

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

OFFICER-INVOLVED SHOOTING – 059-18

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Hollywood	10/29/18		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	6 years, 7 months
Officer B	6 years, 4 months

Reason for Police Contact

Patrol officers responded to a radio call of a nude male causing a disturbance at a business. The officers were directed to the location of the Subject by facility personnel. The Subject refused to comply with the officers' commands, and when they attempted to handcuff him, an altercation ensued that resulted in an officer-involved shooting (OIS).

Subject(s)	Deceased (X)	Wounded ()	Non-Hit ()
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Subject: Male, 30 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 September 17, 2019.

Incident Summary

Witness A was an employee at the business where this incident occurred. Witness A started his shift early that morning and conducted a visual inspection of all the areas inside the location. One of his specific duties on that day was to close the restrooms and locker rooms for remodeling. Witness A used two benches stacked on top of one another to barricade the entrance. Witness A also hung yellow tape across the doorway with a sign that said the locker rooms were closed.

During the early morning hours, the Subject entered the gym wearing a football jacket and khaki pants. The Subject walked past the unmanned front desk and did not check-in as is required by rules of the business. The Subject walked toward the locker room area, removed the yellow tape, moved the benches, and entered the locker room. Shortly thereafter, the Subject entered the women's locker room. Two construction workers, Witnesses B and C, were inside working on a renovation project. A short time later, Witness A entered the women's locker room and discovered the Subject inside. At this point, Witness A asked the Subject to exit the locker room and leave the business.

Surveillance video depicts the Subject and Witness A walking out of the women's locker room and talking in the hallway. While doing so, the Subject removed his jacket and moved in close toward Witness A in an apparent effort to physically intimidate him. According to Witness A, he told the Subject that he (the Subject) was rude and asked him to leave the business. The Subject complied.

A short time later, the Subject returned to the business carrying two white plastic bags in his hands. Witness A, who was standing behind the front counter, saw the Subject enter and requested that he "punch-in," to which the Subject replied, "If I'm going to punch anybody, it's going to be you." The Subject ignored the check-in procedure and again walked past Witness A. As the Subject walked away, Witness A asked the front desk clerk, Witness D, to call the police.

Witness D called 9-1-1 and advised Communications Division (CD) of the incident. The call for service was classified as "non-coded," with comments that read in part that the Subject was verbally threatening employees, causing a disturbance, and refusing to leave.

The Subject entered the women's locker room that was closed for repairs and asked Witnesses B and C (construction workers) if he could use the shower. Witness B led the Subject to the men's locker room, moved the benches from the doorway and allowed him to enter the locker room.

A short time later, Witness A called CD, stating the Subject was harassing members of the business and putting his hands on other people, and that the situation was becoming more serious.

The call was upgraded, and CD broadcast to additional Area units that in addition to the Subject creating a disturbance, he was attempting to grab customers and employees.

Officers A and B were assigned the call. The officers were in a marked black and white police Sport Utility Vehicle equipped with a Digital In-Car Video System (DICV). According to Officers A and B, they had been partners working patrol for approximately one year. During that time, they routinely discussed tactics, contact and cover roles, and would frequently debrief incidents. They also discussed hypothetical situations and how they would handle those scenarios should they arise. According to Officer B, they had recently received training pertaining to the encounters with persons with mental illnesses. Officers A and B acknowledged the call on their Mobile Digital Computer (MDC) and responded.

According to Officer B, they did not have any discussions as they responded to this incident.

Meanwhile, back at the business, two security guards, Witnesses E and F, believed they were summoned by Witness A to the business location. According to Witness A, the security guards arrived at the business without being requested. Witness A briefed the security guards of the ongoing incident and then led them to the locker room where the Subject was located. According to Witness F, he approached the Subject and requested that he leave the business, and the Subject refused.

Witness A dialed 9-1-1 a second time and informed CD the Subject was irate, naked, and was trying to fight people. Witness A told CD, "That sounds like an emergency, right?" CD provided additional information that the Subject was naked, being aggressive, and committed a battery.

Officers A and B arrived at the location and used their police radio to place themselves at scene. The officers exited their vehicle and activated their Body Worn Video (BWV). Officers A and B walked through the entrance of the business and met with Witnesses A, E, and F. As Witness A led the officers toward the Subject's location, Witness A briefly informed them that Subject had hurt members of the gym and was irate. The group then approached the men's locker room.

The entrance to the locker room was still barricaded, with two stacked benches and yellow caution tape. Witness A moved the benches to allow the officers to enter. Officers A and B entered the men's locker room with Witnesses A, E, and F following behind. As the officers entered, they observed the Subject in a shower stall. The Subject was nude and drying himself with a small white towel. According to Officer A, the agreement was for Officer A to be the designated contact officer, and Officer B would act as Officer A's cover. However, they would adjust their roles if necessary.

For over four minutes, as captured by their BWV, Officers A and B attempted, without success, to verbalize with the Subject and to gain his voluntary compliance. First, they advised the Subject that he needed to get dressed and leave the location. The Subject at times ignored them, feigned that he was drying himself off, raised the music on his cellphone, danced while naked, told the officers to shut up, and then displayed his middle finger. The officers' BWV depicts that they repeatedly asked the Subject to comply with their requests, but the Subject refused to do so. According to the officers, they were trying to avoid the need to go "hands-on," so they continually altered their verbal tactics and by raising and lowering the audible level of their voices. All attempts to obtain the Subject's compliance proved unsuccessful. Officer A turned toward Officer B, who was behind Officer A, and nodded at Officer B, signaling that they were going to go "hands-on" to detain the Subject.

The officers had previously placed black latex gloves on their hands. Simultaneously, both officers approached the Subject and grabbed him by the arms, with Officer A on the right and Officer B on the left. Officer A had a set of handcuffs in his/her left hand and with his/her right hand, he/she grabbed the Subject's right arm slightly above the elbow. Officer A then handcuffed the Subject's right wrist. As this was occurring, Officer B was attempting to control the Subject's left wrist with his/her left hand and the Subject's elbow with his/her right hand. The Subject resisted by tensing up, which prevented the officers from handcuffing both arms. Both officers specifically gave the Subject directions to stop resisting and to submit to their commands.

The officers continued to struggle with the Subject as they attempted to complete the handcuffing procedure. Officer B attempted to use a reverse C-grip with a wrist flex by forcing the Subject's left arm behind his back, but the Subject was able to pull his left arm away, which prevented the officers from completing the handcuffing procedure.

Officer A can be heard telling Officer B (on BWV) that he/she was going to reach for one of the handcuffs to connect them to form a daisy chain. According to Officer A, the Subject was a large man, therefore, using two sets of handcuffs and attaching them together would have made it easier to handcuff him. As Officer A was attaching the handcuffs together, the Subject broke free from Officer B by pulling his left arm away. The Subject yelled, "Hey brah [sic], what the fuck is going on here?" The Subject continued to pull away from the officers and resist the officers' attempts to handcuff him. Officer A can be heard continuously verbalizing without success for the Subject to calm down. The officers then forced the Subject against the wall and used their body weight on him to force his hands behind his back. Officer A was then able to interlock the two handcuffs together while Officer B attempted to regain control of the Subject's left arm.

Officer B's BWV camera was knocked off its magnetic mount, fell to the floor, and landed with the camera lens facing the ceiling. From this angle, the camera continued recording the officers' attempts to control the Subject. Officer B's BWV video depicted the Subject raising his left hand above his head, which prevented Officer A, who was much shorter than the Subject, from reaching the Subject's arm. As Officer A was attempting to control the Subject's right wrist and arm, Officer A's BWV camera was

also knocked off its magnetic mount and fell to the ground. It landed with the lens facing the floor. This too resulted in continued audio capture, but no video footage from that point on.

The ongoing altercation resulted in the officers and the Subject moving out of view of either BWV camera. The following account is a summation based on the statements of the involved officers and eyewitnesses.

According to Officer B, he/she was able to place the Subject's left arm behind his back by grabbing the Subject's left wrist with his/her right hand, grabbing the Subject's left elbow with his/her left hand, and forcing the Subject's arm behind his back. During this time, the officers were communicating with the Subject to stop tensing up, but he continued to pull his arms straight and resisted the officers' attempts to handcuff him.

The officers then switched sides to better control the Subject. They pushed him against the wall with their body weight and used the wall as a controlling agent. Eventually, Officer A was able to grab the Subject's left arm and bring it down toward his waist area. Officer A then used his/her shoulder to pin the Subject to the wall as Officer B attempted to control the Subject's right arm. The Subject continued to resist by pushing himself away from the wall with his left arm.

According to Officer B, the Subject broke away from his/her grasp and pulled his right elbow backwards, striking him/her in the face. Officer A broadcast an additional unit request on the police radio. According to Officer A, he/she was able to request an additional unit because they were holding the Subject against the wall and he had relaxed. However, the Subject was not handcuffed with his hands behind his back, and the officers were not in complete control of him at this time.

According to Witness A, he returned to the locker room and observed the officers holding the Subject against the wall. According to Witness A, Officer B was on the Subject's right side and Officer A was on his left side.

The Subject continued to resist the officers, and Officer A broadcast to upgrade his/her request for an additional unit to a backup. The units responding to the backup request were Sergeant A, along with Officers C, D, E, F, G, H, I and J.

According to Officer A, during the struggle, Officers A and B and the Subject had moved toward the sinks located in the locker room. Officer A unholstered his/her TASER, removed the dart cartridge, placed the TASER prongs on the Subject's chest, and warned him, "I'm going to tase you if you don't stop resisting. Relax!" The Subject did not respond and continued to resist the officers.

According to Witnesses E and F, Officer A placed his/her TASER on the sink prior to activating it on the Subject. Witness E believed Officer A recovered his/her TASER and used it by placing it on the left side of the Subject's stomach.

Officer B unholstered his/her TASER but did not give a warning to the Subject. According to Officer B, he/she believed the Subject was listening to the officers and further believed he would attempt to break free if he was warned about the use of the TASER.

According to Witness F, he heard both officers give a warning to the Subject that he was going to be tased if he did not cooperate.

According to Officer B, he/she fired the TASER into the Subject's back with his/her left hand from an approximate distance of one foot. The activation lasted for five seconds. Officer B maintained control of the handcuffs with his/her right hand as he/she fired the TASER. Officer A, who earlier had removed the cartridge from his/her TASER, applied the contact prongs onto the Subject's chest. Officer A utilized his/her TASER in drive stun mode and activated it for five seconds.

According to Witness F, he believed the Subject began to act more aggressively as the officers were reaching for their TASERS.

According to the TASER Report, Officer B activated his/her TASER two more times. According to Officer B, both additional activations had no apparent effect on the Subject.

Officer A activated his/her TASER for a second time. Officer A placed the device against Subject's chest and, utilizing the TASER in drive stun mode, activated the TASER for five seconds. This also had no effect on the Subject.

After being tased, the Subject struck Officer A multiple times in the face and head area with his fist that was handcuffed. According to Witness F, the force of the punches knocked Officer A into the lockers and walls. This caused Officer A to bounce back toward the Subject, who then struck Officer A in the face again. According to Officer A, the Subject's punches caused him/her to lose control of his/her TASER, which fell to the ground. According to Witness F, he believed that Officer A was punched more than eight times.

According to Officer B, he/she could not see his/her partner because the Subject was in front of him/her, and the Subject's extremely large frame was blocking his/her view. After Officer B activated his/her TASER the third time, the Subject turned and punched Officer B. According to Officer B, he/she and the Subject were face to face, and Officer B estimated the Subject had struck his/her face with his right fist approximately four times.

According to Witness F, he believed that the Subject was striking Officer B in the face with his half-open hand. Also according to Witness F, Officer B was bleeding from his/her mouth as the Subject was hitting him/her. Meanwhile, Officer A was still dazed and disoriented from the Subject's punches. Officer B was knocked to the ground by the Subject and was attempting to defend himself/herself. The Subject grabbed the

TASER with his left hand and began to push the TASER into Officer B's face, simultaneously hitting Officer B with his right fist, which had the handcuffs attached.

Officer B activated his/her TASER a fourth time. According to Officer B, he/she felt the electricity from the TASER surging through his/her right hand. Officer B's TASER was activated for a fifth time. Officer B believed he/she may have triggered the TASER the fourth and fifth times as he/she was trying to prevent the Subject from pushing the TASER into his/her face.

However, also according to Officer B, he/she had no independent recollection of doing so and was also unsure if the Subject had pressed the trigger. According to Officer B, it could have been the Subject who pressed the trigger during the struggle, specific to the fourth and fifth TASER activations.

According to Officer B, he/she believed the Subject was standing over him/her for approximately 30-40 seconds as he struck him/her multiple times on the right and left side of his/her head. Officer B does not believe that he/she lost consciousness.

According to Witness F, moments prior to the OIS, while the Subject was straddling Officer B, the Subject grabbed Officer A's gun and attempted to pull it out of its holster. Witness F further stated that the Subject was unable to remove the gun because Officer A pushed the Subject away.

Officer A had no recollection of the Subject grabbing his/her service pistol.

According to Witness F, while attempting to assist the officers during their struggle with the Subject, the Subject grabbed Witness E by his jacket and grabbed him (Witness F) by the neck. The Subject pushed Witness E away from him and choked Witness F. Neither Witness E nor Witness F was injured in the altercation, and they did not seek medical attention.

According to Officer A, he/she saw the Subject striking his/her partner multiple times in the head. Officer A observed the Subject standing over Officer B, throwing massive punches at high velocity to Officer B's face, and he/she saw the chain of the handcuffs hitting Officer B. According to Officer A, it looked like the Subject was trying to kill Officer B.

According to Officer A, fearing for the life of his/her partner, and to stop the Subject's actions, he/she unholstered and drew his/her service pistol. Officer A fired five rounds in rapid succession at the Subject. Officer A did so from an approximate distance of 5-7 feet. Officer A fired his/her first round at the Subject as he was punching Officer B. Officer A fired a second round because the Subject continued to punch Officer B. Officer A fired a third and fourth round because the Subject was still punching Officer B. As Officer A fired his/her fifth round, the Subject fell back away from Officer B. According to Officer A, he/she briefly assessed between all the rounds fired, taking into

consideration the exigent circumstances and the likelihood that his/her partner was going to suffer serious bodily injury and/or death.

According to Witness E, he believed Officer A fired two volleys. The first volley was four rounds. Then there was a two to three second pause and then another volley of three more rounds. Although Witness E stated he heard both volleys, he only observed Officer A fire the last three rounds.

According to Witness F, Officer A fired his/her first round, there was an approximately two second pause, and then Officer A fired a second volley of four more rounds in rapid succession.

According to Witness F, Officer A fired two rounds at the Subject. After the second round, the Subject let go of Officer A's wrist. Witness F believed that the Subject looked at Officer A and then began to walk toward him/her, and that Officer A fired two more rounds.

After Officer A fired his/her fifth and final round, the Subject fell back and landed with his head against the wall, underneath a nearby vanity table. According to Officer B, the Subject gained control of his/her TASER as he was shot and falling back away from him/her. According to Officer B, as the Subject fell down to the ground, he had the TASER in what Officer B believed to be his left hand.

According to Witness F, he believed Officer A's TASER flew out of his/her hand when the Subject struck him/her.

According to Witness E, he believed the officers dropped their TASERs when they began to fight with the Subject.

Prior to the OIS, Witness F stated he had requested that Witness E assist him in dragging Officer B to safety by his/her legs as the Subject was striking him/her in the face. According to Witness F, Witness E declined and exited before Witness F. However, the surveillance video clearly depicts Witness A as the first person out of the locker room, followed two seconds later by Witness F, with Witness E exiting approximately six seconds later.

Officers A and B did not immediately approach the Subject after the OIS to handcuff him because he was still holding the TASER in his left hand and therefore unsafe to approach.

Based on the interior surveillance video at the business, Witnesses A and F were not inside the locker room at the time of the OIS, and Witness E was in the process of exiting the locker room.

Officer A broadcast on the police radio a call of “shots fired, officer needs help, Subject down”. Communication Division broadcast the information on the Hollywood Base Frequency.

Officers A and B were alone in the locker room with the Subject for approximately 10 seconds, after the OIS, before Witnesses E and F re-entered the locker room. Officer B broadcast on the Hollywood Base Frequency for a Rescue Ambulance (RA) to respond to render medical aid to the Subject.

Officers A and B continued to be alone in the locker room with the Subject for approximately one minute and fifty-three seconds prior to the first responding units arriving. When assisting officers arrived, they were met by Officer B at the entrance to the men’s locker room. Officer B moved the stacked benches and the yellow caution tape and escorted the additional officers into the locker room. Officer E’s BWV depicted Officer A with his/her pistol unholstered in a low-ready position and pointed at the Subject, who was laying on his back. Officer E’s BWV also depicted the Subject holding a TASER in his left hand in an overhand grip. The TASER’s cartridge wires were exposed and tangled in and around the Subject’s left hand and between his fingers, with blood spatter on the TASER.

LAFD personnel arrived at the scene and determined the Subject to be deceased.

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 Officers A and B’s tactics to warrant a finding of Administrative Disapproval.

B. Drawing/Exhibiting

The BOPC found Officer A’s drawing and exhibiting of a firearm to be In Policy.

C. Non-Lethal Use of Force

The BOPC found Officers A and B’s non-lethal use of force to be In Policy.

D. Less-Lethal Use of Force

The BOPC found Officers A and B's less-lethal use of 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 suspect'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

- During its review of this incident, the BOPC noted the following tactical considerations:

A. Tactical De-Escalation

Officers A and B did not effectively utilize tactical de-escalation techniques during the incident.

In this case, Officers A and B did not formulate a tactical plan prior to encountering the Subject. Upon arrival at the scene, neither officer obtained details about the incident or about the Subject from the staff at the facility. Upon observing the Subject, the officers did not properly assess the threat that he posed to them – i.e., the Subject's size in relation to their own, his non-compliance with their commands, and his escalating aggressive behavior toward them.

The BOPC was critical of the officers' lack of utilizing time in order to redeploy, their delay in requesting additional resources, and their inadequate maintenance of lines of communication with the Subject prior to attempting to handcuff him. By not observing the warning signs of a potentially violent Subject, the officers acted too quickly and placed themselves at a tactical disadvantage during the incident.

Based on the totality of the circumstances, the BOPC determined that the officers' actions of not formulating a tactical plan, not assessing the Subject's threat level, not redeploying, and not utilizing time to request and wait for additional resources was a substantial deviation, without justification, from approved Department tactical training.

B. Profanity

The investigation revealed that Officers A and B used profanity while giving the Subject commands and throughout their contact with him. Although the officers indicated that their use of profanity was intended to establish greater command presence due to the Subject not complying with their commands, Officers A and B were reminded that the use of profanity may unnecessarily escalate the situation.

C. Proper Use of TASER in Drive-Stun Mode

The investigation revealed that Officer A removed the cartridge from the TASER prior to activating his/her TASER in drive-stun mode. Officer A was reminded that to maximize the effectiveness of the TASER, the cartridge should remain attached to the TASER. Generally, after the TASER cartridge is discharged on the Subject, then the TASER can be applied in what is referred to as a three-point drive-stun to an area of the body away from the probe impact site to maximize the effect of the Neural [sic] Muscular Incapacitation (NMI). It was also noted that Officer B activated his/her TASER in probe mode from a distance of approximately one foot. TASER applications are most effective when discharged in probe mode from a distance of seven to 15 feet, as the spread of the probe darts maximizes the effectiveness of NMI. The three-point drive-stun is the recommended mode for instances where a TASER must be utilized in close proximity to a Subject.

The above topics were to be discussed at the Tactical Debrief.

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

In conducting an objective assessment of this case, the BOPC determined that the tactics utilized by Officers A and B substantially, and unjustifiably, deviated from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

B. Drawing/Exhibiting

- According to Officer A, he/she observed Officer B on the ground in a defensive position, with the Subject standing over Officer B, throwing massive punches at high velocity to Officer B's face. The Subject was severely punching Officer B in the head. While the Subject was punching Officer B, the chain of the handcuffs was also hitting Officer B. Based upon his/her observations and belief that the Subject was trying to kill Officer B or cause as much serious bodily injury to Officer B as he could, Officer A drew his/her service pistol and pointed it at the Subject.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, 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 A's drawing and exhibiting of a firearm to be In Policy.

C. Non-Lethal Use of Force

- **Officer A** – (firm grips, physical force, and bodyweight)

According to Officer A, he/she and Officer B approached the Subject because he was not complying, and they wanted to control the situation. Officer A grabbed the Subject's right arm, and Officer B grabbed his left arm. The officers then pinned the Subject against a wall. Officer A handcuffed the Subject's right wrist and attempted to pull the Subject's hand behind his back to handcuff the left wrist. The Subject began to resist and pulled his arm away from Officer B.

According to Officer A, when he/she observed Officer B struggling to control the Subject's right arm, he/she (Officer A) obtained a second pair of handcuffs and attempted to connect the handcuffs together in order to handcuff the Subject's left wrist. The Subject continued to struggle and faced the officers. The officers told the Subject to relax and stop resisting, but they could not control his arms. Again, the officers pushed the Subject against the wall as a controlling agent.

- **Officer B** – (firm grips, joint lock, and bodyweight)

According to Officer B, Officer A handcuffed the Subject's right wrist. When Officer B grabbed the Subject's left wrist, the Subject tensed up and pulled his arm away. Officer B used a finger flex and gave the Subject commands to stop tensing up, but the Subject resisted the whole time. Additionally, Officers A and B pushed the Subject against the wall to use it as a controlling agent.

Based upon the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, while faced with similar circumstances, would believe that the same applications of non-lethal force would be reasonable to overcome the Subject's resistance as he had physically resisted the officers' attempts to take him into custody.

Therefore, the BOPC found Officers A and B's non-lethal use of force to be objectively reasonable and In Policy.

D. Less-Lethal Use of Force

- **Officer A** – (TASER, two five-second activations in drive-stun mode)

According to Officer A, he/she obtained his/her TASER, removed the cartridge, and warned the Subject that he/she was going to tase him, though he/she did not. Officer B then removed and discharged his/her TASER on the Subject in probe mode, which was ineffective. Officer A then activated his/her TASER in drive stun mode on the Subject's back. Officer A released the Subject and then activated his/her TASER a second time on the Subject's back.

- **Officer B** – (TASER, five five-second activations in probe mode)

According to Officer B, he/she drew his/her TASER with his/her left hand while still attempting to control the Subject's arm with his/her right hand. The Subject struck Officer B in the face with his elbow. Officer B advised Officer A that he/she (Officer B) was going to tase the Subject and then discharged his/her TASER in probe mode into the Subject's back.

According to Officer B, he/she observed the Subject punch Officer A an unknown number of times. Officer B could not see what happened to Officer A, so Officer B activated his/her TASER a second time. The Subject then turned toward Officer B and began punching him/her in the face with a fist, while simultaneously grabbing his/her TASER with his left hand. The Subject turned the TASER towards Officer B's face, and Officer B activated the TASER a third time to prevent the Subject from getting control of the TASER and using it on him/her.

The investigation revealed that Officer B's TASER was activated a total of five times during the incident. According to Officer B, he/she activated his/her TASER a total

of three times. The investigation was not able to definitively determine who activated Officer B's TASER the last two times (the fourth and fifth activations), as Officer B and the Subject were struggling for control of the TASER.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, while faced with similar circumstances, would believe that the same applications of less-lethal force would be reasonable to protect themselves and to effect the Subject's arrest. The Subject physically resisted the officers' attempts to take him into custody and escalated the incident by physically assaulting the officers.

Therefore, the BOPC found Officers A and B's less-lethal use of force to be objectively reasonable and In Policy.

E. Lethal Use of Force

- **Officer A – (pistol, five rounds)**

According to Officer A, Officer B was not able to successfully defend himself/herself from the Subject's strikes due to the Subject's physical size as well as his standing position over him/her (Officer B). Officer A believed that if he/she (Officer A) waited longer, the next punch could have been a deadly one. Officer A believed he/she fired approximately four rounds from his/her service pistol at the Subject to stop him from causing serious bodily injury and/or death to Officer B.

The Force Investigation Division (FID) investigation revealed that Officer A fired five rounds at the Subject, from an approximate distance of five to seven feet, in rapid succession. Officer A fired his/her first round at the Subject as he was punching Officer B. Officer A indicated that he/she assessed after firing each of rounds one through four and continued to fire because the Subject continued to punch Officer B. As Officer A fired his/her fifth round, the Subject stopped his assault on Officer B and fell back and away from Officer B. According to Officer A, he/she briefly assessed between all the rounds fired, taking into consideration the exigent circumstances and the likelihood that Officer B was going to suffer serious bodily injury and/or death.

Due to noise reverberation inside the locker room, FID detectives were unable to measure the time lapse between each round fired. The total time between Officer A's first and last rounds was determined to be approximately three seconds.

In its evaluation of the reasonableness of the use of deadly force by Officer A, the BOPC considered both the circumstances facing Officer A at the time the OIS occurred and the series of tactical decisions that were made leading up to the OIS.

The BOPC noted that Officer A used deadly force at a time when, as supported by the accounts of two independent witnesses, he/she and Officer B were being assaulted by the Subject. At that time, the violence of the Subject's assault relative

to the officers' capacities to defend themselves was such that it was objectively reasonable to believe that there was an imminent threat to the officers of death or serious bodily injury.

The BOPC also noted that the violent conclusion to the encounter between the Subject and the officers followed a series of tactical decisions that were contrary to the Department's tactical training regarding de-escalation. As reflected in the analysis of the officers' tactics, identified concerns include the following:

- The officers did not formulate a tactical plan prior to encountering the Subject;
- Upon their arrival at the incident, the officers did not obtain details about the incident or the Subject from the staff at the facility;
- Upon observing the Subject, the officers did not properly assess the threat he posed to them, *i.e.*, the Subject's size in relation to theirs, the Subject's non-compliance, and the Subject's escalating aggressive behavior toward them;
- The officers did not use available time to redeploy;
- The officers did not use available time to request additional resources prior to attempting to handcuff the Subject; and,
- The officers did not observe warning signs that the Subject was potentially violent, and they acted too quickly, thereby placing themselves at a tactical disadvantage.

Once the officers had initiated physical contact with the Subject, it was readily apparent that the Subject's greater size and strength, in concert with his non-compliant behavior, would make it difficult, if not impossible, for the officers to accomplish their goal of handcuffing him. At that time during the incident, there was no exigency that required the officers to stay physically engaged with the Subject. Nevertheless, the officers did not take the opportunity to disengage from their physical struggle and redeploy in order to allow for the assembly of sufficient resources.¹ Rather, the officers stayed engaged as the situation continued to escalate, culminating in injurious assaults on both officers and the ultimate use of deadly force by Officer A.

- The available evidence supports that Officer A's belief that there was an imminent threat of death or serious bodily injury at the time of the OIS was objectively reasonable. However, the tactical decisions made by Officer A leading up to the use of deadly force were at odds with tactical training. As a result of inappropriate tactical decision-making, Officers A and B were unnecessarily and foreseeably placed at a significant tactical disadvantage. This tactical disadvantage dangerously exposed the officers to the Subject's assaultive behavior, to which they were unable to respond effectively using non-lethal and less-lethal force. When assessed in light of the series of substandard tactical decisions leading up to Officer A's OIS, and the nexus between those decisions and the circumstances under which Officer A found

¹ Requests for an additional unit and, subsequently, for back-up were not broadcast until more than two minutes had passed from the start of the physical struggle.

himself/herself compelled to fire his/her weapon, the lethal use of force by Officer A was unreasonable.

Accordingly, the BOPC found Officer A's lethal use of force in this case to be Out of Policy.