

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

LAW ENFORCEMENT RELATED INJURY/HEAD STRIKE – 033-22

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

Hollenbeck	6/19/22		
------------	---------	--	--

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

Officer A	6 years, 5 months
-----------	-------------------

Reason for Police Contact

Officers responded to an unpermitted concert and directed the crowd to leave the area. The crowd refused to leave and individuals in the crowd launched fireworks and threw projectiles at officers. Officers formed skirmish lines and the incident was declared an unlawful assembly. Members of the crowd continued to launch fireworks and throw projectiles at officers. In response to these actions, officers discharged 40-millimeter less-lethal launcher (40mm LLL) munitions resulting in a Law Enforcement-Related Injury (LERI).

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

Subject: Male, 41 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 (CUOF) 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 May 9, 2023.

Incident Summary

On Saturday, June 18, 2022, LAPD became aware of an unpermitted concert at a large construction site under a bridge in the Hollenbeck Area. The Watch Commander assigned units to respond to the location and conduct a street-level assessment of the incident. It was determined that at that time between 400-500 people were in attendance. Officer reported that there was a mosh pit (dance area) and fireworks were being launched. The Watch Commander then requested that all available Hollenbeck units respond to the incident.

At 2019 hours, Sergeant A arrived at the location, assumed the role as Incident Commander (IC), and met with the officers. Sergeant A also met with Sergeant B, and together they formulated a plan to disperse the crowd to the south. At 2032 hours, Sergeants A and B each led a squad of officers into the concert area.

As Sergeant A's squad drove south toward the bridge above the concert; Officers B and C were in the lead vehicle. The officers made numerous announcements using the Public Address (PA) system and directed the concert attendees to leave. When the officers arrived at the bridge, Officer B again made a PA announcement and directed the crowd to leave the area. The crowd refused to leave, and the band continued to play.

Sergeant B and his squad of officers established a skirmish line north of the bridge. At approximately 2040 hours, individuals in the crowd began to throw rocks and bottles at them. Sergeant B broadcast this information and waited for additional officers to arrive.

At 2051 hours, the officers entered further into the construction site where the concert was occurring and formed a blocking force with their vehicles.

At 2101 hours, the incident was upgraded to a back-up request, due to the crowds' violent actions.

At 2105 hours, Lieutenant A arrived at scene. He/she met with Sergeant A, who briefed him/her on the incident to include the advisement of a dispersal order to the crowd. Lieutenant A assumed the role of IC. Due to the size and hostility of the crowd, Lieutenant A authorized the use of the 40mm LLL.

In response to the incident, a total of 121 officers from Hollenbeck, Newton, Northeast, Central, Rampart, and Olympic Areas were deployed.

Sergeant C responded with 25 Newton uniformed police officers. Sergeant C designated two officers to deploy the 40mm LLL; one of these was Officer A.

At 2116 hours, an air unit (helicopter) issued the unlawful assembly order. A sergeant who was positioned on the bridge, broadcast that the announcement was clear.

At 2117 hours, the officers from Newton Area arrived at scene. Sergeant C met with Lieutenant A under the bridge and was directed to form a blocking force to the east. The Newton squad established the skirmish line and Sergeant C specifically reminded the officers equipped with a 40mm LLL to be target specific to stop a threat.

Officer A, who was equipped with a 40mm LLL, stated that he/she was advised that a dispersal order had been given, observed that the crowd was hostile, and described the scene as complete chaos. Based on Officer A's body-worn video (BWV), once the officers were positioned, individuals in the crowd started throwing bottles at them.

The FID investigation determined that Officer A fired a total of four 40mm LLL sponge rounds. Officer A indicated that a verbal warning was not given for the 40mm LLL rounds he/she fired during the incident, due to the loud noise and the distance of the intended targets from his location. Based on Officer A's estimated location, all four rounds were fired less than 100 feet from the target. In addition, according to Officer A, each time he/she discharged a 40mm LLL round, he/she had an unobstructed view of his/her target.

At 2126:49 hours, Officer A fired his/her first 40mm LLL sponge round approximately 50-60 feet from an unidentified male seen throwing a rock at the officers. Officer A was uncertain if the unidentified male was struck.

At 2127 hours, Officer A's BWV recorded video of the suspect, who appeared uninjured at this time and was walking from a U-Haul truck in the concert area toward the line of officers. The suspect then turned and walked away, disappearing behind the stage.

Officer D was a linebacker on the skirmish line near Officer A's location. Officer D stated that he/she observed a male with dark clothing on top of a dirt mound southeast of the U-Haul truck. The male lit a firework and prepared to launch the firework. At 2128:10 hours, Officer D directed Officer A's attention toward this unidentified male. Officer A indicated that Officer D pointed in the direction of the unidentified male on top of the dirt mound with a firework. Officer A focused his/her attention to the dirt mound and initially did not see anyone. Officer A stated that he/she waited and then observed the unidentified male appear on the dirt mound. According to Officer A, he/she had a clear and unobstructed view of the male bending over, and he/she believed that the suspect was preparing to light a firework. Based on his/her and Officer D's observations, Officer A surmised that the male's actions posed a threat to the officers, and Officer A stated that he/she targeted the male's navel area with a 40mm less-lethal sponge round.

At 2128:14 hours, Officer A fired his/her second sponge round in a southerly direction at the suspect from approximately 50-60 feet. After the round was fired, the male disappeared behind the dirt mound. Unbeknownst to Officer A, this round inadvertently struck the forehead of a different/untargeted male (the Subject), who fell to the ground. At 2128:10 hours, using a view from a different officer's BWV, the unidentified male was recorded as he stood on the dirt mound with an outstretched arm. At 2128:11 hours,

from the male's outstretched arm, a firework was launched toward the west. At 2128:13 hours, the firework exploded amongst the crowd. Simultaneously, the Subject stood at the base of the dirt mound. At 2128:14 hours, the Subject collapsed at the base of the dirt mound, as the unidentified suspect disappeared behind the mound. Although this could be seen on the BWV recording, apparently none of the officers on scene saw the Subject get hit by the 40mm LLL sponge round.

At 2130:43 hours, Officer A fired sponge rounds three and four approximately 80 feet from the unidentified male who threw rocks at officers. Due to the male's constant movement, Officer A was uncertain if the rounds struck the suspect.

The crowd started to disperse, as the skirmish line moved south toward the U-Haul truck and dirt mound. Officer A observed an injured male (the Subject) seated at the foot of the dirt mound. Officer A did not know that the Subject's injury was caused by a sponge round. At 2131 hours, Lieutenant B requested that a Rescue Ambulance (RA) respond for the Subject's injury.

Officer A helped the Subject stand up and passed him to Officer E. Officer E stated that he/she observed the Subject with a laceration on his forehead. The Subject did not state what caused his injury, and it appeared that the Subject could care for himself. Officer E instructed the Subject to walk north toward the police vehicles. According to Officer E, he/she returned to the skirmish line due to the fluid tactical situation.

Officers who were near the police vehicles indicated that they did not see anyone with a head injury walk north toward their location, nor did anyone request medical aid. According to the officers, they were not aware that an RA was posted in the area.

At 2130 hours, the Operations Central Bureau Commander assumed the IC role and implemented a plan to disperse the crowd south. At approximately 2134 hours, the crowd was moved south and out of the construction site. By approximately 2220 hours, most of the crowd had left the area.

The following day, on June 19, 2022, at 1533 hours, Hollenbeck Patrol Division was notified that the Subject was at a local hospital, due to a head injury sustained during the unpermitted concert. At 1615 hours, Sergeant D responded to the hospital and interviewed the Subject.

The interview was recorded on Sergeant D's BWV. The Subject stated that he attended the concert under the bridge, and it was obviously not a permitted venue. The Subject estimated there were approximately 1,000 people in attendance. The Subject stated that the music was loud and fast, and the crowd was very excited and rambunctious. The Subject stated that a helicopter circled the area for a few hours, as police officers arrived and positioned themselves on both streets. The Subject also stated that while he was under the bridge, officers entered the concert area. On one side the officers entered with police cars, on the other side officers in riot gear pushed down a fence and entered on foot. According to the Subject, the officers told everyone to get back. The

Subject stated that he started backing up slowly when he was hit in the head. The Subject believed that he was hit with a rubber bullet or sandbag fired by an officer.

After the interview, Sergeant D notified the Watch Commander that the Subject's injury was due to possible police action, and he would be admitted to the hospital. At 1718 hours, the Watch Commander notified the Department Operations Center (DOC). FID was notified and investigators responded to the hospital to start the investigation. The Subject declined to provide an additional statement or to release his medical records to FID investigators.

On July 6, 2022, it was determined that the incident would be classified as a Law Enforcement-Related Injury (LERI) investigated by FID.

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	DICV RECORDING OF ENTIRE INCIDENT
Officer A	Yes	Yes	Yes	N/A	N/A
Lieutenant A	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 Officer A's tactics to warrant Administrative Disapproval. The BOPC found Lieutenant A's tactics to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

The BOPC found Officer A's less-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 scenario, 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, 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 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 – Sergeant A met with Sergeant B and formed a tactical plan to create two skirmish lines. They discussed the plan to disperse the concert attendees south through the dirt construction site. Officer B advised the air unit of the plan, and the air unit assisted officers in coordinating their movements. Sergeant A coordinated with the air unit to make an unlawful assembly announcement to the crowd. Sergeants A and C met with Lieutenant A and formed a plan to use the police vehicles as a blocking force to the north, and officers on foot to the east to disperse the crowd south.

Assessment – Officers B and C were the first officers to arrive. Officers B and C heard the concert, updated the Watch Commander, and notified Sergeant B that there was an unpermitted musical concert occurring. The air unit was above the crowd and assessed that there were approximately 200 people in attendance at that time. The air unit also noted that a mosh pit had formed, and fireworks were being launched into the air. The air unit's assessment was communicated on the radio frequency. Based on his/her assessment, Lieutenant A determined that he/she needed to request more resources due to the size of the crowd and their violent behavior.

While on the skirmish line, Officer A assessed the crowd. He/she noted that some members were throwing projectiles and fireworks at officers. Officer A discharged four 40mm LLL sponge rounds during the incident. Before and after each discharge,

he/she assessed the specific individual's actions and determined that they posed a threat to the officers.

Time – Arriving at the scene, Sergeants A and B maintained their distance from the crowd. This created time to assess the incident, request additional resources, and create a tactical plan. Officers also used distance from the crowd as they set up a blocking force with marked black-and-white police vehicles. Before attempting to disperse the crowd, officers used a PA system to declare an unlawful assembly, advising those in attendance to leave the area. This allowed time for attendees to voluntarily disperse; however, many did not.

Redeployment and/or Containment – The crowd was contained in a fenced-in construction site with openings to the south and north of the lot. Officers set up a skirmish line and blocking force to the north, to move the crowd to the south opening.

Other Resources – As Sergeant A arrived, he/she requested additional units to assist with setting up a skirmish line and dispersing the crowd. The air unit responded to the incident and helped assess the situation. After additional officers arrived from surrounding divisions, a plan was implemented to move the crowd south out of the area. The air unit broadcast the dispersal order and assisted with the movement of the skirmish lines.

Lines of Communication – Sergeant C met with Lieutenant A under the bridge and was directed to form a blocking force to the east. The Newton Area squad established the skirmish line and Sergeant C reminded 40mm LLL-equipped officers to identify specific targets and engage suspects when necessary. Observing an unidentified male lighting a firework, Officer D directed Officer A's attention toward him.

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

- **40mm LLL Protocols**

During this incident, Officer A discharged four 40mm LLL sponge rounds. Based on the FID investigation, investigators were unable to determine if rounds one, three, or four struck anyone. Therefore, these rounds were assessed solely for tactics.

First Occurrence – One sponge round from approximately 50-60 feet.

Officer A was monitoring the crowd when he/she observed a male dressed in all black clothing, throwing at officers a baseball-size object, which he/she later determined to be a rock. According to Officer A, he/she had a clear and unobstructed view of the male. In response, Officer A targeted the male's navel area and discharged his/her 40mm LLL. Because the male fled into the crowd, Officer A did not see if the round struck him but believed that it did.

Third Occurrence – One sponge round from approximately 80 feet.

Officer A was positioned on the skirmish line when he/she was notified by several officers there was an unidentified male with a backpack throwing rocks and bottles at officers. Because he/she did not see the male throw an object at that point, Officer A did not discharge his/her 40mm LLL. Officer A then observed the male throw an object toward him/her. In response, Officer A discharged his/her third round at the male's navel area. Officer A heard the object shatter on the ground near him/her and determined that it was a bottle. Officer A was unsure if this round struck the male because the male kept moving around.

Fourth Occurrence – One sponge round from approximately 80 feet.

After discharging his/her third round, Officer A assessed and observed the same male with the backpack reappear, cock back his arm, and throw an object that Officer A believed to be a rock. In response, he/she targeted the male's navel area and discharged his/her fourth round. The male then fled out of sight. Officer A was unsure if this round struck the male.

The BOPC noted that the UOFRB evaluated Officer A's use of the 40mm LLL. The UOFRB noted that when the skirmish line formed, some attendees began throwing rocks, bottles, and fireworks at the officers, some of which exploded near them. As Officer A moved with the skirmish line, he/she identified two specific men he/she observed throwing projectiles at the officers on separate occasions. In response, he/she targeted an approved area of each man's body and discharged one round from within the effective range. Based on the men's actions, the UOFRB believed that they posed an immediate threat to the officers' safety when Officer A discharged his/her 40mm LLL. While the UOFRB would have preferred that Officer A had been better able to assess the effectiveness of his/her impact rounds, they understood that the nature of this incident made that difficult to do.

As it pertains to Officer A's decision not to provide a UOF warning, the UOFRB noted that he/she believed that a warning was not feasible due to the noise level of the amplified music and his/her distance from the crowd. The UOFRB also noted that Officer A was advised that a dispersal order, which included the less-lethal force warning, was issued before he/she arrived at the scene. Per the FID investigation, a sergeant on the bridge confirmed that the announcement was clear and audible. The UOFRB further noted that per the Department's protocols, a warning is not required when an officer is attacked and must respond to the suspect's actions. As such, the UOFRB opined that Officer A's actions conformed to the Department's 40mm LLL protocols.

Based on the totality of the circumstances, the BOPC determined that the tactics employed by Officer A related to discharging the 40mm LLL, did not deviate from Department-approved tactical training.

Basic Firearms Safety Rules

- While moving with the skirmish line, on multiple occasions, the muzzle of Officer A's 40mm LLL covered officers in front of him/her.

The BOPC noted that the UOFRB assessed Officer A's adherence to the basic firearm safety rules. The UOFRB noted that on at least two occasions, he/she raised the 40mm LLL's muzzle to shoulder level before moving in front of the skirmish line. As a result, he/she unintentionally covered the officers in front of him/her with the 40mm LLL's muzzle as he/she assessed the crowd. While the UOFRB understood that Officer A was placed in a chaotic situation where officers periodically walked in front of him/her, they noted that it was his/her responsibility to ensure his/her muzzle was pointed in a safe direction. The UOFRB opined that Officer A could have done this by stepping in front of or parallel with the skirmish line before raising his/her muzzle.

Based on the totality of the circumstances, the BOPC determined that the tactics employed by Officer A, related to Basic Firearms Safety Rules, were a substantial deviation, without justification, from Department-approved tactical training.

Additional Tactical Debrief Topics

- **Profanity** – While issuing orders to the crowd, Officer A used profanity. While issuing orders to his/her personnel, Sergeant C used profanity. Sergeant C also used profanity as he/she directed the crowd to leave the area as the skirmish line deployed. While not a best practice, the profanity was not excessive or personal and was intended to gain compliance.
- **Non-Medical Face Coverings** – The FID investigation revealed that Officer A and Lieutenant A were not wearing non-medical face coverings during this incident as directed by the Chief on May 20, 2020.
- **Radio Procedures** – During this incident, Department personnel communicated via a tactical channel; however, a Radio Telephone Operator (RTO) was not assigned to the frequency, and it was only periodically monitored by Communications Division (CD) personnel. As such, it does not appear that CD personnel received Lieutenant B's RA request and, unbeknownst to him/her, an RA was not dispatched for the Subject. Alternatively, he/she could have verified that his/her request had been received by CD.

Command and Control

- Arriving at the scene, Sergeant A assumed the role of IC and met with Sergeant B to formulate a tactical plan to create skirmish lines to disperse the crowd. Sergeants A and B led their squads south toward the concert. Sergeant A directed his/her squad to form a blocking force with their police vehicles under the bridge. When Lieutenant

A arrived at the scene, Sergeant A briefed him/her on the status of the incident. Lieutenant A assumed the role of IC and met with Sergeants A and C and the Watch Commander to discuss the tactical plan to disperse the crowd to the south, out of the construction site.

The crowd started to disperse as the skirmish line moved south toward the dirt mound. At this time, Lieutenant B observed that the Subject was injured and requested an RA to treat him; however, it does not appear that his/her request was received by CD and he/she did not confirm that it had been received. After assisting the Subject to his feet, Officer A escorted the Subject to Officer E. As Officer E walked the Subject out of the area to receive medical treatment, Lieutenant B directed Officer E to return to the skirmish line as the tactical situation was ongoing, and to allow the Subject to continue his own. At this point, officers did not know that a round had struck the Subject.

The overall actions of Sergeants A, B, C, Lieutenants A and B were consistent with Department training and expectations of supervisors during a critical incident. Issues related to Lieutenant B's request for an RA will be addressed during the Tactical Debrief.

Less-Lethal Use of Force

- **Officer A – 40mm LLL**

Only the second occurrence was evaluated, as it was the only round fired that was determined to strike anyone.

Second Occurrence – One 40mm LLL sponge round, from approximately 50-60 feet.

While monitoring the crowd, Officer D observed an unidentified male with dark clothing on top of a dirt mound; the male appeared to be lighting a firework. Based on his/her observations, Officer D believed the male was preparing to throw the firework at officers. In response, Officer D turned his/her attention to Officer A and advised him/her of the threat. Because he/she looked away, Officer D did not know if the male threw the firework.

According to Officer A, one of his/her partners directed his/her attention to a male on top of the mound throwing fireworks. Officer A looked toward the mound but did not see anyone doing so. However, as he/she continued to assess, Officer A observed the male bend over. Based on the male's actions and information from his/her partner, Officer A believed that he was going to light and throw a firework. According to Officer A, he/she had an unobstructed view of the male as he/she targeted his navel area and discharged the second sponge round. Unbeknownst to Officer A, this round inadvertently struck a different/untargeted male (the Subject).

On July 6, 2022, the 40mm LLL used by Officer A was test fired and it was discovered that the point of aim was outside of Department specifications. At 25 feet, the round struck the target 6 inches left of the point of aim. At 50 feet, the round struck 8-9 inches left and 2-3 inches below the point of aim. At 75 feet, the round missed the target.

The BOPC noted that the UOFRB evaluated Officer A's less-lethal use of force. The UOFRB noted that Officer A was directed to a male on the mound who appeared to be lighting a firework. At this point, several fireworks had been thrown toward officers and some exploded near them. Based on his/her observations of the male's actions, and the information from his/her partner, Officer A believed that the male was going to light and throw the firework at officers. In response, he/she targeted the male's navel/beltline area and discharged his/her second 40mm LLL sponge round from within the device's approved range. Based on the totality of the circumstances, the UOFRB opined that it was reasonable for Officer A to believe that the male posed an immediate threat to the officers' safety. Regarding Officer A's decision to not provide a UOF warning, as discussed in Debriefing Point No. 1, the UOFRB opined that his/her decision conformed to the Department's 40mm LLL protocols.

As it pertains to the Subject, the UOFRB noted that after this incident, it was discovered the 40mm LLL's point of aim was low and left of the intended target. As such, the UOFRB opined that Officer A's sponge round unintentionally struck the untargeted Subject who was standing at the base of the mound, not the male suspect targeted. The UOFRB also noted that since this incident, the Department has taken steps to test all of its 40mm LLLs and ensure that the devices' points of aim are within specifications.

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