

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

IN-CUSTODY DEATH – 065-12

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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West Valley	10/01/12		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	18 years
Officer B	3 years, 7 months

Reason for Police Contact

Officers detained the Subject, who then swallowed a large quantity of narcotics.

Subject	Deceased (X) Wounded () Non-Hit ()
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Subject: Male, 22 years old.

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 BOPC 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 August 19, 2013.

Incident Summary

Officers were in the area conducting a regular compliance check on parolees. Sergeant A and Police Officer A observed three people, one of whom was later identified as the Subject, as well as Witnesses A and B walking toward them. As they closed the distance, one of the males stated, "Cops," and all three of them abruptly turned and began to walk toward a parking lot. Both the Subject and Witness 1 continued to walk east with their hands positioned near their front waistbands. As the officers focused on the Subject and Witness A, Witness B walked out of the way but returned a short time later.

Sergeant A ordered the Subject and Witness A to stop and show their hands but they did not comply and continued to walk east and increased their pace. The Subject was simultaneously raising his hands above his head, while continuing to walk, but he then began to lower them near his front waistband. Sergeant A unholstered his service weapon and held it in a low-ready position because he believed the Subject could be in possession of narcotics or possibly arming himself with a weapon. Officer A advised Witness A to put his hands up, and lie on the ground or he would shoot him. Witness A stopped then lay on the ground.

The Subject had his back to the officers with his hands raised but again lowered them toward his waistband. Sergeant A holstered his service weapon and grabbed the Subject's right arm. The Subject spun and pulled away, causing Sergeant A to lose his grip. The Subject then used his head and body weight to push against Sergeant A while also grabbing his right bicep.

Sergeant A cupped the back of the Subject's head with his hand and attempted to strike him in the face by utilizing a front knee strike. The Subject then ran but lost his balance and fell.

In an attempt to keep the Subject from fleeing, Sergeant A placed his left knee on the Subject's lower back, and kept his right leg bent with his right foot on the ground. The Subject was on his stomach moving and contorting his body when his right hand quickly went from his right pocket to his mouth. The Subject then stopped resisting and was handcuffed. Sergeant A stood him up and then walked him over close to where Officer A was holding Witness 1. Sergeant A placed the Subject on his stomach as he and Officer A switched positions where they were standing. Officer A monitored the Subject while Sergeant A handcuffed Witness 1. Sergeant A then directed Officer A to request an ambulance for "a male possibly swallowing narcotics," and a supervisor.

Sergeant A repeatedly directed the Subject to spit the narcotics out. The Subject repeatedly responded with profanity and continued chewing. Sergeant A then placed the Subject on his knees and conducted a pat down search. The Subject was then placed in a seated position and then spat in the face of Sergeant A. Sergeant A stepped back and directed the Subject to lay down on his side. The Subject placed one leg underneath the other and his hands on the ground to brace himself, as if he was

going to stand up. Sergeant A placed his right foot on the Subject's chest and pushed him, causing him to roll onto his back. As Sergeant A began to approach in an attempt to physically hold him down, the Subject sat up and spat at him again. Sergeant A armed himself with a TASER and advised the Subject that he would be tased if he did not stop spitting. The Subject spat and the fluids again made contact with Sergeant A.

Sergeant A pointed the TASER at the Subject and discharged it. The TASER darts struck the Subject's chest area and appeared to penetrate the skin. The Subject fell onto his back and his body became rigid. After the TASER completed a full five-second cycle, the Subject sat up and again spat at Sergeant A and used profanity. Sergeant A activated the TASER a second time. The Subject became rigid, gritted his teeth and fell onto his back but after the activation ended, he again sat up yelled profanity at Sergeant A and spat on at him. Sergeant A then activated the TASER a third time but manually shut it off after three or four seconds when the Subject stopped spitting and attempting to get to his feet.

Officers B and C arrived minutes after the Subject had been handcuffed and ingested the narcotics. Officer B requested an additional unit and another supervisor. Shortly thereafter Officers D and E arrived, as did Sergeant B. Meanwhile, Sergeant A requested a hobble device. Officer E was preparing to apply the hobble when Sergeant A advised him that the Subject was spitting and to wait until the spit mask was placed over his face. At that time, Officer C applied the spit mask and then assisted Sergeant A in placing the Subject into a seated position.

Officer E applied the hobble to the Subject's legs. A few seconds later, the Subject began to slow his movements until he was barely moving his legs. After approximately one minute, one of the Subject's legs was slipping out of the hobble and Sergeant B directed Officer D to remove it from the Subject's legs. Officers placed the Subject in a seated position several times but he refused to remain upright and continued to lie down. Sergeant A allowed the Subject to remain on his left side and continued to monitor him.

As the paramedics arrived, the Subject attempted to kick the paramedics prior to being placed on the gurney. Paramedics placed straps across his upper body and lower legs. Moments later, the Subject stopped moving, lost consciousness, and became unresponsive.

The paramedics attempted to revive the Subject. An RA then transported the Subject to a Medical Center; however, the Subject did not regain consciousness was pronounced dead by an Emergency Room physician.

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 Sergeant A's, and Officers A's, tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

The BOPC found Sergeant A's and Officer A's drawing and exhibiting of a firearm to be in policy.

B. Use of Non-Lethal Force

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

C. Use of Less-Lethal Force

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

Basis for Findings

A. Tactics

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

1. Command and Control

In this instance, the personnel resources of the unit were divided between two field related functions with Sergeant A and Officer A conducting the parole compliance check while other officers continued the surveillance detail.

The BOPC overall assessment, the decision to split the personnel resources between two separate field activities was reasonable considering the intelligence gathering nature of the surveillance detail and the information know to Sergeant A relative to the parole compliance check. The BOPC asserted that there must be an allowance for supervisory discretion in the allocation of personnel resources in order to maintain operational effectiveness. Although the Chief

acknowledged that parole compliance checks have the propensity to escalate beyond that of conventional searches, in this specific case, the decision by Sergeant A to separate his personnel resources was appropriate and in accordance with the BOPC's expectations and consistent with the role of a line supervisor.

In conclusion, the BOPC determined that the decision by Sergeant A to separate his personnel resources did not substantially deviate from approved Department tactical training. However, the BOPC directed that this topic be discussed during the Tactical Debrief.

Additionally, the BOPC appreciated the detailed discussion and focus of the UOFRB on the deployment concerns and its impact on officer safety. The need has been identified for further consideration to be given to the appropriateness of creating established protocols and procedures relative to the deployment of specialized personnel.

The BOPC was pleased that Sergeant A immediately recognized the hazards of the ingestion of narcotics and requested a RA without delay. This action was consistent with the applicable and current standards and the BOPC's expectations.

- The BOPC additionally considered the following:

1. Code-Six Broadcast

In this instance, after walking into the apartment complex, Officer A utilized his police radio to place the officers code-six. The preferred practice, absent exigent circumstances, is for officers to place themselves code-six upon arrival at the location. As such, the BOPC directed this to be a topic of discussion during the Tactical Debrief.

2. Requesting Back Up

Officer A and Sergeant A had detained the Subject and Witness A. Subsequently, Officer A broadcast a request an additional unit, specifically the two remaining officers in the unit. In this instance, a back-up request would have been more appropriate given the circumstances. Though requesting "additional unit" did not affect the response of additional resources, the BOPC directed that this topic be discussed during the Tactical Debrief.

3. Command and Control (TASER)

Sergeant A utilized the TASER rather than defer the use to an officer after additional officers arrived on-scene. The BOPC concluded that it was appropriate for the sergeant to remain engaged with the Subject since he was

present for the entire incident and possessed the perspective to best assess the situation and make the most appropriate decisions relative to the application of force. The BOPC evaluated the circumstances and concurred with this assessment. However, the BOPC directed that this topic 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, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances. The adjudication process operated well and was consistent with the expectations of the BOPC.

Although the BOPC acknowledged the benefit for the Department to assess the protocols and procedures relative to the deployment of specialized personnel, the BOPC determined that the decision to separate the specialized personnel did not substantially deviate from approved Department tactical training.

The BOPC considered that supervisors are tasked with a variety of obstacles while attempting to allocate resources based on operational needs. Moreover, in the BOPC's overall assessment, supervisors must be given discretion to deploy their personnel in a manner that ensures operational effectiveness while also being cognizant of officer safety. In conclusion, the BOPC found that the command and control decisions of Sergeant A did not substantially deviate from approved Department tactical training.

Additionally, the BOPC assessed the tactics employed by Officer A and determined that his actions did not substantially deviate from approved Department tactical training.

The BOPC directed that Sergeant A and Officer A attend a Tactical Debrief.

B. Drawing/Exhibiting

- In this instance, the Subject and Witness A placed their hands near their waistbands while Witness B walked away. Consequently, Sergeant A and Officer A focused their attention on the Subject and Witness A, respectively.

Sergeant A ordered the Subject and Witness A to stop and put their hands up but they failed to comply. Sergeant A and Officer A drew their service pistols, fearing that the Subject and Witness A were possibly armed and that the situation could escalate to the use of deadly force.

The BOPC determined that an officer with similar training and experience as Sergeant A and Officer A, while faced with similar circumstances would reasonably

believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Sergeant A's and Officer A's drawing and exhibiting of a firearm to be in policy.

C. Non-lethal Use of Force

- **Sergeant A** – firm grip, bodyweight, knee strike, physical force

Sergeant A observed the Subject move his hands toward his waistband area and believed he could prevent the Subject from potentially arming himself. As a result, Sergeant A holstered his service pistol and grabbed the Subject's right arm, causing the Subject to spin and pull away from him. Sergeant A lost his grip at which time the Subject lowered his head, grabbed Sergeant A's right bicep and utilized his head and bodyweight to push Sergeant A's chest. Consequently, Sergeant A utilized a firm grip and cupped the back of the Subject's neck and attempted to administer a front knee strike to the Subject's face.

The Subject ran, lost his balance, and fell to the ground in a prone position. Sergeant A approached the Subject and placed his left knee onto his lower back. As Sergeant A utilized bodyweight to control the Subject's movement, the Subject removed his right hand from his pants pocket and placed what Sergeant A believed to be narcotics into his mouth. The Subject stopped resisting and was handcuffed without further incident.

While handcuffed and seated on the ground, the Subject began to chew on what the officers believed to be narcotics. The Subject repeatedly cursed at Sergeant A and ultimately spat on his face and uniform. The Subject began maneuvering into a position which would enable him to stand. In an effort to keep his distance from the Subject and prevent him from standing, Sergeant A placed his right foot on his chest and pushed the Subject back to the ground.

The BOPC determined that an officer with similar training and experience would reasonably believe that the force used to overcome the resistance and effect the arrest was justified and would have acted in a similar manner.

In conclusion, the BOPC found Sergeant A's application of non-lethal force to be in policy.

D. Less-lethal Use of Force

- **Sergeant A** – three TASER activations

First TASER Activation

In this instance, Sergeant A was attempting to search the Subject for weapons when the Subject cursed at Sergeant A and spit on his face. The Subject placed one leg underneath the other while placing his hands on the ground, thus placing himself into a position that would enable him to stand. Sergeant A opined that it would not be safe to approach and move the Subject into a position that was secure. Sergeant A advised the Subject that he would be tased if he continued his actions.

The Subject failed to comply at which time Sergeant A pointed the TASER at the Subject's torso and discharged the TASER from approximately four feet. The Subject fell onto his back and his body became rigid while the TASER completed the full five second cycle.

Second TASER Activation

At the completion of the first activation, the Subject continued his actions and attempted to sit up. Sergeant A opined that the Subject was attempting to stand up and possibly flee. Subsequently, Sergeant A activated the TASER for a second five second cycle, causing the Subject to become rigid and fall to his back again.

Third TASER Activation

Upon completion of the second activation, the Subject repeatedly cursed at Sergeant A and spat in his direction. Based on the Subject's actions combined with the fact that he could not be safely approached, Sergeant A activated the TASER for what he perceived to be the third and final time. The Subject, at the completion of the third TASER activation, ceased his actions and stopped spitting, using profanity and attempting to stand.

Note: The TASER Activation Report documented the TASER was activated a fourth time for a two second duration. The investigation was unable to determine the circumstances under which the fourth TASER activation occurred.

The standard set forth in Department policy dictates 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 Subject was violent and unsafe to approach and that the utilization of less-lethal use of force (TASER) was reasonable.

In conclusion, the BOPC found Sergeant A's use of less-lethal force to be in policy.