

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

HEAD STRIKE WITH AN IMPACT WEAPON - 007-10

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off()</u>	<u>Uniform-Yes(X) No()</u>
Rampart	01/26/10		

<u>Involved Officers</u>	<u>Length of Service</u>
Officer E	2 years, 7 months
Officer B	10 months

Reason for Police Contact

Officers responded to a call about an individual armed with bricks and threatening to do bodily harm.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Subject: 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 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, the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on January 18, 2011.

Incident Summary

Officers A and B received a radio call involving a subject armed with bricks under his clothing, threatening to do bodily harm, and with a history of violence.

Upon arrival, Officer A parked and both officers exited their vehicle. Witness A approached Officers A and B on the sidewalk and advised the officers that he was there to conduct an evaluation on the Subject, who had become violent. Witness A indicated the Subject had armed himself with bricks and stated that he was not going anywhere. Officer A asked Witness A if the Subject was a danger to himself or others. Witness A stated that the Subject was a danger to others, had been very aggressive with him and had made threats to people where he resided. Witness A pointed the officers to where the Subject was standing on the sidewalk, approximately 60 feet east of their location. Officer A observed that the Subject had both his hands in his jacket pockets and that his pockets appeared very bulgy as if he had something in them. The Subject resided at a board and care facility for adults with mental illness.

According to Officer A, he and Officer B “understood [the Subject] was possibly suffering from some sort of mental condition.” Officer A advised Officer B that he would be the contact officer and that Officer B would be the cover officer. Officer A also advised Officer B to have the TASER ready. Officers A and B walked toward the Subject, and when they were approximately 40 feet away, Officer A began verbalizing with the Subject. According to Officer A, the Subject became agitated and began pacing and stating that he wasn’t going anywhere and refusing to cooperate. Officer A observed red-colored bricks protruding from each of the Subject’s pockets. Officer A requested an additional unit to respond to their location.

Officer B held his TASER and Officer A advised the Subject that he was not under arrest and that they were there to safely conduct an assessment of him with the person from the psychological response team. According to Officer B, the Subject became loud and confrontational and began walking backwards into the street, still facing the officers with his hands in his pockets. The officers ordered the Subject to turn around, but he continued walking backwards into the street. According to Officer B, he and Officer A backed off and both told him to get out of the street, fearing he may get hit by a car.

According to Officer B, the Subject saw his TASER and told officers he was not afraid of being tased. The Subject took the bricks out of his pockets, held a brick in each hand, and began motioning his hands up and down. According to Officer B, the Subject was using profanity and telling the officers to come get him.

Officers C and D were in the vicinity in a marked police vehicle when they heard the additional unit request broadcast and responded to the request. Officers C and D observed the Subject in the middle of the street at the intersection, and Officers A and B in the roadway west of the Subject verbalizing with him. Officer D observed the Subject holding a brick in each hand as he waved them around in a right left, circular motion.

It also appeared to Officer D that the Subject was attempting to throw the bricks at Officers B and A "in a baseball pitch motion." Officer C observed the bricks in the Subject's hands and the Subject moving his arms back and forth as if he "was either going to run or throw the bricks." Officer C stopped his police vehicle south of the Subject and both officers exited. Officer D directed the Subject to drop the bricks. The Subject turned his attention toward Officers C and D and faced them. Officer C then broadcast a request for a backup unit.

Soon after, Officers E and F arrived at the scene. Officer E observed the Subject holding a brick in each hand while "doing some kind of karate moves" and stating, "Come on," to the officers. Officer F observed the Subject holding bricks in his hands while "lunging at the officers," who were taking cover. Officer F heard the officers ordering the Subject to put the bricks down and the Subject stating, "No. Come get me. Come get me." Officers F and E heard Officer A yelling for a beanbag shotgun. Officer F opened the trunk of their police vehicle and Officer E retrieved a beanbag shotgun.

The Subject then ran south toward Officers C and D's police vehicle and jumped on top of the vehicle's hood. According to Officer A, the Subject made gestures with the bricks as if he were going to throw them. Officer A advised the Subject that the TASER would be used if he did not comply and that it would hurt. According to Officer B, the Subject yelled profanities. Officer A believed that the Subject was a danger to the officers and citizens at the area. As a result, he directed Officer B to deploy the TASER.

Officer B stepped forward toward the west side of the police vehicle and fired the TASER at the Subject's "center mass area, midsection," from a distance of approximately 18 to 20 feet. The TASER darts made contact with the Subject's jacket and the TASER appeared to have a slight effect on the Subject because he (the Subject) lost his footing, but never fell down. According to Officer A, "[the Subject] shook for just a second" before he pulled the wires off of his jacket and threw them to the ground.

The Subject jumped off the police vehicle on the passenger side and proceeded to walk backwards in an easterly direction in the middle of the street, while still facing officers. Officer B removed the expended TASER cartridge and holstered his TASER. Officer B heard officers calling for a beanbag shotgun, but did not observe any officers at the scene with a firearm drawn. Officer B drew his service pistol, believing the bricks that the Subject had in his hands could cause serious bodily injury or death.

Meanwhile, Officer E had moved from the trunk area of his police vehicle to the west side of Officers C and D's police vehicle. Officer D drew his TASER and followed behind Officer E. According to Officer D, he and Officer E repeatedly ordered the Subject to drop the bricks. From a distance of approximately 30 feet, Officer E observed the Subject in the middle of the street with the bricks in his hands jumping up and down and moving right to left. Officer E left his position of cover and moved north away from the police vehicle. Officer E advised the Subject, "I'm going to shoot you with the beanbag if you don't drop down the bricks," and the Subject responded, "Come on."

Officer E advised the Subject that he would count down and at zero he would fire the beanbag. According to Officer E, he asked the Subject if he understood and the Subject stated, "Yes." Officer E began counting down from five, and at zero, Officer E aimed his beanbag shotgun at the Subject's "upper abdominal" area and fired four beanbag rounds from a distance of approximately 31 feet. According to Officer E, he conducted an evaluation after firing each round, but the Subject did not drop the brick or fall to the ground.

The Subject continued walking east and Officer E ran southeast and took a position of cover behind a white van that was parked on the south side of the street where he loaded two additional beanbag rounds into his shotgun. Officer E observed the Subject walking toward a group of 15 to 20 on-lookers, who were approximately 30 to 40 feet northeast of the Subject. Officer E decided to attempt engaging him again in order to prevent harm to civilian bystanders. Officer E yelled at the group to move out of the way. According to Officer E, the civilians appeared to be in shock and did not move immediately so he yelled, "Move out of the way. I'm going to shoot him with the beanbag." The people scattered. Officer E pointed his beanbag shotgun at the Subject's upper abdominal area and fired a fifth beanbag round from an approximate distance of 36 feet, but it appeared to have no effect on the Subject. According to Officer E, the Subject became more aggressive, still with the bricks in his hands, and was jumping up and down. Officer E fired a sixth beanbag round from an approximate distance of 36 feet, aiming for the Subject's upper abdominal area, and observed the beanbag round strike the Subject's face.

After being struck in the face with the beanbag round, the Subject dropped the bricks at his sides to the ground and fell forward. Officer E put the safety on his shotgun, slung it and approached the Subject along with the rest of the officers at the scene. Officer E grabbed a hold of the Subject's left arm and placed it behind his back. Officer D grabbed the Subject's right arm with the assistance of Officers B and E handcuffed the Subject without further incident. Officer C held the Subject's legs down and placed a Hobble Restraint Device (HRD) around the Subject's ankles. Officer E, with the assistance of Officer B rolled the Subject on to his left side. Officer B then held onto the end of the HRD.

As the officers took the Subject into custody, Officer F observed the bricks that the Subject had dropped on the ground were within the Subject's reach. Officer F kicked the bricks away. Officer A then broadcast a Code-4, suspect in custody, and requested a supervisor, and a rescue ambulance (RA).

Officer E observed the Subject was bleeding from his mouth area. Officer E donned rubber gloves and used the Subject's beanie to apply pressure on the wound to stop the bleeding. Officer E ensured the Subject's airway was not blocked and asked him if he was okay. The Subject stated, "I'm okay." Officer E advised the Subject that they were there to help him and that an RA was on its way. Shortly after, Sergeants A and B arrived at the scene.

Officers G and H arrived at the scene and observed the Subject holding the bricks in his hands. According to Officer G, the Subject was moving erratically and looked like he might throw a brick. According to Officer H, the Subject was walking back and forth attempting to throw the bricks at the officers. Officer G retrieved a beanbag shotgun from the trunk of his police vehicle and proceeded to move toward the nearest officers who he saw, approximately 30 to 40 yards away. As Officer G made his approach, he heard one beanbag round being discharged by an officer. According to Officer H, she was following behind Officer G when she heard four beanbag rounds being discharged. Los Angeles Fire Department (LAFD) personnel arrived at the scene, assessed and treated the Subject.

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 Officers A, B, E, and F's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting/Holstering

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

C. Less-Lethal Use of Force

The BOPC found Officers B and E's use of force to be in policy.

Basis for Findings

A. Tactics

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. Each tactical incident inherently results in considerations for improvement. Each incident must be looked at objectively and the areas of concern must be evaluated based on the totality of the circumstances. In this case, although there were identified areas where

improvement could be made, the tactics utilized did not *“unjustifiably and substantially deviate from approved Department tactical training.”*

In conclusion, a Tactical Debrief is the appropriate mechanism for Officers E, A, F and B to evaluate the events and actions that took place during this incident and assess the identified tactical considerations with the objective of developing peak individual and organizational performance.

The BOPC will direct Officers E, A, F, and B to attend a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

In this instance, Officer B fired the TASER at the Subject, which was ineffective. After deploying the TASER, Officer B did not see any other officer with a lethal force option deployed and believed the situation could escalate to the point where lethal force may be justified and drew his service pistol.

In conclusion, Officer B’s Drawing/Exhibiting was objectively reasonable and within Department guidelines. The BOPC found Officer B’s drawing and exhibiting to be in policy.

C. Less Lethal Use of Force

In this instance, as the officers tried to communicate with the Subject, he climbed on the roof of the police vehicle while holding a brick in each hand. The Subject’s behavior and his possession of the bricks created a circumstance wherein conventional tactics would have been ineffective because it was unsafe to approach within contact range of the suspect. Officer B fired the TASER at the Subject from a distance of approximately 18 to 20 feet, striking him center mass. The TASER caused the Subject to shake for a second, but he was then able to tear the darts out and toss them down to the ground.

An officer with similar training and experience as Officer B would reasonably believe that the use of Less-Lethal force would be appropriate based on The Subject’s actions. In conclusion, the BOPC found Officer B’s less-lethal use of force to be in policy.

In this instance, after the TASER was used and was ineffective, Officer E retrieved the beanbag projectile shotgun from the trunk in his patrol vehicle. The Subject jumped off the police vehicle and ran eastbound in the middle of the street.

Officer E continued to verbalize with the Subject and told him twice that he was going to shoot him with the beanbag projectile shotgun if he did not drop the bricks, to which the Subject replied, *“Come on!”* Officer E told the Subject that he was going to count down and at zero he was going to shoot him with a beanbag. Officer E asked the Subject if he understood and the Subject replied, *“Yes.”* Officer E counted down from five to one and observed that the Subject had not dropped the bricks, aimed the beanbag projectile shotgun at the Subject’s upper abdominal area, and proceeded to fire four consecutive

super-sock rounds at him in an easterly direction, from an approximate distance of 31 feet.

After each round, Officer E assessed and observed that the Subject had not dropped the bricks. Officer E assessed again and moved back, utilizing the police vehicle as cover. He then repositioned himself behind a white van and loaded the beanbag projectile shotgun with two additional super-sock rounds. After Officer E took cover he saw that the Subject backed up approximately 25 feet in close proximity to where several people were standing. Fearing that the Subject may try to injure the civilians standing at the corner, Officer E yelled at the civilians to move out of the way because he was going to shoot the Subject with the beanbag again. As the civilians scattered away, Officer E moved away from behind the van, aimed the beanbag projectile shotgun at the Subject's upper abdominal area and fired his fifth super-sock round at the Subject from an approximate distance of 36 feet. Officer E saw the round hit the Subject in the chest area, but the round did not appear to have any effect on him. The Subject was still acting aggressive and still had the bricks in his hands.

At this point in the incident, lethal force would not have been justified; however, it was unsafe to approach the Subject and the use of Less-Lethal force was appropriate. An officer with similar training and experience as Officer E would reasonably believe that the use of force would be warranted based on the Subject's actions. In conclusion, the BOPC found Officer E's less-lethal use of force was objectively reasonable and in policy.

In this instance, following the fifth super-sock round, the Subject was still acting aggressive and still had the bricks in his hands. Officer E fired a sixth super-sock round at the Subject from an approximate distance of 36 feet, aiming at the upper abdominal area. The Subject was jumping up and down and the super-sock round struck his upper lip area.

After the Subject was struck in the face, he fell to the ground and was subsequently taken into custody. The evidence in this case indicates that although Officer E intended on striking the Subject in the abdominal area with the super-sock round, the fact that it struck the Subject in the face was inadvertent as there was no specific intent to strike him in the face. In conclusion, the BOPC determined that the inadvertent head strike with the beanbag projectile shotgun was objectively reasonable to overcome the aggressive actions presented by the Subject. The BOPC found the less-lethal force utilized by Officer B to be in policy.