

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

**LAW ENFORCEMENT RELATED INJURY -- 035-07**

<b><u>Division</u></b>	<b><u>Date</u></b>	<b><u>Duty-On(X) Off()</u></b>	<b><u>Uniform-Yes(X) No()</u></b>
Rampart	04/09/2007		

<b><u>Officer(s) Involved in Use of Force</u></b>	<b><u>Length of Service</u></b>
Officer A	3 years, 9 months
Officer B	7 years, 7 months
Officer C	10 years, 9 months

**Reason for Police Contact**

Officers responded to a radio call regarding a male who was seen walking on the street wearing only a towel around his waist and striking parked cars with what appeared to be a brick. Subject 1 violently resisted the officers when they contacted him, prompting the officers to use a variety of types of force as they attempted to control him. Subject 1 was hospitalized as a result of an injury sustained during the incident.

<b><u>Subject</u></b>	<b><u>Deceased ()</u></b>	<b><u>Wounded (X)</u></b>	<b><u>Non-Hit ()</u></b>
Subject 1: Male, 40 years of age.			

**Board of Police Commissioners' Review**

This is a brief summary designed only to enumerate the 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 Commission and made itself available for any inquiries by the Commission.

The following incident was adjudicated by the BOPC on 03/25/08.

**Incident Summary**

Communications Division (CD) generated a radio call regarding a male who was seen walking on the street wearing only a towel around his waist and striking parked cars with what appeared to be a brick. Officers A and B acknowledged the radio call and responded. At the scene, a witness directed the officers to the subject. The officers then located Subject 1, walking naked on the sidewalk.

Officer A believed that Subject 1 was possibly under the influence of narcotics and told his partner to grab the TASER. Armed with the TASER, the officers exited their police vehicle, requested an additional unit, and attempted to communicate with Subject 1. Despite being asked to stop by the officers several times, Subject 1 did not comply. When the officers continued to give verbal commands, Subject 1 turned toward the officers, yelled at them and walked away. Wanting to contain Subject 1 and to prevent him from walking further down the street, Officer B walked in front of him and blocked his path with the TASER. Subject 1 clenched his fists, and yelled, "I don't care if you kick me, hit me. Go ahead and kick me. Kick me. Kick me." Officer B advised Subject 1 that if he "did not comply with [Officer B's] orders, he would be tased and it would hurt." Subject 1 turned toward the officers and balled his fists, as if preparing to punch the officers. Officer B again advised Subject 1 that if he did not comply with his commands, he would be tased. Subject 1 disregarded Officer B's warning and walked towards him with raised hands and clenched fists. When Subject 1 came within four feet of Officer B's position, Officer B discharged the TASER in Subject 1's direction. Subject 1 was unaffected by the TASER and walked toward Officer A, swinging his fists toward Officer A as he did so.

Officer A struck Subject 1 approximately five times on his upper left arm and shoulder area with his baton. Despite being struck by the baton, Subject 1 continued to resist and attempted to wrestle the baton from Officer A's possession. Officer A maintained control of the baton and struck Subject 1 with it two additional times. When Officer B approached Subject 1 with the intent to subdue him, Subject 1 punched Officer B in the upper torso, causing him to fall to the ground. Officer B then returned to his feet, removed the spent cartridge from the TASER, and used the TASER in "drive stun" mode against Subject 1's upper back, with no effect.

**Note:** A subsequent check of the TASER used by Officer B determined that the batteries were not fully charged.

Noting that neither the TASER nor the baton strikes were effective in subduing Subject 1, Officer A threw his baton aside and grabbed Subject 1 from behind in a "bear hug."

Wanting to gain control of Subject 1, Officer A pushed him against an adjacent gate while his partner yelled over the radio, "We need backup!" The gate that Officer A pushed Subject 1 against opened, causing Subject 1 to fall onto his back. The officers again advised Subject 1 to stop resisting; however, he did not comply. Rather, Subject 1 remained combative and attempted to kick the officers while positioned on the ground, causing Officer B to step back and kick Subject 1 on his right upper torso approximately five times. Officer A kicked Subject 1 as well, striking him three times on his left upper arm. Despite being struck several times by the officers, Subject 1 stood up and started to jog away. The officers followed Subject 1, but disengaged when Officer A said he could not continue due to an ankle injury. Officer B slowed down to ensure that his partner was okay.

Officer C and Officer D arrived and noted that Subject 1 was walking naked on the street with Officers A and B following behind. Officer D stopped the police vehicle while Officer C retrieved a TASER.

When Officer B continued to instruct Subject 1 to stop, Subject 1 raised his fist, as if to deliver a punch and stepped toward Officer B. Officer C then fired the TASER at Subject 1, causing him to fall.

The officers directed Subject 1 to roll onto his stomach and to place his hands behind his back, but he did not comply. Rather, Subject 1 yelled expletives, sat up, and rolled onto his side. Officer C then advised Subject 1 that if he did not comply with his commands, he would activate the TASER and that he could be injured as a result. Subject 1 bent his leg, put his hand down like he was going to get up and yelled and expletive at the officers. Officer C activated the TASER a second time. Subject 1 then complied with the officers' commands and was arrested without further incident. Once Subject 1 was handcuffed, Officer C requested a Rescue Ambulance (RA).

Sergeant A arrived, spoke with the officers, and determined that the incident would be investigated as a non-categorical use of force. An RA unit arrived at scene, treated Subject 1 for his injuries, and transported him to a hospital. Upon further medical examination, it was determined that Subject 1 had sustained a fractured right arm and would be admitted to the hospital. The investigation of the incident was re-categorized as a categorical use of force.

### **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 Officer A's tactics to warrant divisional training.

The BOPC found Officer B's tactics to warrant formal training.

The BOPC found Officer C's tactics to be appropriate.

#### **B. Non-lethal Use of Force**

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

### **C. Less-lethal Use of Force**

The BOPC found Officer B's less-lethal use of force to warrant formal training.

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

#### **Basis for Findings**

##### **A. Tactics**

The BOPC noted that although the officers took several steps to resolve this incident, there were several identified areas for improvement. Upon arrival, Officers A and B requested an additional unit. It would have been prudent for the officers to broadcast their observations of Subject 1, thereby allowing the responding officers to properly equip themselves. Additionally, after the officers had observed Subject 1's behavior, there was no urgency to apprehend him. It would have been safer for Officers A and B to track Subject 1 and wait for additional officers to arrive, then coordinate a plan for detaining Subject 1.

Subject 1 stood with clenched fist and refused to comply with Officer B's verbal commands. Subject 1 then charged toward Officer B and came to within four feet of Officer B's position, prior to Officer B discharging the TASER. It would have been safer for Officer B to maintain a safe distance from Subject 1, allowing the officer time to react.

The BOPC found Officer A's tactics to warrant divisional training.

The BOPC found Officer B's tactics to warrant formal training.

The BOPC found Officer C's tactics to be appropriate.

##### **B. Non-lethal Use of Force**

The BOPC noted that subsequent to the TASER activation, Subject 1 appeared to be unaffected and charged at Officer A while swinging his arms and attempting to punch Officer A. Officer A drew his baton, blocked Subject 1's punches and delivered several baton strikes to Subject 1's left arm. During the third strike, Subject 1 was able to grasp the baton and attempted to pull it away. Officer A regained control of the baton and delivered two more strikes to Subject 1's left arm and left leg.

Simultaneously, Officer B approached Subject 1 and attempted to use the TASER against Subject 1's ribcage. Subject 1 swung his left arm and struck Officer B, causing him to fall. Officer A then observed Subject 1 approaching Officer B, at which time Officer A applied a bear hug to Subject 1 from behind. Officer A began to feel Subject 1 overpowering him and moved Subject 1 to a nearby driveway gate. Due to the force against the gate, it swung open, causing Subject 1 and Officer A to fall through. Officer A was able to push Subject 1 away causing Subject 1 to fall to the ground on his back. Subject 1 then began to swing his arms and kick his feet.

Subject 1 continued to kick at the officers despite a second TASER activation. Fearing Subject 1 would overpower them if they physically engaged him, Officer A kicked Subject 1 on his left torso, left upper arm and left leg. Officer B kicked Subject 1 approximately five times on his right upper torso area. Subject 1, who appeared unaffected by the officers' kicks, suddenly stood and jogged away.

The BOPC determined that Officers A and B's use of force was reasonable to control the suspect.

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

### **C. Less-lethal Use of Force**

The BOPC noted that after observing Subject 1's behavior, Officer B armed himself with a TASER and both officers approached him. Subject 1, who stood with clenched fists, refused to comply with Officer B's verbal commands. Officer B then warned Subject 1 regarding the use of the TASER, at which time Subject 1 charged toward Officer B, resulting in the first TASER activation. The TASER appeared to have no effect on Subject 1.

As Officer A was engaged with Subject 1, Officer B removed the spent cartridge from the TASER, approached Subject 1's left side and attempted to use the TASER by placing the TASER probes against Subject 1's left ribcage area and activating the TASER. This proved ineffective as the stun feature is not intended to subdue the subject, but simply to allow officers to create distance between themselves and the subject.

As Officer B stood, he observed Subject 1 on his back and kicking at Officer A. Officer B attempted his third activation of the TASER. Subject 1 was still unaffected and continued to struggle with the officers. It would have been prudent for Officer B to attach a new cartridge to the TASER.

The BOPC determined that Officer B's less-lethal use of force was reasonable to stop Subject 1's actions, but that Officer B would benefit from additional TASER training.

Officer C responded to the location and observed Subject 1 in a fighting stance with Officers A and B. Officer C armed himself with a TASER and approached Subject 1. Based on Subject 1's behavior, Officer C was unable to issue a warning and deployed the TASER. The darts made contact, causing Subject 1 to fall back onto the sidewalk. Officer C then warned Subject 1 to comply with the verbal commands or he would be "tased" a second time. When Subject 1 refused to comply, Officer C completed a second and final activation of the TASER. Subject 1 was then taken into custody.

The BOPC determined Officer C's less-lethal use of force was reasonable to stop Subject 1's actions.

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

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