

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

OFFICER-INVOLVED SHOOTING – 013-19

Division Date Duty-On (X) Off () Uniform-Yes (X) No ()

Central 4/14/19

Officer(s) Involved in Use of Force Length of Service

Officer A 20 years, 11 months
Officer B 16 years, 9 months

Reason for Police Contact

Uniformed officers were working an overtime detail at Transit Services Division (TSD). Officers located a wanted person at a pay kiosk outside of a train platform entrance. The officers went in foot pursuit of the subject to an alcove on a sidewalk above the train platform. The subject produced a sawed-off shotgun from his backpack and pointed it in the direction of one of the officers, resulting in an Officer-Involved Shooting (OIS).

Subject(s) Deceased (X) Wounded () Non-Hit ()

Subject: Male, 47 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 March 3, 2020.

Incident Summary

Victim A returned to her residence, where she was confronted by the Subject, who pointed a gun at her head. Victim A was able to escape and telephoned police. Uniformed patrol officers responded and searched the area for the Subject but were unsuccessful in locating him. An Assault with a Deadly Weapon with a Firearm report was generated.

A no-bail warrant for probation revocation was issued on the Subject. The Subject's family members reported to the County of Los Angeles Sheriff's Department that he was calling them and threatening to kill them and himself. A Criminal Threats report was generated.

The following day, the Subject was at a storage locker business when he pointed a sawed-off shotgun at Victim B and demanded his car keys, cell phone, and money. According to Victim B, he asked the Subject if he was kidding, and the Subject replied, *"I'm on a suicide run. I have nothing to lose."* After Victim B gave the Subject the items, the Subject locked Victim B inside of his storage locker and drove away in Victim B's vehicle. Once Victim B freed himself from the storage locker, he telephoned police. Uniformed officers responded and generated a Robbery/Carjacking report. Victim B's vehicle was later recovered, unoccupied.

North Hollywood Detectives initiated an Officer Safety Crime Alert regarding the Subject.

North Hollywood investigators contacted Sergeant A, briefed him/her on the Subject, and requested the assistance of his/her team. Sergeant A's team began an operation in conjunction with North Hollywood to locate and capture the Subject.

Sergeant A obtained information from the Subject's family members concerning a possible location for the Subject. A surveillance operation was held wherein the operational objectives were discussed, which were locating and arresting the Subject. Sergeant A disseminated the Subject's criminal history and descriptors to his/her officers, which included Officer A. They were unsuccessful in their attempts to locate the Subject at this time.

A search warrant affidavit was obtained for the Subject's cellular phone in order to track its location.

On the date of the OIS, Sergeant A was off-duty when he/she was notified of information regarding the Subject's possible location. Sergeant A was aware that officers from his/her team may have been working Transit Services Division (TSD) overtime details in the area where the Subject was possibly located.

Officers A and B were assigned to the TSD overtime detail for the area indicated in the notification that was received by Sergeant A. They were assigned to a fixed post assignment at one of the Metro Stations located in the downtown area.

Sergeant A sent a group text to the officers on his/her team inquiring who was working the TSD detail. He/she subsequently learned that Officer A was working the TSD detail in the area where the Subject was possibly located. Sergeant A telephonically contacted Officer A to advise him/her of the Subject's possible presence in the area of his/her TSD assignment.

Sergeant A sent Officer A text messages of a Google map screen of the area, along with a photograph of the Subject. According to Sergeant A, his/her intent in notifying Officer A of the Subject's possible presence was for officer safety. According to Officer A, he/she took Sergeant A's phone call as officer safety information and as a warning to be aware of his/her surroundings.

Neither Sergeant A, nor Officer A or Officer B notified TSD or Central Division about the Subject possibly being in the area.

Officer A provided Officer B with the information concerning the Subject and the details concerning his want.

Investigators obtained surveillance video from the area. The video did not contain audio. The video captured the Subject walking west on the south sidewalk toward the train platform. The Subject can then be seen walking north, toward stairs that lead to the lower level shopping area, and down the stairs. The video captured the Subject reach the lower level, walk to his left, go around a coffee shop in the direction of the transit platform area, and then go downstairs onto the transit platform area.

Investigators also obtained surveillance video from Metropolitan Transit Authority (MTA). The video did not contain audio. Surveillance video captured the Subject reach the mezzanine level of the transit area and captured the Subject attempt to scan his Transit Access Pass (TAP) card at a turnstile; however, the doors did not open. The Subject turned and walked toward the TAP kiosks, which were located along the wall, where he appeared to make a transaction.

Officers A and B continued their foot beat patrol at the Metro Center transit area. The officers walked down to the mezzanine level and observed a White male, with tattoos on his right arm, wearing a short-sleeved shirt, pants, a baseball hat, and a black backpack, standing in front of a TAP kiosk near the east opening. The male was later identified as the Subject; however Officers A and B did not positively identify this person as the Subject at this time. According to Officer B, the Subject carried the backpack over both shoulders.

According to Officer A, as officers walked by the Subject, he/she could only see the Subject's right-side profile and was unable to positively identify him. According to

Officer B, officers were approximately ten to twelve feet from the Subject when they first observed him.

According to Officer B, they then stood approximately ten to twelve feet behind the Subject and waited for him to turn around, to confirm his identity. As they waited, the officers looked at the Subject's photograph on Officer A's cellphone; however, the Subject never turned in the officers' direction. The Subject turned away from the kiosk, walked to the escalator, and rode up to the shopping level above. According to officers, they followed behind the Subject at a distance of approximately 20 to 30 yards.

MTA video captured Officers A and B walking downstairs into the mezzanine level of the transit area. At this time, the Subject had been at the TAP kiosks for approximately two minutes. The Subject quickly glanced over to his right, in the direction of the officers, and then looked at the machine, where he remained for approximately nineteen seconds before walking toward the escalator to the shopping area. MTA video captured Officers A and B go up the escalator to the shopping level.

The investigation determined that the Subject was in possession of a single TAP card at the time of the incident. The TAP card showed insufficient funds and verified that the Subject had not entered any Metro transit system on the day of the incident. According to Officer B, the Subject walked past officers as he went toward the upstairs shopping level.

According to Officer A, the male's height, ethnicity, tattooed arm, and backpack caused him/her to pause. In order to eliminate him as the Subject, Officer A wanted to see his face. Officer A did not update their status or request additional units because officers had not yet confirmed the Subject's identity. According to Officer B, Officer A told him/her that he/she believed that this was the suspect and he/she wanted to get a better look at him.

The Subject walked through the shopping level and up the stairs to the landing, followed by Officers A and B, who maintained an approximate 20 to 30-yard distance. According to Officer A, in order to have the Subject turn around, he/she yelled, "*Excuse me, sir!*" Officer A stated, "*I tried to grab his attention, so he could turn in my direction, so I could positively identify him if it was the guy that I - - that I knew that was possibly in the area that was wanted in connection for a crime. So, at that point that's - - I yelled in his direction, 'Excuse me, sir,' and he didn't even turn whatsoever.*"

The Subject then walked down approximately five steps onto the sidewalk of the street, and then he walked east on the south sidewalk, out of Officer A's sight. According to Officer A, he/she was uncertain if the Subject heard him/her and, in order to close the distance to the Subject, Officer A jogged a couple of steps. Surveillance video captured Officers A and B jog down the five steps, onto the south sidewalk. It appeared to Officer A that the Subject may have also "picked up his pace" because Officer A opined that the

Subject maintained an approximate 20-yard distance in front of the officers. At this time, Officer A again, more loudly, yelled, "*Excuse me, sir!*"

The surveillance video captured the Subject walking from the direction of the transit area, in front of the coffee shop, toward the stairs that lead to the street level. The video captured the Subject begin to walk up the stairs as Officers A and B emerged from the side of the coffee shop and walked toward the stairs. The video then captured the Subject at the top of the stairs, walking in a northeast direction, toward the street. Officers A and B are captured following the Subject. The Subject is then captured walking eastbound, on the south sidewalk, followed by Officers A and B.

In response, the Subject turned his head to his right and quickly looked behind him, in the direction of Officers A and B, and then ran east on the south sidewalk. According to Officer A, "*It looked just like the picture and, you know, he appeared startled.*" It was at this time that Officer A positively identified the Subject. Officer A ran east behind the Subject on the south sidewalk, followed by Officer B. Officer A ordered the Subject to stop, identifying themselves as police officers. According to Officer B, officers were approximately 40 to 50 feet behind the Subject.

The Subject continued running east, in the crosswalk, and then turned south on the east sidewalk. Officer A began to traverse across the street when, approximately half-way through the crosswalk, Officer A ran diagonally, in a southeast direction, toward the east curb in order to parallel the Subject, who was still on the east sidewalk.

According to Officer B, he/she looked forward in the direction of the Subject and entered the intersection, and it was at this time he/she was going to initiate a radio broadcast. According to Officer B, he/she was not able to reach over for his/her radio to broadcast since he/she was running with his/her side-handle baton in his/her left hand.

The Subject continued south on the east sidewalk, as Officers A and B continued running south in the street, along the east curb, to parallel the Subject while maintaining a distance of approximately 20 yards.

According to Officer A, the Subject stopped, turned to the west in the officers' direction, and began to back himself into an alcove of the adjacent business. According to Officer A, he/she stopped running and, from a distance of approximately 24 feet, stated to the Subject, "*Hey, I just want to talk to you.*"

According to Officer A, the Subject shouted, "*I'm going to shoot you guys. I'm going to kill you guys. I'm going to shoot you. I'm going to kill you.*" Upon hearing the Subject's threats, Officer A feared for the safety of him/herself and his/her partner, believing that the Subject may actually pull something from his backpack and shoot and kill them. Officer A unholstered his/her service pistol, which he/she held in a two-hand low ready position, finger along the frame. According to Officer B, the distance between Officer A and the Subject was approximately 15 to 18 feet.

According to Officer A, the Subject threw his left shoulder forward, grabbing the backpack and pulling it in front of him. As the Subject was moving the backpack in front of himself, the Subject began manipulating the zipper on the backpack, and Officer A ordered him to drop the backpack.

Officer B stopped on the curb, south of a planter, which was north of the alcove. According to Officer B, Officer A had already been verbalizing with the Subject, ordering him to stop and telling him to get on the ground. Officer B stated that as soon as the Subject stopped in the alcove, the Subject squared his upper body up to Officer A. The Subject then took a black and red backpack off of his back, swung it up, and, with his left hand, was cradling it underneath. According to Officer B, the Subject unzipped the backpack and placed his right hand into the main compartment while simultaneously stating, *"Something to the effect of, 'yeah, I'm going to shoot you' or 'yeah, I'm going to shoot you [expletive]."* Believing that the Subject was arming himself, Officer B threw his/her side-handle baton into the planter in front of him/her as he/she unholstered his/her pistol and held it in a two-handed position, pointed towards the Subject, with his/her finger on the frame.

According to Officer A, he/she observed a planter to his/her right, which he/she began to walk toward to seek cover. As Officer A moved to his/her right, toward the planter, the Subject began to remove a shotgun from his backpack. According to Officer A, he/she yelled, *"Gun!"* and began to point his/her pistol at the Subject and moved his/her finger toward the trigger.

Officer B observed the Subject pulling a pistol grip and rear portion of a sawed-off shotgun out of the backpack with his right hand.

According to Witness A, the Subject unzipped his backpack, pulled out what appeared to be an automatic rifle, and shot at the officers. Witness A recalled that as he did so, the Subject was smiling.

The investigation determined that the firearm was a sawed-off shotgun and that the Subject did not discharge the shotgun.

According to Officer A, the Subject began to walk backward, toward the corner of the alcove. The Subject pulled out a small compact shotgun, with a side-saddle that contained extra rounds, from the backpack, held it at waist level with two hands, and pointed the shotgun directly at him/her. According to Officer A, *"That's when he was aiming it as I was moving, he's like, you know, I saw him tracking me as he - - as he was pulling it out."* According to Officer A, as he/she moved to his/her right toward the planter, he/she simultaneously torqued his/her upper torso to his/her left. Officer A feared for his/her life, believing the shotgun would go off any second. Officer A aimed his/her service pistol at the Subject's chest area and discharged approximately three to four rounds while moving towards cover, in an east direction, from an increasing distance of approximately 25 to 30 feet.

According to Officer B, the Subject's right hand was on the pistol grip of the shotgun as he pointed the backpack at Officer A. Officer B believed Officer A was in jeopardy of serious bodily injury or death, so he/she aimed his/her service pistol at the Subject's center body mass, in front of the Subject's right armpit area, and discharged what he/she believed to be three to five rounds, in a southeastern direction, from a distance of approximately 30 feet. Officer B stated, *"At that point I didn't have cover. It was - - the planter was too far north, and it was basically just open sidewalk between myself and the - - and the suspect."*

According to Officer B, the Subject took a few steps back into the alcove, and he/she could no longer see him through the glass that was now shattered on the front of the building. As Officer B observed Officer A move south towards cover, Officer B kept his/her service pistol pointed toward the Subject's last known location and moved southbound to "pie" the corner of the alcove, using it as cover in order to regain sight on the Subject.

According to Officer A, as officers discharged their pistols, the Subject backed into the corner of the alcove. Officer A stated that the Subject was upright, holding the shotgun in his hand, which was still pointed at him/her, but that his body started to slightly go down.

According to Officer A, he/she began to lower his/her profile as he/she continued toward the planter because the height of the planter was a little higher than waist level, and he/she was still exposed as the Subject continued to point the shotgun at him/her. Officer A stopped just to the right side of the planter and lowered his/her right knee into a crouched position.

Officer A quickly assessed that the Subject was not going down and still had the shotgun pointed at him/her. Officer A aimed his/her service pistol at the Subject's chest area and discharged a second volley of three to four shots at the Subject, with his/her last shot aimed at the Subject's head, from a distance of approximately 30 feet. Regarding his/her decision to take a head shot, Officer A stated, *"I had already shot. He wasn't going down. I didn't know if, you know, if he had some sort of ballistic, you know, vest. Because like I said, his body - - the reaction that I got was him going - - his body going backwards, but he wasn't - - he didn't fall."* The investigation determined that Officer A fired a total of seven rounds from an increasing distance of approximately 25 to 30 feet.

According to Officer B, when he/she regained sight of the Subject, he/she observed the Subject in a seated position with his back against the north wall and his legs extended in front of him. The Subject's backpack was on his lap as his left hand was holding the shotgun, which was between his left leg and the building.

According to Officer B, the Subject looked up at Officer A and began to raise his left shoulder and hand while holding the shotgun. Officer B believed that the Subject still had the capability to, and intended to, shoot at Officer A. Officer B believed that the

Subject raised the shotgun up approximately one or two inches. In order to stop the Subject from firing at Officer A, Officer B aimed his/her service pistol at the Subject's center body mass, near his/her right shoulder, and discharged approximately two to three additional rounds. Officer B stated, *"I fired slower and I was able to - - to make a better assessment and he was still actively - - in my opinion, he was actively looking for Officer A's location to bring that shotgun towards Officer A."* According to Officer B, after Officer B discharged his/her last round, the Subject's head, *"flopped over to the right and forward,"* and his left hand had also *"slumped"* behind his left leg. The investigation determined that Officer B fired a total of 7 shots from a decreasing distance of 30 to 25 feet.

A video obtained from an adjacent business captured Officer B's positioning at the time of the OIS. Due to the quality of the video and the distance of the camera, investigators were unable to discern Officer B as he/she discharged his/her pistol. However, the video captured Officer B positioned north of the alcove, south of a concrete planter. Although Officer B was captured in the video during the time of the OIS, the video did not capture Officer A's or the Subject's position.

According to Officers A and B, neither officer was able to see the other officer discharge their pistol; however, they were aware of their proximity to one another and could hear their partner's shots.

After his/her second volley of shots, Officer A assessed and observed the Subject, who was seated against the wall and now appeared non-responsive. The Subject's legs were on the ground, extended out in front of him, and his left hand was on the shotgun, which was on the ground alongside his left leg.

Officers A and B placed their pistols in low ready positions as Officer A moved to his/her left, to Officer B's location, and verified that neither officer was injured.

Officer A broadcast an "officer needs help, shots fired" call over TSD frequency.

Officer A advised Officer B that he/she needed to conduct a tactical reload of his/her pistol. As Officer B covered the Subject, Officer A reloaded with a full magazine.

According to Officer A, he/she then made a phone call to Sergeant A to inform him/her that he/she located the Subject and was involved in an OIS with him. Sergeant A, having been advised telephonically by Officer A that an OIS occurred, responded to the scene.

Officers C and D arrived at scene. Officer C stopped their police vehicle, in a southeast direction, behind, and slightly north of, Officers A and B. Officer C deployed his/her shotgun and assumed the role as the designated cover officer (DCO), eventually taking a position of cover behind the planter, south of the alcove. As officers continued to

order the Subject to show his hands, the Subject remained unresponsive and did not move.

Numerous Central Patrol Division officers responded to the incident to assist the officers.

Sergeant B was the first supervisor to respond. Sergeant C arrived approximately one minute later.

Upon arrival, Sergeant B began to inquire which officers may have been involved in an OIS, at which time Officer B confirmed that he/she and Officer A were involved. Sergeant B directed Officers A and B away from their positions and requested non-involved officers to assume Officers A and B's positions. Sergeant B's BWV captured Officer B informing him/her that the Subject was armed with a shotgun in his left hand and was not yet in custody.

One of the responding officers requested an ambulance, using the TSD frequency.

Sergeant D also responded and observed Officers A and B standing off to the side. Sergeant D realized other sergeants were already at scene and, upon learning that Officers A and B were involved in the OIS, separated and monitored those officers.

According to Sergeant C, upon arrival he/she assessed the scene and took over the tactical portion of the incident. Sergeant C identified that the officers who were covering the Subject, standing at the curb line, had no cover. Sergeant C directed them to positions of cover behind Officers C and Ds' police vehicle.

Meanwhile, Officer C formulated a plan with Sergeant C to get an arrest team with a tactical shield to approach to take the Subject into custody. Officer C had taken a position of cover behind the planter just south of the alcove. The contact team formed up behind the same planter and consisted of Officers C, D, E, F, G, H, and I. The team then approached the Subject and took him into custody.

A Los Angeles Fire Department (LAFD) Rescue Ambulance (RA) responded and rendered emergency medical aid. The Subject did not respond to medical treatment and was declared dead at the scene.

Los Angeles Board of Police Commissioners' Findings

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

A. Tactics

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

B. Drawing/Exhibiting

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

C. Lethal Use of Force

The BOPC found Officers A and B's lethal use of force to be In 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. It is also recognized 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 value 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 and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers." (Use of Force Policy, Los Angeles Police Department Manual.)

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:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where the suspect's actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a subject 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 does not require that an officer compromise his 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. (Tactical De-Escalation Techniques, October 2016.)

A. Tactics

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

1. Tactical Planning/Communication

In this case, Officers A and B did not completely develop or communicate a tactical plan, either with each other or with the inclusion of other officers. The BOPC determined there was sufficient time prior to locating the Subject to formulate a plan and that this lack of communication and planning put the officers at a distinct tactical disadvantage. The BOPC noted that both Officers A and B are experienced officers with experience in conducting investigations. Officer A was well aware of the danger to public safety that the Subject posed, having been involved in the attempts to

apprehend the Subject. Officer B believed that upon locating the Subject, Officer A would coordinate with additional personnel to take the Subject into custody. Officer B did not indicate he/she was aware of what that plan would be, nor what his/her role would have been. According to Officer A, he/she advised Officer B that upon locating the Subject, the officers would request a backup to take the Subject into custody. The BOPC noted that both Officers A and B did not have a clear plan developed, nor an understanding of their roles in the event they located the Subject. Additionally, the officers did not discuss contact and cover roles.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's actions of not formulating a tactical plan, not assessing the Subject's threat level, not redeploying, and not utilizing time to request and wait for additional resources constituted a substantial deviation, without justification, from approved Department tactical training.

2. Code Six/Foot Pursuit Broadcast

Both Officers A and B did not advise Communications Division (CD) of their location when they observed and subsequently followed the Subject onto the platform. Additionally, Officer B did not broadcast that they were in foot pursuit of the Subject, nor did he/she provide critical information about the direction of the foot pursuit and the crime the Subject was wanted for.

The purpose of officers broadcasting a Code Six location is to advise CD and other officers in the area of their location and the nature of the field investigation, in case the incident should escalate and necessitate the response of additional personnel. Vehicle and pedestrian stops can be dangerous, as the identity and actions of a person stopped is often unknown and, as in this case, their actions can be unpredictable.

As a general concept, there is an expectation for the primary officer in a foot pursuit to focus on the suspect, rather than coordinating resources, and for the secondary officer in a foot pursuit to assume the responsibility for such broadcasts. The concept of effective communication via a radio broadcast cannot be compromised.

In this case, the officers were Code Six at a fixed post for their assignment at TSD. However, their Code Six location changed when the officers began following the Subject as they made an attempt to identify and detain him. Neither Officer A nor Officer B updated CD of their Code Six location or created a new Code Six incident. The BOPC noted that the officers had sufficient time to broadcast their Code Six location, as well as any other relevant information, prior to making contact with the Subject and initiating their investigation. Additionally, the officers left the area of their original Code Six location and went into foot pursuit of the Subject, and no broadcast of their foot pursuit was made. An accurate Code Six location and the broadcast of a foot pursuit are both important aspects of maintaining officer safety.

According to Officer B, because he/she was the secondary officer, it was his/her responsibility to broadcast the foot pursuit. During the foot pursuit, Officer B ran with his/her side-handle baton in his/her support hand. Officer B believed that he/she was unable to reach his/her handheld radio, which was also on his/her support side, to broadcast. Officer B did not transition the side-handle baton to his/her primary hand to enable him/her to use his/her handheld radio to broadcast. While holding the side-handle baton in the support side hand is not prohibited by Department policy, in this case, Officer B's decision to maintain the side-handle baton in his/her support hand limited his/her tactical options, specifically his/her ability to broadcast important information on his/her handheld radio.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's failure to broadcast an update of their Code Six location and the nature of their investigation, or to broadcast a new Code Six location when they decided to follow, and attempt to stop, the Subject, constituted a substantial deviation, without justification, from approved Department tactical training.

In addition, Officer B's failure to advise CD when they went in foot pursuit of the Subject was a substantial deviation, without justification, from approved Department tactical training.

3. Utilization of Cover

Officers A and B left their positions of cover while encountering an armed suspect.

The utilization of cover, coupled with distance, enables an officer to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options.

In this case, Officer A left his/her position of cover after the OIS and moved to Officer B's exposed position. The BOPC noted that, while at this position, Officer A conducted a tactical reload of his/her pistol and did not utilize any barricade cover, which required him/her to depend on Officer B to provide lethal force cover. Upon completion of the tactical reload, Officer A remained exposed, without the benefit of any cover, and completed a cellular phone call to Sergeant A informing him/her that Officer A had been involved in an OIS with the Subject.

Officer B placed him/herself behind a planter that provided him/her with limited cover in his/her first volley of rounds during the OIS. However, Officer B left his/her position of cover in order to maintain visual contact of the Subject and was subsequently exposed during his/her second volley of rounds. While not an ideal tactic, the decision by Officer B to leave cover was based on the tactical situation. The BOPC considered Officer B's actions to contain the Subject. The BOPC also considered the officers' need to continually assess the Subject's actions. The Subject was not contained inside of a structure, but rather was contained in an

exposed alcove. Officer B's position allowed him/her to maintain observation, and thus contain the Subject.

Based on the totality of the circumstances, the BOPC has determined that Officer A's decision to leave his/her position of cover was a substantial deviation, without justification, from approved Department tactical training.

In the case of Officer B, based on the totality of the circumstances, the BOPC determined that Officer B's decision to leave his/her position of cover was a substantial deviation, with justification, from approved Department tactical training.

Tactical Debrief

The above topics were to be discussed at the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and are intended to be flexible and incident specific, which requires that each incident be looked at objectively and that the tactics be evaluated based on the totality of the circumstances.

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

In conducting an objective assessment of this case, the BOPC determined that the tactics utilized by Officers A and B substantially, and unjustifiably, deviated from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

B. Drawing/Exhibiting

- According to Officer A, the Subject immediately brought his backpack forward, simultaneously stating, "*I'm going to shoot you. I'm going to kill you.*" The Subject then began working the zipper of the backpack. Officer A ordered the Subject to drop the backpack. Officer A feared for his/her safety and that of his/her partner. Officer A drew his/her service pistol because he/she believed that the Subject was going to pull something from within his backpack or person and shoot the officers.
- According to Officer B, he/she observed that the Subject swung his backpack in front of his body and reached inside with his right hand while cradling the bottom of the backpack with his left hand. Officer B heard the Subject state that he/she was going to shoot Officer A. Officer B believed that the Subject was arming himself. Fearful that the tactical situation was going to escalate to the use of deadly force, Officer B threw his/her side-handle baton into the planter and drew his/her service pistol.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B, while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officers A and B's drawing and exhibiting of a firearm to be In Policy.

C. Lethal Use of Force

- **Officer A** – seven rounds in two volleys, in an easterly direction from approximate increasing distance of 25 to 30 feet.

First Volley – Three to four rounds.

According to Officer A, the Subject removed the shotgun from his backpack and pointed it in his/her direction. The Subject held the shotgun at waist level and tracked Officer A's movement with the shotgun. Officer A believed the Subject's shotgun was going to go off any second. In fear for his/her life, Officer A fired three to four rounds from his/her service pistol as he/she moved southbound to cover behind a planter.

Second Volley – Three to four rounds.

According to Officer A, he/she moved to cover and crouched by the planter at knee level. Officer A observed the Subject moving backwards, but the Subject remained upright and did not fall or drop the shotgun. Officer A believed that the Subject was possibly wearing a ballistic vest. Officer A fired an additional three to four rounds from his/her service pistol to stop the Subject's deadly actions. Officer A assessed as he/she fired, firing his/her final round at the Subject's head.

- **Officer B** – seven rounds in two volleys, in an easterly direction from an approximate decreasing distance of 25 to 30 feet.

First Volley – Three to five rounds.

According to Officer B, the Subject began to pull the pistol grip of a sawed-off shotgun from out of his backpack. Officer B recalled he/she or Officer A stating, "Gun." Simultaneously, the Subject raised the backpack and pointed it at Officer A. Officer B was in fear that the Subject was going to fire the partially concealed shotgun from inside the backpack. To protect Officer A, and citizens in Officer A's background, from serious bodily injury or death, Officer B fired three to five rounds at the Subject from his/her service pistol.

Second Volley – Two to three rounds.

According to Officer B, he/she observed the Subject now in a seated position with his back resting against the north side of the alcove. The Subject held the backpack on his lap and held the shotgun with his left hand, while his legs were extended in front of him. The officers communicated with the Subject again. The Subject looked towards Officer A's position and began to bring the shotgun up again. Officer B fired an additional two to three rounds, more slowly, while assessing the Subject's actions. Officer B fired at the Subject to prevent him from firing at Officer A or any bystanders.

In this case, the BOPC conducted a thorough review of the investigation and considered several factors in evaluating the reasonableness of both officers' use of lethal force. The BOPC noted that this was a dynamic and rapidly unfolding incident. Both officers were forced to make a split-second decision to protect themselves and nearby citizens from the deadly threat of the Subject who was armed with a shotgun. Officer A perceived that the Subject was armed with a shotgun and was pointing it at him/her, posing a deadly threat. Officer B perceived that the Subject was going to discharge his shotgun at either Officer A or other citizens in the area, thus posing a deadly threat. Officer B observed the Subject look at Officer A and begin to raise his shotgun at Officer A, thus posing a deadly threat.

As such, based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officers A and B would reasonably believe that the Subject's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable. Therefore, the BOPC found Officers A and B's Use of Lethal Force to be In Policy, No Further Action.