

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

LAW ENFORCEMENT RELATED INJURY – 099-13

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Hollenbeck 07/20/13

Officers(s) Involved in Use of Force	Length of Service
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Officer A	8 years, 9 months
Officer B	13 years, 8 months
Officer C	16 years, 9 months
Officer D	23 years, 11 months

Reason for Police Contact

Officers A, B, C and D were attempting to detain the Subject for throwing rocks onto the freeway. The Subject fled on foot and resisted arrest, resulting in a Law Enforcement Related Injury (LERI).

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
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Subject: Male, 49 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 Los Angeles Police Department Command Staff presented the matter to the Chief 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 November 04, 2014.

Incident Summary

On the date of this incident, Patrol Division uniformed Police Officers A and B were driving south when Witness A flagged them down. Witness A directed them to a male, who was approximately 300 feet to the north of them, on the east sidewalk, throwing rocks onto the freeway.

Officer B turned around in his seat and observed the Subject appearing to throw rocks toward the freeway. Officer A made a “U” turn and began driving toward the Subject, who was standing on the east sidewalk. To provide them a position of cover, Officer A stopped their police vehicle at an angle to the Subject, facing in a northeast direction. Officer B broadcast to Communications Division (CD) that they were Code Six on a “415 man” and provided their location prior to exiting their police vehicle. Believing that the Subject had possibly been throwing either rocks or bottles, Officer A felt the situation could possibly escalate to the level of deadly force and unholstered his firearm to a low-ready position, while simultaneously directing his partner to deploy the TASER.

Officer B retrieved the TASER from the police vehicle and stood behind his open passenger door for cover. As Officer B aimed the TASER in the Subject’s direction, Officer A began to give the Subject commands to turn around and put his hands on his head.

The Subject was standing northeast of the officers between a metal guardrail and freeway chain link fence. The Subject was not compliant with the officers’ verbal commands and simulated holding a machine gun with both hands, firing it in rapid succession from side to side. Officer B stepped away from his vehicle and onto the sidewalk assuming the role of contact officer. Officer B warned the Subject that if he did not turn around and place his hands on his head, he would shoot him with the TASER. While that occurred, Officer A observed that the Subject had nothing in his hands and consequently holstered his pistol to broadcast a backup request to CD.

With clenched fists, the Subject began walking toward Officer B. Believing he was about to be attacked, Officer B fired the TASER at the Subject’s center body mass from a distance of approximately 15 feet. As the probes contacted the Subject’s clothing, he backed up, but otherwise appeared unaffected by the TASER’s electrical discharge. Officer B activated a second electrical charge also without effect. The TASER probes dislodged from the attached wires when the Subject wrapped them around his wrist and pulled them off his clothes; one probe fell to the ground, and the other remained on the Subject’s clothing.

Note: Officer B collected the TASER wires and cartridge from the scene and discarded them in the trash prior to having knowledge that the non-categorical use of force would later be deemed categorical. Officer A observed one probe attached to the Subject’s clothing after the use of force ended, but it was never recovered.

The Subject turned and ran north approximately 400 feet and crossed over to the west sidewalk. Officer A broadcast the Subject's description and direction of travel as he and Officer B entered their police vehicle to follow him.

Meanwhile, Patrol Division uniformed Police Officers C and D were in the area and responded to Officer A's backup request. While driving south across the freeway overpass, Officers C and D observed the Subject running toward them and stopped approximately 20 to 30 feet in front of him against the curb.

The officers exited their vehicle and Officer D ordered the Subject to stop. The Subject responded by moving his right hand toward his waistband, as if he were reaching for a weapon. Officer D unholstered his pistol because he believed the Subject was possibly armed. The Subject removed his hands from his waistband and ran down the sidewalk of the overpass, past the officers, as Officer C positioned himself to the rear of their police car. Officer D holstered his weapon, and along with his partner, ran after the Subject.

As the Subject continued to flee, Officers A and B drove past him approximately 25 to 30 feet, crossed over into the southbound lanes of traffic, and stopped against the curb. Officer C caught up to the Subject after a short foot pursuit and placed his hands on the back of the Subject's shoulders. Officer C's momentum caused him to pass immediately in front of the Subject, and as he was still in motion, Officer C turned to face the Subject as he now continued to run backwards. The Subject simultaneously put his hands against Officer C's chest, and their momentum caused both men to fall to the sidewalk.

Note: According to Officer D, the Subject deliberately pushed Officer C.

Officer C struck the back of his head on the concrete, while the Subject, due to his momentum, fell to a prone position beside him, striking his face on the ground. Officer C immediately rose to his feet and placed his hands on the Subject's back while applying pressure to keep him from getting up. Almost simultaneously, Officer D caught up with them and placed his left knee on the Subject's upper back while applying pressure with his hands to his back area. The two officers continued to communicate with the Subject, ordering him to stop resisting as they held him down. The Subject responded by kicking his feet and placing his arms underneath his body.

Officers A and B exited their vehicle and observed the Subject face down on the ground with Officers C and D on top of him. Officer A approached the Subject's right side and grabbed his right arm, which was tucked underneath his body. The Subject resisted Officer A by stiffening his arm and trying to pull it away from him. Officer D assisted by grabbing the Subject's right arm with both hands and tried to pull it out from underneath him. The Subject started to shake violently, twist his body, and kick his feet.

As Officer A tried to pull the Subject's arm out from underneath him, he felt what he described as a "pop" in the Subject's right arm. Officer A, with Officer D's assistance, was able to move it behind the Subject's back and place a handcuff around his right

wrist as Officer C continued to apply pressure to the Subject's back. Officer B stood by and observed, but did not engage in the attempt to handcuff. Within a few moments, Officer D was able to remove the Subject's left hand from underneath his body and handcuff it with the assistance of Officer A without further incident.

Shortly thereafter, Sergeant A arrived on scene and after being briefed by the officers as to what had occurred, began conducting a non-categorical use of force investigation, which involved photographing the scene and canvassing the area for potential witnesses.

Once the Subject was taken into custody, he was positioned in a seated position, and Officer B observed that the Subject was bleeding from a small laceration on his forehead and had noticeable swelling to his right elbow/forearm. Officer B broadcast a request for a Rescue Ambulance (RA), which arrived shortly thereafter. The Subject was evaluated at the scene and was determined to have sustained a dislocated elbow. He was transported to a nearby hospital for medical care.

The Subject was admitted to the hospital for treatment related to his elbow. Upon learning that this use of force was a categorical use of force, Sergeant A initiated the standard separation and monitoring protocols with respect to the involved officers.

Despite Officers A and B's initial belief that the Subject had thrown objects onto the freeway and/or roadway, they were not able to locate evidence to that effect, nor were they able to find any victims. Consequently, the Subject was not arrested for this incident, and medical personnel at the hospital subsequently placed him on a 72-hour mental evaluation hold.

Note: Officer C sustained a mild concussion and an abrasion to his right elbow. He was treated for his injuries and placed on Injured on Duty status. Officer D sustained a minor abrasion to his right elbow and also received medical attention.

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 and Exhibiting 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 unanimously made the following findings.

A. Tactics

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

B. Drawing/Exhibiting

The BOPC found Officers A and D's drawing and exhibition of a firearm to be in policy.

C. Non-Lethal Use of Force

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

D. Less-Lethal Use of Force

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

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC identified the following tactical considerations:

1. Tactical Vehicle Deployment

Officers A and B drove their police vehicle into oncoming lanes of traffic and drove past the Subject in an attempt to cut him off.

Officers are given discretion regarding the most advantageous position to place the police vehicle. In this circumstance, Officers A and B were involved with a Subject they believed was possibly throwing rocks onto the freeway. Additionally, the officers surmised that the Subject was possibly under the influence but did not appear to be armed. Officer A recalled that the Subject appeared agitated and was possibly under the influence. Officer A recalled that he was not sure what he was going to come across. According to Officer A, when he did not see anything in the Subject's hands, he began to holster his weapon.

Officer A then drove his police vehicle on the opposite side of the street, past the Subject in an attempt to detain him. Officer A recalled that it was very quick and he could see Officers C and D. According to Officer A, it appeared that Officers C and D were exiting their vehicle, and he was trying to focus because he was driving on the opposite side of the street now in order to make contact with them as well as the Subject.

According to Officer A, this is why he made a quick decision to drive further north past the Subject and get as close as he could to the sidewalk to deploy and

detain him. Officer B recalled that when the officers tried to cut off the Subject, they went approximately 30 feet in front of their vehicle.

The BOPC considered Officers A and B's decision to drive past the Subject, against vehicle traffic, in an attempt to detain him. The BOPC determined that although it is generally discouraged, in this unique circumstance, it was reasonable, based on the fact that the Subject was most likely unarmed and the fact that a pedestrian is highly mobile and can evade detention of officers.

The BOPC realized that the actions of driving against vehicle traffic, past a Subject and stopping in front of him deviates from approved Department tactical training. However, in this specific circumstance, the BOPC's expectation is for officers to take decisive action to minimize the continued threat to public safety. In this case, based on the facts and circumstances of the contact, the BOPC believed that those actions were reasonable.

Therefore, the BOPC found that Officers A and B's actions deviated from approved Department tactical training, but were justified. However, to enhance future performance, this topic will be discussed during the Tactical Debrief.

2. Handcuffing Persons with a Mental Illness

An unidentified officer removed the Subject's handcuffs after taking him into custody and prior to transporting him in an ambulance.

Handcuffing a detainee is not based on rigid criteria; rather it is determined by the nature of each situation as perceived by the officer. The decision to use restraining procedures and devices depends on common sense and good judgment. The primary purpose of handcuffing is to maintain control of the detainee and to minimize the possibility of escalating the situation to a point that would necessitate more drastic means of restraint. Handcuffing may provide safety for the officer, the detainee, and/or another person. In this instance, the officers were unable to locate any witnesses and did not observe the Subject throwing any objects onto the freeway. Consequently, the Subject was not arrested.

Note: CD later informed Officer B that the California Highway patrol (CHP) had no reported victims in the location of the incident.

Officer A recalled that the RA arrived, and the Subject was released to the paramedics, informing them that it was going to be a medical situation only. Officer A then spoke with his supervisor and advised him of the facts and that the citizen who initially contacted them had left the area, so there was no victim. Officer A recalls that Officer B then got in the RA with the Subject and assisted with the transportation to the hospital. According to Officer A, the Subject was not handcuffed. Although Officer A advised the Subject that he was not in custody, he was completely belligerent and was screaming.

Sergeant A recalled the reason the Subject was initially transported by the RA was because he appeared to be under the influence. Sergeant A recalled that the Subject was not in custody and needed to be cleared by medical personnel and/or mental health unit. According to Sergeant A, the Subject was not transported solely as a result of his medical needs. Sergeant A recalled that he was also transported in the RA for possibly being under the influence or an overdose.

In this case, the BOPC concluded that it would have been beneficial for Officers A and B to have left the Subject handcuffed while being transported to the hospital. The Subject had already been involved in a non-lethal use of force with the officers and was displaying symptoms of possibly being under the influence of a controlled substance, as well as possibly suffering from a mental illness.

In this circumstance, the officers were unsure about the specific reasons for detaining or arresting the Subject. This confusion led to a situation wherein the Subject was transported, via RA, while un-handcuffed. Although Officers A and B deviated from approved Departmental training, it was unclear when or if the Subject would actually be detained for a mental illness hold under section 5150 of the Welfare and Institutions Code. Therefore, the officers' actions were reasonable. Nonetheless, the importance of handcuffing persons with mental illness that are taken into custody is something that should be looked at carefully. Therefore, this topic will be discussed during the Tactical Debrief.

- The BOPC additionally considered the following:
 1. Arrest and Release of the Subject

In this case, the Subject was taken into custody as an arrest consistent with section 835 of the California Penal Code, which states that an arrest is made by actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

After the officers determined that they were not going to pursue charges against the Subject, they released him to LAFD personnel pursuant to section 849(b) (1) of the California Penal Code, which states that any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever he or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested. Subsequently, LAFD personnel transported the Subject to a local hospital for a medical necessity, where he was admitted as a result of his injury and ultimately placed on a 72-hour mental evaluation under section 5150 of the Welfare and Institutions Code.

- 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 the individual actions that took place during this incident.

In conclusion, the BOPC found Officer's A, B, C and D's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

- Officers A and B were directed by an unknown citizen toward the Subject, who was possibly throwing rocks onto the freeway. Both officers drove toward the Subject, at which time Officer B believed the Subject was throwing unknown objects toward the freeway. Officer A parked and exited his police vehicle. Believing the situation could escalate to the point where deadly force may be necessary, Officer A drew his service pistol.

Officer A was under the impression that the Subject was possibly throwing rocks or bottles onto the freeway. Officer A could not see from the distance what he was throwing or the manner he was throwing them, but believed that the Subject's actions could cause serious bodily injury to himself and his partner.

Officers C and D responded, and they observed the Subject running north toward them and stopped their police vehicle approximately 20 to 30 feet in front of him against the west curb.

Officers C and D exited their vehicle, and Officer D ordered the Subject to stop. The Subject responded by moving his hand toward his waistband as if he was reaching for a weapon. Consequently, Officer D drew his service pistol. Officer D recalled that the Subject did not have anything in his hands. As Officer D exited his vehicle, he reached for his waistband, simulating as if he had a weapon. Officer D stated that since the Subject was going for his waistband, he drew he weapon.

In evaluating the actions of Officer A, the BOPC took into consideration that he believed the Subject was throwing rocks or bottles, which could result in serious bodily injury to him and his partner. In evaluating Officer D's actions, the BOPC took into consideration that he observed the Subject reaching for his waistband as if he was reaching for a weapon, causing him to recognize that the situation could escalate to a life-threatening situation.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and D, while faced with similar circumstances would reasonably believe there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officers A and D's drawing and exhibiting of a firearm to be in policy.

C. Non-Lethal Use of Force

- **Officer A** – Firm Grip, Physical Force
- **Officer C** – Physical Force, Bodyweight
- **Officer D** – Bodyweight, Firm Grip and Physical Force

Officer C overtook the Subject after a short foot pursuit and utilized physical force by placing his hands on the back of the Subject's shoulders.

Note: According to Officer D, his and Officer C's foot pursuit of the Subject lasted approximately 3-5 seconds and traversed approximately 20-30 feet.

Officer C's momentum caused him to immediately pass in front of the Subject and onto the Subject's left side. As he was still in motion, Officer C turned to his right to face the Subject as he now continued to run backwards. The Subject turned in a clockwise direction and put his hands on Officer C's chest, and their momentum caused them to fall to the ground. Officer C recalled that he was running and then was sideways. Officer C recalled that he was running sideways and the next thing he knew he was running facing the Subject. Officer C then remembered his arms coming out towards his chest and falling backwards.

Officer C struck the back of his head on the concrete while the Subject fell in a prone position beside him. Officer C immediately rose to his feet and placed his hand on the Subject's back and utilized bodyweight to keep him from getting up. Officer C recalled that as soon as he fell, he immediately got up and placed his hand on his back to hold him down.

Simultaneously, Officer D arrived and utilized bodyweight by placing his left knee and hands on the Subject's upper back to hold him down. Officer D recalled that he took his left leg and placed it down on his upper back. The Subject responded by tucking his arms beneath his body, with his elbows in toward the middle of his body and his fists underneath his chin. The Subject then began kicking his feet.

Officers A and B exited their police vehicle and observed the Subject face down on the ground with Officers C and D on top of him. Officer A approached the Subject's right side and utilized a firm grip and physical force to grab the forearm/wrist area of the Subject's right arm with both hands. Officer A recalled that he utilized a firm grip. Officer A believed that he grabbed the Subject's wrist or forearm area and was trying to pull it back and place it into his back so they could complete the handcuffing process.

Although Officers A, C, and D directed the Subject to stop resisting and give them his hands, the Subject continued to resist the officers by shaking his body, kicking his legs, and attempting to pull his arms away from them. To overcome the Subject's resistance and gain control of his right arm, Officers A and D utilized a firm grip and physical force to remove the Subject's right arm from beneath his body, resulting in the Subject dislocating his right elbow. Officer A recalled he was verbalizing where his arms were and telling other officers to assist with getting his arms out from underneath him. Officer A recalled that the Subject had his right arm tucked underneath him and he was working on trying to get his arms, yet the Subject kept pulling them back in. Accordingly, Officer A used force to overcome the Subject's resistance. The Subject was shaking around violently, moving on the ground and squirming. As the Subject was doing this, Officer A felt a pop in the Subject's arm.

Officers A and D were able to move the Subject's right hand behind his back and place a handcuff around his right wrist. Officer D then assisted Officer C, utilizing a firm grip and physical force to pull the Subject's left arm out from underneath his body and place his left hand behind his back. Officer D recalled that at that time another officer showed up, the officers told him that they needed to get the Subject's arms out and to grab an arm. According to Officer D, he was yelling at the Subject to give him his arm and to stop resisting and be still. The Subject was subsequently handcuffed and taken into custody without further incident.

The BOPC determined that an officer with similar training and experience would reasonably believe that the non-lethal force utilized to effect the arrest of the Subject was justified. As such, the BOPC found Officers A, C and D's non-lethal use of force to be objectively reasonable and in policy.

D. Less-Lethal Use of Force

- **Officer B** – Two TASER activations

Upon arrival, Officers A and B exited their police vehicle and attempted to initiate contact with the Subject. The Subject appeared upset and his body became rigid. Subsequently, Officer B issued verbal commands, telling the Subject that if he didn't turn around and put his hands behind his head, he would be tased. Before Officer B could complete the TASER warning, the Subject clenched his fists and began approaching Officer B. Officer B believed the Subject was attempting to initiate a fight and as a result, Officer B discharged the TASER. Officer B recalled that he went from the street to the sidewalk, and his partner kept telling the Subject to turn around and put his hands on his head. According to Officer B, the Subject would not comply, and Officer B yelled out to him to turn around and place his hands behind his head or he would be tased. According to Officer B, when he said this, the Subject clenched his fists. The Subject took a couple of steps towards Officer B, who activated the TASER.

Officer B observed the TASER darts make contact with the Subject. One dart made contact with the Subject's shirt on the right side of his abdomen, and the other dart made contact with his lower left pant leg. After the five second TASER activation, Officers A and B observed that it had no effect on the Subject. Officer B recalled that the Subject was yelling and was focusing on taking off the TASER darts.

As a result, Officer B administered a second five second TASER activation, however it was ineffective. The TASER probes dislodged from the attached wires when the Subject wrapped them around his wrist and pulled them off his clothes. One probe fell to the ground, and the other remained on the Subject's clothing. The Subject turned and fled on foot.

Note: The FID investigation revealed that there were two TASER activations corresponding with this use of force. The TASER's Recorded Firing Data was downloaded and was found to be consistent with Officer B activating the TASER twice, once for six seconds, and once for five seconds. According to FID, once the TASER trigger is pressed and released the activation duration lasts for five seconds. If the trigger is depressed multiple times during the activation, the initial activation could possibly exceed five seconds. According to FID there is no indication that the TASER utilized by Officer B malfunctioned.

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 application of less-lethal force to stop the Subject's actions was reasonable and would have acted in a similar manner.

In conclusion, the BOPC found Officer B's less-lethal use of force to be objectively reasonable and in policy.