

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

**LAW ENFORCEMENT-RELATED INJURY – 055-14**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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Northeast	9/14/14		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Lieutenant A	27 years, 4 months
Officer A	8 years, 3 months
Officer B	9 years, 6 months
Officer C	5 years, 5 months
Officer D	14 years, 3 months

**Reason for Police Contact**

Officers responded to a report of a subject attempting to steal a car. Upon officers' arrival, the subject fled on foot. Officers chased and made contact with the subject. The subject resisted arrest, resulting in a law enforcement-related injury (LERI).

<b>Subject(s)</b>	<b>Deceased ( )</b>	<b>Wounded (X)</b>	<b>Non-Hit ( )</b>
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Subject: Male, 44 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.

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 September 1, 2015.

## **Incident Summary**

On the date of this incident, Communications Division (CD) broadcast a radio call of a citizen holding a grand theft auto subject.

Officers A and B, attired in full uniform and driving a marked black and white police vehicle, advised CD they would respond to the call. Sergeant A, attired in full uniform and driving a marked black and white police vehicle, also responded to the call.

Sergeant A was the first unit to arrive at the scene and observed a white vehicle parked on the street, with approximately three to four males standing around the vehicle, but did not observe anyone detained. Sergeant A issued a radio broadcast that he had arrived at the location and exited his vehicle. As he approached the group, a male, later identified as the owner of the white car, pointed in the direction of a male, later identified as the Subject. As Sergeant A observed the Subject, the Subject turned around and ran southeast through a gas station parking lot and continued east away from the location.

Sergeant A entered his police vehicle and broadcasted his observations. As Sergeant A drove east an unknown citizen advised him that the Subject passed through a hole in a chain-link fence. Sergeant A observed the hole in the fence on the north side of the street that allows access to the area that runs adjacent to a flood control channel. Sergeant A then put out an additional broadcast of the Subject's last known direction of travel and waited for additional units.

Officers A and B, along with Lieutenant A, and Officer C, attired in full uniform and driving marked black and white police vehicles, responded to Sergeant A's location. Air Support Division (ASD) personnel, were monitoring the radio and advised they were overhead.

Officers D and E parked and exited their police vehicle on the opposite side of the flood control channel and went through a different opening in the fence that allowed them access to the same area as the Subject.

**Note:** The dirt pathway that the Subject had fled on was cluttered with dense vegetation and had a steep dirt embankment east of the pathway. There was no artificial lighting and only minimal ambient lighting in this area. However, the spotlight from the air unit was being utilized to provide some illumination over the area.

Lieutenant A, along with Officers A, B and C entered the dirt path through the hole in the fence and proceeded north on foot in search of the Subject, while Sergeant A remained at the fence opening. After searching for the Subject with negative results, Lieutenant A as well as Officers A, B and C walked back toward Sergeant A.

As Officers D and E attempted to locate the Subject from the opposite direction, Officer F, attired in full uniform and driving a marked black and white police vehicle, arrived and

exited his vehicle on the roadway adjacent to the flood control channel, in an attempt to visually locate the Subject. From the air unit, Officer G observed the Subject and broadcasted his observations to the ground officers. Officer F observed the Subject traveling north on the dirt path and verbalized his observations to Officer D, while Officer F illuminated the Subject with his flashlight. After observing Officer D, the Subject stopped and ran up the embankment. Officer D was at the bottom the embankment and observed the Subject at the top of the embankment attempting to scale the fence.

**Note:** The fence was nine feet tall and constructed of vertical wrought iron posts. The top of the fence bent outward toward the embankment approximately 18 inches, with the end of each bar formed into pointed spikes.

Meanwhile, Lieutenant A, along with Officers A, B and C ran north along the dirt path to Officer D's location. Officer D reached the top of the embankment and observed the Subject attempting to scale the fence. According to Officer D, the Subject was attempting to put his left foot over the fence. Consequently, Officer D placed his right hand over the top of the Subject's right foot and his left hand around the Subject's right ankle. Officer D pulled on the Subject's foot while simultaneously verbalizing for the Subject to come down from the gate.

In response, the Subject cursed at the officer numerous times and hooked his armpits over the top of the gate, preventing Officer D from pulling him down off the fence. Officer D repeatedly verbalized for the Subject to come down. However, the Subject ignored his commands. The Subject, now with both legs hanging down toward the embankment, turned his left foot toward Officer D and began kicking at Officer D's hands numerous times.

As Officers A and B arrived at the top of the embankment, Officer D advised them that the Subject had already kicked him. Officers A, B and D discussed discharging the TASER at the Subject, as the Subject supported himself by standing on a horizontal support rail that ran along the middle of the fence. Officer A advised the Subject that the TASER would be used if he did not get off the fence. However, the Subject ignored his commands and did not comply. Officer B indicated that he then observed the Subject move his right foot and believed that the Subject was about to kick Officer D in the head, and as a result of his observation he told Officer A to discharge the TASER at the Subject.

Officer A discharged the TASER at the Subject. Upon being tased, the Subject let go of the fence and fell backwards onto the loose dirt and leaves that were on the ground. Officer D turned the Subject onto his stomach. Officer B then attempted to utilize a firm grip on the Subject's left wrist; however, the Subject was able to break free from his grip and with a clenched fist attempted to strike Officer B.

The Subject rolled down the embankment a short distance and continued to resist the officers' efforts to detain him. Officer A discharged the TASER a second time, with the darts still attached to the Subject.

Officer G's view from the air unit was obstructed by the brush, and he believed there were sufficient personnel at scene, so he turned off the spotlight. A physical altercation with the Subject ensued and the officers, along with Lieutenant A, utilized various non-lethal and less-lethal force techniques, ultimately resulting in the successful handcuffing of the Subject.

Officer A, due to the use of the TASER, requested a Rescue Ambulance (RA) to respond for the Subject. The Subject was treated by Los Angeles Fire Department personnel and transported to the hospital for treatment.

While at the hospital, the Subject was treated for a teardrop fracture to his C4 vertebrae, a small liver laceration (low grade) and several rib fractures on his left side.

### **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 most cases, 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). 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 Lieutenant A's, Sergeant A's, and Officer A, B, C, D and E's tactics to warrant a Tactical Debrief.

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

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

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

The BOPC found Officer A's less-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 Communication

Officers D and E entered the dirt path north of the Subject's location without communicating their intentions to personnel at scene.

Officers coordinated a tactical plan to conduct a foot search for the Subject with the assistance of the air unit through a dirt path with rugged terrain, dense vegetation and a steep embankment, with limited lighting. Officers D and E decided to deploy from the north, and did not broadcast their location to the other officers, thus potentially diminishing officer safety. The BOPC took into consideration the initial information that the Subject was not observed armed with a weapon, and recognized the officers were proactive in responding north of the Subject's last known location, thus effectively containing the Subject.

### 2. TASER Deployment

Officer A deployed the TASER at the Subject while he was holding onto the fence with his feet approximately four and a half feet above the ground.

Officer A's decision to deploy the TASER while the Subject was in an elevated position was considered. The BOPC discussed the potential for injury should the Subject fall from this position, which he did in this case. The BOPC took into account the officer's reasonable belief that should the Subject fall from the fence to the dirt ground, it would likely not result in serious bodily injury or death. Officer A also stated that he believed he was in a position to prevent the Subject from falling down the hill after the TASER was discharged.

In looking closely at the circumstances surrounding this portion of the incident and the potential for injury due to the TASER being discharged at the Subject while he was in an elevated platform, the BOPC determined that it was objectively reasonable for Officer A to discharge his TASER under these circumstances. The relatively soft terrain, comprised of primarily leaves/mulch and loose dirt, coupled with the fact that Officer A stated that he assessed the situation and weighed the potential for injury, made this TASER deployment objectively reasonable under these specific circumstances (see Less-Lethal Use of Force).

These topics will be discussed during the Tactical Debrief with all involved personnel.

- 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.

After a thorough review of the incident, regarding Lieutenant A's, Sergeant A's, and Officer A, B C D and E's tactics, the BOPC determined the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training.

In conclusion, the BOPC found Lieutenant A, Sergeant A, and Officers A, B, C, D and E's tactics to warrant a Tactical Debrief and that the specific identified topics be covered.

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

- Officer D reached the top of the embankment, and observed the Subject, who was attempting to put his left foot over the fence. Officer D placed his right hand over the top of the Subject's right foot and his left hand around the Subject's right ankle and pulled the Subject's foot, while simultaneously verbalizing for the Subject to come down.

While both the Subject's legs were in a hanging position, the Subject turned his left foot toward Officer D and kicked several times at Officer D's hands.

Officer D told the Subject to stop kicking him then clenched his right hand into a fist and struck the Subject once on his right upper thigh area, using the outside portion of his fist in a hammer motion.

When Officers A and B climbed up the embankment, Officer D communicated to them that the Subject had already kicked him. Officers A, B and D discussed utilizing the TASER, as the Subject continued to struggle with Officer D and refused to come down from the fence. Officer B stated he observed the Subject move his right foot and believed the Subject was about to kick Officer D on his head. As a result, Officer B told Officer A to discharge the TASER. Officer A discharged the TASER to stop the Subject's actions.

After being tased, the Subject let go of the fence and fell backwards onto the ground. Officer D turned the Subject onto his stomach. Officer B then attempted to utilize a firm grip on the Subject's left wrist; however, the Subject was able to break free from his grip and with a clenched fist attempted to strike Officer B.

Officer D used his left hand to grab the Subject's right arm as he tried to push himself off the ground. Officer D used his right fist and struck the Subject once on his upper right back area, near his shoulder blade, to prevent the Subject from

pushing himself up. The Subject continued to resist, and Officer D again used his right fist to strike the Subject once or twice in his upper right back area, near his shoulder blade. Officer D then extended his right arm to push the Subject down toward the ground to control him and prevent his escape.

Officer D continued to order the Subject to stop resisting. Officer B placed his right knee on the ground and left foot near the Subject's left shoulder, then grabbed the Subject's left arm and applied bodyweight to control the Subject. Officer B used his left hand to grab the Subject's left arm.

Officer B and the Subject slid down the embankment. The Subject clenched his fists and placed both hands under his body, which prevented Officer B from gaining control and access to his arm. Officer B, with a closed right fist, struck the Subject once on the left side of his upper torso, near his left ribcage area.

Officer A observed the Subject push himself off the ground and then barrel roll to his right a short distance. Once the Subject stopped rolling, approximately two-thirds of the way to the bottom of the embankment, he then attempted to push himself up again. Officer A, who was uphill, struck the Subject with his right knee on the Subject's lower right back and ribcage area and applied bodyweight in an attempt to control the Subject.

As the Subject slid further down the embankment, Officer B fell onto his left shoulder and slightly rolled down the hill. Officer B came to a stop, lying on his back with his head pointed uphill and his legs downhill, slightly lower than the Subject. In an effort to stop the resistance and gain the Subject's compliance, Officer A discharged the TASER a second time, with the darts still attached to the Subject.

Officer B pulled the Subject down to the bottom of the embankment. Officers B and D rolled the Subject onto his stomach. As the Subject attempted to push himself back up, Officer B placed his knee on the Subject's left shoulder and used bodyweight to keep him on the ground. Officer B used his left hand to grab the Subject's left bicep area and his right hand to grab the Subject's left forearm. Officer B then placed the Subject's left arm between his legs to secure it. Officer B placed a handcuff on the Subject's left wrist and maintained control of his left arm.

Officer C utilized bodyweight by placing his left knee on the Subject's lower back to stop the Subject's continued resistance. Lieutenant A directed officers to put the Subject's hands behind his back, and assisted by utilizing a firm grip on the Subject's right upper arm. Officer D grabbed the Subject's right lower arm and with his elbow and with his left and right hand around the Subject's right elbow attempted to pull the Subject's right arm from under his body. Unable to control the Subject's right elbow, Officer D utilized a firm grip on the Subject's right forearm and attempted to twist the Subject's forearm in order to overcome his resistance. Officer D was able to pull the Subject's right arm from underneath his body, which allowed Officer

C to control the Subject's right hand. Officer B was then able to handcuff the Subject.

The BOPC determined that officers with similar training and experience as Lieutenant A, and Officers A, B, C and D, would reasonably believe that the application of non-lethal force was reasonable to overcome the Subject's resistance and prevent his escape, and take him into custody.

The BOPC found Lieutenant A's, along with Officers A, B, C and D's non-lethal use of force to be objectively reasonable and in policy.

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

- **Officer A** – (two TASER activations in probe mode)

Officer D told Officer A that the Subject had kicked him. The Subject also refused to comply with the officer's orders to get down from the fence. Officers A, B and D discussed the deployment of a TASER, as the Subject stood on a support rail along the middle of the fence. While in that position, Officer B observed the Subject move his right foot. Believing that the Subject was about to kick Officer D, Officer B told Officer A to discharge the TASER.

Officer A stood approximately ten feet behind the Subject. As the Subject continued to struggle with Officer D and refused to get off the fence, Officer A believed it was unsafe to approach, removed the TASER from its holster, and assessed the distance the Subject was off the ground, which he believed was approximately three to four feet. Officer A indicated that he believed the Subject would not sustain life-threatening injuries if he were to fall as a result of being Tased and also believed that if the Subject did fall off the fence, he was in a position to prevent the Subject from sliding down the embankment.

Officer A advised the Subject he would deploy the TASER if he did not get off the fence. The Subject refused to get off the fence. Officer A discharged the TASER at the Subject from approximately 10 feet.

The TASER probes struck the Subject on the middle of his back and right buttock area. The Subject let go of the fence and fell backwards onto the ground. Officers B and D attempted to gain control of the Subject's arms while simultaneously verbalizing with him to stop resisting. The Subject rolled down the embankment and continued to resist and fight with officers.

Officer A activated the TASER a second time, with the darts still connected to the Subject. Due to the TASER having no effect on the Subject, the officers collectively applied a combination of various types of non-lethal force on the Subject.

The BOPC closely examined the deployment of the TASER, while the Subject was in an elevated position. The BOPC recognized the fact that the officers had climbed the embankment and were aware of the terrain, as well as the officer's reasonable belief that if the Subject fell, it would not cause serious bodily injury or death.

Department policy states that the decision to use force must be judged through the perspective of a reasonable officer with similar training and experience and in a similar circumstance. The BOPC determined that an officer with similar training and experience would reasonably believe that the application of less-lethal force to stop the Subject's actions during this incident was reasonable and would have acted in a similar manner.

In conclusion, the BOPC found Officer A's less-lethal use of force was objectively reasonable and in policy.