



recommendations of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

The following incident was adjudicated by the BOPC on July 21, 2020.

### **Incident Summary**

On August 18, 2019, uniformed Police Officers A and B were assigned to conduct crime suppression in Hollenbeck Area. Officer A was the driver of a marked black and white police Sport Utility Vehicle (SUV) equipped with ballistic door panels and a Digital In-Car Video System (DICVS).

Officers A and B had been assigned as partners for approximately one year and routinely discussed tactics. The officers discussed tactics regarding pedestrian stops and in the event of a foot pursuit, whether they would go into containment or apprehension mode. According to Officer A, they had recently discussed the tactics they would utilize in the event an armed individual shot at them while they were seated in their police vehicle. The officers agreed they would accelerate their police vehicle away from the threat and then address the situation. Officer B did not indicate they had discussed the tactics they would utilize in the event an armed individual shot at them while seated in their police vehicle.

During the evening hours, Officers A and B stopped for a stop sign and observed a male, identified as the Subject, 33 years of age, walking on the sidewalk. Due to the darkness, Officer B activated the passenger's side spotlight and illuminated the Subject. According to Officer A, he/she noticed the Subject was wearing a black hooded sweatshirt with the hood nearly covering his eyes and had both hands inside his front sweatshirt pockets.

Officer A negotiated a southbound turn as the Subject continued walking on the sidewalk. According to Officer A, the Subject was walking at a slow pace and had his head tilted down as he approached, at which time Officer B turned off the spotlight. The Subject arrived at the northeast corner of the intersection, at which point Officer A utilized his/her flashlight and illuminated the Subject. The officers indicated they illuminated the Subject because he was walking in a dark area. According to the officers, they had no intention of detaining the Subject.

The Subject entered the crosswalk on the north side of the intersection and continued walking. Officer A stopped the police vehicle halfway into the east/west crosswalk for the red phase tri-light. Video surveillance footage obtained from a business captured the Subject walking in the crosswalk towards the police vehicle. Suddenly, the Subject began to walk as Officer A continued to illuminate the Subject. When the Subject was parallel to the driver's door of the police vehicle, approximately nine feet away, he removed a handgun from his right front sweatshirt pocket, obtained a two-handed shooting position, and fired one round at the officers. Video surveillance footage from a business recorded the audible sound of a single gunshot.

According to Officer A, the Subject was looking directly at him/her when he fired the round. The bullet struck the top portion of the driver's door just above the ballistic panel, continued through the police vehicle and exited the front passenger door window. According to Officer A, he/she felt debris strike his/her arm after the Subject fired the round. The driver and front passenger door windows were in the down position when the Subject discharged the round. One discharged 9mm cartridge case was recovered, and the Forensic Analysis Unit (FAU) determined the discharged cartridge case was fired from the Subject's pistol.

After the Subject discharged his pistol, Officer A accelerated and drove the police vehicle south to escape the deadly threat. As he/she did so, the Subject began to run north. Video surveillance footage from a business captured the Subject running north with his upper body facing towards the moving police vehicle and both arms raised in what appears to be a two-handed shooting position. Evidence determined that the Subject did not discharge a second round at this time. Video footage from the business did not capture the audible sound of a second gunshot and only one Discharged Cartridge Casing (DCC) was located. Two live 9mm cartridges were recovered from the area.

As the police vehicle continued through the intersection, Officer B unholstered his/her service pistol while still seated in the vehicle. Officer B grabbed the police radio microphone from inside the police vehicle with his/her left hand while holding his/her pistol in his/her right hand. Officer A crossed the intersection and negotiated a U-turn, as the Subject ran into the alley.

Officer B broadcast an "Officer Needs Help" request, "shots fired" broadcast, and provided his/her location and other relevant information. Communications Division (CD) acknowledged and broadcast the necessary information over the police radio.

Officer A drove through a red light. While seated in the police vehicle, Officer A unholstered his/her service pistol and held it in his/her right hand with his/her finger along the frame while he/she maneuvered the police vehicle with his/her left hand.

In response to the help broadcast, the following Hollenbeck units responded: Police Officers C, D, E, and F, along with Sergeants A, B, and C.

As the police vehicle approached the alley, Officers A and B pointed their service pistols toward the alley. According to Officer A, he/she did not see the Subject when the officers arrived at the alley. The officers discussed a plan and decided to cover the side of the block. Officer A accelerated and then negotiated a turn. Officer B broadcast for officers to set up a perimeter. The officers indicated they were in containment mode. Officer B stated he/she saw the Subject running in the alley. The police radio did not capture Officer B's entire broadcast.

As Officers A and B continued to travel, they were still unholstered. According to Officer B, they drove to a location to secure the side of the perimeter. Officer A negotiated a

turn and momentarily stopped at the alley. The officers did not see the Subject and continued driving.

Officer B's Body-Worn Video (BWV) captured Officer G (Pilot) and Officer H, Tactical Flight Officer (TFO), Air Support Division (ASD), arriving overhead as Officer B requested an Air Unit. The Air Unit continued flying toward the scene. Officers A and B had arrived at an intersection, at which time Officer A observed the Subject walking on the sidewalk, towards their direction. Officers A and B did not update their location.

Officer A positioned the police vehicle into the lanes of traffic. Officer A's BWV captured him/her telling Officer B, "Right here." Officer B did not immediately see the Subject and could be heard on BWV repeatedly asking, "Where?" Officers A and B exited their police vehicle as Officer A pointed his/her pistol in an easterly direction and illuminated the sidewalk with the tactical light attached to his/her pistol. Officer A left his/her position behind his/her ballistic door and began to walk toward the sidewalk as he/she told Officer B, "Right here on the sidewalk." According to Officer A, he/she left his/her police vehicle and was making his/her way to a building at the corner of the intersection.

According to Officer B, he/she could not see the Subject and left his/her police vehicle in an attempt to obtain a visual of the Subject. Additionally, Officer B indicated the police vehicle was a visible target and thought it would be better to take cover behind vehicles that were parked along the curb. Officer B pointed his/her pistol in an easterly direction along the sidewalk and began to walk east in the westbound lanes of traffic. Officer B broadcast that the officers had a possible Subject and provided his/her location.

As Officer B was broadcasting, the BWVs worn by Officers A and B captured the audible sound of the Subject firing a round at the officers. Upon hearing the gunshot, Officer A took a two-handed shooting position on the sidewalk, illuminated the sidewalk with the tactical light attached to his/her pistol, and fired two rounds in an easterly direction. Officer A stated he/she had a visual of the Subject and was firing at his (the Subject's) center mass.

Officer B continued to broadcast, "Shots fired...still shooting." The police radio captured the audible sound of gunfire as Officer B was broadcasting. Communications Division broadcast, "All units, Officer Needs Help; shots fired," and provided the location. Officer B's broadcast was interrupted by gunfire. As such, he/she was unable to finish updating the officers' location. Communications Division broadcast the last known location of the officers, when they had actually moved to another location.

Officer B walked swiftly backwards toward his/her police vehicle and then asked Officer A, "Where's he at?" Officer A's BWV captured the audible sound of the Subject firing a second round. According to Officer A, he/she returned fire and observed the Subject make his way to a tree, taking cover and again firing at the officers. In order to get a better visual of the Subject, Officer A positioned himself/herself on top of an approximately two-foot-high retaining wall. At the same time, Officer B asked Officer A once again where the Subject was located. Officer A replied, "Up the tree." In response

to the second round being fired by the Subject, Officer A continued to illuminate the sidewalk with the tactical light attached to his/her pistol and fired two additional rounds in an easterly direction towards the Subject, who was standing behind a tree. The Air Unit was not overhead at the time of this OIS. According to Officer H, he/she had directed the pilot to the location of the initial broadcast for help.

Officer A's BWV captured the audible sound of the Subject firing a third round. Evidence revealed the bullet continued past Officer A as his/her BWV captured the audible sound of the bullet shattering the window of a business store window located behind him/her.

Officer B fired seven consecutive rounds from his/her pistol. According to Officer B, he/she still observed the Subject and, to protect himself/herself and his/her partner from the imminent threat of death, he/she fired to stop the threat. Officer B was positioned toward the outer edge of his/her police vehicle's open front passenger side door. Officer A fired four additional rounds in an easterly direction. Officer A was still positioned on top of the retaining wall. Although this position did not appear to provide him/her any cover, Officer A stated it gave him/her an elevated platform and a better visual of the Subject. According to Officer A, he/she heard the window shatter behind him/her and returned fire. Officer A left his/her position of cover behind his/her ballistic door and fired all eight rounds from positions that did not appear to provide cover.

After Officer B discharged his/her rounds, Officer B broadcast the Subject's location. Video surveillance footage from a business captured the Subject running and taking cover behind a tree, and it showed three muzzle flashes emanating from his pistol. Officer A discharged a total of eight rounds. Three discharged 9mm cartridge cases and four live 9mm cartridges were recovered from the sidewalk, planter, and driveway area where the Subject was positioned. Forensic examination determined the three discharged cartridge cases were fired from the Subject's pistol.

Officer H broadcast, "Hey guys give me a light." Officer A's BWV depicted that the Air Unit was still overhead in the area. As Subject ran, Officers A and B re-entered their police vehicle and headed after the Subject. Video footage from a business captured the Subject running east on the north sidewalk with what appears to be a gun in his right hand. Officer A broadcast, "Southbound across the street. Southbound airship. Come back westbound." According to Officer A, he/she observed the Subject run across the street and then continue on the sidewalk.

Meanwhile, Witness A was traveling in his vehicle when he observed the Subject appear from one side of the street. Witness A stated the Subject walked across the street and as Witness A got closer, he observed the Subject point a gun in his direction. Fearing the Subject was going to shoot him, Witness A stated he ducked and continued driving. An Assault with a Deadly Weapon (ADW) with a Firearm Investigative Report (IR), listing Witness A as the victim, was completed.

Officer A drove toward the Subject as Officer B broadcast the Subject was on the south side of the street and was barricaded behind a diesel truck. Officers A and B's BWV depicted that the officers still had their pistols unholstered and in their hands as they drove east while keeping distance between themselves and the Subject. Officer A stopped the police vehicle, exited and began to follow the Subject on foot while keeping distance between themselves and the Subject.

Once the Subject arrived on the sidewalk, he began to walk east while removing clothing. Officer A's BWV captured Officer A broadcast, "Airship, airship he shed the jacket. Come back westbound airship." The police radio did not capture Officer A's broadcast. Officer B broadcast, "He just took his black hoodie off. He's got a white shirt on." A black hooded sweatshirt and black hat were recovered from the front planter of a business, which was along the path that the Subject took.

In the interim, Officers C and D were in a marked black and white police vehicle equipped with a DICVS and responded to the scene. This was the first time Officers C and D had worked together. Officers C and D could not recall if they had any discussions regarding tactics before they began to patrol. The DICVS to their vehicle captured the Subject on the south sidewalk of street, walking east.

Meanwhile, Officer A was attempting to direct the Air Unit towards the Subject, when he/she observed Officers C and D's police vehicle negotiating a turn. Officer A broadcast, "Unit stop right there, stop right there, stop right there...Just south of you, stop right there. He's behind you." Officer C stopped the police vehicle, at which time Officers C and D exited their police vehicle. According to Officer D, he/she heard Officer A broadcast, "Behind you," and then turned toward the rear of his/her police vehicle unholstering his/her pistol.

According to Officer D, he/she observed the Subject standing on the side of the street, staring straight at him/her and pointing a firearm in his/her direction. Officer D fired a round, took cover behind his/her police vehicle, and noticed the firearm still pointed in his/her direction. Officer D continued to fire until the Subject fell to the ground. The Subject did not fire at the officers at this time. This determination was made by viewing Officer D's BWV, which did not capture any audible sounds of the Subject firing a round. In addition, there were no discharged cartridge cases located in the area where the Subject was standing, and his pistol was discovered in the slide lock condition with an empty magazine inserted and the pistol's firing chamber empty. Throughout this entire incident, it was determined that the Subject discharged a total of four rounds at Officers A and B.

Officer D fired a total of seven rounds in a southeasterly direction from an approximate distance of 53 feet. Officer D's BWV did not capture the Subject's actions at the time of the OIS due to his/her (Officer D's) position and angle behind the rear portion of the police vehicle. Officer D fired all seven rounds in approximately two seconds. The audio from a business video captured a single gunshot, a pause, and then six additional gunshots.

According to Officer C, he/she exited the police vehicle and heard a gunshot followed by a volley of gunshots. Based on the investigation, it was determined these gunshots were attributed to Officer D. Believing the Subject was shooting at them, Officer C's BWV depicts him/her running approximately 20 yards west and unholstering his/her pistol. Officer C turned, pointed his/her pistol toward the sidewalk, and then walked east joining Officer D, who was still positioned near the right rear quarter panel of the officers' police vehicle. Officer C stated that he/she could not see the Subject when the gunshots began. Video surveillance footage from a business captured the audible sounds of gunfire and the OIS incident. The video footage captured the Subject walking on the sidewalk and then turning and facing the officers while extending his right arm towards the officers.

Officers A and B were west of Officers C and D's police vehicle at the time of Officer D's OIS. Officer A's BWV depicted he/she was on foot in the westbound lanes of traffic when Officer D fired his/her rounds. Officer A was approximately 143 feet from Officer D. Officer A stated he/she did not see the OIS incident. Officer B's BWV depicts he/she was on foot in the eastbound lanes of traffic, when Officer D fired his/her rounds. Officer B was approximately 186 feet from Officer D. Officer B stated he/she heard gunshots but did not see the OIS.

As the Subject lay on the ground, Officer D communicated with Officer C and told him/her, "He's down." According to Officer D, he/she observed the Subject moving his arms, as if attempting to re-arm himself. Officer D's BWV depicted what appears to be the Subject moving his right arm and then Officer D telling the Subject, "Don't reach for the fucking gun."

Meanwhile, as Officers C and D were positioned near the right rear quarter panel of their police vehicle and pointing their pistols toward the Subject, Officers E and F arrived in a marked black and white police SUV equipped with ballistic door panels and a DICVS. Officers C and D's BWVs depict Officers E and F traveling and crossing the muzzle path of their (Officers C and D's) pistols.

According to Officer E, as he/she got closer to the location, he/she didn't realize that the officers had come back in the opposite direction that they were originally going. So instead of going west, they were now going east. Officer E stated that once he/she noticed that the officers were going east, he/she felt it was unsafe due to his/her speed to try to stop because he/she would be in the line of fire of the officers. As such, he/she continued west and stopped beyond the officers, believing this was safer.

As the officers approached the Subject, Officer B's BWV captured his/her broadcast, "Let me get a RA rolling. Male [...], probably 30 years old, conscious and breathing, several gunshot wounds to the chest." The police radio did not capture Officer B's broadcast. From the time Officer D began to fire until Officer B requested a Rescue Ambulance (RA), approximately 22 seconds had elapsed.

As Officers A, B, C, and D approached the Subject, Officer C told Officer D to take the Subject into custody. It was at this time that Officer D holstered his/her pistol. According to Officer A, he/she observed the Subject moving and a gun was approximately two feet from the Subject. Officer A stated that he/she noticed the gun in the slide lock condition and then placed his/her left foot on the gun to prevent the Subject from re-arming himself. Officer B's BWV captured Officer A placing his/her left foot on the gun and sliding the gun away from the Subject, approximately two feet in a northern direction. Officer D secured the Subject's right arm, turned, placed the Subject onto his stomach, and handcuffed him. Officers A, B, and C then holstered their pistols. Officer C's BWV captured the Subject's pistol in the slide lock condition.

Officer H also broadcast a request for an RA. Officer B broadcast, "Code Four. All officers accounted for. I need an RA rolling. Male [...], 30 years of age, conscious and breathing. Gunshot wound to the chest." The police radio did not capture Officer B's entire broadcast. The frequency captured, "Male [...], 30 years of age, conscious and breathing. Gunshot wound to the chest." The time of Officer H's RA request was determined by reviewing the Hollenbeck frequency and identifying that Officer H requested a RA approximately nine seconds prior to Officer B's second RA request. Officer B's request time was determined by reviewing his/her BWV.

The Los Angeles Fire Department (LAFD) personnel responded to the location. Firefighter/Paramedics provided emergency medical treatment to the Subject for gunshot wounds to his upper torso. Approximately 10 minutes, 59 seconds elapsed from the time Officer B requested an RA until LAFD arrived at scene. The Subject was transported to a nearby hospital and rushed into the emergency room where lifesaving protocols were initiated by medical professionals. The Subject did not respond to the treatment, and the Subject was subsequently pronounced as deceased.

### **BWV and DICVS Policy Compliance**

Of the four officers evaluated for their compliance with applicable BWV policy during this incident, all four activated their BWVs in a timely manner, captured a full 2-minute buffer prior to activation, and kept recording through the entire incident.

Of the four officers evaluated for their compliance with applicable DICVS policy during this incident, two activated their DICVSs in a timely manner and kept recording through the entire incident; two did not activate in a timely manner and did not keep recording through the entire incident.

### **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 A, B, C and D's tactics to warrant a Tactical Debrief.

## **B. Drawing and Exhibiting**

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

## **C. Lethal Use of Force**

The BOPC found Officers A, B, and 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. It is also recognized 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 value 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 and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers." (Use of Force Policy, Los Angeles Police Department Manual.)

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), 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:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a subject and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. Tactical de-escalation does not require that an officer compromise his 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. (Tactical De-Escalation Techniques, October 2016.)

## **A. Tactics**

### **Tactical De-Escalation**

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a Subject and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

#### *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 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** – Officers A and B, having been partners for approximately one year, had previously discussed tactics, pedestrian stops, vehicle stops, armed suspects, perimeters, and containment. Officer A stated that he/she and Officer B had decided they would drive past a suspect in an ambush situation. On the day of the incident, Officers A and B had also determined the driver would be the contact officer while the passenger would be the cover officer. After the Subject ambushed the officers and fired at them, the officers enacted their pre-discussed plan and drove away from the Subject. When they could not see the Subject once he ran into the alley, Officers A asked Officer B what he/she wanted to do. Together, they planned to set up containment and immediately began setting up a perimeter.

**Assessment** – Officers A and B, while being fired upon by the Subject, individually assessed their available cover at the corner of an intersection. In addition, Officers A and B both assessed between each round fired and had paused between sequences of fire. Officer D exited his/her police vehicle and observed the Subject facing him/her, pointing a firearm at him/her. Officer D, after firing one round, assessed and simultaneously took cover. After seeing the Subject was still a deadly threat, Officer D fired additional rounds, continually assessing, until observing the Subject had fallen and his firearm was pointed downward. Officer C, while not seeing anyone fire their service pistols, assessed his/her environment and heard shots being fired.

During the discharging of their service pistols, Officers A, B, and D continued to assess the incident and ceased firing when the Subject ceased posing a threat of serious bodily injury or death.

**Time** – Officers A and B, having been ambushed, used their limited time to create distance between themselves and the Subject. Officers drove through and out of the ambush rather than engaging in an OIS. Doing so allowed them to gain more time to create a tactical plan and to set up containment to effectively apprehend the Subject. As the officers were attempting to establish a containment perimeter and a slower paced well-coordinated response to the incident, the actions of the Subject continued to escalate; thereby reducing the time available to the officers.

**Redeployment and/or Containment** – After Officers A and B were fired upon by the Subject, Officer A drove away from the officers' location to escape the deadly

assault and redeploy so their police vehicle would be facing the Subject which would allow the officers to use their ballistic panels for cover. After seeing that that the Subject fled into the alley, the officers redeployed to set up containment on the west end of the alley. Officer C did not see the Subject's location, but due to Officer A's warning, immediately redeployed to the rear of his/her vehicle for cover. Officers attempted to contain the Subject, but the Subject continued to move, which resulted in an additional OIS.

**Lines of Communication** – Officer B broadcast a “shots fired” call, a Subject description, and requested officers for a perimeter. After arriving at an intersection, Officer B began broadcasting the officers' location but was interrupted by the Subject's gunfire. The shortened broadcast led to CD utilizing the last known location of the officers for their follow up broadcast. Responding officers were left unaware of Officers A and B's follow up location. However, even after being fired upon for a second time, Officer B resumed his/her broadcast while redeploying to cover.

The BOPC noted that due to the rapidly unfolding nature of this incident, the officers had limited time to react to the Subject's actions. Officers A, B, C, and D were required to make quick tactical decisions while being mindful of community safety. Officers A and B articulated a thorough assessment of their background at the time of their OIS. Officers A, B, C, and D reacted quickly in stopping the deadly actions of the Subject.

- During its review of this incident, the BOPC noted the following tactical considerations:

### **1. Utilization of Cover**

Officers A and B did not redeploy to positions of cover when approaching the armed Subject and when firing their service pistols at him.

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

In this case, Officers A and B's actions were viewed in light of the Subject's deadly and persistent actions. Officers A and B left the cover of the ballistic panels of their police vehicle and moved to other positions of cover that would improve their ability to observe the Subject. While moving to their positions of cover, they were again fired upon by the Subject. The BOPC noted they would have preferred the officers to have been behind cover but recognized that officers are trained to move away from their police vehicles in ambush incidents.

Also, the BOPC noted the Subject continued to approach the officers and fire at them, making him a persistent and deadly threat. The BOPC recognized the Subject's threat not only to the officers, but also to nearby citizens. In this case, it was understandable for Officer A to prioritize obtaining a sight picture with his/her service pistol to stop the threat, over gaining cover. Officer A obtained a sight picture of the Subject by utilizing an elevated platform to fire at the Subject. The BOPC recognized that high ground was more important at the time. It should also be noted that the Subject had already targeted both Officers A and B while they were seated inside of their police vehicle. The police vehicle was a highly visible target for the Subject, if he chose to continue to target it.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's actions were reasonable given the deadly actions of the Subject and did not deviate from approved Department tactical training.

- The BOPC also noted the following:
  - **Tactical Vehicle Deployment** – Officers A and B stopped their police vehicle in the middle of the crosswalk in the Subject's path and line of sight. Even though the police vehicle affords ballistic protection, the officers were reminded, when possible, to attempt to position their police vehicle in a manner that is most advantageous to their safety, wherein they maintain the tactical advantage.
  - **Driving while Maintaining Control of a Service Pistol** – Officer A unholstered his/her service pistol and held it in his/her right hand as he/she drove his/her police vehicle with his/her left hand. In this case, Officers A and B had been ambushed and fired upon by the Subject. While the BOPC noted this would be allowed under certain circumstances, such as an ambush, officers were reminded there is a heightened concern for safety when maneuvering a police vehicle while holding a service pistol.
  - **Basic Firearms Safety Rules** – Officers A and B simultaneously pointed their service pistols towards the alley where Subject was last seen while seated in their patrol vehicle, resulting in Officer B momentarily covering Officer A with his/her service pistol. Although the officers had just been fired upon, officers were still reminded of basic firearms safety rules.
  - **Tactical Communication** – Officer A deployed from his/her police vehicle to engage an armed Subject, while Officer B attempted to confirm with Officer A of the Subject's location. Although Officer A did advise Officer B of the Subject's location as Officer A exited the police vehicle, Officer B was left unaware of the Subject's specific location until the Subject fired at the officers. Officers were reminded of the importance of effective communication between partners during a tactical incident to reduce possible confusion and improve operational success.

- **Occupying a Moving Vehicle with a Service Pistol Drawn** – Officer B was seated in the passenger seat of the police vehicle with his/her service pistol drawn as Officer A drove to their follow up location. Although in this case the officers did not know the location of the armed Subject, officers were still reminded of risk of an unintentional discharge while being unholstered in a moving vehicle and the concern for safety.
- **Updating Status** – Officers A and B did not update their locations until after they engaged the armed Subject, leaving communications unaware of their location. The Force Investigation Division (FID) investigation revealed that the distance from Officer A and B's original location to their follow-up location was approximately 290 yards. Although the follow-up location was in visual sight of their original location, officers were reminded of the importance of updating their status not only for their safety, but the safety of responding officers.
- **Situational Awareness** – Officers A and B, after being ambushed, drove away from the location, conducted a U-Turn, and returned to the last known location of the armed Subject as he had disappeared from their view. In doing so, Officers A and B placed themselves in a similarly disadvantageous position in which they were originally fired upon. Officers were reminded in the wake of an ambush, to utilize time and distance when returning to the immediate vicinity.

Officers E and F responded to the incident and drove directly towards and through the OIS location, causing them to drive in the line of fire between the officers and the Subject. Although the incident was extremely dynamic and unfolding rapidly, officers were reminded of the importance of ensuring they have a good understanding of the circumstances and location of the officers requesting help upon their arrival.

- **Maintaining a Service Pistol While Placing Vehicle in Park** – Officer A utilized his/her left hand to reach over and place his/her police vehicle in park while his/her service pistol was in his/her right hand. Officers were reminded there is a heightened concern for safety when holding a service pistol in one hand and utilizing the other hand to place a vehicle in park.
- **Fire Control Discipline** – The investigation revealed that Officer D discharged seven rounds from his/her service pistol in approximately two seconds. Officer D stated that he/she observed that the Subject was looking at him/her and pointing a firearm at him/her. The BOPC noted that Officer D paused between discharging his/her rounds. While this was an extremely dynamic incident, Officer D was reminded of the importance of fire control discipline to maximize his/her accuracy by utilizing time to his/her advantage, when possible.
- **Radio Codes and Procedures** – Officers A and B's broadcasts were incomplete due to multiple officers broadcasting simultaneously. During the Use of Force Review Board, FID investigators presented five transmissions that had not been

broadcast during the incident. A further analysis confirmed that the incomplete transmissions were due to multiple officers broadcasting simultaneously, as well as the Radio Telephone Operator (RTO) conducting broadcasts. Officers A and B were reminded to monitor the frequency when broadcasting to ensure that their broadcasts are completed.

- **Searches of Arrestees** – Officer D did not complete a full search of the Subject upon his arrest. Although this was during a dynamic incident which involved an OIS, Officer D was reminded of the importance of thoroughly searching a Subject who was known to have been armed with a firearm.
- **Stepping on Limbs** – Officer F utilized his/her foot to apply bodyweight on the Subject's ankles as the Subject was being taken into custody. Although the Subject had just fired his handgun at officers and was being taken into custody, Officer F was reminded that stepping on limbs can lead to a loss of balance. In addition, this action can cause a negative impact to the public's perception of the Department.
- **Blood Borne Pathogens** – Officer D took the Subject into custody without utilizing Personal Protective Equipment (PPE) despite the Subject having blood on his chest. Officers were reminded to utilize PPE, when feasible, to prevent the spread of blood borne pathogens.
- **Preservation of Evidence** – Officer A placed his/her left foot on the Subject's firearm, which was in the slide lock position, and moved it two feet away from its original position. Officer A stated that he/she did so since he/she observed the Subject moving and the firearm was approximately two feet away from the Subject. Officer A was reminded that whenever tactically feasible, it is preferable to have an uninvolved officer guard evidence and leave it undisturbed until FID investigators can properly document and preserve the scene.
- **Required Equipment** – Officers A, B, C, and D left their side-handle batons in their police vehicles at the time of the incident. Officer C did not have his/her Hobble Restraint Device (HRD) on him/her. Officers were reminded to have all required equipment on their person at all times to allow for the availability of alternative force options in the event they are needed.

These topics were to be discussed at the Tactical Debrief.

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

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

In conducting an objective assessment of this case, the BOPC determined that Officers A, B, C, and D's tactics did not deviate from approved Department tactical training.

Although it was determined that Officers E and F were not substantially involved in this incident and did not receive formal findings, the BOPC recommended that they would benefit from attending the Tactical Debrief.

The BOPC found Officers A, B, C and D's tactics to warrant a finding of Tactical Debrief.

## **B. Drawing and Exhibiting**

- **Officer A**

According to Officer A, he/she passed through the intersection, negotiated a U-turn, and drove northbound. Officer A believed the situation was going to escalate to one involving the use of deadly force since the Subject had already shot at them once. Officer A unholstered his/her service pistol with his/her right hand as he/she maneuvered his/her police vehicle with his/her left hand.

- **Officer B**

According to Officer B, he/she believed the Subject was trying to kill him/her and Officer A. Officer B believed the situation had escalated to the point where deadly force was justified. Officer B unholstered his/her service pistol as Officer A drove through the intersection.

- **Officer C**

According to Officer C, he/she exited his/her vehicle and heard gunshots. While unholstering his/her service pistol, he/she redeployed around to his/her police vehicle and took cover behind the rear panel, next to Officer D. Officer C could not observe the Subject and did not observe Officer D's OIS. Officer C recalled that as he/she stepped out of the vehicle, he/she smelled gun powder and heard shots fired. Officer C believed that the Subject was firing at them.

In this case, the BOPC conducted a thorough review and evaluation of the reasonableness of Officer A's and B's drawing and exhibiting of a firearm. The BOPC noted that Officers A and B initially drew their service pistols upon being ambushed and fired upon by the Subject. Each officer was fearful for not only the safety of himself/herself, but of each other as well. The BOPC conducted a

thorough review and evaluation of the reasonableness of Officer C's drawing and exhibiting of a firearm. The BOPC noted that Officer C knew he/she was responding to an active shooting and, upon exiting the police vehicle, he/she heard gunshots, smelled gun smoke, and believed that he/she was being shot at.

- **Officer D**

According to Officer D, he/she was the passenger and his/her partner, Officer C, was the driver. Officer D stated the officers were responding to the help call and heard gunfire over the radio. As they arrived on scene, Officer D observed two additional officers coming towards their direction. Officer D heard an unidentified officer state, "Stop, stop, stop." Officer D stated that Officer C stopped their vehicle and, as Officer D was about to exit, he/she heard someone say, "Behind you." Officer D unholstered his/her service pistol.

The BOPC conducted a thorough review and evaluation of the reasonableness of Officer D's drawing and exhibiting of a firearm. The BOPC noted that Officer D knew he/she was responding to an active shooting, and upon his/her arrival the circumstances escalated when he/she heard that the Subject was located behind him/her.

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

Therefore, the BOPC found Officers A, B, C, and D's drawing and exhibiting of a firearm to be In Policy.

### **C. Lethal Use of Force**

- **Officer A** – (pistol, eight rounds, in three sequences of fire)

**Sequence-One** – Two rounds in an easterly direction from an approximate distance of 133 feet and 6 inches.

According to Officer A, as he/she attempted to redeploy towards the building, the Subject began firing at him/her from approximately fifty or sixty yards. Officer A observed the Subject take cover behind a tree. Officer A utilized a two-handed grip on his/her service pistol and fired two or three rounds at the Subject's center mass in an eastbound direction.

Officer A recalled that he/she could see the Subject firing at him/her and that he/she returned fire as the Subject made his way to a tree. Officer A recalled that he/she observed the outline of a silhouette and muzzle flashes.

**Sequence-Two** – Two rounds in an easterly direction from an approximate distance of 131 feet 8 inches.

According to Officer A, the Subject was still taking cover behind the tree. Officer A observed the Subject's silhouette from the waist up which included his arm, upper body, and head. Officer A utilized a two-handed grip, obtained a sight picture of the Subject's center mass, and fired about four or five rounds at the center mass of the Subject's body, in an east direction.

**Sequence-Three** – Four rounds in an easterly direction from an approximate distance of 131 feet, 8 inches.

According to Officer A, he/she stepped on top of an elevated platform to his/her left to get a better visual of the Subject. While Officer A did so, the Subject fired at least one round in Officer A's direction from behind the tree. Officer A heard a window shattering from a business on the northwest corner of the intersection. Officer A utilized a two-handed grip and returned fire again.

- **Officer B** – (pistol, seven rounds)

According to Officer B, he/she heard one or two shots being fired and observed muzzle flash, which illuminated the Subject. Officer B redeployed back to his/her police vehicle for cover. Officer B believed the Subject was trying to kill him/her and Officer A. Officer B wanted to protect himself/herself and his/her partner from the imminent threat of death or serious bodily injury. Approximately two seconds after he/she heard the Subject fire, Officer B utilized a two-handed grip and fired his/her service pistol once, in an easterly direction. Officer B stated that after a momentary lull, he/she reassessed and then continued firing approximately six rounds to stop the threat.

- **Officer D** – (pistol, seven rounds)

**Sequence-One** – One round, in a southeasterly direction from an approximate distance of 53 feet.

According to Officer D, he/she observed the Subject staring straight at him/her. Officer D observed the Subject standing south of him/her. Officer D observed the Subject pointing a firearm north, at him/her, from an approximate distance of two car lengths. Officer D observed the Subject holding the gun in a shooting motion with his hands raised towards his upper chest and his whole-body in a shooting stance. Officer D was in fear for his/her life, believed the Subject was an immediate threat, and was going to kill him/her. Officer D utilized a two-handed grip and fired one round at the Subject. After firing, Officer D ducked and took cover behind his/her police vehicle's rear panel.

**Sequence-Two** – Six rounds, in a southeasterly direction from an approximate distance of 53 feet.

According to Officer D, after taking cover, he/she came back, about a split second later, and observed the firearm was still pointed at him/her. Officer D fired what he/she believed was four more rounds at the Subject. Officer D observed the Subject drop down and observed the Subject's handgun was down. Officer D stated the Subject was utilizing a grabbing motion to reach his handgun. The investigation determined that Officer D fired six rounds during the second sequence.

The BOPC noted that Officers A and B were ambushed and fired upon by the Subject in an unprovoked ambush. The bullet fired at the officers traveled through the police vehicle's front passenger compartment where both Officers A and B were seated. Officers A and B utilized lethal force to defend their lives as the Subject shot at them, and the scene was dynamic and evolving as the Subject fled in multiple directions and fired at the officers on an additional occasion. The officers utilized a reasonable amount of lethal force to stop the deadly threats.

The BOPC noted that Officer B stated he/she observed muzzle flash emanating from the Subject's handgun. Officer B feared for Officer A's life, as well as his/her own. The BOPC also noted that Officer B believed that Subject posed a threat of serious bodily injury or death.

The BOPC noted that Officer D stated the Subject was standing in a shooting position and pointing the handgun at him/her as he/she exited the police vehicle. Officer D was in fear for his/her life. The BOPC also noted that Officer D fired in self-defense to stop the Subject's violent actions directed toward him/her.

The BOPC noted the officers were aware of their background during their respective OIS's and their cognizance of public safety. In addition, each officer demonstrated control and composure throughout the event to ensure the safety of the community and others.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience would reasonably believe the Subject's actions presented an imminent threat of death or serious bodily injury and that the lethal use of force would be objectively reasonable.

Therefore, the BOPC found Officers A, B, and D's lethal use of force to be In Policy.