

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

LAW ENFORCEMENT-RELATED INJURY – 068-11

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Wilshire	07/26/2011		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	24 years, 1 month
Officer B	2 years, 7 months

Reason for Police Contact

Officers responded to a lewd activity radio call and as they attempted to remove the Subject from the location, a use of force incident occurred.

Subject	Deceased () Wounded (X) Non-Hit ()
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Subject: Male, 46 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.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on May 22, 2012.

Incident Summary

Officers A and B were in uniform and wearing their ballistic vests, each carrying a canister of OC spray and a Department issued flashlight. Both officers also carried batons on their equipment belts. Officers A and B were assigned as two different single officer units, on two separate work shifts. As both officers were working by themselves, they were primarily responsible for handling non-emergency report-writing radio calls.

Due to a large number of radio calls being broadcast, Officers A and B had been responding to radio calls together in order to safely assist other units. Communications Division (CD) assigned both Officers A and B to a "311 Man" radio call, a generic call code for lewd activity, at a bar/spa.

Officers A and B responded separately to the location. Both officers entered the location and made contact with an employee at the front desk, Witness A, who stated that he had called the police. Witness A explained to the officers that there was a naked man on the rooftop patio who had not paid an entrance fee, and Witness A wanted him escorted out of the premises as a trespasser.

The Subject indicated to officers he had paid to enter earlier in the day, but had left. He subsequently returned to the location, following someone inside who had already paid and been buzzed in. The Subject indicated he was not given a stamp or other indication he had paid when initially leaving the facility.

Witness A led Officers A and B up a set of stairs to a rooftop patio and pointed out a naked man lying on a patio chair, later identified as the Subject. Officer A asked the Subject to get up and leave. The Subject responded, "Fuck you. I'm not leaving, call the police." Officer A responded, "Sir, we are the Los Angeles Police Department, I'm asking you to get up and leave." When the Subject still refused to leave, Officer A explained that if he continued to refuse, he would be arrested for trespassing.

The Subject stood up and put his pants on, keeping his underwear in his hand. Officers A and B then utilized firm grips to escort the Subject from the building.

When the officers asked the Subject which direction he planned to go, the Subject directed his attention toward Officer A and stated, "Fuck you! I'm not leaving!" Officer A turned the Subject to the east and pushed him away, using enough force to push the Subject approximately two feet. Officer B released his grip simultaneously and both officers backed up an additional three to five feet.

The Subject turned toward the officers, focused on Officer A and stated, "Fuck you, you nigger!" The Subject clenched his fists and threw his underwear and passport at Officer A. Officer A attempted to move out of the way of the objects and was struck on the side of his head by the passport.

Officer A communicated to Officer B that they were going to arrest the Subject. The Subject began to approach both officers with his fists closed and hands raised to his waist. As the Subject approached within approximately three feet of the officers, Officers A and B approached him. Officer A walked around the Subject's right side and placed his right hand on the Subject's right wrist and his left hand around the Subject's right elbow. Officer B walked around the Subject's left side and placed his left hand on the Subject's left wrist and his right hand on the Subject's left shoulder blade. According to Officer A, he decided to use the sidewalk as a "controlling agent" to safely take the Subject into custody. Officer B took a step forward and applied pressure to the Subject's left shoulder. Officer A extended the Subject's right arm and used it as a leverage point to force the Subject to the sidewalk.

As the Subject began tilting forward, he lost his balance, causing the officers to lose their balance as well. To prevent himself from falling onto or under the Subject, Officer A released his grip on the Subject. The Subject fell and struck his head on the sidewalk, falling from a distance of two to three feet.

Officer A placed his left knee on the Subject's back, just below the right shoulder blade and Officer B placed one of his knees on the Subject's buttocks to maintain the Subject's position.

Once the Subject was handcuffed, the officers stood up and the Subject started flailing around on the ground. In order to avoid being struck by the Subject's leg and body movements, both officers backed approximately three to four feet away and told him to calm down. The Subject continued to yell at the officers. After waiting for several moments, Officers A and B placed the Subject in a seated position on the sidewalk, but he rolled back onto the sidewalk and continued flailing. Both Officers A and B observed swelling above the Subject's left eye from striking the sidewalk.

At approximately 2:55 a.m., Officer A requested a supervisor. Officer B asked the Subject if he needed medical attention, to which the Subject replied, "Fuck off."

At approximately 3:05 a.m., Sergeant A, responded to the location. Sergeant A met with Officer A, who explained to him that a use of force had occurred and the Subject had been injured. Sergeant A observed the Subject sitting on the sidewalk, mumbling incoherently. Sergeant A also observed a contusion above the Subject's left eye and abrasions to the bridge of his nose and left temple.

The Subject did not complain of any injuries, but due to his observations, Sergeant A directed Officer B to request a Los Angeles Fire Department (LAFD) Rescue Ambulance (RA) to examine the Subject. At approximately 3:06 a.m., Officer B broadcast a request for an RA to respond and examine the Subject.

At approximately 3:10 a.m., LAFD personnel responded to the location and observed the Subject sitting on the sidewalk.

The Subject refused treatment and stated that he did not have any medical complaints. Because the Subject refused treatment and did not demonstrate any immediate medical problems, LAFD personnel did not take vital signs or treat the Subject.

Meanwhile, Officers C and D responded to the location. When LAFD personnel left without transporting the Subject, Sergeant A directed Officers C and D to transport the Subject to the police station. Both officers observed that the Subject appeared to be intoxicated and had swelling above his left eye. The Subject remained handcuffed and was placed in the backseat of Officers C and D's police vehicle. During the transport, the Subject was belligerent toward them and yelling incoherently.

Upon arrival at the station, Officers C and D presented the Subject to the Watch Commander, Sergeant B. Sergeant B asked the Subject the standard screening questions. The Subject stated that he was ill and injured. In addition to listing several medical conditions from which he suffered, the Subject also explained that he was injured by officers and had swelling above his eye and a scratch to the bridge of his nose. Officers C and D placed the Subject in a holding cell and due to his intoxication and continuing belligerent behavior, handcuffed him to the bench inside the cell. As their transportation duties were complete, Officers C and D resumed field patrol. The Subject remained in the holding cell while Officers A and B returned to the station and completed the related arrest report. Sergeant B signed a Booking Approval for California Penal Code Section 241 (C), Assault on a Police Officer, and requested another patrol unit to transport the Subject for booking.

Once the Subject was transported from initial call location, Sergeant A conducted a non-categorical use of force investigation at the scene. Sergeant A identified two people who were standing nearby when the Subject was taken into custody on the sidewalk. Sergeant A interviewed Witnesses A and B at scene and determined that they observed the Subject's behavior prior to and after the use of force; however, they were crossing the street when the Subject was taken to the sidewalk and did not observe what happened. Sergeant A determined the information they provided was consistent with that of Officers A and B. Sergeant A conducted a canvass of nearby businesses, but found no other witnesses. He was unable to locate any video cameras that captured the use of force.

At approximately 0600 hours, Officers C and D were directed to book the Subject at the jail. During the transport, the Subject still appeared to be intoxicated and was yelling. As part of the established protocols when booking a subject with medical conditions, they took the Subject to the Jail Dispensary to be examined by City of Los Angeles Medical Services Division Doctor A. The Subject told the medical staff of his extensive pre-existing medical conditions, that he had pain to his face and was having difficulty breathing.

Officers C and D completed the booking process and waited with the Subject to be relieved by day watch officers.

At approximately 9:00 a.m., Officers E and F responded and took custody of the Subject and transported him in the backseat of their police vehicle to the hospital.

At approximately 9:10 a.m., Officers E and F arrived at the hospital emergency room.

At approximately 10:30 a.m., after examination by Doctor B, the Subject was diagnosed with a collapsed lung and admitted to the hospital. Officer F notified the Watch Commander, Sergeant C, of the change in the Subject's status. Doctor B stated to Sergeant C that the use of force could possibly have caused the collapsed lung. At approximately 1:10 p.m., Sergeant C made the proper notifications that the incident was now a categorical use of force.

On July 27, 2011, the case was referred to the Los Angeles City Attorney's office for filing consideration. The case was rejected, citing time served and the interest of justice.

On July 28, 2011, the Subject was discharged by hospital medical staff.

According to the Subject, he did not recall the officers' demeanor, what he was doing with his hands at the time of the incident, whether the officers were saying anything to him, or whether he was wearing pants. Additionally, he did not recall throwing his underwear at Officer A, using the word "nigger" to refer to Officer A, running with his fists balled up, or raising his arms toward the officers. The Subject also did not recall the officers telling him to put his hands behind his back.

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 of a firearm 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 made the following findings.

A. Tactics

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

B. Non-Lethal Use of Force

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

Basis for Findings

A. Tactics

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

1. Handcuffing Suspects

In this instance, the Subject was not under arrest and was cooperative while being escorted from the roof to the lobby of the bar. Once the Subject refused to leave, the officers took immediate steps to control him and escort him off the property. Though it may have been tactically advantageous to handcuff the Subject at that time, the officers were attempting to resolve the situation without escalating it to the point where an arrest would become necessary.

In conclusion, the BOPC found that the decision by Officers A and B not to handcuff the Subject as they escorted him off the property did not, under the circumstances, substantially deviate from approved Department tactical training but should nonetheless be discussed during the Tactical Debrief.

- The BOPC additionally considered the following:

- Requesting Backup

Once outside the business, the Subject displayed combative behavior when he clenched his fists, held them at waist level and threw his underwear and passport at Officer A. Although an allowance must be made for officer discretion and the rapidly unfolding escalation of the incident, it would have been tactically advantageous to request additional resources at this time. The BOPC directed that this topic be discussed during the Tactical Debrief.

- Requesting Medical Treatment

In this instance, Officer B did not request the response of LAFD personnel until after the arrival of Sergeant A. In doing so, Officer B caused the delay of medical response. While examining this issue, the BOPC considered that the Subject's injuries appeared minor in nature. Furthermore, at the time Officer B asked the Subject if he required medical treatment, the Subject was responsive and did not appear to be in medical distress.

Given these circumstances, the BOPC found that the short delay (approximately five to seven minutes) in requesting medical treatment did not constitute a substantial deviation from approved Department tactical training or Department Policy. However, to ensure that Officers A and B understand the importance of

requesting timely medical treatment, this topic was discussed during the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific. Each tactical incident inherently results in considerations for improvement. In this instance, although there were identified areas for improvement, the tactical considerations did not individually or collectively unjustifiably or substantially deviate from approved Department tactical training.

The BOPC determined that a Tactical Debrief is the appropriate mechanism for the significantly involved personnel to evaluate the events and actions that took place during this incident and assess the identified tactical considerations to better handle a similar incident in the future.

In conclusion, the BOPC found Officers A and B's tactics to warrant a Tactical Debrief.

B. Non-Lethal Use of Force

- Once outside, Officer A asked the Subject which direction he wanted to leave. The Subject responded "Fuck you! I'm not leaving!" In an effort to create distance, Officer A pushed the Subject, using enough force to push him approximately two feet. Simultaneously, Officer B released his grip and both officers backed up an additional three to five feet. After being released, the Subject turned toward the officers, focused on Officer A and stated, "Fuck you, you nigger!" The Subject then clenched his fists and held them at waist level, still holding his underwear and a passport in his right hand. The Subject threw his underwear and passport at Officer A from an approximate distance of seven feet, striking Officer A on the left side of the head.

Officer A communicated to Officer B that they were going to arrest the Subject. The Subject began to approach both officers with his fists closed and hands held at his waist. As the Subject came within three feet of the officers, Officer A approached the Subject's right side and placed his right hand on the Subject's right wrist and his left hand around the Subject's right elbow. At the same time, Officer B walked around the Subject's left side and placed his left hand on the Subject's left wrist and his right hand on the Subject's left shoulder blade. Deciding to use the ground as a controlling agent, Officer B then took a step forward and applied pressure to the Subject's left shoulder while Officer A extended the Subject's right arm and used it as a leverage point to force the Subject to the sidewalk.

However, as the Subject began tilting forward, he lost balance and began to fall. To prevent himself from falling onto or under the Subject, Officer A released his grip on

the Subject. As a result, the Subject, who held his arms tucked under his body, struck his head on the sidewalk from a distance of two to three feet.

Officer A placed his left knee on the Subject's back just below the right shoulder blade and Officer B placed one of his knees on the Subject's buttocks. The Officers then pulled the Subject's arms from underneath his body, placed them behind his back and handcuffed him.

The standard set forth in Department policy dictates that the decision to use force must be judged through the perspective of a reasonable officer with similar training and experience and in a similar circumstance. The BOPC determined that an officer with similar training and experience would reasonably believe that the force used to overcome the resistance and effect an arrest was reasonable and would have acted in a similar manner. Therefore, the force used was objectively reasonable and within Department Policy.

In conclusion, the BOPC found Officers A and B's use of non-lethal force to be in policy.