

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

OFFICER-INVOLVED SHOOTING – 029-21

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No()</u>
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Officer A	7 years, 9 months
Officer B	1 year, 1 month

Reason for Police Contact

Officers responded to a radio call of an “assault with a deadly weapon, suspect there now.” The officers located the Subject who pointed a handgun at the officers, which resulted in an Officer-Involved Shooting (OIS). The Subject was not struck by gunfire and was subsequently taken into custody.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (X)</u>
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Subject: Male, 38 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; 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 May 17, 2022.

Investigative Summary

On May 29, 2021, at approximately 1257 hours, an unidentified male called the Los Angeles Police Department's Communications Division (CD) and reported that a suspect pulled a gun on him and was acting aggressively at a motel. The male caller elaborated that he was sitting in his vehicle when he observed the suspect staring at him. The male rolled his car window down and asked the suspect, "What's going on?" The suspect responded by producing a handgun and stated, "Yeah, shut that [expletive] up." The male also indicated there were two women who attempted to call the suspect into a hotel room. The suspect entered the room and later exited and left the location.

The male caller also provided CD with the suspect's physical description and updates on the suspect's direction of travel as he walked away from the motel and into a north/south alleyway.

At 1259:13 hours, CD broadcast, "ADW suspect there now [...] suspect, male [...] 32 to 35 years, black shirt, black shorts, black socks, with a black backpack, armed with a silver semiautomatic handgun."

At 1300:24 hours, uniformed Sergeant A broadcast that he/she was responding to the radio call and requested that CD verify if the person reporting (PR) actually saw the suspect with a gun or if the suspect just said he had one. Sergeant A also requested that an Air Unit respond to the call.

Police Officers A, B, C, and D broadcast that they were responding with Code 3 (with emergency lights and siren) to the radio call.

According to Officers A and B, the incident was the second shift they had worked together. In addition, both officers had previously talked about the roles of contact and cover. According to Officer A, he/she and Officer B also discussed the roles of lethal, less-lethal, and de-escalation.

According to Officer A, while en route to the call, he/she designated Officer B to be the lethal officer; however, this conversation was not captured on either of the officers' BWV. It should be noted that the entirety of the officers' response to the call was captured during the buffering period of the BWV, which does not have audio. According to Officer B, he/she believed that he/she was the less-lethal officer as the officers were headed to the call.

According to Officer A, Sergeant A had attempted to verify if the PR actually observed the suspect with a firearm but he/she did not recall CD confirming it.

At 1304:38 hours, Officer D broadcast that they were at scene. Officers C and D turned north into the alleyway that ran behind commercial premises.

According to Officer C, given the nature of the call, he/she decided not to speak with the PR because he/she wanted to locate the suspect.

At 1305:02 hours, Officers A and B were approached the alleyway and Officer B broadcast they were at scene. Officer A turned north into the alleyway, trailing Officers C and D. As they drove, Officer B read the suspect's description to Officer A from their vehicle's Mobile Digital Computer.

As they neared the end of the alleyway, the officers turned left and traveled west in the north parking lot of a shopping mall.

According to Officer C, he/she stopped his/her vehicle to visually check a walkway area for the suspect. Officer A's BWV captured him/her pull his/her vehicle along the driver side of Officer C's vehicle. After a few moments, Officer A used his/her right hand to motion toward the west. According to Officer C, he/she interpreted Officer A's hand motion as a cue to move forward.

As the officers continued to drive slowly west, Officer D unholstered his/her service pistol with his/her right hand and held it near his/her right thigh with his/her finger along the frame. According to Officer D, he/she unholstered his/her pistol due to the fact the suspect was reported to be armed and he/she believed he/she needed to be ready to protect him/herself or his/her partner.

As the officers continued west they began to parallel the north side of a market. According to Officers C and D, as they neared the northwest corner of the building, they observed a male (the Subject) in the parking lot wearing black clothing with a black backpack, who matched the suspect description.

The Subject walked south in the parking lot carrying a backpack over his right shoulder with his back turned to the officers. As Officer C began to slowly drive south in the parking lot behind the Subject, he/she began to activate his/her siren in short audible bursts, at which time the Subject briefly looked over his left shoulder in the direction of the officers, as he continued to walk.

Officer C placed his/her vehicle in park and opened his/her door as he/she ordered the Subject to stop. Officer D still held his/her pistol in a one-handed grip, as his/her left arm reached across his/her body to open his/her vehicle door. Officer D then quickly exited his/her vehicle behind his/her door and ordered the Subject to stop. The Subject ignored the officers' commands.

Officer A drove his/her vehicle around the passenger side of Officers C and D's vehicle traveling south. While making the turn, Officer B partially opened the door of his/her vehicle and maintained control of it with his/her right hand. As Officer A traveled south through the parking lot, he/she opened his/her driver's door and held it open with his/her left leg as he/she drove.

According to Officer A, he/she maneuvered his/her vehicle around the other officers to get a visual on the Subject and triangulate on him. As he/she did so, Officer A made eye contact with the Subject. Officer C quickly placed the vehicle back into drive and slowly continued south, as Officer D held the frame of his/her door with his/her left hand and walked behind his/her open passenger door.

According to Officer A, as the Subject continued to move and look back, Officer A observed the Subject reach with both hands toward his waistband area. Officer A believed the Subject was reaching for a firearm. According to Officer B, the Subject looked back over his shoulder at the officers several times, as he reached his right hand into his pocket and appeared to be struggling to pull something out. Both officers recalled that the Subject angled his body away from the officers as he moved, which they interpreted as the Subject attempting to conceal something from their view.

According to Officers A and B, the Subject looked back over his right shoulder; however, Officers C and D's DICVS and surveillance video from the market only captured the Subject looking over his left shoulder.

According to Officer A, upon seeing the Subject reach toward his waistband, he/she unholstered his/her service pistol with his/her right hand and held it in a one-handed grip as he/she continued driving south.

Nearly simultaneously, Officer B unholstered his/her service pistol with his/her right hand and held it in a one-handed grip. According to Officers A and B, they unholstered their pistols because they each believed the situation might escalate to the point that deadly force may be justified.

Officer A pointed his/her pistol in a southeasterly direction out of his/her vehicle and toward the Subject as he/she ordered the Subject to stop. Officer B also yelled at the Subject to stop. According to Officer B, he/she attempted to exit the vehicle, but due to the vehicle still moving, he/she struggled to get traction with his/her right leg. The Subject continued to move south and then east between a parked silver Honda CR-V, and a parked brown Honda sedan, out of view.

As Officer A's vehicle continued to move slowly south and pass the Honda CR-V, Officer A took his/her left hand off the steering wheel. As he/she came to a two-handed grip with his/her pistol, pointing it in an easterly direction out of his/her open door, he/she ordered the Subject to stop two additional times.

According to Officer A, he/she believed that the Subject was going to run south. After he/she lost sight of the Subject, he/she intended to put the car in park, exit his/her vehicle and search for him; however, the Subject did not flee and instead waited for the officers to pass by. As a result, Officer A did not attempt to redeploy. Officer A observed a shadow in the car windows of the Honda sedan that was parked south of the Honda CR-V. Officer A recalled, "...I'm seeing a glare in windows of -- of the car in the Civic and I'm seeing, like, a shadow. And right when I'm -- my car's going I just, you

know, I looked to my left and I see the suspect in a shooting position, in a shooting stance, um, with his -- with the -- with the firearm, and I remember it's -- it's silver -- silver barrel, right?"

As Officer A passed the rear bumper on the passenger side of the Honda CR-V, the Subject stood on the pedestrian walkway near the front of the Honda CR-V, facing west toward the officers. The Subject's right arm was extended, and his left arm was bent with his hands joined, forming a shooting stance.

According to Officer A, he/she observed the Subject pointing a handgun in a westerly direction, toward him/her and Officer B. According to Officer B, he/she looked to his/her left, past Officer A, and also observed the Subject pointing a handgun at them.

According to Officer A, as he/she looked through his/her pistol's sights and targeted the Subject's upper torso, he/she observed the Subject's shoulders move backward as if they were absorbing recoil from his firearm. Officer A believed that he/she had been shot at and that he/she had been struck by gunfire. Officer A added that he/she did not see muzzle flash from the Subject's firearm. Officer A targeted the Subject's upper torso and fired one round from his/her pistol because he/she believed the Subject was engaging him/her and he/she had to stop the threat to protect Officer B, community members, and him/herself. Officer A noted that his/her background was the wall of the market.

After Officer A fired his/her first shot, the Subject began to move quickly north and behind the front of the Honda CR-V.

According to Officer A, he/she conducted a brief assessment and noted that he/she felt burning on his/her left arm and pain to the left side of his/her body. Officer A fired a second round from his/her pistol due to the fact he/she believed the Subject was still engaging him/her and he/she believed that he/she had been shot. Officer A's vehicle came to rest as he/she fired his/her second shot.

According to Officer A, he/she targeted the Subject's upper torso when he/she fired his/her second shot; however, Officer A's BWV captured the Subject's body, with the exception of his left leg, behind the Honda CR-V at the time of his/her second shot.

The investigation determined that Officer A fired two rounds in an easterly direction, in approximately two tenths of one second, from an approximate distance of 28 feet. Officer A's BWV captured him/her firing both rounds at 1307: 26 hours.

Officer A's BWV footage intermittently shows his/her index finger on the trigger of his/her service pistol, at 1307:28 hours and 1307:29 - 1307:30 hours, as his/her hand goes in and out of view of the camera.

As Officer A fired his/her pistol, Officer B exited the passenger door of his/her police vehicle. Officer B held his/her pistol in a two-handed grip pointed east, over the roof of

the police car and in front of the light bar. He/she then quickly re-positioned to his/her left and held his/her pistol over the roof behind the light bar, still pointed east.

Officer A kept his/her pistol pointed in an easterly direction as he/she reached across his/her body with his/her left hand and placed his/her vehicle in park. As he/she did so, Officer A yelled, "Shots fired, shots fired! Officer needs help!" Officer A assessed after his/her second shot and determined the Subject had moved.

According to Officer B, he/she heard two gunshots that he/she believed came from the Subject's weapon, based on the fact that Officer A had not exited his/her vehicle and had declared shots had been fired. Officer B did not observe Officer A fire.

In Officer B's second interview, he/she stated that he/she observed the Subject pointing what he/she believed to be a handgun at Officer A and him/herself, as the Subject stood directly in front of the Honda CR-V. Officer B could see the upper half of the Subject's body through the rear glass and front windshield of the Honda CR-V. Officer B observed the Subject holding the handgun, pointed toward him/herself and Officer A. As he/she looked through the vehicle's windows, Officer B did not observe anyone inside it. In order to defend Officer A and him/herself against the threat of death or serious bodily injury, Officer B targeted the Subject's center mass and fired one shot.

According to Officer B, he/she assessed and observed the Subject was still pointing the gun at Officer A and him/herself through the vehicle's front and rear windscreen. In order to defend against the imminent threat of serious bodily injury to Officer A and him/herself, Officer B again targeted the Subject's center mass and fired a second shot at the Subject. Officer B assessed after his/her second shot and did not see the Subject. Officer B noted that his/her foreground was the Honda CR-V's window glass and his/her background was the wall of the market.

The Subject's exact position at the time of Officer B's shots was not captured on BWV or the market's surveillance video due to the angles of the cameras and various obstructions that blocked the cameras' perspectives at the time of his/her shots.

In his/her first interview, Officer B described his/her observation of the Subject pointing the gun at him/her and Officer A as follows:

"Um, as the vehicle got a little bit closer, um, I don't know if my partner forgot to put the vehicle in park or not, but I remember the vehicle kept moving and it was -- it was difficult to get out of the vehicle because it was moving. And I remember I, like, turned to the left and that's when I saw the suspect, um, what brandished -- what appeared to be a firearm and pointed it towards me and my partner. Um, that's when I got out of the vehicle and I fired approximately two shots because I wanted to defend against eminent (sic) threat of death or serious bodily injury to myself and my partner. Um, once -- after I fired those two shots, I grabbed my radio and I moved into a close contact position just because the -- the position how I was in the vehicle and I put out the help call. I moved a little bit to the left. Um, that's when I could observe the suspect's head. I saw his

head and I believe his left hand. And I gave him commands, um, you know, 'Don't -- don't move.' I told him, 'Show me your hands. Show me your hands' I saw his hands."

Regarding the Subject's position when Officer B observed the Subject pointing a gun at him/her and Officer A, as well as the Subject's position subsequent to the OIS, Officer B stated, "So originally when he [the Subject] -- when he made that quick dash, he would have been on the pass -- he was on the passenger side [of the Honda CR-V] when he exhibited that firearm towards me and my partner. He was on the passenger side. And when I fired the two shots towards -- towards him, um, I don't know what happened and maybe he repositioned, but after I fired the two shots, I put out the help call, um, he repositioned himself on the driver's side of the vehicle which would have been facing north -- I guess he would be moving northbound in that sense. Um, that's when I saw his head sticking out and he was, like, what I believe he was maybe crouched down or something with his hands out -- with one of his hands out."

In further describing the Subject's positioning, the following statements were made by Officer B (as well as his/her attorney and the Force Investigation Division (FID) Investigator) during Officer B's first interview:

Officer B: "So when I first saw him [the Subject], he would have been standing here. So that would have been the passenger side."

[...]

Attorney: "Is that the right front of the car?"

Officer B: "That was --"

[...]

Officer B: "Right there. It would be towards the right originally then after those two shots were fired he at some point navigated just it's hard, oh, I'm sorry, I don't know what I did there. I don't know if it's --"

Attorney: "It's okay just say where is he right in front of the car?"

Officer B: "Yeah. So it would be the right front of the car and at some point because it's -- it's got a pretty high vantage point. It's hard to see exactly."

FID Investigator: "Uh-huh."

Officer B: "But at some point he made some maybe low crawled or did something to navigate towards, like, the other side of the vehicle. I just don't know at what point when he did that."

With regard to Officer B's background and foreground at the time he/she fired his/her two shots, the following exchange occurred during Officer B's first interview:

FID Investigator: "Okay. So let me just -- and then let me just clarify terms. So when I ask you background it would be what object would be behind the suspect?"

Officer B: "The wall. The wall of the [market] would have been behind the suspect."

FID Investigator: "And then when you mentioned the glass, this glass, what is that in reference to?"

Officer B: "Um, that the glass was around the suspect, too. Like the glass of the vehicle. Like the -- well, I was assuming --"

FID Investigator: "Of which vehicle?"

Officer B: "Of the bronze one. I can't recall which one it was. The one he -- the one he was standing in front of the engine block."

FID Investigator: "I see. So you're saying that's -- that was in his foreground? There was --"

Officer B: "Yes."

FID Investigator: "-- it was in front of him?"

Officer B: "Yes. Exactly. It was -- it was in front of the suspect."

With regard to the vehicle in Officer B's foreground, the following exchange occurred between Officer B and FID during Officer B's second interview:

FID Investigator: "[D]id you ever -- ever give any consideration that someone could have been in the vehicle that you shot into at that time?"

Officer B: "There was consideration at the time that I didn't observe any physical obstructions inside the vehicle. Also, at the time he was -- he -- he was pointing a handgun towards us so I had to react to that threat right there because he had a disregard for human life to just point a gun at me and my partner but I didn't see any -- anything."

According to Officer B, he/she fired his/her pistol over his/her vehicle's lightbar; however, Officer B's BWV captured him/her fire over the top of his/her vehicle and behind the lightbar.

According to Officer A, he/she heard additional gunshots and breaking glass. Officer A believed the Subject may have fired the shots. Additionally, Officer A stated he/she was

outside of his/her vehicle when he/she heard additional gunshots; however, Officer A's BMW captured him/her exit his/her vehicle after Officer B fired his/her shots.

The investigation also determined that there were approximately two seconds between Officer A's shots and Officer B's shots.

Regarding the Subject's position and Officer B's view of him when Officer B fired his/her pistol, the following exchange occurred during Officer B's second interview:

FID Investigator: "First question, can you describe exactly where the suspect is using directions or landmarks when you discharged the first round from your pistol?"

Officer B: "Yeah. He'd be in front of the -- the vehicle. I believe -- I forgot the color of the vehicle but he would be directly in front of it."

[...]

FID Investigator: "Now, when you had first observed him to where you're describing him now did his physical position change? And -- and I should say -- let me make this correction. As you -- when is the first time you lose sight of him which you talked about in your first interview, when's the next time you see him?"

Officer B: "The next time I see him after -- after I fired?"

FID Investigator: "After you lost sight of him. No. No. No."

Officer B: "Oh."

FID Investigator: "Before firing after you lose sight of him between the cars before you fire, do you recall when the first time that you see him again was prior to discharge?"

Officer B: "Prior to discharge the first time I saw him was when I got outside the vehicle and that was when I was lining up my sights."

FID Investigator: "Okay. And so, to be clear, at that point, he's behind the -- SUV type vehicle?"

Officer B: "Correct."

FID Investigator: "Okay."

Officer B: "Or he'd be in front. Technically, he'd be in front."

FID Investigator: "Correction. I apologize."

Officer B: "He -- he would be in front of the engine block."

FID Investigator: "Yes. In front of the engine block. What was the suspect's physical body position to the extent that you know being -- and if you can take him from top to bottom."

Officer B: "I can only see the -- the -- this part so it would be the center mass and up and"

FID Investigator: "And --"

Officer B: "-- and his hands."

FID Investigator: "And you just motioned kind of at your belt-line area?"

Officer B: "Uh-huh. Yeah. Around the belt or I would say like the navel area."

FID Investigator: "Navel."

Officer B: "Belt-line area."

FID Investigator: "Okay."

Officer B: "And so I could see him there and I could see he's pointing what appears to be a handgun towards me and my partner."

FID Investigator: "Were there any physical or visual obstructions between you and the suspect at the time you discharged your first time?"

Officer B: "It would be the glass."

FID Investigator: "And then when you say the glass, the glass of what?"

Officer B: "The glass of the vehicle."

FID Investigator: "Okay. And then vehicles have obviously 360 glass. Can you give me the specific piece?"

Officer B: "Yeah. So, it would be the -- it would be the rear-glass panel so the one in the back and then it would be the front windshield as well."

FID Investigator: "Okay. So, you're actually seeing the suspect through both pieces of glass, is that accurate?"

Officer B "Yes."

FID Investigator: "Okay. Now it's going to be -- now I'd like to move on to your second discharge but same question. Where is the suspect now at the time you discharged your second round?"

Officer B: "He's still in the same area."

FID Investigator: "And what is the suspect's body positioning at that time?"

Officer B: "Still standing so the navel area and up is exposed and he's still pointing what appears to be a handgun towards us."

FID Investigator: "And where is his -- and I should have asked this and you kind of stated it. But just to be clear, where is the muzzle of that object that you --"

Officer B: "Point --"

FID Investigator: "-- appear to be a handgun?"

Officer B: "It appeared to be pointed towards us."

FID Investigator: "And again, you said he hadn't moved but it but to be clear where there at this time during your second discharge any visual or physical obstructions between you and the suspect?"

Officer B: "It would be the rear glass panel and the front windshield of the vehicle."

Later during the same interview, with regard to the same issue, the following exchange occurred:

FID Investigator: "And then in regards to it -- it -- I understand that his body position, the suspect's body position was the same for both rounds."

Officer B: "Yes."

FID Investigator: "Could you tell was he fixed in his position or was he in any kind of motion as you describe what you could or couldn't see of him and then pointing at you?"

Officer B: "It looks -- it looked like fixed to me like he was standing in the general area. I don't think he was moving around or anything like that at the time."

As Officer B fired his/her pistol, Officer D broadcast, "Shots fired, officer needs help!" Officer B's BWV captured him/her bring his/her pistol in a close contact position near his/her body and broadcast, "Shots fired, officer need help!" Officer B's broadcast was not captured on the police radio frequency.

As Officer D broadcast the help call, Officer C again placed his/her vehicle in park, exited, and unholstered his/her service pistol, coming to a two-handed grip. According to Officer C, he/she unholstered his/her service pistol because he/she heard gunshots and believed the use of deadly force may be necessary.

Officer A immediately exited his/her vehicle after Officer B fired his/her pistol. Officer A took a few steps forward to the east and then sidestepped to the south. As he/she moved, Officer A ordered Witness A, who was seated in the driver's seat of the Honda sedan, to get out of his/her vehicle.

At that point, the Subject's firearm flew out between the parked vehicles, bounced onto the pavement, and slid west past Officer B. The firearm came to rest near the curb of a planter bed, west of Officer A and B's vehicle.

Officer B moved to his/her left behind the rear fender of his/her vehicle and observed the Subject crouched near the front driver's side of the Honda CR-V, near his backpack. Officer B ordered the Subject to put his hands up. The Subject knelt on his left knee, with his right foot posted on the sidewalk, as he raised his hands. Officer A also gave commands to the Subject to put his hands up and face the wall.

Officer C positioned him/herself near a parked car near the north end of the row of park cars. According to Officer C, he/she observed the Subject hiding near the parked cars, several cars away from him/her. Officer C pointed his/her pistol at the Subject with his/her index finger along the frame and ordered him to show his hands.

Officer A approached the Subject from the passenger side of the Honda CR-V, as Officer B left the cover of his/her vehicle and approached the Subject from the driver's side of the Honda CR-V.

As the officers approached the Subject, Officer D advised that the Subject threw a gun. The Subject stood up, faced the wall of the market, and put his/her hands on the wall. As Officer A closed the distance and stood to the right of the Subject, Officer C, who was still positioned north, lowered his/her pistol to avoid a potential crossfire.

As Officer A covered the Subject with his/her pistol, Officer A yelled, "If you shoot, I'll [expletive] kill you!" As Officer B moved between the parked cars and neared the Subject's left side, Officer B ordered the Subject to get on the ground as he/she moved the Subject's backpack out of his reach. Officer B ordered the Subject to get on his knees and Officer A ordered the Subject to get on the ground.

As Officers A and B contacted the Subject, Officer C weaved his/her way south through the parked cars and toward the officers. Officer D positioned him/herself near the Subject's firearm and communicated with Officer C that he/she was guarding it. Officer C acknowledged Officer D, as he/she holstered his/her pistol, and walked east between the cars and toward Officer B.

The Subject complied with Officer A and B's commands and knelt on both of his knees. The Subject initially put both of his hands on the wall but then dropped his hands, placing them on his upper legs. Both Officers A and B immediately ordered the Subject to put his hands on his head. The Subject complied and interlaced his fingers behind his head.

Officer A directed Officer B to handcuff the Subject. As Officer A pointed his/her pistol at the Subject, he/she yelled, "You move, I'll [expletive] blow your [expletive] head off! You understand?" Officer B holstered his/her pistol, obtained his/her handcuffs, and then handcuffed the Subject. Officer A again yelled at the Subject, "[expletive] blow your [expletive] head off!" Officer B assisted the Subject to his feet and then both Officers B and C ordered the Subject to spread his feet, which he did.

At 1308:05 hours, Police Officers E and F arrived at scene in response to the help call.

Officer B began to search the pockets of the Subject's pants and waistband area. As Officer B searched the Subject, he/she asked the Subject if he had any other weapons on his person. The Subject initially told Officer B that he did not but then informed Officer B that he had a knife on his belt. Officer B lifted the Subject's t-shirt up and removed a folding knife from the Subject's left front belt area and tossed it to the ground. Officer C asked the Subject if he had been struck by gunfire and the Subject stated that he was not; the Subject did not sustain any injuries.

Officers E and F exited their vehicle and began to walk east in the parking lot. As the officers approached, Officer D, who was still guarding the Subject's firearm, informed them that Witness A was in the Honda sedan, but he/she was unsure if Witness A was involved.

As Officer B searched the Subject, Officer A turned around and began to walk west in the parking lot. As he/she did so, Officer A directed Witness A to exit the Honda sedan, and Witness A complied. Officer F unholstered his/her service pistol as he/she approached Witness A. Officer F ordered Witness A to turn around, as he/she holstered his/her pistol. Witness A complied and Officer F handcuffed Witness A. Witness A was subsequently escorted and placed in a police vehicle. The officers later determined that Witness A was not a suspect in the OIS and was later released.

Officer A continued to walk toward his/her vehicle, as he/she touched the left side of his/her neck and asked the other officers if he/she had been shot. Officer E called Officer A over to him/her and directed him/her to holster his/her pistol, which Officer A did. Officer E then checked Officer A for gunshot wounds and did not find any. Officer D later observed Officer A's left elbow was bleeding and alerted him/her of the injury.

At 1308:40 hours, Officer D broadcast that the Subject was in custody.

Officer A verified that Officer D was guarding the Subject's firearm and directed him/her not to leave it. Officer B escorted the Subject to his/her police vehicle and placed him/her in the back seat.

At 1310:10 hours, Sergeant A arrived at the scene. As he/she exited his/her vehicle, Officer E told him/her that Officer A was bleeding. Sergeant A quickly moved east through the parking lot and called Officer A over to him/her. As Officer A came to meet him/her, Officer A informed him/her that he/she was bleeding from his/her elbow and he/she believed the Subject's round missed him/her. Sergeant A checked Officer A for additional injuries but did not find any.

Officer A and Sergeant A then walked to the edge of the crime scene and Officer A explained that crime scene tape was being put up, the Subject's firearm was being guarded, and the Subject was in custody. Without being prompted, Officer A told Sergeant A, "He threw a round at me and I returned fire." Officer A attempted to explain further; however, Sergeant A told him/her to stop and only explain what the officers at scene were doing.

Officer B informed Sergeant A that he/she also fired his/her pistol. Sergeant A ordered Officer B to stop talking until he/she returned. Sergeant A then directed the officers not to wander around in the crime scene. Sergeant A then walked back to his/her vehicle and retrieved paperwork. According to Sergeant A, he/she could not immediately remove the officers that were present and involved during the OIS from the scene, because he/she believed each of the officers were conducting vital roles, such as guarding evidence, monitoring the Subject, and conducting scene security.

At 1312:03 hours, Sergeant A broadcast that he/she was the Incident Commander.

As the Subject sat in the back of Officer A and B's police vehicle, the rear camera of their vehicle's DICVS captured the Subject spontaneously state, "Lucky that [expletive] misfired [expletive]."

It was determined that the Subject's firearm did not discharge; however, based on BWV, forensic analysis, Officer A's account of the Subject's body posture, and the Subject's own admission, it was determined that the Subject attempted to discharge his/her firearm at the officers.

Officers A and B each separately met with Sergeant A and provided him/her with a Public Safety Statement. Sergeant A then ordered Officers A and B not to discuss the incident. Officers E and F later transported the Subject to Topanga Station for booking.

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
Officer C	Yes	Yes	Yes	Yes	Yes
Officer D	Yes	Yes	Yes	Yes	Yes

Los Angeles Board of Police Commissioners' Findings

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

A. Tactics

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

B. Drawing and Exhibiting

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

C. Lethal Use of Force

The BOPC found Officer A's lethal use of force to be In Policy and Officer B'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 officer’s alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge

of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm. Any drawing and exhibiting of a firearm shall conform with this policy on the use of firearms. Moreover, any intentional pointing of a firearm at a person by an officer shall be reported. Such reporting will be published in the Department's year-end use of force report.

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

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

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

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

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

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

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

Warning Shots: It is the policy of this Department that warning shots shall only be used in exceptional circumstances where it might reasonably be expected to avoid the

need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.

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

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

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

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

Definitions

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

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

Imminent: Pursuant to California Penal Code 835a(e)(2), "[A] threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a

reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to a peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”

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

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

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

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

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

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

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

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

A. Tactics

Tactical De-Escalation

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

Tactical De-Escalation Techniques

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

Tactical de-escalation does not require that an officer compromise his/her or his/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 two days, during which time they had discussed tactics, including contact and cover, lethal and less-lethal force options, and tactical de-escalation techniques. According to Officer A, as the driver, he/she was the designated contact/less-lethal officer. As the passenger, Officer B was designated as the cover/lethal officer. According to Officer B, the roles could change based on the situation. As they drove to the radio call, Officer B read the suspect's description to Officer A from their vehicle's Mobile Digital Computer. According to Officer A, while responding, he/she designated Officer B to be the lethal officer.

The BOPC noted the officers were receiving updated information from CD regarding the Subject and were being efficient in their attempt to locate him; however, the BOPC would have preferred more planning and communication between Officers A, B, C, and D as they searched the alley.

Assessment – As Officers A, B, C, and D searched for the Subject, CD advised they were searching in the correct area and that the PR had seen the Subject with a handgun. Locating the Subject, Officer A drove around Officer C's police vehicle to see the Subject and triangulate on him. Officers A and B observed the Subject look back, reaching for a handgun. As the Subject moved between the parked vehicles, out of the officers' view, Officer A opined the Subject was going to flee. Officer A intended to exit the police vehicle and search for the Subject. As Officer A passed the CR-V's rear bumper, the Subject stood on the walkway near the front of the CR-V, facing west toward the officers. The Subject's right arm was extended, his left

arm was bent, and his hands joined, forming a shooting stance. According to Officer A, as he/she looked through his/her service pistol's sights and targeted the Subject's upper torso, he/she observed the Subject's shoulders move back as if they were absorbing recoil from his handgun. While he/she did not see a muzzle flash, Officer A perceived that the Subject had fired a round, striking him/her. The Subject's actions contributed to the officers' inability to implement additional de-escalation techniques.

Time – There is a formula that saves lives: “Distance plus cover equal time.” Upon locating the Subject, Officers C and D stopped their police vehicle, creating distance. They took cover and ordered the Subject to stop. To see the Subject and triangulate on him, Officer A drove around Officer C's police vehicle; Officer A continued to drive toward the Subject. The Subject's subsequent actions quickly escalated the incident and contributed to the officers' inability to use time as a de-escalation technique.

The BOPC was critical of Officer A's vehicle deployment, noting that he/she did not use distance and cover to create time. The BOPC noted, that instead of maintaining distance, Officer A drove toward the Subject. As a result, Officer A placed him/herself and Officer B near the Subject. While Officer B was able to use portions of the police vehicle as cover, Officer A was exposed.

After the OIS, Officers A and B ordered the Subject to raise his hands; the Subject complied. Officers A and B then approached the Subject. The BOPC would have preferred that Officers A and B had used cover, maintained distance, developed a plan, formed a team, and ordered the Subject out from the parked car, into a felony prone position.

Redeployment and/or Containment – Locating the Subject, Officer A drove around Officer C's police vehicle to see the Subject and triangulate on him. Observing the Subject look back while reaching toward his waistband area, Officers A and B opined he was retrieving his handgun. As the Subject moved between the parked vehicles, out of view, Officer A continued forward. Believing the Subject was going to flee, Officer A intended to exit his/her police vehicle and search for him. While the Subject's subsequent actions quickly escalated the incident and contributed to the officers' inability to redeploy or set up containment, the BOPC would have preferred that Officer A had attempted to contain the Subject instead of driving toward him.

Other Resources – Responding to the call, Sergeant A used CD to obtain additional information from the male. Responding to the ADW call, Officers A, B, C, and D learned that an Air Unit had been requested and that additional units were responding as well. Arriving at the radio call, Officer A observed Officers C and D were present. During the search, Officer D used CD to verify they were looking in the correct area.

Lines of Communication – During the search for the Subject, Officer A pulled along the driver's side of Officer C and D's police vehicle. Using his/her right hand,

Officer A motioned west. Officer C interpreted this motion as a cue to continue to move forward. Locating the Subject, Officer D broadcast they were Code Six on a possible suspect, alerting responding units. Locating the Subject, Officers A, B, C, and D all ordered the Subject to stop; the Subject did not comply and continued walking away from officers. Officer A drove toward the Subject, ordering him to stop. The Subject's subsequent actions contributed to the officers' inability to further implement de-escalation techniques before the OIS. During the OIS, Officers D broadcast an officer "help call," advising CD and responding units that shots had been fired. After the OIS, officers continued to communicate with the Subject; no additional force was used.

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

1. Tactical Vehicle Deployment

Officer C stopped his/her police vehicle, opened his/her door, and ordered the Subject to stop. Officer D also opened his/her door and ordered the Subject to stop. The Subject ignored the officers' commands and continued south. Meanwhile, Officer A drove around the passenger side of Officers C and D's police vehicle, traveling south toward the Subject. According to Officer A, he/she maneuvered his/her police vehicle around the other officers to see the Subject and triangulate on him. According to Officers A and B, the Subject ostensibly was attempting to retrieve a handgun from his person. According to Officer B, he/she attempted to exit the vehicle. Because the police vehicle was still moving, he/she struggled to get traction with his/her right leg. The Subject continued south then east out of view between the parked cars. Believing the Subject was going to flee southbound through the parking lot, Officer A continued to drive slowly south by the Honda CR-V. According to Officer A, after losing sight of the Subject, he/she intended to exit his/her police vehicle and search for him. As Officer A passed the Honda CR-V's rear bumper, the Subject stood on the walkway near the front of the Honda CR-V, facing west toward the officers. The Subject's right arm was extended, his left arm was bent, and his hands joined, forming a shooting stance. Officer A's door was open.

The BOPC was critical of Officer A's decision to drive his/her police vehicle near the Subject, who he/she believed was armed with a handgun. The positioning of Officer A's police vehicle prevented him/her and his/her partner from using the ballistic door panels as cover and left Officer A exposed while seated in the police vehicle. While Officer B had limited cover and Officer A effectively had none, the Subject was able to take cover behind the CR-V's engine block. Instead of stopping adjacent to Officers C and D, Officer A placed him/herself and his/her partner at a significant tactical disadvantage by driving near the Subject. The BOPC noted that as Officer A drove toward the Subject, Officer B had the presence of mind to try and exit the police vehicle. The BOPC opined that Officer B's actions were an indication he/she sensed the danger in

approaching the Subject. While both officers generally bear some responsibility for what occurs, the BOPC noted that at the time of this incident, Officer B was a probationary police officer while Officer A was a training officer and the driver.

The BOPC also opined that Officer A's vehicle deployment forced him/her and Officer B to draw their service pistols while seated in the police vehicle. Because Officer A was driving, he/she initially held his/her pistol in his/her right hand while steering with his/her left. Officer A held the door open with his/her left foot while operating the pedals with his/her right. As he/she pointed his/her service pistol toward the Subject, ordering him/her to stop, Officer A transitioned to a two-handed shooting grip. According to the FID investigation, Officer A brought the police vehicle to a stop as he/she discharged his/her second round. The BOPC opined that had Officer A deployed the police vehicle in a manner allowing distance and cover, the officers may have been allowed to implement other de-escalation techniques, and it would have reduced the risk of them being shot by the Subject.

Based on the totality of the circumstances the BOPC determined that the tactics employed by Officer A were a substantial deviation, without justification, from approved Department tactical training. Based on the totality of the circumstances the BOPC also determined, that the tactics employed by Officer B were not a substantial deviation from approved Department tactical training.

2. Basic Firearm Safety Rules

Based on his/her BWV footage, after discharging his/her second round, Officer A's index finger remained on the trigger of his/her service pistol for approximately four seconds as he/she placed the transmission in park and exited the vehicle. The Subject had taken cover behind the CR-V and had not yet discarded his/her handgun. According to Officer A, he/she believed the Subject was still a deadly threat and that he/she may need to re-engage him.

The BOPC considered the facts and circumstances surrounding Officer A's placement of his/her index finger on the trigger of his/her service pistol during this incident. The BOPC noted that Officer A's finger remained on the trigger for approximately four seconds after he/she fired his/her second shot, during which time he/she placed the transmission in park and exited his/her police vehicle. The BOPC noted Officer A was faced with a stressful situation and articulated his/her belief that he/she may have to re-engage with the Subject. However, the BOPC also noted that an officer's decision to place his/her finger on the trigger of a firearm must generally not be a preparatory move but rather a fluid motion that occurs only when the use of deadly force is imminent. Additionally, officers must be cognizant of when their finger is on the trigger. The BOPC further noted that a purpose of the basic firearm safety rules is to prevent the potential of an unintentional discharge. By preemptively placing or leaving their finger on the

trigger, especially under stressful conditions, officers increase the risk of unintentionally discharging their firearms.

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

3. Approaching a Possibly Armed Suspect

After Officer B fired his/her service pistol, Officer A immediately exited his/her police vehicle, stepped forward, and to the side. At that point, the Subject threw his/her handgun toward the parking lot. The Subject's handgun slid across the pavement, past Officer B, coming to rest near a planter bed, west of Officers A and B's vehicle. While Officer A heard a clinking noise and saw an object sliding on the ground, which he/she believed was the Subject's handgun, Officer B was not aware the Subject had discarded his/her handgun. Officer B moved to his/her left behind the rear fender of his/her police vehicle and observed the Subject crouched near the Honda CR-V's front driver's side, near his backpack. Officer B ordered the Subject to put his hands up. The Subject knelt on his left knee, with his right foot posted on the sidewalk, as he raised his hands. Officer A also ordered the Subject to put his hands up and face the wall. Officers A and B observed the Subject's hands were empty and he was no longer holding the handgun. Officer A approached the Subject from the Honda CR-V's passenger side as Officer B approached the Subject from the Honda CR-V's driver's side.

The BOPC noted that after the OIS, the Subject had taken cover in front of the Honda CR-V. As they ordered the Subject to show his hands, Officers A and B also had cover. While the Subject raised his hands and appeared unarmed, the BOPC was critical of Officers A and B's decision to leave cover and approach him. Although it appeared the Subject was unarmed, officers had not yet confirmed that he had discarded the handgun. Also, the Subject could have had additional firearms and did have a folding knife on his person. The BOPC also noted that Officers A and B did not develop a plan nor communicate with each other before approaching the Subject. The BOPC would have preferred that Officers A and B had waited for Officers C and D then formulated a plan and designated roles. Once that was done, the BOPC would have preferred that Officers A and B had ordered the Subject out from in front of the Honda CR-V and into a felony prone position. The BOPC opined that by approaching the Subject without communication and/or a plan, Officers A and B unnecessarily placed themselves at a tactical disadvantage.

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

- The BOPC also considered the following:

Tactical Communication – After the OIS, Officers A and B observed the Subject in front of the Honda CR-V and instructed him to show his hands. Observing that the Subject was no longer armed, Officers A and B approached and took him into custody. While Officer A believed that he/she had observed the Subject's handgun sliding across the parking lot, he/she did not advise Officer B of his/her observations. Although the incident quickly escalated, better communication would have afforded the officers a greater tactical advantage.

Situational Awareness – Officer B discharged his/her service pistol over the top of the police vehicle, behind the roof-mounted lightbar, while Officer A was seated in the driver's seat. Had Officer A exited at that point, he/she may have been in Officer B's foreground.

As Officer B was handcuffing the Subject, Officer A provided lethal cover. Based on their positions, had lethal force been necessary, there was a potential for Officer B to be in Officer A's foreground/background.

Non-Medical Face Coverings – Officers A, B, C, and D were not wearing non-medical face coverings at the scene as directed by the Chief of Police on May 20, 2020.

The BOPC found Officers A and B's tactics to warrant Administrative Disapproval. The BOPC found Officers C and D's tactics to warrant a Tactical Debrief.

B. Drawing and Exhibiting

- **Officer A and B**

According to Officer A, as the Subject continued to walk and look back toward the officers, he/she observed the Subject reach both hands toward his waistband area. Believing that the Subject was reaching for a handgun, Officer A unholstered his/her service pistol. According to Officer B, the Subject looked back over his shoulder at the officers several times as he reached his right hand into his pocket, ostensibly struggling to remove something. Believing the Subject was retrieving a handgun, Officer B unholstered his/her service pistol. According to Officers A and B, they unholstered their service pistols because they believed the situation might escalate to the point that deadly force may be justified

- **Officer C**

According to Officer C, he/she and his/her partner responded to an ADW suspect radio call. While responding, CD advised that the PR said he had seen the Subject armed with a handgun. When located, the Subject ignored the officers' commands to stop; an OIS subsequently occurred. As Officer B discharged his/her service

pistol, Officer D broadcast an officer" help call," stating that shots had been fired. As Officer D broadcast the help call, Officer C exited his/her police vehicle and unholstered his/her service pistol. Officer C had heard approximately two gunshots and believed that deadly force may be justified.

The BOPC evaluated Officers A, B, and C's drawing and exhibiting of their service pistols. The BOPC considered the comments of the radio call indicating the Subject was armed with a handgun, the officers' observations, and the Subject's refusal to comply when ordered to stop. In terms of Officer C, the Board also considered the updated information from CD and that Officer C had heard gunshots while repositioning his/her police vehicle. Based on the totality of the circumstances, the BOPC opined that it was reasonable for Officer C to believe that deadly force may be justified.

In terms of Officers A and B, the Board also considered their belief that the Subject was retrieving his firearm as he reached toward his waistband/pocket. In terms of their decision to unholster their service pistols while seated in their police vehicle, the Board had previously noted this was due to Officer A's vehicle deployment, for which the BOPC made a finding of Administrative Disapproval. While the BOPC looked unfavorably on Officer A's tactics and generally discouraged unholstering while seated in a police vehicle, the BOPC opined that at the point when Officers A and B unholstered their service pistols an officer with similar training and experience would have reasonably believed there was a substantial risk that the situation may escalate to the point where deadly force may be justified. The BOPC noted that this was especially true for Officer B who had tried to exit the police vehicle as Officer A drove toward the Subject.

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

- **Officer D**

According to Officer D, he/she and his/her partner responded to a radio call for an ADW. CD had advised that the Subject was last seen in an alley. As the officers continued to drive slowly, Officer D unholstered his/her service pistol while seated in the police vehicle's passenger seat. Officer D noted that the Subject was reportedly armed with a handgun. He/she also noted there were trash bins, large dumpsters, and corners where the Subject could hide and believed he/she needed to be ready to protect him/herself and/or his/her partner.

The BOPC noted Officer D's concerns and desire to be ready if confronted by an armed Subject. However, the BOPC also noted that Officer D unholstered his/her service pistol a significant distance from where the Subject was subsequently located. While a deadly force encounter ultimately occurred, the BOPC opined that by prematurely unholstering his/her service pistol, Officer D limited his/her alternatives in controlling the situation and increased the risk of an unintentional discharge. While the PR had reported seeing the Subject's firearm, at the point when Officer D unholstered his/her service pistol, he/she knew only that the Subject was last seen in the alley. Based on the totality of the circumstances, the BOPC opined that an officer would not have reasonably believed at that point there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer D would not have reasonably believed that when he/she unholstered his/her service pistol there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officer D's drawing and exhibiting of a firearm to be Out of Policy.

C. Lethal Use of Force

- **Officer A** – (pistol, two rounds)

Background – The FID investigation determined Officer A's background was the wall of the market

Looking to his/her left, Officer A observed the Subject in a shooting stance, pointing a handgun at Officer B and him/her. Per Officer A's BWV footage, the Subject had stepped out from in front of the Honda CR-V. According to Officer A, as he/she looked through his/her service pistol's sights, targeting the Subject's upper torso, he/she observed the Subject's shoulders move back as if they were absorbing recoil from the handgun. While he/she did not see a muzzle flash, Officer A perceived that the Subject was "engaging" him/her and had fired a round, striking Officer A. Believing he/she had been shot, Officer A discharged one round from his/her service pistol at the Subject's upper torso. Officer A discharged his/her service pistol to protect him/herself, his/her partner, and the public from the Subject.

After Officer A discharged his/her first round, the Subject began to move to the front of the Honda CR-V. According to Officer A, he/she conducted a brief assessment and felt burning on his/her left arm and pain in the left side of his/her body. Believing the Subject had already shot him/her and was still engaging, Officer A discharged a second round at the Subject's upper torso from his/her service pistol. According to the FID investigation, at the time of his/her second shot, BWV showed the Subject's body, except for his left leg, behind the Honda CR-V.

The BOPC assessed the proportionality, reasonableness, and necessity of Officer A's lethal use of force. The BOPC noted the comments of the radio call, indicating that the Subject was armed with a handgun. The BOPC also noted that Officer A observed the Subject reaching for his waistband area and moving between parked vehicles, disregarding Officer A's commands to stop. The BOPC noted that Officer A observed the Subject in a shooting stance, pointing a handgun at him/her. The BOPC also noted that based on his/her observations of the Subject, Officer A believed the Subject had shot him/her.

In terms of Officer A's second round, the BOPC noted that according to the FID investigation, BWV showed the Subject's body, except for his left leg, behind the Honda CR-V. The BOPC also noted there is an expectation that officers assess with each round. Based on the dynamic nature of this event, the Board opined that when Officer A decided to discharge his/her second round, the Subject was still in front of him/her, presenting a deadly threat. Between the time Officer A assessed the ongoing deadly threat, made the decision to fire his/her second round, and pulled the trigger, the Subject moved back in front of the Honda CR-V.

Based on the totality of the circumstances the BOPC determined that an officer with similar training and experience as Officer A, in the same situation, would reasonably believe that the use of deadly force was necessary, proportional, and objectively reasonable.

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

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

Background – The FID investigation determined that Officer B's background was the wall of the market; his/her foreground was the Honda CR-V's rear window, hatch, passenger compartment, and windshield.

During his/her interviews with FID, Officer B described two different scenarios associated with his/her decision to use deadly force. The first scenario described several times by Officer B was that he/she observed the Subject point a firearm as he (the Subject) was positioned at the front passenger side of the Honda CR-V. Officer B then exited the police vehicle and fired at the Subject. During his/her first interview, Officer B stated, "So, originally when he [the Subject] -- when he made that quick dash, he would have been on the pass -- he was on the passenger side [of the Honda CR-V] when he exhibited that firearm towards me and my partner. He was on the passenger side. And when I fired the two shots towards -- towards him, um, I don't know what happened and maybe he repositioned, but after I fired the two shots, I put out the help call, um, he repositioned himself on the driver's side of the vehicle which would have been facing north -- I guess he would be moving northbound in that sense. Um, that's when I saw his head sticking out and he was, like, what I believe he was maybe crouched down or something with his hands out --

with one of his hands out.” During the same interview and following a prompting question from his/her own attorney, Officer B indicated that the Subject was pointing a gun at him/her and Officer A at the time when he/she (Officer B) fired his/her rounds. Officer B also stated that the glass of the Honda CR-V was in his/her shooting foreground.

In his/her second interview, Officer B described having seen the Subject pointing a firearm at him/her from a position directly in front of the Honda CR-V, and he/she indicated that he/she made this observation through the rear and front heavily tinted windows of that vehicle. Officer B described the Subject as standing at the time he/she made this observation, and he/she described having been able to see the Subject from the belt line/navel area up.

Officer A’s BWV footage clearly establishes that the Subject pointed a firearm at him/her and Officer B while located at the front passenger side of the Honda CR-V. Officer A fired two shots at the Subject at that time, and as the second shot was fired the Subject moved in front of the Honda CR-V and out of the view of Officer A’s BWV camera. Officer A ceased fire as he/she lost sight of the Subject. Approximately two seconds after Officer A fired his/her rounds, Officer B fired two shots through the rear of the Honda CR-V. According to Officer B, he/she saw no obstructions in the vehicle and was targeting the Subject with his/her gunfire. Bullet path analysis determined that Officer B’s bullets entered through the rear of the Honda CR-V and traveled toward the area of the driver’s seat. None of the available video evidence captured the Subject’s position at the time when Officer B fired his/her rounds, and there is no other source of evidence that corroborates Officer B’s assertion that the Subject pointed a firearm at him/her from the front of the Honda CR-V at that time.

In its evaluation of Officer B’s decision to fire his/her weapon, the BOPC considered it to be a matter of significant concern that Officer B fired into a vehicle located in the parking lot of a busy shopping center. The BOPC noted that Officer B was not in a position to clear the interior of the vehicle and did not claim to have done so. Officer B was asked by FID investigators, “Now with that in mind, you know, speaking about you shooting through the car at the suspect did you ever -- ever give any consideration that someone could have been in the vehicle that you shot into at that time?” Officer B replied that he/she “didn't observe any physical obstructions inside the vehicle.” The paths traveled by Officer B’s bullets were not consistent with his/her stated point of aim, and the rounds he/she fired did not strike the Subject.

The BOPC were concerned with the inconsistencies in Officer B’s statements regarding his/her observations of the Subject at the time he (Officer B) fired his/her weapon, as well as the significant risk to the public created by Officer B’s decision to fire his/her weapon into a vehicle in a busy parking lot.

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