



## **Incident Summary**

Witness A, an employee at a market, was working outside in front of a store when she observed a male (subsequently identified as the Subject) sitting on her work cart and drinking from a can of beer. Witness A notified security officer Witness B. Witness B walked outside, saw the Subject sitting in front of the store with a can of beer and told him to leave. The Subject became angry and confrontational with Witness B, cursing and spitting at him. Witness B again told the Subject to leave; however, the Subject did not. Witness B continued telling the Subject to leave, at which point the Subject threw his can of beer at Witness B, striking him on his left ankle. According to Witness B, the Subject then walked up very close to him, placed his right hand inside his jacket pocket and stated to Witness B, "I'm going to pop you." Witness B interpreted the Subject's actions and statement to mean that the Subject was simulating he had a gun and was going to shoot him (Witness B). Witness B stated to the Subject, "You're not going to pop nobody. Just leave." The Subject pulled his hand out from his jacket as though he were holding a gun, and moved to within a foot of Witness B. The Subject then held up both of his hands, clenched his fists and cursed at Witness B. Witness B removed his oleoresin capsicum (OC) spray and sprayed the Subject in the face with it. The Subject wiped the OC spray from his face and attempted to grab some small potted palm trees and throw them at Witness B. Witness B then grabbed the Subject by his waist, turned him around and walked him toward the parking lot. Witness B handcuffed the Subject and placed the Subject face-down on the ground, then told the market assistant manager, Witness C, to call the police.

Meanwhile Officer A and B were driving in a marked black and white police vehicle, heard Communications Division (CD) broadcast a radio call of a battery subject at the market. Officers A and B arrived at the location, and Officer A observed the Subject handcuffed and lying face-down in the parking lot, with Witness B standing next to him. Officer B notified CD of their Code-6 status via the Mobile Data Terminal and both officers exited their vehicle. Officer A approached Witness B and directed Officer B to stand the Subject up, search him for weapons and switch Witness B's handcuffs for his (Officer B's). According to Officer A, Witness B stated that he took the Subject into custody after the Subject threw a can of beer at him.

Officer B walked over to the Subject, and was approximately five to six feet to the right of Officer A, and stood the Subject up and began to search him. The Subject started shaking in an attempt to free himself from Officer B's grasp. Officer B used a "twist lock," and placed his left hand on the Subject's right elbow and right hand on the Subject's right wrist. According to Officer B, the Subject turned his head to the right and spat at him. Officer B told the Subject to relax and not move, and applied "a little bit of pressure" to the Subject's wrist. The Subject continued trying to break free from Officer B's grasp. The Subject turned and again spat at Officer B, and, as he did so, Officer B guided the Subject to the ground using the Subject's own body weight and momentum. As the Subject went down to the ground his head struck the pavement. Officer B stated that he guided the Subject down to the ground, and it seemed to Officer B that because the Subject was drunk, he went limp. Officer B guided the Subject all the way down to

the ground and the Subject hit his head on the pavement. As further described by Officer B, "It was more like a holding and not a push. Basically it was the Subject body weight that made him fall."

Officer A saw the Subject turn to his right and attempt to spit on Officer B. According to Officer A, Officer B then "pushed him the Subject away and went, guided him down to the ground." As further described by Officer A, "I think he [Officer B] used the subject's weight because the subject was already going to the right so the subject was off balance. And it looked like he [Officer B] just used his [The Subject's] momentum and - - and just let him go to the ground."

According to Witness B, the Subject fell as he was turning toward Officer B. As described by Witness B, "And then that's when the guy, I seen (*sic*) him, like his body leaning already forward almost falling. That's when I seen (*sic*) him fall and just - - I heard the noise from his head banging the concrete."

Witness A was able to observe the interaction between Officer B and the Subject; however, Witness A looked away at the moment the Subject started going to the ground. According to Witness A Officer B's hands extended down toward the Subject as the Subject was falling; however, Witness A did not know if Officer B's threw the Subject to the ground, or if the Subject got away from Officer B or if the Subject fell on his own.

According to Witness C, Officer B told the Subject that if the Subject spit at him (Officer B) again he would put the Subject back on the ground. Witness C saw the Subject turn his head quickly to the right toward Officer B and then observed Officer B turn the Subject to try to bring him down.

Meanwhile, Officer A observed Officer B and the Subject go to the ground and walked over to assist Officer B. Having confirmed that Officer B was in control of the Subject, Officer A walked to his vehicle and retrieved a Spit Sock Hood to place on the Subject. Officer B searched the Subject, and, as he did so, observed a small amount of blood on the pavement. Officer B informed Officer A that the Subject was bleeding. Officer A broadcast a request for additional units, a supervisor, and a Rescue Ambulance (RA).

According to Officer A, he directed Officer B to stand the Subject up and pat him (the Subject) down for weapons, and, as he did so, the Subject attempted to kick Officer B. Officer A then put his hands on the Subject, while Officer B held the left side of the Subject's body. Officer B then searched the Subject. Officers A and B placed the Spit Sock Hood over the Subject's head and stood him up. Officer B walked the Subject to the front of their police vehicle and placed the front of the Subject' body against the front of the vehicle. Officer A interviewed Witness B while Officer B stood with the Subject. According to Officer B, the Subject overheard Witness B tell Officer A that the Subject had threatened him (Witness B) with a gun. The Subject then became angry, kicking backwards at, but missing, Officer B, and tried to break away from Officer B's grasp. Officer B "pushed" the Subject against the hood of the police vehicle.

Los Angeles Fire Department (LAFD) personnel arrived on scene and approached Officers A and B. LAFD personnel transported the Subject to the hospital where the Subject was admitted for treatment.

### **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 unanimously made the following findings.

#### **A. Tactics**

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

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

Does not apply.

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

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

### **Basis for Findings**

#### **Tactics**

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

In this instance, Officer B initially made contact with the Subject while Officer A spoke with Witness B. As Officer B attempted to search the Subject, the Subject resisted, spat at him on two occasions and refused to follow his commands. The investigation revealed that Officer A had his back turned to Officer B as he attempted to search the Subject and did not observe the initial struggle. Once a Spit Sock Hood was applied to the Subject and he began to comply, Officer B walked the Subject toward the police vehicle as Officer A continued to gather information from Witness B. However, when dealing with a non-compliant subject, it is a best practice for officers to utilize the contact and cover concept, gain control of the subject and secure the subject inside the

police vehicle prior to contacting the person reporting. Additionally, time was on the officers' side and the information from Witness B could have been obtained after the Subject was properly secured.

Although Officer A did not see the initial struggle, he was able to hear Officer B tell the Subject not to spit on him, was close enough to hear a spitting sound when the Subject attempted to spit on Officer B and observed the Subject take a step forward and spin to attempt to spit on Officer B again. Additionally, when the Subject attempted to kick Officer B while positioned in front of the police vehicle, Officer A was interviewing Witness B, but was close enough for the Subject to hear the discussions between Officer A and Witness B. This coupled with the statement of Witness C, who stated that the officers were approximately a car length away from one another when Officer B attempted to stand the Subject up, supports that the officers' actions did not rise to the level of separation.

In conclusion, although there were areas where improvement could be made, the BOPC found that the officers' actions did not substantially deviate from approved Department tactical training. A Tactical Debrief is the appropriate mechanism for Officers A and Officer B to evaluate the events and actions that took place during this incident and assesses the identified tactical considerations with the objective of developing peak individual and organizational performance.

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

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

In this instance, Officer B was directed by Officer A to assist the Subject to his feet so that he could be searched for weapons and replace the security officer's handcuffs with his. According to Officer B, *"While I was doing - - while I was going to start doing the search, the subject started shaking a little bit trying to get away from my grip. So what I did is I held him in a twist lock like basically how the y teach us in the academy with my left hand on his - - it was right elbow and right hand on his right wrist. At this time the subject started moving his elbow trying to get away from me and moved his head to the right towards me to look at me and spat at me. At this time I told the subject, 'Relax. Don't move. Don't do that again.'*

Officer B searched the Subject while he was on the ground and he was then directed by Officer A to escort the Subject to the police vehicle. Officer A returned to continue speaking with the security officer. When the Subject overheard the security officer tell Officer A that the Subject verbally threatened him with a gun, he became angry and attempted to shake away from Officer B's grip and began kicking backwards at Officer B, missing him. In response, Officer B used physical force and bent the Subject forward toward the front the front grill of the police vehicle.

According to Officer B, *“So while my training officer was interviewing the security guard, the subject overheard the security guard tell my training officer that he had threatened him verbally that he had a gun. The Subject again became angry and started kicking backwards missing my right knee. So what I did is I was holding him with my left hand on his left elbow. I pushed him down to the hood of the car.”*

Four citizen witnesses were interviewed and three of the witnesses’ statements were consistent with the officers’ account of the incident. Witness A was re-interviewed to clarify statements from her first interview regarding the officer throwing or pushing the subject down and what she meant by the officer being violent.

According Witness A, *“she didn’t know - - he was already on his way down. So she didn’t know if he was pushed, thrown, or that he fell; but when she saw, he was already on his way down; and she just saw the officer’s hands extended down towards him as he went. Okay. And as far as the violence is concerned, she explained that it was only the officer grabbing his arms from behind as - - as the gentleman had his arms behind his back because the officer was just grabbing his arms. That’s what she meant by violence, not that he was struggling - - or not that he was fighting or punching.*

An officer with similar training and experience as Officer B would believe that the application of Non-Lethal force was reasonable to overcome the resistance presented by the Subject. Therefore, the BOPC found that the Non-Lethal force utilized by Officer B was objectively reasonable and within Department guidelines.

In conclusion, the BOPC found Officer B’s application of Non-Lethal Force to be in policy.