

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

**LAW ENFORCEMENT RELATED INJURY – 008-13**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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Rampart	02/03/13		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Sergeant A	14 years, 6 months
Officer A	7 years, 7 months
Officer B	5 years, 9 months

**Reason for Police Contact**

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<b>Subject(s)</b>	<b>Deceased ( ) Wounded (X) Non-Hit ( )</b>
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Subject: Male, 25 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 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 7, 2014.

## **Incident Summary**

Officers A and B responded to a radio call of a “Battery Subject There Now” at the location. The information broadcast described the subject as a male, mid-twenties, wearing a grey hat, white polka dot shirt, black jeans and under the influence. The broadcast also advised that the subject assaulted Witness A at the location and was hiding behind vehicles in a parking garage.

The officers arrived at the location and notified Communications Division of their status using their Mobile Digital Computer (MDC). The officers were flagged down by security personnel who directed the officers to the underground parking structure where Witness A and the Subject were located.

The officers parked their vehicle at the entrance of the underground parking structure and descended into the parking garage. The officers met with Witness A, who advised the officers that he had been kicked and punched by the Subject and requested that the Subject be arrested.

The officers observed the Subject standing behind a vehicle with his hands across his chest. It appeared to the officers that the Subject was sweating and mumbling to himself. Officer A gave the Subject instructions to turn around and place his hands behind his head. The Subject appeared to the officers to be incoherent, and he did not comply with Officer A’s instructions. Officers A and B approached the Subject and handcuffed him without incident.

Officer B conducted a cursory search of the Subject for weapons and questioned the Subject regarding his physical wellbeing. According to Officer B, the Subject informed the officers that he had taken five to six Ketamine pills.

**Note:** Ketamine is a dissociative anesthetic used for humans and animals. Ketamine is a Schedule III non-narcotic substance under the federal Controlled Substances Act.<sup>1</sup>

Officers A and B escorted the Subject to their police vehicle with the intent to request a Los Angeles Fire Department (LAFD) Rescue Ambulance (RA) to assess the Subject’s medical condition.

Prior to the RA request, the officers attempted to place the Subject into the police vehicle but he became agitated and stiffened his body. Officer B held the Subject’s left arm with both hands while Officer A held onto the Subject’s right shoulder. The Subject placed his foot on the vehicle’s rear passenger side door jam and refused to enter the police vehicle. Officers A and B verbalized with the Subject and successfully calmed him down, which allowed the officers to guide him into the police vehicle and close the

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<sup>1</sup> United States Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Drug & Chemical Evaluation Section, August 2013.

door. The officers did not secure the Subject with a seatbelt because they placed him in the backseat to wait for the RA, and not to transport him to the police station.

The Subject lay across the backseat and began kicking at the rear passenger side window, knocking it off the track. Officer A instructed Officer B to move over to the driver's side rear door and assist him in placing the Subject in a seated position.

Officer B ran around the rear of the vehicle and opened the rear driver's side door and attempted to hold the Subject's left arm to control him; however, simultaneously Officer A opened the rear passenger's side door with the intent to use the hobble restraint device (HRD). The Subject immediately exited the rear passenger's side door and started jumping and kicking in front of Officer A.

Officer A, believing the Subject was attempting to escape, immediately grabbed the Subject's left shoulder with his left hand and waist area with his right hand and, while turning the Subject counterclockwise, the Subject fell to the ground face-down.

While on the ground, the Subject attempted to get up so Officer A placed his right knee on the Subject's upper back area. Officer B came around to the Subject's left side and assisted in keeping the Subject down on the ground by placing his right knee on the Subject's left shoulder area. The Subject continued to struggle and attempted to get up, while Officers A and B maintained their bodyweight and verbalized with the Subject to calm down. Shortly thereafter, the Subject complied and cooperated. Officers A and B stood the Subject up and placed him into the police vehicle and secured him with the seatbelt without further incident. The officers requested a supervisor and a Rescue Ambulance (RA) to respond to their location.

Sergeant A responded to the request for a supervisor and arrived simultaneously with the RA.

Upon Sergeant A's arrival, he was briefed by Officer A regarding the incident and the use of force that occurred. As the officers were briefing Sergeant A, they observed the Subject kick the rear passenger window and noted he was no longer secured with his seatbelt.

Officer B moved to the driver's side rear door and attempted to pull the Subject to a seated position. Officer A opened the passenger's side rear door to verbalize with the Subject to calm down and allow the paramedics to examine him. As the door opened, the Subject again moved quickly out of the vehicle and kicked toward Officer A. The officers perceived the Subject's actions as an attempt to escape. Officer A grabbed the Subject by the left shoulder and right hip and turned him in a counterclockwise manner, which caused the Subject's forward momentum to carry him face-down to the ground.

The Subject moved around on the ground and attempted to get to his feet. Officer A placed his knee on the Subject's upper torso to prevent him from standing. According to the officers, the Subject moved his head back and forth on the pavement while he

kicked his feet. Sergeant A believed it was unsafe for the paramedics to approach as the Subject continued to kick toward the officers. Sergeant A held onto the Subject's legs and called for a TASER.

Officer B unholstered his TASER and pointed it at the Subject. Officer B created a 5-foot distance from the Subject and said, "TASER, clear." Officer B waited for Sergeant A and Officer A to move away from the Subject, and fired the TASER toward the Subject's abdomen area.

Officer B observed the Subject continue to kick and move around violently and administered a second TASER activation lasting between three to five seconds, which caused the Subject to stop his behavior.

Officers A and B approached the Subject and secured the Subject's legs with an HRD.

The officers then assisted the paramedics in placing the Subject onto a gurney and into the RA. The Subject was transported by RA to the hospital.

The incident was initially investigated as a Non-Categorical Use of Force (NCUOF). Sergeant B, an uninvolved supervisor, was subsequently assigned the NCUOF investigation.

Sergeant A remained at the scene to locate witnesses and photograph the scene. Sergeant A spoke with Witness A, who stated that he had observed the Subject on top of a moving vehicle earlier in the evening. The vehicle drove away with the Subject on the roof resulting in the Subject falling onto the roadway. From his vantage point, Witness A was unable to see how the Subject fell.

Sergeant A responded to the police station and met with Sergeant B to discuss the NCUOF incident. Sergeant A conducted follow-up at the hospital and was advised by Officer B that the Subject had suffered cranial bleeding and would be transferred to the Intensive Care Unit (ICU) for additional testing. The Subject was subsequently admitted to the hospital, and the involved officers were separated and monitored. The incident was accordingly reclassified as a Categorical Use of Force incident.

## **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 Sergeant A's tactics, along with those of Officers A and B, to warrant a Tactical Debrief.

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

N/A

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

The BOPC found Sergeant A's use of non-lethal force, along with those of Officers A and B, to be in policy.

### **D. Less-Lethal Use of Force**

The BOPC found Sergeant A and Officer B's use of less-lethal force to be in policy.

## **Basis for Findings**

### **A. Tactics**

- In its analysis of this incident, the BOPC considered the following:

1. Code Six/Tactical Communication and Planning

Officers A, B, G, and H were working in the area and heard numerous gunshots nearby. Officers A, B, G, and H did not notify CD of their location and status (Code Six). All officers involved in the incident had a tactical plan to contain any individuals that might try to flee, however, they did not discuss specifically what course of action they would take if a subject were to flee on foot.

Officers should always consider the balance between making a timely Code Six broadcast and officer safety, affording discretion in determining the appropriate time to make their broadcast. In this instance, the BOPC determined that adequate resources (eight officers and a supervisor) were aware of and in the immediate vicinity to address any tactical concerns that may have arisen. Nonetheless, a broadcast of the officer's location on base frequency would have been tactically advantageous to alert CD and others of their location and status.

In evaluating Officers A, B, G, and H's actions, the BOPC determined that based on the totality of the circumstances, although the officers' actions deviated from approved Department tactical training, their actions were justified due to having adequate resources available. However, Officers A, B, G, and H are to be reminded of the importance of a timely Code Six broadcast and a broadcast of additional pertinent information during incidents such as this.

Additionally, it is critical that specifics of the plan are communicated to all involved regarding containment of any fleeing subjects. The BOPC's expectations are that officers should plan and communicate thoroughly the course of action to take in the event that a subject(s) should flee, however, the BOPC noted that throughout this incident, there was containment on all sides.

## 2. Utilizing Cover

Officer A utilized a parked vehicle as cover while entering the yard to make contact with the Subject. While behind cover, Officer A observed the Subject to be armed with a rifle. The Subject subsequently fled on foot, and Officer A left his position of cover to maintain sight of him.

Officers are trained to utilize cover during tactical incidents involving armed subjects. The BOPC was critical of Officer A's decision to leave cover in an attempt to maintain sight of the Subject. Accordingly, the BOPC determined that although Officer A's decision to forgo cover deviated from approved Department training, his actions were justified as a result of his intention to maintain sight of the Subject, while remaining in containment mode. The BOPC also determined that Officer A's actions ensured effective containment, due to his decision to maintain sight of the Subject, even though he left cover to do so, while maintaining a tactical advantage.

In conclusion, Officer A is to be reminded that when confronting an armed subject, the decision to leave cover increases the inherent risk involved in approaching the subject.

## 3. Pursuing an Armed Subject/Apprehension vs. Containment

Officer A pursued the Subject who was armed with a rifle in an attempt to maintain observation and increase the likelihood of containment. Officers are

reminded of the importance of maintaining in a containment mode when pursuing an armed subject. The BOPC assessed Officer A's decision to pursue the Subject while maintaining eyesight thus enhancing the possibility of successful containment.

It is the BOPC's expectation that officers take action to stop the actions of an armed subject that had discharged a rifle into a community with reckless disregard. Nonetheless, Officer A was reminded of the importance of maintaining the tactical advantage by utilizing cover and concealment when available. To that end, the BOPC found that Officer A's actions did not substantially deviate from approved Department tactical training.

- The BOPC additionally considered the following:
  - Running with a Pistol Drawn – Officer A observed the Subject armed with a rifle and pursued the Subject as he ran toward the rear of the yard. Officer A was holding his service pistol in his hands while he ran. Officer A is reminded there is an increased risk for an unintentional discharge when an officer runs with their service pistol drawn.
- 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, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Each tactical incident merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and the individual actions that took place during this incident.

In conclusion, the BOPC found Officers A, B, C, and D's tactics to warrant a Tactical Debrief.

## **B. Drawing/Exhibiting**

- Officers A, B, D, and C heard shots fired in the area. They exited their police vehicles and started to walk on the sidewalk. Officers A and B heard a loud party to the rear of the location and believed the gunshots originated from there. They were met by Officers C and D and briefed them on the situation. The officers discussed a tactical plan and proceeded toward the location. Prior to entering the driveway and believing the situation may escalate to the use of lethal force, Officers A, B, C, and D drew their service pistols.

As additional officers were responding to the incident, the rear location needed to be cleared. Due to the unfolding tactical situation, Officer A drew his service pistol and became part of the search team.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A, B, C, and D would determine that a subject armed with a rifle would represent a deadly threat. Furthermore, an officer 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.

In conclusion, the BOPC found Officers A, B, C, and D's drawing and exhibiting of a firearm to be in policy.

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

- **Officer A** (pistol, 11 rounds)

Officer A observed the Subject to be armed with a rifle. The Subject subsequently fled on foot, at which time Officer A pursued the Subject in an attempt to observe and contain him. A short distance later, the Subject turned and pointed the muzzle of the rifle at Officer A. Officer A believed that his life was in immediate danger and consequently fired eleven rounds at the Subject to stop his actions.

Regarding Officer A's round placement/impacts, due to dynamic and often traumatic, stressed-filled incidents such as this, officers' recall of what actually occurred during the incident can be distorted, or not recalled at all. The BOPC determined that all evidence discovered during the investigation supports Officer A's account of what occurred.

While no rifle was recovered, the BOPC took into account the following factors which identify the Subject was armed with the rifle. During a search of the courtyard, a .223 expended casing and one live .223 round, was recovered from the area where the Subject was observed firing a round into the air. After the OIS, a search of one of the residences at the location, where the Subject often resided, a 30-round rifle magazine was recovered from the east bedroom. In addition, a witness, later identified as Witness B, was a guest at the party and in the residence at the time of the OIS. According to the investigation, Witness B observed the Subject, prior to the officers' arrival, fire a rifle into the air.

Based on the totality of the circumstances, an officer with similar training and experience as Officer A would reasonably believe that the Subject's actions of pointing the muzzle of the rifle toward him presented an imminent threat of death or serious bodily injury and that the use of lethal force would be reasonable.



In conclusion, the BOPC found Officer A's use of lethal force to be objectively reasonable and in policy.