

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

CHIEF OF POLICE DIRECTED USE OF FORCE – 028-21

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Hollenbeck	3/29/21		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	15 years, 10 months
Officer B	25 years, 4 months

Reason for Police Contact

On March 29, 2021, at approximately 1806 hours, uniformed police officers responded to a radio call of a battery suspect. Upon arrival, the officers were directed to the Subject, who was at the front of a restaurant. The officers approached the Subject, who was immediately hostile toward them. The Subject yelled at the officers, clenched his fists, and then stepped toward one officer. In response, the partner officer approached the Subject from behind, wrapped his arms around the Subject, and took him to the ground. Body Worn Video (BWV) captured the officer's right arm come in contact with the Subject's neck and the Subject stating that he could not breathe.

Subject(s)	Deceased ()	Wounded ()	Non-Hit ()
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Subject: Male, 33 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, including any Minority Opinions; the report and recommendations of the Chief of Police; and the report and recommendations of the Office of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

The following incident was adjudicated by the BOPC on March 15, 2022.

Incident Summary

On March 29, 2021, at approximately 1755 hours, a vehicle was in the drive-through lane of a restaurant, waiting to get food. A security camera overlooking the drive-through lane captured the Subject approach the vehicle, appear to yell into the vehicle, spit on the driver's side front window, and punch the driver's side mirror. The punch knocked the mirror's cover loose. The Subject then walked away from the car in a westerly direction, and the vehicle drove away from the location.

Witness A was also in the drive-through lane of the restaurant behind the above vehicle. Witness A stated that the Subject was "acting crazy" and attacked the vehicle, started banging on the window of the driver side, and then eventually pulled the driver's side mirror off the vehicle, damaging it. According to Witness A, he thought about interacting and making contact with the Subject, but thought better of it, because he appeared to be high on possible narcotics of some kind or alcohol. Witness A then called 911 to report the incident and waited in the parking lot for officers to arrive.

At 1805 hours, Communications Division (CD) broadcast the report of a battery Subject at the drive-through restaurant and provided a physical description. Police Officers A and B advised CD that they would handle the call.

At 1817 hours, Officers A and B arrived at the restaurant. Officer A parked the officers' vehicle in the parking lot adjacent to the drive-through lane. Both officers exited the vehicle and met with Witness A, who was standing in the parking lot next to his vehicle. Witness A informed Officers A and B of his previous observations. Witness A told the officers that the Subject was at the front of the building, however the vehicle that was in front of him had driven away. When Officers A and B arrived at scene, Officer B did not roll up the front passenger side window of their vehicle. Officer A asked Witness A to watch their vehicle.

Officers A and B walked to the front of the restaurant. As they walked, Officer B asked Officer A, "How are we going to do this, just ID him?" Officer A responded, "We'll just tell him to get out of here, unless you want to." According to Officer B, since the victim was gone, and they could not verify the vandalism crime, they were going to talk to the Subject and maybe obtain a Field Interview (FI) card and then advise him to leave the premises.

When interviewed, Officer A indicated that he/she was aware of a homeless encampment across the street from the restaurant and had handled multiple radio calls involving the homeless at this location. On prior occasions, Officer A had escorted homeless off the property. On the date of this incident, Officer A believed the situation would be like the prior radio calls, and his/her intention was to direct the Subject to leave the area. Officer A stated since the victim was gone, they did not have a victim of a crime to positively ID the Subject as the person causing the damage. Officer A stated they were just going to ask the Subject to leave.

Officers A and B located the Subject sitting on a window ledge at the front of the restaurant. The Subject had earphones on his ears and was looking at a cellphone that he held in his left hand. Officer A positioned him/herself in front of the Subject, and Officer B stood to the right of the Subject, who remained sitting on the window ledge. Officer B asked the Subject, "So what happened?" The Subject kept looking at his cellphone with his earphones on and muttered, "Get the [expletive] out my face, I don't need no programs, shut the [expletive]." The Subject removed the earphones from his ears and looked briefly toward the ground.

Officer B asked, "Are you talking to us?" The Subject looked toward Officer B, quickly stood up holding his phone in his left hand, turned toward Officer B, and said, "Nah, I'm talking to you!" The Subject stepped toward Officer B and threw his cellphone in an underhand, sideways motion to the ground in the direction where Officer B was standing. Officer B took three steps backward and drew his/her TASER with his/her left hand before transitioning it to his/her right hand. According to Officer B, he/she drew his/her TASER, when the Subject threw the cell phone and said, "take off the badge." Officer B stated the Subject became combative and believed the Subject was about to fight; therefore, Officer B was trying to de-escalate the situation by showing the Subject the TASER.

According to Officer A, the Subject was "instantly agitated, angry." Officer A stated, "He stood up quickly and he threw a cell phone at my partner's feet." In response, Officer A broadcast a request for an additional unit. Officer A explained that he/she requested an additional unit due to the Subject's anger and wanting to fight.

According to the Officer B, when they arrived at the restaurant, he/she went Code Six via the Mobile Digital Computer (MDC). A review of the Incident Recall printout determined that Officer B mistakenly placed them Code Six on an unrelated radio call. Therefore, when Officer A broadcast a request for an additional unit, Communications Division voiced their location as different than where they were located.

The following uniformed personnel responded to the additional unit request:

- Police Officers C, D and Sergeant A.

Officer A stepped behind the Subject and remained behind him as the Subject faced Officer B. Officer B asked the Subject, "Are you trying to fight me?" The Subject told Officer B to take off his/her badge, which Officer B interpreted as a challenge to fight.

The Subject then turned and stepped toward Officer A. In response, Officer A extended his/her left arm toward the Subject, nearly touching his chest. According to Officer A, he/she was keeping his/her hand up for distance. The Subject took a step backward and told Officer A not to touch him and yelled expletives.

As the Subject was yelling at Officer A, Officer B told the Subject, "You are going to get tased." The Subject then looked toward Officer A's BWV camera and made hand

gestures while claiming gang affiliation. Officer A pointed in a southerly direction as he/she told the Subject, "Get outta here, find another spot." The Subject faced Officer A with both fists clenched and yelled, "Don't tell me [expletive] to do."

According to Officer A, seeing the Subject's demeanor and attitude, he/she wanted to identify the Subject because it was getting to a point where the Subject wasn't going to be free to leave and there was a chance the officers would have to take the Subject into custody.

The Subject took several steps toward Officer B while yelling profanities and stating he does whatever he wants. According to Officer B, the Subject stood approximately three to four feet in front of him/her.

According to Officer A, the Suspect focused again on his/her partner, clenched his fists and walked towards him/her, taking about two steps. Officer A believed the Subject was going to strike his/her partner. Officer A approached the Subject from the rear and made the decision that he/she was going to take the Subject to the ground.

Officer A explained that he/she was looking for the most passive way of taking the Subject into custody. Officer A believed if he/she could hold on to his arm and his upper body and take him down, there would be no way he could strike anybody, and they would not have to strike the Subject. According to Officer A, he/she was looking for the most passive way to take the Subject into custody. Additionally, Officer A believed that if he/she had given the Subject additional commands, he/she would have lost the element of surprise and, "It would have been a full-on fight."

At 1820 hours, BWV captured Officer A approach the Subject from behind and pass his/her left arm underneath the Subject's left armpit. Officer A trapped the Subject's left upper arm in the crook of his/her left elbow. Simultaneously, Officer A passed his/her right arm over the Subject's right shoulder and wrapped it around the front of the Subject's upper chest.

Officer A described that from behind, he/she cupped his/her left hand underneath the Subject's left armpit and put his/her right arm over his upper chest. Officer A stated his/her intention was to pull the Subject down towards the left to the ground. Officer A indicated that his/her hands were near each other; however, he/she never locked them together.

According to Officer A, his/her right bicep was in contact with the right side of the Subject's neck, and his/her right forearm was across the Subject's upper chest and clavicle area. Officer A added that he/she applied downward pressure to the Subject's upper chest area and not "backward" pressure.

Officer A maintained that his/her hold on the Subject while pulling him counterclockwise and downward to the ground. According to Officer A, in that motion, his/her legs got tangled with the Subject's and he/she ended up falling forward. Officer A stated that

he/she fell flat on the Subject's body, with all his/her body weight. The Subject landed in a prone position with Officer A's chest on top of the Subject's back.

Officer A stated that his/her left arm continued to hold onto the Subject's left arm and his/her right arm incidentally moved forward to his neck area. When they went to the ground, Officer A indicated that his/her right forearm was positioned "underneath the [Subject's] neck," however, that was not his/her intention.

After taking the Subject to the ground, Officer A's BWV was inadvertently deactivated. Regarding his/her camera being deactivated, Officer A stated that his/her BWV camera was in the middle of his/her chest, and his/her body weight on the Subject's back pushed the button long enough to turn off the camera. Officer A indicated he/she turned his/her camera back on after realizing what occurred.

Officer A directed Officer B to request a backup unit. Officer B placed both hands on Officer A's back, while holding his/her TASER in his/her right hand and radio in his/her left hand. At 1820 hours, Officer B broadcast, "Let me get a backup," and provided the location. Officer B then placed his/her left knee on Officer A's back, removed his/her hands, and holstered his/her TASER.

When Officer B removed his/her hands from Officer A's back, his/her BWV captured the TASER's safety disengaged, and the red laser dot briefly visible on Officer A's back.

Officer B's BWV captured the Subject state, "I can't breathe" and Officer A replied, "That's ok." Regarding his/her response, Officer A stated that he/she told the Subject it was okay because he/she knew he/she wasn't applying any pressure to his neck. Officer A further stated that he/she knew the Subject was able to breathe because he was talking, and he/she wasn't applying any pressure to him.

According to Officer A, he/she was unable to remove his/her right arm from beneath the Subject because his/her body weight was on top of the Subject, who was rigid. Officer A also stated that Officer B had placed his/her weight on top of him/her, so he/she was unable to move, and he/she couldn't pull his/her arm out because it was on the concrete.

Officer B placed his/her left knee on the Subject's right shoulder, grasped the Subject's sleeve with his/her right hand, and repeatedly told the Subject not to move. Officer B then slid his/her right hand down to the Subject's right wrist and obtained a firm grip. Officer B's BWV captured the Subject say something unintelligible before stating, "I can't breathe bro."

At 1821 hours, Officers C and D arrived at scene. Officer C parked their vehicle along the east curb in front of the restaurant as Officer D ran toward Officers A and B.

At 1821 hours, Officer B tapped Officer A's right arm while stating, "Let go." Officer A responded, "I'm relaxing, I'm relaxing." According to Officer A, he/she believed Officer B was tapping him/her to alert him/her that he/she [Officer B] was ready for handcuffing.

Officer A told Officer D to grab the Subject's arm. In response, Officer D placed both of his/her hands on the Subject's left forearm and pulled it out from underneath him. As Officer D obtained control of the Subject's left arm and extended it away from his [the Subject's] body, Officer A placed his/her left hand on the Subject's upper back.

Officer A pulled his/her right arm out from underneath the Subject. Officer A then lifted his/her torso off the Subject's back and straddled his hips. Nearly simultaneously, Officer B removed his/her left knee from the Subject's right shoulder. Officer B then repositioned him/herself and placed his/her right knee onto the Subject's right shoulder.

Officer D used his/her left hand to obtain a grip of the Subject's left wrist before transitioning the Subject's wrist to his/her right hand. Officer D then cleared the Subject's sleeve and handcuffed the Subject's left wrist. Officer D brought the Subject's left arm behind his back as Officers A and B guided the Subject's right arm behind his back. Officer D then handcuffed the Subject's right wrist. Officer C broadcast a Code Four, indicating that the Subject was in custody.

Officer A told FID investigators that that it would have been unsafe for him/her to remove his/her bodyweight from the Subject before additional units arrived. Officer A believed the Subject may have been under the influence of methamphetamine and felt that he could have continued fighting. Therefore, Officer A was trying to maintain control in the most passive way possibly by just maintaining the body weight.

Officer A heard the Subject state that he could not breathe during the use of force. When interviewed by FID investigators, Officer A acknowledged that his/her bodyweight could have inadvertently pushed the Subject's neck into his/her arm while they were on the ground. According to Officer A, he/she never applied a carotid restraint control hold or a choke hold to the Subject, nor did he/she restrict the Subject's airway in any way. Officer A also considered it was possible that his/her bodyweight on the Subject could have made it difficult for him to inhale, giving the Subject the impression that it was difficult to breathe.

The Subject continued to lay in the prone position, and Officer B maintained his/her position with his/her right knee on the Subject's right shoulder and his/her left hand on the Subject's right elbow. Officer B repeatedly asked the Subject if he wanted to sit on his butt, and the Subject replied with profanity and stated that the officers tried to kill him. At approximately 1824 hours, Officers B and C rolled the Subject to his left and Officer C assisted the Subject to a standing position.

Officer D secured the handcuffs on the Subject at 1821 hours. The Subject remained in a prone position until 1824 hours when he was assisted to his feet. When interviewed, Sergeant A stated once the Subject was handcuffed and controlled, he was left laying

on his abdomen for approximately two and a half minutes. Sergeant A stated that he/she counseled the officers on the need to position the Subject in the lateral position once controlled if not sitting up.

Officer C walked the Subject to Officer A's police vehicle. Once at the vehicle, Officer C performed a pat-down search, activated the vehicle's rear seat Digital In-Car Video System, and secured the Subject in the backseat.

At approximately 1826 hours, Sergeant A arrived at scene and met with Officers A and B in the parking lot of the restaurant. Officer A advised Sergeant A that the Subject had been taken down to the ground, and they were involved in a use of force. Officers A and B then went inside the restaurant to attempt to locate any video evidence.

Meanwhile, Sergeant A met with Witness A interviewed him as part of his/her use of force investigation. Sergeant A then spoke with the Subject through the open window as he sat in the backseat of the police vehicle. Sergeant A asked the Subject if he was injured or if he needed medical treatment, and the Subject stated that he was not injured.

Sergeant A requested that Officer D assist him/her in having the Subject exit from the backseat, so he/she could obtain photos for the use of force investigation. As the Subject exited, he questioned why Sergeant A needed photos, and he/she advised the Subject it was because the officers had taken him to the ground. Officer D's BWV captured the Subject reply, "I'm not gonna snitch on nobody. I ain't gonna say nothing. Nothing happened, I don't know nothing. I don't remember nothing."

At 1841 hours, Sergeant A walked over to the police vehicle to speak with the Subject. As Sergeant A was at the open window, the Subject told him/her that Officers A and B almost killed him. The Subject also told Sergeant A that Officer A had choked him, and that he could not breathe.

Officers A and B went into the restaurant where they viewed the security video from the drive-through camera that showed the Subject punching the Victim's mirror. Officers A and B obtained the vehicle's license plate from the video and obtained information on the registered owner.

Officers discovered that the Subject had an outstanding felony warrant for Penal Code (PC) section 422(a) – Criminal Threats and he was placed under arrest. Officers A and B transported him to Hollenbeck Police Station.

Once the Subject was at Hollenbeck Station, Sergeant A read the Subject his Miranda Rights and attempted to interview him regarding the use of force. Sergeant A reminded the Subject about his statement regarding "putting a case" on officers and claiming that the officers choked him. The Subject advised Sergeant A that he did not remember anything about the incident aside from being placed in the police car. The Subject also stated he was "a little drunk."

During a pre-booking search at Hollenbeck Station, Officer B recovered a clear plastic baggie containing an off-white crystal-like substance resembling methamphetamine from the Subject's right front coin pocket. Officers A and B requested booking approval for a violation of section 11377(a) of Health and Safety (H&S) Code – Possession of Methamphetamine.

According to Sergeant A, he/she reviewed the BWV for the incident and noted that Officer A's arm was under the Subject's neck while on the ground. According to Sergeant A, it was a take-down. Sergeant A noted that when they went to the ground it was apparent to him/her that it was unintentional where Officer A's arm went up under the neck of the Subject and his neck was resting on Officer A's arm. During his/her use of force investigation, Officer A told Sergeant A that he/she never applied pressure to the Subject's neck. Sergeant A attributed the Subject stating he couldn't breathe to Officer A weighing over 200 pounds with all his/her body weight laying on top of the Subject.

Regarding the Subject's statements about being choked, Sergeant A indicated because of all the varied statements the Subject was making, that he intended to make up something and that he was just trying to be released. Sergeant A made the determination the force was not a carotid restraint control hold. Additionally, Sergeant A indicated he/she did not see anything in the BWV showing the officers applying pressure to the Subject's trachea or windpipe or restricting the blood flow to his neck. Sergeant A stated he/she spoke with the Watch Commander, Sergeant B, about the use of force.

According to Sergeant A, he/she also informed the Watch Commander of the Body-Worn Video of the officer's arm being under the Subject's neck, in addition to the Subject's statements that he had initially made and later saying he didn't remember anything. Sergeant A stated he/she believed that the Watch Commander had watched the video of the incident.

According to Sergeant A, following his/her conversation with Sergeant B, he/she left further decisions on notifications with Sergeant B. According to Sergeant B, when he/she did the intake on the Subject, he/she asked the Subject all the required questions and the Subject didn't say anything to raise a flag in his/her mind. Sergeant B stated the Subject did not display any type of distress, and Sergeant B did not see any injuries on him. According to Sergeant B, Sergeant A's description of the use of force was that it was a tackle from behind, the officers fell, the Subject was taken into custody, there were no injuries, and that was it. According to Sergeant B, there was nothing else that Sergeant A conveyed as far as the use of force.

According to Sergeant B, Sergeant A's description of the use of force led him/her to believe a Non-Categorical, Level II Use of Force (NCUOF) occurred. Sergeant B indicated that he/she may have seen a "glimpse" of BWV from the incident while talking with Sergeant A in the Sergeant's room; however, he/she did not see the use of force.

Sergeant A conveyed that there were no issues with the use of force, and Sergeant B requested that Sergeant A advise the oncoming Watch Commander if any issues arose.

Officers A and B completed the Subject's arrest report and submitted it to the on-duty Watch Commander, Lieutenant A. for approval. According to Lieutenant A, he/she did not review any video prior to approving the arrest report. Lieutenant A stated that he/she read the use of force report, and at the time it seemed like a takedown and a non-cat level two use of force.

Sergeant A ultimately completed a Non-Categorical, Level II Use of Force investigation and submitted it for review. Regarding his/her decision to conduct a Level II versus Level I use of force, Sergeant A stated that Subject told him/her that he was going to "put a case on them" if the officers didn't let him go home. Sergeant A stated when he/she tried to interview the Subject, he stated that he didn't remember what happened and refused to give a statement about the actual use of force. Sergeant A believed that the totality of everything was that the incident was a level 2 use of force.

The officers transported the Subject to the Los Angeles Police Department's Metropolitan Detention Center (MDC). The Subject received medical treatment unrelated to the use of force at the Jail Dispensary by Physician Assistant A. The Subject was cleared for booking.

The incident was originally investigated as a Level II NCUOF; therefore, there was no separation or monitoring of the officers. On May 7, 2021, Force Investigation Division (FID) assumed investigative responsibility for the use of force upon determination that the incident should have been categorized as a categorical use of force.

BWV and DICVS Policy Compliance

NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
Officer A	Yes	Yes	No	N/A	N/A
Officer B	Yes	Yes	Yes	N/A	N/A

After taking the Subject to the ground, Officer A's BWV was inadvertently deactivated. Once Officer A realized what had occurred, he/she reactivated his/her BWV approximately two minutes later.

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). 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 finding of Administrative Disapproval.

B. Non-Lethal Use of Force

The BOPC found Officers A and B's less-lethal use of force to be In Policy.

C. Lethal Use of Force

The BOPC found Officer A's use of lethal use of force to be Out of Policy.

Basis for Findings

In making its decision in this matter, the Commission is mindful that every "use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. The Los Angeles Police Department also recognizes that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public.

The Department's guiding principle when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe, feasible, and reasonable to do so. As stated below, when warranted, Department personnel may use objectively reasonable force to carry out their duties. Officers may use deadly force only when they reasonably believe, based on the totality of circumstances, that such force is necessary in defense of human life. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to physical hazards, violate the law and rights of individuals upon whom unreasonable force or unnecessary deadly force is used, and subject the Department and themselves to potential civil and criminal liability. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers." (Special Order No. 23, 2020, Policy on the Use of Force - Revised.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in *Graham v. Connor*, 490 U.S. 386 (1989), stating that:

"The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody

allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Use of De-Escalation Techniques: It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a suspect and enable an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.

Verbal Warnings: Where feasible, a peace officer shall, prior to the use of any force, make reasonable efforts to identify themselves as a peace officer and to warn that force may be used, unless the officer has objectively reasonable grounds to believe that the person is already aware of those facts.

Proportionality: Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

Fair and Unbiased Policing: Officers shall carry out their duties, including use of force, in a manner that is fair and unbiased. Discriminatory conduct in the basis of race, religion, color, ethnicity, national origin, age, gender, gender identity, gender expression, sexual orientation, housing status, or disability while performing any law enforcement activity is prohibited.

Use of Force – Non-Deadly: It is the policy of the Department that personnel may use only that force which is “objectively reasonable” to:

- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,
- Overcome resistance.

Factors Used to Determine Objective Reasonableness: Pursuant to the opinion issued by the United States Supreme Court in *Graham v. Connor*, the Department examines the reasonableness of any particular force used: a) from the perspective of a reasonable Los Angeles Police Officer with similar training and experience, in the same situation; and b) based on the facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The feasibility of using de-escalation tactics, crisis intervention or other alternatives to force;
- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the suspect;
- Whether the suspect was posing an immediate threat to the officers or a danger to the community;
- The potential for injury to citizens, officers or suspects;
- The risk or apparent attempt by the suspect to escape;
- The conduct of the suspect being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the suspect;
- Officer versus suspect factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus suspects;
- The environmental factors and/or other exigent circumstances; and,
- Whether a person is a member of a vulnerable population.

Drawing or Exhibiting Firearms: Unnecessarily or prematurely drawing or exhibiting a firearm limits an Officers alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm. Any drawing and exhibiting of a firearm shall conform with this policy on the use of firearms. Moreover, any intentional pointing of a firearm at a person by an officer shall be reported. Such reporting will be published in the Department's year-end use of force report.

Use of Force – Deadly: It is the policy of the Department that officers shall use deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary for either of the following reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or another person; or,
- To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible. Before discharging a firearm, officers shall consider their surroundings and potential risks to bystanders to the extent feasible under the circumstances.

Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.

The Department's Evaluation of Deadly Force: The Department will analyze an Officers use of deadly force by evaluating the totality of the circumstances of each case consistent with the California Penal Code Section 835(a), as well as the factors articulated in *Graham v. Connor*.

Rendering Aid: After any use of force, officers shall immediately request a rescue ambulance for any person injured. In addition, officers shall promptly provide basic and emergency medical assistance to all members of the community, including victims, witnesses, subjects, suspects, persons in custody, suspects of a use of force and fellow officers:

- To the extent of the Officers training and experience in first aid/CPR/AED; and
- To the level of equipment available to the officer at the time assistance is needed.

Warning Shots: It is the policy of this Department that warning shots shall only be used in exceptional circumstances where it might reasonably be expected to avoid the need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.

Shooting at or From Moving Vehicles: It is the policy of this Department that firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an Officers use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants. Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and consistent with this policy regarding the use of Deadly Force.

Note: It is understood that the policy regarding discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, officers are expected to act with intelligence and exercise sound judgement, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to clearly articulate the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

Requirement to Report Potential Excessive Force: An officer who is present and observes another officer using force that the present and observing officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer, shall report such force to a superior officer.

Requirement to Intercede When Excessive Force is Observed: An officer shall intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a suspect.

Definitions

Deadly Force: Deadly force is defined as any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to, the discharge of a firearm.

Feasible: Feasible means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Imminent: Pursuant to California Penal Code 835a(e)(2), “[A] threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to a peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”

Necessary: In addition to California Penal Code 835(a), the Department shall evaluate whether deadly force was necessary by looking at: a) the totality of the circumstances from the perspective of a reasonable Los Angeles Police Officer with similar training and experience; b) the factors used to evaluate whether force is objectively reasonable; c) an evaluation of whether the officer exhausted the available and feasible alternatives to deadly force; and d) whether a warning was feasible and/or given.

Objectively Reasonable: The legal standard used to determine the lawfulness of a use of force is based on the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states, in part, “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving - about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application.”

The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

Serious Bodily Injury: Pursuant to California Penal Code Section 243(f)(4) Serious Bodily Injury includes but is not limited to:

- Loss of consciousness;
- Concussion;
- Bone Fracture;
- Protracted loss or impairment of function of any bodily member or organ;
- A wound requiring extensive suturing; and,
- Serious disfigurement.

Totality of the Circumstances: All facts known to or reasonably perceived by the officer at the time, including the conduct of the officer and the suspect leading up to the use of force.

Vulnerable Population: Vulnerable populations include, but are not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

Warning Shots: The intentional discharge of a firearm off target not intended to hit a person, to warn others that deadly force is imminent.

A. Tactics

Tactical De-Escalation

Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication*

Planning – According to Officer A, he/she and Officer B had worked together approximately 12 times. At the beginning of their shifts, Officers A and B had regularly discussed contact and cover roles; Officer B usually assigned him/herself as the contact officer. According to Officer B, he/she and Officer A always discussed contact/cover and lethal/less-lethal roles. Before contacting the Subject, Officer A and B discussed asking the Subject to leave the location, believing he

might be an unhoused individual staying at a nearby encampment. Officer B asked Officer A if they were going to attempt to identify the Subject. Officer A advised Officer B that they would simply ask the Subject to leave. The BOPC would have preferred that Officers A and B had developed a more substantial plan before contacting the Subject. The BOPC would also have preferred that Officer A had engaged in more communication with Officer B before conducting the takedown.

Assessment – Officers A and B met with Witness A and gathered information related to the radio call. Based on their previous experience and knowledge of the area, the officers formed the opinion that the Subject was possibly an unhoused individual associated with a nearby encampment. With this assessment, officers determined that they would ask the Subject to leave without identifying him since the potential victim had left. Upon contacting the Subject, Officer A assessed from his demeanor, behavior, and statements that it would be prudent to request an additional unit to assist with attempting to de-escalate the situation.

Time – When the officers contacted the Subject, he immediately became agitated and displayed aggression through his words and body language. The Subject clenching his fists and challenging the officers to a fight limited their ability to use time as a de-escalation technique. To mitigate the threat the Subject posed to Officer B, Officer A performed a takedown. While the BOPC noted that the Subject repeatedly approached the officers, to increase time, the BOPC would have preferred that Officers A and B had attempted to create distance.

Redeployment and/or Containment – Upon contact, the Subject immediately became confrontational with Officers A and B. By clenching his fists and challenging officers to fight, the Subject indicated that he was threatening violence and/or physical harm. Believing that the Subject was about to strike Officer B, Officer A performed a takedown. While the BOPC noted that the Subject repeatedly approached the officers, the Board would have preferred that Officers A and B had attempted to redeploy or contain the Subject.

Other Resources – When contacted by officers, the Subject immediately became confrontational in both his posture and words. Officer A requested an additional unit to assist with de-escalating the situation. After Officer A took the Subject to the ground, Officer B requested for a backup unit to respond to their location. Officer A utilized the assistance of the additional officers and directed Officer D to take control of the Subject's left arm to assist in handcuffing.

Lines of Communication – Meeting with Witness A, Officers A and B learned what had transpired before their arrival. Based on their conversation with Witness A, officers learned that a crime had possibly occurred, and they were able to locate the Subject. Officers A and B attempted to communicate with the Subject, asking him to leave the location; Officer A utilized his/her department radio to request an additional unit. While officers attempted to de-escalate the situation, Officer A determined that he/she needed to intervene, based on the Subject's actions toward Officer B.

Following the takedown, Officer B utilized his/her Department radio to request backup units and a supervisor for the Use of Force.

The BOPC noted that during this incident, Officer B asked the Subject if he was trying to fight him/her. Based on Officer B's intonation, the BOPC was concerned that he/she risked escalating the situation. However, upon further review, the BOPC noted that at the time of Officer B's statement, the Subject had stated, "Nah, I'm talking to you!", stepped toward Officer B, threw his cell phone to the ground, and assumed an aggressive posture. While Officer B's phrasing could have been better, the BOPC opined that he/she was attempting to determine the Subject's intent.

- During its review of this incident the BOPC considered the following tactical considerations:

1. Tactical Communication/Planning

Before contacting the Subject, Officers A and B communicated with each other. Officer B asked if they would attempt to identify the Subject, Officer A said they would just ask him to leave. Upon contacting the Subject, the Officers told the Subject to leave. According to Officer B, the Subject became "combative." The Subject threw his cell phone, faced Officers A and B with both fists clenched, told Officer B to take off his/her badge, and took several steps toward Officer B. Officer A formed the opinion that the Subject was going to "start swinging" at Officer B and that an "actual physical fight was going to occur." Officer A positioned himself/herself behind the Subject, placing the Subject between himself/herself and Officer B, and performed a takedown. When Officer A decided to take the Subject to the ground, he/she communicated his/her intentions to Officer B solely through "body cues," so as not to lose the element of surprise.

The BOPC discussed Officer A and B's communication with each other and their plan before approaching the Subject. The BOPC noted that Officers A and B had worked together multiple times, during which they had discussed tactics, specifically contact/cover roles. The BOPC discussed that before approaching the Subject, Officers A and B briefly discussed their plan on how to handle the incident. While the BOPC would have preferred the officers had a more in-depth discussion before approaching the Subject, the board determined this was not a deviation from approved Department tactical training.

Based on the totality of the circumstances the BOPC determined that the tactics employed by Officers A and B were not a deviation from approved Department tactical training.

2. Handcuffing Protocols

The Subject was secured in handcuffs at 1821 hours. After he was handcuffed, the Subject remained in the prone position. Officer B maintained his/her position with his/her right knee on the Subject's right shoulder and his/her left hand on the Subject's right elbow. Officer B repeatedly asked the Subject if he wanted to sit up. The Subject's uttered several expletives and stated that officers had tried to kill him. Based on the Subject's behavior, Officer C felt it was not safe to "roll him over." After speaking with the Subject, Officer C was able to calm him and gain his compliance. At approximately 1824 hours, Officers B and C rolled the Subject to his left; Officer C assisted the Subject to a standing position.

The BOPC was critical in their evaluation of Officers A and B's actions after the Subject was handcuffed. After being handcuffed, the Subject remained in the prone position for approximately two minutes and thirty seconds. The BOPC noted that while Officer B made repeated attempts to convince the Subject to sit up, he continued to be verbally aggressive, using profanity toward Officer B. However, the BOPC opined that the officers had gained control of the Subject at that point. While the Subject used profanity toward Officer B, he was no longer resisting arrest or struggling. The BOPC would have preferred that Officers A and B had physically attempted to roll the Subject into a seated or recovery position immediately after he was handcuffed.

Based on the totality of the circumstances the BOPC determined that the tactics employed by Officers A and B were a substantial deviation, without justification, from approved Department tactical training.

- The BOPC also considered the following:
 - **Back-up request** – When Officers A and B contacted the Subject, he responded aggressively both with his words and his posture. The Subject stood up and threw his cell phone to the ground near Officer B's feet. According to Officer A, the Subject was "instantly agitated" and "angry." In response, Officer A requested an additional unit. Based on the Subject's actions, the BOPC opined that a backup unit would have been more appropriate than an additional unit.
 - **Situational Awareness** – According to Officer B, when he/she and Officer A arrived at the restaurant, he/she updated their status to Code Six via the MDC. However, Officer B inadvertently placed them Code Six on an unrelated radio call. Therefore, CD voiced Officer A's additional unit request location incorrectly.

While assisting Officer A with the Subject, Officer B inadvertently covered Officer A's back with the TASER twice. As he/she did this, the TASER's safety was disengaged, and the red laser dot was briefly visible on Officer A's back; Officer B's finger was along the TASER's frame.

- **Rendering Aid** – During the use of force, the Subject said he could not breathe. When interviewed by FID investigators, Officer A acknowledged that his/her bodyweight could have inadvertently pushed the Subject's neck into his/her arm while they were on the ground. Officer A also considered it was possible that his/her bodyweight could have made it difficult for the Subject to inhale, giving the Subject the impression that it was difficult to breathe. While the Subject was eventually seen by medical staff at the Metropolitan Detention Center jail dispensary, the BOPC noted that it would have been preferable for a RA to evaluate the Subject at the scene.

These topics were to be discussed at the Tactical Debrief.

Command and Control

- At approximately 1826 hours, Sergeant A arrived at the scene and met with Officers A and B in the restaurant's parking lot. Officer A advised Sergeant A that he/she and Officer B had been involved in a NCUOF with the Subject, during which the Subject had been taken to the ground. In response, Sergeant A initiated a NCUOF investigation.

During his/her UOF investigation, Sergeant A reviewed BWV, in which the Subject can be heard saying he could not breathe. The Subject also made statements to Sergeant A that the officer "choked" him "out." Sergeant A believed that the Subject was trying to manipulate the situation to get himself released from custody. On April 18, 2021, after previously speaking with the Watch Commander, Sergeant B, Sergeant A submitted his/her investigation to the next level of review.

On May 2, 2021, Sergeant C began reviewing Sergeant A's NCUOF investigation. Based on his/her review, Sergeant C contacted Captain A regarding the circumstances of this incident. Due to force possibly being applied to the Subject's neck, on May 6, 2021, Captain A contacted FID. On May 7, 2021, after reviewing the investigation, FID consulted with the Office of Inspector General, which concurred that FID should assume investigative responsibility.

According to Sergeant B, Sergeant A's description of the UOF led him/her to believe a Level II NCUOF had occurred. Sergeant B did not remember the Subject displaying any type of distress or seeing any injuries on him. Sergeant B indicated that he/she may have seen a "glimpse" of BWV from the incident while talking with Sergeant A; however, he/she did not see the use of force. According to Sergeant B, Sergeant A conveyed that there were no issues with the use of force.

- In conducting an objective assessment of this case, the BOPC determined that Officers A and B's tactics deviated from approved Department tactical training warrant a finding of Administrative Disapproval.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved officers to discuss individual actions that took place during this incident.

The BOPC found Officers A and B's tactics to warrant a finding of Administrative Disapproval.

B. Non-Lethal Use of Force

- **Officer A** – (1) Bodyweight, (1) Firm Grip
- **Officer B** – (1) Bodyweight, (1) Firm Grip

As their interaction with the Subject unfolded, Officer A formed the opinion that the Subject was going to “start swinging” at Officer B and that an “actual physical fight was going to occur.” In response, Officer A rapidly approached the Subject from behind, passing his/her left arm underneath the Subject's left armpit, trapping the Subject's left upper arm in the crook of his/her (Officer A's) left elbow.

Simultaneously, Officer A passed his/her right arm over the Subject's right shoulder and wrapped it around the front of the Subject's chest “just below his neck.” According to Officer A, his/her right bicep was in contact with the right side of the Subject's neck, and his/her right forearm was across the Subject's upper chest and clavicle area. Officer A clarified that he/she applied downward pressure to the Subject's upper chest area and not “backward” pressure. Officer A also stated that he/she intended to “pull” his/her bodyweight down in a “circular position” to put the Subject on the ground. Officer A maintained his/her hold on the Subject while pulling him counterclockwise and down to the ground. As Officer A pulled the Subject toward the ground, their legs became tangled, causing them to fall forward. According to Officer A, when taking the Subject to the ground, he/she did not intend to, nor did he/she apply pressure to the Subject's trachea or his carotid arteries. The Subject landed in a prone position with Officer A on top of him, and Officer A's chest was pressed against the Subject's back (**Bodyweight**). According to Officer A, as he/she continued to hold the Subject's left arm with his/her left arm (**Firm Grip**), his/her (Officer A's) right arm “incidentally” moved forward to the Subject's “neck area.” Officer A indicated that when they went to the ground, his/her right forearm was positioned underneath the Subject's neck; however, he/she did not intend to position his/her arm in that manner. Officer A further advised that he/she could not pull his/her arm out from underneath the Subject because, “[I]t was on the concrete.”

According to Officer B, he/she believed the Subject was a threat because he threw his cell phone, approached him/her with his fists clenched, used verbally aggressive language, and challenged him/her to fight. To help Officer A control the Subject, Officer B placed his/her left knee on the Subject's right shoulder (**Bodyweight**), grasped the Subject's sleeve with his/her right hand, and repeatedly told the Subject not to move. Officer B then slid his/her right hand down the Subject's right arm and

obtained a **firm grip** on the Subject's right wrist. At this point, the Subject stopped resisting.

The BOPC evaluated Officer A's use of non-lethal force. The BOPC discussed how Officer A took the Subject to the ground, as well as the position of Officer A's arm. The BOPC noted that according to Officer A, he/she did not intend to, nor did he/she apply pressure to the Subject's trachea or carotid arteries. The BOPC also noted that although the takedown was unorthodox, it was effective and did not result in injury to the Subject. The BOPC further noted the statements of Subject Matter Experts (SMEs) from In-Service Training Division. The SMEs explained that there are upper body control techniques (i.e., the seatbelt technique) taught as a part of the Arrest and Control (ARCON) curriculum, as well as upper body takedowns that have been taught in the past, both of which do not restrict the airway or carotid arteries. The SMEs further advised that even though certain ARCON methods are no longer taught, it does not mean they are prohibited (but for the carotid restraint technique, which is prohibited). The SMEs opined that while the method Officer A used to conduct the takedown is not explicitly taught, it is also not prohibited. The SMEs also opined that muscle memory from previously learned techniques may have factored into the technique Officer A used in this incident.

The BOPC also discussed Officer A's arm positioning while on the ground. The BOPC considered Officer A's statements to FID. While Officer A acknowledged that his/her bodyweight could have inadvertently pushed the Subject's neck into his/her arm while they were on the ground, according to Officer A, he/she never intended to, nor did he/she apply pressure to the Subject's trachea or carotid arteries.

The BOPC also considered the Subject's comments about not being able to breathe. The BOPC noted that while on the ground, Officer A's right arm was bent at a 90-degree angle. Based on the angle of Officer A's arm, the BOPC opined that the portion of his/her body weight that was near the Subject's neck was transferred to the ground through his/her elbow/forearm, relieving the pressure that may have been indirectly applied to the Subject's neck by the weight of Officer A's body. The BOPC determined that the Subject's statement was likely due to most of Officer A's 235 pounds on the Subject's torso, and not a result of restriction to the Subject's airway or carotid arteries.

In terms of Officer B's use of force, the BOPC noted that the Subject had not been handcuffed when Officer B applied body weight and a firm grip. Based on the totality of the circumstances the BOPC opined that the force used by Officer B was proportional and objectively reasonable.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, in the same situation, would reasonably believe that the use of body weight and firm grips were objectively reasonable and proportional.

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

C. Lethal Use of Force

- **Officer A - (1) Takedown**

Reviewing BWV, it appears that Officer A's arm was across the Subject's throat and pressure was applied to the Subject's trachea as he was being taken to the ground. It also appears that pressure may have been applied to the Subject's trachea while he was on the ground. While the BOPC believed the pressure was unintentional, the BOPC also believed it was the result of a misapplied technique, specifically the manner in which Officer A took the Subject to the ground. While the BOPC understood that the mechanics of the "seatbelt" technique, as taught by the Department, involves one arm over the shoulder, alongside the neck, it does not involve placing the arm across the throat, nor does it involve applying pressure to the trachea.

The Department defines a carotid restraint as a "vascular neck restraint or any similar restraint, hold, or other defensive tactic, including a C-clamp, in which pressure is applied to the sides of a person's neck that involves a substantial risk [of] restricting blood flow and may render the person unconscious in order to subdue or control the person." A choke hold is defined as "any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe." At the time of this incident, the use of carotid restraints or choke holds was unauthorized. Unlike the carotid restraint, a choke hold does not require pressure involving a substantial risk of restricting blood flow that may render the person unconscious. The BOPC appreciated that Officer A's stated intent was to de-escalate the Subject's behavior before he had a chance to engage in a physical altercation with Officer B. The BOPC also understood that Officer A did not intend to apply pressure to the Subject's trachea. However, to find Officer A's takedown in policy is to say that a misapplied technique is in policy, regardless of the Officer's intent or the ultimate result.

Based on the totality of the circumstances and the preponderance of the evidence, the BOPC believed Officer A's use of a takedown resulted in unintentional pressure to the Subject's trachea, thereby constricting the Subject's airway. The BOPC determined that an officer with similar training and experience as Officer A, in the same situation, would not reasonably believe that the use of lethal force was proportional, objectively reasonable, or necessary.

Therefore, the BOPC found Officer A's lethal use of force to be Out of Policy.