

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

IN-CUSTODY DEATH – 003-19

Division	Date	Duty-On () Off (X)	Uniform-Yes (X) No ()
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Central	2/12/19		
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Officer(s) Involved in Use of Force	Length of Service
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Lieutenant A	21 years, 3 months
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Reason for Police Contact

On February 12, 2019, an off-duty uniformed Los Angeles Police Department (LAPD) lieutenant assisted an on-duty California Highway Patrol (CHP) officer with a suspect on the Hollywood Freeway. After being handcuffed, the Subject attempted to flee, causing the LAPD lieutenant to become involved in a Non-Categorical Use-of-Force. Soon after being subdued, the Subject went into medical distress. The LAPD lieutenant and the CHP officer began life saving measures until the arrival of medical personnel. The Subject was subsequently pronounced dead at the scene.

The incident was investigated by both Force Investigation Division (FID) and the California Highway Patrol. Along with FID investigators, the CHP Multidisciplinary Accident Investigation Team (MAIT) also responded to the scene of the incident.

Subject(s)	Deceased (X)	Wounded ()	Non-Hit ()
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Subject: Male, 34 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.

The following incident was adjudicated by the BOPC on August 13, 2019.

Incident Summary

On Tuesday, February 12, 2019, CHP Officer A, assigned to Central Los Angeles CHP, was patrolling in the area of the southbound 101 Freeway, near an overcrossing. CHP Officer A noticed the Subject rolling down the embankment on one side of the 101 Freeway. According to CHP Officer A, when the Subject discontinued his roll down the embankment, he stood up and staggered into the northbound 101 Freeway lanes of traffic, causing vehicles travelling 20-25 miles per hour to stop. According to CHP Officer A, the Subject held up his hand to stop traffic and attempted to enter at least one vehicle.

CHP Officer A feared the Subject would be injured by passing vehicles or cause vehicles to become involved in collisions, so he/she turned on his Code 3 (emergency) equipment and stopped his/her vehicle diagonally across lanes of the southbound 101 Freeway to stop traffic.

CHP Officer A contacted his/her dispatch via police radio and advised of his/her location and of the pedestrian in the roadway. CHP Officer A exited his/her vehicle and walked toward the center divider of the freeway. According to CHP Officer A, as he/she did so, the Subject noticed CHP Officer A and began walking toward the center divider. CHP Officer A and the Subject met on their respective sides of the approximate four-foot high center divider. According to CHP Officer A, the Subject had blood on his shirt and hands. The Subject advised CHP Officer A that he was coming from jail and that someone was after him and trying to kill him. CHP Officer A formed the opinion that the Subject was under the influence of an unknown substance because of his dilated pupils, constant movement, and due to his body tensing up.

CHP Officer A advised investigators he/she wanted the Subject to move to the opposite side of the center divider but indicated he/she did not want to go hands on with the Subject because of the Subject's large size, his/her opinion that the Subject was under the influence, and the fact that he/she was working alone.

CHP Officer A spoke to the Subject for approximately three and one-half minutes in an attempt to have him voluntarily move to the opposite side of the center divider. During that time, the Subject gave CHP Officer A his name and reiterated the fact that someone was after him and trying to kill him. CHP Officer A placed latex gloves on his/her hands due to the blood he/she observed on the Subject. The Subject eventually voluntarily began to climb over the center divider wall. When the Subject reached the top, he fell to the opposite side of the divider onto his hands and knees.

According to CHP Officer A, he/she backed away from the Subject, but the Subject got up quickly and started walking toward him/her. CHP Officer A then drew his/her TASER

and held it toward the ground, causing the Subject to put his hands in the air and state, "Okay, Okay. Don't do it. Don't do it. Don't do it." The Subject then started walking across the lanes of traffic toward the shoulder, and CHP Officer A followed.

Off-duty, on-call, uniformed LAPD Lieutenant A, had just entered the 101 Freeway from the on-ramp. Lieutenant A observed that traffic was backed up due to a CHP vehicle, later determined to be CHP Officer A, conducting a traffic break. From the on-ramp lane, Lieutenant A observed CHP Officer A walk to the center divider and converse with the Subject. According to Lieutenant A, he/she at first believed the Subject was a stranded motorist or had been involved in a traffic collision. But after observing CHP Officer A place gloves on his/her hands and noticing that the Subject, "didn't appear to be fully cooperating," he/she realized that CHP Officer A may need assistance.

After the Subject and CHP Officer A began walking toward the shoulder of the freeway, Lieutenant A exited his/her vehicle. According to Lieutenant A, he/she used his/her handheld radio to sign out with Communications Division (CD).

Lieutenant A then walked toward the Subject and CHP Officer A. According to CHP Officer A, Lieutenant A asked him/her if he/she needed help, and CHP Officer A told Lieutenant A that he/she did. They continued walking across the freeway lanes until the Subject stood facing the shoulder wall. CHP Officer A advised the Subject that CHP Officer A was going to handcuff him, and the Subject agreed. CHP Officer A stood directly behind the Subject and Lieutenant A stood to his right. Lieutenant A observed that the Subject was moving around and took a firm grip on the Subject's right arm (right hand on the Subject's right elbow and left hand on the Subject's right wrist) while CHP Officer A handcuffed him.

Lieutenant A believed the Subject was hallucinating and formed the opinion he was under the influence of an unknown narcotic because of his agitated state, blank stare, and incoherent statements. The Subject stated, "They're in the bushes. They're in the bushes." Both Lieutenant A and CHP Officer A attempted to deescalate the situation by telling the Subject they were not going to hurt him and that they were there to help. Lieutenant A suggested to CHP Officer A that they place the Subject in the black and white CHP vehicle, and CHP Officer A agreed.

They walked the Subject to the CHP vehicle, which was still parked blocking the lanes of the 101 Freeway. The Subject was placed in the front passenger seat of the vehicle (CHP Officer A's vehicle was not equipped with a cage) but soon started to protest, "I don't want to go in there. They're in there. Don't put me in there. They're going to kill me." CHP Officer A attempted to calm the Subject by telling him there was no one in the vehicle and that CHP Officer A was just going to give him a ride off the freeway. The Subject continued to persist and moved his leg out of the CHP vehicle back to the roadway. CHP Officer A advised Lieutenant A that he/she wanted to take the Subject out of the vehicle and get him back to the right shoulder and that he/she had additional units coming.

The Subject was taken back to the shoulder of the freeway and placed facing the wall. Lieutenant A again asked CHP Officer A if he/she had additional units responding to the location, and CHP Officer A advised that he/she did. CHP Officer A asked Lieutenant A if he/she would watch the Subject so that CHP Officer A could move his/her CHP vehicle out of traffic lanes. Lieutenant A agreed and took a position behind the Subject where he/she could better monitor and control the Subject.

CHP dispatch contacted LAPD Communications Division and requested LAPD units meet CHP Officer A on the 101 Freeway.

CHP Officer A walked back to his/her vehicle and opened the driver's side door. According to Lieutenant A, at this time, the Subject looked back toward CHP Officer A, spun to his left toward the freeway lanes, and attempted to run forward and break free of Lieutenant A's grasp. Lieutenant A stated, "I held onto him with all I could so he wouldn't get away because all I'm thinking is he's going to jump the center divider again into oncoming traffic and get hit." With his/her hands grasping both of the Subject's arms, Lieutenant A turned to his/her left and used the Subject's momentum to place him on the ground in the prone position. Lieutenant A stated, "It was my intention to take him to the ground because that was the only way I could control him. I was by myself at that point, so, yeah, I intended to take him to the ground. That way I could have better control."

Lieutenant A then placed both of his/her knees on the Subject's upper thighs/buttocks area and kept his/her grasp of each of the Subject's forearms. Lieutenant A then yelled to get CHP Officer A's attention. From outside the driver door of his/her CHP vehicle, CHP Officer A looked back to the shoulder of the freeway and observed the Subject face down on the ground with Lieutenant A kneeling on top of him. CHP Officer A then heard Lieutenant A yelling.

CHP Officer A ran from his/her CHP vehicle to the shoulder of the freeway to assist Lieutenant A. CHP Officer A observed the Subject attempting to get up off the roadway and noticed he was bleeding from above one of his eyebrows. CHP Officer A assisted Lieutenant A by placing one of his/her knees on the Subject's right buttocks and both of his/her hands on Subject's right shoulder area. According to CHP Officer A, the Subject continued to squirm and attempt to get up from the roadway.

Lieutenant A advised he/she placed his/her knees on the Subject's buttocks and his/her hands on the Subject's arms, while CHP Officer A assisted by standing over the Subject's head and using his/her hands to hold Subject's shoulders down. CHP Officer A advised that he/she and Lieutenant A each controlled one side of Subject's body, Lieutenant A on the left, and CHP Officer A on the right, each with a knee on their respective sides of the buttocks and hands on the Subject's respective shoulders.

As the Subject continued to struggle, Lieutenant A again asked CHP Officer A if additional units were en route to assist, and CHP Officer A confirmed that units were on their way. The Subject stated, "Let me go. I don't want to get killed. Don't kill me."

Don't hurt me." According to Lieutenant A, he/she realized he/she had made his/her earlier Code 6 broadcast on an unmonitored radio frequency, so he/she changed the channel on his/her hand-held radio to the Central Area frequency. Lieutenant A attempted to key the mic several times to communicate his/her location and circumstance to CD but was unable due to radio traffic.

After approximately 30 seconds from the time Lieutenant A took the Subject to the ground, Lieutenant A and CHP Officer A noticed reddish vomit coming from Subject's mouth. Officer A immediately requested a Rescue Ambulance (RA) respond to the scene via radio. Lieutenant A told CHP Officer A, "Let's put him on his side." Lieutenant A then rolled the Subject onto his left side and asked him if he was alright. Lieutenant A noticed the Subject was having labored breathing and Officer A noticed he was becoming pale. According to Lieutenant A, he/she advised, "Let's get him up." Lieutenant A and CHP Officer A then brought the Subject into a sitting position.

According to Lieutenant A and CHP Officer A, they asked the Subject if he was okay several times, but they did not get a response. The Subject was getting pale, his eyes were opening wider, and his breathing was becoming shallower. Lieutenant A gently slapped the Subject's face in hopes that he was just drifting off due to narcotics intoxication and would come back to consciousness. CHP Officer A noticed that the Subject was not breathing anymore because his stomach had stopped moving and his body was motionless. Lieutenant A and CHP Officer A then laid the Subject onto his back, and Lieutenant A immediately began the chest compressions for Cardiopulmonary Resuscitation (CPR).

CHP Officer A ran to the rear passenger door of his/her vehicle to retrieve his/her pocket breathing mask due to the blood emerging from the Subject's mouth. CHP Officer A then ran back to the shoulder of the freeway to begin the rescue breathing portion of CPR.

While CHP Officer A and Lieutenant A were performing CPR, off-duty, plain-clothed Detective A was driving on the same side of the 101 Freeway. Detective A observed CHP Officer A and Lieutenant A performing CPR on the Subject and stopped to assist. Detective A approached Lieutenant A and, after identifying him/herself, asked if he/she could assist. Lieutenant A advised Detective A to go Code 6 and ensure that an ambulance was en route to the location. Detective A contacted CD and requested an ambulance and two additional units for traffic control.

Advanced Life Support (ALS) Ambulance paramedics were traveling on the same side of the 101 Freeway when they observed CHP Officer A and Lieutenant A performing CPR on the Subject and stopped to assist. Paramedics asked the officers to remove Subject's handcuffs and took over lifesaving efforts.

Uniformed Los Angeles County Sheriff's Department (LASD) Sergeant A arrived at the location and used his/her black and white police vehicle to block traffic. Sergeant A had

observed officers performing CPR while driving on the overcrossing and responded to assist.

A Los Angeles Fire Department (LAFD) Rescue Ambulance (RA) arrived at the scene and continued lifesaving efforts. The Subject was moved into the ambulance for continued lifesaving efforts.

LAPD Sergeant A then arrived at the scene. Sergeant A met with Lieutenant A and learned that he/she had been involved in a use of force. Sergeant A advised Lieutenant A that he/she would monitor him when it became apparent the incident may become an In-Custody Death (ICD). Sergeant A made notification of the incident to his/her command and directed responding LAPD officers to begin a crime scene log and assist with traffic control. Lieutenant A notified his/her command of the incident. Sergeant A advised that CHP Lieutenant A declared him/herself the Incident Commander (IC).

Another LAFD ambulance arrived, and the Subject was moved to the ambulance for continued lifesaving efforts. LAFD Medical Services Bureau Commander A arrived at the scene. Lifesaving efforts continued until Commander A pronounced the Subject as deceased.

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 Lieutenant A's tactics to warrant a Tactical Debrief.

B. Non-Lethal Use of Force

The BOPC found Lieutenant A's non-lethal use of force to be In 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. It is also recognized 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 value 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 and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.” (Use of Force Policy, Los Angeles Police Department Manual.)

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), 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:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where Palencia’s actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a subject and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so. (Tactical De-Escalation Techniques, October 2016.)

A. Tactics

- During its review of the incident, the BOPC identified the following tactical considerations:

1. Tactical Communications/Planning

Lieutenant A initially broadcast his/her Code Six location on a radio frequency which was not monitored by CD.

Operational success is based on the ability of officers to effectively communicate during critical incidents. Officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, Lieutenant A broadcast his/her status and location on a frequency that was not monitored by CD, and immediately responded to assist CHP Officer A. When Lieutenant A realized that CD may not have received his/her initial broadcast, he/she attempted to broadcast on the Central Area base frequency, however, he/she was unable due to radio traffic. Lieutenant A repeatedly confirmed with CHP Officer A throughout the incident that resources were responding. Additionally, upon the arrival of Detective A, Lieutenant A directed Detective A to place the officers Code Six and request an ambulance.

In this circumstance, Lieutenant A was off-duty and acted to assist personnel from another law enforcement agency. Consistent with the Department's expectation, Lieutenant A acted only after considering the tactical situation, namely a lone officer communicating with an individual possibly under the influence of a controlled substance.

The BOPC opined that as a best practice and in an effort to have a plan, Lieutenant A should have switched to a monitored frequency while driving home in full uniform.

Based on the totality of the circumstances, the BOPC determined that Lieutenant A's actions were not a substantial deviation from approved Department tactical training. This be a topic of discussion during the Tactical Debrief.

- The BOPC additionally considered the following:
 1. **Performing Cardiopulmonary Resuscitation** – The investigation revealed that Lieutenant A began performing CPR when he/she believed the Subject's breathing was labored. Lieutenant A was reminded that CPR is to be administered when an individual is not breathing and is unresponsive.
 2. **Protocols Subsequent to a Categorical Use of Force Incident** – A review of the Body Worn Video (BWV) of personnel at scene revealed that Lieutenant A discussed the incident with officers at scene as LAFD personnel continued with lifesaving efforts. The BOPC noted the incident had yet to be classified as a CUOF incident and therefore separation was not required. Lieutenant A however, understood that the Subject was in grave condition. Therefore, the BOPC would have preferred that Lieutenant A initiate CUOF protocols.

The above issues were to be discussed at the Tactical Debrief.

In conducting an objective assessment of this case, the BOPC determined that Lieutenant A's tactics did not substantially deviate from approved Department tactical training.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

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

Therefore, the BOPC found Lieutenant A's tactics to warrant a Tactical Debrief.

B. Non-Lethal Use of Force

- **Lieutenant A** – (Firm Grip, Take Down, and Bodyweight)

According to Lieutenant A, while holding onto the Subject with both hands, the Subject turned to his left and attempted to break free from Lieutenant A's grasp. Believing the Subject was attempting to escape and run back toward the freeway, Lieutenant A held onto the Subject as hard as he/she could and utilized the Subject's forward momentum to pull the Subject down to the ground. The Subject landed on his stomach, and Lieutenant A continued to maintain his/her grip on the Subject's forearms with both hands and placed both knees on the Subject's buttocks and upper thigh area. As the Subject continued moving around and was trying to

get up, Lieutenant A and CHP Officer A continued to apply bodyweight upon the Subject. They also advised the Subject to calm down and relax, however, all efforts to verbalize with the Subject proved ineffective.

Based upon the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Lieutenant A, while faced with similar circumstances, would believe that the same applications of non-lethal force would be reasonable to overcome the Subject's resistance and prevent his escape.

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