

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

LAW ENFORCEMENT-RELATED INJURY – 020-11

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Outside City	03/04/11		

Officer(s) Involved in Use of Force	Length of Service
Sergeant A	26 years, 3 months
Officer A	12 years, 3 months
Officer C	9 years, 2 months
Officer K	8 years, 11 months
Officer I	2 years, 4 months
Officer J	2 years
Officer H	11 months

Reason for Police Contact

Officers observed a suspect driving erratically. Multiple units began to follow the suspect's vehicle, during which the suspect drove toward officers' vehicles, in addition to committing other traffic violations. A PIT maneuver was conducted, and the officers used less-lethal and non-lethal force to take the suspect into custody.

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
Subject: Male White, 68 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 and addenda items); the 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, the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on February 14, 2012.

Incident Summary

Officers A and B were traveling in a marked black-and-white police vehicle with no overhead emergency light bar, when they observed a male (later identified as the Subject) driving a four-door vehicle and straddling lanes, driving slowly and conducting U-turns. Officer A also observed a dog in the front seat of the Subject's vehicle.

The officers decided to stop the Subject, and activated their vehicle's forward facing emergency lights and siren. The Subject conducted another U-turn, and drove eastbound. The officers followed him. Officer A utilized the vehicle's Public Address (PA) system and told the Subject to pull over and turn off his vehicle. The Subject conducted another U-turn, and drove westbound. The Subject then accelerated his vehicle to approximately 35 to 40 miles per hour (MPH) and drove toward the officers' vehicle. Officer A steered his vehicle to the right, out of the path of the Subject's vehicle. Officer A conducted a U-turn and positioned the police vehicle behind the Subject's vehicle. Officer A kept his vehicle's lights and siren on and continued to utilize the PA system to tell the Subject to stop. The Subject continued to drive erratically, swerving in and out of traffic lanes, and accelerating and stopping abruptly.

The Subject, without signaling, turned south. Officer A formed the opinion that the Subject was not going to stop. Officer A turned off his vehicle's lights and siren, and the Subject began to drive at a normal rate of speed.

Officer B then broadcast that his unit was following a reckless driver, and requested backup and an air unit.

The Subject continued driving, making multiple and frequent turns. Meanwhile, Officers A and B were notified that due to weather conditions, an air unit was unable to respond. The officers continued to follow the Subject, and Officer A observed another black-and-white patrol unit with an overhead emergency light bar. Officer A attempted to stop the Subject by turning on his lights and siren, and again, the Subject began to drive recklessly, straddling lanes, swerving between lanes. The Subject then conducted another U-turn and accelerated his vehicle to approximately 40 mph and drove toward Officers A and B's vehicle. Officer A steered their vehicle out of the path of the Subject's vehicle.

Sergeant A and Officers C, D, E and F arrived to the area and joined the following. Subsequent to the arrival of the additional units, Officers A and B pulled over and relinquished their position as the primary unit in the following so as to allow units with overhead emergency light bars to take over.

The Subject continued driving and conducted another U-turn. At that point, Officers C and D took over as the primary unit in the following. Officer C immediately activated his lights and siren and attempted to pull the Subject over. Officer D utilized the PA system and told the Subject to pull over, which the Subject did not.

The officers continued to follow the Subject and, as they did so, the Subject conducted another U-turn and began traveling straight toward Officers C and D's police vehicle, at approximately ten MPH. Fearing for their safety, Officer C swerved right to avoid getting hit by the Subject's vehicle. Sergeant A then took over as the primary unit.

Sergeant A observed vehicle traffic on the streets at that time and, given the Subject's erratic driving, Sergeant A did not want the Subject to get back into traffic. Sergeant A then drove up behind the Subject's vehicle and conducted a Pursuit Intervention Technique (PIT), causing the Subject's vehicle to spin and then stop, with its right rear tire on the curb.

Sergeant A positioned his police vehicle directly in front of the Subject's, as did Officer C, while other officers positioned their vehicle to the side and behind the vehicle, boxing it in.

Simultaneous to and immediately following the PIT on the Subject's vehicle, Officers G, H, I, J, K and L arrived to the area, and positioned their vehicles around the Subject's, further boxing it in.

Meanwhile, Sergeant A exited his vehicle and stood behind the driver's side door. He looked at the Subject's vehicle and observed it to be disabled, with the engine off, and the right rear wheel up on the curb. As he stood next to his vehicle, Sergeant A could hear the Subject yelling and cursing. Sergeant A also saw that the Subject had his hand wrapped around a leash that was attached to a Pit Bull dog.

Meanwhile, as the additional units arrived, the officers exited their vehicles. Officers B, C, E, and F drew their weapons. Sergeant A then began to order the Subject to exit his vehicle. The Subject refused to exit.

Sergeant A then formulated a plan to get the Subject out of his vehicle, wherein he told Officer E to use his baton to break the window on the Subject's driver's side door; he told Officers C and H to deploy their TASERS; Officer K to deploy a beanbag shotgun; and Officers B and I to be lethal cover officers. The officers then took positions around the Subject's vehicle such that they avoided a crossfire situation.

Sergeant A continued to order the Subject to come out of his vehicle with his hands up. Sergeant A also advised the Subject that the officers were going to break his window, and that, if he did not exit his vehicle, he was going to be "tased" and "bean bagged." Sergeant A also advised the Subject that the use of force would hurt.

Sergeant A directed Officer E to approach the Subject's vehicle, along with a cover officer, to see if Officer E could open the rear passenger's side door. It was locked. Sergeant A directed Officer E to see if he could open the rear driver's side door. It, too, was locked. Sergeant A then directed Officer E to break the front driver's side window, which he did, with Sergeant A's PR 24 baton.

After the window was broken, the officers by the right rear of the Subject's vehicle moved to the driver's side of the vehicle. Sergeant A ordered the Subject to release the dog and exit his vehicle. Sergeant A also told the Subject that if he did not, he (the Subject) would be "tased." Upon being warned that he would be "tased," the Subject lay back onto the passenger's seat, covering the center console area with his back, and put his feet up to block the TASER (darts) from coming in through the window. Sergeant A ordered Officer C to discharge his TASER at the Subject. Officer C discharged his TASER at the Subject; however, the TASER darts missed the Subject. The Subject started to sit back up. Sergeant A immediately directed Officer K to fire beanbag rounds at the Subject. Officer K fired two beanbag rounds at the Subject. One beanbag round struck the Subject in the left forearm, and the second struck him on his left torso/rib cage area. Sergeant A told Officer K not to fire another beanbag round.

After being struck by the two beanbag rounds, the Subject cursed and yelled at the officers, and then lay back down in his vehicle. The Subject, who still had his dog's leash wrapped around his right hand, repeatedly told his dog to sic the officers.

The Subject sat back up in his vehicle and Sergeant A directed Officer I to discharge his TASER at the Subject. Officer I discharged his TASER through the driver's side door, which was open at the time. The darts from Officer I's TASER made contact with the Subject. While the TASER was active, the Subject stated something to the effect of, "I'll cooperate. I'll cooperate." However, after the TASER cycle concluded, the Subject removed the TASER darts from his shirt.

Sergeant A ordered the Subject again to release his dog, and to exit his vehicle with his hands up. Sergeant A then directed Officer H to discharge his TASER at the Subject. The Subject wrapped the dog's leash tighter around his hand, got "belligerent" and told the dog to sic the officers. Officer H discharged his TASER, aiming for the Subject's body mass area; however, as the Subject was moving around inside his vehicle, one of the darts struck the Subject's lower lip. The Subject then indicated to the officers that he would cooperate with them. However, after the next cycle of the TASER concluded, the Subject again wrapped the dog's leash tighter around his hand and told his dog to sic the officers. Sergeant A directed Officer H to activate his TASER again, which he did, for a total of five activations. After the fifth activation, the Subject was able to remove the TASER darts.

Sergeant A gave Officer H his own TASER and directed him to discharge it at the Subject, which he did. Officer H activated Sergeant A's TASER a total 18 times.

Prior to each of the TASER discharges/activations by Officers C, H and I, the Subject was ordered to release the dog and come out of the vehicle or he would get "tased" again. And in each instance, the Subject would indicate that he would comply while the TASER's cycle was active and then as soon as each cycle concluded, the Subject would threaten the officers with his dog.

At this time, Officers A and I approached the Subject's vehicle to break out the passenger's side window and remove the Subject from the vehicle. The Subject grabbed his dog, which was on his lap, and the dog's collar broke or came loose, and the Subject then began trying to hit the officers with the broken leash. Sergeant A grabbed the Subject's wrist and bent it back, and along with Officer I, pulled the leash/chain out of the Subject's hand.

Simultaneous to Sergeant A pulling the leash/chain from the Subject's hand, Officer F approached the passenger's side of the Subject's vehicle and broke the passenger's side window, which scared the dog, and the dog jumped down in between the seats. Officer F then reached into the Subject's vehicle and unhooked the dog's collar, allowing it to jump out of the vehicle through the open driver's side window.

Officers A and I reached into the Subject's vehicle and pulled him out of the front passenger's side door. Officer A grabbed the Subject's right arm and the rear of his shirt collar, while Officer I grabbed the Subject's shirt and the right side of his body and they pulled him across the passenger compartment and placed him on the ground on his side. Officers A and I then rolled the Subject face-down on the ground. Officers then handcuffed the Subject, using two sets of handcuffs.

The Subject then began to kick his legs and Officer C placed a hobble restraint device around the Subject's ankles. The officers then placed the Subject in a seated position.

The Subject advised Sergeant A that he was having trouble breathing and Sergeant A requested an ambulance for him. Fire department personnel arrived on scene, assessed and treated the Subject's injuries, which included a laceration to his left arm near the elbow and abrasions to his face, at the scene and then transported him to the hospital, where he was initially examined by Doctor A.

While at the hospital, the Subject complained of chest pains and he was admitted.

Dr. B, who further examined the Subject after he was admitted, determined that the Subject had a right orbital fracture, fractures to two of his right ribs and a laceration to his left elbow. Sergeant A was then told the Subject had been admitted to the hospital for these additional injuries and that the incident was being investigated as a categorical use of force. The Department's Force Investigation Division assumed responsibility for the investigation at that time.

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 revolver 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 Sergeant A along with Officers A, C, E, H, I, J and K's actions to warrant a tactical debrief.

B. Drawing/Exhibiting

The BOPC found Officers C, E, H and J's drawing and exhibition of a firearm to be in policy.

C. Non-Lethal Use of Force

The BOPC found Sergeant A along with Officers A, C, I, J's use of non-lethal force to be in policy.

D. Less-Lethal Use of Force

The BOPC found Sergeant A along with Officers C, H, I and K's use of less-lethal force to be in policy.

Basis for Findings

A. Tactics

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

1. Pursuit Intervention Technique (PIT)

The investigation revealed that Sergeant A was not in pursuit when he made the decision to utilize the PIT. Prior to conducting the PIT, Sergeant A did not advise the

other patrol units that he was going to initiate the PIT nor did he have the required second or third unit as outlined in the Pursuit Intervention Technique guidelines.

In this instance, Sergeant A believed that if he allowed the Subject to continue, the Subject could pose a substantial risk to the community.

Observing that the intersection was wide and free of pedestrian traffic, Sergeant A believed that conducting the PIT maneuver at that location could be done safely and without undue risk to the community. Furthermore, Sergeant A observed that if the Subject were allowed to continue his current course of travel, the Subject would place himself into oncoming traffic.

Due to the erratic actions of the Subject, Sergeant A was forced to temporarily assume the primary position in the following. Though the decision to initiate a PIT maneuver without the benefit of a second or third unit substantially deviated from department tactical training, Sergeant A made this split-second tactical decision to safeguard lives in the community. When the opportunity presented itself to conduct the PIT maneuver with minimal risk to the community, Sergeant A seized the moment and took action.

After giving due consideration to the totality of the circumstances, the BOPC found that though Sergeant A's actions substantially deviated from Department tactical training, this deviation was justified.

2. Pursuit vs. Following

The Subject committed several serious traffic violations in an attempt to run the officers vehicles off the road; and though the Subject had committed multiple acts of assault with a deadly weapon (ADW) against the officers, the officers never placed themselves in pursuit. While explaining the reason for not going in pursuit, the pursuing officers indicated that attempts to stop the Subject's vehicle (activation of emergency lights and sirens) resulted in the Subject driving more erratically.

Though, in this instance, the officers were justified in their decision not to go in pursuit of the Subject's vehicle due to a perceived increased in risk upon activation of emergency equipment and their actions did not deviate from approved Department standards, the officers were reminded of the protections afforded to officers in pursuit under the California Vehicle Code.

Each incident must be looked at objectively and the areas of concern must be evaluated based on the totality of the circumstances. In this case, although there were identified areas where improvement could be made, the tactics utilized did not unjustifiably and substantially deviate from approved Department tactical training.

In conclusion, the BOPC found Sergeant A along with Officers A, C, E, H, I, J and K's actions to warrant a tactical debrief.

B. Drawing/Exhibiting

Moments after Sergeant A conducted the PIT maneuver on the Subject's vehicle, Officers C, E, H and J arrived at the termination of the following and observed the Subject's vehicle stopped and at rest against the curb. As the officers exited their vehicle, they drew their firearms because they did not know if the Subject was armed or not.

In this instance, prior to the PIT occurring, the Subject made his hostile intentions toward the police clear when he repeatedly crossed into oncoming traffic in an attempt to run marked black and white police vehicles off the road. Once his vehicle was disabled, the Subject refused to comply with commands to exit his vehicle and was seen reaching in different areas of the vehicle. Based on the Subject's strange behavior, the inability to see his hands and access to uncontrolled and unobserved areas of the vehicle, an officer under similar circumstances with similar training and experience would reasonably believe that there was a substantial risk that the situation may escalate to the point where lethal force may be justified.

In conclusion, the BOPC found Officers C, E, H and J's drawing and exhibition of a firearm to be in policy.

C. Non-Lethal Use of Force

After the Subject's vehicle was disabled, several attempts were made to order him out of his vehicle. When it was clear that the Subject would not voluntarily exit his vehicle, Sergeant A formed a tactical team to remove him. The tactical team, including Sergeant A, deployed to the rear of the Subject's vehicle. Once again, Sergeant A ordered the Subject to exit the vehicle. The Subject refused the order and remained seated in the vehicle, holding his dog by a leash. Sergeant A informed the Subject that officers would break the driver's window if he did not exit the car. The Subject refused to comply and Sergeant A ordered Officer E to break the front driver's window. Once the window was broken, the Subject reclined back on the front seat with his head near the passenger door as he kicked in the officers' direction. In response to the Subject's continued refusal to exit and subsequent aggressive and combative actions, which included using his dog as a weapon/shield, the officers used less-lethal force options (See Less-Lethal Use of Force).

The Subject also attempted to strike officers with the dog leash. Sergeant A grabbed the Subject's wrist, bent it back and, with the assistance of Officer I, pulled the dog leash/chain from the Subject's hand.

Meanwhile, while Officer H utilized the TASER, Officers A, I and F made their way to the right front passenger door of the Subject's vehicle and Officer F broke the right front passenger window with his collapsible baton. After the window was broken, Officer A was able to unlock the front passenger door and the dog exited the vehicle. This gave Officers A and I an opportunity to grab the Subject, and pull him from the vehicle.

Once the Subject was placed on the ground, Officer J grabbed the Subject's left arm and placed his knees against the Subject's back, utilizing his bodyweight to hold the Subject down during handcuffing. While Officers A and I were attempting to handcuff the Subject, Officer C observed that the Subject was moving his legs. In an effort to stop the Subject from moving his legs, Officer C grabbed the Subject's legs, placed them together and applied a hobble restraint device around the Subject's ankles.

Throughout the Subject's interaction with the police, beginning with the following and culminating with the use of non-lethal and less-lethal force, the Subject's demeanor and actions displayed blatant aggression and hostility toward the involved police officers. The Subject was given many opportunities to comply with the lawful commands that were issued to him; however, the Subject chose to continue his aggressive actions. Once the Subject's dog had fled the vehicle the Officers A, C, I and J seized the opportunity to extract the Subject from his vehicle.

The standards set forth in Department Policy dictate that the decision to use force must be judged through the perspective of a reasonable supervisor (for Sergeant A) and officer (for Officers A, C, I and J) with the same/similar training and experience, facing the same/similar circumstances. A supervisor and officer with similar training and experience faced with similar circumstances as Sergeant A along with Officers A, C, I and J would reasonably believe that the use on non-lethal force would be reasonable to overcome the level of resistance presented by the Subject, the Subject's actions with the broken dog leash/chain, his noncompliance, erratic behavior and threatening actions with his dog, and to effect an arrest.

In conclusion, the BOPC found Sergeant A along with Officers A, C, I and J's use of non-lethal force to be in policy.

D. Less-Lethal Use of Force

Once the front driver's window had been broken, Sergeant A gave the Subject commands to come out of his vehicle. After the Subject refused, Sergeant A warned the Subject that if he did not comply, he would be "tased." The Subject refused to come out of the vehicle. During this time, the Subject was holding his dog in a threatening manner. After repeated refusals by the Subject to exit his vehicle, Sergeant A issued a command to utilize a TASER. Officer C discharged one cartridge from his TASER, but it had no effect.

After the first unsuccessful use of the TASER, the Subject once again refused to exit the vehicle and held his dog close to him, making it unsafe for the officers to approach the vehicle. Seeing that the TASER had no effect on the Subject, Sergeant A ordered Officer K to utilize the beanbag shotgun. Sergeant A warned the Subject that unless he complied with the order to exit the vehicle he would be shot with the beanbag shotgun. The Subject still refused to exit the vehicle. Officer K fired one beanbag round through

the broken driver's door window, which struck the Subject in his stomach. Officer K then fired a second beanbag round, striking the Subject in the left forearm.

After the second beanbag round, the Subject continued his aggressive actions and maneuvered his dog in the officers' direction. Sergeant A directed Officer I to discharge his TASER at the Subject. Officer I discharged his TASER, striking the Subject in the upper torso area. Officer I observed that the TASER was effective; however, the Subject reached up and pulled the darts out.

Sergeant A requested another TASER. Officer H advised Sergeant A that he was equipped with a TASER. The Subject continued to disobey commands to exit his vehicle and maneuvered his dog in a threatening manner, which resulted in five TASER activations by Officer H. Each of these activations appeared effective but on the last activation, the Subject pulled the probes out of his body. Observing that the probes were removed, Sergeant A gave Officer H his TASER. The Subject continued utilizing his dog as a shield/weapon, which resulted in an additional 18 TASER activations by Officer H with Sergeant A's TASER. Each of these 23 TASER activations was prompted by an order from Sergeant A. And between each of the 23 activations, an assessment was made to see if the Subject would cease utilizing his dog as a weapon and exit his vehicle.

The BOPC took into account several factors in determining whether the force use by Officer H (23 total TASER activations) was objectively reasonable.

- The Subject clearly indicated his hostile, if not deadly, intent against the police officers when he negotiated U-turns, crossed into oncoming and increased his speed as he approached the officers' vehicles head-on. Clearly the Subject's intent was not to escape from the officers. If that had been his intent he would have continued to accelerate his vehicle in an attempt to flee. The Subject, however, slowed his vehicle and resumed a normal speed allowing the police units to catch up. Once the police units were behind him, the Subject once again made a U-turn and ran the police units off the road. This act was committed three times and may have continued, perhaps with deadly consequences, had his vehicle had not been disabled with a PIT.
- After the Subject's vehicle was disabled, several attempts were made to call him out. The Subject refused and the officers were forced to approach his vehicle in an effort to remove him.
- Before any force was used, the Subject was given the opportunity to submit to arrest and was warned that if he did not comply, force would be used against him. However, rather than comply with the officers' commands, the Subject chose to grab his dog and utilize it as a potential weapon.
- The fact that the Subject remained in his vehicle and grabbed his dog limited the force options that could be used. Because of the dangers perceived by the dog

and the Subject's potential access to weapons inside the unsearched vehicle, physical contact (e.g., grabbing the Subject and pulling him out the car) was impractical due to increased risk of injury to the officers; a risk which was magnified by the Subject's prior actions (driving head-on into the officers' paths). Oleoresin Capsicum (OC) spray was considered but deemed impractical due to the possibility of cross contamination if the officers were forced to enter the vehicle after OC was deployed. After discounting the use of OC spray, the officers at scene were left with two force options (TASER and beanbag shotgun) that could be deployed from a relatively safe distance.

- Between each of the 23 TASER activations there was an assessment to determine if the Subject would cease his aggressive/combatative behavior. Each time the Subject chose to resume his aggressive actions, using his dog as a potential weapon.

In this instance, Officer H was faced with a unique tactical situation severely limiting the use of other force options. Of the two force options that remained available (TASER and beanbag shotgun), the TASER represented the option with the least possibility of causing injury to the Subject.

Additionally, Sergeant A directed the use of multiple TASERs and the beanbag shotgun. Though given many opportunities to comply with the lawful commands that were issued to him between each application of less-lethal force, the Subject chose to continue his aggressive actions. In each instance, Sergeant A's direction to use the TASER and beanbag shotgun was in direct response to the Subject's continued resistance.

The standards set forth in Department Policy dictate that the decision to use force must be judged through the perspective of a reasonable supervisor (for Sergeant A) and officer (for Officers C, H, I and K) with the same/similar training and experience, facing the same/similar circumstances. A supervisor and officers with similar training and experience faced with similar circumstances as Sergeant A and Officers C, H, I and K would reasonably believe that the Subject's actions made it unsafe for officers to approach and that the application of less-lethal force to overcome the Subject's resistance was reasonable. Further, the possibility of doing something different or better is not a test as to whether force was objectively reasonable. That being said, it should be noted that other force options were considered and discounted due to the increased risk to officer safety.

Given the totality of the circumstances, the BOPC found that each use and directed use of the beanbag shotgun and TASER was objectively reasonable.

In conclusion, the BOPC found Sergeant A along with Officers C, H, I and K's use of less-lethal force to be in policy.