

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

**CAROTID RESTRAINT CONTROL HOLD – 033-18**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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77 <sup>th</sup> Street	5/20/18		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Officer A	7 years, 4 months
Officer B	15 years, 4 months
Officer C	12 years
Officer D	10 years, 5 months

**Reason for Police Contact**

Metropolitan Division uniformed officers were conducting crime suppression. While conducting a possible stolen vehicle investigation, officers encountered the subject, Subject 1, who was armed with a firearm. While attempting to detain Subject 1, Officer A applied a Carotid Restraint Control Hold (CRCH).

<b>Subject(s)</b>	<b>Deceased ( )</b>	<b>Wounded (X)</b>	<b>Non-Hit ( )</b>
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Subject 1: Male, 49 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 April 2, 2019.

### **Incident Summary**

On May 20, 2018, according to Witnesses A and B, they drove and parked Witness B's vehicle on the street due to it overheating. They intended to use a hose from the local dog park to put water in the radiator. Witness B stated she purchased the vehicle from her nephew in February 2018.

Approximately 20 minutes after parking, Witness A stood at the open hood of the vehicle, and Witness B sat inside the vehicle, when they were approached by Subject 1, who offered his assistance. According to both Witnesses A and B, Subject 1 obtained the water hose from the dog park and assisted in cooling the vehicle's engine. After assisting, Subject 1 claimed to not feel well, and Witness B allowed him to sit in the backseat of her vehicle.

Metropolitan Division uniformed Police Officers A and B, wearing Body Worn Video (BWV) cameras and driving a dual-purpose police vehicle, were conducting crime suppression in the area.

**Note:** According to Officer A, he and Officer B had been partners for approximately 11/2 years and had prior tactical discussions regarding contact/cover, armed individuals, and would routinely debrief their tactics after arrests.

According to Officer A, he received information from 77<sup>th</sup> Street Area Gang Detectives regarding sales of narcotics and vehicles that were stolen and stripped for parts in the area of this incident.

According to Officer B, officers were conducting crime suppression due to numerous shootings and gang activity.

Officers observed the vehicle parked along the west curb, facing south. As Officers A and B drove past the vehicle, they observed Witness A seated in the driver's seat, Witness B seated in the front passenger seat, and Subject 1 seated in the back seat of the vehicle. Additionally, Officer A observed that the vehicle's front windshield contained a linear crack, the hood was up, and there were scratches and dents on the vehicle, which he stated was consistent with vehicles that are either stolen or stripped for parts. According to Officer B, when he and his partner drove past the vehicle, Witness A "made eye contact" with them.

According to Officer A, when he passed the vehicle, the driver's door was ajar, Witness A had one foot out of the vehicle and Officer A was able to see inside of the vehicle. Additionally, Officer A stated that he observed Witness A holding what he believed to be

an open bottle of an alcoholic beverage. Witness A then reached back with the alcoholic bottle and gave it to Subject 1 in the back seat.

**Note:** The information regarding the bottle of alcohol was not obtained until after the vehicle was released to the registered owner. Attempts to corroborate the presence of a bottle consistent with that containing an alcoholic beverage were made through the review of the crime scene photographs. No such bottle was observed.

Officer A negotiated a three-point turn and, while doing so, Officer B used the Mobile Digital Computer (MDC) to run the vehicle's license plate. Officer B received information that the vehicle was a recovered stolen vehicle and communicated the information to Officer A.

According to Officer A, while conducting his U-turn, he observed Subject 1 look back over his left shoulder, with Subject 1's shoulders moving left and right, which caused Officer A to opine that Subject 1 was attempting to conceal some type of contraband in his pants. According to Officer A, Witness A then exited the vehicle and walked to the hood, in what Officer A believed to be a ruse.

Officer A stopped their police vehicle facing south, slightly behind, and to the left of the vehicle. Officer A exited the police vehicle and contacted Witness A, who was standing at the front of the vehicle. Officer A conducted a pat-down search of Witness A, due to the area being a high narcotics and gang area and Witness A was wearing baggy clothing, which Officer A opined could easily conceal a weapon. Officer A then escorted Witness A to the hood of the police vehicle, where he stood next to the right front fender.

**Note:** According to Officer B, he believed that he broadcast the officers' Code-Six location; however, there was no broadcast captured on Metropolitan Division radio frequency or either of the officers' BWV cameras.

According to Witness A, he was placed in handcuffs after being searched; however, Officer B' BWV captured Witness A not handcuffed prior to the physical altercation.

Meanwhile, Officer B exited the police vehicle, stood at the driver's door of the vehicle, and contacted Witness B, who was still seated in the front passenger seat, through the open driver's window. Officer B inquired who was the registered owner of the vehicle and was informed by Witness B that she purchased the vehicle from her nephew. As Witness B looked through the vehicle's glove compartment for vehicle paperwork, Officer B inquired if she was either on parole or probation and Witness B stated that she was not. Officer B then inquired with Subject 1, who was still seated in the back seat of the vehicle, whether he was on parole or probation; Subject 1 stated that he was not.

Witness B provided Officer B with vehicle paperwork and was directed to exit the vehicle by Officer B.

Officer A now stood near the left rear fender of the vehicle as Officer B moved toward the hood of the police vehicle to obtain additional information from Witnesses A and B. Officer A directed Subject 1 to exit the back seat of the vehicle and Subject 1 complied, sliding from the right side of the rear seat to the left side of the rear seat and exited the left rear passenger door.

Once Subject 1 was outside the vehicle, Officer A advised Subject 1 that he was going to conduct a pat-down search for weapons. Officer A's BWV captured Subject 1 place his hands in his sweater pockets as he asked Officer A why he was going to search him. Officer A informed Subject 1 that he was conducting a stolen vehicle investigation and asked Subject 1 to remove his hands from his pockets, to which Subject 1 complied. Subject 1 continued to verbalize his disapproval with Officer A's request. Officer A's BWV then captured him continuing to verbalize his intention of conducting a pat-down search of Subject 1. Officer A's BWV then captured him place his right hand on Subject 1's left elbow and use his left hand to conduct a pat-down search of Subject 1's front waistband area.

Officer A's BWV captured Subject 1 continue to verbalize his disapproval as Officer A lifted the back of Subject 1's sweater, where Officer A observed a needle in Subject 1's rear right pants pocket. According to Officer A, the substance in the needle appeared to be brown in color, and he opined the substance resembled heroin. Officer A removed the syringe and placed it on the trunk of the vehicle. According to Witness A, the syringe was empty and Officer A threw it on the ground. The syringe was recovered from the dashboard of the vehicle by Force Investigation Division (FID) personnel.

Officer B observed the interaction between Officer A and Subject 1 and re-deployed away from Witnesses A and B, toward Subject 1. Officer A's BWV captured Subject 1 continue to voice his disapproval of a pat-down search as Officer A moved him toward the right rear passenger door of the police vehicle. According to Officer A, Subject 1 placed his hand back into the right sweater pocket. While standing near the police vehicle, Officer A felt Subject 1 tense up, like he wanted to move his hands close into his body and stomach area.

Officer B's BWV captured Officer A using his left hand to hold onto Subject 1's left wrist area while grabbing Subject 1's right wrist area with his right hand. The video then captured Officer A attempt to place Subject 1's arms behind his back and Subject 1 pull his right arm away from Officer A. Officer A then turned Subject 1 to face toward the police vehicle.

Officer A applied pressure with his upper body, chest, and left shoulder to Subject 1's upper back area, while he maintained a hold on Subject 1's left wrist and held him against the vehicle, using it as a control mechanism.

According to Officer B, he used his left hand to grab Subject 1's right elbow and placed his right hand around Subject 1's right wrist in an attempt to apply a wrist lock. At some point, Officer B removed his handcuffs to place them on Subject 1; however, he lost control of them because of Subject 1's resistance.

According to Officer A, Subject 1 was physically overpowering him and his partner, so Officer A advised Officer B that he was going to take Subject 1 to the ground. Officer A additionally opined that Subject 1 was attempting to arm himself with a knife or firearm by continually reaching into his sweater pocket. According to Officer A, he felt he needed to do a takedown, or leg sweep, to get Subject 1 off balance and take him into custody.

**Note:** Officers A and B's BWV fell to the ground. Officer B's BWV fell pointing downward, providing no video. Officer A's BWV initially pointed downward; however, it became repositioned upward by an unknown means.

Officer A's BWV captured him stating, "Alright, I'm going to take him to the (inaudible)."

According to Officer A, he used his left arm and grabbed Subject 1's left pant leg, near his knee, as he used his right arm to wrap it around Subject 1's waist. Officer B used his left hand to apply pressure on Subject 1's right bicep/shoulder area toward the ground, while pulling Subject 1 back. According to Officer B, Officer A attempted two leg sweeps that were not successful.

According to Officer A, as Subject 1 fell, he struck the left rear quarter panel of the vehicle and landed on his knees. Subject 1 then used his arms and knees to brace himself. As Officer A remained on Subject 1's back, Officer A stated that he moved his left arm under Subject 1's left arm, grabbing the left wrist and moved his right arm under Subject 1's right arm, grabbing Subject 1's right wrist. According to Officer A, he attempted to collapse Subject 1's arms to place him into a prone position, but he was unsuccessful.

At this time, Officer A indicated that Subject 1 looked back over his right shoulder, in Officer A's direction. Subject 1 then moved his right arm rearward, using his right elbow, and struck Officer A on the bridge of the nose. According to Officer A, he advised Officer B that Subject 1 had struck him. According to Officer B, he did not observe Subject 1 strike Officer A, but he did observe Subject 1, "fling like in a right motion," his arm and Officer A move back.

**Note:** Officer A's BWV did not capture communication with Officer B regarding Subject 1 striking him.

Subject 1 then used his right hand and reached toward his sweater pocket as Officer A grabbed Subject 1's right hand/wrist area in an attempt to control it. According to

Officer A, he temporarily grabbed Subject 1's right wrist and felt a heavy metallic object that he believed was in the pocket that Subject 1 had reached for. Based on Subject 1's actions and Officer A's experience in the recovery of firearms from Subject 1, Officer A opined that Subject 1 was armed with a firearm. According to Officer A, he was unable to communicate about the firearm with Officer B because he was actively fighting with Subject 1, which caused him to be short of breath.

According to Officer A, Subject 1 jerked away from him, in a backward motion, while trying to sit up and face him. Officer A further stated that he was once again losing control of Subject 1's upper body. Officer A opined, "he was going to try and engage me either [...] -- with his fists or with whatever he was attempting to -- the weapon that was eventually recovered from -- from in his pocket."

Officer B broadcast a request for back-up. Unable to gain compliance from Subject 1, Officer A directed Officer B to deploy his TASER on Subject 1. Officer A's BWV captured Subject 1 state, "Why, why do you want to taze me?" According to Officer B, Subject 1 was laying on his left side as Officer A attempted to place him onto his stomach and he unholstered his TASER. Officer B yelled, "TASER, partner" to alert Officer A. According to Officer B, he did not provide a warning that he was going to use the TASER because the situation was fluid and he wanted the element of surprise. From a distance of approximately four to five feet, Officer B discharged the Taser cartridge, for a five second duration, striking Subject 1 in his back area.

**Note:** According to Officer B, he targeted Subject 1's navel area. The location of the TASER cartridge connection was obtained from Officer C's BWV.

According to Officer A, Officer B placed the TASER on Subject 1's middle to upper back area and initiated a drive stun. Although Subject 1 screamed, the TASER was ineffective as Subject 1 continued to actively resist both officers. Officer A directed Officer B to activate the TASER a second time. Officer B used his left hand to remove the TASER cartridge. Officer B placed the TASER probes against Subject 1's right thigh and initiated a drive stun for a five second duration, which was ineffective.

Subject 1, who was no longer on his knees, was now almost seated, and Officer A believed that he was attempting to stand. Officer A, who was standing behind Subject 1, then used his closed right fist and struck Subject 1 five times in the back of his neck/head area. During the strikes, Subject 1 placed his right hand to the back of his neck/head.

**Note:** The number of strikes by Officer A was obtained from his BWV. According to Officer A, he believed that he struck Subject 1 three to four times in the back of the neck/head area.

According to Officer B, Officer A struck Subject 1 one to two times on his torso or face, while they were standing. According to Witness B, Officer A struck Subject 1 four times in his face.

As Officer A struck Subject 1, Officer B can be seen on Officer A's BWV using his left hand to grab Subject 1's right arm, which was behind his head, while holding the TASER in his right hand. Between the third and fourth strikes by Officer A, Officer B can be seen on Officer A's BWV placing his TASER on the trunk of the vehicle and grabbing Subject 1's right arm with his right hand.

Officer A's BWV then captured him standing behind Subject 1, who was seated, using his right arm to reach over Subject 1's right shoulder and under Subject 1's chin area. Officer A can then be seen on his BWV leaning backward and turning to his right, causing Subject 1 to move out of camera view. Subject 1 was still in a seated position and, according to Officer A, attempted to access his right sweater pocket. Officer B then observed a pistol to his left and communicated with Officer A, "gun, partner." Officer B removed his radio from the holster and broadcast, "Requesting Help!"

In response to Officer B's emergency broadcast, Metropolitan Division uniformed Police Officers C and D responded to the location.

In fear that the situation could escalate to one involving the use of deadly force, Officer B unholstered his service pistol and held it in a two-handed, low-ready position, pointed in the direction of Subject 1.

**Note:** Officer B stated the gun was stainless steel; however, it was blue steel.

According to Officer B, he observed Officer A directly behind Subject 1, with his arm around Subject 1's chest. Officer A directed Officer B to secure Subject 1's pistol. Officer B used his left hand to pick up Subject 1's pistol and holstered his service pistol. Officer B can be seen in Officer A's BWV securing Subject 1's pistol in his right rear pants pocket.

**Note:** According to Officer B, once the incident was over (Code-Four), he downloaded Subject 1's pistol and secured it in his police vehicle.

According to Officer A, he heard Officer B broadcast the help call and believed that the pistol was unsecure or that Officer B observed an additional weapon on Subject 1. Additionally, Officer A stated that he did not hear Officer B indicate that he had possession of Subject 1's pistol and believed that he had immediate access to it.

According to Officer A, he placed his right bicep against the right side of Subject 1's neck and his right forearm against the left side of Subject 1's neck. Officer A then grabbed his right hand with his left hand and applied pressure along both sides of Subject 1's neck, in what Officer A described as a modified carotid hold. While

performing the modified carotid hold, Officer A stated that he attempted to roll Subject 1 onto his stomach.

According to Officer A, Subject 1 stated that he could not breathe, and Officer A opined that since Subject 1 was speaking, he was still able to breathe. According to Officer A, he maintained the modified carotid hold for approximately five to ten seconds. Officer A stated that he felt Subject 1 was no longer attempting to pull his arms away from his neck and felt Subject 1's body go limp, so he released the hold. According to Officer B, he did not see Subject 1 lose consciousness.

According to Officer A, Subject 1 was on his stomach, with both arms out to his sides. Officer A was on top of Subject 1, using bodyweight to maintain control, as he used his left hand to grab Subject 1's left wrist and his right hand to grab Subject 1's right wrist. According to Officer A, Subject 1 tensed up and placed the palms of his hands on the ground. Subject 1 started to push himself up and, once again, began to resist officers.

According to Officer B, Subject 1's left elbow was bent, and his left hand was in toward his chest. Officer B reached for his handcuffs, but they were lost during the altercation with Subject 1. Officer B then reached for Officer A's handcuffs, but they were also not in his handcuff case.

Once Subject 1 pushed himself off the ground, Officer A placed his right arm around Subject 1's chest and "bear-hugged," him until additional officers arrived.

Officers C and D arrived and observed Officers A and B using bodyweight on top of Subject 1, who was on his stomach. Officer C's BWV captured Officer A on Subject 1's back, with Officer B to his left. Subject 1's left arm, with a black handcuff attached to the wrist, was above his head and being held by Officer B. Officer C grabbed Subject 1's left arm and began to move it behind Subject 1's back.

Once officers handcuffed Subject 1, a Code-Four broadcast was issued, and a request for a Rescue Ambulance was made. Los Angeles City Fire Department personnel transported Subject 1 to a nearby hospital. Subject 1 was treated and released for booking.

### **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). Based on the BOPC's review of the instant case, the BOPC made the following findings:



## **A. Tactics**

The BOPC found Sergeant A, along with Officers A and B's tactics to warrant a finding of Administrative Disapproval. The BOPC found Officers C and D's tactics to warrant a finding of Tactical Debrief.

## **B. Drawing/Exhibiting**

The BOPC found Officer B's drawing and exhibiting of a firearm to be in policy.

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

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

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

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

## **E. Lethal Use of Force**

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

## **Basis for Findings**

In making its decision in this matter, the Commission is mindful that every "use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public. The Department's guiding value when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers." (Use of Force Policy, Los Angeles Police Department Manual.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in Graham v. Connor, 490 U.S. 386 (1989), that:

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where the subject’s actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. 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. (Tactical De-Escalation Techniques, October 2016.)

## **A. Tactics**

- During the review of the incident, the following Debriefing Topics were noted:
  1. **Body Armor** (Substantial Deviation – Officer A)

Officer A did not don his Department approved body armor as required when conducting field related duties.

The BOPC determined that Officer A's decision not to don his body armor was a substantial deviation, without justification, from Department policy and approved tactical training.

## **2. Tactical Communication/ Tactical Planning (Substantial Deviation – Officers A and B)**

On multiple occasions throughout the incident, Officers A and B did not effectively communicate their plan or actions with one another.

Operational success is based on the ability of officers to effectively communicate during critical incidents. Officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, after deciding to conduct an investigative stop on the vehicle, Officers A and B did not communicate with one another a plan to approach and detain Subject 1 in addition to Witnesses A and B. Also, Officer A did not effectively communicate to Officer B his belief that Subject 1's furtive movements, while inside the vehicle was an attempt to conceal weapons or contraband.

Additionally, upon approaching the vehicle, Officer A did not communicate with Officer B his intention to escort Witness A to the front of their police vehicle, nor did he advise Officer B that Witness A was left unsecured behind him.

During the struggle to take Subject 1 into custody, Officer A did not communicate with Officer B his belief that Subject 1 was armed with a firearm after he had felt a metallic heavy object in Subject 1's sweater pocket.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's actions were a substantial deviation, without justification, from approved Department tactical training.

## **3. High-Risk Vehicle Stop (Substantial Deviation – Officers A and B)**

When officers encounter a Subject, whom they believe is armed with a weapon, they are trained to conduct a high-risk search technique to safely take the Subject into custody. This tactic provides the officers a tactical advantage and allows them to plan, communicate, redeploy, utilize cover, give commands, and approach the Subject from a position of advantage.

In this case, Officers A and B formed the opinion that the vehicle Subject 1 was sitting in was possibly stolen and knew that there were three individuals associated with the vehicle. Additionally, despite his belief that Subject 1's furtive movements were consistent with those of someone attempting to conceal a weapon, Officer A did not communicate this belief to Officer B, and both officers ended up approaching the vehicle.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's actions were a substantial deviation, without justification, from approved Department tactical training.

#### **4. Tactical Vehicle Deployment (Substantial Deviation – Officer A)**

When conducting a stop, it is critical to properly position a police vehicle in order to provide officers a tactical advantage should the incident escalate.

In this case, Officer A placed himself and his partner at a significant tactical disadvantage by positioning his police vehicle next to a possible stolen vehicle and in close proximity to a potentially armed Subject.

Based on the totality of the circumstances, the BOPC determined that Officer A's vehicle deployment was a substantial deviation, without justification, from approved Department tactical training.

#### **5. Code Six (Substantial Deviation – Officers A and B)**

Officer A and B did not advise Communications Division (CD) of their Code Six location.

The purpose of broadcasting a Code Six location is to advise CD and officers in the area of their location and the nature of the field investigation, should the incident escalate and necessitate the response of additional personnel. Vehicle and pedestrian stops can be dangerous, as the identity and actions of a person stopped is often unknown, and as in this case, their actions can be unpredictable.

In this case, Officers A and B conducted an investigative stop on three occupants inside a parked vehicle. The officers believed the vehicle was possibly stolen and that one of the occupants, based on his furtive movements, was concealing a weapon. The officers approached, searched, and obtained information from two of the occupants before becoming involved in a use of force with Subject 1.

In this situation, the officers were not initially faced with a rapidly unfolding tactical situation and therefore had sufficient time to broadcast their Code Six location.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's decision not to advise CD of their Code Six location was a substantial deviation, without justification, from approved Department tactical training.

## **6. Contact and Cover (Substantial Deviation – Officers A and B)**

Upon initiating an investigative stop, the officers each acted independently without the benefit of a cover officer. Simultaneously, Officer A approached Witness A and conducted a pat down search while Officer B approached Subject 1 and 3, who were seated inside the vehicle and engaged them in a conversation to obtain information.

Operational success is based on the ability of officers to effectively establish designated roles and communicate during critical incidents. Officers improve overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, although the subjects were initially compliant, Officers A and B placed themselves at a tactical disadvantage and took an unnecessary risk by contacting and physically restraining the subjects without requesting or waiting for additional resources.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's decision to act independently of each other and without the benefit of a cover officer was a substantial deviation, without justification, from approved Department tactical training.

- The BOPC also considered the following:

### **1. Punches to Bony Areas**

The investigation revealed that Officer A punched Subject 1 in the neck/back area with a closed fist five times. Officer A was reminded that punches to the bony areas of the body can cause injury, which would reduce the officer's effectiveness and limit the officer's ability to defend themselves.

### **2. Maintaining Control of Equipment (TASER/Handcuffs)**

The investigation revealed that on multiple occasions, Officer B lost or gave up control of some of his equipment while attempting to control Subject 1. Officer B was reminded of the importance of securing his equipment to prevent the Subject from gaining access to it.

### **3. Proper Use of TASER in Drive-Stun Mode**

The investigation revealed that Officer B removed the TASER cartridge prior to activating his TASER in drive-stun mode. Officer B was reminded that to maximize Neural Muscular Incapacitation (NMI) and effectiveness, the cartridge should remain attached to the TASER when the TASER is applied in drive-stun mode to an area of the body away from the probe impact site.

#### **Command and Control**

- Sergeant A responded to the location and assumed the role of Incident Commander.

Upon arrival, Sergeant A spoke with Officer A, who informed Sergeant A that he had applied a CRCH on Subject 1. Sergeant A did not immediately follow post-Categorical Use of Force protocols resulting in Officers A and B not being separated and monitored by a supervisor. Shortly after advising Sergeant A that a CRCH was used on Subject 1, Officers A and B were seen on BWV speaking to one another without the presence of a supervisor.

Sergeant A did subsequently assign supervisors to the involved officers and ensured that they were separated and monitored.

The BOPC determined that Sergeant A's lack of supervisory oversight during this incident was a substantial deviation and did not demonstrate the appropriate level of command and control, or supervision necessary or expected from an IC.

As a result, the BOPC determined that Sergeant A's lack of supervisory oversight in this incident, substantially and unjustifiably, deviated from approved Department supervisory training, and thus warranted a finding of Administrative Disapproval.

- In conducting an objective assessment of this case, the BOPC determined that Sergeant A's actions were a substantial deviation, without justification, from Department policy and training, thus requiring a finding of Administrative Disapproval.

The BOPC also determined that Officers A and B's actions were a substantial deviation, without justification, from Department policy and tactical training, thus requiring a finding of Administrative Disapproval.

Additionally, the BOPC found that Officers C and D's tactics did not substantially deviate from approved Department tactical training. The BOPC, therefore, found the tactics of Officers C and D to warrant a Tactical Debrief.

Each tactical incident also 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 discuss individual actions that took place during this incident.

Therefore, the BOPC found that Sergeants A, along with Officers A, B, C, and D should attend a Tactical Debrief and that the specific identified topics are discussed.

## **B. Drawing/Exhibiting**

- According to Officer B, Subject 1 was in a seated position when he noticed a gun on the ground, approximately a foot or less from Subject 1 and Officer A. Officer B then alerted Officer A by yelling, "Gun." Fearing that the situation could escalate to one involving the use of deadly force, Officer B drew his service pistol.

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

Therefore, the BOPC found Officer B's drawing and exhibiting of a firearm to be in policy.

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

- **Officer A – Firm Grip, Physical Force, Take Down, Bodyweight and Punches.**

According to Officer A, he obtained a grip on Subject 1's left wrist area and felt Subject 1 tense up. Subject 1 brought his hands close to his body in the area of his stomach and front right sweater pocket. In an attempt to take Subject 1 into custody, Officer A pushed him up against the police vehicle and used it as a controlling device.

According to Officer A, he was unable to effectively control Subject 1 and told him to, "relax," to gain his compliance. Officer A believed he was losing control of Subject 1 and that Subject 1 was attempting to arm himself with either a knife or a firearm. Believing it was necessary to get Subject 1 off balance to take him into custody, Officer A advised Officer B that he was going to take Subject 1 to the ground. Officer A then grabbed Subject 1's left leg with his left hand, Subject 1's right waist area with his right hand, and pulled Subject 1 back.

According to Officer A, he positioned himself on Subject 1's back, reached around the right side of Subject 1's body with his right hand and attempted to control Subject 1's right hand. Officer A then attempted to collapse Subject 1's arms, but Subject 1 looked over his right shoulder, brought his right elbow back and struck Officer A on the bridge of his nose. Subject 1 then immediately brought his hand back towards his right sweater pocket. Officer A advised Officer B that Subject 1 had hit him. Officer A then grabbed Subject 1's right wrist temporarily and felt a metallic heavy

object in Subject 1's sweater. Based on the guns Officer A has recovered, he believed that the object was consistent with a firearm. Believing he was losing the fight and that Subject 1 was armed with a firearm, Officer A then punched Subject 1 three to four times with a closed fist in the neck/back area, to gain Subject 1's compliance.

According to Officer A, while applying the CRCH, he felt Subject 1's body go limp and immediately released his hold. With his chest against Subject 1's back, Officer A then acquired a grip on Subject 1's right and left wrists. Subject 1, from a prone position, tensed up and attempted to push himself up off the ground. Officer A then repositioned his right arm over Subject 1's right shoulder and applied a bear-hug type squeeze and body weight to control Subject 1 until additional resources arrived.

- **Officer B – Firm Grip, Physical Force**

According to Officer B, he observed Officer A pull an unknown object out of Subject 1's pockets and toss it. Officer B walked over to assist Officer A and grabbed Subject 1's right arm as he clenched his fist and stiffened up. Officer B told Subject 1 to, "relax," as he started pulling away.

According to Officer B, Officer A advised him that he was going to take Subject 1 to the ground. Officer B acknowledged and observed Officer A attempt a leg sweep. When the leg sweep was not working, Officer B attempted to push Subject 1 towards the ground by applying pressure with his hands on Subject 1's bicep and back shoulder area.

- **Officer C – Firm Grip, Physical Force**

According to Officer C, upon his arrival, he exited his police vehicle and observed Officers A and B attempting to take Subject 1 into custody. Officer A was on the upper portion of Subject 1's body and Officer B was attempting to control Subject 1's left arm, which was partially underneath the left side of Subject 1's body and had a handcuff connected to it. Officer C then grabbed the handcuff attached to Subject 1's arm and used it to pull the arm out and then behind Subject 1's back. Officer C then assisted Officer D with handcuffing Subject 1.

**Note:** The investigation revealed that Officer C grabbed Subject 1's left wrist with both hands and pulled it out from underneath Subject 1's body to maintain control of him.

- **Officer D – Bodyweight and Firm Grip**

According to Officer D, upon his arrival, he observed two officers and an additional person using bodyweight on Subject 1, who was laying on his stomach. Officer D noted that there were handcuffs on each of Subject 1's wrists. Subject 1 appeared uncooperative and actively fighting the officers, keeping his hands underneath his



body to avoid being handcuffed. Officer D grabbed Subject 1's right arm and held his wrist for control. Officer D then assisted Officer C with handcuffing Subject 1.

**Note:** The investigation revealed that Officer D also applied body weight to Subject 1's lower body while attempting to take him into custody.

Based upon the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A, B, C and D, while faced with similar circumstances, would believe that the same applications of non-lethal force would be reasonable to overcome Subject 1's resistance while taking him into custody.

Therefore, the BOPC found Officers A, B, C and D's non-lethal use of force to be objectively reasonable and in policy.

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

- **Officer B** – TASER, two five-second cycle TASER activations.

First TASER Activation – one five second activation, in probe mode, from a distance of approximately four to five feet.

According to Officer B, Subject 1 was overpowering him and Officer A and failing to comply with their commands to put his hands behind his back. Officer A then directed him to discharge the TASER at Subject 1. Officer B yelled, "TASER" and discharged the TASER in probe mode, from a distance of four to five feet at Subject 1's naval area.

Second TASER Activation – one five second activation, in drive stun mode.

According to Officer B, he knew the initial TASER activation was ineffective because Subject 1 continued to fight. Officer A told him to, "TASE him again." Believing that the drive stun function may be more efficient, Officer B removed the cartridge and initiated a drive-stun TASER activation to Subject 1's right thigh.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer B, while faced with similar circumstances, would believe the same applications of less-lethal force options to stop Subject 1's actions were objectively reasonable.

Therefore, the BOPC found Officer B's less-lethal use of force to be objectively reasonable and in policy.

## **E. Lethal Use of Force**

- **Officer A – Carotid Restraint Control Hold**

According to Officer A, Subject 1 was in a seated position, actively fighting and still attempting to get access to his front right sweater pocket, when he heard Officer B announce, “Partner gun.” Officer A continued attempting to control Subject 1 and advised Officer B to secure the gun in his pocket. Officer A then heard Officer B broadcast a help call, which led him to believe that the firearm was unsecured, or that he had observed an additional weapon on Subject 1.

Officer A was losing control of Subject 1 and was unable to restrain his hands. Believing that the firearm was unsecured or that Subject 1 had immediate access to that firearm, Officer A felt Subject 1 was going to kill Officer B or himself. Officer A then reached across Subject 1’s upper torso area with his right arm and pulled him to his stomach. Officer A placed his right bicep on the right side of Subject 1’s neck and his right forearm against the left side of Subject 1’s neck. Officer A then gripped his own right hand with his left hand and attempted to squeeze as he applied an upper-body restraint, modified carotid hold on Subject 1 for approximately five to 10 seconds.

The BOPC determined that Subject 1 was non-compliant and actively resisted being restrained as he was being punched by Officer A. Immediately after his last strike, Officer A reached down and applied a CRCH on Subject 1. Once the CRCH was applied, Subject 1’s hands were raised up to his neck area and appeared to repeatedly tap Officer A’s arms. The BOPC considered the threat that Subject 1 presented and concluded that he was non-compliant, actively resisting from being restrained, and using his hands to attempt to block Officer A’s punches. The BOPC noted that Officer A’s BWV did not capture Subject 1 attempting to reach into his sweater pocket or waistband, attacking the officers or attempting to disarm the officers.

Based on the totality of the circumstances, the BOPC determined that Subject 1’s actions at the time the CRCH was applied did not rise to the level required for the use of deadly force and that an officer of similar training and experience as Officer A would not have perceived Subject 1’s actions as constituting an imminent threat of death or serious bodily injury. Therefore, the BOPC determined that Officer A’s lethal use of force in this situation was not objectively reasonable or warranted.

Therefore, the BOPC found Officer A’s lethal use of force to be out of policy.