

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

IN-CUSTODY DEATH 057-18

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

North Hollywood 10/20/18

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

Does Not Apply.

Reason for Police Contact

Officers responded to a call of a "415" man in a restaurant, who had gotten into a physical altercation with a restaurant patron.

Suspect **Deceased (X) Wounded ()** **Non-Hit ()**

Subject: Male, 33 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.

The following incident was adjudicated by the BOPC on July 9, 2019.

Incident Summary

Witness A, who resided in a condominium complex, walked outside where he observed a naked individual, later identified as the Subject, lying on the ground next to a pile of clothes. Witness A described the Subject's demeanor as being "scared, docile, and frightened." Witness A befriended the Subject and gave him two bottles of water.

According to Witness A, the Subject told him he was a "sinner" while referring to what Witness A believed to be a couple of pills that were wrapped up in the finger of a rubber glove. The Subject denied having previously taken the substance that was in the glove and asked Witness A to get rid of them for him. According to Witness A, as the Subject got dressed, Witness A discarded the substance by throwing it into a trash bin that was located near the underground parking structure.

Uniformed Police Officer A was subsequently directed to the glove by Witness A. Witness A was present when Officer A recovered it, and Witness A positively identified it as the glove given to him by the Subject. The substance was later tested and determined to be methamphetamine.

According to Witness A, he took the Subject to dinner at a nearby Indian restaurant. During what Witness A described as a lengthy dinner, the Subject ate a full meal and consumed one Indian beer. The Subject indicated that he was a musician and that he wrote music, played guitar, and sang. After dinner, Witness A and the Subject walked to a second restaurant. They spoke with the bartender, later identified as Witness B, and inquired about the "open mic" nights and requested a business card. Witness B walked to the front of the restaurant to obtain a business card and Witness A followed. The Subject remained by the bar, which was located at the back of the restaurant.

In the meantime, Witness C was in the second restaurant having dinner with Witness D. They were approximately 45 minutes into the meal when Witness C noticed Witness A and the Subject enter the restaurant and walk past where he and Witness D were seated. The two walked up to the bar, and Witness C could overhear something about music in the conversation. Approximately one to two minutes later, the Subject walked past him toward the door, then turned back in the direction of Witness C. Without warning or provocation, the Subject jumped up on a bench next to Witness C and began striking Witness C on the side of the head with closed fists. According to Witness C, he had never seen the Subject before this incident, and there had been no form of conflict, eye contact, or other altercation that preceded the Subject's attack on him.

Witness D screamed, which attracted the attention of Witnesses E and F, who were also patrons inside of the restaurant. According to Witnesses E and F, they were able to pull the Subject away from Witness C. Witnesses B, E, and F then surrounded the Subject as they walked him out the front door of the restaurant and onto the sidewalk of the street. Witnesses B, E, and F monitored the front door to prevent the Subject from entering the restaurant.

The Subject remained outside on the sidewalk walking back and forth. As captured by surveillance video, the Subject made several attempts to enter the restaurant, but was denied entry by Witnesses B, E, and F. On the Subject's final attempt to make entry, he physically tried to push his way past Witness E. Witness E stepped in front of the Subject, blocking his path. This prevented the Subject from gaining access into the restaurant and he (the Subject) walked away.

Witness D called 9-1-1 and reported the attack on Witness C. Three minutes later, an Emergency Board Operator (EBO) broadcast a radio call for any North Hollywood Unit to respond to a "415" man at the designated location.

Two minutes later, uniformed Police Officers B and C heard the broadcast and advised Communications Division (CD) they would handle the call. During their response to the radio call, Officers B and C heard an unrelated back-up request broadcast by a Motor Unit. According to Officer B, he/she did not hear any units broadcast that they were responding to the back-up request; therefore, Officers B and C interrupted their response and assisted the motor unit.

According to Officer B, he/she was aware that the comments of the battery-related radio call indicated that the battery suspect had left the location. This information factored into Officer B's decision to interrupt their response to the Code Two call involving the restaurant fight, and respond instead to the back-up request. (A radio call accompanied by a Code Two designation is an urgent call and shall be answered immediately.) Officers B and C arrived at the back up location. Approximately 30 minutes after the initial radio call came out, after the arrival of sufficient units to the scene with the motor unit, the officers cleared their status and continued their response to the original designated location involving the restaurant fight.

The North Hollywood police radio frequency was later reviewed, and only an Air Unit and a North Hollywood Patrol supervisor advised they were responding to the back up call involving the motor unit. Four minutes and ten seconds passed before Officers B and C advised that they were responding to the back-up call involving the motor unit.

At approximately 2051 hours (almost 30 minutes after the initial call for the battery incident came out), as captured by surveillance video, the Subject entered the restaurant through a back door adjacent to the rear alley. According to Witness C, the Subject ran directly toward him as he was standing at the rear of the restaurant. The Subject began again punching Witness C in the head, so Witness C dove over tables and ran out of the front of the restaurant in an attempt to escape the assault. As depicted on surveillance video, Witnesses B and F heard the commotion in the back of the restaurant and entered through the front door of the building. According to Witness E, he had been in the restroom, and he came out when he heard plates breaking and Witness D screaming.

The Subject's entry through the rear door of the restaurant was captured by the restaurant's surveillance video. The time stamp on the video was determined to be 12 minutes faster than Pacific Standard Time.

As captured on the restaurant's surveillance cameras, the Subject ran toward the front of the restaurant in pursuit of Witness C, however, unidentified patrons exiting the restaurant managed to get the front door closed, and this blocked the Subject from exiting the restaurant. Witnesses B, F, and G caught up to the Subject, and they stopped him from exiting the restaurant. Witnesses B, E, F, and G grabbed the Subject and struggled with him while remaining standing. They surrounded him and used their hands to pin him against the wall of the restaurant.

During this time, the witnesses grabbed the Subject's upper body and attempted to control him by pinning him against the wall. For the majority of the time, the Subject did not appear to be actively resisting. However, after approximately two and a half minutes, he began struggling again, at which time Witnesses B, E, and F walked backwards and placed the Subject on his back on the ground. Witnesses B, E, F, and G grappled with the Subject for approximately three minutes. This was captured on the restaurant's surveillance video, however, the struggle moved out of view of the camera once they ended up on the ground.

The Subject's feet were pointed towards the front door of the restaurant. Witness F was holding down the Subject's legs, and Witness E was holding the Subject down by his left shoulder. Witness G had the Subject's right arm pinned to the floor, and Witness B was laying across the Subject's chest and using his right hand to hold the Subject down by the throat and neck area. Witness B's thumb was across the front of the Subject's throat, and his right fingers were on the left side of the Subject's neck / throat area.

According to Witness G, he was concerned that the Subject was having difficulty breathing. Therefore, Witness G advised Witness B not to squeeze the Subject's neck too hard. It appeared to Witness G that Witness B didn't hear him, so Witness G ultimately pulled Witness B's arm away from the Subject's neck area.

The Subject remained in this position for approximately two minutes until Officers B and C arrived. During this time the Subject could be heard making loud grunting noises. This was captured on Witness H's cell phone video.

During the subsequent autopsy, the examination determined that there was no injury or trauma to the Subject's neck / throat. Additionally, the Subject did not display any petechial hemorrhaging in his eyes. A petechial hemorrhage is a pinpoint red mark that signifies asphyxia caused by some external means of obstructing a person's airways.

At 2052:38 hours, Witness I called 9-1-1 and advised that the Subject was inside the restaurant and the police were needed immediately. At 2054:04 hours, CD upgraded the call to an emergency call. Officer C acknowledged the call being upgraded and

advised where the officers were responding from. At 2055:44 hours, Officer C notified CD of their status and location, upon arrival at the location (Code Six).

As the officers approached the front of the restaurant, they looked through the door's front window and observed the Subject on his back being held down by Witnesses B, E, F, and G. As Officer C entered, Witnesses B, E, F, and G got up and moved away from the Subject so that Officers B and C could take him into custody. Officer C reached down and grabbed the Subject's right arm. Officer B grabbed the Subject's left arm and rolled the Subject to the left. As the Subject was being rolled over and placed face down on the ground, Officer C released the Subject's right arm and grabbed his left arm. Officer C then placed the Subject's left arm behind his back while Officer C retrieved his/her handcuffs from his/her equipment belt. Officer C handcuffed the Subject's left wrist, then released it, and held onto the handcuff chain and maintained a pistol grip with his/her left hand. Officer C used his/her right hand to apply the second handcuff to the Subject's right wrist, which was being held behind his back by Officer B. At 2057:14 hours, the Subject was handcuffed.

At 2057:16 hours, Officer C verbalized to the Subject while tapping on his back by stating, "Hey man, are you O.K.? Dude!" Officer C did this to see if the Subject was alert and if he knew where he was. The Subject was non-responsive and at 2057:30 hours, Officer B rolled the Subject over and placed him in a seated upright position against the wall of restaurant.

At 2057:50 hours, Officer C requested a Rescue Ambulance (RA) for the Subject. According to Officer C, he/she observed the Subject's chest moving up and down, which caused him/her to believe that the Subject was still breathing, but passed out or was asleep due to his level of intoxication. Officer C continuously monitored the Subject until the ambulance arrived at scene.

Uniformed Police Officers D and E heard the radio call broadcast and responded to assist Officers B and C.

Los Angeles Fire Department (LAFD) Firefighter/Paramedics (FF/PM) A and B, arrived and made contact with the Subject at 2103:58 hours. FF/PMs A and B observed that the Subject was not breathing and determined that he was in a state of cardiac arrest. They rendered aid to the Subject and transported him to a local hospital. Officer D rode in the ambulance with the Subject while Officer E followed behind in their police vehicle. The investigation later established that Officer D performed Cardiopulmonary Resuscitation (CPR) on the Subject while inside the ambulance.

At 2118:32 hours, the ambulance arrived at the hospital. The Subject failed to respond to medical treatment and was pronounced as deceased at 2143 hours.

Officer D contacted Sergeant A, the Patrol Division Watch Commander, and advised Sergeant A that the Subject was deceased. Sergeant A subsequently notified the Department Operations Center (DOC) of the In-Custody Death (ICD).

Uniformed Sergeant B responded to the scene and established command and control. Sergeant B was notified by Sergeant A that the Subject was deceased, and Sergeant B ensured that the involved officers were separated and monitored. Sergeant B admonished the officers not to discuss the incident and monitored Officers B and C until uniformed Sergeant C arrived at the scene.

Sergeant C took Officer B and obtained a Public Safety Statement (PSS) from him/her as Sergeant B monitored Officer C. Sergeant C then obtained a PSS from Officer C as Sergeant B continued to monitor Officer B. Uniformed Sergeant D responded to the scene and monitored Officer C.

At approximately 2155 hours, Sergeant A notified Force Investigation Division (FID) that an ICD had occurred. FID reviewed all documents and circumstances surrounding the event. All protocols were documented.

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 – Does Not Apply** (No “substantially involved” personnel).
- B. Drawing and Exhibiting – Does Not Apply.**
- C. Lethal Use of Force – Does Not Apply.**

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 subject 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

- **Tactical De-Escalation**

Does not apply.

- The BOPC considered the following in evaluating this incident:
 1. **Requesting Rescue Ambulance** – The investigation revealed that Officer C did not inform CD that the Subject had lost consciousness sometime after his/her request for an RA. This was brought to the attention of Captain A, who addressed the issue through divisional training, which was documented in the Learning Management System (LMS). The Commanding Officers of Operations Valley Bureau (OVB) and the Office of Operations (OO) concurred with this action. As such, the BOPC deemed no further action necessary.
 2. **Body Worn Video (BWV) Activation** – The investigation revealed that Officer D deactivated his/her BWV while he/she performed CPR on the Subject inside of the RA. Captain A was notified and addressed the issue through a Supervisory Action Item and divisional training, which was documented. Additionally, Captain A advised that a 60-day BWV audit for Officer D had begun to ensure adherence to BWV protocols. The Commanding Officers of OVB and OO concurred with this action. As such, the BOPC deemed no further action necessary.
 3. **Response Time** – The investigation revealed that there was a delay between the time Officers B and C were initially assigned the call and the time they arrived at the location. The BOPC examined the factors that resulted in the delayed response and found their response time to be reasonable based on the circumstances. The BOPC determined the delay was based on the fact that Officers B and C interrupted their response to the call to respond to a Backup request by another officer because they did not hear any other units broadcast that they were responding. As soon as the officers determined that they were no longer needed at the Backup, they continued their response to the radio call. As such, the BOPC deemed no further action necessary.

No specific tactical finding was warranted in this case, as there were no substantially involved personnel.

B. Drawing and Exhibiting

- Does Not Apply.

C. Lethal Use of Force

- Does Not Apply.

Given that no force was used by officers, and that no officers had a significant tactical or decision-making role in the circumstances surrounding this In-Custody Death incident, the BOPC determined that no findings were warranted.