

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

OFFICER-INVOLVED SHOOTING – 018-20

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

Outside City 5/3/20

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

Officer A 13 years, 9 months

Reason for Police Contact

Three sworn employees of the Los Angeles Police Department were off-duty and camping in the San Bernardino County desert. One employee, a police officer, pointed and discharged his/her pistol at another of the employees, also a police officer, striking him/her in the left shoulder.

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

Not applicable.

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 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 April 6, 2021.

Incident Summary

Sergeant A and Police Officers A and B had been friends for approximately nine years.

In the weeks preceding this incident, the three friends discussed a plan to drive to the desert with the intent to camp out for the night and engage in target practice with their various guns. According to Officer A, he/she suggested an area that he/she was familiar with and had been to for the purpose of shooting guns. This area of the desert was utilized for Off Highway Vehicle's (OHV) and was an area managed by the Bureau of Land Management (BLM).

According to the BLM website, the area does not restrict people from camping, enjoying recreational off-highway vehicles, or shooting weapons. Sergeant A, and Officers A and B believed the entire area was under the control of the BLM land and if they were following safe practices, they were not violating any laws. According to Sergeant A and Officer A, they checked the BLM website to verify the boundaries and restrictions of the BLM land.

The three agreed on a date and on Saturday, May 2, 2020, they loaded up their respective trucks. In the afternoon, Officer A drove to Sergeant A's residence to pick him/her up. They loaded Sergeant A's camping gear into Officer A's truck and drove to the desert. They arrived in the area and found it was very busy with other campers and off-highway vehicles.

In the later afternoon, after driving around the area looking for a suitable place to camp and safely discharge their weapons, they settled on a location. This location had minimal campers, provided a large mountain as the backdrop for their intended shooting practice, and was not crisscrossed with trails that any unsuspecting off-highway vehicles could access.

Prior to establishing camp, Officer A contacted a camper at the trailer immediately south of and closest to the area he/she wanted to set up camp. Officer A first verified the camper was not planning on shooting any weapons toward the mountain. Officer A then advised the camper he/she was planning on setting up camp north of him and that he/she would be firing weapons in a northerly direction toward the mountain. After establishing that this would not be a concern for the camper, Officer A drove approximately one quarter mile up the hill on a dirt trail to a suitable position to establish camp.

In the meantime, Officer B was driving him/herself to the desert in his/her own truck. Once in the desert and off the highway, he/she communicated with Sergeant A and Officer A through a two-way radio and via cellular text messages. They guided Officer B to their location, and he/she arrived at the camp site at in the early evening hours. When setting up the campsite, Officer A parked his/her truck facing south while Officer B parked perpendicular to the front bumper of Officer A's truck and facing west. This

created a L-shaped barrier to block the wind. The remainder of the camp was set-up in the interior of the protected area created by the trucks.

Sleeping arrangements were established, with Officer A setting up a cot along the driver's side of his/her truck. Officer B set up a similar cot along the passenger side of his/her truck, while Sergeant A set-up a small tent between the two cots with the opening facing to the east. A makeshift firepit, created with a collection of rocks, was situated northeast of Sergeant A's tent. A table with a grill and miscellaneous items, was set-up just east of the tent.

Shortly after his/her arrival, Officer B indicated that he/she wanted to begin shooting and used steel plates set-up toward the mountain by Officer A as targets. Officer A and Sergeant A joined Officer B in the target practice; however, they only fired a small number of rounds each. Officer A then began cooking hamburgers on the grill and had his/her first beer. With dinner served at approximately 2030 hours, the three campers sat down around the campfire, ate, and drank beer, while they talked and listened to music.

Throughout the night Officer A believed he/she drank four to six beers, while Officer B believed he/she drank four to five beers, and Sergeant A believed he/she drank approximately four beers. After dinner the three drank whiskey around the campfire, and according to Officer A, he/she believed he/she had approximately six ounces of whiskey in two three-ounce servings in a cup.

According to all three individuals, the conversation around the camp throughout the day and night was light and jovial. Neither Officer B nor Sergeant A saw any indication that any of them, especially Officer A, was upset or had been affected by personal events. In fact, Sergeant A and Officer B acknowledged that they each had known Officer A for more than nine years and both claimed he/she was acting as he/she always did – mild mannered and even-keeled. Although the three had been drinking, no one was showing any indication of being unusually drunk, acting in an irrational manner, or incapable of caring for themselves. According to both Sergeant A and Officer B, at approximately midnight, Officer A cooked a second round of food that they enjoyed around the campfire.

On Sunday, May 3, 2020, at approximately 0100 hours, Officer A, who was sitting around the campfire, announced he/she was going to urinate. According to Officer A, he/she stood up and walked approximately 30 to 40 feet beyond his/her truck to a bush and urinated onto the ground.

Shortly after Officer A walked away to urinate in the desert, he/she unholstered the pistol he/she was carrying on his/her hip, pointed it at Officer B, and shot him/her. The following is an account of the events that occurred from the perceptions of Sergeant A and Officer B, followed by that of Officer A:

According to Sergeant A and Officer B, they believed Officer A walked to the west, beyond his/her truck to urinate. Officer B, from his/her seat at the fire, looked to the west, in the direction Officer A had walked, and saw him/her facing west and believed he/she was urinating near a bush. Officer B then returned his/her attention to the fire. After a short period of time, Officer B again looked west and saw the silhouette of Officer A now facing south standing adjacent to the passenger side door of his/her (Officer A's) truck. Officer B could clearly see Officer A's silhouette from the light provided by the campfire, a lighted lantern in the camp, and the moonlight.

According to Officer B, Officer A appeared odd standing in that position. Officer B could not see any light from the interior truck light or the glow of a cell phone that Officer A could have been using and was unsure of what he/she was doing. Officer B said, "Hey dude. Why are you being so creepy?" Officer A did not respond.

Officer B disregarded Officer A, stood up, and walked toward Officer B's truck. Sergeant A, who was standing on the south side of his/her tent, between the tent and Officer B's truck, heard Officer B say, "Dude, what the [expletive] are you doing with the gun?"

According to Officer B, as he/she walked from the campfire toward his/her truck, Officer B saw that Officer A was still on the passenger side of his/her (Officer A's) truck but was now standing adjacent to the right rear tire facing east, toward the campfire. Officer B identified Officer A as holding a pistol in both hands with his/her arms extended over the truck bed, pointing the pistol between he/she and Sergeant A.

According to Officer B, Officer A stated, "Hey, get back guys. Get back. Just stay back." Officer B stated, "Hey, just put your gun away! Put your gun away!" According to Officer B, Officer A lowered his/her gun and returned to his/her previous position near the passenger side door facing south. Officer B ignored what had just occurred and believed he/she (Officer B) returned to the campfire.

Remembering he/she needed to get into his/her truck, Officer B again walked toward his/her truck. Looking west, Officer B saw that Officer A was again standing near the right rear tire of his/her truck facing east. Officer A was again holding his/her pistol in both hands with his/her arms extended over the truck bed and according to Officer B, was pointing his/her pistol directly at him/her (Officer B).

Sergeant A described seeing Officer A point the pistol at Officer B only one time. During that one time, he/she believed Officer A was pointing the pistol at Officer B, exclusively. During his/her interview, Sergeant A was asked if Officer A said anything while pointing the pistol at Officer B and according to Sergeant A, he/she could not recall if Officer A did or did not say anything.

According to Officer B, before he/she could verbally respond, Officer A fired three rounds at him/her; however, he/she only observed two distinct muzzle flashes. Officer

B believed it was the third round that struck him/her in his/her left shoulder near the clavicle and exited the rear of his/her shoulder.

According to Sergeant A, he/she observed two muzzle flashes and heard two gunshots. Sergeant A stepped forward to confront Officer A and said, "What the [expletive] are you doing? Hey, drop the [expletive] gun!" As Sergeant A approached the front of Officer A's truck, Officer A pointed the pistol at him/her. Sergeant A again said, "Drop the [expletive] gun!" According to Sergeant A and Officer B, Officer A stated in a threatening, uncharacteristic voice, "[Expletive] you!"

Officer B turned to run away and crashed into and over a small table near the rear of his/her truck. After falling to the ground, he/she got up and stated, "Hey, you [expletive] shot me bro. I love you. Why [expletive] you shoot me?" Sergeant A, in fear, retreated and joined Officer B toward the rear of his/her (Officer B's) truck. In his/her movements, Sergeant A turned off the lantern sitting on the table holding the grill. Neither Sergeant A nor Officer B could see Officer A and did not know his/her exact position. However, according to Officer B, Officer A was stating, "Just fall back guys."

Officer B retrieved a BB-gun with an attached light from inside of his/her truck. Using the attached light, he/she scanned the camp and the desert beyond Officer A's truck. Officer B spotted Officer A approximately 20 to 30 yards north of the camp. Officer B described Officer A as being in a kneeling position with his/her pistol in his/her hands, but according to Officer B, the pistol was not pointed at anything specific. At about this time, Officer B removed his/her pistol from a holster inside of his/her right front short pocket. However, due to the blood on his/her hands, Officer B was unable to securely hold the pistol and returned it to the holster in his/her pocket.

Officer B asked Sergeant A to help him/her find his/her truck keys that he/she had dropped at the time of the shooting. Officer B believed with Officer A 20 to 30 yards outside of the camp, he/she and Sergeant A could start the truck and drive away to get help. However, they were unable to find the keys. The two agreed to walk to one of the two nearby camps and ask for help. At this point Officer B walked south toward the closest camp. In the meantime, Sergeant A called out to Officer A and tried to establish some communication; however, he/she was unable to get any response from Officer A and ultimately, Sergeant A began walking down the mountain in a southeasterly direction.

As he/she moved away from the camp, Sergeant A texted Officer A's spouse to call Officer A and tell him/her to relax. Officer A's spouse immediately responded with, "Why? What happened?" Sergeant A replied by indicating that Officer A had shot Officer B. Immediately thereafter, Sergeant A heard a phone ringing in the distance, but believed it went unanswered.

At about this time, Officer B arrived at the camp located immediately to the south and approximately one third of a mile away. Officer B knocked on the camper and asked the occupant to call 911. After getting no response, Officer B began moving to the east

toward a second camp approximately one quarter of a mile away. Witnesses A and B answered the knocks on their trailer and Witness A called 911.

San Bernardino County dispatch received the call. Witness A reported that an unknown male was knocking on his trailer door reporting he/she had been shot. Deputies from the San Bernardino County Sheriff's Department as well as medical personnel were dispatched.

As Sergeant A traveled down the mountain, he/she encountered Officer A who stated, "Put your hands up! Identify yourself! Put your [expletive] hands up and identify yourself! Who are you?" Sergeant A stated, "Hey man. It's me. It's Sergeant A, dude. Hey!" and Officer A responded with, "I don't know who [expletive] you are!"

According to Sergeant A, Officer A was again speaking to him/her with a voice that was uncharacteristic of him/her. Fearing for his/her safety, Sergeant A decided to run away, zigzagging as he/she made his/her way through the desert.

The following is an account of the events that occurred from the perspective of Officer A after he/she walked away to urinate.

According to Officer A, he/she was approximately 30 to 40 feet west of his/her truck, facing south, urinating near a bush when he/she heard a threatening, unrecognizable voice. Officer A believed the voice was coming from approximately 90 feet away to the south; however, he/she could not see anything in the darkness. Although Officer A could not understand what was said, he/she did perceive what was said to be a threat. Officer A knew the voice was not from Sergeant A or Officer B and upon looking toward the camp, expecting to see his/her friends near the campfire, he/she became concerned when he/she did not see either Sergeant A or Officer B.

According to Officer A, he/she glanced back toward the direction of the voice and heard a single gunshot. Officer A immediately feared that he/she and his/her friends were being ambushed and that his/her friends had already taken out or killed, as he/she could not see them in the camp. Officer A took a knee and unholstered his/her pistol from the holster on his/her right hip. Officer A fired three shots in the direction of the voice and where he/she had heard the single gunshot come from. Although Officer A did not have a specific target, he/she believed he/she was being attacked and by discharging his/her pistol, he/she hoped to eliminate or deter that threat.

Officer A feared for his/her life and reverted to his/her military training. Officer A moved to his/her right approximately ten feet and got down to a prone position to avoid detection. From this position, he/she loudly yelled to Sergeant A and Officer B and looked toward the camp. Officer A could not see them, received no verbal response, and feared they had been "taken out" by assailants.

Officer A wanted to help his/her friends but believed there could be numerous assailants in the camp, and they would overwhelm him/her if he/she approached. Therefore,

according to Officer A, he/she believed his/her best move would be to continue to move up the hill and gain distance from the threat. Once safe, Officer A could use his/her cellular phone to call 911 and get help for his/her friends. Officer A then moved up the hill in a northwesterly direction.

According to Officer A, he/she had no recollection of having any contact with Sergeant A or Officer B after he/she walked out of the campsite to urinate. Officer A claimed he/she never pointed a pistol at Sergeant A or Officer B. Officer A also stated he/she did not shoot at Officer B.

Deputy A, assigned to the San Bernardino County Sheriff's Department, was dispatched to the location of the shooting. Deputy A immediately responded and upon arriving on scene, was met by Officer B. According to Deputy A, Officer B had dried blood on his/her face and torso, and he/she was using a shirt to apply pressure to a gunshot wound to his/her left shoulder.

According to Officer B, he/she identified him/herself as a police officer and was armed with a pistol in his/her right front pocket. Deputy A retrieved the pistol and secured it before interviewing Officer B. According to Deputy A, Officer B stated he/she was camping with his/her friends, Sergeant A and Officer A. Officer B stated they were drinking and enjoying their time camping, and there were no issues or concerns between the three friends until Officer A pointed a pistol at him/her and fired three rounds. Officer B was struck by one of those rounds in the left shoulder. Officer B also stated that Officer A was in the military, and he/she (Officer B) believed that Officer A was suffering from Posttraumatic Stress Disorder (PTSD).

Outside agency Sergeant B, assigned to the San Bernardino County Sheriff's Department, arrived on scene. Sergeant A was immediately followed by Deputy B. Deputy B retrieved his/her medical kit from his/her patrol vehicle and applied first aid to the through and through gunshot wound to Officer B's left shoulder.

At this time, Sergeant A walked out of the darkness with his/her hands raised over his/her head. Sergeant A verbally announced his/her presence as he/she walked toward the deputies. According to Deputy A, Sergeant A announced he/she was armed, and he/she complied as Deputy A retrieved the pistol from Sergeant A's pocket and secured it in his/her patrol vehicle. Sergeant A told Deputy A that there were no issues between him/her and his/her friends. Sergeant A also stated that Officer A shot Officer B.

A helicopter, piloted by Deputy C and his/her observer Deputy D, assigned to the San Bernardino County Sheriff's Department Emergency Operations Division Aviation Unit, arrived on scene. They located the campsite and began a systematic search of the campsite and surrounding area for Officer A. Deputy D utilized an infrared camera, night vision goggles, and a spotlight to determine the campsite was vacant.

The helicopter crew used the Public Address (PA) system to identify themselves and to ask Officer A to present him/herself. Deputies C and D spotted a light approximately one quarter mile south of the campsite and flew in that direction.

According to Officer A, the last thing he/she recalled was moving up the mountain in a northwesterly direction away from a threat. Officer A suddenly woke up, laying on his/her back, with his/her gun in his/her hand and recognized that a police helicopter was circling overhead. Officer A immediately felt relieved as he/she thought help was here to assist him/her and his/her friends.

Officer A intended to call 911 on his/her cellular phone to let them know where he/she was; however, as he/she reached for it, he/she realized it was missing along with his/her wallet and keys. According to Officer A, he/she stayed where he/she was until the helicopter light focused on him/her. From his/her supine position, Officer A waived his/her arms over his/her head to identify his/her position to the Air Unit.

Officer A was located lying in a supine position. According to Deputy D, Officer A was moving his/her legs and arms but was unresponsive to his/her requests over the PA system for Officer A to identify him/herself. The Air Unit broadcast that Officer A acknowledged their request and signaled in the affirmative that he/she was Officer A. An arrest team was established by the San Bernardino County Sheriff's Department.

The arrest team was directed by the Air Unit toward Officer A's location. According to Officer A, before the arrival of the arrest team, he/she set his/her gun down onto the ground. Officer A followed the verbal commands from the Air Unit and the deputies on the ground, and at their direction, he/she laid down in a prone position. Deputies approached Officer A and he/she was handcuffed without incident. According to Deputy A, Officer A spontaneously stated, "What's going on? I was being shot at."

Officer B was treated by a responding San Bernardino County Fire Department Rescue Ambulance and transported to Apple Valley Airport. Officer B was then airlifted to a nearby hospital and was treated for a single gunshot wound to his/her left shoulder. Investigators from the San Bernardino County Sheriff's Department Homicide Detail responded to the scene along with investigators from the Los Angeles Police Department's Force Investigation Division (FID).

The San Bernardino County Sheriff's Department Homicide Detail advised they would proceed as the primary investigative entity for the criminal investigation. Their investigators maintained investigative control of the crime scene until a search warrant was procured and their investigation, including the collection of evidentiary items, was complete.

Officer A was transported to the Victorville Police Station and booked for attempt murder, 664(A)/187 Penal Code (PC).

On May 3, 2020, at approximately 1845 hours, the crime scene was relinquished to FID investigators.

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 Officer A's tactics to warrant a finding of Administrative Disapproval.

B. Drawing and Exhibiting

The BOPC found Officer A's drawing and exhibiting of a firearm to be Out of 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. 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 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. 4, 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.

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.

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. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used,

unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

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.

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*. (Special Order No. 4, 2020, Policy on the Use of Force - Revised.)

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.)

A. Tactics

Tactical De-Escalation Techniques

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- **Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)**

Tactical de-escalation does not require that an officer compromise his 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 – Approximately two weeks prior to the incident, Officer A planned a trip to meet with Sergeant A and Officer B, where they would set up metal targets and practice firing their weapons. Additionally, the officers would camp at the location for a night. Officer A planned to cook dinner for Sergeant A and Officer B later in the evening. Officer A maintained a firearm holstered on his/her hip throughout his/her time at the campground as he/she cooked and later sat around their campfire.

The BOPC noted the purpose of the trip was for the officers to discharge their weapons, as made evident by Officer A ensuring he/she was camping in an area where no one else would be interrupted or placed in danger from discharging their firearms. The BOPC was critical of Officer A's decision to maintain his/her firearm holstered on his/her hip while knowing he/she was going to be consuming alcoholic beverages. Later in the evening, Officer A also began drinking liquor. The BOPC noted Officer A had numerous opportunities throughout the evening to secure his/her firearm in his/her vehicle prior to consuming alcoholic beverages.

Assessment – Officer A stated that he/she walked west, approximately 30 to 40 feet beyond his/her truck, and urinated. Officer A heard a threatening voice approximately 90 feet south of him/her. Officer A could not determine what the voice was saying to him/her but felt threatened. Officer A believed that because of this, he/she was being ambushed and Sergeant A and Officer B had been killed. Officer A drew his/her firearm from its holster on his/her hip and aimed in the direction of the voice. Officer A could not observe the source of the voice; however, Officer A discharged three rounds in the direction of the voice.

The BOPC noted Officer A stated during his/her interview with FID investigators that he/she was unable to determine what the voice was saying to him/her to make him/her feel threatened. Officer A had no clear, distinguishable target, and could not articulate what the threat was at the time. The BOPC noted Officer A's failure to assess the nature of what he/she perceived to be a threat, as well as his/her failure to assess his/her target, which led to Officer A striking Officer B in the shoulder when Officer A discharged his/her pistol. In doing so, Officer A's failure to assess led to violations of basic firearm safety rules and, in turn, Officer B being fired upon.

Time – There was no indication that Officer A utilized time to decrease the intensity of this incident. Based on the preponderance of the evidence, the BOPC determined that Officer A had a significant opportunity to use more time to determine his/her course of actions. Officer A was not under any threat of injury or harm and his/her actions escalated the incident.

Redeployment and/or Containment – There are no indications Officer A utilized redeployment or containment during this incident. Based on the preponderance of the evidence, the BOPC determined that the incident did not warrant Officer A to redeploy or contain the location as no threat to him/her existed.

Other Resources – There are no indications that Officer A utilized other resources during this incident. Based on a preponderance of the evidence, the BOPC determined that the incident did not warrant the use of additional resources as Officer A was not under any threat of harm.

Lines of Communication – Officer A stated that he/she heard what he/she perceived to be a threatening voice and stated he/she heard a gunshot, which came

from the direction of the voice. Officer A did not relay any information to Sergeant A or Officer B or warn them of the occurrence.

The circumstances of this incident were unique as it involved Officer A stating that he/she was responding to a perceived threat, while a preponderance of the evidence indicates that no threat existed. The BOPC considered Officer A's recollection of the incident and how it was in direct conflict with those of Sergeant A and Officer B. Sergeant A and Officer B reported that they did not hear a voice and did not hear a gunshot. The BOPC considered that while Officer A's recollection of the event was invalidated by Sergeant A and Officer B's recollections, Officer A's actions, were he/she to have encountered a threat as one that he/she perceived, would have still violated department policy. The BOPC determined that had Officer A utilized planning, assessment, time, redeployment, other resources, and better lines of communication, it would have allowed Officer A to avoid this circumstance altogether.

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

- 1. Off-Duty Tactics** (Substantial Deviation, without justification – Officer A)

In this circumstance, Officer A had consumed numerous beers and liquor despite having knowledge that there were numerous firearms nearby, as well as the pistol he /she had holstered on his/her hip. Officer A had opportunity to secure his/her pistol prior to consuming any alcoholic beverage. Approximately nine hours after the OIS occurred, a blood sample was collected, and Officer A was determined to still have alcohol in his/her system.

The BOPC considered Officer A's decision to remain with a holstered firearm while consuming beer and liquor. The BOPC noted Sergeant A and Officer B's statements about Officer A appearing to be intoxicated. Officer A had numerous opportunities where he/she could have secured his/her firearm prior to consuming alcohol. Officer A had stated he/she stopped participating in target practice while Officer B had continued into the night. The BOPC noted that officers should abstain from consuming alcohol while maintaining control of firearms and in this case, it was done so with disregard to safety.

In addition, the BOPC determined that Officer A's actions were in stark contrast with the Department's expectation of an officer. Officer A placed Sergeant A and Officer B's lives at risk by pointing his/her loaded firearm at both of them while he/she was intoxicated and ultimately firing at and striking Officer B who presented no threat and was unarmed.

Based on the totality of the circumstances, the BOPC determined that Officer A's actions were a substantial deviation, without justification, from approved Department tactical training.

2. Basic Firearm Safety Rules (Substantial Deviation, without justification – Officer A)

Officer A stated he/she heard a voice approximately ninety feet away as he/she urinated into a bush near his/her campsite. Officer A described his/her inability to see the source of the voice. Officer A believed the voice was threatening to him/her and had already killed Sergeant A and Officer B. In spite of Officer A's inability to see his/her target, which was the voice, Officer A stated that he/she drew his/her pistol and pointed at what he/she perceived to be the threat. Officer A pointed his/her pistol directly at Officer B and fired three times, striking Officer B.

Shortly after, Sergeant A attempted to de-escalate the situation and get Officer A to put his/her pistol away. However, Officer A then pointed his/her pistol at Sergeant A for unknown reasons.

The BOPC discussed Officer A's disregard for safety and of the firearm safety rules. Officer A was aware his/her firearm was loaded and had been firing it earlier in the evening as part of his/her target practice. The BOPC noted that Officer A had pointed his/her gun at Sergeant A and Officer B who posed no threat to him/her and were attempting to de-escalate Officer A's behavior. Additionally, the BOPC considered Officer A's inability to determine what the perceived voice was saying, that Officer A could not articulate what the threat was, and that Officer A did not explain how it could be perceived as a deadly threat. Officer A could not see anyone and only heard the voice, which he/she perceived as a threat and therefore could not acquire his/her sights on this threat. The BOPC also noted that Officer A was not sure of his/her target.

The BOPC was critical of Officer A's disregard for firearm safety, causing Sergeant A and Officer B to be placed in serious and deadly danger with Officer B ultimately being shot.

Based on the totality of the circumstances, the BOPC determined that Officer A's actions were a substantial deviation, without justification, from approved Department tactical training.

3. Intradepartmental Cooperation (Substantial Deviation, without justification – Officer A)

Officer A was found by the San Bernardino Sheriff's Department Air Unit and was lying on his/her back with his/her pistol in his/her hand. Officer A was ordered to identify him/herself and to comply with orders from the helicopter through the PA system. However, the FID investigation determined that, for approximately 15 minutes, Officer A did not comply with the deputies' orders.

The BOPC discussed the extensive delay in Officer A complying with commands from San Bernardino County Sherriff's deputies. Officer A stated that he/she awoke while on top of the mountain, to the sight of the police helicopter. Officer A stated he/she could not understand the commands given to him/her by the deputies in the Air Unit.

The BOPC noted the deputies gave Officer A several commands and requested that he/she confirm his/her identity. Officer A confirmed his/her identity after numerous requests but continued to hold his/her pistol and change it from one hand to another, causing deputies to believe Officer A was unsafe to approach. After many more commands to put his/her pistol down and away from him/herself, Officer A complied approximately 15 minutes later. The BOPC was critical of Officer A's actions as he/she did not display the Department's standard for cooperation with other law enforcement agencies. Officer A's delay in complying with the deputies' orders escalated the danger of the incident.

Based on the totality of the circumstances, the BOPC determined that Officer A's actions were a substantial deviation, without justification, from approved Department tactical training.

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

Each tactical incident also merits a comprehensive debriefing. In this case, there were areas identified 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 Officer A's actions were a substantial deviation, without justification, from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

B. Drawing and Exhibiting

- **Officer A**

According to Officer A, during the entirety of the trip he/she had his/her pistol holstered on his/her hip. After dinner, Officer A stood up from his/her chair, which had been situated around the campfire, and walked away to urinate. Officer A walked to a bush and urinated. Officer A heard a voice which "mumbled" out in front of him/her approximately "90 feet" away from a southern direction. Officer A could not observe anyone since it was dark and could not understand or recognize the voice but knew that the voice he/she had heard was not Sergeant A or Officer B's.

Officer A looked to his/her left where Sergeant A and Officer B had been standing next to the fire pit and did not observe them. Officer A thought it was odd that they were no longer there. Officer A perceived the voice as a “threatening gesture” and attempted to “squint” to see it but was unable to see anyone. Officer A looked forward again in a southern direction and then believed he heard a gunshot coming from that direction. Officer A believed the individual was utilizing a “suppressor” since he/she was unable to observe the muzzle flash of the gun. Officer A believed the voice was trying to draw him/her away, so he/she would not observe that Sergeant A and Officer B had been shot. Officer A immediately got down onto his/her knee and drew his/her pistol.

The BOPC conducted a thorough evaluation of the reasonableness of Officer A’s drawing and exhibiting of his/her pistol. The BOPC discussed Officer A’s account of the incident and noted it was in direct opposition to that of Sergeant A and Officer B’s recollection. Sergeant A and Officer B did not hear the voice that Officer A perceived as a threat and neither heard a gunshot, which Officer A stated he/she heard coming from the direction of the voice. Additionally, Officer A could not articulate what the voice said to cause Officer A to reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified. Officer A drew his/her pistol and pointed it at Sergeant A and Officer B even as they posed no threat to Officer A. Officer B was able to de-escalate the situation momentarily and asked Officer A to put his/her pistol away to which Officer A lowered his/her pistol. Moments later, Officer A brought his/her pistol back up and pointed it directly at Officer B. The BOPC determined it was clear that neither Officer B nor Sergeant A posed a threat to Officer A.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A would not reasonably believe there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officer A’s drawing and exhibiting of a firearm to be Out of Policy.

C. Lethal Use of Force

- **Officer A** – (pistol, one round)

Officer A stated that he/she believed that he/she discharged a total of three rounds, which was consistent with the post-OIS magazine count of Officer A’s pistol. Officer B believed he/she heard three rounds being fired at him/her by Officer A. Sergeant A observed and heard two gunshots, and two expended cartridge casings were recovered. Based on the investigation, FID investigators determined that a total of three rounds were discharged by Officer A.

According to Officer A, after perceiving the voice and hearing a gunshot fired in his/her direction, he/she got down onto his/her knee and discharged three rounds in a southerly direction. Officer A reverted to his/her "military training" and got up, and then conducted a "lateral bound" to his/her right to obtain cover. Officer A yelled out for Sergeant A and Officer B and looked in their last known direction. Officer A believed they were all getting "ambushed." Officer A believed the voice was someone who was trying to distract him/her during the ambush and believed that person already killed Sergeant A and Officer B. Officer A decided to keep moving and walked up the nearby mountain for higher ground until he/she could come up with a plan.

Officer A stated that he/she discharged his/her pistol at an unspecific target, which he/she perceived to be threat. The BOPC determined that Officer A's failure to assess the perceived threat and his/her inability to see his/her target made it evident that he/she therefore did not assess his/her background during the OIS. The BOPC also noted that Officer A in fact discharged his/her pistol at Officer B. It is evident that Officer A did not consider his/her background when he/she discharged his/her pistol at Officer B.

In this case, the BOPC conducted a thorough review of the incident. During their review, the BOPC took into consideration the circumstances of this incident. However, the BOPC noted that based on a preponderance of the evidence, it was evident that Officer A's perceptions did not align with evidence provided by FID detectives and was in opposition to that of Sergeant A and Officer B's statements. The BOPC noted that Officer A's rationale for firing at an unknown target for an unknown threat, placing Sergeant A and Officer B's lives in danger, was unreasonable as Sergeant A and Officer B posed no threat to Officer A.

Additionally, the BOPC noted Officer A discharged three rounds at Officer B. From his/her statements, Officer A indicated that he/she had the presence of mind to perceive a single shot fired from the direction of the voice. However, Officer A aimlessly discharged three rounds without assessing between any of his/her rounds. Officer A also stated he/she discharged all three rounds in the direction of the threat which he/she could not see. Officer A also discharged all three rounds in the direction of Officer B, striking Officer B once in the shoulder.

The BOPC was informed that Officer A may have been suffering from Post-Traumatic Stress Disorder and considered this information during its review of the incident. Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, would not believe the circumstances presented an imminent threat of death or serious bodily injury nor that the use of deadly force would be objectively reasonable or necessary.

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