

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

LAW ENFORCEMENT RELATED INJURY 082-13

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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77 th Street	09/06/13		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	1 year, 6 months
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Reason for Police Contact

Officers were flagged down regarding a “man down.” Officers made contact with the Subject, who became aggressive, and a law enforcement-related injury (LERI) occurred.

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
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Subject: Male, 48 years of age.

Board of Police Commissioners’ Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on August 26, 2014.

Incident Summary

Officers A and B were driving west on a major boulevard, when a motorist driving east in the number one lane flagged them down. The unidentified motorist advised the officers that he observed the Subject collapse on the sidewalk. Officer B drove further west and the officers observed the Subject lying on the sidewalk as another male stood over him looking like he was trying to tend to him. The Subject was lying on the sidewalk between a metal bus bench and a 9-foot high wrought iron fence in front of a closed church.

Officer B negotiated a U-turn at the intersection. Officer B parked the officers' police vehicle along the south curb next to the Subject, and the officers exited their vehicle.

Officer B advised Communications Division (CD) that the officers had arrived at the scene. The unidentified male standing over the Subject told the officers that the Subject had fallen, and he was going to call an ambulance. The male left without identifying himself.

Officers A and B approached the Subject. The officers did not observe any injuries to the Subject; however, they could smell an odor of alcohol, the Subject's eyes were red, and his speech was slurred. Officer A asked the Subject what was going on and the Subject stated he had been drinking and was sick with acquired immunodeficiency syndrome (AIDS). The Subject did not say why he was lying on the sidewalk.

Officers A and B attempted to escort the Subject to the bus bench; however, the Subject was unable to stand. The officers lowered him back to the sidewalk. Officer A obtained the Subject's California driver license and provided it to Officer B, who utilized the officers' Mobile Data Computer to inquire if the Subject had any warrants. Officer B's search returned with negative results.

A short while later, a Los Angeles Fire Department (LAFD) Rescue Ambulance, staffed by Firefighters A and B arrived on scene and advised Officers A and B that they had received a call of a man down. Officer B advised them that the Subject had AIDS.

Firefighters A and B observed the Subject on his back near a bus bench and attempted to speak with the Subject. The Subject appeared intoxicated and did not cooperate with their assessment.

The Subject was able to stand with the assistance of Firefighters A and B, who directed him to have a seat on a gurney. The Subject was to be transported to a medical facility because of his condition and being unable to care for himself. The Subject became aggressive and he grabbed ahold of the wrought iron fence with both of his hands, stating he did not want to be treated or to go to the hospital.

Firefighters A and B were unable to complete the examination of the Subject for injuries. Due to the Subject's aggressive demeanor, Firefighters A and B walked back toward the curb and allowed Officers A and B to step in and attempt to control the Subject.

Officer B then broadcast a request for an additional unit to assist at their location for a man who was causing a disturbance. Officer B then attempted to calm the Subject by explaining what the firefighters wanted to do and that he would be able to leave the hospital as soon as he felt better.

The Subject released his grip on the fence, walked behind the bus bench, removed his shirt and threw it on the ground.

The Subject, facing Officers A and B, clenched his fist and held his hands in front of him above the waist, in a combative stance. He also began to flex his torso and grind his teeth.

Officer B ordered the Subject to turn around and place his hands behind his back. The Subject turned and faced the wrought iron fence as he placed his right hand above his left wrist and stood rigid, facing south. Officer B, believing the Subject was cooperating, approached from the west, as he informed Officer A, who was east of the Subject, that he was going to handcuff the Subject. As Officers A and B walked closer to the Subject, the Subject reached up with both hands and grabbed onto the wrought iron fence. Officer B directed Officer A to step back, as both officers moved toward opposite ends of the bus bench.

Given the Subject's aggressive and combative demeanor and his concern for AIDS contamination if an altercation occurred, Officer A unholstered his Department-issued TASER and held it in his left hand, down by his side, trying to conceal it from the Subject. The Subject, observing Officer A unholster the TASER, let go of the fence and turned toward Officer A, with both of his fists clenched down by his side and flexed his muscles. He then challenged Officer A to tase him. Officer A was approximately seven feet in front of the Subject, facing west. Officer A raised the TASER with his left hand and transitioned it to his right hand and held it with a two-handed grip, index finger along the frame. Officer A activated the TASER and aimed the red dot at the Subject's waist line.

The Subject stood with a blank stare, took one step toward Officer A and then one back. Officer A warned the Subject not to step toward him. Officer B repositioned himself closer to Officer A and ordered the Subject to turn around and place his hands behind his back. Officer B warned the Subject that he would be tased and that it would hurt and could cause great bodily injury or death.

The Subject continued to face Officer A, as Officer A instructed the Subject to place his hands on the gate and not move.

The Subject did not comply with the commands and continued to clench his fist and flex his muscles. The Subject then took another step toward Officer A with his clenched fists in front of him. Fearing for the safety of himself and his partner, Officer A discharged his TASER when the Subject was approximately five feet from him. The TASER darts made contact with the Subject's middle front torso area and completed a three-second activation, causing the Subject's body to stiffen and fall backwards. As he fell, the Subject struck his face on the metal bus bench before hitting his head on the sidewalk, rendering him unconscious. The Subject sustained a facial fracture and was admitted to the hospital for his injuries.

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). 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 unanimously made the following findings.

A. Tactics

The BOPC found Officers A and B's tactics to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

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

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC identified the following tactical considerations:
 1. Code Six

In this instance, Officers A and B stopped their police vehicle to determine if the Subject was in medical distress. Consequently, Officers A and B did not notify Communications Division (CD) of their location.

Officers are given discretion to determine the appropriate time to notify CD of their Code Six location. In this circumstance, Officers A and B stopped their vehicle to determine if the Subject was possibly injured or in need of medical attention.

Officer A obtained the Subject's identification and conducted a want/warrant check while Officer B was simultaneously conducting a Code Six broadcast. Although Officers B and A did not notify CD of their location for approximately two minutes, the BOPC balanced their delay with their initial concern for the Subject's potential medical needs. Consequently, the BOPC determined that, based on the totality of the circumstances, Officer B's broadcast was reasonable and did not represent a substantial deviation from approved Department tactical training.

2. RA Request

Officers A and B observed the Subject lying on the sidewalk. The officers formed the opinion the Subject was under the influence of alcohol. Officer B repeatedly asked if the Subject needed medical treatment. Although the Subject advised that he did not need medical treatment, a request for a Rescue Ambulance (RA) would have been beneficial to the officers' investigation based on their expressed belief that he was under the influence of alcohol.

3. Securing the Scene

A review of the Digital-In-Car Video System (DICVS), depicted numerous pedestrians walking through the scene. Consequently, Officers A and B were reminded of the importance of maintaining the integrity of the crime scene. Therefore, this will be a topic of discussion during the Tactical Debrief.

4. Administrative Supervisory Documentation

The FID investigation revealed police personnel inadvertently failed to complete the Intradepartmental Correspondence Assessment of Supervisory Response within the required ten days as a result of the status change of the investigation from a NCUOF to a CUOF incident.

5. Updating Status

The FID investigation revealed Sergeant A's status showed him en route to the incident but went Code Six approximately 20 minutes after he met with Officer B. The DICVS revealed Sergeant A arrived at scene and made contact with Officer B immediately after the supervisor request.

6. Use of Force Warning

A review of the DICVS revealed Officer B issued a verbal warning by stating, *“Hey, man, we’re going to wind up tasing you, which will cause serious bodily injury or death.”* Although Officer B provided the verbal warning, he is reminded that the term *Death* is not utilized in administering the warning.

7. TASER Documentation

The FID investigation revealed Officer A’s TASER, Recorded Firing Data, was downloaded and consistent with Officer A activating the TASER once for three seconds. The recording also documented a one second activation of the TASER which is consistent with Officer A conducting an equipment check at his start of watch. The internal stamp of the TASER was four minutes and 25 seconds fast.

- 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.

After a thorough review of the incident, the BOPC determined that the identified areas for improvement neither individually nor collectively substantially and unjustifiably deviated from approved Department tactical training. Therefore, 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 with the objective of improving overall organizational and individual performance.

In conclusion, the BOPC found Officers A and B’s tactics to warrant a Tactical Debrief.

B. Less- Lethal Use of Force

- **Officer A – One TASER Activation**

Officer A deployed the TASER when the Subject became agitated and removed his shirt while flexing his muscles and clenching his fists. Additionally, Officer A surmised the Subject was unsafe to approach due to demeanor and the fact that he had AIDS. The Subject turned around, faced Officers A and B while taking an additional step in their direction. Officer A warned the Subject to stop or he will be tased. The Subject responded by stepping back, then immediately moved toward Officers A and B. Officer A advised the Subject to maintain his position, at which time he (the Subject) advanced toward Officers A and B. Consequently, Officer A pointed the TASER at the Subject’s belt line and discharged the TASER from a distance of five feet.

Department policy states that the decision to use force must be judged through the perspective of a reasonable officer with similar training and experience and in a similar circumstance. The BOPC determined that an officer with similar training and

experience would reasonably believe that the Subject's actions, combined with the fact that he had AIDS, could have placed the officers into a situation wherein a prolonged struggle while effecting an arrest was likely. Therefore, the application of less-lethal use of force, to stop the Subject's actions was reasonable. As such, the BOPC found Officer A's less-lethal use of force to be objectively reasonable and in policy.