

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

HEAD STRIKE WITH AN IMPACT WEAPON 034-07

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Central	04/08/2007		

Officer(s) Involved in Use of Force	Length of Service
Officer A	2 years, 4 months
Officer B	2 years, 4 months
Officer D	5 years, 1 month
Officer E	1 year, 7 months
Officer G	10 months

Reason for Police Contact

A Detention Officer was accosted by Subject 1 as she left work. She first called Officer A, her boyfriend, on his cellular telephone to ask for his help. Officers A and B responded and confronted Subject 1, who was stepping away from the Detention Officer's car. An altercation ensued, during which Subject 1 was struck on the head with Officer A's pistol.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
Subject 1: Male, 44 years.			

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 BOPC of Police; and the report and recommendations of the Inspector General. The Los Angeles Police Department Command Staff presented the matter to the Commission and made itself available for any inquiries by the Commission. The following incident was adjudicated by the BOPC on February 19, 2008.

Incident Summary

Detention Officer (DO) A completed her shift at a police facility and was going off-duty. She left a Department parking facility in her personal vehicle, drove a short distance and then stopped for a red traffic signal.

DO A was speaking on her cellular telephone with when she first saw Subject 1. Subject 1 was wearing a hospital gown and was standing directly in front of her vehicle. Subject 1 then climbed atop the hood of DO A's vehicle. Subject 1 pulled himself up to the roof, reached inside the open sunroof and shouted, "Give me, give me."

DO A terminated her telephone call and immediately called Officer A on his cellular telephone.

Note: Officer A and DO A were involved in a relationship.

DO A knew Officer A was working because she had seen him leaving the police facility at the same time she was leaving. Officer A was working with Officer B. Officer B was driving a marked police car and Officer A was the passenger.

Officer A heard his cellular telephone ringing, saw that DO A was calling, and answered. DO A told Officer A, "This guy's in front of my car and will not leave." Officer A immediately told Officer B to turn the vehicle around. Although Officer B sensed that something was wrong, Officers A and B did not communicate with one another regarding what was occurring.

Officer B drove the short distance to DO A's location. As Officers A and B arrived there, they saw Subject 1 was stepping onto the sidewalk. As they came to a stop, both officers exited the vehicle. The officers did not notify Communications Division (CD) of their location and status.

Note: As this confrontation unfolded it was being witnessed by Witness A.

Subject 1 took up a position behind a bus shelter. Officer A saw that Subject 1 was holding objects in both of his hands. Fearing these objects could possibly be a weapon, Officer A drew his pistol.

Note: The objects in Subject 1's hands were subsequently determined to be a cellular telephone, cigarette lighters, a small bottle of hand sanitizer, and some loose change.

Officer B, who exited the police vehicle from the driver's side, momentarily lost sight of Subject 1 as he (Officer B) ran to the rear of the police vehicle in order to join Officer A on the passenger side. Officer B saw that Officer A was pointing his pistol at Subject 1 and believed that Officer A may have had an indication that Subject 1 was armed; however, he did not see any weapons. Officer B drew his pistol and pointed it at Subject 1.

Officer A shouted at Subject 1 to drop whatever he had in his hands and lay down. Initially, Subject 1 refused to comply with these commands. Then, Subject 1 slowly began to comply with their commands and moved from behind the bus shelter. Officer A ordered Subject 1 to lay down on his stomach. Subject 1 went to his knees and then to his stomach with his head pointed south, parallel to the curb.

Note: According to Officer A, Subject 1's hands were concealed under his body. According to Officer B, Subject 1's hands were out to his sides and were visibly empty.

At this time, both of the officers began to approach Subject 1. Officer B, having observed that Subject 1 did not have a weapon in his hands, reholstered his pistol.

Officer A held his pistol in his right hand, close to his body, as he approached Subject 1. According to Officer A, as he reached Subject 1, he placed his left knee on Subject 1's right shoulder blade. Meanwhile, Officer B drew his collapsible baton.

Note: According to Officer B, Officer A placed his foot on Subject 1's right shoulder.

As Officer A placed his foot or knee on Subject 1, Subject 1 began to push himself up off of the ground. Subject 1 was then struck on the head with Officer A's pistol.

According to Officer A, Subject 1 began to quickly raise himself into a standing position. As he did so, Subject 1's head made contact with the muzzle of Officer A's pistol. Officer A then backed up and reholstered his pistol.

According to Officer B, he looked away to scan the area for additional subjects as Officer A placed his foot on Subject 1. Officer B then heard a "clunk" sound. Upon hearing the sound, Officer B looked back and saw Officer A's pistol in contact with Subject 1's head.

Note: According to Witness A, he saw one of the officers strike Subject 1 on the back of the head with a handgun in what appeared to be an intentional act. In an attempt to better describe the strike, Witness A made a motion during his interview with investigators in

order to demonstrate the officer's movements with the handgun. This motion by the witness was described by the investigator as being, "like someone hitting a hammer." Witness A acknowledged and agreed with this description.

After the strike occurred, Subject 1 quickly stood up and moved towards Officer B. Officer B struck Subject 1 in the left knee with his baton. This strike caused Subject 1 to momentarily stumble. Both officers continued to order Subject 1 onto the ground. Subject 1 refused to comply with these orders and eventually moved to the driver's side door area of the police vehicle.

Officer C, assigned to the guard shack at the rear of the police facility, witnessed a portion of these events as they unfolded. His first indication that something was amiss came when he saw Subject 1, attired in a hospital gown, running in a nearby intersection. At about the time he saw Subject 1, he saw the police vehicle driven by Officer B traveling at a high rate of speed toward the intersection.

Officer C stepped outside the guard shack in order to get a better view of what was transpiring. Officer C estimated that he was two to three hundred feet south of the intersection. Officer C could tell that the officers were fighting with Subject 1; however, because of the distance, he could not clearly see or hear these events. Officer C saw Subject 1 take a fighter's stance, and saw one of the officers swing his baton at Subject 1 but could not tell if the baton strike landed.

As Officer C was preparing to call for assistance, Officers D and E arrived at the gate of the police facility in a marked police vehicle. Officer C directed the officers' attention to the altercation involving Subject 1 and told them to respond to that location in order to assist.

Officers D and E drove to the location of the altercation and notified CD they were assisting officers. As they arrived on the scene of the incident, Officers D and E both observed that Subject 1 was bleeding significantly.

Officers D and E pulled up to the altercation, exited their police vehicle, and joined Officers A and B. Officers D and E observed that Subject 1 was agitated and lunging at the officers. The officers shouted commands at Subject 1 to lay down on the ground and stop resisting. Subject 1 replied by shouting, "Beat me up, I ain't going to jail."

The officers then stepped back from Subject 1, and Officer E discharged a TASER at Subject 1's chest. Upon being struck by the TASER discharge, Subject 1 fell forward. The other three officers moved in on Subject 1 and attempted to handcuff him; however, Subject 1 continued to struggle and the officers were unable to secure his hands. Officer E then activated the TASER a second time; however, this did not appear to affect Subject 1.

Officer E discarded the TASER cartridge and moved closer to Subject 1, who was still violently thrashing about on the pavement. As the other three officers struggled with Subject 1, Officer E applied the TASER directly to Subject 1's leg and discharged it. Subject 1 reacted to this discharge by kicking violently, knocking Officer E backwards. Officer E then attempted to apply a further TASER discharge directly to Subject 1's stomach. This application was ineffective. Officer E then placed the TASER in his pocket and joined the other officers in their attempt to physically control Subject 1.

As the officers continued to struggle with Subject 1, Officer D punched Subject 1 twice in his torso. Subject 1 grabbed Officer A's ankle, prompting Officer A to punch Subject 1 on the right side of his face. This punch caused Subject 1 to release his grip on Officer A's ankle. Officer B then delivered several baton strikes and a knee strike to Subject 1's abdomen; however, these strikes, appeared to have no effect on Subject 1.

Subject 1 continued to actively resist the officers' attempts to control him. Subject 1 reached out for the arms of some of the officers, in an apparent attempt to pull them into him. Officer B then delivered four or five knee strikes to Subject 1's rib cage.

Officer C, who continued to monitor the altercation, used his radio to request an additional unit in order to assist the four officers already on scene.

Officers F and G were dispatched to the incident. Both officers were in uniform, driving a marked police vehicle. When Officers F and G arrived at the intersection, they saw all four officers still fighting with Subject 1. Officer G retrieved a TASER. Officers F and G moved towards the altercation.

Officer F told Officer G to be ready to use the TASER if necessary. Officer F and Officer G were then told by one of the officers struggling with Subject 1 that the TASER had already been used against Subject 1 and had proved ineffective. Officers F and G were asked to try and grab one of Subject 1's arms and assist with handcuffing. Officer G placed a foot on Subject 1's hand to stop it from flailing around. With the assistance of Officers F and G, Subject 1 was eventually handcuffed.

Having been handcuffed, Subject 1 continued to struggle and kick, and so the officers applied a Hobble Restraint Device (HRD) to restrain his legs. Subject 1 was then placed in a seated position. A Rescue Ambulance (RA) was then requested by the officers in order to evaluate, treat, and transport Subject 1.

One of the first supervisors to arrive on scene was Sergeant A. Sergeant A used a digital camera to take four photographs of Subject 1.

Note: One of the photographs taken by Sergeant A showed a bleeding injury on the back of Subject 1's head, near the crown.

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 adopted the following findings.

A. Tactics

The BOPC unanimously found Officers A and B's tactics to warrant administrative disapproval.

The BOPC unanimously found Officers C, D, E, F and G's tactics to be appropriate.

B. Drawing and Exhibiting

The BOPC unanimously found Officers A and B's drawing to be in policy.

C. Non-Lethal Use of Force

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

The BOPC unanimously found Officers A and G's non-lethal use of force to be in policy, warranting divisional training.

D. Less-Lethal Use of Force

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

E. Lethal Use of Force

By a three-to-one vote, the BOPC found Officers A's use of lethal force (the strike to Subject 1's head with a pistol) to be out of policy, warranting administrative disapproval.

Basis for Findings

A. Tactics

The BOPC noted that DO A had stopped for a red light at an intersection when Subject 1 appeared in front of her vehicle wearing a hospital gown. Subject 1 proceeded to climb on top of the hood of her vehicle and reached inside the open sunroof while saying, "Give me! Give me!" Cognizant that Officer A was nearby, DO A called Officer A on her cellular phone. While under apparent duress, DO A advised Officer A that someone was trying to get into her vehicle.

Officer A's personal involvement with DO A appears to have clouded his objectivity from the onset. Faced with an urgent call from his girlfriend, Officer A failed to ask crucial fact-finding questions necessary to safely guide the officers' response to the incident. Instead, Officer A directed Officer B to turn the police vehicle around and drive toward DO A's location, without Officers A and B communicating regarding what they were about to encounter.

As the officers drove toward the intersection, Officers A and B observed Subject 1 move away from DO A's vehicle. The officers exited their vehicle, but did not advise Communications Division (CD) of their location and status. By neglecting to advise CD of their location, Officers A and B placed themselves at a disadvantage and limited the capacity of other officers to provide them with timely assistance.

Officer A was positioned closest to Subject 1 and he assumed the role of the contact officer by issuing verbal commands. Subject 1 ignored the officer's commands and remained behind a bus shelter. Officer A observed Subject 1 holding an unknown hard object in his left hand and failed to communicate this observation to Officer B. Communication between partners is an important means of improving officers' safety.

Faced with a non-compliant, potentially armed subject, Officers A and B should have requested a "back-up" via CD; however, as the incident unfolded, they failed to request any assistance. Responding units were made aware of the incident and the seriousness of the threat facing the officers only because of broadcasts made by Officer C from the guard shack.

After Officer A repeatedly issued commands to Subject 1, Subject 1 slowly moved around the bus shelter and assumed a prone position on the sidewalk. According to Officer A, Subject 1's hands were concealed underneath his torso.

The BOPC was concerned that Officer A approached a possibly armed subject when he was unable to see his hands, and was further concerned that he did so with his service pistol drawn. This facilitated the head strike, increased the likelihood of a negligent discharge, and placed the firearm in close proximity to the subject, thus increasing the potential that the subject could gain control of it. Officers A and B further failed to adhere to the basic rules of contact and cover by Officer B holstering his service pistol as Officer A made his approach of Subject 1.

As Subject 1 attempted to push himself off of the sidewalk, Officer B noted his aggressive behavior and deployed his collapsible baton; however, when the head strike occurred, Officer B had looked away to scan the area for additional subjects. The BOPC was concerned that, at this crucial moment, Officer B was not focused on the aggressive actions of Subject 1.

Subject 1 rose to his feet and advanced toward the officers. Moments later, Officers D and E arrived at the scene and used the TASER. After the TASER was used, Subject 1 fell to the ground and a struggle ensued. Officer B simultaneously grabbed Subject 1 with his left hand, while holding his baton in his right hand. Officer B should have properly secured his baton, so as not to limit his ability to fully engage Subject 1.

Officers F and G arrived at the scene and, with their assistance, Subject 1 was taken into custody.

The BOPC unanimously found Officers C, D, E F and G's tactics to be appropriate.

The BOPC was critical of the tactics used by Officers A and B. The officers' made a series of deficient tactical decisions that, in sum, rendered their performance seriously deficient.

The BOPC unanimously found Officers A and B's tactics to warrant administrative disapproval.

B. Drawing and Exhibiting

The BOPC noted that that, as Officer A exited the police vehicle, he observed Subject 1 standing behind a bus shelter holding an unknown object in his left hand. Fearing Subject 1 may be possibly armed with a knife or small handgun, Officer A drew his service pistol.

Officer B was initially unable to see Subject 1's hands from his vantage point. Officer B observed Officer A draw his service pistol and reasonably relied upon Officer A's assessment that the situation may escalate to the point where deadly force may become necessary. Officer B drew his service pistol.

The BOPC determined that Officers A and B had sufficient information to believe that the incident may escalate to the point where deadly force may become necessary.

The BOPC unanimously found Officers A and B's drawing to be in policy.

C. Non-Lethal Use of Force

The BOPC noted that, after the head strike occurred, Subject 1 pushed himself up to a standing position and advanced toward Officers A and B. Officer B delivered one baton strike to Subject 1's left knee. Subject 1 appeared unaffected as he continued to advance toward the officers.

As Officers D and E arrived at the scene, they observed Subject 1's combative actions and Officer E utilized the TASER. Subject 1 immediately fell to the ground; however, he continued to resist the officers' efforts to take him into custody. As the struggle continued, Officer A used firm grips and a punch to Subject 1's face; Officer B used firm grips, knee strikes and a baton strike to Subject 1's torso; Officer D utilized three punches to the torso and bodyweight to Subject 1's legs; and Officer E applied bodyweight to Subject 1's legs and applied the HRD.

Officers F and G arrived at the scene and observed Subject 1 in a prone position with one arm behind his back and Officers A, B, D and E struggling to control him. Officer G placed a foot on Subject 1's hand to stop it from flailing around. Simultaneously, Officer F placed a knee on Subject 1's back and both Officers G and F grabbed Subject 1's right arm and forced it behind his back.

Based on the Subject 1's aggressive actions, the BOPC determined that the officers' non-lethal uses of force were reasonable to overcome Subject 1's resistance and effect his arrest.

The BOPC determined that Officers A and G would benefit from additional training. Although Subject 1 was combative and actively resisting arrest, Officer A's punch to the head should have been avoided due to the potential for injury to the officer. In addition, Officer G's attempt to control Subject 1 by stepping on his hand could have thrown the officer off balance, have been viewed negatively by the public, and/or caused unnecessary injuries.

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

The BOPC unanimously found Officers A and G's non-lethal use of force to be in policy, warranting divisional training.

D. Less-Lethal Use of Force

The BOPC noted that as Officer E approached the location, he observed Officers A and B attempting to gain physical control of Subject 1, with Subject 1 responding by thrashing his arm about. When Subject 1 ignored the officers' commands to stop his actions, Officer E discharged a TASER at Subject 1's chest. Upon being struck by the TASER discharge, Subject 1 fell forward. The other three officers moved in on Subject 1 and attempted to handcuff him; however, Subject 1 continued to struggle and the officers were unable to secure his hands. Officer E then activated the TASER a second time; however, this did not appear to effect Subject 1.

Officer E discarded the TASER cartridge and moved closer to Subject 1, who was still violently thrashing about on the pavement. As the other three officers struggled with Subject 1, E applied the TASER directly to Subject 1's leg and discharged it. Subject 1 reacted to this discharge by kicking violently, knocking Officer E backwards. Officer E then attempted to apply a further TASER discharge directly to Subject 1's stomach.

The BOPC determined that Officer E's uses of the TASER were reasonable attempts to stop Subject 1's actions.

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

E. Lethal Use of Force

The BOPC noted that a strike to the head with an impact weapon or other hard object is assessed as a lethal use of force. The intentional use of such force is authorized only if the subject's actions present a threat of serious bodily injury or death.

Officers A and B were initially able to get Subject 1 to comply with their commands for him to lay prone on the sidewalk. Officer A then approached Subject 1 with his pistol drawn, and the pistol struck Subject 1's head as Subject 1 pushed himself up from the ground.

There is inconsistent testimony as to the manner in which the strike occurred. According to Officer A, Subject 1's head came into contact with the pistol as an inadvertent result of Subject 1's upward movement as Officer A was coming down. This account is in conflict with that of Witness A, who said Officer A held the gun out and hit Subject 1 right on the top of the head and demonstrated an action characterized as "little hitting a hammer." Officer B, meanwhile, indicated that he looked away at the moment the strike occurred, and thus was unable to describe it other than by the "clunk" sound he heard and the post-strike position of the pistol against Subject 1's head.

The investigation into this incident yielded limited detail regarding the nature of the injury to Subject 1's head. However, testimonial and physical evidence indicates that Subject 1 began to bleed significantly immediately after the head strike occurred, and prior to any other uses of force or falls that could have caused a bleeding injury. A photograph taken shortly after the incident shows a bloody injury to the region of Subject 1's head where, according to Officers A and B and Witness A, Officer A's pistol struck. As such, the evidence demonstrates that the strike was of sufficient force to cause a bleeding injury as there was no other mechanism by which the injury could have occurred during the period when Subject 1's head began to bleed. The BOPC considered that the infliction of a bleeding injury to Subject 1's head was consistent with Witness A's account of the manner in which the strike occurred. The BOPC noted that Witness A's account of the overall incident was consistent with other available evidence, and that his account was credible.

The BOPC considered all available evidence, including the descriptions of the strike provided by Officer A and Witness A, and found that the preponderance of the evidence establishes that Officer A intentionally struck Subject 1 in the head with his pistol. Subject 1's actions at the time of the strike did not present a threat of serious bodily injury or death, and would not have warranted such a use of force.

By a three-to-one vote, the BOPC found Officer A's lethal use of force to be out of policy, warranting administrative disapproval.