

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

OFFICER-INVOLVED SHOOTING – 052-20

Division	Date.	Duty-On (X) Off ()	Uniform-Yes (X) No (X)
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Devonshire	11/1/20		
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Officer(s) Involved in Use of Force	Length of Service
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Officer D	6 years
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Reason for Police Contact

On November 1, 2020, officers responded to a radio call of a man with a gun. Before the officers' arrival, the Subject walked into a nearby supermarket and threatened the store manager with a gun. The manager called 911 and reported the assault. When officers arrived, they met with the manager, and began searching for the Subject. During their search, the Subject fell through the ceiling tiles and landed on his feet on top of the freezers. Officers verbalized with the Subject to surrender; however, he refused. The Subject ultimately jumped down from the freezers, produced a handgun, and fired his pistol at an officer, which resulted in an Officer-Involved Shooting (OIS). Neither the officer nor the Subject was struck by gunfire; however, the officer sustained a non-life threatening injury to his left forearm.

The Subject fled the market through a back door and ran across the street to a gas station. The Subject entered the store at the gas station, pointed the handgun at the clerk, and threatened to kill him. Officers surrounded the store and began communicating with the Subject. The Subject ultimately surrendered, and he was taken into custody without further incident.

Subject(s)	Deceased ()	Wounded ()	Non-Hit (X)
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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 incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent subject criminal

history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board 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 October 5, 2021.

Incident Summary

On Sunday, November 1, 2020, Victims A and B were walking with their small child when they observed the Subject in the middle of the roadway. According to Victim B, the Subject appeared to be on drugs and acting aggressively, so they quickened their pace in an attempt to avoid contact with him. The Subject seemed to focus on them, gesturing gang signs and yelling unintelligibly. Victim B then observed the Subject reach under his shirt and produce a handgun. Victim B alerted Victim A that the Subject was now armed with a gun, and they ran to the fire station seeking help. Once at the fire station, Los Angeles Fire Department (LAFD) called 911 and reported the incident.

At approximately 1751 hours, Communications Division (CD) broadcast a "415 man with a gun" call, and provided the Subject's description.

In response to the broadcast, Officers A and B broadcast they were responding to the call.

At approximately 1752 hours, Sergeant A broadcast that he/she was also en route to the call.

At approximately 1752 hours, while still en route, Officer B requested an Air Unit to respond to the call. They were advised by CD that the only helicopter was unavailable due to a foot pursuit in Southwest Division. CD further advised that the victims were inside the fire station.

While en route to the call, officers' BWV captured them discussing a tactical plan about what to do if they encountered the Subject. Officer A advised Officer B to ready the 40mm Less-Lethal Launcher (LLL), which he/she did by removing it from the rack in the center console and loading a 40mm round into the chamber. Officer A also advised Officer B that he/she would give the Subject commands, they would prone him out, and request a back-up unit.

At approximately 1755 hours, Officer B broadcast that the officers were in the area of the call. They drove around the area searching for the Subject; however, they were unable to locate him. At approximately 1759 hours, Officer B broadcast that the Subject was gone on their arrival.

Unbeknownst to the officers, the Subject had entered a nearby a supermarket. According to the store manager, Victim C, he observed the Subject in an employee-only area in the rear of the store. When Victim C questioned the Subject, the Subject stated he was looking for the restrooms, so Victim C directed him to the restrooms location. A short time later, a female co-worker alerted Victim C to a male that was in the women's restroom. Victim C realized it was the Subject and confronted him, asking him to leave the store.

According to Victim C, the Subject appeared to be under the influence of narcotics and started to become aggressive toward him. The Subject then lifted up his shirt, removed a handgun from his waistband and pointed it at Victim C, telling Victim C, "You better back the [expletive] off." Victim C put his hands in the air, backed away from the Subject, and called 911 to report the incident.

Meanwhile, at approximately 1804:45 hours, Officers A and B arrived at the fire station and met with Victims A and B. As Officer B exited the vehicle, he/she unloaded the 40mm launcher and placed it on the front passenger side floorboard. As the officers were interviewing the victims, CD broadcast another "415 man with a gun" call inside the supermarket.

Officer A realized the call at the supermarket was related to their current call and told the victims that he/she and Officer B needed to leave, but asked Victims A and B to remain at the fire station. The officers entered their vehicle and began driving toward the supermarket market, which was approximately 1000 feet north of the fire station. Officer B advised CD the broadcast was related to their call, and requested the call be assigned to them.

At approximately 1808:37 hours, Officer A broadcast they were at scene at the supermarket. Officer B once again loaded a round into the chamber of the 40mm LLL, and Officer A parked their vehicle just west of the west entrance to the supermarket. As the officers walked toward the entrance of the grocery store, Officer A was in the lead and briefly unholstered his/her pistol due to the fact that he/she believed the Subject may be armed with a gun. Officer B followed behind, armed with the 40mm LLL. Officer B requested CD to confirm if the Subject was still inside the supermarket, and CD repeated that the Subject was last seen inside the store.

Officer A holstered his/her pistol, and both officers entered the store through the west entrance. As they entered the grocery store Officer A visually scanned the area for the Subject. The officers were approached by Victim C, and Officer A asked him where the Subject was. Officer A's BWV captured Victim C reply, "I don't know, he's walking around the store."

At approximately 1809:33 hours, Officer B requested a back-up. Communications Division acknowledged the request and asked for the officers' location. Officer B replied that they were inside the supermarket.

As they proceeded to walk past the checkout aisles Officer A instructed Victim C to evacuate the market, stating, "Get everybody out of the store now! Where is he?" Victim C then requested that his employees page the customers to evacuate the store.

Officers A and B proceeded to walk toward the produce section located on the west side of the store and look down the aisles for the Subject. Officer B's BWV captured Officer A ask Victim C what the Subject looked like, and Victim C provided a description. Officer A then asked if the Subject was armed with a gun, and BWV captured Victim C reply, "He had it on him." The officers then turned around and continued their search by walking east, toward the bakery section located on the opposite side of the store, with Victim C following behind.

At approximately 1810:40 hours, Officer B's BWV captured an unidentified male shopper pointing south, toward the dairy section, advising officers the Subject was in the restroom. The officers proceeded to walk south down Aisle 4, toward the dairy section, and an unidentified female shopper pointed west. As the officers walked toward the back of the store, Officer B updated CD, advising they would be to the rear of the store near the bathrooms.

Officer A asked two male supermarket employees where the restroom was and they pointed south, toward the warehouse area. Officer B asked one of the employees what the subject had done and the employee replied, "I have no idea what happened." Officer A then unholstered his/her pistol and positioned him/herself at the west entrance of the warehouse area, with Officer B directly behind him/her armed with the 40mm LLL. Officer A directed Officer B to unholster his/her pistol as well, and pointed with his/her hand in an easterly direction. Officer B slung the 40mm LLL around the front of his/her neck; however, he/she did not unholster his/her pistol. Officers agreed that Officer A would remain as the lethal cover officer, and Officer B would be the designated less lethal officer.

As officers were taking a position at the west entrance of the warehouse area, their BWV captured Victim C state, "I'll go with you." Victim C then walked past the officers toward the warehouse. Officer A asked if all the customers were out of the store, and directed Victim C, "Lock up the store. Make sure no one else gets in." Victim C then briefly walked into the warehouse area alone.

Victim C returned from the warehouse area and an additional male employee came downstairs from the employee break room. Officers briefly spoke with the male, who advised that the Subject was not in the upstairs restroom or break room, and he believed the Subject was last seen in the rear warehouse area. Officer A's BWV captured a banging noise as he/she was speaking with the male, and Victim C stated, "Oh, is he in the cooler?" Officer A repositioned him/herself at the end of Aisle 8 and Officers B backed up slightly to take a position at the end of Aisle 9.

At approximately 1811 hours, Sergeant B broadcast that he/she was at scene. He/she entered the store equipped with a ballistic shield.

At approximately 1812:45 hours, Sergeant B joined the officers at the back of the store near the dairy section. Officer B began briefing Sergeant B and advised him/her that they heard banging coming from the dairy area, and that witnesses last saw the Subject near the restroom. Sergeant B inquired if anyone saw the Subject leave the location, and Officer B replied that no one had seen him leave. Sergeant B then requested the employees to, "Back out of here." Body worn video captured three of the employees walk west, out of the area, but Victim C remained standing near the officers at the end of Aisle 9.

As Sergeant B and the officers were discussing the incident, the Subject fell through the ceiling tiles and landed on top of the freezers located between Aisles 6 and 7. The officers and Sergeant B moved one aisle east and took a position at the end of Aisle 8. Officers A and B both ordered the Subject to get down from the freezers and to keep his hands up. Sergeant B also ordered the Subject to jump down.

Officer A's BWV captured the Subject put his hands up and then lower his left hand toward his left side. The officers immediately ordered him not to reach for his pockets. Officer B's BWV captured him/her warn the Subject, "Do not reach for it. If you reach for anything you will be shot with a less-lethal." The Subject appeared to comply and raised both hands into the air; however, he refused to get down from the freezers.

Sergeant B placed the ballistic shield on the ground, near the dairy coolers, and stood in the middle of the dairy aisle next to Officer B. Sergeant B started to ask Officer B what additional units were at scene. Sergeant B briefly told the Subject they were there to help him, then used his/her radio to broadcast, "Do I have any other units responding here? I need them to respond to the back." Communications Division repeated the request and advised responding units to respond to the back of the store.

The Subject proceeded to walk north, on top of the freezers, toward the front of the store near the checkout aisles. Sergeant B picked the ballistic shield back up with his/her left hand and proceeded to walk north in Aisle 8, toward the front of the store. As Sergeant B reached the front of the store, the Subject was captured on BWV standing atop the freezer aisle. Sergeant B positioned him/herself at the mouth of Aisle 7, and began communicating with the Subject while holding the ballistic shield down at his/her left side.

Officers A and B then began to walk north in Aisle 7, toward the front of the store. When Officer A neared the north end of the aisle, he/she again ordered the Subject to get down; however, the Subject still refused to comply.

Officer A positioned him/herself near the northwest corner of Aisle 7, and Officer B stood in the aisle, just south of Officer A.

Sergeant B then placed the ballistic shield on the ground, leaning it against a display rack, and his/her BWV captured him/her state, "Just don't shoot from up there."

According to Sergeant B, he/she did not want Officer B deploying the 40mm LLL while the Subject was on an elevated platform.

Sergeant B walked east and stood near the end of Aisle 6. As he/she moved, Sergeant B continued to verbalize with the Subject, telling him officers were there to help. The Subject replied that he “wasn’t buying it”, and BWV captured the Subject state, “Should I [...] pull it out right now and you blast me?” Officer A immediately replied, “No, don’t do that man.” Sergeant B also responded, “No, why would we want to do that man?”

The Subject then took off his shirt and held it in his hand, exposing his bare chest. Officer B redeployed, and positioned him/herself just north of Officer A. According to Sergeant B and Officers A and B, they visually scanned the Subject for weapons and did not observe any.

At approximately 1815:34, Sergeant B broadcast that he/she needed the first responding unit to the front of the store, and that the Subject was on top of the refrigerator area. As Sergeant B was making his/her broadcast, the Subject threw his t-shirt toward Sergeant B and it landed on the floor near Sergeant B’s feet.

According to Sergeant B, his/her plan was, “I just want to keep this guy here until we can get our resources to better secure it and then go from there.”

At approximately 1815 hours, Sergeant A broadcast that he/she was at scene and parked his/her vehicle near the west entrance of the supermarket. He/she exited his/her vehicle and retrieved a ballistic shield from the trunk. He/she then proceeded to walk toward the east entrance and turned on his/her BWV camera. As he/she walked, Sergeant A’s BWV recorded over 20 citizens standing outside the grocery store near the windows, looking in. Many of the citizens appeared to be using their cellphones to record the activity inside.

As Sergeant A entered the store, his/her BWV captured Officers C, D, and E entering the store in front of him/her.

According to Officer C, he/she heard a broadcast about the Subject being to the rear of the market, and they initially drove to the back (south) side of the store. When he/she didn’t see any units or the Subject at the rear of the location, Officer C directed Officer D to drive to the front of the location so they could meet with the rest of the units. As additional officers responded, Sergeant B and Officer A continued their verbal efforts to convince the Subject to surrender without success. As Sergeant B and the officers attempted build a rapport with him to deescalate the incident and talk him down, the Subject made several statements indicating he was prepared to die. While on top of the freezers, the Subject appeared to be sweating, constantly moving around, dancing, and smacking his lips.

At approximately 1817:27 hours, Sergeant A asked CD how many units were responding to the incident. Communications Division replied there was a single unit en

route and asked whether they should request additional units from outside the division. Sergeant A replied that he/she wanted two additional units in addition to the one already en route. He/she then specified that the first unit to arrive was to begin clearing the citizens standing outside by the windows.

At approximately 1817:50 hours, Sergeant B's BWV captured Sergeant C enter the store and stand near Officers A and B for approximately one minute. He/she then walked east, directly in front of the Subject, and stood with his/her back to the Subject as he/she spoke with Sergeant B. Sergeants B and C discussed the incident and Sergeant C inquired if they had crime at the location. Sergeant B's BWV captured him/her advise, "We've got a vandalism if nothing else because he crashed through the ceiling." Sergeant C recommended that they get a signed crime report.

Numerous other officers responded to assist at the scene.

Sergeant C walked to the front of the store near the checkout area and briefly met with Victim C. After doing so, Sergeant C informed Sergeant B that the Subject had a handgun and that he pointed it at Victim C. Sergeant B replied that the Subject did not have anything on him that he/she (Sergeant B) could see.

The above discussion occurred next to the checkout aisles at the front of the store. Sergeant B's BWV captured a male uniformed security guard standing nearby who appeared to be recording the events on his/her cell phone. No initial effort was made by the supervisors to have the security guard exit the store.

By this time, Officers F and G had arrived and Officer F asked Sergeant B if they were going to conduct a search for the Subject's gun. Sergeant B replied they would conduct the search after the incident was over. Officers F also made a suggestion for Sergeant B to have the security guard exit the store, and Sergeant B agreed. After Officer F requested that the security guard go outside, he/she was then directed by Sergeant B to meet with Victim C and complete a crime report for an Assault with a Deadly Weapon. Officer F also asked Sergeant B if he/she should go retrieve a beanbag shotgun, and Sergeant B agreed.

According to Officer C, at some point he/she heard a discussion about a crime report and that the Subject may be armed; therefore, he/she unholstered his/her pistol to a two-handed, low-ready position. However, Officer C indicated that he/she visually checked the Subject's front waistband and pockets, and didn't see any indication that the Subject was armed; therefore, he/she holstered his/her pistol.

While waiting for additional units to arrive, Sergeant A positioned him/herself near Officers A and B, at the end of Aisle 7, and also attempted to talk the Subject down without success. According to Sergeant A, he/she also tried communicating with the Subject in Spanish, because he/she was the only Spanish speaking officer at scene. According to Sergeant A, he/she did not see any bulges on the Subject that would indicate he had a firearm.

At approximately 1823 hours, CD asked Sergeant A if he/she still needed an Air Unit to respond, and Sergeant A replied an Air Unit was not needed since the incident was occurring indoors.

At approximately 1823:42 hours, Officers G and H arrived inside the supermarket and met with Sergeants A and B. Sergeant A handed his/her shield to Officer G, and advised them that the Subject was reported to have a gun; however, they did not currently see a gun on him. Body Worn Video captured Sergeant B state, "I think he either dumped it if he had one, dumped it back there, or lost it." Sergeant B also indicated the officers were in a stand-off and no one was going to go up to get the Subject.

According to Sergeant B, at the time of the incident, he/she did not believe it was a barricade situation. When FID investigators asked if he/she ever considered notifying Metropolitan Division Special Weapons and Tactics (SWAT), Sergeant B stated, "If it was going to turn into some type of barricade where had we made sure that everybody was evacuated out of the store, but if we had this guy locked down to a specific location, I couldn't imagine having everybody back out and then lock it down and call SWAT because we - - now we don't know where this guy is going to go. We don't know if there's still people going to be inside the store because we didn't have enough personnel to verify, to determine that everybody was completely out of the store. So my whole thought process was if we can just keep this guy contained right here where he's at, you know, we'll get our resources in, we'll lock it down, and we'll just have to deal with it."

Sergeant A then advised that when enough units arrived, he/she was going to have someone do an article search and pointed toward the rear of the store. Sergeant B responded they could do an article search afterwards, but that he/she wanted to keep the Subject where he was. Sergeant B then advised Officers A and B that they had plenty of time, and they would wait for additional units to arrive.

Officers G and H then took a position behind a U-shaped counter at the front of the store.

At approximately 1826:16 hours, Sergeant A approached Officers D and E, who were standing near Aisle 4, and directed them to search the restrooms located in the back of the store for the Subject's handgun. Officer C then approached Sergeant A and asked if anyone else was in the rear of the store, and Sergeant A indicated he/she didn't think so. Officer C then walked south down Aisle 4 to follow Officers D and E. Sergeant A then directed Sergeant C to locate an employee in order to turn off the audible emergency alarm, and Sergeant C went outside to do so.

At approximately 1827 hours, Sergeant B requested a Rescue Ambulance (RA) to respond and stage outside the supermarket. At approximately 1831 hours, a Los

Angeles Fire Department (LAFD) Truck arrived on scene and staged in the western portion of the supermarket parking lot.

At approximately 1830:06 hours, Sergeant B's BWV captured him/her stating that he/she was going to go out to the front of the store. According to Sergeant B, he/she went out front to get an arrest team together. According to Sergeant A, "There were limited resources at the time so I established control from the inside of the store as Sergeant B walked out."

Once outside the supermarket, Sergeant B's BWV captured him/her speaking to Detective A and Officer I, just outside the west entrance, when two additional officers arrived. One of the officers asked Sergeant B what he/she needed, and Sergeant B replied that he/she needed them as an arrest team, and that there were enough units inside the supermarket.

At approximately 1832:17 hours, Sergeant A approached Officers A and B and advised them that if the Subject came down, he/she had established less-lethal on the east side and they were the designated as the arrest team. Officer H was the designated cover officer with his/her shotgun. Sergeant A then walked over to Officer F, who was positioned near the checkout counter, north of Aisle 5. Officer F was armed with a Beanbag Shotgun and Sergeant A designated him/her as the less-lethal officer. Sergeant A also informed Officer F that if the Subject came down, they were going to rush him, to keep him from running somewhere and arming himself.

As directed by Sergeant A, Officers C, D, and E went to the back of the store to check the restrooms in the southeast portion of the store. While Officers D and E were searching the restrooms, Officer C believed it would be a good de-escalation technique if the Subject saw him/her in the rear aisle. Officer C remained holstered and would occasionally wave at the Subject to alert him to his/her presence. However, the Subject would raise his middle finger and keep looking back at Officer C. Officer C then decided to reposition, out of the Subject's view, so the Subject would not engage them since there were only three officers in the rear of the market.

At approximately 1836 hours, the Subject jumped down from the freezers into Aisle 6 and ran south toward the dairy section.

Once the Subject jumped down from the freezers, Sergeant A's BWV captured him/her stating, "He's going. Go, go, go, go, go, go!" Officers A and B and Sergeant A all ran south after the Subject in Aisle 6, while Officer F ran south in Aisle 5.

According to Officer C, he/she heard the sound of running footsteps, and believed the Subject was running on the top of the freezers. Officer C turned around the corner of Aisle 6 and looked up to the top of the freezers, where he/she expected to see the Subject. Officer C stated, "I figured he's going to be running across the top and if I pop out and make myself visible he's either going to stop or if I can, you know, grab him and take him into custody."

As he neared the end of the aisle, the Subject removed a handgun from his right front pocket of his shorts with his right hand. Officer C was standing near the end of aisle 6 next to the dairy section as the Subject ran directly toward him/her. The Subject lifted his right arm parallel to the floor, pointed his gun at Officer C, and fired one round at close range. According to Officer C, when he/she first saw the Subject, he/she was approximately six feet from him.

According to Officer C, "As I looked down the aisle, I could see the [Subject] running at me holding a firearm at my head. Um, and I believe he fired a round off. I made contact with him. I tried to retrieve my firearm and it got caught up in my tac vest."

As the Subject fired his handgun, Officer C turned 180 degrees clockwise, crashed into the glass refrigerator door and then fell to the ground. Officer C then quickly crawled into Aisle 6.

According to Officer D, he/she heard commotion and the sound of running footsteps approaching, followed by two rapid gunshots. Officer D positioned him/herself near the end of Aisle 5, and quickly unholstered his/her pistol. Officer D observed the Subject emerge from an aisle with a gun in his right hand, aiming it at Officer C. Officer D then observed Officer C fall to the floor and believed Officer C had been shot.

After firing at Officer C, the Subject ran west in the dairy aisle. The Subject then turned around and faced the officers. As he did so, the Subject extended both his arms in front of his body, pointing his handgun in an easterly direction, towards Officers C and D. Officer D believed that the Subject was about to shoot Officer C again, so Officer D aimed his/her pistol at the Subject's torso and fired two rounds in a rapid sequence.

According to Officer D, the Subject then pointed his handgun directly at him/her. Officer D believed the Subject was intending to shoot at him/her. In response, Officer D fired two more rounds toward the Subject.

The Subject was not struck by gunfire and he turned away, continuing running west. Officer D repositioned him/herself next to the aisle shelves seeking cover.

Officer D stated, "So Officer E and I started walking towards Officer C. And then that's when I heard some commotion, and that's when I heard gunshots. Officer D continued, "And then all kind of happened at the same time. I unholstered when I heard the shots, I believe, and next thing I saw was the - - I mean, the [Subject] came to an aisle, so I saw [...] the gun. I mean I remember that. I mean, the gun it was - - I think it was a stainless or a chrome frame with - - or it's a slide."

At approximately 1836:09, Sergeant A broadcast, "Shots fired, shots fired, shots fired." The RTO then broadcast a help call.

After the OIS, the Subject turned into Aisle 8 and ran north toward the front of the store. Meanwhile, Sergeant B had heard the gunfire and was running south down the same

aisle. As Sergeant B approached the Subject, supermarket surveillance video captured the Subject stop and raise his handgun with both hands; however, he did not fire. Sergeant B unholstered his/her pistol after observing the Subject with a gun. The Subject quickly turned around, ran into the warehouse area, and eventually escaped the grocery store through a back door.

After escaping through a back door, the Subject ran across the street and entered a convenience store of a gas station.

The officers inside the supermarket were unaware that the Subject had run out of a rear exit. They moved into positions at the entrance to the warehouse area while Sergeant A attempted to establish containment by requesting responding units to position themselves at the rear of the grocery store.

While the officers maintained their positions inside the supermarket, Officer E escorted Officer C outside to the awaiting paramedics. Officer C had received a laceration to his/her left forearm and believed he/she had been shot by the Subject. A firefighter immediately informed the officers that he/she had just observed the Subject run into the store across the street.

At approximately 1838 hours, Officer E relayed the above information on the radio. This was further verified by a citizen in the area calling 911 reporting the same information. Responding officers established a perimeter around the gas station and visually confirmed the Subject was inside, armed with a handgun in his hand, and was pacing back and forth. Additionally, the Subject was holding the store clerk, Victim D, inside the store at gunpoint.

According to Victim D, "Around 6:45, a suspect came running into the store without a shirt and a weapon in his hand asking me to close the doors of the store; to which I responded that I couldn't do that because the door never closes. It doesn't have a key. He threatened me with the gun that he was going to kill me if I didn't close the door or if I didn't do what he said."

The Subject told Victim D to call San Fernando Police, because the Subject did not believe the officers outside the gas station were the police. Victim D dialed 911 and gave the phone to the Subject.

At approximately 1841:49 hours, Sergeant D broadcast that he/she was at scene at the gas station and declared him/herself the Incident Commander (IC). With the assistance of the Air Unit, Sergeants D and E formulated a tactical plan, which involved establishing a perimeter, designated cover officers armed with rifles, establishing an arrest team and calling the Subject out to have him surrender. Officers made telephonic phone contact with the Subject, and the Subject eventually agreed to exit the location.

At approximately 1902 hours, the Subject walked out of the convenience store unarmed, with his hands up, and surrendered. He was instructed to lie down on the

ground in the felony prone position and he complied. Sergeant E directed and supervised the arrest team.

Once the Subject was handcuffed, he was removed from the area, searched, and subsequently taken to an awaiting RA.

Victim D was also called out, handcuffed and temporarily detained until his identity was confirmed. The interior of the convenience store was then cleared by Metropolitan Division K-9 officers.

Once the incident was rendered safe, Sergeant D established a Command Post, ensured the crime scene was secure, made proper notifications, and ensured that the involved officers were separated and monitored by supervisors.

At approximately 1920 hours, the Department of Operations Center (DOC) was notified of the Categorical Use of Force.

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
Sergeant B	No	Yes	No	N/A	N/A
Sergeant A	Yes	Yes	Yes	N/A	N/A
Sergeant C	N/A	N/A	N/A	N/A	N/A
Officer A	Yes	Yes	Yes	N/A	N/A
Officer B	Yes	Yes	Yes	N/A	N/A
Officer E	N/A	N/A	N/A	N/A	N/A
Officer D	N/A	N/A	N/A	N/A	N/A
Officer C	N/A	N/A	N/A	N/A	N/A

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting 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's tactics to warrant a Tactical Debrief. The BOPC found Sergeants A, B, and C, along with Officers A, B, and C's tactics to warrant a finding of Administrative Disapproval.

B. Drawing and Exhibiting

The BOPC found Sergeants A and B, along with Officers A, C, D, and E's drawing and exhibiting of a firearm to be In Policy.

C. Lethal Use of Force

The BOPC found Officer D's lethal use of force to be In Policy.

Basis for Findings

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

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

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

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

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

Use of De-Escalation Techniques: It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a suspect and enable an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.

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

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

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

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

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

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

- The feasibility of using de-escalation tactics, crisis intervention or other alternatives to force;
- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the suspect;

- Whether the suspect was posing an immediate threat to the officers or a danger to the community;
- The potential for injury to citizens, officers or suspects;
- The risk or apparent attempt by the suspect to escape;
- The conduct of the suspect being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the suspect;
- Officer versus suspect factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus suspects;
- The environmental factors and/or other exigent circumstances; and,
- Whether a person is a member of a vulnerable population.

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

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

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

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

Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable

officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.

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

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

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

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

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

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

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

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

Definitions

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

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

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

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

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

The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

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

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

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

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

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

A. Tactics

Tactical De-Escalation Techniques

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

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

Planning - While this was their first shift as partners, Officers A and B discussed contact and cover roles, lethal and less-lethal force options and responsibilities, and vehicle and foot pursuit concepts. Officers A and B also discussed alternating roles when necessary, and the equipment and back-up weapons each officer carried.

While responding to the call at the fire station, Officer B requested an Air Unit; however, no Air Units were available. Officers A and B formulated a tactical plan in the event the Subject was present when they arrived. At Officer A's direction, Officer B removed the 40mm LLL from the storage rack and loaded a 40mm impact round into the chamber. Officer A also advised Officer B that he/she (Officer A) would

communicate with the Subject, that the Subject would be ordered into a prone position, and the officers would request back-up units.

Officer A was the designated cover officer (DCO) treating the incident as an “active shooter”; however, Officer A had his/her service pistol holstered while Officer B was armed with the 40mm LLL as they were searching for the Subject, who was reported to be armed with a handgun.

Based on the nature of the radio call (i.e. a man with a gun), Sergeants A and B responded with their respective ballistic shields. Sergeant B advised officers at scene not to approach the Subject, to wait for additional units, and to “wait out” the Subject. Sergeant A designated roles and directed officers to search a bathroom. Sergeant C also responded and began speaking with Victim C. After Sergeant B exited the store, Sergeant A designated roles to the officers and a plan should the Subject come down from atop the aisle and try to flee; however, there was no rear containment plan. Given the information the sergeants and officers had on scene regarding the Subject being reportedly armed with a handgun, neither Sergeants A, B, nor C relieved officers to retrieve their ballistic helmets. In addition, none of the supervisors recognized this incident as a possible barricaded incident, assuming that the Subject was no longer armed because they did not observe a handgun despite statements from the Subject indicating that he was armed. While the sergeants, to varying degrees, assumed roles in the tactical operation, no one declared themselves as the IC, except for Sergeant D.

Assessment – According to the sergeants and officers on scene, they continually assessed the Subject’s person for indications that he was armed with the handgun. The sergeants and officers noted that as the Subject stood on the freezer, he did not have a weapon in his hands or deformities in his clothing. Despite Victims A, B, and C’s accounts that the Subject had a handgun, the supervisors and officers believed the Subject was unarmed at that point.

Recognizing that the Subject was on an elevated platform, Sergeant B advised Officer B not to fire the 40mm LLL. Sergeant B also advised officers not to approach the Subject, to wait for additional units, and to “wait out” the Subject.

As the incident progressed, the Subject made comments indicating the possibility that he was armed, specifically when he stated, “Should I [expletive] pull it out right now and you blast me?” Despite the Subject’s comments, Sergeants A, B, and C, and Officers A and B did not appear to re-evaluate their tactics and/or positioning to seek distance, increased cover/concealment, or utilize the ballistic shields.

After hearing gunshots, Officer D wanted to render assistance to Officer C but assessed that he/she did not have a clear foreground to discharge his/her service pistol. As Officer C fell to the floor, Officer D believed Officer C had been shot by the Subject and Officer D assessed that he/she had a clear background/foreground.

When Officer D determined the Subject stopped being an imminent threat of death or serious bodily injury, Officer D ceased firing his/her service pistol.

Time – According to the FID investigation, the Subject was on top of the freezers for approximately 23 minutes before he jumped down. Sergeant B advised the officers that they would utilize time to continue to communicate with the Subject until the Subject tired and complied with officers' commands. However, with this time, Sergeant B did not obtain sufficient information from Officers A and B, nor did the officers supply Sergeant B with all pertinent information from their prior radio call. Neither Sergeants A, B, nor Officer A discussed utilizing this time to ensure containment was implemented, nor did they attempt to contact SWAT and/or the Mental Evaluation Unit (MEU).

Redeployment/Containment - Officers A and B were the first unit to arrive at the supermarket. Victim C advised the officers that the Subject was observed inside the store armed with a handgun. Although Officer B requested back-up units, neither he/she nor Officer A requested that additional units contain the rear exits of the store. In addition, Officers A and B allowed employees to remain in the store with them. The officers also allowed Victim C to search the warehouse alone at the location the Subject was last observed.

When the Subject fell through the ceiling and landed on top of the freezers, Officers A and B redeployed to the end of the aisle to utilize it as cover. When the Subject walked on top of the freezers to front of the store, Officers A and B and Sergeant B, redeployed to the front of the store to maintain a visual of the Subject and attempted to communicate with him. Officers A utilized the end of an aisle as cover while Officer B initially stood in the aisle next to the Subject. Officer B subsequently redeployed behind Officer A while Sergeant B stood in the store's front aisle with the benefit of cover.

When the Subject fell through the ceiling, Sergeant B had requested an additional unit to respond to the rear of the supermarket for containment, but this did not occur. Arriving at scene, Sergeants A and C inquired if the store had been contained. As additional resources responded, Sergeants A, B, and C did not ensure that the rear of the store was contained, allowing the Subject an avenue of escape. Following the OIS, Sergeants A, B, and C did not ensure that Officer D had been separated, which allowed Officer D to respond to the convenience store.

Other Resources - While driving to the first radio call at the fire station, Officer B requested an Air Unit; however, no Air Units were available. Entering the supermarket grocery store, Officer B deployed the 40mm LLL and requested the response of back-up units.

During the incident, Sergeant B requested LAFD personnel to stage at scene outside of the supermarket store in the event there was a need to render medical

aid. With limited resources available, Sergeant D directed Sergeant C to respond to the scene with Officers C, D, and E.

As the Subject was on top of the freezers, CD inquired if an Air Unit was needed. Rather than asking for the Air Unit to respond, Sergeant A advised CD the Air Unit was not needed since the incident was occurring indoors. Despite circumstances indicating that the Subject was a barricaded suspect, Sergeants A, B, and C did not contact SWAT and/or MEU for assistance. The BOPC would have preferred that Sergeants A, B, and C consider contacting Metropolitan Division or MEU for guidance.

Lines of Communication – Arriving at the scene of the first radio call, Officers A and B spoke with Victim A and B regarding their interaction with the Subject. When the second call was broadcast, Officers A and B advised Victims A and B that they had to leave but asked them to wait at the fire station. Prior to entering the store, Officer A attempted to advise CD of their location; Officer B advised CD that back-up units were needed. The officers also asked CD to confirm if the Subject was still inside the supermarket. Speaking to Victim C, Officers A and B learned of his/her interaction with the Subject. Searching the store, Officers A and B communicated with customers, who directed the officers to the Subject's last known location. When Officers A and B walked to the rear of the store, Officer B advised CD of their updated location inside of the store. After locating the Subject, Officers A, B, and Sergeant B communicated with the Subject to obtain his surrender. To gain the Subject's compliance, Officer B provided a partial UOF warning.

After speaking with Sergeant B, Sergeant C met with Victim C to obtain additional information regarding the nature of the crime. Upon learning an ADW had occurred, Sergeant C relayed that information to Sergeant B.

During the incident, Sergeant A advised Sergeant B that when sufficient units had arrived, he/she was going to have someone search the rear of the store for the Subject's handgun. In response, Sergeant B advised Sergeant A to postpone the search until the Subject was taken into custody. Sergeant B then advised Officers A and B that they would wait for additional units to arrive and "just kind of wait him (the Subject) out."

The BOPC noted that despite the radio calls and broadcasts, the supervisors and additional officers at scene were not clear as to what crime or if a crime had occurred. Communication among the supervisors and officers was not sufficient to allow for proper situational awareness.

- During its review of the incident, the BOPC noted the following tactical considerations:
 1. **Designated Cover Officer** (Substantial Deviation, without Justification – Officers A, B, and C)

During this incident, Officers A and B responded to two radio calls during which people advised the officers that the Subject was armed with a handgun. As Officers A and B walked towards the entrance of the grocery store, Officer A unholstered his/her service pistol believing the Subject may be armed with a handgun. Officer B deployed the 40mm LLL and followed behind Officer A. After verifying with CD that the Subject was last seen inside the store, Officer A holstered his/her service pistol and both officers entered the store. As the officers entered the store, Officer A scanned the area for the Subject.

When approached by Victim C, Officer A asked him where the Subject was. Victim C responded, "I don't know, he's walking around the store." When asked by Officer A if the Subject was armed with a handgun, Victim C stated, "He had it on him." As Officers A and B walked the store in search of the Subject, both officers' service pistols were holstered; Officer B searched with the 40mm LLL. Reaching the rear of the store, Officer A unholstered his/her service pistol and positioned him/herself at the west entrance of the warehouse area. Officer B stood behind Officer A, armed with the 40mm LLL. Officer A advised Officer B to unholster his/her service pistol and motioned in an easterly direction. While Officer B slung the 40mm LLL over his/her shoulder, he/she did not unholster his/her service pistol. Officers A and B agreed that Officer A would remain as the DCO and Officer B would be the designated less-lethal officer.

Officer C responded to the back-up request with Officers D and E. Hearing a discussion that the Subject may be armed with a handgun, Officer C unholstered his/her service pistol. Officer C subsequently holstered his/her service pistol. Following Officers D and E to the rear of the store, Officer C took a position in one of the aisles at the rear of the store. While Officers D and E were searching the restrooms, Officer C waived his/her hand at the Subject to alert the Subject to his/her presence. Officer C opined that if the Subject knew officers were behind him, the Subject may surrender. When Officer C waived at the Subject, his/her service pistol was holstered, and he/she was without the benefit of a cover officer. Officer C executed his/her plan without communicating his/her intention to other officers and supervisors.

The BOPC considered that there was sufficient information provided to Officers A, B, and C to believe the Subject was armed with a handgun. The BOPC determined that when searching the store for the Subject, Officers A and B should have had the benefit of a cover officer. While Officer B had the 40mm LLL, it was not a substitute for lethal force and should be considered an option only after sufficient resources had responded to Officers A and B location.

The BOPC also determined that Officer C unnecessarily compromised his/her safety when he/she attempted to gain the Subject's attention. Not only was Officer C without the benefit of a cover officer, but he/she was also alone at the

time. Although Officer C believed his/her actions were a de-escalation tool, his/her actions further agitated the Subject.

Based on the totality of the circumstances, the BOPC determined that Officers A, B, and C's actions were a substantial deviation, without justification, from approved Department policy and training.

2. Tactical Communication/Planning (Substantial Deviation, without Justification – Officers A and B)

Officers A and B entered the grocery store believing the Subject was the same suspect from the previous radio call of an armed suspect. While the officers requested a back-up, they did not provide pertinent information to responding resources to establish containment, nor did they inform arriving officers and supervisors of the information gathered during the first radio call. While searching the store, Officers A and B allowed Victim C to walk with them. Reaching the back of the store, Officers A and B allowed Victim C to enter the warehouse, the area the Subject was last seen, alone.

The BOPC discussed that it would have been preferable for Officers A and B, before entering the store, to have obtained greater situational awareness by gathering pertinent information from Victim C and focusing on evacuating the store. In addition, the BOPC discussed that Officers A and B should have waited for responding resources to contain the store before entering, and that they were at a significant tactical disadvantage by searching the store without additional resources at scene.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's actions were a substantial deviation, without justification, from approved Department policy and training.

3. Utilization of Cover (Substantial Deviation, without Justification – Officers A and B, Sergeants B and C)

The utilization of cover, coupled with distance, enables an officer to confront an armed suspect, while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options.

Due to the information provided by Victims A, B, and C, Officers A and B initially believed the Subject may be armed with a handgun. While Officers A and B, and Sergeants A and B did not observe any deformities in the Subject's clothing that indicated he was armed, the Subject made comments indicating he was armed, specifically with the comment, "Should I fuckin pull it out right now and you blast me?" When the Subject fell from the ceiling, Sergeant B stood in the middle of an aisle, in line of sight with the Subject, as officers spoke to the Subject. While

Sergeant B entered the store with a ballistic shield, he/she set it on the ground instead of ensuring it was used by officers as portable cover. The second time Sergeant B set the ballistic shield down, he/she placed it against the freezer aisle where the Subject was standing.

When the Subject walked on the freezers to the front of the store, Officer B initially stood with the 40mm LLL in an aisle next to the Subject without the benefit of cover. At various points throughout the incident, Officer A stood in positions that did not afford him/her cover from the Subject.

Sergeant C responded to the back-up request and upon arriving at the store, Sergeant C met with Sergeant B. While discussing the incident, both Sergeants B and C stood in the front aisle without the benefit of cover; Sergeant C stood with his/her back to the Subject, who was standing on top of the freezer, shirtless and agitated. Sergeant C verified that the Subject had pointed a handgun at Victim C.

The BOPC considered that there were multiple objects within the store that could have been utilized as cover, or in the alternative, concealment. In addition to their own actions, neither Sergeants B nor C directed the officers to seek cover. The BOPC believed that Sergeants B and C displayed complacency regarding cover, influencing officers at scene to demonstrate the same level of complacency. The BOPC also discussed Officers A and B's lack of cover despite their knowledge of the Subject's actions during both calls. A ballistic shield was available for deployment.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's, and Sergeants B and C's actions were a substantial deviation, without justification, from approved Department policy and training.

4. Command and Control (Substantial Deviation, without Justification – Sergeants A, B, and C)

Sergeant B was the first supervisor to arrive on scene followed by Sergeants A and C. Although Sergeants A and B provided officers with various directions, and Sergeant C spoke with Victim C, no one declared themselves as the IC until Sergeant D arrived at the convenience store.

After locating the Subject, Sergeant B did not utilize the available time to obtain sufficient situational awareness of the incident from Victim C and Officers A and B. At various points during the incident, both Sergeants B and C walked outside of the store. While Sergeant C spoke with Victim C and Sergeant B attempted to form an arrest team, neither sergeant utilized time to establish exterior containment, a CP, or a staging area for responding units.

As additional resources began to arrive, neither Sergeants A, B, nor C developed a plan to allow personnel who were already inside of the store to retrieve their ballistic helmets. Additionally, neither Sergeants A, B, nor C attempt to contact MEU or SWAT when the Subject refused to come down from the freezers. When the Subject refused to come down from the freezers, instead of establishing a dedicated contact officer, Sergeants A and B, and Officers A and B all tried to communicate with the Subject.

During the incident, Sergeant B advised Sergeant A to wait until the Subject was in custody before sending officers to search the bathroom for the Subject's gun. However, when Sergeant B stepped outside of the store, Sergeant A directed Officers D and E to search the restrooms, reducing the number of officers available to contain the Subject.

The BOPC acknowledged that there were some aspects during this incident in which Sergeants A and B were implementing command and control by designating officers' roles, preventing officers from prematurely approaching the Subject, and ensuring less-lethal was not utilized while the Subject was on an elevated platform. The BOPC also noted that to assist Sergeant B, Sergeant C obtained what he/she believed was further information from Victim C. However, the BOPC determined that Sergeants A, B, and C acted independently and not as a team, providing conflicting directions to officers at scene and limited communication between themselves when pertinent information should have been disseminated. Without a defined IC, there was no clear allocation or management of resources, no objectives set, and no stability or structure to this dynamic incident. This created an unnecessary risk to civilians and officers and allowed an avenue of escape for the Subject.

Based on the totality of the circumstances, the BOPC determined that Sergeants A, B, and C's actions were a substantial deviation, without justification, from approved Department policy and training.

5. Barricaded Suspects (Substantial Deviation, without Justification – Sergeants A, B, and C)

During the initial radio call at the fire station, Victims A and B told Officers A and B that the Subject had brandished a handgun. During the subsequent call at supermarket, Victim C told Officers A, B, and Sergeant C that the Subject had pointed a handgun at him/her. Officers located the Subject when he fell from the ceiling and landed on top of freezer cases overlooking the officers' positions. Officers ordered the Subject to surrender but he refused, stating the officers had no "authority." While Officers A and B, and Sergeants A and B did not observe any deformities in the Subject's clothing that indicated he was armed, the Subject reached towards his pocket, and made comments indicating he was armed, specifically when he stated, "Should I [expletive] pull it out right now and you blast me?"

When asked by FID investigators if he/she ever considered notifying SWAT, Sergeant B stated that his/her “thought process” was to keep the Subject “contained” until sufficient “resources arrived,” and they could lock down the location because he/she did not have enough personnel to verify if everyone was evacuated from the store. FID investigators also asked Sergeant A if he/she considered notifying SWAT about the incident. Sergeant A stated, “We hadn’t had a confirmed crime” and believed the Subject was “having a mental breakdown” or was “under the influence.”

In this case, the BOPC considered several factors as they relate to barricaded subjects. The BOPC considered that as the primary unit, Officers A and B had sufficient information gleaned from Victims A, B, and C to indicate that the Subject was probably armed. The BOPC further considered that Sergeant C obtained the same information from Victim C as Officers A and B and relayed it to Sergeant B. The BOPC opined that Sergeants A, B, and C disregarded multiple indicators that the Subject was possibly a barricaded suspect. Despite multiple indications the Subject was probably armed, had committed crimes, was a threat to lives and safety, was in a position of advantage, and was refusing to surrender, the sergeants did not appropriately assess this incident. The BOPC opined that Sergeants A, B, and C should have ensured the continued evacuation of civilians from the store, coordinated resources, including an Air Unit to contain the store’s exterior, and contacted SWAT to determine if the incident met their criteria for a barricaded suspect.

Based on the totality of the circumstances, the BOPC determined that Sergeants A, B, and C’s actions were a deviation, without justification, from approved Department tactics and training.

- The BOPC also considered the following:
 - **40mm LLL Protocols** – According to the FID investigation, at Officer A’s direction, Officer B removed the 40mm LLL from the police vehicle’s storage rack while driving to the first call and loaded a 40mm impact round into the chamber. .
 - **Immediate Action/Rapid Deployment (IARD) Protocols** – According to Officer A, his/her goal when searching the supermarket prior to additional resources arriving was, “Making sure that the [Subject] isn’t trying to take a hostage or fire rounds at anybody. So, I was treating it as an active shooter.” At the time Officers A and B entered the store, there was no indication the Subject had been or was actively shooting at people.
 - **Back-Up Unit Request** - When Officers A and B entered the supermarket, Officer B broadcast the initial back-up request without providing the location and the nature of the request.

- **Basic Firearm Safety Rules** - As Officer B moved to the end of Aisle 8 after the Subject fell through the ceiling tiles, his/her BWV appeared to capture the muzzle of the Officer B's 40mm LLL cover Officer A.
- **Non-Medical Face Coverings (Personal Protective Equipment)** – During this incident, Sergeants A, B, and C were observed not wearing Non-medical Face Coverings, as directed by the BOPC of Police on May 20, 2020, for health and safety concerns related to the coronavirus.
- **Use of Force Warning (40mm LLL)** - When the Subject fell from the ceiling onto the refrigerators, Officer B began giving commands and provided an incomplete less-lethal warning.
- **Handling Firearms** – According to Officer C, when he/she first saw the Subject, the Subject was approximately six feet from him/her. Officer C stated, “As I looked down the aisle, I could see the [S]ubject running at me holding a firearm at my head.” Officer C tried to unholster his/her service pistol but “it got caught up” in his/her “tac vest.”
- **Loading Standards** - The investigation revealed that Officer D had 11 rounds loaded in one of his/her spare magazines; the fully loaded capacity for this magazine was 12 rounds. Additionally, one of the rounds in this magazine was a non-Department approved Winchester Ranger round.

Command and Control

- Sergeant B was the first supervisor to arrive on scene followed by Sergeants A and C. Although Sergeants A and B provided officers with various directions, and Sergeant C spoke with Victim C, no one declared themselves as the IC until Sergeant D arrived at the convenience store. After locating the Subject, Sergeant B did not utilize the available time to obtain sufficient situational awareness of the incident from Victim C and Officers A and B. At various points during the incident, both Sergeants B and C walked outside of the store. While Sergeant C spoke with Victim C and Sergeant B attempted to form an arrest team, neither sergeant utilized the time available to establish exterior containment, a CP, or a staging area for responding units.

As additional resources began to arrive, neither Sergeants A, B, nor C developed a plan to allow personnel who were already inside of the store to retrieve their ballistic helmets. Additionally, neither Sergeants A, B, nor C attempted to contact MEU or SWAT when the Subject refused to come down from the freezers. While the Subject was refusing to come down from the freezers, instead of establishing a dedicated contact officer, Sergeants A and B and Officers A and B all tried to communicate with the Subject. During the incident, Sergeant B advised Sergeant A to wait until the Subject was in custody before sending officers to search the bathroom for the Subject's gun. However, when Sergeant B stepped outside of the store, Sergeant A

directed Officers D and E to search the restrooms, reducing the number of officers available to contain the Subject.

Sergeant D had been monitoring the incident via the radio and was aware there were a limited number of patrol personnel available due to a shift change in watches. In response, Sergeant D directed Sergeant C to respond with his/her officers. At 1841:49 hours, Sergeant D arrived at the market and gas station where the Subject had fled and was still armed. With the assistance of the Air Unit, Sergeant D and Sergeant E formulated a tactical plan which involved establishing a perimeter, DCOs armed with patrol rifles, an arrest team and requesting the Subject to surrender.

Upon learning Officer D had been involved in an OIS at the supermarket, Sergeant F separated Officer D, obtained his/her PSS, and transported Officer D to the Devonshire Community Police Station (CPS).

Sergeant C responded to the hospital and began monitoring Officers C and E, as Officer C received medical treatment. Sergeant C then transported Officers C and E to Devonshire CPS.

Sergeant G responded to the CP to monitor Sergeant A and obtained his/her PSS. Sergeant G transported Sergeant A to Devonshire CPS and continued monitoring him/her until relieved.

Subsequent to the OIS, Deputy Chief A showed Officer C a social media video of the incident, and asked Officer C to identify the Subject on the video. Sergeant H intervened and stopped the video.

At 2020 hours, Sergeant I responded to the CP and monitored the “heard only” witnesses, including Officers A, B, F, G, I, and Detective A. According to Sergeant I’s chronological record, at 2040 hours, Officers A, B, G, and I, and Detective A self-transported to Devonshire CPS at the direction of FID investigators, where Sergeant I continued monitoring them. At 2115 hours, Sergeant I began monitoring Sergeant B at Devonshire CPS.

The actions of Sergeants A, B, and C were not consistent with Department supervisory training and the BOPC’s expectations of field supervisors during a critical incident.

Additionally, the actions of Deputy Chief A were not consistent with the BOPC’s expectations of a staff officer during a critical incident.

The actions of Sergeants D, F, G, H, and I were consistent with Department supervisory training and the BOPC’s expectations of field supervisors during a critical incident.

- In conducting an objective assessment of this case, the BOPC determined, and the BOPC concurred, that Officers E and D's tactics did not deviate from approved Department tactical training. The BOPC directed that Officers E and D attend a Tactical Debrief.

In conducting an objective assessment of this case, the BOPC determined that Sergeants A, B, and C's, along with Officers A, B, and C's actions were a substantial deviation, without justification, from Department tactical training, requiring a finding of Administrative Disapproval. The BOPC directed that Sergeants A, B, and C, along with Officers A, B, and C attend a Tactical Debrief.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved officers to discuss individual actions that took place during the incident.

Although it was determined that Officers G, F, and H would not receive formal findings, the BOPC believed that these officers would benefit from attending the Tactical Debrief to discuss this incident and to enhance future performance.

The BOPC found Officers D and E's tactics to warrant a Tactical Debrief. The BOPC found Sergeants A, B, and C, along with Officers A, B, and C's tactics to warrant a finding of Administrative Disapproval.

B. Drawing and Exhibiting

- **Officer A – First Occurrence**

According to Officer A, he/she drew his/her service pistol prior to entering the grocery store because he/she believed the situation "may escalate to the point where deadly force may have been justified" because "multiple people" had reported that the Subject was armed with a handgun.

Officer A – Second Occurrence

According to the FID investigation, a customer advised officers that the Subject was in the restroom. When asked where the restroom was, two supermarket employees directed Officer A towards the warehouse area. Officer A unholstered his/her service pistol and positioned him/herself at the west entrance of the warehouse area, Officer B was behind Officer A, armed with the 40mm LLL.

The BOPC conducted an evaluation of both occurrences of Officer A's drawing and exhibiting. The BOPC noted that Officer A had responded to two separate radio calls where multiple people reported seeing the Subject armed with a handgun. Additionally, when Officers A and B's arrival at supermarket grocery store, employees and customers indicated that the Subject was still in the store, armed

with a handgun. The BOPC determined that it was reasonable for Officer A to believe that the incident may escalate to the point where deadly force would be justified.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found both occurrences of Officer A's drawing and exhibiting of a firearm to be In Policy.

- **Officer C – First Occurrence**

According to Officer C, as he/she walked into the grocery store, he/she heard officers discuss obtaining a crime report for "brandishing" and the Subject possibly being armed with a handgun. In response, Officer C unholstered his/her service pistol.

Officer C – Second Occurrence

According to Officer C, after the Subject fired his handgun at him/her, he/she observed the Subject running towards him/her. The Subject ran into Officer C, causing Officer C to fall into the store's glass refrigerator door. Officer C heard multiple gunshots and believed the Subject was "standing above" him/her "shooting" at him/her. In response, Officer C stood and unholstered his/her service pistol.

The BOPC conducted an evaluation of Officer C's first and second occurrence of drawing and exhibiting. The BOPC discussed that during his/her first occurrence, Officer C had heard officers discuss obtaining a crime report for "brandishing" and the Subject possibly being armed with a handgun. In the second occurrence, Officer C had already been shot at by the Subject when Officer C heard additional gunshots leading him/her to believe the Subject was standing over him/her while shooting at him/her. The BOPC concluded that it was reasonable for Officer C to believe that the incident may escalate to the point where deadly force would be justified.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer C, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found both occurrences of Officer C's drawing and exhibiting of a firearm to be In Policy.

- **Officer D – First Occurrence**

Officers D and E responded to the rear of the grocery store to search the restroom for the Subject's handgun. According to Officer D, he/she unholstered his/her service pistol while clearing the restroom. Officer D knew that the restroom had not been cleared and based on the radio call of a "415 man with a gun," Officer D unholstered his/her service pistol in case there were additional suspects in the restroom. After clearing the restroom, Officer D holstered his/her service pistol.

Officer D – Second Occurrence

According to Officer D, he/she heard gunshots and observed a "scared" look on Officer C's face. Officer D unholstered his/her service pistol a second time because he/she observed that the Subject was armed with a handgun and believed that the Subject was shooting at Officer C.

- **Officer E – First Occurrence**

Officers D and E went to the rear of the grocery store to search for a possible handgun in the restrooms. According to Officer E, he/she unholstered his/her service pistol while clearing the restroom. Officer E knew that the restroom had not been cleared and based on the surrounding circumstances, believed the situation may "escalate to the point where deadly force would be justified." After clearing the restroom, Officer E holstered his/her service pistol.

Officer E – Second Occurrence

According to Officer E, after clearing the restrooms, he/she and Officer D moved towards Officer C, who was ahead of them. Officer E heard what he/she perceived to be a "gunshot... Three in total." In response, Officer E redeployed behind an aisle and unholstered his/her service pistol.

The BOPC conducted an evaluation of Officers D's and E's first and second occurrences of drawing and exhibiting. The BOPC discussed that Officers D and E had limited information from the supervisors at scene and the Subject was not in custody at the time Officers D and E were directed to search for a handgun in the restrooms. Neither Officers D nor E had sufficient information to determine if the Subject was the only suspect or if additional suspects were involved in this incident. In Officers D and E's second occurrence of drawing and exhibiting, the BOPC discussed the circumstances that Officers D and E were presented with. Both Officers D and E heard gunshots after completing their search of the restroom. Officer E responded by seeking cover and drawing his/her service pistol as he/she assessed. Officer D observed the Subject pointing a handgun at Officer C and believed the Subject was shooting at Officer C. The BOPC concluded that Officers D and E's belief that the situation may escalate to the point where deadly force would be justified was reasonable during both of the officers' occurrences.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers D and E, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found both occurrences of Officers D's and E's drawing and exhibiting of a firearm to be In Policy.

- **Sergeant B**

According to Sergeant B, he/she was outside of the grocery store coordinating an arrest team when he/she noticed that the Subject had jumped down from the refrigerator into the aisle. Sergeant B ran into the grocery store and heard "four or five gunshots," then heard an unknown person or officer state, "Hey, there's an officer hit." Peering down an aisle, Sergeant B observed the Subject "immediately" turn and crouch down; Sergeant B observed "silver and black" in the Subject's waistband. In response, Sergeant B unholstered his/her service pistol. The Subject then "turned and ran out the back" of the grocery store.

The BOPC conducted a thorough evaluation of Sergeant B's drawing and exhibiting. The BOPC discussed that Sergeant B heard multiple gunshots as he/she re-entered the grocery store after having observed the Subject was no longer on top of the grocery aisle. The BOPC noted that after peering down an aisle, Sergeant B was unexpectedly confronted by the Subject, and observed the Subject with a possible handgun in his waistband combined with the Subject's crouching action. The BOPC concluded that Sergeant B had a reasonable belief that the situation may escalate to the point where deadly force would be justified.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Sergeant B, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Sergeant B's drawing and exhibiting to be In Policy.

- **Sergeant A**

According to Sergeant A, he/she observed the Subject running down the aisle and heard "approximately five" gunshots. As Sergeant A approached the end of the aisle, he/she observed Officer C "fall to the ground in front" of him/her and the Subject turn right. Not knowing the extent of Officer C's injuries, Sergeant A "pied the corner" and unholstered his/her service pistol to provide lethal cover for Officer C.

The BOPC conducted a thorough evaluation of Sergeant A's drawing and exhibiting of a firearm. Although the BOPC would have preferred that Sergeant A had allowed the officers that were positioned behind Sergeant A to cover Officer C, the BOPC recognized that Sergeant A was better positioned to cover Officer C. The BOPC also considered that Sergeant A had heard gunshots and observed Officer C fall onto the ground. The BOPC considered the totality of the circumstances and the rapid escalation of the incident when the Subject discharged his/her handgun at Officer C. In a reverence for Officer C's life, Sergeant A's decision to unholster his/her service pistol and provide Officer C with cover was reasonable. The BOPC determined that Sergeant A had a reasonable belief that the situation had escalated to the point where deadly force may be justifiable.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Sergeant A, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Sergeant A's drawing and exhibiting of a firearm to be In Policy.

Accordingly, the BOPC found Sergeants A and B, along with Officers A, C, D, and E's drawing and exhibiting of a firearm to be In Policy.

C. Lethal Use of Force

- **Officer D – 4 rounds**

Background – According to the FID investigation, the OIS occurred inside of a supermarket. Officer D's background consisted of a refrigerator case along the south (rear) wall of the grocery store.

Officer D described his/her background as a "clear aisle" in the grocery store. Officer D recalled that the Subject was the only person in his/her background when he/she discharged his/her service pistol.

A Criminalist from the Forensic Science Division, performed a bullet path analysis examination of the OIS scene and noted nine impacts with five corresponding pathways. Impact A was a perforating impact, located on the refrigerator on the south wall, fourth door from the east (both panes were impacted). Impact A1 was a non-penetrating impact, located on the door to the cabinet on the south (rear) wall of the dairy box. Pathway A was consistent with a projectile traveling in a southeasterly direction.

Impact B was a perforating impact, located on the refrigerator on the south wall, fourteenth door from the east (first pane impacted). Impact B1 was a penetrating impact, located on a case of wine that was west of the employee area and toward

the rear of the supermarket (west rear entrance). Impact C was a perforating impact, located on the refrigerator on the south wall, seventeenth door from the east (first pane impacted). Impact C1 was a penetrating impact, located on a bag of sugar on the display stand that was east of the west rear entrance. Impact D was a non-penetrating impact, located on the east facing surface of the east wall of the west rear entrance. Impact E was a perforating impact, located on the display stand that was east of the west rear entrance. Impact E1 was a penetrating impact, located on the east facing surface of the west wall, near the west rear entrance. Pathways B, C, D, and E were consistent with a projectile traveling in a southwesterly direction.

According to Officer D, he/she observed the Subject “charging” towards, and colliding with Officer C; the Subject was armed with a handgun in his right hand. Officer D observed Officer C fall and believed that he/she (Officer C) had been shot. The Subject faced Officer C and pointed his handgun at Officer C. In response, Officer D discharged two rounds from his/her service pistol at the Subject. Officer D discharged his/her rounds because he/she saw Officer C “go down” and the Subject still pointing his handgun at Officer C in a “shooting grip.” Officer D believed that the Subject was going to continue firing his handgun at Officer C. The Subject then turned towards Officer D and pointed his handgun at him/her (Officer D). Believing the Subject was going to shoot him/her, Officer D discharged two additional rounds at the Subject.

The BOPC conducted a thorough review and analysis of the proportionality, reasonableness, and necessity of Officer D’s lethal use of force. The BOPC considered Officer D’s belief that Officer C had been shot by the Subject when Officer C fell to the floor after the Subject had fired his handgun. The BOPC also considered that before discharging his/her first two rounds, Officer D observed the Subject pointing his handgun at Officer C. The BOPC further considered that before discharging his/her second two rounds, Officer D observed the Subject shift his focus from Officer C and the Subject point his handgun at Officer D. The BOPC noted that Officer D did not discharge his/her service pistol until after Officer C had fallen to the floor and he/she ceased discharging his/her rounds after the Subject fled out of Officer D’s view, indicating to the BOPC that Officer D was continually assessing as he/she discharged his/her rounds. The BOPC determined that Officer D’s discharging of four rounds from his/her service pistol was proportional to the threat of serious bodily injury or death posed by the Subject. The BOPC also determined that the Subject posed an imminent deadly threat to Officers C and D, and in a reverence for human life, Officer D was objectively reasonable when he/she utilized lethal force to defend him/herself and Officer C, and that force was necessary.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer D would reasonably believe the Subject’s actions presented an imminent threat of death or serious bodily injury and that the use of deadly force was proportional, objectively reasonable, and necessary.

Therefore, the BOPC found Officer D's lethal use of force to be In Policy.