

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

LAW ENFORCEMENT-RELATED INJURY – 014-12

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Hollenbeck	03/03/12		

Involved Officer(s)	Length of Service
Officer A	21 years, 10 months

Reason for Police Contact

An officer observed a subject riding a bicycle at night without the proper lighting equipment in violation of the California Vehicle Code. Upon stopping the subject, the Officer determined that the subject had been riding his bicycle while under the influence of alcohol. After handcuffing the subject, the subject attempted to kick the Officer, who then took the subject to the ground, which resulted in an injury to the subject requiring hospitalization.

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
Subject, 49 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 Chief 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 08, 2013.

Incident Summary

Officer A observed the Subject pedaling a bicycle without proper lighting equipment during hours of darkness and initiated a traffic enforcement stop. Officer A activated his emergency lights and parked his police vehicle along the curb. Through his open passenger window, Officer A advised the Subject he wished to speak with him, and the Subject stopped on the sidewalk.

Officer A, through his experience, surmised the Subject was riding a bicycle while intoxicated, and began to conduct a field sobriety test. Officer A determined the Subject exhibited signs of alcohol intoxication. Officer A then notified Communications Division of his location.

Witness A immediately responded and inquired of Officer A as to why the Subject was being detained. As Officer A spoke with Witness A, the Subject began to walk in circles and in a raised voice began swearing at Officer A. The Subject's circles became wider, and each time he walked past Officer A, the Subject would place his face near his and direct expletives at him. Officer A advised the Subject if he did not stop his actions, it would become necessary to handcuff him. The Subject failed to comply and Officer A, working alone and believing the Subject might become combative, decided to handcuff him.

Officer A ordered the Subject to turn around and place his hands behind his back, and the Subject complied with this command. Upon cuffing the Subject's left hand, the Subject immediately turned his body counter-clockwise and faced Officer A. Officer A maintained control of the Subject's left hand and ordered him to turn back around. The Subject turned around, and Officer A completed the handcuffing process.

Officer A utilized his left hand to maintain control of the Subject's right bicep and escorted him to a nearby bus bench where he had the Subject face southbound along the rear of the bench. As Officer A redirected his attention towards Witness A, the Subject stepped forward, rotated his upper body clockwise, and thrust his forehead towards Officer A in an attempt to head butt him.

In an effort to distance himself from the Subject and avoid being head butted, Officer A while still holding onto the Subject, extended his left arm and leaned the Subject over the rear of the bench. Officer A then moved his left hand to the Subject's left hand and grasped the Subject's shirt near the right shoulder area with his right hand.

The Subject began to kick repeatedly with his right foot backwards at Officer A and at one point struck him on the right upper thigh. Officer A believed the Subject was attempting to leg sweep him and in an effort to stop the Subject's actions, utilized the aforementioned hold on the Subject, spun him clockwise, and took him to the ground. Officer A believed he maintained control of the Subject as the Subject went to the ground. As Officer A lifted the Subject off the ground, he observed the Subject bleeding from the facial area.

Note: Witness A indicated that he observed the Subject not listening to the officer while being told to stay still. Witness A also observed the Subject continuously yelling, and suddenly lunging towards the officer prior to going to the ground.

A Rescue Ambulance was requested and the Subject was treated at the scene. The Subject was transported to the hospital and was admitted with injuries to his left eye.

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 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 Officer A's tactics to warrant a tactical debrief.

B. Non-Lethal Use of Force

The BOPC found Officer A's use of non-lethal use of force to be in-policy.

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC identified the following tactical considerations:
 1. Tactical Vehicle Deployment

In this instance, Officer A initiated contact with the Subject while still seated in his police vehicle. However, consideration must be given to the unique challenges associated with the detention of a bicyclist. The inherent nature of this type of stop lends itself to a variety of tactical considerations that are neither exclusive to a pedestrian nor vehicle stop. The speed at which a bicyclist can flee and the ability of a bicyclist to traverse varied terrain creates a circumstance wherein the premature exiting of the police vehicle could prompt an attempt to flee and,

absent full compliance on the part of the bicyclist, hinder the ability of an officer to initiate the detention.

The BOPC considered that at the time Officer A activated his emergency lights and instructed the Subject to stop his bicycle, there were vehicles parked along the curb that provided Officer A with viable cover. *Officer A rolled down the window and called out to the Subject that he wanted to speak to him. The Subject looked at him and acknowledged him.*

Although contact initiated while seated in the police vehicle is generally discouraged, the BOPC determined that in this case it was reasonable given the identified tactical challenges associated with the detention of a bicyclist and that the parked vehicles served to provide Officer A with a source of viable cover.

In conclusion, the deployment of the police vehicle during the initial contact with the Subject did not substantially deviate from approved Department tactical training. However, Officer A would benefit from a review of tactical considerations associated with bicycle stops.

2. Code Six

In this instance, Officer A did not broadcast his location upon his initial contact with the Subject. According to Officer A, once he learned that another officer was unable to respond, he notified CD of his status.

Due to the unique circumstances associated with conducting stops of bicyclists and the fluidity of the incident, it was reasonable for Officer A to temporarily delay making the code-six broadcast until the stop was conducted and the tactical scenario provided a tactically prudent time to initiate the broadcast. Furthermore, Officer A believed he conducted a code-six broadcast when he depressed the button on his hand held radio in a manner that was consistent with his training; however, since he was not wearing his motorcycle helmet, the broadcast was not captured by CD.

The BOPC considered that Officer A was working alone, which placed an emphasis on the necessity that he focus his attention toward the Subject until the tactical scenario was neutralized and provided a tactically prudent moment to conduct the code-six broadcast. Officers are required to balance officer safety considerations against the need to make a timely code-six broadcast. That being said, officers must be afforded some discretion in determining the appropriate time to make the broadcast. Department tactical training allows for officer safety concerns to take precedence over making an immediate code-six broadcast.

In conclusion, the BOPC found that the delay in the code-six broadcast did not represent a substantial deviation from approved Department tactical training. However, Officer A is to be reminded of the importance of a code-six broadcast

and that the use of a personal cellular telephone to request additional personnel should be avoided.

3. Additional Unit / Back-up Request

In this instance, Officer A believed his code-six broadcast was received and assumed that additional units were responding to his location. Officer A recalled that regular operation protocol ensured that once he placed himself at the location, he knew that enforcement officers were listening and would respond.

Generally, when an officer is working alone and dealing with an uncooperative or aggressive subject, a request for an additional unit or back-up would be prudent. In evaluating Officer A's actions, the BOPC took into account that Officer A believed that his code-six broadcast was captured and would cause units in the area to respond. This belief was determined to be reasonable after consideration was given to his specific assignment and involvement in working the DUI Enforcement Detail.

In conclusion, the BOPC determined that the decision not to make a request for the response of additional personnel did not substantially deviate from approved Department tactical training. However, as the incident progressed and the additional units had not arrived, a supplemental broadcast for an additional unit or a back-up would have been prudent.

4. Handcuffing / Controlling the Subject

In this instance, Officer A did not handcuff the Subject at the time of his initial contact. Although the Subject displayed objective symptoms of alcohol intoxication, his initial demeanor did not necessitate that he be handcuffed. However, as the detention continued, the Subject became increasingly belligerent, at which Officer A attempted to deescalate the situation through verbalization and when proven ineffective appropriately handcuffed him.

The primary purpose of handcuffing an arrestee is to minimize the possibility for the situation to escalate. The BOPC was pleased that Officer A recognized the potential for the incident to further escalate and demonstrated a measured response that ultimately resulted in the Subject being handcuffed. When the BOPC evaluated the decision to initially not handcuff the Subject, consideration was given to the fact that Officer A intended to have the Subject perform a Field Sobriety Test, which cannot be performed on a handcuffed individual. In addition, the Subject complied with the direction to stop riding his bicycle and did not become agitated until later in the detention. The decision to use handcuffs depends on the specific circumstances of each case, and in this case, the BOPC determined that Officer A was reasonable in his assessment of the situation and determination as to when to handcuff the Subject.

In conclusion, the decision as to when to handcuff Montes did not substantially deviate from approved Department tactical training. However, Officer Garza would benefit from a review of the tactical considerations associated with the appropriateness of the use of handcuffs.

The BOPC directed that these topics be discussed during the Tactical Debrief.

- 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. Each tactical incident inherently results in considerations for improvement. In this instance, although there were identified areas for improvement, the tactical considerations neither individually nor collectively “unjustifiably or substantially deviated from approved Department tactical training.”

In conclusion, a Tactical Debrief is the appropriate mechanism for the significantly involved personnel to evaluate the events and actions that took place during this incident and assess the identified tactical considerations to better handle a similar incident in the future. The BOPC directed that Officer A attend a Tactical Debrief.

B. Non-Lethal Use of Force

In this instance, Officer A conducted an investigation for a traffic violation and the Subject became angry regarding the justification for the detention. The Subject began to circle Officer A, while using profanity in a raised voice. The Subject continued to become agitated, and Officer A informed the Subject that if his actions continued he would be handcuffed. The Subject failed to comply at which time Officer A placed one manacle on the Subject’s left wrist. The Subject subsequently resisted Officer A by pulling his right hand from Officer A.

Officer A continued to verbalize with the Subject in an effort to calm him. The Subject voluntarily complied and subsequently surrendered his right hand, allowing Officer A to complete the handcuffing process. Once the Subject was handcuffed, he abruptly pulled away from Officer A, turned and attempted to head butt him.

Officer A utilized a nearby bus bench as a controlling agent to control the Subject’s movements. The Subject, while being held against the bus bench, kicked at Officer A numerous times and kicked Officer A in the right thigh area. Officer A spun the Subject and forced him onto the ground in an attempt to control his actions.

The BOPC determined that an officer with similar training and experience as Officer A would reasonably believe that the Subject’s actions constituted a threat and that the force used in order to overcome his resistance would be reasonable.

In conclusion, the BOPC found Officer A’s use of non-lethal force to be in policy.