

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

**LAW ENFORCEMENT RELATED INJURY – 035-10**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off()</b>	<b>Uniform-Yes(X) No()</b>
Hollenbeck	04/14/10		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Officer A	8 years, 1 month
Officer B	6 years, 9 months
Officer C	19 years, 11 months
Officer D	4 years, 5 months
Officer E	3 years, 4 months

**Reason for Police Contact**

Officers conducted a pedestrian stop, which resulted in a Law-Enforcement Related Injury.

<b>Subject</b>	<b>Deceased ()</b>	<b>Wounded (X)</b>	<b>Non-Hit ()</b>
Subject: Male, 47 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 March 29, 2011.

## **Incident Summary**

Officers A and B were patrolling a known narcotics and gang location when they observed the Subject walking on the sidewalk in their direction. When the Subject saw their police vehicle, he immediately ducked and attempted to conceal himself behind a stairwell of an apartment building. The Subject was only partially covered by the stairwell and both officers observed the Subject make a throwing motion from his waistband. The officers believed the Subject was throwing contraband or a weapon to the ground, trying to discard it. The Subject then returned to the sidewalk and continued walking at a faster pace, but appeared nervous.

Officers A and B decided to conduct a pedestrian stop. Officer A turned his vehicle at an angle toward the sidewalk with the front of his vehicle facing the Subject. When the Subject was approximately two feet away from the front bumper of their vehicle, Officer B exited from the passenger side and asked the Subject if he could speak to him. The Subject stated, "What for? What [sic] do you want to talk to me?" Officer B observed that the Subject's hands were clenched in a fist by the front of his waistband. Officer B stated, "Come here. Come here. I just want to talk to you for a second." The Subject responded with profanity and continued walking. Officer B approached the Subject on the sidewalk and told him to stop and that he wanted to talk to him.

Officer A exited his vehicle and walked to where Officer B and the Subject were on the sidewalk. Officer A approached the Subject from behind while Officer B approached the Subject from his front. Officer A attempted to grab the Subject's left shoulder and the Subject responded by leaning back into Officer A. Officer B was in the process of broadcasting their status and location. Officer B then began yelling, "Stop resisting. Stop resisting. Let me see your hands." Officer B assisted Officer A by grabbing the Subject's right shoulder. Officer B observed the Subject holding an object in his right hand. As the struggle ensued, Officer B broadcast a backup request.

Officer A believed that Officer B made contact with the Subject first and that Officer B grabbed either the Subject's right hand or right wrist. When the Subject began to pull away, Officer A grabbed the Subject's left hand. The Subject began throwing his left elbow back in a rear motion toward Officer A and attempted to break free. The Subject struck Officer A on his arm and shoulder area with his elbow. Officer A stepped in front of the Subject's left foot and then brought him down to the ground, which resulted in all three of them falling on the roadway face first. The Subject's hands were underneath his body. Officer A landed on the Subject's left side, closer to his legs. Officer A attempted to control the Subject's legs while Officer B was on the Subject's upper back area. The officers ordered the Subject to place his hands behind his back and to quit resisting. The Subject kicked his legs and would look back to see where Officer A was to rear up his leg and kick. The Subject struck Officer A on his knees and shin with his kicks.

Officer A observed the Subject begin to reach toward his waistband. Officer A then heard Officer B yell, "Hey, he has [phencyclidine] PCP. He has PCP. He has PCP. He

has PCP.” Officer A did not see the PCP, but “it immediately sparked, you know, make sure, you know, he doesn't try and throw it on myself or my partner.” Officer A attempted to grab the Subject's left hand, but the Subject placed his elbows on the ground and tried to push himself up. At one point, the Subject was able to get up on his knees. Officer A stood up, removed his collapsible baton from its holster and waited for an opportunity to strike. When the Subject's left elbow was exposed, Officer A delivered a one-handed side strike with his collapsible baton. Officer A believed his baton strike hit the Subject's left torso. Officer A assessed his strike and observed it had no effect on the Subject. Officer A delivered another strike with his collapsible baton, conducted an assessment and then delivered a third strike. Officer A indicated that these strikes landed either on the Subject's left elbow, arm or torso area. Officer A believed that the Subject was “under the influence of something” because the Subject's strength was greater than theirs and he had a dullness to the pain from the baton strikes. After seeing that the baton was ineffective, Officer A collapsed and re-holstered his baton.

Officer A knelt down and grabbed the Subject's left wrist and managed to bring it to the small of his back. Officer A then handcuffed the Subject's left wrist, held it and waited for backup units to arrive, while the Subject continued to struggle and attempt to pull his hand away. Officer A observed Officer B's police radio lying in the middle of the roadway, but did not know how it ended up there. Officer B reached over to Officer A's police radio and made a broadcast while the radio was still in its holster. Shortly thereafter, Officer A observed additional units arriving at the scene.

Meanwhile, as Officer B fell to the ground, he braced himself using both of his hands and landed on top of the Subject. The Subject shifted his body to his left where Officer B's left arm was on the ground, and pinned Officer B's left arm between his (the Subject's) body and the street. Officer B believed that the Subject was intentionally trapping his left arm to prevent him from grabbing the Subject's hands. The Subject began kicking and thrashing his legs. Officer B delivered three punches to the Subject's upper torso with his right hand using a closed fist, and told him to stop resisting. The punches did not appear to have any effect on the Subject. Officer B reached underneath the Subject's body with his right hand and grabbed the Subject's wrist to prevent him from possibly retrieving a weapon.

At some point during the struggle, the Subject was able to push himself off the ground, which freed up Officer B's left arm. The Subject then tucked his elbows underneath his body. Officer B observed a dark brown vial in the Subject's right hand. Officer B recognized the vial as something commonly used by narcotics suspects for PCP. The Subject attempted to open the brown vial using his left hand. Officer B believed that the Subject was attempting to open the vial to throw the contents of the vial at his face. Officer B yelled to Officer A, “He has PCP. He has PCP.” Officer B believed the Subject was under the influence of PCP, based on the strength the Subject exhibited during the struggle and because Officer B had observed the brown vial in the Subject's hand. As Officer B held onto the Subject's upper torso with his left arm, Officer B reached for the Subject's right hand with his (Officer B's) right hand and was able to “rip out the vial out of his hands.” Officer B then placed the brown vial in his right rear pants

pocket and pinned the Subject's head to the ground with his (Officer B's) left forearm to prevent the Subject from hitting him in the face with his head.

The Subject began throwing his elbow back at Officer B's face. The Subject struck Officer B approximately eight times in the face, chest and upper torso area. At some point during the struggle, Officer B observed Officer A stand up and deliver strikes with a collapsible baton to the Subject's upper torso area as Officer A continued to order the Subject to stop resisting and to let me see your hands. Officer B attempted to broadcast a second backup request.

As Officer B was broadcasting, his police radio fell to the ground next to the Subject. The Subject grabbed the Astro radio on the ground with his right hand and threw it in the middle of the street. Officer B believed that the Subject intentionally threw his Astro radio away to prevent him from broadcasting additional information. Officer B delivered two to four additional closed fist strikes to the Subject's chest and two to six closed-fist strikes to the Subject's face. The Subject continued to resist and thrash about. Officer B then used his right arm to pin the Subject down and utilized his bodyweight. With his left hand, Officer B reached over to Officer A's radio and made a broadcast, providing their location to responding units.

According to the Subject, he had smoked PCP approximately three hours before his encounter with the officers. The Subject admitted to possessing two vials of PCP. The Subject held one of the vials in his hand and did not know what happened to the other vial. During the struggle, the Subject indicated that he attempted to open the vial he had in his hand to dump the stuff. The Subject denied hitting the officers. The Subject stated he heard the officers yelling, "Stop refusing. Stop refusing," and "Give up." The Subject also stated that there were ten officers surrounding him and beating him up, and he remembered "being hit from everywhere."

Witness A was inside her home when she heard someone yelling, "Don't resist. Don't resist." Witness A went to her front porch and observed the Subject and two officers, one on each side of the Subject, on the ground trying to handcuff him. Witness A indicated that the Subject wouldn't let the officers handcuff him and was kicking his legs and lifting his butt up, trying to get up. The Subject stated, "I'm not doing nothing. Just leave me alone. I'm not doing nothing." Witness A observed one of the officers deliver what she described as knee strikes to the Subject's left stomach area. Witness A stated "it took a while before they could get him down" and that the Subject struggled the entire time until backup officers arrived at the scene. Witness A stated she did not observe the officers use a baton or punch the Subject during the struggle.

Officer C arrived at the scene, exited his vehicle and observed Officers A and B attempting to handcuff the Subject, who was lying face down on the ground and being combative. According to Officer C, Officer A was positioned on the Subject, around the small of his back, and Officer B was on the upper portion of the Subject's back. Officer C knelt down next to Officer A and grabbed the Subject's right hand, which was underneath his body, brought it behind his back and completed handcuffing the Subject.

Meanwhile, Officers D and E arrived at the location, observed the Subject being handcuffed by officers and the Subject actively resisting by kicking his legs. Officer D approached the Subject and applied his bodyweight on the Subject's legs. Officer E grabbed the Subject's ankles to place them down to the ground. Officer D removed his hobble restraint device (HRD) and placed it around the Subject's knee area with the assistance of Officer E. After the HRD was secured, the officers rolled the Subject onto to his left side. Officer E observed that the Subject had a laceration to his face and that there was blood on his mouth and cheek area. A Rescue Ambulance (RA) and a supervisor were requested to respond to the location.

Officers D and E decided to place the Subject in a seated position while they awaited the arrival of an RA. Officers D and E grabbed the Subject on each side from underneath his armpits and moved to a location where he could sit leaning against a wall. Approximately five to ten minutes after the Subject had calmed down, Officer D removed the HRD.

Officer A searched the Subject and recovered a small clear baggie containing marijuana from his right front pants pocket. Officer A walked over to the stairwell where he and Officer B had initially seen the Subject to search for evidence. Officer A did not find anything. Officer B recovered a second brown vial on the street where the officers had struggled with the Subject.

Sergeant A arrived at the location. Officer A advised Sergeant A that he and Officer B were involved in a use of force. Officer A also advised Sergeant A that the Subject was in custody for possessing PCP. Sergeant A heard the Subject yelling, but did not seem to make sense at the time. Sergeant A did not recall seeing any injuries to the Subject. The Subject also did not make any complaints at the scene. Based on the information he had obtained from Officer A and his observations of the Subject, Sergeant A initiated a Non-categorical Use of Force (NCUOF) investigation and began canvassing for witnesses.

Los Angeles Fire Department (LAFD) personnel arrived at the scene and assessed the Subject's injuries. After the assessment, LAFD Paramedics determined that the Subject was in an altered level of conscious state, which required him to be transported to the hospital. Shortly thereafter, the LAFD RA arrived at the scene. LAFD Paramedics conducted an assessment of the Subject and noted that he had swelling to his left elbow with a possible break, an abrasion to his lip and abrasions to his forearms. The Subject advised paramedics that he had taken PCP. The Subject was subsequently transported to the hospital where hospital personnel treated the Subject for his injuries.

Sergeant A responded to the hospital to continue his NCUOF investigation and was advised by medical personnel that the Subject was to be admitted due to his injuries and for being under the influence of an unknown substance. Sergeant A called his Watch Commander to advise him of the Subject's condition and that the incident may possibly be elevated to a Categorical Use of Force.

## **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 A, B, C, D and E's tactics to warrant a Tactical Debrief.

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

The BOPC found Officers A, B, C, D and E's non-Lethal use of force to be in policy.

## **Basis for Findings**

### **A. Tactics**

In adjudicating this incident, the BOPC considered that:

Officer B intended to provide CD their status and location; however, due to the rapidly unfolding and dynamic tactical situation, he was forced to focus on the Subject. Officer B appropriately broadcast the first request for a backup as soon as was feasible. In the first broadcast, Officer B advised CD of the wrong location; however, contained within the first broadcast, Officer B referred to a commonly known area of Hollenbeck and his subsequent broadcasts properly informed CD and responding personnel of the true location.

In conclusion, although advising CD of their Code Six location and the importance of providing CD with accurate locations in order to prevent the delay of responding personnel is worthy of discussion at the Tactical Debrief, based on the totality of circumstances, the officers' actions did not substantially deviate from approved Department tactical training. In this instance, after other force types proved ineffective in gaining compliance and the Subject continued to resist while thrashing about, Officer B delivered between two to six punches to the Subject's chin area. Although punches are an authorized non-lethal force option, they can result in short and long-term injury to an officer's hands. The BOPC found Officers A, B, C, D and E's tactics to warrant a Tactical Debrief.

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

The BOPC noted that Officers A and B were faced with an individual who refused to comply with both officers' verbal commands. As Officer A applied a firm grip to the Subject's left hand and Officer B placed firm grips on the Subject's right shoulder and wrist, the Subject attempted to pull free. In response, Officer A stepped in front of the Subject's left foot and forced him to the ground in a prone position, the momentum of which caused Officer B, who was still maintaining his hold on the Subject's right side, to fall forward and land on top of the Subject.

The Subject appeared unaffected by Officer B's punches, placed both hands under his body, and reached toward his waistband area. Officer B then observed the Subject attempting to open a dark brown vial. Officer B immediately yelled to Officer A that the Subject was in possession of PCP. Officer B then grabbed the vial from the Subject's hands and secured it in his rear pants pocket.

With the Subject's left arm exposed, Officer A retrieved his collapsible baton, extended it and delivered a baton strike to the Subject's left arm/torso area. As the Subject was actively attempting to escape, Officer A delivered two additional baton strikes to the Subject's left arm/torso area, assessing between each strike. When the third strike proved ineffective, Officer A returned his collapsible baton to its holster.

Meanwhile, once the vial was secured, Officer B placed his bodyweight on the Subject's upper back, while Officer A applied bodyweight to his lower back area; however, the Subject continued thrashing about, throwing his elbow back toward Officer B's face. Noting Officer A's baton strikes did not result in compliance, Officer B delivered two to four additional punches to the Subject's chest and then two to six final punches to his chin area.

Shortly thereafter, Officers C, D and E arrived at the scene and observed the officers struggling to control the Subject. Officer C knelt down next to Officer A, took the Subject's right hand from underneath his body and with the assistance of Officer A handcuffed the Subject. To prevent the Subject from kicking, Officer D applied bodyweight on the Subject's legs, while Officer E grabbed his ankles. Officer D and E then applied an HRD around the Subject's knees.

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 in order to prevent his escape and effect an arrest. Additionally, both Officers A and B articulated their concerns that the Subject may attempt to throw what they reasonably believed to be PCP onto them. As such, their use of Non-Lethal force to prevent the Subject from doing so and in self-defense was also reasonable.

In conclusion, the BOPC found that the application of Non-Lethal Force utilized by Officers A, B, C, D and E to be In Policy.