

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

**CAROTID RESTRAINT CONTROL HOLD – 105-08**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No (X)</b>
Harbor	12/10/2008		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Officer A	15 years
Officer B	12 years, 10 months

**Reason for Police Contact**

Officer observation

<b>Subject(s)</b>	<b>Deceased ( )</b>	<b>Wounded (X)</b>	<b>Non-Hit ( )</b>
Male: 21 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 Chief of Police; and the report and recommendations of the Inspector General. The Los Angeles Police Department Command Staff presented the matter to the Commission and made itself available for any inquiries by the Commission.

The following incident was adjudicated by the BOPC on November 11, 2009.

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.

**Incident Summary**

Officers A and B were wearing plain clothes and were seated at a table in a restaurant when the subject entered the restaurant and stood in the food line behind a customer. Officer B immediately recognized the subject as a suspect in a gang shooting he was investigating. As described by Officer B, "[The subject] walked in. He looked in my direction. I immediately recognized him. [The subject] continued to walk to the food

counter.” Officer B then told Officer A that the suspect that just walked in was a suspect in a gang shooting.

Officer A advised his partner that he would notify Communications Division (CD) that they were Code Six. Officer A then moved to the front door of the restaurant and stepped partially outside due to the loud music inside the restaurant and notified CD that they were Code Six and requested that another unit respond to the location. Meanwhile, Officer B approached the subject, who was standing in line to pay for his food. As Officer B approached the subject, he verbally identified himself as a police officer and pulled up his jacket so his badge was visible.

**Note:** According to Officer B, he and Officer A had a preset plan that one officer would be contact and the other would be cover.

According to Officer A, “We didn’t have time to really talk about exactly what we were going to do exactly. But from talking on previous incidents and just knowing each other, I knew, you know, [he] was going to talk to him.”

**Note:** According to Officer A, the officers would normally have let uniformed officers contact the suspect unless there were exigent circumstances. As recalled by Officer A, “I think we both had the same – we had talked about this before, but I think we both realized that if we waited and he got into a car and left and a vehicle pursuit ensued, it would probably be a be a little worse than – especially if [the subject had a traffic accident] or – or did something or someone got hurt. We felt like if we just got him and caught him off guard, maybe he’ll just, you know, go with the program and kind of like, you know – and I did ask for additional – maybe a unit would get there, and we could stall him long enough to get an officer to actually take him into custody.”

**Note:** According to Officer A, Officer B held his Astro radio in his hand as he spoke to the subject.

**Note:** Witness 1 was inside the restaurant when Officer B approached the subject. According to Witness 1, he did not hear anyone identify themselves as a police officer; however, he did observe Officer B’s badge and handgun.

Officer B asked the subject his name and he identified himself as “Mike.” Officer B repeatedly asked the subject to remove his hands from his pants pockets. At first, the subject refused and moved closer to the customer in front of him, then he removed both of his hands; however, the subject quickly placed his left hand back inside the left pocket of his pants. As described by Officer B, “[the subject] was also nervous. He was visually shaken and nervous. In fact, all the color drained from his face.”

Officer B asked the subject to step outside the restaurant to talk with Officer B. The subject refused and said he wanted to pay for his food. As recalled by Officer B, "He told me he wanted to pay for his food first. I kind of went along with it because, you know there was another customer there. There was, you know, all kinds of opportunities for him to think and maybe to take her hostage." However, the subject suddenly turned around and began to walk toward the exit holding a bag of food and without paying.

As the subject walked toward the door where Officer A was standing, Officer B walked on his right side, giving him verbal commands to take his hand out of his pocket. As described by Officer B, "I told him – I told him stop a couple – where, you know, where were you going sort of thing. 'Stop,' you know. 'Take your hands out of your pockets.' I was just so focused on his waistband and his – his pockets because I knew his history. I knew he carried weapons in the past."

As the subject approached the exit door, he told Officer B that he had to give the food to his girlfriend and talk to her.

Officer A then grabbed the subject's left arm. As recalled by Officer A, "He then proceeded to lift up his left arm and then put it against my chest and shove me towards the entrance of the door. Cause of his size and his weight, he successfully pushed me out the front door."

**Note:** The subject was 6 feet 2 inches in height and weighed 230 pounds.

Officer A was 5 feet 7 inches in height and weighed 170 pounds.

Officer B was 5 feet 8 inches in height and weighed 160 pounds.

As Officer B grabbed the subject's right arm, the subject was reaching with his right hand toward his pockets. Officer B grabbed the left front pocket of the subject's pants and felt keys inside. Officer B then grabbed the subject's right pocket. As described by Officer B, "I just felt around and – and you know, felt his – felt his right pocket and felt that there's a hard object there and you know, based on my training and experience, this is – this is a gun. I told my partner, 'He's got a gun. He's got a gun.'"

The subject then broke free of Officer B's grip and pushed against his chest with his hands. Officer B fell to the ground and his radio fell out of his back pocket.

Officer A next used his radio to request assistance and observed the subject move his right hand to his right pocket or waistband of his pants and believed he was reaching for a gun. As recalled by Officer A, "So being that I was so close to him and my partner just directly in front of him and with the background, I chose not to draw my weapon and use my – my gun. So I decided to use an upper body control hold, so I actually jumped on his back and attempted to apply an upper body control hold."

As described by Officer A, “I placed my right arm around his neck, I started squeezing to get a good grip because I was slipping off of him because I was actually – it was like a piggy back. I was actually on his back. That’s when I attempted to bring my left palm up to my right palm to get a really firm grip. But because he was moving so much, the fact that I actually had no leverage because I was on his back and he was sweating little bit, I did squeeze and – but I didn’t – I didn’t cinch the upper body control hold really.” As further recalled by Officer A, “And as I was trying to lock it in with my other hand, he started to kind of buck me off and shake me kind of twisting me around a little bit. And then he ran me into the side of the restaurant. I released my grip, and he proceeded to run northbound through the – I guess it would be the parking lot but through a walkway right in front of the restaurant northbound.”

Officer A began to run after the subject and was joined by Officer B. Officer A grabbed the subject’s shirt as Officer B grabbed the subject’s arm. According to Officer A, the subject dragged both him and Officer B for approximately 15 feet.

**Note:** According to Officer B, the subject yelled, “Hey, they’re trying to get me. Help me.”

As the officers struggled to take the subject into custody, the subject fell down in the parking lot. According to Officer B, “The weight of us and him trying to escape, maybe he lost his footing, we were too heavy for him, but he went, you know, I don’t know, he went to the ground.”

As the subject fell to the ground, he landed on his right side with his right hand inside his right pocket or pinned underneath him. Officer A then gained hold of the subject’s left arm and applied his body weight to the subject’s upper torso, while Officer B applied his body weight to the subject’s lower torso. Officer A then activated the help button on his radio.

Officer A next observed Witnesses 2 and 3 standing in front of a store located approximately 50 feet away. As recalled by Officer A, “It appeared to me that he [the subject] was talking specifically, to them, so I was kind of both trying to focus on them as well as [the subject].”

Witnesses 2 and 3, along with Witness 4, the subject’s girlfriend, began to approach the officers. As described by Officer A, “As – as they’re approaching very aggressively – as a matter of fact, one – the one that approached me had his fist up like he was going to punch me.”

**Note:** According to Witness 2, “We thought, like somebody was trying to, like, rob him or something. We’re like, wow, what’s going on here.”

Officer A then observed four people running toward them. As described by Officer A, “I focused my attention on the four people that came, obviously, because they were – in my belief they were coming to either lynch or help out their friend. I identified myself as

a police officer. That's – and they kept advancing. I drew my – my gun and I stated, 'Back off. We're the police.'" The group then retreated.

**Note:** According to Witness 2, the officers "pulled out their badges and identified themselves."

Meanwhile, the subject was on his stomach and Officer B continued to verbalize with him, commanding him to remove his hands from his pockets; however, the subject did not comply with the commands. As recalled by Officer B, "When I realize he is not, you know, there is a possibility that he's going to remove his gun and shoot either me or my partner. Therefore, I, you know, I unholstered and pointed my gun at his head."

After Witnesses 1, 2, and 3 moved back, Officer A re-directed his focus on the subject. As described by Officer A, "At this point he still has his right hand pinned underneath him, and I can't see what he's doing, so I tell him, 'hey, don't' – I said something to the effect of don't pull out he gun or I'm going to shoot you. I don't want to shoot you. Don't pull out the gun.'" Officer A then held his pistol in a close contact position as he pointed it at the subject's midsection.

**Note:** According to the subject, Officer A said, "I'll f\*\*king shoot. Or I'll f\*\*king blow your head off or something."

According to Officer A, the subject responded, "Okay. Okay. I have a .38. I have a 38, or "something to that effect." The subject then removed his arms from underneath his body, and Officer B holstered his pistol and handcuffed him.

**Note:** According to the subject, the officers choked him when they asked him to sit up. As recalled by the subject, "When I told them I – when they wanted me to sit up on the curb, I couldn't get up and they f\*\*king started choking me kind of."

Officer A then holstered his pistol, reached into the right front pocket of the subject's pants, and recovered a .38 caliber revolver. Officer A placed the revolver in left rear pants pocket and broadcast that the officers were Code Four, and the suspect was in custody. Officer A subsequently advised CD of the officers' location.

In response to the call, Officers C and D arrived at the scene. Officer A approached Officer C and handed him the subject's revolver and asked him to secure it. Officer C then unloaded the revolver and secured it in the trunk of his police vehicle.

Sergeant A next arrived at the scene and determined that a Categorical Use of Force had occurred and separated Officers A and B, while Sergeant B requested that a Los Angeles Fire Department Rescue Ambulance (RA) respond to the scene. According to Sergeant B, the subject did not want medical attention; however, the fact that a Carotid Restraint Control Hold was employed warranted medical attention.

**Note:** According to Officer B, the subject complained of pain to his wrists due to the handcuffs.

A RA subsequently arrived at the scene, but the subject refused medical treatment and was transported to the station for booking. While at the station, the subject complained of pain in his right shoulder and elbow area and another RA was requested.

The subject was then transported to a local hospital and was treated for a strained neck and abrasions to his left arm. The subject was then released with medical approval for booking.

### **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 and B's tactics to warrant a finding of administrative disapproval.

#### **B. Drawing/Exhibiting/Holstering**

The BOPC found Officers A and B's drawing and exhibiting to be in policy.

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

The BOPC found Officers A and B's use of Non-Lethal applications of force to be in policy.

#### **D. Use of Force**

The BOPC found that Officer A's use of force to be in policy.

## Basis for Findings

### A. Tactics

The BOPC noted that in this instance Officers A and B initiated contact with the subject inside a restaurant with a patron standing directly in front of him. Absent any exigency that necessitated immediate action, Officers A and B should have considered exiting the restaurant to monitor the subject while awaiting the arrival of additional uniformed personnel.

The BOPC further noted that the officers had been actively searching for the subject, since he was identified as an attempt murder suspect, and had devised a tactical plan as to how to approach the subject; specifically, that Officer B would serve as the contact officer and Officer A the cover officer. However, during its execution, the officers did not adhere to their delineated roles. As Officer B walked toward the subject and identified himself as a police officer, Officer A walked to the front door of the restaurant and leaned outside to broadcast their location to CD.

The BOPC further noted that Officer A did not provide sufficient information when he requested the response of a back-up unit. Specifically, when Officer A requested back-up, he should have advised CD of the nature of the activity, disclosed that he and his partner were plainclothes officers, provided a thorough description of the subject, and given timely updates regarding the subject's movements. This would have facilitated a prompt response and increased the likelihood that uniformed personnel would initiate the detention at a time and place that maximized officer safety. The omission of this information created a circumstance wherein responding personnel were not fully aware of the tactical situation.

The BOPC further noted that when Officer B approached the subject, as he stood in line behind a restaurant patron, Officer B verbally identified himself as a police officer, raised his sweatshirt to expose his Department badge that was affixed to his right front pants pocket, and asked the subject to remove his hands from his pants pockets; however, the subject ignored the officer's commands, moved closer to the customer, and advised Officer B that he wanted to pay for his food first. Officer B did not take any action at that point stating, *"I kind of went with it because, you know, there was another customer there. There was, you know, all kinds of opportunities for him to - - to think and maybe to take a hostage."* The subject was then allowed to retrieve his food and walk toward the front door while maintaining his right hand in his pants pocket. Officer B followed the subject while Officer B repeatedly ordered him to stop and remove his hand from his pocket. Once again, the subject failed to comply with the officer's commands and continued to walk toward the front door, only stopping when he encountered Officer A.

Therefore, the knowledge of the subject's prior crime warranted recognition that the incident was likely to escalate and, once contact was initiated, failure to comply with Officer B's commands should have been met with decisive action.

The BOPC further noted that the officer's decision to physically re-engage the subject after knowing he was in possession of a handgun warranted concern. When an officer reasonably believes a suspect to be armed, especially with a handgun, grappling with the suspect is highly discouraged. In the event physical contact is desirable, officers should attempt to use a strong push to the upper back of the suspect to cause the suspect to lose his balance and fall forward, thereby allowing the officers to retain all of their force options.

Therefore, Officers A and B are reminded that armed suspect tactics involve unique tactical considerations and require restraint and discipline in regards to the urge to become involved in a physical altercation.

### **B. Drawing/Exhibiting/Holstering**

The BOPC noted that in this instance Officers A and B struggled to take custody of the armed suspect on the ground, three individuals responded to the suspect's request for help and advanced toward the officers in an aggressive manner, resulting in Officer A drawing his service pistol.

The group complied with the officers' commands and distanced themselves from the officers; however, the suspect's right hand remained concealed underneath his body near his pants pocket area. Officer A directed the suspect not to reach for the handgun or he would be shot. The suspect then admitted to having a .38 caliber handgun, resulting in Officer B drawing his service pistol.

In this situation, it was reasonable for the involved personnel to believe that the tactical situation had escalated to the point where lethal force may become necessary and it was appropriate for the officers' to have drawn and exhibited their weapons.

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

The BOPC noted that in this instance Officer A stepped in front of the restaurant's door to block the subject's avenue of escape and advised him that they needed to speak with him for a moment. The subject adamantly stated he was going to leave on his own accord. Officers A and B then applied firm grips in attempt to gain control of his arms; however, the subject placed his forearm on Officer A's chest and pushed him rearward and out the front door. As the struggle continued outside, the subject reached for his pants pocket, and a Modified Carotid Restraint Control Hold (MCRCH) was applied. The hold proved ineffective and the subject ran from the officers. Officers A and B then utilized firm grips, a team takedown, and bodyweight to ultimately take the subject into custody.

### **D. Use of Force**

The BOPC noted that according to Officer A:

*“[The subject] was starting to reach for his pocket again, so I – my partner said, “Gun,” and I believed that he was armed with a gun from prior incident and possibly this incident because my partner had reached down towards the pocket area and said, “Gun.” So being that I was so close to him and my partner being just directly in front of him and with the background, I chose not to draw my weapon and use my – gun. So I decided to use a upper body control hold.”*

The BOPC further noted that Officer B declared, “Gun!” after he felt what he believed to be a handgun in the subject’s pocket. This, coupled with the knowledge that the subject was wanted in an attempt murder incident that involved a handgun, caused Officer A to believe that the subject was in possession of a handgun.

Moreover, when the subject reached toward his front pants pocket, it was objectively reasonable for Officer A to believe that the subject was attempting to arm himself. If confronted with the same circumstances, an officer with similar training and experience would believe that the subject posed a substantial risk of serious bodily injury or death as he reached for his handgun.

Therefore, the BOPC determined that Officer A’s application of Lethal Force to be in policy.