

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

LAW ENFORCEMENT-RELATED INJURY 053-10

<u>Division</u>	<u>Date</u>	<u>Duty-On(x) Off()</u>	<u>Uniform-Yes() No(x)</u>
Hollywood	06/27/10		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Officer A	7 years, 3 months
Officer B	4 years, 7 months

Reason for Police Contact

Officers responded to a radio call of an intoxicated male, which resulted in a law enforcement related injury.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
Subject: Male, 31 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 suspect 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 Department Command Staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

In accordance with state law divulging the identity of police officers in public reports is prohibited, so 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 May 23, 2011.

Incident Summary

Communications Division (CD) broadcast a request for any unit to respond to a call of an intoxicated male at a cocktail club. Police Officers A (passenger) and B (driver) heard the broadcast and notified CD that they would respond.

Officer A checked out a TASER on the night of the incident, which he placed in between the front seats of the police vehicle. Officer A did not wear the TASER on his duty belt because he had no room for it.

After arriving at the location, Officer A notified CD of their Code Six status via the Mobile Digital Computer (MDC). The officers were not able to locate the intoxicated male and Officer A contacted CD for further information regarding the call. The officers remained in their vehicle with their windows down and waited for more information from CD and as they did so, they heard a male (later identified as the Subject) yelling racial slurs and obscenities at a group of four or five male adults on the south sidewalk, approximately 75 to 100 feet west of their location. Officers A and B continued to “monitor” the interaction between the Subject and the males and observed that the situation seemed to be escalating. Officer B believed they were about to fight, and according to Officer B, the Subject attempted to swing at the males but missed; however, the males did not hit or attempt to hit the Subject.

Officer B parked the police vehicle facing in a southeasterly direction and illuminated the Subject and the males with the vehicle’s spotlight. According to Officer A, the Subject did not have any shoes on, “looked kind of dirty” and appeared to be under the influence of alcohol or narcotics. The males started to walk slowly away from the Subject; however, the Subject continued to yell obscenities and racial slurs, and to make threats toward the males.

Officer A observed the Subject with his hands clenched and “aggressively yelling” at the males, using profanity and racial slurs. The males did not approach the Subject but maintained their distance and yelled back at the Subject something to the effect of, “Shut the [expletive omitted] up;” however, did not appear to want to fight with the Subject. Officer A exited the police vehicle and, unholstered his service pistol and maintained it at a low ready position. As explained by Officer A, “I didn’t know if any of the [subjects] were armed or the guy yelling at the four males [...], I didn’t know if he was armed or if anyone had any weapons.” Officer A then attempted to separate the parties.

While he was talking to the Subject, Officer A “looked to his right with [his] service weapon,” and saw that the males had started to walk westbound, away from the officers and the Subject, but continued to yell at the Subject.

Officer B broadcast a request for an additional Unit and updated their location.

Officer A believed he no longer needed his pistol drawn and he holstered it. Officer A told Officer B to “keep eyes” on the Subject, and he (Officer A) returned to their police vehicle, retrieved his TASER from between the seats and walked back toward Officer B and the Subject. Officer A pointed the TASER at the Subject, activated the TASER’s red sighting laser, and told the Subject to “take off.” According to Officer A, the Subject was not paying attention to him and continued to yell profanities and racial slurs at the males as they walked away. Officer A continued to verbalize with the Subject and repeatedly told him to “move along.” The Subject yelled “[expletive omitted] you” in the

direction of the males three or four more times, looked in Officer A's direction and then he stated to Officer A, "What the [expletive omitted] is your problem?" or, "[Expletive omitted] you cops." Officer A stated to the Subject, "You're going to get shot with a [TASER] and it's going to hurt." The Subject replied, "I'm going to slice your throat."

Officer A did not see the Subject in possession of a knife or any other weapon at any time during the incident. The Subject paced back and forth on the sidewalk with his hands clenched by his sides. Officer A advised Officer B that if the Subject took one more step toward him that he (Officer A) was going to "shoot" the Subject with the TASER. Officer A moved into the street, north of the Subject, while Officer A moved west, so that Officers A and B were in a triangulated position with the Subject. According to Officer A, the Subject, who still had his hands clenched and by his waist, took a fighting stance and then stepped toward Officer A. Officer A discharged one TASER cartridge at the Subject from a distance of approximately seven feet. According to the TASER download report, Officer A's TASER was activated 13 seconds for a five second duration.

Officer A believed the darts from the TASER struck the Subject in the center body mass, and as soon as they hit him, the Subject stopped talking and became rigid. Simultaneously, according to Officer A, Officer B, who was standing several feet to Officer A's right (west), walked to within three feet of the Subject and using a two-handed grip struck the Subject in the center or small of the Subject's back with a baton. The Subject fell to the ground and hit his head on the curb and according to Officer A, the Subject then fell off of the curb face-down into the street. Officer A believed the Subject was unconscious and as the Subject lay on the ground, Officer A observed a laceration on the top or back of the Subject's head.

Officer B exited the police vehicle and deployed his PR-24 side-handle baton. Officer A exited the vehicle as well. Officer B heard the males state that they do not want to get involved and he saw them walk westbound away from the Subject. Officer B told the Subject to "go the other way;" however, the Subject continued to yell and shout obscenities at the males.

Officer A went back to the police vehicle and retrieved the TASER and Officer B broadcast a request for an additional unit. According to Officer B, both he and Officer A told the Subject to calm down and leave the area. The Subject then stated to Officer A, "[expletive omitted] you. I'm going to slice your throat." Officer A pointed the TASER at the Subject and activated the TASER's laser sight. The Subject again stated to Officer A, "I'm going to slice your throat." Officer B did not see the Subject in possession of a weapon during the incident.

Officer B heard Officer A warn the Subject that if the Subject got any closer then the TASER would be used against him. According to Officer B, the Subject clenched his fists and took a fighting stance. The Subject then took a step toward Officer A and Officer A discharged a TASER cartridge toward the Subject. The Subject "tensed up" but was still standing and continuing to clench his fists. Officer B, believing the Subject

was still a threat, struck the Subject one time with his baton in the middle of the Subject's back, between the shoulder blades, and the Subject immediately fell sideways to the ground. As the Subject fell, his head struck the curb and he came to rest face-down on the curb line/street. Officer B placed his baton back into his baton ring and approached the Subject. Officer B observed that the Subject was unconscious and bleeding from his head. Officer B handcuffed the Subject and conducted a cursory search of the Subject's waistband and pockets. Officer B then broadcasted a request for a Rescue Ambulance (RA) for the Subject and for a supervisor to respond to their location.

A Witness recorded a portion of the incident using a cellular telephone and subsequently posted the video online. The Witness declined any further participation in the investigation and did not submit to an interview.

Officers C and D heard Officer B's request for an additional unit and responded to the location. Upon their arrival, Officer C notified CD of their Code Six status. Officers C and D observed Officers A and B standing over the Subject who was already handcuffed by the time Officers C and D arrived on scene. Both Officers C and D saw a cut on the Subject's head and blood on the ground. Officers C and D determined that they would provide cover for Officers A and B and stop pedestrians from walking through the location, by putting crime scene tape across the sidewalk.

Officers E and F heard Officer B's additional unit request and also responded to the location. According to Officer E, after he and Officer F arrived on scene Officer A told him (Officer E) that the Subject was drunk, charged Officer A and threatened to "slit his [Officer A's] throat," and that in response to the Subject's actions and his verbal threat, Officer A used the TASER on the Subject.

Los Angeles Fire Department (LAFD) personnel arrived on scene, treated the Subject for a laceration to his head and transported the Subject in the RA, along with Officer E, to the hospital.

Sergeant A responded to the location, and by the time Sergeant A arrived on scene the Subject was being placed on a gurney by the LAFD. Sergeant A obtained Public Safety Statements (PSS) from both Officers A and B and ordered the officers not to discuss the incident.

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 and B's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting

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

C. Non-Lethal Use of Force

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

D. Less-Lethal Use of Force

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

Basis for Findings

A. Tactics

In this instance, Officers A and B were confronted with a tactical scenario that had the potential to escalate. Although consideration for a back-up request was warranted, Officers B and A were on-scene and in a position to best determine when a back-up request is necessary. Since an immediate response of additional units was not necessary, the decision to not request a back-up unit did not "*substantially*" deviate from approved Department tactical training.

In conclusion, the BOPC determined that this topic be discussed during the Tactical Debrief.

B. Drawing/Exhibiting

In this instance, according to Officer A, he drew his pistol because he was unsure if any of the involved parties were armed. Officer A was confronted with a rapidly unfolding tactical situation and appropriately recognized the potential for the incident to escalate. The Subject was engaged in behavior that was likely to incite a violent response from the individuals the racial slurs were directed towards. Furthermore, Officer A was unaware of whether the Subject or any individuals in the group possessed a weapon, which could cause the incident to quickly escalate. To the extent that a physical altercation was likely and, as a result, there existed a potential that serious bodily injury (e.g. extensive sutures, loss of consciousness, etc.) could be sustained, an officer with similar training and experience would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

In conclusion, the BOPC determined Officer A's Drawing/Exhibiting to be In Policy.

C. Non-Lethal Use of Force

In this instance, the Subject appeared unaffected by the TASER, continued to clench his fists and remained in a fighting stance as to strike Officer A. Officer A recalled, "As soon as it [TASER] hit him he stopped talking and became rigid with his - - still with hands clenched...I couldn't tell if he was going to come towards me..." According to Officer B, the Subject remained, "very aggressive and 415" after the TASER was activated. In regards to his decision to use force, Officer B made the decision to use his baton after he observed that the Subject's hands "were still clenched at his waist, in his fighting stance."

Officer B reacted, as any reasonable officer with similar training and experience, when he struck the Subject across the back with his baton. Officer B's perception that the Subject presented a continued threat following the TASER activation in that the Subject did not respond in a manner consistent with a successful TASER activation and his hands remained clenched in a fist. Although Officer B did not provide an additional verbal warning before he used his baton, an impact weapon, it was appropriate in that it was not feasible under the circumstances. Officer B was present[ed] with a situation where in the TASER activation was ineffective and there was a necessity to transition to another force option in order to immediately respond to the suspect's actions that were reasonably perceived to be combative. The application of force was within Department policy and consistent with the legal authority to use force to overcome resistance and effect an arrest.

In conclusion, the BOPC determined Officer B's application of Non-Lethal Force to be In Policy.

D. Less-Lethal Use of Force

In this instance, Officer A maintained his position on the sidewalk and attempted to obtain compliance through verbalization. The Subject paced back and forth on the sidewalk with his fists clenched. Officer A recalled, "...he said '[expletive omitted] you cops' at least - - I want to say probably at least six or seven times...I told him hey you know I got a TASER." Again the Subject yelled profanity and stated, "I'm going to slice your throat." Regarding his decision to deploy the TASER, Officer A stated, "That's when...I believe I warned him one more time... he made one step towards me and I shot him one time with a TASER..."

Officer A reacted, as any reasonable officer with similar training and experience, when he used the TASER. The Subject had failed to respond to verbal directives and demonstrated violent behavior, stating, "I'm going to slice your throat." The statement made it reasonable to believe it was unsafe to approach. Officer A provided a verbal warning and discharged the TASER only after the Subject stepped towards him. The

application of force was within Department policy and consistent with the legal authority to use force to overcome resistance and effect an arrest.

In conclusion, the BPOC determined Officer A's application of Less-Lethal Force to be In Policy.