

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

**IN-CUSTODY DEATH – 009-10**

| <b>Division</b>         | <b>Date</b> | <b>Duty-On (X) Off ( )</b> | <b>Uniform-Yes (X) No ( )</b> |
|-------------------------|-------------|----------------------------|-------------------------------|
| 77 <sup>th</sup> Street | 01/29/2010  |                            |                               |

| <b>Officer(s) Involved in Use of Force</b> | <b>Length of Service</b> |
|--|--------------------------|
| Officer C                                  | 3 years, 8 months        |
| Officer D                                  | 3 years, 5 months        |
| Officer E                                  | 7 years, 9 months        |
| Officer F                                  | 2 years, 9 months        |
| Officer G                                  | 14 years, 7 months       |
| Officer H                                  | 6 months                 |

**Reason for Police Contact**

Officer responded to an unknown trouble radio call.

| <b>Subject</b>         | <b>Deceased (X)</b> | <b>Wounded ( )</b> | <b>Non-Hit ( )</b> |
|------------------------|---------------------|--------------------|--------------------|
| Male, 29 years of age. |                     |                    |                    |

**Board of Police Commissioners' Review**

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent suspect criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the Inspector General. The Department Command Staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on January 11, 2011.

## **Incident Summary**

Officers A and B were assigned to an unknown trouble call, with a male whispering that he needed help. Upon arrival at the address they were provided, the officers discovered the location was surrounded by a fence with a locked wrought iron gate, and a large dog roaming the property. The officers requested a supervisor and an additional unit. In response to the request, Officers C, D, E, and F arrived at the scene. The officers were concerned that someone inside the residence needed help and they made attempts to call the reporting person back, but were unable to make contact with anyone.

Since they were unable to enter the property due the locked gate, the officers requested assistance from the Los Angeles Fire Department (LAFD). Upon their arrival, LAFD started to use a power saw to cut off the lock. Before LAFD could cut off the lock, the owner of the property, Witness A, walked outside and spoke with the officers. When it was explained to Witness A that they had responded to his residence due to a 911 call, Witness A told the officers that it was the Subject who must have called. Witness A told the officers that the Subject had an alcohol problem and suffered from an unknown form of mental illness. Witness A gave the officers permission to enter his residence to ensure that there were no problems. The officers were then joined by Sergeant A.

Witness A showed the officers which bedroom the Subject was in, and Witness A knocked on the door and asked him to open it. The Subject said he could not open the door due to an issue with the key. After repeated, unsuccessful attempts to convince the Subject to open the door, Witness A gave the officers permission to force open the door. With the approval of Sergeant A, Officer E kicked the door open, and the officers made entry. The officers found the Subject lying on a bed. The Subject denied having called 911. The Subject did not appear to be a danger to himself or others, and Witness A told the officers that he felt safe with the Subject. Based on the circumstances, Sergeant A, the officers and LAFD subsequently left the location without taking any further action.

According to Witness A, after the officers left and he had gone back to his bedroom, the Subject walked into his room. The Subject claimed to be sick, was in fear and believed someone was following him. Witness A suggested they call for an ambulance, and the Subject called the Fire Department.

LAFD responded to Witness A's residence and were met in front of the location by Witness A who advised that he believed the Subject was on drugs and needed help. LAFD personnel went to Witness A's bedroom and observed Witness B, who was also a resident of the location, struggling to control the Subject. The Subject was naked, acting in a violent manner and Witness B said that he did not believe he could control the Subject. LAFD personnel formed the opinion that the Subject was possibly under the influence of PCP. LAFD personnel were unable to calm the Subject down and he displayed very aggressive behavior. Due to safety concerns for all involved, LAFD requested a back up from LAPD. LAFD personnel stood back and contained the Subject in the bedroom until the arrival of LAPD.

Officers C and D were assigned to return to Witness A's residence to provide back up to LAFD. Upon arrival, Officers C and D made contact with LAFD personnel, who advised them that the Subject wanted to go to the hospital, but every time they got near him, he became violent. Officer C obtained the TASER from his police vehicle, removed it from its holster and placed it in his rear pants pocket. The officers walked into Witness A's bedroom and observed the Subject standing in the room with Witnesses A and B alongside of him. According to Officer C, the Subject was speaking very rapidly, sweating profusely and was naked. Based on these symptoms, Officer C formed the opinion that the Subject was under the influence of PCP, and that it was necessary that he go to the hospital for medical treatment. According to Officer D, the Subject said he would go to the hospital, but wanted to put his pants on. Officer D, asked Witness A to assist the Subject in putting on his pants, but he was only able to get them partially on.

Officer D requested an additional unit. In response to the request, Officers E, F, G and H arrived at the scene. As the additional officers responded to the bedroom, the officers asked Witnesses A and B to leave the room. The Subject did not want them to leave and grabbed onto both Witnesses A and B until they were eventually able to exit the bedroom. As they left the room, Officer D tried to engage the Subject in conversation by telling him that it was okay and they just needed to take him to the hospital. The Subject responded by stating, "Well, I don't want to go anymore, I'm not going anywhere." Officer D told the Subject, "Hey, we have a TASER. It's going to hurt if we use it on you." According to Officer D, based on the fact that the Subject was sweating profusely, he felt they could not leave the Subject at the residence and needed to do "something."

The Subject did not comply with any of the officers' requests to go to the hospital with LAFD personnel, and at one point took a step toward the officers. Officer D then grabbed onto one of the Subject's arms and Officer C grabbed the other arm. As recalled by Officer C, "He immediately lifts both his arms up very rapidly, very violently and he felt very strong to me, stronger than he should have been."

Officers E and G stepped in and attempted to place the Subject in control holds by grabbing on to his wrists and forearms. However, the Subject clenched his fists and was trying to swing toward the officers and thrashing his arms about in a violent manner. As recalled by Officer C, "And immediately the other officers that are with us jumped in, grabbed him and tried to control him. At that point, he started moving around thrashing his arms violently and I realize that the situation was getting bad, and that it was a potential for one of us or himself to get seriously hurt." According to Officer C, he stepped back, removed his TASER from his rear pocket and fired the TASER into the Subject's torso from a distance of two feet. The Subject screamed and went down to one knee, but still did not go all the way to the ground. Officer C activated the TASER again, and the Subject again screamed, and then reached down and pulled out one of the darts.

After the Subject pulled out the dart, he stood up, and Officer C applied a "direct contact tase" to his torso. The Subject fell to the ground and tried to grab the TASER from Officer C. When the Subject did this, the TASER made contact with Officer C's left hand, which caused him to experience a brief shock. In order to ensure the Subject

could not grab the TASER, Officer C slid it out of the way. After the use of the TASER, the Subject continued to be combative and refused verbal commands to comply. As the Subject was in a crouched position on the floor, Officer G punched him with his fist on the bridge of the nose two to three times in an effort to gain compliance. As the other officers attempted to put the Subject's arms behind his back, Officer G punched him again two or three times on the bridge of the nose. The strikes had no apparent effect on the Subject.

According to Officer E, he had stepped back as Officer C activated the TASER and the Subject fell to the ground. When Officer E saw the Subject pull the dart out, he attempted to grab the Subject's right arm, but it slipped out of his grip and the Subject started swinging his arms at Officer E. Officer E punched the Subject approximately two to three times in the face.

As recalled by Officer F, "He was successful in removing one of the darts from his stomach. At which point, he stood back up and resumed a combative stance. As we approached to take [the Subject] into custody, he began to violently resist and flail his arms around." According to Officer F, he punched the Subject in his stomach and then used his knee to strike him in the same area of his stomach, but was unable to gain compliance. Officer F then used his fist and struck the Subject once in the face. The officers were then able to force the Subject back down to the ground and onto his back.

According to Officer H, he approached the Subject as he was lying face up and grabbed onto his legs as other officers told him to flip the Subject over. Officer H flipped the Subject over onto his stomach and applied his bodyweight to the Subject's calves. The Subject continued to resist by flailing his arms and attempting to kick his legs.

According to Officer G, once they were able to roll the Subject over onto his stomach, he used his body weight by placing his knees on the Subject's left arm and pinned it to the ground. The other officers were trying to pull the Subject's right arm behind him. As recalled by Officer G, "I took my ASP and keeping it closed, I started hitting him with the end of the ASP on his right shoulder, on his right shoulder blade trying to get him to relax or do something so they can get the arm back. I hit him, I think, four times. Three or four times like that." Officer F was then able to handcuff the Subject's right wrist. Officer G took his knee off of the Subject's left arm but he was not able to pull it back. Officer G then used his ASP and struck the Subject on his left shoulder blade two or three times. The officers were then able to get the Subject's left arm back and handcuffed him.

According to Officer H, an unknown officer told him to "hobble" the Subject. By this time the Subject's pants had fallen down to around his ankles, so he took his pants the rest of the way off and applied a Hobble Restraint Device (HRD) around his ankles. According to Officer H as soon as the Subject was handcuffed the officers all got off of him. Officer H was the last officer to get off of the Subject after he applied the HRD.

LAFD paramedics were standing nearby, waiting to render medical aid once the Subject was subdued. According to Paramedic A, the Subject went from fighting hard to not moving when the officers got off of him. An unknown officer asked if they could delay

treatment until a supervisor arrived, however, one of the paramedics noticed that the Subject had stopped breathing. The officers immediately allowed the paramedics to treat the Subject and an unknown officer removed the handcuffs. Paramedic A estimated that it was approximately 30 seconds to a minute after the officers got off of the Subject to when they noticed he was not breathing. The Subject was transported by Rescue Ambulance to a hospital. The Subject never regained consciousness and was pronounced dead by medical personnel.

Sergeant A arrived at the location as the Subject was being placed onto a gurney, and he was advised by LAFD that the Subject was in full cardiac arrest. Sergeant A obtained a Public Safety Statement from Officer C.

### **Los Angeles Board of Police Commissioners' Findings**

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting/Holstering of a weapon by any involved officer(s); and the Use of Force by any involved officer(s). All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort to ensure that all officers benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC unanimously made the following findings.

#### **A. Tactics**

The BOPC found Officers C, D, E, F, G and H's tactics to warrant a Tactical Debrief.

#### **B. Non-Lethal Use of Force**

The BOPC found Officers C, D, E, F, G and H's use of Non-Lethal Use of Force to be in policy.

#### **C. Less-lethal Use of Force**

The BOPC found Officer C's Less-Lethal Use of Force to be in policy.

## **Basis for Findings**

### **A. Tactics**

In adjudicating this incident, the BOPC considered that:

In this instance, Officers C, D, E, F and G approached the Subject and initiated physical contact to detain him. The investigation revealed that there was a lack of discussion amongst the officers, outlining the duties of each officer in the effort of take the Subject into custody. Officer C, D, E, F and G are reminded that communication among partners is paramount for officer safety and planning.

Officers are trained to work together and function as a team. The investigation revealed that upon making the initial physical contact with the Subject, each officer coordinated their effort based on the duties assumed by their fellow officers. Although there is area for improvement in relation to tactical communications, the officers' actions did not substantially deviate from approved Department tactical training.

As Officer C deployed the TASER at the Subject's torso area from an approximate distance of two to three feet, Officers D, E and G were simultaneously attempting to overcome the Subject's resistance by holding onto his arms. Although Officers D, E and G were not affected by the deployment of the TASER and continued to attempt to take the Subject into custody, the potential for them to become affected remained present. Officer C had a clear and unobstructed view of the Subject's abdominal area and the reported distance of deployment translates to a maximum TASER probe spread of approximately five inches.

In conclusion, although officers are cautioned that they may be affected while maintaining contact with a suspect during a TASER deployment, Officer C's actions did not substantially deviate from approved Department tactical training.

Officers E, F and G used their closed fists to punch the Subject in the face. Officers are reminded of the increased potential for injury when striking a boney area with their fists; however such punches are not prohibited. In conclusion, Officers E, F and G's actions did not substantially deviate from approved Department tactical training.

Once the Subject was in a prone position, Officer D placed his foot on the small of the Subject's back. In conclusion, Officer D is reminded that stepping on a suspect may throw an officer off balance, will be viewed negatively by the public and may cause unnecessary injuries. Although stepping on the Subject's back deviated from department procedures, the force was justifiable based on the continuous struggle with the Subject and the cramped conditions in which the officers were operating in.

## **B. Non-Lethal Use of Force**

The BOPC noted that the officers arrived at the scene a second time, noted the Subject was nude and sweating profusely and deduced that he was exhibiting signs of being under the influence of a narcotic substance. Fearing for the safety of the Subject's family members who resided at the location and concerned regarding the wellbeing of the Subject, the officers made their approach.

Officer D approached the Subject and placed a firm grip on his right elbow. Officer G placed a firm grip on the Subject's right wrist and upper forearm and Officer C placed a firm grip on his left arm. Officer E approached the Subject and grabbed his left wrist and elbow. When the officers attempted to force the Subject's arms behind his back, the Subject pulled his arms out of the officers' grasps and attempted to strike the officers, resulting in the deployment of the TASER.

After the TASER was deployed, the Subject remained combative and Officer G punched the Subject on the bridge of his nose approximately three times. The Subject appeared unaffected and Officer G delivered approximately three additional punches to the bridge of his nose. The Subject fell to the ground, face up, but he continued to struggle and flail his arms. Officer E, believing that the Subject was attempting to hit him, punched the Subject in the face approximately three times. Meanwhile, Officer F attempted to grab the Subject's left arm and when he resisted, Officer F delivered a punch to the Subject's torso area, a knee strike to his midsection and a punch to the face.

As the struggle continued, Officer G directed the officers to move the Subject away from the wall and turn him over into a prone position. Hearing Officer G's request, Officers F and H proceeded to grab the Subject by the legs and pulled him away from the wall. Officers E, G and H then turned the Subject over into a prone position. The Subject continued to resist and the officers were unable to place his hands into position for handcuffing. Officer G utilized his collapsible baton in the closed position and struck the Subject's right shoulder blade with the end of his baton approximately four times. At that point, Officer F was able to place a handcuff on the Subject's right wrist. Officer F then attempted to handcuff the Subject's left wrist. When the Subject continued to resist, Officer F struck him approximately three more times on the left shoulder blade with the end of his baton. Officers were then able to place the Subject's left arm behind his back and complete the handcuffing process. Officer H then utilized bodyweight and applied the Hobble Restraint Device.

As a result of the Subject's aggressive actions, the Officers were forced to apply a variety of Non-Lethal force types to overcome his resistance and take him into custody. Based upon the facts and circumstances, the BOPC determined that officers with similar training and experience as the involved officers would reasonably believe that the use of Non-Lethal force would be appropriate based on the Subject's actions.

The BOPC determined that Officers C, D, E, F, and H's use of Non-Lethal Force was objectively reasonable and was in policy.

### **C. Less-Lethal Use of Force**

The BOPC noted that while trying to control the Subject, officers placed firm grips on both of his arms and attempted to force the Subject's arms behind his back. The Subject pulled his arms out of the officers' grasps and attempted to strike the officers.

Officer C stepped away from the Subject, removed the TASER from his rear pants pocket and fired a TASER cartridge at the Subject from an approximate distance of three feet. The TASER darts made contact with the Subject's mid section. The Subject screamed and fell to a position on one knee. The five second TASER cycle ended and the Subject continued to struggle. Officer C reactivated the TASER for another five second cycle. The Subject reached down and ripped one of the TASER darts out then stood as the officers were still struggling with him. In response, Officer C closed the distance between the Subject and himself and administered a drive stun to the Subject's torso area.

Based upon the facts and circumstances, the BOPC determined that an officer with similar training and experience as Officer C would reasonably believe that the use of Less-Lethal force would be appropriate based on the Subject's actions and, therefore, determined that Officers C's use of Less-Lethal Force was objectively reasonable and was in policy.