

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

OFFICER-INVOLVED SHOOTING – 057-23

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No()
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Topanga	10/7/23		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	14 years, 6 months
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Reason for Police Contact

Officers received a radio call of a man armed with a gun inside of a truck in the parking lot of a CVS. Officers contacted two males seated inside the cab of the truck. Officers observed the driver (Subject) was armed with a pistol in his waistband. The Subject was given commands to not reach for the gun, he lowered his hand to his waistband resulting in an Officer-Involved Shooting (OIS).

Subject	Deceased (X)	Wounded ()	Non-Hit ()
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Male, 44 years of age.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the Office of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

The following incident was adjudicated by the BOPC on September 24, 2024.

Incident Summary

On Saturday, October 7, 2023, a 911 call was made to Communications Division (CD). The Person Reporting (PR), called and stated there was a man armed with a gun inside of a pickup truck parked in a parking lot

A radio call was broadcast, Officers A and B acknowledged the call and responded. Sergeant A, and Officers C and D also responded to the call.

According to Sergeant A's BWV, he/she arrived first at the radio call near the northeast corner of the parking lot. Sergeant A broadcast he/she was Code-Six in the area and waited for additional officers to arrive at scene before making an approach.

Approximately one minute after Sergeant A arrived at scene, Officers A and B broadcast they were Code-Six in the area.

Officers A and B located the Subject's vehicle, a grey pickup truck, parked facing south in the parking lot. Officer B positioned their police vehicle approximately 20 feet behind the pickup truck. The truck windows had a dark tint on them and officers could not establish whether it was occupied.

Officers C and D arrived to the radio call and positioned their vehicle west of Officers A and B's police vehicle. Officers C and D exited their vehicle and stood behind their doors. Officer C broadcast they were also Code-Six at the radio call.

Officer A asked whether they wanted to push up and clear the vehicle. Officer C replied that they should move up on the passenger side and that Officer A should take point as he had the shotgun.

Officer A was the first officer to move toward the Subject's pickup truck holding his/her shotgun at a low ready with his/her finger on the safety. Officer C followed behind Officer A with his/her pistol at a low ready. Officer B positioned himself/herself third behind Officer C with his/her pistol held down by his/her right side with a one-hand grip. Officer D trailed as the fourth officer holding his/her pistol in his/her right hand.

Officers A and B's BWV had no audio when they began their approach because they both had a late activation and were in buffer mode.

Sergeant A did not approach with the team, instead he/she stayed near Officers A and B's police vehicle, monitoring the driver's side of the pickup.

Officer A was along the passenger side of the bed of the pickup truck as he/she communicated to the officers, that there was a person in the front passenger seat [Witness A].

Officer B yelled at Witness A to exit the vehicle; however, there was no reaction or movement. Officer C stated, that the passenger looked “passed out.” Officer B then gave commands to the passenger in Spanish to exit the vehicle. Officer B hit the side of the truck with his/her hand, making a loud pounding sound.

Officer C’s BWV captures Officer B giving instructions for Witness A to exit the vehicle. At this time Officers A, B and C were positioned along the passenger side of the suspect vehicle without the benefit of cover. The officers had not identified that the Subject was in the driver’s seat at this time.

According to Officer C’s BWV, Officer A moved forward positioning himself/herself parallel to the passenger side door of the truck. Officer A used the light on his/her shotgun to illuminate the interior. Officer C remained second and positioned himself/herself to Officer A’s left, keeping his/her pistol at a low-ready, toward the passenger side of the truck.

As the other officers were at the passenger side of the truck, Officer D walked toward Sergeant A, who was still standing next to Officer A and B’s police vehicle. Officer D directed his/her attention to the driver’s side of the truck.

According to Officer C’s BWV, Officer B opened the truck’s passenger side door and backed away. Officers A and C provided cover for Officer B. After opening the door, Officer B asked if the passenger was the only occupant. Officer C replied that there was a driver too and that they were both passed out. The Subject sat motionless in the driver’s seat of the truck.

According to Officer D’s BWV, he/she asked Sergeant A, if there were occupants in the car. Sergeant A confirmed there was, and Officer D stated, that they should pull back and call the occupants out of the vehicle. Sergeant A responded that he/she believed the occupants were passed out.

Sergeant A advised investigators that it wasn’t viable to redeploy at this point. Had they redeployed he/she believed that there would have been numerous pedestrians in the background should an officer-involved shooting occur.

Officer C’s BWV depicted Officer B grab Witness A’s right wrist with his/her right hand. Officer B shook his right hand and gave him commands in Spanish. Witness A opened his eyes but didn’t respond to Officer B. Officer B pulled on Witness A’s right arm which caused Witness A to slump over and fall toward him/her. According to Officer B, he was trying to rouse Witness A, but he wasn’t responding. He/she attempted to pull Witness A out of the vehicle but he was a dead weight.

Sergeant A moved toward the truck, walking to the passenger side where Officers A and C were. Sergeant A positioned himself/herself along the extended cab, passenger side, vent window. Officer B moved and repositioned himself/herself to driver’s side of

the truck with the intention of opening the driver door. Officer D moved to the rear of the truck. He/she positioned himself/herself on the driver's side behind Officer B.

As Officer B was reaching for the driver door handle, Officer A yelled, "Gun, gun, gun." Officer A yelled commands to the driver, who had a pistol in the front of his waistband. Officer A stated that the driver reached down and pulled his shirt up with both hands. Officer A could see the magazine inserted into the firearm and noted it was a striker-fired pistol.

Officer A extended his/her shotgun into the truck. Officer A explained, that at this point, he believed the passenger was so incapacitated that he was not going to wake up. Officer A penetrated past Witness A with his/her shotgun because Witness A could potentially be in the crossfire with the Subject or he believed the Subject could possibly shoot Witness A.

Officer A's BWV captured him/her giving directions to the team of officers to get the passenger out of the vehicle and informing them that the Subject had a firearm in his waistband. Officer C broadcast a back-up request.

Simultaneously, Officer B holstered his/her pistol and moved from the driver's side of the truck, walked around the bed, and past Officer D who had positioned himself/herself to the rear of the truck bed. Officer B walked by Sergeant A and Officer C toward the passenger side. Officer B stood to Officer A's left side and grabbed Witness A's right upper arm with both hands. Officer B pulled Witness A out of the passenger side of the truck and placed him on his stomach.

Officer D's BWV depicted Officer B place his/her left foot on Witness A's back prior to handcuffing him. When asked, Officer B stated he/she did not recall placing his/her foot on Witness A's back.

Officer B pulled Witness A away from the truck, in a northerly direction and placed handcuffs on him. Officer B did not Search Witness A. Officer B walked back to the passenger side of the truck, positioning himself/herself on the right side of Officer A.

Officer A gave commands to the Subject, "Don't move, don't reach for the gun. Do not reach for the gun. I'm going to shoot you if you reach for that gun. Don't do it".

Officer A advised the team that Subject A had a gun in his waistband and was not listening to commands. Officer A continued giving commands to the Subject, "Hands in the air. Put your hands on top of your head now." eventually stating, "Give me a Spanish speaker. Don't do it."

Officer A's BWV captured the OIS. According to Officer A, "I tell him, 'Don't do it.' And the suspect releases his hands, holds his hand in, I'm going to describe it as kind of like a cupped position, which I immediately recognized as the same as if I was going to acquire grip on my weapon, my pistol. The suspect went down. He acquired - - he

touched the gun and was acquiring the grip. I believed he was going to pull that gun up, and I believed I was the next target. I thought he was going to come up, come across, and shoot me. As soon as I saw him touch and acquire that grip, I fired my shotgun to stop him from using that weapon against me and killing me or seriously hurting me, my partner, or anyone else there.”

Officer A fired one round from his/her Remington shotgun from an approximate distance of four feet. Officer A aimed for “center mass” and struck the Subject on the right side of his neck and shoulder.

Simultaneous to the OIS occurring, Officer B positioned to the right of Officer A and unholstered his/her pistol. According to Officer B he/she could see the firearm as Officer A was giving the Subject commands to show his hands. The Subject started to go for his gun at which time the OIS occurred. Immediately after the OIS, Officer C broadcast that shots had been fired and requested additional units.

Officer D, who was positioned to the rear of the truck moved toward the passenger side following the OIS. Officer D holstered his/her pistol and approached Witness A who was still on the ground. Officer D grabbed Witness A by his left arm and dragged him further away from the truck. Witness A did not have any reaction to being moved. According to Officer D, he/she moved Witness A out of the way for his own safety and to provide the officers in the front with some room to maneuver if they needed to. He/she observed that Witness A was a dead weight and just seemed unresponsive to what was happening.

Officer A held his/her position at the passenger door and advised the other officers that the Subject was not moving and to make an approach on the driver’s side. Sergeant A moved to the rear of the truck after the OIS his/her BWV captured him/her attempting to broadcast a request for a Rescue Ambulance (RA).

Officer B repositioned himself/herself to the driver’s side and opened the truck door. Officer A communicated, that the gun was exposed in the Subject’s waistband. Officer B acknowledged this and recovered the loaded pistol from the Subject’s waistband and placed it on top of the truck bed cover. Officer B went back to the Subject’s waistband and recovered an additional magazine which he/she placed next to the pistol.

Sergeant A repositioned himself/herself to the driver’s side, joining Officers B and D. Sergeant A directed officers to remove the Subject from the truck and handcuff him.

Officer B pulled the Subject out of the truck onto the floor where he was handcuffed by Officer D. According to Sergeant A’s BWV, Officer B’s left foot can be seen on the Subject’s back near his belt line for approximately 35 seconds. When asked, Officer B advised investigators, that it was unintentional and that he/she did not recall doing it. Officer B opined that he/she believed that the Subject was dead as he/she pulled him from the vehicle.

Los Angeles Fire Department (LAFD) personnel arrived at scene. Firefighter Paramedic (FF/PM) assessed the Subject's injuries and pronounced him deceased at scene

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 C	Yes	Yes	Yes	No	No
Officer D	Yes	Yes	Yes	No	No
Sergeant A	Yes	Yes	Yes	No	No

Los Angeles Board of Police Commissioners' Findings

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

A. Tactics

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

B. Drawing/Exhibiting

The BOPC found Officers A, B, C, D, and Sergeant A'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 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 RA for any person injured. In addition, officers shall promptly provide basic and emergency medical assistance to all members of the community, including victims, witnesses, suspects, persons in custody, suspects of a use of force and fellow officers:

- To the extent of the officer's training and experience in first aid/CPR/AED; and

- To the level of equipment available to the officer at the time assistance is needed.

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

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

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

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

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

Definitions

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

Feasible: Feasible means reasonably capable of being done or carried out under the

circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

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

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

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

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

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

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

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

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

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

A. Tactics

Tactical De-Escalation

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

Tactical De-Escalation Techniques

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

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

Planning – According to Officer A, he/she and Officer B have worked together numerous times over the course of thirteen years. They have previously discussed tactics over the years and were comfortable working together. Officer A was riding as the passenger and was cover while Officer B was the contact officer. Due to the comments of the call, Officer A deployed his/her shotgun while inside the vehicle as he/she expressed, he/she was more comfortable returning fire from a position of cover with a superior weapon system if necessary.

According to Officer C, he/she and Officer D have been regular partners for two years. They frequently discuss tactics and contact/cover roles. As the backing unit, their intention was to meet with the primary and coordinate a plan together on how to approach the vehicle.

According to Sergeant A, as he/she exited his/her vehicle and began walking towards the officers, he/she overheard Officer A formulating a plan. Officer A stated they would approach the vehicle from the passenger side to verify if the vehicle was occupied. Sergeant A stated he/she was okay with the plan and if he/she had seen

something that he/she did not agree with he/she would have interjected and taken control. During the incident Sergeant A did not interject.

Assessment – Officer A observed the Subject with a pistol in his waistband and Officer C requested a back-up. Throughout the incident Officer A continued to assess his/her background and the positioning of his/her fellow officers to avoid a crossfire situation. Officer A also communicated the Subject's actions to his/her fellow officers and assessed if the Subject was complying with his/her commands.

Time – The UOFRB was critical that time was not used to de-escalate the situation. The UOFRB noted there was no exigency to act quickly, and that officers could have used additional time to refine their plan as the incident evolved. The UOFRB noted that redeploying would have given officers time to get to cover, request additional resources and tools and formulate a more refined plan.

Redeployment and/or Containment – When Officers identified there were two occupants in the vehicle Officer D suggested to Sergeant A that they redeploy. This suggestion was ignored and Officer A believed that he/she had a tactical advantage maintaining vision of the occupants. Sergeant A also believed they had the tactical advantage maintaining their position and believed that redeploying back to their police vehicles would have exposed nearby community members to danger as they would be in the background.

Other Resources – Upon observing that the Subject had a pistol in his waistband, Officer C requested a backup. After the OIS, Officer C broadcast a help call. The UOFRB noted that additional resources such as an airship or a shield were not requested.

Lines of Communication – Officer B attempted to give commands in Spanish to gain compliance and have the Subject and Witness A exit the vehicle. Officer B was not a Spanish speaker and could only communicate in limited Spanish. Officer A continued to verbalize with the Subject in English and moments prior to the OIS asked officers at scene to get him/her a Spanish speaker. The UOFRB noted that throughout the incident there was minimal verbal communication between the officers.

The UOFRB assessed the tactics employed by Officers A, B, C, D, and Sergeant A. The UOFRB was critical of the lack of planning prior to making contact with the occupants and were critical that designated roles were not pre-planned and discussed. The UOFRB noted there was a brief discussion about approaching the vehicle, but no other plan was discussed. Furthermore, the UOFRB believed no exigency existed and the officers could have taken time to slow down and formulate a plan. The UOFRB noted no Designated Cover Officer (DCO) was identified, and that all officers had drawn their firearms without a discussion about intermediate force options. The UOFRB opined Sergeant A should have intervened and provided more active oversight.

The UOFRB commended Officer D's effort in suggesting to Sergeant A that they redeploy and call the occupants out of the vehicle. The UOFRB recognized that Officer D attempted to influence the outcome of the tactics but was unable, due to the more senior officers at scene taking control.

Therefore, based on the totality of the circumstances, the UOFRB opined, and the BOPC concurred, the tactics utilized by Officer A, B, C, and Sergeant A were a substantial deviation, without justification, from Department approved training. Furthermore, the UOFRB determined, and the BOPC concurred, the tactics employed by Officer D were a substantial deviation, with justification, from Department-approved tactical training.

During the review of this incident, the following Debriefing Topics were noted:

Debriefing Point No. 1: High Risk Vehicle Stop

After placing their police vehicles in a high-risk vehicle stop configuration Officer A and B did not use their PA system to callout the occupants. Neither Officers A, B, C, nor D utilized the police vehicles emergency equipment/lighting prior to approaching the truck to gain the occupants attention or for assisting the officers in seeing into the truck prior to their approach on foot.

After making contact with the occupants, Officer A did not use the truck's pillar or angle at the passenger side of the truck while deploying the shotgun and placed himself/herself directly at the passenger side opening next to the seated passenger. Additionally, on two occasions, one being the removal of the firearm from the Subject's waistband, Officer B was positioned directly across from Officer A, who had deployed the shotgun, rather than redeploy a DCO with Officer B on the driver's side of the truck.

Officer B handcuffed Witness A in an area north, toward the front passenger side of the suspects' truck, exposing himself/herself to an armed occupant.

The officers and Sergeant A did not want to redeploy as it would cause them to "give up" ground and put them at a tactical disadvantage. Sergeant A did not believe this incident rose to the level of a barricaded suspect.

The UOFRB assessed Officers A, B, C, D, and Sergeant A's tactics as it pertained to high-risk vehicle stops. The UOFRB noted the officers' intent was to see if the vehicle was occupied as the heavily tinted windows obscured their vision. The UOFRB was critical though of their decision to clear the vehicle with the resources at hand as they had no exigency and time was on their side. The UOFRB would have preferred that they conducted a high risk stop, use their emergency lights and siren, use the PA system to communicate with the occupants, and request additional resources as needed. Officer D made the suggestion to redeploy however his/her

concerns were disregarded. Due to the tactical situation and his/her lack of tenure, the UOFRB opined Officer D had a responsibility to assist.

As the officers moved forward and observed two occupants in the vehicle, they chose to make contact rather than redeploy to cover and call the occupants out. The UOFRB was critical of this decision and stated they would have preferred for the officers to redeploy and consider the situation as a barricaded suspect if the occupants refused to exit the vehicle. The UOFRB applauded Officer D's effort to convince Sergeant A to redeploy, but acknowledged he/she was ignored at scene. Sergeant A and Officer A felt they had the tactical advantage by maintaining visual contact with the occupants and were reluctant to "give up ground". The UOFRB opined that by remaining near the Subject's vehicle without the benefit of cover they placed themselves at a significant tactical disadvantage.

Once the firearm was identified in the waistband of the Subject, Officer A stood in front of the passenger side door while directing Officer B to remove the passenger. The UOFRB opined that redeploying back to their police vehicle would have given them the benefit of the ballistic door panels as cover and given them distance and time to attempt to de-escalate the situation. The UOFRB also discussed Officer B's decision to pull the passenger out of the vehicle and moving him/her northbound in front of the vehicle. The UOFRB was critical of this decision as occupants in high risk stops are typically pulled backwards towards a position of cover and searched. By leaving Witness A in front of the vehicle he/she was exposed to unnecessary risk and placed personnel at scene at a tactical disadvantage.

Debriefing Point No. 2: Handcuffing Procedures/Protocols

Officer B did not perform a pat down search of Witness A after handcuffing and taking him into custody. Officer B left Witness A face down on his stomach for approximately 21 seconds and unattended, before Officer D moved Witness A toward a police vehicle after the OIS and placed him on his right side. Officer D was directed to leave Witness A unattended by Sergeant A and assist Officer B in removing the Subject from the driver's side of the truck, leaving Witness A unattended behind all the officers and Sergeant A. Officer B did not complete a pat down search after pulling the Subject out of the vehicle. Officer D donned gloves and handcuffed and conducted a pat down of the Subject.

The UOFRB assessed Officer B's adherence to the Department's handcuffing protocols. The UOFRB noted that Officer B left Witness A handcuffed prone on his stomach for approximately 21 seconds before the issue was corrected by Officer D. Furthermore, no pat down search was conducted. The UOFRB would have preferred that he be placed in the recovery position and searched. The UOFRB saw no reason why officer B was unable to conduct his/her search. By failing to search Witness A, he/she placed personnel at scene at a tactical disadvantage and unnecessarily risked their safety. Furthermore, Witness A was left unattended as Officer B moved to the driver side of the vehicle to address the Subject. The

UOFRB noted, while Officer B did remove the pistol and extra magazine from the front of the Subject's waistband prior to being pulled out the vehicle, he/she did not search and clear the rear waistband. As such, The UOFRB concluded that B's failure to search Witness A and the Subject was a substantial deviation, without justification, from Department-approved tactical training.

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

During the review of this incident, the following additional Debriefing Topics were noted:

Additional Tactical Debrief Topics

Situational Awareness / Firearm Safety (over penetration into occupied space)

Officer A extended his/her shotgun into the truck. The muzzle of the shotgun extended in front of the passenger, who appeared unconscious. Officer A remained deployed with his/her shotgun as Officer B redeployed to the driver's side of the truck to remove the firearm and magazine from the Subject's waistband, opposite of Officer A.

Bloodborne Pathogens – Officer B did not don gloves when removing the Subject from the vehicle.

Stepping on Suspects – According to the investigation, Officer B's left foot can be seen on the Subject's back near his belt line. His/her foot remains there for approximately 35 seconds. Officer B also briefly stepped on Witness A's back area while handcuffing him.

Protocols Subsequent to a Categorical – Sergeant A only separated Officer A after the OIS and directed Officers C and D to look for witnesses and for Officer B to put up crime scene tape. After Officer A was separated from others, Officer B approached Officer A and deactivated his/her BWV.

Command and Control

- Sergeant A arrived at the call, broadcast he/she was Code-Six, and waited for additional officers to arrive at scene. Sergeant A lingered at the driver's door of Officer A and B's police vehicle outside of cover as the officers approached the truck and drew/exhibited his/her service pistol.

Sergeant A assessed that Officer A had the incident controlled but would intervene if necessary. Sergeant A did not intervene while the incident unfolded. Sergeant A attempted to request a rescue ambulance (RA), however, Communications Division (CD) did not acknowledge the first request. Sergeant A again requested an RA and

broadcast a Code 4. Sergeant A separated Officer A, turned off his/her BWV, and monitored him/her. Sergeant A did not separate or monitor any further personnel involved in the incident.

Sergeant B, responded to the OIS and obtained a Public Safety Statement from Officer A. Sergeant C notified the DOC of the OIS.

The UOFRB assessed Sergeant A's actions as a supervisor. The UOFRB was critical of Sergeant A's lack of command and control throughout the incident. Sergeant A did not provide any direction for the officers at scene and allowed Officer A to formulate a plan. Sergeant A stated he/she would interject if he/she observed anything that needed correction but did not once interject throughout the incident. Sergeant A did not recognize that the radio call may have required additional resources and did not consider requesting additional resources such as Air Support Division, or Metropolitan Division or tools, such as a shield. The UOFRB noted during the incident Officer D suggested they consider redeploying back to their vehicles and have the occupants called out. These suggestions were ignored and could have played a significant role in de-escalating the outcome of the incident. The UOFRB was critical that Sergeant A did not assume the responsibilities of the incident commander and rather deferred tactical planning to Officer A.

The UOFRB determined, and the BOPC concurred, the overall actions of Sergeant A were not consistent with Department training and the BOPC's expectations of supervisors during a critical incident. Therefore, the BOPC found Sergeant A's actions to be a substantial deviation, without justification, from Department-approved tactical training requiring a finding of Administrative Disapproval for Tactics.

The overall actions of Sergeants B and C were consistent with Department training and the BOPC's expectations of Department supervisors during a critical incident.

B. Drawing/Exhibiting

Officer A

According to Officer A, he/she deployed the shotgun because they were responding to a radio call of a man with a gun.

Officer B (1st occurrence)

Although he/she was not asked specifically, Officer B responded to a call of a "415 man with a gun." Officer B drew his/her service pistol and assisted with clearing the vehicle.

Officer B (2nd occurrence)

As Officer B walked toward the driver side of the vehicle to extract the driver, he/she heard his/her partner, Officer A call out “Gun, gun!” Officer B believed he/she might have to use deadly force.

Officer B (3rd occurrence)

After Officer B had extracted passenger from the vehicle he/she turned towards the driver and observed him reaching for his gun.

Officer C

According to Officer C due to the comments of the call of a “415 man with a gun” he/she believed that the situation may rise to point where deadly force may be used.

Officer D (1st occurrence)

According to Officer D he/she unholstered as they were clearing the suspect vehicle, and the radio call comments detailed a “415 man with a gun.” After observing an occupant being taken into custody, he/she holstered his/her service pistol.

Officer D (2nd occurrence)

After Officer A alerted them that the driver had a pistol in his waistband, Officer D unholstered because he/she believed that the situation could rise to the point where deadly force may be used.

Sergeant A

According to Sergeant A, he/she unholstered because initially he/she was not grouped with the officers. He/she had to traverse open ground without the benefit of cover in order to be in a position to provide oversight.

The UOFRB assessed Officers A, B, C, D and Sergeant A’s drawing and exhibiting. The UOFRB noted Officers B, C, D, and Sergeant A unholstered their service pistols when they arrived on scene, due to the comments of the call of a “415 man with a gun” inside the vehicle. The UOFRB opined it was objectively reasonable to believe the situation could escalate to the use of deadly force when faced with an individual who may be armed with a firearm.

As it pertained to Officer A’s exhibiting of the shotgun the UOFRB opined it was objectively reasonable to believe the situation could escalate to the use of deadly force when faced with an individual who may be armed with a firearm.

As it pertained to Officer D’s second drawing and exhibiting and Officer B’s second drawing and exhibiting, the UOFRB noted at the time they unholstered their service pistols, Officer A had just alerted them that the driver of the vehicle had a gun in his

waistband. The UOFRB opined Officer B's and D's drawing and exhibiting was objectively reasonable when faced with an armed individual.

As it pertained to Officer B's third drawing and exhibiting, the UOFRB noted Officer B had finished handcuffing the passenger and observed the driver of the vehicle reaching for the gun in his waistband. The UOFRB opined Officer B's drawing and exhibiting was objectively reasonable when faced with an armed individual.

Based on the totality of the circumstances, the UOFRB determined, and the BOPC concurred, an officer with similar training and experience as Officers A, B, C, D and Sergeant A would reasonably believe there was a substantial risk the situation may escalate where deadly force could be justified.

Therefore, the BOPC found Officers A, B, C, D and Sergeant A's Drawing/Exhibiting to be In-Policy.

C. Lethal Use of Force

Officer A

Remington 870, 12-gauge, shotgun, "00" buck, one round from an approximate distance of four feet in an easterly direction.

Round One

The investigation determined Officer A fired his/her first round from an approximate distance of four feet. According to Officer A, he/she fired his/her shotgun because he/she believed that the Subject was going to shoot him/her.

The UOFRB assessed the circumstances and evidence related to the use of deadly force. In their assessment of the OIS, the UOFRB considered Officer A's numerous attempts to convince the Subject to not reach for the pistol. The UOFRB noted Officer A attempted to attain a Spanish speaker, but due to the Subject's actions did not have time for one to arrive. Officer A maintained his/her position on the passenger side of the vehicle and monitored the Subject's actions until the Subject began acquiring a grip on the gun in his waistband. The UOFRB noted Officer B also observed the Subject acquiring a grip on the gun in his waistband. The UOFRB opined that the use of deadly force by Officer A to stop the deadly threat posed by the Subject was objectively reasonable, proportional, and necessary.

The Chief and the BOPC considered the same set of circumstances and evidence in this incident and came to a different conclusion. The Department's guiding principle is the reverence for human life. The Department's Use of Force policy states in part, that whenever feasible, officers shall use de-escalation techniques to reduce the intensity of an encounter and enable officers to use additional options to mitigate the need to use a higher level of force. The use of deadly force should be considered a

last resort after other efforts have been exhausted. There were no efforts to de-escalate this incident after the officers saw the gun in the suspect's waistband. In considering the objectively reasonable standard (*Graham v. Connor*), the BOPC noted there was no resistance presented by the Subject and considered the level of threat he posed. The occupants were intoxicated to a level that they could barely move or respond. The feasibility of using de-escalation tactics or other alternatives should have been considered prior to using force, such as a shield, the PA system, emergency lights and siren, as well as requesting assistance from Air Support Division and Metropolitan Division personnel.

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 the use of lethal force was not objectively reasonable, proportional or necessary.

Therefore, the BOPC found Officer A's use of Lethal Use of Force, to be Out of Policy.