

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

OFFICER-INVOLVED SHOOTING – 039-22

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

Foothill 7/21/22

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

Officer A 8 years, 3 months

Reason for Police Contact

Officers observed the Subject exit his vehicle holding in his right hand an object that they believed to be a pistol. The Subject turned in the officers' direction and began to raise the object, resulting in an officer-involved shooting (OIS). The Subject was not struck by gunfire and fled to a side yard of his residence. A perimeter was established and Metropolitan Division Special Weapons and Tactics (SWAT) responded to the scene and subsequently searched the residence. It was determined that the Subject had fled the location.

A black butane lighter, resembling a pistol, was recovered from the scene.

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

Subject: Male, 37 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 (BOPC) 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 July 11, 2023.

Incident Summary

On Thursday, July 21, 2022, Officers A and B were assigned to an overtime crime suppression detail. The officers were regularly assigned as partners.

Prior to starting their watch, the officers received information regarding a recent increase in gang-related shootings. Officers A and B were tasked with patrolling the areas where those shootings had occurred to reduce the incidents of violent crime.

At approximately 1907 hours, the officers were travelling in their police vehicle when they observed what they immediately identified as the Subject's pickup truck backed into the driveway of his residence. The Subject was known to the officers to be an active gang member on Post-Release Community Supervision (PRCS), subject to search and seizure as a condition of his release from state prison. They also had prior knowledge that the Subject had a history of committing robberies and possession of firearms, and that he tended to flee from the police. Officer A recalled information that the pickup truck had also been used in an armed robbery.

Officers A and B acknowledged their observations of the truck with one another and decided to investigate further.

As Officer B drove north toward the residence, they observed the Subject, initially seated in the driver seat of the pickup, exit the truck, and face them. Both officers reported that the Subject appeared to make eye contact with them, leading them to believe that he had identified them as police officers.

According to Officer A, he/she immediately observed the Subject holding what he/she perceived to be a black pistol in his/her right hand with the barrel pointed downward toward the ground. The Subject simultaneously turned to his left and began walking east along the driveway toward his residence.

Note: Officer B did not initially observe an object in the Subject's hand. However, when the Subject turned and began quickly moving toward his residence, Officer B described being immediately "on edge," believing that the Subject was in possession of drugs or a pistol, or he was otherwise out of compliance with PRCS conditions.

According to Officer B, he/she heard Officer A state, "Gun, gun, gun," causing Officer B to turn his/her attention to the Subject's hands. He/she then observed what he/she described as a blue steel Glock type pistol in the Subject's right hand. Officer B began to stop their vehicle.

Note: Officer A recalled alerting Officer B to the pistol but believed that he/she stated "hey, hey, hey," and did not have time to fully communicate his/her observation of the pistol to his/her partner.

As the Subject moved toward the house, both officers observed him turn his upper body to the right, again in their direction, making eye contact with them.

Referring to past experiences with the Subject, Officer B recalled that the Subject would attempt to run directly into his residence without stopping. Officer B added that his/her observation of the Subject looking back at the officers while holding a pistol in his hand, caused him/her to believe that the Subject was about to raise the pistol and fire.

Officer B further described the Subject's body position to be slightly hunched over as he looked back toward the officers, appearing to be readying himself to fire and attempting to lessen his physical profile.

According to Officer A, as the Subject turned toward the officers, he simultaneously began to lift the pistol upward at the elbow, causing Officer A to believe the Subject was turning in preparation to fire.

Upon his/her initial observation of the Subject holding a pistol, Officer A unholstered his/her pistol by leaning rearward and to his/her left while seated in the passenger seat of the police vehicle. He/she acquired a two-handed grip of his/her pistol and locked his/her arms outward through the open passenger window.

Note: Officer A believed that he/she had rested his/her arms on the vehicle door panel for stability. Video footage from his/her body-worn video (BWV) camera depicted his/her arms extended outward without being supported by the door.

According to Officer A, he/she had not anticipated conducting an investigation until after observing the Subject. His focus was then on the Subject and therefore he/she did not have time to broadcast their Code Six (on-scene) location. He/she estimated the time span between turning onto the street to the moment he/she observed the Subject with the pistol to have been one to two seconds. In BWV footage, approximately five seconds elapsed between their northbound turn and the time Officer A was captured with his/her pistol unholstered.

Believing that the Subject was going to fire, Officer A fired three consecutive rounds at the Subject in a northeasterly direction, from approximately 22 feet, as the Subject moved toward the rear of his pickup truck. According to Officer A, the Subject was turning in his/her direction and in the process of lifting the pistol above his right hip when he/she fired his/her first round.

Officer A recalled that, as the Subject turned, he/she (Officer A) focused on the front sight of his/her pistol, aimed at the Subject's torso, and fired. He/she then assessed and observed the Subject in the same position with his head turned, looking back at the officers with his upper body turned toward them and his pistol being raised above his

hip. Officer A fired a second time and assessed. Observing the Subject, again, in the same position, Officer A fired a third time.

Upon a third assessment, Officer A observed that the Subject had either dropped or thrown the pistol and run out of view through a gate into the side yard of the residence.

Note: According to Officer A, he/she was unsure of the Subject's motion as he/she discarded the pistol but recalled it sliding across the driveway at the rear of the pickup truck as the Subject entered the side yard.

Footage obtained from the officers' digital in-car (DICV) camera captured their approach to the location. Once in view, the Subject could be seen exiting the pickup truck and standing near the rear driver-side door, leaving the front driver-side door open. He appeared to face the officers with his right arm held in front of him at waist level, bent at the elbow. He then turned to his left and began walking toward his residence, moving his right hand toward the ground as his right arm straightened downward. As he continued to walk away from the officers' direction, toward the rear of the pickup truck, the Subject turned his head and right shoulder back toward the officers while again lifting his right hand upward to waist level, with his right elbow bent. The right side of his body then moved out of the camera view. As the camera recaptured the entirety of his body, the Subject appeared to be turning his head from right to left, away from the officers' direction, with his hand and arm in front of him. He then immediately stepped around the rear of his truck and into the open gate to the side yard, out of the camera's view.

The Subject's residence was equipped with a security video camera that was mounted to the front of the garage at the north side of the driveway. It faced southwest and provided a view of the driveway and street. In footage of the OIS, the officers' vehicle is captured approaching the location, northbound from Stagg Street. The Subject, initially seated in the driver's position of his pickup truck, was captured exiting as the officers approached. He momentarily stood outside of the truck, facing the officers' vehicle, then abruptly turned toward the house and began walking east in the driveway. Before reaching the rear of the truck, the video captured him turn his head and right shoulder back toward the officers. The Subject's hands and lower body were not visible at the onset of the footage.

The security video further captured Officer A appear to raise his/her pistol. (BWV footage captured Officer A fire his/her first round as he/she raised the pistol to window level.) As captured in the security video, a bullet cartridge case appeared to be ejected from Officer A's window at that time. As the Subject continued walking toward the house and looking in the officers' direction, Officer A appeared to fire a second round as an apparent discharge was visible from the position of Officer A's pistol. The Subject is then seen turning his head and right shoulder back toward the house. Simultaneously, he neared the rear of the truck and his hands entered the camera view. It captured him gripping a black object, later discovered to be a black butane torch lighter, that protruded from the top of his right hand, and an unknown cylindrical object in his left

hand. An additional bullet cartridge case appeared to be ejected from Officer A's window as he/she fired a final round as the Subject reached the back of the truck, immediately adjacent to the gate. The Subject then ran into the yard and out of the security camera's view. The Subject's body obstructed the view of the black butane torch lighter as he turned toward the gate.

Note: Officer B did not observe the Subject raise his/her arm.

Footage from Officer A's BWV camera depicted him/her fire the three rounds within one second, as Officer B was in bringing their vehicle to a stop. According to Officer A, he/she believed that the vehicle was stopped when he/she fired his/her first round.

In regard to firing from the vehicle, Officer A stated, "...my level of fear was so high of myself and my partner that I understand that you're not supposed to shoot from moving vehicles unless it's under exigent circumstances. And I believed that this guy was going to use his firearm on me and my partner. And that's -- that's the reason why, um, I fired." He further explained that the event developed in a "split-second" and due to his/her focus on the Subject's actions, he/she was unable to exit his/her vehicle and issue any commands to the Subject or activate his/her BWV camera until immediately following the OIS.

Note: Due to Officer A's seated position in the police vehicle, the BWV footage captured the interior of the vehicle and does not depict the Subject's actions during the OIS.

According to Officer B, after approximately one to two seconds of Officer A announcing his/her observation of a gun, he/she heard Officer A fire what he/she believed to be four to five times as he/she (Officer B) brought the police vehicle to a stop. Officer B positioned their police vehicle immediately south of the driveway, facing in a northeasterly direction toward the front, left portion of the Subject's truck. He immediately exited and unholstered his/her pistol, holding it in a two-handed grip at a low-ready position with his/her finger along the frame.

According to Officer B, the Subject had run out of his/her view to the rear of the truck and into the yard. Regarding his/her unholstering, Officer B indicated a concern that the Subject could exit the yard with the pistol and that he/she was unable to see into the yard from his/her position at the front of the house.

At 1907:04 hours, immediately following the OIS, Officer A exited the police vehicle and activated his/her BWV camera. He held his/her pistol with his/her right hand, with his/her finger along the frame, in a single-handed grip, retrieved his/her police radio with his/her left hand, and began to broadcast. Officer B immediately advised Officer A that he/she would assume responsibility for communications. According to Officer B, he/she did so in order to allow Officer A to maintain his/her role as the designated cover officer, as planned during their prior discussions on tactics. At 1907:07 hours, Officer B

broadcast a help call, providing the officers' location and information regarding the Subject.

Two additional individuals exited the truck after the Subject: a juvenile male (Witness A) adult female (Witness B). Security video from the residence depicted Witness A exit the right rear passenger door of the pickup truck as the police vehicle approached. He immediately moved toward the rear of the truck and entered the gate leading to the side yard south of the driveway, ahead of the Subject, as the OIS occurred.

Witness B exited the front passenger door of the pickup truck approximately 10 seconds after the OIS had occurred and the Subject and Witness A had fled into the yard. She then ran toward the front entryway of the residence, immediately north of the driveway, on the opposite side of the truck from the officers.

A SWAT deployment was initiated, and the house was eventually cleared. The Subject had escaped, but was apprehended several weeks later. The Subject was uninjured as a result of the OIS.

BWV and DICV Policy Compliance

NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DIC ACTIVATION	DIC RECORDING OF ENTIRE INCIDENT
Officer A	No	N/A	No	No	Yes
Officer B	No	Yes	Yes	No	Yes

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 this incident, the BOPC made the following findings:

A. Tactics

The BOPC found Officer A's tactics to warrant a finding of Administrative Disapproval. There was no finding for Officer B.

B. Drawing and Exhibiting

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

C. Lethal Use of Force

The BOPC found Officer A's lethal use of force to be Out of 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 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 Officers 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 Officers 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 Officers 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 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

Tactical De-Escalation Techniques

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

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 - According to Officer A, he/she and Officer B had worked in the gang unit for two years and were consistent partners for the past month. While discussing tactics, the officers had agreed that the driver would be responsible for contact & communications and the passenger would be the designated cover officer (DCO), should something spontaneous occur. Officer B added that they had previously discussed foot and vehicle pursuit tactics, attended gang unit training, and conducted debriefs after completing tactical operations.

Although a standard plan and understanding were in place between the officers, the BOPC considered that the UOFRB noted that Officers B and A were patrolling in an area where a known gang member with an extensive criminal history, who was known to flee from officers, lived. As such, the UOFRB would have preferred that Officers A and B had discussed a specific plan should they encounter the Subject.

Assessment - As Officers A and B approached, they observed the Subject's truck parked in his driveway. The officers acknowledged their observations with one another and decided to investigate further. While Officer B could see that there was

a person in the driver's seat, he/she could not tell if it was the Subject. As the officers approached the residence, Officer A observed a silhouette in the driver's seat but did not know if it was the Subject. As the officers got closer, Officer A recognized the Subject. According to Officer A, the Subject saw the officers and immediately exited the truck. According to Officer B, he/she also recognized the Subject as he exited the truck.

As soon as the Subject exited the truck, Officer A assessed that he was holding what appeared to be a pistol in his right hand and alerted Officer B. Based on the Subject's subsequent actions, Officer A assessed an imminent lethal threat, at which point the OIS occurred. Officer A indicated that he/she assessed while discharging his/her pistol. Based on his/her assessment, Officer A believed that the Subject continued to present an imminent lethal threat. After discharging his/her third and final round, Officer A assessed that the Subject was no longer an imminent lethal threat as he had either thrown or dropped the pistol and fled into the backyard.

According to Officer B, he/she observed the silhouette of a second male, later identified as 14-year-old Witness A, run toward the side gate with the Subject. Officer B was unsure if Witness A came from the residence or the truck and was unable to obtain a clear view of him. Officer B also reported seeing a female, later identified 25-year-old Witness B, in the front passenger seat of the Subject's truck. After the OIS, Witness B exited the truck and ran into the residence.

Arriving at the scene, Sergeant A assessed the situation and determined that the Subject may be a barricaded Subject.

Time, Redeployment/Containment – As the officers drove north toward the residence, the Subject exited the truck and faced officers while holding what they believed to be a pistol in his right hand, resulting in an OIS. Immediately after the OIS, Officer B stopped the police vehicle, and the officers initially used it for cover. When Witness B exited the Subject's truck and ran toward the residence, Officer B moved north into the street to obtain a better view of the gate and rear yard, utilizing the Subject's truck as cover. He/she soon returned to his/her police vehicle and used it as cover. With assistance from additional units, the officers contained the Subject's residence; however, it was subsequently determined that the Subject fled the residence.

The UOFRB noted that by continuing to move forward after seeing the Subject exit the truck (instead of stopping mid-block), the officers limited the time they had to de-escalate the situation. However, the UOFRB also noted that the Subject's actions at that point forced the officers into a situation where they believed that they had to take immediate action to defend their lives. Additionally, Officer B's use of cover is discussed further in Debriefing Point No. 3.

Other Resources - After the OIS, additional personnel, including an air (helicopter) unit and Metropolitan Division Canine, responded to the scene. As the incident

progressed, SWAT was contacted. During their investigation, SWAT personnel used crisis negotiators, a cellular phone, and a remote-controlled robot in an attempt to locate the Subject and prevent the situation from escalating. As a result of their efforts, SWAT personnel subsequently determined that the Subject had fled the residence. Aware that the Subject was one of three suspects in multiple robberies, and that the two additional occupants of the truck were unaccounted for, the SWAT lieutenant directed SWAT personnel to conduct a warrantless search of the residence before clearing the scene, for the FID investigators' safety.

Lines of Communication - Observing the Subject exit the truck, Officer B warned his/her partner that the Subject was going to run. According to Officer A, he/she then observed the Subject holding an object that he/she believed was a pistol and alerted Officer B by stating, "Hey, hey, hey!" Per Officer A, he/she did not have time to fully communicate his/her observation of the pistol to Officer B. According to Officer B, he/she heard Officer A state, "Gun, gun, gun!" Turning his/her attention to the Subject's hands, Officer B saw what he/she described as a blue steel Glock-type pistol in the Subject's right hand.

According to Officer A, because the Subject posed an imminent threat of death or serious bodily injury to him/her and his/her partner, it was not feasible to order the Subject to drop the pistol before the OIS.

After the OIS, Officer A exited the police vehicle and retrieved his/her police radio to broadcast their Code Six location. Officer B advised Officer A that he/she would assume communications responsibility and advised CD of their location, that officers needed help, and that shots had been fired. Officer B did so to allow Officer A to remain as the designated cover officer (DCO). Officer B also relayed information to responding units to help establish a perimeter to contain the Subject.

As occupants began to exit the residence, Witness C, walked toward the rear of the truck. As Witness C approached the perceived pistol, Officer A repeatedly directed him to, "Get away from the gun!" In response, Witness C told the officers that the object was a lighter. Believing that the object was a pistol, the officers continued to instruct Witness C to stay back.

During the on-scene investigation, Witness C advised that the Subject had fled.

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

Debriefing Point No. 1 Code Six

When Officers A and B approached the area of the Subject's residence, they observed the Subject's pickup truck parked in his driveway. The officers acknowledged their observations with one another and decided to investigate further. As the officers drove north toward the residence, the Subject exited the truck and faced officers while holding what they believed to be a pistol in his right

hand, resulting in an OIS. Immediately after the OIS, Officer B advised CD of their location, that shots had been fired, and that officers needed help.

The BOPC considered that the UOFRB noted that while patrolling, Officers A and B observed the Subject's pickup truck parked at his residence. Although the officers recognized the truck, they did not confirm that the Subject was inside until they were approaching the residence. Once the Subject exited the truck, Officer A observed that the Subject was holding an object that he/she believed was a pistol. From there, the incident unfolded quickly and the OIS occurred. The UOFRB noted that immediately after the OIS, Officer A retrieved his/her police radio to broadcast their Code Six (on scene) location. Officer B advised Officer A that he/she would assume communications responsibility and advised CD of their location, that officers needed help, and that shots had been fired. Given the officers' knowledge of the Subject's history, the UOFRB would have preferred that they had placed themselves Code Six before approaching the residence; however, the UOFRB noted that the officers had not confirmed that the Subject was in the truck until they were mid-block. The Subject then exited the truck with an apparent pistol, forcing the officers into a situation where they believed that they had to take immediate action to defend their lives.

Based on the totality of the circumstances, the BOPC determined that the tactics employed by Officers A and B were not a deviation from Department-approved tactical training.

Debriefing Point No. 2 Shooting from a Moving Vehicle

Officer A fired three rounds as Officer B was bringing their police vehicle to a stop. According to Officer A, he/she believed that the police vehicle was stopped when he/she fired his/her rounds.

The BOPC noted that the UOFRB assessed Officer A's tactics as they pertain to shooting from a moving vehicle. The UOFRB noted that per Department policy, firearms shall not be fired from a moving vehicle, except in exigent circumstances and consistent with the policy regarding the use of lethal force. The UOFRB also noted the factors that may be considered which include whether the officer's life or the lives of others were in immediate peril and whether there was no reasonable or apparent means of escape.

Here, the UOFRB noted that when Officers A and B first drove toward the residence, they had not seen the Subject, only his truck. As the officers continued toward the residence, they observed the Subject exit the truck holding an object they believed was a pistol. While the Subject could have left the object in his truck, he chose to carry it despite the fact it was designed to resemble a pistol. As the Subject moved toward the residence, both officers observed the Subject turn his upper body to the right, in their direction, making eye contact with them. While the Subject could have discarded the object at this point, he chose to retain it. According to Officer A, when the Subject turned toward the officers, he simultaneously began to lift the object,

causing Officer A to believe the Subject was preparing to fire. In response, Officer A discharged three rounds at the Subject from the moving police vehicle. Based on the totality of the circumstances, the UOFRB Majority determined that it was reasonable for Officer A to believe his/her life and Officer B's life were in immediate peril and there was no reasonable or apparent means of escape when the OIS occurred. As such, the UOFRB Majority determined that the tactics employed by Officer A were not a deviation from Department-approved tactical training.

While the UOFRB Minority understood that Officer A perceived a lethal force situation, as indicated below, the UOFRB Minority determined that the Subject's actions did not constitute an imminent lethal threat. As such, the UOFRB Minority could not conclude that when the OIS occurred, the officers' lives were in immediate peril and that there were no reasonable or apparent means of escape.

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

Debriefing Point No. 3 Cover and Concealment

After the OIS, Witness B exited the Subject's truck and ran toward the residence. After this occurred, Officer B moved northbound in the street to obtain a better view of the gate and rear yard. As he/she did so, Officer B attempted to use the Subject's truck as cover. Once Officer B began to cross the front of the truck, he/she realized that he/she was losing cover and returned to the police vehicle.

The BOPC noted that the UOFRB assessed Officer B's use of cover during this incident. The UOFRB noted that after Witness B fled, Officer B chose to leave the cover of his/her police vehicle's ballistic door and use the truck as cover. According to Officer B, he/she did so to achieve a better angle to obtain a view of the gate and rear yard. Realizing that the truck would not provide cover from the front door, Officer B redeployed to his/her police vehicle.

At the UOFRB, a Subject Matter Expert (SME) from Training Division's Tactics Training Unit was asked to provide insight on the Department's training as it relates to the use of cover and concealment during tactical incidents similar to those encountered by Officer B during this incident. The SME stated that while officers are taught to exploit cover and concealment when available, no published Department document requires officers to remain behind cover under all circumstances. During his/her testimony, the SME noted the surveillance video which depicted Officer B's use of cover. Based on the footage, the SME opined that Officer B appeared to be exploiting the right front corner of the truck while assessing for threats. The SME also noted that the camera provided an overhead view which he/she opined could provide a different perspective than Officer B's.

The UOFRB Majority was critical of Officer B's decision to leave cover. The Majority noted that Officer B had already broadcast a help call and that additional resources were responding. Although Officer B considered the truck as an acceptable form of cover, the Majority noted that it had not been properly cleared and may have contained additional suspects. The Majority also noted that Officer B had stated he/she unholstered his/her service pistol because he/she was concerned the Subject or another could exit the residence with a firearm, and that he/she may have to use deadly force. While the decision to leave cover to achieve a better angle may be reasonable in some instances, here the Majority opined that it was not. Based on the totality of the circumstances, the Majority determined that Officer B's decision to leave his/her police vehicle and use the truck as cover placed him/her at a significant tactical disadvantage and unnecessarily risked his/her safety.

The UOFRB Minority disagreed with the Majority's conclusion. In forming their opinion, the Minority relied upon several factors, including the SME's testimony. During their assessment, the Minority noted that Officer B briefly left cover to observe an area of the residence which was a possible route of escape for the Subject. While doing so, Officer B used the truck as cover from anyone inside the residence as he/she attempted to gain situational awareness by getting a view of the gate which led to the rear of the residence. Furthermore, Officer B adjusted his/her behavior when he/she recognized that the Subject's truck did not provide him/her with adequate cover. Officer B neither approached the truck nor attempted to apprehend any of the fleeing individuals. Based on the totality of the circumstances, the Minority opined that Officer B's actions were reasonable and not a substantial deviation from Department-approved tactical training.

The BOPC did not make a majority determination regarding Officer B's actions in this regard.

Debriefing Point No. 4 Required Equipment – Taser

The BOPC considered that the UOFRB noted that per the FID investigation, Officer A was not carrying a Taser on his/her person during his/her incident. The UOFRB also noted that as a uniformed field officer, he/she was required to do so. Additionally, although it does not appear that Officer A would have used the device during this incident, the UOFRB noted that officers limit their de-escalation options when they do not have a Taser on their person.

Based on the totality of the circumstances, the BOPC determined that Officer A's actions were a substantial deviation, without justification, from Department-approved tactical training.

B. Drawing/Exhibiting

Officer A - First Occurrence

According to Officer A, he/she observed the Subject holding what he/she believed to be a pistol. Officer A then observed the Subject lift his right arm and bladed his body. Believing that the situation would escalate to the point where lethal force was justified, Officer A unholstered his/her pistol while seated in the passenger seat of the police vehicle.

Officer B - First Occurrence

According to Officer B, approximately one to two seconds after Officer A announced his/her observation of a gun, he/she heard him/her discharge his/her pistol. Officer B brought the police vehicle to a stop and exited. Concerned that the Subject or another could exit the residence with a gun, and that he/she (Officer B) may have to use lethal force, Officer B unholstered his/her pistol.

Officers A and B - Second Occurrence

According to the FID investigation, Officers A and B later unholstered a second time to facilitate movement to cover, before holstering and being removed from the scene.

The BOPC noted that the UOFRB assessed Officers A and B's drawing and exhibiting of their pistols. Concerning the officers' first occurrence, the UOFRB noted that upon exiting his/her truck, the Subject was armed with what appeared to be a pistol which caused both officers to believe that the incident could require the use of lethal force. In addition, there were others within the truck who fled and may have also been armed. Regarding the officer's second occurrence, the UOFRB noted that the Subject was still outstanding and there was concern that he or another may emerge with a gun. Based on the totality of the circumstances, the UOFRB opined that the officers' actions conformed to the Department's drawing and exhibiting policy.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B would reasonably believe that the tactical situation may escalate to the point where deadly force may be justified. Therefore, the BOPC found Officers A and B's drawing and exhibiting to be In Policy.

C. Lethal Use of Force

- **Background** - According to Officer A, his/her background was a solid garage door with no windows. Additionally, when Officer A discharged his/her pistol, he/she did not observe anyone behind the Subject.

Note: Security video from the residence depicted Witness A exiting the right rear passenger door of the pickup truck as the police vehicle approached. Witness A immediately moved toward the rear of the truck and entered the gate ahead of the Subject, as the OIS occurred. Witness

B exited the front passenger door of the pickup truck approximately 10 seconds after the OIS.

Officer A – Pistol, three rounds in one second from approximately 22 feet.

According to Officer A, the Subject was turning in his/her direction and in the process of lifting the pistol above his right hip when he/she (Officer A) discharged his/her first round. Officer A recalled that as the Subject turned, he/she (Officer A) focused on the front sight of his/her pistol, aimed at the Subject's torso, and fired.

Officer A assessed and observed the Subject in the same position with his head turned, looking back at the officers with his upper body turned toward them and the pistol raised above his hip. In response, Officer A discharged his/her round and assessed.

Observing that the Subject was still in the same position, Officer A discharged his/her third round. Continuing to assess, Officer A observed that the Subject had either dropped or thrown the pistol and run out of view through a gate into the side yard of the residence.

According to the FID investigation, BWV footage captured Officer A discharging his/her first round as he/she raised his/her pistol to window level. Per the surveillance video, as the Subject continued walking toward the house and looking in the officers' direction, Officer A discharged his/her second round. The Subject then turned his head and right shoulder back toward the house. Simultaneously, he neared the rear of his truck and his hands came into view. The footage captured the Subject gripping a black object that protruded from the top of his right hand. Officer A fired a final round as the Subject reached the back of the truck, immediately adjacent to the gate. The Subject then ran into the yard and out of the security camera's view. The Subject's body obstructed the security camera's view of the black object as he turned toward the gate.

The BOPC noted that the UOFRB assessed Officer A's lethal use of force. For clarity, the UOFRB's assessment will be separated into two segments. The first segment is regarding Officer A's first and second rounds, and the second segment is regarding his/her third round.

Note: During their assessment, the UOFRB inquired with the SME regarding the concept of "lag time," often used to describe the time it takes a person to react to an action. According to the SME, studies have indicated that it takes 0.7 to 1.5 seconds for a person to perceive, process, and react to a stimulus.

Regarding Officer A's first and second rounds, there was a UOFRB Majority and a UOFRB Minority opinion, with the UOFRB Majority opining the rounds were in policy and the UOFRB Minority opining they were out of policy.

The UOFRB noted Officer A's knowledge of the Subject's criminal history. The UOFRB also noted Officer A's statements regarding the Subject's decision to exit the truck holding what appeared to be a pistol after seeing the officers.

The UOFRB Majority noted that Officer A saw the Subject's right arm bent at waist level as he bladed his body and looked back over his right shoulder at the officers. The Majority also noted Officer A's belief that the Subject was raising the pistol. Based on his/her observations, Officer A believed that the Subject was preparing to shoot at the officers. The Majority also considered the length of time from when the Subject exited the truck to the OIS and opined that Officer A did not have time to order him to drop the pistol. Based on the totality of the circumstances, the Majority opined that Officer A reasonably believed that the Subject was armed with a pistol and posed an imminent lethal threat, justifying the use of lethal force for his/her first and second rounds.

The UOFRB Minority disagreed with the Majority's findings. The Minority noted that Officer A knew the Subject had run from the police in the past. Based on the speed at which the officers approached the truck, the Minority opined that they intended to detain the Subject before he reached his residence. The Minority also felt that their speed compressed the time they had to react to the Subject's actions. The Minority did note that as the Subject walked away from the officers and looked over his right shoulder, his right arm moved slightly to the right; however, the Minority opined this was the body's natural movement. Based on the video footage, the Minority did not observe the perceived imminent lethal threat that Officer A felt was presented to him/her. Rather, the Minority opined that the evidence indicated the Subject was attempting to flee into the house. Based on the totality of the evidence, the Minority concluded that the Subject did not present an imminent lethal threat to the officers, nor could Officer A's perception be attributed to a "lag time" reaction to an earlier perceived threat. As such, the Minority determined that rounds one and two were not objectively reasonable or necessary.

As it concerns Officer A's third round, there was a UOFRB Minority and a UOFRB Majority opinion, with the Minority opining it was in policy Majority opining that it was out of policy.

Regarding the UOFRB Minority, it was opined that Officer A fired three consecutive rounds with the same time elapsed between each round. The Minority discussed the "Graham v. Connor" standard which includes a reasonable officer's assessment rather than 20/20 hindsight and that officers are often forced to make split-second decisions as occurred in this incident. The Minority considered Officer A's statements and the rapid and dynamic nature of the incident. The Minority concluded that Officer A discharged his/her third round based on his/her perception of the Subject's bladed body positioning and movements. The Minority opined that it was reasonable for Officer A to believe that the Subject still intended to fire at the officers, making him/her an imminent lethal threat. As such, the Minority determined that Officer A's third round was justified under the Department's lethal force policy.

The UOFRB Majority disagreed with the Minority's opinion. Based on their review of the video footage, the Majority did not observe the imminent lethal threat that Officer A perceived when he/she discharged his/her third round. Based on the footage, the Majority opined that the Subject had his back turned toward the officers and was fleeing into the side gate of the residence, negating any imminency or necessity. The Majority also opined that Officer A's perception could not be attributed to a "lag time" reaction based on an earlier perceived threat.

As it pertains to Officer A's background, the UOFRB concluded that based on the video evidence, which depicted Witness A, the Subject, and the truck's position during the OIS, combined with Officer A's statements, Witness A was obscured from Officer A's view.

The BOPC, during its review of this incident, considered both Officer A's statement as well as the available video footage. The BOPC also considered the term "imminent" as defined by both Department policy and Section 835a(e)(2) of the California Penal Code. While the BOPC agreed that the Subject's lighter resembled a pistol, based on the available evidence, the BOPC did not believe that a reasonable officer in the same situation would have believed that the Subject had the apparent intent to immediately cause death or serious bodily injury to Officer A or his/her partner. Rather, it appeared that the Subject was attempting to evade the officers when the OIS occurred. Thus, the BOPC determined that an officer with similar training and experience as Officer A, in the same situation, would not reasonably believe that the use of lethal force was proportional, objectively reasonable, or necessary. Therefore, the BOPC found Officer A's lethal use of force to be Out of Policy.