

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

OFFICER-INVOLVED SHOOTING – 019-22

Division Date Duty-On (X) Off () Uniform-Yes (X) No ()

Newton 5/23/22

Officer(s) Involved in Use of Force Length of Service

Officer A 4 years, 11 months
Officer B 3 years, 1 month

Reason for Police Contact

Officers observed the Subject with a handgun in his rear waistband. The officers conducted a U-turn and followed the Subject in their vehicle as he ran east with the handgun in his left hand. The Subject ultimately ran north in a driveway and into the rear parking lot of a nearby business. As he ran, the Subject fired his handgun at the officers, resulting in an officer-involved shooting (OIS). Neither the Subject nor the officers were struck by gunfire. After the OIS, the Subject climbed on top of two shipping containers and refused to submit to arrest. Metropolitan Division officers responded, negotiated the Subject's surrender, and arrested him without further incident.

Subject(s) Deceased () Wounded () Non-Hit (X)

Male, 18 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 (FID) 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 (UOFRB) recommendations, including any Minority Opinions; the report and recommendations of the Chief of Police; and the report and recommendations of the Office of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

The following incident was adjudicated by the BOPC on 4/11/23.

Incident Summary

On May 23, 2022, at approximately 1837 hours, the Subject was walking south on a major street within Newton Division. Security video footage from the northwest corner of the street captured the Subject scanning the area and pointing a black semiautomatic handgun in various directions.

Approximately three minutes later, security video shows the Subject walking west on the north sidewalk. As he did so, Police Officers A and B were traveling west to an unrelated call for service.

The Subject looked over his left shoulder in the officers' direction as they drove up from behind him. Simultaneously, the Subject lifted the back of his shirt and exposed his rear waistband area, where he was carrying a handgun. According to Officer B, he/she observed the handgun tucked in the back of the Subject's waistband and alerted Officer A that the Subject had a gun.

Unbeknownst to the officers, immediately after they drove past the Subject, he removed the handgun from his rear waistband with his left hand and ran west in the same direction they were traveling. When later interviewed by Force Investigation Division (FID) investigators, the Subject admitted to carrying the handgun in his rear waistband.

Upon hearing his/her partner say that the Subject had a gun, Officer A negotiated a U-turn approximately 250 feet west of where they passed him. Upon seeing the officers make the U-turn and drive toward him, the Subject ran east. As he did so, the officers followed behind him in the number two westbound traffic lane with their vehicle doors ajar. As the Subject continued running east with the handgun in his left hand, he kept his right hand near his right pants pocket. When interviewed, the Subject indicated he was looking for the handgun's magazine, but forgot which pocket it was in.

As the officers followed the Subject, they ordered him to stop. Officer A briefly activated the vehicle's emergency lights and siren, as Officer B broadcast a backup request for a "man with a gun" and provided the Subject's description and direction of travel. Upon reaching the driveway of a nearby business, the Subject ran north.

According to Officer A, prior to reaching the driveway, the Subject began to slow down while looking over his right shoulder. This gave Officer A the impression that the Subject was preparing to engage them. In response, Officer A unholstered his/her pistol with his/her right hand while he/she simultaneously held the steering wheel with his/her left hand. Officer A then positioned his/her pistol between his/her torso and the steering wheel with the muzzle oriented toward his/her driver's door.

Both officers observed the Subject turn into what they believed was an alley out of their view. The investigation determined that the Subject turned north into the driveway of a business. The driveway, which ran north and south, was approximately 25 feet wide and 135 feet long. It led to an enclosed parking lot on the north side of the business. The driveway was bordered on the east and west sides by the walls of two commercial businesses. Two chain link gates were situated on the driveway approximately 30 feet north of the street. At the time of this incident, the gate on the west side of the driveway was closed, while the gate on the east side remained open to vehicle traffic.

Officer A drove approximately 30 feet north into the driveway and stopped the police vehicle in the opening between the two gates.

Officer A opened his/her door with his/her left hand while still holding his/her pistol in his/her right hand. According to Officer A, as he/she exited, he/she heard gunfire and acquired a two-handed grip on his/her pistol. Officer A moved north from his/her open driver's door and positioned himself/herself at the west gate.

According to Officer A, after exiting the vehicle, he/she continued to observe the Subject run north in the driveway with the handgun in his left hand. As he did so, the Subject turned his torso counterclockwise and partially extended his left arm, just below shoulder height, while pointing the handgun back at the officers. As the Subject continued to point the handgun at them, Officer A heard gunfire and feared that he/she and his/her partner could be killed. In response, Officer A stated he/she then fired a volley of five to seven rounds at the Subject.

After firing his/her rounds, Officer A returned to the driver's seat of his/her vehicle and momentarily transferred his/her pistol to his/her left hand and used his/her right hand to drive the police vehicle forward approximately three feet into the opening between the gates.

Security video footage shows that once the Subject was on the north side of the building, he quickly doubled back. For approximately 30 seconds, the Subject positioned himself behind a parked vehicle as he held his handgun in a two-handed grip and repeatedly pointed it at the officers.

As the officers turned north into the driveway, Officer B grasped the handle of the passenger side spotlight with his/her left hand and unholstered his/her pistol with his/her right hand.

In response, Officer B rapidly exited the police vehicle and leaned forward into the area between his/her ballistic door and the right front A-pillar. As he/she did so, Officer B acquired a two-handed grip on his/her pistol and fired two rounds at the Subject. According to Officer B, he/she fired these rounds "milliseconds" after the Subject began firing and while the Subject continued pointing the handgun back at him/her.

Approximately one second after he/she fired his/her first two rounds, Officer B leaned to his/her right and pointed his/her pistol through the open window frame of his/her ballistic door. According to Officer B, after the Subject ran an additional seven to eight feet, he/she observed him making the same turning motion that he/she initially observed. Officer B believed that when the Subject turned this second time, the Subject fired another two to three rounds at him/her. In response, Officer B fired nine additional rounds at the Subject. According to Officer B, as he/she fired these additional rounds, the Subject's right arm remained extended back at a 45-degree angle at him/her.

Immediately after firing his/her second volley, Officer B broadcast a "shots fired, officer needs help" call.

As previously described, security video footage shows that the Subject quickly doubled back once he was on the north side of the building. The Subject positioned himself behind a parked vehicle while holding his handgun in a two-handed grip and repeatedly pointed it at the officers. The investigation determined that during this time, Officer B fired two final rounds at the Subject from the window frame of his/her ballistic door.

The officers fired simultaneously during this incident. A sound graph analysis was conducted and determined that Officer B fired his/her first two volleys, totaling 11 rounds, in 6.776 seconds. The analysis determined that 15.583 seconds later, Officer B fired his/her third volley of two rounds. These were the last rounds fired during the incident. Officer A fired his/her volley of six rounds in 2.367 seconds.

There were 19 gunshots identified during the sound graph analysis which were attributed to the officers. The analysis determined that Officer B fired nine rounds before Officer A fired his first round. Officer B fired rounds 1-9, 11, 13, 18, and 19; and Officer A fired rounds 10, 12, 14, 15, 16, and 17.

FID investigators examined the scene, physical evidence, and video footage to assess the officers' background during the OIS. The investigation determined that their background was multiple parked vehicles and the brick wall of a two-story building located approximately 200 feet north of them. Three vehicles were struck by the officers' gunfire. One of those vehicles was occupied at the time; however, the occupant was not injured.

After firing his/her final rounds, Officer B moved to the rear of his/her patrol vehicle, where he/she broadcast a second help call and a description of the Subject. Officers A and B ultimately repositioned to the north sidewalk and utilized the buildings for cover as they coordinated with responding units. Sergeant A was the first supervisor to arrive at scene and declared himself/herself the incident commander (IC). Sergeant B arrived shortly thereafter and assisted by managing the tactical operation.

In response to the help call, an air unit (helicopter), staffed by a pilot and Tactical Flight Officer (TFO) A arrived overhead and directed responding units to establish perimeter

positions around the enclosed parking lot. During this time, TFO A observed the Subject attempting to scale a fence near the northwest portion of the parking lot. The Subject ultimately positioned himself on top of two shipping containers that were situated on the northwest portion of the lot. According to TFO A, the Subject remained armed with the handgun and, at one point, pointed it at the air unit as they orbited overhead.

Approximately seven minutes after the Subject climbed on top of the shipping containers, Officer C arrived and met with Sergeant B. Officer C was subsequently joined by Officers D, E, F, G, H, I, and J, and by Sergeants C and D.

After receiving a briefing from Sergeant B, Officer D contacted Lieutenant A and advised him/her of the incident. Lieutenant A directed Officer D to give the Subject additional orders to surrender. According to Officer D, if the Subject refused to surrender, Lieutenant A would declare an "open-air barricade," and Special Weapons and Tactics (SWAT) would respond to assist.

Approximately 20 minutes after the Subject climbed onto the shipping containers, Officer D assembled a team of officers and briefed a plan to move into the parking lot where they would use a public announcement (PA) system to communicate with the Subject. Officer C drove Officers A and B's police vehicle north along the driveway and stopped near the northeast corner of the building. However, the team determined this location was too far to communicate with the Subject. With assistance from TFO A, the team moved Officers A and B's police vehicle from the driveway area to the middle of the parking lot, where they staged just out of the Subject's view. Officer D indicated that the re-positioning of this vehicle created a buffer between the Subject and the occupants sheltered in the building and allowed for the vehicles in the parking lot to be checked for potential victims.

After the team repositioned to the parking lot, TFO A used a cellular phone to record footage of the Subject's location. The footage was sent to Officer C, who shared it with Officer D and the other officers on the ground. After viewing the footage, Officer D elected to wait for the arrival of an armored vehicle before attempting to contact the Subject. According to Officer D, he/she believed that waiting for additional resources would help de-escalate the situation and lessen the chance of a secondary OIS.

Approximately 17 minutes after the officers entered the parking lot, an armored Ford Excursion arrived from Metropolitan Division. Shortly thereafter, SWAT Sergeant E arrived and was briefed by Officer D. A plan was formulated to move the armored Excursion into the Subject's line of sight, where Sergeant E would use the PA system to communicate with the Subject.

Approximately five minutes later, Officer C drove the Excursion toward the northwest portion of the parking lot, where visual contact was established with the Subject. Sergeant E then used the PA system to begin communicating with the Subject. After approximately three minutes, the Subject unloaded his handgun and threw it and its

magazine down on a gravel surface south of the shipping containers. Approximately eight minutes later, the Subject climbed down from the shipping containers and laid on the ground. Less than a minute later, Officers G, H, I, J, K, L, and Sergeant B approached the Subject to take him into custody. Officer K then handcuffed the Subject without incident. The Subject was not struck by gunfire or otherwise injured during this incident.

Body-Worn Video (BWV) and Digital In-Car Video (DICV) Policy Compliance

NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICV ACTIVATION	DICVRECORDING OF ENTIRE INCIDENT
Officer A	No	Yes	Yes	No	No
Officer B	Yes	Yes	Yes	No	No
Officer D	Yes	No	Yes	N/A	N/A
Sergeant A	Yes	Yes	Yes	Yes	Yes
Sergeant B	Yes	No	Yes	N/A	N/A
Sergeant D	Yes	Yes	Yes	N/A	N/A
Sergeant E	Yes	Yes	Yes	N/A	N/A

Los Angeles Board of Police Commissioners’ (BOPC) Findings

The BOPC reviews each Categorical Use of Force (CUOF) 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). Based on the BOPC’s review of the instant case, the BOPC made the following findings:

A. Tactics

The BOPC found Officers A, B, and Sergeant A’s tactics to warrant a finding of Administrative Disapproval.

B. Drawing and Exhibiting

The BOPC found Officers A, B, and D’s drawing and exhibiting of a firearm to be In Policy.

C. Lethal Use of Force

The BOPC found Officers A and B’s lethal use of force to be in policy.

Basis for Findings

In making its decision in this matter, the Commission is mindful that every “use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. The Los Angeles Police Department also recognizes that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public.

The Department’s guiding principle when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe, feasible, and reasonable to do so. As stated below, when warranted, Department personnel may use objectively reasonable force to carry out their duties. Officers may use deadly force only when they reasonably believe, based on the totality of circumstances, that such force is necessary in defense of human life. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to physical hazards, violate the law and rights of individuals upon whom unreasonable force or unnecessary deadly force is used, and subject the Department and themselves to potential civil and criminal liability. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers. (Special Order No. 23, 2020, Policy on the Use of Force - Revised.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in *Graham v. Connor*, 490 U.S. 386 (1989), stating that:

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Use of De-Escalation Techniques: It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a suspect and enable

an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.

Verbal Warnings: Where feasible, a peace officer shall, prior to the use of any force, make reasonable efforts to identify themselves as a peace officer and to warn that force may be used, unless the officer has objectively reasonable grounds to believe that the person is already aware of those facts.

Proportionality: Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

Fair and Unbiased Policing: Officers shall carry out their duties, including use of force, in a manner that is fair and unbiased. Discriminatory conduct in the basis of race, religion, color, ethnicity, national origin, age, gender, gender identity, gender expression, sexual orientation, housing status, or disability while performing any law enforcement activity is prohibited.

Use of Force – Non-Deadly: It is the policy of the Department that personnel may use only that force which is “objectively reasonable” to:

- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,
- Overcome resistance.

Factors Used to Determine Objective Reasonableness: Pursuant to the opinion issued by the United States Supreme Court in *Graham v. Connor*, the Department examines the reasonableness of any particular force used: a) from the perspective of a reasonable Los Angeles Police Officer with similar training and experience, in the same situation; and b) based on the facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The feasibility of using de-escalation tactics, crisis intervention or other alternatives to force;
- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the suspect;
- Whether the suspect was posing an immediate threat to the officers or a danger to the community;
- The potential for injury to citizens, officers or suspects;
- The risk or apparent attempt by the suspect to escape;
- The conduct of the suspect being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;

- The training and experience of the officer;
- The proximity or access of weapons to the suspect;
- Officer versus suspect factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus suspects;
- The environmental factors and/or other exigent circumstances; and,
- Whether a person is a member of a vulnerable population.

Drawing or Exhibiting Firearms: Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm. Any drawing and exhibiting of a firearm shall conform with this policy on the use of firearms. Moreover, any intentional pointing of a firearm at a person by an officer shall be reported. Such reporting will be published in the Department's year-end use of force report.

Use of Force – Deadly: It is the policy of the Department that officers shall use deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary for either of the following reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or another person; or,
- To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible. Before discharging a firearm, officers shall consider their surroundings and potential risks to bystanders to the extent feasible under the circumstances.

Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.

The Department's Evaluation of Deadly Force: The Department will analyze an officer's use of deadly force by evaluating the totality of the circumstances of each case consistent with the California Penal Code Section 835(a), as well as the factors articulated in *Graham v. Connor*.

Rendering Aid: After any use of force, officers shall immediately request a rescue ambulance for any person injured. In addition, officers shall promptly provide basic and emergency medical assistance to all members of the community, including victims, witnesses, subjects, suspects, persons in custody, suspects of a use of force and fellow officers:

- To the extent of the officer's training and experience in first aid/CPR/AED; and
- To the level of equipment available to the officer at the time assistance is needed.

Warning Shots: It is the policy of this Department that warning shots shall only be used in exceptional circumstances where it might reasonably be expected to avoid the need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.

Shooting at or From Moving Vehicles: It is the policy of this Department that firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants. Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and consistent with this policy regarding the use of Deadly Force.

Note: It is understood that the policy regarding discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, officers are expected to act with intelligence and exercise sound judgement, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to clearly articulate the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

Requirement to Report Potential Excessive Force: An officer who is present and observes another officer using force that the present and observing officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer, shall report such force to a superior officer.

Requirement to Intercede When Excessive Force is Observed: An officer shall intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a suspect.

Definitions

Deadly Force: Deadly force is defined as any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to, the discharge of a firearm.

Feasible: Feasible means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Imminent: Pursuant to California Penal Code 835a(e)(2), “[A] threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to a peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”

Necessary: In addition to California Penal Code 835(a), the Department shall evaluate whether deadly force was necessary by looking at: a) the totality of the circumstances from the perspective of a reasonable Los Angeles Police Officer with similar training and experience; b) the factors used to evaluate whether force is objectively reasonable; c) an evaluation of whether the officer exhausted the available and feasible alternatives to deadly force; and d) whether a warning was feasible and/or given.

Objectively Reasonable: The legal standard used to determine the lawfulness of a use of force is based on the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states, in part, “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving - about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application.” The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

Serious Bodily Injury: Pursuant to California Penal Code Section 243(f)(4) Serious Bodily Injury includes but is not limited to:

- Loss of consciousness;
- Concussion;
- Bone Fracture;
- Protracted loss or impairment of function of any bodily member or organ;
- A wound requiring extensive suturing; and,
- Serious disfigurement.

Totality of the Circumstances: All facts known to or reasonably perceived by the officer at the time, including the conduct of the officer and the suspect leading up to the use of force.

Vulnerable Population: Vulnerable populations include, but are not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

Warning Shots: The intentional discharge of a firearm off target not intended to hit a person, to warn others that deadly force is imminent.

A. Tactics

Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication*
(*Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques*)

Tactical de-escalation does not require that an officer compromise his/her or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

Planning and Assessment – This was Officers A and B’s third shift as partners. At the beginning of their shift, they discussed various topics, including foot pursuit concepts and officer safety. After observing the Subject with a gun in his waistband, the officers formulated a plan to contain the Subject and request resources to assist them. Before, during, and after the OIS, Officer B assessed the need for additional resources.

Arriving at the scene, Sergeant B formed a tactical team, which included a designated cover officer (DCO), less-lethal force officer, and arrest team. Officer D formulated a tactical plan and organized the tactical team. Observing that parked vehicles had been struck by gunfire, Officer D assessed the potential for victims. A plan was then formulated and approved to search the surrounding area for victims.

During the incident, Sergeant E formulated a plan for Officer D and Sergeant D to use an armored Ford Excursion to safely contact the Subject. After it was determined that the Subject was surrendering, the officers apprehended him without further incident.

Time and Redeployment/Containment – While following the Subject, Officers A and B maintained a distance of approximately 40 to 50 feet from him. By remaining in their

police vehicle, the officers could use it as cover. The BOPC noted that while the UOFRB would have preferred the officers had not over-penetrated the driveway after the Subject disappeared out of their view, the UOFRB did note that when confronted by him, the officers immediately stopped their police vehicle and did not pursue him. After the OIS, Officer B redeployed behind a cement wall. Officer B then instructed his/her partner to move behind “better” cover. With the assistance of responding resources, the Subject was contained on the property and apprehended without additional force.

Other Resources – As stated above, before, during, and after the OIS, Officer B assessed the need for additional resources. After the OIS, additional units responded to the scene. With the air unit’s assistance, the Subject was located on top of a shipping container. The air unit assisted officers in establishing containment and continuously provided updates on the Subject’s actions. Because the Subject was armed with a handgun, Officer C requested an armored vehicle. Sergeant C subsequently responded in an armored Ford Excursion.

After speaking with personnel at the scene, Lieutenant A deployed SWAT resources to assist with apprehending the Subject. When Sergeant E arrived, he/she used the armored Excursion to contact the Subject and begin negotiations. At approximately 1936 hours, Officer M arrived at the scene in the Ballistic Engineered Armored Response Counter Assault Tool (BEARCAT). When the BEARCAT arrived, the arrest team used the armored vehicles to safely approach the Subject who had surrendered.

Lines of Communication – Before the OIS, Officers A and B ordered the Subject to stop, but he refused. After the OIS, both Officer L and the air unit used PA systems to attempt to communicate with the Subject; however, he refused to surrender. Sergeant E also used a PA system while negotiating with the Subject. Based on Sergeant E’s dialogue, the Subject threw his handgun to the ground, climbed down from the roof of the shipping container, and placed himself in the prone position.

During the review of the incident, the following Debriefing Topics were noted:

Debriefing Point No. 1 Tactical Vehicle Deployment

Knowing that the Subject was armed with a handgun, Officers A and B conducted a U-turn and followed him from approximately 40 to 50 feet. As the officers followed the Subject, he turned into what they believed was an alley, and out of their view. Officers A and B followed the Subject in their vehicle, turning into what was later identified as a driveway. The officers proceeded for approximately 30 feet before stopping in front of a partially open chain link gate and exiting their vehicle. When he/she exited the police vehicle, Officer A did not place the police vehicle’s transmission in park. After discharging his/her service pistol, Officer A re-entered the police vehicle, drove forward approximately three feet, and exited. Again, Officer A did not place the vehicle’s transmission in park. Although the vehicle remained stationary, the transmission remained in drive until the vehicle was later used by Metropolitan Division.

The BOPC noted that the UOFRB assessed the positioning of Officers A and B's police vehicle. The UOFRB opined that the officers' initial efforts to contain the Subject by following him in their police vehicle from a distance, as opposed to following him on foot, was a sound tactical decision as it would have allowed them to use their ballistic door panels had he turned and engaged them before he turned into the driveway. However, by following the Subject into the driveway after losing sight of him, the officers placed themselves at a significant tactical disadvantage. While the UOFRB understood why the officers followed the Subject, the UOFRB opined that by over-penetrating the driveway after he disappeared out of their view, they were in the Subject's direct line of fire. This was evidenced by the fact that the Subject's round struck the driver's door while it was closed, and Officer A was still seated in the vehicle. The UOFRB opined that instead of turning into the driveway, the officers should have stopped/paused at the mouth and attempted to locate the Subject before proceeding further. This would have allowed the officers greater distance from the Subject and more opportunities to use cover.

The UOFRB also assessed Officer A's failure to place the transmission in park after exiting the vehicle. The UOFRB noted that the driver's main responsibility is to operate the police vehicle in a safe manner, which includes placing the transmission in park. While the UOFRB understood the gravity of his situation, they opined that Officer A's actions placed him/her and his/her partner at a significant tactical disadvantage, as the vehicle could have continued forward, further exposing the officers to the Subject. The UOFRB opined that this also jeopardized the safety of responding officers, as they were unaware the transmission was in drive as they stood near the vehicle.

The UOFRB did note that Officer A was holding his/her service pistol when he/she exited the police vehicle. While the UOFRB opined that his/her drawing and exhibiting conformed to policy, they suspected that holding his/her service pistol may have contributed to his/her failure to place the transmission in park.

Based on the totality of the circumstances, the BOPC determined that the tactics employed by Officers A and B were a substantial deviation, without justification, from Department-approved tactical training.

Debriefing Point No. 2 Basic Firearm Safety Rules

Officer A unholstered his/her service pistol with his/her right hand while maintaining control of the police vehicle's steering wheel with his/her left hand. While steering the police vehicle, Officer A covered his/her left hand with his/her service pistol. When asked if he/she covered his/her left hand with his/her service pistol, Officer A indicated that he/she did so while entering the driveway.

After the initial exchange of gunfire, Officer A reentered the police vehicle and transferred his/her service pistol to his/her left hand, holding it by the slide. Officer A continued to hold his/her service pistol in his/her left hand as he/she used his/her right hand to control the steering wheel while moving the vehicle forward. Officer B also began to reenter the police vehicle but quickly exited believing that the Subject was

shooting at officers. As Officer B entered/exited, he/she covered Officer A with the muzzle of his/her service pistol; Officer B's index finger was on the frame. Officer B indicated that although his/her muzzle did "kind of go toward" Officer A, he/she did not believe he/she pointed it at him/her.

The BOPC noted that the UOFRB assessed Officers A and B's adherence to the Basic Firearm Safety Rules. The UOFRB noted that while driving the police vehicle, Officer A covered his/her left hand with his/her service pistol, a fact he/she confirmed. Although his/her finger was off the trigger, the UOFRB opined that he/she still violated the basic firearm safety rules by allowing his/her muzzle to cover something he/she did not intend to shoot. Also, while the UOFRB determined that based on the threat the Subject posed, Officer A's drawing and exhibiting conformed to policy, they opined that this did not alleviate Officer A from safely handling his/her service pistol, as he/she could have directed his/her muzzle away from the steering wheel and his/her hand.

Regarding Officer A's decision to hold his/her service pistol by the slide while moving the police vehicle, the UOFRB understood the dynamic nature of what was transpiring; however, the UOFRB would have preferred he/she had holstered his/her service pistol instead.

Regarding Officer B, the UOFRB noted that he/she momentarily covered Officer A with his/her service pistol while entering/exiting the police vehicle. Based on the BWV footage, the UOFRB opined that he/she might have also momentarily covered Officer A as he/she (Officer B) stood outside the police vehicle. While the UOFRB understood the stress that Officer B likely felt, they opined that it did not alleviate him/her from adhering to the basic firearm safety rules, specifically not allowing his/her muzzle to cover anything he/she did not intend to shoot. Additionally, the UOFRB noted that stress can increase the chances of an unintentional discharge. Had that occurred, the result may have been tragic.

Based on the totality of the circumstances, the BOPC determined that the tactics employed by Officers A and B were a substantial deviation, without justification, from Department-approved tactical training.

Additional Tactical Debrief Topics

- **Driving While Holding Service Pistol** – As stated above, Officer A drove the police vehicle while holding his/her service pistol in his/her right hand. While not a violation of policy per se, it is something that should be done only when warranted. As addressed in Debriefing Point No. 2, Officer A did violate the basic firearm safety rules.
- **Cover vs. Concealment** – During and after the OIS, Officer A intermittently moved from his/her police vehicle's ballistic door panel to the chain link gate. Officer A did this to obtain a better view of the Subject. While the gate provided concealment

from the Subject, the ballistic door panel afforded cover. Alternatively, Officer A should have remained behind his/her ballistic door panel or another form of cover.

- **Protocols Subsequent to a Categorical Use of Force** – Sergeant A reviewed his/her BWV and DICV without FID personnel present. Per Sergeant A, he/she needed the timeline of events for his/her log and he/she had not yet been admonished to refrain from viewing the footage. Alternatively, he/she should have obtained permission before viewing his/her video footage.
- **Background/Fire Discipline/Fire Control** – When Officers A and B discharged their service pistols, their background was multiple parked vehicles and the brick wall of a two-story building located approximately 200 feet north of them. Per the FID investigation, three vehicles were struck by the officers' gunfire. One of those vehicles was occupied at the time; however, the occupant was not injured. While not every situation allows officers to decide where police activity will occur, it is important they remain cognizant of their environment.

Command and Control

- At approximately 1845:18 hours, Sergeant A arrived at the scene, declared himself/herself as the incident commander (IC), and requested a tactical frequency. He/she was the first supervisor to arrive at the scene. Sergeant A met with Officer B and verified that an OIS had occurred. Sergeant A contacted Sergeant F and notified him/her of the OIS. He/she also contacted Sergeant B and asked him/her to respond to the scene.

At approximately 1848:46 hours, Sergeant B arrived at the scene and met with Sergeant A. Based on Sergeant B's tactical experience, Sergeant A directed him/her to take control of operations. Sergeant A also attempted to set up a rescue team to evacuate civilians inside the building; however, this was not feasible at the time and the civilians safely sheltered in place. Sergeant B formed a tactical team, which included a designated cover officer (DCO), less-lethal force officer, and arrest team.

At 1855:13 hours, Sergeant A confirmed that Officers A and B were the involved officers and proceeded to separate and monitor them. Approximately 15 minutes after the OIS he/she obtained their Public Safety Statements (PSSs).

After arriving at the scene, Officer D met with Sergeant B and was briefed on the incident. At approximately 1902:15 hours, Officer D contacted Lieutenant A, briefed him/her on the incident, and advised that it was a possible barricade situation. Lieutenant A requested to be contacted by the IC and subsequently spoke to Sergeant B. Officer D believed that Sergeant B was the IC.

At approximately 1907:40 hours, Officer D organized a tactical team. Officer D planned to reposition Officers A and B's police vehicle to the northeast corner of the

building located along the west side of the driveway. Before moving the vehicle, Officer D would receive authorization from Lieutenant A and Sergeant D.

At approximately 1910 hours, Sergeant D contacted Lieutenant A and advised him/her of the ongoing tactical situation. Lieutenant A advised that SWAT resources were responding and to continue to contain the area.

At approximately 1911:46 hours, Sergeant F arrived at the scene and assumed the role of IC. Sergeant F then moved the command post (CP).

As the tactical team moved forward to the corner of the building, Officer D observed multiple vehicles in the parking lot that appeared to have been struck by gunfire. Concerned that there were people in need of medical aid, he/she received approval from Sergeant D to move the tactical team further into the parking lot; however, they remained out of the Subject's line of sight. This was also approved by Lieutenant A. The tactical team then held their position until Sergeant C arrived in the first of two armored vehicles.

At approximately 1921:31 hours, Sergeant E arrived at the scene. He/she assisted in formulating a plan to contact the Subject. The plan involved Officer C driving the Ford Excursion toward the Subject with Sergeant E in the passenger seat as the crisis negotiator and Officer E in the rear as the DCO.

At approximately 1926:15 hours, Captain A arrived at the CP and assumed the role of IC. Approximately two minutes later, Captain B arrived at the scene to assist.

At approximately 1926:50 hours, the team in the Excursion moved forward and Sergeant E began negotiating with the Subject using the PA system. The Subject subsequently responded to Sergeant E's directions. At approximately 1930:15 hours, the Subject unloaded his handgun and threw both it and the magazine to the ground. The Subject then climbed down from the shipping container and lay on the ground in a prone position. Using the armored vehicles as cover, officers apprehended the Subject without further incident.

At 1935 hours, Lieutenant A arrived at the scene. Commander A arrived at the scene at 1936 hours and assumed the role of IC.

The Department Operations Center (DOC) was notified of the OIS at 1930 hours by Captain C.

The BOPC noted that during its review of this incident, the UOFRB was critical of Sergeant A's command and control. Simply put, the UOFRB determined that he/she failed to take control of an ongoing tactical incident. Although he/she did take some actions as noted above, based on the BWV footage, it was clear that he/she did not display active leadership. Instead, he/she seemed to wait for Sergeant B to arrive and assume command. While the UOFRB had no issues with

Sergeant A transferring control of certain aspects of the incident, they expected more from the first supervisor at the scene.

Based on the totality of the circumstances, the BOPC determined that the tactics employed by Sergeant A were a substantial deviation, without justification, from Department-approved tactical training.

Regarding Sergeants B, D, E, Lieutenant A, and Officer D, the BOPC concluded that their overall actions were consistent with Department training.

Tactical Debrief

- In conducting an objective assessment of this case, the BOPC determined that Officers A, B, and Sergeant A's actions were a substantial deviation, without justification, from Department-approved tactical training. The BOPC also determined that Sergeants B, D, E, and Officer D's actions did not deviate from Department-approved tactical training.

B. Drawing and Exhibiting

- **Officer A**

According to Officer A, before reaching the driveway, the Subject began to slow down while looking over his right shoulder. This gave Officer A the impression that the Subject was preparing to engage them and he/she felt that there was an "imminent threat" of the Subject shooting at him/her and his/her partner. In response, Officer A unholstered his/her service pistol with his/her right hand while he/she simultaneously held the steering wheel with his/her left hand.

- **Officer B**

As the officers turned north into the driveway, Officer B grasped the handle of the passenger-side spotlight with his/her left hand and unholstered his/her pistol with his/her right hand. According to Officer B, he/she had observed that the Subject was armed with a handgun and believed it may be a lethal force situation.

- **Officer D**

According to Officer D, as he/she moved forward with the tactical team to search the parking lot for potential victims, he/she recognized that there was still a threat due to an outstanding suspect. In response, Officer D unholstered his/her service pistol and assisted in clearing the vehicles within the parking lot. Once the parking lot was cleared, Officer D re-holstered his service pistol.

The BOPC noted that the UOFRB assessed Officers A, B, and D's drawing and exhibiting of their service pistols. The UOFRB noted that Officers A and B observed

the Subject armed with a handgun. The Subject refused to submit to commands and fled from the officers, eventually turning into the driveway, out of the officers' view. Based on the Subject's actions, the UOFRB opined that it was reasonable for the officers to believe they may have to use lethal force. As it pertains to Officer A's decision to unholster his/her service pistol while driving, the UOFRB would have preferred he/she had remained holstered and allowed his/her partner to function as a DCO. However, this did not negate the fact that the Subject was armed and could quickly present an imminent lethal threat to the officers, despite their efforts to follow him from a distance. As such, the UOFRB opined that his/her drawing and exhibiting still conformed to policy. The UOFRB did acknowledge that after the OIS, Officer A could have re-holstered sooner as multiple officers had arrived and assumed his/her position; however, the UOFRB felt that this was best addressed at the Tactical Debrief.

Regarding Officer D, the UOFRB noted that he/she unholstered his/her service pistol while clearing vehicles and looking for victims. The UOFRB also noted that the Subject was still armed and at large, and Officer D was concerned there may be additional suspects. As such, the UOFRB opined that there was still a potential for the situation to escalate to lethal force.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A, B, and D would reasonably believe that there was a substantial risk that the situation may escalate to the point where lethal force may be justified. Therefore, the BOPC found Officers A, B and D's drawing/exhibiting to be In-Policy.

C. Lethal Use of Force

Background – The FID investigation determined that the background was multiple parked vehicles and the brick wall of a two-story building located approximately 200 feet north of the officers. Three vehicles were struck by the officers' gunfire. One of those vehicles was occupied at the time; however, the occupant was not injured.

- **Officer A** – six rounds fired in a south-to-north and east-to-west direction from an increasing distance of 109 to 132 feet.

According to Officer A, upon entering the driveway, he/she observed the Subject running north. The Subject turned his torso back toward the officers and pointed the firearm, at which point Officer A attempted to put the transmission in park and exited the vehicle. As he/she exited, Officer A heard gunfire and acquired a two-handed grip on his/her pistol. Officer A moved north from his/her open driver's door and positioned himself/herself at the west gate. Officer A continued to observe the Subject run north in the driveway with the handgun in his left hand. According to Officer A, as the Subject did so, he turned his torso counterclockwise and partially extended his left arm, just below shoulder height, while pointing the handgun back at the officers. As the Subject continued to point the handgun at them, Officer A

heard gunfire and feared that he/she and his/her partner could be killed. In response, Officer A discharged six rounds at the Subject.

- **Officer B** – 13 rounds fired during three volleys, in a south to north and east to west direction from an increasing distance of 40 to 150 feet.

Volley 1 – Two rounds discharged in a south-to-north and east-to-west direction, from approximately 40 feet.

According to Officer B, as the officers turned north into the driveway, he/she observed the Subject take “a shooting stance” and “fire two to three rounds” at him/her and his/her partner.¹ In response, Officer B rapidly exited the police vehicle, leaned forward into the area between his/her ballistic door and the right front A-pillar, and discharged two rounds at the Subject. According to Officer B, he/she discharged these rounds “milliseconds” after the Subject began firing and while the Subject continued pointing the handgun back at him/her.

Volley 2 – Nine rounds discharged in a south-to-north and east-to-west direction, from an approximately 47 to 48 feet.

Approximately one second after he/she discharged his/her first two rounds, Officer B leaned to his/her right and pointed his/her service pistol through the open window frame of his/her ballistic door. According to Officer B, after the Subject ran an additional seven to eight feet, he/she observed him making the same turning motion that he/she initially observed. Officer B believed that when the Subject turned this second time, the Subject fired another two to three rounds at him/her. In response, Officer B discharged nine additional rounds at the Subject. According to Officer B, as he/she discharged his/her rounds at the Subject, the Subject’s right arm remained extended back at a 45-degree angle at him/her.

Volley 3 – Two rounds discharged in a south-to-north and east-to-west direction, from an approximately 150 feet.

According to Officer B, the Subject was still running north in the driveway while looking over his right shoulder and extending the handgun back toward the officers with his right hand. Officer B stated he/she heard gunfire and observed a “muzzle flash” coming from the Subject’s location. In response, Officer B discharged two final rounds at the Subject from the window frame of his/her ballistic door.

The BOPC considered the UOFRB’s assessment of Officers A and B’s use of lethal force. The UOFRB noted that as the officers drove north in the driveway, they observed the Subject pointing a handgun at them. The Subject then fired one round, striking the police vehicle. In response, Officer B discharged two rounds from his/her

¹ Per the FID investigation, the Subject fired one round during this incident; however, both he and the officers believed he fired more than once.

service pistol toward the Subject. According to the officers' statements, as the Subject continued to run north, he repeatedly turned back toward the officers and pointed his handgun in their direction. In response, Officer B discharged an additional nine rounds and Officer A discharged six rounds. Based on the BWV and security video footage, which appeared to depict the Subject turning back toward the officers and raising his arm as he ran, the UOFRB opined that the officers' perception of the Subject's action was reasonable. Although the footage did not clearly display the entirety of the situation, the UOFRB opined that the preponderance of evidence was that the Subject repeatedly pointed his gun at the officers. This assertion was supported in part by Officer A's description of seeing a "glimmer" of the laser sight on the Subject's gun as he ran. Additionally, while the investigation determined that the Subject only fired one round, the UOFRB opined that it was reasonable for officers to believe he continued to shoot at them even though the additional gunfire they heard was each other's rounds. The UOFRB did consider the concept of contagious fire; however, as previously indicated, the officers developed independent justification for their lethal use of force, specifically the Subject's actions with his handgun. Also, the UOFRB opined that when a suspect is pointing a gun at officers, generally it would be unreasonable to expect them to wait for the suspect to fire before using lethal force.

As it pertains to Officer B's final volley, the UOFRB noted that based on the security video footage, it appeared that the Subject had stepped back into the driveway and pointed his handgun at the officers, something that he repeatedly did after reaching the corner of the building. Based on the video footage and Officer B's statements, the UOFRB opined that he/she reasonably perceived an imminent lethal threat when he/she fired his/her final volley. Additionally, while Officer B fired a total of 13 rounds during this incident, based on the available evidence, the UOFRB opined that he/she reasonably assessed an imminent lethal threat before discharging each round. The UOFRB opined that the same was true for Officer A.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, in the same situation, would reasonably believe that the lethal use of force was proportional, objectively reasonable, and necessary. Therefore, the BOPC found Officers A and B's lethal use of force to be In-Policy.

Medical Treatment/Rendering Aid – The FID investigation revealed that after the OIS, at 1847:23 hours, Officer B voiced his intent to get a rescue ambulance (RA). Perhaps unaware of what was suggested, Sergeant A directed him to rebroadcast the Subject's description. Approximately two minutes later, Officer B inquired with Officer N if an RA had been staged. At 1853:13 hours, Officer O requested a RA to stage near the location. At 1940:33 hours, the Subject was taken into custody and declined medical treatment. The Subject was not struck by gunfire or otherwise injured during this incident.

Requirement to Intercede

Based on their review of this incident, the BOPC determined that the force used was not clearly beyond that which was necessary, as determined by an objectively reasonable officer under the circumstances and would not have required an officer to intercede.