

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

LAW ENFORCEMENT-RELATED INJURY – 074-17

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

West Valley 11/19/17

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

Officer A 3 years, 2 months
Officer B 4 years, 9 months
Officer C 4 years, 11 months
Officer D 1 years, 1 month
Officer E 13 years, 5 months
Officer F 7 years

Reason for Police Contact

Uniformed officers responded to a radio call of a silent alarm at a business. Officers observed the Subject behind the cashier area and directed him to exit, with negative results. Officers entered the business and deployed a TASER and used physical force and body weight to take the Subject into custody. The Subject was transported to the hospital and later admitted, resulting in a Law Enforcement-Related Injury (LERI).

Subject(s) Deceased () Wounded (X) Non-Hit ()

Subject: Male, 34 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 the Department is currently legally prohibited from 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 October 23, 2018.

Incident Summary

Uniformed Officers A and B were assigned a radio call of a silent holdup alarm at a local business. Officers A and B arrived at scene and parked along the curb, adjacent to the location. Officer B broadcast that the officers had arrived at the scene (Code Six). As they reached the business, Officer B was advised by two individuals in the parking lot that the Subject in the business was behind the cashier area, acting crazy and attempting to steal cigarettes.

Officer B observed the Subject standing behind the cashier counter, inside of the business. The Subject was pacing back and forth in the cashier area and was repeatedly raising and lowering his hands.

Both officers unholstered their firearms, due to the possibility that the Subject was attempting a robbery, as they obtained positions of cover close to the entrance doors. Officer B used the cover of one of the business' walls, which provided him the ability to observe inside the business while maintaining cover. Officer A took cover behind a vehicle parked in front of the business.

Sergeant A, along with Officers C, D, E, and F, also responded to the radio call and arrived shortly after Officers A and B.

Officers C and D responded and parked at the parking lot entrance to the business. The officers' Digital In-Car Video System (DICVS) was activated and captured the activity in the parking lot. Sergeant A and Officers E and F responded and parked along the curb close to the business and behind Officers A and B's vehicle.

All officers were equipped with BWV, which captured the incident.

Officer F took a position behind Officer B, while Sergeant A and Officer E took a position of cover behind a parked vehicle, alongside Officer A. Officers C and D arrived and unholstered their firearms, due to confronting a possible robbery suspect. They obtained a tactical position of cover behind a parked vehicle, creating a triangulated formation on the Subject. Officer B communicated to the arriving officers that the Subject was behind the counter and walking around. Officer B did not observe the Subject in possession of a weapon; however, he observed him holding a cigarette in one hand and a lighter in his other.

Officer E asserted himself and assumed the role of contact officer. Officer E unholstered his firearm as he repeatedly gave the Subject commands to put his hands up and to exit the business. The Subject would raise his hands, as if following Officer

E's commands, but would then put them back down. The Subject did not follow Officer E's numerous commands to exit. Officer E warned the Subject that if he did not exit, the officers enter the business.

Officer E stated that although he did not observe the Subject in possession of a weapon, he was unsure if he had access to a weapon behind the counter. Officer E's BWV depicted the view of the Subject's lower body blocked by the cashier counter.

A business employee then exited the business and walked toward Officer C. The employee was asked if the Subject was armed, and he replied that he had not seen the Subject in possession of any weapons, which Officer C verbally relayed to the officers.

Officer E advised Sergeant A that he did not believe the Subject would exit the business and asked for further direction. Sergeant A facilitated the formation of personnel to initiate contact and detain the Subject. These personnel included a TASER officer, a beanbag officer and an arrest team. Sergeant A assigned Officer F as the beanbag officer and Officers C and D as the arrest team.

Officer E advised he would join Officer C and assist by opening the front door to facilitate entry of the tactical team personnel. Officer E moved to Officer C's position and holstered his firearm to be able to safely open the front door.

Officers C, D, and E moved toward the front doors. As Officer C reached the front door area, Sergeant A instructed the other officers to move forward. Officer E opened the right side front door for Officer C. Officer C stopped at the threshold of the entrance and initiated verbal contact with the Subject.

Officer C instructed the Subject to keep his hands up and to move from behind the counter. Officer C stated it was his preference to move the Subject to an area where he could better assess whether the Subject was in possession of or had access to a weapon. The instructions to move away from the cashier area were repeated several times. The Subject did not move from behind the counter; however, he kept his hands up. The remaining officers positioned themselves at the front door area, prepared to enter behind Officer C.

Meanwhile, Sergeant A directed Officers A and E to serve as additional arrest team members and instructed them to holster their firearms. Sergeant A directed Officer B to serve as lethal cover and positioned him at the front door, alongside Officer C.

Officer C instructed the officers behind him to provide him cover as he entered the store and walked to one side of the counter. Officer C entered the store, and as he proceeded to the end of the counter, he repeatedly told the Subject to keep his hands up. The other officers entered behind him and obtained tactical positions that avoided cross fire.

Officer C took a position that afforded him an unobstructed view of the Subject; he observed no weapons. Officer C holstered his firearm and repeatedly directed the Subject to get down on his knees. The Subject did not follow those instructions. Officer C instructed the Subject to drop a lighter, which he had been holding in his right hand. The Subject dropped the lighter to the ground.

Officer C unholstered his TASER and directed it toward the Subject. Officer C advised the Subject on multiple occasions that if he did not comply, he would be tased and that it would hurt. The Subject did not comply and repeatedly made statements that he had killed somebody.

Officer C unholstered his TASER as he stood south of the counter. He removed the cartridge and conducted a spark check. He did this as a de-escalation tactic; however, it proved ineffective.¹

Officer C advised the Subject to get on his knees and that if he refused to comply, he would be tased and that it would hurt.

Meanwhile, Officer B repositioned himself to the right of Officer C and directed Officers A and D to holster their pistols and become part of the arrest team. Officer B served as lethal cover. Officer D holstered his firearm. Officer A had holstered his firearm prior to entering the business.

According to Officer C, the Subject was a large and solid individual. Officer C described him as being approximately six feet in height and weighing over 250 pounds. The Subject was wearing a tank top on a cold morning but was sweating profusely. The Subject appeared to be in an altered state, as if under the influence of a narcotic. The Subject paced around, not following instructions, and made numerous incoherent statements that he had killed someone. Based on Subject's physical size, aggressive behavior, and the limited space between the edges of the cashier counter, Officer C opined that it was unsafe to approach him. At that time, Officer C aimed at the Subject's torso and discharged his TASER from a distance of approximately 13 feet.

Officer C's BWV depicted the first TASER activation. The probes can be seen impacting the Subject on the left abdomen and left thigh. The activation appeared to have caused some neuro-muscular incapacitation (NMI) as the Subject leaned back against a merchandise display. The arrest team moved forward. Officer D grabbed the Subject's right wrist, while Officer A grabbed the Subject's left hand. After the five-second TASER activation, the Subject raised his arms and lunged toward Officers A and D, which was captured on Officer C's BWV. The Subject flailed his arms in a grabbing and striking manner, at one point ripping off Officer A's right uniform shirt pocket.

¹ A spark check creates the cycling sound of a TASER activation and is often used as a de-escalation tactic in that the sound can coerce an individual to comply to verbal commands.

According to Officer C, he activated the TASER a second time, immediately after the five-second cycle of the initial activation. Officer C did so because the Subject lunged at the arrest team officers.

Multiple BWV depicted Officers A and D pulling the Subject to the ground by his arms, while Officer C used his left hand to push the Subject's back toward the ground. The Subject landed in a modified prone position, in which he was partly on his left side. Officer D used his left shoulder to put body weight on the Subject's right upper shoulder, while using his hands to control the Subject's right hand. Officer A used his hands and body weight to control the Subject's left arm and left shoulder area. The Subject was struggling with the officers as he moved his body and used both arms to reach and grab at the officers around him. Officer C, while holding his TASER in his right hand, placed his left hand on the Subject's upper back, and placed his left knee on the Subject's lower back area, using his body weight. After the second TASER activation, Officer C warned the Subject that if he did not stop resisting, he would be tased again.

According to Officer C, he activated the TASER a third time because he observed and felt the Subject continue to push and struggle against the officers. Officer C again warned the Subject to stop resisting or he would be tased again. According to Officer C, he activated the TASER a fourth time because the Subject continued to actively resist by moving his legs and torso against the officers. Officer C's BWV captured the Subject state, "I'm done ... I'm sorry." Officer C stated the Subject stopped moving his upper torso but continued to move his legs.

Officer B stated he holstered his firearm once the Subject was on the ground and officers were holding his arms. Officer B unholstered his TASER, believing that Officer C's TASER was not effective since the Subject continued to struggle against the officers. When Officer B observed that Officer C continued to tase the Subject, he holstered his TASER and re-positioned himself to control the Subject's legs. Officer B initially wrapped his arms around the lower portion of the Subject's legs, then used his upper torso's body weight to additionally control them.

Officer E placed a handcuff on the Subject's right wrist, as Officer D controlled the Subject's right arm. Officer E attached a second pair of handcuffs to extend the first set because of the Subject's large build. Officer A pulled the Subject's left arm from under his body to behind his back.

Prior to the Subject being handcuffed, Sergeant A broadcast a request for a Rescue Ambulance (RA).

Officers A, D, E and F assisted in bringing the Subject's arms close enough to allow him to be handcuffed. Officer F used both hands (body weight) to hold down the Subject's shoulders, just after being handcuffed.

Officer C observed that Officer B was still controlling the Subject's legs and requested that the Subject be hobbled. Officer E obtained a Hobble Restraint Device (HRD) from

Officer D and applied it to the Subject's legs, just above his knees. Officer C conducted a pat down search of the Subject with negative results.

The Subject was helped to a standing position by Officers A, C, and E. They attempted to walk the Subject out of the cashier area by holding onto his arms. As the Subject walked, he intentionally lowered his head and struck it against an appliance, located on top of the counter area. (This action was captured on Sergeant A's BWV.) The officers struggled to walk the Subject away from the narrow interior of the cashier area, but they were only able to walk him to the entrance area of the U-shaped counter before the Subject let his body weight fall to the floor. Officers guided the Subject to the floor and placed him on his left side, in a recovery position, until an RA unit arrived.

The RA arrived at the scene and after being assessed, the Subject was transported to a nearby hospital where he was admitted for a medical condition potentially connected to the officers' use of force.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting 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 and Officer E's tactics to warrant a finding of Administrative Disapproval. The BOPC found Officers A, B, C, D, and F's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Officers A, B, C, D, E, and F's drawing and exhibiting of a firearm to be in policy.

C. Non-Lethal Use of Force

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

D. Less-Lethal Use of Force

The BOPC found one of Officer C's uses of less-lethal force, his first TASER activation, to be out of policy. The BOPC found Officer C's other uses of less-lethal force, his second through fourth TASER activations, to be in 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 its review of this incident, the BOPC considered the following:

1. Utilization of Cover (Substantial Deviation – Officer E)

Officer E did not utilize cover while standing in the parking lot of the business giving commands to a possibly armed suspect.

The utilization of cover enables an officer to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options.

In this case, Officer E left a position of cover behind a parked vehicle, while he gave commands to a possibly armed suspect. The BOPC would have preferred that Officer E maintain a position of cover so that, in the event the Subject presented an imminent threat of death or serious bodily injury, Officer E would have been in a position of tactical advantage.

Based upon the totality of the circumstances, the BOPC determined that Officer E's actions were a substantial deviation, without justification, from approved Department tactical training.

2. Building Entry

Officer C stopped in the doorway while entering the location.

In this case, Officer C, who was designated to enter the location first, followed by the arrest team, stopped in the doorway, thereby exposing himself and the arrest team to a possibly armed suspect.

Officer C, along with the other officers, were faced with an uncooperative suspect contained in a location that posed a difficult and challenging layout. While Officer C did stop as he made entry, his actions enabled him to keep an open line of communication with the Subject, while attempting to gain compliance and de-escalate the situation without the use of force.

Based upon the totality of the circumstances, the BOPC determined that Officer C's actions were a substantial deviation, with justification, from approved Department tactical training.

3. Hobble Restraint Device

After the HRD was applied to the Subject's knees, the officers stood him up and attempted to walk him out of the location. Due to the Subject's resistance, he was ultimately placed on the ground for approximately 42 seconds.

The BOPC believed the BWV footage depicted the Subject with his left shoulder against the floor and what appeared to be his knees underneath him, raising his chest and stomach off the ground, which would not generally contribute to positional asphyxiation. Shortly after being in this position, Sergeant A then ordered officers to move him to his side.

Based on the totality of the circumstances, the BOPC determined that while identified as an area for improvement, the officers' actions were reasonable.

- The BOPC also considered the following:
 1. TASER Target Areas – The investigation revealed that Officer C aimed at the Subject's torso area when he discharged the TASER. Officer C was reminded that the optimal TASER target areas are the navel or belt-line area.

These topics were to be discussed during the Tactical Debrief.

Command and Control

It is incumbent upon supervisors at the scene of a critical incident such as this, to demonstrate and exercise supervision that is consistent with Department supervisory and tactical training.

In this incident, Sergeant A took immediate command and control of the situation and ensured that less-lethal tools were available and individual roles were assigned to the officers. Sergeant A then directed the officers to make entry to the store in order to effect an arrest.

Once inside the location, Sergeant A remained near the front door and did not provide direction to the officers on what to do in the event the Subject continued to fail to comply with their commands. The BOPC would have preferred Sergeant A maintained an active leadership role with the arrest team, providing guidance based on the Subject's actions. This lack of active leadership factored into the TASER (first activation) being used on a suspect who was not violent and did not pose an immediate threat.

The BOPC acknowledged Sergeant A's leadership, calmness, and control during the incident, with the exception of allowing the officer to utilize the TASER on a suspect that was not violent or did not pose an immediate threat, and concluded that he did not demonstrate the level of control or supervision expected of a field supervisor during a critical incident.

As a result, the BOPC found that Sergeant A's lack of supervisory oversight during the moments prior to the first TASER activation, substantially and unjustifiably deviated from approved Department supervisory training, and thus warranted a Tactics finding of Administrative Disapproval.

- 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 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 review and discuss the incident and individual actions that took place during this incident.

In conclusion, the BOPC found Sergeant A and Officer E's tactics to warrant a finding of Administrative Disapproval. The BOPC found Officers A, B, C, D, and F's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

- According to Officers A, B, C, D, E, and F, they drew their service pistols due to a possible armed robbery situation and believed that the situation could escalate to one involving the use of deadly force. The officers believed that the Subject might be armed and could not see his hands.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A, B, C, D, E, and F, when 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 Officers A, B, C, D, E, and F's drawing and exhibiting of a firearm to be in policy.

C. Non-Lethal Use of Force

- **Officer A** – (firm grips, takedown, and body weight)

According to Officer A, after the Subject was struck with the TASER darts, he approached him. Officer A used both of his hands to place a firm grip on the Subject's left arm. Officer A performed a takedown and kept ahold of the Subject's left arm once he was on the ground. Officer A then used his hand and forearm to apply body weight to the Subject's left shoulder area.

- **Officer B** – (firm grips and body weight)

According to Officer B, after the Subject was on the ground, he assisted the officers with controlling him by applying firm grips and body weight to control his legs.

- **Officer C** – (body weight)

According to Officer C, after discharging his TASER at the Subject, the arrest team approached and took Subject to the ground. Officer C approached the Subject and used his left hand, knee, and shin to apply body weight to Subject's back.

- **Officer D** – (firm grips, physical force, takedown, and body weight)

According to Officer D, after the Subject was struck with the TASER darts, he approached to take control of him. Officer D used both of his hands to place a firm grip on the Subject's right arm. Officer D then used physical force to pull the Subject's right arm down when he attempted to raise it. Officer A was controlling the Subject's left arm, and together they conducted a takedown, pulling the Subject to the ground.

According to Officer D, after the Subject was on the ground, he used his firm grips, body weight, and physical force to handcuff him with the assistance of additional officers.

- **Officer E** – (body weight)

According to Officer E, while attempting to handcuff the Subject, he used his knees to apply body weight to the Subject's legs.

- **Officer F** – (firm grips, physical force, and body weight)

According to Officer F, after the Subject was on the ground, he used his knee to apply body weight to the Subject's back, used his hands to apply a firm grip to the Subject's left wrist, and assisted additional officers with pulling it behind his back for handcuffing.

Based upon the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A, B, C, D, E, and F, when faced with similar circumstances, would believe that this same application of non-lethal force would be reasonable to overcome the Subject's resistance.

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

D. Less-Lethal Use of Force

- **Officer C** – (four five-second TASER activations in probe mode)

First TASER Activation

According to Officer C, the Subject was aggressive and unsafe to approach. Officer C decided that he was going to use the TASER to allow the arrest team to take him into custody. Officer C aimed his TASER at the Subject's torso and discharged it.

Second TASER Activation

According to Officer C, after the first five-second activation ended, the Subject lunged at the officers. Officer C then activated his TASER a second time.

Third TASER Activation

According to Officer C, after the Subject went to the ground, the second five-second activation ended. There was a big struggle, and the Subject was fighting as the officers were attempting to get his hands to take him into custody. At that point, Officer C activated his TASER a third time.

Fourth TASER Activation

According to Officer C, after the third five-second activation ended, he still felt the Subject actively resisting. Officer C told the Subject to stop resisting, but he continued fighting. Officer C then activated his TASER a fourth time.

Based on the totality of the circumstances, the BOPC determined that the Subject was not violent and did not pose an immediate threat at the time of Officer C's first TASER activation.

Therefore, the BOPC found Officer C's first use of less-lethal force to be out of policy.

Additionally, the BOPC determined that an officer with similar training and experience as Officer C, when faced with similar circumstances, would believe that the application of less-lethal force (the second, third, and fourth TASER activations) would be reasonable because the Subject, during that time, was violent and posed an immediate threat to the officers.

Therefore, the BOPC found Officer C's second, third, and fourth uses of less-lethal force to be in policy.