

ABRIDGED SUMMARY OF A HEAD-STRIKE WITH AN IMPACT WEAPON AND FINDINGS BY THE LOS ANGELES BOARD OF POLICE COMMISSIONERS

Head-Strike with an Impact Weapon – 033-09

Division	Date	Duty-On(X) Off()	Uniform-Yes() No(X)
Foothill	5/13/09		

Officer(s) Involved in Use of Force	Length of Service
Police Officer C	18 years, 6 months

Reason for Police Contact

Effecting an arrest during a surveillance for grand theft subjects, Officer A struck Subject A in the head twice while holding a flashlight.

The subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
Male, 32 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 BOPC of Police; and the report and recommendations of the Inspector General. The Los Angeles Police Department Command Staff presented the matter to the Commission and made itself available for any inquiries by the Commission.

The following incident was adjudicated by the BOPC on April 13, 2010.

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.

Incident Summary

Lieutenant A received information from a neighboring police department regarding a possible grand theft from a business within the Area. Witness A, the owner of the business, had received a phone call from an anonymous female. The female told him that several employees had removed range components from inside the business and

secreted them in a loading bay that borders the freeway, that the employees would return after sunset and remove the items from the rear cargo area by climbing the fence that borders the freeway and that a previous theft had been committed in the same manner by the same four employees. This information was shared with Lieutenant B and verified by Detective A. Detective A arranged a meeting with Witness A to further the investigation.

Lieutenant B contacted Detective B and directed him to assemble the rest of his team-- Officers A, B, and C--to participate in the operation.

At approximately 6:30 p.m., Witness A met with Detectives A and B and Officers B and C. Witness A showed them the stolen property, hidden in the rear storage area, that he had located prior to their arrival. The stolen property consisted of various thermostats and regulators, valued at approximately \$6,500.

Detective B determined that a surveillance of the business should be conducted. The four team members would split into two, two-officer teams and hide themselves within the rear storage area.

Note: The rear storage area measured 26 feet by 45 feet and was bordered on the north side by a building, on the east side by a barbed-wire topped rolling gate, on the west side by a loading dock, and on the south side by an 8-foot-high chain-link fence also topped by barbed wire. The southern fence was at the base of an embankment leading to the freeway.

Due to the fact that the four team members had already been briefed, as well as the limited time available, no written operations plan for the surveillance was completed. As explained by Lieutenant B, "we were being told at 5 o'clock that the owner was leaving at six and so we had basically an hour or more or a little more to get set up and get going...our thought is we needed to get this thing in motion..."

Note: Detective B decided against having uniformed officers or a marked police unit in the area due to the possibility of counter-surveillance by the suspects.

Detective A notified Lieutenant C prior to the initiation of the operation.

Officer B notified Communications Division (CD) that the team was conducting surveillance at the business and that their radios would be turned off. Officer A provided a cell phone number to CD.

During the surveillance, Detective B and Officers B and C wore black tactical vests with the word "POLICE" on the front and back panels. Officer A wore soft body armor and a Department raid jacket. Officer B was equipped with a collapsible baton/ASP, and Officers A and C were equipped with OC spray.

The surveillance plan called for Detective B and Officer A to take position in the western portion of the storage area while Officers B and C took position in the eastern portion of the storage area. According to Officer A the teams were separated by approximately 30 feet and were within speaking distance but could not see each other.

After secreting themselves, Officers B and C heard a chain-link fence rattle. Officer C then saw a male, Subject A, walk toward the area where he was hidden. Subject A moved one of the wood pallets and retrieved one of the boxes which contained the stolen property. After a few seconds, Officer C heard Detective B say "Police. Put your hands up."¹ Detective B then illuminated Subject A with his flashlight. Subject A immediately dropped the box and ran toward the southeast corner of the property.

Leaving their position of concealment, Officers B and C chased Subject A as he ran toward a stack of wood pallets near the fence. Both officers ordered Subject A to stop, in both English and Spanish, but he did not comply. Subject A climbed onto the pallets and started to scale the fence as Officers B and C caught up to him. Officer B, positioned on Subject A's left side, reached up and grabbed Subject A near the collarbone. At the same time, Officer C, holding his flashlight in his right hand, grabbed Subject A's left pant leg with his left hand. Simultaneously, both officers pulled on Subject A, which caused him to fall from the pallets to the ground. According to Officer B, Subject A struck the ground face-first. Due to the momentum of Subject A's fall, Officer C was pulled down onto Subject A. Officer C landed with his chest on Subject A's upper shoulder and head, attempted to grab one of Subject A's wrists and use his body weight to control Subject A, but was unsuccessful. Subject A then pushed himself from the ground, which forced Officer C from his back.

As Officer C rose to his feet, Subject A came up on his knees and reached for Officer C. According to Officer C, "so now I'm standing up and now he is on his knees. I kind of move to the front of him and he was reaching out for me. Now, my gun is exposed at this point. And my first thought was I don't want him to grab the gun, and I don't want him to grab hold of my clothing." While still holding his flashlight in his right hand, Officer C struck Subject A twice in the face.

Note: Officer C held his flashlight with the lens toward his little finger and the end cap switch toward his thumb.

Officer B believed that Subject A was throwing punches at Officer C and pushed Subject A, causing him to fall forward onto his stomach. Officer B then placed both his knees on Subject A's back while Officer C used his body weight to keep Subject A from moving. Once Officers B and C gained control of his arms, Subject A was handcuffed.

Note: During handcuffing, Officer C placed his flashlight on the ground.

Meanwhile, as Subject A was being chased by Officers B and C, Detective B illuminated a second individual, Subject B, on a stack of pallets inside the business property near

¹ *Id.*, Page 10, Lines 8 – 14.

the southern perimeter of the business. Detective B verbally identified himself as a police officer, at which time Subject B climbed over the fence and ran onto the freeway embankment. Detective B, followed at a distance of approximately 20 feet by Officer A, climbed the fence in pursuit of Subject B. Once on the embankment, Detective B chased Subject B while shouting for him to stop. Subject B ran approximately 25 yards before complying with Detective B's commands and lying prone on the ground.

As he approached Subject B, whom he believed was "possibly armed", Detective B drew his firearm. Upon reaching Subject B, Detective B started to holster his pistol so that Subject B could be handcuffed. At that time, Subject B's left hand moved toward his chest or waist area. Believing that Subject B could possibly arm himself, Detective B yelled "let me see your hands" and kicked Subject B once in the left rib cage with his right foot. Subject B immediately moved his hands away from his body. Detective B then holstered his pistol and handcuffed Subject B. Upon his arrival, Officer A illuminated Detective B while he handcuffed Subject B.

After checking the embankment for additional suspects, Detective B and Officer A walked back with Subject B toward the street. Detective B decided to retrieve his police vehicle.

After informing Officers A and B of his intention to retrieve the vehicle, Detective B left Subject B with Officer A. When Detective B returned with his vehicle, Officer A removed the handcuffs from Subject B in order to scale the fence separating the embankment from San Fernando Road. When Subject B reached San Fernando Road, Detective B reapplied the handcuffs on the other side of the fence.

Note: Officers A and B were approximately 20 feet apart and separated by the chain-link fence at the time Detective B left the area to retrieve his vehicle.

After returning to the building, Detective B saw an injury that Subject A had sustained to his face and requested a Rescue Ambulance to respond to the scene. Officer C told Detective B that Subject A had "attempted to escape, attempted to fight and that he may have hit him with his flashlight." Additionally, Officer C told Detective B that there was an "indentation from part of the end cap of the flashlight" on Subject A's left cheek. Detective B admonished Officers A, B, and C not to discuss the incident. Detective B then contacted Area Assistant Watch Commander Sergeant A of the use of force.

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 that Detective B's and Officers A, B, and C's tactics in this incident warranted a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

The BOPC found Detective B's tactics to be in policy.

C. Non-Lethal Use of Force

The BOPC found that Detective B's and Officers B and C's non-lethal use of force to be in policy.

D. Lethal Use of Force

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

Basis for Findings

A. Tactics

The BOPC noted that in this instance 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. In this instance, the tactical considerations neither individually nor collectively *"unjustifiably and substantially deviated from approved Department tactical training."*

The BOPC found that the tactics used in this incident warranted a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

In this instance, Detective B was chasing a suspect who was involved in a crime and was attempting to evade capture. Believing the suspect was armed and the situation could escalate to a lethal force incident, Detective B drew his service pistol. According to Detective B, "I'm coming into contact with pos - -a suspect who is possibly armed. You know, I wanted to protect myself and my partner from seriously bodily injury or death. And that's why I had my gun out."

Therefore, the BOPC found the Drawing to be in policy.

C. Non-Lethal Use of Force

Officer B – Physical Force, Takedown and Bodyweight

Officer C – Physical Force, Take down, Bodyweight and Firm Grip

Detective B – Kick

In this instance, Officers B and C were confronted with an aggressive and combative suspect, identified as Subject A, who was attempting to flee and resisted the officers' attempts to handcuff him. Officer B and C pulled on Subject A's trouser legs, forcing him off of a stack of pallets and onto the ground. Once on the ground, Officer C attempted to control Subject A using bodyweight.

Simultaneously, Officer B pushed Subject A from behind causing him to fall to the ground. Once there, the officers used their combined bodyweight to control Subject A and apply the handcuffs.

In the meantime, Detective B was following Subject B, who was attempting to flee along the freeway's embankment. Subject B complied with Detective B's verbal commands and dropped to the ground in a prone position. As Detective B approached, Subject B moved his left hand out of view. Fearing Subject B was attempting to arm himself, Detective B kicked Subject B in the rib area causing Subject B to extend his arms out.

Note: Detective B recovered a knife from Subject B during a pat down search.

The BOPC evaluated the circumstances relevant to Detective B's and Officers B and C's Non-Lethal use of force and determined that the force was objectively reasonable to overcome the aggressive actions presented by both suspects.

The BOPC found that the Non-Lethal Force utilized by Detective B along with Officers B and C to be in policy.

D. Lethal Use of Force

The "head strike" was appropriately identified as a Categorical Use of Force incident for investigative purposes. According to Officer C, the "head strike" was unintentional and occurred when he chose to utilize force and punched Subject A with his right hand while holding his flashlight in the same hand.

The evidence in this case indicates that although Officer C intended on punching Subject A in the head, the head strike with the flashlight was inadvertent. Therefore, the

BOPC determined that the inadvertent head strike with the impact weapon was objectively reasonable to overcome the aggressive actions presented by the suspect.

Therefore, the BOPC found the use of Lethal Force to be in policy.