

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

**OFFICER-INVOLVED SHOOTING – 005-17**

**Division                      Date    Duty-On (X) Off ( )    Uniform-Yes ( ) No (X)**

Outside City      1/17/17

**Officer(s) Involved in Use of Force    Length of Service**

Detective C    21 years, 8 months.

**Reason for Police Contact**

Officers were attempting to arrest an armed murder subject they had been surveilling, when an officer-involved shooting (OIS) occurred.

**Subject(s)    Deceased ( )                      Wounded (X)                      Non-Hit ( )**

Subject: Male, 24 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 the transcribed statements of witnesses, pertinent 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, 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 January 9, 2018.

## **Incident Summary**

Detective C was part of a multi-agency fugitive task force. Six days prior to this incident, the task force received information that the Subject was wanted for a murder and attempted murder out-of-state, and that he may be in the geographic area covered by the task force.

Through technology and surveillance, the task force was able to determine that the Subject was at a gardening nursery in a neighboring county. Members of the task force responded to the nursery and set up a new surveillance on the location. All the task force officers were wearing ballistic vests, as well as clothing or tactical gear that identified them as law enforcement officers.

The team met on the street, except for Detective A, who remained in his vehicle until the team was set to continue the operation. Detectives A and B were the supervisors of the operation.

According to Detective C, during the briefing, he suggested that he ride with Detective D and Special Agent (SA) A to participate on the arrest team. Detective B directed the three of them to enter the parking area in Detective D's van and be the cover team tasked with watching Detective A until he gave the signal to arrest the Subject. The team was set and stood by for further instruction.

Detective A entered the nursery and directed the arrest team to park in the nursery in a parking area near the entrance. Detective D drove his van into the nursery and parked close to an office near the entrance. He parked his vehicle with the rear sticking out onto a dirt path, allowing Detective C to monitor Detective A for his safety as he interacted with the Subject.

The plan was for Detective C to cover the team with his shotgun, while SA A was the contact person, and Detective D was assigned the task of handcuffing the Subject.

Detective A advised Detective B he did not see the Subject as he re-entered the nursery. Detective A met with Witness A, who was an employee of the nursery. Detective A told Witness A he wanted to purchase palm trees and needed help loading them into his truck. Witness A referred Detective A to his boss, Witness B, to complete a purchase before he helped load the plants.

Detective A met with Witness B and advised him he needed help loading palm trees in his truck and needed two men to help him. Witness B called Witness A and told him to help Detective A load the palm trees he inquired about.

Witness A went to get a tractor to lift the palm trees and returned to an area near the offices. He parked the tractor in front of the main office on the dirt path. Detective A still did not see the Subject at that time. He continued with the planned ruse and asked Witness A if he could get another person to assist him. Witness A then contacted the Subject to assist with the palm trees.

Moments later, Detective A observed the Subject walking from the back of the nursery along the dirt path. Detective A noticed the Subject was holding an object he described as a shovel, in one hand, and an object he described as a pair of scissors (pruning shears) in his other hand. He informed Detective B of his observations, who then used his radio to inform the rest of the team. He advised Detective B to have the team hold off because the Subject was still too far away from the front of the nursery.

Detective A met up with the Subject near the front florist office and estimated they were approximately 30-40 feet from the arrest team. Detective A noticed the shovel had a flat, sharpened end, and he asked the Subject to put the shovel down several times so that he could assist him (Detective A) with the plants. The Subject did not want to put the spade down and appeared to be suspicious of Detective A after he made several requests.

Detective A believed that his cover was compromised and gave the pre-designated verbal signal for the arrest team to exit and apprehend the Subject. Detective C exited the van and led the team with his shotgun, his finger on the frame. He was assigned "point" on the arrest team and explained his job was to provide cover with a lethal force weapon. SA A exited the van and unholstered his pistol. He held his pistol in a two-handed, low-ready position. Detective D exited the van, unholstered his weapon, and held it in a two-handed position.

Together, Detectives C and D, along with SA A, maneuvered around the office building as Detective A continued to speak with the Subject. Detective C observed the Subject approximately 20 to 30 feet in front of him. The Subject was holding a long spade in one hand and pruning shears in the other. The officers immediately identified themselves as police officers and gave the Subject commands to drop the spade and get down to his knees.

The Subject refused to comply with the order and began to yell and scream stating, "I'm not going. I want to talk to my mom," and, "You're going to have to kill me."

Detective C continued issuing commands for the Subject to drop the spade. The Subject refused to comply and began to walk away from the arrest team. Detective A also gave the Subject commands to put the spade down in both English and in Spanish. In addition, Detective D and SA A gave the Subject commands to drop the spade. The Subject refused to comply with the commands. The Subject dropped the pruning shears and began to walk away from the arrest team toward the back of the nursery. He attempted to run for a moment, then turned, faced the officers, and walked backwards away from them, still holding the spade.

The arrest team followed the Subject as he walked away. He briefly attempted to run again, turned toward the officers, and continued to walk backwards after a few strides. Detectives A and C continued to verbalize with the Subject and told him to drop the spade. The Subject stated he wanted to call his mom and repeated the same thing

several times. Detective A told the Subject he would have an opportunity to call his mom but wanted him to drop the spade. The arrest team continued to trail behind the Subject as he continued to walk away from them. According to Detective A, the arrest team followed the Subject approximately 10 to 15 feet behind him. SA B drove into the nursery, parked his vehicle on the dirt path near the two offices, and exited. He heard the officers give the Subject commands to drop the spade.

Detective A called for a less-lethal use of force option and requested the TASER. The request was repeated over the radio for a less-lethal use of force option and a beanbag. Special Agent B observed the Subject with the spade, and repeated the request for a beanbag.

Simultaneously, the other task force officers began to enter the nursery. Parole Agent (PA) A exited PA B's vehicle with his TASER and met up with the arrest team. Parole Agent B parked and exited his vehicle with his rifle.

PA C exited his vehicle and ran up to the arrest team with his TASER. Probation Officer A exited his vehicle, unholstered his weapon, and joined the arrest team.

Detective E, who had already exited his vehicle without the beanbag, saw from a distance that the Subject was not complying with the commands and decided to return to his vehicle to get the beanbag shotgun.

Simultaneously, Detective E heard the request for the beanbag shotgun. He removed his beanbag shotgun and chambered a round. As he ran back into the nursesey he observed the arrest team near an electrical transmission tower.

Detective B contacted several of the individuals near the office and directed them to get inside.

According to Detective A, the Subject continued to walk and stopped near the base of an electrical transmission tower while still holding onto the metal spade. According to Detective C, the Subject stood still as he held the spade. He gripped the spade with his left hand in front of his right hand, approximately two feet apart. Detective C was still the point officer as he raised his shotgun on target directly at the Subject with the safety off and his finger on the trigger as he told the Subject to drop the spade.

Detective A was standing slightly behind Detective C to his right and did not unholster his pistol. SA A was standing a few feet behind Detective A and held his pistol in a two-handed position. Detective D stood to the right and slightly behind Detective A with his service pistol held in a two-handed position. SA B stood behind Detective D and to the right of SA A. Probation Officer A stood directly behind SA B and maintained his pistol in a two-handed position. PA C stood near the transmission tower between the bases with his TASER unholstered. PA B was still attempting to make contact with the arrest team. He was walking near the tower with his rifle in the low-ready position. PA B

observed the Subject holding the spade with two hands and aggressively swinging it back and forth, while pointing it at each officer, keeping them at bay.

Detective A continued to verbalize with the Subject and demanded he drop the spade. The Subject continued to refuse to comply while stating, "I want to call my mom. I want to call my mom." Detective A told him he could speak to his mother after he complied and continued giving him commands to drop the spade. He told the Subject to drop the spade in both English and in Spanish. Detective A stated, "Drop it. You're going to be tased. You're going to be tased. We're going to hit you with the TASER." According to Detective C, the Subject stated, "Kill me. Kill me. I want to talk to my mom. I'm not going. I'm not going to jail. You're going to have to kill me. You're going to have to kill me."

Detective A directed a TASER equipped officer to move up. PA A moved up and took a position to the right side of Detective C, stood approximately four feet to the right of Detective C, and gave the Subject commands to drop the spade. According to PA A, the Subject raised the spade as he continued to walk back and just stopped. Per his agency's policy to inform other law enforcement personnel that a TASER would be deployed and not mistake the sound of the discharge to be a firearm, he yelled out, "TASER! TASER! TASER!" PA A discharged his TASER from an approximate distance of seven to eight feet and left it activated for a duration of three-seconds.

According to PA A, one of the TASER probes made contact with the Subject's right arm, but was not effective. The Subject immediately removed the probe from his body and remained standing as he continued to hold onto the spade with his other hand. After removing the probe, he took a two-handed baseball-type grip on the spade and swung it toward PA A's left side.

Five seconds later, PA A immediately discharged his TASER a second time and left it activated for a duration of five-seconds. The probes appeared to have penetrated the Subject as the probes were impaled on his right wrist.

The Subject gave a loud grunt as if the TASER was properly working. According to Detective C, the TASER use appeared to infuriate the Subject. He lowered the spade and held onto the pole with his hands separated. The flat, sharp end of the spade was angled slightly downward and in the direction of Detectives A and C, and PA A. The Subject charged in the direction of Detective C and quickly closed the distance between them. According to PA A, the Subject started screaming. Detective C said the Subject raised the spade with the sharp end up, and demonstrated a baseball-type grip and posture.

Detective C was unable to redeploy or seek cover. He believed he had no other option to stop the Subject's deadly threat other than to shoot him. Detective C took a left-handed shooting stance with the butt of the shotgun against his left cheek. He raised his shotgun and aimed at the Subject's chest area as he fired one round from a distance of approximately 8 to 10 feet.

The Subject was struck on his upper right torso, causing him to stop advancing toward Detectives A, C, and PA A as he fell to the ground. The Subject was then taken into custody and transported to the hospital for treatment.

### **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 of a firearm 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, made the following findings:

#### **A. Tactics**

The BOPC found Detectives A, B, C, D, and E's tactics to warrant a Tactical Debrief.

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

The BOPC found Detectives C and D's drawing and exhibiting of a firearm to be in policy.

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

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

### **Basis for Findings**

#### **Detention**

- Detectives assigned to the Task Force located a felony warrant suspect wanted for a murder committed out-of-state and then attempted to take him into custody. The officers' actions were appropriate and within Department policies and procedures.

#### **A. Tactics**

- **Tactical De-Escalation**

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, personnel assigned to the Task Force located a felony warrant suspect who was wanted for a murder. While working in an undercover capacity, one of the detectives used a ruse in an effort to get the Subject to put down a tool that could be used as a weapon, before directing the other members of the Task Force in to take him into custody.

**Note:** Prior to the incident, the involved personnel also had a plan that included designated less-lethal and lethal officers.

However, the Subject became suspicious, would not discard the tool, and when it appeared to the detective that his cover was about to be compromised, he directed the other members of the team into the nursery to take the Subject in custody.

Upon making contact with the Subject, the officers identified themselves as the police and provided the Subject with repeated commands to drop the tool in an effort to disarm him so they could take him into custody without using force. The officers also communicated to the Subject that they would let him call his mother, as he had requested, in an attempt to calm him down and persuade him to comply with their commands.

As the incident unfolded, the Subject refused to drop the weapon or comply with the officers' commands. In an effort to disarm the Subject and gain compliance, one of the members of the Task Force utilized a less-lethal force option, the TASER, which appeared to have no effect on the Subject. The Subject then raised his weapon and charged at one of the officers.

Faced with an imminent threat of serious bodily injury or death, the officer utilized lethal force to stop the deadly threat and take the Subject into custody.

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

### **1. Tactical Planning/Communication**

In this case, the Subject was located working at the nursery, and a new plan was quickly devised based on the circumstances that the officers were presented with at the time, thus creating some confusion in roles as the incident rapidly unfolded.

Based upon the totality of the circumstances, the BOPC determined that although identified as an area for improvement, Detectives A and B's actions were reasonable and not a substantial deviation from approved Department tactical training.

## 2. Approaching an Armed Suspect

Task Force personnel were directed to approach the Subject who was armed with a four-foot, bladed spade.

In this case, Detective A believed that his undercover capacity was about to be compromised and made the decision to initiate the arrest of a wanted murder suspect, knowing the Subject was armed with a long metal spade.

Based upon the totality of the circumstances, the BOPC determined that although identified as an area for improvement, Detective A's actions were reasonable and not a substantial deviation from approved Department tactical training.

- The BOPC also considered the following:
  1. **Agitated Delirium** – The investigation revealed that the Task Force personnel had been given information the Subject might possibly suffer from mental illness. Although the investigation revealed no documented history of mental illness, often law enforcement personnel must rely on information provided by family and friends as a possible source of the mental state of an individual, and then approach an incident accordingly.
  2. **Simultaneous Commands (Non-Conflicting)** – The investigation revealed that several officers gave simultaneous commands to the Subject during the incident.

### B. Drawing and Exhibiting

- According to Detective C, as he exited the van, he observed the Subject approximately 15 feet away from him holding a bladed shovel. He was the designated point officer and was armed with a Department shotgun which he held in a two-handed position.

According to Detective D, because the Task Force was dealing with a murder suspect who was also armed with a shovel, he believed the situation could rise to one involving the level of deadly force. As he exited the van, he drew his service pistol and held it in a two-handed position.

Based on the totality of the circumstances, the BOPC determined an officer with similar training and experience as Detectives C and D, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Detectives C and D's drawing and exhibiting of a firearm to be in policy.

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

- **Detective C** – (shotgun, one round)

According to Detective C, he heard a TASER being deployed and observed the wires and darts penetrate the Subject. However, the TASER had no effect on the Subject. The Subject then raised the shovel and lunged towards Detective C with the shovel like he was going to hit him over the head with it. In fear of serious bodily injury, Detective C fired one round at the Subject to stop his attack.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Detective C, would reasonably believe that the Subject's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable.

Therefore, the BOPC found Detective C's lethal use of force to be in policy.