

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

OFFICER-INVOLVED SHOOTING – 007-21

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

Southeast 2/9/2021

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

Officer A 3 years, 2 months

Reason for Police Contact

Officers conducted an investigative stop on a vehicle for a parking violation. An officer directed the Subject, who was seated in the driver’s seat of the vehicle, to turn off the engine. The Subject drove toward and then past one of the officers and raised his right arm, resulting in an Officer-Involved Shooting (OIS).

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

Male, 30 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 1/11/2022.

Incident Summary

Officers A and B were in full police uniform driving a marked police sport utility vehicle. Officers A and B's police vehicle was equipped with a Digital In-Car Video System (DICVS), and the officers were equipped with Body Worn Video (BWV). According to Officers A and B, they had been partners for approximately three weeks, during which time they had discussed tactics and engaged in tactical planning. Officers A and B had also discussed their weapon systems. According to Officer B, as the driver, he/she was the designated contact/lethal officer. As the passenger, Officer A was designated as the cover/communications officer. According to Officer B, the roles could change based on the situation.

While on routine patrol, Officer B observed a black Mazda CX-5 parked in a strip mall on the northwest corner of an intersection. The Mazda was parked facing south, blocking multiple parked vehicles in front of a restaurant. According to Officer B, the Mazda was impeding ingress and egress to the parking lot; Office B decided to investigate. As he/she prepared to negotiate a left turn into the parking lot, Officer B noted that the Mazda's windows were tinted. Officer B did not see anyone inside the Mazda and believed it was unoccupied.

As Officer B negotiated a left turn into the parking lot, both Officers A and B observed the Subject sitting in the Mazda's driver seat. According to Officer B, the Subject appeared "startled" by the officers' presence. The Subject was "slouched backwards" in the driver's seat as if attempting to hide. According to Officer A, the Subject looked in the officers' direction. Officer A observed the Subject making "furtive movements" inside the vehicle, reaching toward his waistband, center console, and floorboard area. Officer A believed the Subject was attempting to conceal contraband and/or weapons inside the vehicle. The Subject's demeanor caused both Officers A and B to believe that the Subject may have been engaging in criminal activity. Unbeknownst to the officers, the Subject had a suspended driver's license, and two felony warrants for his arrest.

Officer B decided to contact the Subject. Using the element of surprise to his/her advantage, Officer B stopped his/her police vehicle alongside the Subject's Mazda. As he/she did so, their driver's side doors were adjacent to one another. Officer B considered driving past the Subject's vehicle and turning around; however, there were multiple vehicles in the parking lot and limited room to maneuver the police vehicle. Additionally, Officer B did not want to drive past the Mazda, exposing his back to Subject 1.

Officer B exited the police vehicle, approached the Mazda, and directed the Subject to roll down the driver's window. Officer B did not activate the police vehicle's emergency lighting before contacting the Subject and the police vehicle's digital in-car video system (DICVS) was not otherwise activated, so DICVS did not capture audio or video of the incident. Nearly simultaneously, Officer A exited the police vehicle's passenger side door, walked around the rear of the police vehicle, and stood in front of the Subject's

vehicle. Officer A believed his/her position provided him/her with the best view of his/her partner and the Subject. Officer A noted that there were vehicles parked along the passenger side of the Subject's vehicle. Due to the limited space, which he/she estimated was approximately two to three feet, Officer A believed it was unsafe to stand between the parked vehicles and the Subject's vehicle. Officer A feared he/she could be "squished" if the Subject were to move his vehicle.

According to Officer B, he/she briefly discussed his/her observations with Officer A before the investigative stop; however, he/she did not recall their exact conversation. According to Officer A, Officer B did not communicate his/her observations or inform him/her that he/she intended to conduct an investigative stop on the Subject. When Officer B exited the police vehicle, Officer A assumed that Officer B saw something that he/she (Officer A) did not see. Officer A did not have time to communicate his/her observations with Officer B before Officer B exited the police vehicle.

Lowering his window, the Subject stated to Officer B, "I'm just waiting for my mom, sir," and pointed in the direction of the restaurant. Officer B noticed that both the Subject's hands were empty. Officer B also detected the odor of marijuana emitting from the Mazda's passenger compartment. Officer B told the Subject that he was parked illegally and had a dark window tint on his vehicle. Officer B said that the Subject's eyes were glossy and reddish, he was having a hard time focusing, and he was avoiding eye contact.

Based on his/her observations, Officer B formed the opinion that the Subject was possibly under the influence of marijuana. Officer B told the Subject to turn off the Mazda's engine. The Subject pointed west and replied, "I'll go over there for you, sir." Officer B repeated his/her command for Subject 1 to turn off the vehicle's engine. Subject 1 then gripped the steering wheel with his right hand and pointed in a westerly direction with his left index finger. The Subject stated, "Let me move the car for you, sir," while simultaneously turning the steering wheel in a counterclockwise direction.

Officer A said that he/she was aware that the Subject was not complying with Officer B's commands. Officer A said he/she observed the Subject scanning his surroundings, assessing the situation and the officers. Officer A believed the Subject may attempt to flee the scene. Officer A said that he/she had participated in multiple firearms arrests with suspects displaying the same demeanor as the Subject. Officer A was cognizant that there was potential cover available behind the parked vehicles; however, he/she believed there was insufficient time to safely redeploy. Officer A opined that if he/she would have repositioned him/herself to the side of or behind one of the parked vehicles, he/she would have lost sight of both the Subject and of his/her partner. Therefore, Officer A maintained his/her position near the right front bumper of the Subject's vehicle.

Officer B observed that the Subject appeared to be nervous and continued to look around. Based on his/her observations, Officer B believed that the Subject was going to flee in his vehicle. Officer B ordered the Subject to place the vehicle's transmission into park. Instead, the Subject drove towards Officer A. Officer B grabbed the driver's side

window of the Subject's vehicle with both hands and yelled, "Hey, hey!" Due to the limited space between the police vehicle and the Mazda, Officer B released his/her grip on Subject 1's window and took a few steps backward.

Observing the Subject driving towards him/her, Officer A placed his/her right hand on the Mazda's hood and instinctively yelled, "Yo! Yo! Yo!" to gain the Subject's attention. Officer A said that the Subject looked him/her in the eyes and continued to drive forward. To avoid being struck by the Subject's vehicle, Officer A stepped back and placed his/her left hand on the Mazda's hood. Believing that the Subject was arming himself and going to strike him/her with the Mazda, Officer A unholstered his/her service pistol.

Officer A held his/her service pistol in his/her right hand, in a one-handed shooting position, with the muzzle pointed in a northeasterly direction, toward the Subject. As Officer A moved out of the way of the Subject's vehicle, the Subject raised his hand towards him/her as if he was pointing a firearm. As the Subject drove forward and raised his left hand, his fingers appeared to be partially extended and pointed towards the windshield. While he/she did not see a firearm in the Subject's hand, Officer A believed the Subject was armed. Believing that the Subject was going to shoot him/her, Officer A discharged his/her service pistol at the Subject's upper torso. Approximately 15 seconds elapsed from the moment Officer A initially left the police vehicle until the officer-involved shooting (OIS) occurred. Officer A said that as the Subject drove out of the parking lot and onto the roadway, his right arm remained raised and pointed in Officer A's direction. Believing that the Subject was going to shoot at him/her as he fled, Officer A continued to fire at the Subject. Officer A fired a total of eight rounds at the Subject in approximately 2 seconds, in northeasterly, easterly, and southerly direction.

Officer B was unaware of Officer A's position in front of the Subject's vehicle. As the Subject's vehicle began to move, Officer B heard shots being fired but did not initially know that Officer A was the source. Officer B observed Officer A fire his/her last two rounds. As Officer A fired his/her service pistol towards the Subject's vehicle, two of Officer A's rounds went through the Mazda's windshield and hit Witness A's car as he was driving nearby. Witness A's car sustained two non-perforating bullet impacts; one on the front passenger door and one on the right rear passenger door. Witness A, a Lyft driver, had a customer in the right rear passenger seat (Witness B). Witness A and Witness B were not injured during the incident.

Following the officer-involved shooting (OIS), the Subject continued driving and fled the scene, Officer A holstered his/her service pistol, utilized his/her handheld police radio to broadcast an "Officer Needs Help" call, and advised Communications Division (CD), that shots had been fired.

Believing that the Subject was a potential danger to the community, Officers A and B attempted to "catch up" with him. According to Officer A, he and Officer B were far behind the Subject's vehicle and could not see it. Locating the Mazda traveling at a

high rate of speed, an Air Unit broadcast the Subject's direction of travel and monitored his movements. Officers A and B said that while they were driving with emergency lights and siren (Code Three), they were never in pursuit and merely following the Subject's direction of travel. When asked by the Air Unit if Subject 1 had fired at officers, Officer A broadcast that he had almost run officers over, was reaching within the vehicle, and was possibly armed with a firearm.

While attempting to catch up with the Subject, body-worn video (BWV) captured Officer B advising Officer A that he/she intended to stop the Subject for a possible narcotics investigation. Officer A then proceeded to discuss his/her observations and knowledge of the area with Officer B. Body-worn video (BWV) also captured Officers A and B verbally checking on one another, ensuring neither was injured. Officer A then stated, "He almost hit me, dude. You saw that?" Officer B advised Officer A that he/she witnessed the act. Officer A then asked Officer B, "You saw how he was reaching underneath his thing?" Officer B did not verbally respond. According to Officer A, he/she discussed his/her observations with Officer B because they did not have time to communicate with one another before the OIS and because he/she felt it was necessary to explain to his/her partner what he/she observed. Officer A explained that he/she was "nervous" and had a "lot of adrenaline" following the OIS and was trying to "recollect" his/her thoughts.

The Air Unit followed the Subject to the parking lot of a retail store in the City of Inglewood. The Subject abandoned the Mazda and ran in a southeasterly direction through the parking lot. According to the Air Unit, the Subject reached into his front waistband area and dropped an object resembling a handgun wrapped inside of a black cloth or sock. The Air Unit advised responding units that the Subject "tossed a gun" and ran into a store. The Subject entered the store, removed his black sweatshirt, donned a red jersey, and left the store through the front door, undetected by the Air Unit. The Subject entered a market, removed the black covering from his head, and utilized it as a non-medical face covering.

Arriving at the parking lot, Officers A and B parked west of the store and exited their police vehicle. Upon exiting the police vehicle, Officer A unholstered his/her pistol with his/her right hand and ran toward the store, followed by Officer B. Fearing that the Subject may attempt to take hostages inside of the store, Officers A and B entered the location and began searching for him. Believing that the Subject could still be armed and pose a danger to the community, Officer B unholstered his/her service pistol before searching the store. Officer B directed customers and employees to exit the store. Additional uniformed officers had entered the store before Officers A and B but had remained at the threshold of the business. While searching the store, Officer A holstered his/her service pistol after verifying that two doors in the rear of the location were locked. Soon after holstering his/her service pistol, Officer A discovered a third door at the rear of the store. Officer A unholstered his/her service pistol before ensuring that the third door was locked. When their initial search for Subject 1 was unsuccessful, Officers A and B holstered their service pistols and left the store. As additional resources arrived at the scene, officers at the threshold searched the store for the

Subject after forming a search/arrest team. The Subject had left the area and was not apprehended until a later date.

BWV and DICVS Policy Compliance

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

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 Officer A and Officer B's tactics to warrant a finding of Administrative Disapproval.

B. Drawing and Exhibiting

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

C. Lethal Use of Force

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

Basis for Findings

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

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

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

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

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

Use of De-Escalation Techniques: It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a 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 subjects;
- 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, subjects, 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 – According to Officers A and B, they had been partners for approximately three weeks, during which time they had discussed tactics and engaged in tactical planning. They had also discussed their weapon systems. According to Officer B, as the driver, he/she was the designated contact/lethal officer. As the passenger, Officer A was designated as the cover/communications officer. According to Officer B, the roles could change based on the situation.

Assessment – Officers A and B had prior knowledge of narcotics, prostitution, and gang activity occurring in the strip mall. Observing the Subject's movements inside the Mazda, Officers A and B opined that he may have been engaged in criminal activity. Assessing the position of the Subject's vehicle in the parking lot, Officer A deployed to the front of the Mazda. Due to the limited room between the Subject's vehicle and the parked vehicles, which Officer A estimated to be two to three feet, he/she believed it was unsafe to position himself/herself on the Mazda's passenger side.

Observing the Subject ostensibly scanning his surroundings, assessing the situation and the officers, Officer A believed that the Subject may attempt to flee the scene. According to Officer B, the Subject appeared to be nervous and continued to look around. Based on his/her observations, Officer B believed the Subject was going to flee in his vehicle

Time – Officers A and B did not utilize distance and cover to create time. Officer A stood in front of the Mazda while Officer B stood parallel to the Mazda's driver-side window. After the Subject entered the store, Officers A and B did not utilize time to develop a plan, form a search/arrest team, or designate roles before entering the store to search for him.

Redeployment and/or Containment – Officer A was cognizant that there was potential cover available behind the parked vehicles; however, he/she believed there was insufficient time to safely redeploy. Officer A opined that if he/she would have repositioned him/herself to the side of or behind one of the parked vehicles, he/she would have lost sight of the Subject and his/her partner. Observing the Subject’s vehicle moving towards him/her, Officer A placed his/her hand on the Mazda’s hood and moved back to avoid being struck.

Other Resources – After the officer-involved shooting (OIS), Officer A utilized his/her handheld radio to broadcast an “Officer Needs Help” call. In response, the communications division (CD) initiated a backup request to gather additional officers, a supervisor, and an Air Unit. When the Subject abandoned the Mazda and fled into the General Discount store, Officers A, B and additional units responded to the location. Southeast detectives also responded to assist in locating the Subject.

Lines of Communication – Officer B said that he/she briefly discussed his/her observations with Officer A before the investigative stop; however, he/she did not recall their exact conversation. Officer A said that Officer B did not communicate his/her observations or inform him/her that he/she intended to conduct an investigative stop on the Subject. Officer A said that he/she did not have time to communicate his/her observations with Officer B before Officer B exited the police vehicle. During their investigative stop, Officer B attempted to communicate with the Subject and get him to turn off the Mazda’s engine. After the officer-involved shooting (OIS), Officer A used his/her handheld police radio to broadcast their location, the Subject’s direction of travel, and to inform Communications Division that shots had been fired. In response, the Communications Division broadcast that officers needed help and summoned additional units, a supervisor, and an Air Unit. The Air Unit broadcast the Subject’s direction of travel and monitored his movements. When the Subject abandoned the Mazda, the Air Unit advised officers that he had entered the store.

The BOPC noted Officer A and B’s lack of communication and planning. The BOPC also noted that Officers A and B did not communicate the reasons for contacting the Subject. Despite Officer A observing the Subject making furtive movements, Officers A and B did not develop, communicate, or adhere to a tactical plan before or during their contact with him. The BOPC opined that Officer A and B’s lack of communication, combined with their vehicle placement and lack of cover, put them at a significant tactical disadvantage.

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

1. Tactical Vehicle Deployment

Entering the strip mall, Officer B stopped his/her police vehicle alongside the Subject’s Mazda. As he/she did so, the driver’s side doors were adjacent to one

another. Officer B exited the police vehicle, approached the driver's side of the Subject's vehicle, and directed him to roll down the driver's window. Nearly simultaneously, Officer A exited the police vehicle's passenger side door, walked around the rear of the police vehicle, and stood in front of the Subject's vehicle. According to Officer B, he/she considered driving past the Subject's vehicle and turning around; however, there were multiple vehicles in the parking lot and limited room to maneuver. Additionally, Officer B did not want to drive past the Mazda, exposing his/her back to the Subject.

The BOPC noted that the positioning of a police vehicle when conducting an investigative stop is critical to provide officers a tactical advantage should the incident escalate. By positioning his/her police vehicle next to the Subject's vehicle, close to a potentially armed suspect, Officer B placed him/herself and his/her partner at a significant tactical disadvantage. The BOPC noted that Officer B's vehicle deployment forced Officer A to quickly exit the police vehicle to join Officer B as he/she approached the Subject's vehicle. Due to the position of the police vehicle, Officer B was exposed to the Subject as he/she exited the police vehicle. Also due to the position of the police vehicle, Officer A's options were limited as he/she chose a position to cover his/her partner during the contact. This, however, did not justify standing in front of the Mazda. While the BOPC noted Officer B's concerns, the Board would have preferred that Officer B had entered the parking lot from a different direction. This would have allowed a tactical approach behind the Subject's vehicle, would have given the officers more options and time, and would not have unnecessarily compromised their safety.

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

2. Code Six

As they entered the strip mall and contacted the Subject, neither Officer A nor B advised Communications Division of their Code Six location. According to Officer A, he/she did not advise that they were Code Six "because everything was happening so fast." According to Officer B, he/she believed that as the cover officer, Officer A was responsible for communication; however, Officer B did not know if Officer A went Code Six. Additionally, Officers A and B failed to broadcast their Code Six location when they arrived at the store following the Subject's flight from the OIS location.

The BOPC noted that the purpose of broadcasting a Code Six location is for officers to advise Communications Division and other officers of their location and the nature of their activity. Vehicle and pedestrian stops can be dangerous, as the person's identity and intentions often are unknown. The BOPC noted that while both Officers A and B were familiar with the area and its history of criminal

activity, neither officer broadcast their Code Six location before contacting the Subject. The BOPC also noted that due to a lack of communication and planning, Officer A's first broadcast was the "Officer Needs Help" call.

The BOPC noted that during this incident, Officers A and B were conducting a self-initiated investigative stop. The BOPC further noted that before contacting the Subject, Officers A and B were not confronted by activity that would have prevented them from broadcasting their Code Six location. The BOPC opined that while Officer A appeared to raise his/her handheld police radio shortly before the Subject drove towards him/her, the officers had sufficient time to broadcast their Code Six location before contacting the Subject. The BOPC further opined that Officer A and B's failure to broadcast their Code Six location before contacting the Subject placed them at a tactical disadvantage.

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 tactical training.

3. Utilization of Cover

Entering the strip mall, Officer B stopped his/her police vehicle alongside the Subject's Mazda. As he/she did so, their driver's side doors were adjacent to one another. Officer B exited the police vehicle and approached the driver's side of the Subject's vehicle. Officer B stood between the vehicles, in front of the Mazda's driver's window. Officer B directed the Subject to roll down the driver's window. Nearly simultaneously, Officer A exited the police vehicle's passenger side door, walked around the rear of the police vehicle, and stood in front of the Subject's vehicle. Officer A believed his/her position would provide him/her with the best view of his/her partner and the Subject. Officer A noted that there were vehicles parked along the passenger side of the Subject's vehicle. Due to the limited space, which he/she estimated was approximately two to three feet, Officer A believed it was unsafe to stand between the parked vehicles and the Subject's vehicle. Officer A feared he/she could be "squished" if the Subject were to move his vehicle.

The BOPC noted that Officer B's decision to stand next to the Mazda's driver's side window deviated from Department tactical training, which teaches officers to stand back from the window, placing the driver at a disadvantage. By standing next to the window, Officer B presented him/herself as a target and gave the tactical advantage to the Subject. The BOPC also noted that Officer A's decision to stand in front of the Mazda deviated from Department tactical training, which teaches officers to avoid standing in front of vehicles during traffic stops. While the BOPC considered Officer A's concern about the parked vehicles, better options were available. By standing in front of the Mazda, Officer A also presented him/herself as a target, gave the tactical advantage to the Subject, and was forced to move back to avoid being struck by the vehicle. The BOPC further

noted that Officer A and B's positioning was at odds with their belief that the Subject may have been engaged in criminal activity in a high-crime area.

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 tactical training.

4. Tactical Communication/Tactical Planning

According to Officer B, he/she briefly discussed his/her observations with Officer A before the investigative stop; however, he/she did not recall their exact conversation. According to Officer A, Officer B did not communicate his/her observations or inform him/her that he/she intended to conduct an investigative stop on the Subject. When Officer B exited the police vehicle, Officer A assumed that Officer B saw something that Officer A did not see. Officer A did not have time to communicate his/her observations with Officer B before he/she exited the police vehicle. Although the Subject's demeanor caused both officers to believe he may try to flee the scene, they did not communicate their observations with one another. Additionally, the officers' lack of a clear plan led to Officer A standing in front of the Subject's vehicle, risking a potential crossfire situation.

The BOPC noted that operational success is based on the ability of officers to effectively communicate during critical incidents. When faced with a tactical incident, officers improve their overall safety by their recognition of an unsafe situation and by working together collectively to ensure a successful resolution. The BOPC noted Officers A and B's lack of communication and planning. The BOPC also noted that Officers A and B did not communicate with each other regarding their intentions to contact the Subject. Despite Officer A observing the Subject making furtive movements, Officers A and B did not develop, communicate, or adhere to a tactical plan before or during their contact with him.

The BOPC opined that Officers A and B had enough time to formulate a plan before contacting the Subject. The BOPC further opined that Officers A and B's lack of communication, combined with their vehicle placement and lack of cover, put them at a significant tactical disadvantage. The BOPC would have preferred that Officers A and B had communicated and developed a specific tactical plan regarding contact, cover, and communications roles, as opposed to relying on the assumption that they would be flexible in how they handled an incident. As many law enforcement contacts are fluid and unpredictable, it is incumbent upon officers to develop, communicate, and attempt to adhere to a tactical plan to ensure the safety of Department personnel and the community. While the officers discussed the necessity of being flexible in their tactics and actions, this did not justify a lack of developing a specific plan to approach or detain the Subject.

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 tactical training.

5. Situational Awareness

While speaking to the Subject, Officer B was unaware of Officer A's position. As the Subject's vehicle began to move, Officer B heard "shots" being "fired" but did not initially know that Officer A was the source. Officer B observed Officer A fire his/her last two rounds. When Officer A fired his/her first round, Officer B was standing near the direction where Officer A was firing.

As Officer A continued to fire in the direction of the Subject's vehicle, Witness A was driving nearby. Two of Officer A's rounds traversed the Mazda's windshield. Witness A's vehicle sustained two non-perforating bullet impacts; one on the front passenger door and one on the right rear passenger door. Witness A, a Lyft driver, had a customer (Witness B), in the right rear passenger seat. Witnesses A and B were not injured during the incident. Officer A acknowledged seeing vehicular traffic within the Subject's background at the time of the officer-involved shooting.

The BOPC noted that triangulating on a suspect requires officers to remain increasingly alert to their surroundings to avoid striking an unintended target. The BOPC opined that Officer A and B's lack of situational awareness placed them at a tactical disadvantage and endangered the surrounding community. While Officer A believed he/she was in the best position to monitor his/her partner and the Subject, Officer B did not know Officer A's position nor the source of the initial gunfire. Although Officer A was cognizant of Officer B's location, he/she fired near Officer B's direction. Although he/she acknowledged seeing vehicular traffic within the Subject's background, Officer A continued to fire at the Mazda as the Subject drove away.

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 tactical training.

6. Building Searches

Fearing that the Subject may attempt to take hostages inside of the store, Officers A and B entered the location and began searching for him. Officer B directed the customers and employees to exit the store. Additional uniformed officers had entered the store before Officers A and B but had remained at the threshold of the business. When their initial search for the Subject was unsuccessful, Officers A and B holstered their service pistols and exited the store. As additional resources arrived at the scene, officers at the threshold searched the store for the Subject after forming a search/arrest team.

The BOPC noted that Officers A and B did not communicate with each other or the other officers at the scene before entering and searching the store. The BOPC considered Officer A and B's concerns and the stress of the incident. However, by failing to slow down, communicate, and formulate a tactical plan with enough personnel to conduct a safe and systematic search of the store, Officers A and B placed themselves at a tactical disadvantage and unnecessarily risked their safety.

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

The BOPC also considered the following:

- **Shooting Through Intermediate Barrier** – An intermediate barrier is an inanimate object between the officer's service pistol and the intended target. Believing the Subject was targeting him/her with a handgun from inside the Mazda, Officer A fired a total of eight rounds from his/her service pistol, striking the Mazda's windshield, "A" pillar, right rear door, and right rear passenger window. Shooting through intermediate barriers can diminish accuracy, cause deflection of the bullet, and may result in fragmentation.
- **Emergency Vehicle Operations** – While following the Subject, Officer B drove north in southbound traffic lanes for a distance of approximately 400 feet.
- **Running with Service Pistol Drawn** – As Officer A ran towards the front entrance of the store, he/she held his/her service pistol in his/her right hand.
- **Non-Medical Face Coverings** – Officers A and B were not wearing non-medical face coverings at the scene as directed by the Chief on May 20, 2020.

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 are intended to be flexible and incident specific, which requires that each incident be looked at objectively and that the tactics be evaluated based on the totality of the circumstances.

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 this incident.

The BOPC found Officers A and B's tactics to warrant a finding of Administrative Disapproval.

B. Drawing and Exhibiting

- **Officer A**

First Occurrence

Observing the Subject driving towards him/her, Officer A placed his/her right hand on the Mazda's hood and instinctively yelled, "Yo! Yo! Yo!" to gain the Subject's attention. According to Officer A, the Subject looked him/her in the eyes and drove forward. To avoid being struck by the Subject's vehicle, Officer A stepped back and placed his/her left hand on the Mazda's hood. Believing that the Subject was arming himself and going to strike him/her with the Mazda, Officer A unholstered his/her service pistol.

Second and Third Occurrence

Officer A unholstered his/her pistol when he/she arrived at the store because he/she believed that the Suspect was armed and dangerous. While searching the store, Officer A holstered his/her service pistol after verifying that two doors in the rear of the location were locked. Soon after holstering his/her service pistol, Officer A discovered a third door at the rear of the store. Officer A unholstered his/her service pistol before ensuring that the third door was locked.

- **Officer B**

Believing that the Subject could still be armed and pose a danger to the community, Officer B unholstered his/her service pistol before searching the store.

The BOPC conducted a thorough evaluation of the reasonableness of Officers A and B's drawing and exhibiting of their service pistols. The BOPC noted that Officer A unholstered his/her service pistol when he/she believed that the Subject was arming himself and intended to hit Officer A with the Mazda. The BOPC noted that the second time Officer A unholstered his/her service pistol, he/she feared that the Subject was still armed and would take hostages inside the store. The BOPC also noted that Officer A briefly holstered his/her service pistol during the search, but soon unholstered again after discovering an unverified door. The BOPC further noted that when Officer B unholstered his/her service pistol before searching the store, he/she believed that the Subject could still be armed and pose a danger to the community.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, when 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 Officer A and B's drawing and exhibiting of a firearm to

be In Policy.

C. Lethal Use of Force

- **Officer A** – (pistol, 8 rounds)

Background and Scene Description – The officer-involved shooting occurred during daylight at approximately 1633 hours, in the parking lot of a strip mall. The strip mall was in a commercial area, adjacent to a busy street.

A bullet path analysis examination of the Mazda identified eight impacts with four corresponding pathways. Impact AA was on the Mazda's front windshield, consistent with front-to-back and right to left directionality. Impact AB was on the Mazda's right "A" pillar, consistent with a right to left directionality. Impacts AC, AD, and AE were in the Mazda's right rear door, consistent with back to front and right to left directionality. Impacts AF, AG, and AH were on the Mazda's right rear window, consistent with back to front and right to left directionality. All impacts were attributed to Officer A's rounds. Investigators also inspected Witness A's vehicle. It was determined that the two impacts were non-perforating, therefore no ballistic evidence was recovered from Witness A's vehicle. The vehicle was photographed and released to Witness A at the scene.

Officer A held his/her service pistol in her/his right hand, in a one-handed shooting position, with the muzzle pointed towards the Subject in a northeasterly direction. Officer A said that as he/she was moving out of the way of the Subject's vehicle, the Subject raised his hand towards him/her as if he was pointing a firearm. While Officer A stated that he/she did not see a firearm in the Subject's hand, Officer A believed that the Subject was armed. Believing that the Subject was going to shoot him/her, Officer A said that he/she aimed at the Subject's upper torso. Officer A said that as the Subject drove toward the parking lot exit, his right arm remained raised and pointed in Officer A's direction. Believing that the Subject was going to shoot at him/her as he fled, Officer A continued to fire at the Subject. Officer A fired a total of eight rounds at the Subject in approximately two seconds, in northeasterly, easterly, and southerly directions.

The BOPC conducted a thorough review and analysis of the proportionality, reasonableness, and necessity of Officer A's use of lethal force. The BOPC noted that before Officer A's use of lethal force, the Subject refused to turn off his engine despite Officer B's commands. The Subject then partially raised his left hand and pointed in Officer A's direction. As the Subject drove towards Officer A, he/she moved out of the vehicle's path. Believing that the Subject was armed and going to shoot him/her, Officer A fired his/her service pistol toward the Subject. Observing the Subject continue to point in his/her direction, Officer A said that he/she continued to fire at the Subject while assessing his/her rounds, and that Officer A stopped firing when he/she could no longer see the Subject's arm.

The BOPC noted that when Officer A fired his/her first round, impacting the Mazda's windshield, Officer B was near his/her line of fire. The BOPC also noted that when a shot is fired through an intermediate barrier such as a windshield, accuracy is reduced, and the bullet can fragment or deflect, striking an unintended target. The BOPC further noted that while Officer B was no longer near Officer A's line of fire during round two, Officer A's background had shifted to pedestrian and vehicle traffic.

The BOPC noted that rounds three through five impacted the Mazda's right rear door. Officer A stated that he/she could still see the Subject's hand raised and pointed in his/her direction when he/she fired all three of these rounds. While Officer A stated that he/she saw the Subject's hand raised, he/she did not see a gun.

The BOPC noted that rounds six through eight impacted the Mazda's right rear window. Two of these rounds traversed the Mazda's windshield as Witness A was driving nearby. Officer A stated that he/she fired rounds six and seven because he/she could still see the Subject's hand. Officer A explained that he/she fired round eight because the Subject held his arm straight out and rotated it towards him/her. Although Officer A believed that the Subject was armed and going to shoot him/her, Officer A never saw a gun in the Subject's hand.

The BOPC noted that Officer A did not articulate a separate decision point for rounds two through seven and stated that he/she maintained continuous fire while assessing until he/she could no longer see the Subject's arm.

The BOPC opined that, while Officer A may have perceived that the Subject presented an imminent threat of death or serious bodily injury, a reasonable officer would not have used deadly force based on these facts. The BOPC also noted that Officer B did not unholster his/her service pistol during the incident.

As it pertains to the Department's policy on shooting at moving vehicles, the BOPC noted that before discharging his/her service pistol, Officer A had moved out of the Mazda's path. The BOPC also noted that when he/she discharged his/her service pistol, Officer A's articulated target and the perceived threat was the Subject. Based on Officer A's statements, the BOPC opined that he/she did not violate the presumptive threat clause of the policy because he/she fired at the threat he/she perceived in the Subject's actions and not the threat posed by the vehicle itself.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A would not reasonably believe the Subject's actions presented an imminent threat of death or serious bodily injury and that the use of deadly force would not be proportional, objectively reasonable, or necessary.

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