

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

**LAW ENFORCEMENT RELATED INJURY – 009-21**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
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Topanga	3/9/2021		
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<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
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Officer A	4 years, 11 months
Officer E	12 years, 8 months
Officer H	7 years, 2 months
Officer K	20 years, 1 month

**Reason for Police Contact**

The Subject boarded a Metropolitan Transportation Authority (MTA) bus while armed with a machete. The bus operator notified her dispatch center, who then called 911. Officers were dispatched to the scene. The Subject exited the bus prior to the officers' arrival. When contacted, the Subject refused commands to drop the machete and walked toward a major thoroughfare. The officers deployed less-lethal munitions, striking the Subject and causing him to drop the machete. He was taken into custody without further incident. The Subject was transported to the hospital and admitted for injuries related to the Use of Force, resulting in a Law Enforcement Related Injury (LERI).

<b>Subject(s)</b>	<b>Deceased ( )</b>	<b>Wounded (X)</b>	<b>Non-Hit ( )</b>
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Subject: Male, 42 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 January 18, 2022.

### **Incident Summary**

On March 8, 2021, one day prior to this incident, the Subject walked onto the property of a Chevron gas station in the Topanga Area while holding a three-foot-long stick. The Subject became involved in a verbal altercation with an employee and refused to leave the premises, prompting the employee to call 911. Police Officers A and B responded to the call; however, the Subject left the location prior to their arrival.

Officers A and B met with the Chevron employees who advised them that the Subject chronically stole items from the convenience store. While the officers were at scene, the Subject returned with the stick. According to the officers, the Subject spoke broken English and they had difficulty understanding what he was saying. During the interaction, Officer A believed the Subject threatened to kill him/her, but based on the Subject's demeanor he/she did not feel threatened. Officer A directed the Subject to leave the location, and he complied. Officers A and B determined that a crime had not been committed and that the Subject's actions, although aggressive, did not rise to the level where enforcement action was warranted. Additionally, the officers believed that if they attempted to contact the Subject the situation may unnecessarily escalate to a use of force.

Approximately four minutes after leaving the Chevron, the Subject walked to the Topanga Police Station and approached Police Officer C and his/her partner, who were parked outside the main gate. The Subject still possessed the three-foot long stick and was yelling incoherently at the officers. In response, the officers exited their police vehicle, requested a backup, and attempted to communicate with the Subject in Spanish.

After approximately one minute, the Subject calmed down and walked away. Although the Subject maintained possession of the stick, Officer C advised the other officers at scene that a crime had not been committed. The Subject left the area without further incident.

On March 9, 2021, an MTA Bus was stopped at a bus station. The bus was facing north, on the Busway (hereafter Busway). The Subject entered the bus through the rear door while holding a machete in his right hand.

The bus operator, Witness A, was alerted by an unidentified passenger that the Subject was in the back of the bus holding a machete. Witness A observed the Subject sitting with the machete resting across his lap and directed all of the passengers to exit the bus.

After the passengers exited, Witness A notified the MTA dispatch center who called 911 and generated a radio call of a "415 man with a knife." Witness A left the bus parked along the east curb of The Busway and exited. According to Witness A, the Subject remained inside of the bus talking to himself while still armed with the machete. Witness A's supervisor, Witness B, responded to the scene. Upon his arrival, Witness B joined Witness A in his vehicle.

Police Officers D and E were assigned the radio call. In accordance with the Department's Edged Weapons Protocol, Communications Division verified the officers were equipped with a 40mm Less-Lethal Launcher (hereafter 40mm LLL). Additionally, Sergeant A responded to the call.

Sergeant A was driving south on the Busway when he/she was flagged down by Witness B, who pointed to the bus. Sergeant A observed the Subject outside the bus armed with the machete. Sergeant A continued south before he/she conducted a U-turn and stopped his/her vehicle approximately 90 feet south of the Subject. Sergeant A was the first unit at scene; he/she remained in his/her vehicle and requested a backup.

The Subject began walking toward Sergeant A with the machete. In response, Sergeant A drove approximately 185 feet in reverse, maintaining a buffer of approximately 90 feet between him/herself and the Subject. According to Sergeant A, he/she wanted to maintain distance from the Subject while waiting for backup units. The Subject stopped and walked to the east curb of the Busway.

When describing the Subject's actions, Witness B stated, "When the gentleman saw the LAPD unit arriving, he became aggressive with an aggressive - - aggressive posture and started walking towards the LAPD unit, which in return put his/her unit in reverse and started backing up."

Officers D and E arrived and positioned their police vehicle to the left of Sergeant A's vehicle while the Subject remained approximately 90 feet away with the machete held down at his side. According to the officers, they recognized the Subject from the incident at Topanga Station on the previous day. In response, Officer E equipped him/herself with the 40mm LLL and directed Officer D to assume the role of designated cover officer (DCO). Additionally, Officer E requested a unit to stop traffic from traveling south on the Busway. Officers A and B arrived and parked their police vehicle and shut down southbound traffic on the Busway.

Officers D and E positioned themselves behind the passenger door of their police vehicle approximately 90 feet away from the Subject. The officers gave the Subject commands to drop the machete. Additionally, Officer E motioned downward with his/her open left-hand.

The Subject then walked slowly south along the east curb of the Busway in the direction of the officers. Officers D and E alternately ordered the Subject to stop. The Subject paused briefly before continuing to approximately 55 feet from the officers and stopping.

Officer E warned the Subject that if he did not stop, less-lethal munitions would be used, and he could sustain serious injury. Officer E advised Officer D and Sergeant A that if the Subject continued advancing toward them with the machete that he/she would discharge the 40mm LLL. When the Subject stopped, he made unintelligible statements in Spanish and refused to drop the machete. Officer E asked Sergeant A to broadcast a request for a Spanish speaking officer.

After ignoring repeated commands to drop the machete, the Subject turned and walked north toward the parked bus. Officer E broadcast to Officers A and B, "Guys, he's moving northbound and you have citizens up there and he's got this machete." Officer E then advised Officer D and Sergeant A that they needed to follow the Subject in their vehicles. As the Subject continued north, Sergeant A and Officer D moved their respective vehicles and stopped approximately 70 feet south of the Subject.

The Subject moved north and onto the sidewalk where he stopped near the right rear portion of the bus. Simultaneously, Officers A and B attempted to determine if the bus was occupied. The officers approached the front of the bus, and through the front windshield determined the bus was vacant before Officer A informed the other officers.

Approximately 35 seconds after the bus was determined to be unoccupied, Witness C unexpectedly began walking toward the Subject from the west sidewalk. Sergeant B arrived at the scene. He/she observed Witness C walking in the roadway and alerted Officer A. When Officer A observed Witness C, he/she repeatedly ordered him back. Witness C disregarded Officer A's commands and continued through the roadway, stating that the Subject was a family member. According to Officer A, he/she believed Witness C was attempting to de-escalate the situation, and he/she broadcast to the other units that Witness C was a family member. Simultaneously, Officer E observed Witness C approaching the Subject and yelled, "Sir, get away!" According to Officer E, when Witness C reached the Subject, he/she observed the two "high-five's."

Sergeant A provided an assessment of Witness C's actions stating, "...the family member coming up was - - was something that I wasn't expecting. And - - and by the time I noticed it he's with this - - he's with the subject, you know, whose [sic] has a machete in his hand. And so, you know, at the whole time there I'm just thinking, you know, hopefully, he doesn't, you know, doesn't attack the family member or whatever. And we kept trying to call the family member away, but he was like determined to like sit there and talk to this guy."

Police Officer F and his/her partner joined the officers south of the Subject. Officer F began speaking to the Subject in Spanish.

Additionally, Police Officers C, G, H, I, J, and K arrived at the scene and joined Sergeant A and the other officers. Officer H was equipped with a beanbag shotgun, Officer K was equipped with a 40mm LLL, and Officer J assumed the role of DCO with a shotgun.

Witness C and the Subject conversed for approximately 90 seconds near the rear of the bus before walking north on the east sidewalk of the Busway. In response, the group of officers followed approximately 40 feet behind. From the west sidewalk of the Busway, Sergeant B ordered the Subject to drop the machete in Spanish; however, the Subject refused.

As the officers continued to follow the Subject, Officer E successfully called Witness C away from the Subject. Witness C walked south to the officers and briefly spoke with Officer E. Witness C relayed that the Subject believed he had not done anything wrong; therefore he would not drop the machete. Officer E then directed Witness C to move farther back to safety.

The Subject continued walking north past the front of the bus with the officers following. Officer D directed Officer I to bring his/her [Officer D's] vehicle up to their position. Officer I positioned the vehicle in the roadway southwest of the Subject's location where it could be used as a position of cover.

At this point, Officer F had been giving the Subject commands in Spanish for approximately three minutes, attempting to de-escalate the incident and encouraging the Subject to drop the machete.

On the police radio (Topanga Simplex Frequency), Sergeant A advised Sergeant B that if the Subject approached any closer, the officers would utilize the 40mm LLL and the beanbag shotgun. Sergeant B concurred, and advised, "If he starts heading back northbound and there's people, obviously we can't let that happen as well. So, just have your less-lethal ready."

Sergeant A stood to the right of Officer F as he/she communicated with the Subject. Officer H, who was equipped with the beanbag shotgun, stood to the right of Sergeant A. Similarly, Officer E, who was equipped with the 40mm LLL, stood to Sergeant A's left side. Sergeant A announced to the officers that, if the Subject continued toward the area with pedestrians, less-lethal would be necessary because of civilians in the area. Sergeant A specified that he/she wanted the 40mm LLL utilized as the first force option.

In Spanish, Officer F instructed the Subject to put the machete down; otherwise the officers would use the 40mm LLL and the Subject could be injured. In response, the Subject made various statements including, "Ok, go for it! If you guys hit me, you hit yourselves." The Subject's demeanor became increasingly agitated, and at one point he yelled, "Shoot me motherfucker!" As Officer F was asking him to put the machete down, the Subject turned his back several times to the officers, raised his arms out to his sides. According to Officer K, "He would raise his arms up in the same fashion as - - but angrily. He didn't advance towards officers, but he was gesturing with his arms up and flailing the machete up to his sides. At one point he - - I believe he told officers to shoot him and became increasingly unpredictable and hostile."

Sergeant A provided direction, "Hey, [Officer E] if you got a shot, take it because otherwise ... once he starts going..." Simultaneously, the Subject started walking toward the populated area with his back to the officers. After hearing Sergeant A's direction, Officer E announced, "Beanbag ready!" Officer E then targeted the Subject's rear belt line and discharged one round from his/her 40mm LLL. The less-lethal round struck the Subject in the back, and the Subject stopped his forward movement; however, he maintained the machete in his right hand and turned back and faced the officers.

After Officer E discharged the 40mm round and the Subject stopped moving toward the populated area, the team of officers moved north approximately 25 feet and stopped approximately 50 feet away from the Subject. Officer E conducted an assessment and observed that the Subject had turned toward the officers while holding the machete down at his right side. Officer E concluded that the round was ineffective. He/she targeted the Subject's navel area and fired a second 40mm round, striking the Subject in the abdomen. According to Officer E, "Because the first one had no effect on him. So, thinking that maybe as he turned around to get him in the navel area, you know, maybe that will make him drop it and stop what he's doing."

Officers J and K, who were still positioned southwest of the Subject, also observed him holding the machete at his right side. Officer K indicated the Subject held the machete in an "angry and threatening manner." Officer K targeted the Subject's navel area with his/her 40mm LLL and discharged one 40mm round. The round struck the Subject in the abdomen, but according to Officer K, it had no effect. Officer K fired approximately two seconds after Officer E had fired his/her second 40mm round. Officer K explained his/her rationale for discharging the 40mm round, "He was still yelling, still holding the machete. In my opinion, he could've advanced and came backward to officers based off of his demeanor and the fact that he had already been shot with the 40 and possibly it had not hurt enough to stop him from advancing." Additionally, Officer K stated, "I had a strong belief that he could charge officers at that point based off of his demeanor."

Officer H, who was positioned to the right of Sergeant A, remained equipped with his/her beanbag shotgun. According to Officer H, he/she observed the 40mm rounds impact the Subject; however they appeared to be ineffective. The Subject continued holding the machete at his right side. Officer H targeted the left side of the Subject's abdomen near his navel and discharged one Super-Sock round. The round struck the left side of the Subject's abdomen. Officer H fired approximately five seconds after Officer K had fired. When interviewed, Officer H indicated he/she fired because the Subject was a threat to him/her, the other officers, and citizens that were in the area. Officer H explained, "In a split second he could have charged at us and closed the distance and posed an imminent threat of death or even serious bodily injury by cutting us with the machete."

Officer A was positioned on the Busway, west of the Subject, and equipped with a 40mm LLL. Officer A observed that the Subject had been struck with less-lethal munitions, but he remained armed with the machete. He/she assessed the less-lethal

rounds to be ineffective. Officer A targeted the Subject's right hand and discharged one 40mm round with the intent to disarm him. The round struck the Subject's right hand, knocking the machete from his grasp. When interviewed, Officer A explained his/her rationale for firing, "He takes a few steps towards officers. They then deploy the 40-millimeter and beanbag; I want to say, three more times. I don't know in which session. I can see that the beanbag and 40-millimeter are not doing any - - they are ineffective. He's just - - it looks like it's almost agitating him. So, from my advantage, I can see the 40 - - I can see the machete in his hand, and I believe that I can - - I can hit the machete. I can disarm him with the 40 millimeter, because I don't want him going back or even progressing towards my partner and my fellow officers, putting their life in danger. So, I deploy the 40-millimeter, and I shoot his hand and disarm him."

Immediately after the machete was knocked from the Subject's hand, Officer F ordered him to move away from the machete. The Subject complied, and Officer F further directed him to lie in a prone position on the sidewalk. Officers A, E, H, and K maintained their less-lethal roles while Officers D and J acted as designated cover officers, and Officers F and I acted as the arrest team. The officers approached to take the Subject into custody.

Officer I placed his/her left knee on the Subject's lower back and buttocks in preparation for handcuffing. Officer I brought the Subject's arms to the small of his back, and placed a handcuff on the Subject's right wrist. Officer F cleared clothing from the Subject's left wrist before Officer I secured the other handcuff on the Subject's left wrist. Immediately after he was handcuffed, Officer F searched the Subject and located a seven-inch folding knife in the Subject's right front pant pocket. Officers F and G then assisted the Subject to a standing position. Officer F then guided the Subject to the curb where he sat awaiting the arrival of paramedics.

Los Angeles Fire Department personnel treated the Subject at scene before transporting him to the hospital. The Subject was admitted to the hospital for a fractured middle finger on his right hand. Additionally, Officers I and J placed the Subject on a mental health hold pursuant to Welfare and Institutions Code (WIC) section 5150.

Upon the Subject's admission to the hospital, FID assumed investigative responsibility of the incident.

**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
Sergeant B	Yes	Yes	Yes	N/A	N/A
Sergeant A	Yes	Yes	Yes	N/A	N/A
Officer E	Yes	Yes	Yes	N/A	N/A
Officer K	Yes	Yes	Yes	N/A	N/A
Officer A	Yes	Yes	Yes	N/A	N/A

Officer H	Yes	Yes	No	N/A	N/A
Officer J	Yes	Yes	No	N/A	N/A
Officer B	No	No	No	N/A	N/A
Officer C	No	No	No	N/A	N/A

**Los Angeles Board of Police Commissioners’ Findings**

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

**A. Tactics**

The BOPC found Sergeants A and B’s and Officers A, E, H, and K’s tactics to warrant a Tactical Debrief.

**B. Less-Lethal Use of Force**

The BOPC found Officers A, E, and K’s less-lethal uses of force to be In Policy. The BOPC found Officers H’s less-lethal uses 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 scenario, 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 Techniques*

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

*(Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his/her/her/her or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Officers D and E had been partners for “several years.” Before their start of watch, Officers D and E discussed tactics, including contact and cover roles and de-escalation. Officers D and E also debriefed prior incidents involving edged weapons. Officers A and B had been partners for approximately three years. Before their start of watch, Officers A and B discussed tactics. According to Officer A, the passenger is always the contact officer and the first one to deploy a long rifle or the 40mm LLL, while the driver is usually the cover and communications officer. According to Officer B, whoever is closer to the suspect will be the contact officer; the other officer will be cover.

Sergeants A and B observed the Subject was walking towards an area where there was vehicular traffic, pedestrians, and open businesses. Sergeants A and B discussed the threat that the Subject posed to people and determined it would be unsafe if he was allowed to continue towards that area. Sergeants A and B discussed a plan to stop the Subject through the deployment of 40mm LLL munitions.

**Assessment** – Before utilizing less-lethal munitions, Officer E ordered the Subject to drop his machete. The Subject refused to drop the machete and continued forward. Before discharging their less-lethal rounds, Officers E, H, and K each assessed the Subject’s behavior, observing that he was still armed with the machete. Assessing the Subject’s reaction to Officers E, H, and K’s less-lethal rounds, Officer A targeted the Subject’s hand, an approved secondary area. Striking the Subject’s hand, Officer A observed the Subject drop the machete. Based on the Subject’s reaction, Officer A did not fire additional less-lethal rounds.

**Time** – There is an equation, distance, plus cover, equals time. Locating the Subject, Sergeant A parked approximately 90 feet away and remained inside his/her police vehicle. Observing the Subject walking towards his/her police vehicle holding the machete, Sergeant A reversed approximately 185 feet.

Sergeant A remained in his/her police vehicle, monitoring the Subject while awaiting additional units. When additional units arrived, officers maintained their distance while communicating with the Subject.

During the incident, Officer E advised Sergeant A that they needed to follow the Subject using the police vehicles as cover. Sergeant A and Officer D slowly drove their police vehicles north as Officer E, equipped with his/her 40mm LLL, followed on foot, using his/her police vehicle’s passenger door as cover. When the Subject

continued walking north past the front of the bus with the officers following, Officer D directed Officer I to bring his/her (Officer D's) vehicle up to their position where it could be used as cover.

**Redeployment and/or Containment** – As previously stated, after arriving on scene, Sergeant A redeployed after observing the Subject walking towards his/her police vehicle holding the machete. As additional units arrived, officers contained the area around the Busway. As the Subject walked towards the populated area, officers utilized police vehicles as mobile cover while communicating with the Subject. Officers A and B responded to the location and took a containment position near the Busway. Officers A and B left their position to visually clear the bus for passengers. After verifying the bus was empty, Officers A and B returned to their containment position.

**Other Resources** – Observing the Subject standing on the east curb of the Busway holding a machete, Sergeant A requested a backup. Identifying that a language barrier existed between officers and the Subject, Sergeant A requested a Spanish-speaking officer to respond to the scene Code Three.

**Lines of Communication** – Arriving at scene, Officer E began communicating with the Subject. Hearing the Subject speaking Spanish, Officer E determined a Spanish-speaking officer was needed. After advising Sergeant A to request a Spanish speaker, Officer E continued to communicate with the Subject until Officer F arrived. Arriving at scene, Officer F began speaking with the Subject in Spanish, directing him to drop the machete. When the Subject refused to drop the machete, Officer F modified his/her approach and began to establish rapport, asking the Subject why he was at the location with a machete and assuring the Subject that the officers did not want to hurt him.

Sergeant A advised officers that they were authorized to utilize less-lethal munitions to stop the Subject from reaching the populated area. When asked by Officers E and H which less-lethal weapons should be deployed first, Sergeant A advised that a 40mm LLL should be deployed first. Before discharging his/her first 40mm LLL, Officer E advised officers near him/her that less-lethal munitions would be discharged. To ensure a crossfire situation did not occur, Sergeant A and the officers communicated their positions as the Subject moved about.

Officers A and B did not advise other units they were leaving their position to visually clear the bus for passengers. As they returned to their position, Witness C entered the Busway. Despite Officers A's commands to leave, Witness C walked over to the Subject, to convince him/her to surrender. While well-intentioned, the BOPC would have preferred that Officers A and E had communicated with officers before leaving their containment position.

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

1. **40mm LLL Protocols** – Discharging his/her first 40mm round, Officer E targeted the Subject’s rear belt line. The Subject had his back to Officer E. The primary target area is the naval or belt line, but officers may target the suspect’s arms, hands, or legs when practicable. Officers shall not target the head, neck, spine, chest, kidneys, or groin. FID investigators were unable to determine the exact location of the impact. According to Officer E, he/she avoided the Subject’s spine.

Before discharging his/her 40mm LLL, Officer E stated, “*Beanbag ready.*” When he/she is ready to fire, the 40mm LLL officer alerts other officers by shouting or broadcasting, “*40mm Ready!*”

2. **Situational Awareness** – While loading his/her 40mm LLL, Officer K was standing near the open passenger door of his/her police vehicle. Before reentering the police vehicle, the muzzle of Officer K’s 40mm LLL was momentarily pointed in Officer H’s direction as he/she sat in the driver’s seat. Per FID investigators, Officer K did not appear to cover Officer H with the 40mm LLL’s muzzle.

Officers A, E, H, and K left cover before discharging their less-lethal weapons. To avoid a crossfire situation, Officer A moved from cover as the Subject approached his/her position. Officers A, E, H, and K, and Sergeant A moved from cover to follow the Subject towards the populated area. While tactics are fluid, officers were reminded of the benefits of using cover.

3. **Containment** – Officers A and B left their containment position to visually clear the bus for passengers. As they returned to their position, Witness C entered the Busway. Despite Officer A’s commands to leave, Witness C walked over to the Subject, to convince him to surrender. Witness C stated the Subject was his cousin. While the BOPC appreciated their reverence for life, they would have preferred that Officers A and B held their position or requested personnel to replace them before clearing the bus. It should be noted that despite the officers’ positions, it is likely Witness C still would have disregarded their commands and approached the Subject.
4. **High-Risk Prone Search** – While conducting a high-risk prone search, Officer F stepped between the Subject’s legs instead of stepping over him and straddling his waist.
5. **Non-Medical Face Coverings** – Officers A, E, F, H, and K, and Sergeant A were not wearing a non-medical face covering at the scene as directed by the Chief of Police on May 20, 2020. To minimize concerns related to health and safety stemming from COVID-19, the BOPC directed this to be a topic of discussion during the Tactical Debrief. Any additional Department personnel at the scene not wearing non-medical face coverings will be addressed at the divisional level.



These topics were to be discussed at the Tactical Debrief.

## **Command and Control**

Observing the Subject armed with a machete, Sergeant A requested backup units and Air Support. Arriving at scene, Officer E assisted Sergeant A with containment and advised him/her that a Spanish speaker was needed. Using his/her police radio, Sergeant A requested a Spanish-speaking officer. As the Subject moved north and south on the Busway, Sergeant A and his/her officers communicated their positions with each other.

Observing the Subject approaching a populated area, Sergeant A was concerned that the Subject may cause serious bodily injury or death to people in the area. Sergeant A discussed a tactical plan with officers that involved Officer E discharging his/her 40mm LLL if the Subject charged at the officers or got closer to the populated area while still holding his machete. As a contingency plan, Sergeant A also told Officer H that he/she could deploy a Beanbag shotgun. While Sergeant A was unaware that Officer A had deployed a third 40mm LLL, he/she assumed Sergeant B had control of the officers near the southwest corner of the Busway. Sergeants A and B had communicated via their police radios regarding the Subject's behavior and the threat he posed to citizens in the area. Sergeants A and B discussed the utilization of less-lethal munitions to prevent the Subject from harming community members or the officers.

After the deployment of various less-lethal munitions, the designated arrest team took the Subject into custody without the utilization of further force. Observing blood on the Subject's hand, Sergeant A requested a Rescue Ambulance (RA). Sergeant A began gathering information from officers to provide to Sergeant B for the Non-Categorical Use of Force. Because he/she believed the officers at scene knew he/she was the IC based on his/her actions, Sergeant A did not advise CD that he/she was the Incident Commander (IC).

The BOPC noted that while Sergeant A functioned as the IC, he/she did not broadcast his/her role, creating ambiguity with Sergeant B. The BOPC emphasized the necessity of sergeants to broadcast their role as the IC to ensure clear communication with all involved personnel.

The BOPC was critical of Sergeant A's situational awareness. Before less-lethal munitions were used, Sergeant A was attempting to communicate with the Subject despite having designated an officer to perform that role. Instead of attempting to communicate with the Subject, the BOPC would have preferred that Sergeant A had maintained oversight of the incident.

The BOPC noted that during the incident, Officer E provided Sergeant A with several tactical recommendations. In one instance, Officer E recommended that Sergeant A

move his/her vehicle forward. Officer E also advised Sergeant A to request a Spanish-speaking officer. While the BOPC noted senior officers often provide valuable insight, the BOPC would have preferred that Sergeant A had gained greater situational awareness, allowing officers to focus on their assigned roles.

The BOPC noted that as the Subject walked towards a populated area, Officer E deployed his/her 40mm LLL; however, Sergeant A was unsure when Officer E was going to shoot and was surprised when his/her 40mm round was discharged. To Sergeant A's surprise, Officers A, H, and K also discharged their less-lethal munitions. According to Sergeant A, he/she was unaware of the additional less-lethal weapons at scene and did not know Officer A was deployed at the Busway with a 40mm LLL. Although Officer A took independent action when he/she discharged his/her 40mm LLL round, the BOPC determined that Sergeant A should have identified who had less-lethal weapons and clearly designated their roles. Additionally, Sergeant A believed that Sergeant B was at the Busway, overseeing the northwestern portion of the incident. Unbeknownst to Sergeant A, Sergeant B had disengaged from tactical operations. Additional communication between Sergeants A and B would have allowed better situational awareness and a clear picture of their roles.

The BOPC discussed Sergeant A's command and control during this incident. Sergeant A advised officers that they were authorized to utilize less-lethal munitions to stop the Subject from reaching a populated area. The BOPC noted that Sergeant A's directions were not clear, prompting Officers E and H to ask which less-lethal weapon system would be deployed first. In response, Sergeant A advised Officer E to deploy his/her 40mm LLL first. The BOPC would have preferred that Sergeant A had given clear instructions to all officers regarding the deployment of less-lethal munitions.

Despite their concerns, the BOPC noted that Sergeant A arrived at a dynamic scene where few details were given. The BOPC noted that this incident occurred at an MTA bus station near a busy intersection, where multiple businesses, pedestrians, and vehicular traffic were present. The BOPC noted that Sergeant A ensured less-lethal weapon systems were deployed, a Spanish-speaking officer was communicating with the Subject, a tactical plan was created, and de-escalation techniques were employed. While the BOPC would have preferred that Sergeant A had taken greater command and control of the incident and gained greater situational awareness, the BOPC determined that Sergeant A's actions overall were consistent with Department training.

Sergeant B responded to the area near a group of officers who were containing the north portion of the perimeter of the incident. Sergeant B observed the Subject holding a machete. Sergeant B also observed Sergeant A and the officers near him/her forming a "skirmish line" behind the Subject. Sergeant B began communicating with the Subject, advising him numerous times to drop his machete. Using his/her police radio, Sergeant B advised Sergeant A that the Subject was in

an agitated state. Sergeant B also advised Sergeant A that by refusing to comply with orders, holding a machete, and walking in the direction of pedestrians, the Subject presented a threat of violence to people nearby. Sergeant B then removed him/herself from tactical operations. This was done so Sergeant B could complete the non-categorical UOF investigation once the Subject was taken into custody.

The BOPC noted that Sergeant B arrived at scene and began assessing the incident. Believing Sergeant A was the IC, Sergeant B decided he/she would remain on the perimeter and assist with directing pedestrian and vehicular traffic. Sergeant B returned to his/her police vehicle and assisted with traffic control, his/her back toward the incident. During his/her interview with FID, Sergeant B indicated that he/she intended to help Sergeant A by completing the use of force investigation and therefore wanted to avoid being directly involved in the incident.

The BOPC discussed Sergeant B's decision to avoid becoming directly involved in the incident alongside Sergeant A. While the BOPC would have preferred Sergeant B to have taken a more active role in the incident as a senior supervisor, they discussed that Sergeant B did not abandon the incident or Sergeant A and instead assisted with the advisement, directing vehicular and pedestrian traffic, and requesting additional resources. The BOPC determined that Sergeant B's actions were not a substantial deviation from Department tactical training.

The BOPC was critical of Sergeant B's decision to disengage from tactical operations and believed Sergeant B, as a senior to Sergeant A, should have had a more active supervisory role in the incident. While the BOPC recognized that Sergeant B remained at scene, they opined that he/she did not exercise sufficient command and control. While the BOPC noted Sergeant B's reasoning, they determined it was unreasonable to extract him/herself from the incident to assist with the subsequent use of force investigation.

Sergeant C was with two uniformed officers assigned to an MTA overtime shift. While responding, Sergeant C and the officers discussed the comments of the call and the resources at scene. Sergeant C told the officers that upon arrival, they would assess the scene, assign less-lethal and lethal roles, and that Sergeant C would assume IC. Arriving at scene, Sergeant C met with Sergeant B and discovered there were already officers and an IC at scene. Sergeant C directed his/her officers to monitor pedestrian activity and assist with traffic control. Sergeant C began directing vehicle and pedestrian traffic away from the incident. After the Subject was taken into custody, Sergeant C offered to assist with the non-categorical UOF investigation. When Sergeant B stated he/she did not need assistance, Sergeant C continued to monitor pedestrian traffic. Sergeant C advised the officers that were assigned to him/her for the MTA overtime shift to return to their MTA post. Sergeant C advised his/her watch commander of the incident and left the location. The BOPC determined Sergeant C's actions were consistent with Department training.

The BOPC noted that during this incident, Sergeant B disengaged from the tactical operations. The BOPC understood that Sergeant B's intention was to meet the expectation that an uninvolved supervisor investigates a UOF. However, the BOPC would have preferred that Sergeant B had remained engaged in the tactical operations, to assist Sergeant A with command and control of this incident, rather than removing him/herself in the event a UOF investigation was required. Despite this, the BOPC did not find Sergeant B's actions to be a substantial deviation from approved Department tactical training and his/her actions are best addressed through a Tactical Debrief.

Therefore, the BOPC found the overall actions of Sergeants A, B, C, and Officer E were consistent with Department supervisory training and the BOPC's expectations of senior officers and field supervisors during a critical incident.

- 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 Officers A, E, H, K's and Sergeant A's tactics did not deviate from approved Department tactical training. The BOPC also determined that Sergeant B's tactics were not a substantial deviation from approved Department tactical training.

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

The BOPC found Sergeants A and B's and Officers A, E, H, and K's tactics to warrant a Tactical Debrief.

## **B. Less-Lethal Force**

- **Officer A – (40mm LLL eXact iMpacT Sponge – one round)**

According to Officer A, he/she stood near the southwest corner of a road and the Busway, equipped with his/her 40mm LLL. Officer A had heard Sergeant A tell officers to utilize less-lethal force if the Subject got closer to the populated area. Officer A observed that the Subject remained armed with the machete despite being struck with less-lethal munitions. Believing that the Subject posed a deadly threat to officers and the public, Officer A discharged one 40mm round at the Subject's right hand, intending to disarm him. To prevent the Subject from moving his hand, Officer A did not provide a use of force warning to the Subject. Additionally, Officer A knew the Subject had already been given a use of force warning. The round struck the

Subject's right hand, knocking the machete from his grasp. According to the FID investigation, Officer A discharged one 40mm LLL round at the Subject's right hand, from approximately 46 feet.

In evaluating Officer A's use of less-lethal force, the BOPC considered the Subject's actions before and at the time Officer A discharged his/her 40mm LLL. The BOPC noted that the Subject had boarded an occupied MTA bus holding a machete. When Sergeant A arrived, the Subject brandished his machete. While speaking to officers, the Subject had stated he was from another galaxy and indicated he had the machete to protect the food. The BOPC noted that despite officers' commands, the Subject refused to drop the machete. The Subject's demeanor became increasingly agitated, and at one point he yelled, "Shoot me [expletive]!" The BOPC also noted that the Subject refused to drop the machete after being struck by Officers E, H, and K's impact rounds.

The BOPC noted Officer A's belief that the Subject would continue towards a populated area or charge at officers, causing death or serious bodily injury. To disarm the Subject, Officer A targeted his hand. The BOPC noted that Officer A's round struck the Subject's hand, causing him to drop the machete, allowing officers to take him into custody without the use of further force. The BOPC also noted that the hand is an approved secondary target location. Due to the Subject's behavior, the BOPC determined that it was reasonable for Officer A to believe the Subject posed an immediate threat of violence or physical harm to citizens and officers. The BOPC opined that Officer A's 40mm LLL round was proportional to the threat that the Subject posed.

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 less-lethal force was proportional and objectively reasonable.

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

- **Officer E – (40mm LLL eXact iMpact Sponge – two rounds)**

### **First Round**

According to Officer E, he/she observed the Subject was "swinging" his machete around in the air" and becoming increasingly "agitated." Officer E also observed "a good amount" of people within 50 feet of the Subject. Officer E wanted to prevent the Subject from seriously injuring or killing anyone. Sergeant A and Officer E discussed a plan in which Officer E would discharge his/her 40mm LLL at the Subject if he walked closer to a populated area. Observing the Subject walking toward pedestrians, Officer E gave the Subject a use of force warning in English and ensured that a use of force warning was given in Spanish. Ignoring the officers' commands and verbal warnings, the Subject continued forward. Aiming at the

Subject's rear belt line, Officer E discharged one round from his/her 40mm LLL at the Subject, from an estimated 35 feet. According to Officer E, because the Subject was turned away from him/her, he/she discharged the round at the Subject's rear belt line, purposely avoiding the spine. According to the FID investigation, Officer E discharged his/her 40mm LLL round at the Subject's rear belt line from approximately 73 feet. FID investigators were unable to determine the point of impact or any discernible injury to the Subject's back.

## **Second Round**

According to Officer E, after discharging his/her first round, he/she "reassessed" his/her background and the Subject's actions. Observing the Subject turn towards him/her with the machete still in hand, Officer E believed his/her first round was ineffective. Officer E became "scared," believing that the Subject was going to run at him/her and the officers nearby. To stop the Subject and cause him to drop his machete, Officer E discharged a second round at the Subject's "naval area" from an estimated 30 feet. According to the FID investigation, Officer E discharged his/her second 40mm LLL round at the Subject's naval area from approximately 49 feet.

In evaluating Officer E's use of less-lethal force, the BOPC considered the Subject's actions before and at the time Officer E discharged his/her 40mm LLL. The BOPC noted that the Subject had boarded an occupied MTA bus holding a machete. When Sergeant A arrived, the Subject brandished his machete. While speaking to officers, the Subject had stated he was from another galaxy and indicated he had the machete to protect the food. The BOPC noted that despite officers' commands to drop the machete, the Subject walked towards officers and an area inhabited by the public. The Subject's demeanor became increasingly agitated, and at one point he yelled, "Shoot me [expletive]!" Due to his behavior, Officer E believed the Subject presented an immediate threat of violence or physical harm to officers and the public. After attempts at de-escalation failed, Sergeant A authorized the use of less-lethal munitions; however, Officer E formed independent justification for discharging his/her 40mm LLL.

Assessing Officer E's first round, the BOPC noted that Officer E gave the Subject a use of force warning in English and ensured that a use of force warning was given in Spanish before discharging his/her round. Disregarding the warnings and commands to drop the machete, the Subject continued forward. The BOPC determined that due to the Subject's behavior, it was reasonable for Officer E to believe the Subject posed an immediate threat of violence or physical harm to the officers and the public. The BOPC opined that Officer E's first 40mm LLL round was proportional to the Subject's level of resistance.

Assessing his/her second 40mm LLL round, the BOPC noted Officer E's first round failed to stop the Subject or cause him to drop the machete. Believing that the Subject was going to run at him/her and the officers nearby, Officer E discharged a second 40mm impact round at the Subject. The BOPC determined that due to the

Subject's behavior, it was reasonable for Officer E to believe the Subject continued to pose an immediate threat of violence or physical harm. The BOPC opined that Officer E's second 40mm LLL round was proportional to the Subject's level of resistance.

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

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

- **Officer K** – (40mm LLL eXact iMPact Sponge – one round)

According to Officer K, he/she observed the Subject holding a 16-inch machete. The Subject appeared to be agitated and angry with officers as they commanded him to drop the machete. The Subject was not complying with orders and Officer E's 40mm rounds appeared ineffective. Based on his/her experience, Officer K believed that a suspect with an edged weapon could cover long distances in a short period of time. Based on the Subject's demeanor, Officer K had a "strong" belief that the Subject could charge officers. Officer K was also aware of pedestrians and vehicles nearby. Officer K knew a use of force warning had already been given and had heard Sergeant A authorize the use of the 40mm LLL. Observing the Subject still facing officers with the machete, Officer K aimed at the Subject's naval area and discharged one 40mm LLL round from an estimated 60 feet. According to the FID investigation, Officer K discharged one 40mm LLL round at the Subject's naval area from approximately 56 feet.

In evaluating Officer K's use of less-lethal force, the BOPC considered the Subject's actions before and at the time Officer K discharged his/her 40mm LLL. The BOPC noted that the Subject had boarded an occupied MTA bus holding a machete. When Sergeant A arrived, the Subject brandished his machete. While speaking to officers, the Subject had stated he was from another galaxy and indicated he had the machete to protect the food. The BOPC noted that despite officers' commands, the Subject refused to drop the machete. The Subject's demeanor became increasingly agitated, and at one point he yelled, "Shoot me [expletive]!" The BOPC also noted that the Subject refused to drop the machete after being struck by Officer E's impact rounds. The BOPC opined that at the time Officer K fired his/her 40mm LLL, the Subject had no intention of discarding the machete or surrendering.

The BOPC opined that Officer K had seen Officer E's rounds were ineffective. The BOPC noted Officer K's belief that the Subject would continue toward a populated area or charge at officers, causing death or serious bodily injury. Due to the Subject's behavior, the BOPC determined that it was reasonable for Officer K to believe the Subject posed an immediate threat of violence or physical harm to citizens and officers. The BOPC opined that Officer K's 40mm LLL round was proportional to the threat that the Subject posed.

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

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

- **Officer H** – (Beanbag Super-Sock – one round)

According to Officer H, he/she observed the Subject holding a machete; the Subject appeared to be agitated. Officer H observed that the 40mm LLL rounds that struck the Subject appeared ineffective. Officer H feared the Subject would charge the officers with the machete or run towards a populated area and harm citizens; it appeared the Subject was 20 to 30 feet from citizens. Believing that the Subject posed an imminent threat of death or serious injury to officers and the public, Officer H announced, "Beanbag Ready" and discharged one impact round at the Subject's abdomen area from an estimated 30 feet. Per Sergeant A's BWV, before discharging his/her Beanbag Shotgun, Officer H asked Sergeant A if he/she wanted the Beanbag Shotgun deployed; Sergeant A confirmed that he/she did. According to the FID investigation, Officer H discharged one Beanbag Shotgun round at the Subject's abdomen area, near his naval, from approximately 47 feet.

In evaluating Officer H's use of less-lethal force, the BOPC considered the Subject's actions before and at the time Officer H discharged his/her Beanbag shotgun. The BOPC noted that the Subject had boarded an occupied MTA bus holding a machete. When Sergeant A arrived, the Subject brandished his machete. While speaking to officers, the Subject had stated he was from another galaxy and indicated he had the machete to protect the food. The BOPC noted that despite officers' commands, the Subject refused to drop the machete. The Subject's demeanor became increasingly agitated, and at one point he yelled, "Shoot me [expletive]!" The BOPC also noted that the Subject refused to drop the machete after being struck by Officers E and K's impact rounds.

The BOPC noted that before discharging his/her beanbag round, Officer H clarified with Sergeant A which less-lethal munition he/she wanted to be discharged first. Sergeant A clarified that the 40mm LLL would be first. After Officers E and K discharged their impact round, the Subject responded by turning and facing south. The Subject continued holding the machete. Officer H described his/her fear of the Subject charging at the officers with the machete and causing serious bodily injury or death. Officer H believed he/she had to stop the Subject from doing so and discharged one round from his/her Beanbag shotgun, assessed, and ceased firing after seeing that the Subject had dropped the machete.

Based on the totality of the circumstances, the BOPC opined that an officer with similar training and experience as Officer H, in the same situation, would have reasonably believed that the Subject's actions presented an immediate threat of



violence or physical harm. However, the BOPC was critical of Officer H's decision to discharge his/her Beanbag shotgun from beyond the recommended range of 30 feet. The BOPC noted that while Officer H estimated that he/she discharged his/her Beanbag shotgun from 30 feet, the FID investigation determined that he/she discharged his/her Beanbag shotgun from approximately 47 feet. The BOPC noted that a crucial element of safely deploying less-lethal munitions is the ability to accurately estimate distance. The BOPC also noted that Beanbag rounds are target-specific less-lethal munitions, and when deployed beyond their effective range, may lose effectiveness and accuracy, possibly striking an unintended target. Based on the totality of the Subject's actions, the BOPC saw no justification for exceeding the recommended range of 30 feet. The BOPC determined it was objectively unreasonable for Officer H to discharge his/her Beanbag shotgun from 47 feet.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer H, in the same situation, would reasonably believe that the use of the Beanbag shotgun beyond the recommended range of 30 feet was objectively unreasonable.

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