

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

CAROTID RESTRAINT CONTROL HOLD – 081-06

<u>Division</u>	<u>Date</u>	<u>Duty-On(X) Off()</u>	<u>Uniform-Yes(X) No()</u>
Harbor	09/24/2006		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Officer A	1 year
Officer B	16 years, 5 months

Reason for Police Contact

Officers responded to a report that a male suffering from mental illness had threatened his sister with a piece of wood. When the officers attempted to detain the male, he resisted and a struggle ensued.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
Subject 1: Male, 21 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 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 August 14, 2007.

Incident Summary

On September 24, 2006, Witness A was at home in an apartment. Also at the apartment was Witness A's brother, Subject 1, who suffered from schizophrenia. Subject 1 threatened Witness A with the leg of a small wooden alter that was being dismantled. Witness A then left the apartment. When she returned, Subject 1 was standing outside holding a backpack. When Witness A and Subject 1's mother, Witness B, returned home, Witness A told her what had happened. Witness B called

911 and told the operator that Subject 1 suffered from mental problems and had threatened her daughter with a stick.

Communications Division (CD) broadcast that a “violent male with mental illness” was standing in front of the apartment. CD also provided a description of Subject 1, and indicated that he was “armed with a piece of wood” and had attempted to strike his sister. The call was assigned to Harbor Area Patrol Division uniformed Officers A and B.

Upon arrival at the call location, Officers A and B observed Subject 1 standing on the landing in front of the stairs to his apartment. The officers approached Subject 1.

Note: According to Officer A, upon arrival at the call he broadcast that his unit was at the scene. However, this broadcast was not received by CD.

Subject 1 looked in the officers’ direction, but did not appear to be focusing on them. Officers A and B observed that Subject 1 had a backpack slung over his left shoulder. The officers did not see a piece of wood protruding from the backpack, nor did they see anything in Subject 1’s hands; however, they were concerned that the piece of wood was inside the backpack. Officer A began verbalizing with Subject 1, asking him to drop the backpack; however, Subject 1 did not acknowledge Officer A.

Witness B was watching out of her apartment window, and called down to Subject 1 to comply with the officers. Officer A asked Witness B to let the officers handle the situation. Officer B then began speaking with Subject 1, telling him that they were not going to hurt him, that they were there to help him, and asking him to drop the backpack. Subject 1 occasionally made statements that did not make sense to the officers, but was otherwise unresponsive.

After approximately five minutes of trying to talk to Subject 1, Officers A and B discussed a plan of action to remove the backpack from Subject 1, and to take him into custody. The officers decided that Officer A would approach Subject 1 from the front, and Officer B would approach Subject 1 from the rear.

Officers A and B initiated their plan, and Officer A was able to knock the backpack off of Subject 1’s shoulder and kick it away. Officer A then placed Subject 1’s left hand in a wrist lock.

As he was retrieving his handcuffs, Officer A lost control of Subject 1’s hand. Subject 1 then became agitated and grabbed the handcuffs with his right hand. Officer A told Officer B that Subject 1 had grabbed the handcuffs, and held on to the handcuffs to prevent Subject 1 from taking full control of them. As Officer A and Subject 1 struggled for control of the handcuffs, Officer B struggled to control Subject 1’s right hand.

The officers struggled with Subject 1, attempting to maintain control of the handcuffs and get his arms behind his back. Subject 1 struggled against the officers’ efforts. Subject 1 and the officers then fell onto the stairwell leading up to the apartment.

Subject 1 landed face-down, with Officers A and B on his left and right sides, respectively.

The officers continued to struggle for control of Subject 1's arms. Officer A repeatedly told Subject 1 to "Stop resisting." For his part, Subject 1 was saying, "Ow, ow," and "Don't hurt me." Officer A retrieved his handcuffs from Subject 1's grasp.

Witnesses A and B heard Subject 1 shout "Mom," exited their apartment and stood on the stairway. From that position, the two observed Subject 1 on his stomach on the stairs, struggling with the officers.

Officer A decided to spray Subject 1 with oleoresin capsicum (OC) spray, and drew his canister. However, Officer A decided that there was not enough space to use OC without spraying Officer B. Officer A then reholstered his OC canister and the struggle continued. Meanwhile, Subject 1 was calling to Witnesses A and B, asking them for help. Witnesses A and B told Subject 1 to comply with the officers' orders.

As the struggle continued, Officer A, who was becoming fatigued, again drew his OC canister. Officer A advised Officer B that he was going to use the spray. Officer B turned away to avoid being affected by the spray; however, Subject 1 turned his head away as well. Officer A then reholstered the OC canister, losing control of Subject 1's left hand as he did so. Subject 1 then reached out for Witness A, who was on the stairs, grabbed her hand, and asked her for help.

Officer A attempted to get Subject 1's hand away from Witness A and, as he did so, Subject 1's left hand landed on the TASER Officer A had holstered on his left side.

According to Officer B, Subject 1's hand became entangled in the webbing of the TASER holster. Officer B, concerned that Subject 1 was "actually going after that [TASER] and utilizing it on us" told Officer A, "He's stuck. He's in by the [TASER] ... we need to do something. Get him away from the TASER." Officer B then grabbed Subject 1's right wrist and applied a wrist lock.

Note: By Officer B's account, Officer A's attempt to deploy OC spray occurred after Subject 1's hand was entangled with the TASER and as Officer B continued to apply the wrist lock.

Note: According to Officer A, he noticed that the retention strap on the top of his pistol holster was unsnapped and that the pistol was in the forward position. As such, Officer A believed that the pistol was not secure and that there was nothing to prevent his weapon from sliding out of the holster.

Officer B then shot a one-second burst of OC spray into Subject 1's left eye. Officer B was unsure whether the OC spray affected Subject 1.

Officer B attempted to offer some “comfort” to Subject 1, and, to that end “grabbed his hand and said, “I am here. I want to help you. I don’t want to hurt you. Please calm down. Please put your hands behind your back. Do so.” According to Officer B, Subject 1 -“grabbed onto [Officer B’s] hand like he wanted [Officer B] to help him. But his actions were saying something different.”

Officer B then let go of Subject 1’s right hand and struck him twice in the head with a fist. When the punches proved ineffective, Officer A told Officer B, “I’m putting out a help call,” and activated the emergency button on his radio.

Concerned that the punches had not worked, no assistance had arrived, and nothing that the officers had done was working, Officer B told Officer A to “choke him out.”

Note: Officer B subsequently explained that “everything [the officers] were trying to do until that point wasn’t working.” Officer B was concerned that Subject 1 would take the TASER, use it against the officers and “immobilize” them. Officer B also felt that the officers were exhausted and that back-up was “quite a few minutes” away. Officer B did not believe that the use of a baton was an option, as they were in an “enclosed area” and Officer B did not think that it would be possible to “get a good strike” on Subject 1.

Officer A heard Officer B’s direction to “choke him out” and applied a carotid restraint control hold (CRCH) to Subject 1’s neck using his right arm. Officer A was unable to fully “lock” the restraint due to pain he was experiencing in his hand. As Officer A was applying the CRCH, the officers and Subject 1 fell down onto the landing at the foot of the stairwell, with Officer A landing on his back and Subject 1 lying on top of Officer A. As Officer A continued to apply the CRCH, the officers turned Subject 1 over, onto his stomach. As Office A continued to apply the CRCH, Officer B observed Subject 1’s feet “kind of twitch a little.” Meanwhile, Officer A heard Subject 1 gasping for air and noticed that Subject 1’s level of resistance was declining.

Note: According to Officer A, nobody had responded to Officer B’s back-up request, the officers were fatigued, his arm was hurting, Subject 1 had “at one point” had his hand on the TASER, and he was concerned that his pistol would fall out of its holster. When Officer A heard Officer B give the direction to use a “choke hold,” Officer A believed that it was “a last resort, and that it was something that [he] needed to do.”

Note: Officer A applied the carotid hold for approximately 30-40 seconds.

Note: Officer B did not believe that Subject 1 ever actually lost consciousness, and Officer A was unsure whether he did.

Note: Officer B estimated that the officers’ struggle with Subject 1 lasted from three to five minutes.

Note: Officer A indicated that he did not use the TASER during the struggle because it had the cartridge attached, and he believed that it could not be used in the “close contact” mode in this condition.

Shortly after the help call was broadcast, Officers C and D arrived at the location of the incident. Upon their arrival, Officers C and D observed Subject 1 resisting and Officers A and B on top of him.

Officers C and D told Subject 1 to stop resisting. Subject 1 stated that he needed his medication. Officer C told Subject 1 to put his arms behind his back and they would get the medication. Subject 1 complied, and Officers C and E handcuffed him.

Having handcuffed Subject 1, Officers C and D broadcast that the subject was in custody, and that they needed a supervisor and Rescue Ambulance (RA) for Officers A and B.

Subject 1, whose nose was bleeding slightly, was examined at the scene by paramedics.

Officers A and B were transported to a local hospital, where Officer A was treated for a wrist injury, and Officer B was treated for arm and leg contusions.

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 case, the BOPC made the following findings.

A. Tactics

The BOPC unanimously found Officers A and B’s tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC found that no officers drew firearms in the course of this incident.

C. Non-Lethal Use of Force

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

D. Use of Force

The BOPC unanimously found Officer A's use of force to be in policy.

By a 4 to 1 vote, the BOPC found Officer B's use of force to be out of policy, requiring administrative disapproval.

Basis for Findings

A. Tactics

The BOPC noted that, as Officers A and B arrived at the location, Officer A broadcast their status and location via his handheld radio; however, CD never received Officer A's transmission. Officers A and B should have ensured CD received their transmission prior to approaching the subject.

Officer A attempted to engage Subject 1 in verbal communication. After numerous attempts, the officers switched roles and continued to provide Subject 1 with verbal commands. Subject 1 remained unresponsive and in possession of a backpack, which may have contained a weapon. It would have been tactically safer for Offices A and B to request a back-up unit prior to making any attempts to approach Subject 1.

After several minutes, Subject 1 remained unresponsive to the officers' verbal commands. Officers A and B formulated a plan and approached Subject 1 with the intention of taking him into custody. Officer B approached Subject 1's right side and controlled his right arm as Officer A approached Subject 1's left side. Officer A removed Subject 1's backpack and controlled his left arm. As Officer A removed his handcuffs and placed them on Subject 1's left wrist, Subject 1 broke free and grabbed the metal links between the handcuffs. It was apparent that Officer A did not adhere to the proper handcuffing techniques. It would have been tactically safer for Officer A to ensure he had control of Subject 1's left wrist prior to removing his handcuffs. Additionally, Officer A should have maintained control of the handcuffs.

As the officers were attempting to overcome Subject 1's resistance, Officer B requested a back-up unit through CD. It would have been prudent for Officer B to request "assistance" or "help" after becoming involved in a struggle. Officer A subsequently upgraded the request to a help call by activating the emergency trigger on his handheld radio.

As the struggle continued, the officers and Subject 1 fell to the ground. There, Officer B deployed OC spray into Subject 1's face from a distance of less than three feet. Officer B should be reminded that the optimal distance for OC spray deployment is between three and twelve feet. A distance less than three feet does not allow the active ingredients to mix properly. Also, at close range, there is potential for eye injury.

Officer was equipped with an TASER. The BOPC noted that although the officers were properly equipped with the necessary tools, they did not use them. Officer A indicated

he did not use the TASER's direct stun feature because he believed that the TASER could not be deployed in direct stun mode with a cartridge attached. Officer A should be reminded that nothing precludes him from using the TASER's direct stun feature with or without the cartridge attached.

The BOPC found Officers A and B's tactics to warrant formal training.

B. Drawing/Exhibiting/Holstering

The BOPC found that no officers drew firearms in the course of this incident.

C. Non-Lethal Use of Force

The BOPC noted that, as a result of Subject 1 grabbing Officer A's handcuffs, Officer A applied a wrist lock to Subject 1's left wrist allowing him to regain control of the handcuffs. Simultaneously, Officer B maintained control of Subject 1's right hand. Subject 1 continued his attempts to break free causing himself and the officers to fall on the stairs. Officer A verbalized with Subject 1 and attempted to control his left arm. Meanwhile, Officer B deployed OC spray at Subject 1's face, which had no apparent effect. Officer B then delivered two punches to the right side of Subject 1's head, but these were also ineffective.

Subsequent to the application of the CRCH, Officer A found himself underneath Subject 1. Officer A forced Subject 1 back onto his stomach. Officer B continued to apply bodyweight to Subject 1's legs preventing his escape.

Based on Subject 1's aggressive actions, the BOPC determined that Officers A and B's non-lethal 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.

D. Use of Force

The BOPC noted that Department policy states that a CRCH may only be used when lethal force is authorized and shall only be exercised when reasonable alternatives have been exhausted or appear impracticable. The BOPC further noted that Department policy regarding the use of deadly force provides that, "An officer is authorized to use deadly force when it reasonably appears necessary to protect himself or others from an immediate threat of death or serious bodily injury, or...To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed...Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable." As such, Department policy authorizes the use of a CRCH at a threshold that is essentially the same as the threshold at which the use of a firearm is authorized.

The BOPC noted that Officer A believed that the security of his pistol had been compromised, was experiencing significant pain as a result of a wrist injury, and was fatigued. These factors, in concert with Officer A's very limited field experience, limited knowledge regarding Officer A's available force options (i.e., the TASER), and, most notably, a direction from Officer B (Officer A's Training Officer) to apply a CRCH, support the reasonableness of Officer A's decision to apply the hold.

The BOPC noted that, although the evidence in this case established that Officer B had engaged in a prolonged struggle, was fatigued, and had exhausted or deemed impracticable certain force options, it did not establish that Officer B's direction to apply a CRCH conformed with the policy regulating the use of deadly force. Specifically:

- The evidence did not establish that Officer B reasonably believed that an immediate threat of serious bodily injury or death existed. Officer B asserted the belief that Subject 1 could obtain the TASER from Officer A. However, there was no evidence to indicate that Officer B saw Subject 1 make an attempt to take the TASER at any time during the incident. Rather, Officer B saw Subject 1's left hand in proximity to the TASER at some point during the struggle.

Officer B did not articulate a plausible reason for believing that Subject 1 would take the TASER and use it against the officers. Rather, the stated belief appears to have been speculative. Other than his holding Officer B's hand, neither of the involved officers indicated that Subject 1 attempted to assault them during the incident. The evidence was indicative of a scenario where Subject 1 strenuously resisted placing his arms behind his back for handcuffing by pulling his arms away from the officers' grasps. As such, there was no basis for a reasonable belief by Officer B that an immediate threat of serious bodily injury or death existed.

- The crime reportedly committed by Subject 1 did not reach the threshold of a "crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed." As such, deadly force was not authorized to avoid a delay in his apprehension.
- The evidence did not indicate that Officer B had exhausted reasonable alternatives to the use of deadly force, nor that such alternatives appeared impracticable, at the time the direction was given for the CRCH to be applied. Most notably, there is no indication that Officer B considered the available option of a TASER. More broadly, there was no evidence indicating that the officers were precluded from disengaging from a demonstrably ineffective close-quarters struggle with Subject 1 so as to distance themselves from any potential threats he presented and to facilitate the deployment of other non- or less-lethal force options (e.g., kicks, baton strikes).

The BOPC recognized the very difficult circumstances with which the officers were confronted, and the apparent good faith in which they attempted to control a resistive

subject while fatigued and injured. The BOPC's finding regarding Officer B's use of force be found out of policy is based strictly upon an analysis of the available evidence and the policy that regulates the use of deadly force.

The BOPC found Officer A's use of force (i.e., the application of a CRCH) to be in policy.

By a 4 to 1 vote, the BOPC found Officer B's use of force (i.e., the direction to Officer A to "Choke him out") to be out of policy, warranting administrative disapproval.