

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

OFFICER-INVOLVED SHOOTING – 015-21

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

Hollenbeck 3/17/21

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

Officer C 24 years, 6 months

Reason for Police Contact

An off-duty lieutenant witnessed the shooting of a victim in a residential neighborhood. As the Subject's vehicle drove past the lieutenant, an officer-involved shooting (OIS) occurred.

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

Subject: Male, 15 years of age.
Subject: Male, 17 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 February 15, 2022.

Incident Summary

On Wednesday, March 17, 2021, at approximately 1215 hours, Wilshire Area Lieutenant A was off-duty, sitting in the driver seat of his/her personal vehicle. Lieutenant A was parked along the east curb, facing north, and as he/she looked north down the street, he/she observed a vehicle driving south and stopping in front of a residence. According to Lieutenant A, the vehicle was occupied by Subject 1 (driver) and Subject 2, (passenger). The investigation later determined that the vehicle was stolen.

According to Lieutenant A, he/she had an unobstructed view from inside his/her vehicle, which was approximately 100 feet from where the Subjects had stopped. The front door to the residence was open, and Subject 2 turned his head toward the residence. Lieutenant A believed Subject 2 was calling out to the resident of that location, identified as Victim A. Approximately 30 seconds later, Lieutenant A observed Victim A exit the front door and walk out onto the porch. Subject 2 then produced a handgun, held it out of the open, front passenger window toward Victim A, and fired approximately three to four times. According to Lieutenant A, he/she heard gunfire and saw the muzzle flash from Subject 2's handgun. Lieutenant A then observed Victim A fall to the ground.

Private security video from a nearby residence captured the attempted murder. At approximately 1216:07 hours, the Subjects drove past Victim A's residence and stopped their vehicle. Subject 2 removed his seatbelt and placed his hood over his head. Subject 1 then drove in reverse a short distance and stopped in front of Victim A's residence. Subject 2 attempted to communicate with Victim A by placing his left hand out of the front passenger window and formed a shape with his fingers. Approximately 43 seconds later, Victim A walked out onto his front porch. After briefly conversing with Subject 2, Victim A turned back toward his residence. Subject 2 then motioned for Victim A to come closer. At approximately 1217:22 hours, Victim A walked beyond the front porch and onto the sidewalk as Subject 2 extended the firearm out of the vehicle window. Subject 2 fired five rounds at Victim A.

According to Victim A, he was in his kitchen preparing food when he heard a vehicle outside. Victim A was able to view the vehicle through his open front door. Victim A described the vehicle and stated it was occupied by two males. The occupants began making shapes with their hands, which Victim A initially interpreted as signifying that they were from a criminal street gang. Victim A initially believed the passenger was his friend, however as Victim A approached closer to the vehicle, he noted the passenger was not his friend, and began making hand gang gestures. According to Victim A, he wanted to go back inside his residence when the passenger asked, "You're not gonna say what's up?"

Victim A approached the vehicle and was approximately eight feet away when the passenger opened fire at him. Victim A felt the gunfire strike his abdomen. As Victim A

turned around and fled back toward his residence, he observed a tree near him get struck by gunfire. Victim A felt another bullet strike him in the back and exit the right side of his neck. Victim A described sustaining a third gunshot wound to his stomach/oblique area, but he did not feel the impact when it occurred. After receiving multiple gunshot wounds, Victim A escaped into his residence.

After witnessing the attempted murder, Lieutenant A immediately reclined his/her driver's seat in an attempt to obscure his/her presence from the Subjects. However, according to Lieutenant A, Subject 1 looked directly at him/her while driving approximately 15-20 miles per hour (MPH) in his/her direction. Lieutenant A compared sitting in his/her vehicle to being in a "coffin." Lieutenant A believed that he/she needed to exit the vehicle and take action; otherwise he/she the Subjects would shoot at him/her and he/she could die. Lieutenant A then quickly exited from the front driver's side of his/her vehicle and onto the street.

Lieutenant A described his/her thought process on seeking cover, stating that he/she felt he/she could not run up the hill because he/she would be shot in the back and he/she could not run forward because the Subjects were coming towards him/her. According to Lieutenant A, the vehicle was still approaching him/her and approximately 50 feet from his/her position when he/she unholstered his/her off-duty firearm and held it in a two handed, low-ready position. According to Lieutenant A, he/she unholstered his/her firearm because he/she had just witnessed a shooting, he/she knew the Subjects were still in possession of a firearm, and he/she was in fear that the Subjects would shoot him/her, causing serious injury or death.

According to Lieutenant A, he/she was nervous and had "happy feet," which he/she described as running back and forth while determining that he/she could not take cover near his/her vehicle due to a combination of rocks and rough terrain around his/her vehicle. Lieutenant A feared that he/she would lose his/her balance and fall while attempting to take cover, putting him/herself in a vulnerable position. Lieutenant A indicated that he/she moved to the middle of the street as the Subjects drove toward him/her.

Security video obtained from a nearby residence depicted Lieutenant A running several steps toward the center of the street immediately after the Subject's vehicle drove passed him/her.

Lieutenant A pointed his/her firearm level with the hood of the vehicle, while focusing his/her attention on Subject 2, whom he/she believed was still armed and the primary threat.

Both Subjects 1 and 2 ducked in the vehicle as they approached and passed Lieutenant A. The vehicle continued south and then west onto a different street. Lieutenant A indicated that Subject 1 attempted to lower his profile by sliding down in his/her seat, while Subject 2 bent at the waist and lowered his torso toward the center console. The

Subject's vehicle drove passed Lieutenant A, who was approximately 10 to 15 feet east of the driver side door. While remaining at the low-ready position, Lieutenant A turned his/her left shoulder and tracked the vehicle with the muzzle of his/her firearm, which transferred from the hood to the driver side doors of the vehicle.

The vehicle continued around the turn driving west, which, according to Lieutenant A, provided a clear view of the front passenger side of the vehicle. Subject 2 then raised his torso and exposed his right back and lateral side of his elbow, shoulder, and head. Lieutenant A then observed Subject 2 turn his head and look back in his/her direction, causing him/her to believe Subject 2 was acquiring him/her as a target. At that moment, Lieutenant A believed he/she was in an immediate defense of his/her life situation. Lieutenant A stated that he/she knew that Subject 2 had just shot at Victim A and believed Subject 2 was trying to get rid of him/her because he/she was a witness. Lieutenant A feared for his/her life and questioned him/herself if he/she was going to give Subject 2 an opportunity to reach out and start shooting at him/her.

According to Lieutenant A, he/she stopped his/her movement and aligned the sights of his/her firearm directly on the center of Subject 2's silhouette, specifically his right upper torso, chest, and shoulder area. At approximately 1218:22 hours, Lieutenant A fired one shot at Subject 2, who was still sitting in the front passenger seat of the vehicle as it drove away from him/her. After firing, Lieutenant A observed Subject 2 turn his upper body back toward the vehicle's direction of travel and again lower his torso in a crouching manner, similar to a position of cover. Lieutenant A also heard the engine rev as the vehicle accelerated and continued west.

According to Lieutenant A, he/she would not have fired his/her weapon if he/she had not observed Subject 2 raise his upper body and look back toward his/her direction after the vehicle passed. Lieutenant A believed Subject 2 was identifying him/her as a target. Lieutenant A considered Subject 2 to be his/her only threat; he/she did not consider the vehicle itself to be a threat.

According to Lieutenant A, he/she assessed after his/her first shot and determined that Subject 2 was no longer a threat due to the distance between them. Lieutenant A walked to his/her vehicle, holstered his/her firearm, and retrieved his/her cell phone from the center console. Lieutenant A then described changing priorities after the OIS, stating that he/she called the Watch Commander and focused his/her attention on rendering aid to Victim A.

According to Witness A, she observed Lieutenant A run from the north sidewalk to his/her vehicle, which was parked across the street along the east curb. Witness A observed Lieutenant A opening the front driver side door to his/her vehicle, crouching down, and removing an unknown item from underneath the seat. According to Witness A, although she could not clearly see the item, she believed it was a gun because she observed Lieutenant A armed moments later. Witness A observed Lieutenant A raise

his/her firearm, possibly with a one-handed grip, and fire two to three times as the vehicle drove past her location. Witness A then observed Lieutenant A walk at a fast pace back to his/her vehicle and potentially place an item back into the front driver's side of the vehicle.

According to Witness B, he observed Lieutenant A securing a firearm in his/her holster and then placing the holstered firearm in the front driver side area of a vehicle. According to Witness C, (Witness B's father), he also observed Lieutenant A description placing a firearm into the front driver side seat or center console of the vehicle.

Lieutenant A stated that he/she did not run back to his/her vehicle to retrieve his/her firearm, nor did he/she place the holster or firearm back in his/her vehicle after the OIS. Lieutenant A indicated that his/her handgun was holstered and worn on his/her left inner pant waistline from the time he/she was sitting in his/her vehicle observing the attempted murder until he/she exited his/her vehicle, unholstered, and engaged Subject 2. According to Lieutenant A, he/she did return to his/her vehicle after the OIS; however, it was only to retrieve his/her cell phone from his/her center console to make notifications.

According to Lieutenant A, he/she made two telephonic notifications. Lieutenant A first contacted Hollenbeck Patrol Division Assistant Watch Commander Sergeant A and informed him/her that a Rescue Ambulance (RA) was needed for a victim of a gunshot wound, and that he/she had been involved in an OIS. Lieutenant A then contacted his/her commanding officer, Captain A, and informed Captain A of his/her involvement in the OIS.

According to Sergeant A, Lieutenant A only provided information pertaining to the crime and need for medical assistance at scene. Sergeant A then explicitly asked Lieutenant A if he/she had been involved in an OIS; Lieutenant A replied that he/she had not been involved in an OIS.

At approximately 1219 hours, Sergeant A was in the Watch Commander's Office when he/she received a phone call from Lieutenant A. Sergeant A gathered information about the incident and attempted to simultaneously broadcast. At approximately 1220:30 hours, Sergeant A broadcast on the police radio that Lieutenant A was reporting a shooting (with hits) had just occurred and provided the location and other pertinent information.

At approximately 1221 hours, Captain A was at Wilshire Station when he/she received a call on his/her cell phone from Lieutenant A. According to Captain A, Lieutenant A advised him/her that he/she had been involved in an OIS. Captain A then collected detailed information regarding Lieutenant A's location and what resources were being requested. At approximately 1224:03 hours, Captain A broadcast a request for a a help

call for an off-duty officer with shots fired and provided the location and other pertinent information. Following the broadcast, Captain A made other notifications.

At approximately 1224:48 hours, Communications Division (CD) broadcast an "officer needs help" call and provided the location. Sergeant A and Lieutenant B then responded to the scene together.

According to Lieutenant A, while making notifications to Sergeant A and Captain A, he/she observed Victim A exit his residence and walk near the next-door neighbor's driveway. The resident at that location, Witness D, indicated he heard five gunshots, went outside, and observed Victim A pacing while holding his stomach.

According to Witness D, Victim A informed him that he had been shot. Witness D, who received medical training while in the military, observed gunshot wounds to Victim A's left abdomen, back, and right neck. Witness D placed Victim A on the ground in the left-lateral position and applied pressure to his wounds until paramedics arrived at scene. According to Lieutenant A, after completing the telephonic notifications, which included requesting an RA, his/her intent was to physically render aid to Victim A; however, he/she observed Witness D already providing medical treatment.

Police Officers A and B responded with emergency lights and siren (Code Three) and arrived at scene at 1226:05 hours. According to Officer A, he/she first assessed the scene and determined the Subjects were no longer in the area. Officer A also observed residents rendering aid to Victim A. Witness E was applying pressure to Victim A's abdomen while Witness D held Victim A's legs in an elevated position. Victim A was in a modified supine and left-lateral position on the sidewalk.

At 1226:12 hours, Officer A broadcast that it was clear for the RA to enter the scene. Officer A first made contact with Victim A and inquired about his injuries. After verifying that Victim A sustained a gunshot wound to his abdomen, Officer A broadcast that Victim A was conscious and breathing and suffering from an abdomen gunshot wound. Officer A then spoke to Victim A and obtained preliminary information for a crime broadcast. According to Officer A, Victim A informed him/her of the vehicle description and that he believed Subject's 1 and 2 were members of a gang.

As Officer A obtained information for a crime broadcast, Lieutenant A approached and tapped him/her on the shoulder. According to Lieutenant A, he/she and Officer A knew each other because they worked together in the past. Lieutenant A provided Officer A with an overview of the events including the attempted murder, the description of the Subjects, and his/her involvement in the OIS. Officer A then initiated a detailed crime broadcast with vehicle and Subject descriptions.

Meanwhile, Officer B remained near Victim A until paramedics arrived. Paramedics first made contact with Victim A at 1229:08 hours. After being briefly treated at scene, Victim A was transported by RA to a nearby hospital for further medical care.

According to Officer A, his/her next set of priorities was to obtain additional resources and secure the crime scene. Officer A requested additional resources and Air Support. Soon thereafter, Officer A asked his/her partner to start searching for evidence, particularly discharged cartridge casings. Officer D located three casings near the east curb on the asphalt and placed field interview cards over them. According to Officer A, the wind was blowing the field interview cards out of place, so he/she proceeded to mark large circles around each casing using chalk.

Supervisory personnel arrived on and coordinated a canvass for additional gunshot victims and the dissemination of Subject information to responding units and the police helicopter. A Public Safety Statement (PSS) was obtained from Lieutenant A. The PSS took place away from other personnel and civilians at scene, near Lieutenant A's vehicle, which was several houses south of the attempted murder crime scene. The scene was secured for Force Investigation (FID) detectives. hours, the Department Operations Center (DOC) was notified of the OIS.

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
Lieutenant A	N/A	N/A	N/A	N/A	N/A

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting of a firearm by any involved officer(s); and the Use of Force by any involved officer(s). Based on the BOPC's review of the instant case, the BOPC made the following findings:

A. Tactics

The BOPC found Sergeant A's tactics to warrant a finding of Administrative Disapproval.

B. Drawing and Exhibiting

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

C. Lethal Use of Force

The BOPC found Sergeant 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 suspects;
- The environmental factors and/or other exigent circumstances; and,
- Whether a person is a member of a vulnerable population.

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

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

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

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

Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.

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

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

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

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

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

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

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

Requirement to Intercede When Excessive Force is Observed: An officer shall

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

Definitions

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

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

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

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

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

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

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

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

Totality of the Circumstances: All facts known to or reasonably perceived by the officer at the time, including the conduct of the officer and the 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

Tactical De-Escalation Techniques

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

Tactical de-escalation does not require that an officer compromise his 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 – Lieutenant A was off-duty, sitting in the driver’s seat of his/her vehicle. According to Lieutenant A, he/she was in a high crime area and was not equipped with any additional police equipment (i.e., police radio, baton, ballistic vest). Lieutenant A’s plan initially consisted of being a good witness.

Assessment – Witnessing Subject 2 shoot Victim A, Lieutenant A recognized that he/she was not in an immediate capacity to take law enforcement action and initially opted to recline his/her driver seat to obscure his/her presence from Subject 2. However, according to Lieutenant A, Subject 1 looked directly at him/her while

driving approximately 15-20 MPH in his/her direction. Lieutenant A compared sitting in his/her vehicle to being in a “coffin.” Lieutenant A opined that he/she would be shot by Subject 2 if he/she remained in his/her vehicle. In response, Lieutenant A exited his/her vehicle onto the street.

Time – Lieutenant A did not utilize distance and cover to create time. According to Lieutenant A, the Subject’s vehicle was rapidly approaching him/her with an approximate speed of 15-20 MPH. According to Lieutenant A, he/she could not obscure his/her presence, so he/she quickly exited the driver’s side of his/her vehicle.

Redeployment and/or Containment – Lieutenant A did not believe that he/she could safely deploy to cover. The Subject’s vehicle was still approaching Lieutenant A and was approximately 50 feet from his/her position. According to Lieutenant A, he/she was nervous and began to run back and forth while determining that he/she could not take cover near his/her vehicle due to a combination of rocks and rough terrain around his/her vehicle, fearing he/she would lose his/her balance and fall, putting him/herself in a vulnerable position. Lieutenant A also believed that he/she could not run uphill, nor forward or backward without getting shot. Lieutenant A indicated that he/she moved to the middle of the street as Subjects 1 and 2 drove toward him/her.

Lines of Communication and Other Resources – During the events leading up to the OIS, Lieutenant A was alone and off-duty. Due to the dynamic nature of this incident, and their flight, Lieutenant A was unable to communicate with Subjects 1 and 2. After the OIS, Lieutenant A walked to his/her vehicle, retrieved his/her cellular telephone, and notified Sergeant A and Captain A, Commanding Officer, Wilshire Area, of this incident. Lieutenant A also requested a RA for Victim A.

While the BOPC noted the dynamic nature of this incident and Lieutenant A’s initial plan to be a good witness, the BOPC was critical of his/her decision to run into the roadway, toward the Subject’s vehicle, instead of seeking cover. Instead, the BOPC would have preferred that Lieutenant A had attempted to use his/her vehicle for cover. The BOPC also noted that per the video footage (BWV and surveillance), there was an uninvolved vehicle parked in front of Lieutenant A’s vehicle that could have been used as cover, as well as a small tree near his/her vehicle that could have provided concealment.

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

1. Utilization of Cover

After witnessing the shooting, Lieutenant A immediately reclined his/her driver’s seat to obscure his/her presence from Subjects 1 and 2. However, according to Lieutenant A, Subject 1 looked directly at him/her while driving approximately 15-

20 MPH in his/her direction. Lieutenant A compared sitting in his/her vehicle to being in a "coffin." Lieutenant A opined that he/she would be shot by Subject 2 if he/she remained in his/her vehicle. In response, Lieutenant A exited his/her vehicle onto the street. Lieutenant A did not believe that he/she could safely deploy to cover. The Subject's vehicle was still approaching Lieutenant A and was approximately 50 feet from his/her position. According to Lieutenant A, he/she was nervous and began to run back and forth while determining that he/she could not take cover near his/her vehicle due to a combination of rocks and rough terrain around his/her vehicle, fearing he/she would lose his/her balance and fall, putting him/herself in a vulnerable position. Lieutenant A also believed that he/she could not run uphill, nor forward or backward without getting shot. Lieutenant A indicated that he/she moved to the middle of the street as Subjects 1 and 2 drove toward him/her. Security video obtained from a nearby residence depicted Lieutenant A running several steps toward the center of the street immediately after the Subject's vehicle drove past him/her.

While the BOPC noted the dynamic nature of this incident and Lieutenant A's initial plan to be a good witness, the BOPC was critical of his/her decision to run into the roadway, toward the Subject's vehicle, instead of seeking cover. Instead, the BOPC would have preferred that Lieutenant A had attempted to use his/her vehicle for cover. The BOPC also noted that per the video footage (BWV and surveillance) there was an uninvolved vehicle parked in front of Lieutenant A's vehicle that could have been used as cover, as well as a small tree near his/her vehicle that could have provided concealment. The BOPC noted that at the time he/she discharged his/her pistol, Lieutenant A was in the roadway, without the benefit of cover. By running into the roadway, Lieutenant A unnecessarily risked his/her safety and placed him/herself at a significant tactical disadvantage.

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

2. Shooting at a Moving Vehicle

Observing Subject 2 turn his head and look back in his/her direction, Lieutenant A believed Subject 2 was acquiring him/her as a target. At that moment, Lieutenant A believed that he/she was in an immediate defense of life situation. Lieutenant A stopped his/her movement and aligned his/her pistol's sights directly on the center of Subject 2's silhouette, specifically his right upper torso, chest, and shoulder area. Lieutenant A discharged one round at Subject 2, who was still sitting in the front passenger seat of the vehicle as it drove away from Lieutenant A. According to Lieutenant A, he/she considered Subject 2 to be his/her only threat; he/she did not consider the vehicle itself a threat. Based on the evidence it is possible that Lieutenant A's round impacted the rear portion of the vehicle's undercarriage.

The BOPC noted that per Department policy, officers shall not discharge their firearm 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. While Lieutenant A articulated his/her belief that Subject 2 looked in his/her direction, he/she did not see Subject 2 holding the handgun nor articulate any action on Subject 2's part, such as breaking the threshold of the window, that indicated he posed an imminent threat of death or serious bodily injury when Lieutenant A discharged his/her round. Additionally, when Lieutenant A discharged his/her round, the Subject's vehicle had passed him/her and was continuing to drive away.

Lieutenant A discharged his/her round from approximately 66 feet. The BOPC also noted that per Department policy, 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. Instead of moving away from the Subject's vehicle, surveillance video depicted Lieutenant A running into the roadway, toward the vehicle, as it passed him/her.

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

- The BOPC also considered the following:
 - **Off-Duty Actions** - Off-duty officers should act only after considering the tactical situation and possible liability for themselves and the City of Los Angeles. Officers rarely have all or even part of their normal equipment with them when they are off-duty (i.e., radio, handcuffs). Unless taking action is unavoidable or absolutely necessary, being a good witness may be an off-duty officer's best option depending on the totality of the circumstances.

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.

In conducting an objective assessment of this case, the BOPC determined that the tactics employed by Lieutenant A were a substantial deviation without justification from approved Department tactical training, requiring a finding of Administrative Disapproval.

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

Therefore, the BOPC found Lieutenant A's tactics to warrant Administrative Disapproval.

B. Drawing and Exhibiting

- **Lieutenant A**

After witnessing the shooting, Lieutenant A immediately reclined his/her driver's seat to obscure his/her presence from Subjects 1 and 2. However, according to Lieutenant A, Subject 1 looked directly at him/her while driving approximately 15-20 miles per hour (MPH) in his/her direction. The Subject's vehicle was still approaching Lieutenant A and was approximately 50 feet from his/her position when he/she unholstered his/her off-duty pistol and held it in a two-handed, low ready position. According to Lieutenant A, he/she unholstered his/her pistol because he/she had just witnessed Subject 2 shoot Victim A, Subject 2 was still in possession of a firearm, and he/she was in fear that Subject 2 would shoot him/her (Lieutenant A) causing serious injury or death.

The BOPC evaluated Lieutenant A's drawing and exhibiting. The BOPC noted that Lieutenant A had just witnessed Subject 2 shoot Victim A, multiple times, in an apparent attempt to kill him. The BOPC also noted Lieutenant A's belief that Subject 2 was still armed. The BOPC further noted Lieutenant A's belief that Subject 2 was looking in his/her direction and was going to shoot him/her as the Subject's vehicle fled the scene.

Based on the totality of the circumstances the BOPC determined that an officer with similar training and experience as Lieutenant A, in the same situation, 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 Lieutenant A's drawing and exhibiting of a firearm to be In Policy.

C. Lethal Use of Force

- **Lieutenant A – (pistol, one round)**

Background – The street where the OIS occurred curves to the west and becomes a different street, which sharply declines in elevation as it travels west. Both streets had curb parking in each direction of travel. According to Lieutenant A, there were no other persons in the background.

The Subject's vehicle continued around the turn, driving west, which, according to Lieutenant A, provided a clear view of the front passenger side of the vehicle. Subject 2 then raised his torso and exposed his right back and lateral side of his elbow, shoulder, and head. Lieutenant A then observed Subject 2 turn his head and look back in his/her direction, causing Lieutenant A to believe Subject 2 was acquiring him/her as a target. Lieutenant A believed that Subject 2 was going to kill him/her, eliminating a witness. At that moment, Lieutenant A feared not being able to see his/her family and believed that he/she was in an immediate defense of life situation. Lieutenant A stopped his/her movement and aligned his/her pistol's sights directly on the center of Subject 2's silhouette, specifically his right upper torso, chest, and shoulder area. Lieutenant A discharged one round at Subject 2, who was still sitting in the front passenger seat of the vehicle as it drove away from Lieutenant A. According to Lieutenant A, he/she would not have fired his/her weapon had he/she not observed Subject 2 raise his upper body and look back toward his/her direction after the vehicle passed by.

The BOPC assessed the proportionality, reasonableness, and necessity of Lieutenant A's use of lethal force. The BOPC noted that Lieutenant A had just witnessed Subject 2 shoot Victim A, multiple times, in an apparent attempt to kill him. The BOPC also noted Lieutenant A's belief that Subject 2 was still armed with the handgun when the vehicle drove toward the Lieutenant A at approximately 15-20 MPH, as the Subjects fled the scene. The BOPC further noted Lieutenant A's articulated belief that Subject 2 looked back in his/her direction as the vehicle drove away.

However, the BOPC was critical of Lieutenant A's belief that Subject 2 was going to shoot him/her. When Lieutenant A discharged his/her round, he/she did not see Subject 2 holding the handgun nor did he/she articulate any action on Subject 2's part, such as breaking the threshold of the window, that indicated he posed an imminent threat of death or serious bodily injury. The BOPC noted that the Subject's vehicle windows were not tinted. Additionally, when Lieutenant A discharged his/her round, the vehicle had passed him/her and was continuing to drive away. Lieutenant A discharged his/her round from approximately 66 feet. Instead of moving away from the Subject's vehicle, surveillance video depicted Lieutenant A running into the roadway, toward the vehicle as it passed him/her. The BOPC also opined that despite Subject 2's actions toward Victim A, merely looking back at Lieutenant A, while cause for concern, did not justify the use of deadly force.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Lieutenant A, in the same situation, would not reasonably believe that Subject 2's actions at the time of the OIS 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 Lieutenant A's lethal use of force to be Out of Policy.