

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

HEAD STRIKE WITH AN IMPACT DEVICE – 075-10

Division	Date	Duty-On (X) Off()	Uniform-Yes(X) No()
Central	09/23/10		

Officer(s) Involved in Use of Force	Length of Service
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Officer A	1 year, 10 months
Officer B	1 year, 11 months
Officer C	11 years, 8 months
Officer D	2 years, 3 months

Reason for Police Contact

Officers attempted to conduct a pedestrian stop, which resulted in a head strike with an impact weapon.

Subject	Deceased ()	Wounded (X)	Non-Hit ()
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Subject: Male, 36 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 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 August 9, 2011.

Incident Summary

Officers A and B responded to a radio call of a male and female using narcotics inside a public bathroom. When they arrived at the location, Officers A and B were flagged down by two females who advised them that the Subject and Witness A had just left. One of the females said she had seen the Subject and Witness A in the bathroom having sex and doing drugs. The female described the Subject and Witness A's clothing description and direction of travel. Officers A and B decided to drive around the area to search for the Subject and Witness A.

Officers A and B observed two individuals that matched the clothing description and discussed that they were going to conduct a pedestrian stop of the Subject and Witness A. Officer B broadcast a request for a female officer to conduct a search. Officers A and B donned a pair of gloves and exited their police vehicle. Officer B crossed the street, walking toward the Subject and Witness A, who had now walked around the corner of the building. From a distance of approximately 20 feet, Officer B stated to the Subject, "Stop, I want to talk to you." The Subject and Witness A turned and looked at Officer B, but then continued walking away in a fast pace. Officer B told Officer A to move their vehicle because they would no longer be able to see the vehicle if they continued on foot around the corner. Officer B broadcast their status and location.

Officer A re-entered his police vehicle and drove against traffic on a one-way street to catch up to the Subject and Witness A. Officer B ran on the sidewalk parallel to Officer A's police vehicle. Officer A activated the police vehicle's light to alert oncoming traffic of his presence.

When Officer A got closer to the Subject and Witness A, he stopped his vehicle, exited and directed the Subject to turn around and face the wall. The Subject stated, "Why?" Officer A approached the Subject and told him to face the wall. The Subject was noncompliant. Officer A grabbed the Subject's right wrist with both of his hands. The Subject became rigid and began pulling his arm toward his body. Officer A guided the Subject toward the wall behind him to separate him from Witness A and to use the wall as a controlling agent; however, the Subject grabbed Witness A and wrapped his right arm around her upper torso.

Officer B arrived and both Officers A and B ordered the Subject to release Witness A. Officers A and B believed the Subject was using Witness A as a shield to prevent them from grabbing him. Officers A and B observed the Subject's right arm move up and wrap around Witness A's neck. Witness A raised her hands to the Subject's forearm and attempted to pull his arm down unsuccessfully.

Meanwhile, Officers C and D were nearby, completing an unrelated radio call, when they observed Officer A's police vehicle going to the opposite direction of traffic, pull over, and Officers A and B begin to struggle with the Subject. Officers C and D entered their vehicle and drove toward Officers A and B's location to assist them.

Meanwhile, Officers E and F were responding to the request for a female officer for a search, when they observed Officers C and D's vehicle traveling the wrong way on a one-way street. Officers E and F then observed Officers A and B struggling with the Subject on the sidewalk. Officers E and F activated their emergency lights and sirens, and drove toward the officers' location to assist.

Upon arriving, Officer C stood directly in front of the Subject and Witness A and yelled, "Let her go. Let her go." Officer C saw that the inside of the Subject's arm was around Witness A's neck and the Subject had her in a choke hold. The Subject began to kick and struck Officer C's shins. Officer C removed his baton and made a motion as if he was about to strike the Subject. Officer C observed an opening and utilized a two-handed forward thrust strike to the Subject's sternum area. The Subject began lowering himself, with his back against the wall, while maintaining his hold of Witness A's neck. Officer C delivered two downward strikes with his baton to the Subject's left arm, but the Subject continued to hold his grasp on Witness A. Officer C observed Witness A's eyes roll up to the back of her head and believed that the Subject was going to kill her or that she would lose consciousness and possibly die. Officer C pushed Officer A, who was to his right, to make room and delivered a two-handed downward strike with his baton to the back left side of the Subject's head as he yelled, "Let her go." The baton strike appeared to have no effect on the Subject. As Officer C reared his baton back to deliver another strike, he saw Officer A holding a TASER and told him to Tase the Subject. As Officer C delivered another downward strike to the left rear side of the Subject's head, he heard the TASER discharging. The Subject became rigid and his right arm dropped down to his side. Officers pulled Witness A away from the Subject as he fell to the ground. Officer C holstered his baton and placed his foot on the Subject's back to prevent him from getting up. As the officers knelt down to grab the Subject to handcuff him, the Subject began struggling again. Officer A activated the TASER a second time, which caused the Subject to become rigid and allowed Officer B to grab the Subject's left arm. Officer C told Officer A to turn the TASER off fearing that he or one of the other officers were going to feel the effects of the TASER. Officer B then completed handcuffing the Subject.

Meanwhile, according to Officer A, the Subject hunched over while maintaining his hold of Witness A's neck, and was now sitting on the sidewalk with his back against the wall. Witness A's face was turning red, and her eyes were rolling to the back of her head. Officer A observed Officer C step up and deliver a forward thrust with his baton to the Subject's chest. The Subject appeared winded but continued to hold Witness A. Officer A then observed Officer C deliver a forward thrust to the Subject's head/jaw area with the baton. Officer A then saw a clear view of the Subject's left torso and fired his TASER. The probes struck the Subject's torso and the five-second discharge caused him to release Witness A, scream and fall over on his right side. Officer B pulled Witness A away from the Subject, while other officers attempted to take him into custody. The Subject began to resist by kicking his legs and flailing his arms. Officer A activated the TASER again for approximately three to four seconds, which then allowed the officers to handcuff the Subject.

Meanwhile, Officer B observed that the Subject's hold around Witness A's neck appeared to get tighter and that the Subject was now slouching lower. Officer B drew his TASER with the intention of delivering a direct stun, but he was unable to do so because the Subject continued to move Witness A around, using her as a shield. Officer B observed Officer C use his baton to strike the Subject's shoulder or chest area. Officer B observed the Subject begin to stand up and then heard a TASER discharging. The Subject released Witness A and fell to the ground face down, but began moving his legs around. Officer B used his foot to hold down the Subject's foot/calf area. While officers held the Subject's legs down, Officer B placed his knee on the Subject's back and then handcuffed him. Officer B applied a Hobble Restraint Device (HRD) around the Subject's knee area to prevent him from kicking the officers.

Meanwhile, Officer D arrived at the sidewalk and assisted Officer A with grabbing the Subject's left arm. Officer D indicated the Subject fell and began kicking, but still had his hold on Witness A's neck. To prevent him from kicking, Officer D stepped on the Subject's left foot. Officer D then observed Officer C hit the Subject in the chest area with his baton using a forward thrust motion and then struck the Subject's left arm twice. Officer D moved several feet away to broadcast a backup request. Officer D then observed Officer A deploy the TASER and then the officers taking the Subject into custody. Officer D broadcast a request for a Rescue Ambulance (RA) and also requested a supervisor.

Meanwhile, Officer F observed officers struggling with the Subject as he approached the sidewalk and broadcast a backup request. Officer F observed the Subject's right arm was wrapped around Witness A's neck, and that he was fighting the officers with his left hand and was kicking. Officer F observed that Witness A's eyes were watery and she was gasping for air. Officer F attempted to separate Witness A from the Subject. As the Subject fought with the officers, Officer F observed Officer C strike the Subject on his left arm three to four times with his baton using a jabbing motion. Officer F then observed Officer A fire the TASER and saw the darts strike the Subject's back area. When the TASER was activated the Subject fell, taking Witness A down with him. Officer F picked up Witness A and moved her away from the Subject.

Meanwhile, Officer E observed the Subject on the ground, holding Witness A in a choke hold. Officer E ordered the Subject to let go of Witness A. Officer E observed Officer C with his baton out, but did not see him utilize it because he (Officer E) was focused on assisting Witness A. Officer E heard the TASER activation and observed the Subject release Witness A. After officers pulled Witness A away from the Subject, Officer E asked Witness A if she was okay. Witness A was gasping for air and appeared nervous, but stated she was fine.

According to the Subject, as he and Witness A were walking, a police vehicle pulled up next to them and an officer yelled, "Get on the wall." The Subject indicated the officer said he was resisting, ran up and pushed him to the ground and began beating him with a "billy club." The Subject stated he was struck twice on the left side of his head and was poked six or seven times on his left ribs for no reason. The Subject also stated that

the officer beat him about 20 times on his leg with the baton. The Subject told the officer, "I'm not doing nothing. I'm trying to get laid." The Subject was then tased and indicated that he blacked out. When he regained consciousness, he was sitting on the sidewalk.

According to Witness A, she and the Subject were walking on the sidewalk when a police vehicle pulled over. The Subject grabbed her from around her neck and they both fell. Witness A indicated that the Subject kept saying, "This is my wife, my wife." Witness A heard the officers yelling that the Subject was choking her, "which he is, but I just kept thinking, 'he's not my husband.'" Witness A indicated that the Subject had his arm around her throat for a few seconds before officers hit him with a baton and Tased him. Witness A told investigators, "I was choking it up." As a follow-up, the investigator asked her, "You were choking to death?" Witness A responded, "Yeah. I was," but later indicated, "a little bit."

Lieutenant A arrived at the scene and was advised by Officer C that he had intentionally struck the Subject's head two times with his baton because the Subject had his arm around Witness A's neck and he believed that the Subject was trying to kill her. Lieutenant A was then advised by Officer A that he had deployed the TASER on the Subject. Lieutenant A requested additional supervisors to respond to the scene, admonished the officers not to discuss the incident and separated them.

Los Angeles Fire Department (LAFD) personnel arrived at the scene. LAFD personnel took the Subject's vital signs and bandaged his head. The Subject was placed on a gurney and transported to a hospital.

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 Officers A, B, C, and D's tactics to warrant a Tactical Debrief.

B. Non-Lethal Use of Force

The BOPC found Officers A, B, C, and D's Non-Lethal use of force to be in policy.

C. Less-Lethal Use of Force

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

D. Lethal Use of Force

The BOPC found Officers C's Lethal use of force to be in policy.

Basis for Findings

A. Tactics

In adjudicating this incident, the BOPC considered the following:

Though Officers A and B were momentarily separated when Officer A went to retrieve the police vehicle, Officer B made no attempt to neither follow nor apprehend the Subject and Witness A. Instead, Officer B remained near the corner of the intersection until Officer A returned with the police vehicle. Though it would have been prudent for both officers to remain together, the risks to the officers at that time were minimal due to fact that the Subject and Witness A were attempting to avoid contact with the police and had walked away. The BOPC found that the tactical advantage lost by one officer remaining in the vehicle while the other continued on foot was minimized in that both officers remained within close proximity to each other while approaching the Subject and Witness A. Furthermore, when the officers contacted the Subject and Witness A, they did so at nearly the same time and there was no "unreasonable delay" in rendering aid to one another. The BOPC found that though Officers A and B deviated from approved Departmental tactical training, in that one officer approached the Subject and Witness A on foot while the other approached in the vehicle, this deviation was not "*substantial.*"

The BOPC noted that in police work there are times when officers may find it necessary or tactically advantageous to circumvent the rules of the road. What the Department demands however is that, when these situations arise, the officers act with reasonable justification and with due regard for public safety. Though there are inherent risks associated with driving against traffic on a one-way street, the BOPC considered the following: 1) The officers were attempting to apprehend possible felony suspects. 2) The officers reasonably believed that having their police vehicle with them would provide an increased tactical advantage. 3) The police vehicle was driven against traffic for a short distance and at a slow speed. 4) Acknowledging the risk to the public, Officer A checked the traffic conditions and activated his police vehicle's forward facing emergency red light to alert oncoming traffic. The BOPC found that although Officer A deviated from departmental tactical training by driving his police vehicle on a one way

street, against the flow of traffic for approximately half a block, the deviation was not “*substantial*.”

The BOPC noted that Officers A and B were confronted by the Subject who was combative, non-compliant and who grabbed Witness A from around the neck utilizing her as a shield against the officers. Although it would have been prudent for Officers A and B to request a back-up, the dynamic situation of trying to control the Subject and render aid to Witness A superseded making that request. The BOPC determined the officers’ action did not “*substantially*” deviate from approved Department tactical training.

The BOPC noted that Officers C and D were seated in their police vehicle when they observed Officer A driving in the wrong direction of a one-way street with his emergency lights activated. Officers C and D also observed Officers A and B confront a male and female subject. A reasonable officer would believe that Officers A and B were responding to, or involved in an emergency situation requiring immediate intervention. The BOPC found that although Officer D deviated from departmental tactical training by driving his police vehicle on a one-way street, against the flow of traffic for approximately half a block; the deviation was “*justified*” in that Officers C and D believed that Officers A and B were involved in a “help call” situation and required immediate assistance.

The BOPC noted that in this instance, after the first application of the TASER, the Subject’s body became rigid, released his right arm from around Witness A’s neck and fell to the ground. Officer C returned his baton to his baton ring, placed the Subject on his stomach and placed his left foot between the Subject’s shoulder blades in order to keep him pinned down to the ground until officers could handcuff him. Additionally, once the Subject was handcuffed and on the ground he continued to kick at the officers. Officer B stated he used his foot to hold down the suspect’s foot or calf area. Although Officers B and C deviated from Department tactical training by stepping on the Subject in an effort to control him; the actions were justifiable based on the continuous struggle with the Subject and the confined conditions caused by multiple officers and suspects. The BOPC determined the action did not “*substantially*” deviate from approved Department tactical training. However, due to the inherent tactical risks and negative public perception associated with stepping on a suspect, the Chief will direct that this topic be discussed during the Tactical Debrief.

The BOPC found Officers A, B, C and D’s tactics to warrant a Tactical Debrief.

B. Non-Lethal Use of Force

The BOPC noted that in this instance, Officers A and B gave commands to the Subject who failed to comply with the officers’ orders. Officer A approached the Subject and grabbed his right wrist and bicep area with both hands. The Subject tensed up and attempted to pull his arm away from Officer A’s grasp, causing Officer A to push the Subject backward in an attempt to utilize the concrete wall as a controlling agent. As

Officer A struggled to gain control of the Subject, the Subject grabbed Witness A from around her neck and used her to shield himself from the officers' grasp. During the struggle, the Subject refused to release his hold on Witness A who was having difficulty breathing.

Officers C and D arrived on scene, exited their vehicle, and ran to assist Officers A and B who were both struggling with the Subject. As Officer B attempted to pull Witness A away from the Subject's grip, Officers A and D used firm grips and physical force in an attempt to gain control of the Subject's left arm without success. During the struggle, the Subject refused to release his hold on Witness A. Officer C reacted as any reasonable officer with similar training and experience when he drew his side-handle baton from his equipment belt and repeatedly ordered the Subject to release Witness A. Officer C observed an opening when Witness A was momentarily positioned off to the Subject's side and utilized a two-handed forward thrust strike to the Subject's sternum area. Although Officer C did not provide a verbal warning before he used his baton, it was appropriate under the circumstances. The baton strike caused the Subject to back up and slump slightly downward against the wall while pulling Witness A with him and simultaneously attempting to kick the officers. Officer D attempted to gain control of the Subject's left foot by stepping on it without success. While the Subject continued to hold onto Witness A, Officer C assessed and utilized his side handle baton and struck the Subject once to his left elbow with a two-handed power stroke while simultaneously ordering the Subject to release Witness A. Officer C's baton strike had no apparent effect on the Subject, prompting Officer C to strike the Subject to his left elbow a second time with a two-handed power stroke. Officer C assessed the situation and noted that the Subject's right forearm and bicep were then positioned around Witness A's throat choking her. The officers were now presented with a situation wherein the baton strikes were ineffective and there was a necessity to transition to another force option in order to protect Witness A from the imminent threat of death or serious bodily injury.

After Officer C utilized two power stroke baton strikes to the Subject's head and Officer A utilized the TASER, the Subject released his grasp of Witness A. Officer C returned his baton to his baton ring, grabbed the Subject, placed him on his stomach and put his left foot on the Subject's back just below his head in order to keep him pinned down to the ground.

Officer B grabbed hold of the Subject's right arm and placed it behind his back as the Subject continued to resist prompting Officer A to activate the TASER a second time. After the second TASER activation, Officer B grabbed hold of the Subject's arms, placed them behind his back and completed the handcuffing procedure. Officer B applied the HRD to the Subject's legs, just above the knee area, as a precautionary measure to prevent the Subject from further kicking the officers.

Officers with similar training and experience as Officers A, B, C, and D would reasonably believe that the application of Non-Lethal force would be justified to overcome the Subject's resistance and take him into custody. Therefore, the BOPC

found that the officers' use of Non-Lethal Force was "*objectively reasonable*" and consistent with Department guidelines.

The BOPC found Officers A, B, C and D's application of Non-Lethal Force to be In Policy.

C. Less-Lethal Use of Force

The BOPC noted that in this instance, the Subject failed to comply after being struck with the initial four baton strikes and continued his hold around Witness A's neck. Officer C delivered a second baton strike to the Subject's head while shouting for Officer A to utilize his TASER. Officer A simultaneously deployed/activated his TASER, which struck the left side of the Subject's chest from a distance of approximately four feet. The Subject's body became rigid; he began screaming, released his right arm from around Witness A's neck and fell to the ground.

Officer C holstered his baton and grabbed the Subject, spun him around in a westerly direction and placed him on his stomach. Officer C then placed his left foot on the Subject's back just below his head in order to keep him pinned down to the ground. Officer B grabbed hold of the Subject's right arm and placed it behind his back as the Subject continued to resist. Officer A once again activated the TASER a second time, depressing the trigger for an additional four second burst allowing Officer B to complete the handcuffing procedure.

Officers with similar training and experience as Officer A would reasonably believe that the application of Less-Lethal force would be justified to overcome the Subject's resistance and take him into custody. Therefore, the BOPC found that the officer's use of Less-Lethal Force was "*objectively reasonable*" and consistent with Department guidelines.

The BOPC found Officers A's application of Less-Lethal Force to be In Policy.

D. Use of Force

The BOPC noted that in this instance, after striking the Subject one time to the sternum area with his baton and two times to the Subject's left elbow area without the desired effect, Officer C assessed the situation and noted that the Subject's right forearm and bicep were now positioned around Witness A's throat placing her in a full carotid or choke hold. Officer C observed Witness A's eyes roll up toward the back side of her head and believed she was losing consciousness and the Subject was going to break her neck or possibly kill her. The officers were now presented with a situation wherein the baton strikes were ineffective and there was a necessity to transition to another force option in order to protect Witness A from the imminent threat of death or serious bodily injury, prompting Officer C to intentionally strike the Subject along the top left portion of his head with a two-handed power stroke with his baton and then ordered the Subject to let her go. Officer C assessed the situation and noted that his baton strike

did not have the desired effect of causing the Subject to relinquish his choke hold on Witness A. The Subject continued his hold on Witness A's throat and failed to comply with the orders to let her go. Believing that Witness A had lost consciousness, Officer C delivered a second two-handed power stroke to the top left portion of the Subject's head while shouting to Officer A to utilize his TASER. Officer A deployed/activated the TASER causing the Subject to release his hold on Witness A who was subsequently pulled to safety by Officers B, E and F.

An officer with similar training and experience as Officer C would reasonably believe that the Subject posed an "*imminent threat of death or serious bodily injury*" to Witness A and the use of Lethal Force would be justified. Therefore, the BOPC found that Officer C's use of Lethal Force was "*objectively reasonable*" and consistent with Department guidelines.

The BOPC found Officer C's use of Lethal Force to be In Policy.