

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

**OFFICER-INVOLVED SHOOTING – 020-19**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ()</b>	<b>Uniform-Yes (X) No ()</b>
Southeast	5/20/19		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Officer A	31 years, 2 months
Officer B	7 months

**Reason for Police Contact**

Uniformed officers conducted a traffic stop on a vehicle. During the stop, one of the officers observed a handgun in the vehicle. As the driver exited his vehicle, both officers believed he was armed with the handgun and an Officer-Involved Shooting (OIS) ensued.

<b>Subject(s)</b>	<b>Deceased ()</b>	<b>Wounded (X)</b>	<b>Non-Hit ()</b>
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Subject: Male, 29 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 suspect 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 April 21, 2020.

**Incident Summary**

Police Officer A was driving a marked black and white police vehicle, while Police Officer B was the passenger. It was Officer B's second week out of the police academy

and his/her fifth shift assigned with Officer A. According to the officers, at the start of their shift they had discussed tactics.

Both officers observed a Sports Utility Vehicle (SUV) fail to stop for a solid red traffic signal. Officer B attempted to use the Mobile Digital Computer (MDC) to run the license plate; however, he/she was unable to retrieve any information regarding the vehicle's registered owner. The Subject was driving the SUV and Witness A was in the front passenger seat.

The Subject negotiated a right turn and then another into an alley. The SUV pulled into the rear parking lot of a block of apartments and parked. Officer A did not activate the police vehicle's lights or sirens as he/she stopped the police vehicle at the entrance of the parking lot, directly behind the Subject's vehicle. According to Officer A, his/her intention with his/her vehicle positioning was to primarily keep the SUV from reversing, but also to stay in the alleyway so his/her police vehicle would be visible if assistance was needed. Neither officer broadcast their location and status (Code Six).

According to Officer A, based on the Subject's manner of driving, negotiating two quick turns, driving into the alley and then into the parking lot of the apartment complex, he/she believed the passengers of the SUV were going to exit the vehicle and run from the officers. Officer A directed his/her partner to quickly exit the police vehicle and activate his/her Body Worn Video (BWV). Officer A also activated his/her BWV and the police vehicle's Digital In-Car Video System (DICVS) as he/she exited.

Officer A approached the SUV on the driver's side while Officer B approached the passenger's side. Both the driver's and passenger's front windows were down. Officer A began his/her dialogue with the Subject regarding the reason for the traffic stop and noticed the Subject had his identification already in his hand. At the same time, Officer B was positioned near the front passenger door and used his/her flashlight to illuminate the inside of the SUV.

According to Officer B, he/she observed what he/she believed to be a grip of a pistol in the pocket of the driver's side door. Officer B directed the Subject to straighten out his left leg so he/she could get a better view of the object and positively identify it. As captured on BWV, the Subject became agitated with the request.

Officer B alerted his/her partner that he/she believed that there was a gun in the car. Both officers unholstered their pistols. According to Officer A, he/she unholstered his/her pistol with his/her right hand, and, due to the limited space between the Subject's vehicle and the wall, held it in a close contact position with his/her trigger finger along the frame. Officer B, who was still on the passenger side of the Subject's vehicle, unholstered his/her pistol with his/her right hand, held it with his/her trigger finger along the frame, and held his/her flashlight in his/her left hand.

As captured on Officer A's BWV, the Subject turned on the SUV, put the vehicle in reverse, and started to back up. The Subject turned to Officer A and asked him/her not

to shoot him. The Subject stopped the SUV and appeared to reach down with his right hand to shift the car into park. Officer A pointed his/her handgun at the Subject and told him not to reach for the gun. The Subject replied by stating that he didn't have a gun. Officer A responded by stating that if he (the Subject) didn't have a gun there was nothing to worry about. According to Officer A, his/her partner did not specify where the gun was, but Officer A formed the opinion that while the Subject was seated in the car, the gun was under his left leg. Officer A broadcast a request for back up.

Officer B's BWV captured the Subject as he sat in the vehicle with his hands up, stating that he didn't have a gun and that he was getting out of the car. Officer B, who was standing at the passenger door with his/her flashlight illuminating the interior of the SUV and holding his/her pistol at a low-ready position, told the Subject to stay in the car. The Subject reached with his left hand to the inside door handle and opened the door as he held his right hand in the air. Officer A communicated to his/her partner that the Subject was getting out of the car.

As the Subject opened the door, Officer A moved toward the rear of the SUV. At that time, Officer B was still illuminating the inside of the SUV and, according to Officer B, as the Subject quickly opened the door and exited the vehicle, he reached down with his left hand in the direction of where the gun was located in the door pocket. According to Officer B, when the Subject exited the vehicle, Officer B no longer saw the handle of the gun in the door pocket and yelled, "Partner, gun."

The following is an account of the Subject's actions that resulted in the officers discharging their weapons. This account is derived from the officers' BWV and statements regarding their perception of the events as the incident unfolded.

According to Officer A, as the Subject exited the vehicle, Officer A grabbed the Subject's left wrist with his/her left hand as he/she (Officer A) held his/her pistol in his/her right hand in a close contact position near his/her right hip. Officer A looked down into the Subject's SUV and saw what he/she described as a semiautomatic pistol on the driver's seat. Officer A felt the Subject tense up and attempt to pull away from him/her as the Subject reached down toward the pistol on the seat. According to Officer A, the pistol was no longer visible on the seat, and Officer A believed he/she observed the handle of the gun in the Subject's right hand as the Subject was turning his body to the left toward Officer A. Neither officers' BWV cameras captured a pistol resting on the driver's seat.

Officer A believed the Subject was turning the pistol toward him/her with the intention of shooting him/her. Officer A released the Subject's left wrist and pushed him away as Officer A stepped back to create space between himself/herself and the Subject. Officer A held his/her pistol in his/her right hand and quickly fired two rounds at the Subject from an approximate distance of three feet.

Officer A then assessed the situation and observed the Subject moving around his open door. Officer A's BWV depicted the Subject running along the north walkway of the

apartment building. According to Officer A, he/she believed the Subject still held the pistol in his right hand as the Subject was turning his body and the pistol toward Officer A. Officer A believed the Subject was preparing to shoot him/her and fired a third round.

Officer A believed the Subject had been struck by the gunfire; however, the Subject continued running toward the front of the apartment building.

According to Officer B, the Subject exited the vehicle and confronted Officer A on the driver's side. Officer B heard Officer A tell the Subject to turn around followed by one gunshot. Officer B believed the Subject was armed with the pistol and had shot his/her partner. The Subject immediately ran as several additional shots were fired.

According to Officer B, he/she was standing on the passenger side of the SUV as the Subject ran, holding what Officer B believed to be a pistol in his left hand. He/she further described the Subject holding his left arm bent at the elbow with his forearm across his body and parallel to the ground. According to Officer B, the Subject turned his body to the right; thereby, pointing the perceived pistol in Officer B's direction. Fearing the Subject was preparing to shoot him/her, Officer B fired three consecutive rounds at the Subject.

According to Witness A, the gun was not hers and she was not aware the Subject had the gun in the car. According to Witness A, after the Subject ran, she could see the black handle of the gun in the driver's door panel.

Immediately following the shots being fired, Officer A followed the Subject in order to ascertain his direction of travel. Simultaneously, Officer B walked around the front of the Subject's SUV, opened the driver's side door, and removed the pistol from the interior door pocket. Officer B secured the pistol in his/her right, rear pants pocket, and joined Officer A at the front of the property. Officer B informed Officer A that he/she had possession of the pistol.

Officer A requested a back-up unit, Air Unit, and supervisor. He/she then broadcast the Subject's description, direction of travel, and informed Communications Division (CD) that shots had been fired.

Officers A and B returned to the scene of the OIS, and Witness A was still seated in the front passenger seat of the SUV. Officer B handcuffed Witness A without incident and secured her in the back of their police vehicle.

Patrol units began responding to the vicinity as a perimeter was established. Sergeant A responded to the help call and was the first patrol supervisor at scene as he/she broadcast that he/she was Code-Six and declared himself/herself the Incident Commander (IC). Sergeant A located both involved officers in the rear alley and confirmed they had been involved in an OIS. Sergeant A directed Officer B to turn off

his/her BWV and took custody of the camera prior to obtaining his/her Public Safety Statement (PSS).

Sergeant B responded to the scene and was assigned by Sergeant A to monitor Officer A. Sergeant B took possession of Officer A's BWV camera and obtained his/her PSS.

Police Officers C, D, E, and F responded to the help call and were positioned on the perimeter. Officer D saw the Subject running, unholstered his/her pistol, held it in a low-ready position and ordered the Subject to stop and put his hands up. Officer D utilized a parked vehicle as cover as the Subject stopped and laid on the ground in a prone position. Officer C approached the Subject's left side, grabbed his left hand, and completed the handcuffing process with the assistance of Officer F.

Officers notified CD that the Subject was in custody and a Rescue Ambulance (RA) was requested for the Subject, who was suffering from gunshot wounds.

While waiting for the RA, Officer C's BWV depicted the Subject stating that he got shot by the police for running; he further stated that he had left the gun in the car.

Sergeant B transported Officer A to the Subject's location for a field show-up. The Subject was positively identified by Officer A.

Back at the initial scene, Detective A donned protective gloves and physically recovered the Subject's pistol from Officer B's right, rear pants pocket. The pistol was loaded with one live round in the firing chamber and two live rounds in the seated magazine.

### **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 and Officer B's tactics to warrant a Tactical Debrief.

#### **B. Drawing and Exhibiting**

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

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

The BOPC found Officer 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), 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:

**Planning** – Officers A and B had worked together four times prior to this incident. Officer B had been assigned for approximately two weeks to Southeast Patrol Division after completing his/her academy training. Officers A and B discussed basic tactical concepts including the responsibilities of the contact officer, the cover officer, pedestrian stops, and vehicle stop tactics. During the vehicle stop, Officer A initiated contact with the Subject while Officer B remained alert as the cover officer. The officers would have benefitted from a more specific plan to handle the two occupants inside of the SUV. Other than basic roles of contact and cover officer, no additional planning was discussed as Officers A and B were entering the alley. Officer A directed incoming resources to locations for containment on a perimeter.

**Assessment** – Officers A and B's first assessment began when they observed the SUV make a right turn without stopping at the marked limit line at a red tri-light, in violation of CVC 21453(a) - failure to stop at a red light. As the officers attempted to close the distance and conduct a license plate query, prior to conducting a traffic stop, they observed that the SUV had paper plates and were unable to complete their query. The SUV made two rapid right turns and pulled into the rear parking

area of an apartment complex. Officer A's assessment was that the occupants might flee into the residential building and directed Officer B to get out of the police vehicle. Both officers continued to assess the incident as they engaged in their investigation of the Subject and Witness A. As Officer A verified documentation provided by the Subject, Officer B observed the handle of a firearm in the driver's side door pocket as he/she visually cleared the inside of the SUV. The Subject later exited the SUV, became involved in an OIS with Officer A, and then fled from the location. Believing the Subject was still armed with a firearm when fleeing, Officer A was concerned with locating the Subject due to the danger to public safety. Officer B heard a gunshot, and in his/her assessment, believed Officer A had been shot after having seen the Subject reaching in the vicinity of the door containing the firearm and prior to exiting the SUV. After the Subject fled on foot, Officer B responded to the driver's side of the SUV to assess if the firearm had been dropped or remained in the SUV. Officer B subsequently located and recovered a firearm inside of the SUV.

Responding Officers C and D located the Subject, who was attempting to flee on foot from the vicinity. The officers assessed the Subject's actions and used appropriate tactics to take the Subject into custody without further incident.

**Time** – Upon making contact with the occupants in the SUV, Officer A took time to communicate with the Subject and Witness A; however, as the Subject became agitated, the situation escalated. The Subject escalated the incident through his increasingly argumentative, agitated, and aggressive behavior by then placing the SUV into reverse and attempting to flee from the location, significantly reducing the time Officers A and B had to react. Officer A requested additional resources to afford them more options. The Subject exited the SUV and faced Officer A as Officer B warned Officer A that there was a firearm present. Believing the Subject was armed and posing a deadly threat, Officer A discharged his/her service pistol. The Subject escalated the incident quickly and without warning, reducing the officers' ability to respond and limiting Officer A and B's tactical options. While the Subject initiated his exiting of the SUV, which resulted in the reduction of time for Officers A and B to react, it would have been preferable that the officers had taken greater control of the Subject, such as trying to keep him in the SUV, which may have allowed them more time to control the incident.

**Redeployment and/or Containment** – Officer B communicated his/her observation of a firearm to Officer A and as they drew their service pistols, the Subject turned the SUV ignition on and began reversing the SUV. The Subject's moving of the SUV caused the officers to be positioned toward the front of the SUV. Officers A and B could see the Subject's hands, and Officer A made the decision not to re-deploy to a different position of cover because Officer A believed it would provide the Subject time to arm himself and place the officers at a tactical disadvantage. The Subject stopped the SUV, placed the vehicle into park and turned off the ignition, but proceeded to exit the SUV by opening the driver's side door. Officer A stepped away from the Subject to give Officer A some space between him/herself and the

Subject. As the Subject fled from the location, Officer A attempted to keep a visual of the Subject and requested units for containment and a perimeter. In this case, the officers may have benefitted from re-deploying to a position of cover from the SUV and transitioning to High Risk Vehicle tactics, such as redeploying behind the police vehicle's ballistic door panels, which would have afforded them additional distance as well as possible cover.

**Other Resources** – Officer A broadcast a request for a back-up unit after Officer B identified that there was a firearm inside of the SUV and the Subject became uncooperative. This broadcast caused nearby units, a police Air Unit, and supervisors to respond to the location. After the OIS occurred, Officer A upgraded his/her request to a help call, causing neighboring divisions to respond, as well as a night watch detective to assist with the handling of evidence at the scene. Some of the additional officers who responded located the Subject and took him into custody. Medical treatment was requested for the Subject upon his arrest and LAFD responded to render immediate emergency medical aid.

**Lines of Communication** – Officers A and B communicated their observations of the SUV's traffic violation to each other and their intention to stop the vehicle. Neither Officer A nor B broadcast their Code Six location to CD. Officer A clearly and calmly opened up a dialogue with the Subject, while Officer B communicated his/her observation of the firearm in the SUV. Officer A warned the Subject to not back into the police vehicle, to turn off the SUV's ignition, and not to reach for anything. Officer A broadcast a request for a back-up unit for an armed Subject and then upgraded his/her request to a help call after the OIS and the Subject had fled. Officer A broadcast the Subject's description, direction of travel, and that shots had been fired. Officer A directed incoming resources into areas for containment. Officer B advised Officer A that he/she had recovered a firearm from the SUV. Officer B directed Witness A to exit the SUV and handcuffed her. While Officers A and B established lines of communication with both the Subject and Witness A, they would have benefitted from broadcasting their location to other personnel in the area.

The BOPC determined that Officers A and B attempted to de-escalate this incident involving the Subject through continuous verbalization during the incident; however, the Subject's agitated demeanor, attempt to flee in the SUV, and insistence in exiting the vehicle had rapidly escalated the situation for Officers A and B. The officers' available time was reduced by the escalating and persistent threat the Subject presented to them.

During a review of the incident, the following Debriefing topics were noted:

1. **Code Six** (Substantial Deviation – Officer A, Substantial Deviation with justification – Officer B)

Officers A and B did not advise CD of their Code Six location when they conducted a traffic stop on the SUV occupied by the Subject and Witness A.

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

In this case, the officers had sufficient time to broadcast their Code Six location, as well as other relevant information, including the description of the SUV, prior to approaching the SUV and initiating contact. There was no initial exigency that would have prevented the officers from having sufficient time to notify CD of their Code Six location. The BOPC would have preferred for Officer B to have broadcast their Code Six location just prior to exiting the police vehicle or alternatively for Officer A to broadcast the Code Six location once the officers had stopped their vehicle.

Based on the totality of the circumstances, the BOPC determined that Officer A, despite having the time and opportunity to do so, and having had thorough knowledge of the terrain and area as a senior officer, failed to notify CD of the officers' location or advise Officer B to do so, resulting in a substantial deviation, without justification, from approved Department tactical training.

The BOPC considered Officer B's probationary status, two weeks in the field, his/her lack of knowledge of the area, having worked only four days with Officer A, and that Officer B was under the guidance and direction of a highly tenured training officer. Officer B believed Officer A placed them Code Six, however, he/she did not confirm this with Officer A. The BOPC determined, that Officer B's failure to notify CD of their location, was a substantial deviation, with justification, from approved Department tactical training.

## **2. Tactical Vehicle Deployment (Substantial Deviation – Officer A)**

Officer A stopped the police vehicle perpendicular to and behind the SUV.

When conducting a vehicle stop, it is critical to properly position the police vehicle in order to provide officers a tactical advantage afforded by the vehicle itself and its equipment.

Officer A placed himself/herself and his/her partner at a significant tactical disadvantage by positioning the police vehicle behind the SUV in a perpendicular formation. Additionally, Officer A did not activate any emergency lights, overhead lights, or spotlights. However, even if Officer A had done so, the positioning of the police vehicle would have limited the effectiveness of the police vehicle's illumination devices. Officer A indicated he/she was conducting a traffic

stop, and in this case, neither the Subject nor Witness A exited the SUV or made any initial movements that prevented Officer A from taking the time afforded to him/her to place the police vehicle in the most advantageous tactical position.

In this case, the BOPC would have preferred that Officer A had placed his/her police vehicle in a more offset position and facing towards the rear of the SUV. Positioning the police vehicle more effectively, as well as activating the police vehicle's emergency lights, would have allowed the use of the police vehicle doors as cover. It would have also allowed the police vehicle's illumination devices to be utilized to their full capabilities, thus increasing the visibility inside of the SUV and assessment of potential hazards.

Based upon the totality of the circumstances, the BOPC determined that Officer A's positioning of the police vehicle was a substantial deviation, without justification, from approved Department tactical training.

### **3. Vehicle Stop Tactics (Substantial Deviation – Officer A)**

When handed the Subject's identification and vehicle paperwork, Officer A began to immediately inspect the paperwork at the driver's side window rather than re-deploying to his/her police vehicle or another source of cover, increasing Officer A's physical vulnerability and dividing Officer A's attention.

Officer A placed himself/herself at a tactical disadvantage by inspecting the Subject's identification and documentation while standing at the driver's side window. By standing and inspecting the documentation in that position, Officer A's attention was alternately focused among the Subject, Witness A, and the documents. This potentially exposed Officer A to the actions of either the Subject or Witness A. The Subject was initially cooperative, which afforded Officer A time to return to his/her police vehicle and verify the information provided to him/her.

In this case, the BOPC would have preferred that Officer A take the Subject's documentation to the cover provided by the police vehicle in accordance with Department training and tactics. By doing so, Officer A would have increased his/her distance to the SUV and afforded himself/herself some cover, allowing additional time to respond to any actions or threats presented by either the Subject or Witness A.

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

- The BOPC also considered the following:
  - **Initiating Physical Contact While Holding a Service Pistol** – The investigation revealed that Officer A had his/her service pistol drawn when the Subject exited the driver's side door. Officer A used his/her left hand to grasp the Subject's left hand. Officer A was reminded that initiating physical contact with a Subject, while holding a service pistol may inhibit an officer's ability to utilize other force options or to de-escalate. There is also an increased risk the Subject could gain control of the service pistol.
  - **Running Past an Unsearched/Occupied Vehicle** – The investigation revealed that Officers A and B moved past the SUV while following the Subject in containment mode. The SUV had not been searched and Witness A remained inside seated in the passenger seat. Officer B did locate and secure the firearm he/she had initially observed in the driver's side pocket door; however, Witness A was still left unattended and unsecured in the passenger seat of the vehicle. In response to the Subject fleeing and believing that the Subject remained armed, Officers A and B followed the Subject to maintain visual contact. Officers A and B are reminded of the dangers of leaving additional unsearched subjects inside of unsearched vehicles.
  - **Separation** – When Officer A began following the Subject on foot after the OIS and Officer B moved around the front of the SUV and recovered the firearm from the driver's side door pocket, both Officers A and B momentarily were out of line of sight of each other. As soon as Officer B moved around to the front of the SUV, he/she was within line of sight of Officer A. Officers are reminded that separation can limit an officer's ability to effectively communicate or render immediate aid to one another.
  - **Situational Awareness** – When Officers A and B conducted the traffic stop, there was another vehicle, with the door ajar, parked to the right of the SUV with an occupant in the driver's seat. Officer B approached the passenger side of the SUV and advised the driver of the adjacent vehicle to stay in her vehicle. A short time later, the driver of the adjacent vehicle advised Officer B she would be exiting her vehicle at which time, Officer B moved out of the way and allowed her to exit. Officer B was in a confined space between the two vehicles and did not communicate to Officer A that there was a potential tactical issue presented by the driver in the adjacent vehicle. Additionally, Officer B did not communicate to Officer A that the driver in the adjacent vehicle was exiting and would be coming around and from behind Officer A. Officers B is reminded to be cognizant of his/her surroundings and to communicate possible tactical concerns to his/her partner, which is vital in the ability to react and respond to threats that may arise during a tactical encounter.
  - **Tactical Communication** – Neither Officer A nor Officer B communicated or verified with each other whether they were Code Six. Additionally, once Officer B

advised his/her partner there was a firearm in the SUV, neither officer communicated to each other what the best course of action should be. Officer B also did not advise Officer A of the location where he/she had observed the firearm inside of the SUV. Once the OIS occurred, Officer A proceeded to follow the Subject without communicating to Officer B. Officers A and B are reminded that operational success is based on the ability of officers to effectively communicate during critical incidents. When faced with a tactical incident, overall safety is improved by an officer's ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

- **Preservation of Evidence** – After the OIS, Officer B moved to the driver's side door of the SUV, located the firearm in the driver's side door pocket, and secured it inside his/her right rear pants pocket. In this circumstance, Officer B recovered the Subject's firearm while Officer A followed the Subject and while Witness A was still being seated inside of the SUV. Officer B made the decision to locate and secure the firearm and then follow his/her partner. In this case, the rapid escalation of the incident was a factor in the immediate securing of the firearm. However, to enhance future performance, the officers are reminded that whenever tactically feasible, it is preferable to have an uninvolved officer guard evidence and leave it undisturbed until FID investigators can properly document and preserve the scene. If evidence must be moved, officers should don appropriate personal protective equipment, such as latex gloves, to minimize altering or contaminating the evidence.

These topics are 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 intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

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

Additionally, the BOPC determined, that Officer B's failure to ensure he/she and Officer A were Code Six was a substantial deviation, with justification, from Department policy, due to Officer B's minimal field time as a probationary police officer, thus requiring a finding of Tactical Debrief.

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

## **B. Drawing and Exhibiting**

- **Officer A**

According to Officer A, as he/she was conversing with the Subject, who provided Officer A with his identification and vehicle paperwork, Officer A heard his/her partner order the Subject to straighten his leg. Officer A then focused on the Subject and the Subject's interaction with Officer B. Officer A observed that the Subject had become defensive and talked back to Officer B. As the Subject argued back and forth with Officer B, Officer B alerted Officer A to a firearm in the Subject's vehicle. Officer A believed the Subject had the firearm under his left leg based on Officer B's interaction with the Subject. Officer A immediately unholstered his/her service pistol.

- **Officer B**

According to Officer B, from the beginning of their traffic stop, the Subject was looking back and forth at Officer A and Officer B and became very agitated and defensive as Officer B looked inside the vehicle with his/her flashlight. Officer B believed he/she observed the handle of a firearm in the driver's side door pocket and focused on that area of the vehicle. Officer B asked the Subject to move his left leg so Officer B could get a better viewing angle of the door. The Subject was uncooperative but did move his leg eventually, and by doing so, the Subject's leg hit the door, which pushed the firearm, allowing Officer B to positively identify there was a firearm. Officer B communicated to his/her partner that there was a gun in the vehicle. Officers B immediately unholstered his/her service pistol.

The BOPC conducted a thorough review and evaluation of the reasonableness of Officer A's drawing and exhibiting of a firearm. The BOPC noted that Officer A drew his/her service pistol after Officer B advised him/her that there was a firearm in the SUV and as the Subject began to reverse the SUV. Officer A immediately ordered the Subject to stop and put his hands up. Officer A, believing that the firearm was in arm's reach of the Subject and the Subject's immediate attempt to flee and escalate the encounter, led to Officer A's reasonable belief that the situation could escalate to the point of deadly force.

The BOPC noted that Officer B was the cover officer and was in the process of clearing the passenger compartment of the Subject's vehicle with his/her flashlight when he/she observed the handle of a firearm in the driver's side door pocket. As Officer B attempted to get the Subject to move his leg, the Subject became agitated and verbally argumentative. When Officer B confirmed that there was a firearm inside of the SUV, he/she communicated that information to Officer A. The Subject began to reverse his vehicle in an attempt to flee, as Officer B drew his/her service pistol and ordered the Subject to stop. Officer B, based on the fact that he/she observed a firearm within arm's reach of the Subject, had a reasonable belief that

the tactical situation could escalate to the point where deadly force may be justified, and Officer B 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 Officer A and B's drawing and exhibiting of a firearm to be In Policy.

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

- **Officer A** - (pistol, 3 rounds).

#### **Volley One – Two rounds.**

According to Officer A, he/she grabbed the Subject's left wrist with his/her left hand and Officer A held his/her service pistol in his/her right hand, in a close contact position, near his/her right hip. Officer A observed and described a firearm sitting on the driver's seat. Officer A felt the Subject tense up and attempt to pull away. Officer A was unable to see the firearm on the driver's side seat that Officer A had previously observed. Officer A then observed the handle of the firearm in the Subject's right hand as the Subject turned his body to his left towards Officer A. Officer A believed the Subject was turning towards him/her to point the firearm at Officer A and shoot him/her. Officer A believed that if he/she did not react to the Subject's movements and protect himself/herself, he/she would be shot. Officer A responded by discharging his/her service pistol and firing two rounds.

#### **Volley Two – One round.**

According to Officer A, as the Subject fled on foot down the walkway, the Subject maneuvered around the SUV's open vehicle door. Officer A stated he/she observed the Subject turning towards him/her again, believed there was a firearm in the Subject's right hand, and believed the Subject was still coming up to shoot at Officer A. Officer A responded by firing a third round.

The BOPC conducted a thorough review and analysis of the reasonableness of Officer A's use of lethal force and considered the details of the officers' encounter with the Subject and Witness A. This included the escalation of the Subject's actions as he attempted to flee once Officer B notified Officer A about his/her observation of a firearm inside the SUV.

The BOPC noted that the Subject was initially cooperative with the officers until Officer B began to focus in on the driver's side door of the SUV. The Subject began to become verbally agitated and did not comply with Officer B when asked to move

his left leg. The Subject then immediately attempted to reverse the SUV and flee when Officer B communicated his/her observation that there was a firearm in the vehicle. Officer B's observation, in conjunction with the Subject reversing the vehicle, led to both officers drawing their service pistols. The Subject then stated that he was getting out of the car, to which Officer B advised the Subject to remain inside of the SUV. The Subject continued to disregard Officer B's directions.

The BOPC noted that Officer A believed that he/she had observed a firearm on the driver's side seat and described the weapon. The BOPC noted that there was no physical or video evidence that corroborated Officer A's observation. However, the BOPC considered that Officer B did not communicate the specific location of the firearm inside of the SUV to Officer A. The BOPC noted that Officer A believed the firearm was under the Subject's left leg based on Officer B's flashlight being pointed at the Subject's legs, as well as Officer B asking the Subject to move his left leg in order to get a better view of the driver's side door pocket.

The BOPC noted that Officer A believed the firearm was under the Subject's left leg when the Subject exited the vehicle. According to Officer A, he/she clasped the Subject's left arm, and as the Subject exited the SUV, Officer A observed a firearm on the seat. Officer A observed the Subject then reach down and at that point, Officer A noticed that the firearm was no longer on the seat. Officer A further stated that he/she then observed the back end of a firearm in the Subject's right hand and believed that the Subject had armed himself as he exited the SUV. This happened simultaneously as Officer A gripped the Subject's left wrist with his/her left hand. As the Subject broke free from Officer A's grasp, the Subject turned his body to his left which, according to Officer A, led Officer A to believe the Subject was turning with a firearm held in the Subject's right hand with the intention of shooting him/her. In response to the perceived deadly threat that the Subject presented, Officer A pushed the Subject forward in order to gain some distance and fired two rounds from a close contact position. Officer A stated that he/she observed that the Subject moved around the open driver's door and once again turned his body to his left with a firearm in his right hand, which Officer A believed indicated the Subject's intention to shoot Officer A. Officer A took a two-handed shooting grip and fired one round to address the deadly threat presented by the Subject's actions. Officer A stopped firing when he/she believed the Subject had moved too far away to be a threat to Officer A.

The BOPC noted that Officer B had stated the word "gun" multiple times during the incident. Officer B stated that he/she observed a firearm in the car initially and stated that there was a gun as the Subject exited the vehicle. Based on Officer A's belief that the firearm was under the Subject's left leg and that Officer B stated there was a gun as the Subject exited the vehicle, the BOPC opined that these factors may have had a substantial impact on Officer A's belief that the Subject had armed himself with the firearm and intended to shoot him/her. The BOPC noted that Officer A followed up with assessments between volleys and believed the Subject still possessed a firearm in his hand. In addition, Officer A was captured on BWV,

advising CD that the Subject was armed and fleeing after the OIS had occurred. The BOPC considered the rapidly unfolding tactical situation, the Subject's increased aggression toward Officers A and B throughout the traffic stop and investigation, and that the Subject lifted his left leg to purposefully conceal the firearm in the door or another firearm under his leg. The BOPC also considered that the Subject's continued escalation and insistence to exit the SUV may have been an indication of the Subject's mindset.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A would reasonably believe the Subject's actions presented an imminent threat of death or serious bodily injury and that the lethal use of force would be objectively reasonable.

- **Officer B** – (pistol, 3 rounds)

According to Officer B, he/she observed the Subject reach for the firearm in the driver's side door pocket with his left hand as the Subject exited the SUV. Officer B heard Officer A tell the Subject to turn around, and then heard a single gunshot. Officer B believed the Subject had armed himself with the firearm and had shot Officer A. According to Officer B, as the Subject fled on foot, Officer B stated that the Subject was holding his left arm bent at the elbow with his forearm across his body parallel to the ground. As the Subject fled on foot, the Subject made eye contact with Officer B, and as the Subject was running, Officer B believed the Subject was pointing the firearm. The Subject turned to his right, facing Officer B. Officer B feared for his/her life and that the Subject was going to shoot Officer B. Officer B also feared for his/her partner's safety, believing the Subject had already shot Officer A. Officer B believed that the Subject was going to kill him/her and fired three rounds at the Subject.

The BOPC conducted a thorough review and analysis of the reasonableness of Officer B's use of lethal force and considered the details of the officers' encounter with the Subject, including the escalation of the Subject's actions in his attempt to flee when Officer B observed the firearm located in the driver's side door pocket.

The BOPC noted that the Subject was initially cooperative with the officers until Officer B began to focus in on the driver's side door of the SUV. The Subject began to become verbally agitated and did not comply with Officer B when asked to move his left leg. The Subject then attempted to reverse the SUV and flee when Officer B communicated his/her observation that there was a firearm in the SUV. Officer B's observation, in conjunction with the Subject reversing the vehicle, led to both officers drawing their service pistols. The Subject then stated that he was getting out of the car and began to exit the SUV.

The BOPC noted that Officer B directed the Subject to stay in the vehicle; however, the Subject was insistent and intent on exiting the vehicle and was in the process of doing so. When the Subject exited the vehicle, Officer B stated that he/she

observed the Subject reaching for the firearm and heard a momentary altercation between Officer A and the Subject, followed immediately by a gunshot. Officer B believed the Subject had armed himself with the firearm and shot Officer A. The BOPC considered Officer B's fear for the safety of Officer A. Officer B believed the Subject had armed himself with a firearm and, upon exiting the SUV, had shot Officer A at close range. As the Subject fled on foot, Officer B observed the Subject turn to his right and make eye contact with Officer B. According to Officer B, the Subject turned to his right and pointed his left hand at Officer B, which Officer B believed to be holding a firearm. Officer B believed that the Subject's intention, after shooting Officer A, was to shoot and kill him/her. Officer B fired three rounds in response to the deadly threat presented by the Subject. Officer B stopped firing once the Subject was out of his/her line of sight and was no longer an imminent threat to Officer B and his/her partner. Under stressful and uncertain circumstances, Officer B was forced to make a decision to use lethal force in what was a rapidly unfolding tactical situation.

Based on the totality of the circumstances, the compressed timeframe to make a decision, and the perception and knowledge known to Officer B at the time, the BOPC determined that an officer with similar training and experience as Officer B would reasonably believe the Subject's actions presented an imminent threat of death or serious bodily injury and that the lethal use of force would be objectively reasonable.

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