

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

LAW ENFORCEMENT RELATED INJURY 014-10

Division	Date	Duty-On (X) Off ()	Uniform-Yes(X) No()
Mission	02/17/10		

Officer(s) Involved in Use of Force	Length of Service
Officer A	3 years, 6 months
Officer B	4 years, 7 months
Officer C	3 years, 2 months
Officer D	1 year, 8 months
Officer E	1 year

Reason for Police Contact

Officer responded to a disturbance call, which resulted in a law enforcement related injury.

Subject **Deceased ()** **Wounded (X)** **Non-Hit ()**

Subject: Male, 27 years of age.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate the 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 and addenda items); the 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

Witness A was contacted by Witness B, who resided in the involved apartment. Witness B advised Witness A that his room-mate (hereafter referred to as the Subject) was making the noise. Witness B requested that Witness A call 911 to report the disturbance. Witness A called 911 to complain about loud fighting and noise in an apartment in his building. A call was generated by Communications Division and assigned to Officers A and B.

Officer A utilized his vehicle's Mobile Data Computer to reflect that he and Officer B were Code 6 at the location. Officers A and B observed Witness A standing on his apartment balcony. Officers A and B then entered the complex and met with Witness B, who advised that the Subject had consumed alcohol and/or drugs, would not go to sleep and was throwing furniture around the apartment. After talking to Witness B, the officers devised a plan to establish contact with the Subject and to persuade him to go to sleep. As the officers approached the door to the apartment, Witness B advised them that the door was unlocked. Officer A momentarily stopped at the door to determine if he could hear anything from inside the apartment and heard furniture being moved around. Officer A then opened the door and entered the apartment, followed by Officers B and Witness B. Upon entering the apartment, Officer A observed the Subject standing in the middle of the living room, next to a couch, with a metal dumbbell in one hand and a blanket in the other. Officer A ordered the Subject, to put his hands up and to drop the dumbbell.

According to Officer A he told the Subject in both English and Spanish to drop the dumbbell. As he was given commands, the Subject waved the dumbbell above his head. The Subject failed to comply with Officer A's commands and both officers, who were 10-15 feet away from the Subject, drew their weapons. Officer A pointed his weapon at the Subject, while Officer B assumed a low-ready position with his weapon. The Subject retreated from the officers, toward the apartment's balcony and, threw objects (metal chairs/sofa cushions) in the path of the officers as he did so. Officer A continued to hold and point his weapon at the Subject with his right hand while using his left hand to move aside the thrown objects.

Once on the balcony, the Subject threw the dumbbell over the side of the balcony to the street below, at which point Officer A advised Officer B that the officers "would have to go hands on" with the Subject, as Officer A feared that there might be an additional weapon on the balcony that the Subject could arm himself with, or that the Subject might jump from the balcony and injure himself. Both officers then holstered their weapons and moved toward the Subject.

As Officer A reached the sliding door leading onto the balcony, the Subject grabbed and swung a metal chair at Officer A, who grabbed the chair away from the Subject and discarded it onto the floor of the balcony or into the living room. The Subject then attempted to pick up a barbeque in the corner of the balcony.

Simultaneously, Officer A wrapped his arms around the Subject' upper body to prevent him from picking up the barbeque, which caused charcoal dust to fly into the air.

Officer B believed that the Subject was attempting to grab the barbeque and was concerned that the Subject "would either throw it at him or swing it at" the officers. In response, Officer B gave the Subject two punches to his upper torso area while aiming for the Subject's arm.

Officer A then pulled the Subject down onto the balcony floor and they landed on top of a metal chair, which broke. Once on the floor, Officer A grabbed the Subject's left hand/forearm with his right hand and then used his left hand to also control the Subject's left hand/forearm. Officer A feared that the Subject could grab and use parts of the broken chair as a weapon.

Officer B heard Officer A say that they should attempt to subdue the Subject so Officer B attempted to grab the Subject and he and Officer A took the Subject to the floor of the balcony. Officer B went down to his knees while taking the Subject down and noted that that the Subject landed face-down on the balcony, with Officer A on top of him.

According to Officer A, the Subject then tried to grab various objects (broken chair parts and broken pottery pieces), which could be used as weapons. There was bird cage to the right of where the officers and the Subject were positioned. The bird cage was limiting Officer B's ability to control the Subject's right hand/forearm, so he attempted to move the bird cage. However, the Subject tried to wrap his arm around the leg of the bird cage so that Office B could not move it. Officer B indicated that as he was struggling to get the bird cage away from the Subject when Witness B reached over him, grabbed the cage away from the Subject, and brought it into the apartment.

According to Officer A, he tried to converse with the Subject while trying to gain control of him and, was telling him to stop fighting.

Officer A asked Officer B to request a backup and Officer B requested that backup to respond to the location, but Officer B was unable to request backup earlier because his weapon was unholstered and he would have lost his two-handed grip on his weapon.

After the bird cage was removed, Officer B with his left knee on the ground and his right on the Subject's back, grabbed the Subject's right arm to position it behind the Subject's back to handcuff him. As Officer B applied force to bring the Subject's arm back behind his back and Officer B heard a loud pop from the Subject's arm. At that point, the lower half of the Subject's arm went limp and Officer B was able to bring the arm behind the Subject's back.

According to Officer A, Officer B then told him they had to handcuff the Subject, however, Officer A did not want to reach for his handcuffs because he felt that if he removed one of his hands from the Subject, that he would get loose.

Officer A then told Officer B to maintain his hold on the Subject and to let the Subject expend his energy, so that the Subject might calm down a little bit.

Officers C and D entered the apartment in response to the backup request. As described by Officer A, he advised the officers that the Subject needed to be handcuffed. The Subject was then handcuffed by one of the officers, while Officers A and B maintained their hold on the Subject's arms.

Officer A requested that one of the responding officers contact Communications Division (CD) to advise that the officers were Code 4 and, Officer D did so. Officer B also contacted CD to request that a Rescue Ambulance (RA) respond to the location to treat the Subject.

As described by Officer C, the officers then decided to bring the Subject into the apartment to await the arrival of the RA because there was little space out on the balcony for the paramedics to attend to the Subject. The officers carried the Subject into the living room and he was placed on the floor. The Subject then attempted to break free from the officers and Officer C put pressure on the Subject's left leg to restrain him, while another officer obtained a hobble restraint device (HRD) to secure the Subject's legs. Officer D then placed the HRD on the Subject's legs to prevent him from kicking the officers.

Prior to the HRD being placed on the Subject's legs, Officer E, who had responded to the backup request and was assisting the officers in placing the HRD on the Subject's legs, placed his knees on the Subject's shoulders. Officer E indicated that, after the HRD was placed on the Subject, the officers placed the Subject on the couch.

According to Officer D, the Subject was placed in a seated position on the couch once the HRD was placed on him and the Subject was calm for three or four minutes. The Subject then he started tensing up again and getting real rigid. The subject tried to get up, but just when he flattened his body out, he started sliding down so the officers just let him slide down. The Subject started rolling around and trying to get up. Officers held the Subject down until he calmed down a little bit.

Officer D further indicated that he continued to maintain control of the HRD until the Subject was secured to the gurney at which point he "tucked the -- the end of the hobble into the restraints that the fire department put on [the Subject]." Officer D then followed the fire department personnel from the apartment and observed the Subject attempt to grab "the gurney to give himself leverage to get up. So we just pushed him back down, you know, applied pressure to his -- his neck area with his pressure point trying to get him down.

According to Officer B, upon arrival of the RA, he observed the officers "trying to transfer [the Subject] from the couch to the gurney [...] he was still resisting. Still

trying to kick and flail his arms even though they were handcuffed behind him.” Officer B further stated that “one of the officers applied the hobble and placed [the Subject] on the -- on the gurney and placed the hobble around his chest around (sic) the gurney so that he couldn’t move his upper body once he was on the gurney.” Moreover, that he “observed an officer holding [the Subject’s feet] down [on the gurney] at which point another hobble was applied to [the Subject’s] legs on the lower portion of the gurney.”

Sergeant A and several other officers also responded to the location pursuant to the backup request. Sergeant A assumed the duties of incident commander and decided to take Public Safety Statements from the involved officers in case the incident was later classified as a Categorical Use of Force (CUOF). Officers A and B then returned to the police station together, where they were subsequently separated and monitored by Sergeant B. Meanwhile, Officers C and D also returned to police station where they were also separated and monitored by Sergeant C. Sergeant A transported Officer B to a local hospital for treatment of a minor injury to his right hand sustained during the struggle with the Subject. Officer B was treated and released.

Sergeant A went to the hospital to interview the Subject. At that time, Sergeant A learned that the Subject would be admitted to the hospital and the incident would therefore be classified as a CUOF.

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 made the following findings.

A. Tactics

The BOPC found Officers A, B, C, D and E’s tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting/Holstering

The BOPC found Officer A and B’s drawing and exhibiting to be in policy.

C. Non-Lethal Use of Force

The BOPC found Officers A, B, C, D, and E’s use of Non-Lethal Use of Force to be in policy.

Basis for Findings

A. Tactics

In the analysis of this incident, the BOPC identified the following tactical considerations:

In this instance, it would have been tactically advantageous for the officers to attempt to obtain more information from Witness B (i.e. any firearms in the residence, history of violence or drugs, age and stature of the Subject, etc.) prior to entering the apartment. This additional information could have determined the level of resistance the officers were going to encounter. Additionally, Witness B was allowed to enter the apartment with the officers. Although Witness B did not interfere with the officers' investigation, it would have been prudent for the officers to have directed Witness B to wait outside the apartment until the officers could initiate contact with the Subject and control the situation.

In conclusion, although there was a lack of tactical planning and improvements could be made, Officers A and B's actions did not substantially deviate from approved Department tactical training; however, in order to ensure that the officers are aware of the importance proper tactical planning in the future, the BOPC directed that this topic be discussed during the Tactical Debrief.

In this instance, Officers A and B entered the apartment and immediately encountered the Subject who was armed with a dumbbell and failed to comply with the commands to drop the dumbbell. At this point during the incident, it would have been prudent for the officers to contact Communications Division (CD) and request a back-up.

Additionally, the investigation revealed that a back-up was not requested until after the officers had physically engaged the Subject on the balcony of a second story structure and only after Officer A had instructed Officer B to do so. When Officer B made his broadcast, he did not provide detailed information to any responding unit. It would have been prudent for Officer B's back-up request to have included additional information to maximize the responding units ability to properly respond and make the most appropriate tactical decision.

In conclusion, although Officers A and B's actions deviated from current Department tactical training, the deviation was not substantial and in this instance it did not affect the outcome of the incident. Therefore, the BOPC directed that the topic of requesting additional resources in a timely manner and the appropriate information to include in the broadcast will be addressed during the Tactical Debrief.

In this instance, fearing that the Subject could use the dumbbell as a dangerous weapon, Officers A and B drew their service pistols. Officer B held his service pistol at the low ready position while Officer A pointed his service pistol at the suspect and was up on target.

In conclusion, although Officer A's actions deviated from approved Department tactical training, these actions were not substantial and did not affect the outcome of the incident. Therefore, the BOPC directed that this topic will be addressed during the Tactical Debrief.

B. Drawing/Exhibiting

In this instance, Officers A and B entered the apartment and saw the Subjects standing in the middle of the living room holding an orange colored dumbbell. Officer A told the Subject to drop the dumbbell and put his hands up in both English and Spanish. The Subject looked confused and intoxicated and did not respond to Officer A's commands. Fearing that the Subject could use the dumbbell as a dangerous weapon, Officer A and B drew their service pistols.

In conclusion, it was objectively reasonable for Officers A and B to believe that the situation had escalated to the level where the use of lethal force might become necessary. Therefore, the BOPC found Officers A and B's drawing and exhibiting to be in policy.

C. Non-Lethal Use of Force

In the review of this incident, the BOPC noted that the following force was utilized:

In this instance, the Subject went onto the balcony and threw the dumbbell out toward the street. Officer A holstered his weapon and said to Officer B, "We have to go hands on!" Officer B closed the distance between himself and the Subject and followed him out to the balcony. Officer B also holstered and followed after Officer A. The Subject grabbed a chair and swung it towards Officer A. Officer A grabbed the leg portion of the chair and threw it aside, either on the balcony or in the living room. As Officer A dealt with the chair, the Subject grabbed a metal barbeque and lifted it up causing the charcoal dust to rise up in the air. Fearing that the Subject was going to either hit him with the barbeque or jump off the porch, Officer A moved behind the Subject and wrapped his arms around the Subject's upper body in a "bear hug" to prevent him from again picking up the barbeque or any other objects.

While the Subject was picking up the barbeque, Officer B approached him and with his right fist, punched the Subject twice, striking his upper torso or right shoulder area. Believing that the punches were ineffective, Officer B heard his partner say, "Let's take him to the ground."

While still keeping his arms wrapped around the Subject's upper body, Officer A took the Subject down to the balcony floor assisted by Officer B who grabbed the Subject's right arm. The Subject landed face down on the balcony and Officer A was on top of him. With his right hand, Officer A grabbed the Subject's left hand or forearm areas and with his left hand grabbed the Subject's right hand or right arm and advised Officer B to put out a back-up request. Officer B then attempted to control the Subject's right

arm. The Subject had wrapped his right arm around a metal bird cage on the balcony, which was in Officer B's way, and prevented him from gaining control of the Subject's arm. Witness B reached over Officer B, lifted the birdcage up and removed it from the balcony. Officer B threw the birdcage stand and was then able to gain control of the Subject's right arm. Officer B placed his right hand on the Subject's right forearm and his left hand on the Subject's right bicep, placing the Subject's arm behind his back. While doing so, Officer B heard a "loud pop" and the Subject's lower arm went limp.

Officer A held the Subject's left hand behind his back, while Officer B held the Subject's right hand behind his back. At this time C and D arrived on scene and entered the apartment in response to the back-up request.

Officer C handcuffed the Subject's hands behind his back. According to Officer C either Officer A or B advised him to be careful because the Subject's arm was possibly broken.

At this time, a Code Four was broadcast as well as a request for a RA. Officers C and D lifted the Subject and carried him into the living room as he continued to struggle, squirm, and kick. The officers placed the Subject on the floor to wait for the RA. To prevent the Subject from kicking, Officer A held down his left leg while Officer C held down his right leg, and Officer E used his bodyweight to hold the Subject down in order to apply the HRD. Officer D lifted the Subject's feet, put them through a HRD, and secured it around the Subject's knees. Officer D picked the Subject up and placed him in a seated position on the couch in the living room. The Subject continued to struggle and slid his body back down to the floor.

Upon the arrival of LAFD personnel, Officers C and D lifted the Subject up and placed him in a seated position on a gurney. When the LAFD personnel were attempting to transport the Subject down the stairs case he continued to struggle by grabbing parts of the gurney and the HRD. Officer D applied pressure to the Subject's left shoulder area in an attempt to have him stop his actions, but to no avail.

Officers with similar training and experience as Officers A, B, C, D, and E would reasonably believe that the application of Non-Lethal force would be justified to overcome the resistance presented by the Subject. Therefore, the BOPC found that the Non-Lethal force utilized by Officers A, B, C, D, and E was objectively reasonable and within Department guidelines.

In conclusion, the BOPC found Officers A, B, C, D, and E's application of Non-Lethal force to be in policy.