

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

**OFFICER-INVOLVED SHOOTING – 034-10**

<b>Division</b>	<b>Date</b>	<b>Duty-On (x) Off ( )</b>	<b>Uniform-Yes ( ) No (x)</b>
Van Nuys	4/7/10		

<b>Involved Officer(s)</b>	<b>Length of Service</b>
Officer D	10 years, 4 months

**Reason for Police Contact**

Officers were conducting surveillance at a residence for which they had received complaints of narcotic activity at the location.

<b>Subject</b>	<b>Deceased ( )</b>	<b>Wounded ( )</b>	<b>Non-Hit (x)</b>
Subject: Male, 59 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 the 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 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 March 29, 2011.

**Incident Summary**

Detective A and Officer A were working in plainclothes and driving an unmarked police vehicle, conducting surveillance at a residence. Officer B had received several citizen complaints regarding alleged narcotic activity at the location. Officer B advised Detective A of the complaints.

As the officers monitored the north and south alley behind the residence, they observed two males, subsequently identified as Subject 1 and Subject 2, on bicycles, entering the rear gate of the residence. Approximately 20 minutes later, Subject 1 and Subject 2 left the residence and the officers followed them. Subject 2 remained at the intersection, while Subject 1 rode his bicycle into a parking lot.

Upon leaving the location, the officers requested assistance from other officers. Officer C joined the surveillance team.

Detective A then directed Officer C to detain Subject 2, while he and Officer A continued to follow Subject 1. As Subject 1 rode his bicycle through the parking lot, the officers decided to stop and detain Subject 1 to conduct a narcotics investigation. Officer A exited his vehicle, displayed his badge, and advised Subject 1 that he was a police officer. A search of Subject 1 by Detective A resulted in the recovery of a clear plastic baggie containing methamphetamine.

Subject 1 advised the officers that "there was additional narcotics at the location and that there were additional people staying there," and Detective A decided to secure the location to prevent the destruction of evidence.

Detective A then told Subject 1 the officers were going to obtain a search warrant; however, according to Detective A, Subject 1 told him, "you don't need to write a search warrant. Just, I'll give you permission to go in. I'll show you where [the narcotics are] at." A written consent to search was not obtained from Subject 1.

Officers C, D, E, and along with Detective B, arrived at the location.

According to Detective B, Detective A advised him of his intent "to secure the house for a search warrant." Detective B further stated that he then spoke to Subject 1, who indicated that there was "a little more dope back in [his] room." As described by Detective B, Subject 1 also told the officers that his room was at the back of the house and there was a locked door that separated his room from the rest of the house. Moreover, Subject 1 would provide "consent to [the officers] to go back to his, to his bedroom [to] search. However, he did not have the authority to give any type of consent to search the whole house."

Subject 1 told the officers that the best way to enter his room was from a rear alleyway, that there was an unlocked security gate leading into the rear yard of the house, and that there was a sign on the door to his room that read, "Do Not Enter."

Detective B contacted the Watch Commander and advised him that personnel would respond to a location to secure the residence pending the issuance of a search warrant. Detective B also requested that a uniformed patrol officer respond to their location to assist the officers. Officer F responded to assist the officers. Additionally, Detective B contacted Officer G, while Officer C contacted Officer H, to request that they also respond to the officers' location to assist in securing the residence.

Once all the officers were assembled at the location, Detective A briefed them about the arrest of Subject 1 and Subject 2, and told them that the officers intended to return to the residence to secure the location. In preparation, Detective A assigned the officers responsibilities in the entry team. Additionally, Officer H took custody of Subject 1 and Subject 2 to transport them to the location.

Officer H then observed two males (Subject 3 and Subject 4) standing by the north side of the residence and Officer H made contact with them. Officer H then advised Detective B of his contact and Detective B came from the rear of the residence, took custody of the males, and escorted them to the rear of the residence. The officers had also encountered a female and a young female child upon entering the rear yard of the residence. Officers G and C took custody of the females and removed them from the yard. Detective B then surrendered custody of Subject 3 and Subject 4 to Officers G and C.

According to Detective A, he announced the presence of the officers prior to entering the rear yard by yelling, "Police, police, police."

The officers approached the rear door of the residence leading to Subject 1's room and determined that it was locked. Detective A used a pocket knife to unlock the door. The officers entered the residence and encountered a female (Subject 5), apparently asleep on a bed. Officer E took custody of Subject 5, handcuffed her, and surrendered custody of her to Detective B. The officers then cleared the room, another adjacent bedroom, and entered a hallway.

Once in the hallway, the officers came upon a closed door. According to Detective B, Officer D attempted to open the door but it was locked. Officer D then told Detective B that he heard footsteps behind the door and Detective A directed Officer D to force the door open.

Officer D kicked the door open, yelled, 'Police,' and moved south in the kitchen toward the living room. Officer D then saw Subject 6 with a shotgun in his hand pointing it at the ground. Subject 6 saw Officer D and barricaded himself behind a wall. Officer D thought that Subject 6 was going to shoot him and he fired one round. Subject 6 immediately threw the shotgun on the ground and lay down.

Officer E holstered his weapon, approached Subject 6, and handcuffed his hands behind his back. Officer E also determined that Subject 6 was not struck by the round fired at him by Officer D.

### **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 Detective B's tactics to warrant Administrative Disapproval and Detective A, and Officers A, D, and E's tactics to warrant a tactical debrief.

### **B. Drawing/Exhibiting/Holstering**

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The BOPC found Detectives A and B, and Officers A, D and E's drawing and exhibition of a firearm to be in policy.

### **C. Use of Force**

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

## **Basis for Findings**

### **A. Tactics**

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

#### 1. Narcotics Report

In this instance, Detective A communicated with Officer B verbally and via Department electronic mail regarding possible narcotics activity at the residence. Based on the information he received, Detective A and other personnel responded to the location and made several arrests for narcotics related offenses, then continued their investigation while simultaneously preparing a search warrant and Tactical Plan for the location; however, a Narcotics Report was not completed. According to current Department guidelines, the completion of a Narcotics Report would have been appropriate.

#### 2: Notifications

In this instance, Detective A and Officer A responded to residence to monitor the location for narcotic activity and obtain information to solidify the probable cause for the Search Warrant. As the Investigating Officer handling the case, Detective A neither completed a formal Operation Plan nor ensured the Watch Commander or the Officer-In-Charge (OIC) were verbally notified prior to the utilization of the Observation Post. Additionally, Detective A and Officer A did not notify Communications Division (CD) that they were conducting a surveillance in the area.

In conclusion, Detective A and Officer A are reminded that it is imperative that the Watch Commander, CD, and the surrounding units be made aware of their field activities in order to anticipate their response if needed. To accomplish this, notifications must be made to the appropriate entities. Although Detective A and Officer A's actions deviated from Department policy, with the OIC on vacation, Detective B was the Acting OIC and required to monitor and supervise personnel assigned. The BOPC was concerned with Detective B's failure to monitor the field operations of his personnel and ensure that Department procedures were properly followed. Therefore, the BOPC determined that Detective B's actions substantially and unjustifiably deviated from approved Department tactical training.

### 3: Written Consent Forms

In this instance, although an officer or detective may enter premises without a warrant or probable cause if they have obtained consent from the person with standing (resident), without a written consent form, the validity could not be scrutinized.

In conclusion, Detectives A and Officer A are reminded that obtaining a written consent form, when time allows, provides physical support of the consent. Detective A and Officer A's actions did not substantially deviate from approved Department policy.

### 4. Search and Seizure – Exigent Circumstances

In this instance, as Detective A and Officer A awaited the response of additional personnel, Subject 1's cellular telephone rang numerous times. Based on his training and experience, Detective A believed Subject 1's failure to answer his cellular telephone would prompt additional subject(s) at the location to abscond with or destroy narcotics. To prevent this from occurring, Detective A determined that the elements for exigent circumstances were met and decisive action was required. The decision to respond back to the residence to "secure" the location pending the completion of the search warrant was executed with the approval of Detective B.

Although the training and experience of the personnel cannot be discounted, the assumption that destruction of evidence was imminent was questionable. No attempts were made to confirm that the telephone calls to Subject 1's cellular telephone were generated from the residence. This, coupled with the fact that Subject 1 and Subject 2 were detained a significant distance away from the target location (approximately .6 miles), the nexus between the detention of Subject 1 and Subject 2 and the need to immediately enter the residence to prevent the destruction of evidence and conduct a protective sweep was of concern to the board. To that end, the partially completed search warrant and tactical plan should have been completed and executed.

In conclusion, the BOPC was critical of Detective B's decision to return to the location based on the premise of exigent circumstances. Although the tactical plan that unfolded was conceptualized by Detective A, it was presented to Detective B for approval. Detective B's supervisory oversight substantially and unjustifiably deviated from approved Department tactical training.

#### 5. Knock and Notice/Search Parameters

In this instance, Detective A was assigned to issue the "Knock and Notice;" however, prior to making entry into Subject 1's bedroom via the exterior doors, Detective A did not physically knock on the door.

Detective A recalls, *"I said, 'Police officers. Los Angeles Police Department. We're coming in. We have a search warrant. We're going to get a search warrant,' so I started coming in."*

The above notice was issued by Detective A before entering the rear yard and as the entry team continued toward Subject 1's exterior bedroom door.

Although Detective A did not physically knock on Subject 1's exterior bedroom door prior to making entry, based on the possession of verbal consent to search the bedroom and the fact that the entry team was entering through an exterior door which led into the specific room in which the consent was obtained, there was no requirement of "Knock and Notice." Additionally, sufficient verbal notifications were made as the entry team approached the bedroom door.

In conclusion, Detective A's actions did not substantially deviate from approved Department tactical training. Nevertheless, Detective A is reminded that a proper "Knock and Notice" may minimize the possibility of a violent confrontation between the police and private citizens.

#### 6. Building Search – Thoroughness of Search

According to Detective B, Officers E and A were the two officers that conducted the search of the bedroom located in the northeast corner of the residence.

Because of this, the BOPC found that although the officers' actions substantially deviated from approved Department tactical training; they were justified based on the unusual circumstances due to the OIS.

#### 7. Tactical Communication

During the tactical briefing prior to the building search, Detective B's specific role on the search team was delineated as the communication officer. After the OIS, Detective B broadcast over the radio that additional units were not needed at the scene.

Although Subject 6 and his shotgun were in custody, the search of the residence was still ongoing. As Detective B's broadcast inferred the tactical situation had concluded, it would have prudent for Detective B to include that the search was still underway. Detective B is reminded that his role as the communication officer is to articulate a detailed account of the unfolding situation, thereby preparing personnel on the perimeter for eventualities.

In conclusion, although there is room for improvement, Detective B's actions did not substantially deviate from approved Departmental tactical training.

#### 8. Tactics/Supervisory Oversight

In this instance, Detective B failed to provide sufficient supervisory insight throughout the entire operation. Detective B should have ensured that a Narcotics Report and a written consent form were completed and that proper notifications were made to the Watch Commander prior to initiating the follow-up investigation. Furthermore, Detective B was responsible for monitoring the field operations of his personnel, assessing the legalities of entering a structure without a search warrant, properly utilizing uniformed personnel and ensuring that all Department procedures were adhered to.

Detective B's lack of supervisory oversight was evident in the planning and execution of the operation. The identified concerns throughout this incident could have been avoided had there been a higher level of supervisory oversight.

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.

Therefore, in this instance the BOPC found that the tactics utilized by Detective A, along with Officers D, E and A, did not *"unjustifiably or substantially deviate from approved Department tactical training."* Therefore, the BOPC recommended that Detective A, along with Officers D, E and A, attend a Tactical Debrief.

In conclusion, in conducting an objective assessment of this case, the BOPC found that Detective B's tactics and lack of supervisory oversight *"substantially and unjustifiably deviated from approved Department tactical training,"* requiring a finding of Administrative Disapproval.

## **B. Drawing/Exhibiting**

In this instance, personnel responded to a residence where they believed narcotics were being sold. As they approached the location with the intent of making entry, Detectives A and B, along with Officer A drew their service pistols.

Officers D and E were assigned to the entry team and equipped with entry tools. Once it was determined that forcefully breaching the location was not required, Officers D and E relinquished control of their entry tools and drew their service pistols in preparation to assist with the search.

Personnel with similar training and experience would reasonably believe that a situation, such as making entry into a narcotics location, may escalate to the point where deadly force may be justified.

In conclusion, the BOPC found the Drawing/Exhibiting of Detectives A and B, along with Officers A, D and E, to be in policy.

## **C. Use of Force**

An officer with similar training and experience as Officer D would reasonably believe that a suspect armed with a shotgun, who makes similar movements as Subject 6, presented an imminent threat of serious bodily injury or death and that the use of lethal force would be justified in order to stop the threat. Additionally, Officer D's continual attempt to verbalize to the suspect to drop the weapon further demonstrates the deadly threat and supports that lethal force was justified.

In conclusion, the BOPC found Officer D's application of lethal force to be in policy.