

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

LAW ENFORCEMENT-RELATED INJURY 035-24

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
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Newton	7/4/24		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Officer D	11 years, 2 months
Officer E	10 years, 9 months

Reason for Police Contact

Newton Patrol Division uniformed officers responded to a radio call of an “Assault with a Deadly Weapon (ADW), Domestic Violence Restraining Order Violation.” The Victim reported the Subject threatened to burn down a Recreational Vehicle (RV) with the Victim and her minor children inside. Upon arrival, the officers observed the Subject grip his waistband and believed he was concealing a handgun. The Subject became verbally aggressive and refused to comply with the officers’ commands. Officers utilized a 40mm Less-Lethal Launcher (LLL), which struck the Subject on the hand. The Subject was taken into custody and transported and admitted to the hospital for an injury he sustained during the Use of Force.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Subject: Male, 34 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 (Chief); 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 June 17, 2025.

Incident Summary

On Thursday, July 4, 2024, the Victim and her two minor children were asleep inside an RV parked on the north curb of a public street. At approximately 0040 hours, the Victim was awakened by her estranged husband, later identified as the Subject, who was shouting outside the RV, demanding to be let in. When the Victim refused to allow the Subject to enter, he attempted to forcibly open the windows and the door before he threatened to burn down the RV.

The Victim was separated from the Subject and had a valid Domestic Violence Restraining Order (DVRO) on file.

The Subject then removed a fire starter log from his backpack. According to the Victim, as the Subject held the log he stated "...I'm going to burn you guys." The Subject then placed the log near the front of the RV and lit it on fire. The Victim exited the RV and attempted to stop the Subject as she pushed him to the ground. The Victim entered the RV and called 911. The Subject then moved to the rear passenger side of the RV and continued his effort to light the RV on fire.

In response to the Victim's 911 call, at approximately 0046 hours, Communications Division (CD) broadcast that the Subject had an ADW Domestic Violence Restraining Order Violation and that the PR was in a beige RV.

Newton Patrol Division Police Officers A, B, C, and D responded. The officers were in full police uniforms and operating out of marked black and white police vehicles, equipped with Digital In-Car Video Systems (DICVS).

While enroute to the call, Officer B (passenger) read the comments of the call to Officer A (driver), which described the Subject. The comments of the call also indicated that the Subject threatened to burn down the RV.

As the units responded to the call, CD broadcast, "[...] additional on your ADW domestic violence restraining order violation, [...]" The subject lit a wooden log and threw it on the RV earlier today. He also told the PR he/she put a gasoline tank underneath. PR's sons are 16 and 14 inside the RV."

At approximately 0050 hours, Officers A and B, in addition to Officers C and D, arrived at scene and stopped behind the Victim's RV. Officers A and B's DICVS captured the Subject standing to the rear of the RV and appeared to be tampering with the vehicle. The Subject then turned in the officers' direction and began to back up onto the curb as he placed his right hand on his front waistband area.

Both officers exited their vehicle, stood behind their doors, and unholstered their pistols as the Subject backed up and moved along the sidewalk. Officer A redeployed to the

passenger's side of their vehicle as Officer B shouted, "Hey! Hey Bro, let me see your [expletive deleted] hands." The Subject yelled, "[expletive deleted]," and "Release my family!" before he moved into the open parking lot of a hamburger stand. While doing so, the Subject maintained his hold on the object in his front waistband.

Simultaneously, Officers C and D exited their vehicle. Officer C then broadcast a back-up request for a man disturbing the peace and redeployed to the passenger's side of Officers A and B's vehicle. As Officer C stood behind the officers, he/she unholstered his/her pistol. As Officer C completed the broadcast, Officer D obtained the 40mm Less-Lethal Launcher (LLL) from his/her police vehicle and loaded a projectile into the chamber.

Fifteen officers and two supervisors responded to the backup request and were among the personnel present at the time of the LERI.

Officers A and B repeatedly ordered the Subject to show his hands and to stop touching his waistband. The Subject ignored the officers' commands. Officer D advised Officers A and B that he/she had a 40mm available.

An officer then gave a less-lethal warning stating, "Listen, Bro, you're going to get a 40, and it will hurt or cause serious bodily injury." The Subject made the sign of the cross with his right hand and yelled, "Do it."

Additional officers began to arrive at the scene including Officer E and Sergeant A. Officer E approached the open driver's door of Officers A and B's vehicle and utilized the spotlight to illuminate the Subject.

At Sergeant A's request, Officer C directed Officer E, who was equipped with a 40mm LLL, to redeploy to the passenger's side of Officers A's and B's vehicle. Once Officer E did so, he/she took a position to the right and offset from Officer D.

Sergeant A confirmed with the officers that it also appeared to them the Subject was possibly squeezing the "butt of a gun." Sergeant A then directed another officer, who was standing next to him/her, to alert the surrounding officers that the 40mm LLL was going to be discharged. In response, the officer announced, "Forty Standby!" Officer D then announced, "40 out." As the Subject continued to ignore the officers' commands, Officer D fired the first 40mm projectile. The round struck the Subject on the right thigh.

Immediately after being struck, the Subject bent at the waist before he took several steps backward, while still holding his front waistband with his right hand. Officer D reloaded the 40mm LLL as he/she and another officer gave the Subject commands to put his hands up. The Subject ignored the commands.

Officer D then warned the Subject, "Put your hands up or you're going to get 40'd again." The Subject then yelled, "[expletive deleted] you!" as he made the sign of the cross for the second time.

Approximately 19 seconds after the first round, Officer D fired a second projectile from the 40mm LLL at the Subject, which struck him on the right side of his upper abdomen/lower chest area. Officer D aimed the 40mm LLL at the Subject's beltline and fired it from a distance he/she estimated to be 25 feet. The investigation determined that Officer D fired the second 40mm LLL from an approximate distance of 50 feet.

After the second projectile struck the Subject, he shrieked in pain as his right hand remained on his waistband, and he moved his left hand to the right side of his chest. The Subject began to turn counterclockwise when an officer shouted, "Forty." Sergeant A replied, "Go again."

According to Officer E, he/she observed the Subject move as though he was going to remove what he/she believed to be a firearm from his waistband. According to Officer E, he/she aimed the 40mm LLL at the Subject's beltline and fired it from a distance he/she estimated to be 30 to 40 feet. The investigation determined that Officer E fired the 40mm LLL from an approximate distance of 54 feet.

Immediately after being struck by the third round, the Subject spun around and began to cry out in pain while he moved away from the officers. An officer directed the Subject to put his hands up, and not "take anything out," when a dark object fell from the Subject's waist area and onto the ground. The Subject then dropped to his knees and yelled, "You guys [expletive deleted] me up!" Simultaneously, Officer E called out, "He [the Subject] dropped something." Officer D then alerted the officers as they maintained their positions that the object the Subject dropped was a cordless drill.

At approximately 0058 hours, an officer requested an RA to respond as the Subject leaned forward, rolled onto his side, and cradled his left hand.

After the Subject was taken into custody, an RA transported the Subject to a hospital, where he was initially treated for an open fracture to his left index finger. Approximately four hours later, the Subject was admitted to the hospital to surgically repair his fractured finger.

BWV and DICVS Policy Compliance

NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
Officer D	Yes	Yes	Yes	Yes	Yes
Officer E	No	Yes	Yes	Yes	Yes

Los Angeles Board of Police Commissioners' 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 D and E and Sergeant A's tactics to warrant a Tactical Debrief.

B. Intermediate Use of Force

The BOPC found Officers D and E's Intermediate 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 subject 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 subject;
- Whether the subject 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 subject to escape;
- The conduct of the subject 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 subject;
- Officer versus subject 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 subject.

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 subject 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**

The evaluation of tactics requires consideration be given to the fact officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Tactical De-Escalation Techniques:

- *Planning,*
- *Assessment,*
- *Time,*
- *Redeployment and/or Containment,*
- *Other Resources, and*
- *Lines of Communication.*

Planning and Assessment – Upon arrival, Officer A observed the Subject by the RV and observed him holding what appeared to be a log by the generator. Officer B noted the Subject immediately reached for his waistband as if he was holding a firearm. In assessing the Subject's demeanor, Officer D observed the Subject making movements toward his waistband and using his hand to make the sign of the cross, while stating, "If I die, we all die!" Officer D believed the Subject wanted to engage the officers with a firearm. Officer E assessed and observed the Subject gripping what he/she believed to be a firearm in his front waistband. Assessing the 40mm rounds discharged by Officer D did not cause the Subject to remove his hand from his waistband, Officer E discharged a round from his/her 40mm LLL.

In an effort to gain situational awareness, Sergeant A was briefed by Officer C. Sergeant A verbalized regarding the officers' roles, the plan, delegated communication of information to senior officers to prevent contagious fire, and used physical contact with the respective officer he/she was providing direction to, ensuring comprehension of his/her directions. Sergeant A assigned officers to an arrest team, including a shield officer, intermediate force options, and lethal force options prior to moving forward to take the Subject into custody. On the advice of another officer, Sergeant A concurred with moving the police vehicles forward as additional cover. Officers attempted to de-escalate the Subject for approximately seven minutes prior to intermediate force being used. In Sergeant A's assessment, he/she believed that the incident would have likely escalated to deadly force had the officers waited longer.

According to the FID investigation, Officer D's finger was in the trigger guard of the 40mm LLL for approximately two seconds prior to firing his/her first round. After reloading the 40mm LLL with a third round, Officer D's left index finger entered the trigger guard area and remained there for approximately seven seconds. According to Officer D's assessment, the Subject was still a threat as he continued to hold his waistband and Officer D believed that he/she might have to engage the Subject.

The BOPC evaluated the issue of Officer D's finger in the trigger guard area and had no concerns.

Time and Lines of Communication – Officers A and B repeatedly ordered the Subject to show his hands and to stop touching his waistband. The Subject ignored them. Officer D advised that he/she had a 40mm and took a position to the right of Officer B, along the passenger side of the police vehicle. Officer D attempted to de-escalate the Subject and gain his compliance by speaking with him; however, the Subject became increasingly agitated, maintained hold of the object in his front waistband and refused to comply. Officer E approached the open driver door of Officers A and B's police vehicle and utilized the spotlight to further illuminate the Subject. Officer D warned the Subject that he/she would deploy the 40mm LLL and that the Subject could be injured, but the Subject still did not comply with commands. Additionally, an officer used the Public Address (PA) System to give commands to the Subject directing him to put his hands up and gave him additional Use of Force (UOF) warnings. After discharging a round at the Subject, Officer D provided a second UOF warning to him, but he refused to comply. Prior to discharging a round from his/her 40mm LLL, Officer E shouted "Forty," to alert the officers and supervisor accordingly.

Upon observing an object drop to the ground from the Subject's waistband, Officer E advised surrounding officers that the Subject had dropped an object. Officer D then alerted the officers that the object the Subject dropped was a cordless drill.

Sergeant A reconfirmed Officer D's role as utilizing intermediate force and stated, "Alright, you go forty." Sergeant A stated to Officer E, "If he tries to get up or whatever, or pull it out, forty again." Sergeant A then directed an officer, who was standing next to him, to alert the surrounding officers that the 40mm LLLs were going to be used and the officer did so.

Redeployment and/or Containment – At Sergeant A's request, Officer C directed Officer E, who was equipped with the second 40mm LLL, to redeploy to the passenger side of the primary unit's police vehicle. Once Officer E did so, he/she took a position to the right, offset from Officer D. As officers attempted to gain compliance from the Subject, he continued to relocate himself, causing Officers D and E to readjust their positions in order to maintain a visual on the Subject. The officers and supervisor, who were positioned on the right side of the primary unit's police vehicle, utilized the ballistic door panel, the RV, distance, and angles for cover.

The BOPC analyzed the Subject's continuous movement and officers' use of distance and angles from the RV. The Board noted that an additional police vehicle could have been positioned next to the primary unit's police vehicle to provide more cover as an additional option; however, there was no substantial deviation from Department training standards.

Other Resources – Upon arrival, Officer C requested a “back-up” over the radio. Officers D and E each deployed 40mm LLLs as an intermediate force option while other officers had already deployed their service pistols. An officer requested an RA for the Subject due to the deployment of the 40mm rounds.

In evaluating the use of de-escalation in this incident, the BOPC noted that the officers and supervisor did not rush as they attempted to gain the Subject’s compliance over a seven-minute period and were invested in a safe disposition, demonstrating a reverence and preservation for human life. The officers maintained their distances as they attempted to reason with what they believed was an armed individual and requested an RA early as the incident unfolded. The BOPC opined that the officers and supervisor were effective with regard to communication amongst each other and working as a team, leading to a successful conclusion in this incident and safeguarding the victims.

Command and Control

- Sergeants A and B responded to the backup request. Upon arrival, Sergeant A broadcast that he/she was the Incident Commander (IC) and was briefed by Officer C regarding the incident. Once Sergeant A obtained situational awareness of the incident, he/she developed a tactical plan and assigned roles. As officers gave commands to the Subject, the Subject continued to hold his waistband and squeeze what appeared to be the grip of a handgun. Sergeant A directed Officers D and E to discharge the 40mm LLL at the Subject. According to Officers D and E, they discharged the 40mm LLL based on their independent assessment.

When the Subject fell to the ground after being struck by the third 40mm round, Sergeant A instructed the contact team to take the Subject into custody. Once the Subject was taken into custody without incident, Sergeant A confirmed an RA had been requested for the Subject.

During the incident, Sergeant A performed multiple supervisory tasks such as declaring him/herself as IC, separating and monitoring the involved officers, directing officers to set up a crime scene, canvassing for witnesses, and establishing a Command Post.

Sergeant B assisted Sergeant A in managing the scene. Sergeant B also notified Newton Patrol Watch Commander, Lieutenant A, that the incident could change from a Non-Categorical Use of Force (NCUOF) to a Categorical Use of Force (CUOF) based on the Subject’s injury.

Lieutenant A arrived at the scene and directed Sergeant A to transport and monitor Officers D and E.

The investigation was initially categorized as a NCUOF. Once the incident was determined to be a CUOF, the involved officers were separated, monitored, and admonished not to discuss the incident.

At approximately 0510 hours, Lieutenant A was notified the Subject was being admitted to the hospital to surgically repair his fractured finger. Lieutenant A notified FID and advised that the Subject had been hospitalized as a result of the UOF.

The BOPC commended Sergeant A for his/her leadership in this incident. Sergeant A was deliberate, clearly communicated, relied on his/her senior officers, and ensured the officers were clear on their role designations. The Board opined that Sergeant A was very calm, actively engaged in leadership, coordinated his/her resources, delegated roles, and provided deliberate and clear communication with the officers in this incident, thus reducing the possibility of contagious fire.

The BOPC determined that the overall actions of Lieutenants A as well as Sergeants A and B were consistent with Department training.

The BOPC found Officers D and E and Sergeant A's tactics to warrant a Tactical Debrief.

B. Intermediate Use of Force

- **Officer D** – 40mm LLL, two 40-millimeter rounds from an approximate distance of 41 feet for the first round and an approximate distance of 50 feet for the second round.

First Round

According to Officer D, he/she heard Sergeant A's directions to discharge the 40mm LLL; however, he/she individually assessed the need to discharge the 40mm LLL due to the Subject's actions. The Subject continued holding his waistband with what Officer D believed was a handgun. Believing the Subject posed an immediate threat to the officers' safety, Officer D aimed at the Subject's beltline and discharged one 40mm round to protect the officers from the immediate threat of serious bodily injury and an attempt to prevent an OIS. The round struck the Subject's right thigh. After Officer D discharged the first 40mm round, the Subject bent at the waist before he took several steps backward, while still holding his front waistband with his right hand.

Second Round

According to Officer D, he/she reloaded the 40mm LLL and warned the Subject to put his hands up; otherwise the 40mm LLL would be deployed again. The Subject continued to refuse to comply and made a hand gesture indicating the sign of the cross. Believing the Subject was going to remove what Officer D believed was a handgun from his waistband, Officer D discharged a second round from his/her 40mm LLL, approximately 19 seconds after the first 40mm round. Officer D aimed at the Subject's beltline, and the round struck him on the right side of his upper abdomen/lower chest area.

- **Officer E** – 40mm LLL, one 40-millimeter round from an approximate distance of 54 feet.

According to Officer E, after the Subject had been struck by Officer D's second 40mm round, he/she observed the Subject move as though he was going to remove what Officer E believed to be a firearm from his waistband. Fearing for everyone's safety, approximately four seconds after the second 40mm round was discharged, Officer E discharged one round from his/her 40mm at the Subject's beltline. The 40mm round struck the Subject's left hand, and, as a result, the Subject guided himself to the ground and a cordless drill fell from the Subject's waist area.

The BOPC discussed Officers D and E's use of intermediate force. In their assessment, the Board considered that each time Officers D and E discharged their 40mm LLLs, the Subject refused to show his hands and maintained a hold of what officers believed to be a gun in his waistband. The BOPC noted the Subject admitted to intentionally simulating a handgun in his interview. For an approximate seven-minute period, officers attempted to de-escalate the Subject through communication, yet despite the multiple attempts, the Subject repeatedly defied the officers' orders.

In analyzing the evidence in this incident, the BOPC determined that both 40mm rounds discharged by Officer D and the single 40mm round discharged by Officer E were in response to the Subject's threatening behavior as he continued to simulate being armed and thereby posed an immediate, perceived, and reasonable threat to the safety of the officers and victims.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers D and E, in the same situation, would reasonably believe the use of intermediate force was proportional and objectively reasonable.

Therefore, the BOPC found Officers D and E's Use of Intermediate Force to be In Policy.