

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

IN-CUSTODY DEATH – 047-10

Division	Date	Duty-On (X) Off()	Uniform-Yes(X) No()
Topanga	06/05/10		

Officer(s) Involved in Use of Force	Length of Service
Officer H	31 years
Officer I	17 years
Officer J	11 years, 9 months

Reason for Police Contact

Officers responded to a 911 call regarding a possible sighting of a murder suspect.

Subject	Deceased (X)	Wounded ()	Non-Hit ()
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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, 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 May 31, 2011.

Incident Summary

Witness A read an article in the newspaper about a murder that had occurred a few days earlier involving the Subject, who remained outstanding. Witness A was hiking in and, as he approached the end of the hiking trail, he observed the Subject lying on a large boulder. Witness A returned home and checked the internet for information regarding the murder. Witness A telephoned 911 to report what he had seen. After receiving Witness A's telephone call, Communications Division (CD) broadcast for units to respond to Witness A's residence regarding a possible sighting of the Subject.

Officer A arrived at Witness A's residence. Witness A provided Officer A with directions to where the Subject was located. Officer A requested additional units to respond. Shortly thereafter, Officers B and C arrived at the location and were briefed by Officer A. Officer A advised Officers B and C that they would drive up the hill, stop short of where the road ended and a hiking trail began, and then conduct a search on foot for the Subject.

The officers drove up the hill, exited their vehicles and began searching the immediate area for the Subject. When Officer A reached the top of the hill, he saw the Subject's vehicle. Officer A drew his pistol, crouched down and signaled Officers B and C to his location. Officer A broadcast to CD that the Subject's vehicle was in sight and that the Subject was possibly at the location. Officer A stood up and then he observed the Subject lying on the ground. When the Subject saw Officer A, he got up and began running away from the officers. Officer A observed that the Subject ran open-handed and that he was not holding a weapon. Officer A holstered his pistol, told Officer B to put out a broadcast and gave chase. Officer A ordered the Subject to stop.

Officers A, B and C chased the Subject for a distance of approximately 50 yards through uneven terrain, going over large rocks and crevices. The officers observed the Subject run toward a "drop-off" at the edge of the hillside and disappear out of their view. The officers took cover behind a large boulder. Officer A drew his pistol and moved around the left side of the boulder, followed by Officer C. Officer B moved around the right side of the boulder. The officers then observed the Subject standing by the edge of the cliff, facing toward them while holding a sword that the Subject had pointing to his own chest. Officers B and C drew their pistols. Officer B broadcast that the Subject was on the edge of the cliff and was holding a sword to his chest.

The Subject stated, "Just shoot me. Just kill me now and get this over with." Officer A told to Subject to drop the weapon and give up. The Subject did not comply and remained where he was by the edge of the cliff. The Subject stated that he had killed someone and that Officer A should not feel guilty about shooting him. The Subject also stated that he was either going to jump off or he was going to be shot by the officers.

Note: There was an approximately 50-foot vertical drop from the edge of the cliff, followed by a steep and rocky slope. The ledge upon which the Subject was positioned itself sloped downward toward the cliff's edge.

Upon arriving at the location, Sergeant A formulated a plan and directed one officer to deploy a beanbag shotgun and another officer to deploy a TASER. Officer D was assigned the role of primary negotiator. A group of officers were designated to be the arrest team. Officers assumed containment positions to ensure the Subject did not escape. A Rescue Ambulance (RA) was also requested to respond and standby.

Officer D conversed with the Subject for the next three-and-a-half hours. During that time, the Subject talked about how he had killed his friend and that he wanted to die. As Officer D attempted to convince the Subject to surrender, he received information from another officer that they had found several expended cartridge casings inside the Subject's vehicle, and to be aware that the Subject was possibly armed with a gun. Officer D asked the Subject if he had any other weapons on him, and the Subject stated he did not. The Subject also stated that he had attempted to commit suicide by carbon monoxide poisoning using his vehicle, but had been unsuccessful.

A request for specialist personnel to respond to the location was made. Lieutenant A arrived at the scene and met with Deputy Chief A and Captain A. Shortly thereafter, specialist personnel began to arrive at the location. Lieutenant A directed Sergeants B and C not to take any tactical action until all negotiations efforts were exhausted. Patrol personnel were eventually swapped with specialist personnel.

Officer F arrived at the scene and was briefed by Lieutenant A. Officer F took over negotiations with the Subject, with the assistance of Officer G. Doctor A arrived at the location and was briefed by Lieutenant A.

As negotiations continued, Lieutenant A held face-to-face meetings every hour with Sergeants B and C, Officer E and Mental Evaluation Unit (MEU) personnel to discuss the progress of the negotiations. Lieutenant A would then brief the command staff of their progress. Sergeant C was concerned that his officers might sustain heat-related illnesses because of the hot weather. Additional specialist personnel were requested to respond to the scene so that personnel could be rotated.

Transition to the Tactical Phase of the Operation

According to Lieutenant A, "It was clear, without a doubt, that it wasn't a matter of if was he going to take his life, it was a matter of how and when." Lieutenant A made this determination after having read a suicide letter written by the Subject, the lack of progress being made by Officer F, the feedback he was receiving from the Crisis Negotiation Team and Doctor A, the Subject's prior suicide attempt. Lieutenant A advised Deputy Chief A of his concerns with darkness approaching and that if the Subject jumped and survived, the Subject could be running around the neighborhood in the canyon below. Sergeant B indicated there were potential issues with carrying the incident into nightfall because of the uneven terrain and getting the floodlights out there.

Sergeant C had a concern with the incident going into the night, because it would create a problem with lighting and footing because the officers were not familiar with that area. The terrain was very rugged and there were sections where you could see foliage and then all of a sudden it would drop off into a cliff. Moving around at night presented a problem for officer safety.

Officer E and Sergeant C discussed a plan of having Officer H, who was armed with the X12 TASER shotgun, fire XREP (Electronic Control Device) rounds at the Subject when the Subject presented his back toward the officers. Two arrest teams would then approach and grab the Subject once he was incapacitated and no longer had the sword in his hand. For their safety, the officers who were assigned to the arrest teams were tethered with ropes anchored to rocks.

According to Deputy Chief A, because nothing was working during negotiations, a tactical plan was proposed whereby if the Subject laid on his back, officers would deploy the Sage (less-lethal projectile) Launcher or the X12 TASER shotgun, which would possibly give the officers the opportunity to be able to get a hold of the Subject. Deputy Chief A indicated that there was a long discussion about the likelihood of the Subject falling over the edge of the cliff. Deputy Chief A told investigators, "We've all seen the effects of the TASER, which is why I didn't approve it if he was just seated up because it would have been far easier for him to have gyrated, so to speak, and fall over the side." Additionally, Deputy Chief A stated, "So the request was that if he lays down, or the plan, requested plan, was to allow him to be tased [via the discharge of an XREP round] or a sage round used in order to get his attention for just long enough to be able to get their hands on him and again drag him to safety. I approved that."

According to Lieutenant A, he proposed a tactical plan which entailed immobilizing the Subject using the X12 TASER shotgun for the officers to be able to approach the Subject, secure the sword and keep him from accidentally falling off the edge. Lieutenant A explained how the X12 TASER shotgun had the element of surprise because it could be fired from a greater distance, as compared to the hand-held X26 TASER, and that the officers would not have to immediately go "hands on" with the Subject. Lieutenant A also advised that there were no guarantees, as with any other control device, that the X12 TASER would be 100 percent effective. Lieutenant A stated that Deputy Chief A voiced his concerns about using the X12/XREP and the Subject falling. Lieutenant A relayed Deputy Chief A's concerns to Sergeant C and told him that Deputy Chief A did not want to attempt to "Tase [the Subject] and [the Subject] accidentally falls over or if his, in an attempt to control [the Subject], he accidentally falls. However, if it did not work and he was not immobilized and he decided to jump, that was another factor to consider, but that was part of the risk." Deputy Chief A then gave the approval to go ahead with the tactical plan. Lieutenant A advised Sergeant C to utilize the plan when the opportunity presented itself.

Officer E and Sergeant C briefed officers via the radio of the tactical plan and walked over to each officer at their containment positions to go over the plan, what their role was and to obtain their feedback.

While the containment officers were still discussing the tactical plan, the Subject noticed a crowd and the media forming at the canyon below him. The Subject turned in their direction, had his back toward the officers, and he began yelling down at them. Sergeant B became concerned that the media was now interfering with the negotiations and there was a possibility that the Subject may "jump to make something spectacular and make that his ending." After approximately 20 to 30 minutes, the media and the crowd were directed to move further back.

Use of less-lethal munitions

Approximately 30 to 40 minutes after the discussion between Deputy Chief A and Lieutenant A, the Subject sat down facing south, positioned approximately three feet away from the edge of the ledge. Officer H believed that the Subject was positioned in a way such that he would be struck and incapacitated by an XREP round and would fall backward away from the ledge.

Officer H - X12 TASER shotgun, five XREP rounds from a distance of approximately 20 feet

The Subject exposed the right side of his torso while still in a seated position and Officer H fired one XREP cartridge, which made contact with the Subject's right side. The Subject turned in Officer H's direction, and Officer H fired another XREP cartridge. The Subject began rotating his body left and right to look at the officers who were beginning to make their approach toward him. Officer H heard one of the officers yell, "Drop the knife, drop the knife." The Subject did not drop the sword. Officer H fired his remaining three cartridges. Officer H observed the Subject begin to scoot toward the edge on his buttocks while saying, "I'm jumping, jumping," or "I'm going, I'm going." Once the Subject reached the edge, he slid off.

Officer J - X26 TASER, one discharge from a distance of approximately six feet

Officers J and Q heard Officer H fire the X12 TASER shotgun and began to move forward. Officer J recalled that when they got to within six feet of the Subject, the Subject was standing up and was facing them directly, and still had the sword in his hand. Officer J fired his X26 TASER at the Subject, aiming for his abdomen, and believed the darts struck the Subject in the chest area; however, the TASER appeared to have no effect on the Subject when it was activated. Officer J indicated that three to four seconds after he discharged his X26 TASER, he heard a beanbag round and recalled seeing the beanbag round strike the Subject. The Subject began to inch toward the edge saying, "I'm going to jump. I'm going to jump. I'm going to jump." The Subject then pushed himself off the ledge and fell to the ground below.

Officer I - Beanbag shotgun, one round from a distance of approximately 10 to 15 feet

Officer I heard Officer J deploy the X26 TASER to his left and observed that it had no effect on the Subject. The Subject began to turn to his right with the sword still in his right hand. Officer I aimed for the Subject's back and fired one beanbag round from a distance of approximately 10 to 15 feet. The Subject then began scooting forward using his hands while saying, "I'm going to jump" or "I'm going to go." The Subject then slid off the edge.

The Subject is taken into custody

Officers R, S and T were positioned in the canyon below when they observed the Subject push himself off the ledge and fall to the ground below. The Subject went out of their view because of the vegetation. Officers S and T cautiously approached the Subject's location. Officer S observed the Subject on the ground on his right side, facing down. Officer S covered the Subject while Officer T approached the Subject and then handcuffed him. Paramedics who were standing by were directed to approach. Paramedics assessed the Subject's injuries and noted that he had no pulse and was apneic. The Subject was placed on a gurney and transported in an RA to the hospital. The Subject failed to respond to medical treatment and was pronounced dead by hospital personnel.

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 Deputy Chief A, Captain B, Lieutenant A, Sergeant C, and Officers E, H, I and J's tactics to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

The BOPC found Officers H, I and J's uses of force to be in policy.

C. Drawing/Exhibiting

The review of the incident identified that numerous personnel drew and exhibited firearms. Although the drawing and exhibition of firearms was appropriate in this case because of the potential that the Subject was in possession of a handgun, it was not germane to the application of force. Furthermore, the incident spanned nearly eight hours and personnel were rotated to avoid fatigue and dehydration. Therefore, the BOPC determined that formal findings were not warranted for drawing and exhibiting.

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC noted that during the incident, it was determined that negotiations had proven futile and that an alternative was necessary to resolve the incident. The decision to approve a tactical action plan was influenced in part by the reasonable belief that the Subject intended to commit suicide after dark. An evaluation of the psychological profile, suicidal posture and intentions as expressed in the letter and during the negotiation process, provided sufficient cause for this belief. Additionally, the Subject had exhibited consistently irrational behavior during the incident.

Resolving barricaded subject incidents involve a balance between negotiations and tactical operations. Here, the decision to implement a tactical plan was made only after the negotiations and mental health personnel had formed the professional opinion that negotiations had been exhausted and alternative measures were necessary to save the Subject's life. In this case, the Department had a moral and ethical obligation to intervene to protect human life. In light of those facts and circumstances, the BOPC supported the command decision to develop and initiate a tactical plan in order to resolve the incident and to take the Subject into custody as safely as possible. Furthermore, the terrain made the use of artificial lighting infeasible and created a circumstance wherein the tactical challenges would likely increase as darkness approached. The concept was to initiate the tactical plan in the event the opportunity presented itself before dark. Therefore, it was imperative to have sufficient time to allow for the situation to present a circumstance to implement the tactical plan before darkness. The decision to approve a tactical plan to resolve the incident was made at the appropriate time and did not "*substantially*" deviate from approved Department tactical training.

In this instance, the on-scene tactical experts gave consideration to various tactical plans and options before a final decision was made. Although guidelines state that *generally* the use of a TASER *should* be avoided in situations where there is a *danger of falling which could result in death or serious injury*, the circumstances and dynamics of this incident were clearly unique as were the tactical challenges that officers faced. In this case, officers weighed the risk inherent in the Subject's physical positioning, against their obligation to undertake actions clearly designed to save his life. The

specifications and characteristics of the X12 TASER less-lethal device provided the most viable tactical option. It had the capability to be deployed from a safe distance, allotted for an element of surprise, and created incapacitation for a sufficient time to effect an arrest. Regardless of the approved tactical plan, as with all high risk tactical operations, there were no guarantees of success. Moreover and importantly, the fact that the Subject was intent on committing suicide had a significant bearing on the ultimate outcome. The specific decision to use a TASER Electronic Control Device to resolve the incident did not *substantially* deviate from approved Department tactical training or the general guidelines for TASER use.

In this instance, the X12 TASER was utilized while the Subject was in a seated position, in conflict with the approved tactical plan. The BOPC was aware of the deviations regarding the statements, and the possible miscommunications that may have taken place regarding the details of the approved tactical plan. However, the deviations appear to be inadvertent misinterpretations or perceived differences of the information and not conscious misrepresentation of the approved tactical plan. Consideration must be given to the fact that large tactical operations inherently result in interpreted and perceived variances. There was a plan, which was implemented as effectively as was possible under the circumstances. The tactical plan deviations were consistent with operations of this magnitude and did not “*substantially*” deviate from approved Department tactical training.

The BOPC found Deputy Chief A, Captain B, Lieutenant A, Sergeant C, and Officers E, H, I and J's tactics to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

Officer H: TASER XREP, 4-5 projectiles from an approximate distance of 20 feet.

The Subject was in possession of a weapon other than a firearm and a potential threat to himself and others. It was reasonable to believe that it was unsafe to approach and other means to obtain compliance proved ineffective. The deployment of the X12 TASER was in accordance with the approved tactical plan with the decision to fire being made at a time that minimized the risk of injury to the Subject. The intent of the application of force was to de-escalate the situation and resolve the incident. Officer H assessed between each round and fired only after he determined that the prior round was ineffective and the Subject remained in possession of the sword. Officer H reacted, as any reasonable officer with similar training and experience, when he fired the X12 TASER, assessed, and fired additional rounds at the continued perceived threat. The decision to fire the X12 TASER was “*objectively reasonable*” in that it was consistent with the approved tactical plan and intended to save a human life. Any reasonable officer would have perceived that the Subject posed an “*imminent threat of death or serious bodily injury*” while still in possession of the sword.

Officer J: TASER X26, one cartridge from a distance of approximately six to seven feet.

The deployment of the X26 TASER was in accordance with the approved tactical plan. Officer J fired after he assessed the situation and determined that it was unsafe to approach because the Subject continued to possess the sword and posed a threat to himself and the officers. The intent of the application of force was to immobilize the Subject so he could be safely taken into custody. Officer J reacted, as any reasonable officer with similar training and experience, when he fired the X26 TASER. The decision was *“objectively reasonable”* in that it was consistent with the approved tactical plan and intended to save a human life. An officer with similar training and experience would have reasonably perceived that the Subject posed an *“imminent threat of death or serious bodily injury”* to the arrest team personnel while still in possession of the sword.

The evaluation of Officer J’s application of force revealed a discrepancy. Officer J recalled, *“And I remember him standing up and he was facing us so he’s looking at us directly...”* The media video footage delineates that this recollection was not accurate. Regardless, despite the discrepancy between the perceived versus actual actions, Officer J provided a rationale that was consistent with the circumstances and had sufficient justification for his application of force.

Officer I: Beanbag Shotgun, one sock round, from an approximate distance of 10 to 15 feet.

Officer I observed the Subject *“...start to turn his upper body to the right with the sword in his right hand.”* Officer I was aware the TASER applications of force had no effect; he believed that *“...he [the Subject] may be trying to get up to come toward us, we were probably at a distance of 10 feet...knowing that someone with an edged weapon could close the distance...I fired one round from the beanbag shotgun.”* Officer I reacted, as any reasonable officer with similar training and experience, when he fired the beanbag shotgun. He assessed the situation and perceived that the Subject posed a threat to the members of the tactical and arrest teams. Any reasonable officer would have perceived the Subject’s movement of turning to the right while in possession of the sword to pose an *“imminent threat of death or serious bodily injury.”*

The BOPC found Officers H, I and J’s use of less-lethal force to be in policy.