolitan Division.

The officers forced the front door open and then held their position outside the residence to instruct the occupants of the front room to exit. Thought should be given to the anticipated number of trailers required to stop the destruction of evidence as officers are required to hold their positions to address threat areas and contain additional subjects; and consideration given to a point of entry that facilitates the expeditious prevention of evidence, in this case the rear door.

When forced entry was made through the front door, Subject 1 exited the rear door, observed the officers and re-entered the residence, closing the door behind him. In response, Officer H kicked the rear door open to maintain a visual on Subject 1, which created the potential for a crossfire situation. It would have been tactically safer for Officer H to maintain his position and communicate his observations to the entry team. The BOPC also noted that Officers H and G did not draw their service pistols until Subject 1 exited the rear. This causes concern because they were advised that an armed suspect had run inside the residence and refused to submit to arrest, giving them sufficient cause to reasonably believe there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

The sole remaining subject locked himself in a bedroom and refused to comply with verbal commands to submit to arrest. Again, the BOPC was critical of the decision to

initiate a forced entry. In this instance, there were additional factors to consider; there was still a potential handgun outstanding; and there was no exigency to warrant the expeditious forced entry. The circumstances were consistent with the criteria of a barricade suspect and warranted a notification to Metropolitan Division.

The BOPC applied the standards set forth in Chimel v. California when evaluating the appropriateness of the residential search. When a subject has been arrested within a residence, officers may search the area within the immediate control of the arrestee. A number of factors have been identified when applying the “immediate control” test, in addition to the arrestee(s) distance from the area, one must consider whether the arrestee was handcuffed or otherwise detained; whether police were positioned so as to block the arrestee from the area searched; the ease of access to the area; and the number of officers present. The BOPC has concluded that the extent of the search exceeded the scope of an “immediate control” search and required a search warrant.

The search for evidence was conducted after all subjects had been detained and moved to a location outside the residence. The BOPC also noted that a more thorough search was conducted at the direction of Sergeant A after a pellet gun was located. Additionally, during this search a substantial amount of marijuana was located in a pouch, contained inside a suitcase, within the front bedroom, which was not identified as a room that was occupied by any of the subjects.

The BOPC determined that Sergeant A and Officers A, B, C, D, E, F, G, H, I and J would benefit from additional training regarding tactics.

The BOPC found Sergeant A and Officers A, B, C, D, E, F, G, H, I and J’s tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC noted that Officer B observed Subject 1 run away while holding his waistband and enter the residence. Based on his training and experience, Officer B believed that the subject was armed with a handgun and drew his service pistol.

Officers A, D, F, G and I received information that an armed subject had barricaded himself inside of the residence. Prior to making entry into the residence, where a possible armed subject was located, the officers drew their service pistols.

Officer H received information that an armed subject had barricaded himself inside the residence. While containing the rear of the residence, Subject 1 opened the rear door and attempted to flee. Fearing an armed confrontation, Officer H drew his service pistol and ordered Subject 1 to the ground.

Officer J received information that an armed suspect had barricaded himself inside the residence. As the officers began dragging Subject 1 from the doorway of the residence, Officer J provided cover and drew his service pistol.

The BOPC determined that Officers A, B, D, E, F, G, H, I and J had sufficient information to reasonably believe that the situation might escalate to the point where lethal force may be justified.

The BOPC found Officers A, B, D, E, F, G, H, I and J's drawing to be in policy.

C. Non-Lethal Use of Force

Subject 1 began to raise himself into a push-up position, and it appeared that he was attempting to escape. Officers E and G approached Subject 1, grabbed his arms and dragged him approximately seven feet away from the doorway. Officer G held Subject 1's left arm with a firm grip while Officer E held Subject 1's right arm with a firm grip. Officer G attempted to bring Subject 1's right arm behind his back; however, he resisted and tucked his arm under his body, holding both arms tight and began to push up. Officer G placed his left knee on William's back and his right knee on his shoulder to prevent Subject 1 from escaping. Upon hearing the commotion, Officers F, I and J responded to provide further assistance. Officer I utilized a firm grip, along with his bodyweight on Subject 1's thighs to prevent any further movement from the subject. Officer F assisted Officer G with handcuffing Subject 1, and was taken into custody without any further incident.

The BOPC determined that Officers E, G and I's non-lethal use of force was reasonable to overcome Subject 1's actions.

The BOPC found Officers E, G and I's non-lethal use of force to be in policy.