

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

ATTEMPTED OFFICER-INVOLVED SHOOTING – 093-07

<u>Division</u>	<u>Date</u>	<u>Duty-On(x) Off()</u>	<u>Uniform-Yes(x) No(x)</u>
Newton	10/04/2007		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Officer A	3 years, 11 months

Reason for Police Contact

Officers conducting a search warrant.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (x)</u>	<u>Non-Hit ()</u>
Subject: Male, 47 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 Subject 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, 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 September 2, 2008.

Incident Summary

Detective A (driver) and Officer A (passenger) were deployed in a plain vehicle. Detective A and Officer A were attired in plainclothes and wore their badges on a chain around their necks, concealed under their shirts. Detective A drove east and stopped for a posted stop sign. From his front passenger seat, Officer A observed two males, subsequently identified as the Subject and Witness A, seated on top of a short staircase of a loading dock. Several males were also loitering in the area. Officer A and Detective A remained at the intersection for several minutes and observed the males go to and from the location.

Officer A observed one of the males approach the Subject and Witness A on the staircase and hand folded currency over to the Subject. The Subject then handed the male a small object.

Detective A and Officer A were both aware the location was a known high narcotics area for sales and use and had made several arrests around that area. According to Detective A, he observed the Subject hand a small object to Witness A. There were other males in the area but he did not see any of them make contact with the Subject or Witness A.

Believing a narcotics transaction had occurred, Officer A and Detective A decided to contact the individuals to conduct a narcotics investigation. Detective A and Officer A discussed a plan and it was decided that Detective A would contact the Subject, Officer A would contact Witness A and that they would park their vehicle southeast of the Subject and Witness A's location, behind a wall and out of view. Detective A drove east across the intersection and then parked his vehicle. Detective A and Officer A exposed their badges from underneath their shirts and approached the staircase on foot. Detective A and Officer A did not notify Communications Division (CD) of their status and location.

Detective A and Officer A moved around the south wall of the loading dock and verbally identified themselves as police officers. The other males in the area dispersed, leaving the Subject and Witness A, who were still seated on the top step of the staircase. Detective A and Officer A directed the Subject and Witness A to stand up and come down the stairs. Witness A did as directed and was handcuffed by Officer A without incident.

The Subject remained on the top step with his left hand clenched. Detective A directed the Subject to drop whatever he had in his hand. The Subject finally complied and dropped a white solid object (later determined to be narcotics) on the staircase. Detective A directed the Subject to come down the stairs and face the south wall. The Subject complied. Detective A then directed the Subject to interlace his fingers on top of his head and spread his legs. The Subject raised his hands to his head but would not interlace his fingers or spread his legs. Detective A repeated his commands, which the Subject ignored. Detective A then moved toward the Subject intending to grab his hands. As he was doing so, the Subject spun to his left and punched Detective A in the mouth with his right hand, causing Detective A to stumble backward two to three feet. The Subject then ran in a southeast direction.

Officer A directed Witness A to the ground and both officers began to give chase to the Subject shouting, "Stop. Police." According to Detective A, approximately 10 to 12 feet into the street, he grabbed the Subject's left side while Officer A grabbed the Subject's right side and they were able to bring the Subject down using their combined bodyweight. The Subject landed on his chest with his hands underneath him. Detective A then repeatedly commanded the Subject to, "Give me your hands. Give me your hands."

According to Officer A, the Subject tripped and fell into the street. Officer A caught up with the Subject and was the first to make contact with him. Detective A and Officer A did not broadcast that they were in foot pursuit. The Subject struggled with Officer A and Detective A and was able to roll onto his back and began throwing punches. According to Detective A, the Subject struck him at least two times in his abdomen and leg. In response, Detective A punched the Subject two times in the stomach with his closed left fist.

Throughout the struggle, Officer A repeatedly yelled, "Stop resisting. Stop resisting. LAPD. This is the police." In an attempt to roll the Subject to his front so they could handcuff him, Officer A pinned the Subject's right shoulder and arm down with Officer A's left arm. The Subject leaned his head over and placed his mouth on Officer A's left wrist. In response, Officer A pulled his left hand back and punched the Subject in the face several times with his closed right fist, but the punches appeared to have no effect as the Subject continued to struggle with the officers. Officer A could not recall the exact number of times he punched the Subject.

According to Officer A, as he was struggling with the Subject, Detective A grabbed the radio that was in Officer A's rear pants pocket and broadcast a request for assistance. Detective A broadcast, Officer needs help, officer needs help.

The Subject rolled over onto his stomach and attempted to push the officers off of him. The Subject then leaned over to his side, reached back and grabbed the grip of Detective A's pistol, which was holstered on his right side. Detective A looked down, observed the Subject's hand on his pistol, and used both of his hands to cap his pistol to prevent the Subject from removing it. Simultaneously, Detective A advised Officer A that the Subject had a hold of his gun. Detective A, Officer A, and the Subject all began to stand up. The Subject retained his grip on Detective A's pistol and used his elbow to strike Detective A's ribs at least three times. Detective A and Officer A both yelled, "Let go of the gun. Let go of the gun." The Subject spun around to face Detective A, who was on the Subject's right, and Officer A, who was on the Subject's left. The Subject continued to grab Detective A's pistol. Officer A then heard Detective A yell, "He's getting my gun. He's got my gun. He's got my gun." Officer A observed both of the Subject's hands on the right side of Detective A's waistband where his holster was located. Believing that the Subject had armed himself with Detective A's pistol, Officer A unholstered his pistol and, to avoid accidentally shooting his partner, placed the barrel of his pistol on the Subject's chest for a contact shot. Officer A pulled the trigger intending to shoot the Subject; however, his pistol did not discharge. Believing his pistol had malfunctioned, Officer A pulled his pistol back and ejected the round from the chamber.

According to Detective A, he observed Officer A unholster his pistol, point it at the Subject and then heard a click. He then saw Officer A clear his weapon and observed a round fall from the weapon to the ground.

According to Officer A, the Subject let go of Detective A's pistol and attempted to run westbound, but instead ended up falling to his knees in front of them. After assessing that the immediate threat had passed, Officer A holstered his pistol and both Officer A and Detective A moved toward the Subject to keep him down on the ground. As Officer A made this motion, the Subject was in the process of standing up. Officer A's left arm came in close proximity to the Subject's head. The Subject then turned his head and bit Officer A's left bicep. In response, Officer A kned the Subject in the rib area. The Subject then stood up and ran westbound.

According to Detective A, after the attempted OIS, he (Detective A) remained in a crouched position with the Subject while still wrestling with him. The Subject then let go of his pistol and ran westbound.

Witness A remained standing at the northeast corner and observed the Subject fighting with the officers and then attempting to grab one of the officer's gun. Witness A also recalled one of the officers yelling, "He got my gun. He got my gun."

According to Officer A, the Subject ran approximately 10 to 15 feet, tripped and fell to the ground. Detective A and Officer A caught up with the Subject and used their bodyweight to keep the Subject down. By this time, responding units were arriving at the scene.

Officers B and C heard the "help call" broadcast and responded to the scene. They were flagged down by people who directed them to the area. Officers B and C were the first unit to arrive, followed shortly by Officers D and F. The officers observed Detective A and Officer A struggling with the Subject in the middle of the street and approached them. Officer B placed his knee on the Subject's shoulder/back area, grabbed the Subject's left wrist and applied a set of handcuffs. Officer C observed that the Subject continued kicking his legs. Officer C knelt down and used his hands to hold the Subject's legs down. Officer F applied bodyweight on the Subject's lower back and a wristlock on the Subject's right arm. Officer F noticed a gun on the ground on the Subject's right side, within arm's reach. Officer F observed Officer D approaching them and yelled, "Gun. Take the gun. Grab the gun."

Officer D picked up the pistol and moved it to the right, away from the Subject. Officer D then assisted Officer F with the Subject's right arm and placed it behind his back. When Officer B saw the Subject's right wrist, he reached back, obtained his second pair of handcuffs, placed them on the Subject and then connected the two sets of handcuffs together.

Officer D stood up and picked up the pistol that he had moved to the side. As Officer D was doing so, Detective A was reaching for it and stated, "That's my gun." Officer D handed the pistol over to Detective A, who then placed the pistol back in his holster.

Officers G, H, I, and J, and Sergeant A had arrived at the scene and observed the Subject kicking, spitting and trying to grab at the officers.

Officer G positioned himself on the Subject's right side and placed his knee on the Subject's right shoulder. Officer G told the Subject, "Stop resisting, just relax, stay down." The Subject responded with cursing.

Officer B requested a hobble restraint device (HRD). Officer J heard the request and provided his HRD to one of the officers. Officer H knelt down and held the Subject's feet as the HRD was being applied. The Subject continued to yell and spit at the officers. Officer J heard an officer request a Spit Sock Hood (SSH) and he provided them with one. The SSH was then placed over the Subject's head to prevent him from spitting at the officers.

Officers B and C conducted a search and recovered pieces of narcotics inside a plastic baggie from the Subject's left rear pocket. Officer C turned the Subject's pocket inside out and additional pieces of narcotics were recovered by Officer B and were then handed over to Detective A.

The Subject, whose wrists were secured with two pairs of handcuffs, was able to scratch Officer F's hand. Sergeant A requested a second HRD and directed the officers to place the HRD around the Subject's elbows to limit his mobility, and then to reduce the two sets of handcuffs to one. According to Officer G, Officer H handed Officer B his HRD, and then he (Officer F) and Officer B applied the HRD around the Subject's arms. Officer B then secured the Subject's wrists with a single set of handcuffs and the Subject was placed in an upright position.

Sergeant B, who had also responded to the incident, advised CD that the incident was Code-4 and that the Subject was in custody.

Sergeant C arrived at the scene and was briefed by Officer A about the incident. Unsure whether the incident rose to the level of a Categorical Use of Force (CUOF), Sergeant C telephoned Captain A and briefed him of the incident. Captain A advised Sergeant C to handle the incident as a CUOF. Sergeant C obtained a Public Safety Statement from Officer A and Detective A and monitored the officers until the arrival of additional supervisors.

A marked police vehicle was driven to the Subject's location. The Subject was carried in a seated position, placed in the backseat of the police vehicle and secured with a seat belt. The Subject was transported to Newton Station. The officers involved in effecting the Subject's arrest and Sergeant A were also separated and monitored.

Detective B arrived at scene and observed Detective A and Officer A standing on the street with supervisors monitoring them. Detective A informed Detective B that narcotics were recovered from the Subject. He then handed the plastic bag containing the narcotics over to her. Detective A then advised Detective B that there was additional narcotics by the staircase of the loading dock. Detective B walked over to the loading dock, took photographs of the evidence and then recovered the white solid object. Detective B then took photographs of Detective A and Officer A's injuries.

Lieutenant A arrived at the scene and observed Officer A being photographed. Lieutenant A spoke with Officer A who advised him of the incident. According to Lieutenant A, when he asked Officer A what he did with the cartridge that he had ejected, Officer A informed him that he picked it up, took his magazine out and placed it in the magazine, making it the top cartridge in his magazine. Lieutenant A then directed Officer A to remove his magazine without unholstering his pistol and remove the top cartridge. Officer A complied and handed the cartridge over to Lieutenant A.

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 determined that Sergeant A, along with Officers B, C, F, D, H and G's tactics were appropriate and require no further action.

The BOPC found Detective A and Officer A's tactics to be seriously deficient requiring administrative disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC found Officer A's drawing to be in policy.

C. Use of Non-lethal Force

The BOPC found Detective A, Sergeant A and Officers A, B, C, F, D, H and G's non-lethal use of force to be in policy.

Basis for Findings

Tactics

The BOPC noted that after observing what they believed to be a "hand to hand" narcotics transaction, Officer A and Detective A devised a tactical plan to park behind a cement block wall and utilize the element of surprise to make their approach and detain the Subjects. The roles of contact and cover were discussed; however, the plan

inappropriately delineated them both as contact officers. When officers work independently of one another and do not work as a team, officer safety is compromised.

As the officers exited their vehicle, they failed to notify CD of their "Code-6" status and location. Officers are trained to advise CD when they conduct officer initiated activities, which makes nearby units aware of their location and creates the circumstance wherein they can respond more rapidly if needed. Additionally, Officer A and Detective A did not don their vests and raid jackets knowing they were about to take enforcement action. The Department mandates that plainclothes officers conducting field operations that are likely to result in contact with the Subjects shall wear body armor and raid jackets.

Officer A verbalized with Witness A and detained him without incident. Simultaneously, Detective A, pre-determined to make contact with the Subject, directed him to stand up and repeatedly ordered him to drop an unknown object in his hand. The Subject did not immediately comply with Detective A's commands, nor did he spread his legs or interlace his fingers on top of his head when instructed to do so. As they did not adhere to the roles of contact and cover, wherein the cover officer provides protection from a position of surveillance and control, Detective A approached the Subject without a tactical advantage and was subsequently attacked.

Detective A stumbled rearward approximately two to three feet as the Subject fled southbound into the roadway. Detective A and Officer A gave chase; however, neither officer notified CD of the foot pursuit. A timely broadcast of the rapidly unfolding events is crucial for obtaining the necessary resources to effectively manage the tactical incident. In addition, the officers went in foot pursuit of the Subject and left a handcuffed the Subject behind. As Witness A was not searched, the officers should have maintained their position, broadcast the Subject's description, his direction of travel, the type of crime and where additional units should respond.

When Detective A and Officer A made contact with the Subject, they conducted a team takedown and forced him to the roadway. When employing force, officers are discouraged from tackling a the Subject from behind, as officers may incur injuries. Officers should attempt to use a strong push to the upper back of the Subject, causing the the Subject to lose his balance and fall forward.

During the struggle in the roadway, the Subject grabbed the grips of Detective A's holstered service pistol and aggressively attempted to remove it. As the struggle continued, the three rose upward to crouched positions and Detective A notified Officer A of the Subject's actions. In immediate defense of Detective A's life and his life, Officer A drew his service pistol and attempted a contact shot to the Subject's chest. By pressing the muzzle against the Subject's body, Officer A placed his service pistol in an out of battery condition which prevented it from firing. When confronted by a threatening the Subject from a distance of less than six feet, officers must be able to use their service pistols in a close contact position.

After the Subject attempted to gain control of Detective A's service pistol and Officer A's subsequent weapon malfunction, Detective A broadcast a request for "help" at an incorrect location with no further information. Detective A's failure to broadcast accurate and pertinent information to CD delayed several units in their attempts to locate them. Detective A should be reminded of the importance of transmitting clear and concise broadcasts to CD in order to ensure the proper resources are available to them.

Officers B, C, F, D, H and G arrived at the location and as they struggled to control the Subject, Detective A's service pistol fell out of its holster and within close proximity to the Subject. Officer D moved the service pistol out of the Subject's reach.

Sergeant A arrived at the scene and observed the officers struggling to control the Subject, who was secured with two pairs of linked handcuffs and whose ankles were secured with an HRD. To minimize the Subject's mobility and prevent him from further grabbing the officers, Sergeant A directed the officers to apply a HRD to the Subject's arms to facilitate reducing the handcuffs to one pair.

The BOPC determined that Sergeant A, along with Officers B, C, F, D, H and G's tactics were appropriate and require no further action.

The BOPC was critical of the tactics utilized by Detective A and Officer A. The cumulative tactical errors and decisions by Detective A and Officer A compounded to make their performances seriously deficient requiring administrative disapproval.

Drawing/Exhibiting/Holstering

The BOPC noted that Officer A heard Detective A yell, "He's getting my gun! He's got my gun! He's got my gun," and observed both of the Subject's arms reaching toward the right side of Detective A's waistband. Officer A's view of Detective A's holstered service pistol was obstructed by his vantage point; however, Officer A was cognizant of the fact that Detective A carried his service pistol on his right side. Believing the Subject had armed himself with Detective A's service pistol, Officer A drew his service pistol.

The BOPC determined that Officer A had sufficient information to believe that the situation had escalated to the point where deadly force may become necessary.

The BOPC found Officer A's drawing to be in policy.

Non-lethal Use of Force

The BOPC noted that as the Subject ran southbound across the sidewalk and into the roadway, Officer A and Detective A grabbed his upper body from behind, conducted a team takedown and forced him to the roadway. With the Subject lying in a supine position, Officer A placed his left hand on the Subject's right shoulder and attempted to turn him over into a prone position to facilitate the handcuffing process. The Subject proceeded to lean over and bite Officer A's left wrist.

Officer A pulled his left wrist away from the Subject's mouth and delivered several punches to the Subject's face. While the head is not a recommended area to impact, as striking a hard bone area may cause self-injury resulting in an officer's inability to utilize other force options, the Use of Force Review Board determined that based on the totality of the circumstances, the force used by Officer A was appropriate, as he faced an immediate need to stop the Subject's assault.

The Subject appeared unaffected as he repeatedly kicked and punched at the officers. In response, Detective A delivered two punches to the Subject's abdomen, after which the officers were able to place the Subject in a prone position.

As the struggle continued, the Subject attempted to gain control of Detective A's service pistol, and the attempt OIS occurred. When Officer A stepped rearward and cleared what he believed to be a service pistol malfunction, the Subject released his hold on Detective A's service pistol and ran westbound on 10th Street. Officer A holstered his service pistol and he along with Detective A ran after the Subject.

After running approximately 10 to 12 feet, the officers again conducted a team takedown which caused the Subject to fall in a prone position. The Subject obtained a kneeling position and as Officer A attempted to pull the Subject down to the roadway by his arms, the Subject turned his head and bit Officer A on the left bicep, at which point Officer A delivered several knee strikes to the Subject's left torso area. The Subject appeared unaffected as he broke free from the officers' grasps and continued to run westbound on 10th Street. The Subject fell of his own accord approximately 10 to 15 feet east of Stanford Avenue and Officer A and Detective A once again applied bodyweight on the Subject to hold him on the ground.

Officers B, C, F, D, H and G, along with Sergeant A, arrived on scene and assisted in the attempts to subdue the Subject. Officer B utilized firm grips and bodyweight; Officer C utilized bodyweight; Officer F utilized bodyweight, a wristlock and physical force; Officer D utilized a firm grip and physical force; Officer H utilized physical force and Officer G utilized a firm grip and bodyweight. Sergeant A directed the application of the HRD to the Subject's arms to facilitate reducing the handcuffs to one pair, as the two pairs of handcuffs that secured the Subject allowed him the mobility to grab at the officers.

The BOPC determined that Detective A, Sergeant A and Officers A, B, C, F, D, H and G's non-lethal use of force was reasonable to control the Subject.

The BOPC found Detective A, Sergeant A and Officers A, B, C, F, D, H and G's non-lethal use of force to be in policy.

Use of Force

The BOPC noted that as Officer A and Detective A struggled in the roadway to take the Subject into custody, the Subject rolled onto his right side, and grabbed the grips of Detective A's holstered service pistol.

To prevent the Subject from obtaining control of his service pistol, Detective A placed both hands on top of the Subject's hands and his service pistol and alerted Officer A of the aforementioned act. Officer A heard Detective A yell, "He's getting my gun! He's got my gun! He's got my gun," and observed both of the Subject's arms reaching toward the right side of Detective A's waistband. Officer A's view of Detective A's holstered service pistol was obstructed by his vantage point; however, Officer A was cognizant of the fact that Detective A carried his service pistol on his right side. Believing the Subject had armed himself with Detective A's service pistol, Officer A drew his service pistol, placed the muzzle against the Subject's chest and pressed the trigger.

Personnel from Scientific Investigation Division (SID), Firearms Analysis Unit, determined that Officer A's service pistol functioned as designed and that none of the 40 live rounds appeared to have any signs of an apparent firing pin strike mark. Based on these findings coupled with the fact that when the barrel/slide of Officer A's service pistol was pushed rearward a minimum of 0.08 inches, the connector mechanism disconnects, thereby deactivating the trigger and precluding the service pistol from firing, it appears Officer A attempted to fire a round from his service pistol and its position on the Subject's chest resulted in an unintentional malfunction.

Based on the totality of the situation, Officer A's decision to attempt to shoot the Subject was reasonable. The BOPC determined that Officer A believed that the Subject presented an immediate threat of serious bodily injury or death. An officer would be justified in shooting in this deadly force situation; however, as a round was not discharged, a finding is not necessary.