

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

**IN-CUSTODY DEATH – 073-12**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes ( ) No (X)</b>
Wilshire	10/22/2012		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Officer A	6 years, 9 months
Officer B	6 years, 7 months

**Reason for Police Contact**

Officers conducting surveillance in an area known for narcotics activity observed the Subject exit an apartment building holding a baggie containing a white substance resembling cocaine. The male was detained and subsequently died.

<b>Subject</b>	<b>Deceased (X)</b>	<b>Wounded ( )</b>	<b>Non-Hit ( )</b>
Male, 56 years old.			

**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 September 24, 2013.

## **Incident Summary**

Officers A, B and C were driving a plain vehicle and conducting surveillance. Officer B was the driver of the vehicle, Officer C was the front passenger and Officer A was seated in the back passenger side seat. All officers were attired in plain clothes.

The officers were driving when they observed a white vehicle, driven by the Subject, park on one side of the street. Officer A immediately recognized the Subject from previous narcotic arrests and had knowledge that he was currently on felony parole. Additionally, he informed his partners that he knew from past contacts with the Subject that the Subject had a propensity to run when confronted by the police.

The officers watched as the Subject exited his vehicle and began to walk on the sidewalk. He then proceeded and entered an apartment complex. He went into an apartment on the second floor of the complex. Because of the Subject's prior narcotics arrest history and the fact that he was in an area known for narcotics, the officers positioned themselves on the corner, facing to observe the Subject's movements. The officers broadcast over the radio that they had arrived at the location.

After approximately five minutes, the Subject exited the apartment, but was signaled back to the apartment by an unknown female. The Subject reentered the apartment and left again after approximately one minute. While the Subject was in the apartment, Officer A had exited his vehicle and concealed himself next to some bushes on the corner.

When the Subject again exited the apartment complex, he walked down the street and past the officers' parked vehicle. Officer B observed the Subject holding a plastic baggie, which he saw contained what appeared to be an off-white rock substance resembling cocaine. Officer B informed Officer A, over the radio, what he had observed. Officer A told the other officers to detain the Subject. Officers B and C exited their vehicle and walked quickly toward the Subject. Officer B watched the Subject examining the contents inside the baggie as he walked.

Officer B began to cross the street, as he walked toward the Subject. When Officer B got within two feet of the Subject, the Subject became startled and began to run. Officer B, in a loud voice, identified himself as a police officer, displayed his badge, and ordered the Subject to stop. The Subject ran, and Officer A saw the Subject, as he was running, place something into his mouth. Officer A believed the object was rock cocaine. As Officer B was running after the Subject, he attempted to grab his radio to broadcast that he was in foot pursuit. As Officer B reached for his radio, he dropped it. Officer C, who was also running after the Subject, saw Officer B's radio fall to the ground and he stopped to pick it up. As Officer B ran after Subject, he saw him throw the baggy he was carrying over his head. Officer B yelled out regarding what he had seen. Officer C ran down the middle of the street in case the Subject darted out.

Officer A was also running after the Subject. He ran at an angle and was the first officer to catch up with the Subject. Officer A attempted to grab the Subject's left shoulder;

however, as he reached toward the Subject, the Subject twisted his upper body, causing him to lose his balance and stumble into a chain link fence. The Subject bounced off the fence and was able to regain his footing as he continued to run away from the officers. As the Subject ran, he tripped on the uneven pavement and fell to the ground. Officer A saw that when the Subject fell, he slid on his palms, elbows, and knees, ending up in a prone position.

Officer B was behind the Subject and immediately applied body weight to the Subject, placing his left knee on the Subject's right buttocks while attempting to get the Subject's hands behind his back. Officer A approached the Subject in an attempt to have the Subject spit out what he had in his mouth, squeezing his cheeks together by applying pressure with the thumb and middle finger of his left hand. At the same time, he tilted the Subject's head forward and pinched his nose. Officer A told the Subject to spit out what he had in his mouth.

According to Officer A, the Subject spit out an off-white, rock like object, which Officer A then recovered. Officer B then handcuffed the Subject. Officers A and B picked the Subject up off the ground and walked him to a curb where they sat him down. Officer A requested a supervisor and a Los Angeles Fire Department (LAFD) Rescue Ambulance (RA) for a "male... approximately 50 years old, complaining of pain to his shoulder, conscious and breathing."

Officer B informed Officer C that the Subject had thrown narcotics near the fence he ran past. Officer B directed Officer C to recover it. Officer C went to the fence, but was unable to locate any additional narcotics. However, he did locate and recover an empty plastic baggie which contained only a white powder residue.

Officer A asked the Subject if he had swallowed any narcotics. He told the Subject that it was very important he tell him if he swallowed any narcotics because if he did, he could become sick or die. Subject told Officer A that he had just the one rock in his mouth, which he spit out.

Specialized unit Detective A notified Communications Division she was responding to the scene. Upon arrival, she spoke with the Subject concerning his arrest. After speaking with the Subject, she requested a patrol unit to respond for transportation. A short time later, the RA arrived at scene.

Officer A told the firefighters how the Subject had been injured, the extent of his injuries, and the fact that he had attempted to swallow what appeared to be narcotics, but had spit it out, and that Subject had assured the officers that he did not swallow any of the drugs. The firefighters, after cleaning and dressing the Subject's injuries, cleared the scene. According to the firefighters, no police officer ever told them that the Subject had possibly ingested narcotics. If they had been informed of that fact, they said that they would have taken the Subject to a hospital immediately.

**Note:** According to Officer A, he flagged down the RA and told the firefighters that the Subject tried to swallow some "dope." He also

indicated he told the LAFD personnel that the officers extracted it and that the Subject indicated he didn't swallow any more. The RA did "their thing," indicated the Subject was okay, and then departed the scene.

Detective A was asked if the RA personnel were informed that the Subject had possibly ingested narcotics. Detective A believed the personnel were informed. Detective A did not have a specific recollection of how the information "came out" but did have a belief that the Fire Department personnel knew. When FID asked Detective A if she had told the RA personnel directly about the narcotics, she stated she could not be sure and did not recall relaying that information.

**Note:** Fire Department personnel treated Subject for abrasions to his hands, knees, left shoulder and the left side of his head. The firefighters determined that the Subject was alert and orientated and did not need to be transported to a hospital. The RA then cleared the scene.

According to Officer A, the Subject's mother and sister arrived at the scene and stood standing across the street. During the time they were present at the scene, they attempted to calm the Subject down. At approximately the same time, a female (Witness A) approached the officers and told them that the Subject was her boyfriend. She was directed to stand across the street with the Subject's mother and sister. The officers explained to her why the Subject was in custody. The Subject began yelling that the officers were going to kill him and that they had a gun to his back.

Witness A yelled at the Subject from across the street and attempted to reason with him. She yelled to him that no one was going to hurt him and no one was pointing a gun at him. Officer A told Witness A that she was agitating the Subject and he was going to have to ask her to leave, but Witness A remained across the street.

Officer C recalled that a female identifying herself as the Subject's girlfriend arrived at the scene. The Subject's girlfriend remained across the street with Officer C and did not have contact with the Subject. Officer C stated that because of his location, he could not hear Officer A's conversation with the paramedics. According to Officer B, Detective A arrived at the location as the RA was treating the Subject.

Officer B stated that he was present when the RA arrived and believed that Officer A had advised the paramedics that the Subject had possibly ingested narcotics. Officer B believed the paramedics questioned the Subject about swallowing narcotics and that the Subject replied he just had the one piece that he spit out.

**Note:** Officer B later clarified during his interview that he was not in a position to hear the conversation between Officer A and the paramedics.

Detective A was at the scene when the RA was requested and when the RA arrived. Detective A believed that RA personnel were informed of the Subject's possible narcotics ingestion, but she was unable to recall who said it or when it was said.

According to the Subject's mother, Witness B, she never responded to the scene and never saw her son interacting with the police or LAFD medical personnel. According to the Subject's sister, Witness C, she responded to where the Subject was arrested, but did not arrive until after the RA had left the scene.

Uniformed Officers D and E responded to the request for transportation. Upon arrival, Officer D recalled the Subject was screaming and yelling, "They're trying to kill me. They're trying to kill me. You have guns pointed at my head."

**Note:** There is no evidence to suggest that any officer was pointing a gun at the Subject, and all officers at the location had their weapons holstered.

After the arrival of Officers D and E, the Subject was assisted to his feet and walked toward Officer D's police vehicle. The Subject walked a few steps and dropped his body. The officers would stand the Subject up and he would drop again or pick up his legs. The Subject refused to get into the vehicle and began to scream and kick the interior panel of the police vehicle's passenger door. According to Officer C, the Subject's mother encouraged him to get inside the vehicle.

The Subject was still uncooperative and sat on the ground. Detective A spoke with him and was able to calm him down. The Subject was then seated in the police vehicle, but was still uncooperative and refused to place his legs in the vehicle. Officer A went to the passenger side of the vehicle and pulled the Subject across the seat. Once inside the vehicle, the Subject sat sideways with his back against the door. He kicked the opposite door once or twice.

Officers D and E drove the Subject to the station. The officers said that the Subject did not make any statements during the transportation. Upon arriving at the station, Officer D attempted to help the Subject exit the vehicle. Officer D noted that the Subject was cold to the touch, unresponsive, and appeared to be unconscious. The Subject was removed from the police vehicle and propped up in a seated position against the back wall of the station. Officer D checked the Subject and stated that he was unable to find a pulse, but noted that the Subject was breathing. Officer D ordered an unknown officer to request an RA.

Officer D indicated the RA arrived approximately 10 to 15 minutes later. Fire Department personnel arrived at the station and attended to the Subject. A paramedic took the Subject's vitals and noted that he was awake, alert and non-combative. As LAFD personnel were evaluating the Subject, a paramedic assigned to the fire company which had earlier assisted at the scene stated that an unknown officer told him that the Subject had previously ingested narcotics.

The RA was dispatched to the station for a man with an altered level of consciousness. They arrived at the scene and observed that the Subject was seated against a wall, yelling incomprehensible nonsensical slurs and was combative.

**Note:** Firefighter/Paramedic A assessed the Subject and stated he believed the Subject was alert, conscious, and in minor distress. Firefighter A recalled that when he initially came into contact with the Subject, he was slouched against the rear wall of the station and was lethargic. Firefighter A checked the Subject's alertness by utilizing painful stimuli, and the Subject did not respond. The Subject also did not respond to any questions asked of him by LAFD personnel. Firefighter A believed that the Subject had suffered a seizure.

The handcuffs were removed from the Subject prior to him being placed on the gurney. After being seated on the gurney, Detective A stated that the Subject attempted to get up and had to be restrained by LAFD personnel. The Subject stated "Shoot me in the head." The Subject continued to yell and began to shake in a manner that the paramedics attributed to him faking a seizure.

Subject was placed in the RA, and transported to a local medical center, with Officer E riding inside the RA. While en route to the hospital, Subject had a seizure and an anticonvulsive medication was administered by the paramedics. A short time later, the seizure ceased and the Subject went into cardiac arrest. Paramedics performed Cardio Pulmonary Resuscitation (CPR) on the Subject until they arrived at the hospital where medical care was transferred to emergency room personnel. The Subject was placed on a ventilator by the hospital staff. He remained on the ventilator until his death five days later.

Officer B recovered the object spit out by Subject. It was described as .94 gross grams of an off-white substance resembling cocaine base as well as a clear plastic baggie which contained an off-white residue. Both items were booked and later analyzed by Los Angeles Police Department Scientific Investigation Division. The analysis revealed that the off-white solid material contained cocaine base, and the plastic baggie contained cocaine residue.

The Los Angeles County Department of Coroner Deputy Medical Examiner performed a post-mortem examination of the Subject's remains. The medical examiner concluded that the Subject's death was an accident, attributed to cocaine toxicity. It was also noted that the Subject had sustained multiple superficial non-fatal abrasions on his knees, palm, shoulder and head. These injuries were determined to be non-contributory to the Subject's death.

### **Los Angeles Board of Police Commissioners' Findings**

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting/Holstering of a weapon by any involved officer(s); and the Use of Force by any involved officer(s). All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort

to ensure that all officers benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC made the following findings.

#### **A. Tactics**

The BOPC found Officers A, B, and C's tactics to warrant administrative disapproval.

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

Does not apply.

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

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

### **Basis for Findings**

#### **A. Tactics**

##### **Tactics**

- In their analysis of this incident, the BOPC identified the following tactical considerations:
  1. Tactical Planning/Body Armor

In this instance, Officers A, B and C did not wear body armor. Being that the officers set out to conduct surveillance and there was no plan of action which would imply that the wearing of body armor would compromise their positions or jeopardize the operation, the applicable Department guidelines required that they wear their body armor.

In evaluating the officers' actions, the BOPC also considered the fact that the officers transitioned from conducting surveillance to initiating contact with the Subject in an attempt to detain him without the benefit of uniformed support personnel or a plan to effectively detain subject(s) should they encounter illegal narcotics activity.

Ultimately, although the BOPC appreciated the officers' initiative and their desire to make an impact on the Area's narcotics problem, officer safety is the BOPC's utmost concern. Based on the intentions of the involved personnel during this incident, their lack of support personnel and their subsequent enforcement actions, the BOPC determined that the officers should have donned body armor prior to deploying in the area.

In conclusion, the BOPC determined that the officers' actions of not wearing body armor in this instance represented a substantial and unjustifiable deviation from approved Department guidelines requiring a finding of Administrative Disapproval. This topic will be discussed at the Tactical Debrief.

## 2. Narcotics Ingestion Protocol

In this instance, Officer A was a narcotics expert, familiar with the signs, symptoms, use, and sales of narcotics. Officer A observed the Subject remove what he believed to be narcotics from a plastic baggie and place it in his mouth while discarding the plastic baggie while he continued running.

At the termination of the foot pursuit, while the Subject was held to the ground, Officer A utilized a Department approved technique to prevent the Subject from swallowing the narcotics and compelled him to spit it out. According to Officer A, he had reason to believe that the Subject put narcotics in his mouth, so he attempted to "jar" the Subject's mouth open and tilted his head forward and pinched his nose. The Subject spit out an off-white rock like substance that resembled cocaine.

Officer A indicated that when he asked, "Is there anything else that you swallowed?" the Subject replied no.

Officer A requested a Los Angeles Fire Department (LAFD) Rescue Ambulance (RA). Upon the arrival of the RA, Officer A informed the fire department personnel of how the Subject had been injured, the extent of his injuries, and the fact that he had attempted to swallow what appeared to be narcotics, but had spit it out, and that the Subject had assured them that he did not swallow any of the drugs. After cleaning and dressing the Subject's injuries, the firefighters cleared the scene.

**Note:** The firefighters denied receiving information that Subject either ingested or held narcotics in his mouth.

The investigation did not definitively determine whether or not the officers informed LAFD RA personnel that Subject had held cocaine in his mouth. However, the Tactics Directive does not require officers to obtain medical treatment for detainees/arrestees who are "*merely holding the substance in their mouth.*"

In reviewing Officer A's actions, the BOPC determined that he followed the Narcotics Ingestion procedural guidelines, which require officers who reasonably believe that a detainee or arrestee has ingested a narcotic to summon an LAFD RA for assessment and treatment.

It was an unfortunate tragedy that at some point, either before or after his initial police contact, the Subject did in fact consume a fatal quantity of cocaine.

However, Officer A was not privy to that information at the time he briefed LAFD personnel of Subject's injuries. The Subject denied that he consumed narcotics and, other than letting Fire Department personnel treat him for his abrasions, the Subject refused any further medical treatment.

The BOPC determined that the officers' actions, regardless of whether or not they informed LAFD personnel of their observations of the Subject temporarily placing the narcotics in his mouth, did not represent a substantial deviation from approved Department tactical training. However, in an effort to enhance future performance and to stress the importance of following the procedural guidelines in the Narcotics Ingestion Use of Force Tactics Directive, the BOPC directed that this topic be discussed during the Tactical Debrief.

## **B. Drawing and Exhibiting**

Does not apply.

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

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

**Officer B** – Body Weight

- In this instance, Officer A caught up to the Subject and grabbed his left shoulder (firm grip); however, the Subject twisted his upper body and lost his balance, stumbling into a chain link fence. The Subject bounced off the fence, regained his footing, and continued to flee. As the Subject ran, he tripped on the uneven pavement and fell to the ground, sliding on his palms, elbows, and knees, and ending up in a prone position.

Officer A tried to put hands on the Subject's shoulders to get a hold of him, and the Subject turned his body. As he twisted his body, there was enough force to push him into the fence. The Subject then bounced off the fence and did not go to the ground. He was able to catch his footing one more time.

Officer B immediately placed his left knee (bodyweight) on Subject's right buttocks. Officer B stated that the Subject kept moving around and resisting the officers. And Officer B was still hanging onto the Subject's right hand. Officer B was then able to grab the Subject's hands, brought them to his back, and handcuffed the Subject.

Based on the totality of the circumstances, an officer with similar training and experience would reasonably believe that the firm grip, bodyweight and physical force used to detain the Subject was reasonable. In conclusion, the BOPC found Officers A and B's use of non-lethal force to be in policy.