

The following incident was adjudicated by the BOPC on October 15, 2013.

Incident Summary

Police Officer A had completed his on-duty work shift and was commuting to his home on the freeway. It was rainy, the road was wet and traffic on the freeway was heavy due to freeway construction. Officer A observed the Subject, who appeared to be DUI and attempted to stop him. At this point, Officer A had not broadcast his location to Communications Division (CD). The Subject initially pulled over and then sped away as Officer A started to approach him. Due to traffic and weather conditions, Officer A decided not to pursue the Subject and broadcast the last known direction. Officer A then continued on his way home.

As Officer A came to the crest of the freeway, he observed the Subject's vehicle stopped in the number one traffic lane. The Subject's vehicle had been involved in a violent traffic collision and had sustained major traffic damage to the front and rear.

Officer A was unsure of the Subject's condition and approached the vehicle to investigate. Officer A took into consideration the erratic way the Subject had maneuvered the vehicle. Officer A unholstered his firearm to a low-ready position and tactically approached the vehicle using his flashlight for illumination. Officer A observed the front passenger door and noticed the window was down. Officer A also observed the vehicle's airbags and side air curtains had deployed. As Officer A got closer he observed the Subject seated in the driver's seat. The Subject appeared to be unconscious, but was breathing. Officer A moved from the passenger side of the vehicle, around the front of the vehicle, to the driver's side and observed that the Subject was the only occupant in the vehicle.

Note: Officer A was aware he did not have his handcuffs in his possession. Earlier, during his watch, he had assisted officers with an arrest and provided his handcuffs. Officer A believed he would obtain his handcuffs at the end of his watch; however, his handcuffs were not at the station at the end of his shift, and Officer A departed for home without them.

Officer A believed there was a possibility that if he did not detain the Subject, he might try to run on the freeway, which would pose a danger to Officer A, the Subject and other motorists on the freeway. Officer A holstered his weapon and opened the driver's door, at which time the Subject opened his eyes. Officer A grabbed the Subject's left shoulder by his jacket, removed him from the vehicle and placed him face down on the ground just outside the driver's door. The Subject was limp and did not initially resist.

Officer A broadcast his location to CD as the Subject lay motionless on the ground. Officer A did not receive a response from CD and conducted several radio checks but did not receive any response. Officer A turned his radio dial to the Emergency Frequency and broadcast a radio check but again did not receive a response.

The Subject began to move and Officer A became concerned that the Subject was armed or was possibly attempting to arm himself as he moved his hands toward his body. Officer A believed he needed to control the Subject's hands and with the Subject still lying face down; Officer A straddled his back and obtained a top-control position. At this point Officer A's knees were on the ground, and he was sitting on the Subject's back side using his body weight to keep the Subject down.

In an effort to control the Subject, Officer A grabbed the Subject's right wrist and shirt sleeve, just as the Subject tucked his left hand underneath his body. Officer A ordered the Subject to show his hand. At this point, Officer A had wrapped his legs around the Subject's and crossed his ankles and was now laying on top of the Subject.

The Subject began to struggle, and used his arm and elbow to strike backward at Officer A's head. The Subject threw his head back in an attempt to use his head to strike Officer A. Officer A believed the Subject was not trying to get away, but rather attack him. The Subject attempted to roll onto his left side to position himself onto his back, at which point Officer A felt the Subject grab the right side of his belt and holster. Officer A held the Subject's right wrist with his right hand and as he did so, felt the Subject tug at his holster in an attempt to grab his service pistol.

Officer A attempted to control the Subject by placing his body weight on the top portion of the Subject's upper torso. Officer A continued to verbalize with the Subject to comply with his directions. The Subject continued to throw his right elbow and head back at Officer A and to reach for his service pistol. At one point, the Subject arched his back in an attempt to get Officer A off of him.

Officer A released the Subject's right wrist and attempted to place his left arm around the Subject's neck. Officer A grabbed his left hand with his right hand and attempted to apply a Carotid Restraint Control Hold (CRCH) on the Subject, but he was unable to properly apply it because the Subject turned his head to the right and tucked his chin into his right shoulder. Officer A was still unable to control the Subject and then punched him in the face several times, but the Subject still refused to comply.

Witnesses A and B were driving on the freeway when they observed what they believed was a traffic accident and stopped to render aid. Witness A heard Officer A yelling for help and went to assist him. Witness A observed the struggle and advised the Subject to stop resisting the officer. Officer A advised Witness A to assist him with using the police radio.

Witness A held the radio to Officer A's face and pressed the transmitter button as he broadcast for help.

Witness A observed Officer A's service pistol on the ground approximately one foot from Officer A and the Subject. Witness A advised Witness B of the gun and its location. Witness B kicked the gun away from the struggle. The gun landed near the left front tire

of the Subject's vehicle. Witness A assisted Officer A and held the Subject's legs until responding officers arrived.

Police Officers B, C, D and E heard the request for help and responded to the location. When the officers reached Officer A and the Subject, Officer D positioned himself at the Subject's right shoulder area, placed both his hands on the Subject's right shoulder and used his body weight to hold him down. Officer E approached on the right side, rolled Officer A off of the Subject and grabbed the Subject's right forearm and wrist and held him down as he maneuvered the Subject's right arm behind his back to be handcuffed.

Officer C approached the left side of the Subject and observed his left arm underneath his body. As Officer A rolled off the Subject's right side, the Subject's left side torso became exposed. Officer C placed the knuckles of his left hand in the joint of the Subject's left elbow, held the Subject's left forearm with his right hand and rolled the Subject's left forearm backwards until it came free and presented itself for handcuffing. Officer B approached the Subject, placed his leg behind the Subject's thighs and applied his body weight on the Subject, while handing his handcuffs to Officer E. The officers were subsequently able to handcuff the Subject.

The officers noticed Officer A's pistol was missing from his holster and advised him. Officer E recovered Officer A's pistol from the ground and placed the pistol in Officer A's holster.

A Rescue Ambulance (RA) was requested and transported the Subject to the hospital for treatment for a nasal fracture, multiple rib fractures, a possible fractured left wrist and alcohol intoxication. Medical personnel were unable to determine if the injuries were caused by the traffic collision or the use of force.

Officer A was transported to the hospital upon complaining of pain. He was treated and released.

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 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 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. Drawing/Exhibiting

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

C. Lethal Use of Force

The BOPC found Officer A's 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. Communications Broadcast /Code Six

Officer A conducted a traffic stop of the Subject based on the belief that he was a possible DUI driver and was a danger to the surrounding motorists. Upon conducting the traffic stop, Officer A failed to notify CD of his location and the reason for the vehicle stop.

Officers are required to balance officer safety considerations against the need to make a timely code-six broadcast. However, officers must be afforded some discretion in determining the appropriate time to make their broadcast. Department tactical training allows for officer safety concerns to take precedence over making an immediate broadcast indicating time and location. In this instance, Officer A was hindered by the lack of time afforded to him as a result of the Subject's immediate attempt to flee the location. Nonetheless, a broadcast of Officer A's observations and location would have been advantageous to alert CD, which in turn would notify outside agencies or additional units.

In evaluating Officer A's actions, the BOPC determined that based on the totality of the circumstances, although improvement could be made, 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 timely code-six broadcast and a broadcast of additional pertinent information regarding the Subject's actions and location. Consequently, the BOPC directed that this topic be discussed during the Tactical Debrief.

In conclusion, the BOPC found that Officer A's decision not to broadcast did not substantially deviate from approved Department tactical training.

2. Tactical Approach

Officer A approached the Subject's vehicle at the end of a major traffic collision. Upon clearing the vehicle, Officer A observed the Subject semi-conscious in the driver's seat of the vehicle. Officer A grabbed the Subject's left arm and left shoulder and removed him from the vehicle. Subsequently, Officer A placed the Subject in a prone position onto the ground while assuming a standing position straddling the Subject.

Officers should generally approach traffic investigations and vehicle stops with safety as the utmost priority. Poor planning or complacency can result in tragedy for the officer, the subject or any other persons in the immediate vicinity. In this instance, Officer A arrived at the scene of a major traffic collision and observed the Subject semi-conscious while seated in his vehicle. Cognizant of the fact that the Subject was driving erratically, Officer A determined that the safest manner to take him into custody was to remove him from the vehicle.

Generally, Officers are discouraged from removing a subject from a vehicle without appropriate resources available to assist in the event of unforeseen tactical issues. Officer A believed that the Subject's dangerous driving and his potential to cause additional danger on a crowded freeway necessitated immediate action. Consequently, Officer A's decision to remove the Subject from the vehicle was justified and did not represent a substantial deviation from approved Department tactical training. However, Officer A would benefit from a review of the tactics specific to investigative stops and traffic collisions. The BOPC directed that this topic be discussed during the Tactical Debrief.

- The BOPC additionally considered the following:

1. Equipment

Officer A was not equipped with handcuffs during a prolonged struggle to control an aggressive subject. Officer A is reminded of the importance of always having handcuffs while attired in uniform. As such, the BOPC directed this to be a topic of discussion at the Tactical Debrief.

2. Snapping of Service Pistol Holster

Officer A, upon clearing the Subject's vehicle, re-holstered his service pistol and was later involved in a prolonged struggle with the Subject while on the ground. During the struggle, the Subject attempted to grab Officer A's holster. At the culmination of the incident, responding units observed Officer A's service pistol on the ground.

3. Punches to Boney Areas

Officer A was involved in a prolonged struggle to maintain control of an aggressive subject. During the struggle, Officer A utilized various non-lethal methods to control the Subject's movements while awaiting responding resources. Additionally, the Subject grabbed at Officer A's holster causing Officer A to administer a CRCH to stop the Subject's deadly behavior. The application of the CRCH proved ineffective, and based on the serious nature of the Subject's actions, Officer A delivered a series of punches to the Subject's face. Due to the potential for officer injuries and hindered physical ability as a result, the BOPC directed that this topic be discussed at the Tactical Debrief.

4. Application of the CRCH

Officer A was involved in a prolonged struggle while alone with an aggressive subject. Officer A subsequently felt the Subject's attempt to grab his service pistol in a perceived effort to disarm him. As a result, Officer A applied a CRCH which was ineffective due to the Subject placing his chin into his chest. In order to enhance future tactical performance, the BOPC directed that the topic of CRCH application and possible countermeasures be discussed at 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.

After a thorough review of the incident, it was determined that the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training. Therefore, the most appropriate forum for the involved personnel to review and discuss the incident and individual actions that took place is a Tactical Debrief.

In conclusion, the BOPC found Officers A, B, C, D and E's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

- Officer A arrived at a traffic collision and observed the Subject, who he had previously attempted to stop. Based on the Subject's erratic driving, combined with the fact that he was unsure about the number of occupants in the vehicle, Officer A drew his service pistol. Officer A was unsure if the vehicle contained any additional occupants and proceeded to clear the vehicle. After safely clearing the vehicle, Officer A reholstered his service pistol.

Due to the Subject's erratic driving, combined with the aforementioned traffic collision and the high risk associated with traffic stops; the BOPC determined that officers with similar training and experience as Officer A while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation might escalate to the point where deadly force may be justified.

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

C. Non-Lethal Use of Force

- **Officer A** – Physical Force, Bodyweight, and Punches.

Officer A removed the Subject from his vehicle and placed him onto the ground in a prone position. The Subject regained consciousness and attempted move his hands toward his body at which time Officer A opined that the Subject was possibly attempting to arm himself. Officer A, in an attempt to control the Subject's movements, lowered himself to his knees and straddled the Subject utilizing bodyweight.

In an effort to gain control, Officer A utilized physical force and grabbed the Subject's right wrist while the Subject attempted to conceal his left hand underneath his body. Officer A wrapped his legs around the Subject's legs, crossed his ankles and utilized bodyweight while lying on the Subject in an effort to control his movements.

Officer A continued to struggle with the Subject on the ground while the Subject continued to use his arm and elbow to strike backward toward Officer A's head. Officer A surmised that the Subject was not attempting to escape, but rather attempting to attack him. Soon thereafter, the Subject attempted to grab Officer A's service pistol. Officer A utilized a firm grip and physical force to hold the Subject's right wrist with his right hand to prevent the Subject from obtaining his service pistol.

Officer A continued to struggle with the Subject and during the struggle, the Subject attempted to grab Officer A's service pistol. Officer A subsequently administered a CRCH in an effort to render the Subject unconscious (see Lethal Use of Force). Officer A's CRCH was ineffective, and he administered numerous punches to the Subject's facial area in an effort to take him into custody.

- **Officer B** – Bodyweight

Officer B arrived and observed Officer A engaged in a struggle with the Subject while on the ground. Officer B subsequently placed his leg onto the Subject's thigh and utilized bodyweight to control the Subject's movement.

- **Officer C – Physical Force**

Officer C observed Officer A on the ground involved in a struggle to control the Subject. Officer C applied his knuckles to the joint of the Subject's left elbow and applied pressure while he held the Subject's left forearm. Officer C subsequently moved the Subject's left forearm backwards which enabled the Subject to be handcuffed.

- **Officer D – Bodyweight**

Officer D observed Officer A involved in a struggle with the Subject. Subsequently, Officer D utilized bodyweight by placing his hands onto the Subject's right shoulder, and utilized bodyweight to control the Subject's movements.

- **Officer E – Bodyweight**

Officer E observed Officer A involved in a struggle to control the Subject. Officer E moved Officer A off the Subject and grabbed the Subject's right forearm and wrist and utilized bodyweight to hold the Subject as he maneuvered the Subject's right arm behind his back for handcuffing.

After a thorough review of the incident and involved officers' statements, the BOPC determined that officers with similar training and experience as Officers A, B, C, D and E would reasonably believe the application of non-lethal force would be reasonable to overcome the Subject's resistance in an effort to stop his actions and take him into custody.

In conclusion, the BOPC found that Officers A, B, C, D and E's use of non-lethal force to be objectively reasonable and In Policy, No Further Action.

D. Lethal Use of Force

- **Officer A – Carotid Restraint Control Hold (CRCH)**

Officer A was involved in a prolonged struggle with the Subject wherein Officer A utilized bodyweight, physical force and punches in an effort to control the Subject's aggressive behavior. During the struggle, the Subject placed his right hand on Officer A's belt and holster. Officer A believed that the Subject was attempting to grab his service pistol and disarm him. Officer A, believing the situation had risen to the level of deadly force, applied a CRCH in an attempt to render the Subject unconscious. The Subject placed his chin into his chest which impacted the effectiveness of the CRCH. Consequently, Officer A was unable to cause the Subject to lose consciousness.

Given the totality of the circumstances, an officer with similar training and experience would reasonably believe that a subject who was actively resisting, while attempting

to disarm a uniformed police officer, presented an immediate threat of serious bodily injury or death and that the application of lethal force would be justified.

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