

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

**OFFICER-INVOLVED SHOOTING – 032-21**

| <b>Division</b> | <b>Date</b> | <b>Duty-On (X) Off ( )</b> | <b>Uniform-Yes (X) No ( )</b> |
|-----------------|-------------|----------------------------|-------------------------------|
|-----------------|-------------|----------------------------|-------------------------------|

|              |         |  |  |
|--------------|---------|--|--|
| Outside City | 6/24/21 |  |  |
|--------------|---------|--|--|

| <b>Officer(s) Involved in Use of Force</b> | <b>Length of Service</b> |
|--|--------------------------|
|--|--------------------------|

|           |                   |
|-----------|-------------------|
| Officer A | 6 years, 2 months |
|-----------|-------------------|

**Reason for Police Contact**

Officers entered an alley and observed a vehicle blocking the alley. As the officers drove toward the vehicle, they observed the Subject standing next to it wearing a pullover hooded sweatshirt. The officers observed a heavy “L” shaped object in the center pocket of the Subject’s sweatshirt and formed the opinion he was armed with a firearm. The Subject turned his back to the officers and walked away. As the officers walked behind the Subject, he then removed a pistol with his right hand, resulting in an Officer-Involved Shooting (OIS).

| <b>Subject(s)</b> | <b>Deceased ( )</b> | <b>Wounded ( )</b> | <b>Non-Hit (X)</b> |
|-------------------|---------------------|--------------------|--------------------|
|-------------------|---------------------|--------------------|--------------------|

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, 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 May 10, 2022.

## **Incident Summary**

On Thursday, June 24, 2021, at approximately 2237 hours, Officers A and B were patrolling in an area that borders the County and City of Los Angeles. Officers A and B had just met with deputies from the Los Angeles County Sheriff's Department (LASD) regarding a homicide that occurred earlier in the evening near the city limits. According to Officer B, he/she was directed by his/her supervisor, Sergeant A, to meet with LASD personnel to gather intelligence regarding this incident.

Officers A and B entered an alley they were familiar with because gang members they were assigned to monitor often congregated there. Both officers indicated they had made prior arrests for firearm violations in or near this alley. According to Officer A, he/she turned into the alley to check for gang activity and upon doing so, he/she observed a vehicle in front of him/her, approximately 50 yards east, blocking the alleyway. The location of this alley was within the jurisdictional boundaries of the LASD. According to Officer A, he/she was unaware of this information.

As the officers continued east, they observed the Subject and a female (Witness A) standing near this vehicle. Officer B estimated the vehicle was located approximately four car lengths east of where the officers turned into the alley. The investigation determined the vehicle was parked on the south side of the alley, 250 feet east of where the officers entered the alley.

As the officers neared the Subject, they observed him wearing a blue name brand pullover hooded sweatshirt, which Officer A described as common attire for a particular gang. Both officers noted the Subject was also wearing a name brand baseball cap, which they also recognized as being specific to the gang. Officer A observed the center pocket of the Subject's sweatshirt was weighed down by a heavy "L" shaped object and concluded it was likely a firearm. Officer B also described the object as being "L" shaped and believed it could possibly have been a cell phone or a firearm. Officer A estimated he/she first observed the "L" shaped object when they were 40 feet from the Subject. Officer B indicated that his/her observation was made as they approached within approximately 10 feet of the Subject.

Upon making his/her observation, Officer A communicated with Officer B, stating, "He's got something heavy in his sweater." Officer A then told Officer B that he/she wanted to talk with the Subject and stopped their police vehicle approximately 20 feet from him. Both officers exited their police vehicle, stood behind their respective doors, and asked the Subject what he possessed in his sweatshirt pocket. The investigation determined that Officer A stopped the police vehicle approximately three feet from the rear of the vehicle. The officers' Digital In-Car Video System (DICVS) depicted the Subject standing immediately behind the open driver's side door.

Both officers indicated they did not update their status and location (Code Six) during this incident. In providing a rationale for not doing so, Officer A stated that he/she was driving, and the passenger officer will usually go Code Six. Officer A stated that he/she

was trying to deal with the Subject without being distracted by trying to grab his/her radio or trying to tell his/her partner to go Code Six. Officer B referenced the exigency of the situation and said that he/she was focused on what the Subject had in his hoodie pocket. Officer B stated that he/she did not want to be on the radio while talking to the Subject and not knowing whether he was armed.

According to Officer A, the Subject looked surprised to see them and turned the right side of his body away from them to conceal his right side. The Subject then turned his back to the officers and began walking east while placing his hands inside the center pocket of his hooded sweatshirt. Meanwhile, Witness A, who initially was standing next to the Subject as the officers pulled up, began walking east toward another vehicle parked further down the alley.

Although the officers' DICVS initially recorded without audio, it appeared the Subject verbalized something to the officers upon their arrival. According to Officer A, the Subject ignored his/her question regarding what he was carrying and was not aware the Subject had said anything. Officer B acknowledged that the Subject spoke; however, he/she did not know what the Subject said.

As the Subject continued to walk away, Officers A and B indicated they gave commands for him to take his hands out of his sweatshirt pocket, which he ignored. Both officers then stepped out from behind their respective doors and followed the Subject, while illuminating him with their flashlights. Moments later, the officers unholstered their pistols to a low-ready position.

Officer A indicated that he/she unholstered his/her pistol because he/she believed the Subject was armed with a firearm. Officer A held his/her pistol in his/her right hand, with his/her trigger finger along the frame and a flashlight in his/her opposite hand. Officer B also indicated that he/she unholstered his/her pistol because he/she believed the Subject was armed with a firearm. Officer B held his/her pistol in his/her right hand, with his/her trigger finger along the frame and a flashlight in his/her opposite hand.

As Officer A walked behind the Subject on the north side of the alley, he/she ordered him to stop and to take his hands out of his pockets. According to Officer A, the Subject ignored these commands and looked back over his left shoulder in his/her (Officer A's) direction. Officer A described the Subject's right arm as being bent at a 45-degree angle, with his hand at "mid-level." Officer B said that he/she chose to walk on the south side of the alley parallel with Officer A in what he/she described as an attempt to "triangulate" on the Subject. Officer B explained this tactic was meant to create separation between him/her and his/her partner and thus create "two targets." Officer B believed this would make it harder for the Subject to take him/her out.

As Witness A continued walking west toward the officers, she ultimately stopped in the alley as the Subject passed her. Officer A continued following behind the Subject, as Officer B moved to his/her right (south) and walked around Witness A.

In articulating his/her rationale for moving away from the cover of his/her vehicle, Officer A stated that he/she believed that the Subject was going to comply with his/her directions. Officer A believed that his/her command presence and the fact that he/she and his/her partner were closing the distance on the Subject, would cause the Subject to listen to their directions. In the event the Subject did not comply or decided to run from them, Officer A indicated that they would have requested a back-up and set up a perimeter. According to Officer B, he/she and his/her partner left the cover of their vehicle, because they wanted to investigate the Subject's purpose in the alley and were not positive at the time that he was armed. Officer B considered requesting additional resources; however, he/she indicated the situation happened quickly and he/she did not want to take his/her attention off the Subject to use his/her radio.

As Officer A continued to walk behind the Subject, he/she observed the Subject's right hand emerge from his sweatshirt pocket holding the black handle of a firearm. Officer A perceived that the muzzle of the firearm was pointed across the Subject's body in a northern direction. Officer A indicated that Officer B, who he/she believed had a better view of the Subject, simultaneously yelled, "gun," which confirmed in his/her mind that he/she had made the same observation.

Officer A then saw the Subject's right arm continue to move north across his body, while simultaneously turning his left shoulder in the same direction. Officer A believed the Subject was going to turn and face him/her, which would have caused the muzzle of Subject's firearm to point in his/her direction. Fearing he/she was about to be shot, Officer A raised his/her pistol, targeted the Subject's back and left side, and fired four rounds in rapid succession. According to Officer A, rounds one through three proved to be ineffective, because the Subject continued to turn to his left. At the time he/she fired his/her fourth round, Officer A believed the Subject was almost facing him/her. Officer A added that because he/she was firing at the Subject's center mass, he/she did not recall seeing the Subject's firearm at that point.

Following his/her fourth shot, Officer A said the Subject fell to the ground with his hands up. Although Officer A could not see the Subject's firearm, he/she observed his hands were empty and concluded that the "immediate threat" had ceased, and that there was no reason to fire additional rounds. Officer A indicated his/her background during the OIS was the parked vehicle on the south side of the alley.

During a review of DICV and Body Worn Video (BWV), FID investigators noted vehicle headlights entering the alley approximately 900 feet east just prior to the OIS. Officer A indicated that he/she did not become aware of this vehicle until after he/she fired. Following the OIS, the vehicle slowly continued west toward the officers. According to Officer A, he/she shined his/her flashlight at the vehicle, directing it to stop. The driver complied and ultimately reversed out of the alley. The vehicle and its occupant(s) were not identified.

The investigation determined that Officer A fired a total of five rounds in 1.18 seconds. All his/her rounds were discharged in an easterly direction toward the Subject, from an

increasing distance of approximately 16 to 19 feet. Officer A fired his/her pistol with his/her right hand as he/she held his/her flashlight with his/her left hand, near the grip of his/her pistol. Officer A discharged his/her rounds while stepping backward away from the Subject. In providing a rationale for this action, Officer A said it was to gain greater distance from the Subject and to seek cover if the threat had not stopped. The Subject was not struck by gunfire or injured during this incident.

After discharging his/her pistol, Officer A conducted an in-battery speed reload because he/she was unsure where the Subject's firearm was or if he would be able to gain access to it again. As a result, Officer A wanted to ensure that his/her magazine was topped off to capacity.

A review of Officer B's BWV determined that after removing the firearm from his sweatshirt pocket, the Subject held it in his right hand, upside down by the grip, with the muzzle canted up and to the rear (west). Using an underhanded toss across his body, the Subject then threw the firearm upward and to the left, over a wrought iron fence in the alley. Officer B believed the Subject threw the firearm with his left hand. According to Officer A, he/she was not aware the Subject had thrown the firearm over the fence until after the OIS.

When Officer B first observed the Subject with the firearm, he/she believed the Subject was holding it with his right hand with the barrel pointing downward or to the north. Nevertheless, because the barrel was not pointed in his/her direction, Officer B did not feel his/her life was in danger and therefore did not fire his/her pistol. Upon seeing the Subject's firearm, Officer B yelled, "Gun," to alert Officer A. Officer B lost sight of the firearm at that point and believed the Subject tried to conceal it from him/her by pushing it back into his sweatshirt pocket. Moments later, Officer B observed the Subject throw the firearm over the fence with his left hand and then heard his/her partner fire three to four gunshots. A side by side comparison of Officers A and B's BWV determined that Officer A fired his/her first round nearly simultaneous with the Subject throwing his pistol.

Upon hearing gunshots and seeing the Subject drop to the ground, Officer B began walking backward while activating his/her BWV. Officer B broadcast over 77<sup>th</sup> Street base frequency that shots were fired, "officer needs help," and provided the location. Officer A activated his/her BWV immediately prior to the OIS.

After the Subject fell to the ground, he positioned himself on his back with his head and feet oriented in an east/west direction, respectively. Officer A ordered the Subject to show his hands, turn onto his stomach, and not to move. As the Subject complied with those commands, Officers A and B maintained their positions in the alley and awaited the arrival of responding units.

The following uniformed officers responded to the help call and arrived within seconds of each other: Police Officers C, D, E, F, G, H, I, J, K, and L. Officers C and D were the first to arrive and after stopping their vehicle in the alley, they approached Officers A

and B on foot. Officer D observed Officers A and B with their pistols drawn and saw that the Subject was lying prone on the ground several feet away. According to Officer C, the Subject did not appear agitated or aggressive and directed Officers A and D to move forward and take him into custody. Moments after Officers C and D arrived, Officer B can be heard on BWV announcing that the Subject's "gun is to the left" while pointing to the wrought iron fence.

As the officers walked toward the Subject, Officer C announced that he/she would control the Subject's left arm and directed Officer D to control his right arm. Officer C indicated that he/she was equipped with a TASER and designated him/herself as the less-lethal officer if one became necessary. Additionally, Officer C saw that Officer A still had his/her pistol unholstered and determined he/she would remain as the designated cover officer.

Officer B, who was still unholstered, and Officers F and I, who had already holstered their pistols, moved up with the arrest team. Officers C and D applied firm grips to the Subject's right and left arms respectively and moved them behind his back. Once in that position, Officer D then handcuffed the Subject without further incident. Officer B initiated a broadcast to Communications Division indicating that the incident had been resolved (Code-Four) and that the Subject and gun were in custody. Officers A and B holstered their pistols after Subject was taken into custody.

Officer C assisted the Subject to his feet and assessed that he was not injured. A Rescue Ambulance (RA) was requested as a precautionary measure to evaluate the Subject. Officer C ultimately walked the Subject toward the mouth of the alley near where he remained until the RA arrived.

As responding officers arrived at scene, Officer B directed them to the Subject's firearm and requested that someone detain Witness A. Officer B indicated that he/she gave that direction because Witness A was with the Subject, he/she believed she possibly could have been armed, and she had not yet been searched. Officers G and H detained Witness A pending further investigation. Officer G controlled Witness A's left arm as Officer H controlled her right arm. They were assisted by Officer J, who handcuffed Witness A.

According to Officer J, Detective A later spoke with Witness A at scene and determined she was not involved. Officer J unhandcuffed Witness A at the direction of Detective A. Detective A was working in plain clothes and was not equipped with a BWV camera. Portions of his/her interaction with Witness A were captured on Officer J's BWV. Force Investigation Division (FID) detectives later met with Witness A at scene and conducted a recorded interview with her.

After being directed to the Subject's firearm, Officer F observed it in the backyard of a residence. The firearm was lying on the pavement just north of the fence where the Subject was taken into custody. Officer F illuminated the Subject's firearm with his/her flashlight until Officer E gained access into the yard and maintained security over it.

Upon hearing the help call, Sergeant B responded to the scene from the station. Sergeant B assumed the role of Incident Commander (IC) and identified the involved officers and separated them. As additional supervisors arrived at scene, he/she assigned them to monitor and take Public Safety Statements (PSS) from Officers A and B. After observing that the crime scene was “static” and officers were cordoning off the area, he/she tasked a team of officers to check on the welfare of residents near where the OIS occurred. Sergeant B remained at scene as the IC until he/she was relieved by Lieutenant A.

The Los Angeles Fire Department was dispatched to the scene and medically evaluated and cleared the Subject for booking. The Subject was then transported to 77<sup>th</sup> Street Station by Officers K and L, where he was subsequently booked for a firearms violation.

**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 | No                    | Yes                  | No                               | No                      | No                                 |
| Officer B | No                    | Yes                  | No                               | No                      | No                                 |

Officer A activated his/her BWV one second prior to the OIS. Officer B activated his/her BWV three seconds after the OIS. Officer A manually activated the DICVS post OIS; consequently, the first minute was recorded without sound. Officer A manually activated the DICVS 24 seconds after the OIS, by using the microphone on his/her equipment belt.

**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 and 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 warranted a finding of Administrative Disapproval.

**B. Drawing and Exhibiting**

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

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

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

### **Basis for Findings**

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

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

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

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

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



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

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

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

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

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

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

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

- The feasibility of using de-escalation tactics, crisis intervention or other alternatives to force;
- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the suspect;
- Whether the suspect was posing an immediate threat to the officers or a danger to the community;
- The potential for injury to citizens, officers or suspects;
- The risk or apparent attempt by the suspect to escape;

- The conduct of the suspect being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the suspect;
- Officer versus suspect factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus 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 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 Officers life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

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

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

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

## **Definitions**

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

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

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

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

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

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

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

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

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

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

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

## A. Tactics

### Tactical De-Escalation Techniques

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

**Planning** – Officers A and B had been partners for approximately two months and had established contact/cover roles based on who was the passenger and who was the driver; the roles could shift depending on which officer was the first to contact a suspect. Before entering the alley, Officers A and B did not formulate a specific plan regarding vehicle or pedestrian stops.

**Assessment** – Observing that the front continuous pocket of the Subject’s sweatshirt was weighed down by a heavy “L” shaped object, Officers A and B opined that he may be armed with a handgun.

**Time** – There is an equation that saves lives: “distance plus cover equals time.” During their initial contact with the Subject, Officers A and B used their police vehicle’s ballistic door panels for cover; however, when the Subject walked away, both officers left cover and followed him on foot. During the OIS, Officer A moved backward to create distance. After the OIS, Officers A and B waited for additional

units to arrive before apprehending the Subject. The BOPC was critical of Officers A and B's decision to leave cover and approach a person they believed may be armed with a handgun.

**Redeployment and/or Containment** – As previously stated, during the OIS, Officer A redeployed backward. After the OIS, Officers A and B contained the Subject in the alley and waited for additional units to arrive before apprehending him. The BOPC was concerned that neither officer sought cover as they followed the Subject on foot before the OIS.

**Other Resources** – While Officer B broadcast an officer "help call" after the OIS, neither officer requested additional resources before it. According to Officer A, he/she and Officer B would have requested backup units and a perimeter had the Subject run. According to Officer B, he/she considered requesting additional resources; however, he/she indicated the situation happened quickly and he/she did not want to take his/her attention away from the Subject to broadcast. After forming a contact/arrest team, assisting officers apprehended the Subject without further incident.

The BOPC was concerned that neither Officer A nor B requested additional resources when the Subject walked away from them.

**Lines of Communication** – According to Officer A, before the OIS, he/she advised Officer B of his/her observations of the "L" shaped object and that he/she wanted to talk with the Subject. According to Officer B, there was no communication between the officers regarding the object. As the Subject walked away, both officers commanded him to stop and remove his hands from his sweatshirt pocket. As the Subject removed the handgun from his sweatshirt pocket, Officer B simultaneously yelled "Gun!" to warn Officer A of the threat. After the OIS, Officer A ordered the Subject into a prone position; Officer B broadcast an officer "help call," advising CD of their location and that shots had been fired. Officers A and B communicated with responding units, apprehending the Subject without further incident.

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

#### **1. Tactical Planning/Tactical Communications**

To check for gang activity, Officers A and B drove east in the alley, as they knew gang members often congregated there. Officers A and B were familiar with the location. Observing that the front continuous pocket of the Subject's sweatshirt was weighed down by a heavy "L" shaped object, Officer A opined that the Subject may be armed with a handgun. According to Officer A, he/she advised Officer B of his/her observations and that he/she wanted to talk with the Subject. Officer B had also observed the heavy "L" shaped object in the Subject's sweatshirt pocket, which he/she believed could have been a cellular telephone

phone or a handgun. According to Officer B, there was no communication between the officers regarding the object.

The BOPC noted that while Officers A and B had been partners for approximately two months and had established contact/cover roles, they did not formulate a plan before entering the alley or before contacting the Subject. The BOPC also noted that according to Officer B, there was no communication between the officers regarding the object in the Subject's sweatshirt pocket. While both officers opined that the Subject may have been armed with a handgun, they did not discuss the reason for contacting him. The BOPC further noted that after the Subject began to walk away, Officers A and B did not communicate before leaving cover. With their focus ostensibly on the Subject, there was no communication regarding Witness A or the vehicle that the Subject was standing by.

Based on 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.

## **2. Code Six**

At approximately 2239:05 hours, Officer A stopped the police vehicle behind the Subject's vehicle, but neither Officer A nor B advised Communications Division (CD) of their Code Six status at that point. Officer A indicated that he/she usually deferred responsibility for going Code Six to the passenger officer. Additionally, Officer A wanted to focus on the Subject because he/she believed the Subject may be armed with a handgun. Officer B considered the exigency of the situation and did not want to use his/her hand-held police radio while focusing on the Subject, who he/she believed may be armed with a handgun. After the OIS, Officer B advised CD of the officers' location while broadcasting the officer "help call."

The BOPC noted that the purpose of broadcasting a Code Six location is to advise CD and officers in the area of an officer's location and the nature of their activity, should the incident escalate and necessitate the response of additional personnel. Here, Officers A and B entered an alley they knew was frequented by gang members; both officers had made firearms-related arrests in and near the alley. Opining that the Subject may be armed with a handgun, the officers stopped their police vehicle and attempted to contact him without advising CD of their location. When the Subject walked away, the officers followed him on foot but did not advise CD of their location. The BOPC noted that the officers first advised CD of their location after the OIS. The BOPC opined that Officers A and B's actions placed them at a tactical disadvantage and could have delayed the response of additional personnel had the officers been incapacitated or unable to broadcast the help call.

Based on 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.

## 2. Approaching a Possibly Armed Suspect /High-Risk Stop

At approximately 2239:22 hours, Officers A and B began to follow the Subject on foot while illuminating him with their hand-held flashlights; both officers unholstered their service pistols. Based on their observations and experience, both officers believed the Subject may have been armed with a handgun.

The BOPC noted that when officers encounter a subject they believe is armed, they are trained to conduct a high-risk prone to safely take the subject into custody. This tactic provides the officers a tactical advantage and allows them to plan, communicate, redeploy, utilize cover, give commands, and approach the Subject from a position of advantage. Here, Officers A and B left cover and followed the Subject on foot, despite believing he may be armed with a handgun. The BOPC further noted that Officers A and B did not attempt to initiate a high-risk stop or request additional resources after the Subject began to walk away from them. The BOPC also noted that neither officer sought alternative cover as they followed the Subject on foot. Additionally, Officers A and B walked past Witness A and the Subject's vehicle with little more than a cursory inspection of the vehicle. The BOPC opined that the officers focused solely on the Subject, failing to recognize the Subject's vehicle and/or Witness A as potential threats, creating an officer safety risk. The BOPC would have preferred that Officers A and B had remained behind cover as they ordered the Subject into a high-risk position, or established containment.

Based on 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:
  - **Non-Conflicting Simultaneous Commands** – Before the OIS, Officers A and B gave the Subject simultaneous non-conflicting commands to remove his hands from his sweatshirt pocket.
  - **Pistol Flashlight Technique** – Officer A fired his/her service pistol with his/her right hand while holding his/her flashlight in his/her left hand. Generally, officers should use a two-handed shooting stance or one of the Department's pistol flashlight techniques.

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 actions of Officers A and B were a substantial deviation, without justification, from approved Department tactical training, requiring a finding of Administrative Disapproval.

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

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

## **B. Drawing and Exhibiting**

Officers A and B observed the Subject wearing gang attire in an alley where gang members congregate. Observing the front continuous pocket of the Subject's sweatshirt weighed down by a heavy "L" shaped object, the officers opined that the Subject may be armed with a handgun. When asked what was in his sweatshirt pocket, the Subject turned away from the officers and began to walk east while placing his hands inside his sweatshirt's front pocket. Believing that the situation could rise to the level of deadly force, Officers A and B unholstered their service pistols.

The BOPC evaluated Officers A and B's drawing and exhibiting of their service pistols. The BOPC noted that Officers A and B observed the Subject wearing attire consistent with a gang member that congregated in the alley and whose members were responsible for recent homicides, shootings, and armed robberies in the area. The BOPC also noted that both officers observed the Subject's front sweatshirt pocket weighed down by a heavy "L" shaped object. Based on their observations and experience, Officers A and B opined that the Subject may be armed with a handgun. When the officers attempted to contact the Subject, he walked away, ignoring their commands to stop while placing his hands in his pocket. The BOPC noted that according to both officers, they had made firearms-related arrests in and near the alley. Based on the totality of the circumstances, the BOPC opined that it was reasonable for Officers A and B to believe that the Subject may be armed with a handgun.

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

### C. Lethal Use of Force

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

**Background** – The FID investigation determined the background was a wrought iron fence on the north side of the alley, a parked vehicle on the south side of the alley, and a vehicle that entered the alley, approximately 900 feet east of the OIS location. FID investigators were unable to locate this vehicle.

The Department's Use of Force policy establishes the following with regard to de-escalation:

*"It is the policy of this Department that, whenever feasible, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of an 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."*

The Department's policy specific to the use of deadly force includes the following language:

*"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."*

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

The Totality of the Circumstances is defined by policy as, "All facts known to or reasonably perceived by the officer at the time, including the conduct of the officer and the subject leading up to the use of force." The specified factors that may be used to determine objective reasonableness include the "feasibility of using de-escalation tactics."

In its evaluation of the use of deadly force by Officer A, the BOPC considered both the circumstances facing Officer A at the time the OIS occurred and Officer A's decisions and actions leading up to the OIS. The available evidence shows that the use of deadly force occurred when the Subject produced a firearm and threw the weapon over a fence. According to Officer A, he/she observed the firearm emerge

from the Subject's sweatshirt, heard his/her partner shout "gun," and saw the Subject turning toward him/her. Officer A, who did not see the gun being thrown, believed the Subject was going to shoot at him/her and responded by firing five rounds at the Subject. At the time he/she began firing, Officer A was approximately 16 feet from the Subject with no cover. As such, Officer A was in a tactically disadvantageous position and was highly exposed to any threat the Subject might present.

Although Officer A used deadly force when he/she observed the Subject taking actions that reasonably caused him/her (Officer A) to believe that the Subject was going to shoot at him/her, the tactically disadvantageous situation under which this perceived threat occurred followed a series of decisions by Officer A that substantially and unjustifiably deviated from basic concepts established by Department training regarding tactics and tactical de-escalation. These decisions included leaving cover to follow the Subject, despite believing that the Subject, who was non-compliant with commands, was probably armed with a firearm. The tactical disadvantage resulting from this decision was compounded by Officer A reducing the distance between him/herself and the Subject as Officer A followed him, and by continuing to follow the Subject as the Subject placed his right hand into the area of his sweatshirt pocket where Officer A believed he was carrying the probable gun. As such, Officer A's own decisions and actions substantially contributed to his/her tactically disadvantageous and highly exposed position at the time of the OIS. Additionally, Officer A made no attempt to cause the response of additional resources, nor even to inform Communications Division of his/her unit's Code-6 status, until after the OIS had occurred.

Officer A's decisions and actions leading up to the OIS did not comport with the Use of Force policy requirement that, "whenever feasible, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of an 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." Rather, Officer A undertook a course of action that was contrary to Department training and that unduly placed him/her in an exposed, tactically disadvantageous situation. Officer A's performance in this regard significantly increased the risk that he/she would be harmed and contributed to the circumstance in which he/she perceived the necessity to use deadly force.

Given Officer A's failure to employ de-escalation techniques, despite it being feasible to do so, and the related series of deficient tactical actions undertaken by Officer A leading up to the OIS, the BOPC found Officer A's use of deadly force to be Out of Policy.