

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

**CATEGORICAL USE OF FORCE/CHOKE HOLD 071-23**

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

|           |          |  |  |
|-----------|----------|--|--|
| Northeast | 12/05/23 |  |  |
|-----------|----------|--|--|

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

|           |                    |
|-----------|--------------------|
| Officer A | 18 years, 4 months |
| Officer B | 1 year             |

**Reason for Police Contact**

Northeast Patrol Division uniformed officers responded to a "Possible ADW Suspect" radio call inside of a Bank. When officers arrived, they located the suspect who was sitting inside the lobby area of the location. The officers detained and handcuffed the suspect. While conducting their investigation, the suspect attempted to kick one of the officers multiple times. While subduing the suspect, the officer made contact with his/her neck resulting in a Categorical Use of Force.

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

Male, 32 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 (FID) 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 (UOFRB) recommendations, including any Minority Opinions; the report and recommendations of the BOPC 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 November 26, 2023.

## **Incident Summary**

On Tuesday, December 5, 2023, at approximately 1159 hours, Victim A was working as the regional bank manager.

He observed a male, later identified as the Subject, sitting in the lobby area. According to Victim A, he approached the Subject and asked how he could assist him. The Subject stated he wanted to open an account and cash some checks, which totaled over 1 million dollars. Victim A advised the Subject he would need to make an appointment for this request. The Subject became visibly upset and stated, "If you don't help me, I will shoot you in the head and I will murder you."

In an effort to keep the situation from escalating, Victim A informed the Subject that he would assist him once he was done with helping another customer. In fear for his safety, Victim A walked to a different area of the bank and called 911.

At approximately 1208 hours, in response to Victim A's call, Communications Division (CD) broadcast, "Any Northeast Unit, Possible ADW Suspect, [address redacted], in the lobby. The suspect is [race and description redacted] It's Code Two. Incident 2210, RD 1119."

At approximately 1209 hours, Police Officer A, and Police Officer B responded to the radio call.

**Note:** Officers A and B were in full police uniform and operating out of a marked black and white police vehicle, equipped with a Digital In-Car Video System (DICVS). Additionally, each officer was equipped with all Department required equipment.

According to Officer A, the comments of the call indicated the suspect threatened to shoot or kill the victim; however, no weapons were seen. While en route to the radio call, and based on this information, the officers discussed a tactical plan. Officer A was designated as the cover officer, while Officer B was assigned as the contact officer. The plan was to make contact with the victim and determine if a crime had occurred.

At approximately 1217 hours, officers arrived at the scene, walked into the bank, and were approached by Victim A. Victim A immediately stated, "He's in the lobby with the hat," to Officer B. Victim A briefly explained the Subject wanted to open an account before he/she became upset and threatened to shoot Victim A in the head. During the conversation, Victim A advised officers that the Subject was still seated in the lobby with a cup in his/her hand. During this time, Officer B was positioned close enough to hear Victim A's statements, while still maintaining the Subject in his/her line of sight. When Officer A asked Victim A if he feared for his safety, Victim A responded, "Of course," and told the officers he was unsure if the Subject was armed.

After briefly interviewing Victim A and establishing a crime had occurred, Officer A

advised Officer B they were going to speak with the Subject. As the officers walked toward the Subject, Officer A communicated to Officer B, "I have comms if anything." Once officers approached the Subject, Officer B gave him commands to stand up and put his hands behind his back. The Subject complied and was handcuffed by Officer B without incident. As he was being taken into custody, the Subject advised the officers he/she was unarmed.

Officer B maintained control of the Subject with his/her left hand on the Subject's left bicep and walked him to a floor to ceiling glass window, located on the west side of the lobby near the front entrance of the bank. Once a pat-down search was conducted on the Subject and no contraband was recovered, Officer A instructed Officer B to interview Victim A.

As Officer B walked away to meet with Victim A, Officer A remained standing with the Subject at the front of the bank.

While standing with the Subject, Officer A instructed him to turn and face the window. Instead, the Subject turned clockwise, faced Officer A, and questioned what he/she was doing with his property. During a verbal exchange with Officer A, the Subject raised his voice, stated he was a "judge," and demanded Officer A stop touching him. When Officer A directed the Subject to face the window once again, the Subject ignored Officer A's commands and began to move away from him/her. According to Officer A, it was at this point the Subject "tried to shoulder check" him/her. In response, Officer A placed his/her left hand on the Subject's upper torso, turned him away, and held him against the glass window.

Officer A repositioned his/her hold on the Subject and placed his/her left hand on the Subject's left wrist and his/her right hand on the Subject's upper back. According to Officer A, the Subject was "passively resisting." Officer A believed he/she used reasonable and minimal force when he/she placed the Subject against the glass window.

During this time, Officer B was at the rear of the bank interviewing Victim A. According to Officer B, his/her attention was drawn to the front of the bank as Officer A and the Subject raised their voices.

Officer B then approached Officer A as he/she maintained control of the Subject at the glass window. Officer B briefly placed his/her left hand on the Subject's left elbow and asked Officer A if he/she wanted him/her to put the Subject in their patrol vehicle. Officer A responded, "No, I got him, I got him," before he/she told the Subject "Face forward. That's it. Just relax. That's all you gotta do." Officer A then directed Officer B to finish his/her interview with Victim A.

At this point, Officer A asked the Subject if he wanted to sit down. When the Subject agreed to do so, Officer A escorted him to a chair in the bank lobby, immediately south of where they were standing. Once seated, the Subject began to raise his voice when

Officer A told him he was under arrest for criminal threats. Officer A advised the Subject not to say anything due to being under arrest and having the right to remain silent. The Subject replied, "I'll [expletive deleted] slam your [expletive deleted] and throw your penis in front of your [expletive deleted] wife, bro."

The Subject also threatened to spit in Officer A's face and yelled, "Get the [expletive deleted] off me, bro." The Subject simultaneously lifted his left leg and attempted to kick Officer A in his/her right shin.

As Officer B returned to Officer A's location once again, Officer A instructed him/her to go back and continue interviewing Victim A.

At approximately 1225 hours, Officer A broadcast a request for another unit.

Officer A advised FID investigators he/she did not consider escorting the Subject out of the bank prior to the additional unit arriving.

As the Subject remained seated, he continued to yell obscenities. The Subject stated to Officer A, "Get these the [expletive deleted] up off of me before I kick you in your [expletive deleted]. (inaudible) I know karate, right? You can't slam me the [expletive deleted] around, [expletive deleted]. I'll [expletive deleted] knock you right in your [expletive deleted] nose. You're not going to see it the [expletive deleted] coming."

At approximately 1227 hours, while Officer A stood next to the Subject, he became increasingly agitated. Officer B then walked toward the front of the bank when Officer A informed him/her an additional unit was responding. Once Officer B walked away, the Subject stated to Officer A, "I'll pull out your gun and top you, bro."

While still seated, the Subject stated, "Mother [expletive deleted] hero, man. I'll make you shoot me, bro."

The Subject then leaned back and lifted his left leg as he attempted to kick Officer A a second time.

After he attempted to kick Officer A, the Subject repositioned himself toward the edge of the chair. Officer A believed the Subject was trying to stand up. Officer A then moved toward the Subject and directed him to sit down while he/she extended his/her right hand toward the Subject's left shoulder. The Subject then opened his mouth, turned his head toward Officer A's hand, and attempted to bite him/her.

Officer A moved his/her right hand away to avoid being bit before he/she placed it on the Subject's left shoulder and guided the Subject backward. Officer A then held the Subject down on the chair. As the Subject remained on his back, he raised his right leg and attempted to kick Officer A in the head.

Officer A used his/her left hand and reached toward the right side of the Subject's face.

The Subject appeared to raise his upper torso as Officer A moved his/her left hand and applied a firm grip to the front of the Subject's neck. Officer A then stated to the Subject, "Sit your [expletive deleted] down. Try to bite me again. Kick me in the face," before he/she removed his/her grip from the Subject's neck.

The investigation determined Officer A maintained a firm grip on the Subject's neck for approximately four seconds.

According to Officer A, during the incident, he/she did not believe he/she applied any pressure to the Subject's neck. He further explained there was no indication the Subject had difficulty breathing, and he did not have any visible injuries to his neck.

Officers stood the Subject up and were in the process of walking him toward the bank exit when the Subject lifted his right foot, utilized a rear kick, and struck Officer A on the right shin. The officers then redirected the Subject and walked him to a nearby wall, located on the east side of the bank lobby.

In an effort to limit the Subject's movement, Officer B used his/her bodyweight to hold the Subject against the wall as Officer A maintained control of his/her left arm.

While at the wall, Officer A stood to the left of the Subject. Bank surveillance video captured the Subject jerk his head back towards Officer A's head in a rapid manner. Officer A can then be seen applying a firm grip with his/her right hand to the back of the Subject's neck for approximately three seconds.

| <b>Force Type</b> | <b>Quantity</b> | <b>Officer</b> | <b>Body Area Applied</b> |
|-------------------|-----------------|----------------|--------------------------|
| Firm Grip         | 1               | Officer A      | Left Shoulder            |
| Firm Grip         | 1               | Officer A      | Left Wrist               |
| Firm Grip         | 2               | Officer A      | Left Arm                 |
| Firm Grip         | 1               | Officer A      | Right Arm                |
| Physical Force    | 2               | Officer A      | Left Arm                 |
| Physical Force    | 1               | Officer A      | Left Wrist               |
| Physical Force    | 1               | Officer A      | Back                     |
| Physical Force    | 1               | Officer A      | Left Shoulder            |
| Physical Force    | 1               | Officer A      | Left Arm                 |
| Firm Grip         | 2               | Officer B      | Right Arm                |
| Physical Force    | 2               | Officer B      | Right Arm                |
| Body Weight       | 1               | Officer B      | Back                     |
| Firm Grip         | 1               | Officer A      | Back of Neck             |

## Body-Worn Video (BWV) and Digital In-Car Video (DICV) Policy Compliance

| NAME      | TIMELY BWV ACTIVATION | FULL 2-MINUTE BUFFER | BWV RECORDING OF ENTIRE INCIDENT | TIMELY DICV ACTIVATION | DICV RECORDING OF ENTIRE INCIDENT |
|-----------|-----------------------|----------------------|----------------------------------|------------------------|-----------------------------------|
| Officer A | Yes                   | Yes                  | Yes                              | N/A                    | N/A                               |
| Officer B | Yes                   | Yes                  | Yes                              | N/A                    | N/A                               |

### **Los Angeles Board of Police Commissioners' (BOPC's) Findings**

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

#### **A. Tactics**

The BOPC found Officers A and B's tactics to warrant a finding of Tactical Debrief.

#### **B. Non-Lethal Use of Force**

The BOPC found Officers A and B's non-lethal use of force to be In Policy.

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

The BOPC found Officer A's lethal use of force to warrant a finding of Administrative Disapproval - 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 Subject 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 Subjected 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 Subjected offense;
- The level of threat or resistance presented by the suspect;
- Whether the subject 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 subject to escape;
- The conduct of the subject 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 subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus suspects;
- The environmental factors and/or other exigent circumstances; and,
- Whether a person is a member of a vulnerable population.

**Drawing or Exhibiting Firearms:** Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer’s alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm. When an officer has determined that the use of deadly force is not necessary,



the officer shall, as soon as practicable, secure or holster the firearm. Any drawing and exhibiting of a firearm shall conform with this policy on the use of firearms. Moreover, any intentional pointing of a firearm at a person by an officer shall be reported. Such reporting will be published in the Department's year-end use of force report.

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

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

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

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

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

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

## **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 subject 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 (Los Angeles Police Department, Use of Force - Tactics Directive No. 16, Tactical De-Escalation Techniques, October 2016).

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 and Assessment** – At the time of the incident, Officers A and B had worked together as partners nine times and discussed tactics each time as Officer B was a probationary officer. They discussed tactical concepts, such as contact and cover, and what equipment and force options were available to them. While en route to the bank, Officer B read the comments of the radio call to Officer A and they formed a plan which was to determine whether a crime occurred and gather information that could direct them to the suspect. After meeting with Victim A, the officers determined a criminal threat occurred and were directed to the Subject. Officer A directed Officer B to take the Subject into custody and stated he/she would act as communications should something serious occur. The UOFRB (Use Of Force Review Board) further discussed the officers' planning under Debriefing Point No. 1.

**Time and Redeployment and/or Containment** – Although the Subject was handcuffed during a majority of this incident, he made numerous verbal threats and attempted to kick, bite and head butt Officer A, who created time by creating some distance between him/herself and the Subject. After the Subject sat down on the chair inside the bank lobby and began moving toward the edge of the chair, Officer A believed the Subject was going to stand up and redeployed closer toward him to keep him contained to the chair. Once the additional unit arrived at scene, Officer B and Officer C escorted the Subject to the rear seat of Officers A and B's police vehicle and contained him there until he was transported to Northeast CPS.

**Other Resources and Lines of Communication** – Throughout the incident, Officer A tried to tell the Subject why he was being placed under arrest, but the Subject refused to listen, arguing with Officer A and telling him/her he was an officer and a judge. When the Subject began trying to kick and head butt Officer A, he/she told the Subject to stop what he was doing and to relax and comply. As the Subject's behavior and actions began escalating, Officer A requested an additional unit and advised Officer B of his/her request when he/she returned to try and assist Officer A with the Subject. Officers A and B communicated with each other every step of the

way, making suggestions to one another and communicating each other's intentions until the Subject was placed in the rear seat of their police vehicle.

During the review of the incident, the following Debriefing Point was noted:

### **1. Tactical Planning and Assessment**

- After the Subject was handcuffed without incident, Officer A directed Officer B to interview Victim A while he/she remained with the Subject. Officer B conducted his/her interview nearby, allowing him/her to render aid to Officer A, if necessary. When the Subject tried to "shoulder check" Officer A and their voices raised, Officer B returned to assist Officer A. Despite the Subject's escalating behavior and Officer A's assessment that the Subject suffered from mental illness, Officer A directed Officer B to finish interviewing Victim A. Officer B had asked Officer A if they should place the Subject in the rear seat of their police vehicle; however, Officer A told him/her he/she was "okay" and to continue his/her interview with Victim A. The customers began exiting the bank at Victim A's direction.

After the Subject was seated in the bank, he became further agitated, yelled at Officer A and attempted to kick him/her. Hearing the commotion, Officer B again returned to his/her partner, who directed him/her to continue interviewing Victim A. Officer A requested an additional unit as the Subject continued yelling obscenities. Officer B returned to Officer A, who advised him/her an additional unit was requested and Officer B resumed his/her interview of Victim A. The Subject began yelling at the remaining people in the bank and his agitation and behavior escalated with attempts to kick and bite Officer A, which resulted in a CRCH and additional non-lethal uses of force by both officers to subdue the Subject.

The UOFRB considered the officers' plan for the call and approach through the bank. Although the officers passed the Subject, the UOFRB considered officers were still determining if a crime had occurred and wanted to verify the suspect description with the victim. The UOFRB noted the Subject's escalating behavior as he made numerous verbal threats to Officer A and made attempts to kick Officer A, trying to bite him/her at one point. The UOFRB assessed although the Subject was handcuffed, he continued his aggressive and belligerent behavior. The Subject was disturbing the bank's operations and causing fear among the bank's patrons.

The UOFRB discussed Officer A's assessments throughout the incident as a tenured officer and did not believe his/her actions were unreasonable. Officer A was attempting to maintain communication with the Subject as a tool to diffuse the Subject's anger while also being able to provide direction to his/her partner, who was a probationary police officer. However, the UOFRB also noted Officer B's suggestion to remove the Subject and place him in their police vehicle to further contain the Subject and reduce the disruption to the bank and patrons.

The UOFRB asked the Subject Matter Expert (SME) from Training Division (TD)

about the current training of police recruits and the placing of a suspect in the rear seat of a police vehicle immediately after taking him or her into custody. The SME advised the tactic was currently taught and encouraged because it would remove the suspect from the scene and defuse the situation, which is in line with the concept of tactical de-escalation. The UOFRB considered Officer B's recommendation to place the Subject in the rear seat of their police vehicle more than once, which they commended; however, acknowledged there is no mandate to do so. Although there was concern for Officer A's planning and assessment, the UOFRB determined the best course of action would be to address their concerns with Officer A through the Tactical Debrief.

The BOPC considered the same set of circumstances as the UOFRB, as well as Officer A's statements to FID investigators that he/she never considered placing the Subject in the police vehicle prior to the additional unit's response.

The UOFRB evaluated the tactics employed by Officers A and B as it pertained to de-escalation, specifically their planning and assessment throughout the incident. Based on the totality of the circumstances, the BOPC determined that the tactics employed by Officers A and B were not a substantial deviation from Department-approved tactical training.

### **Additional Tactical Debrief Topics**

- **Protocols Subsequent to a Categorical Use of Force** – Officer A did not request a supervisor while at scene because he/she believed he/she did not have a reportable use of force.
- **Situational Awareness** – Officer A held the Subject against a glass window, which he/she described as being used as a “controlling agent.”
- **Booking Arrestee Property** – During the search incident to arrest inside the bank, property was removed from the Subject before being discarded by the officers in a nearby trash can, which escalated the Subject's behavior. According to Officer A, the discarded items included lighters, tissue paper and miscellaneous trash.

After transporting the Subject to the Northeast CPS, Officers A and B did not ask the Subject for permission to cut the string around his pants before doing so.

- **Profanity** – Officer A used profanity at different points during his/her interaction with the Subject, which he/she stated was an attempt to de-escalate the situation.

### **B. Non-Lethal Force**

**Officer A** – Firm Grips, Bodyweight, and Physical Force.

## **Officer B – Firm Grips, Bodyweight, and Physical Force.**

- As Officer B walked away to interview Victim A, Officer A remained standing with the Subject at the front of the bank. Officer A instructed him to turn and face the window, but the Subject turned and faced Officer A, asking what he/she was doing with his property. The Subject raised his voice and demanded Officer A stop touching him. When Officer A directed the Subject to face the window once again, the Subject ignored Officer A's commands and began to move away from him/her. According to Officer A, the Subject tried to shoulder check him/her and, in response, Officer A placed his/her left hand on the Subject's upper torso, turned him away and held him against the glass window. Officer A warned the Subject not to do it again. Officer A repositioned his/her hold on the Subject and placed a firm grip on the Subject's left wrist and placed his/her right hand on the Subject's upper back.

According to Officer A, the Subject was passively resisting and he/she believed he/she used reasonable and minimal force when he/she placed the Subject against the glass window. Officer B approached Officer A, briefly placed his/her left hand on the Subject's left elbow and asked Officer A if he/she wanted him/her to put the Subject in their police vehicle. Officer A told Officer B he/she had the Subject under control before he/she told the Subject to face forward and relax. While Officer B maintained a firm grip on the Subject's left arm, Officer A placed his/her left hand on the Subject's left wrist and directed Officer B to finish his/her interview with Victim A.

At this point, Officer A asked the Subject if he wanted to sit down, and he agreed to do so. Officer A escorted him to a nearby chair, and once seated, the Subject began to raise his voice. The Subject began threatening Officer A with physical harm and to spit in his/her face, while simultaneously lifting his left leg and attempting to kick Officer A in his/her right shin. As Officer B returned to Officer A, he/she instructed him/her to go back and continue interviewing Victim A. At approximately 1225 hours, Officer A requested an additional unit as the Subject became increasingly agitated.

The Subject threatened to kill Officer A before leaning back and lifting his left leg to kick Officer A a second time. The Subject repositioned himself toward the edge of the chair. Believing the Subject was trying to stand up, Officer A directed him to sit down with his/her right hand extended toward the Subject's left shoulder. The Subject attempted to bite Officer A's right hand and Officer A moved his/her hand away before placing it on the Subject's left shoulder and guiding him backward. Officer A held the Subject down on the chair and directed him to sit down. The Subject raised his right leg and attempted to kick Officer A in the head. Officer A reached toward the right side of the Subject's face with his/her left hand. The Subject appeared to raise his upper torso as Officer A moved his/her left hand and applied a firm grip to the front of the Subject's neck.

Once Officer B returned to Officer A, they stood the Subject up and began walking him toward the exit when the Subject lifted his right foot and kicked Officer A's right shin. Officer A told the Subject not to kick him/her and the Subject told Officer A he would break his/her leg. Officers A and B then walked the Subject to a nearby wall, where Officer B used his/her bodyweight to hold the Subject against the wall as Officer A maintained control of his left arm. Bank surveillance video captured the Subject jerking his head back towards Officer A's head in a rapid manner and captured Officer A applying a firm grip with his/her right hand to the back of the Subject's neck.

The UOFRB evaluated the non-lethal use of force employed by Officers A and B. In assessing both officers' cumulative use of firm grips, bodyweight and physical force, the UOFRB noted the Subject was making verbal threats of violence toward Officer A and attempted to kick and head butt Officer A and actually did kick Officer A in the leg. The UOFRB assessed the Subject continued to struggle with the officers after they placed their hands on him and opined their use of non-lethal force was proportional and in direct response to overcoming his resistance.

To address Officer A's firm grip to the back of the Subject's neck, the UOFRB asked the Arrest and Control SME if applying force to the back of the neck was taught in training and if bilateral pressure could be applied from behind. The SME responded that force to the back of the neck was not something taught in training but stated it is an option, especially if the suspect was trying to head butt the officer as the Subject did. Additionally, the SME advised bilateral pressure in this case could not be achieved from behind unless the hand size of the officer applying force to the back of the neck was significantly larger than the circumference of the subject's neck.

Based on the totality of the circumstances, the BOPC determined an officer with similar training and experience as Officers A and B, in the same situation, would reasonably believe the use of non-lethal force was proportional and objectively reasonable. Therefore, the BOPC found Officers A and B' Non-Lethal Use of Force to be In Policy.

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

- **Officer A** – Carotid Restraint Control Hold/Choke Hold.

**Note:** A carotid restraint is defined “as a vascular neck restraint or any similar restraint, hold, or other defensive tactic, including a c-clamp in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.” A choke hold is defined as “any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.”



On June 8, 2020, the Board of Police Commissioners placed a Moratorium on the use of the CRCH. On July 14, 2020, the Department rescinded its Tactical Directive on the CRCH, thereby banning its use. On August 31, 2020, the California State Assembly approved Assembly Bill 1196 which banned the use of the CRCH or choke hold by any California Law Enforcement Agency. Assembly Bill 1196 went into effect on January 1, 2021.

According to Officer A, the Subject tried to bite his/her hand before trying to kick him/her in the head. Officer A was unsure if the Subject's leg contacted his/her head but recalled placing his/her forearm on the Subject's chest and holding the Subject against the chair, using it as a controlling agent. Officer A did not believe he/she applied any pressure to the Subject's neck and stated there was no indication the Subject had difficulty breathing and did not observe visible injuries to the Subject's neck. The investigation determined Officer A applied pressure to the Subject's trachea.

The UOFRB evaluated the application of force employed by Officer A. In assessing Officer A's use of a CRCH, the UOFRB noted Department policy identified a choke hold as "any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe" and opined Department policy was very clear this force option is required to be evaluated as lethal force and its use banned by state law and Department policy. The UOFRB did consider the Subject was making verbal threats of violence toward Officer A and noted the Subject kicked him/her and attempted to head butt him/her and opined the act of applying pressure to the Subject's neck appeared to be instinctual rather than intentional. However, the UOFRB concluded the Subject's actions and the circumstances surrounding the incident did not arise to the level where lethal force would be justified nor permit the use of a CRCH or choke hold.

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 not reasonably believe the use of deadly force was necessary, proportional and objectively reasonable. Therefore, the BOPC found Officer A's Lethal Use of Force to be Out of Policy.